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# FEDERALISM-E

*Federalism, multi-level governance & intergovernmental relations -  
Fédéralisme, gouvernance à plusieurs niveaux & relations  
intergouvernementales*





# FEDERALISM-E, VOLUME 17

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### **In Memory of OCdt Harrison Kelertas (1994-2016)**

You were a great leader and mentor, and most certainly an amazing friend.  
This edition is dedicated to you. You have put hours of hard work into this and you have been an amazing person to work with.  
May you rest in peace buddy.



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## Welcome to Federalism-e

*Federalism-E* is a peer reviewed undergraduate journal that encourages scholarly debate and research in the area of federalism by exploring topics such as political theory, multi-level governance, and intergovernmental relations. Papers were submitted from across the country and abroad and then sent out undergraduate students who volunteered to be a part of our peer review board. After extensive evaluation, this year's papers were selected and returned to the authors according to a double blind review process before being polished into a publishable product. The result is this, our 16<sup>th</sup> consecutive year of publication.

It is with great pleasure that we present this year's collection of essays. We hope to encourage undergraduate students to contribute to the community of academic studies, create a forum for better understanding the topic of federalism, and to offer high-performing students the experience of participating in the process of academic publication. We hope you enjoy this year's edition.

## Bienvenue à *Federalism-E*

*Federalism-E* est un journal universitaire de premier cycle également révisé par des universitaires, qui encourage les débats pédagogiques dans le domaine du fédéralisme et explore des sujets tels que les théories politiques, le gouvernement à plusieurs échelons ainsi que les relations intergouvernementales. Ces dissertations ont été soumises des quatre coins du pays et même de l'étranger, et ensuite envoyées aux élèves de premier cycle qui se sont portés volontaires pour notre comité de rédaction. Après plusieurs évaluations, les essais qui vous seront présentés ont été retournés aux auteurs afin de permettre à ceux-ci de faire les corrections pour la publication. Le résultat vous est donc présenté ici, dans la 16<sup>ème</sup> publication consécutive du journal.

C'est avec grand plaisir que nous présentons le fruit de cette collaboration. Nous espérons encourager les étudiants de premier cycle à contribuer plus à la communauté universitaire et à créer un forum pour améliorer la compréhension sur le sujet du fédéralisme. tout en offrant une opportunité pour participer dans la publication d'un journal. Bonne lecture!

# The Growing Importance of Municipal Empowerment in the Canadian Federation and the Need for a “Big Cities Collective”

***Lauren Bech-Hansen – Dalhousie University***

The Canadian federal-provincial system of government is recognized as one of the most unique in the world. While the founding fathers originally envisaged a relatively centralized system of government, reflecting their desire for a powerful national authority, political realities soon deemed that a more decentralized form of government would prevail. Influenced by both domestic and international factors, the Canadian federal system evolved throughout the 20<sup>th</sup> century. Provincial governments increasingly asserted their rights to attain the jurisdictional powers necessary to achieve their goals, and demanded to be placed on a near-equal footing with the federal government.<sup>1</sup> The process by which this unfolded was long, grueling and conflict-ridden, but was essential if Canada were to function in the face of intense regionalism.<sup>2</sup> The process reached its culmination in the Constitution Act of 1982, which enshrined the two-tier federal-provincial system.

Seemingly forgotten as federal-provincial jurisdiction has evolved in Canada is the third level of government: municipalities. And despite their enduring existence in the Canadian political economy, municipal governments have historically been excluded from constitutional recognition, and have “never enjoyed the independence that one often connects to a level of government.”<sup>3</sup> Indeed, while the federal and provincial governments relish in autonomous power, local governments have been subordinately constitutionalized as “creatures of the province”, and are fiercely limited under provincial authority.<sup>4</sup> Municipal subordination has become increasingly problematic in an era of globalization that has introduced new consumer demands that heavily burden local governments. Such developments and challenges often fall outside of municipal jurisdiction, yielding a strong rethink of the current federal system. The empowerment debate becomes more complicated in the Canadian system, in that unrelenting regionalism poses a challenge to a “one size fits all” reform. Particularly, rapid urbanization has precipitated the influence of major urban regions as the drivers of national and global economic growth,

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<sup>1</sup>. Canada, Parliamentary Research Branch, Political and Social Affairs Division *The Foundations of Canadian Federalism*, (Prepared by Wolfgang Koerner Ottawa, Parliament of Canada, December 1988), <http://www.lop.parl.gc.ca/content/lop/researchpublications/bp187-e.htm>

<sup>2</sup>. Gregory J Inwood, *Understanding Canadian Federalism* (Toronto: Pearson Canada, 2013).

<sup>3</sup>. Canada, Municipalities Newfoundland and Labrador, *The Umbrella Of Protection: Regional Government As The Protector And Promoter Of Municipal Strength And Autonomy In Newfoundland And Labrador*, (St Johns, 2010): 7, <http://www.municipalnl.ca/userfiles/files/CCRC%20Umbrella%20Protection.pdf>

<sup>4</sup>. Enid Slack, "Provincial-Local Fiscal Transfers In Canada: Provincial Control Trumps Local Accountability", (Draft paper prepared for Conference on General Grants Versus Earmarked Grants: Theory And Practice?, Copenhagen, September 2009).

underscoring the necessity for urban-municipal independence.<sup>5</sup> But the outputs of globalization in Canada highlight an irrefutable reality: municipal governments increasingly suffer the consequences of a flawed political system in which they have remained restricted. Together, these realities supplement the assertion that the current approach to municipal authority is in dire need of reform.

Despite this subordinate relationship, many municipal governments across Canada have been exposed to, and influenced by, many of the same kinds of forces that have contributed to the devolution of powers to the provinces from the federal government – chiefly among them the migration of both people and economic activity away from rural areas to cities. Yet to this day, the subordinate role of municipalities remains a central barrier to their capacity to effectively respond to these new concerns and reach their full potential.<sup>6</sup> Much literature has been published centered around the municipal subordination in the Canadian federal system in which a clear consensus emerges: the growing importance of local government – and large cities in particular – demands that they be recognized and further acquire the appropriate authority to meet amplified challenges, and further bolster Canada's global position.<sup>7</sup> In an era that has been deemed as belonging to the metropolis, the big cities of Canada need more political and economic clout.<sup>8</sup>

This paper will broadly examine several issues to advance the argument for providing “big city” governments with the appropriate autonomy needed to respond to the pressure of contemporary urban needs. It will firstly examine the nature of the relationship between the provincial and municipal governments, providing a backdrop that is characterized by a deep-rooted dependency. The second section seeks to bolster the case for reform through a discussion of the pressing demands that challenge municipal governments in the 21<sup>st</sup> century, and specifically highlight the disproportionate prosperity of the largest cities. The third section builds on the rampant disproportion between the “have” and “have-less” regions that characterize the Canadian political economy, and explores the challenges this poses to the paradigm of municipal empowerment in the Canadian context. The paper will then reconsider the present-day reforms, and introduce a proposed solution – the formation of a “Big Cities Collective”. It will conclude with a call for collaborative federalism and an exploration of how a return to this era may be forthcoming.

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<sup>5</sup>. Thomas J. Courchene, "Global Futures For Canada'S Global Cities", *Institute For Research On Public Policy: Policy Matters* 8, no. 2 (2007): 3, doi:<http://irpp.org/wp-content/uploads/assets/research/canadian-federalism/global-futures-for-canadas-global-cities/pmv018no2.pdf>.

<sup>6</sup>. André Côté and Michael Fenn, “Provincial-Municipal Relations In Ontario: Approaching An Inflection Point”, *IMFG Papers On Municipal Finance And Governance* no. 17 (2014), <http://munkschool.utoronto.ca/imfg/>

<sup>7</sup>. Christopher Leo, "Deep Federalism: Respecting Community Difference In National Policy", *Canadian Journal Of Political Science* 39, no. 03 (2006), doi:10.1017/s0008423906060240.

<sup>8</sup>. Jesse Kancir, "Empowered Cities: A New Path To Collaborative Federalism", *Policy Options*, (2015), <http://policyoptions.irpp.org/2015/05/15/empowered-cities-a-new-path-to-collaborative-federalism/>.

## **A Culture of Control and Dependency: The Relationship between Canadian Municipal and Provincial Levels of Government**

Historically, the Canadian political system has been fraught with conflict between the federal and provincial governments as self-interest and regionalism inevitably prevailed.<sup>9</sup> In the face of these realities, the political imperative of keeping the country intact necessitated a more or less decentralized form of federalism with substantially empowered provincial governments, a process which culminated in the Constitution Act of 1982.<sup>10</sup> Municipalities, on the other hand, have been consistently excluded from constitutional recognition, and subject to an inferior classification reinforced by 19<sup>th</sup> century legislation such as the Baldwin Act (1849) that grants provincial governments full authority over municipal matters.<sup>11</sup> And because Canada's municipal system was "developed for a political economy characterized by staples extraction and a small, scattered population that was primarily rural,"<sup>12</sup> local governments traditionally have had little responsibility, and relied quite heavily on provincial financial support and guidance. In some respects, this extensive provincial fiscal oversight could be seen as beneficial; local governments were granted the rights to limited, yet stable, self-source revenues (mainly the property tax) and held to tight budgets, preventing the likelihood of monetary predicaments at the local level.<sup>13</sup> Yet in the 21<sup>st</sup> century, this dependency continues to underpin the provincial-municipal relationship despite the changing political, economic and social landscape, and contributes little progress towards meaningful self-sufficiency.

The strains of this hierarchical arrangement first became evident in the early years of the 20<sup>th</sup> century. Primary responsibility for the provision of basic public infrastructure services (such as roads, transit, waste systems, etc.) has long been the domain of municipalities, and for the most part, local governments are the "majority or sole funder of these major public works."<sup>14</sup> But with the effects of significant immigration and swift industrialization throughout the 20<sup>th</sup> century, mounting pressure was placed on many local governments ability to fund dramatic expansion of this necessary infrastructure.<sup>15</sup> While provincial governments began to acknowledge the crisis faced by cities, the passing of local governments by passing Local Government Acts and City Charters did little to solve the municipal plight. The status quo of municipal subservience continued to be reinforced by their limited own-source property tax revenue, which insufficiently

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<sup>9</sup> Richard Simeon, "Federal-Provincial Relations", (*The Canadian Encyclopedia*, Historica Canada 1985, 2006)

<sup>10</sup>Inwood, *Understanding Canadian Federalism*

<sup>11</sup>Côté and Fenn, "Provincial-Municipal Relations In Ontario"

<sup>12</sup>Inwood, *Understanding Canadian Federalism*, 231

<sup>13</sup>Slack, "Provincial-Local Fiscal Transfers in Canada"

<sup>14</sup>The Federation of Canadian Municipalities. "Early Warning: Will Canadian Cities Compete? A Comparative Overview of Municipal Government in Canada, the United States and Europe", (Paper presented at the National Round Table on the Environment and the Economy, Ottawa, 2001),

[https://www.fcm.ca/Documents/reports/Early\\_Warning\\_Will\\_Canadian/\\_Cities\\_Compete\\_EN.pdf](https://www.fcm.ca/Documents/reports/Early_Warning_Will_Canadian/_Cities_Compete_EN.pdf)

<sup>15</sup>Côté and Fenn, "Provincial-Municipal Relations In Ontario"

supported their infrastructure needs.<sup>16</sup> Further aggravating the situation, provincial grants were, and today remain, unreliable sources of long-term fiscal support, as the “provincial governments’ interests in the municipal level [tend] to vary over time, ranging from benign neglect to active interference”.<sup>17</sup> Reinforcing municipal subservience, these provincial grants are provided with rigid conditions that limit the municipal governments’ ability to spend the funds on locally determined objectives.<sup>18</sup> Instead, the provinces produce grants that are contingent on municipal spending in ways that meet or support provincial policy goals.<sup>19</sup>

## **Urbanization and Economic Reform in the 21<sup>st</sup> Century: The Growing Importance of the Largest Urban Areas**

Since the post-Second World War era until the contemporary moment, the Canadian nation and the world alike is being fundamentally transformed through the process of globalization. In the beginning of industrial expansion, the roles of municipal governments were primarily concerned with community housekeeping, while larger policy issues remained debated in provincial and federal parliament chambers.<sup>20</sup> Still, all municipalities, large and small, have witnessed repercussions of these global changes. More so than ever before, local governments are being burdened with heightened responsibility, but lack the independent means to effectively address new challenges. The contemporary system is becoming increasingly characterized by such developments: particularly, technological and economic changes, and swiftly growing populations are contributing to turmoil in Canadian governance structures.<sup>21</sup> Adding to the pressure for reform has been the accelerating rates of immigration to metropolitan areas, resulting in an increasing number of service delivery burdens seeping into the municipal sphere, such as: ...fiber optic networking and communications convergence; Olympic and other sports infrastructure; environmental cleanups; increased health care costs arising from aging and pollution; tort and other liability for building inspection and airport crashes; increasing public

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<sup>16</sup>Canada, Municipalities Newfoundland and Labrador, *Continuities And Discontinuities: A Brief History Of Local And Regional Government In Newfoundland And Labrador*, (St. Johns, 2010), <http://www.municipalnl.ca/userfiles/files/CCRC%20Continuities%20&%20Discontinuities.pdf>; Inwood, *Understanding Canadian Federalism*, 232

<sup>17</sup>Ibid., 232

<sup>18</sup> Canada, Parliamentary Research Branch, Political and Social Affairs Division and Economics Division, *Municipalities, the Constitution, and the Canadian Federal System*, (Prepared by Michal Dewing, William R. Young, and Erin Tolley, Ottawa, Parliament of Canada, May 2006), <http://www.lop.parl.gc.ca/content/lop/researchpublications/bp276-e.htm>

<sup>19</sup> Ibid.,

<sup>20</sup> Thomas J. Plunkett, "Structural Reform Of Local Government In Canada", *Public Administration Review* 33, no. 1 (1973): 40, doi:10.2307/974784.

<sup>21</sup>Christopher Leo, "Deep Federalism"

sector wage costs; alternative fuel and advance transit technology; treatment for drug and related, mental, environmental and other illness; new regulations such as airport rescue.<sup>22</sup>

There are among countless other demands that could not have been imagined at the time when the founding fathers first conceived the political structure of the new country, yet these changes are progressively altering the traditional roles of municipalities and complicating the interactions between the levels of government.<sup>23</sup> By the 1960s, the population of Ontario had grown to 7 million people, but existing local governance structures in the province hampered the ability of cities to manage this new growth on top of the aforementioned responsibilities.<sup>24</sup> Compounded by provincial fiscal disengagement and downloading practices, “the municipalities [were] forced, by legislation or practicality, to fill [this] void resulting from the federal and provincial abdication.”<sup>25</sup> The mounting strain between a growing obligation and inability to effectively manage stimulated a renewed municipal voice in pursuit of more decision-making and fiscal powers to deal with these rising challenges.<sup>26</sup>

In response, a myriad of governance reforms have since been introduced in an attempt to empower cities and enhance service coordination (e.g., creation of regional governments; creation of coordinating bodies such as the Federation of Municipalities; charters of various types; federal gas transfers; specified provincial grants, and other legislation). While “charters” for cities may appear on face to offer municipal governments appropriate powers, these charters are rarely as beneficial as initially conceived.<sup>27</sup> In comparing a Canadian charter city to an American charter city, the failures of the current federal system become apparent. American charter cities are broadly more autonomous than Canadian charter cities – while the charter generates a superficial sense of local authority, the legal status of the municipal governments still remain subordinate and subjective to conventional provincial legislation.<sup>28</sup> At a first glance, it might seem that provincial legislatures have recently ‘loosened the grip’ on municipalities, but the “rules and regulations set out by the province both on the standards for services and the collection of taxes and user fees

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<sup>22</sup>Donald Lidstone, “A Comparison of New and Proposed Municipal Acts of the Provinces: Revenues, Financial Powers and Resources”, (Prepared for the 2001 Annual Conference of the Federation of Canadian Municipalities ,Vancouver, 2001), 5

<sup>23</sup>Christopher Leo, "Deep Federalism"

<sup>24</sup>Côté and Fenn, “Provincial-Municipal Relations In Ontario”

<sup>25</sup>Lidstone, “A Comparison Of New And Proposed Municipal Acts”, 2

<sup>26</sup>Action Canada, *Empowered Cities: A New Path To Collaborative Federalism*, (Prepared by Veronique Herry-Saint-One, Andre Juneau, Jesse Kancir, Morvan Le Borgne, Emilie Nicolas and James Stuewe for Action Canada Task Force Policy Projects, 2014), <http://www.actioncanada.ca/wp-content/uploads/2015/02/TF2-Empowered-Cities-EN.pdf>

<sup>27</sup>Andrew Sanction, "The False Panacea of City Charters? A Political Perspective on the Case of Toronto", *The School Of Public Policy Research Papers* 9, no. 3 (2016).

<sup>28</sup>Ibid,

suggests that provincial control has not declined" as much as is supposed.<sup>29</sup> And quite possibly the most important impetus for increased municipal autonomy is the sheer magnitude of economic restructuring associated with worldwide urbanization. The McKinsey Global Institute has stated that the 21<sup>st</sup> century will belong to the cities: We are quite simply witnessing the biggest economic transformation the world has ever seen as the populations of cities expand and enjoy rising incomes—producing a game changing new wave of consumers with considerable spending power. Meeting demand from these new consumers will necessitate an investment boom in buildings and infrastructure.<sup>30</sup>

Further, major urban areas around the globe are advancing their "role as the dynamic motors that drive innovation, growth and trade."<sup>31</sup> These urbanized regions "hold dense concentrations of human capital that increasingly are required by the knowledge-based economy,"<sup>32</sup> which reinforces their role as the drivers of national and global economic growth. Not only do cities produce and attract skilled workers and competitive business, the world's top 100 cities also generate 30 percent of the global GDP.<sup>33</sup> And in Canada, the top six metropolitan regions (Vancouver, Calgary, Toronto, Montreal, Edmonton and Ottawa) are home to nearly 50 percent of the Canadian population and produce almost half of Canada's national GDP.<sup>34</sup> The United Nations has predicted that this rapid urbanization will not slow anytime soon. The UN estimates that by 2030, 60 percent of the world's population will live in cities, therefore proliferating the world's economic growth.<sup>35</sup>

As the engines of economic competitiveness evolve from natural resources and manufacturing to technology- and knowledge-based service industries, certain Canadian cities have become globally competitive.<sup>36</sup> These urban regions "attract global foreign direct investment, which boosts productivity and growth, supports capital formation and job creation, increases tax revenues, and provides "spillovers" such as access to more advanced technology."<sup>37</sup> And while the

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<sup>29</sup>Slack, Enid "Provincial-Local Transfers", 7

<sup>30</sup>McKinsey Global Institute. *Urban World: Cities And The Rise Of The Consuming Class*. Urban World: Mapping The Economic Importance Of Cities, (2012)

<sup>31</sup>Thomas J. Courchene, "Global Futures For Canada'S Global Cities", *Institute For Research On Public Policy: Policy Matters* 8, no. 2 (2007): 3, <http://irpp.org/wp-content/uploads/assets/research/canadian-federalism/global-futures-for-canadas-global-cities/pmvol8no2.pdf>.

<sup>32</sup>Thomas J. Courchene, "Global Futures For Canada'S Global Cities", 3

<sup>33</sup>McKinsey Global Institute, *Urban World: Cities And The Rise Of The Consuming Class*, (Prepared by Richard Dobbs, Jaana Remes, James Manyika, Charles Roxburgh, Sven Smit and Fabian Schaer, McKinsey & Company, June 2012)

<sup>34</sup>Ibid.,

<sup>35</sup>McKinsey Global Institute, *How to Make a City Great*, (Prepared by Shannon Bouton, David Cis, Lenny Mendonca, Herbert Pohl, Jaana Remes, Henry Ritchie, Jonathan Woetzel for McKinsey Cities Special Initiatives, McKinsey & Company, 2013)

<sup>36</sup>Sood, Pankaj, "Toronto: A Globally Competitive City?", *Action Canada: 2014 Fellows' Op-Ed Articles*, 2014

<sup>37</sup>Côté and Fenn, "Provincial-Municipal Relations In Ontario", 19

top six Canadian cities undoubtedly have the potential to become influential players on the global stage, “these opportunities can be easily squandered if [Canada does not] invest wisely in developing infrastructure and a culture that would attract high quality talent.”<sup>38</sup>

It is important to consider, especially within Canada, that each region has a disproportionate mix of resources, human capacity, and opportunity. The provincial legislatures are not always the most adept at adequately assessing the strengths and weaknesses of each individual municipality: cities know their problems best, and should therefore be empowered to implement suitable solutions to their distinct needs.<sup>39</sup> As municipal governments continue to be severely limited in their autonomy as creatures of the province, municipalities will continue to lack the adequate tools, independence, and sustainable and predictable revenue streams needed in order to design and implement strategies, proportionate to their capacity, to achieve long-term prosperity. In the 21<sup>st</sup> century, the outputs of urbanization validate that the status quo is no longer a workable option: “the implications of these developments are momentous and have not been given the attention they deserve.”<sup>40</sup> As the Mayor of Montreal Dennis Coderre once remarked, “I don’t understand why our destiny should be controlled by the government in Quebec City or Ottawa... as a true metropolis, Montreal should have the autonomy to decide where it should spend its money.”<sup>41</sup>

## **A Key Challenge to Reform: Regional Concerns and The “Have-Less” Municipalities**

Despite the growing consensus for greater municipal autonomy in 21<sup>st</sup> century Canada, there are nonetheless valid concerns about the implications of officially recognized municipal empowerment, namely the aforementioned disproportionality that dominates the Canadian political landscape. There are only a handful of large, urban-center cities in Canada among a broader field of 4000 municipalities of varying sizes, decision-making capacity and economic importance. The smaller municipalities in the Canadian political economy range from relatively under-resourced, to severely dependent on the provinces, and will often strategically take on joint ventures with surrounding areas to form a metropolitan region with more competence and political influence.<sup>42</sup> While large metropolitan areas in Ontario, British Columbia, Alberta and Quebec have experienced an influx of people and economic activity, many smaller communities in these same provinces - and especially across poorer provinces such as Newfoundland and Labrador - have faced increased outmigration and “displayed a continuity of dependence on

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<sup>38</sup>Côté and Fenn, “Provincial-Municipal Relations In Ontario”, 19

<sup>39</sup>Christopher Leo, "Deep Federalism"

<sup>40</sup>Ibid.,

<sup>41</sup>Veronique Herry-Saint-Orge, “More Money, Fewer Problems?”, *Action Canada: 2014 Fellows' Op-Ed Articles*, 2014

<sup>42</sup>Christopher Leo, "Deep Federalism"

outside funding and assistance to be sustainable and improve.”<sup>43</sup> Certainly, outmigration from small towns and rural areas has accelerated over the last twenty years, leaving local governments struggling to provide adequate services in the context of a declining tax base.<sup>44</sup> In light of these realities, constitutionally empowering all 4000 municipalities may be of limited utility, since many municipalities may be simply too small, too economically precarious, and too unsophisticated to handle a substantial increase in political and financial autonomy.

In a “have-less” province such as Newfoundland and Labrador, which is not only geographically isolated but also socially and politically, local government development has been gradual at best.<sup>45</sup> During periods of mass migration in the 20<sup>th</sup> and 21<sup>st</sup> century, Newfoundland and Labrador, as well as many other “have-less” provinces in the East, North and central Canada, did not reap the same benefits as the wealthier provinces in the so-called “golden horseshoe”, or in the West.<sup>46</sup> The provinces of British Columbia, Alberta, Ontario and Quebec had dramatic population increases, predominately in urban regions, and witnessed remarkable economic growth that enabled them with more capacity – and need – for improved autonomous flexibility. Regardless, 21<sup>st</sup> century modernization has created new consumer demands, and residents in all municipalities, large and small, require more of their local governments who struggle to provide these services. Responding efficiently to these new developments is exceptionally challenging for “have-less” regions faced with a smaller population and a smaller tax base. On the other hand, concern also centers on the capacity of small municipal governments to effectively manage more political and economic clout in their own affairs.

But the current reality is that while the “have-less” regions may not be well equipped to handle increased independence, they might not have a choice. Provincial funding support for local government has been in relative decline for decades, as the funding pressures of health care, education and social services consume an ever-increasing share of provincial tax revenue.<sup>47</sup> As a result, “municipalities, like never before, have had to create paths to self-sufficiency, regardless of whether they know how or have the resources to do so.”<sup>48</sup> Municipal governments are to an increasing extent “...asked to do more with less - less money, less people, and less resources.”<sup>49</sup> Small-town areas are remarkably confronted in their ability to effectively operate within these new realities. Consequently, smaller municipalities continue to fundamentally rely on provincial support – dwindling though it may be – and remain politically weak and fiscally unstable actors. Due to this dependent and subservient relationship, these smaller cities find themselves in an

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<sup>43</sup>Municipalities Newfoundland and Labrador, *Continuities And Discontinuities*, 1

<sup>44</sup>Ibid.

<sup>45</sup>Ibid.

<sup>46</sup>Ibid.

<sup>47</sup>William B.P. Robson and Alexandre Laurin, “Adaptability, Accountability And Sustainability: Intergovernmental Fiscal Arrangements In Canada”, *C.D. Howe Institute Commentary* 431, (2015).

<sup>48</sup>Municipalities Newfoundland and Labrador, *Continuities And Discontinuities*

<sup>49</sup>Municipalities Newfoundland and Labrador, *The Umbrella of Protection*

undesirable predicament – they require more authority, but are apathetic towards demanding it.<sup>50</sup> Many small municipalities lack jurisdictional authority “not because they are not ready for the respect that accompanies such an agreement,”<sup>51</sup> but because they realize their incapacity to handle such autonomy. The smaller municipal political agenda differs greatly from more urban areas: applying this logic to the thousands of other small municipalities across Canada, if an equal amount of authority were to be granted constitutionally to all local governments in Canada, these community-based localities would likely stagnate. But in light of declining provincial and federal support, it is unclear whether they have a choice.

### **Pushing Aside the Roadblocks: The Creation of a “Big City Collective”**

It remains relatively uncontested that urbanization has brought about a new urgency for local empowerment. The concern for municipal efficiency has been reflected in a number of new reforms, such as the creation of “charter cities” and increased fiscal revenues. And although all municipal governments have been affected in one way or another, it is an irrefutable reality that the most immediate concern remains with the metropolitan cities, “where the pace of urban expansion was the most dramatic in the country.”<sup>52</sup>

It has been said that “despite the legal framework in which they are defined, municipal governments can be taken more seriously by other orders of government if they self-organize and help show the provinces/territories and the federal government the way forward.”<sup>53</sup> If the case made in this paper is valid – that thousands of smaller Canadian municipalities require more authority and are apathetic toward demanding it, but may have no meaningful alternative but to do so eventually – should the case for reform not instead be made by more motivated entities with a real interest in pursuing immediate reform? That is, should Canada’s largest urban municipalities be the ones to “show the way forward?”

Reopening the Constitution is probably a non-starter. The political environment in Canada is simply not amenable to resurrecting constitutional debates at this time, and some experiments in local government restructuring are happening without need for constitutional reform.<sup>54</sup> And as argued above, granting equal constitutional empowerment to each municipality would create difficult challenges across Canada’s political landscape in the contemporary moment.

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<sup>50</sup>Municipalities Newfoundland and Labrador, *The Umbrella of Protection*

<sup>51</sup>Ibid.

<sup>52</sup>Thomas J. Plunkett, "Structural Reform Of Local Government In Canada", 42

<sup>53</sup>Action Canada, *Empowered Cities: A New Path To Collaborative Federalism*. (Prepared by Veronique Herry-Saint-One, Andre Juneau, Jesse Kancir, Morvan Le Borgne, Emilie Nicolas and James Stuewe for Action Canada Task Force Policy Projects, 2014), <http://www.actioncanada.ca/wp-content/uploads/2015/02/TF2-Empowered-Cities-EN.pdf>

<sup>54</sup>Action Canada, *Empowered Cities: A New Path To Collaborative Federalism*

As previously discussed, city charters for Canada's big cities are inherently superficial and restrictive. Although charters may enable local governments with some mechanisms to enhance efficiency, they remain under the same subjective control of provincial legislation as the other small municipalities in the province. Andrew Sancton (2016) neatly discredits the charter model for Canadian urban cities: Virtually none of the desires that Toronto expected would be served by a city charter have been fulfilled. Quite the opposite, it would appear that the dreams once imagined by charter-city proponents have been snuffed out, and there is no longer any real political voice anywhere advocating for more autonomy and taxing authority...<sup>55</sup> What of potential collective efforts to seek municipal empowerment? One attempt to this end was the establishment of the Federation of Canadian Municipalities' "Big City Mayors' Caucus" (representing 21 Canadian cities ranging in size), whose objective is to "provide a forum for the mayors of Canada's largest cities to conduct national advocacy on common issues of importance."<sup>56</sup> This network, however, has to date proved itself prone to member interest conflict, ultimately inhibiting the push for a coherent urban agenda.<sup>57</sup> This incoherency is likely due to a conflict of interest: the political agenda for urban cities differs considerably to the agenda of lesser localities as a result of widespread disparities. Only six of Canada's cities constitute as a "globally competitive city". Compared to smaller municipalities, the six 'big players' hold the political and economic capacity to manage increased independence, and urgently require it to meet their distinct demands and bolster the Canadian economy. It seems that the values held by the more powerful players will often trump the needs of the smaller, less capable cities.

This is why a more limited "Big Cities Collective" may be a better alternative. Action Canada (2014) initially conceived the proposal for a "Big Cities Collective", comprised of Vancouver, Montreal, Calgary and Toronto.<sup>58</sup> This essay will instead suggest a "Big Cities Collective" comprised of the six most affluent Canadian cities (Vancouver, Montreal, Calgary, Toronto, Edmonton and Ottawa). Because these six areas face similar demands stemming from the processes of urbanization, and further demonstrate the most capacity to drive forward the Canadian economy, the likelihood of the entire group agreeing upon a more limited range of reform proposals would be greatly enhanced. Coherency in an urban political agenda will only augment the challenges undertaken by municipalities in maneuvering the federal system in the 21<sup>st</sup> century.

As has been argued in this paper, Canada's largest urban municipalities deserve recognition and authority commensurate with their increasing importance and contribution to the trajectory of the Canadian economy. A "Big Cities Collective" would set out a new roundtable only for Canada's

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<sup>55</sup>Andrew Sancton, "The False Panacea of City Charters", 1

<sup>56</sup>Federation Of Canadian Municipalities - Overview", *City Of Toronto*, 2016,

<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=e3e8fe581b7ff310VgnVCM10000071d60f89RCRD&vgnextchannel=56f632d0b6d1e310VgnVCM10000071d60f89RCRD>.

<sup>57</sup>Kancir, "Empowered Cities"

<sup>58</sup>Action Canada, *Empowered Cities: A New Path To Collaborative Federalism*

most powerful cities, creating a framework within which they can coordinate, compromise, and distinguish common goals that need to be addressed by all levels of government. Such an entity would have the potential to “transform the power dynamics and the consultations practices between the three orders of government.”<sup>59</sup> Results may not be immediate, but if the Big Cities remain committed and organized, the other levels of government would find it difficult to ignore this central, unified voice.<sup>60</sup> The new roundtable would steadily gain political weight and influence as the ascendancy of the urban city proliferates. A “Big Cities Collective” is also flexible enough to gradually include other cities as they continue to restructure and develop in the context of urbanization.<sup>61</sup> One would also anticipate that the success of this entity would encourage the provinces to recognize the desirability of greater autonomy for municipalities generally, thus inspiring a wider range of municipalities to also assert their appeal for more authority.

## **A Call for a Return to Collaborative Federalism**

Urbanization will continue to reshape the Canadian political and social environment, and disturb the balance of power between the three levels of government, and between municipalities themselves. The rise of new demands that blur jurisdictional lines will only contribute to incoherency and confusion in the Canadian federal system. Similar to the evolution of federal-provincial relations throughout the 20<sup>th</sup> century, the 21<sup>st</sup> century presents new circumstances in which municipalities will require more authority, flexibility and autonomy. Regionalism and municipal disparities present a challenge to a “one size fits all” reform, defeating the proposition for constitutional empowerment in the given moment. It is further evident that charters are not always as efficient as they seem. But the developments stemming from urbanization set the stage for an alternative model; that is, they advance the possibility for a renewed approach to collaborative federalism.

Collaborative federalism, as defined by Cameron and Simeon (2002), is “the process by which national goals are achieved, not by the federal government acting alone or by the federal government shaping provincial behavior through the exercise of its spending power, but by some or all of the 11 governments and the territories acting collectively.”<sup>62</sup> This same principal must be applied to the current state of Canadian political affairs where the ascendancy of municipal governments, urban ones in particular, is strengthening. The proposition of a “Big Cities Collective” could help bring forth a renewed era of collaborative federalism, and provide a framework by which the future of municipal governments, large and small, can form a collective approach to addressing their distinct demands effectuated by the changes of the 21<sup>st</sup> century. That is, a “Big Cities Collective” will provide benefits to the more affluent urban centers that are in dire need of

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<sup>59</sup>Action Canada, *Empowered Cities: A New Path To Collaborative Federalism*

<sup>60</sup>Ibid.

<sup>61</sup>Ibid.

<sup>62</sup>David Cameron and Richard Simeon, "Intergovernmental Relations In Canada: The Emergence Of Collaborative Federalism", *Publius: The Journal Of Federalism* 32, no. 2 (2002): 54, <http://publius.oxfordjournals.org/content/32/2/49.abstract>.

greater autonomy; it will sustain the balance of power and refrain the ‘big city agenda’ from silencing the smaller urban agendas; and (assuming it is effective in enabling urban governments the appropriate capacity to thrive), will encourage the “have-less” municipalities to evaluate their own potentials, capitalize on them, and collectively pursue similar autonomy as the greater urban regions. As municipal governments continue to recognize that significant progress comes from the formation of a locally determined agenda, similar to what the 20<sup>th</sup> century provincial governments did, the momentum behind a more collaborative approach will only get stronger.<sup>63</sup>

It is noteworthy to recognize that the recent federal election was marked by the growing voices of municipal governments across Canada. For many municipalities, the election became a platform to push their demands, primarily concerned with infrastructure matters, economic prosperity, and insufficient funding from the other levels of government.<sup>64</sup> The Trudeau administration has already demonstrated a number of initiatives dedicated towards supporting the urban agenda – “for Canada’s towns and cities that had suffered from the lack of an urban agenda over the past decade, this should mean a new and improved working relationship with Ottawa.”<sup>65</sup> Trudeau has established a solid mandate that will hopefully progress a respective, cooperative, working relationship with the municipal governments. And perhaps most commendable, Trudeau has appointed to the Cabinet Canada’s first-ever Minister of Infrastructure and Communities, a role that will allow municipalities to have a stronger voice in the federal government. Praiseworthy as the Trudeau commitment to a more collaborative approach may be, it is vital that municipalities commit “to firmly but positively [pursuing] a vigorous, respectful and cooperative approach to the new federal government.”<sup>66</sup>

As Canada and the globe alike continue to evolve through processes of globalization, the federal structure will have no choice but to face the reality of local challenges, and reform to accommodate for the purpose of efficiency, sustainability, and prosperity.<sup>67</sup> The Canadian political economy is not yet prepared to wholly engage in a formal redistribution of power, but the federal system is adaptive enough to appropriately endow local governments the authority that they need, particularly through a collaborative approach.<sup>68</sup>

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<sup>63</sup>David Cameron and Richard Simeon, "Intergovernmental Relations In Canada: The Emergence Of Collaborative Federalism", *Publius: The Journal Of Federalism* 32, no. 2 (2002): 54, <http://publius.oxfordjournals.org/content/32/2/49.abstract>.

<sup>64</sup>Gord Hume, "Municipalities Win Respect In Federal Election Campaign", *Municipal World*, (2015), <http://gordhume.com/media/columns-written-by-gord-hume/>

<sup>65</sup>Ibid., 2

<sup>66</sup>Ibid., 2

<sup>67</sup>Ibid.,

<sup>68</sup>Ibid.,

## **Conclusion**

The McKinsey Global Institute posits that “in a world that appears to be increasingly ungovernable, cities – not states – are the islands of governance on which the future order should be built.”<sup>69</sup> The time has come for this reality to be recognized in Canada – a country which, the international Forum of Federations notes, stands almost alone in failing to grant important measures of autonomy to the large cities.<sup>70</sup> A “Big Cities Collective” would provide an encouraging model for improved local government leadership and enhanced intergovernmental relations between all levels of government. It would do so by ushering in an era that would give big cities the political weight they need to address the challenges of the 21st century, which include all kinds of national issues such as poverty, pollution, poor service delivery, and conflict.<sup>71</sup> Complimented by the growing municipal voice in the national agenda, expedited by the new Liberal initiatives, a “Big Cities Collective” may just be the catalyst to the return of collaborative federalism. While disparities relating to scale remain a central issue in Canada, a “Big Cities Collective” is a potentially promising approach to pushing aside the roadblocks that currently stand in the path of municipal governance reform in Canada

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<sup>69</sup>Parag Khanna, "When Cities Rule The World", McKinsey & Company, (2011), <http://www.mckinsey.com/global-themes/urbanization/when-cities-rule-the-world>.

<sup>70</sup>Action Canada,. *Empowered Cities: A New Path to Collaborative Federalism*

<sup>71</sup>Ibid.

## Bibliography

- Action Canada. *Empowered Cities: A New Path To Collaborative Federalism*. Prepared by Veronique Herry-Saint-One, Andre Juneau, Jesse Kancir, Morvan Le Borgne, Emilie Nicolas and James Stuewe for Action Canada Task Force Policy Projects, 2014. <http://www.actioncanada.ca/wp-content/uploads/2015/02/TF2-Empowered-Cities-EN.pdf>
- Cameron, David, and Richard Simeon. "Intergovernmental Relations In Canada: The Emergence Of Collaborative Federalism". *Publius: The Journal Of Federalism* 32, no. 2 (2002). <http://publius.oxfordjournals.org/content/32/2/49.abstract>.
- Canada. Library of Parliament. Parliamentary Research Branch. Political and Social Affairs Division and Economics Division. *Municipalities, the Constitution, and the Canadian Federal System*. Prepared by Michal Dewing, William R. Young, and Erin Tolley. BP-276E. Ottawa: Parliament of Canada, May 2006. <http://www.lop.parl.gc.ca/content/lop/researchpublications/bp276-e.htm>
- Canada. Library of Parliament. Parliamentary Research Branch. Political and Social Affairs Division. *The Foundations of Canadian Federalism*. Prepared by Wolfgang Koerner. BP-187E. Ottawa: Parliament of Canada. December 1988. <http://www.lop.parl.gc.ca/content/lop/researchpublications/bp187-e.htm>
- Canada. Municipalities Newfoundland and Labrador. *Continuities And Discontinuities: A Brief History Of Local And Regional Government In Newfoundland And Labrador*. Prepared by Robert Keener and Phillip Whalen. St. Johns: Municipalities Newfoundland and Labrador, 2010. <http://www.municipalnl.ca/userfiles/files/CCRC%20Continuities%20&%20Disc/o ntinuities.pdf>
- Canada. Municipalities Newfoundland and Labrador. *The Umbrella Of Protection: Regional Government As The Protector And Promotor Of Municipal Strength And Autonomy In Newfoundland And Labrador*. Prepared by Robert Keenan and Phillip Whalen. St. Johns: Municipalities Newfoundland and Labrador, 2010. <http://www.municipalnl.ca/userfiles/files/CCRC%20Umbrella%20Protection.pdf>
- Côté, André, and Michael Fenn. "Provincial-Municipal Relations In Ontario: Approaching An Inflection Point". *IMFG Papers On Municipal Finance And Governance*, no. 17 (2014). <http://munkschool.utoronto.ca/imfg/>
- Courchene, Thomas J. "Global Futures For Canada's Global Cities". *Institute For Research On Public Policy: Policy Matters* 8, no. 2 (2007). <http://irpp.org/wp/content/uploads/assets/research/canadian-federalism/global-futures-for-canadas/-global-cities/pmv08no2.pdf>.
- Federation of Canadian Municipalities. "Early Warning: Will Canadian Cities Compete? A Comparative Overview of Municipal Government in Canada, the United States and Europe". Paper presented at the National Round Table on the Environment and the Economy, Ottawa, 2001. [https://www.fcm.ca/Documents/reports/Early\\_Warning\\_Will\\_Canadian\\_Cities /Compete\\_EN.pdf](https://www.fcm.ca/Documents/reports/Early_Warning_Will_Canadian_Cities /Compete_EN.pdf).

- Federation Of Canadian Municipalities. "Overview". *City Of Toronto*. 2016. [http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=e3e8fe581b7ff310V/nVCM10000071d60f89RCRD&vgnextchannel=56f632d0b6d1e310VgnVCM10/\\_000071d60f89RCRD](http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=e3e8fe581b7ff310V/nVCM10000071d60f89RCRD&vgnextchannel=56f632d0b6d1e310VgnVCM10/_000071d60f89RCRD).
- Herry-Saint-Onge, Veronique. "More Money, Fewer Problems?". *Action Canada Fellows' Op-Ed Articles*, (2014).
- Hume, Gord. "Municipalities Win Respect In Federal Election Campaign". *Municipal World*, (October 2015). [http://gordhume.com/media/columns-written-by-gord/\\_hume/](http://gordhume.com/media/columns-written-by-gord/_hume/)
- Inwood, Gregory J. *Understanding Canadian Federalism*. Toronto: Pearson Canada, 2013.
- Kancir, Jesse. "Empowered Cities: A New Path To Collaborative Federalism". *Policy Options* (2015). <http://policyoptions.irpp.org/2015/05/15/empowered-cities-a-new-path-to-collaborative-federalism/>.
- Khanna, Parag. "When Cities Rule The World". McKinsey & Company (2011). <http://www.mckinsey.com/global-themes/urbanization/when-cities-rule-the-world>.
- Leo, Christopher. "Deep Federalism: Respecting Community Difference In National Policy". *Canadian Journal Of Political Science* 39, no. 03 (2006). doi:10.1017/s0008423906060240.
- Lidstone, Donald. "A Comparison of New and Proposed Municipal Acts of the Provinces: Revenues, Financial Powers and Resources." Prepared for the 2001 Annual Conference of the Federation of Canadian Municipalities, Vancouver 2001.
- McKinsey Global Institute. *How to Make a City Great*. Prepared by Shannon Bouton, David Cis, Lenny Mendonca, Herbert Pohl, Jaana Remes, Henry Ritchie, Jonathan Woetzel for McKinsey Cities Special Initiatives. McKinsey & Company, 2013.
- McKinsey Global Institute. *Urban World: Cities and the Rise of the Consuming Class*. Prepared by Richard Dobbs, Jaana Remes, James Manyika, Charles Roxburgh, Sven Smit and Fabian Schaer. McKinsey & Company, June 2012.
- Plunkett, Thomas J. "Structural Reform Of Local Government In Canada". *Public Administration Review* 33, no. 1 (1973): 40. doi:10.2307/974784.
- Robson, William B.P., and Alexandre Laurin. "Adaptability, Accountability And Sustainability: Intergovernmental Fiscal Arrangements In Canada". *C.D. Howe Institute Commentary* 431 (2015). [https://www.cdhowe.org/sites/default/files/attachments/research\\_papers/mixed/Commentary\\_431.pdf](https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/Commentary_431.pdf)
- Sancton, Andrew. "The False Panacea of City Charters? A Political Perspective on the Case of Toronto". *The School Of Public Policy Research Papers* 9, no. 3 (2016). [http://www.pollicyschool.ucalgary.ca/sites/default/files/research/false-panacea-city-charters-sancton\\_0.pdf](http://www.pollicyschool.ucalgary.ca/sites/default/files/research/false-panacea-city-charters-sancton_0.pdf)
- Simeon, Richard. "Federal-Provincial Relations". *The Canadian Encyclopedia*. Historica Canada 1985, 2006.
- Slack, Enid. "Provincial-Local Fiscal Transfers In Canada: Provincial Control Trumps Local Accountability". Draft paper prepared for Conference on General Grants Versus Earmarked Grants: Theory And Practice?", Copenhagen, September 2009.
- Sood, Pankaj. "Toronto – A Globally Competitive City?". *Action Canada Fellows' Op-Ed Articles*, (2014).

# The European Refugee Crisis: transitioning the EU from state-centric ‘kingdoms’ to a federalist system of multi-level governance

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## **Introduction**

In an era where European integration has become increasingly questioned and where Euroscepticism battles the objectives envisioned by the Maastricht Treaty of 1992, the European Union (EU) desperately needs to revitalize its project of unification if its hopes to survive. Events of the last decade, such as the sovereign debt crisis, the global financial crisis, and the evolving refugee crisis, have challenged the efficacy of the EU and have seemingly undermined its legitimacy as a regulatory body. Taken individually, these crises pose a potent threat to the success of European integration and to the enlargement of member state unification. Most recently, the ongoing refugee crisis has created a sense of disunion within the EU giving way to a state of calamity as successive European efforts have failed at resolving this issue. Reeling from civil conflict and political turmoil, individuals from various regions, most notably Africa, the Middle East, and South Asia, have fled the dangers and uncertainties of their homes in order to seek refuge within neighbouring European countries. This arduous and sudden development has prompted commentators, such as former Greek finance minister Yanis Varoufakis, to claim that the solidarity of the EU is being threatened at a level not seen since the migrant crisis of 1945 during the Second World War.<sup>1</sup>

Although the EU has attempted to enhance the cooperation between member states and EU institutions in immigration and asylum policies, the effectiveness in dealing with the current crisis has been abysmal. In reaction to the surge of asylum-seekers<sup>2</sup>, individual member states have sought to pursue responsive measures that are isolationist in nature, choosing this option over more cohesive, cooperative efforts more often than not.<sup>3</sup> By applying the divergent integration theories of ‘multi-level governance’ and ‘state-centrist model’ as discussed by Gary Marks et al<sup>4</sup>, it can be shown that EU member states have opted for a state-centric, or intergovernmental, approach in favour of a multi-level governance effort in their attempts to resolve the crisis. This paper will

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<sup>1</sup> Martin Farrer, “Yanis Varoufakis: Europe is being broken apart by the refugee crisis,” *theguardian*, November 23, 2015, Web, accessed November 29, 2015, <http://www.theguardian.com/world/2015/nov/23/yanis-varoufakis-europe-is-being-broken-apart-by-refugee-crisis>.

<sup>2</sup> Asylum-seekers are defined by Paul Baker and Costas Gabrielatos as someone who has fled persecution in their homeland and exercised the legal right to apply for asylum or the right to live in the country which they have arrived (Baker and Gabrielatos 2008, 15).

<sup>3</sup> Elspeth Guild et al., “The 2015 Refugee Crisis in the European Union,” *Center for European Policy Studies* no. 332, September 2015, Web, accessed November 29, 2015, [https://www.ceps.eu/system/files/CEPS%20PB332%20Refugee%20Crisis%20in%20EU\\_0.pdf](https://www.ceps.eu/system/files/CEPS%20PB332%20Refugee%20Crisis%20in%20EU_0.pdf).

<sup>4</sup> Gary Marks, Liesbet Hooghe, and Kermit Blank, “European Integration from the 1980s: State-Centric v. Multi-level Governance,” *Journal of Common Market Studies* 34, no. 3 (1996): 341-378, DOI: 10.1111/j.1468-5965.1996.tb00577.x.

attempt to show how state-centric conflict resolution within the EU is ineffective and in some cases, detrimental to European integration, making the argument that it has in fact exacerbated the current refugee crisis. It will be shown that the only sufficient response able to resolve the crisis is by fostering a multi-level governance method of cooperation that seeks to establish a common response to refugees<sup>5</sup> across all member states. In doing so, it is argued that states must be willing to forgo some of their sovereignty in order to shift a majority of authority onto the EU so as to produce a federalist structure that increases competences and the capability to organize this multi-level response. The scope of this paper is limited to asylum policy and as such, does not argue for a complete federalist overhaul of the EU, as this would certainly be rejected by member states in many policy areas. Rather, it is shown how the transition to a federalist approach in dealing with the refugee crisis may be the only effective resolution.

## **State-Centric vs. Multi-Level Governance Theories**

Among the dominant theories of European integration, two of the prevailing concepts are state-centric and multi-level governance. Whereas the former seeks to explain integration based on the deliberation and bargaining between state executives (as states are the ultimate decision-makers); the latter argues that decision-making is shared between various actors at different levels rather than being monopolized by the state, and is in fact a process of state decentralization by sharing control over outcomes.<sup>6</sup> State-centrists attempt to conceptualize EU membership as a means of strengthening state sovereignty, and the EU as simply being an arena that facilitates bargains and interactions between member state governments.<sup>7</sup> Realistically however, the emergence of transnational municipal networks across Europe and the increasing interdependence of European nations in the face of globalization, suggests that a multi-level governance model is a better way of understanding politics in the EU. The EU has developed into a system of multiple sources of authority that include European, national, and subnational levels of governance.<sup>8</sup> Rather than confining the EU to a definition solely concerned with nation states, Kristine Kern attempts to provide a more holistic and pragmatic illustration of EU governance:

The concept of multi-level governance can be read in a narrow way as shifting competencies between local, national and supranational governmental institutions, or it can take into account not only traditional methods of public regulation by the state, but also the entire range of actions and institutions which provide order (including public-private partnerships, non-state actors and so on). Authority has not simply shifted upwards to European institutions, it has become dispersed across multiple territorial levels and among a variety of private and public actors. This includes the transfer of authority from the national to the sub-national level because in many European countries government has become increasingly decentralized and local competencies expanded.<sup>9</sup>

Multi-level governance is a much clearer description of contemporary relationships and dynamics within the EU and provides a superior description of European integration than state-

<sup>5</sup> Baker and Gabrielatos mark the distinction of refugee from asylum-seeker as someone whose asylum application has been successful, having proved they would face persecution back home. Thus, refugees and asylum-seekers are extremely similar in their definition; the only difference being that a refugee's claim of persecution is recognized as valid (Baker and Gabrielatos 2008, 15).

<sup>6</sup> Ibid, 345-346.

<sup>7</sup> Ibid, 342.

<sup>8</sup> Kristine Kern and Harriet Bulkeley, "Cities, Europeanization and Multi-Level Governance: Governing Climate Change through Transnational Municipal Networks\*," *Journal of Common Market Studies* 47, no. 2 (2009): 311.

<sup>9</sup> Ibid.

centric theory does. State-centrists seem incapable of recognizing the realities of recent EU enlargement and the ensuing treaties that significantly transferred levels of power and real decision-making authority onto EU institutions. Therefore, the state-centrist model appears to be outdated and incapable of applying itself to modern discussions of EU governance. Similarly it may not be able to induce productive analysis regarding policy negotiations. Ultimately, in the context of the refugee crisis, state-centrist theory will be able to define the singular, isolationist approaches of member states but will be ineffective of proposing a viable solution to this issue. Multi-level governance on the other hand, will be able to identify the responses of various actors, notably the EU and various member states, and can strongly argue that a higher degree of multi-level cooperation is necessary if the refugee crisis is to be resolved.

## **EU Asylum Policies and Practices beyond the Cold War**

The Geneva Convention on the Status of Refugees that was codified in 1951 served as the foundation for European asylum policy until it was restructured in 1967 to include refugees from non-European states.<sup>10</sup> Within this convention, refugees were protected under a shroud of liberalist universalism. Asylum was thus attainable regardless of race, gender, or religion, and was a universally practiced policy by western European states following the Second World War.<sup>11</sup> Throughout the Cold War, perceptions surrounding the Soviet Union, and of communism more generally, began to broaden the definition of refugee. This definition included those who suffered violations of their civil and political freedoms which, when combined with the sentiments of WWII, created a broad acceptance and common implementation of asylum policy across Europe.<sup>12</sup> Rather than outlining how to deal with large influxes of refugees, this policy was tailored specifically for individuals and included a strict right to 'non-refoulement,' or the inability of the state to send a refugee back to a country where their right to life and liberty would be threatened.<sup>13</sup> Clearly then, early examples of European refugee policies were focused on the refugees themselves and were unanimously implemented in a concerted effort between states to mitigate conflict. Although these efforts were largely successful, the relatively high demand for immigrant labour in the post-war period may in part explain these successes.<sup>14</sup> What is important to note here however, is that for several decades, there was an absence of immigrant-driven internal conflict within Europe? The lack of internal tension was the result of states working collectively in applying the same guidelines to their responses and actions.

Moving into the 1970s and 1980s however, endogenous and exogenous factors began to put pressure on Europe, considerably straining their ability to handle the integration of asylum-seekers. Internally, the recession of 1973 that severely increased unemployment across Europe, as well as several instances of disrupted race relations, most notably in the UK, forced states to curb their immigration policies and restrict the avenues available to asylum seekers.<sup>15</sup> Furthermore, the transition into the 1980s and 1990s saw several civil conflicts beyond European borders including

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<sup>10</sup> Christina Boswell, "Values and the Asylum Crisis," *International Affairs* 76, no. 3 (2000): 539, <http://www.jstor.org/stable/2625953>.

<sup>11</sup> Ibid, 540.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid, 541.

<sup>14</sup> Ibid, 542.

<sup>15</sup> Ibid, 541.

from within the former Yugoslavia. These episodes of strife blended with the removal of restrictions on refugees originating from the former Soviet bloc to produce a significant expansion of the number of people seeking asylum within Europe.<sup>16</sup> The hands of national decision-makers became tied, making it near impossible for European countries to avoid conflict and societal unrest due to the particularly complex asylum crisis that began to emerge. This led to asylum-seeking becoming a central theme in European policy resulting in the creation of several treaties, most importantly the Nice Treaty and the Lisbon Treaty. Both of these treaties sought to establish a common legislative framework for handling immigrants while also officially granting power to EU institutions so that they could influence decision-making outcomes.<sup>17</sup> Additionally, the Maastricht Treaty established a legal basis for adopting a common asylum and immigration process, and the Amsterdam Treaty set out minimum standards for granting refugee status.<sup>18</sup> The treaties also provided a framework for member states to ratify these rules and for the EU to regulate them.<sup>19</sup> As the project of integration intensified and the power of the EU grew, it is clear that there was a transition in the way that the EU attempted to resolve interstate crises. With regards to immigration policy and prior efforts at dealing with European asylum crises, there was a shift from intergovernmentalism to a multi-level governance model wherein decisions were shared across the institutional spectrum of the EU. This model has remained in place throughout the first decade and a half of the Twenty First Century. For the most part, multi-level decision-making is a central component of EU action, while generating important effects on border control, asylum, and irregular migration.<sup>20</sup>

## **Current Responses to the Refugee Crisis: The “Fortress” Approach**

The current crisis has largely been influenced by a combination of the tyrannical Syrian leader Bashar al-Assad and a growing terrorist network, the Islamic State, wreaking havoc within Syria and surrounding Middle Eastern regions. The EU itself has recognized the unprecedented rate at which people continue to flock to Europe. The president of the European council Donald Tusk declared it as a challenge not seen in decades, including those experienced in wars close to the region's frontiers.<sup>21</sup> It appears however, that the European response has been characterized by a contradiction between a moral obligation to endorse the human rights of refugees, reflecting the liberal universalism of past policies, and a stark incompetence to administer a comprehensive policy for its member states. Whereas the treaties of the EU call for common protocols in dealing with asylum-seekers, what has actually transpired has been an intergovernmental campaign between member states who have engaged those seeking asylum through isolationist policies.

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<sup>16</sup> Christina Boswell, “The ‘external dimension’ of EU immigration and asylum policy,” *International Affairs* 79, no. 3 (2003): 621.

<sup>17</sup> Petra Bendel, “Asylum and Migration Policy,” in *Policies within the EU Multi-Level System*, edited by Hubert Heinelt and Michele Knodt (Germany: Nomos, 2011): 371.

<sup>18</sup> Boswell, “Values,” 542-543.

<sup>19</sup> Ibid.

<sup>20</sup> Christina Boswell and Andrew Geddes, “Studying Migration and Mobility in the European Union,” in *Migration and Mobility in the European Union* (New York: Palgrave Macmillan, 2011): 7-8.

<sup>21</sup> Chris McGreal, “Donald Tusk defends European response to ‘unprecedented’ refugee crisis,” *theguardian*, September 29, 2015, Web, accessed November 30, 2015,

<http://www.theguardian.com/world/2015/sep/29/donald-tusk-defends-european-values-united-nations>.

Commenting on these nonaligned methods, Lukas Kaelin notes that virtually all of the EU member nations have been affected differently by the crisis' complexity<sup>22</sup>, causing each state to pursue different approaches based on how severe their situation was.<sup>23</sup> In particular, Kaelin mentions the methods undertaken by Greece, Hungary, Germany, France, the Netherlands, and Austria. He explains how the continual failure of the EU to enforce a common asylum system has left nation states no other option but to handle the situation as individuals. Moreover, by referencing unequal rules of migrant distribution and the unsuccessful attempts of the EU to convince its member nations to adopt a quota system<sup>24</sup>, Kaelin highlights the inability of the EU to utilize its authority and become an influential decision-making partner in the situation. He suggests that the EU has become irrelevant in certain aspects of the crisis noting that countries have bypassed the collaborative stage in favour of domestic solutions to the problem. His major concern involves the separate ways in which different countries are attempting to *deter* and even get rid of asylum-seekers because the EU is incapable of controlling the actions of states.<sup>25</sup> Clearly, Kaelin's opinion conforms to that of a state-centrist in that he believes the policy outcomes regarding the refugee crisis are determined by individual member nations who ignore the authority of supranational institutions. He claims that, "In reaction to the flow of migrants, Europeans have focused on reinforcing national borders."<sup>26</sup> This illustrates how national governments have internalized the decision-making process and have effectively shut the EU out. Kaelin's perspective of European integration therefore falls in line with the core principles of the state-centric model.

A large number of states have in fact taken what I call a 'fortress' approach to dealing with the situation, which involves defensive or protectionary methods. They have attempted to barricade their respective borders hoping that it will stall those seeking asylum to the point where they turn elsewhere for help. Hungary has not only sealed off its borders with Serbia and Croatia by constructing a fence, it is also arresting people for trying to cross the border, successfully eliminating any route into the country.<sup>27</sup> Similarly, Austria has imposed stringent security checks on those seeking refuge within the country making it extremely difficult for asylum-seekers to obtain protection.<sup>28</sup> Additionally, Poland, the Czech Republic, and Slovakia have each only accepted a small number of refugees, with the latter being criticized for stating that it would only accept those of Christian faith.<sup>29</sup> There has also been much discussion about the potential deployment of armed forces along several countries' borders. This would complement the already utilized water cannons and tear gas, forcefully repelling those fleeing violence and other forms of persecution

<sup>22</sup> UNHCR The UN Refugee Agency, "2015 UNHCR regional operations profile – Europe," *UNHCR Global Appeal 2015 Update*, 2015, <http://www.unhcr.org/5461e5f80.html>.

<sup>23</sup> Lukas Kaelin, "Europe's Broken Borders," *Foreign Affairs*, September 2, 2015, accessed November 30, 2015, <http://www.foreignaffairs.com/articles/western-europe/2015-09-02/europe-broken-borders>.

<sup>24</sup> Lukas Kaelin, "Europe's Broken Borders," 2015.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> "Reactions to Refugee Crisis May Violate States' International Legal Obligations," *International Justice Resource Center*, November 25, 2015, Web, accessed November 30, 2015, <http://www.ijrcenter.org/2015/11/25/reactions-to-refugee-crisis-may-violate-states-international-legal-obligations/>.

<sup>28</sup> Ibid.

<sup>29</sup> Luke Graham, "How Europeans have reacted to migrant crisis," *CNBC*, September 8, 2015, <http://www.cnbc.com/2015/09/08/how-europeans-have-reacted-to-migrant-crisis.html>.

hoping to find safety within the EU.<sup>30</sup> Collectively then, the reaction of many states has been to create a ‘fortress’ whereby they reinforce their borders to barricade, limit, and expel refugees from entering into their territory in order to protect the nation’s integrity and interests of native citizens.

The imagery that arises from this parallels that of a king in his castle digging a moat and stationing knights around his kingdom to protect himself from peasant uprisings. These European ‘fortresses’ have done nothing to resolve the current crisis. Instead, they have made life indefinitely worse for those already fleeing horrific situations, have created longer and more dangerous routes (often by sea), and have significantly intensified issues associated with shelter and living conditions in other member nations. Essentially, these European ‘strongholds’ have exacerbated the crisis by prioritizing state interests over the lives of hundreds of thousands of people. By pursuing isolationist, state-centric responses to the crisis, member states have created a pattern of integovernmentalism. This pattern has diminished solidarity by uprooting the best practices of asylum policy established in various EU treaties and through its fragmentation of European integration as a whole. It has also brought to light questions surrounding European values and the future of the EU; specifically, can the project of EU integration survive if its constituents cannot be swayed to adopt a humanitarian conscience consistent with the liberal values the EU itself was founded on? It appears as though self-interested member states would rather shrink into themselves through kingly citadels and militarism than embrace the liberal universalism set out in the constitution of the EU.

Not all individual responses have been negative however. A handful of member states have actually proven to be successful in generating positive results. In particular, Germany and Sweden granted the largest number of Syrians asylum from 2012-2014 (39,965 and 31,771 respectively) in addition to refugees who were granted temporary protection (an extra 27,035 and 7,465 respectively).<sup>31</sup> Each country has also made further commitments to accepting more refugees in the near future. The highly state-centric response witnessed throughout this crisis has therefore not produced negative results across the board. In a small number of cases, individual nations have been able to foster an effective response and provide haven for thousands of refugees. More recently, the EU, led by German Chancellor Angela Merkel, proposed a deal with Turkey attempting to limit the number of refugees entering Europe so as to reduce the burden on certain European states.<sup>32</sup> However, the logic and future success of this proposal remains under scrutiny. Turkey not only borders the civil war-torn country of Syria, Turkish officials have also commented on the sheer logistical difficulty in accommodating the increased inflow, making conditions for asylum-seekers volatile and dangerous.<sup>33</sup>

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<sup>30</sup> Gwynne Dyer, “Europe’s Refugee Crisis: The Good, the Bad and the Ugly,” *The Sydney Morning Herald*, September 3, 2015, Web, accessed December 1, 2015, <http://www.smh.com.au/comment/eu-response-to-migrant-crisis-ranges-from-generosity-to-panic-20150903-gje39e.html>.

<sup>31</sup> Nicole Ostrand, “The Syrian Refugee Crisis: A Comparison of Responses by Germany, Sweden, the United Kingdom, and the United States,” *Journal of Migration and Human Security* 3, no. 3 (2015): 269-271.

<sup>32</sup> Krishnadev Calamur, “The Steady Trickle of Refugee Deaths in the Mediterranean,” *The Atlantic*, February 8, 2016, Web, accessed March 11, 2016, <http://www.theatlantic.com/international/archive/2016/02/refugees-drowning/460419/>.

<sup>33</sup> Ibid.

## **Making the Case for Federalism**

Once enough pressure is applied on a king by a peasant uprising who challenge his effectiveness and legitimacy to govern, he has no choice – other than death – but to hand over his kingdom to the people, therein relinquishing his ‘fortress.’ This metaphor resonates with the current refugee crisis unfolding in Europe. Many individual nation states have acted as ‘kings’ or as isolationist decision-makers hiding behind the ‘fortress’ of their borders, and are conceivably indifferent to the human suffering of individuals fleeing persecution. These state-centric reactions have stifled the ability of the EU to put forward an effective solution and have increased the pressure on both cooperative member states as well as on asylum-seekers themselves. The severity of this crisis cannot be understated. The human suffering, tragic losses of thousands of people, and disregard of states in upholding their duty to protect human rights, all serve as justification for an urgent resolution. In 2015 alone, more than 1,800,000 people sought refuge in the EU, about 1,012,000 of whom travelled across seas in order to reach safety.<sup>34</sup> These sea escape routes present an extremely treacherous journey for asylum-seekers. Often by overcrowded boats, displaced families sail across the Mediterranean in small wooden boats; a travel plan that resulted in the death of more than 3,770 migrants in 2015.<sup>35</sup> As of February 5, 374 asylum seekers have died in 2016, mostly from drowning, adding to the already high death toll.<sup>36</sup> If a solution is not found soon, tension may reach a breaking point within the EU, leading to a rapid unravelling of European integration and quite possibly to the dissolution of the EU as a whole. It is quite clear that intergovernmentalism has not presented itself as a viable solution, and the case studies of several individual EU member states have proven that there is a dire need for a new approach.

Many analysts have called for a more cohesive response to the problem involving a consolidation of authority within EU institutions. This is exactly what Europe needs; a system of multi-level governance with an emphasis on the decision-making capability of EU institutions. Rather than a system of many independent ‘kingdoms,’ the EU needs to resemble a federalist system whereby the EU is the highest level of authority and has near complete jurisdiction in matters of asylum-seeking. Federalism is described as,

[...] a euphemism for at least four partially incompatible preferences: “diffusion” of authority from national to relatively local government units, “centralization” of national authority, “separation” of national and state authority, and “empowerment” of both state and national governments.<sup>37</sup>

Similarly, federalism facilitates the importance of federal power in restraining the power of state governments. Due to the overlapping of governmental power, in order to ensure successful implementation of policy it is necessary to have a strong central authority, First, federal institutions play a coordinating role in the exercise of concurrent state authority [...] Second, some grants of exclusive or preemptive power to the federal government serve both a vertical allocation function and a *horizontal conflict avoidance function* (emphasis added).<sup>38</sup>

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<sup>34</sup> “Migrant Crisis: Migration to Europe explained in several charts,” *BBC News*, March 4, 2016, Web, accessed March 13, 2016, <http://www.bbc.com/news/world-europe-34131911>.

<sup>35</sup> Ibid.

<sup>36</sup> Krishnadev Calamur, “The Steady Trickle of Refugee Deaths in the Mediterranean,” *The Atlantic*, February 8, 2016, Web, accessed March 11, 2016, <http://www.theatlantic.com/international/archive/2016/02/refugees-drowning/460419/>.

<sup>37</sup> Allan Erbsen, “Horizontal Federalism,” *Minnesota Law Review* 93.2 (2008-2009): 499-500.

<sup>38</sup> Ibid, 504.

From these connotations, it is clear to see why a federal approach to the refugee crisis would be effective. First, although the member states would retain some of their power, the central governing agencies of the EU would be given a centralized level of authority and would be empowered to wield influence. Second, EU institutions would be better suited to reel non-compliant states into line with common asylum policies, while also acting as a preventative mechanism to horizontal conflicts. Of course, this system would not be ideal for the functioning of the Union as a whole, as member states would most likely reject a federalist overhaul and ensuing concessions of authority. However, it would be effective in this specific policy field.

As George Ross indicates, throughout the history of the EU, intergovernmentalism and the lack of a strong central arbiter, has been the crux of fragmentation; When crises occurred, it was because member states stopped cooperating. When things stagnated, it was because member states preferred to go their own separate ways.[...] When ‘rationality and governance’ fell out of phase, meaning when member states had not yet understood that there were new needs for Europeanization, cooperation could not happen and crisis followed.<sup>39</sup>

Moreover, as the project of European integration faces adversity and skepticism, a big project viewed as vitally important by all citizens that the EU alone could confront, may steer integration back on course. Maybe more importantly, a task like this could ward off a return to the decentralization of state-centrism; because if the EU has no response to the real challenges people face, they will turn toward national responses.<sup>40</sup>

## **Potential Explanations of European State-Centrism**

If we are to fully understand why countries have seemingly circumvented EU institutions in favour of isolationist policies, it is pertinent to explore several potential causes for this behaviour. One such causal factor is that a majority of asylum-seekers reach small, often times overwhelmed countries first and are expectant that they will be granted asylum. Many of the landing sites for Syrian refugees are Mediterranean countries such as Greece and Italy and, according to the Dublin III Regulation,

[...] the first Member State an asylum-seeker entered is responsible for examining their application for international protection. This means that an asylum-seeker who moves to another state will be transferred back to the Member State at the EU's external borders [...] As a consequence of the Dublin rules, Member States on the EU's external borders literally form the front line for asylum applications, at the same time as coming under great pressure from irregular migrants. The overload on some Member States' asylum systems has led to both poor conditions for asylum-seekers (unjustified detentions, mistreatment, etc.) and to lower rates of asylum being granted.<sup>41</sup>

Related to the Dublin *rules*<sup>42</sup>, another factor influencing the responses of member states is the enduring effects of the European sovereign debt and global financial crises that have affected

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<sup>39</sup> George Ross, “Flight of the Member States,” in *The European Union and Its Crises: Through the Eyes of the Brussels Elite* (New York: Palgrave Macmillan, 2011): 61.

<sup>40</sup> Ibid, 108-109.

<sup>41</sup> Piotr Batowski, Eva-Maria Poptcheva, and Detelin Ivanov, “EU migratory challenge: Possible responses to the refugee crisis,” *European Parliament Research Service*, September 2015, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/568312/EPRI\\_BRI\(2015\)568312\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/568312/EPRI_BRI(2015)568312_EN.pdf).

<sup>42</sup> In order to understand how Dublin rules complicate the refugee crisis, see Jan-Paul Brekke and Grete Brochmann’s article “Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences,

the economies of all European states. The financial reality in welcoming refugees, which requires an initial investment of public funds<sup>43</sup>, may ward off countries who still suffer under debt payments and weak economies from conforming to the EU's common asylum policies. Most recently, the attacks in Paris and a growing concern over terrorism has increased the reluctance of states to accept refugees based on religious identification. This event has significantly heightened isolationism as it has forced countries close to the attack such as Belgium, Italy, and France to close and securitize its borders in order to coordinate efforts to apprehend the perpetrators. It has also given partial justification to those countries already skeptical of accepting refugees such as Poland, Latvia, the Czech Republic, and Slovakia. These events have allowed them to incite demands for further restrictions, utilizing loose, xenophobic linkages of the Muslim identity of many refugees to terrorism as their source of justification.<sup>44</sup> Terrorism continues to challenge the solidarity of the EU and may explain, in part, why certain nations are hesitant to adopt an asylum program, as well as why some nations continually reconsider their refugee commitments.

Lastly, there is an institutional factor that may contribute to the skepticism of embracing an EU-led common approach. There is currently no EU-wide asylum *status* enshrined within the Lisbon Treaty, which instead sets out a common *system*. In other words, the EU's asylum system allocates responsibility for the processing of asylum applications to individual member states, while also ensuring the state provides protection when asylum is granted.<sup>45</sup> Thus, a state is not legally required to protect emigrants unless they grant them asylum. As mentioned above, many states have denied this privilege to a large number of asylum-seekers, if any at all. These factors may explain why in most cases, individual states perceive the burdensome policies of the EU as counter-beneficial and instead, opt for methods that better suit their own capabilities and interests.

## **Conflict and Divergence within the EU Multi-Level System**

Although on the surface, the very idea of multi-level governance seems superior to state-centrism and well-suited for a region like the EU, it has not functioned flawlessly and has faced a number of challenges. Member states are in fact legally bound by the various EU treaties to implement community law in an efficient manner, but as Simona Milio explains:

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and the Dublin Regulation.” Brekke and Grete explain that Member States agreed to the implementation of the Dublin Regulation in order to foster EU harmonization and to reduce difference between countries through supranational legislation. Since its inception, it has been revised twice, most recently in 2013 (Dublin III) but still remains problematic and disruptive to the common European asylum system as a whole. The authors make note of several deviations from the Dublin rules, in particular Norwegian officials not forcing those who arrived in Greece but fled to Norway to return to Greece for processing. However, they are critical of how the Dublin rules complicate an already dire situation, in many instances ‘binding’ refugees to the harsh conditions of the country they arrive in, while also placing disproportionate pressure on a handful of national governments (Brekke and Brochmann 2015, 150).

<sup>43</sup> Philippe Legrain, “The Disintegration of Europe,” *Social Europe*, October 20, 2015, Web, accessed December 1, 2015, <http://www.socialeurope.eu/2015/10/the-disintegration-of-europe/>.

<sup>44</sup> Joanna Plucinska, “The Paris Attacks Have Put Europe’s Refugee Crisis Under Renewed Scrutiny,” *Time*, November 16, 2015, Web, accessed December 1, 2015, <http://time.com/4114009/paris-attacks-migrant-crisis-refugees-eu/>.

<sup>45</sup> Bakowski et al., “EU migratory challenge,” 2-3.

In the EU there is an explicit division of competences in relation to the implementation of policies between the EU institutions and the Member States, with the EU Commission responsible for monitoring the correct transposition and application of Community law while responsibility for the execution of policies lies with the Member States. Policy implementation is in general a delicate phase of the policy-making process, more so in the EU, where deviations in the implementation phase from the original policy objectives are recurrent. The EU also experiences significant difficulties in establishing the real impact of EU policies at a national level, due [...] to the sheer complexity of the multi-level interactions that inform the EU integration process.<sup>46</sup>

Clearly, in such a complex and intricate system of governance involving national, subnational, and supranational authorities, successfully carrying out common objectives through EU policy becomes difficult. Moreover, when the *real* power to actually implement policy lies within the hands of member states who may not always see eye-to-eye with one another or the EU, and may very well have differing national interests, the efficacy of common policy is uncertain. Indeed, in a system such as this, member states are often reluctant to outsource their control to the EU as it illustrates a potential transfer of sovereignty and accompanying loss of power of national authority.<sup>47</sup> Likewise, even when the EU demonstrates its competence in dealing with issues, this may have no influence over EU unity. Member states are unlikely to cooperate if national authorities perceive the EU position as divergent from their own preferences or consider it unbeneficial to cooperate on the premise of a common European objective.<sup>48</sup>

EU institutions and treaties themselves may have also lessened the capability of multi-level governance to flourish within the European region. Throughout the EU's evolution, member states have constructed numerous treaties which they later amended to expand the scope of the EU, thereby significantly altering the institutional and procedural framework of the Union. These revisions have been subject to a threefold process which has ultimately limited the *power* of EU institutions, yet at the same time expanded the institutional *involvement*. As defined by Maurer, Mittag, and Wessels, this process is as follows: an accentuation of absolute intergovernmentalism's failure to produce effective measures within the EU by highlighting the dilemma of free-riding that arises during cooperation without supranational arbitration; this is followed by a collective search for an organizational framework that includes the institutions of the EU as brokers of policy areas in order to establish a form of 'rationalized intergovernmentalism'; finally, governments are forced to commit themselves to qualified majority voting and to revisit the treaties to create an efficient set of rules with a stronger role for supranational bodies by acquiescing some of their sovereignty.<sup>49</sup> The process of formulating EU treaties places an emphasis on supranational procedures and delegating authority to an EU set of rules. Unfortunately, it situates policy largely within the intergovernmental pillars of the Union, creating ambiguous policy fields and raising the potential

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<sup>46</sup> Simona Milio, *From Policy to Implementation in the European Union: The Challenge of a Multi-Level Governance System* (New York: I.B. Tauris Publishers, 2010), 4.

<sup>47</sup> Louise G. van Schaik, "EU Competence: A Precondition for EU Unity?" in *EU Effectiveness and Unity in Multilateral Negotiations* (New York: Palgrave Macmillan, 2013), 56.

<sup>48</sup> Ibid, 69.

<sup>49</sup> Andreas Maurer, Jurgen Mittag, and Wolfgang Wessels, "National Systems' Adaptation to the EU System: Trends, Offers, and Constraints," in *Linking EU and National Governance*, edited by Beate Kohler-Koch (New York: Oxford University Press, 2003), 58-59.

for conflict between the actors involved.<sup>50</sup> In other words, treaties have actually separated the competencies of member states and EU institutions rather than consolidating them. Ultimately this challenges the project of European integration and, more importantly, institutionally restrains the ability of multi-level governance to resolve conflict.

When analyzing the issues of immigration and asylum crises more specifically, the same strains on an EU-led policy can be observed. The European policy area of 'Freedom, Justice, and Security' promoted by Justice and home affairs (JHA), has incurred a considerable emphasis of cooperation between member states. In particular, JHA encourages states to strengthen their competencies regarding common policies on immigration and asylum seekers, management of external EU borders, best practices in national policing, and an elaboration of common standards.<sup>51</sup> However, as Christina Boswell states, the measures pursued by the JHA in realizing their objectives have not yet created an established pattern of cooperation, leaving the EU hard-pressed to facilitate the attainment of these policy goals and resolve the crises associated with emigration.<sup>52</sup> In addition, Christopher Bickerton points out that the JHA's compromise of navigating between intensive intergovernmental efforts and consolidating authority in supranational entities has spurred a debate surrounding sovereignty, separating member states and the EU even further.<sup>53</sup> This would suggest that the very institution (JHA) entrusted to facilitate cooperation between member states and the EU in resolving immigration issues, may in fact be prohibiting these common policies from realizing their objectives. Ultimately it may prevent the introduction of a pan-European solution to asylum-seekers and the refugee crisis.

## **Initial Recommendations for Multi-Level Governance**

Both internationally, and internally within the EU it has been stressed that the only way to resolve the current refugee crisis is through a united European response; anything less is simple inadequate.<sup>54</sup> Revisiting the theory of multi-level governance, which states that authority becomes decentralized in national governments to be reallocated to subnational and supranational entities, it is clear that national governments seem to wield considerable authority with regard to asylum policy. Member states are able to repeatedly ignore their supranational counterpart and bypass the common policies which they agreed to when they ratified the treaties of the EU. Shifting to a system characterized by federalism would mitigate these issues and would offer the best chance for abating

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<sup>50</sup> Andreas Maurer, Jurgen Mittag, and Wolfgang Wessels, "National Systems' Adaptation to the EU System: Trends, Offers, and Constraints," in *Linking EU and National Governance*, edited by Beate Kohler-Koch (New York: Oxford University Press, 2003), 60.

<sup>51</sup> Christopher J. Bickerton, "Europe's Compromising Union," in *European Integration: From Nation-States to Member States* (Oxford: Oxford University Press, 2012): 38.

<sup>52</sup> Boswell, "The 'external dimension,'" 620.

<sup>53</sup> Bickerton would agree with Boswell that the JHA seems to complicate efforts toward the asylum crisis rather than consolidate them. Importantly however, he adds that the concerns of national governments over their sovereignty within the multi-level model lie behind the complexity of the JHA domain, thereby reducing the potential to solving asylum crises. (Bickerton 2012: 39).

<sup>54</sup> See the *Human Rights Watch*'s "World Report 2016." They comment critically on the European Union's responses to the refugee crises as inadequate and falling short of any sort of resolution. In particular, the report cites disjointed efforts and the attempts of EU member states to shift responsibility onto external countries as major reasons for the continual failure to reach a resolution. Internally, European and national officials alike have commented on the need for a comprehensive and cooperative effort (2016).

the political and social disintegration generated by this crisis. In order to fix the EU's broken asylum system, there are three key changes that can increase the EU's decision-making power and ultimately its role in solving the refugee crisis: strict implementation and enforcement of EU asylum laws by the European Commission; amending the Dublin Regulation; and establishing an EU-wide asylum status and a centralized EU agency.

*Implementing and enforcing EU asylum laws:* Looking back on EU asylum policies immediately following WWII, it is evident that the EU can be collectively efficient in employing universal regulations to dealing with emigration. The current EU asylum policy, although showing promise to integrate EU institutions into higher roles of importance, has largely been seen as a failure of the EU to instigate a more liberal approach. It has been criticized as having idealized expectations about member states' willingness to accept liberal values and as being ineffective at empowering the EU to maneuver between divergent interests to align them with EU-wide policy.<sup>55</sup> The asylum laws put in place through several key treaties must be harmonized across all national governments and strictly enforced by the EU. The implementation could be supervised by the European Asylum Support Office (EASO) ensuring that national executives upheld their duty to implement EU laws properly.<sup>56</sup>

*Amend the Dublin Regulation:* The EU needs to increase the burden-sharing of states so as to eliminate the free-riding of those who remain idle and purposely avoid extending their help to refugees. This becomes possible with the Dublin Regulation. Asylum-seekers are not allowed to transfer their application beyond the country they originally arrived in, and, considering that a disproportionate amount of asylum-seekers arrive in only a handful of countries, those that are cushioned between states with coastal borders evade the brunt of responsibility. Modifying the Dublin system would be a large step toward shifting responsibility sharing to a heightened multi-level governance model. Member states would no longer be able to avoid the crisis as they would become equally responsible under EU law to protect the rights of refugees. Furthermore, reallocating the responsibility and power from national executives would consolidate much of the authority to govern the situation in the hands of the EU.

### **EU-wide asylum status and centralized EU agency**

Creating a uniform asylum status, thereby eliminating the different definitions of emigration, would simplify the procedure of asylum application. This would ideally mitigate the harsh shelter conditions experienced by many due to their ethnic or religious background, and the malpractice of several member states. Although this would be a difficult task, as there are so many applicants, some commentators have suggested the creation of a centralized EU agency that would oversee a common asylum code and decision process would expedite the process while

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<sup>55</sup> Christina Boswell and Andrew Geddes, "Asylum," in *Migration and Mobility in the European Union* (New York: Palgrave Macmillan, 2011): 161-162.

<sup>56</sup> Bakowski et al. discuss the potential to drastically increase coordination and cooperation if the EU were to formally involve one of its constitutive branches in the overseeing of common migration policy. They estimate that with the introduction of the EASO into the process, states would be compelled and even forced into applying EU standards and rules which would ultimately increase the coherence between member states in resolving the crisis (2015, 4).

simultaneously determining responsibilities of member states.<sup>57</sup> Again, this would formalize decision-making power in an EU institution and would allow the EU itself to regulate the equal treatment of asylum-seekers throughout the Union.

Taking these modifications together, it creates a policy field in which the multi-level system embodies federalism at its core. Currently, the EU does not fulfill the federal criterion of having formal sovereignty, and is therefore not considered a federation because authority primarily rests with the member states.<sup>58</sup> This relatively limited share of sovereignty leaves the EU with hardly any power to directly implement common European rules and policies. The EU's lack of autonomy makes it completely reliant on member states to implement policy as they hold the stronger position in decision-making and policy implementation.<sup>59</sup> In sum, decentralizing the sovereignty of member states and concentrating authority in the hands of the EU to deal with asylum policy is a pragmatic option that should be fiercely pursued by EU executives and member states alike.

## **Conclusion**

The state-centric approaches that have defined the European response to the current refugee crisis have, for the most part, failed in their efficacy at ending the dilemma. This crisis has been the ultimate test of European integration and EU solidarity, significantly challenging the viability of both. By applying the theories of state-centric and multi-level governance models of integration, it was shown how the intergovernmental responses currently pursued by member states have actually exacerbated the crisis. It also highlighted the necessity of restructuring the response into an elevated multi-level governance system with the EU at the forefront. Using both historical and contemporary examples of state-centric failure, the potential successfulness and the dire need for an EU that closer resembles federalism, rather than a collection of 'kingdoms,' was stressed. Through several initial recommendations, it was argued that in practice, the EU would adopt a stronger role in the crisis by empowering central EU institutions. This would take the form of a stronger central authority that would enforce common asylum policies and statuses across the member states. In other words, national governments would be less able to pursue either isolationist or uncooperative approaches, obliging them to follow a comprehensive and cohesive framework. Although the scope of this paper was limited to asylum policy and, as such, did not argue for a complete federalist overhaul of the EU, it showed how the transition to a federalist approach to the refugee crisis could be an effective resolution. Conversely, if it continues to fail in its attempts at resolving the crisis, it is only bound to worsen, leading to the displacement, neglect, and death of thousands more refugees along with increasing sentiments of discontent between member states. The EU's vulnerable project of integration, let alone its survival, now maybe more than ever, heavily depends on the shift to a system of multi-level governance.

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<sup>57</sup> Bakowski et al., "EU migratory challenge," 5.

<sup>58</sup> Ingeborg Tommel, "The European Union – A Federation Sui Generis?" in *The EU and Federalism: Polities and Policies Compared*, edited by Finn Laursen (Burlington: Ashgate Publishing Company, 2011), 43.

<sup>59</sup> Ibid, 45.

## Bibliography

- Baker, Paul and Costas Gabrielatos. "Fleeing, Sneaking, Flooding." *Journal of English Linguistics* 36.1 (2008): 5-38. doi: 10.1177/0075424207311247.
- Bakowski, Piotr, Eva-Maria Poptcheva, and Detelin Ivanov. "EU migratory challenge: Possible responses to the refugee crisis." *European Parliament Research Service*, September 2015.  
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/568312/EPRS\\_BRI\(2015\)568312\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/568312/EPRS_BRI(2015)568312_EN.pdf).
- Bendel, Petra. "Asylum and Migration Policy." In *Policies within the EU Multi-Level System*. Edited by Hubert Heinelt and Michele Knodt. Germany: Nomos, 2011. 371-385.
- Bickerton, Christopher J. "Europe's Compromising Union." In *European Integration: From Nation-States to Member States*. Oxford: Oxford University Press, 2012. 21-50.
- Boswell, Christina. "The 'external dimension' of EU immigration and asylum policy." *International Affairs* 79, no. 3 (2003): 619-638.
- Boswell, Christina. "Values and the Asylum Crisis." *International Affairs* 76, no. 3 (2000): 537-557. <http://www.jstor.org/stable/2625953>.
- Boswell, Christina, and Andrew Geddes. "Asylum." In *Migration and Mobility in the European Union*. New York: Palgrave Macmillan, 2011. 150-175.
- Boswell, Christina, and Andrew Geddes. "Studying Migration and Mobility in the European Union." In *Migration and Mobility in the European Union*. New York: Palgrave Macmillan, 2011. 1-20.
- Brekke, Jan-Paul and Grete Brochmann. "Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation." *Journal of Refugee Studies* 28, no. 2 (2015): 145-162. doi: 10.1093/jrs/feu028.
- Calamur, Krishnadev. "The Steady Trickle of Refugee Deaths in the Mediterranean." *The Atlantic*. February 8, 2016. Web. Accessed March 11, 2016.  
<http://www.theatlantic.com/international/archive/2016/02/refugees-drowning/460419/>.
- Dyer, Gwynne. "Europe's Refugee Crisis: The Good, the Bad and the Ugly." *The Sydney Morning Herald*. September 3, 2015. Web. Accessed December 1, 2015.  
<http://www.smh.com.au/comment/eu-response-to-migrant-crisis-ranges-from-generosity-to-panic-20150903-gje39e.html>.
- Erbesen, Allan. "Horizontal Federalism." *Minnesota Law Review* 93.2 (2008-2009): 493-584.
- Farrer, Martin. "Yanis Varoufakis: Europe is being broken apart by the refugee crisis." *theguardian*. November 23, 2015. Web. Accessed November 29, 2015.  
<http://www.theguardian.com/world/2015/nov/23/yanis-varoufakis-europe-is-being-broken-apart-by-refugee-crisis>.
- Graham, Luke. "How Europeans have reacted to migrant crisis." *CNBC*. September 8, 2015.  
<http://www.cnbc.com/2015/09/08/how-europeans-have-reacted-to-migrant-crisis.html>.
- Guild, Elspeth et al. "The 2015 Refugee Crisis in the European Union." *Center for European Policy Studies* no. 332. September 2015. Web. Accessed November 29, 2015.  
[https://www.ceps.eu/system/files/CEPS%20PB332%20Refugee%20Crisis%20in%20EU\\_0.pdf](https://www.ceps.eu/system/files/CEPS%20PB332%20Refugee%20Crisis%20in%20EU_0.pdf).

- Human Rights Watch. "European Union: Refugee Responses Fall Short." *World Report 2016*. January 27, 2016. Accessed February 7, 2016.  
<https://www.hrw.org/news/2016/01/27/european-union-refugee-response-falls-short>.
- Kaelin, Lukas. "Europe's Broken Borders." *Foreign Affairs*. September 2, 2015. Accessed November 30, 2015. <http://www.foreignaffairs.com/articles/western-europe/2015-09-02/europe=broken-borders>.
- Kern, Kristine, and Harriet Bulkeley. "Cities, Europeanization and Multi-Level Governance: Governing Climate Change through Transnational Municipal Networks\*." *Journal of Common Market Studies* 47, no. 2 (2009): 309-332.
- Legrain, Philippe. "The Disintegration of Europe." *Social Europe*. October 20, 2015. Web. Accessed December 1, 2015. <http://www.socialeurope.eu/2015/10/the-disintegration-of-europe/>.
- Marks, Gary, Liesbet Hooghe, and Kermit Blank. "European Integration from the 1980s: State-Centric v. Multi-level Governance." *Journal of Common Market Studies* 34, no. 3 (1996): 341-378. DOI: 10.1111/j.1468-5965.1996.tb00577.x.
- Maurer, Andreas, Jurgen Mittag, and Wolfgang Wessels. "National Systems' Adaptation to the EU System: Trends, Offers, and Constraints." In *Linking EU and National Governance*. Edited by Beate Kohler-Koch. New York: Oxford University Press, 2003. 53-81.
- McGreal, Chris. "Donald Tusk defends European response to 'unprecedented' refugee crisis." *theguardian*. September 29, 2015. Web. Accessed November 30, 2015. <http://www.theguardian.com/world/2015/sep/29/donald-tusk-defends-european-values-united-nations>.
- Milio, Simona. *From Policy to Implementation in the European Union: The Challenge of a Multi-Level Governance System*. New York: I.B. Tauris Publishers, 2010.
- "Migrant Crisis: Migration to Europe explained in several charts." *BBC News*. March 4, 2016. Web. Accessed March 13, 2016. <http://www.bbc.com/news/world-europe-34131911>.
- Ostrand, Nicole. "The Syrian Refugee Crisis: A Comparison of Responses by Germany, Sweden, the United Kingdom, and the United States." *Journal of Migration and Human Security* 3, no. 3 (2015): 255-279.
- Plucinska, Joanna. "The Paris Attacks Have Put Europe's Refugee Crisis Under Renewed Scrutiny." *Time*. November 16, 2015. Web. Accessed December 1, 2015. <http://time.com/4114009/paris-attacks-migrant-crisis-refugees-eu/>.
- "Reactions to Refugee Crisis May Violate States' International Legal Obligations." *International Justice Resource Center*. November 25, 2015. Web. Accessed November 30, 2015. <http://www.ijrcenter.org/2015/11/25/reactions-to-refugee-crisis-may-violate-states-international-legal-obligations/>.
- Ross, George. "Flight of the Member States." In *The European Union and Its Crises: Through the Eyes of the Brussels Elite*. New York: Palgrave Macmillan, 2011. 60-73.
- Tommel, Ingeborg. "The European Union – A Federation Sui Generis?" In *The EU and Federalism: Polities and Policies Compared*. Edited by Finn Laursen. Burlington: Ashgate Publishing Company, 2011. 41-56.
- UNHCR The UN Refugee Agency. "2015 UNHCR regional operations profile – Europe." *UNHCR Global Appeal 2015 Update*. 2015. <http://www.unhcr.org/5461e5f80.html>.

van Schaik, Louise G. "EU Competence: A Precondition for EU Unity?" In *EU Effectiveness and Unity in Multilateral Negotiations*. New York: Palgrave Macmillan, 2013. 54-69.

# Triumph and Tragedy Associated with Aboriginal Self Governments in Canada: the Cases of the James Bay, Nisga'a, Nunavut and Tsilhqot'in People(s)

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## Introduction

Canada's current population presents a complex mosaic of citizens each belonging to rich and unique cultural, religious, social, and ethnic groups. Urban centres like Toronto, Montreal, and Vancouver are activity-rich hubs of people from a variety of different backgrounds. While the concept of Canada as being a cultural assortment is relatively modern, there are faces in the national crowd that belong to a long-standing group of marginalized peoples – Canada's aboriginal population. The Aboriginal people of Canada have resided in the nation's regions long before the official creation of the country itself. Moreover, they have been operating within established, organized societies and communities well before the assertion and acquisition of sovereignty by the Crown as well as prior to the establishment of settler societies and governments (Luk). As such, the Aboriginal people of Canada have been part of a long and gruelling process to attain varying levels of self-government in the fight to gain back their rights as individuals and as a distinct Aboriginal nation.

In Canada, there are currently 22 self-government agreements for Aboriginal people in 36 different communities across its vast geographical stretch (Government of Canada). These self-government agreements, signed between the federal government of Canada and a variety of different Métis, First Nations, and Inuit communities in Canada, allocate varying degrees of powers to communities as defined by modern treaties, as well as various agreements that have been established in the past. While some powers associated with self-government agreements in Aboriginal communities are comparable to those of Canadian Municipalities, such as the Inuit of Nunavik in Northern Quebec (Papillon, *The Rise (and Fall?) Of Aboriginal Self-Government*), others constitute a far greater range of power, as can be observed in the creation of Inuit-dominated government in Nunavut (Wherrett).

This essay will explore how the term “self-government” manifests itself within the context of the Canadian federation by evaluating some key self-government agreements in Canadian history, beginning with an overall consideration of self government and what it entitles in Canada. It will examine the James Bay and Northern Quebec Agreement (JBNQA) as well as elaborate upon its relative successes and faults. Following the evaluation of the JBNQA

and its style of governance, this essay will go on to reflect upon public governance and self-government in the Nisga'a, Yukon, and Nunavut regions. After examining the many folds and creases associated with the elaborate fabric of self-government in Canada, it may be concluded that while Aboriginal self-government has been implemented in a number of ways in attempt to meet the needs of Aboriginal peoples, the end results have been less than satisfying for the aboriginal people of Canada.

## **Aboriginal-Canadian Self Government: An Overview**

Before examining the specific employments of aboriginal self-government currently operating in Canada, it is important to first examine what the term self-government constitutes. In the Canadian context, the term is far too complex to evaluate in one simple definition. Aboriginal self-government in Canada exists in a multifaceted variety of forms, so as to cater to the varying needs of different communities, such as territorial rights, trapping, hunting, and fishing rights, or administrative rights (Rynard, Welcome In, But Check Your Rights at the Door" : The James Bay and Nisga'a Agreements in Canada).

Aboriginal self-government is a highly important annexation within Canadian federal context. It operates alongside the federation's sphere of multi-level governance, so as to grant a degree of jurisdictional power to a distinct body, or peoples, residing within Canada. It serves to legislate delegated autonomy to said people, so as to serve their distinctive, individual aboriginal needs.

Autonomy, in some instances of self-government, may be attained through the delegation of authority from state level to a local level – similar to municipal power. Alternatively, some aboriginal individuals may view self-governmental power as their inherent right, as ingrained in section 35(1) of the Canadian constitution. Lastly, some scholars, aboriginal and non aboriginal alike, have argued for powers constituting coexistent sovereignty wherein aboriginal powers would be acknowledged outside the binds of the Canadian constitution (Papillon, The Rise (and Fall?) Of Aboriginal Self-Government).

Regardless of the type of self-government that is attained, it all must first be brought about by means of negotiation between a combination of federal, provincial, local, and aboriginal governments (Rynard, Welcome In, But Check Your Rights at the Door" : The James Bay and Nisga'a Agreements in Canada). Negotiation of self-government is often a tedious, lengthy process. From the development of framework principles to the actual ratification and implementation of an agreement, the entirety of the process can take anywhere from a year to a decade (Russell). The majority of these self-government negotiations arise out of issues between aboriginal community and federal or provincial governments, pertaining to larger land claim settlements. Especially in recent years, as the

resource extraction economy in Canada has expanded exponentially, and the federal and provincial governments have begun to engage more frequently in negotiations over aboriginal rights and titles (Papillon, *The Rise (and Fall?) Of Aboriginal Self-Government*). As a result, aboriginal communities across Canada have been driven to voice their concerns for their lands, their rights, and their sovereignty.

## **The Beginning of Canadian Aboriginal Self Government: 1975 James Bay and Northern Quebec Agreement (JBNQA)**

Self-governance first came into prominence in Canada with the JBNQA; this involved an agreement with the James Bay Cree's and the Inuit of Nunavik in Northern Quebec. Spurred by the development of a hydroelectric plant on aboriginal lands, this development prompted the Cree and Inuit people of the regions to enter into negotiations with the federal governments (Papillon, *The Rise (and Fall?) Of Aboriginal Self-Government*). Such negotiations were brought into the federal limelight after the then premier of Quebec, Henry Bourassa, autonomously decided to construct a power plant serving the Quebec-owned utility, Hydro-Québec, on aboriginal lands in 1971. Prior to the affirmation of such decisions made by Bourassa, the Quebec government, in regards to personnel and institutional presence, had previously had very limited presence in the Cree communities in Northern Quebec. While the federal and provincial governments largely governed the communities' rights, such a fact was not so apparent in the aboriginal communities' day-to-day activities (Rynard, *Ally or Colonizer?: the Federal State, the Cree Nation and the James Bay Agreement*). Negotiations concerned the redistribution of aboriginal territorial rights to the federal government in exchange for monetary compensation, specific hunting, trapping, and fishing rights as well as a series of new administrative arrangements allowing for management of governmental programs in native communities (Coates). In some ways, the JBNQA was ground breaking in that it was the first ever self-government deal created in Canada. While the delegated autonomy was not much, it was a start. Firstly, it allocated jurisdictional powers to the Cree, and later the Naskapi in 1978, that limited the federal government's ability to regulate day-to-day administrative action within the communities, essentially allowing the Cree people to create by-laws that were not subject the ministerial veto. Secondly, it allowed the Nunavik Inuit a degree of autonomy comparable to that of a local government. They currently possess regional powers over their whole northern constituency, including the municipalities (Rynard, *Welcome In, But Check Your Rights at the Door* : The James Bay and Nisga'a Agreements in Canada). While the first attainment of a binding form of self-government was a significant feat for Aboriginal people all across Canada, the JBNQA faltered in many aspects. Although the Cree, Inuit, and Naskapi people may have seen some slight improvements in socio-economic terms, their quality of life following the enactment of the agreement and the original aims of the agreement's

aboriginal signatories were not met (Rynard, Welcome In, But Check Your Rights at the Door" : The James Bay and Nisga'a Agreements in Canada).

At the birth of the JBNQA, the primary goal of the aboriginal parties was to obtain a greater level of control over their quickly evolving social and economic environment. When cast in this hopeful light, the agreement was a severe disappointment, as it followed the same, long-standing models of state-led and state-regulated development, as seen in aboriginal communities for years prior to the agreement (Papillon, The Rise (and Fall?) Of Aboriginal Self-Government). Moreover, in some circumstances, the agreement actually further damaged sociological aspects of certain aboriginal communities. For example a Cree community under the agreement, the Chisasibi, were forced to relocate away from the community's neighbouring La Grand River due to altered. This relocation instilled a certain sense of sociological damage in the community; fish is a staple in traditional Cree diets. As an aside, the hydroelectric plant that actually was implemented (though not to the originally intended extent) caused fish to contain higher levels of mercury, thereby poisoning several members of the Chisasibi community (Rynard, Ally or Colonizer?: the Federal State, the Cree Nation and the James Bay Agreement.).

In addition to a lack of recognition of the sociological affects that were brought on by the agreement, a lack of intergovernmental coordination mechanisms and formal dispute resolutions made for highly strained governmental relationships (Russell). Furthermore, prior to the agreement, a common conception among political elites was that aboriginal rights simply entailed vague and out-dated hunting and fishing rights, which could be said to have translated into the actual negotiations (Rynard, Ally or Colonizer?: the Federal State, the Cree Nation and the James Bay Agreement.). Finally, upon regarding the means by which powers in the JBNQA were established, it is appropriate to claim that they did not suffice to the extent that the aboriginal people in the JBNQA communities would have hoped (Russell). Abel and Prince (2009 p573) state, "We have encountered no Aboriginal nations, no matter how small, that have identified the mini-municipality model as their ultimate goal."

It may be surmised that while the creation of aboriginal self-government, in the case of the JBNQA and the Cree, Inuit, and Naskapi people, was significant in its sheer conception, the actual content and framework of the agreement was lacking and in some cases even detrimental, considering the extent to which it catered to the aboriginal people's wishes and needs.

## **The Second Wave of Self-Government Agreements in Canada: Considering the Nisga'a and Nunavut Self-Government Agreements**

Following the trials of self-government that played out with the JBNQA, other Aboriginal people across Canada were watching from the sidelines and envisioning their own ideas and revisions of how they believed self-government could be run more effectively. Like with the JBNQA, land claim agreements spurred the development of self-government in the case of the Nisga'a Final Agreement in 1998, as well as through the creation of Nunavut in 2000 (McNeil). The aboriginal signatories involved with these agreements noted that the JBNQA was greatly ignorant of the recognitions concerning the idea of self-government based on pre-existing aboriginal sovereignty. This is to say that following the JBNQA, what were prior to the agreement, considered to be Aboriginal rights then became treaty rights; section 2.1 of the JBNQA was thereafter known as the infamous extinguishment clause, as it essentially replaced pre-existing, sovereign aboriginal rights with those as acknowledged in the treaty (Rynard, Ally or Colonizer?: the Federal State, the Cree Nation and the James Bay Agreement.). Therefore, the Nisga'a people adopted slightly different models to try and achieve their aims (Papillon, 2014).

Up until 1990, the British Columbian government was largely impartial and ignorant of the Nisga'a people's political pleas and protests for increased territorial rights. In fact, Nisga'a chiefs have been struggling for greater land rights in the political arena since the 1880's (Rynard, Welcome In, But Check Your Rights at the Door" : The James Bay and Nisga'a Agreements in Canada). While the Nisga'a people had a significantly small portion of allocated reserve to begin with, predominantly white societies continued to expand their developments onto Nisga'a land, eating away at aboriginal territory year after year. This long-existing clash for increased sovereignty and political rights coupled with resistance from the British Columbian government cultivated a very harsh political environment, and thereby branded the eventual creation of the Nisga'a Final Agreement a significant achievement (Rynard, Welcome In, But Check Your Rights at the Door" : The James Bay and Nisga'a Agreements in Canada).

The Nisga'a Final Agreement serves as a particularly unique form of self-government in Canada as it allows the Nisga'a people to hold distinct legislative power within a province (Papillon, 2014). The agreement covers 1,992km on both sides of British Columbia's Nass River, and the communities hold ownership to mineral, oil, gas, and forests within the territory (Papillon, 2014). Compared to the James Bay Agreement, which allocated a mere 5600km of land to be shared amongst nine different Aboriginal communities, this is a great improvement in terms of aboriginal self-government land claims in Canada (Papillon, Aboriginal Quality of Life Under Modern Treaty). The governmental structure associated with the Nisga'a Final Agreement establishes the Nisga'a Lisims Government and four Village

Governments. Their law making authority allows for the evaluation of matters such as culture, language, public works, traffic regulation, solemnization of marriages, and land use within the Nisga'a territory (Wherrett).

Nisga'a Final Agreement flourishes compared to that of James Bay and Northern Quebec. But standing alone, it still does not match the ultimate expectations of the aboriginal people. The agreement presents a lack of authority in respect to the Nisga'a concerning wildlife, fisheries, and environmental protection, ultimately demonstrating the lack of cooperative management between Nisga'a self-government and the federal and provincial government that is claimed (Russell). Moreover, the territorial expanse of Nisga'a land is not great enough for them to sustain completely off of their own land-based revenue, meaning they must rely on the federal, provincial, and territorial governments for support (Russell). Finally, on a broader note, Rynard (2000) claims that given the extensive, gruelling history of repression faced by the Nisga'a community, the generalized meaning of equality does not suffice, and the final agreement does not sufficiently illustrate any special consideration of obligations of the federal government on behalf of a shared and tumultuous colonial past. Thus, it may be concluded that while the Nisga'a Final Agreement fulfills the needs of the aboriginal community to an extent, its granted level of autonomy and jurisdiction is not fully satisfactory.

Following the initiation of the Nisga'a Final Agreement in 1995 came the Tapirisat Inuit's proposal to the federal government for the creation of a new territory in 1976. Twenty-three years later, in April of 1999, Canada's great northern territory, Nunavut was officially born (Nunavut Tunngavik Inc.). Aboriginal self-government in Nunavut is considerably different from self-government found in other regions across Canada. The Nunavut government is delegated, by the federal government, a bundle of powers that are almost analogous to those of the provinces with the exception of some natural resources (Papillon, *The Rise (and Fall?) Of Aboriginal Self-Government*). The Inuit majority residing in the territory controls the Nunavut government, but permits non-aboriginal persons to vote and have their fair say on governmental matters. As the Nunavut governmental system largely promotes the Inuit values, culture, interests, and languages as a theme in public policy, it may be regarded as a form of aboriginal self-government within Canada (Nunavut Tunngavik Inc.).

Nunavut self-government does relatively well in meeting the needs of Canada's northern aboriginal people; it provides them with a large degree of jurisdiction and control over their land, guaranteeing them a certain level of equality to the provinces in Canada. But, as with almost all other aboriginal self-government agreements in Canada, it is coupled with its own respective set of issues. Firstly, while the aboriginal funding structure of the Nunavut government is considerably better compared to those of other aboriginal self-

government agreements in Canada, the territory still struggles with limited budgets and serious socio-economic challenges. Currently, the territory relies on the federal government for 90% of its revenues, and its federal transfers over the next 10 years will amount to approximately 1.1 billion CAD. While such funding is necessary for the creation of new territorial governance structures, true self-governmental autonomy would require a stable source of revenue for Nunavut – revenue that would liberate the territory of its federal dependence (Elder). In addition to this, Nunavut's 25 communities are scattered all over a large expanse of Canada's north and are largely independent of each other, as well as southern Canada. Therefore, oftentimes they are each required to spend a significant amount of funding on essential infrastructure, such as airstrips, health centers, and power plants despite the small populations residing in these areas (Nunavut Tunngavik Inc.). All of this considered, a significant toll is taken on the programs and services that the Nunavut government is able to provide to its people, and signals a drastic need for an improved economic development plan in the territory (Nunavut Tunngavik Inc.). Such needs will perhaps call for a greater devolution of responsibility in the future from the federal government to the territorial government in Nunavut, so as to allow the Nunavut government to reach greater autonomy; however it should be noted that the territory is not yet ready to attain such goals (Elder).

Overall, it may be said that the model of aboriginal self-government that is currently enacted in Canada's northern territory of Nunavut is relatively sufficient when in contrast with other forms of self-government in Canada, however its form of self-government still carries its own set of difficulties and needs for greater improvement.

### **Canadian Aboriginal Self Government in the 21<sup>st</sup> Century: Tsilhqot'in Nation v. British Columbia and Taiaiake Alfred's Dissent**

A modern example of current aboriginal self-government in Canada is the Tsilhqot'in people and their declaration of official Aboriginal title in 2014, as awarded by the Supreme Court of Canada. Such a notion refers to the inherent right that aboriginal people hold concerning their lands and territories. This served as the first time that Canada has ever awarded Aboriginal title to aboriginal people for lands off of a reserve, and thereby shall serve as a marked historical advancement for Aboriginal self-government in the nation. In this case, the Tsilhqot'in people were given approximately 1900 km<sup>2</sup> of the claim area, thereby indicating that this declaration of Aboriginal Title is not restricted to a small, intensively used area, as is often the case, but rather extends to all of the territory that is, and has been, exclusively and intensively used by the Tsilhqot'in people prior to the Crown's acquisition of sovereignty (Tsilhqot'in National Government). Moreover, such an attainment of Aboriginal title allows for the Tsilhqot'in people to control the land in whichever manner they please. Overall, this form of allotted self-government to aboriginal people marks a

significant development and acknowledgement of Aboriginal needs in terms of governance on behalf of the federal government – however, this is only to an extent. While scholars, aboriginal and non-aboriginal alike, acknowledge the fact that the Supreme Court's declaration of Aboriginal title in the case of the Tsilhqot'in nation was a great success for Aboriginal self-government in Canada, one aboriginal scholar claims that such is still very lacking in terms of meeting modern Aboriginal needs. Aboriginal scholar and rights activist Taiaiake Alfred provides a substantial degree of criticism circling the declaration; in fact, he claims that it was hardly a triumph at all. He bases this judgement off of the notion that historically, the recognition of Aboriginal people's rights as a sovereign notion existed – thereby indicating that the seemingly never ending struggle for increased rights and increased autonomy on behalf of Aboriginal people is not a new or fresh concept; rather, it's a demand for the state to return to what it originally indicated when the Crown attained sovereignty of the lands (Alfred, Cultural Strength: restoring the place of indigenous knowledge in practice and policy). Alfred also refers to his own Mohawk ancestor's notion of Guswhenta, meaning two-row-wampum in English. This belief entails the illusion of interdependence, partnership, and a sharing of the lands on the basis of mutual agreement, as was pioneered on behalf of the early Canadian governments and Aboriginal peoples (Alfred, Pathways to an ethic of struggle). Alfred looks to the Tsilhqot'in agreement and notes its final paragraph; a paragraph that acknowledges that the terms of the agreement shall stand only if they do not contradict national interest. This is to say that technically, it is within the jurisdictional abilities of the Canadian government to undermine Aboriginal authority should national interests (e.g. national resources) prevail (Alfred, Cultural Strength: restoring the place of indigenous knowledge in practice and policy). While in making the ruling, the Court did acknowledge that infringements to the Aboriginal title on behalf of the government would not be taken lightly (Tsilhqot'in National Government), it could be said that in accordance with historical notions of Gushwenta, such an agreement still does not meet the expectations and desires of Canada's Aboriginal people.

## **Cogitating Failed Self Government Agreements in Canada: A lack of Cultural Revitalization**

Upon reviewing the various different cases of Aboriginal self-government agreements in Canada, it maybe be surmised that each case presents a disconnect between the central government and Aboriginal people, and each agreement ultimately portrays a lack of understanding of Aboriginal needs. While each agreement presents an array of problems and externalities that warrant extensive reviews in themselves, a common theme associated with many self-government agreements in Canada is a lack of cultural revitalization (Alfred, Cultural Strength: restoring the place of indigenous knowledge in practice and policy). That is to say that the agreements do not account of the imposition of colonial values into aboriginal culture, as well as in many cases an erasure of culture for

Aboriginal youth. While many Aboriginal self-government agreements in Canada acknowledge jurisdictional responsibilities associated with governance and land claims, little to none acknowledge the historical obligations of the federal government to facilitate programs in Aboriginal communities to allow youth to learn and relearn their traditional cultural practices. Such programs could involve the maintenance of language fluency or the teachings of traditional practices (Burack). In Northern Quebec, a similar program was implemented within a Cree community; the results were successful. Cree youth who partook in this program showed an enhanced ability to integrate into both Canadian, and Cree communities – both on the reserve and in the city – and thereby were able to surpass many of the socio-economic problems that frequently encounter Canada's aboriginal people (Alfred, Cultural Strength: restoring the place of indigenous knowledge in practice and policy).

Should future self-government agreements in Canada take into account notions of cultural revitalization, coupled with Aboriginal needs for increased jurisdictional powers separate to those of the Canadian government, Canada's Aboriginal population may be able to begin to reach a fair and equal stakeholder status throughout the nation's vast territory.

## **Conclusion:**

Based on the current models of self-government in Canada, the Aboriginal people have gained only a small slice of autonomous powers that, while complying with some of their basic sovereignty needs, do not encompass many fundamental legislative requirements for which Canada's aboriginal communities strive. This point can be understood through examining four main crucial case studies concerning aboriginal self-government in Canada. The first case study, the JBNQA, played a significant role as it was Canada's first ever self-government agreement. The qualms of the JBNQA though were that it did not notably defer from previous models of state led governance and thereby did not fully satisfy the aims of the aboriginal people involved. Secondly, the Nisga'a final agreement succeeded in establishing a greater degree of long sought-out rights pertaining to land claims and a well developed governmental structure for the Nisga'a communities. However, given the Agreement's lack of resource co-management, their dependence on fiscal aid from the federal government, as well as its lack of acknowledgement of past repressions faced by the Nisga'a people, it too fails to meet the ultimate goals striven for by the aboriginal people. In looking to the creation of Canada's territory Nunavut, it may be surmised that public government model that ultimately represents aboriginal self-government in the region shines compared to other self government agreements found across Canada. The autonomy given to the Inuit people in Nunavut is comparable to that which is given to the provinces, thereby declaring the development of Nunavut's public government a great achievement for the aboriginal community in Canada. That being said, the territory still struggles with financial management, and various socio-economic challenges that have resulted largely as

a part of the terms on which its government is negotiation. Finally, in considering the most recent and thereby significant of the Aboriginal self-government agreements in Canada, the Tsilhqot'in's attainment of the first ever awarded Aboriginal title, it may be surmised that self-government agreements in Canada are making substantial advancements. Comparatively, such an agreement flourishes in terms of acknowledging pre-existing Aboriginal entitlements, however it could be said that it still is lacking in the sense that the Canadian government continues to hold centralized power over the jurisdictional abilities as they are delegated to the Tsilhqot'in people.

As it has been demonstrated that self-government agreement's in Canada very rarely meet the expectations of Aboriginal People, a suggestion for future agreements might entail elements of cultural revitalization programming. Should the Canadian government wish to further develop and improve upon the negotiation and establishment of self-government agreements with the Aboriginal population, it may consider including or facilitating the implementation of educational, cultural programs relating to Aboriginal tradition and history. To implement such programs alongside self-government agreements could potentially expedite the success said agreements in the future.

Clearly, while the development of self-government in Canada has evolved considerably, it still warrants a substantial level of development and improvement on a variety of fronts. After reflecting upon the experiences that Canada's aboriginal peoples have undergone concerning self-government agreements, it may be surmised that said agreements do not assure the social and economic well being of aboriginal communities, nor do they, necessarily, drastically alter the relationship between aboriginal communities and the state. Ultimately, it may be speculated that the current lack of fulfillment of aboriginal needs as demonstrated through various self-government agreements across Canada is troubling, and certainly highlights the subjectivity of aboriginal self-government to the Canadian government's greater political agendas. While past agreements may not have been absolutely sufficient, the progress as demonstrated with each successive agreement indicates that possibility for improvement of future Aboriginal self-government agreements in Canada is very conceivable and will entertain very promising outcome.

## Bibliography

- Abele, Frances, and Michael J Prince. "Four Pathways to Aboriginal Self-Government in Canada." *American Review of Canadian Studies* (Tandfonline) 36, no. 4 (November 2009): 568-595.
- Alfred, Taiaiake. "Cultural Strength: restoring the place of indigenous knowledge in practice and policy." *Australian Aboriginal Studies* (Academic Search Premier), no. 1 (2015): 3-11.
- Alfred, Taiaiake. "Pathways to an ethic of struggle." *Canadian Dimension* (Alternative Press Index) 41, no. 1 (January): 35-39.
- Burack, Jacob A. "Developmental perspectives on the role of cultural identity in well-being: Evidence from abiriginal communities in Canada." *Cultural and contextual perspective on developmental risk and well-being* (Cambridge University Press), 2014: 81-103.
- Coates, Ken. "The Indian Act and the Future of Aboriginal Governance in Canada." Research Paper, National Centre for First Nations Governance, 2008.
- Elder, Beth. "Aboriginal Self-Government in Nunavut." *Sovereignty and Intervention*, 2012: 21-33.
- Government of Canada. "Fact Sheet: Aboriginal Self-Government ." *Indigenous and Northern Affairs Canada*. April 2015. <http://www.aadnc-aandc.gc.ca/eng/1100100016293/1100100016294> (accessed Novemeber 15, 2015).
- Luk, Senwung. "Confounding Concepts: The Judicial Definition of the Constitutional Protection of the Aboriginal Right to Self-Government in Canada." *Ottawa Law Review* (University of Ottawa) 41, no. 1 (2009).
- McNeil, Kent. "A Brief History of our Right to Self-Governance, Pre-Contact to Present." *National Centre for First Nations Governance* (First Nations Governance), March 2007: 16-20.
- Nunavut Tunngavik Inc. *Nunavut's Economic Challenges* . Brief, Tunngavik, 2006.
- Papillon, Martin. "Aboriginal Quality of Life Under Modern Treaty." *Instiitute for Reaserch on Public Policy*. August 26, 2008. <http://irpp.org/research-studies/choices-vol14-no9/> (accessed November 17, 2015).
- Papillon, Martin. "The Rise (and Fall?) Of Aboriginal Self-Government." *Canadian Politics* (University of Toronto Press), 2014: 117-123.
- Russell, Dan. *A People's Dream: Aboriginal Self-Government in Canada*. Vancouver, B.C.: UBS Press, 2000.
- Rynard, Paul. "Ally or Colonizer?: the Federal State, the Cree Nation and the James Bay Agreement." *Journal of Canadian Studies* 36, no. 2 (2001): 8-41.
- Rynard, Paul. "Welcome In, But Check Your Rights at the Door" : The James Bay and Nisga'a Agreements in Canada." *Canadian Journal of Political Science* (York University ) 33, no. 02 (June 2000): pp 211-243.
- Tsilhqot'in National Government. "Tsilhqot'in National Government." *tsilhqotin*. 2014. [http://www.tsilhqotin.ca/PDFs/2014\\_07\\_03\\_Summary\\_SCC\\_Decision.pdf](http://www.tsilhqotin.ca/PDFs/2014_07_03_Summary_SCC_Decision.pdf) (accessed March 31, 2016).

Wherrett, Jill. *Aboriginal Self-Government*. Governmental , Political and Social Affairs, Parliamentary Research Branch, Library of Parliament, 1999.

# The problem(s) with cities: Analyzing the need for greater municipal empowerment in Canada

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Canada's big cities face big, complex problems that undeniably hamper their ability to govern effectively. In addition to the fact that they are highly diverse and culturally distinct from their surrounding regions, many structural issues exist within the architecture of big city governments that make the act of governing extremely difficult, and the result is an arguably poorer quality of life for urban citizens. Not only are urbanites underrepresented in the federal system, meaning that the issues they face in their day-to-day lives are less discussed in Ottawa, but urban-based minorities, including racialized and poor Canadians, are further marginalized. Municipalities, presided over by provincial governments, have little control and minimal ability to address the needs of their citizens in serious and thoughtful ways: this is not only harder on the administrators of big cities, who feel significant frustration at their own impotence, but is also hard on citizens who are unable to hold their city governments accountable for anything, including the bad behaviour that sometimes results (Slayton 2015, 1-2).

The consequences of this situation are far-reaching: Canadian cities are less competitive globally because they are "hobbled" with regards to the kind of policy they can create and implement, weakening their ability to drive vital regional growth in the information age (Broadbent 2008, 229; Courchene 2007, 10). Perhaps the biggest issue for cities is that they do not have the fiscal capacity to sustain all of the programming and services they are meant to be responsible for. Again, this results in frustration for citizens, and observations from the provinces that cities are not competent to handle greater autonomy. Theoreticians have offered numerous possible solutions to resolve this woeful state of affairs, including city restructuring, "devo-max", greater federal involvement, and the creation of city-provinces in order to achieve complete autonomy. In light of the litany of serious problems facing big cities, the best solution is their constitutional entrenchment as either city-provinces, or as a defined third order of government with clearly delineated powers. However, despite this being the best solution for these cities, constitutional entrenchment is extremely unlikely to occur due to the strict amending formula: the provinces will always choose to retain the powers that they have, rather than redistributing them.

The study of municipal autonomy is generally fraught with ambiguity as to what truly constitutes a "big city". At what point is a city large enough to consider independence from its province? Various definitions have been established, but there is no methodological

standard or metric<sup>1</sup>. Primary consideration has been for population numbers (although not for rate of population growth, interestingly), and for a vague sense of diverseness. Any definition must also account for the eventuality that more cities will become “big cities” in the future. For the purposes of this article, I will consider Census Metropolitan Areas (CMAs) with a population of two million citizens or greater to be “big cities”. Toronto, Montreal, and Vancouver meet this criteria, according to the 2011 census<sup>2</sup>. Based on population predictions for Canadian CMAs in 2015, Calgary, Edmonton, and Ottawa-Gatineau will become “big cities” in the relatively near future (“Population of Census Metropolitan Areas”, Statistics Canada 2016).

The first section of this paper will provide context to the debate by reviewing the most critical problems faced by big cities today, and exploring why specifically the current model for governing them is failing. The second section will elucidate the various alternative possibilities for modifying the system of municipal governance towards greater autonomy. In the final section, I advocate for the creation of city-provinces as the best way to resolve the numerous problems that exist. I also offer some possibilities as to how a change to this kind of model might work, and finally, discuss why this solution will, in all likelihood, never come to pass.

## **Big City, Big Struggles**

Before looking at the various alternatives to the current model of city government, it is necessary to understand what the existing difficulties are. To begin with, Neil Bradford (2002) claims that Canada is more urbanized now than ever before, with nearly 80% of its population residing in cities (4; Broadbent 2008, 14; Dewing, Young, and Tolley 2006, 4). For big cities, population is a problematic strength: a large population generates significant wealth, but requires much more in terms of service provision and administration. Cities are much more diverse than the provinces in which they reside, and are also where some of Canada’s most critical social issues materialize, including racism and radical social diversity, income disparity and poverty, immigrant settlement, crime, environmental degradation, and “socio-spatial segregation”, also known as ghettoization (Andrew 2001, 100; Bradford 2002, 8-11; Broadbent 2008, 99). Big cities are largely responsible for immigrant settlement and transitional housing, as this is where large immigrant communities already exist, along with the services necessary to ease the arrival process. Toronto alone receives nearly 50% of all immigrants to Canada, and this diversity brings a different set of needs for services, especially in the areas of health care and education (Broadbent 2008, 105, 194-95; Andrew

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1. For example, in his book, Broadbent (2008) describes the Big City Caucus and the group of “C5 Mayors” (Toronto, Montreal, Vancouver, Calgary, and Winnipeg), both of which are subgroups of the Federation of Canadian Municipalities, as options for determining “big cities” (9-12).

2. Population statistics for 2011 are as follows: Toronto - 5,583,064; Montreal - 3,824,221; Vancouver - 2,313,328. Up and coming “big cities” might include Ottawa-Gatineau (1,236,324), Calgary (1,214,839), and Edmonton (1,159,869).

2001, 101-02). While managing these issues is fundamental in big cities, these are needs that simply do not exist in rural areas (Broadbent 2008, 104; Bradford 2002, 4).

Settlement services offer a good example of one area in which big cities have expertise, and yet are stymied in policy making and program design by a lack of political power, despite being able to provide the most immediate and appropriate responses on the ground (Broadbent 2008, 104-06; Bradford 2002, 12). Cities are unable to contribute their significant first-hand knowledge in policy making because they do not participate adequately in the mechanisms of national governance. For example, big cities do not have the representation by population that they ought to in the House of Commons, because of the rapid rate of urbanization and the slow rate of seat redistribution: on average, rural ridings comprise approximately 30% fewer voters than urban ridings do<sup>3</sup>, making each individual rural vote carry more electoral weight (Broadbent 2008, 14-15). Not only is this undemocratic, but it leads to a rural or regional slant in policy making, and biases the discussion towards issues concerning those parts of Canada. For instance, large cities are focused on the “new economy” (service- and knowledge-based), whereas much of the rest of the country is still concerned with the “old economy” (staples and resource-based) (Broadbent 2008, 4, 19, 226; Bradford 2002, 5). This has pushed cities to feel “tired of being the cash cow of Confederation” (Broadbent 2008, 4): while cities funnel capital into Canada, few of their issues are addressed<sup>4</sup>.

This has brought other concerns about the ability of cities to be self-determining and self-governing to the fore. Broadbent (2008) in particular highlights the way in which archaic constitutional structures are limiting the competitiveness of Canada’s big cities in the global economy (71), and claims that there is a “disconnection” in that the structure of our constitution no longer corresponds to that of our society and economy (5, 13; Courchene 2007, 8). Although big cities are the economic engines of Canada’s knowledge economy, disempowered cities are not able to compete at their best within the global marketplace, slowing regional growth. In order to be competitive, cities need to behave more like the autonomous, deterritorialized nodes in a rhizomatic world-wide network of locales.

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3. According to Broadbent (2008), constitutional clauses ensure that regions with diminishing populations retain a set number of seats in the Senate and the House of Commons, which biases the parliamentary structure against those areas that are fast-growing. Further, constitutional provisions allow for a 25% variation in riding size, meaning that the smallest and largest ridings have a size difference of 60% in the number of eligible voters. These issues perpetuate inequality in the voting system (222-23).

4. Although the “urban-rural divide” in voting preference has been strongly mythologized in Canada, this theory (broadly, that rural areas vote conservatively and urban areas vote progressively) does not play out neatly in terms of seats, at least in recent elections. Conservatives still have strong showings in some urban ridings, and recently, more centrist or progressive are winning rural ridings. One place where the urban-rural divide does occur reliably is in the province of Alberta. Although the premise of an urban-rural divide has a strong presence in policy making, rhetoric, and debate, it has been shown inconsistently when it comes to the realities of seat distribution by party (Libin 2011; CBC Canada Votes 2015). However, this does not detract from the fact that rural votes count for more than urban ones do, and that rural concerns are more present in debates; rather, it simply means that rural voters do not always choose Conservative politicians to voice those concerns.

Effectively, as the world becomes extra-local, city governance is becoming more important, while national governance becomes less so (Leo 2006, 482). Because rigid, traditional hierarchies are disadvantageous, Bradford (2002) argues that big cities now have a critical opportunity for democratic engagement with citizens, if they can be given the political room and the financial support to do so (58; Leo 2006, 482-84; Courchene 2007, 11).

Courchene (2007) articulates several reasons for the critical importance of big cities, which generally follow Richard Florida's theory of the "creative class"<sup>5</sup>: big cities play host to dense clusters of human capital, as young, talented, educated, and highly-skilled workers are attracted to places where innovation, diversity, openness, and acceptance are culturally normative, and these clusters in turn draw knowledge-based industry to Canada (12; Courchene 2005, 4-5). Canada's big cities, however, are "falling short of this promise" to propel growth, because they are not being supported by higher levels of government to build infrastructure, improve public transit, and manage social services; therefore, Canada needs to "bridge the gap" for its biggest cities, in order to make them more internationally competitive (Courchene 2007, 12, 32). Crucially, this argument has a flip side: Canadian cities have simultaneously seen a rapid upsurge in the service economy, a de-skilled and flexibilized labour market which enables the knowledge economy. Big cities host not only the creative class, but also the lower class of "denizen" service workers who are disproportionately female, racialized, and precarious; fundamentally, this creates disparities between certain segments of the population that big cities must have the power to address if they wish to avoid extreme polarization in society (Standing 2011, 14; Broadbent 2002, 8-9; Andrew 2001, 101-02).

In the Constitution Act of 1867, "Municipal Institutions" are placed squarely under provincial jurisdiction in s. 92 (8): they are the complete responsibility of the provinces, with "no control over their own destinies" (Dodek 2013, 63; Broadbent 2008, 67). Broadbent (2008) claims that the ability of a government to control its own destiny is fundamental for effectiveness: because cities lack this control, they cannot provide citizens with what they need, want, and reasonably expect (Slayton 2015, 2). Currently, city governments cannot be held accountable for their failings, because they lack the authority to deliver on what they are expected to provide, and can "use their powerlessness as a shield, or a crutch" (Broadbent 2008, 68). They do not have control over even the most basic elements of their administration, such as how many seats there are on city council, and are often undermined by provincial bodies (71, 77-78). Provincial governments can also rearrange municipal structures at will, as happened when Toronto was forcibly amalgamated with its surrounding cities by the Harris government in 1998, over the objections of both the cities involved and most of their citizens (75; Dewing, Young, and Tolley 2006, 2). Historically, in

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5. For more information, see: Florida, Richard. "Cities and the creative class". *City & Community* 2 (1), 3-19. DOI: 10.1111/1540-6040.00034

big cities, “[g]ood day or bad, someone else made the decisions” (Broadbent 2008, 76), largely because the capacity for financing policy and programs resided with other levels of government.

According to Slayton (2015), the structural problems of big city governance have only been worsened by the poor leadership they have seen. Several mayors in Canada’s recent history have faced criminal charges, scandals, accusations of incompetence, and been subject to inquiries, due in part to the unaccountable nature of the job (1). Even the good mayors, he claims, are “constrained, hampered, hobbled and frustrated by the constitutional, economic and political reality of Canadian cities” (4). Theorists agree that by infantilizing big city governments, the provinces have encouraged them to behave childishly. As Broadbent (2008) claims, when the authority of cities is divided from the fiscal capacity to meet their responsibilities, “the behaviour of city governments begins to disintegrate” (76-77; Andrew 2001, 100). The provinces in turn respond to the abhorrent behaviour of city officials and administrations with the claim that they cannot handle the meagre responsibilities they do have, let alone anything more.

Arguably the biggest problem that large cities face is a dearth of fiscal tools with which to raise funds, including broader powers to tax and the use of debt instruments. As Broadbent (2008) says, cities lack the “fundamental basis of effective government”, because “to tax is to govern” (80). Right now, big Canadian cities are “particularly handcuffed fiscally”: they rely heavily on property taxes for revenue, to the extent that approximately 50% of their income is generated this way, as compared to it constituting only 15% of income for US cities (Broadbent 2008, 80; Bradford 2002, 15<sup>6</sup>; Courchene 2007, 16<sup>7</sup>). This is highly problematic, as the values of property do not keep pace with the rest of the economy, in contrast to the consumption and income taxes that other levels of government are permitted to levy (Broadbent 2008, 80; Dewing, Young, and Tolley 2006, 3; Courchene 2007, 18). Generally speaking, property taxes can be considered a regressive form of taxation, as they burden most those with the least ability to pay.

Because cities rely on property taxes, user fees, and provincial grants to operate, it is difficult for them to run financially risky programs such as ones providing assisted-living facilities or low-income housing, no matter how necessary they are. Provincial backing is unpredictable, and therefore cities are incapable of establishing these kinds of initiatives (Broadbent 2008, 90). Big cities are often discouraged from developing long-term solutions because they cannot establish long-term financing, a major challenge as they have, on the balance, problems that can only be solved in the long-term (Dewing, Young, and Tolley 2006, 3). Bradford (2002) refers to the fiscal incapacity of big cities to meet their administrative

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6. Bradford cites the reliance of US cities on property tax revenues at 21% in 2002.

7. For a broader international comparison of city expenditures, revenues, and taxation practices, see Courchene (2007), 12-21.

and service obligations as the “resource-responsibility imbalance”, and claims that it needs to be redressed urgently (29). Ideally, any new mode of governance for big cities would see the unification of authority and accountability through the adoption of new, more appropriate fiscal tools (Broadbent 2008, 80-81).

Regardless of how change is made to city governance structures, there can be no question that it is urgently needed. Cities are distinct from suburban or rural areas, are highly diverse, face an enormous influx of immigrants every year, are densely populated, unaccountable, and financially unfeasible. It is to the different options for how this change might be accomplished that I will now turn.

## **Big Cities Done Better?**

There are many alternatives available for restructuring Canada’s largest cities. Some pathways to empowerment include devolution-maximum (“devo-max”), increasing federal-municipal relations, establishing the right to self-government in a charter, and gaining provincial status and powers via constitutional amendment, among others. Each of these will now be discussed individually.

“Devo-max”, or devolution-maximum, is one such solution proposed by Philip Slayton (2015). This is a term borrowed from the United Kingdom to describe the place that Scotland has been given within the unitary state system as a means to avoid secession. Devo-max would mean that the Canadian federation would grant as much autonomy to the big cities as possible, without relinquishing sovereignty over them (5; Gander 2014). In the Canadian context, the process would involve conference consultations with the premiers and prime minister to acknowledge the problems, and then the (re)negotiation of a charter for every big city. According to Slayton (2015), each of these charters will hinge on a procedural entrenchment clause, which would require any alteration to the charter to adhere to its own rules, including its potential repeal. This would prevent the province from unilaterally changing the foundation of city governance as it would a regular piece of legislation, which is the case currently with Municipal Acts (232-33). While the charter would still be non-binding for the province, Slayton (2015) theorizes that it would be greatly disinclined to ignore a charter because of the possibility of facing substantial political repercussions for doing so (much like the use of the notwithstanding clause in the Charter of Rights and Freedoms). For Slayton (2015), there are three key things that need to be included in these city charters: unlimited financial freedom, better ethical rules for officials and politicians, and the introduction of partisan politics at the municipal level. While the conditions of devo-max are similar to those that currently exist, Slayton (2015) claims that the changes he suggests would make a “simple but substantial” difference (233-35).

Another alternative presented by Broadbent (2008) is to make incremental changes to municipal governance structures through relationships with the federal government (168). Right now, the federal government is largely prevented from direct intergovernmental relations with municipalities by the constitution; indeed, any relations that do happen occur by way of the provinces, or through the lobbying of the Federation of Canadian Municipalities. However, the federal government can still make a financial impact by giving individuals funds directly, through either a grant structure or via the tax system (i.e., scholarships for university students, or rent supplements and tax credits on mortgage payments for low-income Canadians) (173-78). Ideally, the federal government would listen to the needs of big cities and provide funding for the issues that the municipal governments feel are most salient. The argument here is that the biggest issues facing cities are really national issues, such as homelessness or public transit, which are played out most often at the municipal level (169). One example might be making individual transit passes tax-deductible, so that people who take public transit over driving see some direct benefit and are enabled to keep doing so. The federal government could also act as a guarantor for municipalities when they need to take out bonds, so that they have the capital to invest in large, long-term projects such as infrastructure building (173). In addition to these measures, the federal government might take the step of consulting city governments whenever an issue at hand will affect them, thereby privileging their local expertise (181-82).

Although the federal government might be able to engage municipal funding successfully in this way, there are certain problems that arise with these types of arrangements. One such problem is that while these measures have the benefit of targeting support to where the need really is, and dispel potential concern about the province diverting federally allocated funds for other purposes, they still leave the federal government open to confrontation with the provinces over jurisdiction regarding big cities, as is the case right now. Another problem with the aforementioned solutions is that municipalities remain dependent on the goodwill of a higher-level government (although the federal level is perhaps a more natural ally than the province) (Broadbent 2008, 182). Lastly, the kind of change that cities see as the norm now is incremental and needs-based: while having the benefit of ensuring that real need exists before changing relationships of power, it is also an extremely slow and difficult process that does not cohere well with a global pace (95, 185). A significant problem with federal grants and tax measures is that they would continue to offer only incremental levels of change. While these steps are “practical and attainable”, they often take “years and sometimes decades” to accomplish (185). Instead, Broadbent (2008) argues that “[r]ather than telling cities how to behave one issue at a time, governments should give the cities broad authority and responsibility to control their own destinies” (186-87).

Leo (2006), relying on Courchene (1995)<sup>8</sup>, claims that the ability to give greater autonomy to the largest cities through the creation of asymmetrical governance already exists within the Canadian model and practice of federalism (“federalism as process”), as demonstrated by the asymmetry provided for Quebec in the federal-provincial context. Essentially, his argument is that the flexibility required to accommodate difference is built into the federal system; therefore, there should be no need to impose rigidity on municipal governing structures by constitutionalizing them, when their needs can be adapted to through the federal process (486-87). Some possibilities for these types of arrangements that can avoid constitutional change include federal-provincial-municipal (“tri-level”) agreements and accords, and the inclusion of authentic local participation through consultation in the decision making process (489-90). Leo (2006) cites multiple examples of this style of inclusive agreement, including the Social Union Framework Agreement (SUFA) and the Neighbourhood Improvement Programme (NIP) in Winnipeg (490).

Leo (2006) also imagines a Canada of “non-territorial federalism”, where sovereignty can be “unbundled”. This requires working beyond traditional hierarchical structures and instead adopting a mode of government that is more interdependent, overlapping, and perhaps less transparent. Levels of government, he says, would cooperate, sharing responsibilities and working together on some initiatives. Furthermore, when we consider this seriously, “it becomes obvious that hierarchies of sovereignty were never as tidy, or jurisdictions as airtight, as many imagined them to be”. This is how the world operates today: with increasing need for flexibility and with a sense of borderlessness. The result would be a shift from “government” to “governance”, where multiple levels would collaborate on issues of importance, and govern simultaneously. At the same time, communities would participate in decision-making, even down to the level of neighbourhoods, so that agreements could be reached from the bottom-up (Leo 2006, 491-93; Courchene 2007, 28).

There are several ways that this might be brought about: federal transfers might be tied to community level consultation and participation, or municipal governments might participate in the process of creating agreements between levels of government. Regardless of the method, “deep” federalism would require that national policy address community needs in a way that would likely result in the further decentralization of the Canadian state (Leo 2006, 502-03). Other theorists agree: Bradford (2002) promotes the “joint responsibility” of governments and citizens, claiming that the outcome is better in the long term, that policy is more effectively implemented, and that this method creates “ownership of problems and responsibility for solutions [which] is shared by the stakeholders” (52). While this seems aimed at supporting communities and customizing policy to fit specific needs, it also represents in certain aspects the neoliberalization of governance, through the

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8. From Courchene, T. J. (1995). *Celebrating Flexibility: An Interpretive Essay on the Evolution of Canadian Federalism*. Montreal: CD Howe Institute.

downloading of responsibility onto citizens and government withdrawal from decision-making. In addition, though asymmetrical federalism is indeed useful in accommodating large minority groups, such as the French Canadian population of Quebec, it is arguably less possible and less appropriate to accommodate the needs of urban Canadians even with the inherent flexibility of federalism, as they constitute a majority population.

Finally, some may argue that cities are now addressing their issues well enough after having established city charters. These charters are one strategy that cities are currently using to modify the arrangements that exist between them and their provincial governments. The Greater Toronto Charter, for example, was established in 2006, in order to help to address the challenges of urbanization through the articulation of more extensive powers (Broadbent 2008, 8). The purpose of a city charter is to structure the unique laws that apply to that city, including any distinctive powers or responsibilities that do not correspond with those of other municipalities in the region. This creates a unique system of governance for a specific city, so that its needs and circumstances are recognized beyond the administration of blanket provincial legislation (Keil and Young 2003, 92; Broadbent 2008, 8-10).

The principal benefits of chartering for cities are that it allows them to tailor legislation while remaining under provincial jurisdiction, it makes governing more flexible, and it may increase governing capacity so that autonomy is more possible in the future. However, there are drawbacks, too: city charters can be unilaterally amended or repealed by the province like regular legislation (although the province must consult with the city before doing so). Charters may also create different governing arrangements and structures for many municipalities in one region, resulting in a “patchwork” of governance (Dewing, Young, and Tolley 2006, 19; Leo 2006, 484-85). According to Courchene (2007), city charters establish powers for big cities in Canada that most international cities of comparable size already have; therefore, to do the same thing in Canada should be easily achievable (29). Importantly, Courchene (2007) emphasizes that big cities in Canada differ substantially and in numerous ways from the most other municipalities, which warrants that they receive distinct treatment (33; Keil and Young 2003, 95). Indeed, many municipalities would not have the desire or capacity to take on the powers given in a charter, and benefit in many ways by pooling resources through the provincial government (Broadbent 2008, 83).

Having reviewed multiple solutions for enhancing municipal autonomy, and after presenting a critique of both the benefits and drawbacks for each alternative, I will now discuss and advocate for one final possibility: that of empowering big cities within the constitution via the creation of city-provinces.

## **Big Cities Need Big Changes**

While the options described above offer workable ideas, constitutional entrenchment is the best option for effecting concrete change and empowerment for big cities. Alan Broadbent (2008) offers a bold vision for this: he proposes that the three biggest Canadian cities (Toronto, Vancouver, and Montreal) be transformed into city-provinces, despite the difficulties inherent in any attempts to amend the constitution. The time has come – as he says, “we cannot any longer afford to be captives of our constitutional documents if we hope to be masters of our future” (20). Not only do these cities have large population bases, unlike some of the existing provinces, but they are significantly distinct from their regional contexts in terms of identity and extreme heterogeneity. Therefore, he claims, a “one size fits all” approach to municipal legislation cannot feasibly work, as “it will fit only [big cities or smaller municipalities] or neither” (99, 228-29). Ultimately, big cities must have a legal “seat” in government: in order for the federation to continue to work, Broadbent (2008) says, “partners must have equal status and equal rights at the table” (81).

To review, there are numerous reasons to entrench city provinces in the constitution, aside from the huge population disparities that exist between many of the provinces and the largest cities<sup>9</sup>: big cities have more complex and diversified economies that vitalize their whole regions, they are where the majority of immigrants settle, and they are already an amalgamation of smaller localized identities (189). Big cities also have special needs that do not exist in other parts of their regions: their healthcare systems function differently, their school curriculums teach different things and require different resources, they need to administer settlement services, they have a much greater need for low-income and transitional housing, they experience the most urgent need for environmental policy, they need public transit, their land use decisions and patterns of growth are different, and they require much stricter gun laws (191-98).

There are several ways that the creation of city-provinces might occur. The most radical would be for an existing province to make the change unilaterally, which it has the power to do by regular vote; however, this would in all likelihood have terrible political consequences (Broadbent 2008, 202). A Royal Commission could be struck to assess the situation of big cities and to determine what the new arrangements would look like, and eventually recommend the incorporation of city-provinces (203). Similarly, the Senate could be called upon to research different options for city-province development via committee (204). Interestingly, no consideration has been given in the literature to the possibility of giving big cities the status of territories, which would create “provinces-in-waiting” by allowing the federal government to devolve the powers of a province slowly over time, and

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9. According to Broadbent (2008), the Greater Toronto Area alone has a larger population than each of the Maritime and Prairie provinces individually, and the Greater Golden Horseshoe, an area extending from Peterborough to Georgian Bay and down to Niagara, has a larger population than all of the Maritime and Prairie Provinces combined. Further, Montreal and Vancouver each hold as many people as six out of the ten provinces do (187).

provide flexibility for these entities to be more or less dependent on the federal government according to the developmental stage of their capacity. While outside of the scope of this paper, this is noteworthy as potential option for the development of city-provinces that should be investigated in future research.

Broadbent (2008) asks why we are so “resolutely in thrall to an organizational structure a century out of date”, and argues that it is time to build a “new Canada” by introducing these crucial changes (212). However, not all political theorists agree that the creation of city-provinces would even be possible, regardless of how it was undertaken. Andrew Sancton (2008) argues that the boundaries of cities are necessarily flexible, and that they could not be made static in order for big cities to attain provincial status (3). Further, he claims that to establish such concrete boundaries would only reify existing differences between cities, suburbs, and rural areas, which are seen by some as “arbitrary, outdated, discriminatory, and irrelevant” (4). Keil and Young (2003) had similar findings in their research: not only were there significant differences among interviewees about what area actually constituted the city of Toronto, there was a minority opinion that advocated actively for the exclusion of suburbs from a chartered Toronto, as the suburbs “fac[e] a different set of issues than does the city and should, therefore, not be combined with the city” (96). Instead of creating a bounded, rigid city-province, Sancton (2008) argues that the central governments need to exercise their powers more in cities in order to help deal with the problems related to urbanization (131). Addressing some of these arguments, Broadbent (2008) says that the new city-provinces could be created using an opting-in process, instead of determining boundaries from the top-down, in order to be as inclusive as possible (205).

There are also other reasons for why the constitutional entrenchment of big cities would be very difficult to accomplish, and is therefore highly unlikely. Firstly, the provinces will not cede their powers over municipalities, and will guard the current arrangements “jealously” (Dewing, Young, and Tolley 2006, 1; Broadbent 2008, 61). In addition, the smaller provinces would oppose any plan to create city-provinces avidly, seeing it as an attempt to outnumber them and dismiss their regional concerns (Broadbent 2008, 201). The provinces generally see efforts by the federal government to engage with the cities or their issues as an intrusion into their exclusive jurisdiction; indeed, a key reason why past attempts to establish a federal ministry or agency to help deal with urban issues have gone awry was that the provinces viewed this development as the federal governments and municipalities allying against them (Dewing, Young, and Tolley 2006, 4, 7-8).

Slayton (2015) agrees that while constitutional change would be ideal, “the political forces and technical difficulties arrayed against it are too great”: any amendment to the constitution requires the approval of seven provinces representing at least 50% of the

population<sup>10</sup>, and it would be extremely difficult to get enough provinces on board (4, 233; Dodek 2013, 105; Broadbent 2008, 201; Dewing, Young, and Tolley 2006, 11). As the Macdonald Commission reported, “it is out of the question that the legislative assemblies of such a majority of provinces would agree to this loss of power” (Dewing, Young, and Tolley 2006, 11; L’Hereaux 1985, 201). Broadbent (2008) claims that those who are most vocally opposed to the empowerment of big cities in the constitution are usually those with the most to lose, including provincial finance departments, provincial bureaucrats, and federal finance ministers, who have “convinced themselves not only that nothing can change, but that nothing *should* change”, and instead prefer to work *around* constitutional stasis (97, 210, emphasis in original). Given the level of conflict that already exists between the federal and provincial levels of government, it is possible that the addition of city-provinces would only make intergovernmental relations more challenging, complex, and rigid (Dewing, Young, and Tolley 2006, 12).

Several theorists claim that ideally, the best thing for Canada’s largest cities would be to bring them to the table and constitutionalize their powers, tools, and obligations, namely by giving them provincial status. Whether or not they agree with this proposal, however, nearly every theorist agrees whole-heartedly that amending the constitution is unlikely in the extreme, because the provinces will vote to maintain their jurisdiction over cities. Many articulate the belief that big cities can work around this problem, and gain additional powers to support the fulfillment of their responsibilities without entrenching them. However, the alternate solutions proposed by various theorists are “tantamount to de facto, if not de jure, constitutional change” (Courchene 2007, 33). Problematically, the ability to enact even smaller, more incremental types of changes always relies on the desire and willingness of the provincial governments to cooperate and delegate significant powers to big cities in the first place, returning us to the original point of difficulty.

What this speaks to is the fact that the constitutional amending formula is too stringent to allow for appropriate action on these issues. Right now there is an inability to amend the constitutional makeup of the country despite clear and consistent need, leaving big cities to attempt to find ways to circumvent these constitutionally imposed restrictions, which results in a weakened and more convoluted democracy for Canada. In discussions of senate and democratic reform, former Senator Hugh Segal has expressed this best: Canada is now in a situation where “the country serves the Constitution rather than the Constitution serving the country”<sup>11</sup> (Broadbent 2008, 167-68). Broadbent (2008) too articulates his frustration with this, declaring that “[o]ur constitutional structure exerts a drag on modernizing our practice” (167). Even Leo (2006), who favors radical decentralization via

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7. This specific aspect of the amending formula can be found in Part V, section 38 (1) (b) of the Constitution Act, 1982.

8. This is not a direct quotation of Segal, and no further reference for this statement is provided in *Urban Nation*. I therefore must entrust the veracity of this comment to Broadbent (2008).

the inherent flexibility of federalism, says that voluntary arrangements “are not a substitute for a constitutional assignment of responsibilities, nor do they relieve us of the need to consider constitutional changes when circumstances require them” (487). While federalism is prepared to accommodate minority groups, it arguably cannot accommodate majorities such as urban-dwellers – nor should it have to. Therefore, Canada’s biggest cities will be best served – and best able to serve the nation – if they are constitutionally entrenched as city-provinces.

Canada’s largest cities are struggling, and they have been for some time. The arguments that I have set out here clearly define a need for change to the structures by which Canada’s big cities govern. They face a myriad of difficulties which prevent them from functioning effectively: they are hugely diverse, highly populated, and profoundly distinct from other areas in their surrounding regions; their citizens are underrepresented in parliament; they are disadvantaged fiscally in terms of the tools they are constrained to using; they have little control or autonomy; and lastly, they have minimal ability to contribute to policy- and decision-making even in fields where they have expertise. These problems present severe consequences, including the election of poorly behaved politicians who remain unaccountable, deep frustration for citizens, civil servants, and elected representatives, and worst of all, incompetence and incapacity when it comes to providing essential services. While many have offered solutions that go some of the distance in accomplishing changes for cities, I propose that the constitutional entrenchment of big cities, particularly through the creation of city-provinces, is the best and most democratically sound solution to the resolve the numerous problems that currently exist. Unfortunately, the strict amending formula forecloses on this possibility, leaving cities to consider other, less effective alternatives as a next-best solution, in an attempt to improve the currently unsustainable state of affairs.

## Bibliography

- Andrew, Caroline. 2001. "The Shame of (Ignoring) the Cities". *Journal of Canadian Studies*, 35 (4), 100-111.
- Bradford, Neil. 2002. *Why Cities Matter: Policy Research Perspectives for Canada*. Ottawa: Canadian Policy Research Network. Discussion Paper No. F23.
- Broadbent, Alan. 2008. *Urban Nation: Why we need to Give Power Back to Cities to Make Canada Strong*. Toronto: HarperCollins.
- Canadian Broadcasting Corporation. 2015. "Federal Election Results 2015: Justin Trudeau's Liberals to Form Majority Government". *CBC News Canada Votes*, October 20<sup>th</sup>. Retrieved from: <http://www.cbc.ca/news2/interactives/results-2015/>
- Courchene, Thomas Joseph. 2005. *Citistate and the State of Cities: Political-Economy and Fiscal Federalism Dimensions*. Ottawa: Institute for Research in Public Policy.
- Courchene, Thomas Joseph. 2007. "Global Futures for Canada's Global Cities". *Policy Matters*, 8 (2), June. Ottawa: Institute for Research in Public Policy.
- Dewing, Michael, William Robert Young, and Erin Tolley. 2006. *Municipalities, the Constitution, and the Canadian Federal System*. Parliamentary Information and Research Service.
- Dodek, Adam. 2013. *The Canadian Constitution*. Toronto: Dundurn.
- Gander, Kashmira. 2014. Scottish Independence: What is Devo-Max? *The Independent*, September 15<sup>th</sup>. Retrieved from <http://www.independent.co.uk/>
- Keil, Roger, and Young, Douglas. 2003. "A Charter for the People? A Research Note on the Debate about Municipal Autonomy in Toronto. *Urban Affairs Review*, 39 (1), 87-102.
- Leo, Christopher. 2006. "Deep Federalism: Respecting Community Difference in National Policy". *Canadian Journal of Political Science*, 39 (3), 481-506.
- L'Heureux, Jacques. 1985. "Municipalities and the Division of Powers," in Richard Simeon, ed., *Intergovernmental Relations, Royal Commission on the Economic Union and Development Prospects for Canada*, No. 63. Toronto: University of Toronto Press, 201.
- Libin, Kevin. 2001. "Kevin Libin: The Myth of the Urban-Rural Divide". *National Post*, April 10<sup>th</sup>. Retrieved from: <http://news.nationalpost.com/news/canada/kevin-libin-the-myth-of-the-urban-rural-divide>
- Sancton, Andrew. 2008. *The Limits of Boundaries: Why City-Regions Cannot be Self-Governing*. Montreal & Kingston: McGill-Queen's University Press.
- Slayton, Phillip. 2015. *Mayors Gone Bad*. Toronto: Viking Canada.
- Standing, Guy. 2011. *The Precariat: The New Dangerous Class*. London: Bloomsbury.
- Statistics Canada. 2011. *Population and Dwelling Count Highlight Tables, 2011 Census*. Population and dwelling counts, for census metropolitan areas and census. Catalogue number 98-310-XWE2011002 in Statistics Canada [database online]. [Accessed April 3<sup>rd</sup>, 2016].
- Statistics Canada. 2011. *Population of Census Metropolitan Areas, 2011 Census*. Table 051-0056 - Estimates of population by census metropolitan area, sex and age group for July 1, based on the Standard Geographical Classification (SGC) 2011, annual (persons), CANSIM (database). [Accessed: April 3<sup>rd</sup>, 2016].

# Federal-Provincial Relations and Conservatism in the Canadian West

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Regionalism has been a prominent feature of Western Canadian political culture even prior to Alberta and Saskatchewan joining confederation in 1905. One manifestation of this regionalism is through intergovernmental conflict, particularly jurisdictional disputes between the provincial and federal governments. These disputes have generally seen provincial governments of various ideological leanings cooperate, and yet decentralization—or expansion of provincial jurisdiction—is a position that has largely been advanced by conservatives in recent decade.<sup>1</sup> Is there an ideological connection between expansion of provincial jurisdiction and conservatism? This essay contends that the conservative ideology particular to Western Canada was uniquely influenced by the dynamic of federal-provincial relations in Canada because of particular features of the region's brand of conservatism. This essay will demonstrate that ongoing disputes between western provinces—Alberta in particular—and the federal government, particularly over natural resource issues, have reinforced a dynamic of regionalism within Western Canadian conservatism, leading it to become the perennial feature of conservative policy, federally and provincially, that it is today.

## **Early Conflict and Exploitation**

The roots of conflict between the West and Ottawa can be traced back to the territorial government of the present-day western provinces prior to 1905. Despite entering a period of settlement and growth, the Northwest Territories frequently lacked effective representation in the Dominion Government.<sup>2</sup> Lacking the autonomy of full-fledged provinces, the Northwest Territories required the approval of the federal government for access to funding, including for vital infrastructure. Gayle Thrift suggests that as early as 1883, discontent with the treatment of the territories was brewing, with a movement underway to lobby Ottawa for increased representation and autonomy.<sup>3</sup> Even the Dominion Lands Policy, David K. Elton

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<sup>1</sup> Maxime Bernier, “Ottawa should quite intruding on provincial jurisdiction,” *National Post*, October 13, 2010; Brooke Jeffrey, “Prime Minister Harper’s Open Federalism: Promoting a Neo-Liberal Agenda?” in *The Case for Centralized Federalism*, ed. Gord DiGiacomo and Maryantonett Flumian, (Ottawa: University of Ottawa Press, 2010); David Laycock, “Making Sense of Reform as a Western Party,” in *Regionalism and Party Politics in Canada*, ed. Lisa Young and Keith Archer (Oxford: Oxford University Press, 2001); Alain Nöel, “Is Decentralization Conservative? Federalism and the Contemporary Debate on the Canadian Welfare State,” in *Stretching the Federation: The Art of the State in Canada*, ed. Robert Young (Kingston: Institute of Intergovernmental Relations, 1999).

<sup>2</sup> David K. Elton, “Alberta and the Federal Government in Historical Perspective, 1905-1977,” in *Society and Politics in Alberta: Research Papers*, ed. Carlo Caldarola (Toronto: Methuen).

<sup>3</sup> Gayle Thrift, “‘By the West, for the West’: Frederick Haultain and the Struggle for Provincial Rights in Alberta,” *Alberta History* 59 (2011): 4.

argues, was a point of contention between westerners and the Dominion Government. The pattern of land distribution impaired the development of communities and added a great expense to communication.<sup>4</sup>

Even when the populated portions of the Northwest Territories were finally granted provincial status, the process was contentious. The Liberal government of Sir Wilfrid Laurier feared that another large province joining confederation could rival the power of the existing provinces.<sup>5</sup> Perhaps to further mitigate the risk of domination by the west, the newly formed provinces of Alberta and Saskatchewan were denied the full autonomy of the other provinces. Most notably, the federal government retained ownership of crown land in the western provinces, leading J. R. Mallory to conclude that Alberta and Saskatchewan “were not provinces in the same sense as were Ontario and Quebec, but in the Roman sense”.<sup>6</sup> Though the westerners rebelled against this view, “Roman provinces” were in keeping with the original intents of western settlement. Sir John A. Macdonald’s National Policy intended to settle the west in hopes of offsetting the dependence of Central Canada on American markets.<sup>7</sup> Ottawa would continue to argue over the next decades that retention of western land ownership was necessary to pursue the western settlement policy of the Dominion Government.<sup>8</sup>

## **A Political Culture Emerges**

By the time control of natural resources was granted to the western provinces, a considerable impact had already been made on the region’s political culture. Gurston Dacks defines a political culture as “the pattern of fundamental ideas, of basic beliefs and values, by which a group of people interpret politics and decide how they will behave when faced with political choices”.<sup>9</sup> Political culture should not be confounded with ideology, or with individuals’ beliefs. Rather, political culture is the lens through which people participate in, and view, the political system. For example, a social democrat and a conservative may have radically different perspectives on the relationship between the provincial government and Ottawa, but in either case their views will have been coloured by the fundamental values of a region’s culture. Dacks suggests that while political culture may lend a degree of constraint to the choices of political actors, actors will emphasize different aspects of political culture most politically advantageous to them.<sup>10</sup> In terms of the dissemination of political culture, Dacks

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<sup>4</sup> Elton, “Alberta and the Federal Government,” 109.

<sup>5</sup> Ibid., 75.

<sup>6</sup> J. R. Mallory, *Social Credit and the Federal Power in Canada* (Toronto University of Toronto Press, 1954), 10.

<sup>7</sup> John Richards and Larry Pratt, *Prairie Capitalism: Power and Influence in the New West* (Toronto: McClelland and Stewart, 1979), 15.

<sup>8</sup> Ibid., 17.

<sup>9</sup> Gurston Dacks, “From Consensus to Competition: Social Democracy and Political Culture in Alberta,” in *Essays in Honour of Grant Notley: Socialism and Democracy in Alberta*, ed. Larry Pratt (Edmonton: NeWest Press, 1986), 186-187.

<sup>10</sup> Ibid.

points to the media and schools, shared experiences, and a desire for newcomers to integrate as key methods.<sup>11</sup> With regard to the substance of political culture, Barry Cooper highlights the importance of political myths, pointing out that “what begins as policy” may have significant and longstanding effects on the relationship of a people to politics.<sup>12</sup>

Thus, what began as a policy of exploitation of the west’s resources by Central Canada, in time, came to be viewed as exploitation of the west itself. The traditional discussion of western discontent centres on “western alienation”, which Roger Gibbins has defined as “a political ideology of regional discontent” that “encompasses a sense of political, economic, and to a lesser extent, cultural estrangement from the Canadian heartland”.<sup>13</sup> However, Gibbins’s study of western alienation emphasizes the idea that there has been a substantial desire for “greater participation in and recognition by the national government,” and also uses individual-level survey data as a means of attempting to capture political culture.<sup>14</sup> Gibbins fails to articulate the logic of these assumptions: in principle, exploitation by the federal government seems at least as likely to draw westerners *away* from the federal government as toward it. For conservatives in particular, as we shall see below, circumstances would suggest a preference for Alberta to manage as many of its own affairs as possible, with minimal interference from the federal government. On the point of survey data, Cooper notes there is no reason to believe that this aspect of western culture would be captured via survey.<sup>15</sup> On the contrary, the use of such attitudinal data *excludes* the myths of political culture itself.<sup>16</sup> The important point here is that perceptions of politics have an impact on politics itself; capturing only political realities through data misses an important part of the picture.

## **Prairie Conservatism and Populism**

So far, we have seen the development of a political culture in which the mythology of exploitation by Ottawa is significant. Before we can develop these ideas further, we must examine a simultaneous development: the emergence of political ideology on the prairies. Nelson Wiseman suggests ideological variance across the prairie provinces developed largely as a function of immigration patterns.<sup>17</sup> Saskatchewan was strongly influenced by British settlers and consequently the British labour movement, while Alberta was strongly influenced by liberal-populist ideas of the American Midwest. This special brand of Albertan

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<sup>11</sup> Gurston Dacks, “From Consensus to Competition: Social Democracy and Political Culture in Alberta,” in *Essays in Honour of Grant Notley: Socialism and Democracy in Alberta*, ed. Larry Pratt (Edmonton: NeWest Press, 1986), 186–187.

<sup>12</sup> Barry Cooper, *It’s the Regime, Stupid!: A Report from the Cowboy West on Why Stephen Harper Matters* (Toronto: Key Porter, 2009), 63.

<sup>13</sup> Roger Gibbins, *Prairie Politics and Society: Regionalism in Decline* (Toronto: Butterworths, 1980), 169.

<sup>14</sup> Ibid., 167.

<sup>15</sup> Cooper, *It’s the Regime Stupid*, 120.

<sup>16</sup> Ibid.

<sup>17</sup> Nelson Wiseman, “The Pattern of Prairie Politics,” in *Party Politics in Canada*, ed. Hugh G. Thorburn and Alan Whitehorn (Toronto: Prentice Hall, 2001).

conservatism, Clark Banack argues, is at odds with the British toryism that predominated in the rest of English-speaking Canada.<sup>18</sup> Tories tend to be more statist and hierarchically minded, whereas the American-Western conservatives discussed here tend to be more libertarian.<sup>19</sup> Jared J. Wesley identifies particular values that were the product of American settlers: laissez-faire liberalism and a lack of deference manifesting as populism.<sup>20</sup> Wesley also identifies western alienation as one of the values brought by American settlers.<sup>21</sup> However, as has already been intimated, this value arrived as the result of Canadian phenomena. The interplay of the Canadian conditions with what began as American values has had interesting effects as is explored further below.

Not immediately obvious is that all of Alberta's major governing parties share elements of this same ideological tradition.<sup>22</sup> The influence of American protestantism in particular underlay the United Farmers of Alberta (UFA), Social Credit, and even Progressive Conservative parties.<sup>23</sup> Each of these parties had vastly different policy ideas yet were fundamentally governed by the same populist, and to some degree individualist, tradition. Despite the prominence of these values in Alberta and their near ubiquity in the province's government, they are not the only views widely held in Alberta nor in the prairies more broadly. For this reason, the values of western conservatism are best described as a western ideology rather than as a fundamental aspect of the region's political culture. By the same logic, although the American-influenced conservative tradition has been most prominent in Alberta, it is not isolated to it: the different ideological traditions of the west are unevenly distributed across the prairies.<sup>24</sup> However, our interest here is on the conservative tradition in the West. Because this tradition has been most prominent in Alberta, Alberta must be the central focus.

One more feature of conservatism on the prairies must be mentioned: an ideological disposition towards the free market and capital enterprise. With perhaps the exception of Social Credit policy towards the banking industry, which was frequently the target of the government's policy experimentation, even Social Credit policy was firmly grounded in

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<sup>18</sup> Clark Banack, "American Protestantism and the Roots of 'Populist Conservatism' in Alberta," in *Conservatism in Canada*, ed. James Farney and David Rayside (Toronto: University of Toronto Press, 2013), 231.

<sup>19</sup> Nelson Wiseman, "Provincial Conservatism," in *Conservatism in Canada*, ed. James Farney and David Rayside (Toronto: University of Toronto Press, 2013), 209.

<sup>20</sup> Jared J. Wesley, *Code Politics: Campaigns and Cultures on the Canadian Prairies* (Vancouver: UBC Press, 2011), 55.

<sup>21</sup> Ibid.

<sup>22</sup> I exclude the Alberta's initial Liberal government from this analysis given that they were initially appointed without standing election and held an incumbency advantage thereafter. I also exclude Alberta's current NDP government as there is currently insufficient literature.

<sup>23</sup> Banack, "American Protestantism."

<sup>24</sup> Wiseman, "The Pattern of Prairie Politics."

capitalism and the free market.<sup>25</sup> Unfortunately, given the Depression and the relatively un-industrialized nature of the western economy at this point in history, there was little in the way of capital-building opportunity. However, the free market spirit would play a significant role when circumstances ultimately changed.

We can now consider the combination of a political culture of discontent with the treatment of the west with the conservative values of liberalism and populism. For conservatives, there was an impulse towards autonomy, or the management of the west's own affairs within the provinces themselves.<sup>26</sup> To be sure, most conservatives were still committed to national unity, and therefore also participation at the national level as Gibbins suggests.<sup>27</sup> To this extent, the western alienation thesis may hold, but does not provide a complete picture for western conservatives. However, the west lacked leverage or indeed any significant motivation for more autonomy. Over the following decades, the push for autonomy became more significant.

### **Natural Resources, Conservatism and Political Culture**

Natural resources, we have established, had an early and significant effect on the relationship between the territorial/provincial governments and the Dominion government. We have further seen that Gibbins's conception of western alienation does not reflect the true cultural significance the early federal-provincial dynamic had in the west. And now, we have seen that early western conservatism was strongly influenced by the ideas of populism and individualism, as imported from the United States. Furthermore, we have seen that an affinity between these values and the underlying political culture of regional discontent could result in a desire for more provincial autonomy. But was there any tangible connection, and how did it develop?

The early western economy was almost entirely based on agriculture. Alberta in particular was sparsely populated and dependent upon Central Canada for access to markets. Disputes between the UFA and Social Credit governments, even after natural resource rights were granted, primarily pertained to access to these markets and monetary policy otherwise.<sup>28</sup> Freight rates to the east, a system of protective tariffs, and—in the eyes of William Aberhart—domination of the banking industry by Easterners, were evidence of continued domination by the elites of Central Canada. The federal-provincial conflict of this era was not the result of a view that the western governments needed more power for ideological reasons,

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<sup>25</sup> Rand Dyck, *Provincial Politics in Canada: Towards the Turn of the Century* (Scarborough: Prentice Hall, 1996), 536.

<sup>26</sup> Wesley, *Code Politics*, 57.

<sup>27</sup> Roger Gibbins and Loleen Berdahl, *Western Visions, Western Future: Perspectives on the West in Canada*, second edition (Peterborough: Broadview, 2003), 50.

<sup>28</sup> Elton, "Alberta and the Federal Government," 111-112.

but were rather a continued attempt to attain equality with the other provinces in the federation—whether the inequality was real or perceived.<sup>29</sup> G. Bruce Doern and Glen Toner highlight that dissatisfaction with Ottawa's economic policy had a very real effect on westerners' perceptions of Central Canada whether or not the policies were truly discriminatory.<sup>30</sup>

The situation for the west and Alberta in particular changed dramatically with the discovery of oil at Leduc in 1947. Oil changed the dynamic of federal-provincial relations for two reasons: one, the properties of oil and gas themselves demand government regulation in order for the resources to be used effectively.<sup>31</sup> The level of government setting the regulations therefore controls the pace of resource development. This ties into the second reason: significant amounts of revenue were at stake for the government and for the economy of the region itself. Regardless of ideological stripe, a rational government benefits from increasing its revenue-generating capacity. For conservative free-market supporters, such as those dominating Alberta, controlling the regulatory structure means controlling access to this market as well.

Federalism naturally complicates regulation of the oil industry. Although the provincial governments have ownership of provincial natural resources, certain sections of the *British North America Act, 1867* (now the *Constitution Act, 1867*) make the division of powers more complicated. Under s. 91(2), the federal government has the power to regulate trade and commerce, and the sole power to raise money via taxation under s. 91(3). s. 91 also grants the federal government residual power to legislate on areas that have not explicitly been enumerated to either level of government. While provincial ownership of the resources means provinces can control and monetize their direct exploitation as owners, the federal government controls the trade of resources.<sup>32</sup> This overlap of jurisdiction leaves significant room for dispute. Over the decades that followed, many disputes did occur, and in the process solidified the relationship between a decentralized federation and western conservatism.

## **Energy and the Constitution**

The stage had effectively been set for conflict. A culture in the west, particularly for conservatives, of mistrust for the federal government had combined with a considerable turn

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<sup>29</sup> The Social Credit movement was clearly ‘ideological’ in the sense that it had specific policy preferences it wished to pursue provincially; however, these policies were in response to supposedly discriminatory policies of the federal government. Therefore, the disputes of the Social Credit government can still rightly be included with conflicts of equality. See *ibid.*, 113.

<sup>30</sup> G. Bruce Doern and Glen Toner, *The Politics of Energy: The Development and Implementation of the NEP* (Toronto: Methuen, 1985), 163.

<sup>31</sup> Richards and Pratt, *Prairie Capitalism*, 47.

<sup>32</sup> Robert D. Cairns, “Natural Resources and Canadian Federalism: Recurring Conflict, and Resolution,” *Publius: The Journal of Federalism* 22 (Winter 1992): 55-70.

of fortune in the way of economic opportunity. As such, throughout the 1970s and 1980s, we see a pattern by which each level of government tries to strengthen its jurisdictional claim. Prior to 1973, the federal and provincial governments generally agreed on the goals of energy policy: to stimulate the energy industry.<sup>33</sup> Nonetheless, both levels of government were actively trying to increase their jurisdictional authority through new legislation.

The federal government asserted its role in regulating trade between provinces and internationally in 1949 through the creation of the *Pipe Line Act*. Only federally incorporated companies would be able to transport natural gas via pipeline outside of the province of production, and the routing for any pipelines would require approval of the federal government.<sup>34</sup> The provincial government of Alberta was concerned the federal government might use this legislation to control supply and thereby change pricing in a manner most favourable for Eastern Canada.<sup>35</sup> As we have seen, the precedent certainly existed: the resource struggles of the provinces early history show the potential for exploitation existed. In response, the Social Credit government of Ernest Manning created the Alberta Gas Trunk Line (AGTL) to carry all natural gas within the province to the provincial border. This directly undermines the federal legislation, and leaves the routing, at least to some degree, in provincial hands.

The 1973 energy shock is when conservatism became especially significant to energy jurisdiction, and provincial jurisdiction more broadly. While in the preceding decades the federal and provincial governments had largely agreed in principle, this was no longer the case. Conservatives generally, and the conservative government of Peter Lougheed, had a vision of the energy industry in which Albertans should first and foremost benefit from the industry they are directly involved in. The federal government, on the other hand, viewed the energy industry as a source of revenue and benefit for all Canadians—a policy that, in the view of Albertans, would be at their expense.<sup>36</sup> The Albertan view emphasizes the values of individualism and populism we have identified as western conservative earlier: the ability of individual Albertans to control their own destiny.<sup>37</sup> Moreover, the capitalist aspect of western conservatism was clearly also in play: the province emphasized the role of “local entrepreneurs” within the province, rather than the monopolistic domination of eastern interests.<sup>38</sup> Conservative values were the goal, but not always the means however: in order to implement this vision, the province needed to secure its jurisdictional claim. As such, Lougheed began a vigorous campaign for greater autonomy—the only way to ensure conservative values would be emphasized.

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<sup>33</sup> Doern and Toner, *The Politics of Energy*, 67.

<sup>34</sup> Ibid., 69.

<sup>35</sup> Richards and Pratt, *Prairie Capitalism*, 66.

<sup>36</sup> Wesley, *Code Politics*, 92-93; Dyck, *Provincial Politics in Canada*, 542-543.

<sup>37</sup> Dyck, *Provincial Politics in Canada*, 544.

<sup>38</sup> Ibid.

The provincial government of Alberta litigated or intervened on several cases in an effort to protect its jurisdiction. In 1977, Alberta, Manitoba and Quebec intervened on behalf of the government of Saskatchewan in *CIGOL v. Saskatchewan*, with the federal government intervening on behalf of CIGOL. The issue was whether a “royalty surcharge” imposed on oil companies drilling on provincial crown lands constituted a royalty–profits derived from the government’s ownership of the resource–or a tax, which only the federal government has the authority to levy.<sup>39</sup> The case was therefore significant in that it had the effect to interfere with both the provinces’ jurisdictional capacity, but their ability to raise revenue as well. Ultimately, the Supreme Court of Canada found that the royalty surcharge constituted indirect taxation, and the impugned legislation was therefore *ultra vires*.<sup>40</sup> For Premier Allan Blakeney of Saskatchewan, this case was further evidence of systematic discrimination against the west. Other commodities faced the same price increases as oil did, and yet only oil was being targeted for revenue by the federal government.<sup>41</sup> Blakeney was not a conservative–indeed, he led a New Democratic government. Yet interference from the federal government such as this hindered his province’s ability to introduce the sort of progressive legislation he desired.<sup>42</sup> The same principle held true for Alberta: as long as the federal government interfered–and especially with the Trudeau Liberals in power–it would be difficult to implement policies with the values of western conservatism.

In 1978, another energy-constitutional case was brought forward, again involving the Government of Saskatchewan, and again with Alberta, Manitoba and Quebec plus New Brunswick and Newfoundland intervening. *Central Canada Potash v. Saskatchewan* depended on whether the Government of Saskatchewan was engaged in price fixing, or attempting to conserve potash as a natural resource by limiting supply.<sup>43</sup> The case overturned an earlier precedent in Alberta, *Spooner Oils Ltd. v. Turner Valley Gas Conservation* which established the authority of the provinces to regulate the conservation of their natural resources. Despite not having any potash, this case was therefore relevant to each of the western provinces. As noted earlier, oil and natural gas in particular are resources necessitating government regulation in order to maintain the resources over the long term. *Central Canada Potash* was important for all western provinces for much the same reason as *CIGOL v. Saskatchewan*: victory for the federal government ran the risk of privileging Central Canadian interests, policies, and ideology above those in the West. These fears were ultimately realized with the

<sup>39</sup> William D. Moull, “Natural Resources: The Other Crisis in Canadian Federalism,” *Osgoode Hall Law Journal* 18 (March 1980): 1-48.

<sup>40</sup> Ibid.

<sup>41</sup> Allan Blakeney, *An Honourable Calling: Political Memoirs* (Toronto: University of Toronto Press, 2008), 132.

<sup>42</sup> Janet L. Hiebert, “Compromise and the Notwithstanding Clause: Why the Dominant Narrative Distorts our Understanding,” in *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*, ed. James B. Kelly and Christopher P. Manfredi (Vancouver: UBC Press, 2009), 113.

<sup>43</sup> Moull, “Natural Resources.”

implementation of the National Energy Program by the government of Pierre Trudeau in 1980.

## **Exploited Again?**

The National Energy Program (NEP) was the single most important act in solidifying a relationship between provincial rights and conservatism in the second half of the west's history. The NEP, without input from the provincial governments, imposed a new pricing structure for Canadian oil and gas, and at a lower level than Alberta would have liked.<sup>44</sup> The NEP also included a new energy sharing model where the federal government would take a substantially larger share of revenue by implementing additional taxes on the industry.<sup>45</sup> One tax in particular, an export tax on natural gas, was a notable example. The federal government was aware the governments of Alberta and British Columbia in particular opposed such a tax, and yet proceeded with it regardless.<sup>46</sup> In retaliation, the Government of Alberta proposed a reference question to the Alberta Court of Appeal asking whether a tax on natural gas owned solely by the provincial government was within the constitutional powers of the federal government. Section 125 of the *British North America Act, 1867* prohibited one level of government from imposing taxes on another. The Court ultimately determined that such a tax would be *ultra vires*.<sup>47</sup> This hypothetical scenario gave the provincial government more bargaining power, and in 1981 the federal and provincial governments reached a new agreement—though not one constituting a clear victory for either side.<sup>48</sup>

Nonetheless, by all appearances in the west, the federal government was again exploiting the west in the name of eastern interests. As Pratt observes, the conclusion was again “that central Canadians continue to regard the west as little more than a resource-rich hinterland, and Alberta in particular as a storehouse of energy resources which are too important to be left under provincial jurisdiction”.<sup>49</sup> However, this time around a substantial difference existed: during this period conservatives dominated Alberta provincially and in Alberta’s federal seats. Roger Gibbins therefore suspects that “the cutting edge of western alienation may have been a purely partisan dislike; western Canadians were alienated as much because they were Conservatives as because they were western Canadians.”<sup>50</sup> Aside from the ideological foundations we established earlier for strong provincial government being amenable to conservatism, we cannot discount the notion of an “us” versus “them” mentality playing a role along ideological lines.

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<sup>44</sup> Dyck, *Provincial Politics in Canada*, 545.

<sup>45</sup> Doern and Toner, *The Politics of Energy*, 7-8.

<sup>46</sup> Troy Riddell and F. L. Morton, “Government Use of Strategic Litigation: The Alberta Exported Gas Tax Reference,” *The American Review of Canadian Studies* 34(3) (Fall 2004): 489.

<sup>47</sup> Ibid., 491.

<sup>48</sup> Ibid., 491-492.

<sup>49</sup> Larry Pratt, “Energy, Regionalism and Canadian Nationalism,” *Newfoundland Studies* 1(2) (1985): 178.

<sup>50</sup> Gibbins, *Prairie Politics and Society*, 183.

Indeed, the strongest and most prolific federal-provincial conflicts occurred during this period, when there was a mismatch between the dominant ideological faction in Alberta and in Ottawa. Natural resources aside, negotiations over constitutional amendment provoked further conflict. Gibbins suggests the process of constitutional negotiation severely undermined the fabric of the country.<sup>51</sup> Not only was the new constitution viewed as the product solely of the federal Liberal government, but because there were no seats held by Liberals in Western Canada in Parliament, it was a process the west was altogether excluded from. Moreover, the new constitution did nothing to address the institutional problems of regional conflict in Canada. Not only was the process viewed as being contrary to western interests, but the end result as well. The amending formula was a success for strong provinces in one significant regard: it solidifies the claim that the provinces have a role to play in setting the national agenda, and establishes the equality of the provinces; i.e. Quebec is not treated differently.<sup>52</sup> The dominance of provincial government is a mixed blessing for western conservatives, however. The provincial government is more likely to be ideologically favourable for them, but the strength of provinces in the amending formula comes at the expense of the very conservative principles prominent in the west. The constitution leaves no room for populism or individualism, whether in the way of constitutional referenda or another method of direct involvement with the amending process.

## **Provincial Goes Federal**

We have now seen that a pattern of exploitation by the federal government, whether in perception or in practice, strengthened the link between strong provincial rights and conservatism in at least two ways. First, strong provincial rights aligned with the values of western conservatism, namely populism, liberalism and capitalism by allowing the provincial governments to pursue policies aligning with these values. Second, antagonism between big-L Liberals federally and big and small-c conservatives in the west added an “us” versus “them” dimension to federal-provincial disputes in the latter period. As we shall now see, provincial rights have continued to be pursued by conservatives outside of provincial government—that is, when jurisdictional gains impose no immediate benefit in a power sense—since the end of the constitutional debates suggests that these earlier events have crystallized the notion of provincialism as part of the western conservative ideology.

Preston Manning’s Reform Party continued to advocate for many of the positions that had been relegated from the 1982 constitution negotiations and from the later Meech Lake and Charlottetown Accords. Brian Mulroney’s Progressive Conservative government was

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<sup>51</sup> Roger Gibbins, “Constitutional Politics and the West,” in *And No One Cheered: Federalism, Democracy and the Constitution Act*, ed. Keith Banting and Richard Simeon (Toronto: Methuen, 1983).

<sup>52</sup> Ibid., 127.

perceived to be favouring the conservative voters of other regions and Quebec in particular.<sup>53</sup> This left an opportunity for a party espousing the ideas of western conservatism to emerge. Although Manning sought to establish a party of the West rather than a party of ideology, the values and policies of the party clearly align with those we have found to be western conservative here: populism, liberalism and capitalism.<sup>54</sup>

Importantly for our purposes, though, the Reform Party continued to advocate for decentralization.<sup>55</sup> Reform, unlike the Progressive Conservative government of Peter Lougheed or even the UFA and Social Credit parties before them, contested only at the federal level. Their advocacy for decentralization conferred no direct benefit in terms of the expansion of their powers. In fact, had the Reform Party proved electorally successful and had the opportunity to form government, this advocacy would have taken powers away from the party. This suggests that there was some degree of staying power for provincial rights within conservatism. Even the explanation that decentralization was advocated solely for electoral benefit seems inadequate—other conservatives, we shall now see, advocated for decentralization even when there was *no* tangible benefit to them.

David Rovinsky authored a paper in 1998 titled “The Ascendancy of Western Canada in Canadian Policymaking”. Rovinsky describes how Western Canada “has always presented a distinctive regional viewpoint on national issues.”<sup>56</sup> What he describes is essentially what we have identified here as western conservatism. Notably, Rovinsky also mentions several of the figures who would later go on to write the infamous “Firewall Letter” as leading figures in the ascendancy of this school of thought. The Firewall Letter itself is notable for advocating for decentralization by way of encouraging then-Alberta Premier Ralph Klein to use the full extent of the province’s existing constitutional powers.<sup>57</sup> Taken together, these documents suggest there has been a high degree of continuity between western conservative thought as it has advanced forward, and support for decentralization and strong provinces as well. Unlike provincial governments and even the Reform Party, the authors of the Firewall Letter did not directly benefit from advocating this position. The authors do, however, advocate for using expanded provincial jurisdiction for conservative policy ends, explicitly noting “individual freedom” and “greater use of the referendum and initiative”. This further bolsters the conclusion that, through the actions of the conflicts of the 20th century between the provincial and federal governments, a connection has developed between decentralization and the brand of conservatism in the west.

<sup>53</sup> Tom Flanagan, *Waiting for the Wave: The Reform Party and the Conservative Movement*, second edition (Montreal & Kingston: McGill-Queen’s University Press, 2009), 51.

<sup>54</sup> Ibid., 53-56.

<sup>55</sup> Laycock, “Making Sense of Reform,” 132-133.

<sup>56</sup> David Rovinsky, “The Ascendancy of Western Canada in Canadian Policymaking,” *Policy Papers on the Americas* IX Study 2 (February 16 1998): 14

<sup>57</sup> Stephen Harper et al., [Firewall Letter] “An open letter to Ralph Klein,” *National Post*, January 24, 2001.

Rovinsky's paper is interesting for another reason. The notion of the "ascendancy of Western Canada" effectively predicts the rise of western conservatism nationally that occurred in the 21st century under the banner of the United Conservative Party, led by Stephen Harper—the very same Firewall author. Brooke Jeffrey suggests the present-day Conservative Party has advanced a significantly more decentralized view of Canadian federalism than their Liberal predecessors, and even more than the former Progressive Conservative Party.<sup>58</sup> Jeffrey argues that Harper seeks to promote a "neo-liberal agenda". She compares Harper's views on decentralization to the states' rights movement in the United States, citing figures such as Ronald Reagan as evidence of similarities.<sup>59</sup> Given the history we have now demonstrated that has linked western conservatism with provincial rights, we can reach a different conclusion: Harper's agenda is the ascendancy of Western Canadian conservatism as it has been articulated in this paper. Given the United Conservative Party must campaign to a national electorate, it is undoubtedly tempered with other branches of Canadian conservatism, but Harper's views on federalism are in line with a long tradition of Western Canadian political thought. In this sense, Jeffrey is correct in assuming Harper's views are American in origin—what she misses is that the Americans in question started out as migrants to western Canada, bringing the values of populism, liberalism and capitalism with them.

## **Conclusion**

The question we began this paper with was whether there was an ideological link between conservatism and a decentralized federation in Canada. To answer this question, we considered the sources the desire for decentralization itself, finding it to be a result of the early (and ongoing) policies of the federal government with regard to the west. We also identified the origin of Western Canadian conservatism, finding it to be based largely on American rather than Tory influences of Central Canada, and moreover centred primarily in Alberta. In origin, then, decentralization and conservatism do not form an ideological unit. But, because of the continued policy choices of the federal government vis-à-vis the west, decentralization presented an opportunity for realizing the policy preferences of conservatives, particularly once Alberta's economy shifted from primarily agriculture to primarily energy based. Furthermore, the ideological divisions between the federal and provincial government of Alberta in this era created an "us" versus "them" mentality—together, these factors cemented a relationship between western conservatism and decentralization, which continues to subsist today.

Whether decentralization is an ideological feature of conservatism, then, depends on one's meaning. The pattern of affinity between them could be considered ideological in that

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<sup>58</sup> Jeffrey, "Prime Minister Harper's Open Federalism."

<sup>59</sup> Ibid., 120.

provincial rights continue to be asserted alongside other conservative values. On the other hand, decentralization could be considered a means to an end for implementing these other values. Considering the longevity of their relationship, we can perhaps tentatively conclude the former. Future research might examine whether this link persists in the future: the heartland of western conservatism, Alberta, is now governed by the New Democrats, and the Conservative Party has recently lost power to the Liberal Party federally. How conservatives react to these changes will give us an indication of whether the relationship between decentralization and conservatism is as solid as it has appeared.

## Bibliography

- Banack, Clark. "American Protestantism and the Roots of 'Populist Conservatism' in Alberta." In *Conservatism in Canada*, edited by James Farney and David Rayside, 231-248. Toronto: University of Toronto Press, 2013.
- Bernier, Maxime. "Ottawa should quit intruding on provincial jurisdiction." *National Post*, October 13, 2010. Accessed September 20, 2015. <http://news.nationalpost.com/full-comment/maxime-bernier-ottawa-should-quit-intruding-on-provincial-jurisdiction>.
- Blakeney, Allan. *An Honourable Calling: Political Memoirs*. Toronto: University of Toronto Press, 2008.
- Cairns, Robert D. "Natural Resources and Canadian Federalism: Recurring Conflict, and Resolution." *Publius: The Journal of Federalism* 22 (Winter 1992): 55-70.
- Cooper, Barry. *It's the Regime, Stupid!: A Report from the Cowboy West on Why Stephen Harper Matters*. Toronto: Key Porter, 2009.
- Dacks, Gurston. "From Consensus to Competition: Social Democracy and Political Culture in Alberta." In *Essays in Honour of Grant Notley: Socialism and Democracy in Alberta*, edited by Larry Pratt. Edmonton: NeWest Press, 1986.
- Doern, G. Bruce and Glen Toner. *The Politics of Energy: The Development and Implementation of the NEP*. Toronto: Methuen, 1985.
- Dyck, Rand. *Provincial Politics in Canada: Towards the Turn of the Century*. Scarborough: Prentice Hall, 1996.
- Elton, David K. "Alberta and the Federal Government in Historical Perspective, 1905-1977." In *Society and Politics in Alberta: Research Papers*, edited by Carlo Caldarola, 108-130. Toronto: Methuen, 1979.
- Flanagan, Tom. *Waiting for the Wave: The Reform Party and the Conservative Movement*, Second Edition. Montreal & Kingston: McGill-Queen's University Press, 2009.
- Gibbins, Roger. *Prairie Politics and Society: Regionalism in Decline*. Toronto: Butterworths, 1980.
- Gibbins, Roger. "Constitutional Politics and the West." In *And No One Cheered: Federalism, Democracy and the Constitution Act*, edited by Keith Banting and Richard Simeon. Toronto: Methuen, 1983.
- Gibbins, Roger and Loleen Berdahl. *Western Visions, Western Future: Perspectives on the West in Canada*, second edition. Peterborough: Broadview, 2003.
- Harper, Stephen, Tom Flanagan, Ted Morton, Rainer Knopff, Andrew Crooks and Ken Brossenkool. 2001. [Firewall Letter] "An open letter to Ralph Klein." *National Post*, January 24.
- Hiebert, Janet L. "Compromise and the Notwithstanding Clause: Why the Dominant Narrative Distorts our Understanding." In *Contested Constitutionalism: Reflections on the Canadian Charter of Rights and Freedoms*, edited by James B. Kelly and Christopher P. Manfredi, 107-125. Vancouver: UBC Press, 2009.
- Jeffrey, Brooke. "Prime Minister Harper's Open Federalism: Promoting a Neo-Liberal Agenda?" In *The Case for Centralized Federalism*, edited by Gord DiGiacomo and Maryantonett Flumian, 108-136. Ottawa: University of Ottawa Press, 2010.

- Laycock, David. "Making Sense of Reform as a Western Party." In *Regionalism and Party Politics in Canada*, edited by Lisa Young and Keith Archer, 129-157. Oxford: Oxford University Press, 2001.
- Mallory, J. R. *Social Credit and the Federal Power in Canada*. Toronto: University of Toronto Press, 1954.
- Moull, William D. "Natural Resources: The Other Crisis in Canadian Federalism." *Osgoode Hall Law Journal* 18 (March 1980): 1-48.
- Noël, Alain. "Is Decentralization Conservative? Federalism and the Contemporary Debate on the Canadian Welfare State." In *Stretching the Federation: The Art of the State in Canada*, edited by Robert Young, 195-219. Kingston: Institute of Intergovernmental Relations, 1999.
- Pratt, Larry. "Energy, Regionalism and Canadian Nationalism." *Newfoundland Studies* 1(2) (1985): 175-199.
- Richards, John and Larry Pratt. *Prairie Capitalism: Power and Influence in the New West*. Toronto: McClelland and Stewart, 1979.
- Riddell, Troy and F. L. Morton. "Government Use of Strategic Litigation: The Alberta Exported Gas Tax Reference." *The American Review of Canadian Studies* 34(3) (Fall 2004): 485-509.
- Rovinsky, David. "The Ascendancy of Western Canada in Canadian Policymaking." *Policy Papers on the Americas* IX Study 2 (February 16 1998).
- Thrift, Gayle. "'By the West, for the West': Frederick Haultain and the Struggle for Provincial Rights in Alberta." *Alberta History* 59 (Winter 2011): 2-11.
- Wesley, Jared J. *Code Politics: Campaigns and Cultures on the Canadian Prairies*. Vancouver: UBC Press, 2011.
- Wiseman, Nelson. "The Pattern of Prairie Politics." In *Party Politics in Canada*, edited by Hugh G. Thorburn and Alan Whitehorn, 351-368. Toronto: Prentice Hall, 2001.
- Wiseman, Nelson. "Provincial Conservatism." In *Conservatism in Canada*, edited by James Farney and David Rayside, 209-230. Toronto: University of Toronto Press, 2013.

# République Fédéral de l'Éthiopie : Vers une stabilité démocratique ou la dissolution?

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## **Introduction**

Il y a maintenant un peu plus de deux décennies que l'Éthiopie décida d'instaurer le système fédéralisme afin d'améliorer le processus démocratique ainsi que le niveau de vie pour l'ensemble du pays. De ce fait, le but de ce document est d'analyser les conséquences que cette décision a engendrées jusqu'à présent, pour ensuite examiner si cette fédération sera en mesure de perpétuer à travers le temps. En d'autres mots, nous allons observer si l'Éthiopie se dirige vers la stabilité ou l'échec. La nécessité de cette recherche ne vient pas seulement de la précarité politique à laquelle l'Éthiopie fait face, mais davantage des caractéristiques uniques qui constituent l'organisation de ce pays. Étant composés de plus quatre-vingts différents groupes ethniques, en plus d'une structure politique instable, les enjeux auxquelles ce pays fait face sont extrêmement complexes (Habtu 2004; Kincaid & al. 2010). De plus, l'étonnant niveau de décentralisation offert par la constitution est si élevé que cela est dangereux pour la conservation du pays (Habtu 2005; Cohen 1995). Par ce fait même, afin de répondre à notre questionnement principal nous allons tenter de prouver notre hypothèse qui est la suivante : *dû à l'organisation du pays sous une fédération du type « ethnique » ainsi que l'article 39 de la constitution, encourageant l'auto-détermination et autorisant la sécession, l'Éthiopie se dirige vers l'échec. Il ne fait donc aucun doute que sans changement considérable ce pays n'atteindra pas une stabilité désirée pour assurer un bon fonctionnement, ce qui mènera à sa dissolution.*

La façon dont nous avons structuré le texte va nous permettre de bien comprendre le contexte éthiopien tout en défendant notre thèse de façon organisée. Nous allons débuter par expliquer le contexte historique de l'Éthiopie, puisqu'il est important de voir le rôle du passé et l'influence de celui-ci dans le fonctionnement de la présente fédération. Ensuite, nous allons enchaîner avec l'argumentation de notre thèse qui sera divisée en trois sections. Les deux premières sections concernent respectivement les deux raisons que nous avons citées dans notre hypothèse, à savoir pourquoi le pays se dirige vers l'échec. La troisième section constitue les solutions que nous proposons pour la fédération. Nous terminons le document en concluant le tout.

## **Contexte historique**

Étant considérés comme une nouvelle fédération, nous pouvons tout juste commencer à examiner l'efficacité et les répercussions que le système fédéralisme détient sur ce pays. La signature de la constitution en 1994, suivie de l'application de celle-ci en 1995 consiste au point

départ de la fédération comme nous la connaissons aujourd’hui. Le but n’étant pas d’expliquer le parcours historique de l’Éthiopie, il est cependant nécessaire de brièvement notifier les évènements importants qui ont influencé le cheminement de la république fédérale. Dans cette ligne d’idée, nous allons alors brièvement relater les épisodes importants qui ont poussé l’Éthiopie à adopter un système fédéralisme. À la suite de cette description, nous pourrons nous concentrer sur le déroulement de la fédération depuis l’application de la constitution jusqu’à maintenant.

Lorsque nous observons attentivement la répression à laquelle les différents groupes éthiques ont fait face au cours du temps, il n'est pas étonnant que la constitution de 1994 mette l'emphase sur l'égalité de chaque ethnicité. Dès le début du 19<sup>e</sup> siècle, sous l'empereur Menilek II, l'objectif était de créer une nation Amharique constituée d'une ethnicité, d'une langue et d'une culture (Turton 2006, 119-123). La stratégie qui était de construire une nation c'est plutôt révélé en la destruction du pays. Par conséquent, divers mouvements se sont créées à la suite des années 1960 dont le Mouvement Étudiant Éthiopien (MÉÉ) qui était les premiers à réclamer l'égalité ethnique. Le mouvement de libération ethnique c'est poursuivi sous le groupe EPRDF (Ethiopian People Revolutionary Democratic Front), résultant à l'achèvement du régime dictatorial en 1991 (Turton 2006, 122-128; Tewfik 2010, 4-5). La révolution donna donc pour la première fois la chance à toutes les ethnicités du pays d'être à niveau égales et non dirigées par les amharas. Dès lors, l’Éthiopie entra dans une période de transition, de 1991 à 1995, où les élites étaient à la recherche d'un système pouvant améliorer à la fois les relations entre différentes ethnicités dans le pays et la stabilité du système politique. De là proviennent le système fédéralisme et l’Éthiopie contemporaine.

L’application de la constitution en 1995 a provoqué de nombreux changements dans la manière dont le pays fonctionne et il sera à nous de juger si ces modifications sont pour le mieux du pays. D’abord, le pays a été séparé en 9 régions et 2 villes détenant un statut spécial, Addis Ababa qui est la capitale fédérale et Dire Dawa la capitale territoriale (voir Annexe1, carte 1.0). De plus, chacune de ces régions est séparée par des zones administratives et des zones spéciales nommées *wereda*. La particularité de l’Éthiopie est que les 9 régions ont été formées en lien avec les différentes ethnies, de là vient l’appellation « fédération ethnique ». Les motifs derrière ce type de séparation sont bien évidemment, éviter les conflits raciaux datant de longue date. D’ailleurs, à l’exception des élites, les interactions entre les différentes régions sont limitées, puisque la langue la plus parlée (l’amharique) est seulement utilisée par un peu plus de 30% de la population (Habtu 2004, 105). Il y a donc une panoplie de langues dans ce pays faisant provoquant un faible niveau de communication à l’intérieur du pays. Néanmoins, depuis 1995, il est légitime d'affirmer que la situation économique ainsi que le niveau de vie, encore plus dans les régions, s'est grandement améliorée. Grâce aux standards nationaux que les régions doivent maintenant respecter, entre autres en éducation et santé, l’ensemble de la société bénéficie de meilleures conditions (Tewfik 2010, 16).

Ensuite, ne voulant pas revivre les incidents du passé, la constitution a été écrite de façon à n'entraver aucun droit humain et de laisser la chance à chacune des ethnies de s'émanciper. La diversité est mise de l'avant à un point tel que dans le préambule de la constitution nous pouvons lire « We the Nations, Nationalities and People of Ethiopia », ceci reflète bien l'optique vers lequel le pays veut se diriger (Turton 2006, 132). En outre, la constitution intègre des clauses pour les régions, telles que le droit de sécession et d'auto-détermination, le droit d'écrire leur propre constitution, le droit de choisir leur langage officiel, le droit d'établir leurs propres institutions et le droit d'avoir leur propre force policière (Cohen 1995, 165). Avec des conditions de la sorte, il ne fait aucun doute que l'Éthiopie se retrouve du côté de l'extrême décentralisation si on s'en remet au spectrum de Friedrich (Burgess 2006, 35). En mettant l'emphase sur l'ouverture et l'accommodation, la constitution éthiopienne encourage la flexibilité et l'autonomie des régions. Il est de mise qu'en optant pour une fédération ethnique, les élites devaient accepter le fait de donner une grande partie des pouvoirs aux régions pour que celles-ci se développent en respect avec leurs identités. Toutefois, la situation à laquelle nous avons assisté jusqu'à présent ne se déroule pas parfaitement comme la constitution le désire. C'est-à-dire, le gouvernement national exerce un énorme pouvoir sur les gouvernements régionaux et l'ensemble du pays de sorte que les droits constitutionnels ne sont pas respectés comme il le devrait (Kincaid 2010, 159-160; Turton 2006, 156-157). De ce fait, malgré l'amélioration croissante du niveau de vie, l'instabilité politique persiste dans le pays. Cette instabilité qui a des répercussions partout au pays vient essentiellement du manque de démocratie dans le processus politique. Il est donc évident que la fédération éthiopienne est encore en développement. Or, l'histoire de ce territoire est très longue, beaucoup de conflits et d'événement marquant reste gravé dans la mémoire des différentes ethnies, c'est pour cette raison que cette nouvelle fédération est aussi fragile.

Maintenant que nous avons établi une fondation abrégée de la situation éthiopienne, nous sommes prêts à nous diriger vers la section principale du texte. Ayant déjà expliqué le contexte éthiopien, la section suivante sera consacrée exclusivement à prouver notre thèse. Dans ces conditions, notre opinion poussera la réflexion à savoir si les faits exposés plus haut reflètent réellement un futur positif pour l'Éthiopie ou non.

## **Une fédération perdue**

Selon la description que nous avons établie ultérieurement de la fédération éthiopienne, il serait compréhensible d'affirmer que l'instauration du fédéralisme a réformé le fonctionnement du pays pour le mieux. Or, comme nous avons mentionné dans notre introduction, nous pensons que l'Éthiopie se dirige vers un désastre. Cette partie du texte est donc dédiée à notre argumentaire afin de défendre notre hypothèse de départ. Nous avons basé notre hypothèse sur deux raisons assez claires : les répercussions du fédéralisme du type « ethnique » et les conséquences de la clause de sécession dans le contexte éthiopien. De cette manière, nous exposerons le futur incertain de

l'Éthiopie dans ces deux sections, pour finalement illustrer des solutions qui pourraient améliorer l'avenir de cette nouvelle fédération.

## **Fédéralisme du type ethnique**

Le fédéralisme ethnique était perçu comme la meilleure solution afin d'éviter les conflits ethniques interminables dans ce pays, or, avec du recul, il est discutable à savoir si cela était vraiment une bonne décision. En fait, ce type de fédéralisme a apporté plusieurs nouveaux problèmes, en débutant par la séparation des régions. Dans un pays comme l'Éthiopie, il est très difficile d'attribuer une région à une ethnie. D'ailleurs, pendant la période de transition le pays était divisé en 13 régions plus les deux villes (voir Annexe 1, Carte 1.1). Cela signifie que non seulement des bordures ont été créées pour la période de transition, mais qu'après celle-ci, nous en avons créée de nouvelles. Déjà que la modification de territoire est une opération délicate, surtout lorsqu'il y a de fortes tensions ethniques, les modifier à deux reprises en moins de 5 ans est très risquée. Évidemment, l'élimination de certaines régions après 1995 a créé de nouveaux conflits entre différentes ethnies. L'application du fédéralisme, établi pour stabiliser le pays, à donc dès le départ produit l'émergence de nouveaux conflits. Il est donc difficile d'argumenter que cela a amélioré la paix dans le pays, il serait plus juste de dire que cela a redirigé les problèmes.

Toutefois, ces problèmes ethniques sont peu surprenants et risques de refaire surface sans arrêt dû à la définition du mot « ethnie » que le pays utilise. L'Éthiopie définit un groupe ethnique par rapport à sa langue, ce qui est tout à fait légitime pour la majorité des pays, mais lorsqu'il y a plus de 80 langues parlées il est impossible de tous les accommoder (Turton 2006, 134). La situation est encore plus importante ici où les deux langues les plus parlées dans le pays sont seulement parlées par un peu plus de 30%, la troisième langue est parlée par 6.07% de la population (voir Annexe 2, tableau 2.0). Pourtant, si on se rappelle bien le préambule de la constitution spécifie bien : « We the Nations, Nationalities and People of Ethiopia ». Ainsi, en tentant d'accommoder toutes ethnies/langues, le fédéralisme ethnique produit littéralement de nouveaux conflits et des enjeux extrêmement complexes. Aussi bien que, la source de ces nouveaux conflits est très facile à cibler, puisque pratiquement chaque région est constituée d'une majorité ethnique et de minorités ethniques. Conséquemment, comme les régions ont le droit de choisir la langue qu'ils désirent, il revient à dire que le groupe ethnique majoritaire impose sa propre langue pour l'entièreté de la région. C'est pourquoi nous pensons que d'avoir implanté un système fédéralisme ethnique donne l'impression d'avoir apporté une équité entre les différentes ethnies du pays. Cependant, le problème a seulement été transféré du niveau national au milieu régional, ce qui fait en sorte qu'il soit moins apparent. Partout où il y aura une majorité, il y aura une minorité. Ce qui est dangereux est que contrairement à avant où les conflits se déroulaient entre l'entièreté de la population contre le gouvernement national, les conflits se déroulent maintenant entre la population même. Du coup, la répression est difficilement contrôlable, surtout dû au fait que les régions détiennent leur propre force de l'ordre. Donner plus d'autonomie aux régions n'a pas eu le résultat attendu. Au lieu d'avoir une répression ethnique dans l'ensemble du pays, l'Éthiopie témoigne présentement d'intimidation

dans chacune des différentes régions. Alors, le problème ethnique était l'une des principales raisons pourquoi le fédéralisme ethnique a été adopté, mais il ne semble pas avoir de progrès à ce niveau. L'élimination de problème en a seulement apporté de nouveaux.

Jusqu'ici nous avons vu que l'organisation du territoire selon les ethnies n'a pas été aussi fructueuse qu'espéré. La déception de l'organisation territoriale ne fait qu'augmenter lorsque nous analysons ce que les dirigeants ont décidé de faire avec la région du SNNP (Southern Nations, Nationalities and People Region). Généralement, les régions contiennent entre 1 et 5 différentes ethnies afin de tenter de conserver un bon équilibre, or, la région du SNNP contient 46 différentes ethnies (voir Annexe 2, Tableau 2.1). En d'autres mots, cette région a été établie pour y installer toutes les ethnies qui n'étaient pas conformes aux autres régions. Les problèmes qu'attend cette région sont énormes. Aussi bien que ceux-ci ont déjà débuté, prenons le cas de la communauté *Silte* dans la région du SNNP qui au début des années 2000 s'est séparée de la communauté *Gurage* à laquelle elle était identifiée, car elle se disait distincte de celle-ci. Par conséquent, après avoir fait un référendum chez les *Siltes* ceux-ci se sont séparés et ont maintenant leurs propres communautés (Habtu 2004, 108-109). Les problèmes émergeants du fédéralisme ethnique ne sont pas seulement en matière de guerres, mais aussi en terme de séparations de populations. La flexibilité et la facilité de se faire reconnaître comme une ethnie distincte sont trop élevées, ce processus peut être utilisée avec abus auprès des différentes ethnies.

Cette situation peu semblée peu importante, mais en ayant une communauté distincte les groupes ethniques reçoivent plus d'argent du gouvernement national pour développer leurs propres institutions. C'est à ce moment que l'importance de cet enjeu prend tout son sens, les différentes ethnies sont plus conscientes de la facilité de ce processus et peuvent agir en conséquence. Le fédéralisme ethnique encourage donc les différences entre ethnies qui n'étaient pas réellement présentent avant l'instauration de ce système. Les répercussions de ce système peuvent être sans fin, puisqu'il a plus de 80 langues parlées. Pourtant, lorsque nous prenons le temps d'analyser les différentes ethnies, nous en venons à constater que la majorité de celles-ci sont mélangées entre elles et que la raison d'être du fédéralisme ethnique perd tout son sens. La séparation de la population a été jugée plus importante que l'unification de celle-ci, ce qui met certainement à risque l'entité du pays.

À ce moment-ci, il est tout à fait légitime de se demander si l'application du fédéralisme ethnique a vraiment augmenté le niveau d'accommodation ou bien si celui-ci a simplement apporté de nouveaux obstacles au développement du pays. Il y a eu tellement d'efforts qui ont été consacrés à résoudre les conflits ethniques que les autres secteurs en ont soufferts. Tel est le cas pour les institutions et les infrastructures qui ont certainement été négligées aux dépens de la séparation ethnique. Au lieu de tenter de garder tous les groupes ensemble en leur permettant de pouvoir s'identifier à leur ethnie facilement, il aurait été une meilleure idée de réunir les différentes populations sous un même projet, comme les institutions et les infrastructures sont capables de le

faire. Ce que nous voulons dire est qu'en décentralisant le plus de pouvoir possible, l'importance du gouvernement national au niveau de la population est plus ou moins élevée. C'est situation s'avère véridique dans le cas où les institutions fédérales sont quasi-invisibles dans les différentes régions de l'Éthiopie, ce qui cause des limites sérieuses au projet national (Kincaid 2010,151). Bien que tenter d'accommoder et d'intégrer le plus possible toutes les populations en leur accordant de l'autonomie soit bien, et même encourager, si cela n'est pas soutenu par un mouvement d'unification, ce projet est dédié à l'échec (Idem, 152).

Dans les pages précédentes nous avons étudié les conséquences non anticipées par les dirigeants qui ont décidé d'installer un fédéralisme ethnique en Éthiopie. Ce qui est le plus effrayant en regardant ces conséquences est que celles-ci s'entrecroisent constamment. En d'autres termes, en observant tous ces conséquences en même temps, il est raisonnable d'anticiper un renforcement de division entre les régions et les différentes ethnies. Cette particularité de l'Éthiopie est très dangereuse, c'est-à-dire, non seulement la fédération présente des renforcements de division entre les régions, mais aussi à l'intérieur même des régions. Il est facile de comprendre le renforcement entre régions, puisque nous pouvons comparer la situation avec la première fédération africaine, le Nigéria, qui a aussi beaucoup d'ethnies. Dans ses 3 périodes démocratiques, séparées par des régimes militaires, le Nigeria a débuté avec 3 états (1960), pour ensuite augmenter à 19 états (1979) et finalement à 36 états (1999) (Turton 2006, 68). En analysant l'évolution du Nigeria nous percevons que quand il y avait peu d'états et que ceux-ci étaient grands, il y a avait de forts mouvements de renforcements de séparations. Ce qui nous laisse croire que plus les états sont puissants, plus le renforcement est élevée. En prenant ces informations pour l'Éthiopie, en plus de l'absence d'institutions fédérales dans les régions, tous les ingrédients y sont pour l'accroissement du renforcement de divisions. En plus, depuis 1999 le Nigéria a adopté une philosophie axée sur le partage fédéral et régional pour assurer un mouvement d'unification et un degré d'autonomie aux états, ce qui n'est pas le cas pour l'Éthiopie (Idem, 72).

La comparaison de l'Éthiopie avec l'évolution du Nigéria illustre parfaitement les dangers vers lesquelles l'Éthiopie se dirige, si aucun changement n'est fait. Contrairement au Nigéria le partage est absent de la structure éthiopienne, tout est concentré sur l'auto-détermination. À un point tel que les différentes communautés tentent de se faire reconnaître comme une communauté distincte afin de contrôler l'argent pour développer leurs projets. Ceci est sans compter qu'il n'y a aucun symbole encourageant l'unification du pays ou auquel la population peut s'identifier. L'unique symbole éthiopien qui pourrait être considéré est que le pays n'a jamais été colonisé. Or, celui-ci n'est pas mis à l'avant-plan dans le pays et est plutôt faible. En ce qui concerne le renforcement de division à l'intérieur même des régions, ceci est directement relié au point que nous avons fait auparavant en lien avec les minorités qui sont contrôlées les majorités ethniques dans une région. D'autre part, si nous regardons la région du SNNP qui est constituée de minorités, ceux-ci préfèrent clairement vivre indépendamment que de former de plus larges collectivités. Ceci

est facilement observable, car c'est dans cette région que nous pouvons retrouver le plus de zones administratives en Éthiopie.

Ainsi, il est important de mentionner que nous ne s'opposons pas aux instruments d'intégrations utilisées par les fédérations. Au contraire, il faut assurer la facilité d'intégration afin que le fonctionnement de la société soit efficace. Toutefois, le problème ici est que l'Éthiopie n'a pas utilisé correctement ces instruments. La maladresse du fédéralisme ethnique peut à elle seule faire effondrer la fédération, car la séparation est mise en avant plan. Bien qu'il soit important d'offrir un niveau d'autonomie aux régions, celles-ci doivent partager un sentiment d'appartenance avec le pays. Dans ce cas-ci, non seulement les régions ne soutiennent pas l'unification du pays, mais elles tentent d'acquérir toujours plus d'autonomie afin de s'auto-diriger. En retour, ce comportement n'est pas unique à l'Éthiopie, dans toutes les fédérations certaines régions tentent d'être plus autonome pour mieux servir leur population. Cependant, ce qui est unique à l'Éthiopie est que la façon dont le fédéralisme ethnique est développé leur donne pratiquement carte blanche et encourage cette séparation.

## **Clause de sécession**

Ce qui distingue le plus l'Éthiopie des autres systèmes fédéraux, est sans aucun doute la clause de sécession dans la constitution (voir annexe 3, article 39). La controverse de cette clause nous oblige à nous interroger à savoir si le pays ne se situe pas plus près de la confédération que de la fédération, dû au niveau élevé d'indépendance des régions. Néanmoins, en analysant la formation du pays, il est clair que cette clause était une condition nécessaire afin d'obtenir la signature de toutes les régions, surtout la région du Somali (Habtu 204, 324-325). Malgré les quelques conditions à respecter pour se séparer; un vote des plus des deux-tiers des membres du conseil législatif de la région approuvant la demande et un vote référendaire organisé par le gouvernement national, nous pensons que cette clause est bien plus que seulement symbolique. Certains experts de l'Éthiopie, dont Habtu, affirment que cette clause est purement symbolique. Or, la clause aurait été seulement symbolique si le gouvernement national avait un impact et une visibilité constante dans la vie des citoyens. Dans le cas présent la population est reliée presque uniquement à sa région, ce qui réduit l'importance du gouvernement fédéral à leurs yeux et renforce l'importance de la clause de sécession.

En outre, l'importance de cette clause pour certains groupes ethniques était primordiale due à la répression qui a eu lieu pendant plusieurs années. De ce fait, puisque la répression ethnique par le gouvernement national est maintenant absente depuis de nombreuses années il peut sembler impensable qu'une région se sépare sans l'apparition d'un conflit. En revanche, nous pensons plutôt le contraire, à savoir que le développement des régions et leurs autonomies les encouragent à se développer encore plus, mais de façon indépendante. Ce que nous voulons dire est que les probabilités que les régions veuillent se séparer avant que la fédération soit établie étaient faibles dus au très bas niveau de vie. Maintenant, grâce à la fédération nous ne pouvons nier que le niveau de vie à raisonnablement augmenter, ce qui signifie une meilleure économie et des populations plus

éduquées. Par conséquent, étant plus conscient des enjeux et étant conscient de leurs potentiels, la tentation de se séparer et de former leur propre nation peut sembler plus attrayante et surtout plus réalisable. Ainsi, cette clause n'est plus simplement symbolique comme elle pouvait l'être auparavant, mais bien une option envisageable.

D'ailleurs, la fédération éthiopienne a déjà vécu une séparation lors de ses débuts avec ce qui est maintenant le pays de l'Érythrée. Bien que le contexte soit différent, l'inspiration et le fait que la séparation soit effectivement une option envisageable à assurément un impact sur la conscience des populations. En fait, l'ex-région de l'Érythrée avait des raisons plus que valables de désirer un pays indépendant, dû à la répression que la population subissait et au régime autoritaire qui régnait. Cependant, tout comme l'Érythrée, les courantes régions ont plus de raisons que la constitution peut le laisser croire de se séparer, puisque en réalité l'Éthiopie n'est pas un pays entièrement démocratique. Nous considérons l'Éthiopie comme un pays semi-autoritaire. Cette situation apporte une toute nouvelle dynamique à la clause de sécession, puisque les droits de la population ne sont pas tous acceptés. Si la fédération était véritablement un pays démocratique comme elle prétend l'être, les régions seraient moins en mesure de vouloir se séparer car tous leurs droits seraient respectées. Or, la population éthiopienne n'a pas cette chance. L'exemple le plus explicite de ce régime semi-autoritaire est lorsque nous analysons les élections. Depuis 1995, quatre élections ont eu lieu soit en 1995, 2000, 2005 et 2010. Les deux premières élections ont été remportée par l'EPRDF (Ethiopian People's Revolutionary Democratic Front), mais il n'avait aucun opposant. En retour, dans les deux dernières élections plusieurs parties légitimes faisaient la course. Cependant, l'EPRDF qui a encore gagné a été accusé d'intimidation et de violence afin de s'assurer de remporter les élections (aleen 2006, 250-251).

Les conséquences de ce système semi-autoritaire sont très importantes pour la fédération et l'utilisation de la clause de sécession. Les régions ont accepté de faire partie de cette entente de fédération afin de faire partie d'un système auquel ils pouvaient avoir confiance et où leurs intérêts seraient représentés. Par ce fait même, l'emprise du parti EPRDF ne peut qu'apporter du mécontentement auprès des différentes régions qui seraient mieux représentées avec un autre parti au pouvoir. En observant le déroulement de la séparation de l'Érythrée, où la séparation a été très violente, il est légitime de craindre un scénario similaire pour les années futures. Quoique le contexte soit différent, la démocratie n'est toujours pas présente et les droits constitutionnels ne sont pas tous respectés. Dès lors, lorsque nous analysons les pré-conditions d'une fédération échouée, le non-respect des règles constitutionnelles est l'une des causes principales. Alors, le fait que l'Éthiopie soit dirigée par un parti semi-autoritaire, où les droits humains ne sont pas tous respectés, oblige les régions désavantagées par cette situation à penser à utiliser la clause 39 si aucune correction n'est faite.

D'un point de vue opposé, il est facile de penser que puisque les régions sont sous un régime semi-autoritaire, jamais leur droit de sécession ne sera respecté. Ce qui est effectivement un

scénario très plausible. Cependant, la particularité de la clause 39 est qu'elle forme la clause la plus importante de la constitution. C'est-à-dire qu'elle est la seule clause qui doit être appliquée à tout moment, même lorsque le pays est en « état d'urgence ». Conséquemment, si cette clause n'est pas respectée, nous pensons fortement que le pays assistera à une guerre civile ou de sérieux conflits, due à l'importance de cette clause aux yeux des éthiopiens. Ainsi, l'impact du régime autoritaire sur la clause 39 apportera soit une région à se séparer grâce à cette même clause où apportera le pays en guerre, car la clause de sécession ne sera pas respectée par le gouvernement.

Dans la même ligne d'idée, depuis la création de la fédération, comme nous l'avons mentionné, le pays a seulement été dirigé par l'EPRDF. Ce qui nous oblige à nous interroger à savoir si la transition d'un nouveau parti serait sans dommage pour le pays. Étant une fédération du type ethnique, il est logique de voir pratiquement que des partis représentant une certaine région ou ethnie. L'impossibilité de représenter tous les groupes du pays est un enjeu crucial pour le futur de la fédération, surtout si nous assistons à l'émergence au pouvoir de partis voulant seulement avantager leur région. Curieusement, nous pouvons comparer la situation de l'Éthiopie avec l'Ex-Yougoslavie et l'URSS. C'est deux pays utilisant le système fédéralisme étaient maintenus en vie grâce à un groupe de dirigeant, ou un seul, dirigeant rassemblant la nation. Lorsqu'il y a un changement de gouvernement dans ces deux pays, plusieurs conflits ont fait surface et la guerre a éclaté. Ces exemples nous obligent à considérer ce scénario pour l'Éthiopie. De plus, ces deux ex-fédérations avec chacune clause de sécession à l'intérieur de leur constitution, ce qui laisse un mauvais présage dû au fait que se sont les seuls fédérations avec l'Éthiopie à avoir une telle clause . Les ressemblances sont étrangement intéressantes, la seule distinction, qui est très importante, est que les deux anciennes fédérations prônaient une seule ethnie, culture et langage à l'intérieur du pays.

Or, reste que le mode de gouvernance autoritaire et même violent utilisé par l'EPRDF est inquiétant pour le futur de l'Éthiopie. Même si la répression ethnique n'est plus pratiquée, nous avons deux exemples de fédérations utilisant la violence et ayant un système autoritaire, qui ont tous deux terminés en catastrophe. Ces exemples renforcent notre idée que si une région demande la clause de sécession, le pays se transforme en état de guerre. Nous soutenons ces opinions par le fait que les fédérations non démocratiques précédentes qui n'ont pas respecté la constitution de façon adéquate (Ex-Yougoslavie et URSS) ont connu des guerres sanglantes. Alors, initialement nous trouvions la clause de sécession dangereuse dans un pays aussi décentralisé que l'Éthiopie, mais maintenant cette clause est encore plus dangereuse puisqu'elle est présente dans un pays semi-autoritaire. En outre, même si nous avons vu que le gouvernement accepte toutes les ethnies, cultures et langues, il reste que celui-ci n'accepte pas les idéologies différentes à un point où il utilise la violence. Ainsi, sous une forme de répression différente que les deux ex-fédérations, le cas de l'Éthiopie n'est pas à l'abri d'une catastrophe.

D'ailleurs, ce qui est encore plus inquiétant est que le parti au pouvoir ne respecte déjà pas une clause majeure de la constitution, qui est la représentation de chaque ethnies dans la chambre de la fédération. La chambre de fédération est sans doute un des instituts les plus importants pour la fédération, car elle assure une représentation proportionnelle des différentes ethnies dans le pays. Selon l'article 61 (voir annexe 3) de la constitution, chacune des ethnicités doit être représentée par au moins un membre à la chambre de la fédération. Toutefois, cette clause qui est extrêmement importante pour le pays, puisqu'elle est l'une des raisons principales à savoir pourquoi les régions ont accepté de former une fédération, n'est pas respectée. Encore une fois l'effet de cette décision prouve non seulement que le respect de la constitution par le gouvernement est très faible, mais aussi que le « fédéralisme ethnique » perd tout son sens. La relation entre la clause 61 et la clause 39 de la constitution est intimement liée, car si la représentation est respectée les ethnies ont moins de chances de vouloir se séparer. Ce qui est encore plus étonnant est que ce n'est pas les ethnies les moins nombreuses qui ne sont pas représentées. En fait, l'ethnie la moins nombreuse de l'Éthiopie avec environ 1500 personnes est représentée à la chambre (Habtu 2005, 330). Ce qui signifie clairement un traitement inégal des différentes ethnies dans les institutions politiques. La contradiction entre le comportement du gouvernement et la constitution, comme nous l'avons mentionné ultérieurement, est l'un des critères principaux pour l'échec d'une fédération. Ce qui est encore plus grave ici, c'est que la chambre de la fédération est l'essence même de la représentation et de la preuve de l'accord fédéral entre les régions.

Après toutes les justifications exposées plus haut prouvant que la clause de sécession dans la constitution est dangereuse, et ce, surtout dans le contexte de l'Éthiopie, nous devons absolument examiner si des mouvements séparatistes sont en œuvres qui menaceraient la survie du pays. En fait, plusieurs partis séparatistes existent dont OLF (Oromo Liberation Front), ALF (Afar Liberation Front) et plusieurs autres partis moins importants. Le parti séparatiste le plus important n'est nul doute OLF, puisque les Oromos constituent la plus grande partie de la population éthiopienne. Or, il n'est pas étonnant de découvrir que le parti au pouvoir emprisonne les partisans et les dirigeants de ce parti séparatiste. L'absence de liberté d'expression et d'opinion due à la suppression peut qu'augmenter dans ce type de situation. Plus les gens verront leurs droits mis de coté et les gens qui les représentent emprisonnés, plus ils seront mécontents. Empêcher l'émergence de partis séparatistes, dont certains ont une popularité considérable, ne fera qu'augmenter le problème. Donc, oui les mouvements séparatistes existent, mais ceux-ci doivent se faire discret dû à la violence.

Ainsi, ce que nous avons voulu démontrer dans cette section du texte est que la clause de sécession dans la constitution semble reconnaître et encourager l'émancipation des différentes ethnies. Cependant, la réalité est totalement différente. D'une part, cette clause met la fédération en danger en laissant croire que cette option est viable, et donc, les régions prennent en considération la sécession. De l'autre part, la façon dont le pays fonctionne contredit cette clause, ce qui provoque une insatisfaction grandissante chez les ethnies et les régions. De plus, en ayant brièvement

comparé la situation avec l'Érythrée, l'Ex-Yougoslavie et l'URSS, où chacune des séparations s'est terminées en conflit dû au non-respect de la constitution, il est légitime d'anticiper le pire pour l'Éthiopie. La fragilité de l'Éthiopie a obligé les dirigeants à intégrer cette clause à la constitution, mais celle-ci pourrait bien être la raison de l'échec de la nouvelle fédération.

## **Le futur de la fédération éthiopienne**

L'avenir de la République Fédérale éthiopienne est très incertain, mais il n'est toujours pas trop tard pour améliorer ses chances de survie. Nous avons vu au début du document que le niveau de vie de la population a progressé, surtout en ce qui concerne la santé et l'éducation. Or, le problème se retrouve dans l'organisation de la fédération et dans l'injustice qui y persiste. Comme nous l'avons illustré dans la section précédente, si rien n'est fait l'Éthiopie risque de grand danger. Bien que certains instruments d'intégrations aient été utilisés, ceux-ci requièrent certaines modifications pour les adapter au contexte éthiopien. D'ailleurs, le premier problème auquel nous devons nous attardés est le fédéralisme ethnique. Si l'idée de base était bonne, l'application de ce type de fédéralisme n'est pas efficace. Ce fédéralisme ramène l'Éthiopie sous un état tribal où tous les groupes sont séparés et se concentrent seulement sur leurs propres survies (Mahretu 2012, 119). En ce sens, l'Éthiopie doit absolument faire augmenter l'importance du niveau national et de montrer qu'il est possible de former un pays uni avec une multitude d'ethnies à travers le territoire. L'implantation de projet partagé ou de législation partagée entre le niveau fédéral et le niveau régional est sans aucun doute une solution envisageable et efficace. Cette solution s'est entre autres montrée performante dans le cas du Nigeria, où la collaboration a été mise de l'avant. L'équilibre entre l'autonomie des régions, la participation et contribution du niveau national est extrêmement bien exécuté depuis quelques années au Nigeria et cela se fait voir dans toutes les sphères du pays. Le Nigéria est sans doute l'un des pays les plus stables d'Afrique. L'Éthiopie devrait donc se diriger vers un fédéralisme collaboratif, ce qui permettrait au pays de se développer plus rapidement et efficacement sous une seule entité. En outre, en mettant l'emphase sur la collaboration plutôt que la séparation ethnique, les renforcements de divisions entre les régions vont grandement diminuer. De plus, dans un pays aussi fragile que l'Éthiopie en ce moment, celui-ci ne peut pas se permettre de vivre sous la présence des anciens conflits. Surtout que la séparation ethnique ne fait que conserver ces conflits en vie. Pourtant les ethnies se mixtes de plus en plus entre elles, ce qui enlève toute la nécessité de la séparation ethnique. La modernisation du modèle fédéralisme doit donc être prioritaire.

Dans une autre ligne d'idée, non seulement le gouvernement national doit développer plus d'institution dans les régions, mais il doit débuter par bien utiliser ceux qui sont déjà en place. Ce que nous voulons dire ici, est que la Chambre de la Fédération, qui représente un symbole de l'unification des régions, est trop peu utilisée (Kincaid 2010, 151-152). Les membres de la deuxième chambre, se réunissent seulement à deux reprises à chaque année, ce qui est loin d'être suffisant pour assurer une gouvernance intègre (Idem, 146-147). À l'avenir, cette chambre assurant le respect de la constitution devrait être plus active au sein du pays et évidemment représenter

chaque ethnicité, ce qui n'est toujours pas le cas, mais pourtant clairement identifié dans la constitution. Également, il pourrait être une bonne idée d'élire les représentants par un vote de la population. Présentement, les membres sont choisis par les délégués législatifs. D'ailleurs, en votant pour les membres de la Chambre de la fédération, la population s'acclimaterait avec l'action d'aller voter, ce qui peut certainement améliorer le processus lors des élections fédérales.

Bien entendu, le changement de direction ne sera pas facile à établir si le pays est toujours contrôlé par un gouvernement semi-autoritaire. Les solutions concernant cet enjeu sont extrêmement difficiles à implanter, puisque le pouvoir réside qu'à un seul endroit. Le moyen le plus efficace et qui réduit les chances de conflits est l'émergence de fortes oppositions politiques (Idem, 159-160). Si des partis d'opposition se forment et constituent un groupe légitime, la population voudra le changement et le parti qui est au pouvoir n'aura pas d'autre choix que d'ouvrir la discussion. En outre, si l'opposition pouvait établir une coalition afin de réunir les forces contre l'autorité, cela augmenterait grandement les chances de vaincre le régime. En d'autres mots ce qu'il faut est un mouvement solidaire de la part de la population est des groupes politiques afin de compléter la transformation de l'Éthiopie et d'assurer un avenir meilleur.

## **Conclusion**

Pour conclure, nous maintenons notre thèse de départ disant que l'avenir de l'Éthiopie est incertain. Le fédéralisme du type ethnique et la clause de sécession sont tous les deux des instruments d'intégrations très délicats, car il est difficile de juger si cela apportera la stabilité ou l'échec du pays. Toutefois, dans le cas de l'Éthiopie il est plus logique que ces instruments tournent à l'échec, puisque le pays est trop instable. D'une part, l'application du fédéralisme ethnique dans un pays aussi instable que l'Éthiopie ne peut qu'accentuer la division entre les différentes ethnies. D'ailleurs, ce type de fédéralisme ramène le pays dans un état tribal, et donc empêche la formation d'un projet national. Sous une telle organisation où les différences ethniques sont à l'avant-plan, il est impossible de créer un pays uni et fière. En outre, si un pays décide d'utiliser le fédéralisme ethnique comme instrument d'intégration, celui-ci doit assurer une participation continue du niveau national. Si le gouvernement fédéral est trop absent dans la vie de la population, celui-ci devient inutile aux yeux de la société. L'apport de législation partagé où les deux niveaux de gouvernement participent est sans doute le moyen de pratiquer un fédéralisme ethnique tout en conservant une vision nationale. En ce qui concerne la clause 39, nous avons vu que celle-ci faisait partie de la négociation constitutionnelle et qu'elle était donc nécessaire pour que les régions intègrent la fédération. Or, encore une fois, cet instrument d'intégration est extrêmement puissant, mais aussi dangereux. Le fait que cette clause est intégrée dans un pays instable et dans une fédération qui est dirigé par un gouvernement semi-autoritaire nous oblige à anticiper le pire. En laissant croire aux régions qu'ils ont la possibilité de s'émanciper à l'extérieur de la fédération éthiopienne, la constitution semble très incitante. Cependant, la contradiction entre ce que la constitution affirme et ce que le gouvernement fait risque d'augmenter le niveau d'opposition et d'insatisfaction envers ce même gouvernement. De cette situation émerge la possibilité des régions

de vouloir se séparer. Ce qui est encore plus dangereux avec cette clause, est que nous ne savons pas ce qui va se produire si une région l'utilise. C'est-à-dire, est ce que le gouvernement national va accepter et la région va se séparer ou le gouvernement national n'acceptera pas et une guerre jaillira dans ce pays instable. Cette clause apporte donc beaucoup de questions et mais surtout de l'inquiétude pour l'avenir de l'Éthiopie.

D'autre part, nous espérons évidemment que l'Éthiopie procèdera à des modifications afin de stabiliser le pays et d'assurer la continuité de cette récente fédération. L'enjeu fédéral de l'Éthiopie est extrêmement important pour le fédéralisme. En adoptant des instruments d'intégrations uniques, ce pays peut apporter une nouvelle vision de l'organisation fédérale surtout dans un monde où la diversité culturelle ne fait qu'augmenter à travers la planète. Si l'Éthiopie trouve un moyen d'adapter les failles qui sont présentes pour faire de ce pays un territoire stable, cela incitera assurément certains pays instables à tenter l'expérience fédérale. Ainsi, bien que l'avenir de l'Éthiopie est plus qu'incertain, il n'est pas trop tard pour trouver des solutions plus adaptés au contexte de ce pays et par le fait même d'inciter de nouveaux pays à utiliser le système fédéral pour accommoder leur diversité.

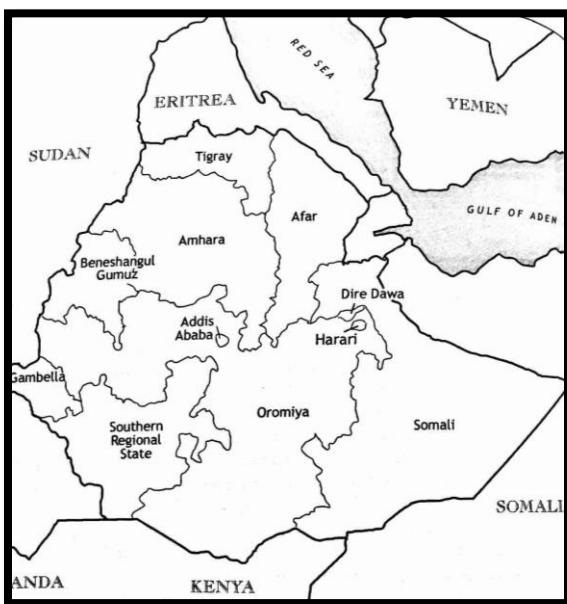
## **Bibliographie**

- Aalen, Lovise. 2006. "Ethnic Federalism and Self-Determination for Nationalities in a Semi-Authoritarian State: The Case of Ethiopia." *International Journal of Minority and Group Rights* 13: 243-261.
- Burgess, Michael. 2006. *Comparative Federalism :Theory and Practice*. London; New York, NY: Routledge.
- Cohen, John M. 1995. ""Ethnic Federalism" in Ethiopia." *Michigan State University Press* 2 (2): 157-188.
- Habtu, Alem. 2003. "Ethnic Federalism in Ethiopia: Background, Present Conditions and Future Prospects." Queen College, City University of New York.
- . 2004. "Ethnic Pluralism as an Organizing Principle of the Ethiopian Federation." *Springer* 28 (2): 91-123.
- . 2005. "Multiethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution." *Oxford University Press* 35 (2): 313-335.
- Kavalski, Emilian and Magdalena Zólkos. 2008. *Defunct Federalisms :Critical Perspectives on Federal Failure*. Federalism Studies. Aldershot, Hampshire, England; Burlington, VT: Ashgate.
- Kincaid, John, Luis Moreno, César Colino, International Association of Centers for Federal Studies, and Forum of Federations. 2010. *Diversity and Unity in Federal Countries*. A Global Dialogue on Federalism. Vol. 7. Montreal: Published for Forum of Federations and International Association of Centers for Federal Studies by McGill-Queen's University Press.
- Mehretu, Assefa. 2012. "Ethnic Federalism and its Potential to Dismember the Ethiopian State." *Progress and Development Studies* 12 (2/3): 113-133.
- Parker, Ben. "Ethiopian Constitution." University of Pennsylvania, African Studies Center. [http://www.africa.upenn.edu/Hornet/Ethiopian\\_Constitution.html](http://www.africa.upenn.edu/Hornet/Ethiopian_Constitution.html)
- Tewfik, Hashim. 2010. *Transition to Federalism: The Ethiopian Experience*. Ottawa: Forum of Federations.
- Turton, David. 2006. *Ethnic Federalism :The Ethiopian Experience in Comparative Perspective*. Eastern African Studies. Oxford: James Currey.

Zimmermann-Steinhart, Petra and Yacob Bekele. 2012. "The Implications of Federalism and Decentralisation on Socioeconomic Conditions in Ethiopia." *Potchefstroom Electronic Law Journal* 15 (2): 89-117.

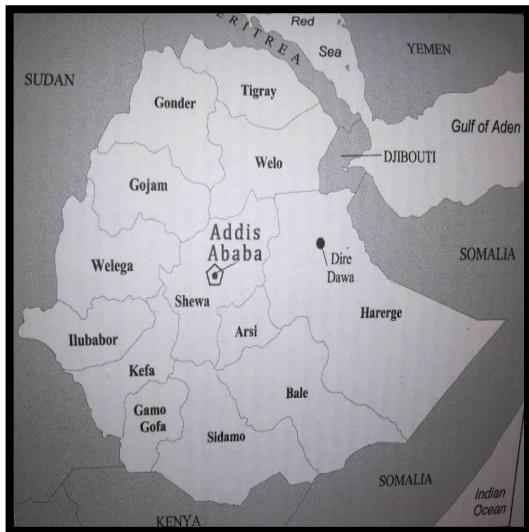
## Annexe 1

### Carte 1.0



Source: Turton 2006, x

### Carte 1.1



Source : Kincaid 2010,1

## Annexe 2

**Tableau 2.0**

Distribution of mother tongues (100 000+) and second languages in Ethiopia

Mother tongue	Population	Percentage of total population	Second language population	Percentage of total population
Amharic	17,374,913	32.70	5,104,150	9.61
Oromiffa	16,777,976	31.58	1,535,434	2.89
Tigrinya	3,224,875	6.07	146,933	0.28
Somali	3,187,053	6.00	95,572	0.18
Guragigna	1,881,574	3.54	208,358	0.39
Sidamigna	1,876,329	3.53	101,340	0.19
Welaitigna	1,231,673	2.32	89,801	0.17
Afarigna	965,462	1.82	22,848	0.04
Hadiyigna	923,958	1.74	150,889	0.28
Gamogna	690,069	1.30	24,438	0.05
Gedeogna	637,082	1.20	47,950	0.09
Keffigna	569,626	1.07	46,720	0.09
Kembatigna	487,655	0.92	68,607	0.13
Agew/	356,980	0.67	64,425	0.12
Awingiga				
Kulogna	313,228	0.59	19,996	0.04
Goffigna	233,340	0.44	33,449	0.06
Benchigna	173,586	0.33	22,640	0.04
Arigna	158,857	0.30	13,319	0.03
Konsogna	149,508	0.28	5658	0.01
Agew/	143,369	0.27	11,026	0.02
Kamyrgna				
Alabigna	126,257	0.24	25,271	0.05
Gumuzigna	120,424	0.23	4379	0.01
Jebelawigna	116,084	0.22	15,738	0.03
Koyrigna	103,879	0.20	2371	0.00

Source: Habtu 2004, 105

**Tableau 2.1**

Population of Ethiopia by regional state and number of ethnic groups in each regional state, 2001 <sup>a</sup>		
Regional state	Population	Number of ethnic group
Tigray	3,901,000	3
Afar	1,272,000	1
Amhara	17,205,000	5
Oromia	23,704,000	1
Somali	3,898,000	1
Benishangul-Gumuz	565,000	5
Southern nations, nationalities, and peoples	13,293,000	46
Gambella	222,000	4
Harari	172,000	1
Addis Ababa	2,646,000	Not applicable
Dire Dawa	342,000	Not applicable
Total	67,220,000	67

Source : Habtu 2005, 320

### Annexe 3

#### Article 39 The Right of Nations, Nationalities and Peoples:

1. Every nation, nationality or people in Ethiopia shall have the unrestricted right to self determination up to secession.
2. Every nation, nationality and people shall have the right to speak, write and develop its language and to promote its culture, help it grow and flourish, and preserve its historical heritage.
3. Every nation, nationality or people in Ethiopia shall have the unrestricted right to administer itself; and this shall include the right to establish government institutions within the territory it inhabits and the right to fair representation in the federal and state governments.
4. The right to self determination up to secession of nation, nationality and peoples may be exercised:
  - (a) where the demand for secession is approved by a two thirds (2/3rds) majority of the legislature of the nation, nationality or people concerned.
  - (b) where the Federal Government within three years upon receipt of the decision of the legislature of the nation, nationality or people demanding secession, organises a referendum for the nation, nationality or people demanding secession.
  - (c) where the demand for secession is supported by a simple majority vote in the referendum.
  - (d) where the Federal Government transfers power to the parliament of the nation, nationality or people which has opted for secession.
  - (e) where property is partitioned in accordance with the law.
5. The term "nation, nationality and people" shall mean a community having the following characteristics: People having a common culture reflecting considerable uniformity or similarity of custom, a common language, belief in a common bond and identity, and a common consciousness the majority of whom live within a common territory. An alternative supported

by a minority of the Council.

1. Every nationality in Ethiopia shall have the right to speak and write in its own language, and express, promote and develop it.
2. Every nationality in Ethiopia shall have the full right to administer itself .This right shall include the right to establish government institutions within the territory it inhabits and the right to fair representation in the federal and state governments.
3. Nationalities shall have, on the basis of the free choice of their peoples, the right to organise on a larger territory a self- administrative structure for running their internal affairs and establish governmental institutions for common self-administration.
4. Nationalities shall also have, on the basis of the free choice of their peoples, the right to establish regional self-administration, and such regional self-administrative unit shall be a member of the Federation.
5. For the purposes of this constitution, the term "nationality" shall mean a community having the following characteristics: people with a common culture reflecting considerable uniformity and a similarity of custom, a common language or (minority) languages of communication, a belief in a common bond and identity, the majority of whom live in a common territory.
6. Affiliated nationalities who share common characteristics but exhibiting varying cultures, common political and economic interests and believe in establishing, on the basis of the free choice of their peoples, a common administration may together decide to be recognized as a single nation or as one people.
7. In the event where the rights enumerated in this Article are violated, or by virtue of an unjust distribution of social wealth or an unfair distribution of the products of development, a sector of the population which has obtained recognition as a nation in accordance with Sub-Article (6) of this Article raises the demand for secession, the causes for which the demand was made shall be made to find solutions.
  - (a) any question arising out of the causes indicated herein above shall be submitted to the Constitutional Court for its consideration. Where the Constitutional Court subsequently finds that these causes reflect the views of the majority of the population, it may further investigate the causes and decide upon various solutions, including that of compensation or submit other recommendations for conciliation.
  - (b) The decision made, or the recommendation for conciliation made by the Constitutional Court shall be submitted to a joint meeting of the two Chambers of the Council, and the joint meeting may accept, reject or amend the decision or recommendation for conciliation.
  - (c) The decision passed by the joint meeting shall be submitted to the parliament of the self-administration of the nation concerned.
  - (d) Where the parliament of the nation concerned rejects the joint meeting's decision, it may, by two-thirds majority vote submit an alternative recommendation for conciliation to the Council of the Federation or decide for a referendum on the secession issue to be conducted.
  - (e) The referendum shall be held three years after the nation's parliaments approval of the demand for secession in accordance with Sub-Article 1(d) of this Article.
  - (f) The decision for secession shall come into effect where it is supported by two-thirds majority vote of the population of the nation concerned.

Article 61 Council of the Federation:

1. The Council of the Federation shall be composed of representatives of nations, nationalities and peoples of the member States of the Federation.
2. Each nation, nationality, people shall have at least one representative. Every additional one million people of the nation /nationality shall be represented by one additional representative.
3. The Members of the Council of the Federation may be elected by parliaments of the respective states. The parliaments may elect the representative either by themselves or through direct elections by the people.

Source: Parker,1994

# La décentralisation au sein des fédérations de Suisse, d'Allemagne et d'Autriche

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## **Introduction**

Le fédéralisme est un régime politique basé sur plusieurs principes fondamentaux tels que la subsidiarité et le partage des compétences. Ce modèle d'organisation politique n'est cependant pas rigide dans son application, puisqu'il se décline en plusieurs variantes. À cet effet, ce texte est voué à l'étude du système fédéral européen, une ramifications du fédéralisme relativement complexe et bien moins connue que le modèle anglo-saxon sur lequel sont basées de nombreuses fédérations telles que le Canada, les États-Unis, l'Australie et l'Afrique du Sud.

Par le biais de cette recherche, nous tenterons de déterminer de quelle façon certains facteurs constitutionnels et institutionnels ont pu influencer le fonctionnement des fédérations européennes de Suisse, d'Autriche et d'Allemagne. Pour y parvenir, nous effectuerons une analyse comparative du niveau de décentralisation au sein de ces fédérations.

Ces trois régimes fédéraux sont comparables sur de nombreux points, notamment puisqu'ils ont tous été créés à la suite d'un processus d'agrégation étatique et sont tous basés sur le principe de fédéralisme d'exécution. Ce principe, qui caractérise l'ensemble des fédérations d'Europe, implique que les responsabilités législatives, exécutives et administratives liées à chacune des compétences énoncées dans leur constitution ne forment pas un ensemble systématiquement indivisible comme c'est le cas pour les fédérations de racines britanniques<sup>1</sup>.

L'intérêt de considérer dans cette recherche les fédérations de Suisse, d'Autriche et d'Allemagne émane de plusieurs éléments. Premièrement, ces trois fédérations se sont fédéralisées à des périodes et dans des circonstances bien différentes. À cet égard, la Suisse est devenue une fédération en 1848 à l'issue d'une guerre civile entre protestants et catholiques<sup>2</sup>, tandis que l'Autriche s'est fédéralisée suite à la Première Guerre mondiale<sup>3</sup>. La période fédérale en Allemagne s'amorce quant

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<sup>1</sup> Watts, Ronald L., «Comparaison des régimes fédéraux», 2<sup>e</sup> éd., [En ligne], 2002, <http://www.queensu.ca/iigr/sites/webpublish.queensu.ca.iigrwww/files/files/pub/archive/books/ComparaisonDesRegimeFederaux-Watts.pdf>. (Consulté le 22 mars 2015)

<sup>2</sup> Fleiner, Thomas., «Recent developments of swiss federalism», *Publius : The Journal of Federalism*, Vol.32, No.2, [En ligne], 2002 <http://publius.oxfordjournals.org/content/32/2/97.full.pdf+html>, pp.97-124. (Consulté le 30 mars 2015)

<sup>3</sup> Erk, Jan., «Austria : A Federation without federalism», *Publius : The Journal of Federalism*, Vol.34, No.1, [En ligne], 2004, <http://publius.oxfordjournals.org/content/34/1/1.full.pdf+html>, pp.1-20. (Consulté le 25 mars 2015)

à elle en 1867 avec la création de la Confédération de l'Allemagne du Nord<sup>4</sup>, mais s'interrompt en 1933 alors que l'Allemagne devient un État unitaire sous la gouverne d'Adolf Hitler. Le pays se fédéralisera à nouveau après la Seconde Guerre mondiale avec l'adoption en 1949 d'une nouvelle Constitution<sup>5</sup>.

Deuxièmement, l'Allemagne et l'Autriche ont une population homogène, alors que celle de la Suisse est à l'inverse fortement disparate ce qui, comme nous le verrons, a d'importantes implications par rapport à leur fonctionnement étatique. Finalement, le choix de l'Autriche se justifie aussi par le désir d'étudier une fédération sur laquelle peu d'attention académique avait été portée jusqu'ici.

Pour procéder, le niveau de décentralisation de ces fédérations sera dans un premier temps analysé par rapport à des paramètres législatifs, exécutifs ainsi qu'administratifs. Puis, dans un deuxième temps, il sera mesuré dans une optique financière et fiscale. Pour mener à bien cette étude, nous prendrons principalement en compte des facteurs constitutionnels, mais aussi divers autres éléments tels que les variables institutionnelles et juridiques.

## **La décentralisation législative, exécutive et administrative**

Pour bien examiner le degré de décentralisation législative, exécutive et administrative d'une fédération, il importe de se pencher sur plusieurs aspects déterminants. Parfois, le partage de compétences établi dans les constitutions fédérales permet d'avoir un bon aperçu d'un système étatique, mais la réalité peut néanmoins être toute autre. Afin de bien comprendre les fédérations d'Autriche, d'Allemagne et de Suisse, il est impératif de considérer également d'autres facteurs révélateurs comme les différents principes constitutionnels, les institutions ainsi que l'influence des entités fédérées au sein de ces États.

## **Autriche : la fine ligne entre fédération et État unitaire**

Dans l'intention de bien distinguer le fonctionnement de chacune des fédérations à l'étude, il est en premier lieu nécessaire d'ausculter leurs constitutions. Tout d'abord, comme dans toute fédération, la Constitution de la République d'Autriche (1920)<sup>6</sup> établit l'existence d'un État central et d'entités fédérées, soit les neuf Bundesländer autrichiens\*. L'étude approfondie du partage de compétences dans cette Constitution nous révèle l'existence de nombreux types de compétences. Tout d'abord, comme dans l'ensemble des fédérations du monde, des compétences exclusives sont attribuées au gouvernement fédéral autrichien et celles-ci concernent majoritairement les questions nationales telles que les affaires étrangères, la monnaie et la défense<sup>7</sup>.

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<sup>4</sup> Office of the Historian, «A guide to the united states' history of recognition, diplomatic, and consular relations, by country, since 1776: north german confederation», *U.S. Department of State*, [En ligne], 2015, <https://history.state.gov/countries/north-german-confederation>. (Consulté le 22 mars 2015)

<sup>5</sup> Larousse, «Allemagne : histoire», *Encyclopédie Larousse*, [En ligne], 2016, [http://www.larousse.fr/encyclopedie/divers/Allemagne\\_histoire/185779](http://www.larousse.fr/encyclopedie/divers/Allemagne_histoire/185779). (Consulté le 26 mars 2016)

\*Le mot Bundesländer (forme plurielle de Bundesland) constitue la traduction littéraire en allemand de l'appellation « entités fédérées ». Sa composante « Bundes» rapporte à une union et « Länder » à des États.

<sup>6</sup> Constitute project, «Austria's constitution of 1920, reinstated in 1945, with amendments through 2009», [En ligne], 2015, [https://www.constituteproject.org/constitution/Austria\\_2009.pdf](https://www.constituteproject.org/constitution/Austria_2009.pdf). (Consulté le 1er avril 2015)

<sup>7</sup> Watts, Ronald L., *et al.*, *op. cit.*

La Constitution autrichienne formule ensuite certaines compétences pour lesquelles le devoir de légiférer est octroyé au gouvernement central tandis que les Bundesländer héritent de la responsabilité exécutive, par exemple pour la nationalité, la police de route et la navigation intérieure. De plus, certaines compétences permettent au fédéral d'adopter des lois générales (lois-cadres) tout en laissant l'exécution et la responsabilité de créer des lois d'application aux entités fédérées, entre autres pour l'assistance aux pauvres. Finalement, il existe certaines compétences exclusives aux Bundesländer, comme les écoles techniques et la formation du personnel forestier, dont l'énumération dans la Constitution est cependant peu exhaustive.

Cela dit, le fonctionnement de l'Autriche tient bien peu du fédéralisme malgré sa séparation territoriale en Bundesländer et le partage de compétences à l'intérieur de sa Constitution<sup>8</sup>. À ce propos, Claude-Sophie Douin relate dans son ouvrage *Le fédéralisme autrichien* qu'en décortiquant la Constitution autrichienne et ses différentes réformes, on constate un transfert de plusieurs compétences cruciales aux mains du gouvernement fédéral. De plus, elle souligne que parmi les nombreuses compétences réservées au fédéral, plusieurs sont essentielles et souvent énoncées de manière assez vague, comme l'illustre bien sa compétence sur la « Constitution fédérale ». Cela, combiné à une large interprétation constitutionnelle par la Cour constitutionnelle d'Autriche, a engendré au fil du temps une tendance manifestement centralisatrice de la fédération autrichienne<sup>9</sup>.

De leur côté, les compétences législatives des Bundesländer qui ne concernent pas directement les services locaux sont bien moins capitales, comme en témoigne leur obligation de parachever la législation fédérale sur la protection des plantes contre les maladies et les parasites. De surcroît, l'exécution d'une loi fédérale par les Bundesländer ne peut en aucun temps déroger au cadre imposé par le gouvernement central, transformant cette responsabilité exécutive uniquement en une possibilité d'ajustement aux particularités régionales<sup>10</sup>. En fait, la liberté d'exécution des entités fédérées en Autriche n'a qu'une faible valeur<sup>11</sup> puisqu'elle peut même leur être révoquée par deux outils constitutionnels à la disposition du gouvernement fédéral.

En effet, la législation fédérale dite « de nécessité » permet tout d'abord l'ingérence définitive du gouvernement central dans les compétences des entités fédérées s'il y a un besoin d'uniformité. Cette nécessité peut être jugée par des critères objectifs ou tout simplement déterminée par le bon vouloir du gouvernement fédéral, comme le lui permet l'article 11(2) de la Constitution. Cette ingérence peut de plus se concrétiser par dévolution, c'est-à-dire que le fédéral peut s'approprier la responsabilité d'un Bundesland d'édicter des lois d'application dans un domaine de compétence si celui-ci ne s'est pas préalablement prévalu de son droit de légiférer à cet égard. Cette intrusion s'opère jusqu'à ce que le Bundesland décide de reprendre ses droits, alors que cette ingérence était autrefois permanente<sup>12</sup>.

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<sup>8</sup> Erk, Jan., *et al.*, *op. cit.*

<sup>9</sup> Douin, Claude-Sophie, *Le fédéralisme autrichien*, Paris, Librairie générale de droit et de jurisprudence, 1977, p.20-21.

<sup>10</sup> *Ibid.*, p.18-26.

<sup>11</sup> Stelzer, Manfred, *The Constitution of the Republic of Austria*, Portland, Hart publishing, 2011, p.156

<sup>12</sup> Douin, Claude-Sophie, *et al. op. cit.*, p.26 à 29.

À l'inverse, la Constitution autrichienne contient à première vue deux facteurs constitutionnels en faveur des Bundesländer. Le premier est l'absence de primauté du droit fédéral alors que le second découle de leur pouvoir résiduel. En effet, la priorité est accordée aux États fédérés pour des compétences simultanément attribuées aux Bundesländer et au fédéral, mais pour lesquelles la Constitution n'indique pas clairement la répartition des responsabilités y étant rattachées<sup>13</sup>.

La valeur de ces prérogatives en principe favorables aux Bundesländer est toutefois négligeable puisqu'elles peuvent tout de même être outrepassées par le biais de deux théories d'interprétation constitutionnelle. Premièrement, la théorie de la pétrification impose l'interprétation de la Constitution en fonction de son sens d'origine et permet donc au fédéral de rattacher de nouveaux domaines aux compétences qui lui ont été attribuées initialement. Cette pratique est d'ailleurs grandement facilitée par l'énonciation souvent large des compétences fédérales<sup>14</sup>. Deuxièmement, le fédéral a la capacité de rapatrier certaines compétences des Bundesländer du moment qu'elles ont un quelconque lien avec l'une des siennes. Par exemple, le fédéral pourrait déclarer du domaine fédéral la lutte contre les incendies de forêt, sachant que la lutte aux incendies est du ressort des États et la forêt de celui du fédéral<sup>15</sup>.

Dans un autre ordre d'idées, un des avantages du régime fédéral est qu'il permet habituellement de laisser une certaine autonomie aux entités fédérées. Cet attribut du fédéralisme revêt une importance toute particulière lorsqu'il y a entre les États fédérés une certaine hétérogénéité, comme c'est le cas en Suisse et en Belgique. L'Autriche est quant à elle très homogène puisqu'elle a hérité, par le démantèlement en 1945 de son ancêtre l'Autriche-Hongrie, de territoires presque uniquement germanophones. Conséquemment, le gouvernement central est davantage porté à gérer le pays en tant qu'ensemble plutôt que de considérer au cas par cas les enjeux régionaux<sup>16</sup>.

Cette façon de gouverner le pays a entraîné une uniformisation des partis politiques qui rend les décisions des institutions parlementaires autrichiennes considérablement dépendantes des volontés partisanes. Tant au niveau des assemblées législatives des États qu'au niveau des institutions parlementaires fédérales, ce sont donc généralement les mêmes partis en présence, notamment les deux plus grands, le Parti social-démocrate (SPÖ) et le Parti populaire autrichien (ÖVP)<sup>17</sup>.

À cet égard, l'appartenance politique des parlementaires joue un grand rôle tant au Nationalrat (chambre basse) qu'au Conseil fédéral (chambre haute). Puisque les membres du Conseil fédéral ne sont pas élus, il se peut qu'un individu y soit nommé par le gouvernement d'un Bundesland sans même avoir de lien réel avec celui-ci. Cela est possible parce que la Constitution autrichienne stipule que les membres du Conseil fédéral n'ont aucune obligation stricte d'y être les ambassadeurs des

<sup>13</sup>Douin, Claude-Sophie, *et al. op. cit.*, p. 46 à 48.

<sup>14</sup> Stelzer, Manfred, *et al., op. cit.*, p.160.

<sup>15</sup> Douin, Claude-Sophie, *et al. op. cit.*, p.46 à 52.

<sup>16</sup> Erk, Jan., *et al., op. cit.*

<sup>17</sup> Perspective monde, «École de politique appliquée-Autriche», *Université de Sherbrooke*, [En ligne], 2014, <http://perspective.usherbrooke.ca/bilan/servlet/BMGvt?codePays=AUT>. (Consulté le 6 avril 2015)

Bundesländer, ce qui est difficilement conjugable avec le rôle de représentation des entités fédérées de cette institution<sup>18</sup>.

En somme, l'analyse du partage des compétences et des principes constitutionnels autrichiens nous permet de constater une nette centralisation des pouvoirs législatifs aux mains du gouvernement fédéral. Néanmoins, les responsabilités administratives et exécutives, quoique rigoureusement encadrées par ce dernier, sont davantage attribuées aux Bundesländer. L'interprétation de la Constitution par la Cour constitutionnelle autrichienne contribue tout autant à cette centralisation, ce qui n'est pas une surprise sachant que les membres de cette cour ont des liens connus avec les partis politiques fédéraux<sup>19</sup>. Finalement, le peu de considérations des problématiques régionales et la grande influence partisane au sein des institutions parlementaires fédérales font que les préférences des Bundesländer ne sont que sommairement prises en compte au niveau fédéral.

### **Allemagne : l'importance des Lander au niveau fédéral**

En plus d'affirmer les compétences exclusives du fédéral et celles des seize Lander, la *Loi fondamentale pour la République fédérale d'Allemagne*<sup>20</sup> établit trois types de compétences concurrentes qui concernent entre autres les affaires sociales, le droit civil et le droit pénal. Avant de les expliquer, il faut tout d'abord comprendre la mécanique qui sous-tend le fonctionnement constitutionnel allemand, comme l'explique Werner Heun dans son livre *The Constitution of Germany* : La Loi fondamentale n'attribue pas strictement des responsabilités pour chaque domaine, mais opte plutôt pour des pouvoirs étendus du fédéral lui permettant d'agir dans des domaines présumés sous juridiction des Lander [...], tant que la Loi fondamentale le lui permet explicitement. Autrement dit, le pouvoir résiduel des Lander est relativement peu utile dans la mesure où le fédéral comble pratiquement tout l'espace potentiel que lui attribue la Constitution<sup>21</sup>. Sachant cela, les compétences concurrentes de premier type sont celles que « les Lander peuvent exercer aussi longtemps que la Fédération ne les exerce pas<sup>22</sup> ». Ces compétences, comme il en existe pareillement en Suisse, sont nettement à l'avantage du fédéral justement en raison de son omniprésence législative, laissant bien peu de place à la législation des États.

Deuxièmement, il existe des compétences concurrentes pour lesquelles le gouvernement central peut imposer sa législation<sup>23</sup> dans le but « [d'établir des] conditions de vie équivalentes sur le territoire fédéral ou [de sauvegarder] l'unité juridique ou économique [...] de l'ensemble de l'État ». C'est donc une autre forme d'ingérence fédérale qui peut par exemple s'appliquer à des domaines comme la chasse ou la répartition foncière.

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<sup>18</sup> Douin, Claude-Sophie, *et al. op. cit.*, p.215-216.

<sup>19</sup> Stelzer, Manfred, *et al., op. cit.*, p.24.

<sup>20</sup> Deutsher Bundestag, «Loi fondamentale pour la République fédérale d'Allemagne», [En ligne], 2012, [http://www.bundestag.de/blob/189762/f05687578\\_77611b2e434039d29a1a822/loi\\_fondamentale-data.pdf](http://www.bundestag.de/blob/189762/f05687578_77611b2e434039d29a1a822/loi_fondamentale-data.pdf). (Consulté le 7 mars 2015)

<sup>21</sup>Heun, Werner, *The Constitution of Germany*, Portland, Hart publishing, 2011, p.58

<sup>22</sup> Fromont, Michel., «La réforme du fédéralisme allemand en 2006», [En ligne], 2007,

[http://www.ajfa.fr/2010/v\\_fr/ressource/reforme\\_federalisme\\_allemand.pdf](http://www.ajfa.fr/2010/v_fr/ressource/reforme_federalisme_allemand.pdf). (Consulté le 29 mars 2015)

<sup>23</sup> Lechevalier, Arnaud., «La dynamique du pacte fédéral et social en Allemagne», *Sociétés contemporaines*, Vol.3, No.51, [En ligne], 2003, doi:10.3917/soco.051.0033, pp.33-56. (Consulté le 27 mars 2015)

Dans les faits, même si la Constitution d'Allemagne concentre les pouvoirs législatifs aux mains du fédéral, cet avantage est grandement tempéré par le fait que les Lander détiennent les responsabilités exécutives et administratives de la plupart des lois fédérales<sup>24</sup>. Dans l'exécution de ces lois, les Lander ont d'ailleurs une liberté d'action notable, et ce, même si le gouvernement fédéral a la possibilité d'insérer des directives précises sur l'administration de celles-ci. Le rôle du niveau local est lui aussi primordial dans cette fédération parce que 80% des lois fédérales allemandes sont administrées par les collectivités locales<sup>25</sup>.

Cette autonomie des Lander est bien illustrée par le troisième type de compétences concurrentes, nouvellement instauré par la réforme constitutionnelle de 2006, qui leur donne la possibilité d'adopter des lois contradictoires à la législation fédérale notamment en environnement et en éducation, et cela en dépit de la primauté du droit fédéral<sup>26</sup>.

Le Bundesrat\* favorise lui de même grandement la considération des Lander au sein du pays. À l'instar des autres fédérations, la seconde chambre allemande a un rôle de représentation des États au niveau fédéral, mais le fait qu'elle soit composée de membres de l'exécutif des Lander fait d'elle le principal outil de coopération entre les deux ordres de gouvernements. Cette caractéristique du modèle politique allemand est d'ailleurs unique parmi l'ensemble des fédérations du monde<sup>27</sup>. Ainsi, parce qu'ils proviennent des gouvernements fédérés, les membres du Bundesrat sont conséquemment largement incités à agir en fonction des intérêts de la population grâce à laquelle ils ont été élus<sup>28</sup>. À titre comparatif, les membres du Conseil fédéral autrichien se soucient quant à eux davantage de respecter la ligne de parti plutôt que d'être attentifs aux problématiques des États fédérés qu'ils représentent<sup>29</sup>.

L'influence considérable du Bundesrat sur les décisions gouvernementales découle également du veto absolu qu'il détient sur toutes les modifications constitutionnelles ou sur tous les projets de loi fédéraux qui concernent aussi les Lander, soit 60% de l'ensemble de la législation fédérale. Si le processus législatif porte sur de tels projets de loi, l'obtention du consensus au sein du Bundesrat est souvent la norme, mais ne constitue cependant pas une nécessité. Sous la menace d'un veto absolu du Bundesrat, cette unanimousité est souvent atteinte en négociant des transferts financiers fédéraux au profit des Lander, ce qui contribue grandement à l'accentuation des ressources pécuniaires des entités fédérées.

Lorsque confronté à une législation fédérale qui n'implique pas les Lander, le Bundesrat ne dispose que d'un veto suspensif alors que c'est au mieux ce type de veto dont dispose le Conseil fédéral d'Autriche, peu importe l'essence du projet de loi présenté<sup>30</sup>.

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\* Le mot Bundesrat réfère à un «Conseil de la fédération», considérant que sa composante «Bundes» rapporte à une union et «rat» à un Conseil.

<sup>24</sup> Fromont, Michel, *Les institutions de la République fédérale d'Allemagne*, Paris, Documentation française, 1993, p.31

<sup>25</sup> Heun, Werner, *et al.*, *op. cit.*, p.62.

<sup>26</sup> Fromont, Michel. «La réforme du fédéralisme allemand en 2006»., *et al.*, *op. cit.*

<sup>27</sup> Watts, Ronald L., *et al.*, *op. cit.*

<sup>28</sup> Stelzer, Manfred, *et al.*, *op. cit.*, p 76.

<sup>29</sup> Sturm, Roland., «Autriche» dans *Guide des pays fédéraux*, éd. Ann Griffiths et Karl Nerenberg, [En ligne], 2005, <http://www.forumfed.org/libdocs/FedCountries/FC-Austria-f.pdf>. (Consulté le 1<sup>er</sup> avril 2015)

<sup>30</sup> Watts, Ronald L., *et al.*, *op. cit.*

En définitive, le système étatique allemand est bien plus décentralisé que celui d'Autriche, car au-delà du fait que ces deux fédérations soient caractérisées par le fédéralisme d'exécution, les Lander détiennent davantage de liberté dans leur exécution et d'autonomie législative que les Bundesländer autrichiens. De plus, malgré le fait que la population allemande soit elle aussi homogène comme en Autriche, il y a une importante considération des enjeux régionaux au niveau fédéral et cela émane de la composition et du rôle unique que joue le Bundesrat au sein de la fédération.

## **Suisse : les cantons et la population en tant que fondements de la fédération**

Tandis qu'elle énumère tout de même les compétences fédérales exclusives, la Constitution de la Confédération suisse<sup>31</sup> se distingue de celles d'Allemagne et d'Autriche puisqu'elle n'énumère pas de compétences réservées aux 26 cantons, bien qu'elle leur consent néanmoins le pouvoir résiduel. Tout comme en Allemagne, il existe en Suisse des compétences concourantes permettant aux cantons de légiférer jusqu'à ce que le fédéral le fasse par lui-même, par exemple pour les domaines de la protection civile et du transport d'énergie. Dans ces cas, par la primauté du droit fédéral, la législation cantonale n'aura plus force de loi<sup>32</sup>. Finalement, à l'instar de la Constitution autrichienne, celle de Suisse établit des compétences concurrentes « limitées au principe », permettant au fédéral de créer des lois-cadres relativement à des domaines tels que la chasse et la pêche.

Le système fédéral helvète fonctionne lui aussi sur le principe de fédéralisme d'exécution, comme l'illustre Sonja Wälti : « Le pouvoir des cantons découle en outre du fait que de nombreuses tâches fédérales leur sont déléguées, soit par la Constitution, soit par des lois, soit même par des ordonnances ». Cependant, contrairement aux gouvernements d'Autriche et d'Allemagne, le gouvernement suisse possède bien peu de moyens pour baliser la liberté d'exécution des cantons, contribuant ainsi à leur grande autonomie et au caractère largement décentralisé du pays. À cet effet, les négociations constitutionnelles en Suisse donnent généralement l'occasion aux cantons de marchander une latitude d'exécution bonifiée et un meilleur partage des ressources financières en échange d'un transfert de pouvoirs vers le fédéral<sup>33</sup>.

Bien que les réformes constitutionnelles aient contribué à la centralisation des pouvoirs législatifs, les États suisses ont tout de même conservé des pouvoirs essentiels tels que la possibilité de signer des traités internationaux dans leurs domaines de compétences<sup>34</sup>, capacité qu'ont également les Lander. En comparaison, les Bundesländer ont peu de compétences d'envergure et ne peuvent par exemple conclure des traités internationaux qu'avec des pays limitrophes de l'Autriche ou leurs entités fédérées, tel qu'affirmé à l'article 16(1) de la Constitution autrichienne.

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<sup>31</sup> Les autorités fédérales-Confédération suisse, «Constitution fédérale de la Confédération suisse de 1999», [En ligne], 2014, <http://www.admin.ch/opc/fr/classified-compilation/19995395/201405180000/101.pdf>. (Consulté le 19 mars 2015)

<sup>32</sup> Chancellerie fédérale, «Types de compétences législatives fédérales», Confédération suisse, [En ligne], 2015, <http://www.bk.admin.ch/themen/lang/01616/02287/index.html?lang=fr> (Consulté le 10 mars 2015)

<sup>33</sup> Wälti, Sonja., «Les équilibres et déséquilibres du système fédéral suisse», [En ligne], 2001, <http://www.groupes.finances.gouv.qc.ca/desequilibrefiscal/fr/pdf/walti.pdf>. (Consulté le 15 mars 2015)

<sup>34</sup> Fleiner, Thomas., *et al.*, *op. cit.*

Le caractère décentralisé de la Suisse s'explique de surcroît par d'autres facteurs. Il y a tout d'abord la souveraineté et les caractéristiques distinctes de chaque canton qui leur procurent une importante influence dans le fonctionnement de la fédération<sup>35</sup>. Le préambule de la Constitution suisse illustre d'ailleurs bien ce propos : « Le peuple et les cantons suisses [...] [sont] déterminés à vivre ensemble leurs diversités ». À cet effet, la population suisse est d'une part divisée en plusieurs groupes linguistiques, dont les germanophones (64,5% de la population), les francophones (22,6%), les italophones (8,3%) et les romanchophones (0,5%)<sup>36</sup>. Il existe d'autre part un grand clivage religieux, puisque 38% des Suisses sont catholiques romains et 26,1% sont protestants, tandis que le reste de la population est athée ou d'une autre religion<sup>37</sup>. Malgré ces grandes divisions, la Suisse demeure toutefois viable et unie puisqu'au lieu de se superposer, les clivages religieux et linguistiques se chevauchent, occasionnant à titre d'exemple que tous les francophones ne sont pas forcément catholiques<sup>38</sup>. À la lumière de cette hétérogénéité, il serait donc impossible pour le gouvernement suisse de gouverner le pays uniquement en considérant les enjeux nationaux comme c'est le cas en Autriche.

Par ailleurs, le gouvernement de la Confédération a une position avantageuse face au Tribunal fédéral. Comme l'explique l'article 189 de la Constitution suisse, les lois fédérales sont à l'abri du contrôle constitutionnel du Tribunal fédéral, alors que la législation cantonale lui est bel et bien soumise<sup>39</sup>. Cette particularité unique au droit constitutionnel suisse est en fait liée au rôle critique du citoyen dans le fonctionnement de la fédération.

En ce sens, la population suisse ne donne nulle autre signification à la Constitution que le reflet de sa propre expression<sup>40</sup>. Conséquemment, Vernon Bogdanor affirme : « ce n'est pas au Tribunal fédéral de juger la Constitution, mais bien à la population elle-même ». Ce jugement s'opère en premier lieu par des référendums obligatoires qui permettent à la population suisse de se prononcer sur l'adoption de projets de loi d'importance ou sur l'adhésion de la Suisse à des traités internationaux.

L'importance de cette procédure, qui s'est d'ailleurs appliquée pour adopter la nouvelle Constitution de 1999, est significative par rapport à la situation dans les deux autres fédérations étudiées : en Autriche, uniquement l'adoption d'une nouvelle Constitution nécessite un référendum

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<sup>35</sup>Fleiner, Thomas., *et al.*, *op. cit.*

<sup>36</sup> Statistique suisse, «Langues, religions – Données, indicateurs, Langues», Confédération suisse, [En ligne], 2015, <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/01/05/blank/key/sprachen.html>. (Consulté le 18 mars 2015)

<sup>37</sup> Statistique suisse, «Langues, religions – Données, indicateurs, Religions», Confédération suisse, [En ligne], 2015, <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/01/05/blank/key/religionen.html>. (Consulté le 19 mars 2015)

<sup>38</sup> Giraud, Olivier., « De la démocratie de négociation à la démocratie délibérative – débats théoriques et trajectoires nationales », *Négociations*, Vo.2, No.12, [En ligne], 2009, doi:10.3917/neg.012.0215, pp.215-227. (Consulté le 24 janvier 2016)

<sup>39</sup> Dubey, Bernard, *La répartition des compétences au sein de l'Union européenne à la lumière du fédéralisme suisse*, Bâle, Helbing & Lichtenhahn, 2002, p. 59

<sup>40</sup> Bogdanor, Vernon., «Federalism in Switzerland», *Government and Opposition*, Vol.23, No.1, [En ligne], 1988, doi:10.1017/S0017257X00017012, pp.69-90. (Consulté le 29 mars 2015)

obligatoire, tandis que la *Loi fondamentale* d'Allemagne ne prévoit tout simplement aucun référendum.

En second lieu, toute nouvelle loi fédérale peut être soumise à la volonté populaire si 50 000 citoyens en font la demande. C'est d'ailleurs par cette procédure que fut contestée (sans succès) la loi sur la décriminalisation de l'avortement en 2002. En dernier lieu, il existe en Suisse une procédure d'initiative populaire permettant, par l'appui de 100 000 citoyens, de proposer une modification constitutionnelle ou même une nouvelle constitution et de la soumettre à un référendum. C'est notamment par ce mécanisme qu'a été introduit l'emprisonnement à vie pour les criminels violents dans le Code pénal suisse<sup>4142</sup>.

En comparaison, les initiatives populaires autrichiennes nécessitent quant à elles 100 000 appuis au total ou celui du sixième des électeurs dans trois Bundesländer, mais ne conduisent pas à une consultation populaire, mais uniquement au dépôt du projet de loi au Nationalrat. De plus, elles ne peuvent porter que « sur une question susceptible d'être réglée par une loi [ordinaire] fédérale », ce qui exclut donc la proposition d'une modification constitutionnelle.

Dans un autre ordre d'idées, les membres du Conseil des États de Suisse ne sont pas tellement différents de ceux du Conseil fédéral autrichien en ce sens qu'ils veillent eux aussi davantage aux intérêts partisans qu'à ceux des cantons eux-mêmes. En revanche, le « cumul des mandats » en Suisse engendre tout de même une influence notable des cantons au niveau fédéral en permettant à un individu d'être à la fois membre d'un gouvernement cantonal et de l'une des deux chambres parlementaires qui composent l'Assemblée fédérale suisse<sup>43</sup>. De plus, le Conseil des États a l'avantage d'être sur un pied d'égalité avec le Conseil national (chambre basse) dans le processus législatif, ce qui lui permet dès lors de participer à l'élaboration et de rejeter tout projet de loi fédéral<sup>44</sup>.

Pour conclure, le fonctionnement étatique de la Suisse est également articulé autour du fédéralisme d'exécution. Cependant, les cantons ont une autonomie appréciable en ce qui a trait à leurs responsabilités exécutives et administratives et conservent en plus de nombreuses compétences législatives d'envergure, contribuant conséquemment à la forte décentralisation du pays. De surcroît, le rôle des citoyens suisses dans le fonctionnement étatique est d'une importance capitale, puisque par divers moyens comme les référendums et les initiatives populaires, ils ont la possibilité de se prononcer sur les agissements du gouvernement fédéral et même de proposer des modifications constitutionnelles.

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<sup>41</sup> Wolf, Linder., «Swiss Democracy, Possible solutions to conflict in Multicultural Societies», *Palgrave Macmillan*, 3<sup>e</sup> éd., [En ligne], 2010, <http://www.palgrave.com/page/detail/Swiss-Democracy/?K=9780230231887>. (Consulté le 24 mars 2015)

<sup>42</sup> Chancellerie fédérale, «Initiatives populaires», Confédération suisse, [En ligne], 2015, <http://www.bk.admin.ch/themen/pore/vi/index.html?lang=fr>. (Consulté le 23 mars 2015)

<sup>43</sup> Bogdanor, Vernon., *et al.*, *op. cit.*

<sup>44</sup> Site du Sénat, «Switzerland : Council of states», *Sénat*, [En ligne], 2007, <http://www.senat.fr/senatsdumonde/switzerlandenglish/switzerlandenglish.html>. (Consulté le 15 mars 2016)

## La décentralisation financière

Après avoir considéré les aspects législatifs, exécutifs et administratifs, le niveau de décentralisation des fédérations étudiées sera maintenant mesuré par l'entremise de facteurs financiers et fiscaux. À cet égard, nous étudierons le partage des compétences financières dans les fédérations d'Autriche, de Suisse et d'Allemagne en utilisant entre autres une analyse empirique de la part des dépenses, des revenus et des transferts intergouvernementaux totaux du pays attribuable à chaque niveau de gouvernement. En adoptant une approche plus pragmatique, nous serons en mesure de bien comprendre la répartition des compétences financières, mais aussi de mieux cerner la façon dont l'affectation des responsabilités par le principe de fédéralisme d'exécution influence réellement le niveau de décentralisation de ces fédérations.

Jusqu'ici, relativement peu d'attention avait été portée sur les collectivités locales puisque la totalité des responsabilités à leur charge est déléguée par les États fédérés et n'est donc pas conférée directement par la Constitution<sup>45</sup>. Or, leur considération est primordiale dans la perspective financière et fiscale de cette recherche étant donné que leur poids respectif dans le portrait financier des trois fédérations est un indicateur pertinent du niveau de décentralisation du pays.

## La répartition des compétences financières et fiscales

Alors que le régime fédéral octroie déjà aux entités fédérées des domaines onéreux comme l'éducation, la santé et les services locaux, le fédéralisme d'exécution accentue de plus belle leur fardeau financier. En effet, les États se voient infliger des dépenses supplémentaires puisqu'ils héritent d'obligations exécutives et administratives liées à des lois qui ne sont pas les leurs. Compte tenu de cette dispendieuse charge, le fait que les gouvernements fédéraux détiennent une meilleure capacité à générer des revenus crée d'importants déséquilibres verticaux<sup>46</sup>.

Tout d'abord, les données de l'OCDE compilées au tableau 1 illustrent la grandeur des dépenses de chaque palier de gouvernement à l'intérieur des dépenses totales des trois fédérations à l'étude. On peut y voir que le gouvernement fédéral d'Autriche compte pour plus des deux tiers des dépenses totales du pays, tandis que cette répartition est plus équilibrée en Allemagne. À l'inverse, les entités locales suisses et les cantons dépensent ensemble davantage que le fédéral, ce qui est bien représentatif du degré de décentralisation du pays.

Tableau 1 : Proportion (%) des dépenses totales du pays de chaque palier de gouvernement (2014) <sup>47</sup>			
	Autriche	Allemagne	Suisse
Fédéral	69,38	60,44	42,61
États fédérés	15,87	22,46	37,96
Niveau local	14,76	17,10	19,43

<sup>45</sup> Watts, Ronald L., *et al.*, *op. cit.*

<sup>46</sup> *Ibid.*

<sup>47</sup>Organisation de Coopération et de Développement Économiques, «Consolidated government expenditure as percentage of total general government expenditure», [En ligne], 2014, [http://www.oecd.org/tax/federalism/oecdfiscaldecentralisationdatabase.htm#C\\_3](http://www.oecd.org/tax/federalism/oecdfiscaldecentralisationdatabase.htm#C_3). (Consulté le 24 janvier 2016)

En réponse à leurs grandes obligations, les États doivent avoir accès à des ressources financières appréciables. À cet effet, certaines compétences financières sont attribuées de façon semblable dans les trois fédérations, par exemple pour les taxes douanières et la responsabilité de la dette qui sont dans tous les cas exclusivement de compétence fédérale<sup>48</sup>.

Il n'en est cependant pas toujours ainsi. À l'instar des autres compétences, les pouvoirs financiers en Autriche sont en majeure partie détenus par le gouvernement fédéral<sup>49</sup>. Par exemple, ce dernier conserve les compétences exclusives d'imposer les revenus des particuliers et d'emprunter à l'étranger alors qu'en Suisse et en Allemagne, celles-ci sont partagées entre les trois ordres de gouvernement dans le premier cas et avec les entités fédérées dans le second<sup>50 51 52</sup>. Par conséquent, le gouvernement fédéral autrichien recueille presque la totalité des revenus de la fédération, soit 90,11%, ne laissant que des miettes aux entités locales et aux Bundesländer, comme les données du tableau 2 l'illustrent bien.

Tableau 2 : Proportion (%) des revenus totaux du pays de chaque palier de gouvernement (2014) <sup>53</sup>			
	Autriche	Allemagne	Suisse
Fédéral	90,11	64,34	52,06
États fédérés	3,36	24,49	29,45
Niveau local	6,53	11,17	18,49

Tableau 3 : Proportion (%) de transferts intergouvernementaux dans les revenus totaux de chaque palier de gouvernement (2014) <sup>54</sup>			
	Autriche	Allemagne	Suisse
Fédéral	0,39	0,64	0,79
États fédérés	81,97	14,90	25,14
Niveau local	62,25	36,32	11,17

En Allemagne, les sources de revenus sont réparties de manière nettement plus pondérée, ce qui s'illustre entre autres par le droit octroyé à tous les paliers gouvernementaux de taxer les biens et services et de prélever l'impôt des sociétés<sup>55</sup>. Par conséquent, la proportion des revenus totaux de la fédération perçus par les entités fédérées et par les collectivités locales allemandes est substantiellement plus élevée qu'en Autriche. Quant à la Suisse, la capacité de ses entités territoriales à générer des recettes est encore plus accentuée, ce qui se démontre aisément par le droit exclusif aux communes d'imposer le capital des entreprises<sup>56</sup>. De ce fait, le gouvernement

<sup>48</sup> Watts, Ronald L., *et al.*, *op. cit.*

<sup>49</sup> Delchamp, Alain et John Loughlin (sous la direction de), *La décentralisation dans les États de l'Union européenne*, Paris, La documentation française, 2003, p.53.

<sup>50</sup> Feld, Lars P. et Emmanuelle Reulier, «Le fédéralisme financier en Suisse», *Revue de l'OFCE*, Vol.3, No.94, [En ligne], 2005, doi:10.3917/reof.094.0351, pp.351-371. (Consulté le 30 mars 2015)

<sup>51</sup> Delchamp, Alain et John Loughlin., *et al.*, *op. cit.*, p.32-33,44 à 54.

<sup>52</sup> Watts, Ronald L., *et al.*, *op. cit.*

<sup>53</sup> Organisation de Coopération et de Développement Économiques, «Consolidated government revenue as percentage of total general government revenue». [En ligne], 2014, [http://www.oecd.org/tax/federalism/oecdfiscaldecentralisationdatabase.htm#C\\_3](http://www.oecd.org/tax/federalism/oecdfiscaldecentralisationdatabase.htm#C_3). (Consulté le 24 janvier 2016)

<sup>54</sup> Organisation de Coopération et de Développement Économiques, «Inter-governmental transfer revenue as percentage of total revenue for each level of government», [En ligne], 2014, [http://www.oecd.org/tax/federalism/oecdfiscaldecentralisationdatabase.htm#C\\_3](http://www.oecd.org/tax/federalism/oecdfiscaldecentralisationdatabase.htm#C_3). (Consulté le 24 janvier 2016)

<sup>55</sup> Commission sur le déséquilibre fiscal, gouvernement du Québec. «Arrangements financiers intergouvernementaux», [En ligne], 2001, [http://www.groupes.finances.gouv.qc.ca/desequilibrefiscal/fr/pdf/internationnal\\_fr.pdf](http://www.groupes.finances.gouv.qc.ca/desequilibrefiscal/fr/pdf/internationnal_fr.pdf). (Consulté le 2 avril 2015)

<sup>56</sup> Feld, Lars P. et Emmanuelle Reulier., *et al.*, *op. cit.*.

central suisse n'est en mesure d'obtenir que 52,06% des revenus totaux du pays, ce qui est relativement peu pour un gouvernement fédéral.

## **L'importance des transferts dans les budgets gouvernementaux**

Sachant que les transferts financiers intergouvernementaux servent à réduire les déséquilibres verticaux entre les paliers de gouvernement, l'ampleur de ces débordements dans le portrait financier d'une fédération est un baromètre efficace de son niveau de décentralisation. En se basant sur les données compilées au tableau 3, on constate qu'en Suisse, les communes et les cantons sont relativement peu dépendants des transferts intergouvernementaux puisque la part de ceux-ci dans leurs budgets respectifs est de 11,17% et de 25,14%. Complètement à l'opposé, les Bundesländer et les communes autrichiennes sont bien plus subordonnés à ces transferts. Le poids de ceux-ci dans leur budget grimpe à 81,97% pour les États et à 62,25% pour les communes, ce qui s'explique par le peu de moyens qu'ont ces derniers pour obtenir du financement autonome. En Allemagne, contrairement à la Suisse et à l'Autriche, ce sont les entités locales et non les États qui ont la plus grande proportion de transferts intergouvernementaux dans leur budget.

Alors qu'il existe un système de péréquation vertical entre le gouvernement fédéral et les États dans les trois pays étudiés, l'Allemagne est la seule fédération au monde dans laquelle il existe un système de péréquation horizontal. Ce procédé, par lequel les Lander les plus riches aident financièrement les Lander les plus pauvres, représente d'ailleurs presque les deux tiers de la péréquation totale du pays<sup>57</sup>.

En somme, les déséquilibres verticaux entre les paliers gouvernementaux entraînent une certaine dépendance des entités territoriales envers le financement fédéral. Pour compenser ces débordements financiers, des transferts intergouvernementaux ont été instaurés et leur ampleur est un excellent paramètre pour déterminer le niveau de décentralisation des fédérations à l'étude. En Autriche, les compétences financières sont fortement centralisées aux mains du fédéral ce qui rend les subdivisions territoriales grandement dépendantes du financement fédéral. À l'inverse, les États et les collectivités locales suisses ont d'importantes sources de financement qui leur permettent d'engranger beaucoup de recettes, ce qui engendre une importante décentralisation financière. Cette décentralisation est relativement moindre pour le modèle financier allemand, puisque la capacité de taxation et d'imposition du gouvernement central demeure élevée en comparaison au système financier suisse.

## **Conclusion**

L'Allemagne, la Suisse et l'Autriche sont des fédérations européennes basées sur le principe de fédéralisme d'exécution, lequel fait en sorte que les responsabilités législatives, exécutives et administratives pour une même compétence ne sont pas systématiquement attribuées à un même ordre de gouvernement. Par le biais d'une analyse comparée du niveau de décentralisation de ces fédérations, ce travail de recherche a démontré de quelle façon certaines particularités constitutionnelles et institutionnelles ont pu faire diverger leur fonctionnement étatique.

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<sup>57</sup> Watts, Ronald L., *et al.*, *op. cit.*

De prime abord, le gouvernement fédéral autrichien monopolise la grande majorité des compétences de la fédération, dont plusieurs des plus cruciales, ce qui atteste de la faible décentralisation du pays. À l'opposé, les entités fédérées allemandes et suisses détiennent de nombreuses compétences dont certaines hautement significatives comme la ratification de traités internationaux qui leur permettent de contrebalancer efficacement la prédominance du fédéral.

Ensuite, les cantons détiennent une liberté remarquable dans leur exécution des lois fédérales, ce qui témoigne amplement de leur autonomie au sein de la fédération suisse. En Allemagne, l'État central détient tout de même certains outils pour baliser l'exécution de sa législation par les entités fédérées, alors qu'en Autriche, ce contrôle est si marqué que les Bundesländer ne sont habilités qu'à ajuster la législation fédérale à leurs particularités régionales.

De surcroît, le Bundesrat est un acteur fondamental au sein de la fédération allemande tant par sa capacité à bien représenter les Lander au niveau fédéral que par son efficacité à contrôler l'action du gouvernement central. Cela s'explique d'une part parce qu'il est composé de membres de l'exécutif des Lander et d'autre part en raison de son veto absolu sur toute modification constitutionnelle et sur toute loi fédérale qui affecte les Lander. C'est toutefois l'inverse avec le Conseil fédéral autrichien, puisque celui-ci est miné par la partisanerie et ne possède qu'un veto suspensif sur la législation fédérale, ce qui l'empêche d'offrir aux Bundesländer un réel levier de pouvoir au sein de la fédération d'Autriche et contribue donc à sa centralisation.

En Suisse, le fait que le Conseil des États participe à poids égal avec le Conseil national dans le processus législatif constitue un vecteur important de l'influence des cantons dans la fédération, mais le contrôle exercé sur le gouvernement central émane aussi d'une tout autre source. En effet, sachant « [qu'un] Suisse est avant tout citoyen d'une commune et donc d'un canton, avant d'être citoyen suisse »<sup>58</sup>, la population helvète a plusieurs moyens de se prononcer sur les agissements du gouvernement central. Il existe en effet des référendums obligatoires sur les modifications constitutionnelles et sur l'adhésion de la Suisse à des traités internationaux, des référendums facultatifs de contestation d'une loi fédérale et finalement des initiatives populaires servant à proposer une modification constitutionnelle.

De plus, l'impuissance du Conseil fédéral d'Autriche, combinée à l'homogénéité du peuple autrichien, fait en sorte que la fédération est gouvernée en tant qu'unité et non en fonction des enjeux régionaux. Ce n'est cependant pas le cas en Allemagne où malgré le caractère peu hétéroclite de la population, l'influence notable du Bundesrat dans la fédération oblige le gouvernement central à prendre en compte les problématiques territoriales. L'hétérogénéité linguistique et religieuse de la population suisse a quant à elle favorisé l'attribution de plus grands pouvoirs aux entités fédérées et a donc conforté leur autonomie.

Parallèlement, l'analyse empirique de l'organisation fiscale et financière des fédérations de Suisse, d'Autriche et d'Allemagne a contribué à mesurer l'amplitude de leur décentralisation, mais également à concrétiser la recherche précédemment réalisée sur les variables législative, exécutive et administrative.

Alors que le gouvernement central autrichien réalise plus des deux tiers des dépenses du pays, la *Loi constitutionnelle de finances* d'Autriche répartit les compétences de taxation et d'imposition

<sup>58</sup> Département fédéral des affaires étrangères, «Les communes», Gouvernement de Suisse, [En ligne], 2015, [http://www.swissworld.org/fr/politique/vue\\_densemble/les\\_communes/](http://www.swissworld.org/fr/politique/vue_densemble/les_communes/). (Consulté le 30 mars 2015)

de manière à permettre à ce gouvernement de recueillir plus de 90% de la totalité des revenus du pays. On constate donc un déséquilibre vertical prononcé : les États fédérés et les collectivités locales sont responsables d'environ 30% des dépenses totales du pays, alors qu'elles ne sont en mesure de percevoir que 10% des revenus. Considérant que les transferts financiers intergouvernementaux sont voués à atténuer ces déséquilibres, le poids important de ces transferts dans le budget des communes autrichiennes et des Bundesländer témoigne sans surprise de la décentralisation minime de l'Autriche.

La situation est d'une tout autre nature en Allemagne et particulièrement en Suisse. En effet, leur répartition constitutionnelle des compétences financières et fiscales entre les divers échelons gouvernementaux est beaucoup plus balancée et permet aux États fédérés et aux collectivités locales d'amasser d'importantes recettes. À cet effet, le portait financier de la Confédération suisse démontre son impressionnante décentralisation, car les cantons et leurs communes sont collectivement responsables de 58% des dépenses du pays tout en recueillant 48% des revenus. La situation est assez similaire en Allemagne, mais étant donné que le gouvernement central est responsable d'une proportion plus grande des dépenses et des revenus totaux de la fédération, l'ampleur de sa décentralisation s'en trouve réduite.

Pour terminer, l'analyse de la décentralisation au sein des fédérations de Suisse, d'Allemagne et d'Autriche nous a permis de constater que l'Autriche est l'incarnation même d'une fédération fortement centralisée, à un tel point qu'elle est davantage centralisée que plusieurs États unitaires comme le Japon<sup>59</sup>. Nous avons en outre pu constater que la Suisse est l'exemple par excellence d'un régime fédéral grandement décentralisé, alors que le degré de décentralisation de l'Allemagne est relativement plus modeste.

Aux termes de ce qui précède, l'existence de différences parfois fondamentales dans l'organisation institutionnelle et constitutionnelle des fédérations de Suisse, d'Autriche et d'Allemagne ne constitue pas un obstacle à leur durabilité, mais est plutôt le symbole de leur capacité à s'ajuster aux réalités nationales. Tout bien considéré, il serait intéressant d'articuler ce même cadre d'analyse à d'autres variantes du fédéralisme comme le modèle anglo-saxon, en se penchant notamment sur les effets du fédéralisme asymétrique au sein des fédérations du Canada et de la Malaisie

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<sup>59</sup> OCDE, «Panorama des administrations publiques 2013», *Organisation de Coopération et de Développement Économiques*, [En ligne], 2014, <http://www.oecd-ilibrary.org/docserver/download/4213202e.pdf?expires=1458183025&id=id&accname=guest&checksum=2C4C9E2921B92282BD7E6BC2326C784C>. (Consulté le 14 mars 2016)

## **Bibliographie**

### **Livres**

- Douin, Claude-Sophie, *Le fédéralisme autrichien*, Paris, Librairie générale de droit et de jurisprudence, 1977, p.18 à 29, 46 à 52, 215 à 220
- Delchamp, Alain et John Loughlin (sous la direction de), *La décentralisation dans les États de l'Union européenne*, Paris, La documentation française, 2003, p.32 à 54
- Dubey, Bernard, *La répartition des compétences au sein de l'Union européenne à la lumière du fédéralisme suisse*, Bâle, Helbing & Lichtenhahn, 2002, p.59
- Fromont, Michel, *Les institutions de la République fédérale d'Allemagne*, Paris, Documentation française, 1993, p.31-32
- Heun, Werner, *The Constitution of Germany*, Portland, Hart publishing, 2011, p.58 à 72
- Stelzer, Manfred, *The Constitution of the Republic of Austria*, Portland, Hart publishing, 2011, p.24, 76, 156 à 189

### **Articles tirés du web**

- Bogdanor, Vernon., «Federalism in Switzerland», *Government and Opposition*, Vol.23, No.1, [En ligne], 1988, doi:10.1017/S0017257X00017012, pp.69-90. (Consulté le 29 mars 2015)
- Commission sur le déséquilibre fiscal, gouvernement du Québec. «Arrangements financiers intergouvernementaux», [En ligne], 2001, [http://www.groupes.finances.gouv.qc.ca/desequilibrefiscal/fr/pdf/internationnal\\_fr.pdf](http://www.groupes.finances.gouv.qc.ca/desequilibrefiscal/fr/pdf/internationnal_fr.pdf). (Consulté le 2 avril 2015)
- Erk, Jan., «Austria : A Federation without federalism», *Publius : The Journal of Federalism*, Vol.34, No.1, [En ligne], 2004, <http://publius.oxfordjournals.org/content/34/1/1.full.pdf+html>, pp.1-20. (Consulté le 25 mars 2015)
- Feld, Lars P. et Emmanuelle Reulier, «Le fédéralisme financier en Suisse», *Revue de l'OFCE*, Vol.3, No.94, [En ligne], 2005, doi:10.3917/reof.094.0351, pp.351-371. (Consulté le 30 mars 2015)
- Fleiner, Thomas., «Recent developments of swiss federalism», *Publius : The Journal of Federalism*, Vol.32, No.2, [En ligne], 2002 <http://publius.oxfordjournals.org/content/32/2/97.full.pdf+html>, pp.97-124. (Consulté le 30 mars 2015)
- Fromont, Michel., «La réforme du fédéralisme allemand en 2006», [En ligne], 2007, [http://www.ajfa.fr/2010/v\\_fr/ressource/reforme\\_federalisme\\_allemand.pdf](http://www.ajfa.fr/2010/v_fr/ressource/reforme_federalisme_allemand.pdf). (Consulté le 29 mars 2015)
- Giraud, Olivier., « De la démocratie de négociation à la démocratie délibérative – débats théoriques et trajectoires nationales », *Négociations*, Vo.2, No.12, [En ligne], 2009, doi:10.3917/neg.012.0215, pp.215-227. (Consulté le 24 janvier 2016)
- Lechevalier, Arnaud., «La dynamique du pacte fédéral et social en Allemagne», *Sociétés contemporaines*, Vol.3, No.51, [En ligne], 2003, doi:10.3917/soco.051.0033, pp.33-56. (Consulté le 27 mars 2015)
- OCDE, «Panorama des administrations publiques 2013», *Organisation de Coopération et de Développement Économiques*, [En ligne], 2014, <http://www.oecd-ilibrary.org/docserver/download/4213202e.pdf?expires=1458183025&id=id&a>

[ccname=guest&checksum=2C4C9E2921B92282BD7E6BC2326C784C](#). (Consulté le 14 mars 2016)

Sturm, Roland., «Autriche» dans *Guide des pays fédéraux*, éd. Ann Griffiths et Karl Nerenberg, [En ligne], 2005,  
<http://www.forumfed.org/libdocs/FedCountries/FC-Austria-f.pdf>. (Consulté le 1<sup>er</sup> avril 2015)

Wälti, Sonja., «Les équilibres et déséquilibres du système fédéral suisse», [En ligne], 2001,  
<http://www.groupes.finances.gouv.qc.ca/desequilibrefiscal/fr/pdf/walti.pdf>. (Consulté le 15 mars 2015)

Watts, Ronald L., «Comparaison des régimes fédéraux», 2<sup>e</sup> éd., [En ligne], 2002,  
<http://www.queensu.ca/iigr/sites/webpublish.queensu.ca.iigrwww/files/files/pub/archive/books/ComparaisonDesRegimesFederaux-Watts.pdf>. (Consulté le 22 mars 2015)

Wolf, Linder., «Swiss Democracy, Possible solutions to conflict in Multicultural Societies», *Palgrave Macmillan*, 3<sup>e</sup> éd., [En ligne], 2010,  
<http://www.palgrave.com/page/detail/Swiss-Democracy/?K=9780230231887>. (Consulté le 24 mars 2015)

## Sites web

Chancellerie fédérale, «Initiatives populaires», *Confédération suisse*, [En ligne], 2015,  
<http://www.bk.admin.ch/themen/pore/vi/index.html?lang=fr>. (Consulté le 23 mars 2015)

Chancellerie fédérale, «Types de compétences législatives fédérales», *Confédération suisse*, [En ligne], 2015, <http://www.bk.admin.ch/themen/lang/01616/02287/index.html?lang=fr>. (Consulté le 10 mars 2015)

Département fédéral des affaires étrangères, «Les communes», *Gouvernement de Suisse*, [En ligne], 2015,  
[http://www.swissworld.org/fr/politique/vue\\_densemble/les\\_communes/](http://www.swissworld.org/fr/politique/vue_densemble/les_communes/). (Consulté le 30 mars 2015)

Larousse, «Allemagne : histoire», *Encyclopédie Larousse*, [En ligne], 2016,  
[http://www.larousse.fr/encyclopedie/divers/Allemagne\\_histoire/185779](http://www.larousse.fr/encyclopedie/divers/Allemagne_histoire/185779). (Consulté le 26 mars 2016)

Office of the Historian, «A guide to the united states' history of recognition, diplomatic, and consular relations, by country, since 1776: north german confederation», *U.S. Department of State*, [En ligne], 2015, <https://history.state.gov/countries/north-german-confederation>. (Consulté le 22 mars 2015)

Perspective monde, «École de politique appliquée-Autriche», *Université de Sherbrooke*, [En ligne], 2014,  
<http://perspective.usherbrooke.ca/bilan/servlet/BMGvt?codePays=AUT>. (Consulté le 6 avril 2015)

Site du Sénat, «Switzerland : Council of states», *Sénat*, [En ligne], 2007,  
<http://www.senat.fr/senatsdumonde/switzerlandenglish/switzerlandenglish.html>. (Consulté le 15 mars 2016)

Statistique suisse, «Langues, religions – Données, indicateurs, Langues», *Confédération suisse*, [En ligne], 2015, <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/01/05/blank/key/sprachen.html>. (Consulté le 18 mars 2015)

Statistique suisse, «Langues, religions – Données, indicateurs, Religions», *Confédération suisse*, [En ligne], 2015, <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/01/05/blank/key/religionen.html>. (Consulté le 19 mars 2015)

#### Autres sources

Constitute project, «Austria's constitution of 1920, reinstated in 1945, with amendments through 2009», [En ligne], 2015, [https://www.constituteproject.org/constitution/Austria\\_2009.pdf](https://www.constituteproject.org/constitution/Austria_2009.pdf). (Consulté le 1er avril 2015)

Les autorités fédérales-Confédération suisse, «Constitution fédérale de la Confédération suisse de 1999», [En ligne], 2014, <http://www.admin.ch/opc/fr/classified-compilation/19995395/201405180000/101.pdf>. (Consulté le 19 mars 2015)

Deutsher Bundestag, «Loi fondamentale pour la République fédérale d'Allemagne», [En ligne], 2012, [http://www.bundestag.de/blob/189762/f0568757877611b2e434039d29a1a822/loi\\_fondamentale-data.pdf](http://www.bundestag.de/blob/189762/f0568757877611b2e434039d29a1a822/loi_fondamentale-data.pdf). (Consulté le 7 mars 2015)

Organisation de Coopération et de Développement Économiques, «Consolidated government expenditure as percentage of total general government expenditure», [En ligne], 2014, [http://www.oecd.org/tax/federalism/oecdfiscaldecentralisationdatabase.htm#C\\_3](http://www.oecd.org/tax/federalism/oecdfiscaldecentralisationdatabase.htm#C_3). (Consulté le 24 janvier 2016)

Organisation de Coopération et de Développement Économiques, «Consolidated government revenue as percentage of total general government revenue», [En ligne], 2014, [http://www.oecd.org/tax/federalism/oecdfiscaldecentralisationdatabase.htm#C\\_3](http://www.oecd.org/tax/federalism/oecdfiscaldecentralisationdatabase.htm#C_3). (Consulté le 24 janvier 2016)

Organisation de Coopération et de Développement Économiques, «Inter-governmental transfer revenue as percentage of total revenue for each level of government», [En ligne], 2014, [http://www.oecd.org/tax/federalism/oecdfiscaldecentralisationdatabase.htm#C\\_3](http://www.oecd.org/tax/federalism/oecdfiscaldecentralisationdatabase.htm#C_3). (Consulté le 24 janvier 2016)

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