REVISITING UNITY AND DIVERSITY IN FEDERAL COUNTRIES:
CHANGING CONCEPTS, REFORM PROPOSALS AND NEW INSTITUTIONAL REALITIES

INTERNATIONAL ASSOCIATION OF CENTERS FOR FEDERAL STUDIES CONFERENCE
MONTREAL, QUÉBEC
2–3 OCTOBER 2015
PROGRAM

IACFS, 2015 MONTREAL CONFERENCE

REVISITING UNITY AND DIVERSITY IN FEDERAL COUNTRIES:
CHANGING CONCEPTS, REFORM PROPOSALS AND NEW INSTITUTIONAL
REALITIES

1-2-3 OCTOBER 2015

Under the auspices of the
Canada Research Chair in Québec and Canadian Studies (CREQC/CRIDAQ) www.creqc.uqam.ca
Université du Québec à Montréal
Montréal, Québec, Canada

All academic activities will be taking place at:
http://montreal.intercontinental.com/
360, rue Saint-Antoine ouest, Montréal

PROGRAMME

Thursday, 1 October – Hotel Intercontinental Montréal
Executive Committee meeting: 14.30 – 15.45
Pause: 15.45 – 16.00
Board of Directors’ meeting: 16.00 – 18.00
19.00: Welcoming Drink : Bar SarahB (Hotel Intercontinental)
Friday, 2 October – Hôtel Intercontinental

Welcome: 8.45-9.00

Alain-G. Gagnon, CREQC, UQAM and Michael Burgess, CREQC, UQAM

Session 1 : 9.00-10.30 The Original Conceptual Framework: Unity and Diversity

Federalism Beyond Unity and Diversity – Frédéric Lépine, Centre international de formation européenne, Nice

Federalism in Brazil: the Struggle for « Unity » and the Problem of « Diversity » – Tracy B. Fenwick, School of Politics and I.R. Australian National University

Political Unity and Economic Diversity in Argentina – Miguel Angel Asensio, Institute of Federalism, Santa Fe, Argentina

Refreshments 10.30-10.45

Session 2 : 10.45-12.15 Contemporary Empirical Change and Challenges (I)

Diversity and Teaching Language: The Case of Switzerland – Peter Hänni, Director of the Institute of Federalism, University of Freiburg, Switzerland

Territorial Accommodation of Ethnic Diversity and Internal Minorities in Africa: The Case of Ethiopia and Nigeria – Yonathan Tesfaye Fessha, Community Law Centre, University of the Western Cape, South Africa

Interplay of Unity and Diversity in Bosnia and Herzegovina – Dejan Vanjek, Institute for Social and Political Research, Mostar

Lunch: 12.15-13.45 (Book launch)

Session 3 : 13.45-14.45 Contemporary Empirical Change and Challenges (II)

Diversity from Demographic Change and the Effects on Intergovernmental Financial Relations: German Experiences and Discussions for Reform – Gisela Färber, Deutsches Forschungsinstitut für öffentliche Verwaltung Speyer, Speyer

Diversity-Induced Centralization in American Federalism – John Kincaid, Lafayette College, Easton, PA, United States

Refreshments 14.45 – 15.00
Session 4: 15.00 - 16.30 The Original Conceptual Framework: Asymmetry

Asymmetrical Federalism: A Key to India’s Unity in Diversity – Rekha Saxena, Centre for Multilevel Federalism, New Delhi

Unity and Diversity in the (partial) Italian Asymmetrical Regionalism – Paolo Colasante, Institute for the Study of Regionalism, Federalism and Self-Government, Rome

Of Tribes and Territories: Asymmetry in American Federalism – Alan Tarr, Center for State Constitutional Studies, Rutgers University, Camden, NJ, United States

17.00: Keynote Address Carles Boix – Federalism as a Political Equilibrium - With an Examination of Spain’s Failed Constitutional Arrangement -

19.30: Restaurant Hôtel Intercontinental: Osco !

Saturday, 3 October – Hôtel Intercontinental

Session 5: 8.30-10.00 Reactions & Responses to Political Challenges

Accommodating National Minorities in Federal Switzerland – Eva Maria Belser, Institute of Federalism, University of Fribourg, Switzerland

Unity and Diversity in Spain – Mireia Grau Creus, Institut d’Estudis Autonòmics, Barcelona, Catalonia, Spain


Refreshments 10.00 – 10.15

Session 6: 10.15 - 11.45 Practical Reform Proposals

Citizenship Regime Change and the Unity-Diversity Relationship in Canada, James, Bickerton, St. Francis Xavier University, Antigonish, Nova Scotia, Canada

Constitutional Revision in Federal, Hybrid and Regional Models: A Comparison with the European Union – Beniamino Caravita, Sapienza Università da Roma, Rome

From Owned to Shared Autonomy? Subnational Entities between Majoritarian and Anti-majoritarian Institutional Design, Karl Kössler, EURAC/Bolzano-Bozen – Institute for Studies on Federalism and Regionalism
Session 7: 11.45 - 12.15 Country Reports
Canada: John Allan, Institute of Intergovernmental Relations, Queen's University, Queen's University, Kingston
Italy: Elisabeth Alber, Institute for Studies on Federalism and Regionalism, EURAC
Nigeria: Victoria O Isawa-Elaigwu, Institute of Governance and Social Research
USA: Robert Williams, Center for State Constitutional Studies, Rutgers University, Camden

Lunch: 12.15-13.30 (Book launch)

Special Event: 13.30-14.00
Young Researcher Award, presentation by Marc Sanjaume (CREQC, Ph D. Universitat Pompeu Fabra, Catalonia)

Reconciling Liberal Democracy, Nationalism and Political Divorce in Federalizing Contexts

Session 8: 14.00 - 15.30 New Institutional Practices: Constitutional, Political, Legal, Economic and Sociological Changes and Reform

The Development of EU Citizenship Between Unity and Diversity – Gabriella Saputelli, Institute for the Study of Regionalism, Federalism and Self-Government, Rome, Italy

The “Ping-Pong” – Power: Deviant State Legislation in Germany – Hans-Peter Schneider, German Institute for Federal Studies, Hannover, Germany

How Indigenous Group Policy Affects Unity and Diversity in Federal States: Heterogenous Institutional Practices in Australia, Canada and the United States, Shane Day, University of New Mexico, Vincent and Elinor Workshop, USA

Refreshments 15.30-15.45

Session 9: 15.45 - 16:45 The State of the Canadian Federation

2015 Elections Special Panel with Hugo Cyr, Alain-G. Gagnon, Allison Harell, and Graham Fox (moderator)

Closing Remarks: 16.45 – 17.00

Michael Burgess, CREQC, UQAM and Alain-G. Gagnon, CREQC, UQAM

A Commented Promenade in Vieux-Montréal 18.00 – 19.30

20.00 Restaurant Porto Mar, 201 Place d’Youville (Vieux-Montréal)
REVISITING UNITY AND DIVERSITY IN FEDERAL COUNTRIES:
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This IACFS Conference sponsored by the Canada Research Chair in Quebec and Canadian Studies (CREQC)/Interdisciplinary Research Center on Diversity and Democracy (CRIDAQ) based at UQAM in Montréal is designed to revisit the basic theme of «unity and diversity» that remains at the heart of research into federalism and federation. This conference theme has not been directly addressed by the IACFS for well over a decade and it is time for us to take another look at its contemporary relevance to ascertain how far the bifocal relationship between unity and diversity has evolved and has been translated into changing conceptual lenses, practical reform proposals and in some cases new institutional practices.

As Daniel Elazar has argued, these two concepts should not be seen not as polar opposites but rather as congruent partners in the federal idea. The opposite of unity is not diversity; it is disunity while the opposite of diversity is a singular uniform homogeneity. The essence of the federal idea is that these two concepts can be situated comfortably together to produce a particular kind of unity: federal unity. It is important to place this fundamental conceptual partnership in different empirical contexts because each federal or federalizing country has its own historical specificity so that unity and diversity will play out very differently in each case. There are different understandings as to what these concepts mean and how they have changed over time. The original conceptual basis may have changed due to new socio-economic or cultural-ideological challenges that render it less relevant or redundant leading to the emergence of new or revised concepts that will more accurately reflect these new realities and govern practical approaches to meeting emerging challenges.

So it will be important for each participant to begin their contributions with a brief summary of what they take unity and diversity to mean in their own case studies, whether it is spelled out in the written constitution or in some other way. This will represent the original conceptual benchmark against which scholars can demonstrate its subsequent evolution. It is precisely from this approach that new reform proposals are generated signalling the practical responses to new realities that ultimately give way to new institutional practices. So the logic runs in the following way: original conceptual framework of 'unity and diversity'; challenges to its explanatory capacity as a direct result of new social realities; conceptual responses to these contemporary changes leading to concept reformulation; the emergence of practical reform proposals in each federal country (even if not implemented); and new institutional practices in politics, public policy, constitutional law, economic changes and societal/sociological relationships.

Conference participants are invited to present papers in different disciplines with different approaches but with a uniformity of purpose.

Put a different way, they will proceed in the direction indicated above: begin with the original conceptual framework that identifies unity and diversity; the contemporary empirical challenges to it; the conceptual response(s) pointing up how far this has had to change; practical reform proposals; and, finally new institutional realities, such as constitutional, legal and political practices. In this way the participants will connect concepts
to individual case studies in order to explain how the conceptual partnership of unity and diversity has evolved from the past to the present in each federal country. The papers can therefore summarise the interaction of unity and diversity both on a conceptual and an empirical basis.

Five Steps

Introduction: the original conceptual understanding of what unity and diversity mean in each case study and how it is expressed. eg, values and principles in the preamble to the written constitution, historical traditions and legacies.

Contemporary empirical change and challenges to this understanding. eg, new social cleavages having constitutional and/or political salience, new political movements, civil society mobilisation.

Conceptual reactions and responses to these empirical challenges and changes leading to conceptual reformation. eg, public discourses, parliamentary debates, media analyses of how far the public understanding of ‘unity and diversity’ has been compelled to rethink and revise this understanding. eg, undermining ‘diversity’ or preferring ‘unity’ over ‘diversity’, constitutional cases, political debates/public discourse(s).

Inclusion of any practical reform proposals [even if not implemented] that demonstrate a constitutional and/or political discourse[s] derived from and based upon this new conceptual understanding of how and why the meaning of the ‘unity and diversity’ axis has changed.

New institutional practices: constitutional, political, legal, economic and sociological changes and reforms. Are there any tangible, concrete empirical institutional outcomes that have appeared to reflect the contemporary realities born of conceptual change. eg., senate reform; parliamentary declarations and legislative changes; institutional change and innovations; [eg, Council of the Federation in Canada, 2004] + informal practices revolving around new conventions; new forms of political and economic behaviour; new organised interest groups; and/or civil society activism.
John R. Allan, Queen’s Institute of Intergovernmental Relations, Kingston

John Allan is Vice-President Emeritus and Professor of Economics Emeritus of the University of Regina. Born in Scotland, he obtained a B.A. (Hons.) degree in political economy from McMaster University and a Ph.D. from Princeton University, where he was a Ford Foundation Fellow. John’s career has alternated between academia and government: in addition to the University of Regina, he has been a member of the economics departments of Queen’s and McMaster Universities, and has served in a senior executive capacity in the Federal Department of Finance and in the Alberta Treasury Department. He is a Fellow of the Queen’s Institute of Intergovernmental Relations and, for the second time, is serving as Interim Director of the Institute.

Elisabeth Alber, Institute for Studies on Federalism and Regionalism, Bolzano/Bozen EURAC

Elisabeth Alber is researcher and program manager (EURAC Federal Scholar in Residence) at the Institute for Studies on Federalism and Regionalism at the European Academy of Bolzano/Bozen (EURAC). Her research and publications focus on comparative federalism and regionalism, participatory and deliberative democracy in compound states, institutional innovation and decentralization processes, autonomies and minority rights. She also works in the field of civic education as well as conflict mediation. Among others, she facilitates the role-play “Let’s go federal!”, which was created by EURAC with different difficulty levels, for civil servants, postgraduates, graduates, undergraduates and high school students. Elisabeth Alber can be reached at ealber@eurac.edu.

Miguel Angel Asensio, Institute of Federalism, UNC, Cordoba

Miguel Angel Asensio is Doctor in Economics (Alcalá University, Spain); Doctor in History (Torcuato Di Tella University, Argentina). Owns degrees in economic sciences (UNL and UNR, Argentina). Undergraduate and Graduate Professor of Economic History and Public Finance (UNL and others). Director of Public Administration Doctoral Program (UNL). He was Fulbright Scholar at University of Pittsburgh, Pennsylvania (USA), visiting Professor in Canadian Universities and consultant for World Bank and Organization of American States. Authored in related fields books and articles. Former Secretary and Minister of Public Finance in Province of Santa Fe, member of Federal Commission for Taxes and National Senate’s Adviser (Argentina). President of Two Centuries Foundation.

Political Unity and Economic Diversity in Argentina

The original federation, in the case of Argentina, is a consequence of a long period of regional unrest after the earlier unity in the Viceroyalty of Rio de la Plata and an attempt of precarious maintenance of a centralized republican regime. In broad terms, during forty years it was not possible to find a formula for bringing together the various provinces formed after the dissolution of the central power in the 1820s. The federal arrangement finally reached was framed with fourteen constituent units. The provinces then signing the agreement where initially separated by diverging economic strength and interests. Broadly speaking, it was the association of a «big and rich brother» with thirteen weak and poor partners. Thus, one dimension of diversity, the «economic diversity» was present when the federation was born. The «political unity» was achieved after a long-standing and sometimes open economic conflict. Inland regions with the coastal area confronted on clear divergences based on economic power and resources. Of course, it is not a unique characteristic of the Argentine federation but deserves some explanation in relation with its evolution and the maintenance of the unity given the original economic diversity and evolving historical circumstances and also within a scenario without religious or linguistic causes of disunity. In such a way, the paper will take into further consideration the initial framework and its evolution, aiming at
the identification of the modern conditions of the economic diversity and its impact on the conditions for the functioning of the political union, without ignoring some comparison with the so-called «regions of recent settlement» with federal systems, including Canada. Given such a context of historical evolution, indicators of regional development and others related will be used for identifying the present dimension of regional and fiscal economic divergences which have important effects in the operation of the federal system and institutions -some of them transformed- which shape the contemporary federal union, as «union among diverse».

Eva Maria Belser, institute of Federalism, University of Fribourg

Eva Maria Belser is Professor of constitutional and administrative law at the University of Fribourg and Co-Director of the Institute of Federalism. Her publications and main research interests include comparative constitutional law, international human rights and labour law, trade and development law, links between human rights protection and economic globalisation, federalism and multi-level states. She has been involved in federalism projects and human rights activities among others in Sudan, China and Palestine.

Accommodating National Minorities in Federal Switzerland

This paper will analyze the concept of national minorities as it is understood and implemented in federal Switzerland. It attempts to examine how traditional Swiss understandings of unity and diversity are being challenged by the European Framework Convention for the Protection of National Minorities which is currently ratified by 42 European states and designed to be implemented in unitary, decentralized as well as federal states. While protecting and promoting diversity in unity has always been at the heart of the pluralistic Swiss state, the concept of accommodating «national minorities» has been introduced to the Swiss scene mainly by international law. When the country ratified the Framework Convention in 1998 it defined national minorities as follows: «groups of individuals numerically inferior to the rest of the population of the country or of a canton, whose members are Swiss nationals, have long-standing, firm and lasting ties with Switzerland and are guided by the will to safeguard together what constitutes their common identity, in particular their culture, their traditions, their religion or their language». While the concept of «voluntary nation» (Willensnation) is still reminiscent in this declaration, it is obvious that new (numeric and other) criteria are being introduced. According to the country report, the following groups can claim protection under the Convention: the French, Italian and Romansh speaking communities, the members of the Jewish community and travelers. It follows from this that German speakers living in French or Italian parts of the country, Protestants living in Catholic environments or Muslims are not recognized as national minorities. While the country traditionally relies on pluralistic and very flexible concepts of diversity, the Framework convention seems to bring about a tendency to identify and protect clearly discernable groups.

The paper will also outline the original understanding of unity and diversity in Switzerland and the empirical and legal challenges that demographic changes and the Framework Convention has brought to the country. The paper will then examine the conceptual reactions and responses to these challenges by investigating the initial report on the implementation of the Framework Convention submitted by Switzerland in 2001 and the three subsequent reporting cycles documenting numerous changes in law and policies as well as reform projects that are affecting national minorities. By doing so, the author attempts to clarify the interactions between the country's traditional, mostly federal, patterns of dealing with diversity in unity and the new ways of thinking about and accommodating national minorities introduced by the Framework Convention. The guiding question will be if and how the implementation of the Convention has impacted on the original Swiss arrangements developed to deal with the country’s plurality.
Citizenship Regime Change and the Unity-Diversity Relationship in Canada

The Canadian federation that was created in 1867 was in fact an admixture of governance models that reflected the necessary political compromises to conclude the federation agreement. Some of these compromises concerned basic institutional design, such as the experiment of fusing federal principles and practices to the British parliamentary system used by the colonies at the time of Confederation. Clearly, this was a compromise of major proportions, but one that was undertaken without clear consensus on what was the ultimate purpose of this arrangement or what the long-term result should/would be. While a form of territorial federalism with exclusive and symmetrical divisions of powers between governments went some distance toward satisfying the demands of French Canadian and Maritime elites that their particular diversities be recognized and accommodated through the federal division of powers, the balance between unity and diversity struck by this arrangement had to be further supplemented by constitutional guarantees of the linguistic and religious rights of French and English-speaking minorities within the provinces. Less apparent, because it was almost totally ignored in the 1867 British North America Act (referred to hereafter as the Confederation Agreement), was the existence of a silenced third party to the Confederation Agreement, that being the distinct peoples then referred to as Indians or natives, and now variously termed Aboriginal or Indigenous Peoples, or First Nations. Power over and control of these non-contracting and non-consenting parties was granted to the Dominion (federal) government, including sovereignty over all Indian lands and resources set aside by treaties, the first of which were signed between the British Crown and Mi’kmaq people of what is now Nova Scotia in the 1750s. Treaty-making with First Nations would continue for the next 150 years as first British North America and then the Canadian federation extended its reach across the continent to the Pacific and Arctic Oceans.

This paper will adopt a case study approach to chart the evolution of the unity-diversity relationship within a single Canadian province (Nova Scotia), and the circumstances under which diversity is recognized and accommodated as a perceived contribution toward federal unity. Its focus will be on original minorities that were ‘stranded’ within the federating provinces at Confederation and thereafter, becoming subject to the political will of provincial majorities as expressed through their governments and legislatures, save for the constitutional and treaty guarantees previously mentioned, the original intent of which was to safeguard and preserve the diversity represented by these groups from a majoritarian notion of unity that in its conception, institutions and practices would tend toward a uniformity, homogeneity and symmetry that would be intolerant of the kind of deep diversity required to maintain and promote significant minority difference and territorial pluralism, not only between but also within the federating territorial units. As well, a third form of territorial pluralism (besides linguistic and aboriginal minorities) will be examined. This is represented by a territorial sub-region of the province of Nova Scotia (Cape Breton Island), the geographical, cultural and economic distinctiveness of which has created a persistent need and demand for accommodation of its distinctiveness through greater autonomy or asymmetrical treatment in terms
of public policy, regional institutions and intergovernmental relations. Though unsupported by constitutional or treaty guarantees, this third form of territorial pluralism has nonetheless been directly affected by the evolving unity-diversity relationship within the Canadian federation.

The paper will outline the adoption of governance arrangements that marked a departure from standardized federal identities and symmetrical divisions of power and responsibility, due to a range of political, social and cultural factors. In particular, it will take note of the institutions and policies that were created, stretched or rescaled in order to instantiate forms of territorial and corporate pluralism specific to the case region’s specific history, geography, demography and economy. Given a ‘conducive’ political opportunity structure, it can be seen that ‘workable balances’ could be struck between different forms of justice (social, cultural, territorial) in order to address territorial inequalities, identity difference recognition, and minority rights, in the process addressing legitimacy deficits that often arise in federal systems of governance. The paper will seek to identify both the political and institutional supports for certain asymmetrical or non-standard arrangements meant to preserve diversity, but also alternatively those that pushed toward the restoration of symmetry and standardization in the name of greater uniformity, in effect repealing the diversity recognition that had been previously granted.

**Michael Burgess (co-organiser)** has worked at the Universities of Plymouth, Keele, and Hull before joining the School of Politics and International Relations in Canterbury in 2005. At Hull he was the Director of the Centre for European Union Studies (CEUS) for a decade and has maintained his research interests in European integration as well as comparative federalism, Canadian constitutional politics, British federalism, and federal political theory. He was a Professor of Federal Studies and Director of the Centre for Federal Studies (CFS) at the University of Kent. Among his publications let’s mention Comparative Federalism in Theory and Practice with Routledge, In Search of the Federal Spirit with Oxford University Press (2012). He has also coedited Federal Democracies (Routledge, 2010) and Comparative Federalism and Federalism (Harvester and University of Toronto Press, 1993).

**Carles Boix** writes and teaches on comparative political economy and comparative politics. He is the author of Political Parties, Growth and Equality (Cambridge University Press, 1998), Lobertura catalana (Idees, 2002) and Democracy and Redistribution (Cambridge University Press, 2003) and the co-editor of the Oxford Handbook of Comparative Politics (Oxford University Press, 2007). He has received the William Riker award for the best book on political economy twice, the Mattei Dogan award for best book published in the field of comparative research and the Heinz Eulau award for best article published in the American Political Science Review. His current research projects include: the exploration of the origins and persistence of economic inequality; the analysis of the conditions that led to the emergence of party systems and electoral institutions in advanced democracies; the application of agent-based models to understand the formation of states; and the internal structure of dictatorships. Before joining Princeton he taught at the University of Chicago. Ph.D. Harvard University. [http://wws.princeton.edu/faculty-research/faculty/cboix#sthash.303aSeTl.dpuf](http://wws.princeton.edu/faculty-research/faculty/cboix#sthash.303aSeTl.dpuf)

**Keynote Address : Federalism as a Political Equilibrium - With an Examination of Spain's Failed Constitutional Arrangement**

**Beniamino Caravita, Sapienza Universitat da Roma, Rome**

**Beniamino Caravita** is Full professor of Public law in the Faculty of political science in Sapienza Rome University; Scientific coordinator of Association «Osservatorio sui processi di governo e sul federalismo»; Chairman of the legal firm CdTA; Editor of the review «federalismi.it» (www.federalismi.it).

**Constitutional Revision in Federal, Hybrid and Regional Models: A Comparison with the European Union**

The aim of this paper is to compare the constitutional revision both in federal and regional countries with the
revision of the treaties of the European Union, considering them as the material Constitution of the Union. The attention will be stressed on the main articles of the Charters of federal, hybrid, regional models and the Treaties of the European Union, concerning constitutional revision. This analysis that aims at individuating how much and what kind of involvement have member units in federal, hybrid and regional countries in the matter of constitutional revision, comparing with the procedure of constitutional revision introduced by the Treaty of Lisbon, that simplifies this kind of process, creating two different types of procedure that goes beyond the mere idea of the agreement among the States.

Paolo Colasante

Paolo Colasante graduated in Law and obtained PhD in Public Law at the University of Teramo (Italy). He is currently a researcher at the Institute for the Study of Regionalism, Federalism and Self-Government “Massimo Severo Giannini” of the Italian National Research Council (Rome). He is Author of several essays and papers on constitutional law, regional law and EU law, some of which are published in English.

Unity and Diversity in the (partial) Italian Asymmetric Regionalism

The Italian Constitution has incorporated among its fundamental principles the tension between the concepts of unity and diversity, providing in art. 5 that “The Republic, one and indivisible, recognises and promotes local autonomies” and specifying that it “accords the principles and methods of its legislation to the requirements of autonomy and decentralisation”.

From the beginning, the regionalization of the whole country has been based on the recognition of two different models of regionalism: the ordinary one, in which - for most of the regions (15/20) - the regulatory, legislative and administrative autonomy was and is regulated by the provisions of Title V of Part II of the Constitution; and the special one, characterized by five regions to which have been recognized forms and conditions of autonomy on the basis of statutes approved with a constitutional law.

The experience of the ordinary regions is based on a concept of “uniform” and more modest autonomy in respect to the one of the five special regions, whose actual functioning, however, preceded the establishment of the ordinary regions which took place only in 1970, while the entry into force of the Republican Constitution, and the establishment of special regions, dates back to 1948.

The special autonomy, provided by art. 116 Cost. and based on statutes that have the force of constitutional law, allows to derogate from the Constitution, giving the Regions special forms of autonomy, as well as (at least until the revision of Title V of 2001) the entitlement of types of powers unknown to the ordinary Regions (eg., the so-called primary legislative power).

The Republican Constitution adopted this model of differentiated regionalism for historical, political and geographical reasons. This circumstance, however, led to the result that, while the ordinary regionalism had - at least initially - a predominantly functional connotation, the special one could be defined from the beginning as a case of “identity regionalism”.

In this context, also in light of the reform currently in debate in Italy, which tends to a weakening of regional autonomy, special regionalism maintains its own features, accentuating a constitutional considerable gap between the two models of regionalism. Moreover, the same special autonomy is characterized by a remarkable difference between the Alps regions (Friuli-Venezia Giulia, Trentino-Alto Adige, Valle d’Aosta) and the Islands (Sicily and Sardinia), the former being able to best use the differentiated autonomy, while the latter have not always been characterized by an effective management of special autonomy.
Hugo Cyr

Hugo Cyr is Professor of Public Law and Legal Theory, Dean of the Faculty of Political Science and Law at the Université du Québec à Montréal and a member of the Québec Bar. He is also a member of the Centre de recherche interdisciplinaire sur la diversité et la démocratie (CRIDAQ) and Vice President of the Chaire UNESCO d’étude des fondements philosophiques de la justice et de la société démocratique.

Shane Day, University of New Mexico, Vincent and Elinor Workshop, USA

Shane Day is an Assistant Professor in the School of Public Administration at the University of New Mexico, where he was hired to develop the curriculum for a new MPA concentration in Native American and Indigenous Governance. He received a Ph.D. in Public Policy from Indiana University – Bloomington, where he maintains an Affiliate Faculty appointment in the Vincent and Elinor Ostrom Workshop in Political Theory and Policy Analysis. He also holds MPA, MA in International Studies, and BA degrees from the University of Washington in Seattle. Shane’s research interests revolve around the issues of indigenous group sovereignty and self-governance, indigenous groups in international affairs, environmental policy, natural resource management, federalism and intergovernmental relations, economic development, collaborative management, comparative public administration, and international relations. His dissertation research explored the participatory authority and influence of indigenous groups in international fisheries management institutions.


National policies addressing the political status of indigenous groups and their relationships with their respective nation-states present a particularly fruitful lens for examining the tensions between unity and diversity in federal systems. The prevalent emphasis placed on political and cultural unity by mainstream societies frequently bumps up against special natural law and/or treaty rights specific to many indigenous groups, resulting in political pressures from the mainstream for reform measures which would curtail special rights and privileges of indigenous groups and facilitate assimilationist policies. Conversely, the imperative of recognizing and protecting the case-by-case specific needs and rights of indigenous groups frequently results in complicated matrices of policies which impairs the cohesiveness of national policy approaches towards indigenous issues. This paper examines the national contexts of Australia, Canada, and the United States in order to illustrate how different political and cultural contexts shape the relative tolerance of diversities or result in demands for greater unity. In particular, I argue that in certain contexts evolving social norms on the part of both settler and indigenous communities have served to reinforce judicial precedents and administrative actions which have resulted in greater tolerances for diversities of political arrangements for indigenous groups within a country’s national political system. In contrast, in other contexts there has been an entrenchment of unity-leaning ideological views which have served to diminish the self-governance aspirations of particular indigenous groups. In all cases, evolving social norms and increased judicial recognition of aboriginal rights have served to change the institutional practices that these states have employed in their relations with their respective indigenous groups. Furthermore, these changes in institutional practices rarely occur at the constitutional level, with potential implications for the gains in self-governance power that have been made by many indigenous groups in these societies. The result has been an increasing complexity in the patterns of indigenous-settler state institutional practices, which in some cases complicates the implementation of a cohesive indigenous policy, and has in many cases exacerbated inter-tribal tensions due to resultant asymmetries in their relative political statuses vis-a-vis the state.
Diversity from Demographic Change and the Effects on Intergovernmental Financial Relations: German Experiences and Discussions for Reform

Demographic change resulting from a decline of birth rates, an increase of life expectancy and internal and external migrations in many industrialized countries is not only a challenge for social security, but in particular for federal systems. It changes the political balance between growing and shrinking regions, imports more ethnical diversity into some jurisdictions more than in others, and intensifies political and economic competition among governments on subnational and local level. Demographic change implies many changes in public budgets which not only vary for growing or shrinking jurisdictions but also for states/provinces and communities with a more or less aging population and those which experiences (net) immigration in contrast to those where particularly young people emigrate.

Federal systems should have a better ability to get along with the diverse effects and the growing diversity from demographic change than unitary ones. But demographic change also causes conflicts within and among levels of government most of them closely related to or even focused on the financial intergovernmental relations. The paper aims to identify for Germany an increasing diversity of the populations with regard to size, age (and gender?) structure as well as population with different ethnical respective migration background. It will investigate important effects for public budgets in vertical and horizontal perspective and on intergovernmental financial transfers and will try to find some answers under which conditions (decentralized) governments will have a better chance to cope successfully with “their” regional and local demographic change.
Federalism in Brazil: the Struggle for « Unity » and the Problem of « Diversity »

This paper presents two propositions based on the Brazilian case of federalism related to Elazar’s conceptualization of ‘unity’ and ‘diversity’ in federal systems of government. The first claim directly related to ‘unity’ is that persistent structural inequality in Brazil undermines its political unification. The second claim directly related to diversity is that the multiplicity of non-territorial divisions of power and territorial divisions of power in Brazil’s political institutional design maintains the diffusion of political power, but that such diffusion cannot be justified. Both of these socio-economic and institutional realities constitute contemporary challenges for Brazilian federalism and democracy that over the past two decades have led to diverse government responses, empirical challenges, and practical reform proposals, each met with varying levels of societal support and success. I conclude that the re-application of Elazar’s concepts are in fact useful for understanding contemporary Brazilian federalism and its current challenges.

Graham Fox was appointed President and CEO of the Institute of Research on Public Policy in 2011.

He brings to the organization a decade of executive-level experience in the fields of politics and public policy. Prior to coming to the IRPP, Graham was a strategic policy adviser at the law firm of Fraser Milner Casgrain, where he provided public policy analysis and government relations advice in the fields of telecommunications, economic development, international aid, foreign investment, energy and aerospace. Before that he was vice-president of the Public Policy Forum, executive director of the KTA Centre for Collaborative Government, and director of communications at the IRPP. In politics, Graham contested the 2007 Ontario general election as a candidate in the constituency of Ottawa-Orléans. He was chief of staff to the Rt. Hon. Joe Clark, and adviser to members of Parliament in the House of Commons. In 1998, he served as press secretary to the Hugh Segal campaign for the leadership of the Progressive Conservative Party of Canada.

Alain-G. Gagnon (co-organiser) holds the Canada Research Chair in Québec and Canadian Studies at the Université du Québec à Montréal. His most recent books include, as author, The Case for Multinational Federalism (Routledge, 2010) and Minority Nations in the Age of Uncertainty (University of Toronto Press, 2014); as co-author, Federalism, Citizenship, and Quebec (University of Toronto Press, 2008); and, as co-editor (with Michael Burgess), Federal Democracies (Routledge, 2011) as well as, in 2012, with Palgrave Macmillan Political Autonomy and Divided Societies (with Michael Keating) and Multinational Federalism (with Michel Seymour). He also edited Contemporary Canadian Federalism and coedited Canadian Politics (with James Bickerton) now in its 6th edition with the University of Toronto Press. He was elected member of the Royal Society of Canada in 2008 and received the Trudeau Award in 2010 for his contribution to the advancement of knowledge and his civic engagement.

Mireia Grau Creus, Institut d’Estudis Autonòmics, Barcelona, Catalonia, Spain

Mireia Grau Creus is Senior officer at the Institut d’Estudis Autonòmics, Barcelona, she has taught Public Policy Analysis at the University of Murcia (Spain), KU Leuven (Belgium) and the Pompeu Fabra University (Spain). PhD in Social and Political Sciences, European University Institute, Florence.
Unity and Diversity in Spain

In Spain and within the context of political decentralization, the relationship between the concepts of unity and diversity has not been that of “congruent partners”, nor even that of equal adversaries but rather and manifestly that of hierarchy: unity has dominated over diversity in legal, institutional and also political and public opinion fronts. In this sense, the concept of unity has severely constrained the meaning and, therefore, the conceptual limits of diversity. In the same sense, the empirical evidence also shows that the degree of hierarchy (or subordination) has varied over the last thirty years, as constitutional case-law but also as public opinion data can illustrate. In sum, the analysis of the hierarchical relationship between unity and diversity in Spain implies to answer at least the two following questions:

- Why unity has been the parameter of diversity and which consequences has had upon decentralization?
- Which have been the variations over time and which can be the factors that could account for them?

The aim of our paper would be to provide an explanation of the relationship between unity and diversity in Spain as much as this relationship has forged the origins, evolution and the current crisis of decentralization. The analysis would start by explaining why unity and diversity are concepts hierarchically linked, and how such a hierarchy is manifested in the legal and institutional framework of decentralization. Secondly, the paper would turn to explore the evolution over time of the unity-diversity relationship by paying attention to its impacts upon three dimensions: the building-up of the normative structure of devolution, the shaping of the political discourse about decentralization and the public opinion.

Peter Hänni, Institute of Federalism, University of Fribourg

Peter Hänni is Prof., attorney at law, LLM (Yale), is Professor for constitutional and administrative law at the University of Fribourg and Director of the Institute of Federalism. His publications and main research interests include federalism, the statute of public employees, planning and construction law, and environmental law. He is also the Director of the Swiss Association for Administrative Organization Law, former Dean of the Law Faculty, University of Fribourg.

Does the Federal level have the constitutional competence to regulate teaching of foreign languages in schools? Switzerland, with its four national languages and three official languages is a multi-lingual state. For a long period of time, teaching of foreign languages in primary and secondary schools in Switzerland was regulated by the cantons. This started to change in the early 1970s when the Swiss Conference of Cantonal Ministers of Education (EDK). initiated a process of continuous coordination, most important among the recommendations made by the EDK in 1975, was the one to introduce teaching of a second national language in primary school, which all cantons, albeit not all immediately introduced in their curriculum.

While it was generally accepted that the teaching of a second language means the teaching of one of the national languages, this started changing with the advent of rapid globalisation and the increasing use of English. At the end of the 1990s the discussion arose whether the introduction of early English teaching at the primary school level requires coordination. At the General Assembly meeting of 25 March 2004, the EDK agreed on a common objective in the area of language teaching at the compulsory schooling level and set out a work plan for the coordination across Switzerland.

To reach the common objectives, the cantons would have to introduce in the long run, second and third languages in primary school with the requirement that at least one of the foreign languages introduced would also have to
be national language. The first of the two languages would have to be introduced latest in Grade 3 and the second latest by Grade 5. This so-called 3/5 model was adopted by the HarmoS-Konkordat and was implemented by most cantons, also those which did not join the HarmoS-Konkordat.

The common objectives agreed upon by the EDK and concretised in Art. 4 HarmoS, termed as the “Language Strategy” has run into difficulties through various popular initiatives and parliamentary postulates which have been submitted or even accepted, in some German speaking cantons, which more or less demand that only one foreign language be taught at the primary school level.

In the canton of Nidwalden, the citizens accepted a popular initiative on 8 March 2015 for an amendment to the Public School Law with respect to language teaching at the primary school level. In the canton of Lucerne a similar initiative was submitted in autumn 2014; in the canton of Grisons, a popular initiative submitted in 2013 challenges not only the number of foreign languages but also which language is to be taught in which region of the canton (since Grisons is a trilingual canton, this is of importance). Other far-reaching initiatives demand an exit from the HarmoS-Konkordat. In the canton of Thurgau, the cantonal parliament has passed on a motion to the cantonal council (Executive) demanding the shift of French-language teaching from the primary school level to the secondary school level. Similar and sometimes more far-reaching parliamentary postulates have been introduced also in other cantons.

In light of these developments, the EDK at its Annual Assembly of 31 October 2014, with the participation of Federal Councillor Alain Berset, publicly confirmed their position on the “Language Strategy” and the Model 3/5 (or 5/7 in accordance with the HarmoS-Konkordat). Several calls for an intervention by the Federal level have been made and the Federal Council as well as the National Parliamentary Commission for Science, Education and Culture, have announced that in order to avoid the situation that individual cantons adopt English as the only foreign language to be taught at primary school level (leaving out the other national languages) the Federal level would intervene. If necessary, this would mean amending the Language Laws to require compulsory second national language teaching at the primary school level. These announcements are based on concerns of national unity and necessity for understanding and interactions between the several national language regions.

These announcements also show that the Federal Council, the National Parliamentary Commission for Science, Education and Culture as well as the EDK assume that the Federal level has the constitutional competence to dictate to the cantons on the issue of teaching a second national language at the primary school level. This presentation will examine the question of constitutional allocation of competences with respect to teaching of foreign languages and whether such a competence is allocated to the federal level at all. Other aspects like the political implications of teaching national languages can only be touched upon but cannot be dealt with in detail.

Allison Harell is Associate professor in the Department of Political Science at UQAM. She specializes in public opinion and political behaviour in industrialized democracies. She is particularly interested in the implications of ethnocultural diversity and gender on citizenship. She is founder and co-director of the Political Communication and Public Opinion Lab (LACPOP), and also collaborates on the Canadian Election Study (2011-2015). Her research has appeared in various international journals, including the Canadian Journal of Political Science, Public Opinion Quarterly, Political Studies and Gender and Politics.

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Victoria O Isawa-Elaigwu is Programme Officer of the Institute of Governance and Social Research.
Diversity-Induced Centralization in American Federalism

Population diversity in the United States has had centralizing impacts on federalism for two reasons. First, the United States has consistently suppressed governmental institutionalizations of territorially based diversity associated with race, nationality, ethnicity, language, and/or religion. Second, the United States has employed federal powers to override state powers in order to protect minorities against predatory majorities. The suppression of territorial institutionalizations of diversity occurred mostly during the nineteenth century when 32 new states were created west of the original 13 states, although the policy also affected the five states admitted to the union after 1899. Federal overrides of state powers to protect minorities began in the mid-twentieth century and continue today.

The principal impetus for the two centralizing trends was the bicomunal nature of the American federal system, which pitted a modern liberal region—the North—against a feudalistic reactionary region—the South. Although the U.S. Constitution originally accommodated these two distinct societies, the accommodation was a political necessity inevitably doomed to failure in the form of either secession or the triumph of one region over the other. Both occurred in the 1860s when the North triumphed militarily over the secessionist South, but a political resurgence of the South for a century after the war postponed the modernization of the South until the 1950s and 1960s when the federal government undertook massive encroachments on “states’ rights” in order to protect individual rights.

The evolution of American federalism has significantly restricted the scope of governmentally enforced territorial cultural diversity while significantly expanding the scope of diversity within the citizenry such that expressions of quasi-cultural territorial diversity today, such as state legalizations of marijuana, physician-assisted suicide, pre-approved drugs for dying persons, and rights for illegal immigrants, as well as battles for and against abortion and same-sex marriage (until June 2015), are rooted in conceptions of individual rights, not communal cultural rights. Furthermore, despite the high degree of centralization today compared to the past, the United States remains, according to the World Bank’s decentralization index, the ninth most decentralized polity in the world and second most decentralized federal polity (after Switzerland).
From Owned to Shared Autonomy? Subnational Entities between Majoritarian and Anti-majoritarian Institutional Designs

For many countries worldwide, their culturally diverse societies are among the most pressing challenges. Yet, nation-states as well as nation-regions frequently still cling to the illusion of ethno-culturally homogeneous territory, from which they derive a right of the dominant majority to ‘ownership’ of this territory and, as a consequence, of territorially-based power. The paper explores how subnational entities respond to this challenge of culturally diverse territory in terms of their institutional design. It does so from a comparative perspective by discussing a number of cases from Europe, Asia and Africa.

A first set of subnational entities strives to reinforce based on the above-mentioned ‘ownership’ rationale the hegemonic status of the dominant majority by implementing a form of majoritarian ethnic-based autonomy. The paper looks into the historical structural legacies of such a notion of autonomy (especially from traditional liberalism, communism and colonialism) and then examines its concrete manifestations in constitutional statements of identity, provisions regarding territorial (re)organization and concerning the majoritarian exercise of autonomous power.

In a second set of subnational entities, the majority seeks to share power with ‘internal minorities’. It does so by introducing mechanisms, which impose external substantive limits on the scope of majoritarian decision-making within the autonomous territory (e.g. non-territorial autonomy) and/or set internal procedural limits to majoritarian decision-making (e.g. regional power-sharing). It is argued that in circumstances of cultural diversity an institutional design, in which such mechanisms supplement majoritarian democracy, is from the perspectives of both constitutional theory and research on conflict regulation imperative for such a design to gain and maintain legitimacy and, as a consequence, lasting stability.

Frédéric Lépine, Centre international de formation européenne (CIFE), Nice

Frédéric Lépine is Deputy Director-general and Lecturer in “Federalism and Governance the Centre international de formation européenne (CIFE) in Nice, France. His research focuses mainly on federalism in political philosophy. His latest published articles are about theories of federalism and federalism in Belgium.

Federalism Beyond Unity and Diversity

1) Dans un premier temps, et dans le même contexte que l'article que j’ai consacré au Festschrift pour Michael, je présenterai une définition du fédéralisme de type constructiviste, en le définissant comme ce qui n’est ni la diversité pure ni l’unité pure. Je présenterai également une évolution chronologique de la pensée fédérale, qui est d’abord centrée sur l’organisation institutionnelle, puis sur l’ambiguïté identitaire, et enfin sur une approche beaucoup plus fonctionnaliste (avec la gouvernance multiniveau).
2) Dans un second temps, j’attirerai l’attention sur les conséquences de cette approche transhistorique du fédéralisme : le fédéralisme est avant toute une méthode d’organisation, détaché d’un système de valeurs. Cela conduit à l’échec potentiel de toute démarche normative, si cette dernière vise en même temps à définir la nature holistique de la pensée fédérale.

En conclusion, ma démarche s’inspire bien entendu pour beaucoup des travaux de Daniel Elazar, tout s’en détachant pour tout ce qui concerne la progression historique. Ma démarche cherche également à prolonger l’ouvrage de Gaudreault-DesBiens et Gélinas du « fédéralisme dans tous ses états ».

Marc Sanjaume-Calvet, PhD, Postdoctoral researcher, Canada Research Chair in Québec and Canadian Studies, UQAM.

Political scientist, devoted to teaching and research. BA in Political Science and Public Administration (2003-2007) and Master in Political and Social Sciences (2007-2008) at Universitat Pompeu Fabra. I obtained my PhD in 2013 with a thesis dealing with Morality and Political legitimacy in Theories of secession: a Theoretical and Comparative Analysis under the supervision of Ferran Requejo. I am a member of the Political Theory Research Group (GRTP) and I taught at UPF and Universitat de Girona.

My research field is political theory, especially democratic theory in relation to cultural pluralism (secession, self-determination, nationalism, multiculturalism). I have been a visiting researcher at Laval University (Quebec, Canada) and the University of Edinburgh (Scotland, UK). Currently I am a postdoctoral researcher at UQÀM with the CRIDAQ, a research center exploring matters related to democracy and diversity and I have a postdoctoral fellowship with the Canada Research Chair in Quebec and Canadian Studies and the Institut d’Estudis Autonòmics of Catalonia. I have been editing a Catalan political science blog during the last 5 years with my colleagues Marc Guinjoan and Toni Rodon.


Gabriella Saputelli, Institute for the Study of Regionalism, Federalism and Self-Government, Rome, Italy

Gabriella Saputelli is Researcher in Public Law at the Institute for the Study of Regionalism and Self Government (ISSiRFA) of the National Research Council (CNR) in Rome since March 2011. She graduated in law and obtained a Ph.D. in Italian and European Constitutional Law at the University of Teramo (Italy). She has been Adjunct assistant professor at the University of Teramo and at the Lumsa University of Rome. She is Center Associate at the EUCE/EUS of the University of Pittsburgh and has published several essays and papers on constitutional law, regional law and EU law.
The Development of EU Citizenship Between Unity and Diversity

The paper will explore the development and the evolution of the EU citizenship in connection with the European federalizing process. The concept of citizenship has an ancient history (since Roman and Greek experiences) and the citizenship rules have many important implications for the society from the social, political, legal and economical point of view. In federal systems, the status of citizenship and the relationship between federal and national citizenships symptomatically express the tension of unity and diversity and the differences between unity/disunity and diversity/uniformity. In recent times, the meaning and the role citizenship (both at national and supranational level) are influenced by socio-economic or cultural-ideological challenges, such as the growth of mobility of people, the rise of migration and the crisis of the cultural identity of people. As a result, other concepts and instruments, which seem more flexible and useful (i.e. residence, fundamental rights protection), emerge as mechanisms that better reflect the realities and the challenges. After pointing out the meaning, the characteristics and the implications of the concept of citizenship in the European context (that is to say, the EU citizenship and its relationship with national citizenships), as well as the challenges mentioned above, I will focus on the debate, the possible remedies, the solution proposed by scholars and Institutions. Particular attention will be given to the case law of the European Court of Justice, which is considered the engine of the EU integration process. Taking advantages from some elements of comparison with the US historical experience, the analysis will show which model is supposed to function better with the need to preserve the balance between unity and diversity in the EU system, considering that “United in diversity” is the motto of EU and one of its fundamental values.

Rekha Saxena, Honorary Vice-Chairman, Centre for Multilevel Federalism, New Delhi and Professor, Department of Political Science, University of Delhi.

Rekha Saxena is Honorary Vice-Chairman, Centre for Multilevel Federalism, New Delhi, India. She is also Professor at the Department of Political Science, University of Delhi. Besides, she is the Senior Advisor to the Forum of Federations, Canada. She was appointed as a Member of a Task Force of the Second Commission on Centre-State Relations set up by the Union Ministry of Home Affairs, Government of India. She was twice appointed as a country co-coordinator for India on Global Dialogue Programs of the Forum of Federations, Canada. Her recent publications include: Varieties of Federal Governance: Major Contemporary Models, Foundation: Cambridge University Press, India (2010) and Mapping Canadian Federalism for India, Konark (2002) (edited), Situating Federalism: Mechanisms of Intergovernmental Relations in Canada and India, Manohar (2006) (authored), India at the Polls: Parliamentary Elections in the Federal Phase, Orient Longman (2003), Indian Politics: Constitutional Design and Institutional Functioning, Prentice Hall India (2011) and Federalizing India in the Age of Globalization, Primus (2013) (co-authored).

Asymmetrical Federalism: A Key to India’s Unity in Diversity

In comparative federal theory, asymmetrical federalism, which was earlier suspected to make a political system vulnerable to secession, is now more positively evaluated as a mechanism to make a federal union possible among states marked by otherwise unbridgeable multicultural and multinational diversities. This revisionist theory is illustrated by the experience of federations such as Canada, India, and Belgium. On the other hand, the federations that are spuriously cited as having failed on account of asymmetrical federalism never really practised even federal democracy in the first place, let alone asymmetrical federalism. India, despite argument by some that its asymmetrical federal provisions are either ‘temporary’ or gradually diluted over the decades as in case of Jammu & Kashmir, or peripheral as in case of the northeastern states, is a durable and substantial case of asymmetrical federalism. For even though the Indian constitution intended and still captions Article 370 regarding Jammu & Kashmir as ‘temporary’, it has not been abolished for the last over six decades, including during the Hindu Right Bharatiya Janata Party (BJP)-led National Democratic Alliance government headed by Atal Bihari Vajpayee and...
even the de facto BJP majority government led by Narendra Modi. In fact, some asymmetrical features were subsequently extended to some states of the northeast like Nagaland and Mizoram under Articles 371A and 371G which are less fargoing than in Jammu & Kashmir but still quite considerable. The variation is explainable in terms of different historical trajectory of integration of the northwestern state with the Indian Union in comparison to the northeastern ones. Moreover, there are a series of other asymmetrical features in the Indian constitution for tribal communities and tribal areas under Article 371 series and the fifth and sixth schedules of the constitution. The magnitude of special autonomies vary among these provisions according to the need of the areas and communities concerned, but all are asymmetrical features different from the mainline states. And the numerical frequency of such provisions is itself is too recurrent to consider them marginal. And what is even more relevant is that these asymmetries have stood India in good stead in sustaining its federal national unity in diversity. 

Hans-Peter Schneider, German Institute for Federal Studies, Hannover, Germany

Hans-Peter Schneider is Professor Emeritus for Constitutional and Administrative Law at the University of Hannover (Germany); Acting Director of the «German Institute for Federal Studies Inc. (DIF)», Hannover; Former Justice of the Constitutional Courts of Saxony and Lower Saxony; 1998-2002 Vice-President of the IACFS. Member of numerous advisory bodies in Germany and elsewhere.

The “Ping-Pong” - Power: Deviant State Legislation in Germany

According to Article 31 of the Basic Law (BL) federal law shall take precedence over land law. This “supremacy”-rule of federal law was changed to the opposite for specific matters of legislation by the constitutional reforms of the German federal system in 2006. Now Article 72 par. 3 BL states: If the Federation has made use of its concurrent power to legislate on matters of Article 74 par. 1 BL, the States (Länder) may enact laws deviant from this federal legislation with respect to: 1. hunting (except for the law on hunting licenses); 2. Protection of nature and landscape management (except for the general principles governing the protection of nature, the law on protection of plant and animal species or the law on protection of marine life); 3. land distribution; 4. regional planning; 5. management of water resources (except for regulations related to materials or facilities); 6. admission to institutions of higher education and requirements for graduation in such institutions. But Federal laws on these matters shall enter into force not earlier than six months following their promulgation unless otherwise provided with the consent of the Federal Council (Bundesrat). As for the relationship between federal law and law of the States, the latest law enacted shall take precedence with respect to matters open for deviation.

This worldwide unique mechanism creates more variety in the German legal system. It was the result of negotiations between the Federation and the States about the repercussions on the abolishment of the framework legislation in the above mentioned matters (cf. the former Article 75 BL). Both sides have been unhappy with the entangled powers of the narrow framework settings by the Federation and, consequently, of the limited possibilities to fill it up by the States. In the past the Federation has often exceeded the frame with detailed guidelines, so that the States did not have sufficient space for their own legislation. The compromise reached by the negotiations reflects a “win-win”-situation: The Federation got the complete concurrent power to legislate unrestricted on the former framework matters and the States are allowed to deviate from these federal statutes. After the invention of this “ping-pong”-mechanism in 2006 the States at first hesitated to make use of it. But later on, until the end of 2012 more than 250 deviations by the States could be observed, whilst the Federation in no single case has intervened and the State’s deviations cancelled or overruled. In order to enable the Federation to react to the deviant statutes of the States, the States are obliged to inform the national legislature about their deviations and to report them in the National Gazette.
Nico Steytler (see under Jaap Visser for joint paper)

Nico Steytler is the holder of the South African Research Chair in Multilevel Government, Law and Policy at the Dullah Omar Institute of Constitutional Law, Governance and Human Rights (formerly the Community Law Centre), the University of the Western Cape, South Africa. Formerly he was the Director of the Community Law Centre, a research and advocacy institute that works for the realization of the democratic values and human rights enshrined in South Africa’s Constitution. His research focus of the past two decades has been on multilevel government in South Africa and Africa. He co-authored with Jaap de Visser Local Government Law of South Africa (LexisNexis, 8th revision 2014) and was the editor of the Global Dialogue volume on Local Government and Metropolitan Regions in Federal Systems (McGill-Queen’s University Press, 2009). He was a member of the Municipal Demarcation Board (2004-2014) and is a commissioner of the Financial and Fiscal Commission (2013-2017). He was a UN expert adviser to the Yemeni Constitutional Drafting Committee (2014).

Alan Tarr, Center for State Constitutional Studies, Rutgers University, Camden, NJ, United States

G. Alan Tarr is Director of the Center for State Constitutional Studies and Board of Governors Professor of Political Science at Rutgers University-Camden. He serves as the editor of the reference series Oxford Commentaries on the State Constitutions of the United States. His books include: Without Fear or Favor: Judicial Independence and Judicial Accountability in the States (2013); State Constitutions for the Twenty-first Century (2006); and Understanding State Constitutions (1998).

Difference, Asymmetry, and American Federalism

The United States is usually viewed as a symmetrical federal system. The original thirteen states each exercise the same powers and enjoyed the same representation in the Senate, and the U.S. Constitution guarantees that all states subsequently admitted to the Union join on an equal footing, with the same powers, representation, and prerogatives as the original thirteen. This understanding of the American federal system as symmetrical suffices, however, only if one restricts one’s attention to the fifty states. But both historically and currently the country has included other component units, whose populations differ from the country’s original population in terms of ethnicity, culture, and language. These include Native American tribes, almost 600 of which have been recognized by the federal government, and territories such as Puerto Rico and the Virgin Islands. The status of these non-state units is defined in part by the federal Constitution but also by federal statutes and in some instances by agreements between the federal government and those units. Given the crucial role played by non-constitutional legal materials, it is perhaps not surprising that the status of these various non-state units has altered over time, in response to shifts in political perspective and in political power. The legal status and rights of those residing in these units has likewise changed. My proposed paper describes the current status of America’s tribes and territories, analyzes the factors that have prompted shifts in their status over time, and through a comparison of their status with that of the American states, highlights the implications of this asymmetry for American federalism. It also considers the problems encountered in attempting to reconcile this diversity of federal arrangements with the federal Constitution and with prevailing political values in the society.

Dejan Vanjek, Institute for Social and Political Research, Mostar

Dejan Vanjek (Sarajevo, 1975) Ph.D. in sociological sciences (2013, Faculty of Political Sciences, Sarajevo, BiH); MA - human rights and democracy programme (2002, CIPS; Uni. Sarajevo/Bologna); BA – Faculty Studia Croatia (2000, University of Zagreb, Croatia). Scientific associate of the Institute for social and political research IDPI, Mostar, Bosnia and Herzegovina (Articles and analysis available at www.idpi.ba); Leader of Research team and co-author of the “Study on restructuring of Bosnia and Herzegovina in view of ensuring equality of the constitut-
Interplay of unity and diversity in Bosnia and Herzegovina

My paper would aim to elaborate on misuse of unity and diversity in public discourse in Bosnia and Herzegovina (BiH), pointing to how instrumental approach to these broad, but very relevant and consequential terms, affects prospects of democratic federalization toward self-sustainable socio-political system. In BiH these two terms are juxtaposed and confronted perhaps as nowhere else, although semantically and conceptually they are indeed independent one from another.

There are two dominant disjunctive policies in BiH on this: one advocating unity against diversity and the other one advocating diversity against unity. Third policy area which allows for cohabitation and harmonization of these two concepts within a single political system is a federalist paradigm and power sharing arrangements in broader sense. There the question arises how come that despite applied federal arrangement and consociative techniques, Bosnia and Herzegovina doesn’t undergo democratic federalization and optimization of its political system in line with federal values as well as its own constitutional values and tradition (I would elaborate further more on that point in the paper).

I argue that broader social-political explanation for a/m is applicable exactly in the space between unity and diversity and around them. Those are theoretical benchmarks for understanding of current federal undertaking in BiH, and, dependent on criteria, valorization of its failure or success, setting ground for its critique but also the guidelines for its development. Evidently unity and diversity can build a country but they can also tare it apart if exaggerated and mutually confronted. Unfortunately, case of BiH inclines more to the latter.

Jaap de Visser and Nico Steytler, South African Research Chair in Multilevel Government, Law and Policy

Jaap de Visser (LLB, LLB,LLD) is Director of the University of the Western Cape's Dullah Omar Institute (formerly Community Law Centre), a research and advocacy unit focusing on democracy and human rights in Africa. He is a C2-rated scientist with South Africa's National Research Foundation and co-author of Local Government Law of South Africa. His research, teaching and consulting focuses on multilevel government, local government, good governance and federalism in Africa and he has published widely on these topics. Prof DeVisser has overseen and conducted research on multilevel government in South Africa, Uganda, Zimbabwe, Ethiopia, Tanzania and Kenya. He has been consulted by many national and international organisations, including the Independent Evaluation Group (Worldbank), UNHABITAT, Forum of Federations, GIZ, South Africa's Department of Cooperative Government, the City of Cape Town as well as other local authorities in South Africa. He was lead consultant on the Western Cape Land Use Planning Act of 2014 and was recently appointed by the UNDP to review Lesotho's Local Government Act.

Old and New Diversities, Old and New Responses for Unity in South Africa

The primary division that the negotiated revolution of 1994 had to address was the black/white divide. With a black majority government the minority white fears were addressed mainly through the constitutional protection on accrued wealth. The federal elements in the constitution dealt with other divisions. The purpose of establishing
provinces with some federal features was to accommodate Zulu nationalists and right wing Afrikaners (with a focus on language and culture), although unity was sought by de-emphasizing ethnicity. One of the primary purposes of establishing local government with strong autonomous powers across the entire country was to unify urban settlements with their impoverished rural hinterlands in large, resource-redistributing, municipalities. Unity was to be obtained through equitable development. After 20 years, the old diversities are still present but have emerged in new forms. The response to the new manifestations of diversity has not altered significantly, placing the concepts underpinning unity under pressure.

Over the past 20 years the political salience of Zulu and Afrikaner nationalists, once powerful forces, has withered away. However, of late new ethnic claims are still made but no longer confined to the protection of language and culture. A small ethnic minority, the Shangaan in Limpopo Province, agitates for an ethnic-based municipality, not on the basis of preserving their linguistic or cultural uniqueness, but because of state failure. They argue that the municipality in which their ethnic community falls, is dominated by the Venda ethnic group, and as a result is neglecting them in the provision the municipal services. A similar argument is to be found among the right wing Afrikaners; they are looking again at the right of self-determination as enshrined in the Constitution, no longer only to protect their language or culture, but on the ground of the failure of the national, provincial and local state to provide basic services. Both initiatives are doomed to failure because the government’s response to both has remained the same; national unity is not to be built on the geographical recognition of ethnicity.

Robert Williams, Center for State Constitutional Studies, Rutgers University, Rutgers University School of Law, Camden

Robert Williams is Distinguished Professor of Law. Professor Williams earned his B.A. cum laude in 1967 at Florida State University, where he was elected to Phi Beta Kappa and Phi Kappa Phi. He earned his J.D. with honors in 1969 at the University of Florida School of Law, where he was executive editor of the law review and a member of the Order of the Coif. Professor Williams also earned his LL.M. in 1971 at New York University School of Law, where he was a Ford Foundation Urban Law Fellow. In addition, he has been a Chamberlain Fellow at Columbia University Law School, where he earned an LL.M. in 1980. He is admitted to the bars of Florida, New Jersey and the United States Supreme Court. He has been the legislative advocacy director and executive director of Florida Legal Services, Inc.; an International Legal Center Fellow in Kabul, Afghanistan; and a reporter for the Florida Law Revision Council’s Landlord-Tenant Law Project. In addition, he served as a legislative assistant to Florida Senator D. Robert Graham; a staff attorney with Legal Services of Greater Miami, Inc.; and a law clerk to Chief Judge T. Frank Hobson of the Florida Second District Court of Appeals. His books include The Law of American State Constitutions (2009); The New Jersey State Constitution (2d Ed. 2012) and State Constitutional Law, Cases and Materials (Fourth Edition, 2006). He is the coauthor, with Hetzel and Libonati, of Legislative Law and Statutory Interpretation: Cases and Materials (Fourth Ed. 2008). Among his articles are: “Statutes as Sources of Law beyond Their Terms in Common Law Cases” (George Washington Law Review), “State Constitutional Law Processes” (William and Mary Law Review), “In the Supreme Court’s Shadow: Legitimacy of State Rejection of Supreme Court Reasoning and Result” (South Carolina Law Review), “Equality Guarantees in State Constitutional Law” (Texas Law Review), “The State Constitutions of the Founding Decade: Pennsylvania’s Radical 1776 Constitution and its Influence on American Constitutionalism” (Temple Law Review), and “In the Glare of the Supreme Court: Continuing Methodology and Legitimacy Problems in Independent State Constitutional Rights Adjudication” (Notre Dame Law Review).
The Canada Research Chair in Quebec and Canadian Studies (www.creqc.uqam.ca) focuses its work on the construction of political communities from a regional, national or international perspective. Research activities of the CREQC concentrate on the study of federalism and countries that have federal aspirations. CREQC brings together researchers from France, Mexico, Spain, the United Kingdom and various Canadian provinces. In 2015-2016, the CREQC welcomes 20 graduate and post-graduate students.

Among its most recent publications in the areas of federal studies and Canadian politics, we can mention:

- Alain-G. Gagnon and Jose Maria Sauzen, Negotiating Diversity: Identity, Pluralism and Democracy, Brussels, Peter Lang, 2014 (in 18 languages).