



Public Safety in Federal Systems: A Primer

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Introduction

As basic as the protection of citizens' life and property is to the modern state, as difficult this fundamental principle seems to realize. The growing intensity, scope, cost and magnitude of public safety make issues of public safety in federal and multilevel governance systems all the more pressing.¹ In recent years, many federal governments have set up new central institutions to coordinate, centralize or oversee the more effective provisioning of public safety. Over the past decade, many federal governments significantly transformed their approach to dealing with security and large-scale emergencies. These changes have necessitated more extensive, and effective, coordination of policy and action across levels of government. The importance of these policies and the extent of reorganization notwithstanding, the new-found punctuated equilibria have received precious little scholarly attention. Since the overarching norms of state organization make processes of governance notoriously impervious to restructuring, it is not self-evident that the flurry of activity the public-safety dossier has seen in recent years necessarily effected change, let alone improve the system's operation. In effect,

1. Ross T. Newkirk, "The Increasing Cost of Disasters in Developed Countries: A Challenge to Local Planning and Government," *Journal of Contingencies and Crisis Management* 9 (2001): 159-170.



historical norms and patterns of interaction are not necessarily congruent with best practices of public safety. If reform outcomes of public safety are no less path-dependent on historical norms and institutions than other policy areas, then that is all the more cause for concern: inefficient multilevel coordination often stands in the way of public-safety or emergency management, causing unnecessary delays or inadequate organization while impeding governmental planning and preparedness. Federal actors tend to privilege effectiveness and efficiency of measures and response over administrative and political divisions. Constituent and local units, by contrast, tend to insist on respect for divisions of authority. This article investigates this prevailing tension between shared-rule and self-rule as a function of entrenched structures, processes and recognized norms and patterns that serve political interests flowing from territorial commitments and structural constraints that are intrinsic to federal and multilevel governance systems.

Human beings leave the state of nature where life is “*solitary, poor, nasty, brutish and short,*” and enter into a social contract, not primarily in return for governance, economic development, or interpersonal trust, but, first and foremost, to gain security. Such is the job of Hobbes’ Leviathan: to provide security.² All people, then, are “*consumers*” of public safety, not all states have the same capacity to provide it. Security is a pure public good: Its consumption by one individual does not reduce its availability to others (non-rivalry) and no one can effectively be excluded (non-excludable). Government has a key role to play in the provision of public goods. Weak governmental institutions thus make it more difficult to provision these goods effectively. On the one hand, federal systems are designed to enhance security by balancing shared rule with self rule. Indeed, systems resorted to federalism because cohabitation was possibly only by imposing constitutional limits on federal governments while providing a constitutional guarantee of at least some degree of local autonomy. On the other hand, federal governments retain many of the key legislative and institutional capacities that have the potential to overwhelm local jurisdictions. Bosnia-Herzegovina would be unlikely to exist as a single country were it not its federal solution. Yet, fifteen years after the signing of the Dayton Accord, the country continues to struggle with finding a security solution that is acceptable to all communities. Federalism not only offers security benefits but also raises new security challenges.

Threats to public safety do not discriminate by regime type: natural disasters, violent extremism and terrorism, organized crime, cybersecurity, espionage, and the illicit, illegal or undocumented movement of good and people are just a few example of the litany of threats to public safety that afflict unitary and federal countries alike. Hitherto, the prevailing approach seems to have been that public

2. Thomas Hobbes, *Leviathan: Or the Matter, Forme, and Power of a Common-Wealth Ecclesiasticall and Civil*, ed. Ian Shapiro (New Haven: Yale University Press, 2010).

safety is largely divorced from matters of federalism and multilevel governance. That is really the only way to explain the notably absence of a systematic body of literature or research in the field, save for the exceptional single-*n* case study. This article has two objectives. One is to ask whether the distinction between federal and unitary systems is at all useful when discussing public safety. From a multilevel governance perspective, one would think it is: In the classic, common-law federations, sovereignty is divided between federal and constituent governments; by contrast, the relationship between constituent and local governments is unitary in nature since cities are not a separate level of government with distinct constitutional protections. In other words, public safety in federal systems perforce has both federal and multilevel governance dimensions. To this end, the second section of the article considers whether structural features shape the positions political actors take on matters of public safety. It is premised on an examination of the way institutional constraints, such as regulations, rules, and institutionalized practices as well as party systems and the rules regulating venues of policy deliberations empower and constrain interests.

The article's other objective is to explore different interests, and to work out the implications for comparative research, policy development and security-sector reform. That is, the third section explores how territorial commitments and structural constraints (1) determine public-safety choices among different levels of government and (2) shape actors' understanding of social reality, affect how actors understand the nature of their own interest, and how policies further specific interests.³ This section is framed in the context of a classic debate in the study of comparative federalism: Are the federal manifestations of public safety a function of a country's society or of its institutions? For the purpose of developing policy and reforming institutions, it is important to know not only what is the impact of society on government, but also what is the impact of government on the functioning of society. The former sociological reductionism is common in the literature; the agency approach inherent in the latter question that inverts the dependent and independent variables, by contrast, is less common. Which perspective better accounts for public safety arrangements in federal systems? Initially, however, the article frames the '*problématique*' that informs the subsequent theoretical and comparative discussion.

I. Framing the discussion on public safety in federal systems

This article is generally concerned with the institutional capacity to coordinate public safety among federal and subnational governments, and the necessary

3. Maarten Hajer, *The Politics of Environmental Discourse: Ecological Modernization and the Policy Process* (Oxford: Clarendon Press, 1995), 51.

institutional and intergovernmental mechanisms for such coordination to generate and sustain public-safety equilibria that result in local communities that are sufficiently secure for effective governance and economic development to occur. On the one hand, federal arrangements, by their very nature, require a tenable compromise between shared-rule and self-rule. In practice, however, that compromise can be highly problematic. From Gujarat through Chechnya, local security forces have been implicated in complicity in acts against just the local populations they are supposedly meant to protect. Moreover, local populations in many of the world's federations are weary of their local security forces. Often, they trust federal security forces more than their local ones. On the other hand, federal governments and their security forces run the risk of conducting themselves as if they operated in a unitary system, with little or no respect for jurisdictional divides and local autonomy. Precisely this attitude, however, runs the risk of exacerbating local security problems, federal forces' ability to provide kinetic surge capacity notwithstanding. Military troops performing targeted urban security missions in Rio de Janeiro, for instance, exemplify a situation where local security services are simply no match for the context, organization, networks and firepower in some *favelas*. Central governments, after all, have a formidable arsenal of well-trained, well-equipped, and well-paid security personnel at their disposal. The temptation, then, is to deploy these forces at the local level to stabilize the situation.

Federalists, of course, have long been sensitive to the dangers presented by the unchecked use of the central government's power. As James Madison writes in Federalist n° 51:

If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.⁴

As Madison goes on to point out, however, guarding against oppression by a society's rulers is but one concern:

It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure.⁵

4. Alexander Hamilton, John Jay and James Madison. *The Federalist Papers*. Project Gutenberg: <http://www.gutenberg.org/files/1404/1404-h/1404-h.htm>

5. Ibid.

Federations are instruments meant to guard against both, oppression by those who rule as well as injustices a majority may commit against a minority. Alexander Hamilton writes in Federalist n° 85:

The additional securities to republican government, to liberty and to property, to be derived from the adoption of the plan under consideration, consist chiefly in the restraints which the preservation of the Union will impose on local factions and insurrections, and on the ambition of powerful individuals in single States, who may acquire credit and influence enough, from leaders and favourite, to become the despots of the people.⁶

By design, therefore, federations defy the Leviathan by intentionally divvying up his power among two (or more) levels of government, by enshrining a division of powers in the Constitution.

By and large, this division of powers follows the same rationale in all federal systems. Areas where the state has to overcome collective-action problems among constituent units are apportioned to the federal government, notably national defence, economic union, and international relations. By contrast, matters of purely local concern tend to belong to the constituent units. Security, however, is not readily divisible between two levels of government. On the one hand, as Hobbes realized, a strong state is indispensable to the effective provision of security. On the other hand, the state, as Madison and Hamilton observe, has itself the potential to menace society.

Federal forces necessarily represent national interests and values, local public safety assets interests and values of the local community. In large countries especially, a federal police force whose membership is composed of citizens from across the country is, by its very nature, unlikely to be as sensitive to local values, needs, and customs as a police force composed of locals who grew up with, understand, and share those local values, needs, and customs. As in so many other policy fields, federal and local values and interests are not necessarily congruent. In the case of ethno-linguistic minority communities in post-conflict situations, for instance, concerns about being subjected to undue federal intervention necessitate a federal solution but can also paralyze its implementation. Tension can be healthy; but the risk here is that federal governments enjoy such an overwhelming security prowess that there is little to thwart them from infringing on local jurisdiction should they so choose.

There are two basic ways to implement security arrangements in federal countries. One model is to have multiple police forces working concomitantly in the same territory but with a clear division of labour: one (or more) federal police

6. Ibid.

force(s) whose primary purpose it is to enforce federal law and a force at the level of the constituent unit that enforces both the law of both the constituent unit and the federation. These forces may be augmented by municipal police (that fall under the jurisdiction of the constituent unit) as well as Aboriginal police (that tend to fall under federal jurisdiction). This is the case in Canada and Australia, for example. Another model is that found in administrative federations where the federal level of government has just about all the constitutional powers to make security legislation but the administration and enforcement of that legislation tends to fall under the purview of the constituent units. Under this arrangement, the federal government tends to have only very limited enforcement abilities, including a federal criminal police, a border police, an immigration police and a security police dealing specifically with threats against the state. This is the German model.

Yet, even in Canada, a country that is often cited as a prime example of federal dualism, the administration of criminal justice follows the approach of administrative federalism: The federal government has the constitutional competence to make criminal legislation while the provinces are tasked with administering criminal (and some related) legislation. Concretely, that means even in cases where the federal police, the RCMP, investigate a file, the ultimate authority as to whether to lay charges or not rests with the attorney general of the province in which the charges are to be laid. This is not a formality; attorneys general regularly avail themselves of their discretion to lay charges (or not) in potentially controversial cases, such as those involving violations of immigration law.

Although structurally the United States looks similar to the Canadian or the Australian model, its logic is one of limiting the powers of the federal government, both by curtailing the policing powers of the federal government and by dividing law enforcement at the federal level into several specialized agencies that often effectively compete with one another. “*Ambition*,” writes Madison in *Federalist* n° 51, “*must be made to counteract ambition*.” In the United States, for example, a FBI officer is constitutionally prohibited from pulling over a driver in a vehicle for a moving violation; in Canada, nothing prevents a member of the Royal Canadian Mounted Police from doing so.

II. Theorizing public safety in federal and multilevel governance systems

The study of federalism is overwhelmingly concerned with institutional change and the way institutions emerge from and are embedded in concrete temporal processes. Analytically, though this neo-institutionalist has rather limited comparative traction and affords little opportunity to theorize. The alternative is the pioneering application of a rational-choice framework to the study of federalism that is concerned with institutions as coordination mechanisms that generate

or sustain equilibria. It focuses institutional stability in the form of measurable independent social and institutional effects and the way they shape the patterns of intergovernmental relations.

The principle of subsidiarity prevails with respect to public safety: It is primarily a local matter and needs to reflect local values and priorities. That explains why first responders, such as police, fire, ambulance services, are local (and handle the bulk of matters related to public safety). Local responders are on the front-line and forefront of public safety. As the first line of defence, they tend to take the lead in responding to local public-safety concerns. They are best suited to such tasks as they are the most familiar with local conditions in their communities and thus best positioned to ascertain the best response to a local problem. As urbanization continues apace along with the systematic risks associated with urban life, the importance of local authorities in public safety grows as well.⁷ Recent large-scale public-safety events such as 9/11 in New York City, Hurricane Katrina in New Orleans, and the SARS epidemic in Toronto revealed the vulnerability of modern urban areas in federal and multilevel governance systems insofar, as anthropogenic or natural emergencies can quickly create a large number casualties, significant hardship and large-scale economic damage. Threat prevention, mitigation, response and recovery have significant federal implications, since legislative, fiscal, administrative and operational capacities are distributed across two or more levels of government. For example, by virtue of the implications for urban planning and zoning regulations, the resilience of cities requires risk-based territorial management.⁸ The necessary policy levers, however, tend to fall under the jurisdiction of constituent or local governments. Similarly, much critical infrastructure, including waterworks and electricity-distribution grids, tend to come under the jurisdiction of constituent or local governments. Politically and conceptually, then, public safety necessitates extensive intergovernmental cooperation along with strengthening the role of municipalities.

However, in many federations the federal government is rather limited in its ability to liaise with municipalities directly. In other words, federal intergovernmental relations are inevitable; multilevel governance ones are not. Whereas there

7. See Neil R. Britton, "A New Emergency Management for the Millennium?" *Australian Journal of Emergency Management* 16 (2000): 44-54.

Kiki Caruson, Susan A. MacManus, Matthew Kohen, and Thomas A. Watson, "Homeland Security Preparedness: The Rebirth of Regionalism," *Publius* 35 (2005): 143-168.

Kiki Caruson and Susan A. MacManus, "Designing Homeland Security Policy within a Regional Structure: A Needs Assessment of Local Security Concerns," *Journal of Homeland Security and Emergency Management* 4 (2007): art. 7.

Peter Eisinger, "Imperfect Federalism: The Intergovernmental Partnership for Homeland Security," *Public Administration Review* 66 (2006): 537-545.

Paul Gabriel, "The Development of Municipal Emergency Preparedness Planning in Victoria, Australia," *Australian Journal of Emergency Management* 18 (2003): 74-80.

8. Britton, "A New Emergency Management for the Millennium?" 44-45.

is close federal-provincial coordination on matters of public safety in Canada, contrary to what the above-mentioned model would predict, the same does not obtain for the federal government's relations with Canadian municipalities.⁹ First responders fall under the auspices of constituent units, either by virtue of municipalities falling within the jurisdiction of constituent units, as is the case in the classic federations (the United States, Switzerland, Canada, Australia and Germany) or because they are assigned to municipal governments which enjoy standing as a separate constitutional tier of government (as is the case in South Africa and Brazil). Two possibilities flow from this observation: the opportunistic (or functional) model whereby constituent and local units in federal systems are happy to defer to federal demands, and the legislative model whereby the logic that informs constituent and local governments causes them to assert their own over federal interests:

[The functional theory] predicts that each level will expand in its area of competence but will remain limited or diminish in its less competent areas. The second, legislative theory, says that the modern federal system is shaped by the political needs of legislators responsible for its design. Legislators at all levels of government will seek to distribute government benefits for which they can take credit.¹⁰

Following the opportunistic model, institutional capacity of public safety is treated as a resource that can be mobilized for any end at the behest of policy makers. This model reflects an understanding of federal systems in which “*any activity performed by nations can be performed by cities*”.¹¹ This model presumes that constituent units and local governments can readily be enlisted in the service of national goals. This conception of federalism harkens back to Grodzins' description of federalism as a “marble cake”: policy functions are distributed somewhat arbitrarily among local, state and national governments.¹²

However, this perspective fails to account for the distinctive limits within which local government operates. Does the fragmented and decentralized nature of federal and multilevel governance shape the role of constituent units and municipalities with respect to the function and politics of public safety? This is an interesting question as it lends itself to a hypothesis that can be subjected to empirical testing. Constituent and local governments have only a fraction of the federal governments' powers: “*they cannot make war or peace; they cannot issue passports or forbid outsiders from entering their territory; they cannot issue currency;*

9. Juillet and Koji, forthcoming.

10. Paul E. Peterson, *The Price of Federalism* (Washington, DC: The Brookings Institution Press, 1995).

11. Paul E. Peterson, *City Limits*. (Chicago University Press, 1981), 15.

12. Morton Grodzins, *The American System: A New View of Government in the United States*. Ed. Daniel Elazar (Chicago: Rand McNally, 1966).

and they cannot control imports or erect tariff walls".¹³ These limits pervade local policymaking. Politicians, bureaucrats and interest groups are aware of these limits and have reason to adapt their preferences accordingly: Failing to do so risks driving dissatisfied resident away.¹⁴

H1: Local government's limited powers influence the interests of constituent units and municipalities in federal systems, the political dynamics that express those interests, and the policy choices that emerge.

If this hypothesis obtains, it would posit limits on the public-safety role of constituent and local units in federal and multilevel governance systems, quite different from central/unitary systems. That is because this hypothesis effectively treats constituent and local governments as a particular kind of social structure that, like all social structures, have interests determined by "their place in the larger socioeconomic and political context".¹⁵ Constituent and local governments have reason to pursue only those policies that advance city interests defined as the component of individuals' overall interest that they have by virtue of their residence or movement in a particular legal jurisdiction.¹⁶

Max Weber poignantly observed that legal institutions have distinctive interests. Constituent and local governments in federal and multilevel governance systems are social actors in their own right. Not only do legal institutions distribute financial benefits and burdens but they also distribute the benefits and burdens associated with the use of governmental coercive authority, such as the surveillance and information-gathering used to identify deviance¹⁷ and the coercive force used to stop it.¹⁸ Weber acknowledged that in modern societies interests in class, status and power cannot be readily disentangled from economic interests but may conflict.¹⁹ In those cases, economic interests alone do not offer an adequate explanation.²⁰ Weber argued that the interests of social actors are a function not only of economic position, but also of social honour and political power.²¹ The interests of constituent and local units can be defined in accordance with these three specific interests: (1) a unit's policy decisions can confer honour and stigma upon the unit, (2) they can affect perceptions of the unit's legitimacy, and (3) they can affect the well-being of a particular territories. Those responsibilities limit the policy functions constituent and local units can and should

13. Peterson, *City Limits*, p. 3.

14. Peterson, *City Limits*, p. 29.

15. Peterson, *City Limits*, p. 4.

16. Peterson, *City Limits*, p. 21.

17. Gary Marx, *Undercover: Police Surveillance in America* (Berkeley: University of California Press, 1988).

18. Egon Bittner, *Aspects of Police Work* (Boston: Northeastern University Press, 1990).

19. Max Weber, *Economy and Society*, (2 vols. Berkeley: University of California Press, 1978), 932, 938.

20. Weber, *Economy and Society*, 212, 926, 932.

21. Weber, *Economy and Society*, 926-940.

pursue. It is not in a jurisdiction's interest to pursue a policy whose benefits accrue overwhelmingly to jurisdictions other than the one that bears its burden. It would actually be inappropriate for local government to do so because its purpose is to serve local interests.²²

In an empirical analysis of homeland security of this federal-local dialectic, Thacher finds a geographic mismatch between the costs and benefits of homeland security, for instance. In antiterrorism activities, the US federal government is looking to municipalities to perform investigative efforts to local individuals who have committed or intend to commit terrorist acts. Instead, local governments have a strong preference for performing community-protection functions of homeland security, such as emergency response and protective security for potential targets.²³ The reason that local governments are better situated to administer the latter rather than the former is that the latter privileges place over people. This distinction, as Thacher observes, is significant because the two tasks typically distribute their benefits and costs differently:

When a city pursues community protection, both the benefits and the costs redound to the city itself because community protection safeguards just those people and places the city chooses. But since terrorism is a national or even international problem, the benefits of searching out offenders do not necessarily accrue to the city where potential terrorist reside, while the costs do.²⁴

A city that increases its efforts to seek out people suspected of involvement in terrorist activities, either to bring them to justice after they have committed an attack or to prevent them from doing so in the first place, must spend its own resources and place its own residents under increased surveillance to prevent acts of terrorism that are likely to be perpetrated elsewhere: Local police are necessarily reluctant to take costly and controversial steps to prevent crime arising in other jurisdictions. In fact, they actually have an incentive to displace crime into other jurisdictions so as to offload costs and responsibilities and opportunistically optimize for local payoffs relative to the availability of scarce resources.

To bolster his point, Thacher compares homeland security to conventional crime control. On the one hand, a community's concerns about being harassed put pressure on police to minimize surveillance when targeting street crime. On the other hand, concerns about safety create countervailing pressures to increase surveillance. Owing to these conflicting pressures make policing street crime controversial. However, pressures arise in both direction; so, the final equilibrium usually ends up involving some attention being given to searching out offenders

22. Peterson, *City Limits*.

23. Eisinger, "Imperfect Federalism: The Intergovernmental Partnership for Homeland Security," 2006.

24. David Thacher, "The Local Role in Homeland Security," *Law & Society Review* 39(3) (2005): 638.

to control crime. With respect to antiterrorism, by contrast, local police departments have little incentive to pursue because the people who suffer the burdens of police surveillance often differ from the people to whom the benefits accrue. Insofar as the benefits of offender search typically accrue to other jurisdictions, “no city interest counterbalances the burdens of police surveillance”.²⁵ On the one hand, the community of first responders, then has a strong incentive to privilege territorial commitments over performing specific functions. Functionally, on the other hand, there is a strong incentive to focus on public-safety functions with a tangible benefit for their community. Faced with a clear and present danger, New York City, and to a lesser extent New York state, has an incentive to be proactive about antiterrorism at the local level; by contrast, Dearborn, Michigan, does not: “Although local offender search efforts may serve important national goals, any particular city has little reason to pursue them except in rare cases when local political actors believe that suspected terrorists have targeted their city”.²⁶ Thacher concludes: “Since local government is mainly concerned with the well-being of a specific place, it has little reason to bear the costs of new police activities unless the benefits to the city itself are clear.”²⁷ In other words, the priorities of constituent units in a federal or multilevel governance system cannot readily be reduced to economic interests.

However, the argument is not deterministic. That is, just because it is in a constituent or local unit’s interest to pursue a particular policy choice does not mean that it will. One of the questions of inquiry is precisely whether, with respect to public safety, there is a pattern as to the conditions under which legal entities reach decisions that are in a given unit’s interests, when interests have little bearing on decisions that simply allocate benefits, and when the conditions under which they reach decisions that run counter to a unit’s interest (but that may, for example, be in line with federal priorities). Whether a certain decision serves a political actor’s interest is one question; whether these interests can trump historical norms and deeply entrenched structures and processes of interaction is quite another.

III. Operationalizing the comparative study public safety in federal and multilevel governance systems

The impact of society on government is a common theme in the study of democratic polities. Less common, especially outside of multinational federations, is an agency approach which inverts the dependent and independent variables by stressing the impact of government on the functioning of society. So, is public

25. Thacher, “The Local Role in Homeland Security,” 669.

26. Thacher, “The Local Role in Homeland Security,” 668.

27. Thacher, “The Local Role in Homeland Security,” 667.

safety a function of its society or of its institutions? Understood as coordinating mechanisms, federal institutions are functionally predicated on generating or sustaining equilibria. But what impact do changes in independent social effects have on institutional stability? Either these equilibria are highly elastic; or there comes a tipping point of social change beyond which equilibria become increasingly costly and difficult to sustain, let alone generate. Notwithstanding the challenges posed by everything from natural disasters to terrorism, federal institutional structures have remained largely unchanged. This observation has important implications for theorizing about the relationship between structure and institutional change: Is sociological change presaging changes to public safety arrangements; or are federal institutions proving themselves to be agents of continuity in the face of substantial sociological change? This comparative approach to public safety in federal systems thus facilitates the measurement and comparison of both the nature and magnitude of change over time. How much effect do social, political and economic changes, such as economic integration, the 'decline of deference', the rise in the status and political claims of cities, have on the centrality and conduct of intergovernmental relations with respect to public safety?

In the mid-16th century, much of Europe was beset by wars of religion, pitting Catholics against Protestants, the same sort of events that later inspired Thomas Hobbes' *Leviathan*. Bruegel vividly depicts violence done in the name of the state by organs of the state in 'defence' of state interests. This is, after all, the legacy of the *gens d'armes* throughout much of continental Europe. Originally referring to a professional soldier in medieval Europe in the form of a fully armoured heavy cavalryman in the king's household, the *gens d'armes* morphed into a paramilitary force with police duties among civilian populations, mostly enforcing state interests. This is known as "*high policing*": safeguarding the central government as the ultimate locus of political authority and sovereignty. France's Louis XIV established the *haute police* whose job it was to protect the national government from internal threats. Its purpose was to police the 'higher' interests of government rather than those of individual citizens or the mass population. The term also reflects the fact that high-policing organizations are endowed with authority and legal powers superior to those of other police organizations. Whether the *gendarmerie* in France, the *Carabinieri* in Italy, the *Guarda Nacional Republicana* in Portugal, the *Guardia Civil* in Spain²⁸, or the now-defunct *Gendarmerie* in Austria, Luxembourg, and Belgium or the *Royal Canadian Mounted Police*, the *South African Police* (until 1994), Russia's Internal Troops, and the *Central Re-*

28. The Guardia Civil, however, is being eclipsed by the decentralization of law-enforcement in Spain where a growing number of Autonomous Communities have been setting up their own police forces, including the Ertzaintza in the Basque Country, the Mozos d'Esquadra of Catalonia, and the Policia Foral in Navarra as well as the ACs of Canarias and Galicia which have approved new laws to set up their own autonomous police forces but have yet to do so.

serve Police Force in India, the legacy of central organizations to police civilians pervades many modern democracies.

The hallmark of national security forces in a federation, however, is precisely that they are representative of the federation as a whole. On the one hand, then, they represent and enforce national values and priorities, not local ones. On the other hand, they are neither sensitive to nor familiar with local values and priorities. The centre can thus offer overwhelming kinetic force in an effort to try to stabilize a local security situation. But if security is ultimately local, then kinetic force can at best alleviate symptoms, but not the roots of insecurity. The centre is not usually under any illusion in this regard. The problem is that, as the deployment of the army in Mexico in places such as Ciudad Juarez has shown, an exit strategy is difficult unless such a deployment is clearly coupled with an effort to rebuild local communities' capacity to provide the services necessary to take care of their own affairs. For the aforementioned reasons, however, federal forces are not only less-than-ideal means to remedy local shortfalls but may also end up further undermining local capacity to provide for itself. And it is the central government's scepticism about the subnational or local level's ability to do so that is partially responsible for the deterioration in security in the first place.

Since the circumstances under which the central government intervenes in subnational affairs in this manner are related to matters of national security, constitutionally the central government is often perfectly in its right to intervene. Even when intervention is constitutionally controversial, jurisdictional disputes may end up taking a long time to settle. There is, then, a temptation to treat security in federal systems similar to the way unitary systems such as the UK devolve home rule and policing to Northern Ireland: Local control is conditional and subject to override by the central government.

Central governments are inherently wary of local politicians advancing particularistic interests or, at the very least, interests that are not readily congruent with those the centre would like to see pursued and enforced. So, the temptation for the centre is to starve local units fiscally. That deprives them of their ability to provide effective local services, thus delegitimizing them and strengthening the authority of the centre. Fiscal starvation, however, may only further exacerbate the problem by providing an incentive for local politicians to concentrate the few resources they have on advancing ever more particularistic interests and to find other, possibly illicit, sources to fund their ventures.

Corruption, then, is one example of an equilibrium that can become punctuated. If local authorities or law enforcement delegitimize their position with the local population by being seen as corrupt or in some other way not serving the

public interest²⁹—as is the perception of local law enforcement in many developing countries—that may precipitate intervention by the central government.³⁰ Comparative research can help ascertain both the conditions that affect the probability of such intervention and the way limited sovereignty of constituent and local governments shapes policy decisions in an effort to maintain an equilibrium that forestalls the looming prospect of central intervention and concomitant loss of autonomy. Divided sovereignty in federal systems notwithstanding, constituent units may find their autonomy curtailed by intervention by central security forces, as occasioned in Indian states such as Gujarat by communal rioting, or in the Mexican state of Chihuahua. The prospect of intervention provides a strong incentive to avoid punctuating the equilibrium—that is, bringing intervention upon themselves.

As a result, policy makers in constituent units have an incentive to concern themselves with the legitimate use of authority, stemming corruption among local security forces, etc. At the same time though, the provision of effective policing requires (1) an institutionalized and functioning system of fiscal transfers from the centre to the constituent units and (2) a commitment by the centre not to politicize such transfers and fund subnational units adequately. Mexico is an *exemple par excellence*. On the one hand, fiscal transfers are notoriously politicized in Mexico. On the other hand, Mexico's states are insufferably underfunded.³¹ This has a spillover effect into underfunded municipalities. It compromises the ability of Mexico's states and cities to provide effective policing, especially at the municipal level. While the causal mechanisms at work are certainly far more complex than funding, the correlation between underfunded security forces at the state and municipal level is difficult to dismiss. Of course, Mexico is hardly the only federation that is plagued by this problem. But the example demonstrates that path-dependency is as much a force to be reckoned with in public safety as in any other policy area.

IV. Conclusion

Federal systems have to reconcile a peculiar tension. They are federal precisely because some subnational units do not trust the central governments to run matters on their own. Yet, this aura of mistrust makes a common approach and understanding between federal and constituent governments more difficult than in

29. Tom Tyler, "Enhancing Police Legitimacy," *Annals of the American Academy of Political and Social Sciences* (2004): 84-99.

30. John P. Crank and Robert Langworthy, "An Institutional Perspective of Policing," *Journal of Criminal Law and Criminology* (1992): 338-363.

31. Allison Rowland, "The Interaction of Municipal and Federal Governments: Trends, Issues and Problems," in *Spheres of Governance: Comparative Studies of Cities in Multilevel Governance Systems*. Eds. Harvey Lazar and Christian Leuprecht (Montreal and Kingston: McGill-Queen's University Press, 2007).

just about any other policy field. In other words, one would not expect otherwise but for the intergovernmental arrangements around provision of public safety in federal systems to prove contentious and controversial. Public safety requires as much intergovernmental compromise and collaboration as any other policy issue. The difference is that security issues do not have the luxury of time. Responding promptly to public-safety concerns is often a matter of life or death. In the case of larger emergencies, that requires a considerable degree of multilevel coordination, both to prepare and to be able to respond effectively.

Moreover, public safety is a first mover of sorts: where security does not prevail, governance and economic development become problematic if not impossible. Federalism is meant to preserve local autonomy through a degree of qualified self-rule. It is also meant to limit the otherwise unbridled power wielded by central governments. When both principles are adhered to, federalism holds out the possibility of providing security under circumstances where security would be unlikely to reign under a unitary system. When one or both are compromised for the sake of expediency, the risk is a return to just the sort of security dilemma that gave rise to the need for a federal solution in the first place. Intergovernmental public-safety equilibria are difficult to generate, let alone sustain. And once established, the prevailing structures, processes and norms become hard to change as they come to serve well-established political interests. This conundrum gives rise to a series of research questions that can be answered systematically only by marshalling evidence from comparative study.

First, the territorial commitments and structural constraints of federal and multilevel governance systems engender a decision-making logic that is quite different from that found in conventional unitary systems. In federations, this is a feature of institutional design. Quoting James Madison from Federalist n° 51: *“The great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.”*³² This hypothesis lends itself well to comparative inquiry because it can readily be subjected to empirical scrutiny by testing whether territorial commitments and structural constraints do, indeed, shape decision-making and, if so, in what way.

Second, if they are rational actors, then the political rationality according to which territorial commitments and structural constraints shape the positions of political actors is complex. That is, the rationality that informs public-safety decisions in federal systems cannot readily be reduced to means-ends calculations of economic efficiency. This observation has significant implications. As Thacher observes, if public-safety interests in federal systems were primarily economic, *“then there are limits to the kinds of policies that constituent and local governments*

32. Allison Rowland, “The Interaction of Municipal and Federal Governments: Trends, Issues and Problems,”

will finance, but there are no limits in principle to the policies they will administer, since higher levels of government can simply subsidize them.”³³ Yet, not all interests can be monetized. Legitimacy is one example. One might thus hypothesize that federal governments will experience difficulties getting constituent and local governments to take on interests that cannot readily be monetized, because there is no incentive for them to do so.

Third, enlisting the cooperating of constituent or local governments in implementing federal public-safety objectives is likely to be costly, especially if interests are not easily monetized. To get lower levels of government to follow through, they would have to create detailed regulations, monitor compliance, provide incentives to comply. That is, getting lower levels of government to comply with public-safety expectations that are not in their interests requires structural changes. Even if those are forthcoming, expectations should remain low as long as constituent units do not have much of an incentive to comply. As a result, it may be easier for the central government to expand the mandate of an extant federal actor than to attempt to incentivize local compliance. Or the central government could attempt to manipulate institutional constraints in an attempt to alter the decision-making logic at the local level.

In theory, then, one might reasonably expect public safety in federal and multilevel governance systems to play out differently than in unitary systems. In practice, many of the dynamics and findings with respect to federal and multilevel governance systems are likely to be relevant to unitary systems as well. Owing to the principle of subsidiarity, unitary systems tend to decentralize matters of public safety, such as first responders, as well and, in many cases, they are responsible to local rather than central authorities.³⁴ The Police Service of Northern Ireland (PSNI) is one example.³⁵ Since these local authorities are often elected themselves, the institutional logic with respect to public safety may be similar to the one that operates in federal and multilevel governance systems. By virtue of the absence of divided sovereignty that is the hallmark of federal and many multilevel governance systems, however, central governments in unitary systems have greater ability to solicit cooperation from lower levels of government. One might thus expect to find fewer incentives, regulations and monitoring mechanisms of local undertakings in unitary countries than in federal ones. For example, the existence of municipal police forces in France notwithstanding, in practice it has few powers beyond regulating traffic. Security enforcement rests with the *police nationale* (under the ministry of the interior) and the *gendarmerie* (under the ministry of

33. Thacher, *The Local Role in Homeland Security*, 671.

34. David Bayley, *Patterns of Policing* (New Brunswick, NJ: Rutgers University Press, 1990), 54.

35. John McGarry, and Brendan O’Leary, *Policing Northern Ireland* (Belfast: Blackstaff Press, 1999).

defence). In effect, then, in the provision of security in France, national interests and those of the state are clearly intended to trump local ones.

In effect, one of the premises behind federal solutions is that there is a good reason why not all services are necessarily entrusted to the central government. If the hallmark of federal systems is that, contrary to unitary systems, the intergovernmental constitutional relationship is not determined by the central government, then security becomes the litmus test of a federal system's maturity measured as a function of the extent to which intergovernmental coordinating mechanisms are honoured by the central government. If security is ultimately local, then one way to measure a central government's commitment to federalism is its respect for local autonomy over security decision-making and enforcement.

Confronted with intransigent structures, processes and norms, the coordinating mechanisms that intergovernmental arrangements provide too readily end up having to yield to expediency. Yet, the evidence also suggests that a public-safety equilibrium is ultimately likely to prevail only when federal institutions can play their role as a mechanism to mediate a security equilibrium that balances shared-rule and self-rule. It would appear that those federal systems that respect subnational autonomy and where the central government respects subnational units preserve of their autonomy, funding, and decision-making power in the case of federal intervention in security-related matters, fare better on security than federal countries with central governments that do not. This is a hypothesis that needs further elaboration and testing. There are a lot of independent and intervening variables to disentangle. Yet, unilateral or uncoordinated interventions by central governments in matters of public safety rarely seem to fare well in the sense that, unable to overcome the path-dependency engendered by territorial commitments and structural constraints, they prove unsustainable over the long term.

Abstract

Four basic conditions have to be met for any society to function effectively: security, good governance, economic development and psycho-social conditions. Much of the literature focuses on the latter three aspects. Yet, security appears to be a precondition, a first-mover of sorts, without which it appears difficult for the other three to take root. Whilst security concerns are the raison d'être at the heart of many federal arrangements, the nexus of federalism and public safety has received little scholarly attention. In light of the exponential growth of federal systems and the newfound interest in public safety in federal systems as a result of heightened concerns about terrorism on the one hand, and about the capacity of federations to respond to both natural and anthropogenic emergencies on the other hand, this article proposes a preliminary theoretical and substantive framework to inform and entice the comparative study of public safety in federal systems.

Résumé

Quatre conditions de base doivent être respectées pour le fonctionnement efficace d'une société : la sécurité, la bonne gouvernance, le développement économique et les conditions psycho-sociales. Une bonne partie de la littérature porte sur les trois derniers aspects. Pourtant, la sécurité semble être une condition préalable, un élément premier, sans laquelle il semble difficile pour les trois autres à prendre racine. Alors

que les préoccupations de sécurité sont la raison d'être au cœur de nombreux arrangements fédéraux, le lien du fédéralisme et de la sécurité publique a reçu peu d'attention de la part des chercheurs. À la lumière de la croissance exponentielle des systèmes fédéraux et de l'intérêt retrouvée dans la sécurité publique dans les systèmes fédéraux en raison de préoccupations au sujet du terrorisme d'une part, et de la capacité des fédérations de faire suite aux urgences naturelles et anthropogéniques d'autre part, cet article propose un cadre préliminaire de théorie et de substance afin d'informer et d'inciter l'étude comparative de la sécurité publique dans les systèmes fédéraux et multi-palier.