



“Federally Trapped”? Comparing and Contrasting Local Government in Federal Systems

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I A PROBLEM OF (COL)LOCATION

Federal scholars generally assume that local government has its own place within federal arrangements. What this “place” implies is not as clear as one might expect. In writing this chapter an extremely chartered territory has emerged; outputs on local bodies abound, but most of them are elusive regarding local institutions *within* federations. Although the topic has gained “increasing autonomy” in federal studies (Saunders, 2006: 374), it remains underexplored. With minor exceptions (e.g., Palermo & Kössler, 2017: 281–315), local authorities are examined in introductory chapters, comparative conclusions (e.g., Kincaid, 2005: 438–439; Loughlin, 2013: 13–14; Watts, 2008: 132–133); in country reports (e.g.,

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Denters & Rose, 2005; Steytler, 2009a), and chapters dedicated to fiscal federalism, where they are “regarded as an integral part” of federations (Steytler, 2009b: 3).

Their marginalisation gives rise to a problem of *collocation*. Borrowed from linguistics, the item denotes “the combination of words formed when two or more words are often used together in a way that sounds correct” (2022). Federal studies mainly focus on the allocation of powers between federation and the states, thus “trapping” local governments in a two-tier federal dynamic.

From a formal institutional perspective, local bodies are in the hands of either tier of government, which arranges their forms and functions. This is also caused by the comparative-legal habit that classifies federal systems upon their origins. Consequently, in aggregative federations, units have exclusive jurisdiction over local bodies, which are “units” “creatures” and “auxiliaries ... for the purposes of local government” (Watts, 2006: 330).¹ This resonates with the scholarly collocation of local authorities in mature (e.g., the United States, Canada, Switzerland, and Germany) and emergent federations (e.g., Ethiopia, or Bosnia and Herzegovina). It is also taken for granted that devolutionary federations constitutionally entrench local bodies, thus allowing the centre to have a say on the allocation of powers at the local level, causing an intricate concurrency of their forms and functions.

Concurrency challenges the belief that local government is “federally trapped”. Overlapping and competing jurisdictions trigger an “uncomfortable *ménage à trois*” between all levels of government (Steytler, 2007: 229). Asymmetry makes everything more complex because units may have differentiated powers in relation to local bodies (see Sect. 3.3). Far from pointing to a “uniform institution with ... identifiable characteristics” (Steytler, 2009a: 3), we are before a constellation of local regimes.

Finally, prototypes of federalism are mainly Western-related (Bhattacharyya, 2021: 13). In several federations, traditional institutions are often part of local governance, such as the Indian *Panchayat*, the South African traditional leaders, “Indigenous Local Authorities” in New South Wales. The same occurs in Palau (Schuster, 1994), the Federated States of Micronesia (FSM: Burdick, 1986: 460), and Mexico (Xanthaki, 2015:

¹ *U.S. Supreme Court, Atkin v. Kansas*, 191 U.S. 207 (1903), at 220.

209). Likewise, in Pakistan, traditional village governance (the *dera*) interweaves with local government (Malik, 2009: 1001). Yet, these institutions are considered a hindrance to comparative analysis; hardly squaring with Western taxonomies, they are labelled as “non-democratic” (Palermo & Kössler, 2017: 282) and positioned at the margins of federal studies.

2 RE-LOCATING LOCAL GOVERNMENT IN FEDERAL STUDIES

This chapter positions local government within federal studies from a comparative legal perspective, thus dismissing the straitjackets of traditional taxonomies as regards non-Western—or hybrid—federations (Watts, 2008: 55; see also Taylor, 2007). This perspective also favours a nuanced approach to local government. Its constellation is indeed more complex than that described by federal taxonomies (Kincaid, 2005: 38; Steytler & Ayele, 2018). To assess this heterogeneity, this chapter goes beyond the black-letter constitution and examines the operational rules that effectively implement the regime of local government, thus contributing to the fuzziness of traditional taxonomies.

Advancing a comparative survey, this chapter discloses the variety of existing local institutional settings in federal contexts, the discrete solutions adopted, the “multi-national” character of federations (e.g., Belgium, Malaysia, Bosnia and Herzegovina, or Ethiopia), and the interweaving of local bodies and traditional institutions. It aims to sidestep the federal trap by moving beyond the traditional two-tier federal dialectic.

The comparative legal method proves capable of disengaging local government from its marginal collocation in federal studies. This does not mean oversimplifying the complexity at play, but rather going beyond the federal trap in its traditional understanding. To this end, it “relocates” local government, detecting deviations from traditional federal arrangements.

When exploring local government, the most contentious issue is the definition of “federal system”. Federal scholars usually take Watts’s classification in *Comparing Federal Systems* for granted. Yet, Watts acknowledged that this definition was (and still is) the *caput mortuum* of federal studies: “could *nomen* be enough [...], or do we need to search for the *res*? What is the substance that identifies federalism?” (Watts, 2013: 20).

The chapter adopts the broadest possible definition of federation that extends over all systems that, to various degrees, have been examined and classified in federal studies. Thus, “federation” encompasses aggregative² and devolutionary federacies,³ but also federations beyond the West, where federalism has undergone a process of reinvention affecting the federal-local connection.⁴

The chapter proceeds as follows. It examines the constitutional recognition of local government, the distribution of powers related thereto (Sect. 3), their functions (Sect. 4), and systems of finance (Sect. 5). Finally, it briefly analyses institutions and practices of cooperation between local bodies and the other levels of government (Sect. 6).

3 THE CONSTITUTIONAL REGIME OF LOCAL GOVERNMENT

This section examines the “federal” constitutional regime of local autonomy. Three issues arise: (1) whether local government is constitutionally recognised; (2) how related powers are distributed among federal and state governments⁵; and (3) whether the systems of local government is homogeneous, asymmetric, or forged at the discretion of state levels.

3.1 *Constitutional Recognition*

Scholars often reframe the first question asking whether local bodies constitute the third tier within federations. Indeed, several constitutions list them alongside federal and state levels of government. In South Africa

² The United States, Canada, Switzerland, Germany, Australia, and Austria.

³ Belgium, Bosnia and Herzegovina, Italy, Spain, the UK, Argentina, Brazil, Mexico, and the Russian Federation.

⁴ South Africa, Ethiopia, India, Nigeria, Comoros, Democratic Republic of Congo, Nepal, Palau, Federated States of Micronesia, Saint Kitts and Nevis, and Pakistan.

⁵ The chapter uses federal (level of) government to refer to the central (level of) government, whereas state (level of) government refers to the level intermediate between the central/federal and local ones. The precise expression used by each Constitution of concern is also used when it deems it fit to do so (e.g. Union government in India; autonomous Communities in Spain; Regions in Belgium and Italy; and so on).

(RSA), local authorities are styled as one of the three “spheres of government”; the Constitutions of Brazil, Spain, Italy, Mexico, Nigeria, Nepal, and the Federated States of Micronesia (FSM) do the same.⁶

We chose not to address the issue in terms of layers of government, because some systems do not have three levels. In some cases, this structure is impracticable: being limited in size, state and local government coincide in Palau and Saint Kitts and Nevis.⁷ In the United Kingdom the absence of a codified (and entrenched) constitution leaves English local bodies in the hands of British Parliament.⁸ The Wales Act 2017 assigns local government to the Welsh Assembly; like in Scotland and Northern Ireland, also in Wales local authorities fall under the jurisdictions of devolved legislatures.⁹

It is more productive to address the implications of constitutional recognition of local government. This is constitutionally entrenched in several federations,¹⁰ even where a two-tier federalism is adopted (e.g., Germany, Austria, Switzerland, and Argentina). For example, according to Art. 50.1 of the Swiss Constitution, “the autonomy of the municipalities is guaranteed in accordance with cantonal law”.¹¹ This does not mean that the time for a three-layered federal framework has come. These provisions still assume that local bodies are “units” “creatures” with some room left for the federal government. In several systems, the centre determines functions and financial resources of the local level. In Austria, the federal Fiscal Equalisation Act (*Finanzausgleichsgesetz*) distributes financial powers among all levels of government; the same occurs in Italy, Germany, and Nigeria (Sect. 5). In Belgium, the 2001 constitutional

⁶ See the following constitutions: Sect. 40 (RSA), Arts. 18 (Brazil), 137 (Spain), 114 (Italy), 115.I (Mexico), and 8 (Nigeria), 56.1 (Nepal), and VII s 1 (FSM).

⁷ See Art. XV s 6 and Chapter X of their respective constitutions.

⁸ See e.g., *Local Government Act 2000*; *Localism Act 2011*.

⁹ The pre-devolution *Local Government etc. (Scotland) Act 1994* is complemented by acts of the Scottish Parliament: see the *Local Government in Scotland Act 2003*. For Northern Ireland see *Local Government Act (Northern Ireland) 2014*.

¹⁰ See the Constitutions of Argentina (Art. 5); Brazil (Art. 18); Italy (Art. 114.1); Nigeria (Art. 7); Pakistan (Art. 140A(1), introduced in 2010); Spain (Art. 137); Iraq (Art. 116); Russian Federation (Art. 12).

¹¹ Constitutions of Austria (Art. 116.1), Argentina (Art. 5), and Germany (Art. 28 GG).

reform assigned local authorities to the Regions, reserving some competences (e.g., the linguistic regime) at the federal level. The Republic of South Africa (RSA) Constitution allocates many functions at the local level, and federal government interferences “equals or surpasses that of provincial government” (de Visser, 2009: 268).

Constitutional recognition does not prevent flaws between the local regime and its operational rules. These certainly occur in all federations, but they are particularly patent in hybrid federations. In Cameroon, the 1996 constitutional amendments were implemented only between 2004 and 2017; elected in 2020, local bodies gained financial autonomy only in 2019. In Bosnia and Herzegovina, municipal elections were held in the municipality of Mostar in 2020; political tensions between Croats and Bosniaks prevented them from being held for ten years. In Iraq, the war against ISIS (2014–2016) and difficult relations between the Kurdistan Region and the central government delayed the implementation of local authorities.

There are no signs of such flaws where constitutions are silent, as in Anglophone federacies. In Australia and the U.S., local governments “are not separately mentioned in the Federal Constitution”. Yet, these thrive despite their “legal recognition and authority ... exists entirely by state action” (Bluestein, 2006: 1985).

The scope of constitutional recognition thus matters more than the three-layers. It ranges from minimum requirements (e.g., state obligation to establish local government¹²) to detailed regulations related to government, functions, and financial resources.¹³ Far from entrenching the third level of government, these “homogeneity clauses” (Gamper, 2008: 76) constraint both local and state autonomy.

3.2 *The Distribution of Competences over Local Government*

Constitutional recognition is strictly related to the distribution of powers over local authorities. Again, their effective implementation is assigned either to the federal or to the state governments. In mature federations (e.g. Canada and Austria), local government is a specified head of

¹² Example, the Constitutions of Argentina (Arts. 5 and 123), Germany (Art. 28), Nigeria (Art. 8), and Ethiopia (Art. 50).

¹³ See e.g., the Constitutions of Austria (Arts. 115 to 120), Brazil (Arts. 18, 29 to 31), and RSA (Sects. 40–41, 151 to 164).

legislative power allocated at the state level and Austria. This occurs in Anglo-Saxon federations (Dollery et al., 2008): apart from Malaysia,¹⁴ local bodies are not recognised in federal constitutions and are treated as a subject matter assigned to state constitutions and legislation.¹⁵ State powers may also be implicitly inferred from the residuary powers clause. Besides the X Amendment of the U.S. Constitution, Art. 121.I of the Iraqi Constitution assigns regions all powers not assigned to the central level, among which local administration. The Kurdistan Region Government enacted laws No. 3 and No. 4 (2009), on local bodies and local elections (Connelly & Fleet, 2020).

In devolved federations, the competence over local government is frequently shared by federal and state jurisdictions. The centre retains the general competence as regards the basic features and functions of local authorities, whereas all other competences are assigned to state governments as in South Africa, Spain, and Italy. In Comoros, the Union has competence over the establishment of municipalities, whereas Islands have a say on their territorial demarcation.

3.3 *Between Homogeneity and Asymmetry*

The third question addresses the legislative intricacy of the distribution of powers, i.e. whether homogeneity or differentiation are the outcomes of the asymmetrical features of the federal arrangements. In Italy, for instance, two types of regions exist. In ordinary regions local bodies fall within central jurisdiction, which extends over electoral systems, governing bodies, and fundamental functions (Art. 117.2.p of the Constitution). Ordinary regions’ competences over them are confined to the allotment of administrative powers and the creation of supra-municipal entities. Created for protecting linguistic minorities and geographical reasons, special regions have exclusive competence over their local entities (Nicolini, 2019).

Asymmetric federal features are present in Malaysia, Bosnia, and Iraq. In Malaysia, local government is a state competence, whereas the federation has legislative powers over the territories of Kuala Lumpur, Putrajaya,

¹⁴ See Sect. 4 of State List in 9th Schedule to the Malayan Constitution.

¹⁵ Such as in Canada (Sect. 92(8) of the *Constitution Act* 1867), Argentina, Ethiopia, and the subnational Constitution of the Federation of Bosnia and Herzegovina (Art. VI.A.1-6 FBH).

and Labuan. The presence of indigenous peoples grants Sabah and Sarawak margins of discretion as regards local governments (Sect. 95D of the Constitution). In Bosnia, the Serbian *Republika Srpska* has a two-tier system of local bodies (state level-municipalities/cities); the Federation of Bosnia and Herzegovina, with Bosniak and Croat ethnic groups, has a three-tier structure (federation-cities-cantons-municipalities). In Iraq, local government is constitutionally recognised (Art. 116), but its regime depends on whether governorates have exercised their right to organise themselves into a region (Art. 119). So far, only the Kurdistan Region has been established (Danilovich, 2020) with powers over local administration. The rest of the country is still divided in governorates, whose local bodies fall under the exclusive jurisdiction of the centre.

A degree of asymmetry can also be at play when local governments finds themselves to be “creature” of state governments. In Australia, the U.S., Canada, and Switzerland, it is “inaccurate to speak of ‘the system’ of municipal government”; rather, there are as many systems as there are constituent units, with “sharp differences across” them (Young, 2009: 107). In the U.S., local entities vary significantly from state to state: counties, municipalities (cities, towns, and townships), special and school districts make local government heterogenous and asymmetrical.

4 THE SCOPE OF LOCAL AUTONOMY

Whether explicitly enshrined in constitutional texts or not, constitutional recognition shapes local government in all federations. The comparative survey has reframed the federal trap by making local bodies “coordinate” and “interdependent” with the other two levels of government. Operational rules on local government are implemented by federal/state legislation, thus making it “distinctive”. Constitutional distinctiveness must be interpreted in terms of “spheres” rather than in hierarchical terms. Together with Sect. 40 of RSA Constitution, the Russian Constitution also states that “the bodies of local self-government shall not be part of the system of bodies of state authority” (Art. 12). The Constitutions of Italy, Argentina, Germany, Austria, and Brazil similarly protect local territorial institutions, granting “self-government for the management of their interests” (Art. 137 of the Spanish Constitution).

We must bear in mind that the scope of local autonomy is dependent upon further factors. Constitutional distinctiveness is meaningful if it effectively matches territorial demands. In this lies the “democratic

character” of local government, whose vitality depends on several factors, including territorial demarcation (Sect. 4.1), local functions (Sect. 4.2), and local finance (Sect. 5).

4.1 *Territorial Demarcation*

Territorial demarcation points to the division of the federal (and constituent units’) territory into two or more local bodies, thus expressing a relation between a community and its territory, within which political power matches the needs of the former.

To secure their “democratic character”, creation and amalgamation of local bodies are often adopted after consulting their population¹⁶ or local councils.¹⁷ Plebiscites and referenda allow communities concerned by demarcation to decide its own “self-identification” as new local communities. Procedures are laid down by either federal or state legislation, which usually favours amalgamation by providing financial incentives (e.g., Italy, Australia, Canada, Switzerland, and Austria).

Where local bodies are “creatures” of subnational units, the latter may demarcate them also against the will of the populace concerned, and in the US, Australia, Canada, Austria, and Germany, Cameroon, Pakistan (except for the Capital Territory and Sindh Province), the Federated States of Micronesia, and Congo.

Constituent units are not entirely autonomous in terms of territorial reorganisation. To secure the local democratic character, proposed readjustments must preserve the congruence between community and territory, as well as the ability of local authorities to respond to the demands of its populace. This speaks to the principle of an inviolable core of local autonomy.

4.2 *Allocating Functions at the Local Level*

Another safeguard of local autonomy concerns the allocation of powers at the local level. Local bodies carry out functions assigned to them by federal or state legislation, according to their respective legislative

¹⁶ Such as in Italy (Art. 133.1), Belgium (Art. 41), Brazil (Art. 18.4), Nigeria (Sec. 8.3); South Africa (Sec. 40). In Switzerland and Germany, the procedure is regulated at the subnational level.

¹⁷ See Art. 13 of Law 7/1985 Regulating the Basis of Local Government (Spain).

competences. These functions may be fundamental (or autonomous) and delegated, according to a distinction drawn by the Constitutions of Italy (Arts. 117.2.p and 118.2) and Austria (Arts 116.1, 118.1, and 119). Fundamental functions are administrative activities that enable local self-government to meet the demands of territorial communities.¹⁸ When performing delegated functions, by contrast, local bodies are agents of federal or state administration. In any case, federal and state supervisory powers cannot interfere with local “democratic” character, whose constitutional distinctiveness grants local authorities the right to self-government as regards all their functions, even the delegated one, as the Italian and Spanish Constitutional Courts stipulate.¹⁹

As local governments are constitutionally located in proximity to their communities, several federal arrangements contain explicit or implicit references to the principle of subsidiarity.²⁰ Administrative responsibilities are conferred on municipalities, unless it is necessary to ensure their uniform implementation. This general presumption of competence means that all tasks matching the interests of local communities must be assigned at their level. Consequently, local tasks relate to the development and wellbeing of their respective communities (e.g., conservation of records, sanitation, social welfare, youth affairs and sports), local markets, economy, tourism, culture, services of general interest (e.g., energy, water, sewage, waste, and transport), urban planning, and environment.

5 LOCAL FINANCE

Traditionally, local finance within federations is the result of decisions made at the state level. This, however, provides only a partial explanation of how local finance is arranged, because it only reflects the situation of mature federations, without grasping the whole of contemporary federal dynamics. As federalism also encompasses systems showing mixed features

¹⁸ Respectively: BVerFGE 79, 127; *Federated Municipal and Shire Council Employees' Union of Australia v Melbourne Corporation* (1919) at 526.

¹⁹ For Italy see e.g., Constitutional Court, ruling no. 83/1997; for Spain see Constitutional Tribunal ruling 4/1981, of 2 February.

²⁰ For explicit references see Constitutions of Italy (Art. 118.1), Switzerland (Art. 5a as introduced in 2008). Although not formally recognised in their constitutions, it also finds application in Germany, Australia, and Austria, and Comoros. In Bosnia, it is enshrined in Art. 10 of the Local Self-Government Act of the FBH.

of both federal and unitary states (see Sect. 2), local finance might not follow either the unitary or the federal paradigm *per se*, but rather a mixed pattern, where federal and state governments concur in the field. Hence, the federal paradigm reveals its weaknesses with reference to local finance. New taxonomies now assign a new collocation to local governments in financial relations, thus diluting the traditional dichotomy between federal and unitary paradigms. Local finance is one of the most symptomatic areas in displaying the fragility of the traditional—federal and unitary—archetypes of local government. Therefore, this area of investigation is a real benchmark, against which it is possible to reassess local government within federal systems.

Our starting point is the recognition of the worldwide heterogeneity of local finance.

Ample variations exist in spending responsibilities at the local level. In certain cases, local government is entrusted with both typical local public services and a variety of policies, (e.g. education, health, and so on). In other systems, local responsibilities are very limited. Moreover, if the federal or state governments set a minimum standard for local services, this impacts the degree of local self-government (Kitchen, 2007: 489). These different settings necessarily affect the resources local governments need. In the late 2000s, for instance, local governments spent annually an average of 3000–4000 USD in the U.S. and in Europe, whereas the amount was of 36 USD in Africa, 232 USD in Eurasia, 133 USD in Latin America, and only 92 USD in low- and middle-income Asian countries (Roig, 2016).

Marked discrepancies also exist on the revenue side. It matters whether the resources come mainly from taxes raised under the authority of local governments, or whether the local power to tax is constrained against federal or state governments’ limits. The margin of fiscal autonomy determines the extent to which local governments act as “partners” of either the federal or state level of government.

Both dimensions—revenue and spending autonomy—significantly affect the scope of our analysis, i.e. the nature and trajectory of financial relations.

If local governments have only a few responsibilities, local finance and transfers are limited in their amount. Contrariwise, when local governments have several responsibilities, their reliance on transfers tends to be more significant (Kitchen, 2007: 489). If standards are then set, resources are usually transferred with conditions attached.

The vertical distribution of the power to tax, the resulting vertical fiscal gap, and the degree of reliance on federal *vs* state transfers—untied or tied—also influence the scope of local autonomy, which is in fact extensively conditioned by the degree of dependence on the federal and state governments, as well as by the prevalence of one over the other.

Against these variations, the traditional categories of federal studies—e.g., aggregative *vs* devolutionary, mature *vs* emerging federations—lose their capacity to thoroughly describe the different systems of local finance.

A comparative constitutional analysis reveals the existence of several features of intergovernmental financial relations that might facilitate the understanding of the challenges to the traditional federal paradigm and to the state-local connections. The following subsections examine different cases and paradigms.

5.1 *The “General” Spending Power as a Challenge to the Federal Paradigm?*

In the U.S., local finance can be located within the traditional paradigm, although the federal government somehow contributes to the funding of local bodies as well. Usually, local taxes represent the main revenue source of general-purpose units, but local governments also receive substantial transfers from federal and state governments (U.S. Census Bureau, 2019). If state transfers confirm the existence of the traditional state-local paradigm, federal grants represent an interesting deviation from it. Federal subsidies to local governments have changed substantially over time, reflecting the drift of the U.S. in a cooperative and then in a coercive direction (Kincaid, 1990).

Likewise, local funding in Canada is determined by each province. Yet, about one half of municipal revenue comes from taxes, while another half consists of fees and federal and provincial transfers. The latter are more consistent, thus confirming the prevalence of the traditional model in the dynamics of (financial) intergovernmental relations (Young, 2009: 116–118; see also Martineau, in this volume).

In these cases, the concurrency of federal and state transfers has probably been steered by the functioning of the spending power in federal systems, which is not only limited to the enumerated competences. Both federal and state governments can spend in areas beyond their jurisdictions; which, in practice, means on every object (Courchene, 2008: 75ff.). The federal level makes larger use of its “general spending power”

(Palermo & Kössler, 2017: 229ff.) to pursue its own objectives in areas of state jurisdiction, hereby widening its scope of influence.

The issue has been highly contentious. In the U.S., the federal government has extensive power to spend in areas of state jurisdiction. This is traceable back to the “*General Welfare Clause*” (Sec. 8 U.S. Const.), which assigns the federal government a separate and distinct authority to spend beyond the enumerated powers, with the only requirement that it is exercised for the general welfare of the whole federation (*U.S. v. Butler* U.S. 1 [1936]).

If federal transfers come with conditions attached, the consequence is a stronger invasion in areas of state and local jurisdiction to the benefit of federally-set priorities. Again, this is the case in the U.S., where the increase in federal transfers was followed by stringent conditionalities. Hence, the concept “coercive federalism” (Kincaid, 2012).

Against this trend, Switzerland still adheres to the traditional federal paradigm. Swiss municipalities enjoy extended fiscal autonomy and taxes are the main source of local funding. Nevertheless, cantons determine and constrain local fiscal autonomy, and set up inter-municipal equalisation mechanisms (Rühli, 2013). The federal paradigm is fully reflected in Switzerland, and transfers, if any, come mainly from the cantons. The limits to the federal spending power and the strong fiscal decentralisation in place account for the different outcome reached by Switzerland.

5.2 *Fiscal Centralisation as the Sword of Damocles Over the Federal Paradigm?*

The deviation from the federal paradigm is also due to fiscal centralisation and its side-effects in terms of “administrative federalism”. This is the tax system many federal systems have opted for, regardless of their aggregative or devolutionary origin.

Fiscally centralised systems show more deviations from the federal paradigm, since they need to cover the vertical fiscal gap and ensure adequate funding for state and local jurisdictions.

The case of Austria confirms this hypothesis. Despite its dual structure, the federal Constitution includes a chapter entirely devoted to local government, without formally resulting in a three-layered system (Sect. 3). On the one hand, local governments bear the costs for discharging their (own and delegated) tasks; on the other, the *Bund* determines the allocation of taxing-powers and tax-revenues, including

transfers. *Länder* also have a role in this. First, they can opt to share their (albeit limited) fiscal competences with local authorities; second, they can make transfers to them. Yet, the centre clearly dominates the scene. Accordingly, one third of revenue comes from the *Bund* and one fifth from the *Länder* (Mitterer & Seisenbacher, 2021). The three-layered drift of this system is particularly palpable in the decision-making structure for adopting the *Finanzausgleichgesetz*. Despite being a federal law, its approval is the result of negotiations involving all three tiers, although the *Bund* prevails again (Pernthaler & Gamper, 2005: 77ff.).

India follows a similar scheme. Under the 74th Constitutional Amendment Act (1992), local finance is a state competence. Each state determines which tax-revenues are shared with the local government and the taxation powers thereof (Art. 243 Const.). In practice, local revenues have a marginal role, whereas federal transfers are the main revenue source and come under the Consolidated Fund (shares are distributed according to the State Finance Commissions' recommendations), the Union-government sponsored-schemes, and the grants-in-aid determined by the Union Finance Commission. Nevertheless, states have a role in the allocation of the first type of grants, although the establishment of the State Finance Commission is mandated by the national Constitution. In fact, states have often accepted—but not always implemented—the Commission's recommendations (Mathew & Hooja, 2009: 188).

Ethiopia also adopts a centrally driven scheme. Local governments are created by states, although state constitutions do not assign them clear taxing powers (Ayele & Fessha, 2012). Local bodies have only delegated tax-raising powers limited to the collection of certain taxes on behalf of the state. Furthermore, collected revenues are exceptionally small, and local bodies are substantially dependent on state transfers (Ayele & Steytler, 2018), which constitute around 80% of local revenues, despite being of modest magnitude in absolute terms. Nonetheless, local finance also includes special-purpose grants, i.e., conditional federal transfers allocated through states. In this case, states simply rubber-stamp decisions made by the federal government. Again, the enactment of federal legislation is required for local government to raise non-tax revenues. Consequently, the one who controls the center controls the rest (Clapham, 2018: 2). In exacerbating the financial dependence of local government, this emphasises the unitarist conception of Ethiopia's centre-periphery relations (Ayele, 2014).

The Belgian case seems to contradict this hypothesis, in that constitutional recognition of local finance circumvent the federal trap. As said, local government is in the hands of the Regions, and local finance follows the same logic. Contrariwise, local fiscal autonomy is enshrined in the Constitution and tax revenues are the main source of local funding.

Despite this, local bodies strongly depend on the federal government and the Regions in terms of both transfers and tax-revenues. This is particularly evident for surtaxes, also when local governments are entitled to vary the tax-rate (e.g., the *centimes additionnels*). A change in the tax base introduced by the regional or federal legislatures has in fact noticeable repercussions on the local financial endowment. Although transfers are another substantial source of local funding, the system remains in line with the federal paradigm as most of them come from the Regions and are distributed following regionally defined criteria.

Despite the existence of a profound vertical fiscal gap between the Commonwealth and the states, in Australia local finance tends to remain under the main influence of the states. This depends on various factors. First, local councils in principle fund with own taxes on average 80% of their spending responsibilities. Local government has ample room of manoeuvre in all states with the exception of New South Wales. The actual scope of their taxing power depends in fact from a state government’s decision. Second, Australian local governments benefit from substantial federal transfers, but the bulk of them is distributed through the states via Financial Assistance Grants (distributed from the Commonwealth via states on the advice of the state grants commissions) and via specific-purpose grants. May it be only to confirm the federal position, states have the last say in that matter. Moreover, the regulation and the supervision of local finance belongs primarily to state governments (Productivity Commission, 2017).

In Germany, local finance is a *Länder* responsibility, but taxing powers are centralised to the extent that the *Bund* ends up playing a determining role. However, the drift is corrected thanks to the *Bundesrat*, whose role in federal decision-making is topical in this field. Although the legal framework is entrenched in the Basic Law and in federal legislation, the approval depends on both *Bund* and *Länder* governments. Through the *Bundesrat*, *Länder* consent to all federal laws relating to taxes, whose revenue accrues wholly or partly to them or municipalities (Art. 105 BL).

5.3 *The Mixed Paradigm as an Additional Category?*

Many federal systems hardly fit into the paradigms mentioned above. That is the reason why we speculate about the existence of a mixed paradigm presenting features common to both—federal and unitary—traditional taxonomies. From a theoretical standpoint, heterogeneity seems to manifest itself either in asymmetrical institutional solutions—whereas (1) some units behave as if they were centrally driven, while (2) others adopt the federal paradigm in its entirety—, or in the concurrency of the different levels of government in local finance.

Italy is an emblematic example of a mixed system of the first type. Local finance is characterised by a clean dichotomy. Local authorities in ordinary regions follow the unitary pattern, and those in special regions reflect the federal paradigm. In special regions, local finance is under the regional exclusive jurisdiction, whereas it is centrally driven in ordinary regions. Although tax-revenues account for almost 50% of local revenues (IFEL, 2019), in ordinary regions their amount depends on decisions of the central government. The taxation power concentrates at this level with local entities entitled, at most, to a limited tax-varying power. Ordinary regions have thus no power on local taxes. Transfers are another revenue source largely falling under the central authority. Indeed, most of the transfers come from the equalisation fund, over which the centre has exclusive competence (Art. 117.2 Const.).

Spain is a good example of a mixed system of the second type. Local government is capped within a hybrid paradigm, as both the central and autonomous governments share the jurisdiction thereover. Concurrency is also theoretically reflected in the funding scheme. Despite that, the national government plays a central role, which makes it difficult to confirm or deny the existence of the mixed paradigm. Although Spanish local governments are financed by means of their own taxes (50%) and from transfers, local taxes are mainly regulated by the national legislator (Velasco-Caballero, 2009: 315). Formally, this might also be done through units' legislation, and many regional basic laws secure local authorities' powers over their own taxes. However, this does not happen in practice, as local taxes are regulated by national law. Additional funds are provided through a share of national or regional taxes and transfers. Although both levels may contribute to local funding, the role of the centre is, therefore, dominant.

As such, Spain adds an important feature to the mixed paradigm, i.e. the need to consider the gap between formal institutions and practices, or—which is the same—between law in books and law in action.

Similarly, South Africa exhibits the typical traits of a mixed paradigm when it comes to local finance, although in practice it is clearly centrally driven. In this three-layered federal system, local taxing power originates from the national Constitution (Sec. 229.1a Const.). Additional powers can be exercised only after authorisation by national legislator (Sec. 229.1b Const.). The latter is also in charge of regulating local fiscal autonomy. Despite the constitutional entrenchment, local fiscal autonomy suffers from centralising tendencies (de Visser, 2009: 281). Against this pattern, federal grants are the most important revenue source, further strengthening the role of central level in this field. Although provinces could extend the municipal financial endowment, for different reasons this is rarely the case. First, roughly 95% of provincial revenues come from the national budget; second, most provincial revenues (80%) are indirectly conditioned by the centre, although they are formally unconditional (de Visser, 2009: 283). Both provincial and local governments are largely dependent upon the centre in terms of revenue and spending powers. Also, they are largely conditioned by the overall insufficiency of resources as well as by indirect restrictions imposed by the national government on their destination. This distances South Africa from Spain, where autonomous Communities enjoy substantial financial autonomy.

In Latin America, Brazil is formally the most decentralised country; in practice, though, it has never ceased to be centralised. Stringent federal controls are in place and “all relevant law, is federal law”. The federal government has thus a hegemonic position (Souza, 2009: 111), including on local finance. The federal Constitution entitles municipalities with the power to tax under certain conditions, which are specified by federal legislation (Art. 156). The Constitution also mandates the union and state governments to distribute the revenues they collect. These transfers are the prevailing source of municipal financing and consist mainly of union government transfers. Consequently, states limitedly contribute to local funding, and state and local governments have no say in determining the tax revenues that accrue to them. The centre concentrates fiscal powers in its hands, constantly attempting to increase the revenues that are not shared.

Finally, the mixed paradigm also comprises Nigeria. There, grants are the major sources of local funding. They come from both federal and state

governments, but federal transfers prevail (World Bank, 2007). Simultaneously, local finance is enshrined in the national Constitution, and the latter requires state governments set aside 10% of internally generated revenue for local councils. The Constitution also prescribes the set-up of the State Joint Local Government Account, where federal resources are distributed to local governments via states. The allocation criteria are determined by subnational lower houses under the prescriptions of the National Assembly (Galadima, 2009: 251). When states have a say on local finance, they have usually diverted funds from local governments to state functions. Therefore, local government and finance are weak.

Besides the gap between formal institutions and practice, the last three cases emphasise that non-legal factors cause substantial deviations from traditional paradigms. Among other things, fragile economy, low fiscal capacity, weak state government, and lack of administrative capacity at the subnational and local level might be decisive in determining whether the state competence over local finance is more apparent than real.

6 CONCLUDING REMARKS: FEW CERTAINTIES AND STILL A LONG WAY TO GO

In challenging the traditional collocation of local government within federal systems, the comparative legal analysis has demonstrated the strong structural and functional heterogeneity that exists in the federal practice. Local government can hardly be traced back to the simplification typical of comparative taxonomies, but the latter do contribute to the (re-)positioning of local government in federal studies.

The choice of reviewing the foundations of local government in federal systems (i.e., power, territory, and money) is particularly fitting for these purposes. Since these are key elements of federal systems, dynamics related thereto appear to be decisive also as regards local government. It is not by chance that these elements precisely call into question the “federal trap” and discard its *raison d’être*.

The *trait d’union* between the array of federal arrangements is the existence of deviations from the federal paradigm. Our analysis, though, goes beyond that to find out similarities and differences among them.

In so doing, several interactions among legal and non-legal factors have emerged. These also have a strong impact on the phenomenon under scrutiny and beyond that on the very functioning of federal arrangements. We have attempted to simplify this complex reality, but such efforts must

be read as a starting point for a further examination of the topic; certainly not as its point of arrival. The topic under scrutiny is still “unripe” to reach (hasty) conclusions, and the lack of doctrinal interest towards an integrated, and intergovernmental, reading of the phenomenon might be considered as a contributing factor to this deadlock.

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