

21 Territorial power distribution

1. Federations, Confederations and Unitary States

The most clarifying usage of the word “federalism”, as we see it, is to let it denote the *general idea* of organised co-operation between states. The word “federation” could then be reserved for the notion of a *constitutional structure* of a particular kind. When we let the word “federalism” denote the general idea of international co-operation, most peoples of the world seem to be oriented towards federalism as a general attitude. “Federation” in the strict sense of constitutional law is much less common. Most states in the world take part in all sorts of international co-operation, but only some fifteen of them are “federations”, in the sense of Germany or the USA, for example.

Comparing a *federation* with the alternative constitutional constructs of a *unitary state* on the one side, and that of a *confederation* on the other, is a way of illuminating the fundamental issues. By comparison, the different constructs are looked upon in the perspective of alternative solutions to the same problem. A *unitary state* as one basic alternative, however decentralised it may be, is so organised that every piece of legislation and taxation at the central level has a direct effect, together with the fact that every citizen gets equal representation. Countries like Denmark, Finland, France, Norway and Sweden are clear examples of unitary states. A *confederative* structure, as the other basic alternative, is so organised that every piece of legislation and taxation has to be confirmed and transformed into national law and taxation by the legislature of the member-state. Furthermore, another important aspect of a confederative structure is that the basic representative principle is one-state-one-vote and not one-man-one-vote. In practice this means that very little can be achieved by all the member-states in common action. In practice all confederative structures give veto powers to each of their member states. An example of a confederative structure is The League of Nations between 1919 and 1939.

A *federation* has mainly three characteristic traits. The first is that central government can legislate and tax with *direct effect* on the citizens of the member-states. The second characteristic trait is the element of *primacy* of federal legislation in cases where it comes into collision with the legislation of a member-state. The third characteristic is the standardised *representational compromise* between the idea of one-man-one-vote in the lower chamber of the national parliament, on the one hand, and the idea of one-state-one-vote in the upper chamber, on the other.

The Federal Republic of Germany works fairly close to the ideal type of a federation. A bicameral assembly ensures representation in the legislature for the member states. In the lower chamber, the *Bundestag*, the principle of representation is strictly one-man-one-vote, while in the upper chamber, the *Bundesrat*, the principle of one-state-one-vote is applied, although somewhat modified. Less populous member states like Hamburg

or Mecklenburg-Schwerin are being favoured compared to heavily populated states like Bavaria or Nordrhein-Westphalia, but not up to the point of equality. Russia is the second example of a federation in the Baltic region, with an upper chamber, the *Council of Federation*, consisting of two representatives from each of the federal units. However, the Russian constitution is unclear regarding the appointment of these representatives, and the federal structure of the country as a whole is as yet rather ambiguous, even though the regions have developed into stronger entities.

From the point of view of a strictly one-man-one-vote representational and unitary state, the construct of a federation means a constitutionally fixed over-representation of the less populated member-states. Politically speaking, that is part of the basic bargain. For historical reasons the smaller states demand and are guaranteed over-representation in order to stay loyal to the constitutional idea that legislation and taxation can be accomplished with majority rule at the federal level, have direct effect in relation to the citizens of the member-states, and primacy in relation to their legislation. Realistically speaking, the balance of power and initiative between a federation and its member-states depends heavily upon the smooth running of the revenue-raising powers and redistributing capabilities within the constitutional structure as a whole. Redistributing resources is the means by which constitutional cohesion and adherence is achieved.

2. Local Self-Government

The local government plays a very important role in a modern state. In many societies it provides numerous services essential for welfare policies. In a democracy, the basic difference in local government is between *dual* and *fused* systems. Under a dual system, local government operates separately from the centre. In a fused system, on the other hand, the central and local government are joined in one office – such as the prefect, a central appointee who is charged with overseeing the administration of a particular locality. France is the most influential example of a fused, centralised system of prefects. All of the countries of the Baltic region either have, or are moving towards, the dual system with local units of self-government.

As regards the history of local government, however, we must divide the Baltic Region in two parts: the West-Baltic (Scandinavia and Germany), with a history of local self-government going way back in history, and the East-Baltic (Poland, Lithuania, Latvia, Estonia and Russia), with democratic local government implemented only a few years ago. This difference is rooted much further back in history than the legacy of Communist rule. Even long before the years of Communism, the territorial systems of a major part of Poland, as well as the three Baltic States, were strongly influenced by the centralist traditions of the Russian empire.

But still, it is important to remember that local self-government systems were impossibilities during the Communist regime. According to the socialist model, local authorities were regulated in accordance with the doctrine of “homogenous state power”. This doctrine assumed that systems of local self-government, being sensitive to the interests of the locality, might divide the country. Egoistic or particularistic local interests were seen as harmful to the process of satisfying “the needs of the whole working class”. These “needs” could only be met by the policies of the Communist Party and central authorities. Consequently, local decision-making was to be responsive to central policies rather than the local electorate. As a result, local self-government became a chimera.

The size of the local units of government has a crucial impact on local politics and economic life. With some simplification one could say that arguments for both sides regard political and economic size. On the one hand, units large enough to imply economy of scale in service administration are needed. On the other hand, both theoretical and practical evidence suggest that the smaller the size of the unit, the better the citizen satisfaction and participation in public life. The trade-offs between these arguments generally result in some kind of compromise. With the exception of Germany, the municipalities of the Baltic Region are relatively big. This is the effect of an amalgamation process in several of the countries during the last 25 years.

The Scandinavian countries have highly consolidated systems of local self-government. The scope of their local functions is very broad, and the municipalities and counties play a decisive role in implementing public policies. In the East-Baltic countries, the systems of local government are still developing. Typical municipal functions in the Baltic region include: child-care, pre-school and primary education, basic health service, public utilities (gas, water supply, sewage, street cleaning, waste collection), and public transport. As a rule, the counties are responsible for higher education, hospital and planning. There are of course exceptions to these general characteristics.

3. Local elections

Generally speaking, only municipalities enjoy autonomous self-governmental structures (Sweden and Denmark being exceptions, however, even with self-governmental units at the county level). The most obvious way for local citizens to participate is to vote in local elections. In Scandinavia the local electoral systems are proportional, while in Germany and Poland the systems are mixed. In Poland, for example, the small municipalities use the majority system, while cities with over 40,000 of population use the proportional formula. The rationale for this division is that contacts between voters and politicians are closer in small rural areas, thus working in favour of a system allowing the choice of an individual candidate, while the more informal contacts in cities make proportional party elections more suitable. The highest authority in the municipality is the local council. Its size varies from 10 to 101 elected representatives, depending on the size of the local unit. A common feature in the Baltic Region is the relatively weak position of the mayor, who is generally elected indirectly. Local politics in Scandinavia, as well as in Germany, are essentially party dominated. After the Second World War, about 60-65% of the local representatives were elected on a partisan basis, but now this figure is 90% or higher. However, this does not necessarily imply a highly polarised political situation, because there is a tradition of local consensus deeply rooted in the area. The activity level of political parties in the new democracies has developed since independence, even though party organisation is weak. As local elections were introduced, the participants in local elections have been equal to those in national elections. However, a demanding, while at the same time passive, attitude of the citizens – accustomed to a

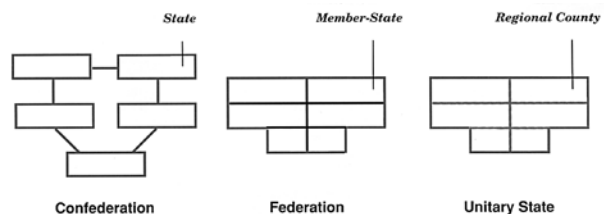


Figure 93. Three basic forms of territorial power distribution. Ill.: Karin Hallgren

centralised and strongly hierarchical political system – is one of the most important problems facing local governments in post-communist countries today, in combination with corruption, which has followed in the footsteps of privatisation of land and industries.

Citizenship and suffrage in Estonia

Priit Järve

In a democratic state, there is a very clear link between suffrage and citizenship. An individual without citizenship usually also has no right to vote. Thus, non-citizens are generally assigned to the same category of non-voters as children, criminals and the mentally incompetent. In most democracies, this category is fairly small – although, historically speaking, the nearly “universal” suffrage is a relatively modern phenomenon.

Citizenship and suffrage in Estonia has been an internationally debated issue since 1992 – in addition to the political discussions at home – due to the large Russian-speaking minority residing in the country. According to the population census of 2000, this minority makes up almost 30 percent of the population of 1,37 million, or more than 400,000 people. The majority of these Russian-speakers were not granted Estonian citizenship under the citizenship legislation of 1992 because they or their parents were not citizens of the pre-1940 Estonian Republic.

The rules that now apply, under the new Citizenship law of 1995, prescribe that non-citizens can acquire Estonian citizenship through a “naturalisation” process, i.e., a language and constitution test, a loyalty oath sworn to the state of Estonia, and permanent residency of five years (plus one year for the process of application). Some 30 percent of the non-citizens have acquired Estonian citizenship since 1992, while approximately the same amount, or almost 100,000 people have applied for and received the citizenship of the Russian Federation instead. However, the remaining 200,000 Russian-speakers reside in Estonia with the right to vote only in local (not national) elections and without the right to run for political office. The same applies to the citizens of Russia living in Estonia.

Basically, there are two conflicting approaches to the issue of suffrage and citizenship in Estonia. They can be described as the historic and the contemporary approach respectively. The first approach, more characteristic of the Estonian side, draws heavily on history and underlines the changes claimed to be negative or dangerous for the survival of the Estonian nation. Here the rapid change in ethnic composition of the Estonian population comes to the fore with the share of Estonians falling from 90% to almost 60% during one generation (from 1944 to 1989). Rejection of the so-called zero-option, i.e., refusal to grant Estonian citizenship to all applicants automatically, and establishing certain requirements for those seeking citizenship instead, is generally believed to be an appropriate reaction to what has happened to the Estonian population during the Soviet years.

There is also another argument supporting this view: comparisons with citizenship laws in other countries show that the Estonian requirements for citizenship are quite liberal by current international standards. Hence, the Estonian side maintains that, from a legal point of view, there is no problem with the country’s citizenship legislation.

The second approach, clearly that of the Russian-speaking minority and of many of the international bodies, maintains that history and nation do not matter as much as the Estonians think they do. Rather, one should start with the present multi-ethnic situation and think about individuals. As a characteristic example of this view, the Helsinki Watch has pointed out that it “rejects the argument that all those who came to Estonia after 1940 did so illegally and therefore were never citizens. Their residency was legally established under the applicable law at the time they entered the territory of Estonia. Those who settled in Estonia after 1940 must be treated as individuals, not as instruments of state policy, however reprehensible that policy may have been”. (Helsinki Watch, “Integrating Estonia’s Non-Citizen Minority”, October 1993, vol. 5, Issue 20, p. 14.)

According to the proponents of this view, a large number of people without citizenship is a security risk for Estonia, since the interests of these individuals are not properly represented at the state level, and their behaviour can be unpredictable. The underlying implication of this argument is usually that Estonia should grant citizenship more generously by further simplifying its conditions, especially the language requirements. Yet, the two largest language communities (Russians and Estonians) are facing each other with different interpretations of what is going on.

In the context of the accession to the European Union, the Estonian Government set the course in 1998 to integrate Estonian society, i.e. to lower barriers, which interfere with the naturalisation of Russian-speakers and their full participation in life. If this effort is successful, Estonia will make an important step towards being a fully democratic society.