Arbre à palabre, Palaver tree

CONSTITUTIONAL OPTIONS PROJECT

CAMEROON ANGLOPHONE CRISIS PEACE POLICY PAPER SERIES:

ANNOTATED BIBLIOGRAPHY

www.constitutionaloptionsproject.org

OFFICIAL LANGUAGES, LANGUAGE POLICY AND PLANNING

1. **Eric A. Anchimbe, *Multilingual backgrounds and the identity issue in Cameroon*, in Anuario del Seminario de Filología Vasca Julio de Urquijo, International Journal of Basque Linguistics and Philology, Vol. 39, No. 2, 2005, pp. 33-48.**

Cameroon, generally referred to as Africa in miniature, has a complex multilingual setting, the foundation of which has been laid long before colonialism and postcolonialism. During the colonial period, Cameroon was divided into two parts. One part, that is one fifth of the country governed by the British administration, had English as its official language and the other by the French administration and had French as its official language. With the advent of independence and unification of Cameroon, the language policy adopted was bilingualism. Both English and French became the official languages of the State, but the native languages still exist. However, this multilingual setting has created identity confusion and forged a reshape of belonging and attachment. Because language is central to identity, many identities can then be traced in Cameroon. Thus, one individual can incorporate various identities like the official language identity, the ethnic identity, the bilingual identity and the individual identity, depending on the context in which he/she is. These identities have turned out to be makeshift responses to several social discontent calls. Shifting from one to the other is a means of coping with the challenges presented by the reunion of people of diverse origins and races within the same country.

The author notes that the official language identity transcends the other identities and adopts a political and a regional dimension. This can be seen through the various discontentment calls issued by the Anglophones like the lack of equal opportunities in political appointments and marginalisation in other aspects of national life. That is why the Anglophone movement was created, there was the Southern Cameroons Secession Attempt. Moreover, because the linguistic identity is central, Francophones who migrated to the Western provinces during and after colonialism and delivered children there, are still considered together with their descendants are considered as Francophones by virtue of their origin (the French-speaking zone). These people are referred to as the 11th province. This situation fragilizes the State's unity. In order to uphold this unity, several concessions and reforms must be made, like giving real attention to regional representation, building national identity on an integrative bilingualism.

2. **Bernard Fonlon, *The Case for an Early Bilingualism*, ABBIA Journal, Vol 4, 1963, pp 56 – 94.**

Language is very important because of its power over the human mind, feelings and reactions. Its mastery can give some people a high position in a given community and can be of great help in the formation of personality. Above all, it is the indispensable instrument for the advancement of man's mental and intellectual progress. Being intimately linked to the substance of our spirit, language creates a unity of spirit among those who speak that language. It is a very powerful instrument for the implementation of national unity and an effective asset in creating human relations between all those who use it, whatever their country. It also plays a very important role in the development of knowledge. Compared to European countries where language is no longer an obstacle, African countries are still experiencing a growing linguistic impediment. Therefore, Africans, who do not have their own language capable of conveying progress, are obliged to adopt the languages imposed by the

colonists, languages which were at the time the instrument of their humiliation. Among all the colonists' languages, English and French have become the languages of great communication and represent the best possible linguistic solution for Africa to ensure its political, economic, social and international development. So, if this becomes an imperative for all African countries, Cameroon has no other choice but to teach its official and constitutional languages, namely English and French, and this bilingualism must be individual and not a State bilingualism.

The author notes, however, that Cameroonian bilingualism is a misnomer and it is more appropriate to speak of Cameroonian trilingualism, because in addition to French and English, which remain foreign languages and cannot represent the real, authentic expression of African culture, Cameroonians already express themselves in their local language. But since no national language is taught at school level, the ideal goal to be achieved in schools would be to produce citizens capable of handling the official languages to perfection, from the first day at primary school. The author therefore advocates for early bilingualism and believes that it is very possible to teach two languages to very young children without seriously altering their mental and psychological growth, which is the argument of those who are against teaching two languages to children. Early bilingualism is the right policy and is based on experience, logical, psychological and physiological arguments. And the atmosphere in Cameroon, compared to other countries like Canada and Belgium, is favourable to bilingualism. But for this bilingualism to be real and not remain a fantasy indefinitely, conscious efforts must be made.

3. **Stephen Ambe Mforteh, *Cultural Innovations in Cameroon's linguistic Tower of Babel*, in: TRANS. Internet-Zeitschrift für Kulturwissenschaften, No. 16, March 2006.**

The complex ethnolinguistic nature of Cameroon can be traced back even before the colonial period. However, colonialism was decisive as it placed French and English, the official languages of Cameroon at the top and the indigenous languages at the bottom. The linguistic and cultural complexity of Cameroon is a source of both wealth and misfortune. On the one hand, it is a great handicap for national unity and national integration as Anglophone are considered fundamentally different from Francophones. Each community builds identity boundaries around them that exclude the other. On the other hand, the advantage is the employment possibilities it offers. Over the years, several sociolinguistic changes have taken place in Cameroon which include the great desire of Francophones to learn English language because of the global status the language gained, the renewed attention to Cameroon Pidgin English, the standardization and introduction of mother tongues in primary schools, the promotion of bilingualism through several educational curricular projects, the creation of regional branches of Francophone Cameroon companies in the Anglophone part of Cameroon. On the long run, Anglophones would lose both linguistically and culturally in the face of the current encroachment of the Francophones into the spheres hitherto monopolised by them.

4. **Isaiah Ayafor, *Official Bilingualism in Cameroon: An Empirical Evaluation of the Status of English in Official Domains*, Ph.D. Thesis, Albert Ludwigs University of Freiburg, Germany, 2005. (Very detailed account of the actual status and use of English in official settings in Cameroon, see chapter 7 titled: ''Status of English in public communication''. PS note: Do the annotation based on Chapter 7, mainly – and look at the thesis' general intro).**

The aim of this study is to investigate the status of English within the framework of the promotion of official bilingualism. It examines the disparagement of the status of English, and the restriction of its

functions in government and private domains within the frame of implementation of the policy. Chapter 7 presents the visual evidence regarding this disparagement of the status of English within official and private domains. It analysed photographs which show the manner in which English and French are used in notices in official and in private sector places. Official information given on signboards, notice boards, signposts, road signs, and in other types of notices in general, portrays inconsistencies in the use of the two languages. Some of the images illustrated that the functions of English are inadvertently restricted in some official domains as it is taken for granted that everyone speaks French. This restriction ranges from a complete exclusion of English through poor English in the translation of the French versions to inequality in the sizes and formats of the two versions. A similar fate may befall French in English-speaking areas when it is used by Anglophones. However, the use of French in English-speaking regions by Anglophones is so rare that the probability is quite low that French will experience a comparable fate to that suffered by English in French-speaking areas.

It should be noted, nevertheless, that there are many indicators emanating from the international power and prestige of English that show that English has established firm ground as a language that matters in Cameroon and in the Central African sub-region. These indicators, adding to the international utility of English as the language of science and technology, trade, tourism, internet, international caucuses, include, the involvement of Cameroon in multiple projects with English-speaking countries be it in the public or private sectors and the sudden interest of Francophones in learning English for personal gains. All these indicators have a significant impact on the ongoing widening needs and functions of English and shape an overwhelming perception of English across the entire country and the Central African sub-region.

5. Joseph-G. Turi, *Language Law and Language Rights*, International Journal of Law, Language & Discourse, 2012, Vol. 2, No. 4, pp. 1-18.

There are, in many political contexts, contacts, conflicts and inequalities among languages used within the same territory. The political and legal intervention of modern States and public authorities (at all levels, national, regional, local and municipal) on languages, that is the language law, is to resolve the linguistic problems arising from those linguistic contacts, conflicts and inequalities phenomena. Comparative Emphasis is put on the different ways used by the States in legally determining and establishing the status and use of the languages in question, especially in the official usage of languages. There are official and non-official language legislation. There are also institutionalizing, standardizing and liberal language legislation and the historical and universal linguistic rights (the right to “the” language and the right to “a language”). It should be noted that linguistic legislation does not oblige anyone to use one or more languages in absolute terms. In principle, it is aimed at the speakers of a language rather than at the language itself. Nevertheless, States have the right to legally impose as official a language or some languages to assure a kind of social cohesion among citizens who in turn have the duty to respect legally the official language(s) of their States. Linguistic law, that is the intervention of States and public authorities is very important and is relatively new due especially to three relatively recent social phenomena and problems, the democratization of education, the globalization of communications and the growing importance of linguistic diversity in our world.

6. **Sue Wright, *Language and Power, Background to the Debate on Language Rights*, International Journal on Multicultural Societies, Vol. 3, No. 1, 2001, pp. 44-54.**

This article reviews four contributions and discusses the political and social context within which the recognition of linguistic rights for regional or minority language groups has to be addressed. It begins with Eduardo Vieytez paper's which gives a historical account of the evolution of linguistic rights, pointing out that such rights were not an issue in Europe before the nineteenth century. they began to be an issue as the concept of linguistic minority was created in the era of nationalism. Thus, the plight of minorities gradually came to the fore as an issue in the domain of international treaties and charters. The linguistic rights as Fernand de Varennes documents are inextricably linked to human rights. De Varennes argues that there should be no discrimination between speakers of majority languages and those of minority languages or distinction between autochthonous and allochthonous minorities in human rights treaties. That is why the European Charter for Regional or Minority Languages calls for the protection of cultural and linguistic heritage as Elda Moreno states in his paper. However, the Charter makes it clear that it is only concerned with autochthonous minorities, a stand that Donall O Riagan criticizes in his paper. He notes that if the Charter finds important the preservation of the cultural and linguistic heritage, then it becomes difficult to make the case for the protection of some languages but not others. He argues that the European Council is reluctant to deal with the linguistic question formally. The whole question of language and politics needs to be actually addressed in the European Union.

7. **Sue Wright, *Language as a Contributing Factor in Conflicts Between States and Within States*, Journal of Current Issues In: Language and Society, Vol. 4, No. 3, 1997, pp. 215-237.**

In this article, the author reveals that in armed conflict, language seems to play a causative and mobilising role and the shifts and developments in language use can be seen a reliable indicator of the shifts and developments in power relationships. Cleavages between language communities in medieval Europe did not usually coincide with the borders of kingdoms and empires; dialect continua spanned Europe. It was nation state building which gave Europe stable state borders and then created different standardised national languages within those borders causing definite linguistic fissures within the dialect continua. There were two main European models for the nation building process: the contractual nation exemplified by France and the ethno-linguistic nation of the German tradition. The nationalism of both models permitted war to be made the affair of the whole people. The existence of a culturally and linguistically homogenous group was the necessary climate for a government to be successful in persuading the whole of a population to fight for the country. Going to war was first of all a linguistic process. Construction of a discourse which ennobles, explains and justifies the war is as essential a part of preparation for war as weapon production.

Where there is no such homogeneity in the country, or the where the State unification is not successful, the different regional groups may retain separate civil societies and may demand devolved or autonomous status within the state or indeed complete secession from it. Unfortunately, it is more difficult to discern the role that language difference plays in any situation of intergroup aggression. Where there is conflict between groups, language is an important factor in the cohesion of the group faced with the enemy. Groups would prefer their enemies to be of a different language group.

8. Bernard Fonlon, *Pour un bilinguisme de bonne heure*, Revue ABBIA, Vol 7, No. 2, 1964, pp. 7-47.

In this article, the author reveals that language is very important because of its power over the human mind, feelings and reactions. Its mastery can give some people a high position in a given community and can be of great help in the formation of personality. Above all, it is the indispensable instrument for the development of man's mental and intellectual progress. Being thus intimately linked to the substance of our spirit, language creates a unity of spirit among those who are of the same expression. It is a very powerful instrument in the service of national unity and an effective asset in creating human relations between all those who use it, whatever their country. It also plays a very important role in the development of knowledge. Compared to European countries where language is no longer an obstacle, African countries are still experiencing a linguistic handicap which is taking on enormous proportions. Africans, who do not have their own language capable of conveying progress, are obliged to adopt the languages imposed by the colonisers, languages which were at the time the instrument of their humiliation. Of all the languages of the colonisers, English and French have become the languages of great communication and represent the best possible linguistic solution for Africa to ensure its political, economic, social and international development. So, if this becomes an imperative for all African countries, Cameroon, which is considered Africa in miniature, has no other choice but to teach its official and constitutional languages, namely English and French, and this bilingualism must be individual and not a State bilingualism.

The author notes, however, that Cameroonian bilingualism is a misnomer and it is more appropriate to speak of Cameroonian trilingualism, because in addition to French and English, which remain foreign languages and cannot represent the real, authentic expression of African culture, Cameroonians already express themselves in their vernacular language. But since no national language is taught at school level, the ideal goal to be achieved in schools would be to produce citizens capable of handling the official languages to perfection, from the first day at primary school. The author therefore argues in favour of early bilingualism and believes that it is very possible to teach two languages to children at a tender age without seriously altering their mental and psychological growth, as is mentioned by those who are against teaching two languages to children at an early age. Early bilingualism is the right policy and is based on experience, logical, psychological and physiological arguments. And the atmosphere in Cameroon, compared to other countries like Canada and Belgium, is favourable to bilingualism. But for this bilingualism to be real and not remain forever a figment of the imagination, conscious efforts must be made.

9. Joseph G. Turi, *Le droit linguistique et les droits linguistiques*, Les Cahiers de droit, Vol. 31, No. 2, 1990, pp. 641–650.

Linguistic law, understood objectively, is a set of legal norms concerning the status and use of one or more languages, named and unnamed, in a given political context. It is a meta-legal law in that language, which is the main tool of law, becomes both the subject and the object of law. It is also a futuristic right in that it further enshrines, albeit still rather timidly and implicitly, the right to "the" language, and thus the right to difference. Linguistic rights, understood subjectively as both individual and collective rights, include the right to "a" language (the right to use one or more named languages, particularly in the field of official language use, a right that is essentially historical in nature) and the right to "the" language (the right to use any language, particularly in the field of unofficial language use, a right that is essentially fundamental in nature). This distinction, now recognised by the Supreme

Court of Canada, is based on the principles of linguistic territoriality and personality. Finally, depending on whether or not language law is considered to be of public order, it is primarily aimed at language or at language speakers. In any case, language law generally only targets the language-medium (the form) and not the language-message (the content).

LANGUAGE-IN-EDUCATION POLICIES AND COEXISTENCE OF EDUCATIONAL SYSTEMS

10. Jane-Francis Afungmeyu Abongdia, *Language Ideologies and Attitudes of Francophone Learners towards English in Yaoundé*, Master's Thesis, University of the Western Cape, 2009.

English is the most widely spoken language in the world and for this reason it would be of advantage for everyone to learn it. This thesis focuses on the attitudes and motivations of a particular group of Francophone students of English in Cameroon towards English, and how these are influenced by the prevailing language ideologies in the country. The author found out that the different attitudes and ideologies held towards English in Cameroon are influenced and shaped by socio-political factors, economic, identity, personal reasons and also the way in which English is taught in schools. Surveys conducted for this study revealed that the predominant language ideology in Cameroon, that is French was the powerful language in Cameroon, had a powerful impact on the language attitudes of Francophone students, the majority of whom held negative attitudes towards English, despite being instrumentally motivated to learn the language. Even those with positive attitudes towards English had instrumental reasons for learning the language, and felt no need to integrate with English-speaking people, in order to achieve their goals with regards to higher education and jobs. Most of the students only encountered English in school, when the English teacher was present and they were unable to practice speaking the language because outside of the English classroom, it is French that was spoken. However, they are forced to study English, since it carries one of the highest coefficients as the main subject for Francophone students. But they do not so because they like it but because they want to pass their examination.

Furthermore, the surveys showed that students had a negative stereotype about the Anglophone community, and this contributed to them being discouraged from learning the language. Anglophones being in minority, some Francophones felt that it was better to learn the majority language (that is French) and that they could survive economically without English, as they could work successfully in eight out of the ten provinces in Cameroon. Also, the teaching methods and overall conduct of the teachers also contributed to a poor performance with attendant negative attitudes. The teachers used the translation method rather than employing more contemporary methods like the communicative method. Thus, students at the secondary and high school levels found it difficult to understand the language.

The author noted that few students performed well or had a positive attitude mainly because of their language learning skills and the desire to use English with the speakers of the language. They studied it at home and used it with friends and neighbours. This is in contrast to the poorly-motivated students who did not devote enough time to the study of the language. In fact, English in this study was studied for instrumental reasons. The students considered what they would gain with the use of English as a

motivation, like the international job opportunities, the ability to watch movies or listen to music in English.

Based on the above negative attitudes of Francophone learners towards English, the author thinks that there is a need to develop positive motivations of English in the country and that English should be taught at an early stage like French, that is from nursery school level. Also, the language policy in Cameroon should be accompanied by a clear implementation policy because it has been noted that there is more individual bilingualism than state bilingualism in Cameroon. The effective implementation should be made much more visible in the language practices of state departments and other national services, and people should be appointed on the basis of a high level of bilingualism in French and English. In addition, the author suggests that instead of using only French and English in the name of nation building and national unity, it would be better to develop some national languages as nation building does not imply cultural or linguistic uniformity. Cameroonians should start appreciating their own languages, developing them and using them in all aspects of life.

11. **Jane-Francis A. Abongdia and Fiona Willans, *The position of English globally and nationally: A comparison of Cameroon and Vanuatu*, Current Issues in Language Planning (Journal), Vol 15, 2014.** [*PS note: the article is focussed on language status/position as a factor of choice of language in education, hence its being included under this segment]*.

This paper examines the Language Policy and Planning (LPP) in two linguistically diverse countries that experienced both British and French rule: Cameroon and Vanuatu. They have been faced with the decisions about the use of the colonial languages, English and French, in multilingual situations. During the colonial period, there was no cooperation between the British and French colonial powers. At independence, the new nations inherited both French and English as their official languages and media of instruction. Unlike in Cameroon, Vanuatu chose a third official language and sole native language which is Bislama, even though it is not used in the education system. Thus, the language policy is official bilingualism in Cameroon and official multilingualism in Vanuatu. However, the two former colonial languages do not hold equal status in both countries, French being the predominant language in Cameroon and English in Vanuatu. However, it can be noted that English has gained a global dominance and has become associated with progress, development, opportunity and participation. In this paper, the authors consider the extent to which the global position of English may impact on attitudes towards English and French within Cameroon and Vanuatu based on data collected in two studies.

In Cameroon, French has always been and is still considered the numerically dominant former colonial language, but there appears to be an increase in the desire to access English for instrumental reasons. However, there is no sense that global spread of English is currently eroding the status of French in the country, instead Cameroonians are beginning to see the utility of English in addition to French. Thus, the official bilingualism is perceived to be beneficial. In Vanuatu, it is English that has dominated numerically but, despite evidence that suggests a limited instrumental benefit to be gained by speaking French, this language remains highly valued. However, rather than a dominant discourse in which English is positioned as the only desirable language, due to its position as the global language, a discourse of double opportunity and a patriotic orientation towards bilingualism is used to justify the need for both English and French. Both countries thus demonstrate the continued hegemony of former colonial languages, but not necessarily of English in particular. The consequence of this position towards the two former colonial languages is that they are unlikely to be removed from the education

system in both countries as medium of instruction. The incorporation of national languages as medium of instruction is therefore compromised. These languages are likely to lose out because of globalisation.

12. **Alain Flaubert Takam, Innocent Fassé Mbouya, *Language Policy in Education: Second Official Language in (Technical) Education in Canada and Cameroon*, Journal of Education and Learning, Vol. 7, No. 4, 2018, pp. 20-31.**

Cameroon and Canada share together their two official languages: English and French. However, in Cameroon, English is the minority official language and in Canada, it is the French language. This paper examines the language policies and planning in (technical) education which include State's laws, acts, measures taken in order to regulate and promote both countries' second official languages, that is English in Cameroon and French in Canada. Unlike Cameroon which has no satisfactory technical and educational process for implementing the official language policy, Canada has put in place a clear-cut language policy. In Canada, there are three French second language programmes in primary and secondary levels, whereas in Cameroon, there is only one English second language programme. While English classes are systematically compulsory in Cameroon at all levels of education, including technical education, French classes seems to be optional in some levels of education in Canada. Another difference is that Cameroon has a clear and distinct post-primary technical education programme and setting against a somewhat mixed general and technical education in Canada. One striking similarity in both countries is that neither of them has integrated the specific second official language needs of technical education students neither in curriculum and syllabus design nor in languages teachers training schemes. This situation discourages tech-oriented students from learning French in Canada and in Cameroon it does not boost the performance of these students in the English language learning.

13. **Georges Courade and Christiane Courade, *Education in Anglophone Cameroon: 1915 – 1975*, National Office for Scientific and Technical Research (ONAREST), Yaoundé, 1977.**

Influenced by 45 years of British presence, the Cameroonians of the South West and North West regions acquired the Anglo-Saxon style mainly through education which was essential in shaping a new society. The colonial school did not impose the colonists' language and cultural values, thus allowing Anglophones to feel that they had preserved their cultural traditions better than Francophones. Until the late 1950s, the use of vernacular languages in the early school years was accepted. And it was this education system that was in place until 1972 after some adjustments. This system was liberal, decentralised and pragmatic, compared to the French education system instituted by Jules Ferry, which was cumbersome, bureaucratic and hypercentralised. English-speaking teachers, unlike French-speaking teachers, were not forced to follow a pedagogical agenda already designed by the hierarchy but had the freedom and responsibility to suggest lessons that would produce the best results. Even in the country's administration, the system was decentralised, unlike the centralised French administrative system. However, one of the problems of the colonial education was that it depended on religious missions, which slowed down the establishment of schools. Later on, competition between the missions led to the multiplication of schools that were not always necessary, as the colonial school was a selective school where only those who could pay the school fees could attend classes.

With the reunification of Cameroon, the question of the compatibility of the colonial school systems was raised. Several solutions were proposed, but not adopted. Finally, a solution was considered, namely teaching a child to read in his or her mother tongue, while introducing him or her to the two official languages, English and French, at a very early stage. Thus, in order to introduce French in West Cameroon, a bilingual high school in Buea was to be established and French was to be taught through audio-visual means. However, for the Anglophones, learning French was tantamount to accepting the Francophone lifesyle in a certain way. In order to achieve national unity, the authorities had to make bilingual education compulsory. The educational systems were to merge into one system integrating Cameroonian cultures and French and English education. This education had to also prepare the child to be a producer. There are too many obstacles to overcome, making the chances of creating a national school, neither francophone nor anglophone, infinitesimal because its content is yet to be defined.

14. **United Nations Educational, Scientific and Cultural Organization (UNESCO), *Cameroon second mission of the education planning group (September-December 1963)*, Emergency programme for Africa, EDPLAN/CMN/2, May 1965.**

UNESCO, at the request of the Cameroonian government, sent to Cameroon a first planning mission which drew up a report and proposed solutions for the development of education in each of the two parts of the Federal Republic. Plans were then made for a second mission which would be responsible for studying the reform of the curricula and measures calculated to bring about the necessary harmonization of the existing systems of East and West Cameroon. For the drafting of the report, the mission decided to adopt some principles. The mission would concentrate its work on the basic problem of harmonizing the educational systems in the two parts of the Federal Republic, given that the educational systems of East Cameroon and West Cameroon differ profoundly. The mission will thus make practical suggestions to assist in solving this problem. However, beyond the differences between the teaching methods or between curricula, the real difficulty stems from the fact that there are two different spirits with which the two parts have been imbued as a result of the chances of contemporary politics. To resolve this issue, the Federal State needs to create a Cameroonian Cameroon with a civilisation which distinctive feature will be the combination in a higher synthesis of the separate efforts of each of the two parts. Such a synthesis cannot be done only through a mere compromise in scholastic matters but will be achieved only after a long symbiosis. The missions compared the two educational systems and will make recommendations that do not revolutionize education because an innovation may appear insufficiently attractive for West Cameroon to adopt them without some hesitation. In this regard, a certain flexibility is left to the discretion of school headmasters.

BI-JURALISM AND MANAGEMENT OF MIXED LEGAL SYSTEMS

15. **Esin Orucu, *What is a Mixed Legal System: Exclusion or Expansion?* Electronic Journal of Comparative Law, Vol. 12, No. 1, May 2008.**

Nowadays, there is an increasing interest in mixed systems in the world. Influences other than the substantial civil law-common law, and different types of mixes deserve as much attention by comparatists, inasmuch as there are no pure legal systems in the world. This paper seeks to make the case for considering mixed systems and looks at examples of a number of overlaps of different types. All legal systems are combinations and overlaps. For example, practically all of the legal traditions in

the South East Asia region encompass all of the world's major legal world views and systems. The most significant theories explaining the birth of mixed systems come from linguistics: the family tree model and the wave theory. The family tree model explains ramification and divergence. It is deconstructive, disintegrative and critical. On the other hand, the wave theory shows how changes spread like waves and disperse over a wide area, thus leading to convergence. This theory caters both for convergence and divergence, the waves causing diffusion and for dispersals to occur spontaneously through contact.

History tells that when legal systems of diverse socio- and/or legal-cultures meet, the diverse elements co-exist side by side in the resultant legal system, hence mixed systems ensue. The term mixed refers to a combination of more than one body of law applicable within the whole territory of a country or restricted to an area or a culture. It can also refer to legal systems that have never had a single dominant culture. Mixed legal systems are places of encounters. There is no exclusive appropriation of one of the laws; here, expansion is advocated. Instances of mixing are complicated. They may be overt or covert, structured or unstructured, complex or simple, blended or unblended; and often difficult to define. Some mixed systems are the results of strong movements of transmigration of legal institutions and ideas. More complex mixes might appear in places where the legal system or the law is based on, or heavily determined by, religion or belief. The paper notes that there are systems that have already been grouped as mixed jurisdictions, which is Vernon Palmer's point of view, where common law and civil law coexist within the same country. This view, however, disregards the impact of indigenous laws present in some of those systems. So, in order to grasp the concept of mixed systems better, they can be examined using the law and economics approach, offered by Anthony Ogus, which is what comparative lawyers need to consider when assessing mixed or hybrid systems. Indeed, it is the study of 'mixedness' that can illuminate the path towards the comprehension of the interaction of law and culture everywhere.

16. Stéphane Beaulac, Jean-François Gaudreault-Desbiens, *Common Law and Civil Law: A Comparative Primer*, Federation of Law Societies of Canada, July 2017.

Canada is one of the few countries in the world which can boast a connection to both of the two major Western legal traditions, i.e. the Common Law and the Civil Law, but its bijuralism is experienced differently on the ground and has given rise to various kinds of asymmetries. This paper studies some basic methodological and epistemological issues inherent to Canada's bijural condition. It examines the sources of law of each system, the style of legislation and judgments and address how bijuralism is susceptible of affecting the interpretation of federal legislation and how bijuralism and bilingualism interact at some points. The various sources of Common Law are judicial precedents, equity, Customs, legal scholarship. Their reasoning is generally characterized as inductive. As far as the Civil Law traditions is concerned, its various sources of law are the Codes, particular laws, Customs, Case laws. The two systems also have different styles. In the Common Law, the legislative drafting is very precise and technical, while the Civilian legislative drafting style tends to favour clarity, concision and a certain level of generality. As law is about language, the language of the law in a country with two official languages often turns into a vexing issue. In Canada, the French and English versions of federal statutes are equally authoritative, and all Canadian jurists should be pay attention to both and be aware of their consequences on the interpretation of the law.

Finally, the paper examines substantive legal differences between Quebec Civil Law and Canadian Common Law in selected areas of private law, namely contracts, torts and civil responsibility, judicial remedies, civil procedure and evidence, property and securities, trust and fiduciies, and family (II).

17. **Marie-France Séguin & Marie-Claude Gervais, *Some thoughts on Bijuralism in Canada and the world*, Department of Justice, Canada, 2018. [The above 2 are of course the French/English versions of the same article. Useful to have it annotated in both languages.]**

Bijuralism is defined as the coexistence of two legal traditions within a single state. Since the common law and civil law coexist in Canada in both official languages, Canada is said to be a bijural country. The existence of these two laws may be explained by history and by the colonisation of America by the English and the French. This legal duality has since been preserved in Canada. Civil law derives its sources and inspiration from Roman law, but also from rules of customary law. It is the body of law consisting of the fundamental rules of private law. On the other hand, common law derives from the rules accepted and applied by the Royal Courts of Westminster and also from rules of equity. It is distinguished by its method and inductive reasoning, while civil law is characterized by its deductive method.

In Canada, the two legal traditions coexist in two ways at the national level: influence and interaction. In fact, the similarities between civil law and common law are much greater than are the technical differences. These similarities are often the result of the influences they have had on each other over time. In parallel with these influences, the reciprocal action of those systems may also manifest itself through the interaction of their respective rules and principles. The division of legislative powers has established relationships of complementarity between the law of the provinces and federal law. However, there are exceptions to the rule of complementarity which are characterized as dissociations. Here, a standard foreign to the private law of the province of application corrects the incompleteness of the federal legislation, thus excluding any suppletive application of the law of that province. The dissociation can be absolute or relative.

Canada, not being the only bijural country, there are many instances of bijuralism around the world, like in the United Kingdom, the United States and Europe. Bijuralism is most often the result of the juxtaposition of a legal system - typically civil law or common law - with a pre-existing law such as customary law, Islamic law or Talmudic law. In the United Kingdom, the English common law and the Scottish civil law coexist. However, the interaction of the civil law and common law gives rise to the dissociation of these two systems rather than their complementarity. In the United States, the plurality of legal systems makes the country a bijural one. Most States adopted the common law, but Louisiana preserved the civil law, a heritage from the French colonization. The American legal system consists of courts that apply federal law and other courts under the jurisdiction of each of the states that apply state law. the system is intended to ensure standard administration and interpretation of federal law throughout the land. In Europe, the standards do not emanate from a state body but rather from an organization both supra-governmental and intergovernmental. The division of powers among the member states and the community is governed by the principle of subsidiarity. The European Community is in the process of shaping a common law in which English common law and French-style civil law play an important role.

18. **Jean-François Gaudreault-DesBiens, *On the Relative Pertinence of the Civil Law/Common Law Dichotomy When Reflecting on the Relationship between Comparative Law, Development Law and Living Law. Some Observations in the African Context* (examining the OHADA model), April 7, 2017.**

This article examines the pertinence of resorting to the civil law/common law dichotomy in the context of the use of legal comparison to evaluate the relative "performance" of states in the development field. It accordingly looks into the growing importance of neo-institutionalist analysis in law and development economics, in order to conclude that if certain analyses have possibly unduly amplified the role of legal tradition as critical variable of states' performance, they must nevertheless be credited with bringing to light the influence of institutional variables on such performance and with assisting us to grasp the relationship between civil law and common law from the angle of development law rather than from the more classic comparative law one. While it acknowledges the significance of institutional analysis, the article highlights its limited grasp of law's ability to influence the development of a society. Focusing particularly on the example of Africa and the harmonization projects conducted there under the aegis of OHADA, it notes that a fixation on the civil law or common law legal tradition more often than not poses an epistemological obstacle or a distraction from the point of view of elaborating efficient normative intervention strategies in societies where economic relations are still predominantly informal. The article therefore defends the thesis, based on a perspective anchored in legal pluralism, that granting a disproportionate significance to the civil law/common law dichotomy is problematic when reflecting in an appropriately complex manner on optimal conditions for the development of such societies. However, this dichotomy remains relevant when considering the type of legal education that best prepares jurists to grasp the complexity of the normative landscape of such societies, so as to ensure that their normative interventions are aligned with living law rather than with law in books. In this respect, it must be acknowledged that several fundamental characteristics of the civil law tradition, as well as the type of legal education generally offered in states associated with this tradition, tend to prevent a genuinely complex understanding of that normative landscape, particularly because of the lasting hegemony of legal monism and positivism, and of the dissociation of state law from the political, economic and social contexts in which it arises and to which it seeks to apply. Such training therefore hampers the development of cultural intelligence in the jurists for whom it is intended. The article thus calls for a reform of legal education in civil law states, and for their opening up to legal pluralism and interdisciplinarity.

19. **Charles Manga Fombad, *Managing Legal Diversity: Cameroonian Bijuralism at a Critical Crossroads*, in 'Mixed Legal Systems, East and West', Vernon Palmer, Mohamed Mattar, Anna Koppel (eds.), Routledge Publishers, New York, 2016, pp. 101-122.**

Until fairly recently, comparatists and legal historians had shown little interest in the Cameroonian bijural system. Yet the Cameroonian system provides a fascinating example of a comparative law melting pot with peculiar and multifaceted problems. This article gives a brief look at the historical origin and the theoretical context of the Cameroonian mixed legal systems which are the French civil law and the English common law. This situation stems from the fact Cameroon has been under two colonial powers: the British and the French. When it gained independence, the country kept its colonial heritage. The article then gives an overview of legal developments in public law, private law, procedural law, and the system of administrative justice since the introduction of the bijural system

in Cameroon. It shows that the process of legal reforms has led to an overwhelming predominance in style, form, content, and formulation of civil law over common law in what can be perceived only as a one-sided invasion and assimilation of the former by the latter. Because bijuralism in Cameroon is not only a historical fact but also a daily reality that cannot be ignored or wished away, the author examines ways of correcting the bijural deficit. He argues that adopting a diversity-conscious approach to legal reforms in Cameroon or, in fact, any country facing such a dilemma is the best way to sustain bijuralism in the country. Furthermore, he notes that the coexistence of legal traditions is both a practical reality and a practical necessity in an increasingly plurality-conscious world where dynamic equity rather than flattening equality prevails.

20. Organisation Internationale de la Francophonie, *Promouvoir la diversité des cultures juridiques*, Délégation à la paix, à la démocratie et aux droits de l'homme, 2020.

In the same way that La Francophonie defends the cultural and linguistic diversity that is at the heart of its values, it is also committed to promoting the diversity of legal cultures experienced every day by its citizens, because there is no such thing as a Francophone legal system. Nearly half of the member or observers States are characterised by the coexistence of at least two legal systems. However, the diversity of legal cultures is being challenged. Most analyses of globalisation focus primarily on the socio-economic and cultural dimension, yet they are not without legal consequences. The development of economic globalisation risks reinforcing a globalised law at the expense of legal diversity. This globalisation or internationalisation of law puts legal systems under great pressure and they are therefore caught up in a process of competition and harmonisation, and the expression of legal cultures is thus threatened. To limit the effects of this competition, La Francophonie is committed to a political approach that is the consolidation of the link between diversity of legal cultures and democracy. It is also committed to promoting the democratisation of international relations, in which it sees a guarantee of the diversity of legal and political systems.

In order to effectively defend the specificities of the legal cultures diversity, La Francophonie has developed action strategies such as (1) the presence and development of Francophone expertise, which implies strengthening and developing the capacities of national Francophone expertise, accompanying Organisation Internationale de la Francophonie (OIF) member states, and monitoring major international meetings; (2) the mobilisation of institutional networks and civil society actors, networks which are at the heart of a reinforced strategic approach and which direct the work towards common problems; (3) the development of Ohada law and support for regional and sectoral harmonisation which involves identifying the needs and sectors of harmonisation and taking account of convergences; (4) the dissemination and accessibility of law. This dissemination is an essential issue for the influence of law in the Francophone area, as well as for raising the awareness of actors and populations. It is a prerequisite for access to justice and the promotion of legal diversity, while respecting cultures.

21. Louis LeBel & Pierre-Louis Le Saunier, *L'interaction du droit civil et de la common law à la Cour suprême du Canada*, Les Cahiers de droit, Vol 47, No. 2, 2006, pp. 179-238.

The state of relations between the common law and the civil law at the Supreme Court of Canada is characterised by several types of relationship that are articulated in different ways depending on the periods and the areas of law. While at the beginning of its history, the Supreme Court practised a policy of uniformity of the law, the recognition of the specificity and autonomy of the civil law has

allowed for the emergence of a genuine dialogue between the two legal traditions. This dialogical relationship is also accentuated by the presence of sociological, cultural, technical, institutional and legal factors. Through their dialogue, the traditions influence each other through the episodic borrowing of legal solutions or through references in the context of comparative law analyses. The authors also point out that there is currently no real convergence between the two legal traditions. Convergence is limited to situations where the traditions have similar legal concepts or problems. On the other hand, the traditions are sometimes in conflict with each other in divergent relationships. The study of the case law reveals that the rules of positive law, the common law and civil law traditions, the economics of the legal systems at stake and certain methodological aspects continue to limit the establishment of true convergence relationships. Thus, the authors remain of the opinion that civil law and common law will continue to evolve in parallel, allowing themselves to be influenced by each other while respecting the general principles and the economics of the legal systems that are specific to them.

In this context, it seems difficult to conclude that the two traditions are harmonised. The adaptation and reconciliation of the two traditions is more a matter for legislative initiative. The interaction of Canada's two major legal traditions in the Supreme Court is a real and complex encounter, but it is still a long way from a more systematic merger or convergence such as that which seems to be taking place in Europe at present with the gradual development of a new jus commune.

22. Marie-France Séguin & Marie-Claude Gervais, *Le bijuridisme au Canada et dans le monde : Quelques considérations*, Conseillères Juridiques, Ministère de la Justice du Canada, 2018.

Bijuralism is defined as the coexistence of two legal traditions within a single state. Since common law and civil law coexist in Canada in both official languages, Canada is said to be a bijural country. The existence of these two laws is explained by history and by the colonisation of America by the English and the French. This legal duality has since been preserved in Canada. The civil law draws its sources and inspiration from Roman law, but also from the rules of customary law. This is the body of law made up of the fundamental rules of private law. The common law, on the other hand, derives from the rules accepted and applied by the Westminster Royal Courts and the rules of equity. It is characterised by its inductive method and reasoning, whereas civil law is characterised by its deductive method.

In Canada, the two legal traditions co-exist in two ways at the national level: influence and interaction. The similarities between the civil law and the common law are far more important than the technical differences. These similarities are often the result of the influences they have exerted on each other over time. Alongside these influences, the interplay of these systems can also be seen in the interaction of their respective rules and principles. The division of legislative powers has established a complementary relationship between provincial and federal law. However, there are exceptions to the complementarity rule which are characterised as dissociations. In this case, a standard foreign to the private law of the province of application corrects the incompleteness of the federal legislation, thus excluding any suppletive application of the law of that province. Dissociation may be absolute or relative.

Canada is not the only bijural country; there are examples of bijuralism around the world, such as in the United Kingdom, the United States and Europe. Bijuralism is most often the result of the juxtaposition of a legal system - typically civil law or common law - with a pre-existing law such as

customary law, Islamic law or Talmudic law. In the UK, English common law and Scottish civil law co-exist. However, the interaction of civil law and common law leads to a dissociation of these two systems rather than their complementarity. In the United States, the plurality of legal systems makes it a bijural country. Most states have adopted the common law, but Louisiana has retained the civil law, a legacy of French colonisation. The American legal system consists of courts that apply federal law and other courts under the jurisdiction of individual states that apply state law. This system aims to ensure uniform administration and interpretation of federal law throughout the country. In Europe, norms do not emanate from a state body, but rather from both a supra-governmental and an inter-governmental organisation. The division of competences between the Member States and the Community is governed by the principle of subsidiarity. The European Community is shaping a common law in which English common law and French civil law play an important role.

23. Mathieu Devinat, *Le bijuridisme et le bilinguisme canadiens : des idéaux sous tension*, Revue française de linguistique appliquée, Vol. XVI, No.1, 2011, pp. 33-50.

Since its creation in 1867, Canada has been based on a political compromise between the two founding peoples, which has resulted in the establishment of a legal system that expressly recognizes the official status of two distinct languages and legal traditions. The purpose of this article is to critically present the discourse and reasoning surrounding the implementation of bilingualism and bijuralism in Canadian law.

Canadian bijuralism has given rise to a fundamental reflection on the status that should be extendded to provincial law in the implementation of federal law. Since federal law is neither an autonomous law nor a complete legal system, Parliament, in enacting legislation in certain areas, must take into account the ten provincial legal systems. These multiple systems can be reduced to two, however, the civil law system in force in Quebec and the common law system found in each of the provinces. To be effective, bijuralism requires either a community of jurists with a dual legal culture or terminological tools that make it possible to transpose concepts from one or the other of the two legal systems.

Legislative bilingualism, on the other hand, does not presuppose knowledge of several legal systems for its implementation, but rather the mastery of the two official languages used to express it that is assumed by the principles of interpretation. When English and French texts converge, there is no problem of understanding the texts. But this is not the case when the English and French texts do not express the same idea. In the event of a discrepancy, therefore, the courts have developed a test which consists of looking for their common meaning, which gives rise to three different situations: (1) the two versions may not be reconcilable, (2) one of the versions may be ambiguous and the other unequivocal; the unequivocal version is then preferred because it expresses the common meaning of both versions, (3) one version has a broader meaning than the other, the narrower meaning should then be preferred for the same reason.

24. Pierre Etienne Kenfack, *La gestion de la pluralité des systèmes juridiques par les Etats de l'Afrique noire : les enseignements de l'expérience camerounaise*, Cahiers de la recherche sur les droits fondamentaux, No. 7, 2009, pp. 153-160.

This article elaborates on the management of the plurality of legal systems in Africa from the perspective of the relevance of the solutions in use and the lessons to be learned from the current system of management, with Cameroon as a case study. Having acquired its plurality through the pre-colonial experience with the application of the system of traditional African laws and the colonial

experience with the institution of the German-Roman system introduced by France and the Common Law system introduced by Great Britain, Cameroon has, since its accession to independence, techniques and mechanisms to manage this plurality. The author wants to highlight the lessons drawn from the Cameroonian experience, with the aim of revealing paths for a better management of the plurality of legal systems by the Black African States. The experience of Cameroon allows us to identify two rather contradictory approaches that can help a State to manage the plurality of legal systems. The first approach is the one to be avoided, which is the suppression of plurality. Suppression can be achieved in two ways: (1) by putting aside the disruptive, undesirable system(s), (2) by imposing a system without worrying about the existence of others which will automatically disappear. In the case of Cameroon, the colonial powers and later the legislator and the administrative authorities undertook to gradually eliminate the customary law system in favour of the modern law inherited from colonisation. Unfortunately, this was a failure. The Cameroonian legislator, in an attempt to combine political unity with legal unity, also tried to eliminate plurality by imposing the French system. Again, this was a failure. The experience of Cameroon thus makes it clear that it is impossible to eliminate plurality by resorting to these two options.

The second approach is the one to be explored, which is the exploitation of plurality, rather than its suppression. It requires choosing an exploitation technique among the two techniques of juxtaposition and harmonisation and then implementing this technique. In Cameroon, harmonisation is used. It is a technique that aims to create a new system from different systems. It must be implemented taking into account the country's international commitments, the concern for effectiveness, accessibility and intelligibility of the law.

25. Nkoulou Yannick-Serge, *Langue et droit au Cameroun (Linéaments de la problématique de l'unification du droit dans un contexte bilingue)*, Revue internationale de droit comparé. Vol. 67 No. 3, 2015, pp. 695-726.

The relationship between law and language has been widely studied, but rarely in Cameroon from the perspective of the unification of the law of that State. Yet, the situation of Cameroon, which is a State experiencing official bilingualism - French and English - and historical legal dualism - civil law and common law - makes such an analysis necessary. This is so because, even though it is expressly provided for in the constitution, the bilingualism of the law, due to the lack of a legislative backup, is not effective. A review of the various sources of law - domestic laws, international treaties, case law - is enough to convince one of this. This biased practice of bilingualism in the production and dissemination of law makes the process of unifying Cameroonian law rather illusory and in any case poses the problem of the equality of citizens before the law. Even though the legislator is obliged to enact bilingual laws, the unification of the law remains in question. This is because each of the languages involved conveys a culture and therefore a legal culture. In view of the approximate results of legal translation and the influence of the cultural background of each judge on the interpretation of the law, the law that is intended to be uniform risks being bifurcated and, at best, will necessarily be hybrid.

26. Claire Moore Dickerson, *Le droit de l'OHADA dans les États anglophones et ses problématiques linguistiques*, Revue internationale de droit comparé. Vol. 60 No. 1, 2008, pp. 7-17.

Whether or not English-speaking countries join the OHADA treaty is a political issue, as it is the governments that will have to take the necessary decisions and steps. OHADA's business law, which is

based on civil law, is uniform in an area comprising 16 countries in West and Central Africa. These countries cannot directly influence the internal policy of their neighbours, but they can modify OHADA law in order to make it more easily adoptable by their common law neighbours, with the aim of enlarging the OHADA area. Substantively, the differences between the two systems in the field of business law are not very pronounced, as both have deductive aspects. Nevertheless, there are difficulties that English-speakers face and which cause their reluctance towards OHADA law. The first difficulty is language, the working language being French, which implies a translation problem. There are also cultural difficulties, as the equity regime which goes along with the common law brings flexibility to the Anglo-Saxon system, whereas the civil law system such as OHADA acts through rules and structures. Moreover, there are divergences in the ways of interpreting laws and decrees. However, the simplicity of OHADA's rules and structures may be an advantage that even English speakers recognise because lawyers trained in Anglo-Saxon law have a certain attitude towards OHADA law. But in order to facilitate the policy of eventual membership, it would be useful if OHADA would agree to rework translations with Anglophone lawyers and also to adopt certain Anglo-Saxon legal concepts.

27. **Justice Lucy Asuagbor, *La coexistence de droits dans un même espace économique : la perspective Camerounaise*, Intervention au 31e Congrès 2008 de Lomé : Le rôle du droit dans le développement économique, Institut international de Droit d'Expression et d'inspiration Françaises, 2009.**

Legal duality exists in very few French speaking countries in Africa. This is probably why the coexistence of laws, although of paramount importance, has not often been addressed in Africa. Cameroon is one of the few African countries that is multi-jurisdictional due to the coexistence of inherited English and French law (common law and civil law) with customary law. However, because of the prevalence of these two Western legal systems over customary law, Cameroon is considered a dualist legal country.

This dualism originates from the country's history. During the colonial period, Cameroon was divided into two parts and administered by two colonial powers, France and Great Britain. British Cameroon, which in turn was split into Nothern Cameroons and Southern Cameroons, was administered as an integral part of Nigeria and therefore was subject to the ordinances promulgated in Nigeria by the British. French Cameroon, on the other hand, was subject to French laws. On January 1st, 1960, French Cameroon became independent and subsequently Southern Cameroons decided to join the Republic of Cameroon; Nothern Cameroons became part of Nigeria. The Federal Republic of Cameroon was thus created in 1961 and the judicial system of each of the federated states continued to function according to the pre-existing model before the reunification of the country. The country also adopted bilingualism in French and English. In 1972, Cameroon moved from a federal state to a unitary state. Bilingualism was reinforced and promulgated and a uniform judicial system with different jurisdictions was created. However, procedural duality persisted and the common law and civil law are still the authoritative sources of law in matters of substantive law and procedural rules.

The Cameroonian legal system has taken a particular turn since 1993 with the signing of the OHADA Treaty and other regional instruments such as the CEMAC Merchant Navy Code and the CIMA Code; these instruments aim to harmonise and unify laws in economic, monetary, banking and business law. The entry into force of OHADA, particularly caused strong reactions in the Anglophone provinces of Cameroon where OHADA was perceived as an instrument intended to undermine the foundations of

Common Law. But this turbulence has subsided and OHADA with all its Uniform Acts is now recognised by the courts in the English-speaking provinces after many decisive seminars. Although the Uniform Acts are intended to facilitate the task of lawyers by providing them with modern, precise, easily identifiable and identical rules, some difficulties can be identified, such as the repealing effect of the Uniform Acts, the original working language of OHADA which is French and finally a mediocre translation, more literal than technical. The Cameroonian practitioner, in particular, is confronted with numerous difficulties, including multiple legislation, difficult access to texts, case law and doctrine, especially in English, and difficulties for English-speaking lawyers to plead before these high courts.

28. Jean-Claude Gémar, *Langages du droit et styles en traduction : Common Law vs. Droit civil : An Odd Couple ?* Journal of Civil Law Studies, Vol. 9, No. 1, article 7, 2016, pp. 135-165.

The older and more developed a law-producing society is, the more complex its institutions and language become, and consequently the translation of texts becomes a risky, but equally fascinating, venture. The two languages of law, Common Law and Civil Law, expressed in English and French respectively, are an obvious illustration of the risks involved in translating them. French and English have much in common. English vocabulary contains some 65 per cent of words of French origin, and French has been borrowing from English for as long as it can remember. Despite their commonality, the two languages have differences. From English to French, you don't just move from one language to another, you essentially move from one culture to another, from one lifestyle to another, from one way of thinking to another, from one syntax to another. Many obstacles stand in the way of languages, and the language of law, more than any other specialised language, is a victim of this, but to a greater degree in that the risks incurred are linked to the binding, potentially obligatory, nature of the legal norm and the understanding that the parties will derive from the text concerning them. When languages are put to the test of translation, the translator knows that it is not simply a matter of translating the words of one text into another, but of conveying the meaning of the message it contains, hence the perils that the translator must face during this exercise, especially in the field of law.

The singularity of the language of law is an obstacle to its translation. The translation of legal texts from English into French is more complicated because it is not only a translation operation, but also an interpretation operation. When translating law, it is futile to seek a perfect equivalence. One must know how to distance oneself enough from the original text to freely express the message to be rendered, as is the practice in Canada through co-drafting. Unlike the simple translator who interprets the meaning of the message of the original text before translating it and re-expressing it in the target text, for the lawyer, the meaning of the text of the law to be interpreted generally depends on the legislator's intention. The version that the court will retain is the one that most accurately expresses what appears to be the intended meaning.

INTERNATIONAL LAW - LITIGATION

29. African Commission on Human & Peoples' Rights, *Kevin Mgwanga Gumne et al v. Cameroon*, 26th activity report of the African Commission on Human and Peoples' Rights (ACHPR) submitted in accordance with article 54 of the African Charter on Human and People's Rights, EX.CL/529(XV), Annex 4 – Communication decided the 45th Ordinary Session, 13-27 May 2009.

The Complainants were Southern Cameroonian citizens who alleged a variety of human rights violations done by Cameroon, which occurred shortly after the French Cameroon's independence on January 1, 1960 and they were seeking the right to secede and form their own State. In 1961, the United Nations organized a plebiscite that allowed Southern Cameroonians to join Cameroon or Nigeria but not to form their own country. They voted to join Cameroon. Since that time, Southern Cameroonians have remained a separate and distinct people who speak English and not the predominate French. The complainants alleged that Southern Cameroonians were continually marginalized. They highlighted the unequal representation of Southern Cameroonians in government compared to the population statistics; 20% instead of 22% of the seats were allocated to Southern Cameroon in the National Assembly. They alleged that various economic enterprises and projects were relocated or located in Francophone Cameroon. They complained about the Francophones' control over their education system, significant judicial and police violations. Court proceedings were conducted in French without interpreters, and guilt was presumed upon arrest as is done in the civil law tradition. Also, they alleged that Business Laws passed by the State of Cameroon are a discrimination against the Anglophone South Cameroonian people by providing that businesses be registered in French, and by entering into a business harmonization treaty, the Organisation pour l'Harmonisation des Droits d'Affaires en Afrique (OHADA), which provided that business disputes were to be settled in French.

Southern Cameroonians wanted to engage the Government of Cameroon with constitutional reforms and they declared in 1994 that if no constitutional talks occurred, the independence movement would be revived. The Government failed to address their concerns and adopted a new Constitution in 1995 without public debate. This situation prompted the Anglophone people to conduct a signature referendum which revealed their call for secession. The Complainants further alleged systematic human rights violations by the Respondent State, which included arbitrary arrests, detentions, torture, punishment, maiming and killings of persons who have advocated for the self determination of Southern Cameroon. The Complainants allege that Articles 2, 3, 4, 5, 6, 7(1), 9, 10, 11, 12, 13, 17(1), 19, 20, 21, 22, 23(1), 24 of the African Charter have been violated and that the Republic of Cameroon has violated its general duty under in Article 26 of the African Charter to guarantee the independence of the judiciary.

The Commission found a violation of article 2 of the African Charter (the right to non-discrimination) on the basis of the State's refusal of the State to register companies created by Southern Cameroonians on account of language. It also found a violation of article 4 (the right to life) of the African Charter. the Commission found a violation of article 5 (freedom from torture and cruel, inhuman or degrading treatment) as police forces used torture, amputations and denial of medical treatment against alleged South Cameroonian terrorists. The Court found that even if the State was fighting terrorism, the actions were not justified. There was a violation of article 6 (right to liberty) because the State did not deny that some victims were arrested and detained for days and even months without trial. Article 7(1) which establishes the right to fair trial, was violated as well. Cameroon transferred all alleged civilian criminals from Southern Cameroon to military courts in Francophone Cameroon, yet the Commission found that civil courts within the jurisdiction of the alleged crimes were competent and that the transfer of the alleged criminals was a breach of the law. Furthermore, the State did not provide for interpreters to help the accused who were tried in a language (French) they did not understand. Failing to do that amounted to a violation of the right to a fair trial. As far as article 11 (the right to freedom of assembly) is concerned, the Commission found

a violation as the State used force to suppress citizens who were exercising their right to freedom of assembly.

The Commission found a violation of article 19 (equality of people) as the State relocated business enterprises from Anglophone Cameroon to Francophone Cameroon and this affected negatively the economic life of Southern Cameroon. The Commission also found a violation of article 26 which promotes the doctrine of separation of powers. The fact that the President of the Republic and the Ministry of Justice are the Chairperson and Vice Chairperson of the Higher Judicial Council is manifest proof that the judiciary is not independent.

The Commission noted that the Complainants did not mention article 1 of the African Charter among the provisions alleged to have been violated by the State of Cameroon. The Commission found that article 1 has also been violated because Cameroon, a State Party, failed to adopt adequate measures to give effect to the provisions of the African Charter.

The Commission found that article 3 (equality before the law) has not be violated because there was no evidence to prove that. There was no violation of articles 9,10 because the Complainants did not make any submissions. The Commission found no violation of articles 12 and 13 because there was not enough information to substantiate the infringement of their rights to freedom of movement and to participate in the State's political affairs. The Commission found no violation of article 17 (the right to education).

The Commission found no violation of Article 20 (right to self-determination). This right is a right of a people, which the Commission found to be of equal level to an individual right. The Court found that the South Cameroonian people were within the definition of "people" as they share many characteristics and affinities. More importantly, they "identify themselves as a people with a separate and distinct identity." While the right to self-determination is inalienable, it must be balanced with the need to protect territorial integrity. Using case law, the Court noted that to violate territorial integrity requires evidence of "oppression and domination" i.e., massive human rights violations including violations of Article 13.1. The Court found that the people of South Cameroon had not been subject to massive human rights violations (nor to violations of Article 13) sufficient to give rise to a right to exercise self-determination in the form of secession. The Commission believes that the Southern Cameroonians' grievances cannot be resolved through secession but through a comprehensive national dialogue.

The Commission found no violation of articles 21, 22, 23(1) and 24 either because the Complainants did not substantiate their allegations or the latter alone cannot be a basis for the finding of a violation.

The Commission therefore recommends that (a) the State of Cameroon should abolish all discriminatory practices against people of Northwest and Southwest Cameroon at all levels, stop the transfer of accused persons from Anglophone provinces for trial in the Francophone provinces, ensure that every accused persons are tried in the language they understand or alternatively the State of Cameroon should put interpreters at their disposal, locate national projects equitably throughout the entire country, pay compensation to companies situated in the Anglophone regions which suffered as a result of discriminatory treatment by banks, enter into constructive dialogue with the Complainants, reform the Higher Judicial Council to ensure that it is totally independent of the executive power; (b) the Complainants, and SCNC and SCAPO in particular, transform into political parties, abandon

secessionism and engage in constructive dialogue with the State of Cameroon on the Constitutional issues and grievances.

STATE FORMS (CENTRAL & SUBNATIONAL LAYERS): UNITARY, COMPOSITE, REGIONAL, FEDERAL, DEVOLUTION, INCLUDING ASYMMETRICAL

30. Brunetta Baldi, *Beyond the Federal-Unitary Dichotomy*, Working Paper 99-7, University of Bologna, September 1999.

The evolution of new political developments and institutional arrangements, has challenged the federal-unitary dichotomy, making the dichotomy useless for the purpose of classification. Consequently, the analysis and classification of multilevel systems of government have to move beyond this dichotomy and new criteria have to be developed, able to grasp new convergences and differences. This paper develops a classificatory scheme based on two analytical and conceptually separated dimensions which are federalism and decentralization. They are conceptualized not in terms of dichotomy but in those of degree.

On the one hand, federalism, the essence of which is non-centralism can develop by degree. The conditions for the guaranteed non-centralized distribution of powers, that are the constitutional allocation of power and territorial representation, are progressively built through a sequence of federal arrangements which develop over time. These arrangements can be developed constitutionally or paraconstitutionally through intergovernmental relations and party system. The constitutional or paraconstitutional variables can have a lower or higher center-contraining potential depending on how the federal principle is implemented. On the other hand, decentralization, in the absence of federalism, develops in system where the local-regional powers are determined and subject to the centre. Here the centre is not constrained, and the distribution of powers is not guaranteed, as it is the case in federalism. Decentralization can also be conceived in terms of varying degrees and the powers that are taken into consideration are the law-making power, the administrative power and the financial or fiscal power. These powers help to determine if a system is more or less decentralized.

In this paper, the author shows through a classificatory scheme that a centralistic unitary system can evolve to the point of being a federal system. The sub-units are first subject to the centre and over time, the center becomes more and more constrained by the emergence of the sub-units as centers. This process of federalization can develop by disaggregation or by integration. Also depending on the powers given in decentralization, regional systems might be as much decentralized as federations and in some policy sectors, federations can be as mush centralized as non-federal systems.

31. C. M. G. Himsworth, Devolution and Its Jurisdictional Asymmetries, The Modern Law Review, Vol. 70, No. 1, 2007, 31-58 pp. (Available via the *JPASS* Journal subscription service)

The devolution of legislative and executive powers to the different parts of the United Kingdom has meant that, because of the asymmetric arrangements made, there has been an increase in policy divergence from one part to another. Some of this has been intended, some unintended. Devolution has enhanced the capacity for difference and, more importantly, enhanced its democratic base. The territorial forms of administration of the country, which provided a degree of decentralisation, or at

least de-concentration of government in Scotland, Northern Ireland and Wales, were one part of the foundations of devolution. Another part of these foundations was the separate legal systems or jurisdictions of the United Kingdom. These jurisdictional divisions provide a further asymmetry to the devolutionary arrangements. Whilst, in Scotland and Northern Ireland, the jurisdictional boundaries are aligned with the governmental boundaries, this is not the case in Wales where they diverge because of the shared jurisdiction between England and Wales. The purpose of this article is to explore what may perhaps be identified as the four consequences for devolution of the jurisdictional divisions. First, the separateness or not of the jurisdiction within which powers are devolved affects the manner in which those powers, especially legislative powers, may be conferred. Secondly, it may affect whether the devolved powers should include responsibility for the institutions of the legal system and, above all, the courts. Thirdly, important consequences for the management of government under devolved conditions derive from the need for powers reserved to the central UK government to be implemented under the jurisdiction of courts whose own powers and procedures are not themselves reserved but fall within the competence of the devolved authorities. Finally, if these are instrumental consequences of the sharing of responsibilities under devolution, there may also be related 'rights' consequences for citizens.

When the actual process of devolving of legal systems competences is examined, it becomes apparent that to devolve responsibilities for courts and their procedures, including judicial review, is not at all the same as the devolution of competences in other policy areas. Legal systems are different and what their arrangements acknowledge is that devolution on the UK model does not produce a simple division between devolved and reserved competences. Because they fall under the sway of judges rather than the executive branch, they have an autonomy and dynamic which make them quite different from other sectors, whether devolved or not.

32. Charles Manga Fombad, *Constitutional Entrenchment of Decentralisation in Africa: An Overview of Trends and Tendencies*, Institute for International and Comparative Law in Africa Faculty of Law, University of Pretoria, South Africa, 2018.

Decentralisation, in a broad sense, refers to the dispersal of governmental authority and power away from the centre to lower levels of government or levels of administration. Generally, there are three types of decentralisation, namely, political, administrative and fiscal decentralisation; and within this typology, there are three forms of decentralisation: devolution, delegation and deconcentration. One may add to these forms, divestment or privatisation which is not, strictly speaking, decentralisation, since the transfer of powers is not between, but rather within the same level of government. The author notes that there is no pure or completely deconcentrated, delegates or devolves form of governance. It is a question of the degree to which actual and effective powers have been transferred from the centre to the subnational units and this is largely influenced by the motives behind the decentralisation. The objectives of decentralisation can be condensed into four themes: (1) the peace-making and state-building in fragile states, (2) the limitation of the abuse of power by centralised government, (3) enhancement of development by bringing government closer to the people, (3) the promotion of constitutionalism and democracy.

An important indicator of the depth of decentralisation, and therefore of its ability to achieve its goals, is the existence of and number of tiers of subnational governments and the protection given to these lower levels in the constitution. In Africa, the level of subnational-unit governance protection is moderate in many constitutions. However, the majority of Africa states have a low level of protection

of subnational-level governance. The level of the constitutionalisation of political decentralisation of subnational units is fairly low and does not really promote local self-governance. As far as the administrative decentralisation and fiscal decentralisation are concerned in African States, they vary from high levels to low levels in their constitutions.

The constitutional entrenchment of decentralisation enhances the prospects for the effective implementation and creates considerable scope for deepening democracy, constitutionalism and respect for the rule of law. This constitutional entrenchment is one of the major innovations that have emerged in post-1990 African constitutional design. It has many advantages: (1) it helps to ensure the institutional durability, certainty and predictability of the decentralisation system, (2) it ensures there is clarity in the roles to be played by the different levels of government, fostering good intergovernmental relations, open dialogue between the levels of government and the civil society, (3) it makes the implementation of decentralising provisions mandatory and opens the way for an action for violation of the constitution, (4) it can promote responsiveness, transparency and accountability, (5) it encourages informal structures for the participation of the civil society and foreign donors in governance. In short, decentralisation can help to build democracy from the bottom.

33. Malcolm M. Feeley, Aniket Kesari, *Federalism as Compared to What? Sorting out the Effects of Federalism, Unitary Systems, and Decentralization*, Jus Politicum Revue de droit politique, No. 17, 2017, 97-124 pp.

The paper identifies the distinctive nature of federalism and explores this system in comparative perspective and in theoretical context. When comparative studies of federalism are undertaken, they are almost always comparisons among federal systems. Almost no comparative research on federalism has focused on differences between federal and unitary systems. The objective is to rectify this imbalance by focusing on the comparison of federal with other types of systems, particularly unitary systems. The paper draws on the work of the few political scientists who have conducted a handful of studies that compare federal with unitary and other systems in order to determine how well federal systems fare. Those studies found out that unitary systems out-perform federal systems on almost all measures of government effectiveness and efficiency and citizen well-being. Re-analysing some of the data of those political scientists and other data sources and research designs, the paper also concludes that unitary systems fare better than federal system. It also distinguishes these two systems from the ideas of centralization and decentralization. Unitary systems can vary in the degree to which they are centralized or decentralized and federalism is totally independent from decentralization, even though it generally results in a fairly high level of decentralization.

In developing their theories of public finance, economists have used the term federalism interchangeably with decentralization. In terms of the power and reach of their « federal » economic theory, the distinction is unimportant. But for political scientists and constitutional scholars, the distinction is crucial. Economic theory shapes institutional designs that aim at specific or well-defined purposes. Some legal scholars have been too quick to appropriate the findings of economic theories of federalism. However, the point is that almost all these theories, whatever their intrinsic value, are actually theories of decentralization, and thus have little if anything to tell us about federalism.

34. Pierre de Montalivet, *l'État unitaire français et la décentralisation: L'hybridation des modèles territoriaux*, in Fundamentos, La Evolución de los Modelos Territoriales: Reformulación versus Ruptura, No. 10, 2018, pp. 129-154.

Gradually, doctrine has developed conceptual categories that are supposed to summarize the different forms of State: the centralised, decentralised, regional and federal unitary state. However, the evolution of certain States has led to a reconsideration of these categories and to the definition of their limits. This article therefore questions these concepts in the light of the evolution of the French State. France, which was once a centralised unitary state, has embarked on the path of decentralisation, becoming a decentralised unitary state. The State then transferred some of its powers to the various territorial authorities, in a progressive and continuous manner, as shown by the three acts of decentralisation that have punctuated the history of these transfers of powers since 1982. There are several reasons for this strong decentralisation movement, such as democratic logic, the disadvantages of centralisation, the permanence of local demands and, finally, the very first victory of the Left-wing in 1981. This movement has resulted in the democratisation of local authorities; we speak of local democracy, which is both representative and participatory. Decentralisation also consolidated the separation of powers between the state and local authorities and strengthened the promotion of the rights and freedoms of these authorities. It has also led to improved relations between citizens and local government.

The French State, although decentralised, remains unitary, with all the characteristics of a unitary State. Thus, there is no change in the form of the State, but a simple reformulation of the unitary State, which has become neither federal nor regional. This decentralization movement is, however, marked by a certain ambivalence. Some elements show that the State is tempted by a form of recentralization. These elements include: the permanence of the preponderance of the State, the limits of local democracy, and measures taken by the state that have the effect of reducing or suppressing the powers attributed to local authorities. In parallel with this temptation to recentralize, we can observe a politicisation of decentralization and therefore a partial regionalisation of the State. And with the case of New Caledonia, which benefits from a special status that has constitutional value, one wonders whether France is not moving towards federalism. All this leads to a relativisation of the traditional forms of State. We realise, and the observation would probably be the same for several other States, that the French territorial model is marked by hybridity and diversity. The important thing now is to distinguish between the principled distribution of powers and its territorial exceptions.

35. Vincent de Briant, *Contribution à l'étude des « arrangements fédératifs », de l'État fédéral à l'État unitaire décentralisé*, Journal : Fédéralisme Régionalisme, Vol. 9, No. 2, 2009.

Institutional federalism is the territorialised variant of the rule of law. For this reason, it cannot be reduced to the federal State, but can be present in the form of numerous "federative arrangements" in States or entities that confer or recognise "constitutional" rights on their members. However, it is important to appreciate the relativity of these rights, including in federal States. The "constituent units" are in fact only autonomous, which obliges them to cooperate (or co-operate) at the local level as well as the "central" level, or with the central level. Federalism, and the multiple arrangements that characterize it, is therefore both autonomy and cooperation, and not centralisation or decentralisation (or non-centralisation). Indeed, the more autonomy increases, the more the need to develop cooperation increases, independently of its administrative or political nature, which is most often determined in a purely gradualist manner. This does not prevent a distinction being made

between the federal State, the regional state and the decentralised unitary State. It also makes it possible to show that they are all distinct from the 'sovereign' State, which as such is less a State of law than a legal State.

REGIONAL AUTONOMY, SPECIAL STATUS REGIONS, ASYMMETRICAL DEVOLUTION INCLUDING IN UNITARY SYSTEMS

36. Alfred Stepan, Juan Linz, Yogendra Yadav, *Federacy: A Formula for Democratically Managing Multinational Societies in Unitary States*, in: 'Crafting State Nations: India and other Multinational Democracies', Alfred Stepan, Juan Linz, Yogendra Yadav, the John Hopkins University Press, 2011, pp. 201-256.

In a unitary State faced with a territorially concentrated minority community who desires greater autonomy and self-government, federalism and secession may not always be the solution to this political challenge. However, the problem still remains, and a solution must be found. The author's solution is the federacy formula which he considers to be the ideal type. This concept, as well as the practice, could be of great use, especially for managing multinational societies democratically. A federacy is a political administrative unit in an independent unitary State with exclusive power in certain areas, including some legislative power, constitutionally or quasi-constitutionally embedded, that cannot be changes unilaterally and whose inhabitants have full citizenship rights in the otherwise unitary State. Such an ideal type arrangement should satisfy five institutional requirements: (1) federal-like division of State and federacy powers and responsibilities, (2) quasi-constitutionally embedded political autonomy of the federacy that cannot be altered without substantial supermajorities on both the centre and on the federacy, (3) existence of dispute resolution procedures, (4) reciprocal representation between the unitary State and the federacy, (5) the federacy is part of an internationally recognized independent State. In addition to these five requirements, two additional and legitimate peace-facilitating features must be contained in the federacy arrangements: (a) role of international guarantors in the founding of the federacy, (b) the ability of the federacy to construct some opt-out arrangements of international treaties signed by the unitary State with the latter's agreement and help. Given the defining requirements, it is worth mentioning that federacy is a concept different from unitary States, asymmetrical federations, confederations and associated States. The Aland Islands, the Faroe Islands, the Greenland cases discussed in this article are concrete examples of how federacy arrangements can be set up and how successful they can be.

The author also explores other nations beyond Scandinavia that have experienced more conflictual situations than the three above-mentioned federacies. He analyses the case of Italy in the immediate aftermath of World War II with all the crises it was facing, the case of Portugal in 1974 when the Carnation Revolution broke out, the case of Corsica in France, the unitary State model and the case of Indonesia. Italy and Portugal succeeded in creating federacies, but that was not the case for Corsica in France. The author assumes that the decentralizing measures short of full federacy measures may be enough in the Corsican case. In the unitary State of Indonesia, a civil war-torn country where the separatists did not want to settle for anything less than independence, the federacy ideal type is finally what contributed to peace agreements between the government of Indonesia and Aceh. Federacies are a response to the problems of 'holding together' a unitary State while also responding to the claims of the minority community within that State.

37. Giancarlo Rolla, *The development of asymmetric regionalism and the principle of autonomy in the new constitutional systems: a comparative approach*, in: 'One Country, Two Systems, Three Legal Orders - Perspectives of Evolution', Jorge Costa Oliveira, Paulo Cardinal (eds). Springer, Berlin, 2009, pp. 461-481.

The development of asymmetric regionalism and the establishment of the principle of autonomy of territorial communities represent two elements of modern constitutional systems. This trend is innovative when compared to the previous federal experiences, given that the ongoing devolution processes reveal different characteristics with respect to the impulse that favoured federalization of States during the Nineteenth and the Twentieth centuries. The main characteristic of constitutional legal orders is to promote autonomy, differentiation, enhancement of uniformity.

Constitutional systems are now being arranged in accordance with the principle of autonomy. The concept of autonomy is defined by a series of distinctive elements: the acknowledgement of autonomy requires the existence of genuine power to configure the characteristics that shape a distinctive legal order, it calls for participation of autonomous subjects to the State's decision-making process it needs adequate financial resources, it compels efficient authority-intended safeguard measures. The principle of autonomy is put into practice and implemented by way of different methods and according to various characteristics. There are instances of widespread regionalisation across the entire State's territory or instances of regionalisation operating only in specific areas. There is also a territory-based regionalisation and an ethnicity and language-based regionalisation. In addition, there exists the uniform regionalisation and an asymmetric one. And the author states that economic globalization has greatly affected asymmetry. Instances of asymmetrical regionalisation are widespread. Asymmetrical is based on the ability of reaching a balance between the territorial communities' constitutional right to independence and the principle of equality and of solidarity. It should be noted that autonomy must develop within a unitary framework represented by constitutional principles and the general legal order, thus autonomous parties cannot disregard the State's entire legal and economic organization.

The author examined the autonomy of Macau in China and finds that the process undergone by Macau represents a hybrid, as it displays characteristics of both the federalizing process and of the devolution process, without however adhering to either of them entirely. It is an example of special and symmetric regionalism. Its autonomy is anchored in the Constitution, but it developed according to a special constitutional law (Basic law) and international and foreign sources of law. These sources of law bind and limit the sovereignty of the People's Republic of China.

38. Daniele Conversi, *Asymmetry in Quasi-federal and Unitary States*, in: Ethnopolitics, Vol. 6, No. 1, 2007, pp. 121-124.

In this article, the author shows by focussing on Spain as a quasi-federal State and Italy as a unitary State that asymmetric arrangements are more accommodative, durable and practical, having proved more flexible and effective in managing and preventing ethnic conflict in both settings. In post-Franco's Spain, the landmark event was the approval of the 1978 Constitution, the preliminary section of which describes Spain as a unitary state. However, its open character ultimately resulted in the emergence of a quasi-federal system. The operative premise is that social peace can only be achieved by accommodating minority aspirations. Asymmetry thus protects national minorities against centripetal trends.

Italy's case confirms that a State does not need to be federal in order to concede special rights to some regions particularly inclined to ethnic mobilization. Italy, which is a highly centralist State, has successfully used asymmetry to prevent ethnic radicalization. Its asymmetry is flexible, permitting power-sharing executive arrangements where they are needed. In fact, asymmetry has proved to be effective within unitary states insofar as they need to maintain a unitary framework, while allowing concessions to federalism and power-sharing demands.

39. Markku Suksi, *Sub-state solutions as expressions of self-determination*, Føroyskt Lógar Rit (Faroese Law Review), Vol. 3, No. 3, 2003, pp. 197-230.

The article suggests that self-determination can imply self-government both at the State and at the sub-State level. In so far as self-determination is created against the background of international law, it should also at a sub-State level produce an institutional arrangement which acquires a share in the totality of internal self-determination of the State in question. To this end, elaborate constitutional mechanisms are required for the creation of a devolved share of exclusive legislative powers in the sub-State entity, which may be a constituent state of a federation or an autonomous territory. In so far as the final solution is modelled against the background of self-determination it may be worth pointing out that self-determination seems to assume to assume peace. When a demand of self-determination by a State's entity does not lead to a voluntary grant of secession or independence by the State concerned, International law proposes other solutions to exercise the right of self-determination. The Friendly Relations Declaration of 1970 enumerates the options, which are either free association or integration on the one hand or emergence into any other political status freely chosen by a people on the other. The author reveals that emergence into any other political status, seems to lead into the creation of sub-State entities of different kind and this can be the expression of internal self-determination, in so far as it implies law-making powers at a sub-national level. ''Any other political status'' can cover all constitutional solutions ranging from a federation through various kinds of autonomy arrangements and arrangements of devolution to cultural autonomy. Emergence into any other political status is hence essentially a constitutional consideration and the development of the position of a sub-State entity is supposed to take place under the forms established in the constitution of the State. There must also be legal guarantees for the permanency of the arrangement so that no unilateral changes in the status of the sub-State entity can occur. This concept of self-determination, at the same time, secures the will of the entity by granting them some law-making powers and gives assurance to the State concerning its territorial integrity.

40. Bertus de Villiers, *Special regional autonomy in a unitary system – preliminary observations on the case of the Bangsomoro homeland in the Philippines*, Journal of Law and Politics in Africa, Asia and Latin America, Vol. 48, No. 2, 2015, pp. 205-226.

The region of Bangsomoro, situated within the island Mindanao, which in turn is part of the Philippines, has been experiencing one of the longest self-determination struggles in the world. A peace accord was entered into on 27 March 2014 with the aim of granting autonomous, asymmetrical powers to the Moro-community, Bangsomoro. To give practical effect to the peace accord, a statutory instrument, the Basic Law sets out in detail the institutions of governance, the allocation of powers, and related matters. The article places the Bangsomoro arrangement in context of international experiences with asymmetrical autonomy and makes recommendations about how certain aspects of the Basic Law can be improved. It focuses particularly on 5 aspects.

The first aspect concerns the conceptual clarity about some of the terms used in the settlement. The author finds that the Basic Law uses concepts that require further clarification. These concepts are among other the principle of subsidiarity, the principle of asymmetry, the allocation of powers and functions to the respective levels of government, particularly in regard to concurrent powers. These concepts need to be clarified so as to prevent confusion or conflict in the implementation process.

The second aspect discusses the demarcation of boundaries of Bangsomoro. The Basic law provides that Bangsomoro remains part of the territory of the Philippines and that any other contiguous area adjacent to Bangsomoro can request to be included in the autonomy arrangement. The Basic Law may, for a limited time, establish a basis for opt-in and opt-out before the boundaries of Bangsomoro are settled

In addition, the intergovernmental relations between Manila and Bangsomoro is still blurred. The Basic Law contains several references to the concept of intergovernmental relations, although it does not define what it meant by this concept. It should give a more detailed exposition of what the required standards of the two levels of government are.

Furthermore, the author examines the representation of Bangsomoro in national institutions, which he finds to be novel. On the one hand, there is no specific provision for Bangsomoro to receive separate representation in parliament, but account must be taken that a substantial number of members of parliament are elected from the Bangsomoro area. On the other hand, provision is made for representatives from Bangsomoro to be appointed in executive institutions, but the Basic Law does not determine how the central government is to exercise its discretion when appointments are made.

The last aspect covers the amendment of the Basic Law. The arrangements contained in the Basic Law for amending the powers and functions of Bangsomoro are unique and contain elements of a typical federal constitution albeit that the Philippines are not a federation and the powers of Bangsomoro are set out in a statute and not in the Constitution. The benchmark for amendments to the Basic law is unrealistically high, because the Basic Law is a very young constitutional instrument and lack of flexibility may cause it to be too rigid for growth and adaptation. Also, even minor amendments must be submitted to a referendum. Whereas, it may be more prudent to identify the core aspects of the Basic law for which plebiscite is requires, with all other amendments only requiring the recommendation of the Philippine Congress-Bangsomoro Parliament Forum and approval by the national parliament.

41. Sia Spiliopoulou Åkermark, *Internal Self-Determination and the Role of Territorial Autonomy as a Tool for the Resolution of Ethno-Political Disputes*, International Journal on Minority and Group Rights, Brill, Vol. 20, No. 1, 2013, pp. 5-25.

Since the end of the Cold War, autonomy arrangements have been increasingly perceived and used as tools for resolving ethno-political conflicts as well as part of the affirmation of indigenous claims and self-determination struggles. One important reason for this is that the all-or-nothing dichotomy of statehood and external self-determination seems to have sustained conflict at least as much as having resolved conflict. However, the theoretical underpinnings of territorial autonomy have not yet been elaborated in international law. While the Canadian Supreme Court started formulating some requirements of what it takes to have a “meaningful access to government” in the Reference re Secession of Quebec case, the Advisory Opinion of the International Court of Justice seems to pull international law back into the perennial discussion of secession, this time dubbed “remedial”.

Territorial autonomy as an institution is about more than the division of competences between centre and periphery; it is about creating comprehensive structural solutions and processes of representation, accountability and decision-making. International law needs thus to engage seriously with the conditions influencing the quality, stability and adaptability of territorial autonomy arrangements. Among those are issues of timing; responses to the traumas of conflict; the quality of democratic involvement and institutional design; as well as the influence of external actors.

42. Alexis Heraclides, *Partition, Autonomy, Secession: The Three Roads of Separatism*, Cahiers d'Etudes sur la Méditerranée Orientale et le Monde Turco-Iranien, No. 34, 2002, pp. 149-174.

In this paper three basic manifestations of separatism are examined, all three with important theoretical and practical consequences: partition (the "velvet divorce"), secession (the "confrontational divorce") and autonomy to which a special attention is paid. Autonomy and other forms of devolution are often considered with great reserve if not hostility by states. In an attempt to address state fears, devolution-autonomy is approached mainly (a) by attempting to set clear-cut criteria for its realisation in some instances, (b) by pointing out that the record for successful military rather than political solutions is increasingly bleak as far as states are concerned and (c) that the "slippery slope" effect, the well-known nightmare of States, though real is far from pervasive and that the main responsibility for its occurrence lays in fact more in the behaviour of reluctant central authorities and less on recalcitrant separatists. Finally the principle of self-determination, which is central to the whole question of partition, secession and autonomy, is revisited and various avenues of revision are pointed out in order to overcome the limitations of a self-determination confined only to freedom from colonialism (as it is the case today under international law).

43. Alexis Heraclides, *The Ending of Unending Conflicts: Separatist Wars*, Millennium Journal of International Studies, Vol. 26, No. 3, 1997, pp 679-707. (Available via the Sage Journals subscription service).

This paper addresses separatist wars since 1945 and finds that separatist or internal wars are more frequent and more violent than interstate wars and are almost intractable. It argues that unlike in civil wars as a whole where military victory ends war, negotiated settlements and compromises are more likely to end separatist wars. The statistics show that from 1978-1997, States have not been able to curb insurgencies and put an end to wars with military victories.

This paper outlines twelve factors that can contribute to conflict resolution: (1) the situation is militarily a no-win for both adversaries, (2) the situation is a military hurting stalemate for both sides, (3) the parties realize that they have more to gain and less to lose by a peace accord than by continuing fighting, (4) the warring sides are economically, militarily and morally exhausted, (5) there is some form of conflict transformation, such as leadership, political system change, (6) the more powerful side is prepared for talks and the intransigent party is on the verge of defeat with ebbing legitimacy, (7) one side loses crucial foreign military support or realises that it is on the verge of being left out in the cold by its supporters, (8) when the weaker party is actively supported by a powerful state which is not keen to incorporate the separatist entity, but instead pushes for a mediated settlement, (9) some form of mediation marks a breakthrough, (10) some form of coercive mediation is initiated, (11) a cease-fire is agreed upon, the warring groups are physically separated, and their mutual security dilemmas are alleviated by third parties, (12) a settlement addresses the fears of the separatist

leadership and a prestigious and meaningful role is in the offing in the prospective peace settlement, such as heading the regional government.

However, it has been noticed that peace agreements do not provide for sustainable solutions like military solutions because they are in most cases conditional and inconclusive. If the terms of the peace talks are not respected (in most instances by States), violence can spring up again. The conflict may therefore seem endless. The paper groups the main obstacles to arriving at a peace accord under four categories: (1) both sides in the conflict; (2) the state in question; (3) the separatist side; (4) other states with a stake in the conflict.

44. Von Ruth Lapidoth, *Elements of Stable Regional Autonomy Arrangements*, Centre for Applied Policy Research Working Paper, Ludwig-Maximilians University, Munich - Germany, August 2001.

This Working Paper examines the elements necessary to create and to maintain a stable regional autonomy arrangement within a particular state. It defines territorial autonomy as an arrangement aimed at granting the population of a sub-state unit a means by which it can express its distinct identity and run its own affairs in certain spheres while maintaining at the same time the integrity of the State which the region is part of. Drawing on both contemporary and historical examples from different continents, the author considers how autonomy is established, how it is put into practice, and how it may best be sustained over a longer period of time. Factors which may enhance the prospects of success are identified, the most important of which is a prevailing atmosphere of conciliation and goodwill.

In dealing with the concept of autonomy, it is important to distinguish it from other similar mechanisms which also serve for diffusion of powers, like federalism, decentralization self-government and associate statehood. Unlike autonomy which can be established by a treaty, a constitution or a statute, and where autonomous entities, in most cases, does not participate in the activities of the central authorities, a federation is usually established by a constitution and the federal entities play an important role in the central authorities. As far as decentralization is concerned, it involves a delegation of powers, whereas autonomy assumes a transfer of powers and these powers under a regime of decentralization are controlled and supervised by the central government. But the latter can interfere with acts of an autonomous entity only in extreme cases. Also, autonomy and self-government are very much similar in that a self-governed entity manages its own internal affairs by itself, with no external intervention. Despite the great similarity between the two concepts, self-government implies a considerable degree of self-rule, whereas autonomy is a flexible concept, its substance ranging from limited powers to very broad ones. Under the regime of associate Statehood which is characterized by recognition of the significant subordination of and delegation of competence by the associate to the principal but maintenance of the continuing international status of statehood of each component, the associate status is established with the consent of both the principal and associate. The latter is interested in the relationship in order to enhance its security and economic viability. The management of powers is agreed between the parties.

All the details of the regime of autonomy are open to negotiation between representatives of the central state and representatives of the autonomous region. An overriding issue in these negotiations is the division of powers between the central authorities and the autonomous entity. The author argues that defining the powers of an autonomous regime as clearly as possible at its establishment

is important for avoiding future disputes and misunderstandings. Four areas of powers have to be considered, namely: which powers are reserved for the central authorities, which are fully transferred to the autonomous entity, which can be exercised in parallel, and which can only be exercised jointly. The spheres that may be considered in deciding on the allocation of powers are: security, foreign relations, economic financial and monetary matters, water, energy, communication, transportation, environmental protection, cultural questions, social policy, the legal system and residual powers.

45. Brunetta Baldi, *Exploring Autonomism: Asymmetry and New Developments in Italian Regionalism*, Revista d'Estudis Autonòmics i Federals - Journal of Self-Government (REAF-JSG), No. 32, pp. 15-44, December 2020.

Autonomism, as a political phenomenon and, above all, as an institutional arrangement, is still bereft of solid theoretical foundations. It tends to be considered as equivalent to regionalism, and at times confused with federalism, or even secessionism. Without a doubt, these phenomena do have similarities and to some extent, they may overlap; however, there are also substantial differences among them.

The author begins by defining autonomism in relation to the more general phenomenon of regionalism, the former being a variant of the latter. Regionalism can be understood as an institutional arrangement or as a political ideology underlying the development of regionalist movement and parties. This political dimension of regionalism is embraced by autonomism as the mobilisation of a region characterised by ethno-cultural and/or economic diversity, demanding its own autonomy, and striving, individually, to express, defend and govern said diversity within the State whose integrity it does not challenge, unlike secessionism. Autonomism also possesses an institutional dimension relating to the granting of autonomy to mobilised regions within the State. Thus, there is a margin for negotiation, hence the asymmetry. The de jure asymmetry represents the most characteristic institutional aspect of autonomism. One can identify four types of asymmetry: asymmetry of competences, of relations with the State, in nation status and fiscal asymmetry.

It is equally important to distinguish autonomism from federalism. While autonomism aims at obtaining self-rule for the individual region pushing for such, federalism attempts to balance regional self-rule with the shared rule of the entire State. Autonomism features not only a less guaranteed, but also a more open, indeterminate distribution of power whereas in federalism, the distribution of power is stable, insofar as it is determined constitutionally.

In Italy, the idea of establishing a regional State, animated the political debate following the First World War, as among others a means to meet the claims of a number of autonomist movements emerging throughout the country. However, the Fascist regime put paid to any attempted recognition of regional autonomy and it was not until the fall of the regime that further opportunities arose for the establishment of some kind of regional autonomy. In 1948, a regional State with an asymmetric nature was created and five among the fifteen ordinary regions received a special status. This original asymmetry raised doubts about the ordinary regions which, compared to the special regions, appeared to be of less importance. As a result, the gap with the special regions grew and this contributed to the crisis of the original regions. Such weakness bordering on failure, quickly called for reforms to be made. During the course of 1990s, following the collapse of the so-called First Republic, the idea of a federal transformation of the country was brought to the political debate and an autonomist drive began to emerge on the part of some regions. In 2001, the constitutional revision

opened the way to Italian federalisation whilst not excluding future autonomist developments. Unfortunately, the federal reforms remained unfulfilled and favourable conditions emerged for the re-launching of Italian regionalism. Some regions even moved decisively in the direction of differentiated regionalism. Nevertheless, an autonomist renewal for Italian regionalism is accompanied by a number of critical issues which are in relation to the abandonment of a federal vision which on the contrary could guarantee territorial integration, the political and cultural conditions required in order to effectively accomplish differentiated regionalism. Thus, an autonomist renewal implies a radical transformation of Italian regionalism and raises the question of whether citizens are actually prepared to accept a considerable regional differentiation of public policies.

46. Francesco Palermo, *Asymmetries in the Italian regional system and their role model*, in: 'Federalism and Constitutional Law: The Italian Contribution to Comparative Regionalism', Erika Arban, Giuseppe Martinico, and Francesco Palermo (eds), Routledge, Taylor & Francis Group, 2021, pp. 136-151.

The Italian regional system is not often referred to in comparative federal studies among others because the country lacks the federal spirit and consequently, it is not listed among federal or quasi-federal countries. However, some institutional features of the Italian regional system are particularly relevant to the theory and practice of comparative federalism and this is the case of asymmetry at various levels, making Italy one of the most differentiated countries in the world. Being a deeply diverse country, the drafters of the 1948 constitution were fully aware of the deep divides and the constitution provided for an innovative experiment with regionalization. Five – out of twenty – regions were provided with a special status, but this innovation created a huge gap between the special regions and the ordinary regions. The gap was narrowed after the 1999 and 2001 major constitutional amendments that increased the autonomy of ordinary regions. Nevertheless, profound differences remain between the two types of regions, particularly with the varied implementation of four institutional elements which are: the rank of the statute of autonomy, the extent of legislative and administrative powers, the financial regime, and the intergovernmental relations. It should be noted that asymmetry is a feature characteristic not only of the relationship between special and ordinary regions, but also among the special regions themselves.

Big differences equally exist among the ordinary regions, with very different degrees of development of self-government, of economic performance, and of political as well as administrative capacity. The 2001 constitution allows for further differentiation on the principle of negotiation among ordinary regions, but no agreement has yet been reached. The negotiation process has always been and still is confronted with enormous resistance as several specialists consider de jure differentiation among ordinary regions a threat to national unity and solidarity as the equalizing role of the State would be reduced. In any case, asymmetry has been from the outset and continues to be the main feature of Italian regionalism, the only one making it possible to accommodate such a great deal of diversity within a common framework, in a difficult and never stable search for a new balance.

47. Ronald Watts, *La Décentralisation asymmétrique : fonctionnelle ou dysfonctionnelle*, Papier présenté à l'Association Internationale de Science Politique, Québec, Canada, Aout 2000.

Over the past decade, the international community has paid increasing attention to asymmetric forms of decentralisation in unitary, federal and confederal political regimes, rather than symmetric forms. In contrast to symmetry, which refers to uniformity in the relations of member states within a regime,

asymmetry refers to a situation where the diversity of a larger society is politically heard through the governments of the constituent units, which "are endowed, at various levels, with autonomy and responsibilities. There are two broad categories of asymmetry in a regime: politically motivated asymmetry and capacity-motivated asymmetry of constituent units, and asymmetry can be de jure or de facto. It is de jure when it is constitutionally established and de facto when it emanates from underlying conditions that affect the autonomy, power and influence of a regime's constituent units. Asymmetry can be seen in several aspects: variations between (1) magnitudes of constituent units, which affect their relative influence and power, (2) autonomy, jurisdiction and relative powers of units, (3) autonomy, financial resources and relative fiscal powers of constituent units, (4) basis on which member States are represented in federal institutions, (5) representation of member states in processes of intergovernmental relations, (6) differential nature and influence of regional political parties on the political system, (7) implementation of a constitutional bill of rights, (8) relative power in the formal process of constitutional amendment, and (9) form and structure of the constitution of member States.

Whether de facto or de jure, asymmetry may refer, in a federal or decentralised system, to one or more full member States, which constitute the system, or to some peripheral units, which are the territories with a lower level of autonomy that can be administered at the centre, or units with a lesser relationship to the system, such as associated States or federative entities. The asymmetry can also be permanent or transitory. In either case, it is generally seen as a necessary step towards a consensus on participation within a broader political regime. In examining asymmetry in States as to whether it is functional or dysfunctional, the author notes that asymmetry has proved advantageous in some countries, such as Canada, Belgium, Germany, and its recognition has been a means of reconciling the great differences between constituent units, which might not otherwise have been possible. But in other cases, asymmetry contributes to inter-regional conflict within the federal system rather than alleviating it, and asymmetric decentralisation is a panacea and de jure asymmetry has limits beyond which extreme asymmetry may be dysfunctional in a federal or decentralised system.

48. Conseil de l'Europe, *Expériences positives des régions autonomes comme source d'inspiration dans la résolution de conflits en Europe*, Rapport, Doc. No. 9824, Juin 2003.

Most of today's conflicts are no longer inter-State, but rather intra-State conflicts between States and minority groups claiming their rights to preserve their identities. These conflicts are due, on the one hand, to territorial changes and the formation of new States following the two world wars and the collapse of the former communist system and, on the other hand, to the necessary adaptation of the concept of the nation-state, which previously considered national sovereignty and cultural homogeneity to be paramount.

Autonomy, as applied in States governed by the rule of law, is a source of inspiration for resolving internal political conflicts. Autonomy allows a minority group in a State to enjoy its rights while providing the State with guarantees of unity, sovereignty and territorial integrity. An autonomous status can be applied in different systems of political organisation and involves the attribution of specific powers to the autonomous entity, in the form of a transfer of powers or a division of competences, while remaining subject to the authority of the State. In order to ensure the sustainability of autonomy, the report recommends that a number of basic parameters be respected, including the establishment of a legal framework for the status of autonomy, a clear division of powers

and the establishment of democratically elected legislative and executive bodies at the level of the autonomous region.

49. Élisabeth A. Vallet, *L'Autonomie Corse Face à l'Indivisibilité de la République*, French Politics, Culture & Society, Vol. 22, No. 3, 2004, pp. 51-75. (Available via the JPASS Journal subscription service).

Corsica joined France in the eighteenth century, but regionalism in Corsica only really emerged in the mid-1960s. The success of the regionalists lies in the fact that they managed to impose their demands. However, the first law on decentralisation in 1982 altered the balance of the regionalist formations and the dissolution of the Front de Libération Nationale de la Corse (FLNC), born in 1976, provoked movements in the region. This led to an outbreak of violence and terrorist acts in Corsica. In order to pacify the island, the French government launched a process of negotiations to redefine the status of Corsica. As a result, the law of 22 January 2002 reinforces the specificity of Corsica within the French Republic and grants it a normative power.

Despite this recognition of Corsica's specificity, its scope remains limited. It is therefore necessary to approach the question of the institutional reform of Corsica from another angle. In the light of the evolution of the status of Corsica, some commentators feared a change in the political form of the State by reiterating the resolutely unitary and indivisible State structure. However, with the development of autonomy, the principle of indivisibility seems to be progressively diluted by taking diversity into account. In order to integrate this diversity into the unitary and indivisible structure of the State, the revision of the constitutional law of 28 March 2003 enshrined the decentralised structure of the State, without however calling into question the unity of the Nation. For Corsica, this constitutional revision of 2003 constitutionalises notions (such as financial autonomy, the principle of subsidiarity, local participation) which constitute the pillars of a more advanced free administration. In fact, the increased autonomy of Corsica is paradoxically presented as the salvation of the undivided Republic.

50. Fathi Zerari, *L'évaluation de l'autonomie des collectivités territoriales dans les systèmes juridiques d'inspiration française*, Les Annales de droit [en ligne], No. 12, 2018, pp. 211-227.

In this article, the author analyses the limits and elements of the autonomy of local authorities based on the French model and highlights the benchmarks for evaluating this autonomy in French-inspired legal systems.

Territorial authorities, with various names such as local decentralisation, local administration, local government, are considered as a way of being of the State. Based on the principle of free administration or autonomy, territorial entities are as old as human groupings, but as a legal phenomenon they are relatively recent realities. In France, for example, the term autonomy was not used until the early 2000s. These entities, which have become permanent components of political systems, need to be delimited according to the form adopted by the State, since decentralisation has generated different forms of States (unitary, regional, autonomous, federal). Depending on the traditions and times, the territorial authority is sometimes conceived as a corollary of national sovereignty and thus implies an evolved mode of territorial organisation, sometimes confined to a minimal mode close to administrative deconcentration.

Between these two limits, the author examines the essential benchmarks of local self-government that serve as vectors between the two (minimalist and advanced) conceptions of local government, based on the French model. Thus, it determines the constitutional vector of territorial autonomy, the legal vector that relates to the nature and scope of the general decision-making power recognised to local authorities and finally, the financial vector that concretises the autonomy of territorial authorities. The author recalls that the notion of territorial authorities suggests four elements: a legal personality under public law, its own affairs, a general decision-making power and State control.

51. André Roux and Guy Scoffoni, *Autonomie Régionale et Formes de l'Etat*, in 'Renouveau du droit constitutionnel, Mélanges en l'honneur de Louis Favoreu', Dalloz, 2007, pp. 895-913.

The development of regional autonomies has disrupted the demarcation between the different State forms. The boundaries between them are less and less certain, and increasingly permeable, to the point where one might question the usefulness of a classification that has become obsolete. This development has led to the introduction, in States that are still formally 'unitary' (decentralised, such as France, or regional, such as Spain or Italy), of a system for distributing powers between the state and the regional authorities that is quite comparable to that found in federal states (such as Germany). The regional authorities have substantive powers guaranteed by the Constitution and legislative powers to regulate local affairs, while the State has powers of attribution. The relationship between the regional authorities and the state is resolved not by applying the principle of hierarchy, but by applying the principle of competence.

However, regardless of the developments in regional autonomy, the boundary between the unitary State and the federal State remains distinct because regional authorities, unlike federated states, have no constituent power and no representation, allowing them to participate in State decisions. The institutions of regionalism and federalism were born in different historical contexts and developments have led to some convergences but not to total assimilation.

PEACE PROCESSES AND PEACE NEGOTIATIONS

52. Laura Wise, *Territorial Power-Sharing and Inclusion in Peace Processes*, Political Settlements Research Program, PA-X Report: Power-Sharing Series, 2018.

Territorial power sharing can be understood as the sharing and delegation of the central government's powers and responsibilities to geographical units. In deeply divided societies experiencing conflict, territorial power sharing is often understood to provide a form of group accommodation, particularly in societies fragmented along ethnic, national, religious, linguistic, or cultural markers. So, territorial power-sharing is often seen as a mode of compromise in secessionist conflicts and its degrees vary across different country-contexts, with different powers devolved and retained by the centre. There are various forms of territorial power sharing which are: federalism, confederalism, autonomy, devolution and decentralization.

In including territorial power-sharing in peace processes, there are critical decisions that need to be considered: (1) how will territory be divided? (2) what will be the process for internal boundary demarcation? (3) what will be the institutional framework for sub-state entities? (4) how will responsibilities be divided between different levels of governance? (5) how will disputes between the central and other levels of government be resolved? (6) will the arrangements be placed in a new

articulation of the nature of the state? (7) how will any new 'minority-majority' dynamics be anticipated and provided for? (8) when, where and how is territorial power-sharing agreed?

Territorial power-sharing is nevertheless a contested approach, and one which can be difficult to implement. Despite being a means to meet minority demands for territorial self-governance without ceding sovereignty to grant groups degrees of control over issues important to them or to improve access to decision making for territorially disparate communities, territorial power-sharing can actually contribute to, rather than manage, conflict in divided societies or may be merely ineffective in addressing a conflict because the State can still maintain sovereignty over the contested area, and in practice, can control whether the movement of power away from the centre is actually implemented. In order to navigate the challenges raised by negotiating territorial power-sharing in peace processes, mediators have used some various and creative ways: (a) understanding the political dynamics of the inclusion goals of territorial reconfiguration, (b) responding to de-facto pre-existing regional entities, (c) using symbolic terminology to creatively name processes, (d) using sequencing to achieve incremental agreement, (e) implementing techniques of formalized unsettlement to promote plurinationalism.

53. Nicole Töpperwien, *Peace Mediation Essentials: Decentralization, Special Territorial Autonomy, and Peace Negotiations*, Centre for Security Studies & SwissPeace, Switzerland, November 2010.

This paper looks at the place of decentralization and special territorial autonomy in peace negotiations. Decentralization and special autonomy can be useful means of conflict transformation and can establish forms of government that are in compliance with international law standards on minority protection and self-determination. However, these means contain some risks. They provide for separate rule, but not for improvement of shared rule as both majority and minority groups may be reluctant to share power at the center. The majority may want to maintain control, while the minority may deny extra legitimacy to central institutions. Decentralization and special autonomy can lead to new frustrations, especially if powers are not matched with resources and may not all alone be sufficient to provide sustainable peace. Additional inclusive mechanisms may be required to supplement these concepts.

Decentralization and special autonomy can be useful measures to address root causes and to create a common vision that offers possibilities for the self-determination of groups on a territorial basis, while at the same time not questioning the unitary character of the state. The paper presents the requirements for the implementation of these measures and the key options on how to address them in peace processes. Among others, it presents options for creating decentralized and special autonomous units, options for the distribution of powers, options for providing resources to those different units, options regulating the relations between center and decentralized units and options for entrenchment. Finally, it also contains key questions for mediators to consider before, during and after a peace process.

RESOLVING SEPARATIST CONFLICTS

54. Lieutenant Colonel Joko P. Putranto (Indonesian Army), *Aceh conflict resolution: a lesson learned and the future of Aceh*, Thesis submitted for the Master of Science in Defence Analysis, US Naval Postgraduate School, June 2009.

The Aceh conflict has been one of the longest running in Asia, when the memorandum of understanding between the Government of Indonesia (GoI) and GAM (Free Aceh Movement) was

finally signed on August 15, 2005, in Helsinki, Finland. The agreement brought an end to the nearly thirty years of bloody armed conflict that claimed 15.000 lives, displaced tens of thousands and impacted the whole country economically, as well as politically. In the early process, many expressed their skepticism with the government in handling this conflict, due to the failure of previous two peace settlements. Many believed that GAM had to be eliminated by employing military operations. The military options, however, proved ineffective to eliminate rebellion. Instead, the military abuses and resource exploitation have only increased the GAM's public support. The Helsinki peace agreement appears to have a better chance to put an end to the separatist conflict in Aceh. This win-win solution settlement has so far worked well. However, lessons learned from this conflict will be beneficial for any government, and the military, in handling conflicts that might take us into the future. These lessons indicate that the policies of the government toward Aceh were often damaged by the broken promises of the central government in implementing the Special Autonomy law and the continuing State repression. Indeed, instead of military options, Helsinki's peace agreement is the best solution for the future of Aceh.

55. Kolby Hanson, *Live and Let Live: Explaining Long-Term Truces in Separatist Conflicts*, Journal of International Peacekeeping, 2020, pp. 1-23. (Available via the Taylor & Francis Online Journal service).

Policymakers and scholars generally assume that, unlike in interstate wars, in civil conflicts opposing forces cannot simply "agree to disagree"; in order to stop fighting, one side must collapse, disarm, or concede. This paper argues that this assumption largely holds for center-seeking conflicts, but not for separatist conflicts. If rebels are seeking to overthrow or influence the central government, restoring a credible peace becomes extremely challenging once conflict is underway. By contrast, because separatist conflicts involve more geographically contained fighting and more limited ambitions, rebels and states can more easily transition into cooperation. In such conflicts, governments can easily establish de facto borders with rebels, or at least to agree on clear limits on rebel activity. To test this argument on whether long-term truces are effective at ending separatist conflicts, an original worldwide dataset of long-term truces in civil conflicts (1989-2015) was created. That is, cases in which governments and rebels transition from open fighting to peaceful cooperation for an extended period without either side collapsing, disarming, or conceding. Overall, the author finds strong support for the main contention: while such truces are exceedingly rare in center-seeking conflicts, they have happened in more than one-third of separatist conflicts since 1989. Even where rebels are strong or have little public support, separatist aims open space for containment and cooperation. These findings help fill in the empirical gaps between war and peace and document cases of peaceful cooperation without disarmament or political reform. Long-term truces are important because they undercut the common assumption that opposing forces in a civil conflict cannot restore a durable peace while both maintaining armed forces. Unlike center-seeking conflicts, separatist conflicts have proven more difficult to be resolved by peace agreement. So rather than disarming rebels in exchange for permanent reforms, governments and rebels can commit to coexist, remaining armed and leaving the door open for negotiation.

56. Colonel Wade Stothart, *Nation-States, Separatist Movements and Autonomy Arrangements: between war and independence – what options does the nation-state have?*, Australian Defence College, Centre for Defence and Strategic Studies, 2014.

The paper addresses the complex and usually volatile issue of separatist movements in nation-states, examining the options other than war or independence. It explores the origin and function of the nation-state. The nation-state, the term 'State' being different from 'nation', has its foundation in the Treaty of Westphalia of 1648 and the two key outcomes of this treaty were territoriality and autonomy. The paper notes that the nation-state as it operates in the current international system is undergoing considerable change, and the state now shares or has to share with non-state actors many responsibilities that were previously their sole domain. Some states have struggled to maintain their legitimacy in the face of these external forces. Self-determination movements, involving minority movements pushing for independence, have tipped some states into violence or have resulted in the creation of states that are fragile, failing or failed, consequently posing a threat to others. It is essential for the maintenance of international order that viable states persist as the primary source of political association and in that regard, the author finds that autonomy is a viable option for non-states actors in certain circumstances and that power-sharing arrangements, in particular, potentially balance the competing need of states to preserve their territorial integrity and sovereignty, while meeting the minority movements' demands.

57. Clive Baldwin, Chris Chapman and Zoë Gray, *Minority Rights: The Key to Conflict Prevention,* Minority Rights Group International, 2007.

The number of violent conflicts in the world that have a major underlying cause involving ethnicity, culture or language are extremely high. The vast majority of these types of conflicts concern minority groups. They seem to last the longest and often cause the most bitterness and damage. And yet, despite minority issues being at the heart of many conflicts, the priority given by those who seek to end and prevent conflict to understanding minorities and minority rights is low. Minority rights fall essentially into four main categories: existence, identity, discrimination and participation. Violent conflict involving minorities appears to come in two main forms: attacks on minorities usually carried out by government agents or by third parties and minorities resorting to violence when the feel they are under threat and have nothing to lose from violence because they have suffered years of discrimination and denial of its identity, identity being a key factor in most conflicts involving minorities. Some aspects of identity that are important to minorities and that are often at stake in situations of violent conflict are language, education and religion.

Conflicts can also break out when minorities are denied a say in political affairs. In such exclusion, a minority may see secession as the only route. Mechanisms to facilitate the involvement of minorities in political affairs can be set up at the national or local level. At the national level, some electoral and reserved seats arrangements can be made. Political parties based on minority identity may also provide a vehicle for minority voices to be heard. At the regional level, arrangements for political decision-making to be taken can be set up, such as autonomy or federalism. Other arrangements that can ensure broad-based participation are consociationalism and integrative power-sharing.

Other key features in conflicts are the development and economic exclusion affecting minorities. Planned or intentionally discriminatory economic and development policies can deepen inequalities, entrench power and economic hierarchies, and stimulate or aggravate inter-ethnic tensions leading

to conflict. A solution is to work systematically towards improving the situation of the excluded, and to entrench inclusion economically, socially and politically. One economic aspect that is also at the heart of many minorities conflicts is land. Land is both a cause of attacks on minorities and also an issue for which minorities may often take up arms after they lost their land. Solutions to land disputes include compensation for loss of land and restitution of illegally taken land.

Furthermore, where peoples and individuals feel a strong sense of injustice, violence is much more likely. There appear to be two essential elements of injustice and conflict. First, there is an historic or ongoing massive violation of minority rights. Second, is the lack of any effective mechanism to address the injustice, that is to consider, evaluate it and provide a remedy. A functioning justice system is vital to address the underlying problems experienced by minorities. Most importantly the justice system needs to address the issues such as crime, discrimination, land and property, especially after a violent conflict.

The authors note there needs to be much greater emphasis on averting conflicts and attention needs to be paid to minority rights. They conclude the report with a checklist for assessing if a country is at risk of violent conflict involving ethnic, religious or linguistic minorities and they give some recommendations to governments and others in position of authority and recommendations on how to manage a post ethnic or religious conflict situation.

58. Erika Forsberg, *Do Ethnic Dominoes Fall? Evaluating Domino Effects of Granting Territorial Concessions to Separatist Groups*, International Studies Quarterly, Vol. 57, No. 2, 2013, pp. 329-340. (Available via the JPASS Journal subscription service)

There is a widespread and largely undisputed concern that granting autonomy or separate statehood to ethnic groups may set in motion a "domino effect." The claim is that the success of one separatist movement may in turn trigger other ethnic groups to also promote separate statehood violently, threatening to disintegrate the whole country and spread across borders. Another example of the fear of domino effects is the policy promoted by the African Union (AU) and its predecessor Organization of African Unity (OAU), which consistently prioritizes the territorial integrity of states rather than the promotion of peoples' right to self-determination. Previous research has not generated any firm conclusions regarding if, when, and why domino effects operate. The study addresses this research gap by empirically examining domino effects between ethnic groups within and across country borders. It suggests that domino effects may be generated by two distinct processes. The first is a general inspiration process suggesting that the accommodation of one group's separatist aspirations may encourage other groups to pursue similar demands. This general inspiration process may work both domestically. The second explanation of domino effects builds on a more specific logic. If a government grants autonomy or independent statehood to one of the state's ethnic groups, this can be viewed by other ethnic groups in the state as a signal that it may yield to their demands as well.

The study combined two data sets, the Ethnic Power Relations (EPR) data set and the Implementation of Pacts (IMPACT) data set. The empirical analysis finds no evidence of domino effects operating. Ethnic groups are not more predisposed to pursuing violent conflict when other ethnic groups are successful in the pursuit of their separatist demands. In previous research, such effects have been suggested to operate, and there is empirical evidence for such effects operating between ethnic groups in the same country. This study, however, fails to replicate this conclusion. The findings of this study are thus also relevant to policymakers who are afraid of precedent-setting. The principle of

territorial integrity of States promoted by AU built on the assertion that Africa, with its artificially created borders that badly correspond to the ethnic nations, are more susceptible to separatist conflict. However, the empirical record on the contrary shows that Africa has relatively fewer territorial conflicts than the rest of the world. This paper suggests that there is no need for policymakers to fear widespread domino effects when considering whether or not to accommodate territorial demands by an ethnic group involved in conflict. Autonomy may in fact be a useful conflict management strategy.

59. Yash Ghai, *Autonomy as a Strategy for Diffusing Conflict*, in: 'International Conflict Resolution After the Cold War', Paul C. Stern & Daniel Druckman (eds), The National Academies Press, 2000, pp. 483-530.

In recent years several conflicts, especially ethnic ones, have centered on demands for, and resistance to, autonomy. Equally, several conflicts have been resolved by the concession of autonomy. In some instances, the form of dispute has been transformed by an offer of autonomy. In other cases, an agreement in principle to consider autonomy has been sufficient to get the parties to the negotiating forum. The international community has attached particular importance to autonomy as a conflict management device and has brought pressure on governments to concede, and on minorities to accept, autonomy as a suitable compromise. Autonomy is a device to allow ethnic or other groups that claim a distinct identity to exercise direct control over affairs of special concern to them while allowing the larger entity to exercise those powers that cover common interests. It can be granted under different legal forms and best known is federalism, but the federal model may be regarded as unnecessary if the need is to accommodate only one or two minority groups. In such situations, regional autonomy (or the devolution of power) is the appropriate option.

Developments in autonomy regimes significantly change the nature and organization of States. Therein lies both the positive and the negative aspects of autonomy. The positive aspect is that it helps in restructuring the State to accommodate cultural and ethnic diversity. The negative aspect is that majority groups resist modification to the State structure. Though the legal basis of autonomy is unclear, it rests on three principal sources: minority rights; indigenous peoples' rights; and, more controversially, the right to self-determination. The record of the success of autonomy to resolve or manage ethnic conflicts is mixed. There are many instances when its use has defused tensions, reorganized the State, and provided the basis for the existence of ethnic groups. There are also numerous occasions when autonomy has been unacceptable to a party in conflict. Governments sometimes fear that it would consolidate ethnic solidarity and divisiveness. The concept upsets long-held views of the sacredness of territory and the unity of the motherland. Also, there are shared fears the autonomy will be merely a springboard to secession.

The mixed picture of success and the denial of autonomy suggests that it is difficult to say a priori that autonomy is an effective device, so it is necessary to examine circumstances in which autonomy is likely to be negotiated and in which it is likely to be successful and the consequences of the denial of autonomy. Ethnicity raises complex problems of social harmony, identity, security, and equity, while autonomy itself seeks to balance various, sometimes conflicting, considerations. Success must be judged with reference to the purposes of autonomy, the primary purpose being to ensure a significant measure of self-government to a group, acknowledge its identity, promote diversity, and facilitate harmonious, or at least conflict-free relations, with other communities and the central government. The motivating factor is to bring a dispute to an end and to maintain the unity of the state. From war-

torn countries' experiences, autonomy arrangements, appropriately arrived at and operated, can defuse and make more peaceful identity-based conflicts in states. The author makes propositions about circumstances when the concession of autonomy is likely: (1) the prospects of establishing autonomy arrangements are strongest when the state undergoes a regime change; (2) Autonomy arrangements are likely to be established if the international community becomes involved in conflict resolution; (3) they are most likely to succeed in states that have established traditions of democracy and the rule of law; (4) Autonomy has a better chance of success if the autonomous area is small, has limited resources, and is marginal to the state; (5) Autonomy is easier to concede and is likely to succeed when there is no dispute about sovereignty; (6) Autonomy is more likely to be negotiated and to succeed if there are several ethnic groups rather than two; (7) Autonomy is more likely to be conceded and to succeed in being conceded and in operation where it is not explicitly based on ethnicity.

The author also makes propositions about actions that can increase the likelihood that an autonomy arrangement will succeed: (1) autonomy arrangements that have been negotiated in a democratic and participatory way have better chances of success than those that in effect are imposed; (2) systems that provide for consultation and mechanisms for renegotiation are more likely to succeed; (3) successful arrangements are likely to have built in flexibility to deal with an evolving situation; (4) Successful arrangements are likely to have built in flexibility to deal with an evolving situation; (5) a careful design of institutional structures is essential for the success of autonomy.

Furthermore, propositions about the social and political consequences of autonomy arrangements are made. Asymmetry is the direct consequence of autonomy arrangements. It acknowledges the unevenness of diversities. It opens up additional possibilities of awarding recognition to specific groups whose needs or capacities may be different from other groups. As a matter of fact, autonomy does not promote secession; true autonomy prevents it.

60. William Zartman, *Ripeness: The Hurting Stalemate and Beyond*, in: 'International Conflict Resolution After the Cold War', Paul C. Stern & Daniel Druckman (eds), The National Academies Press, 2000, pp. 225-250.

There are essentially two approaches to the study and practice of negotiation. One, of the longest standing, holds that the key to a successful resolution of conflict lies in the substance of the proposals for a solution. Parties resolve their conflict by finding an acceptable agreement. The other holds that the key to successful conflict resolution lies in the timing (or the ripe moment) of efforts for resolution. Parties resolve their conflict only when they are ready to do so—when alternative means of achieving a satisfactory result are blocked and the parties find themselves in an uncomfortable and costly predicament. At that point they grab on to proposals that usually have been in the air for a long time and that only now appear attractive. The concept of a ripe moment centers on the parties' perception of a mutually hurting stalemate, optimally associated with an impeding, past or recently avoided catastrophe. The catastrophe provides a deadline or a lesson indicating that pain can be sharply increased if something is not done about it immediately. Another element necessary for a ripe moment is the perception of a way out. The third element is the presence of a valid spokesman for each side.

The theory of ripeness raises some intriguing problems. One complication with the notion of a hurting stalemate arises when increased pain increases resistance rather than reducing it. Thus, under some

conditions, a mutually hurting stalemate does not create an opening for negotiation but makes it more difficult. This resistant reaction can stem from four elements: perseverance, agent escalation, true belief or ideological cultures. Another drawback about the notion of a hurting stalemate is its dependence on conflict. It means, on the one hand, that preemptive conflict resolution and preventive diplomacy are unpromising, since ripeness is hard to achieve so far ahead. On the other hand, it means that to ripen a conflict one must raise the level of conflict until a stalemate is reached and then further until it begins to hurt—and even then work toward a perception of an impending catastrophe as well. In addition, the theory of ripeness only addresses the opening of negotiations and there are rare examples where ripeness covered the entire process and led to a conclusion of negotiations. Thus, while a mutually hurting stalemate is the necessary, but also an insufficient condition for negotiations to begin, during the process the negotiators must provide the prospects for a more attractive future to pull them out of their conflict.

It is important to mention that though ripeness is an entry door to negotiations, its absence should not hinder conflict resolution researches. As a matter of fact, the absence of ripeness helps to identify obstacles and suggests ways of handling them and managing the problem until resolution becomes possible. Thus, two policies are indicated when the moment is not ripe: positioning and ripening. More work needs to be done on ways in which unripe situations can be turned ripe by third parties so that negotiations and mediation can begin.

61. Abdulkader H. Sinno, *Armed groups' organizational structure and their strategic options*, International Review of the Red Cross, Vol. 93, No. 882, June 2011, pp. 311-332.

Ethnic groups, social classes, peoples, civilizations, religions, and nations do not engage in conflict or strategic interaction; organizations do. The organizational structures of armed groups, whether they develop by accident or by design, affect their strategic choices during the conflict and their ability to enter peace agreements. Some organizations are shaped by pre-existing societal ties while others are developed by political entrepreneurs to maximize their organization's probability of success or to achieve personal gains in areas where societal structures are weak. The author identifies six basic organizational structures: centralized, decentralized, networked, patron–client, multiple, and fragmented. The way that power is distributed within the structure creates incentives that affect how members perform their operations, and the availability of a safe haven affects whether they can achieve the levels of performance their organizational structure permits. The organization's control of a territorial safe haven, is very important because each organization in conflict must perform most critical operations better than the competition, to have a good chance of winning. When an organization, especially a centralized one, does not have a safe haven, it is very vulnerable because its activities can be frequently interrupted by rivals. This makes peace less attractive to their opponents and explains in part why long-lasting peace agreements between such groups and their opponents are rare. On the contrary, a non-centralized organisation has a poor chance of survival when it has a safe haven and when it does not have, it has a good chance of survival.

The organizational structure has a great impact on strategic choices. A certain structure can limit the strategic options available to a movement; make the adoption of a certain strategy more or less credible to the organization's opponents, sponsors, and supporters; limit the ability of the organization to resist its rivals' strategies; and provide additional incentives to adopt some strategies. Depending on the structure's organization, it can adopt an accommodationist or a conflictual strategy, the divide and conquer, strategy, the hearts and minds strategy and the co-option strategy. The author

notes that decentralized structures are generally incapable of taking the strategic initiative but can effectively resist complex strategies, meanwhile centralized structures generally can take the strategic initiative and execute complex strategies but are less able to counter them.

SPECIFIC ANALYTICS ON CAMEROON: HISTORICAL AND CONFLICT PERSPECTIVES

62. Simon M. Weldehaimanot, *The ACHPR in the Case of Southern Cameroons*, in: SUR International Journal on Human Rights, Connectas Human Rights, Vol. 9, No.16, June 2012, pp. 84-107.

Human rights treaty monitoring bodies have contributed to the process of norm specification beyond human rights treaties. Yet in some instances, these bodies have avoided complex principles that desperately need elaboration. On the right of self-determination, vital in Africa, the ACHPR had two relevant cases: Katanga (disposed in less than one page) and Southern Cameroons, which has obscured the important contribution of Katanga by failing to distinguish internal from external self-determination. Consequently, the ACHPR set the standard for internal self-determination too high by using the standard for secession and has made this right almost unavailable for "peoples" (the main claimants in the Southern Cameroons case). It did so by subjecting the nature of self-determination to majoritarian democracy and as a result, soft recommendations that lack specificity were given. The author reveals that the ACHPR erred in holding that that the current political regime (unitary state) and constitution of Cameroon do not violate the right to self-determination of the people of Southern Cameroons and that there was violation of that right when the move from the federal (the former system of Cameroon) to the unitary form of government occurred. The author finds that the ACHPR would have been right in inviting Cameroon, the respondent State, to return to the federal constitutional order of 1961. By failing to do so, the ACHPR may as well have contributed to the belief that the right of self-determination is realized not in a court of reason or diplomatic quarters but when claimants go to the bush and amass power.

63. Nicodemus Fru Awasom, *Anglo-Saxonism and Gallicism in Nation Building in Africa: The Case of Bilingual Cameroon and the Senegambia Confederation in Historical and Contemporary Perspective*, Afrika Zamani, Annual Journal of African History, Issue 11-12, 2003-2004, pp. 86-118.

This article is a comparative study of the impact of the colonial presence in nation building in Africa. The author argues that the colonial presence created identity markers and mindsets which sometimes facilitated but most of the time complicated the nation-building endeavours of African statesmen. The inherited Anglo-Saxon values and Gallic legacies in bilingual Cameroon on the one hand, and Senegal and The Gambia, which is located inside its belly, on the other hand, pose problems in different ways. In the case of Cameroon, the Anglo-French partition of the territory, which was originally a German protectorate, was transcended by the political elite of the two territories to achieve a reunified sovereign state in 1961 owing to a common German colonial past that generated a historical memory of one Cameroon. But Anglophone-Francophone differences in postcolonial Cameroon pose nation-building problems. In the case of Senegal and The Gambia, the British recommended close union between the two states for purposes of economic viability. But the colonially inherited values of the two states supplanted their common African ethnic bonds and militated against political integration.

Thus, in both Cameroon and the Sene-Gambia, English and French colonial values constitute identity markers that pose a great challenge to nation building.

64. Frank M. Stark, *Federalism in Cameroon: The Shadow and the Reality*, Canadian Journal of African Studies / Revue Canadienne des Études Africaines, Vol. 10, No. 3, 1976, pp. 423-442. (Available via the JPASS Journal subscription service).

When the Federal Republic of Cameroon officially became the United Republic of Cameroon on June 2, 1972, it marked the end of a highly centralized federalism. However, although the name and the outward structure of government changed, little revolutionary change took place and there was little to no opposition to the event among West Cameroonians. To understand why federalism was easily conceded especially by the Anglophone minority leaders, the author examines the kind of political relationship that federalism in Cameroon actually was. The author gives a brief historical account from the birth till the end of federalism. The outlined events and circumstances suggest that federalism was an empty symbol of reunification from its inception and that President Ahidjo ultimately intended to end it.

The West Cameroon elite who arranged "federation" were badly advised, had little experience or education, and were confused by the early arrangements for independence. President Ahidjo on the other hand had the legal advantage because of the absolute necessity of the Southern Cameroons to join the Republic after the plebiscite in 1961. He had tactical superiority in his argument that a new constitution was not necessary since the Republic of Cameroon was already independent and this gave him the superiority to arbitrate what changes he would accept. He also had the skill and patience to make federalism irrelevant to the West Cameroonian elite through the single party system, and higher salaries for federal civil servants. He played West Cameroonian political factions off against each other. He eliminated from positions of power those West Cameroonians who might hold views different from his own. Federalism was primarily an "elite" symbol and concept. The president attempted to suppress its popular appeal as can be noted in his speech in Buea in 1966 and his success in eliminating its appeal to the West Cameroon "elite" was an important reason Federalism died a quiet death.

65. Rodrigue Ngando Sandje, *III.2 – Le statut spécial des régions anglophones du Cameroun : Chronique d'une exigence de l'Assemblée Générale des nations Unies*, Juridis Periodique No. 123, Juillet-Août-Septembre 2020.

After the First World War, Cameroon, one of Germany's possessions in the war, was placed under international administration. One part of the country was administered by France and the other part by the United Kingdom. On 1st January 1960, Cameroon under French trusteeship gained independence and on 1st September 1961, British Cameroon gained independence by joining French Cameroon. Thus, it can be noted that English-speaking Cameroon did not experience an exclusive independence, because as soon as it was free from the British administration, it became part of the Cameroonian entity. In 1961, the reunification of Cameroon was achieved in the form of a federal State. This political union was intended to preserve the Anglophone specificity. Unfortunately, in 1972, when the federation was dissolved in favour of the creation of a unitary State, no debate on national specificities was undertaken, and no measures were taken to ensure the long-term promotion of the Anglophone specificity within the Cameroonian entity. What was to be the fate of this part of Cameroon, now that it found itself in a new form of State that obviously did not take its specificity into account? This is how the Anglophone question was born.

This Anglophone issue, which is still of interest to this day, was the subject of the great national dialogue initiated by the President of the Republic in 2019. The major recommendation of this dialogue is to grant the North-West and South-West regions a special status in accordance with Article 62(2) of the Constitution of Cameroon, which stipulates that the law may take into consideration the specificities of certain regions with regard to their organisation and functioning. However, the author notes that this article, instead of solving the Anglophone problem, rather pushes it back. Indeed, the special status that should in principle be enshrined in the constitution according to Principle VII of UN General Assembly Resolution 1541, is reduced to the threshold of an ordinary law. Furthermore, this article tends to reduce the special status of the English-speaking regions, the requirements of which are provided for in Principle VIII of Resolution 1541, to the framework of territorial decentralisation. This is specified in Article 3(2) of the General Code of Decentralised Local Authorities. However, these requirements do not accommodate the idea of transfer, but rather the distribution of competences and a retreat of the State. As a result, the special status is analysed as a vehicle for full autonomy, if not quasi-independence. In Cameroon, however, the special status of the English-speaking regions is only a group of words and does not carry all the attributes attached to the regime of special statutes, which attributes call for the technique of experimental laws.

66. Bertrand-Raymond Guimdo D., *Les bases constitutionnelles de la décentralisation au Cameroun (Contribution à l'étude de l'émergence d'un droit constitutionnel des collectivités territoriales décentralisées)*, Revue générale de droit, Vol. 29, No. 1, 1998, pp. 79-100.

18 January 1996 was an important date in Cameroon at the institutional level. It marks the advent of a 'new Constitution', following a fundamental reform of the Constitution of 2 June 1972. One of the original features of this reform is the consecration of the 'constitutional bases' of territorial decentralisation. This was reflected in the institution of decentralised territorial authorities with constitutional status, namely the municipality and the region. It also consisted in recognising that these communities have a legal personality, administrative and financial autonomy and a free administration by elected councils. Finally, this consecration consisted in the constitutional development of the region at the organic level, in organising its protection, and in making the Senate the structure of representation, at the State level, of the decentralised territorial authorities.

However, this reform did not result in total decentralisation. Thus, the Constituent Act of 18 January 1996 sets the limits. Some of these are linked to the form of the State, which is a decentralised unitary State and not a regional State, let alone a federal State. The others relate to the importance of the constitutional prerogatives recognised to the organs of the State, namely the Parliament, the President of the Republic and the representative of the State at the level of the region, within the framework of the establishment and functioning of the decentralised territorial authorities. In spite of everything, it is undeniable that the Constituent Act of 18 January 1996 introduced into Cameroonian public law a constitutional right of decentralised local authorities. For this decentralisation to be effective, the Cameroonian population must be involved, because it is through the establishment of real decentralisation that Cameroon will be able to become truly democratic and that Cameroonians will be involved without any ulterior motive in building their country.

67. Pierre Fabien Nkot, *Le référendum du 20 mai 1972 au Cameroun : analyse de quelques tendances de la doctrine*, Revue : les Cahiers de droit, Vol. 40, No. 3, 1999, pp. 665-690.

On the initiative of Mr Ahmadou Ahidjo, then President of the Republic of Cameroon, the Cameroonian people voted in a referendum on 20 May 1972 to change from a federal to a unitary State. Considered by the doctrine to have constituted nothing less than a 'civil coup d'État', this referendum is, today, at the root of the main threat of Cameroon's implosion. This article therefore focuses on assessing the legal basis of this referendum through a reading of Cameroonian doctrine. A careful examination of most of the works on the subject indicates that it was more a question of elaborating on the nature and legal qualification of the act carried out by President Ahidjo in 1972, rather than on the regularity of the referendum in question. As a result, there are two competing theses: the dominant thesis according to which the 1972 referendum was a constitutional revision, and the minority thesis according to which the 1972 referendum was the writing of a new constitution.

On the one hand, the protagonists of the dominant thesis, while agreeing on the nature of the operation to revise the Constitution of 1 September 1961, which took the form of the 1972 referendum, disagree on whether or not this operation was in conformity with the 1961 Constitution. Three main trends are thus perceptible: (1) the constitutional revision was lawful, (2) the revision was allegedly organised in violation of the provisions of the Constitution then in force, (3) the revision was more or less lawful.

On the other hand, the minority thesis, whose sole protagonist is Professor Maurice Kamto, maintains that the Constitution of 2 June 1972 appears to be the work of an original constituent power, acting ex nihilo, and not that of a derivative constituent power drawing its competence from an existing constitutional text, in this case the Constitution of 1 September 1961. For him, beyond a constitutional revision, it was the writing of a new constitution, and the establishment of a new legal order which is considered as the civil coup d'État of 1972 executed by President Ahmadou Ahidjo. However, the author of this article notes that the president's revolutionary power, although he had illegally gained original jurisdiction, was legal because he was powerful enough to impose his will socially, and as Guy Héraud says, it is the strength of power that leads to its 'legality', for it alone allows this social authority to establish a socially effective normative order. Consequently, the new legal order that he implemented was valid, as was the Constitution of 2 June 1972. It should be noted, however, that beyond the legal critique, the political significance is not excluded, notwithstanding the overwhelming and positive participation of the populations of the former British Cameroons in the referendum, there is an Anglophone problem arising from it, which is a potential focus of internal tension.

68. Jean Njoya, *La constitutionnalisation des droits de minorités au Cameroun : Usages politiques du droit et phobie du séparatisme*, Journal of Law and Politics in Africa, Asia and Latin America, Vol. 34, No. 1, Quartal 2001, pp. 24-47. (Available via the JPASS Journal subscription service).

Because its originality stems from the bilingualism inherited from the French and English colonial administrations, Cameroon quickly experienced conviviality problems between Anglophones and Francophones in all domains. The Cameroonian constituent then had to find a centralist option that was more and more capable of stifling the crystallisation of divisions between the two communities. To achieve this end, there were successively the Constitutions of 1st September 1961, 2 June 1972 and 18 January 1996. The author reveals that the constitutional act of 1st September 1961 was the illusion of taking into account the bi-communal identity. In fact, the unusual character of Cameroonian

federalism was based essentially on the overly centralist nature of the State and the establishment of unicameralism, although the competences between the central power and the federated States were relatively consistent with classical federalism. The federalism of 1961 already announced the warning signs of the unitary State that was to be established in 1972 through the Constitution of 2 June 1972. But before the creation of this unitary State, it was necessary to condition the political atmosphere, which resulted in the promotion of the unified party and the creation of the law of 10 November 1969, which revised the constitution by means of a referendum. These legal and political preludes inevitably led to the formation of the unitary State, which was decreed in 1972. However, opinions seem to be divided as to the legal nature of the constitutional revision of 2 June 1972 and that of 18 January 1996. For the author of this article, it was the institutionalisation of constitutional fraud that consolidated the Anglophone-Francophone divide. According to him, the constitutional reform of 18 January 1996 implies for (1) the stifling of separatism which was achieved through a positioning strategy of the Anglophone leaders and (2) the legal framing of new social cleavages: minorities, non-natives, natives.

69. P.F. Gonidec, *Les Institutions Politiques de la République Fédérale du Cameroun / THE POLITICALINSTITUTIONS OF THE FEDERAL REPUBLIC OF CAMEROON*, Journal: Civilisations, Vol. 11, No. 4, 1961, pp. 370-400.

The author studies the political institutions of the Cameroonian State, taking into account the fact that the State now has a federal structure. In this article, he analyses the institutions of the federated communities and in another publication, he analyses the institutions of the federal state. The federated states were called Eastern Cameroon for the former French Cameroon and Western Cameroon for the former English Cameroon.

On the one hand, the political institutions of Eastern Cameroon have their source in two texts: the federal constitution and the law on the organisation of public powers. The federal constitution implicitly enshrines the principle of the separation of powers, one of the consequences of which is the existence of two organs of power: the Legislative Assembly and the Government. Cameroon has adopted the unicameral system and unicephalism. The Constitution also stipulates that executive power is transferred to the federal state and legislative power is exercised by the Assembly. However, there are actually two kinds of legislation. Parliamentary legislation and government legislation. The separation of powers therefore extends more as a separation of organs than as a separation of functions. Parliamentary legislation is the will of the constituents to limit the powers of Parliament for the benefit of the Government. With regard to government legislation, the Government must consult the Head of State if it takes measures that may affect the life of the federation. As for the executive power, the Prime Minister is responsible for directing the administration and execution of laws and their promulgation is attributed to the Head of State. In addition to the Legislative Assembly and the Government, there are also non-political forces that have a direct influence on the functioning of the institutions. These include tribalism, chieftaincies, religions, trade unionism and youth (especially students). In addition to these forces, there are also political parties whose system is, however, influenced by the state of the various forces mentioned above.

On the other hand, studying the political institutions of West Cameroon involves analysing the evolution of this part of the country and then analysing the political institutions themselves. West Cameroon did not have an independent political life because it was attached to Nigeria. It was separated into two parts: the northern part which is now part of Nigeria and the southern part which is now part of East Cameroon and which is the subject of this study. The actual West Cameroon does

not have its own constitution. Its constitutional system was derived from the Nigerian constitution. However, since constitutional autonomy is almost unattainable, given the provisions contained in the federal constitution, the constitutional system is the result of both the orders in council and the federal constitution. Unlike East Cameroon, which has a unicameral system, West Cameroon keeps its assembly of traditional chiefs, in addition to the lower house, which will have the same characteristics as the East Cameroon Assembly. The Assembly of Traditional Leaders has certain legislative powers as determined by the Federal Constitution. As far as the non-political forces in East Cameroon are concerned, they are the same as in West Cameroon, with the exception of some specifities such as the intellectual elites who are rarer than in French-speaking Cameroon.

70. P.F. Gonidec, *Les Institutions Politiques de la République Fédérale du Cameroun / THE POLITICAL INSTITUTIONS OF THE FEDERAL REPUBLIC OF CAMEROON*, Journal: Civilisations, Vol 12, No. 1, 1961, pp. 13-26.

The first part of this article, related to the Federated States of the Republic of Cameroon, was published in the previous issue (Vol. 11, No. 4). In this publication, the author studies the federal institutions created by the Constitution of 14 August 1961. This Constitution is a revision of the 4 March 1960 Constitution of the State of Cameroon and its fundamental principles are taken from the 1960 Constitution. However, the constituent authority did not explicitly define the rights and freedoms of citizens in the 1961 Constitution, but provided for a system to ensure the primacy of the Constitution. The Constitution provides for 3 kinds of organs (1) the President of the Republic assisted by a Vice-President and Ministers and he is both Head of State and Head of Government. He is the exclusive holder of executive power, as the Vice-President and the ministers are only his assistants, (2) a National Assembly, which is composed of a number of parliamentarians proportional to its population, and (3) a Federal Court of Justice.

The existence of a federal State raises the issue of the distribution of powers between itself and the federated States even before the problem of the distribution of functions between the federal authorities arises. The distribution of powers between itself and the federated States is a crucial problem because, depending on how it is solved, federalism is real or it is only a wall intended to hide a decentralised unitary state. In terms of international competences, the federal State has the monopoly, which does not pose a real problem. As for internal competences, the principle is the autonomy of the States. They are competent in all matters that are not expressly reserved to the federal authorities, and these areas are so numerous that those reserved to the States are very limited. Concerning the distribution of functions between the federal authorities, the legislative function belongs primarily to the Federal National Assembly. The executive function belongs in its fullness to the President, the Vice-President being his assistant only and the ministers under his sole responsibility. At the international level, he exercises all powers and at the national level, he is the head of the Administration. The judicial function is exercised by the Federal Court of Justice. Regarding the courts of the States, it plays the role of a jurisdictional court and at the federal level it is an administrative court, an arbitration court and a constitutional court.

As a rule, the relationship between the executive and the parliament is balanced. The President is not accountable to the Assembly, nor can he dissolve it. However, this balance can be jeopardized to the benefit of the parliament in the sense that although he cannot dissolve the Assembly, he can exert pressure on it in several ways.

71. **Manassé Aboya Endong, *Le Parlementarisme sous Tutelle de l'Etat Fédéral (19611972-): une Construction Politique par le Droit de l'Etat Unitaire du Cameroun*, Revue française de droit constitutionnel, Vol. 1, No. 97, 2014, pp. 1-29.**

The end of the colonial powers' arbitration has led to the paralysis of parliamentary regimes, yet the latter need a guardian or an arbitrator in order to develop and take root. Trusteeship can thus be seen as a constant feature of Cameroonian parliamentarianism. In 1960, the parliamentary regime was placed under the authority of the President of the Republic of Cameroon. However, this resolution departs from the classical model of parliamentarianism. In reality, it is a rationalised parliamentary regime under the supervision of the federal State and the single party. The political communities that make up the federal State have relinquished some of their powers to the Federation, provided they participate in the constitution of the federal State bodies and in the conduct of federal public affairs. The competences of the federal authorities listed in the Constitution were too extensive, while those of the federated authorities were residual. This unequal division of powers between the federated States and the federal State led to the latter exercising a strong supervision over the functioning of the powers and administration of the federated States.

The Constitution of Cameroon, particularly in its articles 5 and 6, attributed to the federal State considerable powers, some of which were immediate, others progressive, thereby reducing the autonomy of the federated states whose powers were not defined in detail. In fact, the federal State had the power to extend its jurisdiction indefinitely, of its own accord and through its own organs. Its administration benefited from the legislation, but also from the practice, a status that allowed it to have a stranglehold not only on the administration of the federated States but also on their local authorities. The constitution placed the federated governments under the supervision of the Head of State, which was, to say the least, restrictive, insofar as the Head of State had a determining role in their formation, as well as in their resignation. This supervision did not weaken the federated States, it destroyed them. This was the beginning of the process of transition from a federal State to a centralised unitary state.

DIFFERENCES BETWEEN ANGLO-SAXON AND FRENCH EDUCATION

72. **P. Broadfoot, M. Osborn, C. Planel and K. Sharpe. *Promoting Quality in Learning: Does England Have the Answer?* London: Cassell, 2000.**

This article is an examination of the education system in England as compared with neighbouring countries, such as France. A sample of 800 children aged 9 to 11, half from each country, formed the basis of the research. The research showed that English and French pupils' attitudes towards school and work differed. Whilst English pupils regarded work as a collaborative effort and recognized the important social role it played in their current lives, French pupils saw school work as an individual pursuit involving cognitive skills, and regarded schooling as preparation for their future careers. The study also identified distinct differences in the way teachers organized learning. The French classroom was on the whole a lot more teacher-focused, and children tended to work individually on the same task. In contrast, English pupils were observed conducting a variety of tasks simultaneously, encouraged to talk to each other and tended to receive teacher attention in groups.

The educational systems underwent some national reforms and the analysis of national policy and local conditions showed that underlying national attitudes and traditions were, to a certain extent,

resistant to change. In England, despite reforms which brought more control to the centre, the English system continued to be characterized by individuality and diversity. In France, despite attempts to create more diversity, the system remained a centralized, bureaucratic structure.

English pupils found school more difficult than their French counterparts and had a more holistic and broad perception of work. They included social and physical skills in their descriptions of work. They believed their teacher valued above all good behaviour and affective learning, rather than achieving good results, that is cognitive learning. On the other hand, French pupils defines work as mainly cognitive skills. As far as they are concerned, teachers should make them work hard and focus on their academic progress. They have a greater sense of pride in their country and aspects of citizenships were more overtly taught in French schools than in English schools at the time of this study. Since this study was published citizenship has been formally introduced into the curriculum at all levels of the English school system.

73. Denis Meuret, Marie Duru-Bellat, *English and French Modes of Regulation of the Education System: a comparison*, Journal of Comparative Education, Taylor & Francis (Routledge), 2003, Vol. 39, No. 4, pp.463-477.

This paper describes English and French modes of regulation of the educational system, stressing the contract between them. England uses a system of regulation by outcomes, while France uses a system of regulation by process. The authors examine more contemporary features of reforms enacted in recent decades. Thirty years ago, the English and French educational systems were considered as opposite as possible. The French system The French system, driven from the Centre, was devoted to teaching a strong, academically oriented national curriculum. French teachers were proud to teach every pupil the same way, whatever their social or cultural background. Meanwhile, the English system, driven from Local Educational Authorities, was devoted to the personal and social development of children. English teachers considered their main professional responsibility to 'start building up closeness to the child, and to care about his self-esteem and self-confidence. To a large extent, reforms which have been implemented in the last 30 years in both countries have made the two systems converge. As a result, a large number of teachers in both countries have felt, for opposite reasons, that their professional dignity was being attacked. In England, the system became academically-focused and a more centralized one and teachers felt that they were losing their autonomy regarding the objectives of teaching. In France, the National Curriculum was made more flexible, more concern for social development was introduced, adaptation to the children's needs was advocated. Teachers felt they were being turned into social workers and parents had more opportunity than before to express their advice on school life. But surprisingly, the autonomy of schools has increased far more in England than in France.

It should also be noted that in France, some new policies are explicitly designed as experimental, and their generalization subordinated to a positive evaluation. This seems to indicate that the ministry is giving itself adequate tools for a centralized management of educational policies, which also occurs in England. Teachers in England complain about the contradiction between autonomy and accountability, holding that they are told how to teach by the regulation of process and the Ministry sometimes accept that the teachers who do not want to implement them may be allowed not to do so. In France, these contradictions, along with the fact that parents' capacity to influence schools has been only slightly increased may lead to frustrations which will be difficult to fix. Thus, the authors

think that France is facing more fundamental revisions than England if it is to make its educational system more understandable and legitimate.

74. Marilyn Osborn & Patricia Broadfoot, *A Lesson in Progress? Primary Classrooms Observed in England and France*, Source: Oxford Review of Education, Vol. 18, No. 1, 1992, pp. 3-15.

This article draws upon a comparative study of primary school teachers in England and France carried out shortly before the implementation of the National and its assessment in English schools. The aim was to ascertain in a systematic fashion to what extent it is true to say that particular institutional systems, together with the cultural traditions from which they derive, represent a major influence on teaching practices and on the conceptions which teachers have of their roles and responsibilities. responsibilities. A central concern was to explore teachers' conceptions of their professional responsibility in two very different national contexts, in France, a high centralised education system with programmes of study and attainment laid down for all children and in England a highly decentralised system with apparently much greater autonomy for teachers in matters of curriculum and pedagogy.

As far as pedagogy is concerned, many primary classrooms in France seemed to be characterized by an emphasis on the product rather than the process of learning. Neatness and attractive, well set-out exercise books and impressive pieces of finished work were highly valued. In addition, almost all the French classrooms observed were more or less totally dependent on teacher control for maintaining works In England, more stress was laid on the learning process and less on the finished product. There were also relatively few signs of direct teacher control and the teachers showed less sensitivity to pupils' self-confidence and self-esteem than their English counterparts who showed what might be thought of as outstanding or strong sensitivity to pupils' feelings.

Co-operative work with other teachers and discussion of work amongst colleagues was also considerably more commonly found in England where staffrooms formed the focal point of a common school 'culture of collaboration' which was lacking altogether in most French schools. It may be said that a number of the factors which research suggests to be positive features in teaching, such as teacher warmth, sensitivity to pupils, and emphasis on pupils' positive achievements, and working towards pupils' achieving self- control and autonomy were all more often observed in England than in France. However, these features which would appear to most English teachers as desirable, seemed sometimes to be achieved at the expense of an orderly calm classroom and perhaps of a good working environment. The authors have reported more evidence in England of pupils' avoiding work; of teachers' not being aware of what was going on in the class as a whole; and more evidence of teacher anxiety and tension than in France. it is clear from the way in which teachers in the two countries define their 'professional responsibility' that their ideologies about teaching are dramatically different and that the national context of the two educational systems plays an important part.

75. Robin Alexander, *Dichotomous pedagogies and the promise of comparative research*, Paper presented at the Annual Meeting of the American Educational Research Association (New Orleans, LA, April 1-5, 2002).

The author defines pedagogy as the discourse which attends the act of teaching and teaching is a practical and observable act. Pedagogy evokes grander questions of culture, structure, agency, policy, control and can also be considered as a relay for the relations of class, gender, religion, region and above all power. At classroom level, the research offered three 'levels' of data and analysis, state,

school and classroom. These differences can be grouped within six constellations of pedagogical values, or versions of teaching, which are: Teaching as transmission, teaching as induction, teaching as negotiation (democratic pedagogy), teaching as facilitation (developmental pedagogy), teaching as acceleration and teaching as technology. Buttressing these specifically pedagogical versions are three primordial values: individualism, community and collectivism, which are concerned with that most fundamental human question, the relationship of humans to each other and to the communities and societies they inhabit.

The author adds that as the six versions of teaching and the three primordial values emerged from data collected in England, France, India, Russia and the United States, a comparable study in other countries might well yield additional versions of teaching, and weaken still further the hegemony of Anglo-American pedagogical dichotomies. Educational ideas and practices reflect a long process of accretion and sedimentation, or hybridisation, and the past (and its tensions and contradictions) is always observable within the present, like in the contemporary American primary education. In contrast, most of the lessons observed in France and Russia displayed somewhat greater clarity of purpose, procedural coherence and above all consistency in message. While comparing countries' versions of teaching, the author specifies that it is a mistake to presume that one can wrench a policy or practice from its context of values and transplant it as it stands; or that one can change teaching without attending to the values underpinning the practice which one seek to transform.

76. Marilyn Osborn, *Être élève en Angleterre et en France*, Revue internationale d'éducation de Sèvres, No. 50, April 2009, pp. 87-98.

This article is a comparative study conducted as part of a series of international surveys in France and England over two decades. In England, a strong local autonomy tradition, associative and religious intervention and differentiated school provision have promoted an individualised, child-centred pedagogy. On the other hand, in France, education has been organised according to the republican ideal that the State has a duty to provide universal education which ensures equal opportunities for all. The French system is based on the notion of citizenship and the promotion of national values and social solidarity.

These differences in national cultural traditions are reflected in the organisation and practices that characterize the two education systems. In England, the system tries to promote both cognitive or academic and affective or social personal development goals and emphasizes differentiation and individualisation. In terms of the students' experience in this country, although they do not like the school environment, they affirm that their teachers are keen to see them express their personal ideas and treat them as individuals. Teachers even go so far as to look after the social and emotional needs of students. In France, however, the emphasis is mainly on the academic rather than the emotional purpose of education. Students in this country report a school experience that lacks a personal and social dimension, mentioning a distant and relatively formal classroom, a relationship with the teacher excessively oriented towards cognitive objectives. They see school instrumentally as a means of obtaining diplomas and securing a future career, and the role of teachers stops at the school's gates.

It should be noted, however, that the difficulties of maintaining a balance between student status and social identity are greatest in the English system, whose culture is marked by the greatest fragmentation and differentiation between schools. The way in which classroom practices are defined by government policy in England has changed completely over the last twenty years, as a result of

constant reform. It might change further, moving towards the French model, which is itself close to that of Belgium, Italy, Spain and Portugal. This research highlights the importance of understanding the cultural and social context in which teaching and learning takes place and of teachers' increasing awareness of the 'contextualised' nature of their beliefs and practices

77. Raveaud Maroussia, *Minorités, ethnicité et citoyenneté : les modèles français et anglais sur les bancs de l'école*, In: Revue française de pédagogie, Vol. 144, 2003. Dynamiques multiculturelles et politiques scolaires en Europe, pp. 19-28.

The term 'ethnic minority' encounters strong resistance in France, at the level of science, the Republic and even in the Constitution. Meanwhile, ethnic differences are reified by research in England, where the Commission for Racial Equality considers 'race' to be as 'real' as biological differences. The UK authorities have established an Ethnic Minority Achievement Fund that is explicitly and exclusively for the benefit of ethnic minority children. This funding has been set up in the context of the fight against 'institutional racism', which schools and other major institutions (police, health system) are accused of perpetuating. In France, skin colours are not "seen" and ethnic differences are not taken into account. The funding is given on the basis of educational difficulties, unlike in England.

With regard to the diversity of the national population in the school curriculum, the curriculum in England contributes to the development of students' sense of identity. On the contrary, in France, the emphasis is on integration rather than diversity. English schools differ from French schools with the emphasis they place on cultural diversity. Education in France or England leads to very different patterns of socialisation, strongly influenced by multicultural and republican ideals. Central to the models of integration is the determination of which characteristics receive public recognition. In France, when children were invited to share their culture of origin, it was at specific, clearly defined times, outside of normal learning activities. These occasions are peripheral to teaching. In the exercise of its function of transmitting knowledge, the school requires the child to put aside his or her community affiliations - social class, neighbourhood, religious beliefs, geographical origins, gender - in order to construct in the public sphere a universal being, 'free' from prejudice, which works for the common good.

On the contrary, in England, the recognition of community identities is combined with pedagogical ideals centred on the needs of the child to lead to a valorisation of individual differences. The integration that is sought is not that of a universal individual, but of an individual anchored in multiple spheres of belonging. The English pupil learns to engage his whole being, his thoughts, his values, his imagination, his cultural and religious affiliations in the school universe, whereas the French pupil discovers a school that aims to be a 'society' and not a 'community', governed by the rules of collective life, not those of the family. They are introduced to a model of citizenship where the citizen engages in the public sphere only as a public person - a person of no age, sex, religion or skin colour, a universal being.

78. Robin Alexander, *Comparer c'est comprendre: visions et versions de l'école élémentaire*, La Revue Française de Pédagogie, No. 142, janvier – février – mars 2003, pp. 5-19.

This article is based on a comparative study of primary education in five countries: England, France, India, Russia and the United States. The aim was to discover differences, similarities and universals in the reflection of educational practice at the system, school and classroom levels. The author's argument is that pedagogy should be understood as an aspect of culture. He focuses on the interaction

of two sets of values. One concerns the relationship of the individual with society; the other is about the nature of knowledge, childhood and learning. These social and pedagogical values combine to produce differentiated versions of teaching. This article illustrates the impact they can have in schools and classrooms, and in particular their effect on the pedagogical discourse through which knowledge, learning processes, and culture are conveyed.

The author notes that of the five countries studied, the two whose approach stands in starkest contrast to France are England and the USA. France has national educational goals and national curricula, while in the USA the constitution explicitly prevents the federal government from controlling education, leaving it to the fifty states. Pre-school education in England, while subject to national rules on curriculum and assessment, is also under the responsibility of the schools in terms of teacher appointment, teaching methods, budget.

In India, Russia and many French classrooms, children generally work individually but in blocks, doing the same exercises in the same time, moving constantly from group activities involving question-and-answer sequences and blackboard demonstrations, to solitary activities. In contrast, in England and the USA, children work in small groups and their time is shared between group and individual work, so little time is spent teaching the whole class. In observing these differences, the author believes that there is no approach to early childhood education that is undeniably the most effective, let alone one that can be taken from one country and transplanted to another with any guarantee of success. That said, there is much to be learned from the study of education systems other than ours, but only if we remember that education where ever it is carried out, is based first and foremost on values and principles, not just on practical experience.

79. Régis Malet, *Les mondes scolaires et enseignants et la construction culturelle et politique du sens*, in: 'Modernisation de l'école et contextes culturels' Régis Malet & Estelle Brisard (eds.), L'Harmattan, 2005, pp. 51-90.

This chapter puts into perspective the transnational dynamics observable in school policies in the contemporary period with the national frameworks for the formation of the meaning of school and the teaching profession, on the basis of a double historical examination, that of the cultural, social and political construction of school in France and in England, enlightening by the conceptions of the social function of school and teachers that it translates into the understanding of the recent evolutions of the forms of school administration in both countries.

The French political and unitary conception of schooling has promoted an abstract citizenship, which refers to the inclusive action of the state (the French centralised and unifying model), constructed against intermediate forms of belonging. The French model has emphasised more than others the separation between the public and private spheres, and rejected from citizenship the sphere of particular interests or affiliations other than national. On the political-administrative level, this model promoted a powerful central state and a highly controlled local autonomy, with the omnipresence of the state on the national territory being manifested by the search for uniformity in the implementation of public services. The Anglo-Saxon conception of school and citizenship is, on the contrary, communitarian. It refers less to the idea of national or state integration than to the participatory action of citizens in their community, promoting a less abstract, less exclusive, more local and pluralist conception of citizenship. This model was built against the absolutism of the state and for an affirmation of individual rights and local freedoms.

However, over the last two decades, the French and British school systems have been affected by common fundamental problems: from elitist to mass education, faced with a diversification of school populations and teaching contexts, and the rise of school consumerism, both have responded to these transformations by redefining the frameworks for state intervention, breaking with their traditional forms of school administration. In England, national regulation of the school was strengthened, with the aim of homogenising teaching content and educational standards, while allowing for a high degree of autonomy at the micro-political level of the schools; in France, the opposite movement of decentralisation and de-concentration took place, with the aim of democratising the quality of the school and adapting an education system that had traditionally been withdrawn from its socio-economic environment, promoting, according to its own methods, the local level and school organisation. It should be emphasised that the promotion of school organisation in Great Britain perpetuates a conflictual tradition, due in particular to a strong dependence on the political sphere which fuels tensions, whereas in France decentralisation has favoured the study of local actorial and organisational dynamics. However, beyond these specific features, the convergence of school systems and the problems they face tends to favour the importation of models and research methods constructed in the Anglo-Saxon world.

FRANCE CENTRE-PERIPHERY RELATIONS

80. Laurent Bouchard, *Le préfet : Un instrument de domination devenu outil de dialogue?* Gestion et Management Public, Vol. 4, No. 2, 2015, pp. 31-44.

The prefect was and remains above all an agent of the state. The exhaustive list of his fields of competence in the 19th century is almost difficult to draw up as his areas of intervention are so numerous, but they are limited to certain areas such as taxation, legal justice and the army. The prefect was then the main representative of the state in the division, the delegate of its authority. In this capacity, and in a centralized logic that has lasted for several centuries, he embodies the power of the State and its government over the entire territory. This power was largely inflected by the 1982 decentralisation process, completed by Act II in 2005 and then by the reforms of 2010 and 2013. However, if the context has changed, the organic role of the prefect has remained the same, namely, the prefect is an agent closely dependent on the central power, with very extensive powers and attributions, as well as practical limits. The question then arises whether this permanent role also applies to post-decentralisation public bodies.

Historically, the prefect was used as a tool for dialogue with the citizens. He was the point of contact between the legal abstraction of the state and the practical reality of the territories. It was therefore imperative for him to encourage exchanges and therefore also to know how to bring local needs to the centre. This made him 'a hybrid person: both a representative of the central power in the department and a defender of the interests of his constituents'. Decentralisation has not completely eliminated this traditional mission. Still the representative of the state in the territories, he still has a means of ensuring the pre-eminence of national interests over local ones and therefore the respect of the unitary and republican law in territorial diversity. If the institutional setting has evolved, the spirit of the prefectural function has remained unchanged for more than two centuries.

81. Nicolas Kada, *Le préfet est mort, vive le préfet !* In: 'La décentralisation 30 après', Serges Regourd, Joseph Carles, Didier Guignard (eds.), Presses de l'université Toulouse 1 Capitole, 2013, pp. 95-105.

The laws of decentralisation in 1982 brought changes to France, a centralised state which had established prefects whose role was to represent the state in their locality. These laws called into question the prefectural institution. Many state competences are transferred to decentralised authorities. The regime of control of legality established in 1982 underwent further adjustments that reduced the possibilities of prefectural intervention. The decentralisation reforms also required the state to reorganise all its decentralised services. From 1982 onwards, numerous decrees show that the link between decentralisation and de-concentration, although not very visible, is nevertheless real.

The organisation of the state's administrative apparatus, in which the prefectural institution seems to have its place, has survived even after the decentralisation laws of 1982. Numerous laws and decrees confirm this reform of the regional administration of France and in 2010, the hierarchical authority of the regional prefect over the divisional prefect is further affirmed. The regional prefect is now responsible for the implementation of State policies in the region and defines the framework for the action of the divisional prefects. In a large number of areas, the latter had to take decisions in agreement with the guidelines set by the regional prefect and report back to him. However, the prefectural institution remains problematic in that it is unclear whether it is a political authority or an administrative institution.