



The problem of the capital city
New research on federal capitals
and their territory

KLAUS-JÜRGEN NAGEL (ed.)



Generalitat de Catalunya
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BARCELONA
2013

Biblioteca de Catalunya. Dades CIP:

The problem of the capital city : new research on federal capitals and their territory. – (Col·lecció Institut d'Estudis Autònòmics ; 86)

Bibliografia

ISBN 9788439390633

I. Nagel, Klaus-Jürgen, ed. II. Institut d'Estudis Autònòmics (Catalunya) III. Col·lecció : Institut d'Estudis Autònòmics (Col·lecció) ; 86

1. Capitals (Ciutats) 2. Federalisme
911.375:342.24

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Cover photo: Palau Centelles, Barcelona (16th century). Detail of Renaissance sculpture that crowns the main studio door.

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First edition: October 2013

ISBN: 978-84-393-9063-3

Legal deposit: B. 24133-2013

Production: Entitat Autònoma del Diari Oficial i de Publicacions



Imprès en paper certificat FSC®

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INTRODUCTION: ASYMMETRY AND THE CAPITAL¹

KLAUS-JÜRGEN NAGEL

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Federal Capitals often have special statutes. Compared with member states, they often enjoy a lower degree of self-government and, sometimes, a lesser share in the governing of the federation. Surprisingly, the burgeoning literature on asymmetric federalism (Agranoff 1999, Watts 2006, Requejo 1999, 2001, 2003, 2004, 2005, 2007, Requejo/Fossas 1999, among others) has overlooked this feature of a *de iure* asymmetry² - and this in spite of its importance for the relation between democratic equality, citizenship rights, and federalism, an issue at the core of the normative discussion on asymmetric federalism.

Political theory has not yet tackled this important question. Works on asymmetric federalism have usually analysed differences between member-states or between member-states on one hand and territories or associated states on the other. Important contributions have covered asymmetric accommodation in multinational democracies, where some of the units –but not all- are nations or at least culturally differentiated communities. Asymmetric federalism has been portrayed as a way of providing recognition and thereby improving the stability of the federation and fostering respect for double identities. We have ourselves contributed to this literature (Nagel/Requejo 2009a and 2009b, 2010). But surprisingly, this literature has, up to now, not included the case of the clearly asymmetric treatment federal

1 Important parts of this introduction have already been published (Nagel 2011a and 2011b). In order to avoid tedious repetitions, no further references to these publications will be provided.

2 This is perhaps because political theory up to now has concentrated on cases of multi-cultural and plurinational federations.

capitals enjoy or suffer. This holds true in spite of the fact that a lesser share in central government (or its absence) is not always compensated by *more* self-rule, but often runs hand-in-hand with *less* self-rule.

Since Rowat (1973) advocated that at least in decentralised federations like Canada, a federal district solution (a D.C.), should be preferred to the model of a city in a member state (Ottawa), political science has rarely asked for the normative background of choosing the model of a capital city in a federation.

However, comparative literature is also rare. Indeed the comparison of federal capitals remains clearly under-researched. True, capital cities have generated a lot of literature on planning, urban problems, even relating (world-) cities to globalization (Campbell 2003, Hall 1993). And this literature includes federal capitals, too. Works on capital cities such as those presented by John Taylor et al. (1993) or David Gordon (2006) include some federal capitals. However, they usually centre on planning issues or, like Barani (2011), Boyd/Fauntroy (2002), Feldman (2010), Kaufhold (2000), or Zimmermann (2010), on financial aspects.

Finally, some history books tell us about the relation between capital cities, their national institutions and monuments, and their importance for nation building (Daum/Mauch 2005, Lessoff 2003, to name some examples relevant for our study).

When capitals of federations are included in such literatures, this affects mostly the big ones. In the world, capitals are usually the biggest towns of their countries. This is the rule for *non-federal* countries (with very few exceptions in Asia,³ in Africa,⁴ and in the Americas;⁵ in Europe, if we exclude Turkey, there is only the case of the Netherlands). When we look at *federations*, we find many more cases, among them such significant ones as India, Brazil, the USA, Nigeria, Canada, and Australia, only to name some of the largest federations (but there is also tiny Switzerland).

Luckily, to assert the facts of asymmetric government in federal capitals, we can rely on a few case studies and (very few) comparisons. Donald Rowat's classical studies on the government of federal capitals highlight the tension between the interest of federal government to develop its capital and its national role, and the local interests of their inhabitants, while the states

3 China, Vietnam, Myanmar, Kazakhstan.

4 Morocco, Tanzania, Cameroon, Ivory Coast.

5 Bolivia and Belize.

interests are less considered. However, Rowat's main work, though still important, dates from 1973 (!) and is centred on questions of governance.⁶ There is some comparative updating in the work of Harris (1995: 239-262, particularly on Canberra, Brazil, and Mexico. And above all, there is a new book edited by Slack/Chattopadhyay (2009),⁷ however, it concentrates on questions of funding and finance of federal capitals, transfers and taxes. This important work analyses their income as well as their spending autonomy and needs. It does not address the reasons and moral justifications of setting up the capital, however, it includes important information on the case studies included in this volume, as it provides basic data on representation in shared government, eventual restrictions to self-government, and the question of compensating less autonomy with money. This study also includes *some* information on the initial setting and some data on tendencies over time. However, such information is only available for some of the capital cities. Hoff/Krüger (2004) had already presented a less ambitious study, also concentrating on financial aspects, but only on a small number of capitals. Van Wynsberghe has made some very important contributions (2002, 2003, 2005, 2007, 2009). She has updated Rowat (1968, 1970, 1973, 1993), and ordered no less than 17 capitals by degree of predominance of federal/national interests or local interests with regards to self-government and finance. She is also the author of very important studies comparing Brussels and Ottawa (2002), and of in-depth articles on the case of Brussels. Indeed the Belgian capital is without doubt the best studied case (Alen et al. 1999, Cattoir et al 2002, De Groof 2009, Dumont/van Drooghenbroeck 2007, Lagasse 1999, Nihoul 1993, Poirier 2007, Robert 1997, Swenden 2002, among others), followed by Washington (American Bar Association 2006, Bowling 1993, Boyd 2007, Boyd/Fauntroy et al 2002, Daum/Mauch 2005, Diner 1992, Fauntroy 2003 and 2004, Gandhi et al. 2009, Garg 2007-8, Harris 1995 and 1997, O'Cleireacain 1997, Price 2003, Romeo 2010, Walters/Travis 2010, Wolman 2006), where the town administration has presented some important documents and studies. To a degree, such individual and institutional studies also exist in other cases like Berlin (Baesecke/Maier 1981, Barani 2010, Biedenkopf 2003, Craig 1998, Färber 2003, Hoff/Krüger 2004, Pommerin 1989, Salz 2006, Zimmermann 2009 and 2010) and Ottawa (Andrew 2004, Andrew/Chiasson 2012, Andrew/Ray/Chiasson 2011,

6 See also the review by Brereton (1974).

7 See also the review by Wettenhall (2010).

Chattopadhyay/Paquet 2011, Knight 1991, Paquet 2006, Tassonyi 2009, Van Wynsberghe 2003). For future comparisons with other cities, we also point to the literature on Bern (Bundeskanzlei 2004, Kübler 2009, Kübler/Scheuss 2005, Stadler 1971), Canberra (Atkins 1978, Halligan/Wettenhall 2000, Headon 2003, Juddery 1989, Oakes/Reeder 1991, Sansom 2009, Wettenhall 2009, Wigmore 1971, Wright 1998) and Ciudad de Mexico (Abal Medina 2003, Alvarez 2002, Delgado 2009, Harbers 2006, Loeza 1995, Wirth 2006).

Following this literature and in particular the contributions of Van Wynsberghe, the following typology may be established:

Table 1: Own elaboration, based on Slack/Chattopadhyay 2009: 6-7, 298 and Van Wynsberghe 2005; our case studies are in italics.

FEDERAL DISTRICT	MEMBER-STATE	CITIES IN MEMBER-STATES
Abuja, Addis Ababa, Brasilia, Buenos Aires, Canberra, Caracas, Islamabad, Kuala Lumpur, Mexico City, New Delhi, <i>Washington DC.</i>	<i>Berlin, Brussels</i> , Moscow, Vienna. In some aspects, we might also include Madrid, the capital of a strongly decentralised state.	Bern, <i>Ottawa</i> , Pretoria/Cape Town. Formerly, also Bonn, Belgrade (Yugoslavia) and Moscow (USSR).
These capitals have a legal status that differs from that of the states that surround them. These capitals may lack constitutional sovereignty, representation in federal institutions, and may depend on federal legislation and nominations and/or control. Even if self-administrating, the city government does not take over all tasks of a member-state.	These capitals are both city and state. In some cases the capital does not enjoy full parity with other states of the federation. Brussels is also the capital of Flanders and the French Community (and Europe). The Autonomous Community of Madrid and the Brussels Region also include other municipalities. Often, the capital state has some asymmetric arrangement.	The capital is a simple municipality within a member-state, falling under its jurisdiction. However, in some cases, the capital may benefit from special funding arrangements. Capitals that are, at the same time, capital of a member-state, may be considered a sub-group (Bern, formerly Belgrade and Moscow under the USSR), different from the rest. In South Africa, Pretoria would belong to the second, Cape Town to the first subgroup.

Small capitals are usually to be found in the *district* model; however, not all capitals organized as districts are small. Artificial, planned, newly built capitals are to be found in the district type. No European capital is to be found in this group, nearly all capitals here are American, while some are located in the Far East.

Cities in this group may have local government (but policing, courts and finance are often excluded) or not. They all have no administration equal to that of a member state, and all are administered by federal and eventually (under more or less intensive supervision) by a local government of their own. Separation of powers, a federal principle, is often neglected in their territory, where the respective federal government usually exercises competencies that it does not possess in other places. We find much variety inside this group: the degree of local self government and fiscal autonomy may be higher – more close to that enjoyed by a state – or lower – closer to a mere local administration; there may be more or less tiers of administration; the district may strictly include one city or even part of it, or include more than one municipality etc. However, if compared to a member-state, all districts have *less* self government (this may happen to other types of territories that form part of the respective federation, too; however, where such other territories exist, they usually have the perspective of becoming states in the future). For district inhabitants, the division of powers between the levels does not exist or is not complete; and in some places, even their representation at the federal level is curtailed. This asks for explanations, for the asymmetry existing between the district and the other territorial units, but also between the rights enjoyed by citizens of the districts and citizens of the states. Can these asymmetries be justified? Under what terms?

Some (few) capitals are *member-states* in their own right. These cities have a double status, they are municipalities and states. In some of them, there is even no differentiation between the local and the state administration, and the city mayor is the head of the corresponding state government. In others, this differentiation exists. This is particularly the case when we find other municipalities included in the member state of the capital. Curiously, the –few- capitals grouped in this category are all located in Europe. However, can these cities develop the true federal spirit of a member state, or are they dominated by the interests of the federal bureaucracy? Can they be trusted by the other member states to act as such? Curiously, these cities are all the biggest cities of their federation – were they just «too big to be passed over» when the federation was set up?

Capitals as *cities in member states* form the third group of federal capitals. Citizens of these capitals are «nothing special», they are just double citizens of the federation and of the member state where their city is located. This is a state they cannot control, though there may be a difference between those cities that are at the same time capitals of the federation and

of the particular member state they belong to, and those that are not. In this (small) group, there is only one American case, Ottawa. Rowat made the point that this type is to be found in federations that are quite centralized anyway, like (in his time) Moscow/USSR, Belgrade/Yugoslavia, and Islamabad/Pakistan. However, there was always the case of Bern. We may ask whether the chance to rule over the federal capital does not give a particular advantage to the member state where the capital is located, and we will see whether in fact, particular laws and rules apply to prevent such influence, at least in the case of Ottawa, the capital of a decentralized federation.

This book tries to answer such and questions by dealing with four cases belonging to different groups. The Federal District model is represented by Washington, where asymmetries in self rule and shared rule are particularly sharp, and where we are sure to find a lot of considered federal argument for and against the model. Berlin and Brussels represent the member-state model, though Brussels «not quite», as we will see. Ottawa belongs to a single member state (Ontario in Canada). Therefore, our case studies will highlight different features of *de facto* and *de iure* asymmetry.

The questions we will try to answer in each case include the following ones: What are the normative foundations for each arrangement? Why were these different models initially chosen? Is there a comparatively more successful model? Are there any trends pointing towards a change of any model? And in particular: Can the asymmetric treatment of capitals be normatively justified? How?

Curiously, federal arguments on stability and in favour of a stronger union seem to justify, at least to most actors, asymmetrical arrangements, that, seen from outside, seem to contradict democratic and liberal principles and norms, and that are usually not tolerated in the case of minority nations. In cases of minority nations, as our own research has established, asymmetric arrangements often face claims for re-symmetrization (Requejo/Nagel 2009, 2010). Is this also the case when we deal with federal districts, and how successful are those claims?

No systematic study of the motives that have driven actors to choose the type of capital city has yet been presented. The literature permits us to distinguish between military reasons (a capital far from the frontier), geographical reasons (in the middle of the country, or at least equidistant from the most powerful member-states), development strategies (to help underdeveloped zones), and national reasons (to foster cohesion, to repre-

sent the diversity of the federation). Federal arguments, it seems, can go different ways.

The «district» model has been credited to have a better chance of reflecting the diversity of the federation. It «seems to be particularly appropriate ... in decentralized federations» (Rowat 1973: 350).⁸ It may avoid conflict between competing powerful member states; it may «neutralise» the capital, making its choice acceptable for all member-states. However, it might be the population of the capital city who pays the price for this.

The «member-state» model is the main alternative to the asymmetrical district model. It remains to be seen whether its choice is motivated by the strength of the capital city. The model avoids the general problems of *de iure* asymmetrical treatment between the citizens, establishing, however, a new and relevant asymmetry between the states (particularly where the capital is the one and only city state). However, it seems to give the capital a double role on both levels: federation, and member states, and may be strongly rejected by the none-city-states. Both the district and the city state (particularly if they are small) may bring with them specific problems related to the question of the city boundaries (commuting, taxing...).

The «city-in-a-member-state» model tries to see the capital as a simple municipality. But it might give an unfair advantage to the state where the capital is situated, submitting the latter to particular state laws, policing, and financing. In addition, on the one hand the member-state may act as a barrier between the federation and the municipal government of the capital. On the other hand, the city government itself may seek direct contacts with the federal administration and hence overstep the member-state. This model may also fail to reflect the diversity of the federation (Ottawa is an English speaking capital in a bilingual federation). The model may «suffer from serious problems of divided jurisdiction, financial insufficiency, cultural domination by the governing state, inadequate metropolitan government, and the inability of the central government to control the capital city or its development in the interests of the nation» (Rowat 1973: 349).

8 Rowat admits that the same goal may be theoretically reached by other means, like joint control, and he advocates for strong self government of the district, including a second tier of local government to be established (351).

The present book will tackle the aforementioned questions. However, in spite of the funding the *Institut* has generously provided⁹ and which made possible the previous meeting of most authors during a public workshop in Barcelona,¹⁰ this book can only provide in-depth analysis of five cases, three European and two American, including, on occasion, a sixth (Canberra in Australia). These are cases of special interest. According to some authors there is a tendency to give «federal districts» more autonomy (van Wynsberghe 2005: 20), bringing them closer to the «member-state» model. «The trend for capital cities is towards greater forms of autonomy and heightened enfranchisement over time» (George Washington Institute of Public Policy: 2007). Conflicts over «taxation without representation» (Washington) will be analysed – is it leading to the end of the district model and moving towards a member-state model as propagated by some actors? Mexico and Brasilia (in the latter case, after a long process) as well as Canberra (against initial resistance by its inhabitants!) and even Abuja (in spite of being a district that initially had succeeded a member state – Lagos – in the function of the capital) have already acquired some characteristics of the «capital-as-member-state» type. On the other hand, should Ottawa not be a Federal District made up of territory carved out from the provinces of Ontario (the city of Ottawa) and Québec (French speaking Gatineau) to form a bilingual Federal District? What were the normative arguments in Germany to change the capital city from a state model (Bonn) to a model of a (real?) symmetric member state (Berlin)? We will also consider the possible existence of deviations from the «pure» types. «In-between» cases (Brussels region is a member state, but «not quite») are of special interest.

Up to know, not many research groups have tried to compare federal capitals and none (to our knowledge) with a background in Political Theory. The Fourth International Conference on Federalism in New Delhi (2007) initiated some research on metropolitan regions, and the recently published aforementioned book by Slack and Chattopadhyay (2009) is a result of this. There are some groups comparing metropolitan regions in general, of course (for example, the International Metropolitan Observatory –IMO– at Stuttgart University, since 2002), but as they are often fixed on plan-

9 I take the opportunity to thank the IEA for the Research Subsidy granted on 13 September 2011.

10 «Capital cities of federations. Another type of federal asymmetry?», Institut d'Estudis Autònòmics, Barcelona, September 17, 2012.

ning, they are not of much use for our study. In Ottawa the Canadian High Commission offers a National Capital Research Scholarship and there is a Canadian Centre for the Study of Capitals, however, it too is concentrated on planning. Brussels is the most important exception in this respect. The *Institut d'encouragement de la recherche scientifique et de l'innovation* and the *Université Catholique de Louvain* funded, from 2001 to 2005, the *Projet la Région de Bruxelles-capitale*, which included a comparison with Berlin and Ottawa, and made reference to other cases. Since then, the review *Brussels Studies* has become one of the most interesting journals for our purpose (The Institutional Future 2008).

In the chapters of this book that deal with the particular cases, the authors will provide understanding for *de iure* asymmetries (or their absence). They start by answering simple questions and assess basic data such as the population share of the capital with regards to the overall population, compare it to other cities in demographic terms and income. They inform on whether the respective capital is a major economic and financial centre, and how its population fares with regards to the general GDP per capita. Much emphasis is placed on assessing eventual asymmetries in self-government and in shared government. Are all three powers of the federal government concentrated in the capital? Are the asymmetries anchored in the constitution?

With regards to finances (including autonomy on rules, administration, spending and compensation payments for performing the functions of a capital), we will rely on the works already cited. For example, published research has already established that the district model does not necessarily mean more federal money, thereby less self government and/or share in federal governance is not always «compensated» with more money.

In all case studies we insist on the reasons for the initial choice of status for the capital, as reflected in acts of parliament, and/or in public debates like the Berlin-Bonn discussion in Germany. For the historic cases of Washington, Ottawa, and Canberra a particular chapter on the reasons for choosing the model and the city is included, too. The authors assess what kind of actors preferred what type of capital, and what kind of arguments (individual rights, democracy, equality, nationalism...) they brought forward. The case studies on Washington, Ottawa, Brussels, Berlin and Moscow also dedicate space to conflicts that have appeared after the initial choice was established. In the cases where there has been a change of capital city, they will also assess how conflicts with the former capital

were solved. Finally, they will also assess whether there are or have been tendencies (successful or otherwise) to bring the status of the capital nearer to one of the other type.

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CHOOSING THE FEDERAL CAPITAL: A COMPARATIVE STUDY OF THE UNITED STATES, CANADA AND AUSTRALIA

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SUMMARY: Introduction. The USA. Canada. Australia. The three cases in comparative perspective. Conclusion. Bibliography.

1• Introduction

Capital cities play an important role in virtually all states. They act as administrative centres and often develop into hubs of economic, social and cultural activity as well as acting as national symbols that embody the shared values of a state (such as democracy, equality or development) (Hall 1993). The word capital itself derives from the Latin word *caput* meaning head and denotes a certain primacy status associated with the very idea of a capital. But in federations the idea of federalism is often deemed to play an important role on the capital city, to the extent that as Elazar (1987:75) argued «true federal systems do not have capitals, they have seats of government. ‘Capital’ implies a place at the top of the governmental pyramid, whereas ‘seat’ appropriately suggests a place of assembly». This is because federations are composed of distinct member states that are united in a governance partnership. Federations are varied and their origins differ, however this idea of ‘seat’ of government as opposed to ‘capital’ city is especially relevant for «coming together» federations: federations were «relatively autonomous units come together to pool their sovereignty while retaining their individual identities» (Stepan 1999:23). The choice of capital or seat of government is hence an issue that is embedded in the founding of the federation.

Despite this the existing literature on the foundation of federations has not focused on examining the relationship between the formation or ori-

gins of a federation and how this might affect the constitutional provisions on the seat of government or the choice of location of capital city. Instead the literature has focused predominantly on accounting for the creation of a federation as opposed to a unitary state. In this respect the studies of Wheare (1963), Friedrich (1968), Riker (1975), Dikshit (1975), Watts (1981), and Elazar (1987, 1994) for example have considered the interrelation among geographical, historical, economic, ecological, security, intellectual, cultural, demographic, and international factors in promoting both unity and diversity, and the significance of these factors in the consideration of unitary or federal alternatives. Some attempts to classify federations by origin can be found. Perhaps most famously, Riker (1964), albeit attempting to explain why federations occur, famously proposed that federations are the result of a federal bargain being reached by politicians driven by what Burgess (2006:77-78) summarised as «1. A desire...to expand their territorial control by peaceful means, usually either to meet an external military or diplomatic threat or to prepare for military or diplomatic aggression or aggrandizement. 2. A willingness...to give up some independence for the sake of union because of some external military-diplomatic threat or opportunity». Nevertheless it is not entirely clear whether the same arguments that are used to justify the creation of a federation are also used to justify the choice of capital city.

In this chapter I focus on studying the choice of capital model when a federation is formed. I do not seek to establish direct causal relationships, but explore the justification or arguments used for the choice of capital city and attempt to account for the constitutional provisions made and for the city chosen as federal seat of government. Since the study of all federations and the selection of the federal capital at their founding falls beyond the scope of one chapter I have restricted my comparative study to the federations of the United States of America, Canada and Australia. These are three of the first federations to be created and states that have shown remarkable constitutional stability. They have also served as constitutional models of federalism for later federations. They are all also «coming together» federations according to Stepan (1999), or in the words of Watts (2005: 234), the «processes for establishing political partnerships» is primarily one of «aggregation of partners».¹¹

11 Canada is classed as a federation which is a result of a combination of «aggregation and devolution».

In terms of the constitutional provisions for the seat of government however, the three cases differ. Based on the classification summarised in the introduction of this volume the US and Australia have *federal district* capital cities while Canada's capital is classed as a *city within a Member State*. All three federal systems reflect unique historical contexts which have influenced the outcome of the Constitution. In the widest sense, the USA was created as different from the traditional UK parliamentary system establishing a presidential federal polity. Canada, while creating a federation, maintained the UK's idea of responsive government and set up a parliamentary federation. Australia reflects the Westminster model of parliamentary supremacy but many of the features of the Australian constitution are based on US federal rationale. Yet despite the specific contexts in which the federation was formed, as I will attempt to argue and illustrate in this chapter, in all three cases the justification for the choice of capital makes reference to similar issues. It is justified with reference to principles of federalism but the outcome is better explained as being the result of political bargaining and political events at the time the federation was created.

To do so, for each case, I first examine the constitutional provisions made with respect to the seat of government in the founding constitution and the arguments used at the time to justify them. I then outline briefly an account of how they can be explained. For the USA, I focus first in examining the principle or model of capital city envisaged in the founding constitution and then examine the location chosen, including how the choice that resulted was, to an extent, a trade-off whereby the choice of model was accepted but restricted by specific provisions on its location. The constitution makes provisions for a capital city as the federal seat of government and grants Congress the power to decide the location, which was set after federation. For Canada the debate on the model cannot be separated from the debate on its location and therefore this distinction is less pronounced, nonetheless I also examine how the choice of location (made before federation) may have influenced the choice of model (indirectly set in the federal pact). In the case of Australia I follow a similar structure to that of the USA. I then provide a comparative analysis on the constitutional provision, the choice of capital, the arguments used to justify it and what the choice reflects. In the final section I conclude.

The USA

In the case of the USA, the capital city is a federal district, it is not a Member State in its own right and it is not a city within a Member State either, it has a legal status that differs from that of the states that surround it. This model is set in the constitutional provisions for the seat of government section 8 of article 1 which grants Congress the power to «exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and the Acceptance of Congress, become the Seat of the Government of the United States». This in effect provides for a permanent seat of government (since it sets a territory for it). Congress is left to choose its location. The choice however must meet certain conditions. First its size is restricted. Secondly, the land on which the federal capital is set is to be owned by the federation (Congress) and it is to become federal land by cession from the State within which it lies and acceptance by Congress. Thirdly Congress is to have exclusive authority (or jurisdiction) over the district. By omission, it has often been interpreted as meaning that the residents of the district are not granted direct representation in Congress.¹² Also, by implication, it established that the capital district was not to be an existing city (at least not one of the existing main industrial or commercial cities) but a newly developed one. In summary, it seems that the constitutional provision establishes a permanent seat of government over which no member state has control, to be chosen (in terms of location) by Congress, but its choice is restricted by certain set conditions.

Justifying the choice

In order to examine how such a model and its specific provisions were justified I will address the arguments used in favour of its key features. First, let us consider the establishment of a permanent seat of government. This was an issue that had been debated prior to the shift towards federation.

¹² In terms of the Senate this is clearly the case. Since the capital district is not a state it can not have representation. In terms of the House of Representatives, although it is population based chamber, its constituencies are based on the States and therefore the capital district is an anomaly. The debate on the extent the US Constitution allows or prohibits representation for the capital district in federal institutions is still ongoing. See the chapter written by Nagel in this volume.

The periodical move of the capital during the period of US confederation was considered to be unnecessarily costly, contributed to a periodic loss of public records and caused real disruption to the work of government. It was hence a factor that contributed to the inefficiency of Confederation. With moves towards greater powers for Congress (and later federation) and the need for a more effective central administration, such arguments gained strength and a rotating capital was generally perceived to be simply impracticable for good governance.

Secondly, and perhaps most importantly, let us consider how the terms that provide Congress with exclusive jurisdiction over the district were justified.¹³ The arguments are best set out in *The Federalist* number 43 and it is worth quoting at length. In it, Madison argued that:

«The indispensable necessity of complete authority at the seat of government, carries its own evidence with it. It is a power exercised by every legislature of the Union, I might say of the world, by virtue of its general supremacy. Without it, not only the public authority might be insulted and its proceedings interrupted with impunity; but a dependence of the members of the general government on the State comprehending the seat of the government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonourable to the government and dissatisfactory to the other members of the Confederacy. This consideration has the more weight, as the gradual accumulation of public improvements at the stationary residence of the government would be both too great a public pledge to be left in the hands of a single State, and would create so many obstacles to a removal of the government, as still further to abridge its necessary independence» (Madison 1788: 279).

Some of the arguments made are of special interest and must be noticed. Exclusive legislation is argued to give Congress the power to police itself, preserve order hence provide physical security for its buildings and delegates so they carry out their duties and conduct their business. It is also necessary to ensure the independence of the national government from the

13 It was also the most controversial provision of the capital city and indeed not agreed until later than the other provisions. See for example Bowling (1991).

influence or domination of one state. At the same time, it would be potentially unfair to the other states if one state was able to control the federal seat of government - the spirit or idea of a coming together federation is clearly identifiable. In addition, there are also some arguments related to the economic cost of housing the government. With recognition that powers of the central government were going to increase, it was argued that it would be unfair for one state to have the burden of housing and providing for it.

Thirdly, the provision that ensures that land is to be owned by Congress and obtained by cession was also justified with reference to the federal idea and is linked with the arguments outlined above. Since it was rightly argued that housing the federal government incurred a cost but would also provide benefits to the surrounding area, providing for Congress to own the land would reduce the sense that one state would disproportionately benefit from it. The attainment of land by cession of a State and acceptance from Congress ensured that neither could impose a location without consent of the other. But it is not only federal concerns that justified this, it was also directly linked to the need for Congress to exercise full jurisdiction over the seat of government for security reasons. Providing for congress to own the land of the federal capital was congruent with ensuring security concerns were addressed in practice.

Fourthly, let us turn to the restriction in the size over which Congress was to have exclusive legislation. The provision was justified to stop the federal government from growing out of control and prevent disproportionate growth of the centre. It was a safeguard against an aggrandising capital that would result in a loss of equality and loss of state authority in favour of the federation. This responds directly to arguments made by those critical of a strong union. According to these, unless Congress was restricted, an undesirable city would evolve: a city «of a few million (two to four) of federal government employees, lobbyists, etc who would be dependent on federal government who would have absolute control and authority over them since no charter of liberties or the like would guarantee the rights of residents. And by extension create a hiding place for all the scoundrels upon the continent and like the churches in Italy a refuge from justice» (Bowling 1991:78).

In this respect, and linked to their fear of a strong executive, the confederalists, opposed to a strong central power and therefore criticising the US constitution, created an image where they «viewed the president, with a large military established under his command, as a virtual monarch, and

envisioned an aristocracy of political and commercial wealth rising about him. The federal city would become the cultural, social and fashion setting seat of the US. To it would flock those Americans who adulated people of fortune and power, and it would soon be home to the great and mighty of the earth...idle, avaricious and ambitious» all to be funded by taxes collected from all Americans (Bowling 1991:82-83). As a precautionary measure (and conceding that a permanent capital would be set with federation) the size would have to be restricted. Overall therefore the maximum size set was enough to allow Congress to set a capital large enough to house all the necessary functions, serve as a symbolic national city (with national museums, monuments and such like) and allow for the expression of the American ideals of liberty, union and republican empire; while at the same time, and with direct reference to confederalist arguments, the size of the capital would be «sufficiently circumscribed to satisfy every jealousy of an opposite nature» (Madison 1788: 279).

Fifthly the provision by omission that the city was to have no representation was justified in relation to a trade-off whereby the capital was to be a national commons in which representatives of the nation would govern the district in the federal interest. In exchange for federal patronage the citizens of the district would surrender their suffrage (Cobb 1994).

Finally, in terms of locating the capital city in a new city or an existing city, few Congressmen were in favour of locating in an existing city. This was because «many Americans and their spokesmen in Congress believed that cities, with their commerce, local politics, luxury and mobs, were by definition anti –republican and insisted that the US should abandon the European precedent of placing capitals in large cities» (Bowling 1991:10-11). Hence the arguments presented related to the need to preserve the purity of federal government and its independence from the influence of any particular state, while at the same time being detached from existing localised interests. This is clear in the disqualification made of Philadelphia, a city that until 1783 was considered as the likely contender to house the seat of government. As Bowling writes, «for decentralists Philadelphia had become synonymous with grasping federal government, wealth and corruption. One of them asserted that in that city ‘plans for absolute government, for deceiving the lower classes of people, for introducing undue influence, for any kind of government, in which democracy has the least possible share, originate are cherished and are disseminated’» (Bowling 1991:30).

Explaining the choice

When considering why the specific US Constitution clause on the seat of government was included, we must first bear in mind that its justification, although it largely reflects the federal position (vis a vis the confederal position) in favour of union and the need for a capital city, also makes direct reference to opposition arguments. Hence it seems that ultimately, the *choice* was a result of negotiations and is some sort of compromise. Although I do not deny that its general base is that of the so called *Virginia Plan*, the result does reflect concessions between the more fervent unionists and their opponents. The debates on the restrictions to the size of the capital are an example. Federalists were in favour of a large capital territory but decentralists instead preferred a lesser grand capital in order to remove some of the symbolic importance that a large capital might have in aggrandising the federal level. Ultimately, the maximum size set was less than the 100 or even the 20 square miles that some delegates had called for and more than the 1 square mile that others had demanded; it does not quite reflect the vision of a great capital but at the same time it would be much more than a complex of a few buildings to house the government. The provision denotes a concession by federalists on size which allowed exclusive jurisdiction of Congress over the federal district to be approved. It responded directly to the fears voiced by decentralists during the struggles of ratification between 1787 and 1788 that with growth and economic prosperity in the district individual liberties would be put at risk, and there would be a loss of state authority in favour of the federation. By restricting the size, it was argued, this was controlled.

The provision that the district would have no direct representation in Congress was also a concession in order to ensure Congress had exclusive legislation over the capital. This is evident if we look at the debates on the relationship between Congress and the residents of the capital city. Some federalists argued for residents of the district to elect their own representatives in Congress, this would avoid them being disenfranchised. But the fears expressed by anti-federalists meant others were prepared to omit such a consideration in order to increase the chances of ratification. Its inclusion would have only fuelled the fear-mongering vision of the federal capital as a small island of citizens under exclusive federal control. Indeed for many, including Madison, this was a reasonable concession, for they believed that

with the passage of time, as the capital city grew, Congress would grant some form of self government to the residents of the District.¹⁴

The end result seems therefore to be a compromise, a bargain, the outcome of a political game. It is worth returning to examine why locating the capital city in an existing city was not a real option. As I made reference to above, there were many normative undertones to the debate on this issue, but it would be naïve to lose sight of the fact that opposition to setting the seat of government in an existing city was politically motivated. Accounts of congressional sessions suggest that the support for a newly built capital city was low until after 1783 and the mob disturbances in Philadelphia. This episode provided the opportunity for delegates from other large city constituencies that would be disadvantaged by Philadelphia becoming capital city to make alternative proposals, some of which called for a newly built city. As a response, delegates from constituencies who would have benefited from Philadelphia becoming the capital city joined the calls for the need for the capital city to be a newly built city for fear of other rival commercial and financial cities gaining an advantage. Hence by 1784 a majority of Congress supported a newly built capital city, but the reason behind it seems to be politically motivated rather than actual preoccupation for the independence of the national government as the arguments used to justify the clause might suggest. Finally, there is one final point that must be considered in order to understand why this clause was accepted and which adds to the argument that it was a political compromise. This is the fact that it left one of the most politically contentious issues unresolved: the seat of government location. It simply granted Congress the power to set it at a later date.

Choosing the location

Choosing the site was indeed a contentious point and one which occupied Congressional business for over a year. The degree of discrepancy over the location is generally identified as one of the main reasons behind the crisis of the Union of 1789-1790. As Cummings and Price (1993:215) summarised «no agreement could be reached between neither of the two main sectors of the country, the North and the South, each with very different economic and social institutions, would consent to having the nation's capi-

¹⁴ For a detailed account of the debate on representation please see Bowling (1991: 81-86).

tal in the other region». The issue was finally resolved in the First Great Compromise between the North and the Southern States in 1790. This set the seat of government by the Potomac River in what today has become Washington DC.

The justification provided was argued to reflect the vision of an agrarian capital, to represent the nature of most of the US states. In addition, the location represented the creation of a central government independent from any specific constituent unit and embodied the federation as a partnership of equals. The economic advantage of the seat of government was not sidelined in the justification of the choice, but it was framed with reference to development rationale. It was argued that the improved infrastructure investment into the site would develop what was to date a missing link between North and South. Furthermore, the site was also justified as having a symbolic importance due to its geographically central location (between two regions with different visions and interests). In addition, the choice also reflected concerns for the security of Congress from external attack or internal influence. It was removed from the Atlantic coast, which was considered to be exposed to outside (European) influences. It was also removed from the existing strong commercial, economic, urban interests and therefore safe from internal influences that might exert undue pressure on Congress and subvert democracy.

Yet despite these aggrandising normative arguments used to justify the choice of capital city, it is best explained with reference to the political loyalties and rivalries of the time. It does seem that «concern about the idea of an American Capital and the proper qualities of site were dwarfed by preoccupation among revolutionary leaders with the political means of achieving a location in the best interests of themselves and their constituents. Almost no one has the interests of the US as their predominant concern, for the Union was too new to outweigh loyalty to section, state and locale» (Bowling 1991:12-13). The choice was part of the First Great Compromise of Union in 1790. It was a compromise of union whereby the southern representatives accepted federal repayment of (northern) state revolutionary war debts in exchange for a southern capital. Furthermore, with what seemed to be general animosity to the Union from Southern States, the location chosen was strategic choice aimed at influencing Southern attitudes towards federation. Proximity to the seat of government meant access to federal political officials and offices and hence an opportunity to influence. Furthermore, given the

amount of federal investment that the building of a seat of government required, it would create economic and commercial opportunities for the adjacent area (and States), generating employment in the short term and improved infrastructure for the future. Virginia, a Southern State, with a large vocal opposition to the creation of the federation itself would benefit disproportionately. The chosen location may therefore have been a concession or compromise reached in the first year of federation in order to safeguard the Union from collapse.

Finally and related to this last point, it is also important to bear in mind the personalities involved in the decision. This is particularly relevant if we consider that the choice was politically motivated. I am referring to the fact that «in the choice of the site, it is noticeable that Washington selected it as near as possible ... to his own home at Mount Vernon» (Hazelton 1914: 7). George Washington's leadership and personal interests in locating the capital close to Mount Vermont (and the debates it elicited from his opponents) were decisive in why the specific Potomac River location was ultimately chosen.

Canada

Canada's federation was created as a union of several North American British colonies by virtue of the British North American Act of 1867 and continued under UK tutelage until it gradually gained independence. It was preceded by a unification of the two largest British colonies in North America, Upper and Lower Canada in 1840 to form the Province of Canada with a single, common parliament. In 1867, at federation, the Province of Canada was split into two separate constituent units, the provinces of Ontario and Quebec, which largely correspond to the original Upper and Lower Canada. For this reason Canada is considered as either a coming together federation according to Stepan (1999), or as Watts (2005) argues, a partnership that was a result of aggregation and devolution. Despite this, the Canadian federal system is considerably different to that of the US. In terms of the capital city, Ottawa, a small city within the Province of Ontario, situated on the border with the Province of Quebec is the federal capital city. The choice however was made not at federation, but in 1859. It was originally chosen, not as the capital city for the federation but as the capital city for the unified Province of Canada. Indeed it started functioning as the

administrative capital city of the Province of Canada colony in 1866, one year before formal federation. The relevant question in this case therefore is why Ottawa was maintained as capital at federation.

In terms of the constitutional provisions for the capital city, Article 16 of the British North American Act (1867) states that «*Until the Queen otherwise directs, the Seat of Government of Canada shall be Ottawa.*» The constitution therefore names what city shall be the seat of government as well as setting out what is the provision for changing or choosing a capital city: royal prerogative. The choice nonetheless reflects firstly, a need to fix the seat of government, secondly, the existence of a debate on whether the seat of government should be located in an existing or a new city (the choice of Ottawa embodies the conclusion that a new city is preferable). Thirdly it illustrates the consideration that the capital city should be in a neutral location without giving unfair advantage to any constituent unit. Fourthly, it reflects a concern for the need to ensure a secure location away from potential internal attack (that is, possible destruction of parliament by disgruntled mobs) or external attack (from the US). Finally, by virtue of naming the Queen as the agent on whom the power of choosing the capital falls on (albeit requiring the approval of Parliament), reflects a symbolic patriotic move, it illustrates Canada's loyalty to Crown and Empire and a choice that distances itself deliberately from the revolutionary USA.

Justifying the choice

In order to be able to examine the justification for maintaining Ottawa as the Capital City of Canada as a federation, it is important to return to the arguments around the original choice of Ottawa in the context of the Province of Canada. In this sense, with regards to the need to establishment a permanent seat of government, the arguments emerged after the unification of Upper and Lower Canada in 1840. The legislature began to meet in different cities. But with a growth of powers and an increase in the legislative functions of Parliament concerns were rapidly raised on the need to fix a permanent seat. As the Governor General Sir Edmund Head noted in a letter sent to Henry Labouchere (the Colonial Secretary in London) on the 28th March 1857, a rotating capital «is attended at great expense and by a periodical suspension of

public business in every office».¹⁵ With federation in 1867, the need for a fixed capital was unquestionable.

Ottawa reflects a choice not to locate the capital in an existing city. Such a choice was justified with arguments similar to those in the US, an existing city with its own established economic or commercial interests could affect the impartiality of the capital. It is a safeguard to protect the institutions and purity of government from existing strong interests that could influence the independence of parliament. Indeed this very same argument was also voiced to justify why other contenders for capital city were not appropriate. The alternative cities that were considered as potential capitals (Toronto, Montréal, Kingston and Quebec City) were all said to house strong local or provincial interests that would threaten the independence of the federal government by providing an unfair advantage to either Upper or Lower Canada.

Indeed, perhaps more importantly, the justification of Ottawa was based on its neutral location. Although it was chosen as capital of a new single colony, the fact that this new colony was the unification of what had been two distinct ones was taken into account. Since the location of the capital city was acknowledged as requiring considerable federal expenditure and investment as well as generating privileges for its location, the choice of Ottawa ensured neither Upper nor Lower Canada gained disproportionately. It was also argued that the investment allocated to build up the capital city would increase infrastructure links between them and benefit both. Indeed the geographical location of Ottawa was one of the main arguments used to endorse its bid to become capital since it symbolised the coming together of Upper and Lower Canada. This sentiment is captured and summarised in a letter to the editor printed in the Times of London on the 21st of April 1857:

«let the decision, then, be in favour of Lower Canada, and you light a Volcano in the heart of Upper Canada; let it be in favour of Upper Canada, and you sink a deep well of discontent in the heart of Lower Canada. But let it be in favour of Ottawa, which is on the boundary line between the two, with half its population French and the other English – let at this point, where the two provinces are connected by a magnificent suspension bridge, the parliament house be erected in Upper Canada and the Governors' palace or

15 cited in Knight (1991:194)

government house in Lower Canada... and unite the two provinces and the two races in a bond that can never be broken».¹⁶

Security concerns were also an important justification for the location of the capital city. In the case of Canada, these concerns are twofold; one was the concern of mob attacks from dissatisfied interests and the second a potential external threat to Canada from the neighbouring powerful US. In terms of the former, more than justify the choice of Ottawa, it discredited the possibility of Montreal becoming the capital city much in the same way as Philadelphia was in the US. Montreal was a commercial city and a contender to become the permanent capital (indeed, it hosted the seat of government from 1843 to 1849), but had been the scene of a ferocious attack on the parliament building. In terms of the latter (perhaps the more important security concern in terms of justifying the choice of Ottawa), the worry is well illustrated in the Memorial of the City of Ottawa (dated 8th of May 1857) written by Ottawa's Mayor in which he set out the advantages the location had to offer as a potential seat of government.

«Consisting as Canada does, of an extended line of territory, lying opposite the frontier of a powerful and rapidly increasing republic, it is of the highest importance to its protection that the seat of government should be at some point far removed from the possibility of hostile attack in the time of war, and of foreign influences on the minds of its people in time of peace, and so situated that its connection with the rest of the country should never be cut off or intercepted by an invading enemy...[Ottawa] lies in the very heart of Canada, far removed from the American Frontier, surrounded by loyal population, composed equality of French and British origin, who have ever remained free from the storm of dissatisfaction to the crown of England».¹⁷

This also illustrates the final set of arguments used to justify the choice of Ottawa: a show of loyalty to the Crown and Empire and a deliberate distancing from the revolutionary USA. This loyalty is also expressed in how, unable to settle the issue of capital city, the Canadian parliament sought to

¹⁶ cited in Knight (1991:197-8)

¹⁷ cited in Knight (1991:234)

resolve it by appealing to the Queen and how her choice was subsequently respected. The opposition argued that to seek the involvement of higher entities amounted to an abdication of the principle of responsible government. But such opposition was silenced by the then Prime Minister John MacDonalld with arguments that «it was impossible for any government or legislature in this country to settle the question... the fault was not with government but with sectionalism of the legislature».¹⁸

Finally, before turning to address how the choice can be explained, it is also worth noting that at federation the argument that seems to have carried most weight in justifying why Ottawa was maintained as capital city is rather pragmatic. This was the fact that there was a building (albeit not yet finished) already being constructed in Ottawa.¹⁹

Explaining the choice

Like in the case of the US, despite the arguments used to justify the choice, it seems that politics has the greatest bearing on why the choice was made. This is quite clear if we return to the historical context of the United Province of Canada. There were five potential cities to become capital but no sufficient majority in parliament could be obtained for any one place. In terms of the potential candidate cities, perhaps it was the Times of London that summarised best the choice and the problems of each: «[Kingston] is neither one thing nor the other; [Toronto] is simply the capital of Upper Canada. It has not a particle of sympathy with Lower Canada... it is absolutely indefensible... Quebec is the capital of Lower Canada in a still more exclusive sense than Toronto is in Upper province... there is a strong party for Ottawa, a city that is to be rather than is now... the choice of Ottawa would sacrifice the actual convenience of the majority to the ideas of the few... there remains the city of Montreal which would probably be the Capital at this moment but for the folly of some intemperate politicians, who being beaten in the leg, instigated a mob to burn its house to the ground».²⁰

Unable to settle the issue of capital city, the Canadian parliament sought to resolve the issue by appealing to the Queen. In his account of the debates

¹⁸ cited in Morton (1964:14)

¹⁹ An argument to this effect is developed further in Andrew's contribution in this volume.

²⁰ Editorial printed in The Times of London on the 4th of April 1857 cited in Knight (1991:197)

that took place between the 17th and 19th of March 1857 where three resolutions were debated - to fix the seat of government, to vote expenditures for removing the government to the chosen site, and to request the Queen to make the choice the location of capital city was debated - Morton writes that «most members, governed by the inveterate local feeling of Canadian politics and conscious that the eyes of their constituents were upon them, fought openly in favour of the city of his residence or his region. In a series of resolutions in favour of the rival cities, Kingston received twenty seven votes, Toronto thirty, Quebec only fourteen. Then on the March 24 the first resolution passed without division, the second by a majority of sixteen, and the third and decisive one, to refer the question to the Queen, by a majority of eleven».²¹

But the issue was not solely that the parliament could not agree but that «the question, at once sectional and local, would if further agitated, weaken the Union and disrupt the ministry and the coalition on which it rested. The removal of the question from provincial politics was, Head wrote to Labouchere [the colonial secretary in London], was necessary if Canada was to remain united. The removal might be affected by requesting the Queen to choose the site of the permanent capital of Canada».²² Hence, it was a position that colonialists at the time favoured as a means to ensure unity. In order to understand why disunity was a real threat, it is important to note that this was occurring at the same time as debates on legislative representation between Upper and Lower Canada, debates on responsible government and territorial versus population basis for parliamentary representation.

The government, after having proposed the capital city choice be set by the Queen, was returned to power with the overwhelming support of Upper Canada but a minority in Lower Canada. In this new Parliament, when in 1858 Ottawa (a city in Upper Canada) was announced as the Queen's choice a deep institutional crisis ensued. It reached unprecedented levels on the 28th July when the Assembly accepted a motion to ask the Governor General to respectfully ask the Queen to reconsider her choice. A heated, long debate followed with the House sitting continuously until 2.15 am on the 29th. The bitterness of the debate and the opposition to Ottawa led to the government resigning the following day.²³ After a tumultuous episode whereby

21 Morton (1969:14)

22 Morton (1969:14)

23 For an extensive account see for example W. L. Morton (1964), especially pages 12 to 21

the governor general refused to call new elections and the government was subsequently reinstated, Parliament was asked to vote again in February 1859 on accepting Ottawa. The vote was set as a vote of confidence in the government and partisan pressure ensured a narrow endorsement. In the end, the need to get a capital and support the government came above constituency loyalty as the ministry of Cartier-MacDonald was on the line. Ottawa was therefore accepted at a time of national political crisis.

These debates were arguable the origins of the federation. Hence when a few years later in 1864 formal confederation discussions began at the Quebec conference, delegates were keen not to revive the divisive issue of the capital city. Early on the conference proceedings, when John MacDonal moved that the seat of government for the confederated provinces be Ottawa subject to royal prerogative, it was unanimously accepted.²⁴

Ultimately then political disputes and rivalries seem to offer the key to understanding the choice made. Indeed most commentators on Ottawa and Canadian federalism conclude that Ottawa was chosen capital due to the lack of a possible alternative rather than a vote in favour of Ottawa itself. It was a compromise solution that Queen Victoria was encouraged to choose by the then Governor General of the Province of Canada Sir Edmund Head to ensure that unity was maintained. There was therefore a fear by the political elites of a break down of the colony. It was recognition of a parliamentary impasse that had to be resolved. It was a choice that ensured no main city (or region) benefited from the economic investment associated with the setting of a capital city. Finally, at federation, there was no wish to revive a deeply divisive issue. It seems that the historian David Knight was right in writing that:

«the reasons for Ottawa finally being selected were many, but there was not a sincere acceptance by all politicians of the duty of the several «logical», «rational,» positive factors in favour of Ottawa, as laid out in either several governor-general reports or, more significantly, in the booster newspaper articles, politicians speeches, or the 1857 city memorials to the Queen. After all, supporters of each city also had «logical», «rational» and «positive» factors in favour of their own city. Instead Ottawa was finally selected

24 Browne (1969:88). Knight (1991) chapter 8 also provides a similar account of why Ottawa was accepted as capital city at federation.

because an alternative could not be chosen due to profound local, regional and sectional attachments and rivalries that powerfully affected all parliamentary attention to the question. To many it was the «best» *second* choice. Clearly the choice was not based upon some rational economic argument. The governor's general and the colonial authorities were influenced by strategic questions, as well as a fair reading of the carious divisions within the country. And they were aware that parliament controlled supply, so ultimately, the seat of government question was in the hands of parliament» (Knight 1991:340-341).

In the case of Canada it is also worth noting that the fact that Ottawa was within one of the provinces was not considered of relevance. And there was no debate on whether it was problematic, from a federal perspective, that the capital city was a city within one of the member states. In this respect I argue there are two points that need to be taken into account. Firstly, Ottawa was not a commercial city and was substantially different from Quebec or Toronto (the two main rival commercial and financial centres of Canada at the time) hence Ottawa's local interests (other than being capital city) were not deemed significant, or at least not a direct threat to existing centres. There was little fear of the interests of the federation taking over the province of Toronto. On the other hand, since Toronto was the dominant city within the Province of Ontario (where Ottawa is located) and the provincial government's interests were deemed to be mainly based on the Toronto area, there was little fear of the province of Ontario or the city of Toronto having undue influence in the governance of the federation. Put simply, the government of the Province of Ontario had little interest in focusing on the region of Ottawa. Indeed it would benefit from allowing the federation a relative free hand in investing in the city since it would mean that its resources could be focused in the Toronto region. Secondly, it is worth noting that Canada was created a federation under UK tutelage. It was, to a large extent, a top down development (a design made in Whitehall) and its closest historical model was the US (and this was not a model that the British wished to emulate).²⁵

25 Australia was also created under UK dominance, however in Australia the federation and the process was essentially led by the colonial elites and was only approved, rather than designed, in London.

Australia

Australia's federation, born under British Colonial rule by virtue of the Commonwealth of Australia Constitution Act 1901, reflects a particular mix of US federal rationale while maintaining some features of British institutions. For this reason many commentators have described Australia as displaying a middle point between the Canadian and American models of federation. But in terms of the capital city, the provisions in the constitution reflect very closely those of the US constitution, and indeed were based on it. The constitution sets the capital city as a federal district to be chosen by the Commonwealth. Like the US, it also introduces conditions or restrictions on the choice that can be made. The relevant constitutional provisions are clause 125 and 53 of the Australian Constitution. Clause 125, entitled Seat of Government, states that:

«The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred miles from Sydney. Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment therefor. The Parliament shall sit at Melbourne until it meet at the seat of Government».²⁶

And Clause 53 states:

«Parliament shall, subject to this constitution, have exclusive powers to make laws for the peace, order and good government of the Commonwealth with respect to i) the seat of government of the commonwealth».²⁷

²⁶ The Constitution of Australia can be found at http://www.apf.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution.aspx [accessed June 2012]

²⁷ See note above

In this case then it is important to note the following. Firstly, the constitution established that a fixed site for the capital city was necessary and that the choice was to be determined by the Commonwealth. Secondly, and together with clause 53, a federal district type capital was set, on land owned by the Commonwealth and over which the commonwealth was to have exclusive legislation. Thirdly, the land was to become Commonwealth land by cession from a state (New South Wales) or acquisition by the Commonwealth. By implication therefore, the capital city was not to be an existing State capital city. Indeed, given the detailed instructions on its location, it was set to be a newly built city. Fourthly, the location was restricted by the provision that it was to be within the State of New South Wales (NSW), and was to be «not less than one hundred miles» from Sydney. Finally a minimum size of 100 square miles (relatively large compared to US) was set.

Justifying the choice

Firstly, let us consider the arguments used to justify the need for a fixed permanent seat of government. Like in the two other cases examined, reference was made to the inconvenience for effective government of the legislature meeting in different locations. Accounts of the time argued that «where the legislature expands into a powerful two-chambered parliament, and where there are permanent executive and judicial departments, and all the cumbersome machinery of a great national government, this caravanserai system would be simply impossible» (Garran 1879:180). Australia, having no past experience of a rotating capital, relied exclusively on references to the past experiences of the US and Canada.

Secondly, the provision for the Federal Parliament to decide the site once federation was created was justified with reference to the fact that it would not only be difficult (and very divisive) to decide the location at the same time as federation was being discussed, but it seemed also incongruent since it was not yet known what colonies would comprise the initial union. Indeed, in the first session of the constitutional convention, Gibbs (a New South Wales delegate and anti-federalist) proposed that the seat of government should be fixed at Sydney instead of being left for the Federal Parliament. This was rejected by 26 votes to 4. The prevailing sentiment was that since it was not clear what colonies would actually federate it seemed inappropriate to set the capital city in one colony. This might seem

to contradict the fact that the constitution sets the capital in NSW, however as I will discuss below, this was a later addition.

Thirdly, the provision that an existing State capital could not become the seat of the Commonwealth government reflects arguments made that it should be an independent, neutral city in order to truly reflect the aims of the community as a whole against the interests of any particular part. Hence it was argued that it should be unfettered by local considerations. If federal legislation and administration was carried out in a state capital, powerful forces would act (directly or indirectly) to influence the national point of view. Furthermore, based on past precedence of the US, it was felt that «the seat of government ought to be on neutral territory, and not depend for protection, in the exercise of its duty on the laws of a single country» (Garran 1897:181). This leads to the fourth provision worth noting, that the federal Parliament should have full political control (exclusive legislation) over its seat. This was argued as necessary to ensure it did not suffer indignity or hindrance at the hands of a state government holding different political views, or through organised violence beyond its control. It was therefore a provision to safeguard its independence. This is in line with the conclusions reached in the US over the issue of congressional exclusive legislation over the federal district (Hunt 1930). Furthermore, references to the need for it to be unencumbered by local interests, and for it to reflect the aims of the community as a whole against those of a particular part were also made to justify the creation of the capital on federal owned land. Like in the US, the justification lay in the need to avoid the possible scenario of the state hosting the capital city using its privilege for political advantage. The model reflected «the wish that no one member state would dominate the federal Head Quarters, or gain special prestige or influence from the presence of the national government» (Atkins 1978:1).

Fifthly, in terms of the provision on the size of the capital territory, it was argued that the commonwealth should have exclusive legislation over an area large enough to guarantee its own independence, and for symbolic reasons. The Seat of Government worked as a symbol of unification, a symbol of the federation. It reflected a vision of a grand capital. A city that «embodies the ideals and aspirations associated with the birth and development of the Australian Commonwealth» (Atkins 1978:2) This was also argued with direct reference to the US case, however instead of emulating the US federal district's relatively small size, Australia wished to deliberately encourage a large symbolic national city. Finally, and perhaps more

pragmatically, the actual clause in its entirety was presented and justified to the electorate as being the result of negotiations between the Premiers of the federating colonies. It was presented as a compromise reached and hence the conditions under which federation would occur. Simply put, it was suggested that if one favoured federation, one would have to accept the specific clause on the capital city or there would be no federation.

Explaining the choice

The provision, unlike that of the US (and Canada) was substantially changed from the initial constitutional draft to that adopted in 1901. Hence perhaps in the case of Australia, more than in the other two, the actual process of drafting the constitution is important and relevant to explain its choice. In this sense, the clause ultimately enacted was the result of concessions made by other states (particularly Victoria) to objections raised by New South Wales (a state that had been traditionally resistant to union). Without them, the creation of the federation would either not have occurred, or at least been indefinitely delayed. This can be clearly detected if we look at the evolution of the draft clause on the seat of government in the process that led to federation.

Initially, at the start of the process towards federation (which is often considered to be the 1891 National Australasian Convention) there was no agreement on the seat of government, and as such it was left as a choice that the Commonwealth, once formed, would make. Indeed the constitutional clause of the draft bill considered in the convention simply stated that «*the seat of government of the Commonwealth shall be determined by the Parliament. Until such determination is made, the Parliament shall be summoned to meet at such place within the Commonwealth as a majority of the Governors of the states, or, in the event of equal division of opinion among the governors as the Governor-General shall direct*» (Quick and Garran 1901:135). This bill died off and was never actually adopted by the convention as economic troubles shifted attention to domestic matters in each colony, and especially in NSW where opposition to federation began to resurface. But in the years 1897-1898 representatives from each colony meet again with the specific task to devise a proposed constitutional draft for federation to be submitted to referendum of the States. Its work took the draft Constitution devised during the 1891 convention as the basis for discussion.

The outcome of this new convention differed from the initial draft. Firstly, in the 1897 session held in Adelaide, clause 53 which provides for exclusive legislation of parliament over the capital city was added. Secondly, in the third and final session in 1898, held in Melbourne, further details were added, namely, that the seat of government should be federal territory (thereby excluding Sydney, Melbourne and all other state capitals from consideration).²⁸ The final clause adopted by the convention, and sent to referendum read:

«the seat of Government of the Commonwealth shall be determined by the Parliament and shall be within territory vested in the Commonwealth. Until such determination the parliament shall be summoned to meet at such place within the Commonwealth as a majority of the Governors of the states, or, in the event of equal division of opinion among the governors as the Governor-General shall direct» (Quick and Garran 1901:141).

Although the Constitutional bill was endorsed in referendum in Tasmania, South Australia and Victoria, it was rejected in New South Wales. Hence it was never adapted. And it was the efforts that NSW made after this that explain the rather convoluted nature of the actual constitutional provision enacted.

Shortly after rejecting the constitutional draft, NSW held general elections and a new parliament was elected where «every member stood pledged to the main principles of the draft constitution» (Quick and Garran 1901:216). This is significant because it assured that efforts towards federation continued. Indeed when the new parliament met, the government was quick to introduce what were called the federal resolutions, including one stating that «steps should be taken without delay, in conjunction with the other colonies, to bring about the completion of federal Union» (Quick and Garran 1901:217). It called on the NSW government to seek dialogue with other colonies and ask them to reconsider the points of the constitutional draft which NSW was concerned about - including the location of the seat of government. At the request of Mr Reid (the NSW Premier), a Premier's Conference was held in 1899 where he appealed for the seat of government

28 This was a proposal made by Sir George Turner (a Victoria representative).

clause to be changed «provision made in the bill for the establishment of the federal capital in such place within the boundaries of NSW as federal parliament may determine» (Quick and Garran 1901:216). Part of NWS lobbied for Sydney to be made capital city, but Mr Reid, aware that such calls would not be accepted,²⁹ endorsed instead the milder position. NWS was therefore prepared to cede part of its territory for the capital city to ensure it, and the considerable investment that it would inevitably attract, be easily accessible from Sydney (and ensure Melbourne – Victoria’s capital and Sydney’s competitor- did not gain a comparative advantage).

The premiers met behind closed doors for three days and at the end reached a unanimous agreement that was then submitted to their respective Parliaments and electors. The agreement on the seat of government was the clause that became part of the Constitution Act. The changes were not publicly debated, and the conference simply reported that «it is considered that the fixing of the site of the capital is a question which might well be left to the parliament to decide, but in view of the strong expression of opinion in relation to this matter in NSW, the Premiers have modified the clause, so that while the capital cannot be fixed at Sydney, or in its neighbourhood, provision is made in the constitution for its establishment in NSW at a reasonable distance from that city» (Quick and Garran 1901:219). This strongly suggests that the specific conditions set to restrict the choice of capital city were directly related to NSW (and its politicians) endorsing federation. Hence the choice of location, model and constitutional provision reflects political negotiation and compromise.

Choosing the location

Finally, before turning to make some comparative remarks, it is worth outlining the choice of location itself. The choice reflected political compromise rather than respond to any particular vision. This is perhaps best illustrated by the rather simplistic justifications given for adopting Canberra as capital city as opposed to the political debates and wrangling that occurred during almost a decade prior to the issue being settled. The choice itself, Canberra,

²⁹ There was a risk that either federation would not take place because other colonies would simply not accept now what had been rejected on previous occasions (Sydney being the capital city), or perhaps that the other colonies would federate and exclude NWS if it made unreasonable demands.

was justified with reference to it being accessible for Australians but not on the coast (hence protected from possible hostile outside attack). It was also presented as being in line with the constitutional provisions enacted. Furthermore, reference was made to the fact that the site had a climate and scenery that would suit Australia's capital city. These seemingly mundane justifications however hide an extensive, sometimes raucous and public debate between not only where the capital city was to be located, but the interpretation of the Australian constitutional provisions itself. Initially, in 1904 a relatively low key but extensive consultation and process to identify a suitable location had set a site around Dalgety, an area within NSW but bordering Victoria. However, with a change in government in NSW that was more critical of federation, the choice was vociferously opposed. The NSW government publicly refused to cede the territory in question citing the location to be unconstitutional. It argued Dalgety was not *within* NSW (since it bordered Victoria), and would not be ceded by NSW, hence be unconstitutional. Furthermore, the fact that it lay the furthest away it could possibly be and still be in NSW was argued to contradict the spirit of the Premiers Conference decision that the capital should be at least 100 miles from Sydney. This, according to the NSW government, was a way of ensuring the capital city was set close to, rather than far from, Sydney. This resulted in a clash between interpretations of the constitutional clause.

What this conflict reflects however, is the rivalry between Victoria and NSW. The latter considered Dalgety to be a triumph for Victoria and resented it. Victoria considered the NSW position self serving. Nonetheless, given the interests that both Victoria and NSW had in ensuring the federation lasted, concessions between the federation and the state of NSW were reached and the new site of Canberra was accepted. It was a concession for NSW since the capital city was moved closer to Sydney (in relation to the proposed location of Dalgety). In return, NSW accepted to cede to the federation an area of almost a thousand square miles (significantly larger than the minimum size set by the constitution). This was enough to ensure that Canberra would be able to control its own access to water supplies, considered essential by other states to ensure that the federal capital could not be held hostage by NSW.

The choice of Canberra (rather than Dalgety) is therefore explained by political factors and the need to find a compromise brought about by a change in government in NSW. It is true that it could be argued that the decision could have been simply postponed until a more favourable govern-

ment in NSW was elected, however the choice of capital city was already dragging. Indeed although the Commonwealth came into being in 1901, it was not until 1909 that a permanent capital city was established.³⁰

The three cases in comparative perspective

If we look at the constitutional provisions for the seat of government across our three case studies the differences are rather striking, particularly between the US and Australia on one hand and Canada on the other. It is true that all three cases address the seat of government rather than capital city and that all make provision for a permanent seat of government. However while the US and Australia set a federal district model of capital city, Canada simply names a city to be capital and has no provision on the model of city envisaged.

Australia and the US are similar in the sense that neither sets a location but provide the federal legislature with the power to choose. They are also similar in the provision for the federal legislature to own and administer the capital city land, as well as the means by which the land is to become federal property. Lastly they both also establish a maximum condition in terms of size set for the federal district. However that is as far as they are similar. For the US, the size is set as a maximum and it is a comparatively small area of «no more than 10 square miles», a size dwarfed by the size provided for in the Australian constitution. It reflects a point of divergence between the vision of capital city envisaged in the US and Australia. In the former, a limit to the size was set to restrict its potential growth, in the latter a minimum size was instead agreed upon in the hope of creating a grand national capital. Furthermore, in the case of Australia there are further conditions set to delimit the location. That is, the capital city must be within New South Wales but must not include, and indeed be a distance from, Sydney. The US constitution does not stipulate any such conditions to the possible location. At the same time however, it has some features that may be considered more permissive than the US case. For example, the territory on which the capital city is to sit is to be *granted or acquired* by the Commonwealth while in the US it must be *ceded and accepted* by Congress. In the Australian formula, as Quick

³⁰ As set by the constitution, Melbourne housed the seat of government during this time.

and Garran (1901) noted, there is a primacy of the Commonwealth in deciding where the capital city sits (notwithstanding the provision that it must be within NSW). In the US case, the need for it to be agreed by Congress and state or states in question is evident. In the table below I have summarised the constitutional provisions of each of the three cases.

The constitutional provisions on the seat of government

USA	CANADA	AUSTRALIA
<ul style="list-style-type: none"> - <i>A permanent seat of government</i> - <i>Congress sets the location</i> - <i>The capital is to be small, no more than 10 square miles</i> - <i>Exclusive jurisdiction of Congress over the District hence land to be owned by Congress and obtained by cession</i> 	<ul style="list-style-type: none"> - <i>A permanent seat of government</i> - <i>To be Ottawa</i> - <i>Queen to dictate location</i> 	<ul style="list-style-type: none"> - <i>A permanent seat of government</i> - <i>Parliament sets the location</i> - <i>Capital is to be relatively large, no less than one hundred square miles - Capital city will be within NSW</i> - <i>Parliament is to govern the capital city hence land is to be owned by the Commonwealth and obtained by cession or acquisition</i>

(Own source)

Basically then, it seems that in the case of the US, Congress is set to decide the location, the constitution sets the model of capital city and restricts the freedom of congress on the choice it makes. In Canada, it simply sets the location, and in the case of Australia, although Parliament is given the power to decide the capital city, the constitution also sets the model and restricts the choice but with more conditions than in the US case.

In terms of the locations chosen it is worth noting that there are similarities across all three cases. They reflected newly built cities, or at least locations with small and relatively insignificant urban centres. They are all geographically important locations. The Potomac River site, although considered to have been a *southern* capital location, is between the Northern and Southern states. Ottawa is on the frontier of what had been Upper and Lower Canada (now Ontario and Quebec). Similarly, Canberra is also geographically between Melbourne and Sydney. Indeed these similarities are not coincidental. If we consider in comparative perspective the arguments used to justify the choice of constitutional provision and indeed of the location, we find a great degree of similarity across all three cases.

In all three cases the need to ensure continuous government was used as an argument for a permanent capital city. Canada and the US had experience of a rotating capital and this was felt to be impracticable. Australia relied on the experience of these two cases to justify its own provision. As such in all three countries arguments in favour included the need to provide purpose built suitable accommodation for the legislature to meet as well as for government records to ensure their security and reduce loss. In terms of the location, as mentioned above all three cases were justified with reference to geographic centrality as well as being in a site that ensured it was protected against external threat. In the case of the US, it was away from the Atlantic coast, safe not only from the influences of the large dominant cities such as Philadelphia and New York but also more easily defended from possible European attack.³¹ Canberra also was justified as being inland and hence more defensible from external attack as well as being centrally located between Australia's two main cities Melbourne and Sydney. Ottawa again was justified as a safe location, away from the US border and potential attack. It was also justified as being centrally located between Upper and Lower Canada. In addition and perhaps most importantly in terms of federal principles, the choice was justified as being in neutral territory. By this I mean that it was explicitly argued that one of the virtues of the capital city was the way in which it guaranteed that no one state or interest could exert undue influence over it and hence influence the federal government.

There are also some differences across the cases. In terms of choosing a central location for the capital city, in the US case, the choice was made after federation and there was little or no debate on the need for a central location to be chosen in either justifying the constitutional provisions or their ratification. In Canada's case, concern for setting the capital city in a central location was expressed before federation when Ottawa was chosen. Finally, in Australia's case, the need for the capital city to be centrally located was a concern both at federation and afterwards when the actual choice was made. Another example of divergence between the cases is the weight and expression of the symbolic role assigned to the capital city in the different cases. In the US for example, the symbolism of the seat of government was related to its small size as opposed to Australia's deliberate attempt at establishing a territorially large capital city.

31 A point that has been stressed especially by Riker (1987) in his account of US federalism and its origins.

In addition to this, there are some more pronounced differences too. In Canada for example, loyalty to Crown and Empire was also deliberately used as an argument to justify the choice of capital. The choice was portrayed as a patriotic one, which should be accepted and indeed endorsed out of loyalty to UK rule. In this sense, it was explicitly portrayed as distinct from the US. In the US, the model of federal district was explicitly linked to helping secure the division of powers, one of the underlying pillars of the whole federal system of government envisaged. The federal district model, with exclusive legislation reserved for Congress, protected the federal government from possible member state encroachment.³² Hence the model chosen was argued to guarantee the independence of federal government and protected it from powerful interests. In the Australian case, reference to the US case and its justification was made and its own provisions were justified directly in terms of them. In the table below I summarise the arguments used to justify the choice of constitutional provisions and the location for each of the three cases.

The arguments used to justify the choice of constitutional provision and location

USA	CANADA	AUSTRALIA
<ul style="list-style-type: none"> -Ensuring continuous government - Providing purpose built suitable accommodation - Securing public records of government - Reducing the economic cost - Geographic centrality - Protection against external threat - Guaranteeing independence of federal government and protection against powerful interests - Securing division of powers 	<ul style="list-style-type: none"> - Ensuring continuous government - Providing purpose built suitable accommodation - Securing public records of government - Reducing the economic cost - Geographic centrality - Protection against external threat - Reinforcing unity - Loyalty to the Crown and Empire 	<ul style="list-style-type: none"> - Ensuring continuous government - Providing purpose built suitable accommodation - Securing public records of government - Reducing the economic cost - Geographic centrality - Protection against external threat - Guaranteeing independence of federal government and protection against powerful interests - Capital city as symbol of national unity and embodiment of the federal constitution - Providing national symbols

(Own source)

³² It is worth noting however that some concerns were raised that this also meant that in the district there would be no separation of powers between legislature, executive and indeed judiciary since they would all be under Congress control.

Overall it seems that although there were similar references made in all three cases, each of them is modelled on its own historical context. In this sense Canada was argued to be against the US model and in line with its own history and tradition while Australia relied on past precedents and debates of US and Canada rather than its own experiences (mainly because of its lack of historical development to rely on). But in all three cases the creation of the federation through a process of ‘coming together’ attempted to make sure that the federal government remained independent from any and every state. The federal government was therefore portrayed as a higher authority for every state which would govern in the interest of all and in return would command the loyalty of all. The choices made were, to an extent, the practical application of this rationale.

If we consider what the constitutional provisions entails and indeed what the choice of location reflect, the differences diminish. In all three cases it is possible to detect recognition that there is a need for a permanent seat of government. Furthermore, given that it is to be the national capital, and would require considerable investment, it should be paid for by the federation as a whole. At the same time, a concern to ensure that no one member state should benefit disproportionately or exert undue influence over it is also evident. Perhaps it is for this reason that in all three cases the choice of a newly built city rather than an existing city was deemed to be more appropriate. Yet the explanation for the choice rather than respond to any kind of normative vision of capital city actually reflects the fact that the resulting choice is related to existing rivalries. The choice in all three cases responded to the need to reach compromises between rival states or even cities, a choice that all could either support or at least not oppose. In the table below the three cases are summarised.

Nevertheless the choices taken in each case are anchored in the context of each case, the debates at the time and the personalities or parties involved in the negotiations. There are underlying arguments across all three cases that are similar, but the outcome or the provisions enacted differ. Hence it seems that the specific framework and background of each case shaped in particular ways the specific constitutional requirement and subsequent choice of capital city.

What the constitutional provisions and the choice of location reflects

USA	CANADA	AUSTRALIA
<ul style="list-style-type: none"> - Recognition that there is a need for a capital city - Recognition that capital cities are centres of considerable federal investment - Recognition that capital city is an important issue - Part of the wider federation deal and concessions between federalists and anti-federalists - Rivalry between different cities - Threat of union falling apart: conflict between North and South 	<ul style="list-style-type: none"> - Recognition that there is a need for a capital city - Recognition that capital cities are centres of considerable federal investment - Recognition that capital city is an important issue - Part of the wider federation deal - Rivalry between different potential candidate cities and rivalry between Upper and Lower Canada - An effort to maintain the union, fear by colonialists of disintegration or revolution (US style) - Security concerns (protection from external threat) - Loyalty to Crown and Empire 	<ul style="list-style-type: none"> - Recognition that there is a need for a capital city - Recognition that capital cities are centres of considerable federal investment - Recognition that capital city is an important issue - Part of the wider federation deal -Rivalry between Melbourne and Sydney (Victoria and NSW) -Fear of threat to the federation

(Own source)

Conclusion

The examination of three early cases of coming together federations has shown that despite different constitutional provisions being enacted in the constitution, there are common arguments that played a role in justifying the choice. More specifically, the idea or criteria of federalism seems to be an important consideration. By this I am referring to the perceived vision of the federation being created as a union of states (a coming together). In it, constituent units are considered equal partners. The federal government therefore acts to serve the union as a whole and by implication must therefore not benefit one state over any other. At the same time, the new government created (the federal level government) must be able to function and fulfil its duties assigned by the constitution with little or no hindrance from any one constituent unit. In terms of the seat of government, such

arguments are reflected by the debates on how a relatively neutral location was required as its permanent seat. A neutral location that would ensure that the national government would be safeguarded from the interests not only of any one constituent unit but also of existing strong commercial or economic interest. In addition, with a recognition that creating a permanent seat of government required considerable investment which would undoubtedly bring benefits to the chosen site, a seemingly neutral location was also required to uphold the argument that no one member state was benefiting at the expense of the of others.

Despite the common underlying arguments however, the choices made differed. In the US and Australia for example, a capital district over which the federal parliament would have exclusive legislation was envisaged. This was argued to be the formula to ensure the neutrality of the federal government (versus the member states) and gave the federation additional power. In Canada this was not the case; the choice was Ottawa, an small existing city within one of the Provinces, however as has been shown, the choice was made before federation, the specific historical context of Canada suggests this choice is not unexpected and remains congruent to federal concerns. But in addition to Ottawa, Canberra and Washington DC were also political choices that are best explained by the historical background leading up to federation and the political dynamics of the first years of federation. The model and the choice of location in all three cases, while appealing to federal criteria and arguments are not neutral or objective choices. Instead they reflect the outcome of the specific political context at the time.

Finally, what is perhaps most interesting from the perspective of the wider preoccupation on asymmetric federalism is the fact that in these three historic cases, the discussion on choosing the federal capital was shaped in terms of creating a city to be the permanent house of the federal government as opposed to viewing the capital city as a city where residents live out their everyday lives. In this sense, the capital city was not viewed as a constituent unit or a partner in the federation. It seems to have been viewed as an administrative centre, rather detached from the federated units. This is specifically true in the US and Australia where a federal district model was chosen. Yet this does not seem to be a deliberate vision of the role of the capital city in a federation, but part of an attempt to ensure no existing unit gained disproportionately from the federal investment that a capital city would require and to reduce the possibility of one unit influencing federal positions. At the founding of the federation, the relationship between the

residents of said city and the federation and the effect it would have on its asymmetric treatment was to a certain extent sidelined or even actively subverted. The special status of the capital city was tended to be viewed as justified or compensated by other features (such as considerable federal investment). It was not until later that issues of governance of the capital city arose. The unequal treatment of residents in the federal district of the US for example or the tensions between Provincial and Federal government in Ottawa are now (and have been for some time), politically salient issues and ongoing source of debate. Even as the federations have consolidated themselves the issue of the federal capital, somewhat neglected at the founding of the federation, remains unresolved. This is perhaps not surprising since as I have argued in this chapter, the choices made are largely conditioned on the political context and dynamics at the time. With changing circumstances the compromise reached at the founding of the federation is found wanting. Notwithstanding this, whether the tensions concerning a capital city in federations can ever be resolved remains an open debate.

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REPRESENTATION FOR THE TAXED? PROJECTS TO END THE ASYMMETRY OF WASHINGTON DC AND WHY (MOST OF THEM) HAVE FAILED

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SUMMARY: 1. Initial set-up. 2. Current situation. 3. Alternatives to the current status. 4. From the initial set-up to the Civil War. 5. Hundred years of exclusive Congressional rule. 6. Towards Home Rule and (non-voting) representation. 7. From claiming representation to fighting for statehood, and how both failed: the years 1978-2005. 8. «Virtual statehood» and how it failed. Initiatives since 2005. 9. Why did (nearly) all proposals to change the status fail? References.

«Taxation without representation». Cars registered in Washington DC display this protest slogan on their number plates. While the inhabitants of the capital pay federal taxes like other US citizens, they are not allowed to elect a Senator, and their Representative in the House may only vote in Committee sessions, not on the floor. This seems to contradict the principles of the American Revolution («No taxation without representation»). And there is no «compensation» between asymmetries of rights and duties: while Puerto Rico has no vote in Congress, the inhabitants of the island do not have to pay federal taxes, and they enjoy greater autonomy than states, including a conditioned right to secede. This is not the case for the D.C. On what grounds has the asymmetric treatment of Washington D.C. been argued and can it still be defended? Who wants the status to be changed and in what direction? How can changes be justified? Why have they not succeeded yet?

1 · Initial set-up³³

The US Constitution establishes that Congress has powers «to exercise legislation in all cases whatsoever, over such a District ... as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States» (cited by Gilliland, in this volume). This prescription clearly breaks with a basic principle of the American Constitution (the separation of powers) and a central feature of its initial federal system (dual federalism). In «Federalist 43» Madison justified the decision in favour of a permanent capital, to be built in a District controlled by Congress, *ex negativo*: «Without it, the public authority might be insulted and its proceedings interrupted with impunity; ... a dependence of the members of the general government on the State comprehending the seat of government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonourable to the government and dissatisfactory to the other members of the Confederacy.» This reflects the real or imagined fear of a repetition of the Philadelphia incident described in Gilliland's contribution to this volume. Interestingly, Madison does not envisage any problems with the inhabitants of such a District under Congress authority – he is convinced that they would easily trade away participation rights for their interests, as particular citizenship rights would be granted: «the inhabitants will find sufficient inducements of interest to become willing parties to the cession (of land by a state in order to set up the District, KJN); *as they will have had their voice in the election of the government which is to exercise authority over them; as a municipal legislature for local purposes, derived from their own suffrages, will of course be allowed them; and as the authority of the legislature of the State, and of the inhabitants of the ceded part of it, to concur in the cession, will be derived from the whole people of the State in their adoption of the Constitution, every imaginable objection seems to be obviated.*» (Madison; italics are mine). The decision to set up the District occurred a long time ago; and Madison did not reflect upon the rights and feelings of later generations, who have had no vote in the set-up, but find themselves bereft of part of their rights as citizens.

33 See Gilliland (in this book) for a complete analysis of the normative basis and the practical aspects of choosing the district model and the site; further sources of this chapter are Bowling 1993, Bowling/Gerhard 2006 and Cobb 1994-5.

Madison clearly envisaged a local authority, a «municipal legislature for local purposes». But during most of its history, the citizens of the DC have not enjoyed such a legislature. The main purpose of the «Madisonian» DC was to protect the federal government from encroachment by any particular state: «Nor would it be proper for the places on which the security of the entire Union may depend, to be in any degree dependent on a particular member of it.» «As treason may be committed against the United States, the authority of the United States ought to be enabled to punish it.» In a district under federal authority, Congress would have this possibility. Madison and the fathers of the constitution did not even consider the model of a city state. The US at the time of independence was a scarcely populated, vast country, largely dependent on agriculture. Madison, in his bid to strengthen the Union against the «anti-federalists» (or confederalists), defended the District as one of the federal (as opposed to confederal) elements of the type of Constitution he worked so hard to establish.

It is of course up to discussion whether the final set-up of the District was due to the federal argument, or whether it was the product of the circumstances of the time that brought Hamilton and Jefferson to pact in 1790 (Cummings/Price 1993). Reading Gilliland (this volume) it seems clear enough that the decision to move the capital southwards from Philadelphia to current Washington was the outcome of a negotiation where the Northern states succeeded in having their war debts nationalized (a federal bail out!), while the debt-free Southerners liberated the capital from the influence of Pennsylvania Northerners, and where at the same time President Washington got the chance to select the exact site. The location had to be as commercial as agricultural, accessible by sea, carved out of the states of Maryland and Virginia, the states that had to agree on the cession of part of their land. The 1790 Residence Act provided for a three member board of commissioners appointed by the President to oversee the construction of the nation's capital. And, as Madison had postulated, the inhabitants of the District of Columbia were allowed, under exclusive control of Congress, their own municipal government. Washington was granted an elected six member council (but the Mayor was to be appointed by the President). The municipalities of Georgetown and Alexandria, also integrated into the district, retained their established local government, including an elected Mayor. The District, for most of its history, would fare worse.

2 · Current situation

Washington DC is not represented in the US Senate. Since 1973 the city (the only one in today's DC) sends one delegate (regardless of its population at any given time) to the House of Representatives who may vote in Committees but not on the floor of the House. Since 1960 DC citizens participate in the election of the President of the US by sending a fixed number of three members to the Electoral College. The DC and its citizens are therefore clearly asymmetrically treated with regards to their voting rights. It has to be said that during most of the country's history, they had no representation at all either in the House or in the Electoral College. The reason was found in the Constitution: «The House of Representatives shall be composed of Members chosen every second year by the people of the several *States* and the Electors in each *State* shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature» (Article I Par 2 clause 1; my italics). The use of the word «States» seems to exclude the District (as well as the territories) not only from the Senate, but also from the House. The rest of the clause (not quoted here) is important, too: by drawing the maps of the electoral districts for Congress and setting rules on voter registration and election organisation, US member States exercise an important degree of influence on federal election results. Local majorities may be enhanced by strategies such as gerrymandering where possible. The District has no such possibility.

One might expect to find compensation for a lesser role in shared rule in an enhanced capacity to self rule. Currently, the DC may be considered a self governing territory. However, its degree of autonomy is lower than the one enjoyed by a state, or even municipal governments within a member state. And it is questionable whether - as Madison had suggested - this double negative asymmetry is compensated by (for example economic) interest, which is a problematic trade-off on normative grounds.

Currently, DC residents elect the mayor, the city council, some school board members, and neighbourhood commissioners. However, legislative action in the DC is subject to approval by Congress. Congress can overturn any law, and sometimes does. The budget of the DC must be approved (by items). The District is not allowed to tax against incomes earned by non-residents. This reduces the possibility to impose sales tax or value added tax or wage tax on professional services. The District is not allowed to levy tolls for entering the DC. While in the States we may find suburban dwellers

paying taxes for services that favour the urban poor, there is no possibility to redistribute the taxes of the higher income commuters residing in Maryland or Virginia in favour of the poor inner city population of Washington. A federal Act excludes certain provisions from local autonomy (composition and jurisdiction of courts, loans...). The Superior Court of the DC is funded and operated by the US federal government, and the President continues to appoint the city's judges and prosecutors.

Congress exercises its supervision by Committees in the House and in the Senate. Until the 1970s, the House Committee was dominated by segregationist members from Southern states. The denominations of the Committees show that DC issues do not rank very high in Congress. In the House, the responsible body is the Committee on Oversight and Government Reform – Subcommittee on Health Care, District of Columbia, Census and National Archives. As courtesy, the DC non-voting member is always allowed to serve on this Committee. In the Senate, there is the Committee on Homeland Security and Governmental Affairs - Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia.

Vetoing DC laws is not the only way in which Congress may direct DC policies. Congress can (and often does) simply block the DC from spending funds on particular issues and thereby renders DC laws useless without overturning them (see Fauntroy 2003a: 76-79, for examples). For example, the DC cannot spend money on lobbying to gain representation. DC prescriptions on moral issues (death penalty, arms control, equal sex marriage) have proved to be particularly conflictive with Congress.

According to Wolman et al. (2007), Washington DC functions as a city and a school district in some matters (streets, policy, fire, schools, public works...), like a county in others (health and income maintenance), and like a state in matters of highways, police, higher education, redistribution of public funds. The federal government controls and directly provides for prisons and courts, which are functions that states have in other parts of the US.

3 · Alternatives to the current status

The US Constitution is the oldest democratic constitution still in force. No wonder that thousands of amendments have been proposed since 1787 – however, only about two dozen of them have been accepted. Such consti-

tutional stability requires a lot of interpretive work by the Supreme Court. Although some 150-200 proposals for Amendments to federal laws relating to the status of the DC have been made since the initial set-up more than 200 years ago, the fundamental status of the DC has not changed. Most of the aforementioned proposals for change can be classified as follows:

A. Proposals to enhance DC (or DC citizens) role in *shared rule* (representation):

1. Constitutional Amendments to change the status (abolishing the District clause, changing the above cited clause on elections eliminating the term «States» etc.)

Arguably, other proposals would not need constitutional amendment:³⁴

2. Retrocession of the DC to Maryland (and Virginia, in the past)

3. Semi-retrocession (treating DC citizens as Marylanders for the sake of House elections, and eventually for Senate elections too)

4. Statehood for the DC (that is, city state status)

5. Virtual statehood (treat the DC as a state for the sake of federal representation)

B. Proposals to enhance Home Rule.

Arguably, Home Rule may be enhanced (or restricted) without changing the DC status; but such a law would always be easily revocable. Indeed there have been lots of proposals to reduce or abolish existing Home Rule possibilities and/or institutions.

Let us now analyze the different kind of proposals that have been made across different historical periods, and how and why most of them failed. We will pay particular attention to constitutional amendments and to those proposals that were either successful or come near.

4 · From the initial set-up to the Civil War

Although some constitutional amendment for a «half state» status had already been proposed in the early times (the first was Augustus Woolward

³⁴ There is no agreement among constitutional lawyers, however.

in 1801), the discussion during these years was between the defenders of the District and those that argued for retrocession. In *Loughborough v. Blake* (see Raven-Hansen 1974-5: 180) the Supreme Court ruled that the population of the DC had «voluntarily relinquished the right of representation and has adopted the whole body of Congress for its legitimate government». The Court admitted that «in theory it might be more congenial to the spirit of our institutions to admit a representative from the District» but doubted that this would serve its interests better. Most important: «certainly the Constitution does not consider their want of a representative in Congress as exempting it from equal taxation» (U.S. Supreme Court 1820: 3). Congress was hence allowed to tax DC citizens in proportion to its population, treating it «as a State» for the purpose of taxation, but not representation (Frankel 1990-1: 1680).

During the first half of the 19th century, the District clause was not a big issue, nor was the election of Congressmen. The most discussed alternative was retrocession. The first debate on the issue took place in 1803 in the House, and many more followed, in the wake of the increasing debate on slavery. The municipalities of Georgetown (1838) and Alexandria (on several occasions) actively claimed retrocession, the first to Maryland, the second to Virginia. In 1846, Alexandria succeeded. By Act of Congress and approval of the Virginia Parliament, 31 of the 100 square miles of the DC were returned to Virginia. Alexandria, a centre of the slave trade, was afraid it would find its economic future strangled if Congress were to abolish slavery in the DC (Harris 1995: 3-4). The retrocession made Alexandria's citizens Virginians again – and in the state parliament, the very narrow pro-slavery majority grew. Alexandria had also protested because laws had concentrated the building of federal institutions in Washington City, thereby keeping land prices low in Alexandria. During the Civil War Lincoln tried to get Alexandria back into the District, but the proposal was rejected by the Senate. Retrocession was reviewed by the Supreme Court in 1875 and was upheld; however, the Court did not venture into a true test of its constitutionality since all parts were satisfied with the measure and no third party had a standing to file suit. The precedent however demonstrates that retrocession (at least of part of the District) may take place.

During the period before the Civil War Congress forced its rules on reluctant local elites. In 1848 Congress abolished property qualifications that were restricting the right to vote. In 1862 Congress ended slavery in the District, and in 1867 it established universal manhood suffrage, overriding

a Presidential veto and the opposition of the city council of Washington City. Congress rule stood for more progressive government. Home Rule was granted in a piecemeal and limited way. The council of the city of Washington had an elected mayor since 1812; Congress established this right and granted greater authority to the city government in 1820. However the proposal for an elected territorial legislative of the DC by President Monroe was not accepted by Congress (Diner 1992: 394). It was only after the War, in 1871, that by Act of Congress the individual charters of local government for Washington and Georgetown were revoked and a new territorial government for the whole of the District was established. This consisted of a governor appointed by the President and a two chamber legislative assembly (an appointed upper house and an elected lower house) as well as an appointed Board of Public Works.

In 1871, the DC was even allowed to send a (non-voting) representative to the House (Diner 1992: 390; Harris 1995: 5; Lessoff 2002, 2003; Fauntroy 2010: 32-33; Harrison 2006). However, in 1874, this short experience with asymmetric representation was ended. The laws of 1874 and 1878 established pure Congressional Rule, and all elected Home Rule institutions remained outlawed for about a hundred years. According to Senator Norton, this was «to get clear of the Negro vote» (cited in Diner 1992: 396) as many blacks had settled in Washington during and after the War. However, in comparison with Southern states, direct congressional rule could be considered to have had some advantages for black citizens (black teachers were paid the same as white, under federal rule). Furthermore, at least initially, the lack of home rule was somehow «compensated» by Congress's commitment to pay 50% of the city budget.

5 • Hundred years of exclusive Congressional rule

During nearly a century, Washington DC remained without either Home Rule or federal representation. Senators, usually from the North, regularly introduced proposals for Constitutional amendments (for representation in 1888, for virtual statehood in 1917, for statehood in 1921, to name a few; see Boyd 2007 for more examples) and, particularly since 1946, laws for some degree of home rule. These proposals either did not make it to the Senate floor, or failed there, or, if approved (this occurred on five occasions between 1949 and 1960), were afterwards blocked in the House. The House

Committee was stuffed with what Lesoff qualifies as unglamorous segregationist Southern Democrats, ideologically distanced from the urban liberals that were also found in the party (sometimes in the District, too). According to Lesoff (2005: 250s; see also Lesoff 1994), the House Committee «in local lore ... appears as a stronghold of hacks, ignoramuses, Virginians, and Marylanders seeking votes among suburban-dwelling federal workers, and chiselers who fix parking tickets for their friends.» These Congressmen had everything to fear from the increasingly black population of the District.³⁵ In 1919, Congress reduced its financing of the DC's budget to 40%, and from 1925 only a lump sum was provided. In the DC, dissatisfaction with the governors Congress appointed was growing and Congress rule became more and more criticized as unresponsive and inefficient (Diner 1992: 402; O'Cleireacain 1997), as well as orientated towards suburban whites and racist (see Fauntroy 2010, 2003a).

It is interesting to see how retrocession proposals were brought into Congress again and again, probably to deflect initiatives for Home Rule and/or DC representation in Congress (Diner 1992: 404). The problems with the status of the DC, became a nationally relevant issue as the DC grew – and as citizens' rights movements expanded.

6 · Towards Home Rule and (non-voting) representation

Before the end of the 60s, Home Rule bills had continually failed. But the District finally won limited representation in the Electoral College. In 1959, the 23rd amendment was introduced, in close connection with opposition to the poll tax. The original text of the proposal would have granted the District representation in the Electoral College and in the House in proportion to its population (3 members in the House and 5 votes in the College). The amendment passed the Senate and, this time, there was no blocking minority in the House. However, the House was able to strike a bargain. The outlawing of the poll tax was left out of the amendment, and representation for the DC was reduced to the Electoral College only and to three electors (equivalent to the number of votes granted to the least populated states). The compromise was defended in a bipartisan ratification campaign. 35

³⁵ Majority was reached in 1957.

states ratified the amendment. All Southern states with the exception of Tennessee opposed it. With the ratification of the amendment completed in 1960, the DC had moved a little bit closer to becoming a member state, because its population now had a stake in electing the President and the Vice President. With the progress of black emancipation, the way for other amendments seemed open. In 1970, the Senate held two hearings for a Constitutional amendment to grant full representation to the DC, however, only a non voting delegate to Congress in the House was achieved, and that was established by law instead (in 1971). Immediately, the new House member started to present proposals for Constitutional amendment.

By that same time the chances of achieving some Home Rule (supported by Presidents Kennedy and Johnson)³⁶ were increasing, and retrocession, so often used to block full representation, could no longer be as easily used as a tool to avoid change. Nine proposals of retrocession failed during these years. Southern Democrat McMillan, the eternal chairman of the House Committee, was defeated in 1972 in his South Carolina constituency by newly enfranchised black voters (Diner 1992: 408; Lesoff 2005: 251; Fauntroy 2003: 7-8). In 1973, the District of Columbia Home Rule Act passed both the House (floor vote of 272:74) and the Senate (77:13), providing a directly elected mayor and a city council as well as 37 advisory commissions elected by neighbourhoods.³⁷ However, the DC courts remained funded and operated by the federal government and Congress retained authority over the budget. To this day it can still overturn legislation within 30 days when both House and Senate agree.³⁸

7 • From claiming representation to fighting for statehood, and how both failed: the years 1978-2005

While Home Rule could be introduced and improved by an Act, full representation could only be achieved through amendment to the Constitution. This was attempted but failed at the end of the 70s. The proposed Voting

36 In 1967, Johnson used his reorganization authority for reforming the city administration, appointing some Blacks. This was widely seen as preparing the District for Home Rule.

37 For the Constitutional debate during these years, see Raven-Hansen 1974-5.

38 For the history of Home Rule in the DC see Fauntroy 2003: 40-58; for its evaluation, see Harris 1995.

Rights Amendments were not approved. Congress was not the problem this time. Democrat majorities in both chambers and a democrat President were supportive. The problem lay in convincing the states. In 1978 an amendment proposal passed both the House (289:12) and the Senate (67:32) with sufficient majorities and had the backing of President Jimmy Carter. The proposal would have seen full representation in the Electoral College, the House and the Senate «as if the DC was a state». However, when the amendment was presented to the states for ratification only 16 of the 38 required did so before it expired in 1985. During these years, the District became demographically more black and poorer (Walters/Travis 2010: 4). Its claim became more and more orientated towards statehood. A considerable movement for a «New Columbia» state grew within the District. In 1982, elections for delegates to write its constitution took place, and such a document was later approved in a referendum albeit by a relatively small margin (about 60000 to 54000 votes). The document was forwarded to Congress in 1983. But it was widely considered too radical (Harris 1995 and Meyers 1996), and some of the proponents of statehood changed to support a «softer» version (based on the Home Rule charter) in 1987, getting criticized for «treason» by the movement. The final vote in the House (1993) was 277:163 against. Many Democrats did not follow the positive stance of their convention platform (Fauntroy 2003a: 87) and Bill Clinton, who in 1992 had promised to sign such a proposal, was not given the opportunity to keep his word. In total, since the 98th Congress, 13 statehood bills have been introduced, all of which have failed.

Amendments of House Rule to allow the DC representative (and those of other territories) to vote in the Committee of the Whole were established in 1993-4, and upheld by the US District Court and Court of Appeal. But this was only a small consolation, and a short lived one. The new rules were repealed by the 104th Congress (1995-6, with a Republican majority), only to be changed again by the Democrat majority of the House in 2007 (Thomas 2007; Boyd 2007: 3).

During the conservatism of the Reagan years and the corresponding Republican majorities in Congress, DC laws were often overturned on ideological grounds (decriminalization of certain forms of sexual acts, limitations to handgun property, use of funds to pay for abortions for poor women). Fauntroy (2003a, 2003b, 2003c, 2004, 2010) has provided exhaustive accounts of this process which he describes as continued erosion of Home Rule. At the same time, the DC administration, particularly under

Mayor Marion Barry, one of the staunchest defenders of statehood, experienced corruption and drug scandals. The city gained a bad reputation as the world capital for murder and a centre of drug dealing and consumption (Niskanen 1991 as an example). During the years 1995-2001, and following bankruptcy of the District under Democrat Mayor Barry, financial autonomy of the District was entirely suspended. District spending was overseen by a Financial Control Board established by Congress during these years (Jost 1996, Meyers 1996, Harris/Thornton 2006, Fauntroy 2003a: 167-192, Walters/Travis 2010, among others).

While initiatives to provide representation via virtual statehood (1990, 2004) failed in Congress, retrocession and semi-retrocession proposals resurfaced. These were supported by Republicans but opposed by the representative of the District, and, more importantly, by many members of neighbouring Maryland constituencies.³⁹ It is no wonder that they all failed too.

8 • «Virtual statehood» and how it failed. Initiatives since 2005

During the years 2005-2007 some moderate plans for very limited «virtual statehood» by Act, were introduced in Congress to avoid the necessity of a Constitutional amendment. The 2005 proposal presented to the House by District Representative Norton and to the Senate by Lieberman (significantly called the *No Taxation Without Representation Act*) would have provided the District with virtual statehood, that is, it would have treated DC as a state for the sake of congressional representation, and limited the House delegation to a single member, permanently increasing the House to 436. The 2006 *DC Fair and Equal House Voting Rights Act* would have established the District as a congressional district for House elections only (American Bar Association 2006). In order to assure Republican votes in Congress, the House would have grown by 2 seats, the second to be elected at-large in Utah (thereby balancing the probable Democrat majority in the DC by a probable Republican seat). A very similar proposal (Garg 2007-8, Coleman Tió 2007: 1389) made it through the House in 2007 (passed by 241 to 177 votes), and passed Committee stage in the Senate, but was «killed»

³⁹ Many constitutional lawyers consider that retrocession against the will of the receiving state could, if at all, only come by Constitutional amendment.

on the floor by a Republican filibuster when only 57 senators voted in favour of closure (Thomas 2007). Obama, as a senator, had sponsored the bill, and in 2008 he said that if elected President he would sign such a law (Walters/Travis 2010: 262). Once President, he has not shown much enthusiasm to solve the problem. But Congress has not given him the opportunity to do so either.

The 2009 *DC House Voting Rights Act* introduced in the Senate again by Lieberman (Connecticut) and Orin Hatch (Utah) and in the House by District Representative Eleanor Holmes Norton was passed in the Senate by a 61 to 37 in a floor vote, however, it was passed with an amendment introduced by Republican Senator (Nevada) John Ensign which removed the authority of the DC to restrict gun possession (The Washington Times 26.2.2009) – hence a plus in representation was balanced with less Home Rule. There was no majority in the House to bring the proposal to the floor. The constitutionality of the law would have been doubtful anyway. Since then, another Constitutional amendment has been introduced (2009) in vain. Retrocession (with the exception of a small strip including the White House, Congress and the Supreme Court) returned to the agenda, too (2010).⁴⁰ But these initiatives never made it through Congress.

9 · Why did (nearly) all proposals to change the status fail?

Strong arguments have been brought forward to back the claim for representation of DC citizens. The sheer number of initiatives is overwhelming.⁴¹ The first argument is always the principle of consent of the governed. A related argument is that taxing while not admitting representation seems an unfair distribution of burdens and rights. While US citizens living abroad can vote for Congress in the state they last lived in before leaving the US, a citizen who moves to the DC loses his right to vote in congressional

40 With the problem that if this was legislated by Act, the remaining strip would still be constitutionally entitled to send 3 members to the Electoral College.

41 The best summary of all significant legislative proposals to grant voting representation either by amendment, retrocession, semi-retrocession, statehood or virtual statehood is provided by Boyd 2007. See also Price 2003. The argument that Washingtonians in order to get suffrage would just have to move to the suburbs (quoted in Meyers 1996: 71) seems cynical.

elections. DC citizens also shoulder a higher tax burden than US citizens in territories; and territories may become states.

Defenders of the current system of mere Home Rule under Congressional supervision often disguise very parochial interests with Constitutional or federalist arguments – either well connected local interests that use Congress to appeal against local majorities, or neighbour states afraid of the taxes a New Columbia state would levy on its commuting citizens (Harris 1995: 264s.). US states usually tax non-residents. Congress may not be the best institution to run the management of a city – its rules and interventions may go into ridiculous details. The supervising «nanny» may even produce perverse incentives, encouraging irresponsible or immature local behaviour.

One of the main arguments used by those that prefer to maintain the *status quo* is always the text of the Constitution. Only «states» are entitled to congressional representation; on the other hand, the existence of a District is also a constitutional necessity. These two articles condition the debate. Any solution that is attempted via Act that either provides representation or retrocedes territory, may fail the test of constitutionality. Many prominent lawyers argue that Constitutional amendment is necessary in any such case (Thomas 2007 including relevant sentences by the tribunals; for a confrontation of arguments, Garg 2007-8). According to their point of view, Congress has no right to extend, on its own, the representation in the legislature (or in the Electoral College or in the process of ratifying amendments) to a territory that is not a state, without previously amending the clause of the Constitution that reserved these rights to the citizens of member «states». In fact, existing states use this monopoly to magnify their respective local majorities (for example, by gerrymandering district constituencies or by winner-take-it-all rules), and the DC, given the chance, would surely do the same. To increase Home Rule by statute law seems much less of a problem, instead giving the House delegate a vote would have an effect on the whole nation, and directly affect the structure and exercise of power by Congress, diluting the value of the vote of the other members. Full statehood (with Senators, a full set of Electors and a role in the amendment process) would have the same effect, only stronger. While the danger for the independence of the federal government that Madison and the framers were so afraid of may be magnified by granting greater self rule capacity to the territory the government is seated in (and not so by letting this territory have a share in the overall ruling of the Federation), in the unique case of

the US, the District is curtailed both in self rule and in its participation in the US shared rule.⁴²

True, full representation in a Congress that has supervision over the DC's Home Rule may always seem somewhat odd in a system of checks and balances. However, advocates of granting full representation in the House by Act of Congress argue that the word «states» in the Constitution has already been used in a laxer way in some US statute laws (Raven-Hansen 1974-5; Frankel 1990-1; for many arguments against, see Kurland 1992). For example, the DC already receives federal money for assistance programs that are reserved to «states». However, a Constitutional amendment may be the only proper way for a change that holds before the Supreme Court. Such an amendment is difficult to achieve when the majority of the states that have to ratify it hold the monopoly of representation – why should they share? Political motives are also to be considered, as the representation of the DC will always be «too urban, too progressive, too Democratic, and too Black» (the four «toos» named in Fauntroy 2003a: 13, citing other sources; see also Schrag 1990: 345). The majority of the member states are rural and many of them will have Republican majorities at any given moment, making ratification of an amendment improbable.

A priori, retrocession to Maryland seems easier; and though some lawyers argue that this would also need an amendment (and if the DC is completely abolished, this seems clear), there are many experts that share the opinion that it could take place by statute law if it excludes the land on which the main federal buildings sit. There is a precedent (Alexandria was given back to Virginia) and this partial retrocession was upheld by the Supreme Court (albeit its constitutionality has never been tested). DC citizens would simply return to be Marylanders «again» and vote for Maryland Senators and Representatives (but would also vote for the Maryland legislature!). But there is the 23rd amendment to be considered – the three votes of the District in electing the President. If this is not repealed, retrocession

42 To illustrate my argument: while it is obvious that a member state may use undue influence on the federal institutions seated in its territory in many ways, including policing and rules on planning and construction, it is not as clear that representation of the capital district in the Senate of a federation will be pernicious for the independence of the federal government. This is plausible even in the hypothetical case that these senators act strongly influenced by voters that are employed by this government. It is much more plausible that these senators will align themselves with the federal government and against the interests of the other member states.

or even semi-retrocession will suddenly double the influence of DC citizens in the composition of the Electoral College, as they will also be able to vote for the Maryland Grand Electors.

Retrocession may also need the consent of the affected population and of the receiving state (Maryland), given that this was also necessary for the initial cession – and Marylanders may refrain from sharing their own Senators with DC inhabitants, they may have second thoughts on District redistribution for House elections, and in the case of real retrocession (not only for the sake of Congress elections, but for all purposes), they may be reluctant to share their own Maryland state Congress with so many new citizens with very different orientation. DC citizens may also be against these changes, they may not cherish the tactical argument that their own Maryland congressmen will be more effective defenders of DC statehood and that retrocession is a stepping stone to statehood.

Current proposals normally do not suggest total retrocession. In order to respect the District Clause of the Constitution, they leave a small area that covers the main federal buildings (more or less the current National Capital Service Area) in federal hands.⁴³ Thereby Constitutional amendment should be avoided. The Madisonian philosophy of federal institutional security could arguably be maintained.

Alternatively, current proposals advocate (maybe in addition) «virtual» retrocession, where DC citizens only vote as Marylanders in federal elections, hence «only» influencing the composition of the representation Maryland sends to the House and the Senate. DC citizens already voted as Marylanders and Virginians between 1790 and 1800, therefore it seems strange to argue that the founding fathers would have been against such a solution. This would still give DC citizens no influence in the constitutional amendment process; but they could maintain their three votes in the Electoral College conceded by the 23rd amendment. However, there is the political problem that Maryland may not want this solution to take place; vested interests might stand against such a plan: the political weight of particular zones of the state would diminish (the capital, Baltimore, in the first place). Maryland would have to organize elections outside of its state borders; an untenable situation, and, in addition, an unfunded mandate. And if Maryland were to accept DC voters without the right to draw the

⁴³ For the history of the NCSA, see Harris 1995: 15-42. The problem is with the three Grand Electors. Should they represent such a small zone with very few inhabitants?

boundaries of the electoral districts in the DC territory and without the right of registering these voters (residency in the DC is under Congress law, not under Maryland law), could that be accepted in a constitutional context that insists on symmetry between the member states, that is, providing all states with the same rights? If forced to maintain DC boundaries as a constituency for electoral purposes, Maryland could also have problems with the 14th amendment (on reapportioning electoral districts according to population). In fact, virtual retrocession might not be as free from Constitutional constraints as its defenders argue.

Historical reasons may stand against retrocession too. It could be unacceptable to many DC citizens, particularly for black Americans, because of the historical use of retrocession debates as a weapon against DC statehood. In spite of the recent decrease in Blacks in Washington city, the DC is the only territory in the US where African Americans form a majority. Statehood is much more popular among these citizens, because it is seen as a way to elect more Blacks to Congress. Retrocession may be seen as a way to dilute Black American votes, particularly among those that still remember the times when its staunchest defenders were segregationist Southerners.

Statehood, preferred by many actors in the District given the failure of full representation, seems also to be the constitutionally easiest way to change the status of the US capital - from a DC to member state. Territories can be admitted as states by simple law of Congress. Kurland (1993), who argues for the necessity of an amendment, may remind us that the District is no territory. However, if Congress has exclusive authority over the District, it may be argued that it can create any form of government there, even a state (Fauntroy 2003a: 204). The old Madison arguments, however, would resurface again: Would this new member state not have a decisive influence on the federal institutions, could it not in many ways encroach on their liberties of decision? If a capital inside a state may be bad for the autonomy of a federal government, as academics seem to agree since Rowat, then a city state may be worse. However, Madison provides other arguments to be considered here. He also defended bigger political units, in order to dilute the oppressive majorities so often to be found in more homogeneous small scale entities. This argument has been used against the creation of a small New Columbia state (Meyers 1996: 68). A Washington city state has been rejected on grounds of being a sort of federal «company town», with a large proportion of its citizens depending on the work the federal government offers, and thereby being not viable as a state (Best 1984: 77-79). However,

many employees of the federal government live in Maryland, Virginia or Pennsylvania, too. At the same time, poor people may concentrate in the inner city. Statehood defenders have argued that the workforce employed in the private sector is growing, and that, ultimately, the New Columbia state would not be categorically different in population or dependence on a particular business sector from other member states. True enough, there is no city state tradition in the US, and states, particularly rural ones, have proved to be reluctant to DC statehood (as they were on full representation). States in the neighbourhood of the DC are full of commuters that work in Washington but pay taxes at home, and these citizens may fear that they may be more heavily taxed if they work in a New Columbia state. US states normally tax non-residents. The corresponding loss of income tax may prove particularly relevant for Maryland and Virginia.

On the other hand, and still discussing «hidden arguments» against statehood, it has to be admitted that some of them no longer exist or are no longer as strong. North and South are no longer as clearly divided as before and during the Civil War, District neutrality and security may be achieved just as well in a smaller Capital area. Congress does not have to fear state security forces as much (Raven-Hansen 1991-2: 173s reminds us that Congress now commands state militias anyway). Transport and capacity of agricultural self-sufficiency are no longer such a problem as they were at the time the Constitution was drawn. Today, a smaller area may fulfil the Constitutional requisites of a District just as well. Raven-Hansen (1991-2: 169-170) argues that the residents of a downsized «rest-of» District should then vote as citizens of New Columbia too, so no one would have a standing to complain before the Courts and the 23rd amendment would be obsolete. Lawyers like Best or Kurland use the «district clause» to argue that an amendment may be necessary in this particular case of granting statehood. They also consider Maryland's consent to be necessary, as Maryland has not ceded the territory for the purpose of creating another state, but for the set-up of a federal district. But Raven-Hansen (1991: 179-183) has found no such condition in the original document of cession, and he considers that in any case 200 years of serving as a district should be considered as compliance with the original purpose of the gift.

Treating the DC as a state for electoral purposes only without conceding full statehood may be more problematic than complete statehood, if done without Constitutional amendment. If DC members in Congress were to have full representation rights and their votes became decisive in passing

a law, the states, and even individual US citizens affected by it, may have the right to sue the constitutionality of this law and may succeed before the Courts.

Madison himself had already advocated municipal self government for the citizens of the District, and though this was not granted by Congress for a hundred years, it cannot be denied now if it takes place under the supervision of Congress. If revocable, greater autonomy, less financial control, and a greater justice system of its own may be granted by Congress without infringing the Constitution. Exclusive administration by Congress has however, and arguably, been proved to be no longer necessary, to be expansive, and inefficient. Yet more self government is no longer sufficient to satisfy Washingtonians. The political control of Congress, in the age of moral politics, has also become a weapon for Congressmen that use supervision for their own moral fights against gun control, against abortion, and for the death penalty. In 1992, Diner argued (412): «the historical reasons for the establishment of a federal district have long been outmoded, and the system of direct or indirect federal control has continued because it has proved politically useful to members of Congress and sometimes to the president.» While the framers had sought to strengthen the power of federal government by establishing a DC, this may not be necessary (or desirable) any more. Diner considers: «If federal control of the District cannot be justified any longer on federalist grounds, the history of federal control shows that it also cannot be justified on the basis of efficiency.» (1992: 413). The DC finds itself held hostage to the national interest, and it is no longer content with the pay off (jobs, and for some issues, federal money). However, curiously, it is now the states, or at least many of them, that for political interests prevent the DC from gaining statehood or near statehood status via constitutional amendment. This is despite international comparisons showing that a federal capital organized as a member state is not necessarily politically dependent on the central government, nor encroaches upon it. Canberra, Brasilia and Mexico have shown that Districts may have representation in federal legislatures without undue conditioning the federation, leaving Washington DC the one and only case of «taxation without representation». The reasons for this situation may well have to do with the particular history of the USA. While some limits to state-like self government may still be appropriate for a federation (and a model combining city-state and District may well be an appropriate solution for these necessities), it is difficult to justify the absence of representation.

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THE CASE OF OTTAWA

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SUMMARY: 1. Explaining the initial set-up of the status of the federal capital. 2. Later Development: Changes to the initial set up and their reasons. 3. Tendencies of change. 4. Current set-up in regards to the initial set-up. Bibliography.

1• Explaining the initial set-up of the status of the federal capital

Ottawa was not really chosen to be the capital of Canada. It was selected, as the result of a long lasting and very divisive political battle, to be the capital of the United Province of Canada, formed by the union of Upper (now the province of Ontario) Canada and Lower (now Quebec) Canada. The Union lasted from 1840 to 1867 and Ottawa, designated as the capital in 1857, continued to be the capital with the creation of Canada in 1867.

Ottawa as a capital exemplifies the model of the simple municipality within a member-state. However, at the time of choosing Ottawa as a capital there was no discussion of a model for a capital city. Ottawa was, as we will see, picked very much for what we might call the criteria of federalism but, as the political battles were about which city was to be the capital, the discussion was only about who would be the capital, not what the capital might be. The result was a capital city that is a municipality within the province of Ontario. To understand the position of Ottawa as a capital in a federal state it is important to situate Ottawa geographically. It sits on the banks of the Ottawa River (in French, la rivière des Outaouais) which marks the boundary between the provinces of Ontario and Quebec. On the other side of the river is the City of Gatineau and the two form one urban area in terms of residential and employment locations. However, the two parts are divided by provincial jurisdictions and Gatineau is a municipality within Quebec in the same way that Ottawa is an Ontario municipality.

The model of the simple municipality within a member-state has changed considerably over time and there have been a variety of non-constitutional changes to the way in which the Canadian Capital is governed and understood. But before we look at the evolution of the model, it is important to understand the original decision to choose Ottawa. In order to do so, it is necessary to describe the political context that led to the Union of the two provinces. The 1837-40 period in the Canada's had been a period of considerable political agitation. The «Rebellions» of Upper and Lower Canada were motivated by demands for responsible government, for the executive to be accountable to the legislature, but in the case of Lower Canada the political opposition was greatly heightened by the fact that the vast majority of the population was French-speaking and the executive power British and English-speaking. With the defeat of the rebellions in both Upper and Lower Canada, the British government send a new Governor, Lord Durham, to report on the rebellions and recommend changes in the relationship of these colonies to the British government. The Durham Report was a document of a liberal British colonial vision of the time; responsible government and an explicit recommendation to assimilate the French-speaking population in order to 'modernize' it by, among other means, uniting the provinces of Upper and Lower Canada. Needless to say, this created huge animosity on the part of Lower Canada to the very idea of union. This was rendered even less palatable in that the Parliament of the United Province of Canada was to be composed of an equal number of seats for Upper and Lower Canada, despite the considerably larger population of Lower Canada. Calls for «representation by population» on the part of Lower Canada were blocked by the insistence of Upper Canada on the equal number of seats and the support of the British Colonial Office for the position of Upper Canada.

To understand the intensity of the battles around the «seat of Government» question, it is important to understand the demographic shifts taking place during this period. Upper Canada, with the arrival of what Canadian historians refer to as the «United Empire Loyalists» grew much more rapidly than Lower Canada. In the early 1840'S Upper Canada had a population of 455, 688 and Lower Canada 697,084 but by 1851-2 Upper Canada had a population of 952,004 and Lower Canada 890, 261. Almost immediately, calls for «representation by population» were raised in Upper Canada and this demand, which had been so firmly rejected merely ten years earlier, was now seen to be the legitimate right of a democratic society.

This background is important to understand why the choice of the capital became such a contested and embattled decision. The consequence was that the period 1840-1867 became the period of the mobile capital, with Kingston, Quebec City, Toronto, Montreal and Ottawa all taking turns at being the capital. These cities had different resources – economic, demographic, cultural, linguistic, spatial and political – that could be put forward to support their cause. Montreal was the economic capital of Canada and the largest city but its economic power was in the hands of the politically Conservative English-speaking minority whereas the French-speaking majority were politically Reformers. Quebec City had been the first capital city, as of 1663, but it was small, with waning economic power and was politically controlled by a Reform French-speaking population which made it suspect to parts of Upper Canada. Toronto was a growing city with an overwhelmingly English-speaking population but was seen by Montreal as its major rival and therefore opposed by Montreal and by the Montreal economic interests, as Toronto was less dominated by Conservative political elements. Kingston was seen as a small city but a genteel city dominated by Conservative politics. Ottawa was a rough lumber town on the border between Ontario and Quebec.

With an equal number of seats in Parliament, political alliances were fast forming and fast changing, across both political and linguistic lines. The British Governor made the first choice of the capital and in 1841 chose Kingston, at least in part for its Conservative links. The Legislative Assembly then voted in 1843 to have Montreal as the capital, in part arguing that Kingston had not been able to provide adequate accommodation for the Legislative Assembly and in part simply mobilizing enough votes from Lower Canada to adopt the resolution. The issue of the physical accommodations, the «Building» played an important role in the debates on the «seat of Government» debates and certainly the chances of Kingston were severely disadvantaged by the lack of an adequate building. So Montreal became the capital and had adequate facilities but, in 1849, an extremely hostile crowd of the English-speaking Conservative minority burned down the Parliament Buildings in Montreal. The lack of security in Montreal eliminated it as a choice for the capital and in 1849 the capital was moved to Toronto. By 1852 the members from Lower Canada managed to assemble enough votes to have the capital move to Quebec City and it remained in Quebec City from 1852 to 1856 when the Assembly voted to have the capital move back to Toronto.

At this point, our story needs to add a new factor; political leadership. John A. Macdonald, later to be Sir John A. Macdonald and the first Prime Minister of Canada, was a moderate Conservative from Kingston and during the course of the Union government he had become an increasingly important political leader. He had formed an alliance with Georges Etienne Cartier, a leading figure from Lower Canada. Both of them were closely allied to the dominant commercial interests of the day; Cartier was a lawyer working for the banks and the railways and Macdonald shared this vision of state expenditure for developing transportation links to enhance economic development. An early biographer of Macdonald wrote:

It is fortunate that at such a time Canada possessed a public man who was versed in all the intricacies of local politics, and endowed with the peculiar skill that creates and holds together parliamentary majorities, and who at the same time had a mind capable of grasping the problems of a broad national statesmanship.⁴⁴

At the same time the same biographer writes «of grave political errors and acknowledged personal defects»⁴⁵ (corruption and drinking) which moderates, and perhaps humanizes, the rhetoric of nation-building while keeping the image of a skillful politician. Macdonald was leader of the Government in 1857 and when the Governor General, Sir Edmund Head, suggested a petition to Queen Victoria asking her to settle the question of the «seat of Government» Macdonald seized the opportunity to use this method as a delaying tactic to make sure that the answer from London would come after the upcoming election and therefore bury the «seat of Government» question for the period of the election campaign.

The legend in Canada is often that Queen Victoria chose Ottawa to be the capital but the historical record shows clearly that the Governor General, in private correspondence to the Queen, laid out the case for Ottawa. Several reasons were given: the fact of being on the border of Upper and Lower Canada; a population of French, English and Irish and a distance from the US border «which would give breadth and substance to the country».⁴⁶ In

44 Parkin, II. This quotation is in part a personal indulgence as the author is my maternal great-grandfather. But it is very typical prose for that period.

45 Parkin, II.

46 Eggleston 1961: 102.

summary, «Ottawa is the only place which will be accepted by the majority of Upper and Lower Canada as a fair compromise. With the exception of Ottawa, every one of the cities proposed is an object of jealousy to each of the others.»⁴⁷ He went on to describe the decision as «a choice of evils»,⁴⁸ the evils of Ottawa being «its wild position, and relative inferiority to the other cities named».⁴⁹

Ottawa was agreed upon but, given the fact that appropriate buildings did not exist in Ottawa, Quebec City was awarded the capital for a last time, from 1859 to 1866. Funds were then made available for the construction of the Parliament Buildings and the buildings were ready for occupancy in 1866. From 1863 to 1867 the United Province of Canada became engaged in what became known as the Confederation debates, discussions about a larger political entity bringing together the colonies in the Atlantic region along with Upper and Lower Canada. There were meetings in Charlotte-town and then in Quebec City. Although there may have been some discussion about whether the choice of Ottawa should be reconsidered, the formal records of the Quebec meetings simply indicated that Macdonald moved a resolution that Ottawa be named the seat of Government and that the resolution was adopted. Certainly at this stage the existence of the Parliament buildings in Ottawa, even still in the construction stage, was a huge practical advantage. The creators of Canada were practical politicians, deeply suspicious of American patterns of governance and attached to the British Empire. London was certainly more the model than Washington. Besides, the real disputes were about differences between regions (provinces, to use the modern Canadian terminology), and the whole debate around the seat of Government was much more a conflict between Upper and Lower Canada and, secondarily between English-speaking and French-speaking Canadians. The victory was being named the capital with little thought about what it should do or be.

To reiterate our original point, there was no reflection on a model for a capital in a federal country at the time Ottawa was chosen. Ottawa was described in the British North America Act as the seat of Government and it was simply expected that it would continue as an Ontario municipality. However, the choice of Ottawa did relate to the perceived importance of the

47 Eggleston 1961: 102.

48 Eggleston 1961: 106.

49 Eggleston 1961: 103.

relationship between Upper and Lower Canada and of the relationship between French-speaking and English-speaking Canadians. We can therefore see the choice of Ottawa as in part based on reasons that relate to the vision of a federal state. It was also based on nationalistic reasons; further from the US, easier to defend from the US and not influenced by the American form and structure of government. Finally there were clearly pragmatic reasons in the weight given to the existence of Parliamentary buildings. There were neither democratic reasons nor liberal reasons in the choice of the capital and the only reference to the protection of minorities in the Confederation debates as a whole is the oft-quoted remark of Macdonald that the Senate was there for the protection of minorities and the rich are always in a minority. Moreover, the whole context that we described earlier, of running rough shod over the calls by Lower Canada for representation by population in the earlier period and then Upper Canada demanding representation by population once its population had surpassed Lower Canada's certainly indicates that democratic principles and arguments were not important in the choice of the capital.

If we consider the creation of Canada the winners were the commercial interests of Upper and Lower Canada, more so Upper than Lower. Creating a country was for economic development and a country required a capital but certainly Ottawa was not seen as a central economic node and therefore not as requiring a particular form of governance. The capital was chosen but, as we have seen, at the time of the creation of Canada the choice of Ottawa was simply the continuation of the role it had won in the United Province of Canada. The Union ended in 1867 with the creation of Canada and the division of the United Province of Canada into the Province of Quebec and the Province of Ontario.

2 • Later Development: Changes to the initial set up and their reasons

If there was no debate about the model for the capital before Confederation, there has certainly been debate since 1867. And, equally important, the governance of Ottawa was far more influenced by the federal government that would be suggested by the model of a municipality within a sub-unit of the federation. From the early years the federal government played a dominant role in planning the Capital and, in practice, controlled the major

planning decisions. The Ontario Government was far away in Toronto and the fact that the federal presence brought economic benefits to the region meant that Ontario could continue its provincial policies of focussing on the Toronto region while at the same time worrying about regions worse off than the Ottawa region. So the Ontario government was quite happy to let the federal government spend in Ottawa.

The City of Ottawa had a more ambiguous relationship with the federal government.⁵⁰ The attitude illustrated by the Governor General's description of Ottawa in terms of its «relative inferiority» was often the attitude presented by the federal government. As we will see, the first agency of the federal government to look after the capital region was called the Ottawa Improvement Commission with an even more eloquent title in French, la Commission d'embellissement d'Ottawa. This certainly situated the federal attitude – Ottawa was an object to be improved and clearly the municipal government was not capable of doing this. No wonder that the City government saw the federal government as patronizing and condescending. The City therefore felt that they were being treated as dependents of the federal government yet they were perfectly willing – once a bit of grumbling had taken place – to let the federal government spend on what could be seen as high end services, such as urban parks, the borders along the Rideau Canal (and later on, bicycle trails). The City of Ottawa's attitude became one of seeing themselves as an organization to deliver basic services to its residents and to see the federal government as the organization to look after the representation of Canada and of Canadians in the capital.⁵¹

It was in 1899 that the federal government created the Ottawa Improvement Commission and began its formal role in the planning of the Capital. This was a decision of the then Prime Minister, Sir Wilfrid Laurier, who had promised in 1893, to create a «Washington of the North»,⁵² an image used to evoke the physical beauty and aesthetic qualities of a planned capital and not about the governance structure. Perhaps unfortunately, Laurier's enthusiasm for planning the Capital was relatively short-lived. In 1903 the first of many plans was produced, the Preliminary Report of the Ottawa Improvement Commission in which Frederic Todd proposed a parks plan for Ottawa and Hull (the name at the time of the Quebec municipality right

50 Andrew/Chiasson 2011.

51 Andrew/Chiasson 2011.

52 Taylor 1986: 148.

across the river from Ottawa). The plan was not accepted although many of the proposed parks were, in time, put into place. Then in 1913 the federal government created a «Federal Plan Commission» with terms of reference to «take all necessary steps to draw up and perfect a comprehensive scheme or plan looking to the future growth and development of the City of Ottawa and the City of Hull, and their environs...».⁵³ The Report was presented in 1915 and the first recommendation was as follows:

We are of the firm opinion that the future improvements in the area about the Capital at Ottawa and Hull should not be attempted without first establishing a Federal district and securing for the Federal authority some control of local government.⁵⁴

Nothing was done with any of the recommendations of the Federal Plan Commission, in part because of the considerations of the war efforts and in part because the Centre Block of the Parliament buildings burned down in 1916 and its rebuilding took ten years and occupied much of the efforts of the federal government in relation to the capital. However, during this period the federal presence was becoming more visible in Ottawa. Between 1896 and 1913 eleven new federal buildings were constructed primarily in the core of the City, including the Public Archives, the Royal Mint and the Victoria Memorial Museum, all significant institutions of the Canadian state.⁵⁵

The question of the Federal District was raised again in 1922 when Noulan Cauchon, Ottawa's first planner, published a Federal District Plan. It is worth referencing this document at some length in that it describes why, according to its author, earlier views of a Federal District had failed to gain approval and the version that he felt could be acceptable.

Discussion of a Federal District in the past has always taken for granted that such a project would involve legislative union between the two cities of Ottawa in Ontario and Hull in Quebec under the control of the Dominion Government, which seemed to involve the disfranchisement of the citizens on both sides of the boundary and the complete loss of

53 Eggleston 1961: 167.

54 Eggleston 1961: 168.

55 Taylor 1986: 148.

municipal autonomy. Those who have studied the government of the District of Columbia have realized, with something of a shock, that the Capital of the great republic has forsworn in its own administration those democratic principles which are the *raison d'être* of the nation and in the government of its Federal District has disfranchised its citizens. The Federal District of the United States is practically a sovereign state governed by the collective authority of the other states and not by the votes of its resident citizens. Possibly the next shock is, the realization that the system works very well.

In the new proposal for a Federal District of Ottawa as the capital, submitted to a subcommittee of the Senate by Mr. Noulan Cauchon, consulting engineer and town planner and illustrated in this issue of *The Journal*, it is suggested that a Federal District Commission should be created by an enabling act of the Dominion parliament to control and develop the physical features and public services of a large area embracing the two cities of Ottawa and Hull and environs. It is proposed that under this act the municipalities be given the power to transfer voluntarily to the Federal District Commission the exercise of such of their powers, granted under their respective provincial acts, as they may see fit.⁵⁶

This plan was also completely ignored but the Federal government further enhanced its role in the Capital under the leadership of Prime Minister Mackenzie King, the federal political leader who has demonstrated the greatest interest in the planning of the Capital. Mackenzie King was Prime Minister of Canada from 1921 to 1926, 1926 to 1930 and 1935 to 1948. In 1927 Mackenzie King created the Federal District Commission to replace the Ottawa Improvement Commission and in part it simply continued the work of the earlier body, focussing on the development of parks and drive-ways.⁵⁷ However, it did represent a strengthening of the federal presence; local representation was greatly diminished in the new structure, an activist chair was named to the Commission, its mandate included the City of Hull and the federal presence was enhanced in the very centre of Ottawa, in what was known as Confederation Square. In 1936 Mackenzie King had met the French planner Jacques Gréber in Paris and invited him in 1937 to come to

⁵⁶ *Journal of the Town Planning Institute of Canada* 1, 9, April 1922: 3-6.

⁵⁷ Taylor 1986: 148.

Ottawa to advise on Confederation Square and the War Memorial. Gréber's work was interrupted by the war but in 1945 King invited Gréber to return to Ottawa and the Federal District Commission established a committee to draw up a Master Plan of the National Capital District. Gréber's plan was made public in 1950 and contained many of the ideas of earlier plans; removal of the rail-lines from the centre of the city and use of the land thus cleared for more automobile routes, expansion of Gatineau Park (on the Quebec side of the river), establishment of a greenbelt on the Ontario side and the enhancing of Confederation Square as the entry to Parliament Hill. The Federal District Commission was transformed in 1959 to the National Capital Commission (NCC) by the adoption of the *National Capital Act* by the federal Parliament. There were no consultations with the provincial governments as this was seen as an internal matter for the federal government and as a continuation of the former organizational structure. The area covered by the NCC was greatly expanded to cover seventy-two municipalities in Ontario and Quebec. No municipal representation was included in the NCC. Despite the fact that Mackenzie King was no longer Prime Minister by this time, the Gréber Plan was implemented by his successors through a very active program of property acquisition. The federal government's planning role was to be achieved by owning sufficient property to be able to plan the capital through the development of its own property.

The 1960's represented the peak of federal government dominance in the planning and development of the region. This can be dramatically illustrated by the fate of the NCC plan made public in 1970 which was premised on a development pattern moving to the east on the Ontario side (the most Francophone areas) and to the west on the Quebec side (the most Anglophone areas). The federal government argued that this would build a balanced bilingual capital region strengthening the Francophone areas of Ontario and the Anglophone areas of Quebec. The plan was vigorously contested by the planners on both sides of the river, as Ottawa's priorities were in development to the west and those of Quebec, in development to the east. In part these municipal priorities did favour the interests of local land-owners⁵⁸ but they also corresponded to favouring the development of the poorer Francophone areas on the Quebec side rather than the richer Anglophone areas. On the Ontario side the priority to the west also cor-

58 Taylor 1986: 194 and Andrew/Bordeleau/Guimont 1981.

responded to local land-owner interests but also to the high tech development in the western suburb of Kanata which had begun in the late 1960's. The municipal interests won out and development continued to the west in Ontario and to the east in Quebec.

More fundamentally, the decline in the dominance of the federal government from the 1970's represents the impact of the reorganization of the local and regional political structures and the resulting greater competence of these structures to plan and develop their respective areas. In all cases, these decisions were taken by the respective provincial governments, often over considerable local opposition. The first set of changes was through the creation of regional government structures both in Ontario and in Quebec. In 1969 the Regional Municipality of Ottawa-Carleton (RMOC) was created, bringing together the City of Ottawa and the suburban municipalities surrounding the City in a new level of government, leaving the existing municipal structures in place and adding the regional level. The RMOC was responsible for regional planning as well as major infrastructure and over the lifetime of the RMOC it took over more and more responsibilities. A year later the Communauté urbaine de l'Outaouais was created on the Quebec side of the river with a very large territory matching the territory of the NCC on the Quebec side and here too, regional planning was a responsibility of the new structure.

The second set of local restructuring took place some thirty years later and this time the provincially imposed reorganizations amalgamated the individual municipalities and created a single municipal structure. The new City of Ottawa was created in 2001 with a huge rural territory as well as all the suburban and urban areas. In 2002 the new City of Gatineau was established on the Quebec side, bringing together all the urban municipalities and taking the name of the most populated suburban municipality instead of the former core city of Hull. This meant that there were now three major players in the federal capital; the City of Ottawa, the City of Gatineau and the National Capital Commission. The provincial governments of Ontario and Quebec had been the major players in the decisions to create the new municipal structures but once created there was little direct involvement of the provincial governments in the management of the capital region.

The planning competence of the two major cities had greatly increased since the 1970's, both at a regional level and at a neighbourhood level. John Taylor's «Ottawa: An Illustrated History» develops the argument that the federal government's reduced role in planning was related to its inability

to understand both the regional development issues and those at the neighbourhood level. Neighbourhood planning started in the 1970's in Ottawa and led both to the gentrification of some of the central neighbourhoods and to the formation of close ties between the City of Ottawa and to the citizens who had been leaders in these neighbourhood planning processes. The same processes took place in Gatineau. In the case of Ottawa many of those involved at the neighbourhood level went on to become active in municipal politics and this reinforced the links between municipal Ottawa and the most engaged citizenry.

Another important change in the governance of the capital region came about with the election of Pierre Elliott Trudeau as Prime Minister in 1968. Trudeau was determined to prevent the independence of Quebec and was elected Prime Minister at a time with a very strong separatist movement in Quebec. Part of Trudeau's plan related to the capital region and to his decision to place federal buildings in the downtown core on the Quebec side of the river, both as a way of more equally distributing the benefits of the federal presence (as federal buildings made payments in lieu of taxation to the municipalities) to the Quebec side and also as making much more difficult a separation because of the greater presence of federal buildings.⁵⁹ Expropriations took place and both federal buildings and Quebec government buildings were built in the downtown core on the Quebec side of the river. At the same time Trudeau received the approval of the provincial prime ministers and premiers for a redefinition of the National Capital Region to include both Ottawa and Gatineau as part of the National Capital Region (NCR). This was done at a federal-provincial conference in 1969 and although it did not lead to a constitutional change in the designation of the seat of Government as being Ottawa-Gatineau it did establish an official entity, the National Capital Region, which fully includes Gatineau as equal to Ottawa. This designation has had an impact on the public understanding of the National Capital as the NCR designation is extensively used by the NCC.

The other legacy of Trudeau to the Capital was the building to two world-class cultural institutions; the National Gallery and the Museum of Civilization. The two buildings sit on the banks of the Ottawa River, the Gallery on the Ontario side and the Museum of Civilization on the Quebec side. For the National Gallery this was the first permanent location after

⁵⁹ Andrew/Bordeleau/Guimont 1981.

more than 100 years of existence. The Museum of Civilization's origins date from 1856 with the establishment of a museum by the Geological Survey of Canada and the Museum had been part of the Victoria Memorial Museum Building opened in 1911. In 1968 the Human History Branch became the National Museum of Man and in 1986, with the new building in construction and a public campaign objecting strongly to the name, the museum was renamed the Museum of Civilization. It opened in 1989. The establishment of the Museum of Civilization in Gatineau has moved tourist activity somewhat more to the Quebec side and certainly these two museums have enhanced the core of the National Capital Region. In addition, the Museum of Civilization, designed by Douglas Cardinal an internationally recognized architect of Métis and Blackfoot ancestry, has brought an Aboriginal presence into the core of the NCR.

This brings us to the end of our second section; the changes to the initial set up. Certainly the status of the capital has been modified but not in a formal sense. As we have seen, the recommendation for a federal district model was made in 1915 and in 1922 and again by Donald Rowat in 1973⁶⁰ and by Douglas Fullerton in 1974⁶¹ and was never followed up by the federal government. Ottawa is still, according to the Constitution, the seat of Government but in practice the designation of the National Capital Region more accurately illustrates the practices of the federal government in relation to its capital. This was first done through the planning activity of the different federal agencies, from the Ottawa Improvement Commission through the Federal District Commission to the National Capital Commission and it has continued, although perhaps in somewhat different ways, after the NCC has lost much of its planning and development dominance and taken on a different role as organizer of events. Events of the NCC use the frame of the NCR and therefore portray a Capital equally present in Ottawa and in Gatineau.

The National Capital Commission has a Board of Directors of 15 members, including the Chairperson and the Chief Executive Officer (CEO). The thirteen other members represent all the regions of Canada and at present, there are five members who come from the Capital Region and eight from other regions across Canada. The members are named by the Minister of Foreign Affairs, with the approval of the Governor-in-Council

60 Rowat 1973.

61 Fullerton 1974.

(this means the Prime Minister). The chairperson and CEO are appointed by the Governor-in-Council.

The major actors in these changes were the Prime Ministers who took an interest in the capital, and in particular Mackenzie King and Pierre Elliott Trudeau. Their interests were somewhat different as Mackenzie King was interested in town planning as a part of his overall views on social organization whereas Trudeau's interest was primarily in the relationship of Quebec to Canada. Interestingly, neither of them used pragmatic arguments. Mackenzie King would have probably seen his arguments as being democratic (creating the good life for the overall population through better urban planning and development) although critics and commentators might have seen his arguments as being as much anti-democratic in reducing the capacity of the local population to make their own decisions and more about reinforcing the importance of the federal level of government. Trudeau's arguments were national in putting into place his vision of Canada and also linked to a vision of federalism in the sense of the practical impact of his decisions on the relationship of Gatineau to the federal capital. There continues to be huge disagreement among commentators on their opinion of Trudeau's decisions, including those relating to the National Capital Region. Was he improving the place of the French-speaking population in the National Capital Region or was he interfering with the legitimate right of Quebec to decide its own future? Was he creating a more equal distribution of the benefits of the presence of the federal government in the NCR or was the impact to have displaced and disrupted an urban community through the placing of huge office complexes into a residential and commercial community?

In order to answer the question of success we need to make a distinction between the formal model of governance of the capital and the more pragmatic analysis of the relations between the two sides of the river and of the extent to which the capital region is seen as an appropriate representation of Canada. The answer to this will be helped by looking at the various tendencies of change.

3 • Tendencies of change

There are two tendencies of change that in fact go in completely different directions; those that would give an enhanced role to the federal government and an enhanced role to the idea of the Capital and those who see an

enhanced role for the two major cities, Ottawa and Gatineau, working each with their citizenry and with each other to create a more vibrant capital region. The proponents of each of these tendencies would argue that real changes are moving the NCR in the direction they prefer. Those who argue for an enhanced federal role make the case for the increased importance in the modern world of countries being able to project the image of their capital as a visual representation of their country to the world. Those who argue for the enhanced role of the two major cities suggest that the municipalities are better able to understand and react positively to the increasing diversity of their local communities and therefore to be able to create a more vibrant capital region.

One illustration of the first tendency was the Report of the Panel on the NCC Mandate Review of December 2006. The Panel was chaired by Gilles Paquet, Professor at the University of Ottawa and long-time observer and commentator on the local and regional scene. The Report was entitled «The National Capital Commission: Charting a New Course» and the first two recommendations in the Report stake out a new and enhanced role for the NCC.

THAT the long-term construction, stewardship, sustainability, and celebration of the capital of Canada constitute the overarching consideration for the federal government at the time of taking decisions regarding the future mandate of the National Capital Commission (NCC). The importance, significance and meaning of the capital of Canada – to the country and to Canadians – should be recognized through a new preamble in a modified National Capital Act.

THAT the mandate of the NCC, as the main instrument of the federal government charged with the coordination of all activities pertaining to the ongoing planning, stewardship, and celebration of the capital of Canada, be strongly re-affirmed through the strengthening of its mandate.⁶²

62 Paquet 2006: 28-29.

Gilles Paquet has followed up on his interest in the governance of the National Capital Region by holding a colloquium in 2011 and co-editing a volume, «The Unimagined Canadian Capital: Challenges for the Federal Capital Region» with the President of the Forum of Federations, Rupak Chattopadhyay, one of the co-sponsors of the colloquium. The volume is interesting in that it contains full examples of the two tendencies we have described, enhancing the federal role and enhancing the city role. Little was said about the provincial role, although note was taken that the Quebec government would not be favourable to any suggestion of an institutional solution such as a federal district.

The Preface to the book states that its purpose is «to repair the important neglect by so many stakeholders of their duty in imagining a better federal capital region for Canada ...but to ensure that the federal capital region does not remain unimagined in the future».⁶³ The contributors to the volume include the two researchers who have written the most extensively on the capital, David L.A. Gordon, Professor of Planning at Queen's University in Kingston and John H. Taylor, historian from Carleton University and who hold opposite positions on the future of the region. Taylor has always argued for the local community and Gordon for an enhanced role for the federal government. Gordon's article ends with a list of eleven projects that the federal government could do to enhance the capital region and Taylor's article ends with a very different perspective: «Two cities, with an opportunity to behave like cities, is the most likely route to a 'better and more inspiring' capital».⁶⁴

The missing factor in our discussion of the tendencies of change is that of political leadership. Telling the story of the capital has illustrated the weight of political leadership- from John A. Macdonald to Mackenzie King to Pierre Elliott Trudeau. There have been other leaders – Jean Pigott was Chair of the NCC from 1985 to 1992 and she was a shrewd administrator with excellent contacts and a wonderful gift of storytelling that brought the NCC into greater public visibility. But high level political leadership would seem to be a key and it is very difficult at the moment to evaluate this factor. It would appear that none of the possible leaders, not the federal Prime Minister nor the mayors of Ottawa and Gatineau, see themselves in a leadership role in relation to the NCR and therefore the two tendencies

⁶³ Chattopadhyay/Paquet 2011: II.

⁶⁴ Taylor 2011: 33.

of change that we have described exist at the level of public debate rather than at the level of governmental action.

Generally speaking political leadership at the municipal level is a personal leadership and not a partisan political leadership. Political parties do not exist in the Ottawa or the Gatineau municipal council. This has been the majority tradition in Canada, candidates run as individuals or, sometimes, as members of what is referred to in Canada as «civic» parties, parties that exist only at the municipal level and do not correspond to the political parties that exist at either provincial or federal levels. At the present time, for example, such a party is being formed in Gatineau under the name of Action Gatineau.

4 · Current set-up in regards to the initial set-up

We have tried to demonstrate that the current governance of the Canadian capital is rather different from the initial set up. The framing of the NCR and its growing use in the functioning of the capital region gives a de facto equality to Ottawa and Gatineau despite the continuing formal designation of Ottawa as the seat of Government. What is particularly interesting, and challenging, in this effort to reflect on the Canadian Capital is to think about the arguments that have been presented over time and to understand and explain the changes in these arguments. Certainly in the case of Canada, the initial period did not use democratic arguments, quite the contrary, but we now live in a democratic era in which decisions about governance cannot ignore democratic arguments. The arguments that were used in past decisions about the Canadian Capital were a mixture of pragmatic and national – there were buildings almost ready in Ottawa but they were more arguments about political balancing; Ottawa would irritate fewer people than any other choice and Ottawa made sense in terms of one of the fundamental tensions in Canadian politics; the balance between regions (provinces) and linguistic groups. Managing tensions between linguistic groups makes clarity complicated, and as Jean Laponce argued in 1993, «Bilingual capitals are sometimes at their most effective when they do not speak».⁶⁵ However he continued «But it is in the nature of politics to want

⁶⁵ Laponce 1993: 411.

centrality and it is in the nature of democracy to want to speak».66 The balance between regions has shifted in Canada from the Quebec-Ontario balancing act to one between the West gaining power in relation both to Ontario and Quebec. In addition the balancing act between French-speaking Canadians and English-speaking Canadians has been complicated by the increasing ethno-cultural diversity of the Canadian population and the need to re-envisage two linguistic communities both composed of increasing multilingual members. The challenge for Canada is the point made by Laponce; that it is in the nature of democracy to want to talk. Our historical tradition has been different and more a process of muddling through the creation of a Canadian Capital; the challenge would appear to be that of continuing the process in a democratic era.

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BERLIN: AN ALMOST SYMMETRICAL CASE⁶⁷

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SUMMARY: 1. Introduction: Focusing on asymmetric government. 2. Why was Berlin chosen as capital city? 3. Symmetry in federations: Why and how? 4. Facets of (a)symmetry for Berlin. 5. Concluding remark. Bibliography.

1 • Introduction: Focusing on asymmetric government

The emphasis of our project is on how capital cities in federal countries have led to elements of asymmetric federalism. The benchmark for symmetry is apparently situations in which the capital of a federal country is dealt with in the same way as any other city of the country with similar characteristics. Thus the small or medium-sized capital city would probably become a city within a state (or Land in Germany), whereas a large city could become a member-state alongside other large city-states, if such city-states exist in the respective federation.

As the capital city may incur additional cost because of its capital city function, a special provision to account for this cost may be considered an instrument to ensure symmetry. This leads to the difficult question of whether the cost of being a capital city should be balanced against the advantage gained for being the capital.

This chapter starts with the question of why Berlin became the present capital of Germany, despite the fact that after 1949 the medium-sized city of Bonn inside the Land of Northrhine-Westphalia had been the capital of West Germany. This is interesting because it means that symmetry can be tested for very different ways of organizing the capital in a federal system. Therefore, the notion of symmetry is then looked at in more detail, and

⁶⁷ The author thanks Klaus-Martin Boese of the Senatsverwaltung Finanzen Berlin and Jürgen Schneider of the Federal Ministry of Finance for helpful information.

the question is asked whether symmetry is a positive notion in all conceivable cases. The chapter then analyses, for Berlin, three possible aspects of asymmetry: political, economic and fiscal. In the final section a conclusion is drawn on whether, or to what degree, Berlin is symmetric within the German system.

2 · Why was Berlin chosen as capital city?

In what follows, in general, we take Berlin after 1991 as the initial setup. This city had been the capital until 1945, and Bonn had only been a – declaredly - interim solution from 1949 to 1991. Also, Bonn had been the capital city of West Germany only. This status was not laid down in formal law, not to speak of the constitution (see below for Berlin). Bonn was, and still is, a medium-sized town in the state of Northrhine-Westphalia, with 115 000 inhabitants in 1950 and only 60 kilometres away from the Western border of the country. Frankfurt am Main, a much larger city and somewhat more towards the centre of West Germany, was also under discussion in 1949 as a potential capital.

It is said that, ultimately, the personal interest of Chancellor Konrad Adenauer to have the capital city close to his house in Rhöndorf, just a few miles across the Rhine river from Bonn, tipped the balance. This sounds similar to the rumours that the choice of Washington, D.C. has something to do with the fact that the mansion and property of George Washington at Mt. Vernon was very close to the new capital.⁶⁸ Perhaps America's Mt. Vernon has a recent counterpart in Germany's Rhöndorf.

Bonn was a city-county inside a single state. This meant that it depended, to a degree, on the policy of this state vis-à-vis its municipalities. German states usually award higher per capita grants to larger cities because of their higher cost and their functions as central places. Bonn profited from this, but only to an average degree and less than the large cities of the Ruhr Valley, which is still the largest agglomeration in Europe and, for the Land of Northrhine-Westphalia, the main object where money is channelled when re-election draws closer. For Bonn, a trilateral agreement on additional financing for its capital city functions existed, agreed between the city

⁶⁸ See chapter 2 in this volume.

of Bonn, the state of Northrhine-Westphalia and the federal government, however, its details were not published.

With unification in 1990 everything changed. Between 1949 and 1991 Berlin had enjoyed a special status. When the West German constitution was passed in 1949, the three Western allied powers, wrote a letter (May 12, 1949) in which a couple of provisos were expressed. One proviso was about Berlin. It established that the Berlin members of the Bonn parliament should not be directly elected, but appointed by the parliament of Berlin (Abgeordnetenhaus), and that they were not entitled to vote on laws in the federal parliament in Bonn. This was clearly a case of asymmetrical federalism.

In 1991 Berlin formally became the capital of re-united Germany, and the city is now designated as such in the constitution (see below). The city was then, and still is, one of three city-states in the federal system, alongside Hamburg and Bremen, and thus became a symmetrical element in the German federation.

Several types of arguments may be used to justify choosing the type of federal capital. In our project, we have distinguished pragmatic, liberal, democratic, national(ist) and federal reasons and justifications. From this list one item contains the main reason for choosing Berlin. It was the «national reason» after achieving national unity between the two parts of the country following the fall of the German Democratic Republic in 1989. As Chancellor Helmut Kohl put it, he could not make the new Eastern Lander feel part of the wider Germany if he ruled them from a small capital 60 km from the country's Western border. As to the choice of Berlin, he once mentioned to the author that: «In a reunited Germany, and in a Europe that grows together, parliament and government must sit where it has historically met, where the dividing line between East and West, between freedom and dictatorship ran, where the wound of separation in the midst of our country and of Europe had been painful. This was, and remains my conviction, and therefore I voted for the move from Bonn to Berlin in 1991».⁶⁹

Looking at its geographic position, the new capital was now 60 km from the Eastern border, but that helped the Eastern states feel they had become equal to their Western counterparts. The choice of Berlin certainly did not mean geographic centrality. For that, Erfurt, a major town in the new Lander, would have been the better alternative (see Figure 1).

⁶⁹ Personal communication of Chancellor Helmut Kohl to the author on March 3, 1999.

Figure 1: Bonn, Berlin and Erfurt in Germany



(Source: Bundesamt für Bauwesen und Raumordnung)

The choice between Bonn and Berlin was highly controversial, and the final vote in the Bundestag was pretty narrow. To a certain degree Bonn had to be compensated, and this occurred with the Berlin-Bonn law of 1991. The author used the «taxi driver» test to probe the effect. Immediately after the relocation of the federal government the attitude of taxi drivers in Bonn was a gloomy one. They could not imagine that the loss of the whole host of taxi guests, which had until then visited the various institutions of the federal government, could ever be compensated for. But only five years later they talked about business as usual and were no longer worried about their future. Moreover, Bonn is situated within a region which, compared to other German regions, has a favourable outlook⁷⁰ and has more jobs now than at the time of relocation.⁷¹

Since then no major effort has been made to dispute the choice of Berlin and bring other places into the discussion on the German capital. This was confirmed to the author by the persons relevant to the relations between federal and Berlin governments both in the Federal Ministry of Finance and the Senate of Berlin. In 2006 provisions were made in the German constitution to state that «the capital of the Federal Republic of Germany is Berlin. The representation of the state at large in the capital is a federal task» (Article 22).

Looking back at the German capital during the last centuries, Berlin has an unusual record. It had been the capital of the various Prussian governments at least since 1415, where the dynasty of the Hohenzollern reigned until 1918. In 1871 the German Reich was founded, under the strong leadership of Prussia, with Berlin still being the capital. In the Weimar Republic (1918-1933) and under the Nazi-Regime (1933-1945) it retained its status of capital city. After a brief interval (1945-1949), Bonn became the capital of West Germany while East Berlin was made capital of the GDR. In 1991 Berlin was then re-installed as capital for the whole of Germany and remains being so today.

This last step meant that Berlin was deliberately chosen as capital and had, in many respects, to be rebuilt to house the federal government. In the terms of Parkinson (2012), is Berlin an «organic» or a «deliberately designed» capital? Bonn was never categorized as the preliminary capital for - a later unified - Germany. So after unification the Bonn parliament was

70 N. N. 2008: 57.

71 Burger 2012: 2.

free to choose its capital. In this sense Berlin was «deliberately designed». But the fact that it had been the capital for such a long period before arguably made it easier to re-establish it in 1991, though opponents may have considered this as a disadvantage too. However, the «organic» aspect was underlined when the old seat of the central government in Berlin, the Reichstag, was again chosen as the new seat, with the only addition being the building of a modern cupola. This can be interpreted as a symbol of continuity between the old and the new capital (Zimmermann 2009). In this sense Berlin seems to have characteristics of both Parkinson's types of capital cities.

3 · Symmetry in federations: Why and how?

a. Why focus on symmetry?

When drafting this chapter the author assumed that «symmetry is given, if the capital city of a federal country is dealt with as any other city of the country with similar characteristics». It means that a small capital city might be a city within an individual state, whereas a large capital city might become a city-state alongside other large city-states.

When the focus of a whole book is on symmetry, questions on whether symmetry is good for some higher objective and whether it is good on any occasion, have to be asked. When symmetry is analyzed in the context of federalism, it is apparent that the positive connotation of symmetry is understood as a contribution to the objectives behind the case for federalism. In economic terms one would thus expect that symmetry is meant to enhance efficiency with respect to the objectives of federations. Hence in what follows, some dimensions of symmetry are evaluated in terms of how the federal system functions. But before that, the important question is whether symmetry is always a good thing.

b. Is symmetry always positive?

«Symmetry» sounds as if it is 100% a positive notion. To induce critical thinking around this notion, this chapter puts forward two arguments which add further dimensions to the field of symmetry in federations.

- *The federal government held hostage?*

The first argument relates to Berlin not being like Washington, D.C. in the sense that the federal government has no say in how Berlin is ruled. If future ethnic developments or political changes to the far left or far right occur, and the government of the city is placed on a strong adversarial mode against the federal government, there might be second thoughts on the city's independence from federal intervention.

These arguments remind the author of the historical event which was first referred to him by Natwar M. Gandhi⁷² during a conference in Delhi in 2008. Gandhi had learned earlier that the delegates of the Philadelphia Congress in the United States had decided on Washington, D. C. as a neutral element in the federal system, because they had sworn they would never again be held hostage by any state government, in this case Pennsylvania. What he was referring to was apparently the «Philadelphia Incident» of 1783,⁷³ when soldiers in mutiny beleaguered the new Congress and the leaders of the state of Pennsylvania until they received a legal document that assured their back pay. This incident was influential in making the newly founded capital an asymmetric element in the new federation. As Madison wrote in *The Federalist* 43 on the need of the federal government to have «complete authority at its seat of government»: «Without it, not only the public authority might be insulted and its proceedings interrupted with impunity; but a dependence of the members of the general government on the State comprehending the seat of government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence, equally dishonorable to the government and dissatisfactory to the other members of the Confederacy» (Madison 1788, p. 279). One can virtually smell the personal experience of the Philadelphia Incident in these lines.

In the case of Berlin, or earlier Bonn, there has so far never been a fear of federal organs being held hostage by the local government of Berlin, or earlier by the state of Northrhine-Westphalia, or by antagonistic parts of the city population, be they far left or far right. However, if in Berlin the city government or the population ever slides into strict antagonistic behaviour,

72 He was at the time Chief Financial Officer for the District of Columbia.

73 The following, including the reference to *Federalist* No. 43, was written after listening to Anthony Gilliland's report in Barcelona.

the discussion of being held hostage will probably arise. But so far, there does not seem to be any danger of a «Berlin Incident».

Comparing the two cases, earlier Washington, D.C. and today's Berlin, it seems that such fears relate to earlier and weaker forms of state. Today, it maybe applies to so-called failing states, where it might be helpful to have an autonomous capital city ruled by the central government. In modern democracies this seems to be no longer necessary.

- Regional (a)symmetry and national growth

The second argument refers to the regional aspect of economic symmetry. If one adheres to the notion that the development of a country should occur without major regional disparities, and hence around a pattern of not-so-large centres, then the Berlin solution would be asymmetrical in this perspective. But the author thinks that the – desirable – economic growth of a country depends, to a large degree, on the existence of major modern agglomerations (Zimmermann 2004). It is here where most of the necessary innovations originate, and where Krugman's forces towards agglomeration work (Krugman 1998). From this perspective Berlin was a better choice than Erfurt. This point will be taken up below.

c. Types of asymmetry in federations

The literature on asymmetric federalism typically distinguishes between three types of asymmetry: de facto (mainly economic), de jure (political and fiscal).⁷⁴ De facto asymmetries, in terms of geographic size and natural endowments, population, income and so on, exist in all federations. De jure asymmetry normally refers to federations with different self-government rights on one level, in this case the rights of the capital city compared to the rights of other similar entities at the same level.⁷⁵ Fiscal asymmetry refers to the distribution of revenues, transfers, expenditure rights, and the like, and may be considered, in a sense, to be a special case of de jure asymmetry.

In what follows, the de jure or political aspect is dealt with first, because it is the most important in any federation. It is followed by the de facto or –

⁷⁴ For an overview and the pertinent literature see Libman 2009 and 2012.

⁷⁵ Occasionally, it also refers to different rights in shared rule, for example, representation in a second chamber.

in the case of Berlin mainly - economic asymmetry, because this influences the fiscal situation very much, which in turn is therefore dealt with last.

4 · Facets of (a)symmetry for Berlin

a. Political asymmetry?

- Assuring basic rights

One of the first things one would expect with respect to any organization of a state would be the respect for basic rights. One such right was discussed during the conference in Barcelona: the unlimited voting rights of any citizen. Apparently in the United States there is a limitation to the voting right of the citizens of the District of Columbia. They are not fully represented in Congress, for reasons discussed centuries ago. If the District was situated inside Europe, it would be interesting to know how the European Court on Human Rights would rule if a citizen of the District went to this court to claim full voting rights. In Berlin the voting rights of the population were limited between 1949 and 1991. That, however, was unavoidable – as mentioned before - because the Allied powers treated Berlin as a separate entity.

- Bridging cleavages

In general one would assume that symmetry is an instrument to minimize the political cost of dissatisfaction. The probably most important reason for dissatisfaction are ethnic or language cleavages inside a country. The establishment of a federal system can be helpful to bridge such cleavages. The various groups are given the right of partial self-government, but across such cleavages all citizens are to be dealt with equally, with no preferential treatment for any of them or their regions.

Beyond this aspect of equal treatment, the bridging of these cleavages is at the same time an instrument ‘to keep the country together’. This, however, is probably not an unlimited objective in itself. Seen from the centre, the reduction of the country in terms of area and population of course means less international influence. Also, in economic terms, a reduced number of borders is an advantage in itself, because borders have a cost. But existing

cleavages have a reason, be it language, ethnic background or any other. If the feeling of being different and the desire to remain different is very strong, the separation of the region, be it partial, as in the case of the Swiss new canton of Jura, or be it total, may be better in terms of the preferences of the population.

- Assigning a place in the federal system

As mentioned above, before 1991 Berlin as a legal unit in West Germany showed substantial political asymmetry. It was disputed among the Allied powers whether West-Berlin was an integral part of West Germany at all, not to speak of whether it was to be considered a city-state like Hamburg and Bremen. Above all, the delegates of Berlin in the Bonn Bundestag were not full members and were appointed by the Berlin parliament. Therefore, when unification occurred, it would have been unimaginable that the constitution could include a provision for Berlin to become the capital, but in the form of a special unit, as is the case of Washington, D. C. This would have been a rather clear case of *de jure* asymmetry.⁷⁶ The constitution was silent on both issues: the future capital city and the form it was to take. But due to the sheer size of Berlin almost no discussion occurred on it becoming a city-state, alongside Hamburg and Bremen. Moreover, between 1949 and 1991 Berlin had always been treated as a separate unit in the West German federal system, not as part of any Land. Given this situation, it would have been difficult at this point in time to deny Berlin, as the largest agglomeration, the status of a city-state.

However, in 1996 a special event occurred with regard to Berlin. Before Berlin became the capital of Germany, much discussion had occurred on the justification for the other two city-states (Hamburg and Bremen) as separate states in the German federal system. In order not to keep the new third city-state of Berlin forever, an effort was made to amalgamate Berlin with its surrounding Land of Brandenburg. The referendum, which was necessary due to a particular provision in the constitution, failed in 1996. But some of the institutions which had been previously created in order to bring the two states closer together continue to exist today. Possibly the most

⁷⁶ This argument was referred to the author by Lars P. Feld.

important of them is a common area planning commission which plans for Berlin and Brandenburg simultaneously.

- *City in a state or city-state?*

If amalgamation had occurred, Berlin would have changed from being a city-state to being a city inside a state.⁷⁷ However, this (failed) attempt towards amalgamation was a rather regional initiative and not part of a general drive to do away with all of the three city-states. Nevertheless, it touched upon the legal status of the federal capital. Berlin would have become a case like Ottawa. The author feels uneasy when imagining the huge Berlin agglomeration, including the federal government, being governed from a potentially remote state government.⁷⁸ It would certainly have led to many special arrangements between state and capital city, for instance in the field of financing specific capital city costs, and it would have made Berlin dependent on one state, so arguments like the one quoted from James Madison might have arisen.

It might be possible to generalize from this specific German discussion. The city-state as a solution brings the federal government and the city-state, which contains the seat of the federal government, to the same table as equal partners, and no other part of the country is involved. In the city-in-a-state solution this is different. Here the other parts of the state (including the state capital and the hinterland) with their different interests sit at the table. In Germany a discussion arose on whether, and to what degree, the hinterland of a state is able to politically exploit the agglomeration (Zimmermann 2007), and in this case the federal capital would have been the agglomeration. This cannot happen in the city-state solution.⁷⁹ Taken together, this city-state solution seems, for a large capital city, to be an efficient solution. At the same time it comes closest to the D.C. solution, without being an asymmetrical element in the federation.

Generally speaking, the term political asymmetry may also relate to the local government of the capital and its local population being treated dif-

77 For reference to this aspect the author thanks T. Baskaran.

78 Berlin would have probably become the state capital of the newly formed state. But at the moment Potsdam is the state capital of the – larger – state of Brandenburg.

79 When Klaus-Jürgen Nagel observed in our Barcelona discussion that the city-in-a-state solution may be a bad alternative, he surely had such arguments in mind.

ferently, compared to the other parts of the federation. In this sense Berlin is in no regard similar to the regime of Washington, D.C., since it obtained full «self-rule» in 1991. The federal government has no say whatsoever in the internal matters of the city of Berlin.

b. Economic asymmetry?⁸⁰

An apparent case of economic symmetry is geographical symmetry. Ideally, the capital city should have the best possible access from all areas of the country, meaning that it should be placed somewhere near the geographical centre of the country. Looking at the United States and Germany, this is certainly not fulfilled; their capitals are rather close to the Eastern border.

In many countries the geographical situation, the existence of barriers such as high mountains (as in Switzerland) or vast stretches of ocean (like in Indonesia) determines the fate of a country and its government to a large degree. This is not so in Germany, a rather compact country, with low mountains and navigable rivers. Therefore, economic asymmetry today is reduced mainly to the economic heritage of 40 years of communist rule in the GDR and East Germany and to the separation of West Berlin from West Germany by the Iron Curtain.

At the time of unification (1990) Berlin was no prosperous agglomeration. West Berlin had undergone cold-war isolation for more than four decades, and its previously strong industrial base was weakened and had moved towards a flatter value-added pyramid, not least as a consequence of special allowances in value-added tax. East Berlin industries had, due to the break-up of the Soviet system, lost most of their Eastern European markets. Taken together, united Berlin had major economic deficiencies (Zimmermann 2009, p. 106-109). In this respect, adding to the Berlin economy the economic advantages of becoming the capital of the whole of Germany could have served as an instrument for more economic symmetry among the German agglomerations.

But that meant, at the same time, that no counterweight was created to balance the large existing agglomerations, as had occurred in the case of Brasilia and Canberra.⁸¹ If that had been a major objective, either Bonn could have been retained as capital, or Erfurt might have been selected if

80 Details on the economic and financial situation of Berlin can be found in Zimmermann 2009.

81 For the rationale see Zimmermann 2010.

it had to be a city in the new Lander. If a balanced regional structure in a country is considered symmetry, then the move from Bonn to Berlin has led to regional de facto asymmetry.

Certainly, the Berlin agglomeration could serve as a development centre for the generally less developed new Eastern Lander, and this has been the case, though only to a minor degree. If Erfurt had been chosen as capital, this objective could not have been reached because this city would have been much too small to act as the economic focus for the whole of the Eastern Lander. After 22 years the East is still heavily lagging behind, though with ups and downs over these years. It still has a long way to go to approach equal economic strength – or in this sense economic symmetry - compared to the West.

c. Fiscal asymmetry?

- Asymmetrical fiscal treatment during transition?

West Berlin was isolated by the Iron Curtain between 1949 and 1989. This led to a strange fiscal situation; it depended, to a large degree, on direct subsidies to the city's government and on tax subsidies to the local private economy. The dependence on subsidies was very strong as can be seen by the percentage of direct subsidies in the budget, which was around 50% for most of the time (Senatsverwaltung für Finanzen 2005, p. 2). East Berlin was also badly off, the physical transfer of industrial machinery as 'reparation' and the planned strengthening of the Southern industries in the GDR had weakened its industrial basis, and no direct subsidies were granted.

At the time of unification in 1990 it was decided that West Berlin was to return to 'normal' as soon as possible. Chancellor Kohl had talked about «flowering landscapes» immediately developing in the East. It was basically right to reduce the subsidies over time, but the question was how fast this should happen. A reduction of 50% within only four years occurred. In comparison, reducing public employment in Berlin by 50% took 20 years, in spite of the sometimes strong policies of budgetary discipline.

- Ensuring fiscal symmetry concerning the capital city

The decision to move the federal government (Parliament and part of the administration) to Berlin was made on June 10, 1991. Already in 1992 the

first treaty between the Senate of Berlin and the federal government was agreed. Its title is self-explanatory: «Agreement concerning the cooperation of the federal government and the Senate of Berlin on the development of Berlin as capital of the Federal Republic of Germany and on the fulfilment of its function as seat of the German Bundestag and of the federal government». This meant that both sides already considered it necessary to somehow support Berlin in its new function.

The current financial support is laid down in the «Treaty on the financing of culture derived from the capital city function of Berlin and on the compensation for special burdens of the federal capital», called the «Capital city financing treaty 2007». It followed a similar treaty of 1994.

When setting up this treaty, the question of capital city cost had to be dealt with, at least implicitly. It is not an easy question, as later research showed.⁸² The additional cost has to be weighed against additional economic advantages and additional public revenue in the capital city budget. In discussions like this the author likes to present a thought-experiment. Ask the mayor of Berlin after the third glass of beer, when he tends to speak openly, whether he would like to see the federal government back in Bonn (or in Erfurt, to use the example which was seriously discussed at the time of the Bonn-Berlin move). The answer would certainly be negative, and persons knowing the scene assured the author that Berlin is still happy to ‘have’ the federal government. This means that the various – positive - capital city goods, which can be discerned (Zimmermann 2010), are judged to be considerable. This in turn means that the eventual compensation for the cost of being the capital city should be rather small, if fiscal symmetry with the other regions of the country is to be observed.

The «Capital city financing treaty 2007» can be interpreted as the result of such a rational discussion. Although the partners may not have argued at the time in terms of the specific costs and benefits of a capital city function, the result fits that which would be obtained from the calculation of budgetary cost and economic benefit, in the sense that, at best, a small compensation is adequate.

Following the separation of issues in the treaty of 1994, the treaty of 2007 also separates support for culture from the «special burdens of the Land Berlin». The support for culture follows earlier subsidy practices,

82 For this discussion see Zimmermann 2010 and the literature there, as well as Slack/ Chattopadhyay 2009 for the discussion in other countries.

among others a highly disputed refurbishing of the third opera house in Berlin. Whether these cultural institutions are really necessary to fulfil the role of a respected capital, when foreign diplomats are in town and so on, can certainly be questioned.

The section «Special burdens of the Land» consists of only two items. One is the construction of a new subway line, connecting the seat of the federal government with the centre of the city. It may be argued that this is truly a service for the federal government, though most of this new line is also important in terms of inner city transport for the general public.

The second item is important for the general discussion of capital city costs: security for the federal government, for foreign guests arriving and so on. This is subsidized by a fixed sum of 60 million Euro per year. Compared to the budget of Berlin this is a minimal amount (0.3 % of the budget). Whereas some of the other objects of finance, like the new subway line or the refurbishing of the third opera house, are one-time capital-cost undertakings and do not include the continuous payment of current costs, the continuous remuneration for capital city cost in Berlin is reduced to a small amount. This is consistent with the feeling of one economist that the capital city cost and capital city benefit are not strongly outbalanced towards the side of cost.

The city of Berlin produces annually a report on the «Present capital-city-related expenditures of the Land Berlin» (Senat von Berlin 2011). It is organized along the list of items in the «Capital city financing treaty 2007» and emphasizes to what degree Berlin itself has contributed in addition to the federal funds. The security-related annual 60 million Euro from the federal government was matched with an additional 107 million Euro for the fiscal year 2010, and the same occurs for the other items. Some percentage of this may be due to ‘creative accounting’, but most of it will be realistic. The differences do not seem to be a matter of complaint or efforts towards revision. In any case this would probably not be successful, since it could be answered by pointing to the advantages of the federal presence (and to the above-mentioned thought-experiment).

Interestingly, the aforementioned annual report of the Senate of Berlin also points indirectly to the need to consider the benefits as well. In its justification of the «Capital city financing treaty 2007» and other compensations it refers to the new Article 106 (section 8) of the federal constitution. This article extends the rule of connectivity, which stipulates concomitant financing to accompany new delegated tasks beyond the relation between federal and Land level, including in addition the relation between federal and lo-

cal level. Among other arguments the article notes that «fiscal advantages, which accrue from these institutions to Lander and communities, are to be taken into account for the compensation». It is not clear whether that applies directly to the case of capital city cost, but the basic argument is there.

From this perspective it is difficult to understand, why CDU members in Lander parliaments, while they undertake the laudable effort to reform the equalizing system between Lander, have proposed additional special grants for Berlin as capital city («Hauptstadthilfe», «capital city support»)⁸³ This would be a long-term commitment, beyond the above-mentioned financing treaty. It would surpass the objective need for such support, if the benefit of housing the federal government is taken into account. And it would increase the federal influence in Berlin politics, so Berlin should hesitate before accepting this ‘present’. Instead of specifying the additional money, if it is deemed necessary for Berlin in general, for its capital-city function, it should be channelled through the existing more general systems, which are discussed in the following. Instead, if the said proposal is accepted, it would render a so-far symmetric solution for the capital, slightly asymmetrical.

- Observing fiscal symmetry countrywide

Germany has strong equalizing fiscal systems, both between Lander, and in each Land (other than the city-states) between its respective municipalities (Zimmermann 2009, p. 116-120). The city-states are - as cities - outside the Land-specific equalization for the municipalities. There they would, if fiscally weak, be receivers, like the large poor cities of the Ruhr Valley in Northrhine-Westphalia.

Berlin is, however, part of the fiscal equalization system between the Lander. There it receives money under general rules, which do not contain a special Berlin clause, because that is supposedly taken care of by the «Capital city financing treaty 2007». Even the clause which weighs the population of city-states higher, does not give Berlin an additional advantage.⁸⁴ Yet it does profit from the special federal grants for the Eastern Lander. In addition, Berlin receives, like Bremen, Saarland, Schleswig-Holstein and Sachsen-Anhalt, temporary funds from a special program for states with a

83 N. N. 2012: 1-2.

84 As to the symmetrical aspect of this weighting procedure see Zimmermann 2013a, and for the general aspect of this procedure Zimmermann 2013b.

difficult budget situation, in particular very high debt (Bundesministerium der Finanzen 2012). And it naturally profits from the net inflow from social security systems, due to its weak economic situation.

On the other hand, some special tax exemptions may also work against Berlin. A striking example is the general exemption of public real estate from local real estate tax. This way, the new federal real estate in Berlin is also tax-exempt. Other countries handle this differently (see Tassonyi 2009, p. 64). But even this is symmetric in Germany.

In the tax sharing system, too, Berlin is treated like any other Land or large city. 80% of all German tax revenue is, though collected by only one system, distributed by general rules, and some of them are even specified in the constitution (Zimmermann et al. 2012, chapter 4). Where the tax base is spread over several municipalities or even Lander, special laws regulate the separation of tax revenue. The total system is not biased in any way specifically for or against Berlin, so fiscal symmetry is observed scrupulously in this important field of tax revenue allocation.

In general, as there are strong equalizing elements in the German fiscal system, Berlin profits more than it would in other countries without such a system or with a weaker one.

5 • Concluding remark

Looking over the various aspects of asymmetry – political, economic and fiscal – Germany seems to treat Berlin rather symmetrically. Some fiscal asymmetry occurred possibly right after unification took place, when subsidies were reduced very fast, and this took some time to digest. As small as it may appear in theoretical perspective, the special cost of being a capital (if we include also the special benefits gained) is sufficiently accounted for in the 2007 Treaty on capital city financing. Political asymmetry does not seem to exist at all. The population and the government of Berlin are not handled in any way differently from Hamburg and Bremen. And the economic lag, which is to a large degree a heritage of 40 years of communist rule in East Berlin and of economic separation in West Berlin, has been narrowed for the city as such, not least through the presence of the federal government.

Summing up, to draw a conclusion on whether the Berlin solution is an efficient one, a look at the Table presented by Nagel in the introduction to this book is helpful. Small cities as capitals form one type of federation and are a

viable solution. In this case the capital is a city-county within a member State. That was the case of Bonn, and there are also Ottawa and Bern as capital of Canada and Switzerland. The political choice of Berlin as the capital of reunited Germany belongs to the category of capital city as a member state of the federation. And this also seems to be a good solution. The federal government consisted of few employees in 1950, and Berlin still had to find its way into the political system of – then - West Germany. Now the federal government is a large unit which cannot easily be ruled under any Land.

So taking everything together, both German solutions - Bonn and Berlin - seem to have led to very little asymmetry. Instead, the move from Bonn to Berlin can be interpreted as a move from one symmetrical case to another. And, as asymmetry may incur inefficiency in political and economic terms, Germany might possibly be satisfied in terms of the criteria which govern this publication.

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BRUSSELS AS A MULTIPLE CAPITAL CITY

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SUMMARY: 1. Initial set-up. 2. Later development: changes to the initial set up and their reasons. 3. Tendencies of chance. 4. Current set-up with regards to the initial set-up. Bibliography.

The question of Brussels as a (federal) capital city may be raised regarding three dimensions: (1) perhaps obviously, as the bilingual capital city of the Belgian federation, (2) as the seat of the main institutions of the European Union, and (3) the capital city of some Belgian federated entities.⁸⁵ I will deal primarily with the first issue in this chapter but also refer to the other two dimensions to illustrate the high degree of complexity of Belgian federalism and of the disputed position of Brussels.

The status of Brussels as Belgium's capital city has never been questioned as such but its status of federated entity (Region) is much more problematic. Its official name, «Brussels-Capital Region», reveals one of the aspect for such controversy. Some claim that the mention of «Capital Region» demonstrates that Brussels is not a Region like the others.⁸⁶ It is impossible to draw a map of the institutions of Brussels and their remit without questioning the underlying Belgian model of distribution of pow-

85 In the (still young) Belgian federal vocabulary the 'State' refers to the federation while the sub-national polities (3 Regions and 3 Communities) are known as 'federated entities'. Despite this, politicians do not always make this distinction. Politicians from Flanders for example, are beginning to call their Community a State. The French-speaking representatives consider this to be a threat to the unity of the country and a step toward confederalism, however they have themselves renamed their own Community to «Wallonia-Brussels Federation».

86 The official names of the Walloon and Flemish Region have no additional qualifying term.

ers, i.e. consociative democracy⁸⁷ (Lijphart, 1999). The Belgian political system is build in order to guarantee stability and continuity of power in a highly fragmented society.

1. Initial set-up

Belgian Capital City

In 1830, at independence from The Netherlands, the choice of Brussels as seat of Parliament and Government was obvious. Actually from the Burgundy period, and especially after the Habsburg era, Brussels had already been hosting «national» institutions. In 1790, during a very short period (a few months) of independence, the United Belgian States established their government there. Immediately after, during the French occupation, the city obviously lost its status as capital, but remained the most important city of the newly created department.

In 1815 after reunification with The Netherlands, Brussels was restored as the capital city, alternating with The Hague (Govaert, 2000: 13-15). Appropriate buildings were established to host state institutions (the Nation's Palace for the Parliament, Royal Palace for King Willem Frederik I). Furthermore, the city was developing as an economic centre and established itself as such within The Netherlands as a whole and not only in the Southern part of the country. Although the King attempted to link Brussels with the coal and mineral fields of Charleroi, the capital city never became an industrial centre. Brussels was more oriented towards crafts and its economic roots became progressively based on tertiary activity, primarily banking and administration. The country was however leading the industrial revolution and was the first country in continental Europe to open a railway line.

After the short revolution of the summer of 1830 a provisional government was established in Brussels. This first Belgian institution was mainly made up of members from Brussels (Govaert, 2000: 16) but even if its

⁸⁷ At its origin, the purpose of consociationalism (also called pacification model), as applied to Belgium, was to accommodate its three segments of society (socialist, catholic and liberal), based mainly on socio-economic and Church-State cleavages. Nowadays the centre-periphery cleavage has become the most important one, and this has given birth to two major linguistic segments that correspond to the two main communities.

make-up had been different, the choice of location would not have been affected. No other city could hypothetically compete or bargain with this choice. Brussels' capital status was never questioned. The official designation of Brussels was highly logical since the city could already offer buildings for future institutions. Quoting the (elected) National Congress that took the final decision, Govaert (2000: 16) considers that the designation was also a privilege granted to Brussels to reward it for the crucial role it played during the independence revolution.

At that time, Belgium was not a federation and Brussels was an embryonic conglomeration of municipalities. Indeed, as stated in the Constitution, only the municipality called «Brussels-City»⁸⁸ hosts the seat of Parliament and of Government. We may therefore consider Brussels as an historical capital city, since it had been capital city for the unitary States of 19th century Western Europe. The French-speaking elite (from bourgeoisie descent) ruled the country which was, during the first decades, officially and administratively monolingual. Although part of the population spoke another language,⁸⁹ no specific community was recognised. There was therefore neither a minority to accommodate, nor a federalist trend to control. On the contrary, the period was characterised by strong national unity. Liberals and Catholics formed a national alliance at a time when one of the main political issues was the need to get other countries to accept Belgian independence. The threat came particularly from The Netherlands, until it finally signed a Treaty which formally recognised Belgium's independence (1839).

Brussels as the seat of European institutions

The designation of Brussels as the seat of European institutions is more a matter of chance and indecision than of conscious deliberation (Van Wynsberghe, 2007). Brussels was not a logical choice when the European Coal and Steel Community was created in 1951. The Belgian government supported the application of Liège, where some ministers lived, while the three Benelux countries supported a triple candidacy (The Hague, Liège and Luxemburg). These were quite surprised by the bilateral agreement between France and Germany that aimed to set all common European institutions in

⁸⁸ Brussels-City is one of the 19 municipalities of the Brussels agglomeration/Region.

⁸⁹ The population of Brussels' municipalities was actually predominantly Dutch/Flemish-speaking.

the Sarre area. No decision was taken since the Treaty stated that an agreement had to be reached by the governments of the member States, hence it had to be unanimous.

In 1957, the municipality of Brussels-City finally announced its official candidacy to host the Secretariat-General, and in June 1958, the governments agreed on Brussels as the seat for the Commissions of the European Economic Community and of the European Atomic Energy Community. But this location was only provisional and other institutions were also set in Luxemburg and Strasburg (the assembly in Strasburg and the Court of Justice in Luxemburg). In 1965, when the Communities' institutions were merged, although services continued to be distributed, Brussels was generally favoured. In compensation, Luxemburg became host to the European Investment Bank. The main advantage of Brussels' candidacy lay in its centrality among the six founding countries.

Due to its proximity to other institutions and services, the assembly began to progressively hold some meetings (parliamentary commissions) in Brussels. Logically this also meant that MEP's would need an appropriate building in which to meet. The construction of the Parliament site started in the late 80's and lasted almost 20 years. A residential neighbourhood was razed to the ground to build a huge bureaucratic network called «le Caprice des Dieux» in honour of its shape – which is similar to the box of the eponymous cheese, but also because enlarging the European area in the city constituted some kind of whim of the gods.

The provisional situation lasted for a long time. It was not until 1992 (Edinburgh Summit) that the three host-cities were confirmed as the three definite seats of the European Union's institutions. The remit of each city was listed in a Declaration approved by all the governments of the member States. Finally, during the Nice European Summit (2000), the heads of member States and Governments decided that all meetings of the European Council would be held in Brussels.

Capital City of the federated entities

The Belgian federation is made up of 2 types of overlapping constituent units. On the one hand, the 19 municipalities constitute, along with Wallonia and Flanders, the three Regions, a type of federated entity based on territory and economy. On the other hand there are three Communities (Dutch, French, and German-speaking) which deal with cultural, linguistic

and ‘personalisable’ (i.e. linkable to people) affairs. If we leave apart the German-speaking Community, since it covers less than 1% of the Belgian population, we may summarise the jurisdiction of the two large Communities as follows: the territory of Flanders and Brussels for the Dutch-speaking Community and the territory of Wallonia and Brussels for the French-speaking one. Being a bilingual area implies that both Communities are competent within their remit in Brussels, although no official data of the linguistic distribution exists given that it is actually not legal to ask citizens to choose a linguistic identity. This complex federal structure is the result of a compromise to accommodate the two main segments of population: the North (Dutch-speaking) vs. the South (French-speaking); the former stresses culture and language (the Community), and the latter is based on territory and the economy (the Region).

The three Communities and the two large Regions (Flanders and Wallonia) started to play a role as quasi federated entities in 1980,⁹⁰ while Brussels was recognised as a subject of the federation only in 1989. This delay is a reflection of the ambiguity that lies in the initial bargain and the double lecture of Belgian federalism with no obvious place for Brussels. Besides, the Flemish Region and Community have merged their institutions. This means that – with special dispositions regarding Brussels – the Community fulfils the functions of the Region.⁹¹ The Southern part of the country did not make the same choice. This constitutes a major source of asymmetry in Belgian federalism. There was no will to create a third type of polity and as long as no agreement is reached, Brussels will continue to be jointly managed by both Communities through the national assembly.

Both Communities claim Brussels if Belgium were to split, but for different reasons. Flanders claims «property rights» over Brussels because it is supposed to be geographically and historically a Flemish city. The French-speaking Community considers Brussels as a predominantly French-speaking city and therefore sees it as a part of its territory that might be threatened were Flanders to become independent. The actual tensions are due to the Frenchifying of the agglomeration, landlocked in Flanders. Neither side is prepared to cede this central territory to the other, nor to consider full independence for Brussels.

⁹⁰ The Belgian Constitution only recognised the federal form of the country in 1993.

⁹¹ This is why the usual (but not officially recognised by the Constitution) name of Flanders does not mention what type of federated entity it is.

Both Communities have chosen the same way to reaffirm their link with Brussels: they both consider it as their capital city. In 1983, a Flemish MP brought in the first proposition of decree⁹² to make Brussels the capital city and seat of the Flemish government and parliament. He argued that since every «nation» has a capital city and Flanders was becoming one, it needed a capital city and suggested that Brussels⁹³ was suited to fulfill this function given that it is a Flemish city that has occupied a central place in the history of Flemish nation.

The (federal) Council of State immediately challenged the proposition and distinguished between two issues. (1) The question of establishing the seat of institutions was directly rejected since it is each assembly (i.e. Community and Region legislative body) that has to fix its own regulation regarding the place where meetings are held. The same logic prevails as far as the seat of the executive is concerned. The Council of State criticizes the proposition for failing the autonomy of the institutions. (2) On the designation of Brussels as the capital city, the Council of State argued that it did not lie within the remit of the Community to make such a choice. In 1984 however, a similar proposition⁹⁴ was passed despite the negative decision of the Council of State.

Since the beginning of the federalisation of the country, some parliamentary mechanisms have been institutionalised to protect each entity should it feel threatened by another (alarm bell procedure), or should an entity consider that another infringes on its interests (conflict of interests procedure). The French-speaking Community assembly used the latter and called a meeting of the dialogue committee («comité de concertation») where federal and federated governments tried to reach an agreement on the problematic topic. As no agreement was found on the text called into question, it was finally voted for by the Flemish parliament.

The answer of the French-speaking parliament was to vote a similar decree and to declare Brussels its capital city as it did not want to pave the way for Brussels becoming Flemish. Considering that Brussels is a predominantly French-speaking city and a part of the French-speaking Community,

92 The federal parliament passes laws, the federated parliaments pass decrees, but the Brussels parliament passes ordinances. All three are equipollent. There is no hierarchy between federal and regional or Community norms.

93 The municipality called Brussels-city, not the entire Region.

94 But it no longer mentioned the delicate point of it becoming the seat of institutions.

this reaction was predictable. Besides, since Brussels did not yet exist as a Region, French-speaking officials felt a duty to protect the interests of Brussels against Flanders. The proposition also mentions that continuity between Brussels, its periphery⁹⁵ and Wallonia is not to be broken, hence a virtual contiguity between Brussels and Wallonia⁹⁶ is marked.

In the space of a few weeks the municipality of Brussels-city thus become the capital city of the two main Communities which seek to maintain a strong relationship with the whole agglomeration. On the French-speaking side the decision of the Council of State is considered as fundamental and reference to it is often made. We assume that their failure to mention their own decision to declare Brussels their capital city is explained by the fact that this was passed as a reprisal for the Flemish vote.

2 · Later development: changes to the initial set up and their reasons

As federal capital city

The Constitution states that Brussels-City (the municipality) is the seat of Government, but we may consider that it is the seat of all the main Belgian institutions. This is obviously the case for the Parliament, the main judicial institutions (Council of State and Constitutional Court) and the National Bank. There is no policy to decentralize or relocate federal public services elsewhere in the federation. Furthermore, with its centrality and its accessibility, no other city would be as appropriate as Brussels.

Unlike Berlin or Vienna where local and federated institutions are merged, the status of Brussels is twofold. Historically, Brussels is an agglomeration of 19 municipalities which all enjoy local self-rule. Each municipality has therefore its own elected council (every 6 years) chaired by an appointed Mayor. Besides, since 1989 Brussels is also a constituent unit of the Belgian federation and is ruled by an elected Parliament and an appointed Government, just as the other Belgian federated entities are. The territory of the «Brussels-Capital Region» corresponds to the agglomeration

⁹⁵ Actually in Flanders.

⁹⁶ The Walloon Region has established its government and parliament in the city of Namur (not the principal city of the Region but the most central).

area. This official label shows, on the one hand, the full status as a subject of the federation (Region) it has achieved, but also, on the other hand, that it plays a specific role in the Belgian federal structure as the capital city of the federation. It constitutes one of the famous Belgian compromise solutions between French-speaking political parties who wanted Brussels to become a fully autonomous polity and Flemish politicians who claim that Brussels is part of Flanders. The label therefore maintains a certain ambiguity with regards to the federation's right of supervision potential over its capital. A radical reading pushes the interpretation further by taking into account the role of Brussels as capital city of two federated States. This would provide the scope for possible co-management by the two main Communities.

The Belgian Constitution does not recognize the municipalities as an order of government like the Regions or Communities, nor defines what local interests are. However, it allows significant latitude for municipalities to exercise the local interest (Bataille, 2002: 409). The Belgian Regions are responsible for Municipal Law and exercise supervision over municipalities. As a regulatory authority, the Region does not distinguish between Brussels or any other municipality. The question of local/regional autonomy (self-rule) is highly sensitive as the Region of Brussels was created after the other federated entities. Between 1980 and 1989, Brussels has thus been managed – on the regional level – by the national/federal State, without prejudice to its municipal autonomy.⁹⁷ This management of the capital city was assimilated to the way Brussels is co-directed by the two main Communities, given that the executive committee for Brussels is accountable to the national Parliament.

Local autonomy

Legally speaking the municipalities are required to organise a set of tasks (compulsory tasks). They must keep the civil and electoral registers⁹⁸ updated. They are also responsible for street maintenance and security (see below). Since a constitutional provision states that the good father may

⁹⁷ In Belgian political vocabulary, it is said that the problem has been placed on the fridge, that is, provisionally frozen until a more favorable context develops.

⁹⁸ Belgian citizens are automatically registered as voters. Foreign residents may vote at local elections but they have to register beforehand.

freely chose between catholic or ‘official’ education, one of the compulsory municipal tasks is to organise primary school (Molitor, 2004).

There are other optional assignments with regards to higher education. Housing policy is not a local obligation, nor do municipalities have to promote tourism or organize cultural events. Currently Brussels’ municipalities usually have an alderperson in charge of French-speaking culture and another one in charge of Dutch-speaking affairs, but as this is an optional competence, it may obviously vary from one municipality to another.

Local elections are held every six years in October throughout the entire country. The voters elect municipal councillors, the members of the local deliberative assembly. A coalition majority within the council appoints the Mayor as well as the alderpersons.⁹⁹ Until the next election (2012), the Mayor chairs the meetings of the board as well as the meetings of the council; in the future, its chairperson will be elected by the council. Members of the social aid council (in charge of public centres for social aid) are appointed by the municipal council. Besides, some municipal councillors also sit in police boards along with the Mayor and colleagues from other municipalities that are part of the same police area.

Contrary to the regional elections, there is no linguistic quota for local elections. Electoral lists may be bilingual (and also usually regroup several parties or tendencies). Although there is no mechanism that guarantees a minimal representation of Dutch-speaking members, since the Lombard agreement (2001), there is a legal provision that offers a financial incentive to municipalities that have at least one Dutch-speaking alderman or chairman of the public centre for social aid. Municipalities that fulfil this condition may share an amount of ca. € 25 millions.

Regional autonomy and institutions

The Brussels government is chaired by a Minister-President and composed of four other ministers as well as junior ministers (*secrétaire d’État*). To offer some guarantees to the Dutch-speaking minority, the rules of setting-up the government mirror the federal mechanisms that ensure linguistic parity among senior ministers, but also allow the process of ‘alarm bell’ to be activated if there is a perceived threat of one Community over the other.

⁹⁹ These regulations vary from one Region to the other.

The government is accountable to the regional parliament (regional application of the principle of parliamentary democracy), but the duration of the legislature is fixed at 5 years. No early elections, common at the federal level, are possible.

The regional legislative body is made up of 89 MP's elected every five years.¹⁰⁰ Each is part of a linguistic group (there are 17 Dutch-speaking seats and 72 French-speaking ones), which have to validate the appointment of the government. This frozen linguistic distribution of seats¹⁰¹ implies that it is not possible for a political party to introduce bilingual lists. Every candidate has to choose between both linguistic regimes;¹⁰² hence it forces them to choose linguistic membership. However, voters have access to all the electoral lists regardless of their linguistic role (or mother tongue).

As a federated entity, Brussels exercises the competences assigned to the Regions (linked to territory and economy): public works, urbanism and planning, regional heritage protection, public transport, housing, environment, economy, employment, scientific research, fire departments and emergency medical aid. The competences exercised by Brussels municipalities are: aid to persons, culture, education, environment, housing, public works and urbanism. Security and public order are not regional competences. Police is organised on a twofold basis: federal and local. The Brussels Region is divided into six (local) police areas, each ruled by a board made up of representatives from the affected municipalities.

Obviously some competences are concurrent, but that corresponds to the consociative way of sharing, dispersing and limiting power (Lijphart, 1999). The Belgian principle of competence distribution is based on exclusive power (authority) even if the competence is shared between different levels (for example, mobility is part federal, part regional, and part municipi-

100 Typical of the Belgian consociationalism, the electoral system is based on proportional representation (D'Hondt formula).

101 It is applied since the 2004 election. This followed the Lombard agreement which guaranteed this minimal representation for Dutch-speaking parties as a way to consolidate the mechanisms for minority protection (as part of a larger federal compromise on the refinancing of the French-speaking educational system), and as a way to weaken the representation of the Flemish far right party by increasing the district magnitude and therefore strengthening proportionality.

102 This provision is valid only for regional elections. For federal or municipal elections bilingual lists are allowed and there are no linguistic quotas.

pal). Every polity knows pretty well the extent of its remit, and there is no noticeable conflict of interests.

Brussels is also responsible for exercising some Community competences over its territory. As inhabitants of various origin live in Brussels and need to access cultural or educational services in French or Dutch, institutional engineers have chosen another compromise solution, to divide in two the Regional government and parliament, but only for the purpose of Community competences. These separate arenas are organised around two commissions dealing with Community competences: the VGC (*Vlaamse Gemeenschapscommissie*) and the COCOF (*Commission Communautaire française*). The Regional MP's from each linguistic group sit in the assembly of the corresponding commission, while the ministers of the same linguistic group make up the executive body. VGC and COCOF competences were similar at the beginning: education, sport, health, and social aid. But in accordance with the constitutional possibility of asymmetry, the COCOF sphere of activities has been enlarged as competences have been transferred from the Community to Brussels and Wallonia.

Furthermore, some Community competences exercised in Brussels (such as public hospitals and public services for social aid) involve both Communities simultaneously (bi-community matters). A third Community commission has therefore been established: the Joint Community commission (COCOM). As the name indicates, the assembly constitutes a joint assembly of VGC and COCOF or, in other words, the Regional parliament. The logic is the same for its executive body, which is made up of all Regional ministers.

The composition of the French-speaking Community Parliament is not the result of an election. It is made up of the 75 Walloon MP's and 19 (French-speaking) MP's from (and designated by their linguistic group in) the Brussels Parliament. Furthermore, some of them are also designated by the Community assembly to sit in the federal Senate. This plurality of mandates is thus legal and indeed, compulsory.¹⁰³ The same mechanism was used until 2004 to represent the Brussels Dutch-speaking citizens. However, the system was reformed and now the Flemish Parliament includes six directly elected MP's from Brussels.

103 They do not, however, accumulate allowances since there is a set upper limit.

It is a common practice to hold simultaneously a mandate as an MP and local responsibilities. Obviously a large number of regional MP's are also municipal councillors, and even aldermen. A majority¹⁰⁴ of the 19 mayors are either regional MP's (11) or regional minister¹⁰⁵ (1) and one was, until recently, also federal junior minister and together with three others is currently a federal MP.¹⁰⁶ Regions are allowed to take decision to prevent such plurality of mandates but in Brussels no majority has agreed on a common project to do so. This also means that in Brussels – more than elsewhere due to its high density – the regional parliament may be seen as an assembly of local leaders. Local politics often interfere in regional debates, and it is not uncommon to see a Mayor, MP from the opposition, submitting an appeal to regional decision.

Due to its double status of 1) federal capital city and 2) the only bilingual city in the country, Brussels has three potential limitations to its classical regional autonomy. (1) It does not enjoy constitutive autonomy. That means that the Region may not organize its own institutions.¹⁰⁷ It is impossible, for instance, for it to decide to reduce the number of MP's or to add a minister. (2) The parliament votes ordinances (ordonnance) instead of decrees (décret). This implies potential jurisdictional control (over the conformity of an ordinance with Constitution and Special Law), but this has only been used twice since 1989. Finally (3) the federal government has the right to cancel any Brussels ordinance that prejudices its status or function as capital and international city. Even if its somewhat special status is actually linked to its bilingual status, the provisions made regarding federal supervision over the capital city seems to be rather common for federal districts but not for capitals that are cities-States. Besides, these limitations were quite accepted in 1989 as they were the price to pay in order to obtain regional home rule instead of full supervision by federal authorities or co-rule by Flanders and the French-speaking Community.

104 Data before 2012 municipal election.

105 In title, not in function: «bourgmestre empêché» in the Belgian vocabulary.

106 Currently only 3 Mayors have no other mandate such as regional or federal MP or minister, but two of them had such mandates before.

107 Within the obvious and legal limits of the Special Law organising the regional institutions in Brussels (1989). The six constituent Belgian units were created by a Special Law, i.e. a law voted by a double majority (2/3 in each assembly of the federal parliament and ½ of each linguistic group).

To mark the federal responsibility for the functioning of the capital and as far the afore mentioned third limitation is concerned, a cooperation committee has been created with equal representation of the federal and regional levels¹⁰⁸ (Poirier, 2002: 509). The other constituent units do not participate. The committee only meets when the procedure is activated, but we may consider it as an obviously institutionalised tool of intergovernmental relations.

Financing the capital city

As far as financing the responsibilities of being the capital city is concerned, Brussels shows a strong similarity with city-States even if Brussels does not correspond exactly to such a model since its organisational structure takes the form of an agglomeration. In these cases financial autonomy is highly proportional to the allocation of competences. The little compensation received by such capital cities is generally formalised through bilateral agreements that either establish the amount or the way that funds will be granted over several years. Most conventions provide information on the purpose for which money is allocated. Thus allocation is conditioned to well-defined items (mainly public security, or mobility and culture) or is supposed to cover the tax immunity of federal and international buildings. This kind of arrangement implies a strictly limited (or the absence of) federal control over the budget. To finance the role of Brussels as an international (capital) city, the federal and Brussels regional governments are bound by the terms of a ‘cooperation agreement’ (Beliris)¹⁰⁹ that provides (partial or entire) federal funding for, among others, public works to promote its international role and function of Brussels as capital city.

Poirier distinguishes four types of investment: infrastructure and transport, monument development, planning of public spaces, and infrastructure improvement in underprivileged neighbourhoods (2002: 502). Beliris were signed for the first time in 1993 and are regularly amended. However, some weaknesses may be pointed out. For instance, credits are engaged with a high delay. Furthermore, it is the federal administration that is in charge of executing the agreement, while probably it would have been more appropri-

108 With an additional concern for linguistic parity (French-Dutch).

109 «Bel» for Belgium. «Iris» is the flower representing Brussels on the flag.

ate for the regional administration to do so. Finally, the projects financed by Beliris are now quite detached from their initial purpose, linked to its function as capital city. Nowadays, Beliris seems to be more like some sort of compensation for the problems that typically arise in a metropolis (Catoire, 2008: 3; Poirier, 2002: 505).

Regarding the preparation of additional clauses to the financial bilateral agreement, the power to decide on matters of intergovernmental relations is strong but it relies on the financial agreement rather than being strictly an output of a meeting of the cooperation committee. This means that the formal decision taken depends on the text of the agreement rather than being a consequence of the entire meetings' progress. The logic that prevails in such a decision board is clearly one of consensus. It is not typical in Belgian political culture for members to vote in committees (Poirier, 2002: 509).

The degree of formalisation and institutionalisation is higher when the federal authorities exercise their supervisory right. According to the Special Law, a meeting of the cooperation committee is a compulsory step. Unless the committee reaches a political agreement on the problematic topic within 60 days, the case is transferred to the House of Representatives, and therefore the cost of the decisions taken to solve the conflict between federal and regional levels must be met by the federal budget. If the cooperation committee reaches a compromise the financial costs are shared. This situation may be interpreted as being a strong incentive to pass such issues on to the federal level, but at the same time it would mean that Brussels concedes full control over the project to federal authority. Furthermore, it would violate the political culture of consensus (there is no agreement unless there is agreement on everything; we agree to disagree).

The decisional type at this time is also high and the procedures are quite transparent as there is a certain degree of control. This opens an interesting line of thought regarding intergovernmental relations between a Federation and its capital city. While one may expect bilateral dialogue to take place before a decision is taken (ex-ante IGR), in the Belgian case only an ex-post IGR mechanism is planned by a Special Law. Yet we may discuss if – contrary to what we might initially suspect – this process, in the end, does not guarantee greater scope in which the capital city may manoeuvre. Would a supervisory right allow more room for self-government than a compulsory bilateral dialogue? In any case, as IGR is often theoretically considered as an ex-ante procedure, it probably constitutes a very specific

case albeit it is very typical for the Belgian model of consociationalism (Van Wynsberghe, 2008: 15).

Finally, the capital city, the municipality of Brussels-City, also enjoys a subvention to cover specific expenses linked to its status as capital city, mainly security (as it is not a regional competence) and cleaning.

Representation at the federal level

Brussels' residents elect their representatives at the municipal level every 6 years,¹¹⁰ at the Regional (and indirectly to the Community) Parliament, and to the European level every 5 years, and, until now, at the Federal level every 4 years.¹¹¹ The federal Parliament consists of two houses. The Belgian Senate should soon become an assembly of the States. The institutional reforms enacted set that after the next general elections the Communities will appoint their own representatives to sit in the Senate. The details as yet are not known, however it seems that Brussels will not have direct representatives or delegates as such. Instead, it will doubtlessly get a quota of seats within the French-speaking group as was previously the case.¹¹² The explanation for this is probably less linked to its status as federal capital city than to its bilingual status. The capital city thus does not enjoy strict representation in the Upper House. Traditionally however, in federations this house has a role to play in the dialogue between constituent units and hence may be seen as a place for intergovernmental relations. Brussels, like the District of Columbia, is then in a certain way deprived of the possibility of activating IGR at this level, even in an informal mode.

110 Foreigners may vote in local elections (with some conditions) and EU citizens may vote in European elections too. At other levels, only Belgians have the right to vote. Voting is compulsory for them and for foreigners who decide to register on the electoral lists.

111 The new State reform will modify the federal electoral rhythm in order to match the regional and European electoral calendars. However, this does not translate into a will to subject federal elections to the regional level. It is simply a way of extending the federal cycle.

112 The Dutch-speaking residents of Brussels are not numerous enough to claim a quota. Indeed, if they did demand it, it would provoke an important reaction given that the French-speaking inhabitants of the Brussels periphery (proportionally more numerous) would then demand specific representation for themselves within their constituency.

In the House of Representatives, Brussels' citizens were up to now included in an electoral constituency exceeding the capital territory, the well-known 'Brussels-Halle-Vilvoorde' (or simply BHV) district. This highly controversial constituency¹¹³ was virtually split (by law) in July 2012 and will come into effect after the next election. Then the specific interests of the residents of the capital city will be directly represented as such in the Lower House. Theoretically, it could bring Brussels' status closer to a city state, as one of its main particularities compared to the other regions has been removed and regional boundaries are now electorally more relevant, it is now *de facto* relatively independent.

As far as the executive power is concerned there is no constitutional or formal constraint on the appointment of federal ministers from Brussels, but through coalition agreements ministers' geographical origins tend to be balanced. Usually, in a tacit deal, political parties make sure that most provinces are represented, or at least the largest cities. However, since a federal minister must be in charge of the management of the bilateral agreement Beliris (see above), logically, it is often someone coming from the capital city.

A European and a federated capital city

The status of Brussels as seat of the European institutions is very stable and there has been no major change to its initial set up. The role of Brussels as host city of international institutions has been strengthened as other institutions have settled there. NATO's headquarters was transferred to near Brussels airport in 1967, along with Eurocontrol, the general secretariat of Benelux, and the World Custom Organisation.

As a double federated capital city, Brussels' role has also been symbolically reinforced. Both Communities build or renovate new buildings to mark the territory. This leads to a pseudo-concurrence, which is not always very sane, for example one Community bought (at a very high price) a cinema coveted by the other. Competition between both communities seems to be high and there is a clear drive not to give up or indeed grant any room to the other Community.

113 It is controversial because the electoral delimitation did not correspond to provincial and linguistic borders.

3 · Tendencies of chance

As a City-State in Belgium

In terms of efficiency the current institutional organization in Brussels still has to improve. Indeed the structure of the city-Region implies the co-existence of 20 leaders: 19 Mayors and a Minister-President. Especially, a new distribution of competences should be considered in order to avoid overlapping and the contradictory decisions between the Region and the 19 municipalities that are too often made. This point was already raised at the beginning of the 2000's when a political committee was appointed to discuss redistribution of competences. Actually, most party officials individually agree on the statement and the solution: transfer to the Region all competences that need a global approach while leaving very local matters to the municipalities. However, it seems impossible to reach an agreement to reform the current distribution (Van Wynsberghe, 2005). A new committee has again been appointed as part of a drive towards State reform (2012), but no agenda has been fixed to reach an agreement. We can interpret the slow decision making process as illustrating the classical dialectics that arise when both Communities conflict: the Dutch-speaking parties claiming better management and organisation collide with the French-speaking parties that are reluctant to do so in order to avoid the image that they obey or work under the pressure of their Northern partners.

In addition, while merging both tiers of government is discussed, it is not really considered as an immediate option. In Brussels in particular, but also in Belgium as a whole, citizens are strongly attached to local government and the proximity it implies. The parochial feeling of attachment still has great resonance even to the point that some suggest that municipalities be divided into neighbourhoods, alongside a redistribution of the most global competences. It therefore seems to be impossible to suppress the municipalities in favour of the Region in the near future. A first rational step has nevertheless already been taken with the re-organization of local police. Until the reform of 1998, local police was organized on a strict municipal base. Since, Brussels has been divided into 6 police areas, each covering several municipalities.

Only very recently have politicians outside Brussels¹¹⁴ become aware of the special situation, and particularly of the special needs of the Region,

114 Mainly Walloon officials.

that are not actually primarily linked to the status of Brussels as capital city. The negotiations and outputs of State reform confirm this growing concern despite the fact that Brussels is not yet fully recognised as a Region in the same way «as the two others» are (it lacks constitutive autonomy, ordinances, and so on). Although officially this is justified by its function as the federal capital city, it is difficult to consider the supervisory role of the federation over Brussels as being unrelated to its status as a single bilingual area, or indeed without reference to the position of the Communities, whereby each side claims to have rights over its capital city based on different justifications: it is historically Flemish, but has now become a French-speaking city. Broadly speaking, Brussels could be seen as a miniature Belgium in terms of linguistic opposition.

With regards to taxation, Brussels has the same fiscal powers as Flanders and Wallonia. Nevertheless the capacity of Brussels is reduced due especially to its small size and the fact that its economic hinterland transcends administrative boundaries. The metropolitan development of Brussels will constitute a major challenge in the near future. It should have been dealt with by the 2012 State reform, and indeed a special law does establish a metropolitan community around Brussels, but the principles on which it will work are yet to be defined by the three Regions and the federation as a whole.

Its multiple role as capital city, and its position as the largest city of the country with all the typical urban problems associated to it (commuting, unemployment, exodus to the suburbs by the wealthy, the presence of European civil servants with a taxation status close to the one enjoyed by diplomats exempted from revenue taxes), implies that it is clearly under-financed (Lambert *et al.*, 2002). Following the municipal elections, a new special law on financing should be passed within the framework of State reform. According to the 2011 agreement, it should grant a considerable (but not sufficient) refinancing plan for Brussels.

As the seat of European institutions

In 1958 when the member States considered the possibility of gathering the organisations of the three communities in one place (ESCE, EEC and Euratom), some EU officials suggested the creation of a new city. However, this initiative has never developed beyond the proposal stage.

A similar idea was voiced in 1996 by a Flemish politician, Louis Tobback, who suggested transforming Brussels into a federal (European) district. The issue at that time was not really inspired by the need to build or plan a capital city similar to the District of Columbia for example, but instead it was an attempt to remove from the Belgian political debate the problems linked to Brussels' bilingual status. According to Tobback the economic and monetary union would weaken the Belgian federal remit as Europe moved towards emulating the USA (Dubuisson, 1996). The proposal was not very detailed, but there was a clear goal to grant a greater role to Europe in the decision making process: «the 'European government' should have a say in the Region where it is based» (Dubuisson, 1996). Although the proposal was made in an interview to a major French-speaking newspaper, it went unnoticed due to the importance of other current affairs at that time. Tobback detailed his idea the following year in another interview and added that «Brussels, DC» would not be the first step towards separatism and therefore would not abandon the Dutch-speaking citizens of Brussels (Dubuisson, 1997).

In 2000 the Flemish Minister-president took over the idea. He expressed problems with the existence of Brussels as a fully autonomous Region like «the two others». The status of Brussels as a European district would also bring special features to Brussels inside Belgium as well as changes to its financing with respect to its functions as capital city (De Boeck & Vanoverbeke, 2000). Like Tobback, his vision was within the framework of a strictly bipolar Belgium and did not envisage a change in the borders of Brussels. The city would remain the Belgian capital city but as a European district. He saw in the Nice agreement (2000) a supplementary reason for this special status (PDJ, 2000), given that it set a limit to the rotating presidency and placed greater importance on Brussels as the seat of the European Council.

The French-speaking political parties have never provided an answer to such proposals, but in Flemish minds they have remained as a way to solve «the current political tangle» (interview of Prime minister Leterme to a French newspaper) (Quatremer, 2006). The French-speaking television echoed the idea in its famous fake news bulletin «Bye Bye Belgium» in December 2006: Within the framework of Flemish independence, Brussels becomes a European district. Indeed, as Flemish politicians refuse to give up Brussels, neutralising it under the form of a European district is the only way for them to access independence.

These scenarios would be more pertinent if the status of the European capital was on the European agenda, but since 1958 it has not been considered by European authorities and no such demand has been expressed. In other words, this discussion on the European capital exploits the fact that EU institutions are established in Brussels, to serve unspoken goals regarding the Belgian federal structure.

On the other hand, the question of the seat of European institutions and their relocation in order to concentrate them in Brussels has been raised several times. The last time that such proposals received a high degree of media attention was probably the oneseat.eu action in 2006, when a petition calling on the EU parliament to be all year round in Brussels was signed by more than 1 million citizens. Indeed MEP's spend more time in Brussels than in Strasbourg and such a measure would allow € 200 million to be saved. Furthermore, it would bring the executive and legislative institutions closer to one another. Luxemburg nonetheless, would still host other institutions. The question was raised again after the ceiling of the building that housed the Parliament in Strasbourg collapse in 2008, and was recently raised again in 2012 when fissures were detected in the Brussels Parliament building. Nevertheless it has absolutely no political relevance at the moment despite the fact that some lobbies have already considered compensations for Strasbourg (such as creating a European University or a European Institute of Technology).

4 • Current set-up with regards to the initial set-up

Since the transformation of the unitary State into a federation, institutional asymmetries have been constitutionally allowed and are increasingly becoming classical features of Belgium. The main one is probably due to the merging of Community and Region in the North of the country. It constitutes, at least, a destabilizing factor in the federal equilibrium since Flanders does not have an equivalent in the South. Indeed, there has been a change in the opposite direction and competences have been handed over from the French-speaking Community to Wallonia and the French-speaking Community Commission (COCOF) in Brussels. Such a transfer however has had no other goal than to relieve the Community's finances. Nonetheless this has created an asymmetry *within* the institutions of Brussels given that the COCOF has more power and autonomy than the VGC. And, with regards

to the competences that have been transferred, the COCOF enjoys the same decree-issuing powers as the federated entities.

These asymmetries are, again, not linked to the capital city status of Brussels, even if this role does justify some limitations to its autonomy. We have however tried to demonstrate that even if capital city status is used as «the» argument, it is unclear whether such asymmetries would have developed had the bilingual status of the agglomeration not existed. Historically speaking this seems to be confirmed by the fact that it took nine further years to establish Brussels as a fully-fledged constituent unit.

From being a simple city hosting the government and parliament of a unitary State, Brussels has become the smallest Region of a federation. As long as the federation continues to exist, its status is not really threatened despite some proposals to turn it into a federal (European) district. The question of change in the current set-up will only be raised if steps are taken toward confederation. Today the formula of 2+2¹¹⁵ is not as relevant, but the question is what would become of Brussels if Belgium were to split. Even if a whole recomposition of the country occurs under the form of a confederation, it is unclear whether Brussels would keep, not its status as a political centre, but its status as an autonomous polity taking part in the confederal bargain.

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CAPITAL CITY IN A RE-FEDERALIZED RUSSIA: THE CASE OF MOSCOW

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SUMMARY: 1. Introduction. 2. Territorial Restructuring of the Russian Federation. 3. Main Institutional and Decision-Making Processes. 4. Moscow as a Capital City: de-jure symmetries versus de-facto asymmetries. 5. Conclusion: Future Perspectives for the development of a Capital City. Bibliography.

1 • Introduction

This chapter looks at the dynamic nature of Russian federalism with special focus on the status of the capital – Moscow. Moscow had been called a triple capital – of the Russian Federation, previously of the whole USSR, and of the Communist world in general. That notorious image is now limited to being the capital of Russia, although it remains as the unofficial capital of the post-Soviet states in Eurasia.

Moscow, along with St. Petersburg, has the special status of «city of federal significance» within the Russian Federation. The chapter analyses the de-jure (constitutional) symmetric role of Moscow within the federation and contrasts it with its de-facto highly privileged position over other regions. Apart from the constitutional and legal features, a political aspect, that is, the regional regime, is also taken into account. After a detailed analysis, the chapter highlights the nature of the political regime at sub-national level in general and in Moscow in particular. The dynamic nature of national and subnational political regimes is at odds with the legal and the territorial symmetry of the Federation and its capital.

The Russian Federation (RF) is the largest territorial federation in the world, and has the highest number of regions.¹¹⁶ The city of Moscow is one of the biggest cities in the world in terms of both territory and population. The official population of Moscow city¹¹⁷ is about 12 million people with permanent residence permit, an additional 1.8 million «official guests» (foreigners with a temporary residence permit for Moscow) and yet another one million unregistered residents, bringing the total to 15 million (9.8% of the total population of Russia). What is the legal and actual status of Moscow capital within the Russian Federation? To answer this question, we first need to analyze the dynamics of the development of Russian federalism after Russia gained independence, that is, after the dissolution of the USSR. Then we can focus on Moscow in the context of Russian federalism.

During twenty years of regime transition, Russia has experienced a radical territorial transition from a highly centralized Soviet Union to a highly decentralized Russia in the 1990s and then again to a highly centralized, almost unitary, territorial structure in the first decade of the 21st century. Diversity is a hallmark of Russian federalism and touches upon every single aspect of its politics and society. Social, economic, geographic, climatic, ethnic, linguistic, demographic differences across Russian regions have been widely addressed in literature.¹¹⁸ Moreover, by the beginning of the 21st century, this regional diversity had been enriched with a variety of subnational political regimes— different regions exhibited distinct political regimes, ranging from more democratic ones (for example on the north-western border) to the autocratic ones.¹¹⁹

The de-federalization of this multi-ethnic state, with its extremely heterogeneous regions, requires close analysis. The structure of this chapter

116 By «regions», we refer to territorial constituent units, also defined as «subjects» by the 1993 Constitution. The Constitution uses «territorial subjects» and «territorial constituent units» interchangeably. This paper refers to these as «regions». In the 1990s, there were 89 regions, in the first decade of the 21st century, the number decreased to 83. Ronald Watts commented that Russia still has the highest number of regions, of any state, in the world (Watts 2008).

117 Moscow city should not be confused with Moscow region (or Moscow oblast). In this chapter by Moscow I am referring to Moscow city unless I specify «region» (which I use interchangeably with «oblast»)

118 See, for example, Ross 2002, Stoner-Weiss 2006, Watts 2008, Dinino/Ortung 2005, Obydenkova 2008.

119 On regional diversity and the different political regimes, see, for example, Gelman 1997 and Obydenkova 2011.

is as follows: the next sections look into the recent historical development of the RF, and the main institutions and decision-making processes of the federation. Then, the chapter considers the de-jure and de-facto place of a capital city within the RF. Finally, the chapter concludes on the future perspectives for the development of the federation and its capital, Moscow.

2 · Territorial Restructuring of the Russian Federation

The formation of the Russian Federation as an independent state started the moment the Union of Soviet Socialist Republics (USSR) dissolved in 1991.¹²⁰ Over the last twenty years, Russia has experienced a triple transformation: democratization, marketization, and territorial re-structuring. A few main periods can be distinguished in the post-Soviet territorial restructuring of Russia. It can be broadly divided into the decentralization reforms of Yeltsin's government (1993-2000) and the recentralization reforms of Putin (2000-2008).¹²¹ The first period can be defined as decentralization through the introduction of a double federal asymmetry and the second one as recentralization and equalization of the regions. Some scholars also distinguish a third period marked by the presidency of Medvedev.¹²²

The 1990s witnessed the acceptance of important documents that would shape the future of Russia, such as the Declaration of State Sovereignty by the Russian Soviet Federal Socialist Republic (RSFSR), the Federation Treaty and the RF Constitution. The Declaration of the RSFSR was accepted on the 12th of June 1990 by the first Russian Congress of People's Deputies.¹²³ Article 1, 3, and 4 of the Declaration outline the concept of sovereignty as being based on the multi-ethnicity of the country. Another important document defining the Russian Federation was the Federation Treaty (FT) signed by Yeltsin and regional leaders on the 31st of March 1992. In fact, the FT consisted of three treaties: the first with the ethnic

120 Some of these sections draw on and overlap with Obydenkova 2012b.

121 There is common agreement in the literature on Russian federalism that there is no crucial difference between President Putin's territorial policy and President Medvedev's policy. Medvedev is perceived to be a close ally of Putin. He comes from the same political party «United Russia» and has continued the policy lines pursued by Putin from 2000 to 2008.

122 See, for example, Slider 2010.

123 See, for example, Kahn 2002, Agabekov 1995.

republics on nation-state formation, the second with the six *krais*, forty-nine *oblasts* and two cities of federal significance - Moscow and St. Petersburg - on administrative-territorial formations, and the third with the Jewish Autonomous *Oblast* and the ten autonomous *okrugs* on national-territorial formations. In addition, the FT outlined republican sovereignty and the right to self-determination, the participation of regional organs in the implementation of federal authority, and prohibited federal intrusions in regional affairs.¹²⁴ The Federation Treaty included a number of privileges for three republics: Tatarstan, Bashkortostan, and Sakha.

The Federation Treaty of 1992 was followed by the 1993 RF Constitution. This introduced a number of contradictions regarding the status of regions. The Constitution included the Federation Treaty with its 'unequal treatment' of regions while at the same time proclaimed legal equality among all 89 regions of the Russian Federation (Article 5). Despite this proclamation of equality, the Constitution defines the status of republics, as opposed to other regions, in a different way (Article 5.2).¹²⁵ According to the Constitution, the regions were equal in terms of their representation in the upper chamber of the Federal Parliament (the Council of the Federation). Article 95.2 of the RF Constitution permits each region two representatives in the upper chamber of Parliament.

Among other contradictions included in the RF Constitution is the status of the ten regions that were territorially incorporated into bigger regions and their legal equality in status and rights. This problem has often been described as «matrioshka» (Russian doll). These ten regions are: Nenets autonomous okrug (AO) incorporated into the Arkhangelsk oblast; Ust-Orda Buryat into the Irkutsk oblast; Koryak AO (Kamchatka oblast), Komi-Permiak (Perm oblast); Chukotka (Magadan oblast); Agin-Buryat AO (Chita oblast); Yevenk and Taimyr (Krasnoyarsk Krai); Khanty-Mansiisk and Yamala-Nenets (Tyumen oblast). Moscow is also surrounded territorially by another region – Moscow Oblast (or Moscow region) but is not administratively subordinated to it. The RF Constitution did not define the

124 Detailed analysis of the Federal Treaty can be found in Kahn 2002. For the legal documents, see Strashun 1996.

125 There have been debates on the nominal or symbolic nature of differences between non-republican regions and republics. For example, the RF Constitution specifies that all regions have 'charters', while the republics have 'constitutions'; the regions have executives while the republics have 'presidents' and so on.

relationship between the administrations of those regions with autonomous *okrug* status and that of the territories in which they are located. According to the Constitution, these regions are equal to their geographic 'parent regions'.¹²⁶

The reaction of regional governments to the Federal Constitution of 1993 was either neutral or pro-Yeltsin. Even the regional leadership of the most separatist regions, the president of the Republic of Chechnya and that of Ingushetia, supported Yeltsin, while the Tatarstan government announced its neutrality (Teague 1993:16).

The 1990s witnessed a territorial re-structuring of the Russian Federation through extensive decentralization and increasing asymmetry between the regions. It was also a period of embedded legal contradictions and uncertainty. A range of additional privileges for certain regions was negotiated bilaterally. Between 1994 and 1998, forty-seven bilateral treaties and several hundred supplementary agreements between regions and the federal centre were signed. As a result of reforms, center-regional relations were regulated by three, contradictory legal sources: the RF Constitution, the Federal Treaty, and bilateral treaties. The outcome of the decentralization reforms was the establishment of constitutional and contractual asymmetries.

Some studies demonstrate that during the period of decentralization under Yeltsin's government, both ethnic and economic asymmetries across the regions played an important role in establishing constitutional and contractual asymmetries as part of federalization reforms of the 1990s.¹²⁷ Furthermore, these constitutional and contractual asymmetries contributed to the resolution of center-regional disputes during the regime transition.¹²⁸

During the 1990s, the regions did not only develop centrifugal tendencies but also established their own laws, charters, and constitutions which often contradicted the federal legislation and violated principles outlined in the RF Constitution. Among these is, for example, the violation of a citizen's right to travel freely (Smith 2002:27). This violation was included in the laws of regions such as Ingushetia, Stavropol krai, the Moscow region, Moscow city, Kabardino-Balkaria, Karachay-Cherkessia, North-Ossetia, and Volgograd.

126 On the disputes and peculiarities of center-peripheral relations in the 1990s, see Kahn 2002, Ross 2002, Butler 2003, Mihaleva 1995.

127 See, for example, Obydenkova 2008.

128 Obydenkova 2008.

The ambiguity of the RF Constitution established the legal framework from which Putin's government could conduct its recentralization reforms and construct a highly centralized state. Article 78 of the RF Constitution provides the central government with the opportunity to establish unspecified «territorial organs» and appoint «appropriate officials». Another article (Art. 77) highlights the importance of the presence of a «unified system of executive power» in the Federation.¹²⁹ Finally, the 1993 RF Constitution also subordinated the Federal Treaty, which had given regions great autonomy, to the Constitution, which equalizes all the regions in terms of autonomy. The RF Constitution became a legal pretext for recentralization under Putin's government, and this has remained so under president Medvedev, who has introduced practically no changes.

From the very beginning of Putin's presidency in January 2000, new federal reforms were started. One of the official purposes of the new reforms was to bring regional laws in line with federal legislation. From May to September 2000 major reforms of center-periphery relations were introduced and included the following: the creation of seven federal districts into which the 89 regions were incorporated; the creation of a State Council where all regional leaders would be represented; the increase in the powers of federal authorities over federal spending in the regions; reform of the Federation Council; the prohibition of regional executive leaders and chairmen of regional legislatures from sitting in the upper chamber; the right of the president to dismiss regional executives if they enacted a law contradicting federal legislation; changes to the law on local government which would allow regional governors to dismiss local government leaders who enacted measures that violated federal and regional law; and a legal harmonization aimed at bringing regional laws and constitutions in line with federal law and the RF Constitution.¹³⁰

One of the most radical reforms was the reform of the Federation Council. The reform implied that regional governors (executives) would not have a seat in the upper chamber. Each region was supposed to send two representatives to the Federation Council with one representing the executive and the other representing the legislature. These representatives were to be appointed by the regional governor for the period of his term in office,

129 See, for example, Mihaleva 1995.

130 A detailed description of Putin's reforms can be found in, for example, Smith 2002, Kahn 2002, Ross 2002.

with the appointments confirmed by the legislative branch of the region. If more than two-thirds of the regional parliament deputies vote against the governor's nomination, the appointment is vetoed.

The new body, the State Council, was meant to supplement the Federal Council. The State Council is a consultative body and meets at least once every three months and is meant to act as an alternative information source for the president. The main function of the State Council is to monitor the implementation of federal law, consider draft laws on presidential request, and discuss the federal budget and its implementation. The Council has a seven-member presidium comprised of leaders from each of the federal districts with rotation of membership every six months.¹³¹

Overall, the goals of Putin's reforms were to «synchronize» laws, to establish the to create a unified legal space across the federation, to increase stability, and to bring power structures under federal control. The Ministries of Defense, Justice, Interior and Emergency, and the Federal Security Service established an official presence in each of the seven federal districts in order to monitor the activities of their regional subordinates. The third period inaugurated with president Medvedev can be described as the consolidation of centralized territorial structures established under the Putin government.

The overall policy of President Medvedev was consistent with policy lines established by the Putin government. However, there are some significant differences between the two governments. At the beginning of his term, Medvedev announced that among his priorities was «radical administrative reform in the regions» which would help fight corruption in regional politics and would allow «lowering the barriers to small business that are impeding Russian economic development» (Slider 2008: 4). Also, unlike Putin, Medvedev became more assertive in exercising the presidential power to replace regional executives. Putin's main reform was about the appointment and replacement of regional executives; Medvedev took further steps in this direction. In the words of Darrell Slider, «Medvedev's removal of important governors, culminating with Moscow's Yuri Luzhkov, marks a departure from the more incumbent-friendly policies of Putin» (2010: 2). Already, at the beginning of his term, President Medvedev announced his intention to replace regional governors who had been in power for three

131 For analysis of Putin's reforms, see also Kahn 2002, Ross 2002, Smith 2002, Aldis/Herd 2002.

terms or even more.¹³² This new turn can be interpreted in two ways. The federal centre has grown stronger and more confident in implementing the laws on replacing regional executives. At the same time, governors who remain in power for more than two years become more corrupted and less accountable to the regional population and the federal president. A detailed analysis of this new period of territorial politics started by Medvedev is clearly beyond the scope of this study. However, it is important to highlight that despite the high level of consensus between the former and current presidents, Putin's priority was to maintain the stability and loyalty of regional governors while, in contrast, Medvedev's policy is more assertive in terms of replacing well-entrenched political elites in the regions. The consequences of this assertive policy will be the target of future analysis that will demonstrate the pros and cons of this policy for regional governments and populations. The next section examines in detail the main institutions and decision-making processes established by Putin's government.

3 • Main Institutional and Decision-Making Processes

The modern institutions of the RF are the product of two radical reforms – extreme decentralization during Yeltsin's government followed by an equally extreme recentralization and recuperation of control by the centre under Putin's rule. The third period, the period of the new president, Medvedev, is often considered as a continuation of Putin's reforms. To understand the official (constitutional) power, and its limits, of Moscow as a subject of the Federation, it is necessary to look into the main sub-national (regional) institutional and decision-making processes of the federation (the division of responsibilities across levels of government).

Regional Executive Power

In October 1994, the decree «On the Measures to Strengthen the Unified System of Executive Power in the RF» was passed. According to this decree, the appointment of regional executives (governors) falls under the compe-

¹³² See, for example, Slider 2010.

tence of the federal president.¹³³ The federal president can also dismiss them. The Federal Congress gave Yeltsin the right to appoint governors from 1991 until the first regional elections were organized. During the 1990s, each region had one or two electoral cycles with the regional population voting for its governor. However, Putin re-established control over regional governors and recuperated the president's power of appointment.

In the wake of a terrorist act (the Beslan school hostage in September 2004), President Putin called for the creation of a «vertical executive» which «should be achieved through the election of governors by regional assemblies, with the candidate or candidates to be nominated by the Russian president» (Slider 2009: 106). The president's choice of candidate should be officially approved by the regional parliament. However, if the president's candidate is rejected twice, the regional legislature is dissolved. This became one of the most radical steps of recentralization.

Regional Parliaments

Article 10 of the RF Constitution allows regions to decide the model of their parliament. By the beginning of the 2000s, the regions had created different regional parliamentary models and exhibited different trajectories of development. A region can also choose its own government system as long as it does not contradict the federal constitution. Regions have the right to adopt legislation provided that the central government does not exercise its legislative power in the same area (Busygina and Heinemann-Gruder, 2010, p. 262).¹³⁴ In contrast, judicial power remained almost completely federal.¹³⁵ The courts are financed by the federal budget and governed by federal legislation.

Local self-government

Articles 130 to 134 of the 1993 RF Constitution, the law on Self-Government (1996), and the law on the Financial Basis of Self-Government (1997) institutionalized municipal self-government across all regions. Interestingly,

133 During the 1990s the rule was applied to all regions except of those with the status of republic. See, for example, Kahn 2002, Ross 2002, Slider 2009.

134 For the division of competencies (responsibilities) across levels of government, see Table 1.

135 See, for example, Kahn 2002, Ross 2002.

the European Charter of Self-governance became a model for the development of local self-government. Its implementation was one of the conditions for the RF's membership to the Council of Europe.

According to the Law on Self-Government (1996), the local population elects representatives to the local council, which is responsible for local affairs such as public transportation, health, education, planning and land use. The division of regions into municipalities and the number of representatives allocated to each unit is decided at regional level. The Law on the Financial Basis of Self-Government (1997) declares that the income of the local budget consists of local taxes and payments and shares of both federal and regional taxes. Formally, local councils decide their budgets independently from the state. However, in practice, local government is highly dependent on subsidies from the central government.¹³⁶

The following table summarizes the main responsibilities assigned to the federal, regional and local governments. The budgets of lower tiers of government depend on grants from higher tiers of government, that is, the regional government provides local government expenditure, just as the federal government provides regional governments. Responsibilities outside the federal and joint competences belong to the regions.

Table 1: Division of Responsibilities across Levels of Government in the Russian Federation

Level of Government	Main Responsibilities
Federal Competences	The adoption and amendment of the Constitution, of federal laws and the supervision of compliance with them; the regulation and protection of human rights and rights of national minorities; citizenship of the RF; management of federal and state property; the legal framework for a single market; federal transport, railways, information, and communications; space activities; law enforcement.

136 De Silva et. al. 2010: 41 also consider that one of the most important laws passed by Putin's government in terms of establishment a multi-tier system of government was the Law on General Principles of the Organization of Local Self-Government adopted in 2003 and implemented in 2006. This law established local self-government across all the regions of Russia

Shared Competences (federal and regional)	Administrative, administrative-procedural, labour, family, housing, land, water and forestry legislation; general issues of education, science, culture, sport; guidelines for taxation and other levies; ensuring compliance with the Constitution and regional laws; protection of human rights and freedoms; protection of the rights of ethnic minorities; possession, use, and management of land, mineral resources, water, and other natural resources; general guidelines for the organization of the constituent-government system and of local self-government; and coordination of the international and external economic relations of the regions
Regional Government Competences	Providing health care in specialized hospitals (for tuberculosis, cancer, psychiatric conditions, etc.); providing vocational education; providing funds to municipalities for preschool, primary, secondary, and after-school education; prevention of disasters and emergencies and dealing with their aftermath; fire protection; welfare services to senior citizens and persons with disabilities, support for victims of Stalin's regime and workers in defence enterprises during World War II; providing medical insurance for the unemployed; running orphanages; preventing terrorism; paying allowances to families with children and to low-income households (for housing and utilities); providing veterinary clinics; environmental protection and nature reserves; organizing cultural and sports events; maintaining regional public libraries and regional museums.
Local Government competences	Responsibilities
Municipal Raions	Providing preschool, primary, secondary education along with supplementary after-class education, using subsidies from the regional budget; providing health care in general hospitals, maternity care, and ambulance services, providing municipal police; environmental protection; managing waste disposal, maintaining raions' libraries; organising recreational, cultural and sports events, providing electricity and gas; constructing and maintaining inter-settlement roads; providing inter-settlement public transport.
Settlements	Delivering housing and utilities (electricity, heating, water, gas, streetlights) and providing waste collection; constructing and maintaining housing for low-income households; providing basic fire protection; maintain cemeteries, parks, gardens, settlement libraries; organizing recreational, cultural and sports events and recreational activities for teenagers; constructing and maintaining intra-settlement roads, providing intra-settlement public transport.

Source: Retrieved by the author from De Silva et. al. (2010) and from Busygina/Heinemann-Gruder (2010: 261-262).

Political Parties

The 1990s witnessed a growth in the number of political parties across Russia and its regions.¹³⁷ However, despite the large number of parties, they had little influence on regional and federal politics.¹³⁸ In the beginning of the 21st century, scholars argued that «in Russia parties continue to penetrate provincial politics only weakly and thus do not help to integrate the state and enhance its abilities to govern in the periphery by extension» (Stoner-Weiss 2002: 125). Indeed, very few governors (regional executives) would identify themselves with a specific political party and staying ‘above parties’ was common in most regions.¹³⁹ According to some studies, the role of parties in the 1990s was not significant and they were weak.¹⁴⁰ Furthermore, according to Golosov (2004: 23): «Throughout the 1993-2003 period, Russia’s presidents were not members of any parties, and the same applies to the majority of other senior officials within the federal executive». Abstaining from the affiliation to a national or regional party seems to be a peculiar feature of the subnational regime transition across the regions of Russia.

In contrast to scholars who argued that political parties had been weak during the 1990s, other scholars note that a transition to a party-based system was actually underway.¹⁴¹ Given the long absence of a multi-party system during the Soviet and pre-Soviet periods, what happened in the 1990s was a short but relatively successful attempt at building political parties and a multi-party system. However, given the unfavourable historical legacy and only ten years of democratization, the nascent party system was easily reversed at the beginning of the century.

Historically, political parties were connected to the legislative branch, traditionally weak in Russia. This is confirmed, partially, by a number of

137 Overall, there were about 273 political parties during the 1990s.

138 Among studies which make this argument, see, for example, Stoner-Weiss 2002. Some studies do not agree with this statement. For a different opinion on the role of political parties, see Panov 2009 for example.

139 For example, «74 elections of regional heads of administration had taken place up to the end of 2000: out of 744 candidates, only 7.6 percent identified with a political party» (Busygina/Heinemann-Gruder 2010: 271).

140 See, for example, Golosov 2004.

141 See, for example, Panov 2009: 176.

opinion polls on people's trust in institutions.¹⁴² According to different polls, the tendency is that people trust the executive leader the most, be they the regional governor, the republican president, or the federal president.¹⁴³ The legislative branch, the judicial branch, and political parties are viewed as faceless by the population. such as cult of personality which dates back to the Tsarist time and was strengthened during the Soviet period. Apparently this historical legacy has remained to some extent in the post-Soviet period and has had an impact on democratization and re-federalization.

After Putin passed a new law on political parties in 2001, their role became even less important. According to this law, any party has to be national. The law on «Political Parties» substituted the law «On Public Association» and aimed to reduce the number of political parties, thereby making the remaining ones, and in particular «United Russia», the first successful party of the president, more important. According to this law, political parties must be all-Russian, must have at least 10,000 members and branches of one hundred or more members in at least half of the 83 regions. Inter-regional and regional movements were no longer allowed. As a result, the number of political parties was drastically reduced to only fifteen.

Another consequence of this law was the growing influence of national parties in general and the so-called party of power, United Russia, in particular. United Russia (UR) has slowly penetrated regional and local politics.¹⁴⁴ In the context of other reforms, for example substituting elected regional governors by presidential appointees requiring the approval of regional legislatures, the changes in political parties seem even more important. According to some recent studies, United Russia played a key role in the recentralization policy of Putin.¹⁴⁵ With the increasing power of United Russia over regional legislatures, the choice of regional executive by the federal president becomes final since as long as UR holds the majority of seats in the regional legislatures, the presidents choice will not be rejected.

142 See, for example, extensive opinion polls of the Levada Center at <http://www.levada.ru/eng/>

143 Ibid.

144 Gel'man/Lankina 2008.

145 See, for example, Konitzer /Wegren 2006.

Fiscal Autonomy of the Regions

According to a World Bank survey, fiscal autonomy of the regions is practically non-existent.¹⁴⁶ In 2001, the Putin government started intergovernmental reforms. The goals of these reforms was to reassign revenue sources to different levels of government, establish transparent rules for allocating federal and regional intergovernmental transfers, establish a multilevel system of local government, improve public financial management in subnational governments, and clarify expenditure responsibilities across levels of government (De Silva et. al. 2010: 39). A new Fiscal Federalism Program was implemented during the period 2002-2005.

The reform of expenditure distribution was meant to clarify the issues of joint responsibility between the federal and regional level (see the table). Among these were environmental issues, the response to emergency situations, health care, education, culture, and social policy. The main problem, as identified by a group of experts, was the so-called unfunded mandates, that is, the lack of funding necessary to maintain the responsibilities assigned to the regional and local level. However, there is still no clarity on the division of responsibilities across levels (De Siva et. al. 2010: 99).

During this period, a new fiscal program, the Concept for Increasing the Efficiency of Intergovernmental Relations and Improving Subnational Finance Management (2006-2008) was implemented (De Silva 2010: 46). Despite the declared goals, including «strengthening regional fiscal autonomy» and «increasing transparency», the main goal of this program was to strengthen central control over the regions. According to a group of experts of the World Bank «concrete government actions to strengthen the fiscal autonomy of subnational governments are still lacking» (46).

Overall, in Putin's federal reform, one can see that «the new institutional networks surfaced in a rather rigid and centralised form» and there has been an emergence of «adaptive, disguised forms of the federal dialogue» (Chebankova 2008: 989). A change that took place under Putin's government, and continues, is the division between the three levels of governments, which has become clear both legally and formally. According to the law, each level of government is supposed to establish and approve its

146 De Siva et. al. 2010.

own budget, independent of higher tiers of government. The implementation of laws in practice, however, is very different given that the lower level of government is financially dependent on the higher level of government: «the total spending of regional and municipal governments depends on higher-level decisions» and regional governments cannot even estimate the total amount of revenues available to them in the next fiscal year (De Silva et. al. 2010: 49).

4 · Moscow as a Capital City: de-jure symmetries versus de-facto asymmetries

There are at least two perspectives that should be developed while assessing the status of Moscow within the Russian Federation: national and international.

As far as the national perspective is concerned, under the system of Russian federalism there are two distinguished cities which have the status of «city of federal significance» – Moscow and St. Petersburg. Both cities are meant to have the same status within the symmetric federal structure of Russia. De-jure, the status of these two cities is the same, and is also equal to the status of all other regions of the RF. Republics, oblasts, okrugs, and so on are all considered to be «equal subjects of the Federation» according to the Constitution of 1993. However, the de-facto status of the regions is very different in terms of demographic, cultural, religious, economic, and political criteria. Unofficially, St. Petersburg has been considered the cultural capital of Russia, while Moscow the political and financial centre. Due to the high degree of fusion between business and politics in Russia in general, financial weight is equal to political weight. During his presidency, Vladimir Putin tried to move some of the political institutions to St. Petersburg, in order to make it a centre for high level political meetings and international negotiation. Still, despite the constitutional symmetry across the regions, Moscow remains a strong political and economic leader and the uncontested centre among all other regions of Russia including St. Petersburg. The hypothetical answer to this puzzle, developed in this chapter, is that the most important reason for this is the peculiarity of the sub-national regime developed in Moscow.

Moscow as a Special Case of Political Sub-National Regime

To start with, national and sub-national regimes are not necessarily developing in the same direction.¹⁴⁷ While in the 1990s, Russia was considered to be a rapidly democratizing country, sub-national regional governments established autocratic and semi-autocratic regimes. In contrast, under Putin in the 2000s, Russia slid down in all international ratings of democracy (Freedom House, Polity IV), while its regions stopped developing sub-national autocracies and became more responsive to the strong central government. This phenomenon is not really particular to Russia and had been previously observed in a number of transitional and democratizing states (for example Brazil, Mexico and India to name only a few). Scholars noticed the contradiction between national democratization and sub-national autocratization. This phenomenon had been labeled as multi-level regime transition (Obydenkova 2011).

The History of Two Rival Capitals

Historically, Moscow has always been a natural choice for a capital. Founded in the 12th century, the city served as the capital of a progression of states, starting from the medieval Grand Duchy of Moscow, the so-called Muscovite kingdom. But in the early 18th century, Peter the Great founded a new city, a potential rival capital to Moscow: St. Petersburg, situated at the Western border of Russia by the Neva river and the Gulf of Finland. The city was founded in May 1703 and was meant to become a «window to Europe» for Russia due to its commitment to education, science, and innovative building technologies imported from Western European states (Germany, France, and England among others). St. Petersburg was also meant to become an alternative to «old fashion» patriarchic Moscow. Indeed, St. Petersburg became capital of Russia during 1713-1728 and 1732-1918. However, after the Revolution of 1917, the capital was moved back to Moscow.¹⁴⁸

There are two hypothetical reasons for the decision to re-establish Moscow as capital: one is ideological and the other pragmatic. Ideologically, St. Petersburg was strongly associated with Imperial Tsarist pro-Western Russia while the Soviet central government wanted to create a different

147 On multi-level regime transition as a concept, see Obydenkova 2011.

148 These facts on history as well as some other general data on other related issues, are reported in a number of available internet sources. See for example <http://en.wikipedia.org/wiki/Moscow> accessed on 5 June 2012.

image for the Soviet capital – more anti-Western and more pro-Eastern. Moscow suited this profile perfectly. The other reason is a pragmatic one. Moscow is territorially more central and is much closer to the Asian regions of Russia as well as closer to the Caucasian and Central Asian Soviet Republics. Having the capital closer to the geographic centre of the state was thus much better for strategic and geopolitical purposes than keeping it in the Western European border.

However, due to this historical path, a certain rivalry between the two cities has developed and remains up till now. Despite certain advantages (for example St. Petersburg's closeness to Russia's Western border), Moscow will most likely be kept as capital as it has become attractive not only for Western but also many Eastern businesses as a centre for financial transactions and political negotiations (the following section will look into Moscow as an international financial centre in more detail).

De-Jure Symmetry versus De-facto Asymmetry

As mentioned earlier, modern Moscow is one of the biggest cities in the world in both territory and population. It is the most populated region in Russia and one of the smallest in terms of territory. Moscow-capital accounts for 14% of Gross National Product of Russia (and contains about 80% of the financial resources of the state). Taxes paid by Moscow to the central budget make up 35% of the federal budget and the city state is one of the strongest donor-regions in Russia. The *official* population of Moscow city is about 12 million people with permanent residence permit, about 2 millions «official guests» (people with temporary residency) and another one million unregistered residents, adding up to a total population of 15 millions (that is 9.8% of total population in Russia). Moscow is considered to be the fifth largest city by population in the world and the second most populous city in Europe.

Moscow city is territorially incorporated into Moscow region (also called Moscow oblast). However, constitutionally, both regions – city and oblast – are considered to be equal territorial subjects of the Federation.

Among the centralization reforms started by Putin in his two previous presidencies was the project of merging regions. All plans for merger Moscow and Moscow oblast have failed. Instead, the 'Moscow expansion' project was taken up by the government and was successfully implemented in July 2012. From July 2012, due to the territorial expansion of Moscow-

capital into Moscow-oblast, the capital has increased its area. The initial area of the capital was 1000 square kilometers and it is now 2.500 kilometers.

Administrative Structure and Informal Power of the Mayor

The entire city of Moscow is headed by a mayor. Administratively, Moscow is subdivided into 12 administrative okrugs and 123 districts. All administrative okrugs and districts have their own flag and individual heads of the area.

The first and longest serving mayor of Moscow was Yuri Luzhkov (whose family became one of the most influential millionaires in Russia due to the restricted access to assets located in the city).

The dissolution of the USSR in 1991 triggered a triple regime transition – democratization, marketization, and federalization. The attention of the central government was directed to the first two. Many of the mayors and leaders of regional administrations, sub-national executives and governors used their practically unlimited access to public «state-owned» assets and lucrative resources previously controlled by the Communist party. The administration of Moscow city, headed by Yuri Luzhkov, was actively involved in this process. The city's administration became deeply involved in business entrepreneurship, facilitated by Luzhkov's administration control established over property and building contracts in Moscow.

All these circumstances made it easier for Luzhkov to craft an authoritarian political regime in Moscow that was marked by a high degree of fusion between politics and business, and by a patrimonial regime (typical of the scheme of a «winner-takes-all» formula offered by Helman (1998)). The patrimonial regime is in a way similar to the tsarist regime as there is no separation between property ownership and political sovereignty. Thus, for example, Moscow's mayor was actively involved in business, banking, financing of programs, commercial use of city funds, an opaque budget process, and the extensive use of off-budget funds, which paradoxically, were highly reliant on federal subsidies. The centralization reforms of the federal system allowed a mayor to be replaced with a presidentially appointee, and President Putin replaced Luzhkov with Sergey Sobianin. After dismissing Luzhkov, some observers and the mass media have noticed that unofficial off-shore business has diminished, and crime rates have dropped, while transparency in business and management has increased.

International Perspectives and the Special Status of Moscow

However, what makes the status of Moscow special within Russia is also its international standing. From an international perspective, Moscow established itself as one of the biggest financial centers in the world. In terms of financial world capitals, above Moscow there is New York, London, Frankfurt and recently also Hong Kong.¹⁴⁹ According to the Corporation of London, in the Global Financial Centers' Index, Moscow has a much lower score than the above-mentioned financial capitals. However, of all other cities in Russia, it has the highest rank in this index. Taking all these facts into account, Moscow's government is attempting to develop additional special programs to increase the status of Moscow as a financial capital in Russia and the world.

This led to the creation of some official programmes destined to increase Moscow's international standing (Government of the Russian Federation Strategy, Government of the RF Concept, and the Government of the RF action plan).¹⁵⁰ Summarizing the main points of these documents, the following aspects are specifically featured: (1) the central government will attempt to increase the level of human capital which could be used in the financial services industry (to take advantage of an the already existing high level of education in mathematics, computer science engineering and natural science); (2) to exploit further the advantage of Moscow's geographic location, between European and Asian financial centers; in order to attract investment flows and negotiate deals with both Eastern and Western partners; (3) to increase the relatively high level of development of the national market; (4) to strengthen the relatively close links with many post-Soviet states where Russian is the lingua franca, etc. These aspects are meant to be developed further by the central government to contribute to its further development as a financial capital Irrespectively of whether the plans of the central government to increase the rating of Moscow in terms of its reliability as a world-wide financial centre are realistic or not, the very fact that Moscow is considered an international financial capital attracts more national investment to it. In turn, the city further increases its special de

149 Abramov, D./Polezhaev, S./Sherstnev, M.: Moscow as international financial center: ideas, plans and perspectives, *Journal of Eurasian Studies* 2, 2011, 2: 144-152

150 Abramov/Polezhaev/ Sherstnev 2011.

facto status as well as increasing the gap between Moscow and the other sub-national regions of Russia.

5 . Conclusion: Future Perspectives for the development of a Capital City

Moscow presents an interesting case in the context of the territorial structure of Russia. On the one hand, Moscow is obviously an outlier if compared to the other regions, in demographic, economic, and cultural terms. On the other hand, it can still be considered as an enlarged image of the situation of other regions of Russia. The creation, establishment and development of sub-national political regimes had mainly gone in the autocratic direction during the 1990s. The situation has changed over the 2000s. However, in the way economic assets have been captured, how regional administrations have been involved in this process, and in terms of the fusion between politics and business, Moscow's behaviour is standard compared to other regions. The only difference is that in the case of Moscow, one can witness how huge economic and financial assets have been transformed into equally enormous increases in political influence and outcomes. However, in other regions of Russia very similar processes took place with similar results – the establishment and strengthening of autocratic patrimonial regimes at the sub-national level.¹⁵¹

The centralization and the current unitary structure of Russia may be temporary. If the previously centralized post-Soviet Russia could become as radically de-centralized as it did, the modern centralization reform can also be redressed in the future. The declared goals of recentralization were environmental protection, the synchronization of laws at the regional level, and resolving legal contradictions between the RF Constitution and regional laws. Once these goals are achieved, recentralization might switch back to decentralization.

Decentralization could restart due to a number of different factors and be either bottom-up or top-down. In the former case, it could be pushed forward by the regional populations, NGOs, or regional and local mass media; although television is firmly controlled by the centre, federal, re-

¹⁵¹ See for example Obydenkova/Libman 2012.

gional and local newspapers still enjoy a great deal of autonomy and keep challenging the appointed regional governors and criticize the regime and centralization. Thus future decentralization and democratization is still a feasible scenario for Russia.

Scholars also have repeatedly noted that to be able to discuss the future development of Russia federalism in general and of Moscow as a territorial unit in particular, its historical legacies have to be taken into account (Bermeo 2002: 98, Burgess 2009: 25). The preconditions for federalism are just as important as its consequences, and in cases such as Russia, preconditions may play a crucial defining role in the development of federal structures. The highly centralized Soviet Russia and pre-Soviet Tsarist regime is more than a century-long experience. This historical legacy significantly influenced post-Soviet development and might have an impact on the future perspective of Russian federalism, too.

Initially, scholars argued that Russian federalism failed because the federal centre is too weak and should be given more powers over the regions.¹⁵² Indeed, in the 1990s, rapid decentralization encouraged rent-seeking behavior by the regions, collusion between regional political and economic elites, and a lack of accountability of regional governments to both central government and to the electorate, and as a result, corruption increased.¹⁵³ Regional elites successfully sabotaged both the transition to market economy and democratization reforms carried out by the central government in the 1990s.

After 2001, the direction of federal reforms changed so radically that now scholars argue that federalism failed because the central government is too strong. More recent studies suggest that both dilemmas (strong central government-weak regions and weak centre-strong regions) should be addressed simultaneously (Figueiredo, McFaul, Weingast 2007). This is an important turn in the studies on Russian federalism. However, this can be developed even further: building institutional constraints on the centre is as important as strengthening constraints on regional and local administrations by developing their accountability to the electorate rather than to central government. The latter is only feasible when democracy is established and consolidated at the subnational level. As Roust and Shvetsova (2007) stated, federal stability requires an already established and «well-

¹⁵² See, for example, Treisman 2000.

¹⁵³ See, for example, Stoner-Weiss 2006, Dinino/Orttung 2005.

functioning democratic process» (244). Democracy is a precondition for genuine federalism, a «necessary condition for the resiliency of the federal regime is a representative democracy» (244). Thus, federalism is meant to emerge as an outcome of democracy, and fails when it is expected to produce democracy, whether at the regional or local level.¹⁵⁴

Decentralization in the 1990s had not led to the establishment of democracy at local, regional or national levels. Recentralization became possible and was accepted by the regional elites and regional electorates. As Konitzer and Wegren (2006) state, the rise of the party of power, United Russia, was not due to «its development as a mass party with many millions of members» nor can it be explained by support of regional populations (511). Apart from the federal reforms of Putin, regional leaders also contributed to recentralization through cooperation and affiliation with the new party of power: «party leaders in Russia's regions help to implement the wishes of the center by reining in previously recalcitrant regional executives» (517). In other words, the «party of power» (party of Putin) succeeded because of weaknesses in regional and local democracy. If genuine democratic principles had been at work in the regions, the invasion of United Russia into regional politics would not have been possible. However, Konitzer and Wegren (2006) also argue that the erosion of federalism is a cause of anti-democratization. This chapter argues that the erosion of federalism is an outcome of the absence of democratization and unless democracy becomes present at all levels, federal structures will remain fragile, vulnerable, and unstable.¹⁵⁵ It has often been forgotten that genuine federalism is, actually, the outcome of previously established, if not yet consolidated, democratic institutions and practices. The lack of democratic prerequisites such as civil society, a strong electorate and fair and competitive elections will lead to the malfunctioning of any federal structures.

154 See, for example, Obydenkova 2011.

155 For an excellent discussion of the interconnections between democracy, federalism and national pluralism, see, for example, Requejo and Caminal (2010), Requejo (2010).

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SOME FINAL REFLECTIONS

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This book has analyzed some prominent cases of federal capitals, focusing on asymmetries, their justifications, and eventual tendencies of re-symmetrisation. It could not tackle all federal capitals of the world, so some important questions had to be left open: for example, what model is the best, or whether there are general tendencies of convergence between the models. Studying cases we cannot provide general answers to such questions. However, several insights into this under researched topic of federal capitals can still be gained.

Anthony Gilliland compared the initial set-up of the capitals in three classical federations, the US, Canada, and Australia. In all these cases, we are dealing with vast countries with a basically immigrant population and small capital cities. All three processes are different, however, the problem of choosing the site often proved at least as important as the choice of the model. This already warns us against too much generalization. A common line of the actors was the need to strengthen the federation. This is prominent in Madison's often cited concern for protecting the federal government against single state encroachment. The «neutrality» of the place and national security were without doubt important issues for the founders. However, there are few neutral sites to be found in today's federations, and national security no longer depends on the capital city's distance from the next boundary as it did two hundred years ago. Today's capitals attract more or less commuters from neighbouring states, and in many other ways communicate with or radiate towards them. This happens to federal districts as well as to city states or to capitals that are cities inside member states. In all the three classical federations (probably even in Canada) the federal government has strengthened its muscles, as the studies by Andrew and

Nagel on Ottawa and Washington confirm. The DC of the USA is the case that has most clearly maintained the characteristics of a federal district. A District, the model preferred by Madison, and on conditions also by modern authors like Rowat, looks to protect the federal government against possible encroachment by the state in which the capital is located. It is particularly recommended by Rowat for decentralized federations. However, the US federal government no longer has to fear being subjected to undue influence by a state (or states), at least not as much as at the time the federation was founded. The sacrifice of the rights of the inhabitants of the District for the purpose of establishing a balance between the states of the federation seems more difficult to justify now, at a time when the states do not command as many «weapons» (even in the literal sense of the word), than at the time of the founding fathers. While with regards to self rule some asymmetry between the District and the states may still be reasonable (for example, the protection of federal government buildings, or some federal oversight on particular branches of District administration), the Washingtonian asymmetry (with no representation of the DC in the federal institutions) is much more questionable. The participation of the capital and its citizens in federal rule may be less of a danger for the independent working of the federal institutions than the degree of self rule enjoyed by the district or state of the capital.¹⁵⁶ Most federal districts have long abandoned this asymmetry in representation between District and states, granting their citizens a fair share in the general ruling of the federation. This is true not only for Districts housing big cities with demographic and economic influence that therefore cannot to be neglected, like Mexico or Buenos Aires, but also for Brasilia or Canberra.

Most districts (and to a lesser extent even Washington DC) have come somewhat closer towards to the model of the city state capital. However, there is still an argument, already advanced by Rowat, in favour of the District model. In the case of deeply diverse, and in particular of plurinational federations, the capital should not be in the hands of the majority alone. This is often difficult to achieve. Very rarely can the capital really be constructed as a place respectful of minorities. In the Washington case, where African

¹⁵⁶ However, there may be some concern arising from an inverted «West Lothian Question» when representatives of the District in the federal government share the federal task of supervising the administration of the same District. However, some solution to this problem may be found.

Americans, a minority across the US, are a majority (and it is the only territory of the US where this is the case), this may have barred the city from gaining symmetrical representation in the institutions of federal government. It may have even stopped it from receiving, and then maintaining, the districts self ruling capacities. On the other hand, this means that the District's claim for statehood is not only motivated by the lack of respect for the territorial demos, but also overburdened by the wish to achieve better representation of African Americans in national institutions.

Rowat would have probably favoured a District to be situated between Ontario and Quebec as the capital of plurinational Canada. He criticized the Ottawa model of a city inside a member state since it means that the capital city is subject to the rules and laws of the state it is located in. Andrew, in her contribution to this volume, demonstrates that federal government influence has always been stronger than the model suggests. Federalist minded Canadian governments have contributed to the establishment of a National Capital Region including the city of Gatineau in Quebec. The direct collaboration between local and federal governments as well as some rules on capital financing may bring Ottawa somewhat closer to a District model, without totally breaking the path dependency. This strengthening of the federal government may not always be to the liking of the province of Quebec. Capitals that are normal cities inside a member state, equal to any other city of the nation, that is with citizens that are at the same time members of the federal and of a state demos, are rare occasions in an ever urbanizing world. Where we find examples of the model, such cities are also capitals of a member state. This was the case for Belgrade in the former Yugoslavia, but is also the case of the tiny city of Bern.

The model of the capital as city state is represented in this book by three very different cases, Brussels, Berlin and Moscow. Traditionally, this type has attracted even less attention than the other models, perhaps because it is not present in classical federations. According to Rowat this model might be even «worse» than the city in a member state one. The symmetry this model stands for is the one between member states, there is no special territory or District endowed with a lesser set of rights or duties, and there is no sacrificing a District and its citizens for the sake of the federation. Asymmetry here is between local administrations, as one of them is – or exercises as – state administration, concentrating power. This could indeed be the worst situation for a «Philadelphia incident» to take place – capital cities endowed with all the powers of a member state. However, in practical

cases like Brussels, we may find some of these powers to be withheld. After reading Van Wynsberghe's contribution to the volume, this editor got the impression that Brussels could not have been a district because it 1) could not be passed over due to its size and importance, and because 2) without Brussels there would only be two members of the Belgian federation. In some ways, at least in Brussels, the citizens of the capital have to bear the burden of the balancing out the interests of the other two partners in the federation: Brussels had to be a member state, but not totally so. One could argue that city states are generally «chosen» where the capital is too big to be passed over, where they simply could not be relegated to the lesser status of a District.¹⁵⁷ At first glance, Berlin and Moscow as possible cases in favour of such an argument. But Zimmermann shows that even in the case of Berlin (where local political majorities use to differ from those in the federation), a city state is not a real danger for the federal government. To let the city have a stake in the institutions of a federation may be sound advice for federations and this may even become better protection against «antifederal behavior» than to leave it without representation. In Moscow, a privileged city state, where, as Obydenkova shows, the relative demographic and economic weight of the capital for the whole country is even greater than in Germany, popular and populist Mayor Luzhkov lost out against the pressure of the federal government. However it should be recognised that this was part of a general process of recentralization and resymmetrization of the Russian Federation. It is very questionable whether a city state solution is a good idea in federations with deep diversities.

These final reflections are not meant to summarize the contributions of the authors to this volume. Each case is different, and factors like size, demographical and economical weight, and the planning and financial necessities play an often decisive role in the management of the capital. Each case could be clearly classified in one of the categories. But even so, each case may also contain traits of one of the other types. In our book, the authors could freely choose to give proper attention to particular features. Individual cases cannot be understood only on their adscription to a particular category. In political reality, federal rule over a District may not only reflect the noble aim of protecting the federal interest, for example, but be a response to well connected parochial interests with enough influence to

157 And where other city states exist and render the argument of symmetry between the states even more credible (Hamburg, Bremen, St. Petersburg).

use federal oversight for their particular interests (Harris 1995: 264), while other federal overseers just stand by or «sell» their power to favour such groups. Federal trust is not always better served by one or another of the three models. Mismanaging may undermine the noblest of all objectives. It may also be sound advice to treat a District as a state in some issues, or to give a capital city inside a member state special treatment in some regards, or to use the formula of a city state but reserving some policies. However, at a time of big government, in many places it is the federal government that is growing in power, so city states may not be a bad choice, at least in mononational established liberal democracies where local authoritarianism is not a danger.

In the study of federal capital cities, attention has already been paid to the relations between local and federal administrations, to the self governing rights of the inhabitants of the city (Rowat and Harris), to the protection of the national interest (since Madison), and, more recently, to capital city financing (Slack/Chattopadhyay). Hence with regard to further research, it seems to me time to turn to focus on the relation between the capital city and the states, and particularly in the case of federations with features of deep diversity.

Federal capitals often have special statutes. Compared with member states, they often enjoy a lower degree of self-government and, sometimes, a lesser share in the governing of the federation. Surprisingly, the burgeoning literature on asymmetric federalism has overlooked this feature, in spite of its importance for the relation between democratic equality, citizenship rights, and federalism. Can the asymmetric treatment of capitals be normatively justified, and if so, how? This book tries to fill the gap by asking for the normative foundations for each of three current arrangements. The "Federal District" model is represented by Washington, where asymmetries in self rule and shared rule are particularly sharp, and where we find a long history of considered federal arguments for and against the model. Berlin, Brussels and Moscow represent very different versions of the "capital-as-a-member-state" model, while Ottawa is a "city-inside-a-member-state". Therefore, our case studies highlight different features of de facto and de iure asymmetry in federations (between states/territories, between towns, between citizens). We will investigate why different models were chosen, what normative and practical advantages and inconveniences each model presents, and whether there are converging trends in the historic development of each model.

ISBN: 978-84-393-9063-3



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