

FEDERALISM AND THE SEPARATION OF POWERS
AT THE SUBNATIONAL LEVEL

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Abstract

Most of the literature on federalism has emphasized the relationship between national and subnational governments, but has overlooked the organization of power at the subnational level. Likewise, most of the debate on the separation of powers in presidential, parliamentary, and mixed systems has neglected the role of federalism in bolstering the separation of powers. In this paper, we argue federalism may be defined as a constitutional arrangement that creates executive, legislative, and judicial branches of government at the subnational level. This definition has important implications for the literatures on federalism and the separation of powers, two themes often treated in isolation. First, it directs the attention of students of federalism to the neglected subject of the separation of powers at the subnational level. Second, it directs the attention of students of the separation of powers to the issue of federalism. We show that the existence of institutional mechanisms that override the subnational separation of powers in federal systems is problematic for democracy and deserves further attention. We also point to the fact that by safeguarding the subnational separation of powers, federalism can strengthen democracy at the national level.

INTRODUCTION

The twentieth century will open the age of federations, or else humanity will undergo another purgatory of a thousand years.¹

Pierre-Joseph Proudhon's prediction appears to have come true. Forty percent of the world's population lives in countries that can be considered or claim to be federal, and as Edward L. Gibson says: "We live in an increasingly federalized world."² In the mid-nineteenth century, Proudhon defined federalism as a social doctrine, a philosophy, a global view of society, a 'ism' like liberalism or socialism. Before him, Immanuel Kant had theorized on the idea of federation, not as a doctrine but as part of a theory of law and politics. Kant conceived the idea of an international federation to safeguard international peace from war and anarchy.

Throughout the 20th century, the focus of the scholarly literature on federalism shifted from the doctrinaire and international levels to a more concrete emphasis on the national level of analysis.³ The United States' federal constitution most frequently became the explicit or implicit point of departure or comparison for this body of literature. We engage our discussion with this literature, with the study of federalism at the national level. In fact, we propose to take the debate on federalism one-step further down in the hierarchy of intergovernmental relations: toward the subnational level of (state, province, Länder, and canton—what some scholars call the "meso-level").⁴

We argue that federalism may be defined as a constitutional arrangement that creates executive, legislative, and judicial branches of government at the subnational level. This definition has important implications for the literatures on federalism and the separation of powers, two themes that are often treated in isolation. First, it directs the attention of students of federalism to the neglected subject of the separation of powers at the subnational level. Most of the literature on federalism has emphasized the relationship between the national and

subnational levels of government, but has overlooked the organization of power at the subnational level. Second, it directs the attention of students of the constitutional separation of powers to the issue of federalism. Most of the debate on the separation of powers in presidential, parliamentary, and mixed systems has neglected the role of federalism in bolstering the separation of powers.

The intuition behind our definition is that the separation of powers is an essential feature of constitutional government. An inherent feature of constitutional government is the capacity to legislate and adjudicate. For a subnational unit to claim to represent the sovereignty of its citizens—a claim separate from that of the national government—it must have its own constitutional institutions: together with a subnational executive, there must be a subnational legislature, which within the capacities granted in the national constitution makes the laws that affect the subnational territory, and a judiciary that enforces the laws enacted by the subnational legislature.

This article is divided into four parts. The first part examines the meaning of the separation of powers. We then review definitions of federalism and find that most definitions have focused on the vertical division of sovereignty between national and subnational levels of government rather than the separation of powers in both. We examine subnational governments in all existing federal systems, and find that the vast majority fit our definition. The third section of the paper reviews empirical implications of our definition, applied to the four cases of Latin American federations. The final section concludes.

SEPARATION OF POWERS

Federalism and the separation of powers both imply constitutional limits on state power, either through the functional or territorial division of governmental roles and offices.⁵ The separation of powers makes it nearly impossible for one faction to speak unequivocally—or, one might say, univocally—on behalf of “We The People.”⁶ Likewise, the division of powers between national and subnational levels creates offices with competing territorial claims to speak on behalf of the *demos*. The constitutional autonomy of the subnational units is guaranteed by the existence of legislative bodies and a system of courts. Federalism is not only similar to the separation of powers; the two terms are mutually constitutive.

Constitutions, for our purposes, refer to conventions and laws that establish the arrangement of public roles and offices, including the executive, deliberative, and judicial branches of government. Unlike ordinary laws that forbid or enjoin actions under penalty of sanction, constitutions confer legal powers to legislate or judge.⁷ Since the 17th century, modern constitutions have always specified the role of legislatures, bodies that monopolize the production of laws; the role of judiciaries, bodies that monopolize the interpretation of laws and their application to particular cases; and the role of executives, bodies that monopolize the legitimate use of coercion within a given territory.⁸ The presence of three branches of government, each with offices in which individuals have specific functions, is what Max Weber called the functionally specific division of powers.⁹ The legal-rational administration of the affairs of state requires a functionally specific division of powers, and a constitution that does not create separate governmental offices and roles is no constitution at all.¹⁰

A critical distinction can be made between the specification of offices with defined roles, and the arrangement of these offices according to alternative constitutional principles. Whereas the specification of relatively fixed offices and roles is what defines a system as constitutional, the type of constitution depends on the principles governing how offices are arranged. Federalism is one such constitutional principle. It specifies a type of constitution in which there are two levels of constitutional government: the national and the subnational. For the subnational level of government to have constitutional standing—that is, the autonomy to make rules, apply them to particular cases, and govern itself under the rule of law—it must have its own legislature, executive, and judiciary.¹¹ A constitution that does not create legislative, executive, and judicial roles and offices at national and subnational levels is not federal.

A long list of scholars have hinted at the connection between federalism and the separation of powers, but none have insisted the two are mutually constitutive. There are two reasons for this. First, the separation of powers has come to denote a constitutional doctrine historically specific to Anglo-Saxon countries. Second, scholars have conflated presidentialism and the separation of powers, leading to a presumption that any attempt to link federalism and the separation of powers necessarily implies advocacy of the US model.¹²

The doctrine—or, rather, the myth—of the separation of powers is aptly summarized by M.J.C. Vile: “It is essential for the establishment and maintenance of liberty that the government be divided into three branches or departments, the legislature, the executive, and the judiciary. To each of these three branches there is a corresponding identifiable function of government, legislative, executive, or judicial.”¹³ This succinct statement captures the functionally specific division of powers, and is unobjectionable. However, Vile attaches two

problematic conditions to the doctrine: “Each branch of the government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches. Furthermore, the persons who compose these three agencies of government must be kept separate and distinct, no individual being allowed to be at the same time a member of more than one branch.”¹⁴ The latter part of this doctrine has two serious problems. First, there are no expositors of this view; and, second, it has no empirical referent.

The doctrine of the separation of powers, at least as outlined by Vile, cannot be attributed to Montesquieu, nor to Locke, Madison, Kant or any other major thinker. It is mythical in the sense that nowhere in the canons of constitutional thought has a serious constitutional theorist ever advocated the watertight separation of the branches of government.¹⁵ The first person to detect this misreading of Montesquieu was James Madison.

In The Federalist No. 47, Madison insisted that the separation of powers had been “totally misconceived and misapplied” by opponents of the proposed US Constitution. They misread Montesquieu and the British Constitution that served as his model. He noted that “the legislative, executive, and judiciary departments are by no means totally separate and distinct from each other” in Britain. The executive is part of the legislature and appoints and dismisses members of the judiciary, and one part of the legislature serves judicial and constitutional functions. One cannot infer from Montesquieu’s work that the branches of government should have “no *partial agency* in, or no *control* over, the acts of each other.”¹⁶ Rather, Montesquieu must have meant “where the *whole* power of one department is exercised by the same hands that possess the *whole* power of another department, the fundamental principles of a free constitution are subverted.”¹⁷ Montesquieu’s target is, of

course, the absolutist state not parliamentarism. Madison then describes the essence of British parliamentarism and insists that it is consistent with Montesquieu's maxim:

The magistrate in who the whole executive power resides cannot of himself make a law, though he can put a negative on every law; nor administer justice in person, though he has the appointment of those who do administer it. The judges can exercise no executive prerogative, though they are shoots from the executive stock; nor any legislative function, though they may be advised with by the legislative councils. The entire legislature can perform no judiciary act, though by the joint act of two of its branches the judges may be removed from their offices, and though one of its branches is possessed of the judicial power in the last resort. The entire legislature, again, can exercise no executive prerogative, though one of its branches constitutes the supreme executive magistracy, and another, on the impeachment of a third, can try and condemn all the subordinate officers in the executive department.

A sharper understanding of British parliamentarism would be hard to find, and it is equally clear that Madison recognized this as Montesquieu's model. He reinforces this by pointing to the outcomes Montesquieu fears (the monarch who enacts tyrannical laws and enforces them tyrannically; the judge who acts as legislator; the judge who serves the executive and becomes oppressive), which are clearly avoided by the British Constitution. In spite of the penetrating clarity of Madison's argument, not only has the doctrine been frequently invoked as a straw man for the purposes of disqualifying parliamentarism as a system based on the separation of powers, but it has also fostered the misperception that the separation of powers refers to presidentialism.

The key difference between presidentialism and parliamentarism lies not in the separation of powers *per se*, but in the nature of checks and balances.¹⁸ In presidential systems, the executive and legislatures are directly elected for a fixed terms; a legislative majority chooses the executive in parliamentary systems. Thus, in a presidential system, there are checks and balances between the legislature and the executive. The presidential veto empowers a non-legislative office to partially control the legislative agenda. Impeachment

gives congress the right to remove the executive from office. Parliamentarism is based on the partial fusion of executive and legislative power. As long as the legislature monopolizes legislation and the cabinet obeys the law, however, the functionally specific division of powers remains intact. Presidentialism and parliamentarism are thus subtypes of constitutional government, and like all constitutional governments, they are based on the separation of powers.¹⁹

We do not question the well-known fact that parliamentary systems centralize powers in the office of the prime minister, and that cabinet government partially fuses legislative and executive branches of government. In the British parliamentary tradition in particular, where parties are strong and disciplined and the prime minister has extensive influence over patronage and career paths, the executive has enormous powers to set the legislative agenda and shape policy outcomes. Even the cabinet has seen its influence wane relative to the office of the prime minister.²⁰ Critics of parliamentary government are right to emphasize the virtually unchecked powers of the office of the prime minister in the Westminster model. At issue, however, is whether this nullifies the separation of powers and gives rise to the sort of abuses of power that concerned Montesquieu. As long as the legislature makes the laws, the judiciary interprets and applies of laws in particular cases, and the executive operates within the framework of the rule of law, we see no reason to eliminate parliamentary governments from the set of constitutional systems as defined here. The fact that there is overlapping membership in the executive and legislature does not mean the executive makes laws, or the legislature is not deliberative, much less does it mean the judiciary cannot be independent.

Were a prime minister to decide that his or her decisions had the force of statutory law regardless of legislative approval (as is the case, for example, in post-Soviet Russia), or were judges to impose a sentence based on the preference of the executive rather than the merits of the case in light of the law, tolerance for such actions would indeed strike at the heart of constitutional government. The mutual dependence of legislative and executive branches in parliamentary systems means that the prime minister must work with the legislature and sustain its confidence.²¹ Prime ministers may have strong legislative agenda setting powers, but they cannot bypass parliament and there is no reason to believe that the legislature is any less a bulwark against an autocratic executive than congress in a presidential system. Extraordinarily concentrated decision-making does not mean the executive can act outside the rule of law, and this is what counts from the perspective of the separation of powers. At issue is whether the constitution can be changed at will by any one branch of government, and in ways that erode the rule of law. The integrity of the constitutional order is the best guarantee of the protection of subnational units from encroachments by the center.

In practice, the record of parliamentary systems has been better than that of presidential systems in terms of avoiding constitutional crises and the breakdown of democratic regimes. Parliamentary systems are also more likely to respect the rule of law than presidential ones,²² a fact that belies the facile assumption that parliamentary systems are “elective dictatorships.”²³ Ironically, the presidential model seems especially prone to produce precisely the outcomes Montesquieu and Madison sought to avoid, especially but not exclusively outside of the US.

Presidentialism checks executive power, but divided government and fixed terms can generate legislative-executive gridlock and invite constitutional crisis and unconstitutional solutions like the abuse of rule by decree. Whereas parliamentarism has a ready-made solution to the problem of lack of control over the legislature (a vote of non-confidence followed by elections), presidentialism can lead to lame duck presidents who serve out their terms without fulfilling their mandates. Thus, while separate elections for the legislature and the executive create checks and balances, it is unclear whether this invites or prevents overweening and arbitrary behavior by the executive branch.

Contrary to constitutional scholars of the British constitution from Walter Bagehot to Albert Venn Dicey, the Westminster system exemplifies the separation of powers because the British constitution establishes a rule of law in which the distinctive roles and offices associated with the various branches of government work to sustain constitutional government.²⁴ The classical text that is often cited in support of the view that there is no separation in the Westminster model is Bagehot's The English Constitution, but Bagehot only succeeds in demonstrating that the myth of the separation of powers does not apply to England. He repeatedly refers to "the principle" that "the legislative, executive, and the judicial powers are divided—that each is entrusted to a separate person or set of persons—that no one of these can at all interfere with the work of the others."²⁵ Yet he never offers a source for this principle, and since it describes no known political system it is easy to show that it does not capture well the English constitution.

While Bagehot was surely right to stress the weakness of checks and balances in England relative to the United States, he was too hasty in drawing the conclusion that there is no separation of powers in the Westminster model. As Ferdinand Mount puts it, "the rule of

law fortifies the traditional and highly desirable separation of powers between legislature, executive and judiciary. Each power in the land—the Crown and its Ministers, the law-makers in Parliament, the judges—enjoys a separate and distinct authority under the law. And the separation and distinctness reinforce our liberty, because no power can go very far in oppressing us without running into the equally potent authority of some other power.”²⁶

Confusion over what constitutes the “separation of powers,” its conflation with presidential systems, and the failure to distinguish it from “checks and balances,” hinders our understanding of federalism. An extreme example is provided by Dicey who was driven to the conclusion that Canada was more like a presidential than a Westminster system because it had a federal constitution. Peter C. Ordeshook is less categorical, but he sees a presidential system “as an essential component of a stable federal government” and suggests parliamentary systems are more appropriate for “small homogeneous states.”²⁷ In fact, however, there are more parliamentary than presidential federal systems. Even Kenneth C. Wheare stumbled on this problem.

In his classic study of federalism, Wheare, like Bagehot, takes the myth of the separation of powers as his point of departure. “The doctrine of the separation of powers” he says, “holds that good government is ensured if the functions of legislation, administration and adjudication in a state are not placed in the hands of one body of person but are distributed to a greater or less degree among distinct or separate bodies of persons.”²⁸ Wheare acknowledges that “the absolute and exclusive separation has never been advocated.” However, he says, it approximated—albeit imperfectly—in the presidential system of the United States. Wheare concludes from this that while federal government may work better if thus organized according to the separation of powers, this is not essential. The

federal principle implies no rules about how the general government is organized, provided that the federal and regional governments are coordinate, each supreme in its own sphere. “The separation of legislature, executive, and judiciary in the general government or their overlapping or complete fusion does not conflict with or connect with the federal principle.”

Ware notes one exception to this claim: the independence of the judiciary in the federal government “is important if it is the tribunal which decides disputes about the division of powers” between the levels of government.²⁹ This is a significant concession. The independence of the judiciary is important because federalism creates two levels of government, both of which have standing in under the constitution. Each level has offices with specific roles that are part of the constitution. The independence of the judiciary is essential to ensure that the federal government cannot encroach upon the jurisdiction of the subnational government.³⁰ Once we dispense with the myth of the separation of powers as a doctrine of watertight separation of branches of government, Ware’s analysis can be pushed one step further. The ultimate achievement of the separation of powers, understood as the specific division of governmental functions, is the rule of law; this, in turn, is the best institutional guarantee against the encroachment on the subnational government by the center. The rule of law requires not only an independent judiciary, but also legislatures that legislate and executives that abide by the law.

In the absence of the rule of law an executive can divide up the administration of government any way it wishes. It may create subnational governments and dissolve them at will. Such subnational governments have no special status, and are not important in characterizing the regime. The system may be formally federal, just as formal power may be vested in the supreme legislative organ. But if real power is in the hands of, say, a party, the

bureaucracy, or a military junta, then the regime is better characterized in terms of the realities of party, bureaucratic, or military rule than the formalities of the constitutional document. For example, the Mexican constitution of 1917 is federal and presidential but these features were partially neutralized by hegemonic party rule for most of the 20th Century. We say partially advisedly, because there were important constitutional principles (such as no presidential re-election) that were well respected by the ruling elite, and federal features of the constitution fostered democratization that, in turn, re-established the separation of powers.

Federal governments do not have to be democratic, but they must be constitutional. Constitutions are prior to and give rise to regimes, which we define as systems of government or rule involving the manner of access to and the exercise of public roles and offices. Non-democratic regimes may be constitutional as long as they clearly specify the roles and offices of legislative, executive, and judicial branches of government.³¹ In practice, federal constitutions and democratic regimes tend to go hand in hand, but this is not because the separation of powers is inherently democratic. Indeed, Montesquieu and Madison promoted their respective versions of the separation of powers precisely as a bulwark against what they perceived as the dangers inherent in the rising power of legislatures. As long as there are courts and legislatures at the subnational level, we are prepared to classify a constitution as federal regardless of how their members are selected. At the same time, we do believe that courts and legislatures are essential institutions of self-government and their very existence is a source of pressure for democratization.

To sum up, conventional wisdom holds that the doctrine of the separation of powers underpins presidential systems because the legislature and executive are formed directly in

separate elections, while parliamentary government is based upon the centralized sovereignty of parliament. According to this view, Montesquieu misread the English constitution, failing to see how cabinet government fused legislative and executive functions. As we argue, the conventional wisdom misinterprets English constitutional history, misreads both Montesquieu and Madison, exaggerates the importance of legislative-executive relations to the detriment of the independence of the judiciary, and fails to distinguish between the doctrine of the separation of powers and checks and balances. It has the further consequence of obscuring the close association between federalism and the separation of powers.

Federal systems can be either presidential or parliamentary; to qualify as federal, a constitution must simply create executive, legislative, and judicial branches of government at the subnational level, and this can be done, in ways that may approximate or diverge from the doctrine of the separation of powers, in either presidential or parliamentary systems. Yet, as we see in the next section, the literature on federalism has focused on the horizontal division of powers, rather than separation of powers at the subnational level.

FEDERALISM

Most of the comparative studies on federalism classify countries as being federal or not according to the constitutional division of jurisdictions between the national and subnational governments. Robert A. Dahl defines federalism as a system of dual sovereignty, “in which some matters are exclusively *within* the competence of certain local units—cantons, states, provinces—and are constitutionally *beyond* the scope of the authority of the national government, and where certain other matters are constitutionally outside the scope of the authority of the smaller units.”³²

In a similar vein, albeit adding the issues of shared government and independent constituencies, Ron Watts asserts: “Federalism provides a technique of constitutional organization that permits action by a shared government for certain common purposes, together with autonomous action by constituent units of government for purposes that relate to maintaining their distinctiveness, with each level directly responsible to its own electorate.”³³

Wheare classifies countries as federal or not, not only on the basis of their constitutions, but also on the basis of their governmental practices and the degree of centralization of authority of the national executive. He states that although Canada has a quasi-federal constitution (the British North America Act of 1867), in practice the government is federal, and therefore must be classified as such. Mexico, on the other hand, has a federal constitution (adopted in 1857 and reenacted in 1917), but, as we have previously noted, under single-party hegemony government power was centralized in the national executive. Therefore, Wheare argues, different periods should be distinguished in Mexico: those when federalism was at work, and those when it was not. The same, he sustains, can be said of Venezuela.³⁴

Whether the national level definitions of federalism take into consideration the constitution alone or government practices as well, they all focus on the vertical division of sovereignty and power between the center and the states. They say little or nothing about the constitutional features of the subnational units. Unlike these previous definitions, our conceptualization focuses attention squarely on the separation of powers at the subnational level. Valerie Bunce comes closer to our view of federalism and the separation of powers by implying that federalism must create subnational representative bodies. As summarized by

Nancy Bermeo, Bunce argues that “A federal system exists when there is a layer of institutions between a state’s center and its localities, when this layer of institutions features its own leaders and representative bodies, and when those leaders and bodies share decision-making power with the center.”³⁵ This is precisely the layer of institutions we focus on when defining federalism as a constitutional arrangement that creates executive, legislative, and judicial branches of government at the subnational level. We believe this definition helps draw lines between federal and unitary systems that largely correspond to our traditional intuitions and conventions on what countries correspond to each category.

To assess our definition, we reviewed The Handbook of Federal Countries, which identified 25 federations, to determine whether all federal systems create both legislatures and courts at the subnational level. Our definition fits 24 of the cases.

Insert Table 1 about here

Of the 25 cases of federalism in the world, 24 establish legislative institutions at the subnational level (the exception being the United Arab Emirates) and 19 clearly establish both legislative and judicial institutions at the subnational level. These cases include: Argentina, Australia, Austria, Belgium, Bosnia-Herzegovina, Brazil, Canada, Ethiopia, Germany, Mexico, Micronesia, Nigeria, Pakistan, South Africa, Spain, Switzerland, United States, Venezuela, and Yugoslavia. There are five countries that do not have subnational courts, and we classify them as “quasi-federal”: India, Malaysia, Russia, St. Kitts and Nevis, and Comoros. They do not fully fit our definition, but there is also evidence of scholarly ambivalence about whether they should be classified as federal systems; hence our analysis is not far from the mainstream. There is one country that we regard non-constitutional and

hence not federal: the United Arab Emirates. Similar doubts lead us to stress that a number of federal countries have violated basic principles of constitutionalism in ways that raise questions about the characterization of their constitutions. The military government of Pakistan, under Provisional Constitutional Order No. 1 of 1999, has essentially emasculated its constitution. As long as this aberrance is in effect, Pakistan is not a fully constitutional government, much less fully federal.

A number of countries have a single judicial system, but with sufficient subnational autonomy for lower level courts to classify according to our definition. Belgium, for example, has a single judicial system, but judicial administration is organized on four levels: nation, region, district and canton. The nine provinces are combined in five judicial regions. The judiciary is both highly decentralized and independent. Most importantly, there is no hierarchy among laws between the federal government and the regions: both have the same rank.³⁶ In Canada, there is one court system, but it is jointly administered and provinces have their own courts, including supreme courts, in areas of their jurisdiction.

India, Malaysia, and Russia have no court systems, or very weak courts, at the subnational level. In India, the federal parliament has the power to “create new states, to alter the boundaries of existing states, and even to abolish a state by ordinary legislative procedure without recourse to constitutional amendment” (Hardgrave 1980: 88). States are weakened further by the fact that India has a “single, integrated judicial system” (Hardgrave 1980: 76). There are higher and lower courts in each state, but every court is part of a single hierarchy and subject to the laws of the whole country (including both state and federal legislation).³⁷

In Malaysia the federal Supreme Court is the highest authority in a centralized judicial system. Each state has its own high courts, but no supreme court. Federal laws “take precedence over state laws in matters of incompatibility” (Griffiths 183). Islamic law is practiced throughout Malaysia, and the administration of Islamic affairs, including courts, is relatively decentralized, typically under the supervision of a sultan. Malaysia is regarded as quasi-federal.

In Russia, Article 71 of the highly centralist 1993 constitution places the courts entirely under the federal government. Although Russia’s 89 territorial components have their own legislatures, they do not have courts. Russia has a further problem. Under President Putin, the federal government has increasingly encroached on the autonomy of the regions, enacting reforms to make it possible for the president to dismiss regional assemblies and remove governors.³⁸ One author concludes that Russia is federal “more in name than in reality,”³⁹ another claims Russia is “a federation without federalism.”⁴⁰ Indeed, it’s constitutional order is precarious, with unrestrained executive power exercised both nationally as well as in many of the subnational units.

St. Kitts and Nevis pose additional challenges for classification. One island has a legislature (Nevis), but another (St. Kitts) does not. Moreover, the system of justice based the East Caribbean Supreme Court based in St. Lucia. This asymmetrical system is atypical of federal arrangements. Another island nation, Comoros, is at best a quasi-federal system. Each island has its own president and assemblies, but there is a single court system. The lack of constitutional continuity as a result of repeated coups and the absence of the rule of law raise doubts about whether the principle of the separation of powers is sufficiently respected for the system to be regarded as constitutional.

The separation of powers is not observed in the constituent emirates of the United Arab Emirates. Each unit is subject to patrimonial rule by a Sheik, without a constitutionally specified legislative body. Local courts are based on Islamic law, or Shari'a. In some emirates, legal matters are referred to the ruling family; others are referred to Kadis (judges).⁴¹ Although there are features of a constitutional monarchy at the federal level (including an appointed council and a federal court system), the lack of separation of powers at the subnational level violates our definition. We depart from the scholarly consensus with regard to this case.

In short, of the 25 federations in the world, according to the authoritative source, 19 fit our definition perfectly, five are borderline cases, and one is excluded. The borderline cases are especially interesting because they help us sharpen our conceptual boundaries. According to Watts, quasi-federalism is where "the overall structure is predominantly that of a federation but the federal or central government is constitutionally allocated some overriding unilateral powers akin to those in unitary systems that may be exercise in certain specified circumstances." (p.XX) We offer a more parsimonious definition: the absence of subnational courts.

Watts suggests that subnational courts may not be necessary in a federation: "While a dual judiciary would seem to be the logical corollary of the dual polity inherent in the federal principle as traditionally formulated, a number of federal systems have concluded that a fully dual system of courts is not necessary as long as the independence of the judiciary from the executives and legislatures of both levels of government can be assured."⁴² As in Wheare's analysis, the separation of powers does a lot of work for this conceptualization; without an independent judiciary, the lack of constitutional standing for subnational levels of

government would be fatal. Even with judicial independence, however, a subnational court system is the best possible guarantee of that standing.

Our definitions of federalism and quasi-federalism have several advantages. First, they allow us to get away from the conceptual murkiness of conflating federalism and democracy. Most federal systems are, in fact, democracies. If federalism creates national and subnational separations of powers, the expectation is that most of the countries that qualify as federal will indeed classify as democracies as well. This is because the separation of powers can only exist when at least some degree of freedom and autonomy is conferred to each branch of government. But democracy is not a pre-requisite of federalism, as our definition does not say anything about how the members of the three branches of government are elected.

Second, our minimalist definitions offer clear-cut ways of thinking about the boundary cases. Our definitions do not refer to the quality of the separation of powers, or the government, nor make a normative claim. Our definitions just ask us to check if there is separation of powers at the national and subnational level. Third, and as a consequence of the latter advantage, our definitions are easily operationalized. Thus, while a variety of mechanisms to decentralize power within a unitary constitution are conceivable, we argue that none of these systems can be considered federal unless there is a subnational legislative and enforcement capacity. In fact, our conceptualization of federalism may call into question the conclusions of those studies that have conflated federalism with democracy or that have classified as federal systems countries that have a high degree of fiscal decentralization but do not necessarily have self-governing subnational units.⁴³

EMPIRICAL IMPLICATIONS

What are the implications of our definition of federalism for comparative research?

Definitions of federalism based solely on the vertical division of authority between the central government and the states have mainly led to the study of intergovernmental dynamics. In most of these studies, the underlining assumption is that center and the states compete in a zero-sum game. As Peter C. Ordeshook and Olga Shvetsova write, federalism is “an ‘ $N + 1$ participant interaction’ between and among the N federal subjects and the national government—an interaction in which federal subjects and the national government are adversaries who must compete for power and resources through bargaining, strategic maneuvering, coalition formation, and deception.”⁴⁴ Drawing from this type of conceptualization, three main problems have been pointed out in the comparative analysis of how federal systems work. The first problem is the encroachment on the states by the center. The second problem is the encroachment on the center by the states. Finally, the third problem is the encroachment on the political majority by regional minorities.

Since the early days of the United States constitution, scholars of federalism have been concerned with safeguarding the states against the transgressions of the center. According to these scholars, federalism must grant minimal powers to the center and all residual powers to the states. As Lucio Levi writes, “[T]he constitutional principle of the federal state is a plurality of coordinated sovereign centers of powers, such that a minimum quantity of powers ... is conferred to the federal government that rules upon the whole territory of the federation, while the [subnational] states, each one competent upon its own territory, are assigned the residual powers.”⁴⁵

The same idea lies behind the more recent conceptualization of “market-preserving federalism.” The central thesis of this theory is that by guaranteeing political decentralization to the constituent units, federalism is a political mechanism that limits what otherwise would be the center’s natural tendency to confiscate wealth from its constituent parts.⁴⁶ In fact, the threat of secession is the ultimate guarantee that states have against the tyranny of the central government.

On the other hand, since the early days of the United States confederation, there have also been concerns about the encroachment on the center by the states. In the Federalist No. 45, Madison writes: “Several important considerations have been touched in the course of these papers, which discountenance the supposition that the operation of the federal Government will by degrees prove fatal to the State Governments. The more I revolve the subject the more fully I am persuaded that the balance is much more likely to be disturbed by the preponderancy of the last than of the first scale.”⁴⁷ According to Madison, the granting of exclusive spheres of authority to the federal government was a safeguard against this second type of encroachment.

Finally, there is a third group of works that is concerned with the biases of power that federalism produces. By assigning equal number of seats in the Senate, for example, federalism can grant veto power to minorities that are regionally concentrated. In other words, a biased distribution of power along territorial lines may encroach the will of the political majority. In such cases, federalism becomes “demos-constraining”, contradicting the majority rule principle of democratic regimes.⁴⁸

These three empirical threats and problems of federalism are extremely important. However, our definition shifts the focus of analysis from the vertical division of jurisdiction

to the horizontal separation of powers, particularly at the subnational level. Such shift of analytical focus makes us aware of a new set of threats to the functioning of the federal arrangement. Hence, we complement the scholarly work on the shortcomings of federal arrangements by presenting a new array of empirical situations that jeopardize the practice of federalism.

In practice, two scenarios arise that pose problems to the workings of the separation of powers at the subnational level. First, despite the existence of a federal constitution there could be separation of powers at the national level but not at the subnational level, or—as a sub-set of this problem--the subnational separation of powers could be overridden by the central government in some of the constituent units.⁴⁹ Second, we could encounter a constitutionally federal country that has separation of powers at the subnational level, but not at the national level.

Latin American federations, which until recently have deserved little attention from the scholarly work on federalism, provide clear illustrations of these problems. Two of the four Latin American federations, Venezuela and Argentina, serve to illustrate the first scenario. According to its national constitution, Venezuela is a federal country. Its presidential system has separation of powers at the national level. However, until recently a fully-fledged system of separation of powers did not exist at the subnational level. The centralization of the judicial system at the national level in 1948 weakened one of the fundamental powers of the states. While departmental and municipal courts continued to exist throughout the remaining of the twentieth century, they were subnational dependencies of the Federal Supreme Court.⁵⁰ Moreover, since the Juan V. Gómez constitution of 1925 Venezuelan presidents have appointed the governors. This authority was ratified in the 1961

constitution (reformed in 1983), which in Article 21 read that governors were “representatives of the national executive in the states.” Not only did this feature of governorships subordinate a key office of subnational government to the national executive branch, but it also limited the capacity of state assemblies to check the power of the governors. In a country that was characterized by strong parties,⁵¹ state legislators could not realistically check the power of governors who represented (and were appointed by) the president. The situation changed after 1988, when an electoral reform introduced popular election of the governors. This reform, ratified by the 1999 constitution (Art. 160), strengthened democracy and it also reinforced the separation of powers at the subnational level by reducing the dependency of governors on presidents. Throughout most of the twentieth century, however, Venezuela posed an interesting empirical puzzle: despite some federal features, the separation of powers at the subnational level was incomplete.

Another example of the lack of separation of powers at the subnational level is found in the enactment of one of the political institutions that defined the Argentine federal arrangement since 1853. Unlike Venezuela, Argentina has national and subnational executives, legislatures, and judiciaries. However, the national constitution grants the federal government the authority to intervene in the provinces. The federal government can intervene in the executive branch, the legislature, the courts, or any combination of the three branches of provincial government. The national executive is allowed to use provincial interventions in order to “guarantee the republican form of government” (Article 6), which due to the vagueness of interpretation has historically meant that the federal government has had a blank check to intervene in the provinces with great discretion. Based on this constitutional article, central governments have deposed provincial authorities and installed new provincial

governments. From the enactment of the national constitution in 1853 until the present (and taking into consideration only periods of civilian rule), there have been 163 federal interventions to the provinces in Argentina.⁵² Two thirds of these interventions were declared by presidential decree, and only one third by law (with national congress approval). In these interventions one, two, or the three branches of provincial powers were intervened, eliminating de facto the separation of powers at the subnational level.

The use of federal interventions poses a serious threat to the practice of federalism, as well as to the separation of powers. If widely used, federal interventions may de facto change the constitutional character of the country, which becomes to be ruled as a unitary country. Furthermore, because during an intervention the president appoints those who replace the provincial authorities, the people's right to choose their own representatives is suspended until new elections are held, which in some cases may entail several years. Finally, if the provincial judiciary is intervened, the executive representative of the national government in the province appoints the new judges, who—because they have lifetime-appointments—remain in power once the new authorities are elected. In this way, the justice system becomes largely embedded with the political interests of the national executive (and its political party) at the time of the intervention. In fact, the political use of federal interventions constitutes a potential threat to federalism as well as to democracy.⁵³

The second scenario that puts at risk the functioning of federalism as defined here, arises when there is separation of powers at the subnational level, but there is not separation of power at the national level. Two broad situations can be thought of to illustrate this scenario: (a) the intervention of a military government at the national level, and (b) a single-party regime that while keeping tight control of the branches of government (diluting de facto

the separation of powers) at the national level, cannot impede competition at the subnational level. The two other Latin American federations, Brazil and Mexico, serve to illustrate this second scenario.

Three years after the military intervened in Brazil in 1964, elections for governors were made indirect, reducing the autonomy governors had had since the inception of the federal republic at the end of the nineteenth century. However, the subnational (and national) separation of powers was not completely erased. Citizens continued to vote for state assemblies, federal deputies and senators, as well as mayors and city council-members.⁵⁴ Although these elections were not free and fair as they were tightly controlled by the military, due to the tradition of patronage politics (operated from the office of the governor) and the maintenance of elections at various levels, governors remained important players throughout the military government. In Daniel J. Elazar's words: "In Brazil the existence of federalism preserved a modicum of free government, even during the military dictatorship, through the state governors who could retain power and have limited elections because of their military and political strength."⁵⁵

In 1982 direct elections of governors were held. In 1985, governors commanded the largest public protest movement against the military regime, the campaign for "Direct [Presidential] Elections Now." The campaign was unsuccessful but, as Samuels and Abrucio argue, paved the way for the transition to the democracy and the ultimate separation of powers at the national level.⁵⁶ The case of Brazil reveals that the separation of powers at the subnational level was instrumental in achieving the separation of powers at the national level.

Similar to the case of Brazil, the separation of powers at the subnational level in Mexico paved the way for the separation of powers at the national level, which ultimately led

to the breakdown of the PRI single-party regime and the process of democratization.⁵⁷

Although the separations of powers at the national and subnational level were inscribed in the Mexican constitution (in the third and fifth titles, respectively), the metaconstitutional powers of the presidency and the single-party system partially neutralized both the separation of powers and federalism. This is succinctly depicted in a phrase attributed to former President Adolfo Ruiz Cortínez (1952-1958): “The chambers [of Congress] and the governors' offices belong to the president; the state chambers belong to the governors; and the city halls belong to the people.”⁵⁸

Thus, when in the early 1980s it was necessary to release the social and political pressures generated by the economic crisis and the mobilization against political fraud, the ruling party allowed political openness at the level of government that was less costly to the regime: the municipal level. By 1982, forty municipalities were ruled by opposition parties and in 1983 a constitutional amendment was passed by Congress that gave more political autonomy to municipalities. While in relative terms, the number of municipalities ruled by the opposition was low (there were over 2,300 municipalities in Mexico at the time), they included large cities and state capitals (such as Merida and Guanajuato). This allowed opposition parties to build electoral support based on the experience of municipal government. In 1989, the opposition won the first governorship (Baja California), and with a divided state legislature the separation of powers at the subnational level started to take shape.⁵⁹ By 1997, opposition executives ruled in six states and in Mexico City. In four of those states, the state legislatures were divided, and in only three states the governor's party had a simple majority in the state legislature.⁶⁰ Hence, the notion of separation of powers became a reality at the subnational level, with state legislatures and courts actively checking

and balancing the power of the governors.⁶¹ This process of political contestation from the bottom-up (from the municipalities to the states and from the states to the federation) led to a divided national congress in 1997--which started to operate more closely to the principles of the separation of powers--and finally to an opposition president in 2000.

CONCLUSIONS

Our analysis has important implications for the study of democracy. First, we reinforce Jonathan Fox's insistence on the importance of studying democratization at the subnational level.⁶² The same is true of the separation of powers. This encompasses the rule of law, the autonomy and initiative of legislatures, and whether executive officials act within the law, all issues that need to be addressed at the subnational level.

Second, we return to the concerns of the Federalists. The problem of checking ambition and abuses of power by office-holders is one aspect of the concern of the Federalists. However, the founders of the American republic also understood that the separation of powers could provide the basis for a federal system that would generate more power than the Confederacy: "Clearly, the true objective of the American Constitution was not to limit power but to create more power".⁶³ The issue of federalism and the separation of powers, therefore, relates to the larger problem of state capacity.

Third, if we are right in emphasizing the connection between federalism and the separation of powers at the subnational level, a host of empirical questions and research problems arise. For example, if the extent of the separation of powers varies extensively across subnational units within the same country, how do we address this problem in cross-national comparisons? To us, and following Snyder's advice, the answers to these questions

lie on a comparative research agenda that takes the subnational governments as units of analysis and studies the separation of powers at that level, as well as the interaction with national politics.⁶⁴ Such methodological approach would afford a better understanding of how federalism really works and its relationship to democracy.

In the meantime, and to end with a prescriptive note, our advice to analysts is the following: When assessing whether a constitution is federal, we should direct our attention to the existence of legislative and judicial institutions at the subnational level; when assessing whether a constitution upholds the doctrine of the separation of powers, we should direct our attention to whether the institutions of self-government are in operation at the subnational level as well the national level.

ENDNOTES

¹ Pierre-Joseph Proudhon, The Principle of Federation and the Need to Reconstitute the Party of Revolution (Toronto, Buffalo, London: University of Toronto Press, 1863), pp. 68-69.

² Edward L. Gibson, ed., Federalism: Latin America in Comparative Perspective (Baltimore: Johns Hopkins University Press, 2003). See also Ron Watts, "Federalism Today" (paper presented at the International Conference on Federalism 2002, Saint Gallen, Switzerland, 2002).

³ More recent studies—inspired by the formation and evolution of the European Union—have turned their attention back to the issue of international federalism. See among others Tanja A. Borzel and Madeleine O. Hosli, "Brussels between Bern and Berlin: Comparative federalism meets the European Union," Governance—an International Journal of Policy and Administration 16 (April 2003), pp. 179-202; Thomas O. Hueglin, "From constitutional to treaty federalism: A comparative perspective," Publius: The Journal of Federalism 30 (Fall 2000), pp. 137-153; and David McKay, "On the origins of political unions: The European case," Journal of Theoretical Politics 9 (July 1997), pp. 279-296.

⁴ From this point on, states or provinces are used indistinctively to refer to the intermediate or regional level of government, this is, the level between the national and local governments. While in general subnational refers to both the intermediate and local levels, here when we say "subnational" we refer specifically to the intermediate level of government.

⁵ The distinction between functional and territorial division of powers is based on Stein Rokkan. See Peter Flora, ed. State Formation, Nation-Building, and Mass Politics in Europe: The Theory of Stein Rokkan (Oxford: Oxford University Press, 1999), pp. 5-7.

⁶ Bruce A. Ackerman, "Neo-federalism?" in Constitutionalism and Democracy, J. Elster and R. Slagstad, eds. (Cambridge: Cambridge University Press, 1993), p. 170.

⁷ H.L.A. Hart, The Concept of Law. Penelope Bullock and Joseph Raz, eds. (Oxford: Oxford University Press, 1994).

⁸ An earlier literature in political science attempted to use Montesquieu's separation of powers but eliminate its doctrinaire elements. For example, Gabriel Almond argued that rule-making, rule-application, and rule-adjudication are features of all political systems. See his "Introduction: A Functional Approach to Comparative Politics," in Almond and Coleman, eds. The Politics of Developing Areas (Princeton: Princeton University Press, 1960), p. 17. Indeed, idea that all constitutions have deliberative, executive, and judicial features can be traced back to Aristotle's Politics.

⁹ Max Weber, Economy and Society, Volume 1, G. Roth and C. Wittich, eds. (Berkeley and Los Angeles: University of California Press, 1978), p. 282.

¹⁰ The Declaration of the Rights of Man and the Citizen, Article 16, states: "A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all."

¹¹ As Kant put it, the three elements of a constitution—*legislatoria, rectoria, judiciaria*—complement each other to complete the constitution of the state and ensure its autonomy. Immanuel Kant, The Philosophy of Law: An Exposition of the Fundamental Principles of Jurisprudence as the Science of Right. [Translated by W. Hastie]. (Edinburgh: T&T Clark, 1887) p. 170.

¹² The point that the US model is not necessarily the best for all countries is well made by Alfred Stepan, "Federalism and Democracy: Beyond the US Model" in Amoretti and

Bermeo, eds. Federalism and Territorial Cleavages (Baltimore: Johns Hopkins University Press, 2004).

¹³ M.J.C. Vile, Constitutionalism and the Separation of Powers (Indianapolis: Liberty Fund, 1998), p. 14.

¹⁴ Vile, Constitutionalism and the Separation of Powers, 14. See also Bernard Manin, “Checks, balances and boundaries: the separation of powers in the constitutional debate of 1787,” in Biancamaria Fontana, ed., The Invention of the Modern Republic (Cambridge: Cambridge University Press, 1994), pp. 27-62.

¹⁵ Charles Eisenmann, “L’Esprit des Lois et la separation des pouvoir,” Mélanges Carré de Malberg (Paris, 1933). See also Louis Althusser, Montesquieu, Rousseau, Marx: Politics and History (London: Verso, 1982).

¹⁶ 1937: 314, italics in original.

¹⁷ 1937: 314-315, italics in original.

¹⁸ This contrasts with the view that parliamentary systems “are distinguished from presidential systems by their abandonment of the idea of the separation of powers.” Peter C. Ordeshook, “Some Rules of Constitutional Design,” Social Philosophy and Policy 10, (July 1993), pp. 226-227. The difference between the two system lies in the extent of checks and balances. To use Stephan Haggard and Mathew D. McCubbin’s terms, presidential systems are typically characterized by greater “separation of purpose.” Whereas the different parts of government are more likely to work in unison in parliamentary systems, in presidential systems they are more likely to be “motivated to seek different goals.” Stephan Haggard and Mathew D. McCubbins, “Introduction: Political Institutions and the Determinants of Public

Policy,” in Haggard and McCubbins, eds. Presidents, Parliaments, and Policy (Cambridge: Cambridge University Press, 2001), p. 3.

¹⁹ The constitutional separation of powers is a radial category. Subsets of the overall category (in this case presidentialism and parliamentarism) “do not share the full complement of attributes by which we would recognize the overall category.” See David Collier and James E. Mahon, Jr., “Conceptual ‘Stretching’ Revisited: Adapting Categories in Comparative Analysis,” American Political Science Review 87 (December 1993), p. 848.

²⁰ See John P. Mackintosh, The British Cabinet, Third Edition. London: Stevens and Sons Ltd. 1977), pp. 628-631.

²¹ This term is from Alfred Stepan and Cindy Skach, “Presidentialism and Parliamentarism in Comparative Perspective,” in Juan J. Linz and Arturo Valenzuela, eds. The Failure of Presidential Democracy: Comparative Perspectives, Vol. 1 (Baltimore: Johns Hopkins University Press, 1994), pp. 119-136.

²² There is an extensive literature on this, some of which questions whether the superior record of regime survival in parliamentary constitutions can be attributed to intrinsic differences between parliamentarism and presidentialism. For a review of this debate, see José Antonio Cheibub and Fernando Limongi, “Democratic Institutions and Regime Survival: Parliamentary and Presidential Democracies Reconsidered,” Annual Review of Political Science, 5 (2002): 151-79. On the lower level of rule of law in presidential democracies, see Josephine T. Andrews and Gabriella R. Montinola, “Veto Players and the Rule of Law in Emerging Democracies,” Comparative Political Studies 37(1) February 2004: 81-2.

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- ²³ Lord Hailsham, Elective Dictatorship: The Richard Dimbleby Lecture. British Broadcasting Corporation, 1976.
- ²⁴ Walter Bagehot, English Constitution (Oxford: Oxford University Press, 1949) and Albert Venn Dicey, Introduction to the Study of the Law of the Constitution (London: MacMillan 1959).
- ²⁵ Bagehot, p. 59.
- ²⁶ Ferdinand Mount, The British Constitution Now: Recovery of Decline? (London: Heinemann, 1992), p. 86. Mount offers a trenchant rebuke to Dicey and Bagehot.
- ²⁷ Ordeshook, "Some Rules of Constitutional Design," pp. 226-227.
- ²⁸ Kenneth C. Wheare, Federal Government, 4th ed. (New York,: A Galaxy Book, Oxford University Press, 1964), p. 80.
- ²⁹ Wheare, Federal Government, p. 81.
- ³⁰ The independence of the judiciary means that judges are impartial and decide cases based on the law not political pressures. See Christopher M. Larkins, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," The American Journal of Comparative Law, 44 (1996): p. 611.
- ³¹ Robert Barros makes a compelling case that not all dictatorships rule unlawfully or arbitrarily, and even the harshest forms of military rule may respect certain key features of the constitutional separation of powers. See his Constitutionalism and Dictatorship (Cambridge: Cambridge University Press, 2002).
- ³² Robert A. Dahl, "Federalism and the Democratic Process," in Democracy, Liberty, and Equality (Oslo, Denmark: Norwegian University Press, 1986), p. 114.
- ³³ Watts, "Federalism Today".

³⁴ Wheare, Federal Government.

³⁵ Citation from Nancy Bermeo, "The Importance of Institutions: A New Look at Federalism," Journal of Democracy 13 (April 2002), p. 98.

³⁶ See J. Van Ginderachter, "The Belgian Federal Model," paper presented in 2nd ECSA-World Conference, Federalism, Subsidiarity and Democracy in the European Union, Brussels, 5-6 May 1994. Available at: http://www.ecsanet.org/conferences/2nd_ecsa.htm

³⁷ Daniel Elazar, ed. Federal Systems of the World: A Handbook of federal, confederal, and autonomy arrangements 2nd edition. p. 108.

³⁸ Mikhail Filippov, Peter C. Ordeshook, and Olga Shvetsova, Designing Federalism: A Theory of Self-Sustainable Federal Institutions (Cambridge: Cambridge University Press, 2004); see also Kathryn Stoner-Weiss, "Russia: Managing Territorial Cleavages under Dual Transitions," in Amoretti and Bermeo, eds. Federalism and Territorial Cleavages (Baltimore: Johns Hopkins University Press, 2004).

³⁹ Robert B. Ahdieh, Russia's Constitutional Revolution: Legal Consciousness and the Transition to Democracy, 1985-1996 (University Park, Pennsylvania: The Pennsylvania State University Press, 1997).

⁴⁰ Cameron Ross, Federalism and Democratisation in Russia (Manchester, England: Manchester University Press, 2002), p. 7.

⁴¹ Elazar, p. 259, and Ann Griffiths ed. Handbook of Federal Countries (Montreal: McGill University Press), p. 332.

⁴² Watts, p. 18.

⁴³ For examples of both types of studies see John Gerring and Strom C. Thacker, "Good Government: A Centripetal Theory of Democratic Governance," (Boston University, Boston:

in progress), and Barry Weingast, "The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development," Journal of Law, Economics, and Organization 11, no. 1 (1995).

⁴⁴ Peter C. Ordeshook and Olga Shvetsova, "Federalism and Constitutional Design," Journal of Democracy 8, (January 1997): p. 29.

⁴⁵ Lucio Levi, "Federalismo," in Dizionario Di Politica, ed. Norberto Bobbio and Nicola Matteucci (Torino: U.T.E.T, 1976), p. 392, our translation

⁴⁶ Weingast, "The Economic Role of Political Institutions: Market-Preserving Federalism and Economic Development."

⁴⁷ Alexander Hamilton, James Madison, and John Jay, The Federalist Papers (New York and Toronto: Bantam Books, 1982 [1787-8]), p. 233.

⁴⁸ Alfred Stepan, "Toward a New Comparative Politics of Federalism, Multinationalism, and Democracy," in Gibson ed. Federalism: Latin America in Comparative Perspective; Dahl, "Federalism and the Democratic Process."

⁴⁹ Notice that this is related to, albeit different from, the "encroachment on the states by the center" approach. We are not making a general claim about the powers of the national government vis-à-vis the subnational governments, but rather slicing a very specific aspect of this problem. We are concerned with only one type of national power: the ability to dissolve the separation of powers at the subnational level.

⁵⁰ Leo B. Lott, "The Nationalization of Justice in Venezuela," Inter-American Economic Affairs 13, (Summer 1959), pp. 3-19.

⁵¹ Michael Coppedge, Strong Parties and Lame Ducks: Presidential Partyarchy and Factionalism in Venezuela (Stanford, California: Stanford University Press, 1994).

⁵² Tulia Falletti, "Federalismo y descentralización en Argentina: antecedentes históricos y nuevo escenario institucional de las relaciones intergubernamentales," (Buenos Aires: 2003), pp. 39-40.

⁵³ This problem was addressed in Jenna Bednar, "Crisis in Argentina: How Interventions Intertwine Federalism, Democracy, and Economic Stability," (Ann Arbor, Michigan: 2002).

⁵⁴ David Samuels and Fernando Luiz Abrucio, "Federalism and Democratic Transitions: The "New" Politics of the Governors in Brazil," Publius: The Journal of Federalism 30, no. 2 (2000), p. 49.

⁵⁵ Daniel J. Elazar, "From Statism to Federalism--a Paradigm Shift," International Political Science Review 17, no. 4 (1996), p. 426.

⁵⁶ Samuels and Abrucio, "Federalism and Democratic Transitions: The "New" Politics of the Governors in Brazil".

⁵⁷ See Enrique Ochoa - Reza, "The Impact of Mexico's Federal Features on Its Democratic Transition and Possible Consolidation," in Gibson ed. Federalism: Latin America in Comparative Perspective.

⁵⁸ Jorge V Alcocer, "Recent Electoral Reforms in Mexico: Prospects for a Real Multiparty Democracy," in Riordan Roett, ed., The Challenge of Institutional Reform in Mexico (Boulder and London: Lynne Rienner publishers, 1995), pp. 57-75, 70.

⁵⁹ Yemile Mizrahi, "Democracia, eficiencia y participación: los dilemas de los gobiernos de oposición en México," Política y Gobierno II, (Segundo Semestre 1995), pp. 177-205.

⁶⁰ In 1997, the states with opposition governors and divided state legislatures were: Guanajuato, Chihuahua, Querétaro, and the government of Mexico City, and those with

opposition governors and simple majorities in the state legislatures were: Baja California, Jalisco, and Nuevo León.

⁶¹ Alonso Lujambio, El Poder Compartido. Un Ensayo Sobre La Democratización Mexicana [Shared Power. An Essay on Mexico's Democratization] (Mexico: Editorial Oceano de Mexico, 2000).

⁶² Jonathan Fox, "The Difficult Transition from Clientelism to Citizenship: Lessons from Mexico," World Politics 46 (January 1994), pp. 151-184.

⁶³ Hannah Arendt, On Revolution (New York: Viking Press, 1965), p. 153.

⁶⁴ Richard Snyder, "Scaling Down: The Subnational Comparative Method," Studies in Comparative International Development 36, (Spring 2001), pp. 93-110.

Table 1
The Separation of Powers at the Subnational Level in 25 Federal Constitutions

Country/System	Subnational legislatures	Subnational courts
Argentina Presidential	Provinces have legislatures.	Provinces have courts. Federal governments can intervene for security and to guarantee a federal form of government, which limits their powers.
Australia Parliamentary	States and territories have legislatures.	There are state and territorial courts. The high court interprets the constitution.
Austria Parliamentary	Provinces (or Länder) have legislatures.	There are provincial higher courts and district courts.
Belgium Parliamentary	All self-governing regions and cantons have elected assemblies.	There is a single judicial system, with five regions. Regional laws have the hierarchy as federal law, and the judicial system is organized according to region, district, and canton.
Bosnia and Herzegovina Parliamentary	There are assemblies for both the Bosniak/Croat Federation and the Republika Srpska's	Each "entity" has a Supreme Court as well as lower courts.
Brazil Presidential	States have their own legislatures	States have their own constitutions and courts.
Canada Parliamentary Quasi-federal (Watts, p. 15).	All provinces have legislative assemblies.	Provinces have own court systems, with right of appeal to federal supreme court.
Comoros Military	Each island has its own assembly.	The court system corresponds only to the federal level.
Ethiopia Parliamentary	States have legislatures.	States have their own constitutions, supreme courts and judiciaries.
Germany Parliamentary	States have legislatures.	Länder courts control constitutions of their land.
India Parliamentary Quasi-federal (Wheare 1953: 28; Watts, p. 15)	States have legislatures. Federal parliament has power to alter or abolish a state by ordinary legislation without constitutional amendment (Hardgrave 1980: 88).	There is a single, integrated judicial system with the Supreme Court of India at its apex (Hardgrave 1980: 76).
Malaysia Parliamentary Quasi-federal	States have assemblies.	The courts system is almost unitary. States have their own constitutions and high courts.
Mexico Presidential	States have legislatures.	States have constitutions and courts with jurisdiction over state laws.
Micronesia Presidential	States have legislatures.	States have their own constitutions and courts.
Nigeria	States have legislatures.	Each state has a high court –there are also

Presidential		customary courts that administer traditional Muslim laws and customs and Shari'a courts in Muslim-majority states.
Pakistan Military Quasi-federal.	Provinces have assemblies	Each province has a high court, district and sessions courts.
Russia Presidential	States have legislatures.	The judiciary is under federal control.
St Kitts and Nevis Parliamentary	Nevis has its own legislature, St. Kitts does not.	Justice is administered by the East Caribbean Supreme court based in St. Lucia.
South Africa Parliamentary	The provinces have legislatures.	Provinces have their own courts. Ordinance passed by provincial governments are subject to federal veto. Supreme court is divided into provincial divisions.
Spain Parliamentary	Regions have legislatures.	Each region has a high court, which is subordinate to the Supreme Court.
Switzerland Parliamentary	Cantons have legislatures.	Courts function primarily at the cantonal level. The Canton's Supreme Court is the highest court, with appeal over the cantonal courts.
The United Arab Emirates Monarchy	Each emirate under a Sheik who rules through traditional family networks.	At local level, legal matters resolved by ruling family or Kadi.
United States of America Presidential	States have legislatures.	There is a fully dual system of federal and state courts. State courts have jurisdiction over state laws.
Venezuela Presidential	States have legislatures.	Judiciary is centralized under the Federal Supreme Court, but each state has a supreme court and superior courts or tribunals.
Yugoslavia Parliamentary	Each republic has a national assembly.	Republics and provinces have their own county tribunals, district courts and supreme courts.

Source: Cases were selected based on their inclusion in the Handbook of Federal Countries 2002. Information on subnational institutions taken from Griffiths, Ann ed. Handbook of Federal Countries (Montreal: McGill University Press). Information on judicial institutions is taken from Elazar, Daniel ed. Federal Systems of the World: A Handbook of federal, confederal, and autonomy arrangements 2nd edition. (Harlow, Essex UK: Longman Current Affairs) 1994. Also consulted: Robert L. Hardgrave, Jr. 1980. India: Government and Politics in a Developing Nation, Third Edition. New York: Harcourt, Brace, Jovanovich, Inc. Kenneth Wheare (1953: 28). Watts, Ronald. "Provinces, States, *Länder* and Cantons: Content and Variations Among Subnational Constitutions of the World". Banks, Arthur S. et al. Political Handbook of the World 2000-2002.