Challenges of Devolution and Power Sharing Structures in Federations


Abstract

Federalism is one of the most important constitutional concepts and designs which enable legitimacy of political power with regard to a fragmented society. Thus one of the main questions to be asked with regard to the way federalism is designed has always to be: Will the tools of participation enhance or destroy the legitimacy of the federation towards its people and its different communities?

Devolution and autonomy based on decentralisation is mainly a challenge for the federal units to achieve based on this autonomy legitimacy with regard to their own democratic community. This paper will explore the challenges and the most important issues to achieve such legitimacy.

On the other hand the issue of participation of the different federal units in decision making processes is the most sensitive issue of legitimacy of the federation. Indeed through their participation the federal unites are required to find solutions in order to accommodate the different units but also to establish justice within the entire community. Their challenge is to contribute to the legitimacy of the federation and at the same time of their proper federal unit. When dealing with this second issue the paper will explore the different solutions of participation.

The underlying issue for both challenges will be to inquire to what extent devolution and shared rule will enhance integration or disintegration within a federal system.
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1. Introduction

The modern state principally ignores, neglects or even denies diversity as a state-building factor. The melting pot concept of all people living within a state territory (“we the people”) is the only answer of mainly immigration states to the challenge of diversity. Thus neither devolution nor shared rule are considered as essential elements constituting the modern state.

Federalism nevertheless is one of the most important constitutional concepts and designs which enable legitimacy of political power to integrate and enhance a the fragmentation of the society. Thus the main question to be asked with regard to the way federalism is designed has always to be: Will the tools of devolution and power-sharing enhance or destroy the legitimacy of the federation towards its people and its different communities?

Devolution and autonomy based on decentralisation is mainly a challenge for the federal units to achieve based on this autonomy legitimacy with regard to their own democratic community. The issue of participation of the different federal units in decision making processes on the other hand is the most sensitive issue of legitimacy of the federation. Indeed through their participation the federal unites are required to find solutions in order to accommodate the different units but also to establish justice within the entire community. Their challenge is to contribute to the legitimacy of the federation and at the same time of their proper federal unit.

When dealing with the different solutions of participation in this paper, one has to be aware that the overall and always underlying issue will be to what extent devolution and power-sharing will enhance integration or disintegration.

2. Devolution

2.1. Introduction

Some Questions:

Analysing the different modern states with regard to their devolution we observe a very wide range of different solutions from a very far reaching devolution such as Greenland and Denmark, Honkong Makao and China as well as the UK with Scotland and Wales and Spain and Italy as examples for asymmetric devolutions and Austria, India, Pakistan and Switzerland as examples for devolutions in federal countries.
The major issues with regard to devolution may be addressed as follows: Is devolution a tool for disintegration of the country or of its integration? Is devolution building on diversities or is it trying to balance unity and diversity? Can devolution as such create a new unity in the sense of unity within diversity (the Swiss formula) or is diversity as such a challenge or even a contradiction to the required unity?

**Common values**

It is obvious that devolution turns into secession when there are no communalities with the other units, be they federal units or part of the unitary state. Only based on some communality holding the common state together devolution is a possible. For this reason the most important issue for any devolution must be to analyse and explore the communalities which will hold a state decentralised by devolution together. What will be the communalities holding the different units of Cyprus together? What will be the communalities which could hold Sri Lanka together? If those communalities are given and undisputed devolution will not be considered as a threat but as an enrichment and an added value to the common state because it adds new solutions and local communalities to the already existing unit of the state.

2.2. Devolution of Governmental Branches

Constitution making and legislation in unitary countries mainly deals with the content to be regulated and the aims to be achieved with the legislative norms. In countries facing the challenge of devolution any substantial political or legal issue always needs to address the following questions:

On the constitutional level the country will have to decide what kind of governmental branches shall be decentralized: Constitution making, legislation, judicial and executive power. With regard to constitution making most federations have decentralized at least partially the power to constitute the federal unites by proper constitutions. India may be one of the most important exceptions to this issue. The challenge with regard to constitution making contains the power of the decentralized units to determine a proper governmental system (presidential or parliamentary with one or two chambers), to provide for political and democratic rights of the citizens and to organize their unit with further devolution to local authorities.

With regard to devolution of legislative power such devolution is one of the most characteristic features of a federal state. Unlike unitary states federal states provide in general for either delegated or original legislative powers of the federal units.
This, of course is even more the case with regard to the executive. In all federal states decisions of the legislature of the federal units are implemented by the executive power of the federal units. Important differences however can be detected with regard to the implementation of federal legislation. In the US and in many other federal states belonging to the common law family federal agencies often implement directly federal laws. In the continental system federal laws are in general implemented by the federal units. This type of federalism is called in German Vollzugsföderalismus a label which can not be translated into English because executive federalism is something very different.

Important differences can also be found with regard to devolution of the juridical branch. In some cases the courts are organised by central legislation and in some cases they the organisation, the jurisdiction and the procedure of the courts is within the power of the federal unit. Since in common law countries main standards with regard to procedure, criminal law, civil and commercial law are determined by the courts, the question whether those courts of the federal units have original jurisdiction is of highest importance.

1.2..3.. Devolution by legislation

Federal legislatures in federal countries need in general to decide two quite different important political issues: First they have to decide on which level the issue has to be decided: Level of the federation, of the federal units or of subunits or municipalities. This question depends on many different aspects: For the decision on the issue of inner security the question of trust either to local or federal police is decisive. For issues on schools the question which level can at best guarantee cultural identity becomes crucial. When issues related to religion have to be decided such as whether federal units should have the power to introduce the Sharia issues related the focus of the political debate will be determined by tolerance and trust. When language is at stake arguments related local identity will determine the debate. Devolution with regard to environmental protection, zoning, traffic, economy, commerce or research on the other hand depends on questions related to efficiency. The principle of subsidiary within the European Union or the commerce clause in the US may contain some major guidelines for this or an other solution.

2..4.. Goals of Devolution

Devolution may have different aims and purposes such as to accommodate diversities, to strengthen local democracy, to provide for additional vertical separation of powers or to provide for state bureaucracy closer to the citizens. Moreover local regulations, which
can accommodate better real local needs and interests, correspond to the efficiency interest. Devolution often creates new motivation on the local level for the citizens to commit and invest its engagement for local public interest. Thus it helps to integrate citizens and to enhance nation building. For many of these reasons devolution provides often more effective and efficient management of state affairs, because power and responsibility of authorities on local level, who bear quickly the consequences of bad decisions, coincide. In addition it enables local authorities to experiment and to innovate new concepts and measures for the management of public interests. On local level authorities can be more flexible and adapt quicker to new challenges than on the central level. Finally it helps to reduce at least big corruption on the central level if local authorities are effectively accountable to the local democracy.

2.5. Main Challenges of Devolution

**Political Challenges**

On the other hand one has to admit that devolution may often be the cause for major inequalities with regard to economic development, taxes, opportunities, administrative performances etc. Such inequalities can only be reduced by fiscal equalization and a major guarantee for equal distribution of good public services within the entire federation.

Many states also fear that autonomy will become the first step for the final secession. Autonomous units may build up a proper identity and thus compete with the identity of the federal state. Such development may create loyalty conflicts of different citizens.

Federal units, which built up on the diversity of their majority, may on the other hand discriminate minorities, which may even belong on federal level to the majority. In this case majorities might strongly oppose any real devolution. Thus too much autonomy specially with regard to security of minorities may endanger the week minorities in certain federal units. (cf. Mississippi cases in the 50ies of the US)

**Legal Challenges**

Could one imagine a federal unit ruled by monarchy while the federation is ruled by a majoritarian democracy? Indeed some harmony with regard to basic democratic rules and governmental systems are indispensable. With regard to certain basic constitutional features a certain harmony among the different federal units must be guaranteed. Moreover most federations (except Belgium) provide for a guarantee of the supremacy of federal law with regard to the law of
the federal units. (even the European Union which is only a federation on the making)

Finally federations entering in international supranational organisations may face important challenges with regard to the implementation of international law within the federal units. International law ignores the federal structure of the sovereign states but on the other hand the federal structure may become crucial when it comes to the implementation of international law within the domestic law. This may even have an impact on the treaty making power. Although Canada may conclude international treaties such as double taxation which are of the competence of the provinces, the federal legislature has no power to enact the necessary domestic legislation in order to implement the international obligation within its own domestic legal system, because as common law country Canada belongs to the dualist states, which always needs internal legislation in order to bind the courts to the international obligation. Thus the treaty can only be implemented into the domestic legislation with the competent legislature which in this case would be the provincial and not the federal legislature.

Asymmetry

Finally autonomy may become an important challenge with regard to the problem of asymmetry. To what extent a federation may provide for additional autonomy for certain federal units which require special accommodation in particular due to the diversity. Such requests compete with the interest of all other units which reject the idea of discrimination as has been seen in the Québec case with the refusal of the meech lake accord.

Asymmetry has in general a great importance with regard to devolution of unitary states to specific regions such as the UK (Scotland, Wales, Isle of Man, Guernsey), Spain (Catalonia, Galicia, Basque), Italy (Alto Adige, Sardinia), Denmark Faroe Islands and Greenland), Sweden (Åland), Tanzania (Zanzibar) and China (Hong Kong, Macao). With regard to these autonomous regions one can detect almost incredible varieties with regard to unequal autonomies. Denmark is part of the EU its Greenland is not. Hong Kong is under Chinese sovereignty but with a different economic system and own currency. Catalans did recently become a special nation in Spain. In some cases (e.g. Faroe Islands and Alto Adige) the autonomy is based on international guarantees.

2..6.. Content of the Distributed Powers

With regard to the content of the distribution of powers one can observe differences due to the historical development of the federation which has been created either bottom up (US and
Switzerland) or top down (Canada and India). Further differences depend on the question for what reason the federation has been established. The US and German federation have mainly been established for strengthening limited government and democracy. The Swiss, Belgium and Ethiopian federalism accommodate diversity. Thus the issue of division of power is strongly linked to the question of legitimacy. To what extent the federation has legitimacy to deal with education, police or foreign policy? Such questions may be rather in the centre of the debate on devolution. In the European Union which is divided with regard to the issue of deepening the union or enlarging the main criteria for devolution did become the principle of subsidiary. In Switzerland direct democracy has for long time been a major institutional tool to slow down centralisation.

2.7. Conclusions

The variety of possibilities of different methods, kinds, contents, goals, and ways of distribution of powers is almost unlimited. This opens a big range of flexibility and creativity for any state which has decided for devolution of its central powers and jurisdiction. For this reason the possibilities of federal states or states which provide for far reaching asymmetric autonomy have much more possibilities to adapt to new and up to now not known solutions. They can experiment and fully exploit the high complexity which enables them to cope with new and modern challenges.

3. Power-Sharing

3.1. Introduction

Institutionalized power sharing is mainly developed in federal states. For this reason we shall focus the challenges with regard to power-sharing mainly to federations.

The main question to be asked with regard to the way power-sharing is designed has always to be: Will the tools of participation enhance or destroy the legitimacy of the federation towards its people and its different communities? Devolution and autonomy based on decentralisation is mainly a challenge for the federal units to achieve based on this autonomy legitimacy with regard to their own democratic community. The issue of participation of the different federal units in decision making processes on the other hand is the most sensitive issue of legitimacy of the federation. Indeed through their participation the federal unites are required to find solutions in order to accommodate the different units but also to establish justice within the entire community. Their challenge is to contribute to the legitimacy of the federation and at the same time of their proper federal unit. When dealing with the different solutions of participation
in this paper, one has to be aware that the overall and always underlying issue will be to what extent participation will enhance integration or disintegration.

3.2. The motor of the dynamics:

The Balance between the Right to be Equal and the Right to be Different (Un-Equal)

Traditionally a democratic state is only sustainable in an environment which respects the basic principles of the rule of law and of separation of powers. Rule of Law and in particular the principle of democracy generating the value of one person, one value and one vote is based on the basic value, that all human beings are equal.

Federalism as a state concept to accommodate diversity on the other hand has to recognize the right to be different or unequal. The minority languages for instance require equal recognition not based on the number of peoples speaking this language but based on the cultural value of this specific language to be taken on equal terms with the cultural value of the majority language. Thus equality of cultural values is only possible if one accepts the consequence that the right of individuals belonging to those cultural communities is to be considered as un-equal that is different and thus privileged compared to individuals belonging to the majority culture.

The Balance between Tyranny of Majority versus the Tyranny of Minorities

Thus the dynamics of participation of federal units is shifting between the equality of individuals and the equality of values of federal units. To put it on other terms, minorities in federations want to be protected against the misuse of the tyranny of the majority; the majority on the other hand wants to be protected against the misuse of the tyranny of the minority. Thus the wisdom of every federation is to find the appropriate balance which overcomes mistrust and enhances common trust.

Any federation would lose its legitimacy, if majorities tyrannise or if they are able to tyrannise minorities and if minorities would tyrannise or if they would be able to tyrannise the majority. Thus the balance between the right to be equal and the right to be unequal has to be found in the legitimacy of the federation. If the federation can generate comprehensive common values, the minorities will trust the majority and pay the price for the winner takes all democracy. If the federation has only limited legitimacy and the majority only limited trust from the minorities, it will have to accept for the sake of the common interest of the federation more power-sharing with the federal units.
This is one tension which is the motor to speed up the dynamics between effective participation of federal units against the winner-takes all only majority democracy.

**Balance Between Shared Rule and Self Rule**

The other reason for different solutions of participation of federal units is to be seen in the very essence of any federal solution. Federalism is the constitutional balance between shared rule and self rule. If one takes this principle serious one would assert that the more self rule is implemented the less shared rule is required and vice-versa. If federal units loose autonomy and thus self rule powers they would require compensation on the federal level with more institutions guaranteeing shared rule. Thus in order to upheld the balance between self-rule and shared-rule federation need to accommodate to the dynamics of the globalised world, which requires for economic and social reasons centralisation, the federation would have to improve the shared rule tools in order to keep the balance.

In order to establish and limit political power, federal constitutions must have legitimacy. As they are under the stress either to accept more globalisation or to accommodate minorities with more localisation they are to seek the balance between the two federal principles. But in contrary to unitary states, which do not know such balance federal states can meet these challenges of a changing world as they have not only institutions to decentralise but also institutions to enable shared rule institutions.

3.3. The Tools of the Shared Rule Dynamics

**With regard to different Issues**

**Different Levels of Decisions**

With regard to the legitimacy of the federation, the federal units will require participation at least on all issues, which they consider crucial for their own legitimacy with regard to the demos they represent on the federal level. But they will also need participation on the federal level in order to be able to identify as federal units with the decisions of the federation. If for instance traffic planning is decided on the federal level, the whole planning process must accommodate the different interests of the regions, but it has also to accommodate the common interests of all people’s of the federation including all different federal units as well as common community but also as individual units.

If on the other hand the federation decides on currency matters, it will of course not include all different federations in the decision making process, but it will have to provide for guarantees, that the citizens of all different federal units will be able to identify with
the currency of the federation. This aim however can only be achieved, if through the decision making process all federal units are able to claim somehow their ownership on the final result.

**Abolition of Federal Units**

If on the other hand the federation would decide on the very existence of a federal unit itself, then it would need the consensus of the respective unit in order to guarantee that such essential decision could be implemented peacefully and without endangering stability. Decisions changing the self-rule of federal units that is enlarging or diminishing their autonomy are more sensitive than decision on import or export of goods. Thus follows that the tools of shared rule institutions differ with regard to the issues to be decided on one side and with regard to the legitimacy and communality of the federation on the other side. Strongly integrated federations with large consensus of the population will need less shared rule institutions than federations which are required to accommodate diversity and which have to build up new communalities with regard to their fragmented society.

**Other issues**

The very existence of a federal unit can certainly not be questioned without unanimous consensus of the respective unit. With regard to the other decision making processes one will have to distinguish on their impact and consequence for the federation itself. Constitution making will require more consensus than legislation. The implementation of legislation by the executive is less sensitive for federal units than the legislative process. The judiciary committed to the rule of law should never be biased and thus not dependend on the federal units.

**Foreign Policy**

Interesting though is the implementation of the shared rule system in foreign policy. Foreign policy has long time been considered as of only federal interest. Thus federations usually do not have any tools which would enable them to participate in foreign policy matters. The American Senate as one exceptional example has rather to be seen as the high chamber following the powers of the British high chamber in the 17th and 18th century. With the new development of international networking based federal units seem now to require more shared rule tools in international affairs. The most important example is certainly Belgium which can only ratify international treaties dealing with competences of the federal units with the consensus of the parliaments of those units and which includes those units in the international decision making process. It
may also be interesting to note, that the integration process has also induced the Swiss Cantons to require more participation in the international decision making process, which is now constitutionally guaranteed in Article 55 of the Federal Constitution.

*With regard to Institutions*

**Second Chamber**

Traditionally the most important tool for shared rule institutions is the second chamber. Comparing the different second chambers one can deduce however two important differences: The second chamber based on the liberal model of representation representing the constituency of the federal unit such as the American senate and the Swiss council of the states on one side and the concept of a council of ministries representing the governments of the federal units such as the Bundestag and the Council of the European Union. With the new federal development of the Swiss federal constitution a new body has been created by the cantons, which is the conference of the cantonal governments. It remains to be seen which body will gain more importance in the future the traditional liberal council representing the constituencies of the cantons or the committee of the cantonal governments, which up to now has no real constitutional competences.

The two different concepts reflect in principle also to different concept of federalism. In Germany the Länder are more or less the units, which have to implement and execute federal statutes. Thus to have the executive power of the federal units represented is quite appropriate. The governments of the Länder in fact can at best evaluate to what extent federal legislation is in fact appropriate and to what extent they can guarantee implementation. The chamber based on representation is asked to evaluate legislation under the criteria of common interest taking into account the different interests of the different constituencies. In the 19th century when the second chamber was established in Switzerland the focus was of course not on the administration but on legislation. Thus the second chamber was to be installed as part of the legislature to represent the interest of the cantons.

**Other Branches of Government**

However one has to be aware that shared rule tools are not only installed with the second chamber but with different elements even in the executive, the administration and the judiciary. Even though the executive, the administration and the courts have to be committed only to act in the common interests of the federation the legitimacy of those decisions would be questionable if the executive
its administration and the judiciary would exclude professionals belonging to minorities. Indeed one should transform the famous sentence guaranteeing the independence of the judiciary: "Justice has to be seen to be done" into a federalist principle and thus postulate that "federalism has to be seen to be done" and thus in all important issue of the federation people have to see to what extent solutions are influenced by the federal diversity of the country. Only if the federal units acquire ownership with regard to the administrative and judicial activity, they will consider federal decisions also to be their decisions.

This has as a consequence, that decisions which are existential for the federal units need more acceptance than decisions with less impact on the existence of the federal units. Thus constitution making and constitution changing can influence the competences and the power of the federal units.

Legislative decisions may have far reaching consequences on specific issues such as education, culture and language it is clear that those issues need better acceptance.

But also on the executive level there are federal units, which require to be represented in order to influence the day to day politics from their point of view.

Finally also on the level of the judiciary participation may be required.

Important is also the issue of representation. For some units the governments of the units require to be represented, for some the people of the units require representation. There are even combinations possible.

Creating New Federal Institutions

In Switzerland the legislature has recently revised the legislation on the federal support Universities. As universities are federal and cantonal it has set up a new institution, which includes the federal government as well as cantonal governments with universities and some representing cantons without universities. This new body is deciding on the development of cantonal and federal universities. It embraces all federal and cantonal units interested on university issues and is able to develop a policy common for federal and cantonal universities. One could even label this new body a super-body as it has to decide on federal and cantonal issues. This is an example which demonstrates the flexibility of federal arrangements, which can meet and bring together in one body the interests of different federal levels.
3.4. **Challenges**

There are mainly three arguments used to prevent shared rule and participation of federal units: The deadlock of the necessary dynamics of federal processes on one side, the privilege for minorities to be given more powers than to the majority that is the discrimination of the majority on the other side and the restriction of the majority rule of the democracy.

**The Deadlock Argument**

The stalemate argument is particularly most effective in federations with very few or only two federal units. In the case of Cyprus, Serbia-Montenegro, Sri Lanka all opponents of a federal solution have constantly evoked this deadlock argument. Except for the Constitution of Serbia Montenegro, which has however been imposed by the European Union, a peaceful solution for Cyprus and for Sri Lanka has been impeded mainly with this argument. Of course one has to be aware, that in particular in conflict situation the necessary trust that the other party would neither misuse its veto-position nor its majority power is almost always lacking.

**Need for Common Values**

It is probably much more difficult to unite two conflicting units into one federation based on common values to be pursued by the federation for the common interest of both units and the entire population. But unless there are communalities which convincingly induce the population of each federal unit to pay a certain price for a compromise, the chances of a federal solution are very low.

Indeed the most difficult challenge of any federation and in particular of those with only two units is to generate communalities and to find the common values able to hold or even bring fragmented societies together. The more legitimacy can be regenerated on the federal level the less federal units require participation.

**Constitution making as Nation Building**

It is evident that such process can not be achieved only by diplomatic negotiations on a new constitution. In South Africa for instance the two levels constitution making process has not only helped to find the consensus for a constitution, but it has also helped to the nation building process. Thus I would consider that the self-rule concept of any federation has also to be assessed as a nation building process, which should support and enhance the integration of different communities into the bigger composed nation.

Federalism is the state organisation and structure, which enables federal units to influence federal decisions in order to identify themselves with the federal state. It is a part from the democratic
participation of the people the possibility to legitimise federal power and federal decisions. Only through participation can the federation guarantee that federal units can consider themselves to be part of the federation.

**Tools to overcome the Deadlock**

There have been different types of tools to overcome deadlocks: Decision making processes which end up in an arbitration procedure which usually either support the majority or the minority or procedures which install an unbiased mediator as a court or as an international body. One might also think of procedures which give to some minorities the possibility of opting out. Of course one has to be aware of the consequences of federalism with different speed. But often for the sake of peace and stability asymmetric federalism is the only possibility to hold conflicting communities together.

**The Privilege Argument**

The strongest and most convincing arguments against federal types of solutions are based on equality issues. In Switzerland for instance in any constitution making democratic decision the vote of a citizen in the smallest canton weighs 36 times more than of a citizen in the canton of Zurich. In the federation of Serbia Montenegro the number of Inhabitants of Montenegro is only one fourth of the number of inhabitants of Belgrade. The decision making process for the new Constitution of the European Union showed how difficult it was and still is to find the compromise between the big and the small states. Thus in many cases constitutions provide adapted scales, which take into account the number of inhabitants, the size of the federal units etc. Those scales are usually calculated in order to prevent a veto position for the small and to avoid the big states to be able to make decisions against all the small units.

In Switzerland the argument for the privilege of the small canton was based on a historical argument. The small cantons claimed that the quality of sovereignty transferred to the confederation is the same notwithstanding the size of the canton. Today this inequality is again disputed as it privileges excessively the small federal units. A solution between those positions can only be found on the bases of diversity. If diversity is as an important value as the value of majority, then the balance between diversity guaranteeing inequality and the majority guaranteeing equality is possible. The challenge for the minorities, that they misuse their power against the interests of the majority remains however. It can only be met; if in the day to day political life minorities do not misuse their legal power.
**The Democracy Argument**

Federal units participating as units in the decision making process are claimed to limit democracy. Thus federalism is considered to be a limit to the majority rule. If democracy is reduced to the winner-takes all democracy principle, this argument has some grounds. However if one considers democracy as a tool to enable as much as possible self-determination within a community, one has to seek procedures which enable the largest possible consensus. As the federal units are within their entity to guarantee stability and implementation of federal laws, they have to be considered not only as part of the common nation but as a unit which has to seek values which are good for its own community. For this reason as federal units have to have their own legitimacy and as the federation can only get legitimacy through the legitimacy of the federal units, it has to seek the support of the largest possible number of federal units.

3.5. Conclusion

In what ever dynamics will influence the shared-rule principle, multicultural states have to take their diversity serious and build their composed nation upon this diversity. Communalities can probably only be found on the bases of fostering diversity, accepting multiple loyalties and to provide common ownership for all federal units in order to establish a common fatherland for all different communities. The right to be unequal must be kept in balance to the right to be equal. This will only be possible if one perceives this shared rule principle as an instrument to implement collective rights of the federal units able to defend those rights in court proceedings.

Dynamics of development of shared rule elements will never achieve appropriate results if the only aim of the state is reduced to the guarantee of individual liberty. Peace among the different communities has necessarily also to be a main priority of the federal multicultural state. It is only for the sake of peaceful common development, that one can justify privileges of minorities versus discrimination of the majority.

In order to establish and limit political power, constitutions must have legitimacy of the great bulk of the concerned cultural communities. This legitimacy can only be achieved if the different communities have the power to participate on equal footing in the constitution-making process. The winner-takes-all democracy cannot be the foundation for a governmental system that achieves legitimacy with regard to those cultural communities that will fear to end up as permanent losers. Only by introducing elements of power-sharing, and thus softening the rule that 51% equals 100% majority, the principle of democracy will be acceptable by minorities, which
otherwise would permanently be excluded from participation in the political decision making process.

The legitimacy of a state with cultural diversity can only be achieved if each cultural community considers the state as its own state. This goal is only attainable if the cultural community is convinced that its own cultural heritage is best developed within the respective state. The state must aim to enhance diversity.

The primary aim of democracy is not to only produce simple majorities, but to seek consensus of the society on crucial issues. A consensus-driven democracy operates on a bottom-up process, beginning with self-determination of the individual, and rising through the ranks of municipal, district, and regional communities to possibly finish on the state or international level. Decisions should be made on such a level as to enable as many citizens as possible to participate in the decision-making process, so as they may identify with the outcome of their input.

Most democracies are prepared to give 100% of the state power to 51% of the voters. In a state with cultural diversity such a system needs to be adjusted on the basis of compromise as fundamental political value. In such a system 51% must not be considered as 100% but as a small majority lacking 49% of support. Thus the tiny majority will have to find the necessary compromise in order to achieve a higher percentage of approval. The political decision making process and the political institutions have to be guided by the idea that a compromise, which produces larger approval, has higher value than a small majority.

Democratic procedures should not only produce effective and legitimate decisions for the society. They must also be conceived as tools for conflict management among the different conflicting communities. In this sense democracy can be seen as an aim and as a common value to be achieved by the fragmented state in order to enhance self-determination for individuals, communities and for the composed demos.

4. Conclusions

One of the undisputed characteristics of the development of civilization is with regard to culture the qualitative enormous step with regard to music composition from monophony to polyphony. This step can be compared to the development of society without wheels to a society in which wheels have been invented and generally used. To a certain extent the founding fathers of the American federalism have invented a new wheel of state organisation with their idea to strengthen the local democracy of the states with an over all democracy of the federation. Of course they were influenced by the most ancient federal model: The “Lycian League” a confederation of
fierce independent state of the 2nd century b. Cr., but by turning the confederal into a federal model, they invented again history and provided the possibilities of the state to develop from monotony to polyphony.