

Brief Overview of Federalism

Barry Gutierrez
UP College of Law

Institutional characteristics

- Shared rule and divided rule
- Three independent branches of government at unit level
- Units have own constitutions
- Representation and participation of units in the central government: equal or unequal representation of units
- Representational rights or “veto powers” to certain ethnic groups
- Federal party system

Federal values

- Recognition of and respect for diversity
- Solidarity
- Non-centralization
- Residual powers rest with units
- Cooperation and competition
- Subsidiarity
- Equality of units vis-à-vis central government
- Protection of federal principles through national/unit constitutions

Subsidiarity as a key principle

- “functions should be performed by the lowest level of government competent to do so effectively”
- **Freedom of choice:** Individual or groups are given maximum scope to solve problems
- **Systemic failure:** largely avoided (lowest possible level in charge, only one level of government may crash, but not all levels together)
- “Free riding” is avoided (responsible behavior)

Problems with subsidiarity

- May preserve illiberal orders (liberty problem)
- May work against economies of scale
- May inhibit application of national standards (for example, health, environment, labor)

Federalism as self rule

- Whenever able, **exercise all necessary functions** of government without intervention by the other authority
- Choose your own **leaders**
- Exercise legislative powers in your jurisdiction
- **Power to enforce laws or to discipline** one's own citizens
- **Control parties, factions and groups** that seek to break away
- **Codes of ethical behavior** within one's own unit or group
- **Resolve internal conflicts, grievances, or malpractices** without external interference

Principle of shared rule

- Cooperation with regard to competencies/joint decision-making and/or decentralization
- Financial cooperation
- Co-decision-making in Second Chamber
- Cooperation of ministries: Executive federalism
- Supreme or Constitutional Court
- (Re-)Drawing of boundaries of regions (no unilateralism)
- Central government confined to framework legislation
- Coalition-building together with representatives from the regional parties & units of the federation
- Incorporation of ethnic or regional leaders

Yardsticks of Federalism

- National sovereignty in external affairs
- Prohibition against secession
- Exercise of federal powers independent of individual approval by units
- Unit participation in constitutional amendments
- Protection of unit identity

Yardsticks of Federalism

- (Equal) Representation of unequal units
- Two independent judicial systems
- Norm control through federal Supreme or Constitutional Court
- Residual powers with the units
- Transparent division of competencies (exclusive, joint, or concurrent)

Variations

- Ethnic and/ or territorial federalism
- Degree of asymmetry
- Parliamentary or presidential federalism
- Majoritarian or proportional electoral laws or combination of both
- Nation-wide civil service or divided civil service
- Nation-wide police or divided
- National property of natural resources or divided or exclusive property of units
- Education: national or unit responsibility

Flexibilities

- Flexible application of joint or concurrent powers
- Multiple speeds of granting autonomy
- Status hierarchies among federal units
- Variety of government systems in states

Varieties of regional systems

- **Types of government:** Directly elected president/ chief minister or elected by parliament
- **Type of Cabinet:** Collegial or decision-making competence by Chief Minister
- **State/regional constitutions:** Confirmation of identity, for example one or several state languages
- **Unicameral or bicameral system** on state level, variations in size of parliament

Varieties of regional systems

- **Direct democracy** (referenda), social rights
- **Ethnic quotas** for minorities in state/regional parliaments
- **State/region-based citizenship regulations**(Switzerland, former Soviet Union)
- **Type of local self-government:** competencies, resources, obligations, oversight
- **Variations in size, number and type of districts**, for example Autonomous(ethnic) Districts inside states/regions
- **Policy goals:** School types, legal status of churches, public welfare obligations of enterprises, protection of agricultural land, social care, labor rights, etc.

Federal party system

- Party system should avoid two extremes: centralism and party fragmentation
- Party system should encourage politicians to join ranks with national parties and to incorporate regional/local interests
- Encourage that minority votes are needed for winning elections (vote pooling)
- Electoral districting and minimal electoral quorums
- National parties should be federal in character

Functions of Second Chamber

- Exercise of joint competencies
- Constitutional amendments
- Legislative review
- State of emergency or declaration of war
- Co-appointment of judges of the Constitutional Court
- Aggregation/representation of region/state interests and bargaining
- Conciliation with first chamber (which can often override second chamber with qualified majority)

Frequently granted powers to units

- **Legislative powers** :Electoral law, police, education, universities, forests, agriculture, fisheries, health, irrigation, sports, museums & archaeology, urban development , local taxes & revenue; tourism; transport; local authorities; markets; welfare of “tribes”; penal law
- **Protection of land and property rights**
- **Languages of instruction**: Only with approval of region/state government
- **Selection of & control over officers and staff working in unit administration**
- **State/regional government decides upon investment & provides grants for development works**
- **Executive branch**: Election, size, and principles of representation of minorities