

Federalism and Police Systems

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COGINTA

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EXECUTIVE SUMMARY

The overall objective of this study is to equip the public officials and the Nepalese Police Force with the tools that will allow them to identify the implications of a shift to federalism when it comes to the policing forces and to make the right decision when designing their police system.

The report outlines the core concepts necessary to understand policing in federal states including legal and organizational aspects. Such a clarification is essential so that the authorities can have a clear vision of what the implementation of various federal scenarios would entail for their country.

Its purpose is also to systematically compare a set of countries with a long history of federalism and others with a shorter one, all having different types of federal systems. This will help explain how police systems are structured in federations, moving from concepts to observed reality.

Finally, this report provides a number of 'checklists' which are assembled into a 'general checklist' presenting items that are usually essential for the good implementation and functioning of a police system in a federal polity. This checklist will facilitate the implementation of basic changes required for the establishment of a legal basis for the organization of the police system.

Findings

This report identifies the dimensions of police systems in federal polities with the aim of helping select the most important features for a transition process. In total, four main points have been highlighted, all of which are crucial for the establishment of a police system:

- Structure of the political system (on the federal, state, regional, municipal levels)
- Structure of police forces (national, local)
- Nature of police forces (ministerial affiliation)
- Powers of police forces.

Firstly, the constitutional arrangement itself is very important. In particular, there are two sets of decisions which are of utmost importance:

- To protect the rights and freedom unambiguously and without restriction, for example on the basis of the Bill of Rights or similar documents;
- To establish the foundations of the police system within the constitution itself, the Spanish model being the most convincing example in our review.

The second main finding of this review is that the form of a politically organized unit does not necessarily coincide with the form of the other organs, including the police agency.

We have proposed that, in addition to the type of polity, the key distinctions for properly crafting a police system are:

- Its degree of centralization
- Its security configuration (other factors than centralization impacting the governance of the security sector), including ministerial affiliation
- The powers vested in the various police agencies.

Checklist for Establishing a Police System in a Federation

In order to institutionalize or upgrade a police system, four sets of questions should be addressed:

1. What is the desired distribution of police competences to levels of governments?
 - a) Which levels?
 - b) What competences?
2. What are the policing powers given to each force?
 - a) Full jurisdiction (all crimes in all territories)?
 - b) Limited territorial jurisdiction?
3. Leaving aside very specialized units, how centralized should the organization of daily policing forces be?
 - a) National forces operating locally under central control?
 - b) National corps operating locally under member unit control?

-
- c) State level forces responding to state authorities?
 - d) More local level forces answering to those authorities.
4. In case of opting for state or lower level forces, shall there be:
- a) A national police law?
 - b) A national recruitment procedure and management of such a force?
 - c) National training standards?
 - d) A national penal code and criminal procedure code?
 - e) A national information system?

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Introduction

Background

The recent political changes in Nepal have resulted in the transformation of its political structure from a centralized political system to a federal republic. It is now in the process of drafting a new constitution. At this stage, this report is produced without knowing what the new political arrangements will be, how far the process is advanced and what type of federalism will be selected. Additionally, there are still questions concerning the number of member units, the distribution of power among the member units, etc.

A 'scoping team' was asked to assess the readiness and ability of the Nepal Police to engage effectively in the federalization process currently being discussed in political circles, the Constituent Assembly and Nepali society at large. For this purpose, the team presented structures, policies, practices and performance of policing systems in formally federal countries to a number of stakeholders. Prior to the visit of this team, DCAF (Geneva Centre for the Democratic Control of Armed Forces) had commissioned studies on the police in the USA, Spain, Russia, Bosnia-Herzegovina and India to provide information and possible lessons that could be useful in the Nepali political and security contexts and to assist the Nepal Police (NP) in preparing for the federalization process they will have to engage in.

It is important that the police can effectively prepare themselves for the inevitable changes and issues a transition to a federal system will result in and learn how to cope with them. Conceptual knowledge of the functioning of police forces in a federalized system is critical for the Nepal Police and other officials involved in the process. The purpose of the 'scoping team' was to present lessons learned from countries which went through the federation process.

This report aims to provide a general support and awareness-raising of core notions related to the democratic police system in a federal structure.

Objective

The overall objective of the study is to equip the public officials and the Nepal Police with the tools that will allow them to identify the implications of a shift to federalism when it comes to the policing forces and to take the necessary steps when transforming their police system.

The report presents the core concepts that are necessary to understand what policing means in federal contexts, what it entails in terms of legal and organizational features. Such a clarification is essential so that the authorities can have a clear vision of what the implementation of various federal scenarios will entail for their country.

There will be a comparative analysis of countries which underwent a political transformation, including some which have a long history of federalism and others which have only recently turned into a federation. This systematic analysis will enable a better understanding of the structure of police systems in federations, using both theoretical concepts and practical experience. Finally, this report provides a number of 'checklists' which are assembled into a 'general checklist' which include basic items necessary for the implementation and well-functioning of a police system in a federal structure. Based on this checklist decisions can be made in a systematic and organized manner on the constitutional requirements for establishing a legal basis for and the organization of a police system (configuration, structure, uniformity across the country).

Roadmap

The report starts with definitions and core notions relevant to police systems in federalism. There is often a confusion and wrong application in the usage of terms such as 'police system,' 'police forces,' 'police doctrines,' 'federation,' 'decentralization,' 'governance' and 'good governance.'

Features of police systems which are not determined by a shift to a federation are excluded from the review, namely police doctrines, good governance and the related internal and external control mechanism that it entails even if modern police doctrines and good governance principles are desirable for establishing a democratic police force. In sum, democratic policing is a broader subject than

establishing a police system in a federation, this report being focused on the latter.

In order to get a better understanding of police systems in federations, we selected four case studies to illustrate practical aspects of a political structure in federal states: India, Spain, Switzerland, and the United States.

Two major developments can be observed from our case studies. The first consists of the constitutional arrangement itself, its basic requirements for establishing a democratic police system. The protection of fundamental rights and freedom on the one hand and the degree of dispersion in the distribution of police competence on the other hand constitute the two major issues at stake at the constitutional level. The second development focuses on the features of police systems themselves. A system is usually composed of various forces, with diversity in ministerial or governmental affiliations. Forces operating in one given country are more or less bound by common rules which federations have decided (or not) to impose on them.

Based on the review of the four case studies, a checklist is proposed to guide the technical decision-making process when establishing the new police system.

Concepts

A basic set of concepts is required to understand the very complex notion of policing in federal states. In fact, unless more specifications are given it is unclear what the notion of federalism can include as far as the political organization of states is concerned, given that very large variations exist within the realm of the various species of federations. Federalism and decentralization also need to be carefully distinguished. Police force and police system need careful conceptual separation. Finally, we must clarify what exactly policing encompasses: types of police doctrine, constituent forces, organization, etc. and if and how those features are linked to the federal organization of a country.

Police Forces vs. Police Systems

A **police system** is composed of the multiple police *forces*—which together comprise the totality of state agencies *explicitly* and *exclusively* (in the sense that policing is their sole or dominant mission)—tasked with maintaining internal public security and order. In democracies, police forces are often tasked with protecting human rights. These forces may or may not be linked among themselves operationally or in terms of control by higher civilian authorities. Police forces are distinct from armed forces in that they are *exclusively* assigned with the mission of maintaining internal public law and order.

What distinguishes a police system from its **constituent forces**? A police system includes a set of relationships of command, control, and jurisdiction among forces and with the public authorities in charge of the police (police authorities). Thus, we can say that a nation's police system is a set of relationships among all the constituent police forces within a given territory.

There are well established theories of confederations or federations but there is no comprehensive theory on what federalism means for police forces.

Police forces are structured (and operate) differently in different countries even if those countries all live under federal political order. A federal political order is here taken to be “the genus of political organization that is marked by the combination of shared rule and

self-rule.”¹ Federalism is the theory of such an order, including principles for dividing final authority between member units and the common institutions (see below).

Federalism does not entail a well determined and specific type of police system. When one refers to “federal police forces” it is done so in order to point at one of the types of police force, not at the arrangements of the police system itself. Federal forces are mobilized within their jurisdiction which is usually given by the nature of the crime committed (for example a crime against a federal official) or the place where it is committed (for example federal buildings or the federal state of Mexico City or Washington D.C.).

Police systems usually are composed of a public and a private subsystem. A police system is chiefly characterized by:

- Its degree of privatization (ratio of public versus private agents)
- Its degree of fragmentation (the number of forces in a country)
- The nature of the forces in charge of internal security
- The command and control lines
- Its professionalization (importance of training of agents specifically for police duties)
- Introduction of management (value for money and the series of indicators implied in order to measure the performance of the various police forces).

We are here primarily concerned with the public subsystem and its structural features. We leave aside the external control, the content of the training processes, the management as far as performance and “value for money” is concerned and limit ourselves to reference to the management of appointments and revocations.

This report will analyze police systems found in federal structures. We intend to depict police systems compatible with federalism regarding both the constituent forces and their mutual relationship as well as their relationship with the public authorities endowed with police powers (at central and local levels).

¹ Ronald L. Watts, “Federalism, Federal Political Systems, and Federations,” *Annual Review of Political Science* 1 (June 1998): 117–37.

Police Doctrine

In contemporary police reforms, the principal innovation resides in the introduction of a systemic concept of public security, a paradigm that goes beyond the traditional view centered on the police. New police doctrines have been produced in order to meet this challenge.

Police doctrines contribute to democratic policing or the good governance of the police system. However, a police doctrine is a dimension of study that can be considered independently of the type of police system and of the type of polity.

The police system is made up of the forces operating in a given country. It is observed that not all its constituent forces necessarily have the same doctrine. For example, the Chicago police department and the Los Angeles police department have different policing policy orientations and doctrines.

Across different countries with different polities and different police systems, similar police doctrines can be found. For example, many governments (central or local) have decided to implement community oriented policing doctrines (CoP) or proximity policing (PP), the former being mostly found in the United States and the United Kingdom but also in Latin American, the latter in continental Europe.

The aim of this report is not to consider police doctrines as such since they are neither determined by the type of polity nor by the type of police system. However, we will refer to doctrines and implementations necessary for the establishment of a police structure in a federal system (see the section on what federalism is aiming at). We will see that police doctrines and the establishment of a federal structure can be guided by common values.

Federalism

In order to simplify the analysis of federalism, we will use a minimalist approach of this political structure, since it is a very vast subject and exceeds the scope of this report. We will limit the discussion to the core notions related to federal polities as much as possible in order to focus on the discussion of the organization of the police system.

A polity is usually defined as a civil order, the form of government of a social organization of a politically organized unit, management of public affairs.²

Typically, there are three forms of government structures: unitary governments (in strictly unitary ones all power resides in the central government; in decentralized unitary government there is an important disparity in power but local government has its jurisdiction), confederations (an intermediate solution) and federalism (a way of organizing a nation so that two or more levels of government are in charge and exercise formal authority).

A few countries in the world have chosen a federalist government. Out of about 200, less than two dozen countries use a federal system (among them: Argentina, Australia, Austria, Belgium, Bosnia, Brazil, Canada, Germany, India, Malaysia, Mexico, the United States, Switzerland, Nigeria).

The EU is a hybrid system of government closer to a confederation than a federation although it has powers on the member states through various means regulated by a kind of constitution which is referred to as a constitutional treaty.

As seen in the US example, although constitutions set up federal systems, nowhere do they define what federalism is. The Indian constitution is another example: it does not use the term 'federation' and "is described by various political scientists as a federation without federalism, quasi-federal, semi-federal and a union of unequal states."³

Theoreticians came up with different definitions. Federalism is a set of distribution of authority between the levels of governments structured by a set of institutions. It aims at realizing national unity while preserving identity of the sub-national units. According to us and for the purpose of this study, the best concise definition is to consider that federalism is a political organization that is characterized by the combination of shared rule and self-rule.

² wordnetweb.princeton.edu/perl/webwn.

³ N. Ramakantan, Director of Kerala Institute of Local Administration, Trissur, India, "Federalism, Decentralization and Democratization in a Multicultural Polity: Some Critical Issues in the State of Federalism in India," IFF Summer University 2008 – Paper for Week 2, p. 3; www.federalism.ch/files/FileDownload/887/Remakantan_India.pdf.

Box 1. Federalism and Decentralization

Federalism is a political organization that is marked by the combination of shared rule and self-rule. Federalism is a system in which the power to govern is shared between national and provincial/state governments. This division of power is typically entrenched in a constitution which neither a member unit nor the common government can alter unilaterally.

In comparison, decentralized authority in unitary states can typically be revoked by the central legislature at will.

Federalism is a political concept for the establishment of a government in which sovereignty is constitutionally divided between a central governing authority and constituent political units (often states or provinces). The political units are assembled in what is often called a federation or a federal system (a union of states or a union of provinces). Federalism is a system in which the power to govern is shared between national and provincial/state governments. "This division of power is typically entrenched in a constitution which neither a member unit nor the common government can alter unilaterally." In comparison, decentralized authority in unitary states can typically be revoked by the central legislature at will.⁴

Some political and constitutional facets are considered crucial for federalism. Among them we can list:

1. Giving citizens or their elected representatives more power in political decision-making
2. Establishing sub-national political entities of government (executive branch and legislature) that are politically accountable to the local electorate with powers on decision-making and finances
3. Often representing member-states or the sub-national entities at the central level.

It is also worthwhile mentioning that there are different types of federalism.

Dual federalism sees the federal system as a sort of combination of layers of government, each of them performing the tasks that are

⁴ For those definitions, see the *Stanford Encyclopedia of Philosophy* at <http://plato.stanford.edu/entries/federalism/>.

Table 1: Dimensions of Federalism (or Quasi-federalism) for Selected States.

	Dual	Cooperative
Symmetrical	United States (pre 1900) Switzerland	United States (after ratification of 16 th amendment giving federal government the ability to tax income), Germany, India ⁵
Asymmetrical	European Union	Spain

assigned to them. This option leaves each level of government supreme within its own sphere of operations, in exercise of its 'reserved' powers. In the US for example, powers in the federal government are distinct and limited, with certain tasks enumerated for the national government in the constitution and the remaining tasks left to the state governments in order to prevent national government interference. This type of federalism is sometimes called dual sovereignty.

Another type of federalism is the *cooperative* one coined in the 1930s in the US; it emphasizes that there are many areas in which their responsibilities overlap.⁶ For example, law enforcement involves federal agents, state troopers, and local police. The jurisdictions are overlapping and each layer makes a contribution. The US federal government supplies funds for education of police personnel, but the state and local school boards choose curriculum and set the standards for the qualifications of teachers.

In addition, it is important to note that some federations are said to be *symmetrical* and others *asymmetrical*. In asymmetrical federations (as in Spain or India) not all member units share the same principles for functioning or have the same amount of power. The law makes special provisions for some of the member-states or

⁵ <http://www.legalserviceindia.com/article/I441-Cooperative-Federalism-In-India.html>.

⁶ <http://politicalscience.studentreader.com/dual-federalism-cooperative-federalism/> and http://wps.prenhall.com/hss_berman_democracy_4/7/1857/475505.cw/index.html.

member-units regarding language or culture, but also police. For example, Spanish *autonomias* (the member units of the federation) have a right to establish their own regional police forces. Some have used this power while others have not and prefer to rely on national police forces.

Sometimes the notion of cooperative federalism is used with a different meaning. It stresses the fact that the member units will help each other in case of a major disturbance faced by one of them. This is the case in Switzerland and in Germany.

The inclusion of Spain in federal regimes⁷ can be debatable. However, Spain clearly is not a unitary state. This country has regional parliaments, and the member units (*autonomias*) can even have their own police force distinct from the national forces with national jurisdiction. As there are only two main ideal types of states, federal and unitary, it is legitimate to include Spain among federal ones. Although some might call Spain a quasi-federal state rather than a federal state, in analytical terms it still has the same status of a federation, at least for the purpose of our study.

It is equally difficult to give a clear definition of the political regime of the European Union: It is a mix of federalism and inter-governmentalism. The central political unit is not officially a 'government,' there is no constitution of the EU and no police laws are passed. However, the governance of the EU tends to be closer to a central government than 20 years ago. A sign of this is the inclusion of a 'third pillar' of the EU which includes the judiciary and the police. Emerging policing forces could in the future be of federal type with the legal and operational strengthening of Europol and Eurojust. If the EU is included in the list of federal states, it is clearly an asymmetrical and dual federation. It is asymmetrical because not all member units have a comparable public police system (some are unitary, and some are federal or quasi-federal). And it is dual in the sense that the barriers between the EU jurisdiction and the member-units jurisdiction lacks clarity but insists on the fact that internal

⁷ A regime is "the ensemble of patterns, formal or informal, and explicit or implicit, that determine the forms and channels of access to principal governmental positions." See Guillermo A. O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Baltimore, Maryland: Johns Hopkins University Press, 1986).

security is the sole domain of member-states. Therefore, the EU as such cannot be included in the scope of this report due to the absence of a clear and unanimously accepted understanding of its political nature.

Finally, an important feature is the strength of the national centre. It is a political rather than legal feature. India is an example of a federal polity with a strong center, especially regarding police powers and functions despite the clear allocation of policing function to the states in the constitution.

In India, the justification for using the term of 'strong center' relates to the extraordinary powers of the central government in times of crisis. In ordinary circumstances, the police powers are divided into the member units and the federal government, with a stronger power given to the member units. However, in times of crisis, the centre can, according to the constitution, 'take over' internal security and the control of local forces.

Decentralization

Decentralization is the process of transferring decision-making governance to the people and citizen.⁸ Political decentralization aims to give citizens or their elected representatives more power in public decision-making processes. Both unitary and federal polities can be more or less decentralized.

Political decentralization assumes that decisions made with greater participation will be better informed and more relevant to diverse interests in society than those made only by national political authorities. Decentralization further distributes powers within a polity and provides institutional mechanisms for extending the participation to democracy⁹ of the community at large.

⁸ Hans F.W. Duboisab and Giovanni Fattore, "Definitions and Typologies in Public Administration Research: The Case of Decentralization," *International Journal of Public Administration* 32:8 (2009): 704–27.

⁹ "Democracy in a complex society may be defined as a political system which supplies regular constitutional opportunities for changing the governing officials, and a social mechanism which permits the largest possible part of the population to influence major decisions by choosing among contenders for political office." See Seymour Martin Lipset, "The Indispensability of Political Parties," *Journal of Democracy* 11:1 (January 2000): 48–55.

Box 2. Centralization of Public Police Systems

Federalism and decentralization are the two dominant contemporary theories that have in common to support power-sharing among multiple layers of the government and provide accountability to the people. However, federalism and decentralization are distinct concepts.

The form and degree of decentralization of a police system does not automatically stem from a federal *versus* unitary arrangement. Unitary polities have seen a significant rise in local police forces over the last 30 years in Europe as in Italy or France. Some police systems have centralized features even in federal states. It is therefore necessary to study the degree of decentralization of the police system itself.

Administrative decentralization seeks to redistribute authority, responsibility and financial resources for providing public services among different levels of governance.

The overall organization of a police system primarily depends on the unitary or federalist nature of the state. In unitary states, the largest share of police agents serves in forces that are centralized. However, it is noteworthy that the form and degree of decentralization of a police system does not automatically stem from a federal *versus* unitary arrangement. Unitary polities have seen a significant rise in local police forces over the last 30 years in Europe as in Italy or France. Some police systems have centralized features even in federal states. The large majority of the personnel in the forces of a country can have a central status (called a 'national force' as in Spain) rather than state or regional level status. They can even be of very local nature (Switzerland, US). In other words, there is a large variety of types of police systems among federations.

It is therefore important to consider the degree of decentralization of the police system itself.

Decentralization ranges from deconcentration (its weakest form characterized by the existence of a local representative of the central state) to devolution (in its stronger form, powers are allotted to the local level). Deconcentration redistributes decision-making authority and/or financial and management responsibilities among different levels of government. Its purpose can be to shift responsibilities from central government officials in the capital city to those working at a lower level. It can also create a field administration with

a central status working under the supervision of central government representatives at the local level. Deconcentration, the weakest form of decentralization, is used most frequently in unitary states. However certain departments of the state can be of deconcentrated form in federal systems. It is very relevant in the present study since police forces sometimes remain national by status in non-unitary states as in the case of Spain (fully) or India (partially).

In a devolved system, local governments have legally recognized geographical boundaries over which they exercise authority and within which they perform public functions. Units of local government are quasi-autonomous and have authority for decision-making, finance and management. At the local level, citizens elect their own assemblies, raise their own revenues, and have independent decisions-making power within the domains of competence vested in those assemblies by the central government.

Federalism and Governance

The notion of federal arrangements should not be confused with the overall governance of the internal security sector. Truly, aims in establishing a federal polity and efforts for prompting 'good governance' may converge. However, those two notions are distinct and any confusion should be avoided.

The notion of governance is useful in illustrating the range of actors involved in determining the functioning of the police system. Governance refers to 'real politics,' as opposed to just norms. It therefore includes all actors: the ones in government and in civil society. This includes the legal as well as the illegal forces affiliated to the government (in some countries, the army plays an important function in the internal security sector despite the fact that it lacks legal grounds for it) but also found in the civil society (for example, some influential firms or militias).

'Good governance' of the security sectors refers to principles and practices that have largely been approved at the internal level. They mainly refer to forces being under the rule of law, civilian control and service oriented (in the sense of servicing the needs of the people and not only focus on those of the government). The notion of an equal service especially vis-à-vis minority members is highlighted. Seven main principles were elaborated in that line of thinking. However, there is no reference to the constitutional situation in

Box 3. Federalism and Governance

Federalism determines the structure of rule in a given territory, while good governance informs us about useful principles for guiding police works and the oversight of police agents and forces.

the sense of the preference for a centralized or federalist political system – such an option remains of course in the domain of sovereignty of the states.

Federal arrangements as such do not specify all aspects of the mechanisms for controlling the works of the police forces. Accountability depends on the distribution of police powers among the different layers of governments (for example, if the police is placed under the authority of the regional government, police forces will report to this civilian authority), but there are no set norms for establishing them. Instead, there are many solutions which can help connect the police system to the federal political system (see the section below). In order to illustrate this mechanism, one can think of similar examples such as fiscal federalism, where there is not just one single way of establishing it. The control mechanisms over the police system have to be specifically designed for each particular case, keeping in mind the nature of its political system. Those mechanisms are inspired by principles relative to the democratization of policing, for example the institutionalization of an external form of oversight that can deal with the complaints of citizen against the police forces.

Mechanisms designed to obtain a better civilian oversight of policing forces do not stem from the federal versus unitary types of states. They are meant to operate in any polity. Additionally, those mechanisms are not dependent on the type of police system (and its degree of centralization for example) since they tend to be external to the police forces. Typically, in the most advanced police systems, inspection, audit and evaluation are undertaken by non-police bodies. Examples of such bodies include national public security boards, inspectorates, non-departmental complaint boards, human rights structures and special or standing committees of the Parliament.

Regarding the issue of good governance or democratic governance, it appears that federalism is less important than the nature of

control of the security forces. In fact, unitary as well as federal polities can be said to have good governance if the adequate control and accountability mechanisms are put in place together with police doctrines oriented toward the service of citizens.

In sum, federalism determines the structure of rule in a given territory, while good governance informs us about useful principles for guiding police works and the oversight of police forces. The mechanisms that can guarantee good governance are by definition largely external to the police system and not determined by the type of polity (they can be implemented in unitary as well as federalist polities).

Summary and Implication for SSR: The Four Key Conceptual Distinctions

Federalism is a system of public authority. It has been widely accepted as the form of government which involves two or more layers within the polity, each with a measure of constitutional autonomy, each directly governing and being accountable to the people.

In dual federalism, the overall purpose of the federal authority is limited by a constitutional mandate. Throughout each government's sphere of influence, each authority maintains sovereignty which should not impact on another authority.

In cooperative federalism, national and state or regional governments cooperate actively. In contrast, an all-powerful federal regime imposes policies on local administrators. As a result, in cooperative federalism, all layers of the government are independent and interdependent since there is an overlap of functions and financial resources.

Federalism and decentralization are the two dominant contemporary theories which have in common to support power-sharing among multiple layers of government and protect accountability to the people.

However, federalism and decentralization are two distinct concepts. Decentralization organizes the distribution of power within a unitary or a federal polity. It provides certain institutional mechanisms for extending the democratic accountability to lower ranks. For example, a police can become more decentralized in unitary states by making the force accountable at the local level even if it is of central nature. Conversely, a federation can decide to have one

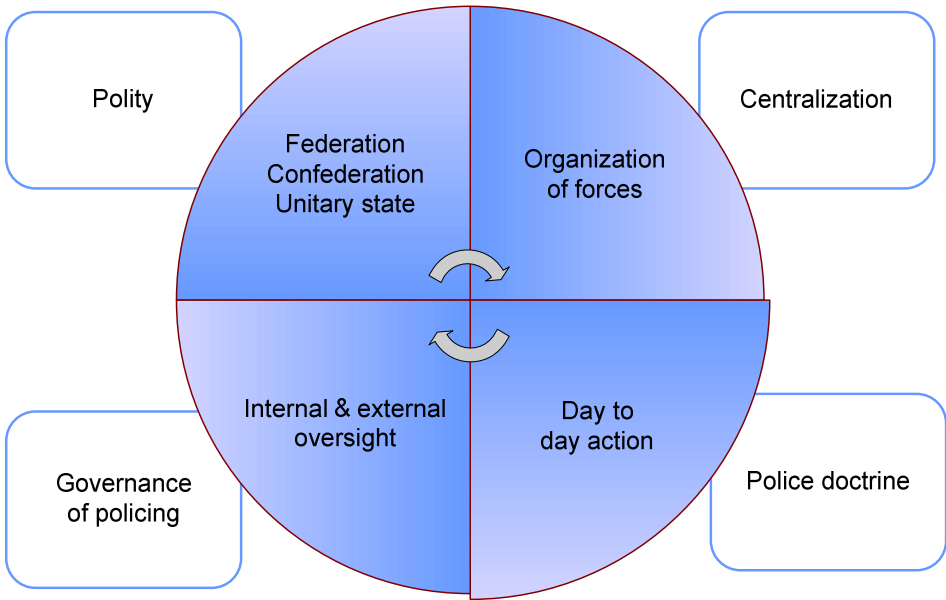


Figure 1: The Four Key Conceptual Distinctions.

or two national forces with jurisdiction over the entire country so that they have limited accountability to the local level.

When designing their political arrangements and police institutions, public authorities will have to take decisions concerning those four key concepts (see Figure 1). In sum, establishing a democratic police system involves taking into account four levels:

1. The political structure of the country (federal versus unitary state, and the type of federal state)
2. The level of centralization/decentralization (how centralized should the police system be and for which of its features: hierarchy, recruitment, training, etc.)
3. The level of 'good governance' which refers to norms which are neither dependent on the polity nor the degree of centralization and are primarily focused on the control of the police forces (internal and external) and policing policies
4. The level of police doctrines, practices and actions (whatever the structure of the police system is).

The decisions taken at each of these levels will be crucial as they will shape the police system.

Decisions stemming from such a global approach could of course only be implemented along a detailed strategic plan that would include a number of steps for each component of the four levels of action.

Case Studies

Considering the difficulty of finding a unanimous definition of what constitutes federalism and because of the absence of previous analysis on policing and federalism, it would be impossible to include all federal states in this study. We therefore decided to select a few federations which will be useful for the purpose of our analysis.

Each state formation and each police system across the world is unique. In order to avoid generalizations concerning federal states and police systems, it is useful to select a few contrasted federations.

We have combined four criteria that can characterize a federation:

- symmetrical or asymmetrical
- large or small
- with very fragmented police systems or with more unified police systems
- with police forces or with police and gendarmerie.

Table 2: Federal Countries Included in the Study.

	Population (in millions)	Symmetrical polity	Name of member unit	Fragmenta- tion of police system	Military status police force (Gendarme- rie)
India	1,115	yes	State (28)	Low	No
Spain	46	no	<i>Autonomia</i> (17+2 cities)	Very low	Yes (yes)
Switzerland	7,7	yes	Canton (26)	High	No (yes)*
USA	308	yes	State (50)	Very high	No

*A gendarmerie is found in Switzerland, but its status is not military

Based on that reasoning, we have included:

- The *United States*, a very large state, a symmetrical federation with the most fragmented police system, with police forces only
- *Switzerland*, a very small state, a symmetrical federation with a fragmented police system and a fully civilian gendarmerie
- *India*, a very large state, a symmetrical federation with a limited fragmentation and police forces only
- *Spain*, a medium sized state, an asymmetrical federation with a centralized police system and the presence of a military status gendarmerie.

Such a selection provides us with geographical diversity (America, Europe, Asia) – an important dimension to be integrated in any comparison. Additionally, India is a major player in the Eastern region of the world, and an important cultural reference as well as a neighbor of Nepal.

Federal Polities: Purposes and Implications for Police Systems

Three main questions will be addressed in this section, all related to the relationship found between the federal polity and the police system:

1. What are the aims of establishing a federal polity? How does this relate to policing issues and structures?
2. How and to what extent are police systems organized in federal states by the core legal documents that establish the foundation of the polity? The organization principles of a police system may be described or not in the fundamental laws of countries (constitution, organic laws for example). For example, a constitution impacts on the police competence distribution, as well as the structure and functioning of the police system.
3. What are the main distinctive features of police systems that can be found around the world, and how do they compare to one another?
 - The structures (division of policing powers and competence among levels of government, the policing forces)
 - The amount of power given to the policing forces
 - The limitations of these powers because of core values found in democracy: the Bill of Rights or Human Rights.

Purposes of Federations: What Problems is Federalism Trying to Solve?

The first observation that can be made is that federalism is not a single system with one type of organization. Federalism is rather a category of systems whose political properties vary widely. It therefore seems inappropriate to speak of the properties of federalism per se, as is often the case in political studies. Some federal systems may promote a balanced organization and efficient and locally accountable police systems while others do not (see below).

However, federal arrangements were invented and implemented with the intention to solve a number of difficulties:

1. To promote peace and prevent aggressive and preemptive wars among member units.
2. To protect minorities' human rights against member unit authorities, assuming that the center is neutral. To provide protection against central authorities by securing immunity and non-domination for minority groups or nations. Constitutional allocation of powers to a member unit protects individuals from the center, while interlocking arrangements provide influence on central decisions via member unit bodies.
3. To promote cooperation, justice and other related values among and within member units. Federal arrangements can accommodate minority nations which aspire to self determination and the preservation of their culture, language or religion; minimize coercion.
4. To increase the opportunities for citizen participation in the public decision-making process: deliberation and consultation in both member units and central bodies ensure political participation among citizens; to be more responsive to citizens' needs.
5. To encourage local variation will enable the creation of public goods and services for vulnerable parts of the population.

The problems usually addressed by the recourse to federal polities are not primarily related to policing but to the protection of liberties and the rights of minorities in general. Since most of the police powers are left with the member states and not the union, the con-

Box 4. Risk Mitigation

Proper attention should be given to the risks related to federalism in order to avoid difficulties linked to the establishment of an effective police system:

1. Distribution of power may allow groups in certain regions to obstruct or ignore national mandates
2. There are inequalities in federal systems: an uneven distribution of wealth among rich and poor regions; poor regions unable to provide services to their residents.

stitution of federations does not contain many provisions related to policing. In fact, the constitution primarily settles the relation between the center and the units of the union and among the units themselves.

Nonetheless, many of the difficulties that federal polities tried to solve are relevant for the implementation of a modern and democratic police system: the protection of the minority rights, the promotion of the rule of law and minimizing the use of coercive power, the focus on citizen participation and responsiveness to citizens' needs.

Such principles are often aimed at through the decentralization of the policing forces, the establishment of professional forces, the guidance of a code of ethics, a proper civilian oversight as well as independent judicial control. To turn democratic values into practice necessitates a combination of political arrangements (federalism, decentralization), good governance (internal and external control mechanisms) and adequate professional guidance (police doctrines, training, etc.).

Constitutional Protection of Liberties and Distribution of Police Powers

Police powers can have two meanings: the powers given by law to police agents so that they can carry out their duties and responsibilities; the powers to establish, instruct and monitor a police force given to civilian authorities. We will thereafter try to limit the overlap between the two notions by restricting the use of 'police powers' to refer to powers given by law to police agents, and use 'police competence' to point at the authority over the force given to public authorities and levels of government.

The constitution has two potential main effects on police since it decides:

- The limits within which police forces will exercise their powers, and the limitations that shall be put on the police forces
- The allocation of competences to the different governmental levels (who is in charge of what).

Rights and Freedom and Declaration of Human Rights

A constitution often starts with listing the fundamental rights, the freedom and liberties that no state organization can jeopardize through its actions and procedures.

The importance given in constitutions to these rights and the inclusion (or not) of all human beings—whether they are national or not—is critical since the highest courts would eventually refer to it. If not guaranteed at the constitutional level, the freedom and liberties might lack the necessary legal support for their full enforcement. Those rights will act as guiding principle for all public services, including the police. And since police powers and police actions are by definition limitative of liberties, the impact of those guarantees is perhaps even more important for police forces and agents than for other civil servants.

However, this does not constitute a distinctive feature of federal states. A unitary state like France has a declaration of human rights in addition to its constitution so that the document has the highest value in the legal system. The peculiarity of federal states in that respect stems from the fact that there are two layers of constitutions, usually those of the member units and the central one.

Constitutional and Core Legal Foundations of the Police System

With regards to the mission of the policing forces, the constitution of Spain—a short document—is very modern in that it clearly assigns a duty of protecting the citizens and their rights to the national police and the *guardia civil*, the two national forces (security is defined as an ‘exclusive competence’ of the central state). A strong emphasis is put on the rule of law and the disciplinary system for the national forces.

The US constitution is also a short document. It does not mention the criminal justice system or the police. It only mentions that the judicial power rests in a Supreme Court which has the power of judicial review. Many important phrases and terms in the constitution which govern law and criminal justice are written in a general and imprecise language which has no specific meaning until placed in a social or criminal context. This requires some political body to make authoritative interpretations.

The US notion of rights reflects British common law (a natural consequence of having been a British colony) and establishes a clear distinction between public and private spheres of life. The central principle is that the government, despite all its powers, cannot enter people’s private spheres without a compelling and verifiable justification. This distinction has a powerful influence on policing practices in the US. The police must abide to this principle in

their daily work for example when entering a home, stopping and questioning people in public places, searching and seizing evidence, effecting arrests, conducting interrogations, and it cannot treat people differently based on discriminatory criteria. The constitution always says *persons* have rights, which translates that any person in the US, whether they are in the country legally or illegally, whether they are officially a citizen or not, has the same rights.

It is possible in some cases that the constitution also assigns duties and responsibilities to the public policing forces as is the case in Spain, to be elaborated in details in an organic law. The organic law (a law which has a rank between the constitution and regular acts of Parliament) organizes in a detailed way the duties and responsibilities of the national forces, their ministerial affiliation, the rights of the agents working in the force. All forces, whether they have a civilian (national police) or military status (*guardia civil*), are housed by, and accountable to, the Ministry of Interior. As a consequence, neither the Ministry of Defense nor the army can have a role in interior security.

The fact that the army should be excluded of internal security is also acknowledged under US regulation and is summarized by the expression 'posse comitatus,' a law of 16 June 1878 with the intention of substantially limiting the powers of the federal government to use the military for law enforcement. The Act was a response to the military occupation by the US Army troops of the former Confederate States during the ten years of Reconstruction (1867–1877) following the American Civil War (1861–1865). The Act prohibits most members of the federal uniformed services (today the Marine Corps, Army, Navy, Air Force, and State National Guard forces when called into federal service) from exercising nominally state law enforcement, police or peace officer powers that maintain 'law and order' on non-federal property (states and their counties and municipal divisions) within the United States. The Coast Guard is exempt from the Act. On September 26, 2006, President Bush urged Congress to consider revising federal laws so that US armed forces could restore public order and enforce laws in the aftermath of a natural disaster, in the wake of Hurricane Katrina.¹

¹ These changes were included in the John Warner National Defense Authorization Act for Fiscal Year 2007, which was signed into law on October 17, 2006.

Constitutional Distribution of Police Competences

The multi-level organization of police competence and powers is specific to federal systems.

In all our case studies as well as in others, *the distribution of police powers* is established by the constitution of a political union. Distribution is often presented in lists of competences.

Switzerland vests the administration of justice in the member units (cantons) but the legal penal framework (penal code, penal procedure) in the federation. The cantons can establish their own police forces as they wish as long as they comply with federal regulation, including the penal code. The country has no formal list of police competence and regulates the division of competencies between the federal and the local level using the so-called “principle of subsidiarity” (art. 3 and 5 of the federal constitution). According to this principle, all powers not explicitly assigned to the federal level belong automatically to the local level. This translates into the existence of a single list defining crimes dealt with by the federal police. These crimes in Switzerland are defined by law, not the constitution. All other crimes are assigned to the cantonal police.

In the case of India, there are three lists. The first specifies the power (competence) of the union, the second of the states and the last one – the shared power. Such a list exists also for the US. The ‘delegated powers’ are those delegated specifically to the national government.

The Indian constitution lists the powers (competence) and functions of the central government and state governments. Three lists are distinguished: the Central List, the State List and the Concurrent List. According to Article 246 of the constitution, parliament has exclusive power to make laws regarding matters enumerated in list 1. State legislatures have exclusive power to make laws for the state regarding any of the matters in list 2. Both parliament and state legislature can make laws on subjects specified in list 3. However, primacy is given to Union laws over state laws. This clearly indicates that the union government has supremacy over the state governments in matters related to legislation. Experts note that this supremacy exists not only in legislative powers but in administrative

and financial matters also.² The predominance of national laws (whenever national and state legislation overlap) or national bodies (whenever federal and state supreme courts disagree) is not specific to India and applies to the US or Switzerland for example. However, more counterweights are found in Switzerland, the cantons being protected against an 'over-legislation' by the confederation.

Each of the 28 states and 7 union territories of India has its own police force. Each state legislature has exclusive power to make laws relating to the police force and its functioning. Since the executive power of the state extends to subjects in the State List (list 2), it is the responsibility of the state governments to establish and maintain police forces and exercise superintendence over them. Rules and regulations governing the state police forces are framed by the state governments and contained in their Police manuals.

However, regarding internal security, the Indian Constitution bestows extraordinary powers to the central government in case of a crisis that allows it to take over the police powers of the federated states. And last, but not the least important, is the quasi federal character of the Indian polity with specific provisions in the constitution, implying a coordinating and counseling role for the centre in police matters and even authorizing it to set up certain central police organizations.

There is no list of competences in the Spanish constitution. Instead, there is a list of police powers to be distributed between the two national forces. Distribution of competences is based on agreements between the central government and the member units on an *ad hoc* basis. The reason explaining this situation stems from the fact that the constitution establishes a balance of police competence that is clearly favorable to the central level since policing is defined as "an exclusive duty" of the central government. However, it does not clearly discard an involvement of other public forces in internal security. Based on this possibility, some member units (called 'autonomies') have set up their own forces (see the section below).

An opposite situation is found in the US where the balance of competence is clearly favorable to the local level. There are federal

² Ramakantan, "Federalism, Decentralization and Democratization in a Multicultural Polity," p.2.

duties related to policing, but those are far more limited than state and local ones. The maintenance of peace, conduct of orderly elections, and prosecution of unlawful actions are all state responsibilities, pursuant to the states' primary job of exercising police power and maintaining law and order.

In Switzerland, the balance of policing competencies clearly favors the local level as well. Federal responsibilities are mostly limited to terrorism and organized crime. There is no uniformed police at the federal level, thus public order and investigation of crimes is entirely distributed to cantons. Cantons can themselves further devolve policing powers to municipalities which is the case in a majority of cantons.

Conflicts between the conceptions of the authority over the police system are solved by clarification in orders of the Federal Supreme Court or National Constitutional Court depending on the countries. India has set up a special committee—the Commission on Centre State Relations—that provides advisory opinion to the government on that very sensitive matter.

Central Competences, Federal and National Forces

As explained above, federations have a constitution that usually divides the police competences between the levels of government using 'a list.' There is no rule for establishing such a list. However, we can have a look at the options chosen by selected governments.

Spain is a unique case in our sample of countries in the sense that internal security is defined as an 'exclusive competence' of the central state but in practice things are substantially different. The Spanish constitution asserts that the State has the exclusive power in terms of public security. However, it implicitly recognizes the rights of autonomous regions to create their own police agencies: Autonomous regions and local councils may participate in public security through their own police services. According to the constitution, the mission of all Spanish police agencies (*Las Fuerzas y Cuerpos de seguridad*) is "to protect the citizen's rights and liberties and to guarantee public security." The structure and functional aspects of the various police agencies in Spain are defined by the "Law on Police agencies" passed in 1986. Since then, there has been a political shift towards more decentralization which has resulted in a flexible interpretation of the constitutional provisions.

Since in Spain internal security is “an exclusive competence” of the central state, police forces are mainly affiliated to the central level (147,000 agents). Because of the political evolutions, the local forces have grown in size and competences (at the regional level, and at the municipal level with 67,000 agents).

As mentioned above, the federal level in Switzerland has exclusive competencies on a small number of crimes. This includes economic spying, terrorism and political crimes, border protection, complex and organized crimes. All other public security issues not specifically and explicitly listed in the competency of the federal police are by default dealt with by the individual cantons (“principle of subsidiarity”). The federal level does not have a uniformed police. Special anti-terrorism intervention units, for instance, are all under the responsibility of individual cantons. All investigations except for federal crimes, traffic control, or community policing are assigned to cantonal police forces. The total number of local police agents in Switzerland is about 26,000 against about 1,000 federal agents.

Based on observation from the case studies, we can note that what can be termed as ‘sovereignty functions’ are under the responsibility of the central level, for example the protection of borders against trafficking (carried out by coast guards, which can have a military or civilian status) or infiltration as in India, the protection of the central government premises and personnel.

In addition, the policing functions that involve illegal activity in more than one member unit are also in the hands of the center, for example the use of firearms since there is a need for a national registration system (US, Spain). In the case of the US, the “interstate commerce clause” in the constitution means that Congress can pass legislation on practically any activity – not just in the economic sector. Very few events or activities happen only in one state. For example, the authority of the FBI to deal with bank robberies is based on the interstate commerce clause, as is gun control legislation which requires local gun sellers to verify relevant personal information of a buyer (e.g. whether they have a felony record, as the right to own a gun is lost on a felony conviction).

Central governments equally always have their information police at the central level. In the US, the FBI is perhaps the most famous agency. In India, the “Central Bureau of Intelligence and Investigation” is found in the Union List of the constitution of India.

The maintenance of statistics at the central level is observed in the US (Uniform Crime Report) or in India (National Crime Records Bureau) as well as in Spain. They are in charge of collecting, storing, analyzing and disseminating information about crime and criminals and development of computer-based systems. In Switzerland, Fedpol (Federal Office of Police) serves as an information, coordination and analysis center. Fedpol manages national police databases (DNA, etc.) and the input into international databases (Interpol, Schengen).

In some countries the maintenance of public order may also be considered a federal responsibility by the constitution or by a law in specific circumstances. In the case of India, according to the constitution, the Union can deploy “any armed force in any state in aid of the civil power” according to the Union list of competences. According to one of the “Emergency Provisions” it is the “duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.” If there is a breakdown of the constitutional machinery in any state, the central government can take over all functions of the state government.

An important distinction lies in the definition by the regulatory framework of the normal *versus* extraordinary circumstances. In normal circumstances, the power of the center is limited in the US. However, in troubled times (the definition of which is crucial and difficult to determine), the center tends to gain additional competence. This can lead to two important changes:

- The army (a central force) is allowed to intervene in policing duties: ‘posse comitatus’ can be suspended in the US in times of crisis; in India, the special power act gives extraordinary powers to the army to deal with a disturbed situation as well as judicial immunity
- The local level loses some of its autonomy vis-à-vis the center in the use of its own police force: in India the central government can instruct the state police chiefs in case of an important turmoil.

In sum, the functions frequently involving the union government (not exclusively) are: the protection of the sovereignty of the country, public order in case of major disturbances, intelligence gather-

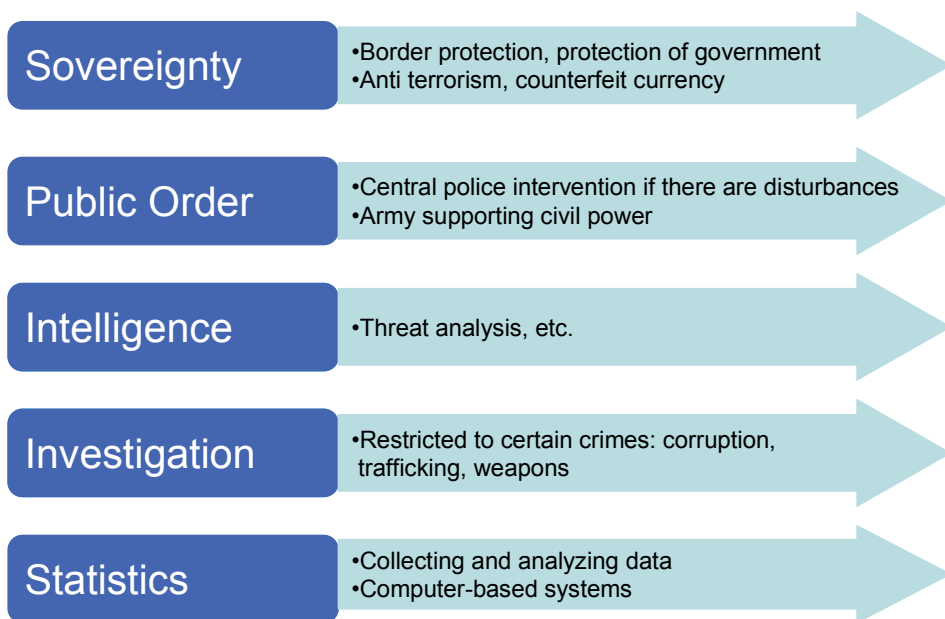


Figure 2: Policing Responsibilities often Vested in the Central Government.

ing, investigation of certain types of crimes, statistical analysis of criminal activity and maintenance of large information on a computer-based system.

In addition, functions of coordination can sometimes be found in certain federal states. However, they vary immensely in scope and implementation and cannot be considered core responsibilities.

Final Remarks

Advocates of a balanced system with “strong member units” criticize the fact that central governments can impinge on their core competences based on a unilateral assessment and without the consent of the member units. They argue that such an imbalance is not acceptable and contrary to the nature of a federation (and the two principles of *mutual rule* and *self rule*).

Having been bestowed with police competence, each level of government can decide how it wants its force or forces to be organized. This is the reason why in federal polities forces at the local level vary in many respects from one state or municipality to another: internal organization, appointment procedure of the police

chief, training required for accreditation, size of the force, police doctrine, etc.

Many such variations can be found in the US. They can also be observed in Spain where not all member units (*autonomias*) like Catalonia and the Basque Country have decided to have their own police force, some preferring to rely on central forces while others deciding to establish a full-fledged local force. In Switzerland, the various cantons have also implemented a diversity of policing solution, some having further devolved certain policing powers to municipal police forces while others have not.

A Checklist of Key Points at the Constitutional Level for Establishing a Police System in a Federation

The establishment of the federal polity in a constitution usually does not imply large developments in the criminal justice and police system. However, based on the review of selected federal polities, it is crucial that a constitution ensures the following provisions:

- Choice between two options: dual or cooperative federalism
- Unambiguous protection of human rights and liberties without restriction since those provisions will bind police agents and forces
- Assertion that policing is placed under civilian authorities, that the agents and forces are fully accountable to the civilian authorities
- That policing is a service to the public and that law enforcement and public order maintenance (internal security) is bestowed to civilian police forces
- Determining which level of government will be primarily in charge of public policing; it encloses a “list of police competences” to be distributed between the central level, the member units and the local levels and those to be shared by different levels of government
- Set-up of a coordination mechanism in order to counterbalance a risk of fragmentation observed in some federal polities
- Imposing “a national police act” in order to regulate in a detailed fashion policing responsibilities of the forces and disciplinary rules

- Indication of which institutional mechanism is to be established in order to resolve problems that may arise related to the distribution of competences (advisory decisions, court orders).

Police Systems in Federations: Main Features

Federal or quasi-federal countries can be different with respect to “distribution of competence” but also regarding to “police decentralization” and structure of the police system itself (the organization of police forces: degree of centralization, number of forces, etc.). The organization of public police forces is not derived from the overall organization of government.

After competences are vested in a level of government, the organization lies within the concerned authority. Very often, four levels are observed: the federal, the member unit (state, canton, *autonomia*) and the municipal one for cities and a territorial unit for the countryside (sheriff in the US, gendarmerie in Spain).

The Complex Relation between Federalism and the Police Administration Structure

The organization of public police forces cannot be deduced from the overall organization of a government. There are various reasons for that. Firstly, local conditions affect the development of police systems. Secondly, as explained in a section below, federal systems were not invented for the purpose of providing ‘good policing.’ Virtually no precise rule concerning the establishment of the police system can be found in a constitution.

For example, there are two central forces with shared ministerial affiliation in Spain. Both the National Police and the *Guardia Civil* (a policing force with a military nature) are under the authority of the central Ministry of Interior. Those forces operate throughout the country at all administrative levels and constitute the police forces on the ground. However, in Germany no such locally operating national forces exist. This is also the case in India, Switzerland or the US.

India represents yet another case: The police force is national as far as its recruitment is concerned, but it is divided into as many forces as there are states and directed by the Ministry of Interior of the member units (not the central government). The union govern-

ment establishes its own distinct forces in line with the powers bestowed by the constitution.

Based on a literature review and on our four case studies, a larger number of elements can be taken into consideration regarding the structure of the police system:

- Number of forces in the country (strongly influenced by the distribution of competences)
- Degree of centralization and fragmentation of the police system (national police law, national penal code, recruitment process and training system, etc.)
- Nature of the public forces (military or civilian status and ministerial affiliation) and the locus of control (reality of the summit of the chain of command, for example with the affiliation of a gendarmerie force to the ministry of interior)
- Distribution of tasks and powers among forces (clear system based on a list in Spain and Switzerland, blurred boundaries in the US).

Number of Forces

One of the most obvious differences among countries is the number of forces that legally operate in a country at a given point in time.

Some countries have an extremely fragmented police system while others tend to have only two main forces. Among democratic states, almost none have only one force that would operate throughout the country for all purposes. However, there are some exceptions. Nigeria, a federal state, has one single national police operating throughout the country.¹

However, there are still major differences in the number of police forces even in democratic and federalist systems. In other words, opting for a federal system does not solve the issue of the organization of a police system. At one end of the spectrum, one can find countries like the US and Switzerland. Their political system and their police system are extremely fragmented. At the other end of the spectrum, one can find a state like Spain with two forces accounting for more than 90% of all police personnel operating in the country. Of course, the size of the forces is negatively correlated with their number.

¹ www.cleen.org/policing.%20driver%20of%20change.pdf.

In the US, the vast majority of police agencies exist at the local level and the number of personnel can range from about 38,000 police officers for the New York Police Department to just one police officer in a small rural town.

US states have a state police, typically called State Troopers or, in the state of Texas, Texas Rangers. There are about 80,000 state police employees. Their jurisdiction and work are normally limited to traffic control on state highways and roads (but not city roads), accident investigations, managing state training academies, and conducting crime investigations. Some Troopers have other specific duties. In the state of Washington, the State Troopers manage the State Crime Lab. Police in smaller agencies which lack the resources to assess evidence, such as DNA, send their evidence for processing and testing to the State Crime Lab. State police are under the control of state agencies, normally the Governor's office and their budget is provided by state legislature.

Many governmental units have their own police, usually limited to function or territory, such as transit, harbor, airport or school districts. School districts (which are separate governmental entities funded typically by local property taxes and guided by elected boards) can have their own police force. School police forces deal with security in schools and adjacent playgrounds; they sometimes conduct drug awareness lessons and attend parent-teacher meetings to explain to parents what the security concerns and policies are in a school. Universities can have their own autonomous police force providing full service, but with jurisdiction limited to policing the campus.

Finally, there are about 80 federal police forces which have the right to carry firearms and carry out arrests.

In sum, there are about 17,800 police agencies in the US with a total of about 800,000 sworn police officers. About 10% work for federal agencies, 10% at the state level, and 80% at the local level. Each police agency at each of the three levels is autonomous and no police agency can give instructions to another police agency. For example, the FBI or any other federal police force cannot command a local agency to investigate a crime or enforce a regulation. The fact that the US managed to keep such a dispersed system of public authority can be explained by its historical background: the US was isolated from international threats for so long and was hardly

faced with class conflict due to its post-feudal origins and open frontier.

In Spain, police agents are mostly affiliated at the national level. They work in two forces that are part of central government structures and therefore depend on the Ministry of the Interior. These two forces, under the command of the Director General of the Police and *Guardia Civil* are the National Police (*Cuerpo Nacional de Policia*). The National Police is a civilian police service of around 60,000 officers having police stations in all 52 capitals and cities of more than 20,000 inhabitants (subject to variation based on a decision of the Government). The *Guardia Civil* is a police service with a military status, having 80,500 officers deployed in more than 2,000 police stations throughout Spain, mainly in rural areas and in cities under 20,000 inhabitants.

In addition, there are approximately 21,000 police officers at the regional level. A regional force only operates in the territory of its autonomous region. It responds to the Counselor of Interior of the regional government. For various political and financial reasons not all of the 17 autonomous regions have opted for their own regional police, while keeping the right to do so at any time. Up to now four regions have decided to create a regional police agency: Mossos D'Esquadra, the regional police agency operating in the territory of Catalonia; Ertzaina operating in the territory of the Basque Country; Policia Foral operating in the territory of Navarra and finally Policia de Canarias, to operate in the territory of Canary Islands. The latter is however in an early stage of development. Their powers vary according to the agreements among the central and regional governments.

Lastly, police agencies are also found in municipalities. Out of the more than 8,100 municipalities in Spain, more than 1,700 have their own local (municipal) police unit. In total, there are 54,000 municipal police officers. They are part of the hierarchical structures of the local councils and are accountable to the mayor. The staff of each municipal police body ranges from just a few (2 or 3 officers) in small villages to more than 5,000 officers (in capitals like Madrid or Barcelona). Since there are many local municipalities without their own municipal police, the law allows small municipalities to associate for the creation of inter-municipal local police agencies.

In total, there are more than 1,700 police services in Spain. However, 140,500 out of a total of 215,500 officers are in the two

national forces (65%) and 161,500 are found in 5 (the two national and three operating regional) forces (75%).

In Switzerland, each canton has one cantonal police force. Regulated by cantonal laws, cantons may also allow municipalities to establish their own local police. There are 300 communal or municipal forces with various policing powers. Some large municipalities have exclusive policing competencies devolved to them by the canton while others have none. There is also a Federal police service with several units (Coordination Unit Cybercrime, human trafficking and smuggling). The communal forces in Switzerland are accountable to the municipal authorities and recruited by them; they are not sub-units of the cantonal forces (contrary to India for example where the lower echelons under the state are staffed by state police officers).

Countries like India which have chosen to decentralize the police powers at a level superior to the municipality or the county, namely the state level, found themselves in an intermediate position with about 35 forces in the country (28 states and 7 union territories). Every state police force has two major components – the civil and armed police. The armed police are used as a striking reserve to deal with emergency law and order situations. The remaining part of the state police force is the civil police. Just as the state police forces have two main components—the civil and the armed police—the central police organizations (CPOs) can also be divided into two parts. One category consists of para-military and the other of non para-military or civil police organizations. The strength of the latter is 820,900. The total strength of the police forces in states and union territories on January 1, 2008 was 1,746,000, of which civil police accounted for 1,334,000 and armed police for 412,000 (the actual strength however was much less, as there were as many as 267,000 vacancies in the police forces on that date).

The number of forces combined to the degree of centralization probably impacts on the possibility for local accountability. When a system is based on a few very large forces which are centrally managed, there is usually less room for adjusting to the local needs and for encouraging public participation. However, the Spanish case study indicates a possibility for coordination mechanisms to be established and being open to direct (through associations) and indirect (through the mayor's office) citizen representation. Local se-

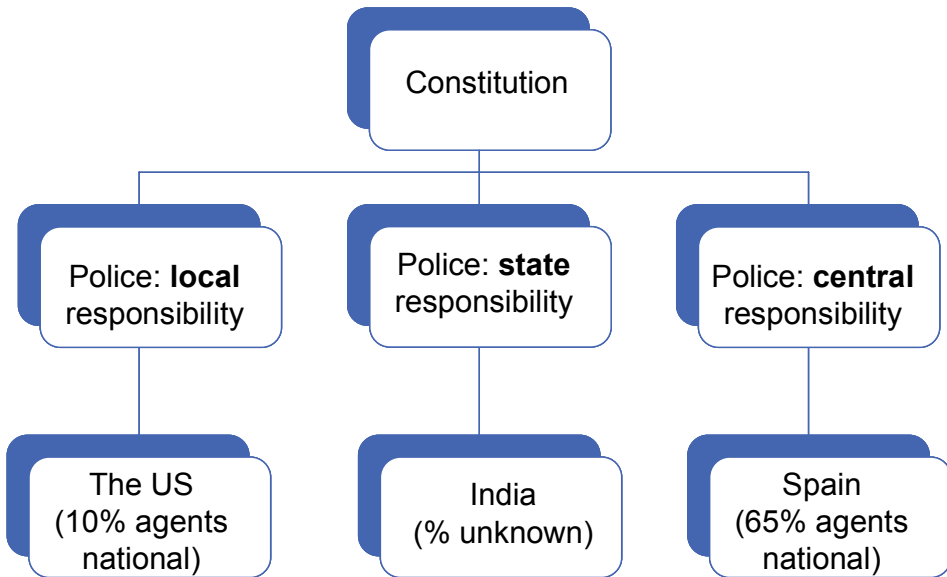


Figure 3: Difference in Central versus Local Police Force Shares According to the Type of Police System (Centralized or Decentralized).

curity councils for example were established precisely for this reason.

In very decentralized police systems, through the chief of the executive at the municipal level (being also the one to appoint the chief of police), citizens can easily voice their preferences towards the police force. This is even true when a local police chief gets appointed through a partisan election as it is the case with the sheriff in the USA.

Intermediate systems that operate at the cantonal or state level lose the benefit of a direct involvement of citizens. Additionally, mayors of small cities often resent their lack of influence on the cantonal/state police chief.

In sum, there are flaws and weaknesses in both police systems. While the centralized one is arguably dominated by a small group of powerful persons, the federal system is very fragmented which makes the coordination between the different units very difficult.

Degree of Centralization and Fragmentation of the Police System

The constitutional distribution of police competence typically influences the degree to which the police system is centralized. If the competence of police is concentrated on the local level, there will be a very large number of forces. If the competence of police is concentrated on the national government, fewer forces are found (see previous section).

However, the constitutional arrangement is not the only factor determining the degree to which the police system is homogeneous. In fact, elements of commonality are brought about by several factors.

National Police Law

There is no such law in the US considering it is a federal structure and therefore local governments (rather than the federal government) have the primary duty of ensuring public security. The federal government however, is responsible for protecting rights against discrimination, for example with regards to the recruitment of minorities in the police forces.

In Switzerland, the cantons regulate the work of the police in so-called 'police organization laws,' voted by the cantonal parliament and enacted by the cantonal government. Therefore, no common rule for the organization of the police forces exists on the national level. Most cantons divide the services of the police: criminal, security and traffic police forces in German speaking cantons or criminal and security police troops in French-speaking cantons, while some cantons divide their forces into geographical sectors (Italian speaking canton, the cantons of Bern and Graubünden). The canton of Basel city has a dual system with a security police under the cantonal home ministry and a criminal police led by the prosecutor office. Most cantons have communal police forces with various police powers.

In Spain, there is an organic police law pursuant to the constitution and the fact that internal security is an exclusive competence of the central government.

In India, despite the existence of numerous state police forces, there is considerable uniformity in their structure and functioning. One important explanation is that the structure and functioning of the State Police Forces are governed by the Police Act of 1861

which is applicable to most parts of the country (or by the State Police Acts modeled mostly on the 1861 legislation).

National Penal Code

In the US, there are 52 legal and criminal justice systems: one at the federal level, 50 at the state level, and one for Indian land. The definition of crime somewhat differs among the 52 systems, especially in terms of the elements stated in statutes. State laws and federal laws are not always in harmony with each other and some criminal issues are still unresolved and the body responsible for deciding over the issue will be decided only once the case has reached the Supreme Court. For example, the federal law includes a list of illicit substances (drugs), the production, trafficking, possession and use of which are considered serious offenses. This list includes marijuana. Some states however have deregulated or decriminalized marijuana for private or medical use.

Since internal security is a competence of the central state, Spain has one penal code and code of procedure for the entire country. Regional and municipal forces have to abide to the same rules.

Switzerland has only recently introduced a harmonization of its codes. They are a competence of the federal government.

In India, major criminal laws, like the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act are uniformly applicable to almost all parts of the country.

National Police Force, National Corps, National Police Standards

A national force is a force which responds to the central authorities with jurisdiction over the entire country concerning the majority of crimes that can be committed. Most countries do not have such a force. However, nations can more or less take steps in the direction of a more homogeneous police servicing by establishing a police corps (recruited and managed even if not operating under the authority of a central government) or police standards for selection and training.

No such national force is found in the US. There is not even a definition of a federal police peace officer.

Similarly, in Switzerland, there is no national force of this kind. Since 2003 the police profession has been recognized on a federal level with the introduction of a federal certification and a unified ba-

sic training. Municipal police receive generally a shorter non-federally sanctioned training (3 months) which can be trained in various local police schools. Four training centers are to replace the old cantonal police schools and training will be standardized. However, the current system remains largely fragmented. There is no higher-level police academy in Switzerland which could be compared to the Police Leadership Academy of Münster in Germany for instance. All recruitment/training is done locally by cantonal police forces or municipal forces.

On the contrary, there are two national forces in Spain (nationally recruited, trained, appointed and managed, for all ranks of the force).

In India, an intermediate situation is found: The "All India Service," i.e. the Indian Police Service is recruited, trained and managed by the Central Government and provides senior officers to the State Police Forces. It is not a national force in the Spanish sense (a national service operating at all ranks locally and under the direction of the central government). However, there is a national body of police chiefs and middle rank managers.

The head of each state police force is an officer of the rank of Director General of Police, who is responsible to the state government for the administration of the force and for advising the government on police and public order matters. He is assisted by senior officers in charge of different departments, like Police Training, Crime Investigation, Police Telecommunications, Human Resources, Human Rights, Armed Police, Vigilance & Anti-corruption, Intelligence/Security, Railway Police, Civil Defence/Home Guards, Traffic Police, Police Housing, etc. There may be minor variations in the headquarters establishment of different state police forces, but generally each of the departments is headed by an officer of the rank of Additional Director General or Inspector General of Police and in some cases even by a Director General of Police.

This is very different to the US where many governmental units have their own police, normally limited by function or territory, such as transit, harbor, airport, universities or school districts. Police at the federal level all have limited jurisdiction power and formally have very little interactions with each other.

National information systems participate in the unification of the forces. In Switzerland, the majority of police-related information systems are not yet centralized. At present, standards for collecting

crime data are agreed at the national level but no national crime database exists. Bilaterally, some cantons do share data and have joint analysts units searching for inter-cantonal crime patterns, etc. Crime statistics are collected by cantonal police and sent to the federal statistics office.

National Disciplinary System

In India, the police are very autonomous. The rules differ from state to state. Generally, dismissal, removal and reduction in rank or pay and penalty of service are regarded as 'major punishments.' They cannot be imposed on any police officer without conducting a regular departmental inquiry.

In the US, as one would expect, each government with policing competence has its own internal disciplinary system.

The same applies to Switzerland. There is no special competency of the federal police to investigate local police.

The Spanish disciplinary system is the most integrated one. Embedded in the constitution, it places the rule of law and discipline at the core of policing functions. It insists on making no difference between the military status force (*guardia civil*) and the civilian forces.

Means of Influencing Local Decision-Making in Policing

Two federations have developed a way of influencing or overseeing the decisions made at the local level concerning policing issues.

In Spain, there is a 'government delegate' who represents the central state at the local level and who is the head of the two major forces (police and *guardia civil*). The government delegate used to be called a 'prefect' based on the French centralized model. Although his influence strongly declined with the rise of the power of the *autonomias*, he has maintained his role regarding internal security.

In 2010, in an attempt to protect civil servants from being subjected to the state governments' use of powers, the Indian central government amended the All India Services (Discipline and Appeal) Rules. The Amendment withdrew powers of state governments to suspend the heads of these three services in states: Chief Secretary of the Indian administrative services, Director General of Police and Chief Conservator of Forests. This power was previously avail-

Box 5. Check List: Degree in Homogeneity and Centralization of a Police System

Unity across forces of a police system are brought about by many factors:

- The existence of a national police law
- The enforcement of a unique penal code throughout the country
- The existence of national information systems
- The existence of a national police force or national standards
- The existence of a national disciplinary system
- Means of influencing local decision-making with regards to police issues (local delegates of the central government, appointment of state police chief)
- The size and capability of central forces to be projected locally in case of troubles.

able with state governments; now they are required to refer all such cases to the central government.

In Switzerland, the dual principle of federalism applies fully to policing. Local police policies are decided exclusively by the local governments. On specific topics, harmonization is attempted through an inter-cantonal coordination body but rests entirely on a voluntary approach by cantons.

Framework, Status and Affiliation

The forces established constitutionally or by derived acts can be of various nature and affiliation.

By definition, federal or national forces are operating within their jurisdiction. In all federal countries, a number of federal or national forces exist. In addition, public forces operating on a daily basis at the local level are found. Those can be of national, state or regional and even municipal nature.

In order to understand the nature and affiliation of forces, several dimensions shall be considered. At least three criteria must be confronted here:

- firstly, the central or local framework for forces
- secondly, their military or civilian status, and, finally
- their ministerial affiliation.

Let us consider the *central or local framework* for the forces. In most federations, the federal forces operate under the authority of the central government and have a jurisdiction of their own in geographical terms (some premises are federal) or in terms of crimes (some crimes are federal). When deployed in a member state, they usually require to be supported by state or other local police force. In Switzerland, many investigations of federal nature are delegated to the cantonal police under the supervision of the federal agency. There are virtually no federal agents with a permanent office in a canton. Spain is the only counter-example here since it does not have a federal force. Instead, national forces are found with jurisdiction over the entire country and for all types of crimes. Those personnel are permanently working at the local level.

The anchorage of local force naturally is local. The police services of a canton, state or *autonomia* operate exclusively in their geographical area and have no jurisdiction beyond it. In Switzerland, multilateral concordats between cantons regulate the possibility of a cantonal agent operating on the territory of another canton (for example 'hot pursuit'). The same applies for municipal forces.

The system in India has specificity (see Table 3). Police chiefs belong to a national corps (India Police Services). They are assigned to a given state where they perform their duty under the authority of the state government. Their jurisdiction is local.

We can only truly understand the regime implications of a police system if we also understand whether the police respond to soldiers and the military hierarchy, or whether they respond to political officials such as mayors or governors, whether those are appointed or elected. This relation between the forces and the civilian authorities is called the *security configuration*.

Table 3: Police Chiefs of Main Local Forces (State, Region, Municipality Depending on Country): Recruitment, Appointment, Operations.

	USA (Municipal)	India (State)	Spain (National)	Switzerland (Canton)
Recruitment	Municipal	National	National	Canton
Appointment	Municipal	National	National	Canton
Operations	Municipal	State	National	Canton

Analysts such as Llorente² have noticed the changing ministerial affiliations of the police—between Defense and Interior—in Latin America and suggested that such changes have an important impact on the militarization of the police. It is likely that the ministerial affiliation is important, but that the locus of control is equally so. If *the internal security sector* is in the hands of soldiers instead of politicians, as it is the case for example in Turkey with the gendarmerie, the evolution of the police system and police doctrines will probably be much slower.

In our review, most public forces are of *civilian nature* as opposed to *military nature*. The continental model based on the Napoleonic experience has contributed to defining and spreading the model of the French gendarmerie in Europe and beyond. It was fit to large countries with vast rural settings.

Because the gendarmerie² is a central force (there is no local gendarmerie, but only national ones) and it has a military status, it also inherited an authoritarian connotation.

The European gendarmes are military by status. However, despite that fact, their *affiliation* has shifted from the Ministry of Defense to *the Ministry of Interior* in line with the evolution of their function in society. In practice, the gendarmes have become a quasi-civilian police force but wearing a military uniform. In Spain, as early as 1978, they were defined as an internal security force and placed under the authority of the Ministry of Interior.

In Switzerland, the gendarmerie has become a fully civilian force, only the name reminds of 'old times.' The Swiss gendarmes are in fact the uniformed department dealing with public security within the cantonal police. Other European governments although centralized have followed the same path: France is now in a similar situation and Italy seems to move in that direction.

The affiliation of the national forces is the central Ministry of Interior. Even in the case of the gendarmerie, the Ministry of Defense is not involved. The member unit forces are affiliated to the member unit Ministry of Interior at regional level or equivalent. The Swiss gendarmerie falls into that pattern.

² Maria Victoria Llorente, "Demilitarization in a War Zone," in *Public Security and Police Reform in the Americas*, ed. John Bailey and Lucía Dammert (Pittsburgh: University of Pittsburgh Press, 2006), pp. 111–31.

Table 4: Existence of a Public Policing Force with a Military Status at the Local Level and Nature of Top of Its Chain of Command.

	<i>India (State)</i>	<i>Spain (National)</i>	<i>Switzerland (Canton)</i>	<i>USA (Municipal)</i>
Existence of police with military status	No	Yes	No	No
Top of chain of command	Not applicable	Central Ministry of Interior	Cantonal, equivalent to the Ministry of Interior	Not applicable

The Anglo-Saxon tradition insisted, against the French model, that police forces should be of civilian nature. Therefore, those countries excluded gendarmeries in their own countries or the countries that they influenced directly. This tradition is reflected in international norms and standards where a clear division is sought between the role of the army (defense) and of the police (internal public order and security).

Core Elements Constituting a Police System

We have provided an overview of the main structural features of police systems found in four federal states. We focused on the security configuration in which the policing forces (civilian or military by status) are accountable to the civilian authorities, as it is the case in our four case studies. Based on this review, we come to the following conclusions.

Each country is a syncretism that combines three elements into a unique police construction:

- a distribution of police competences to the different levels of governments
- policing powers given to each force or service
- a more or less centralized organization of policing forces, with a possible territorial division of powers among forces (a central force working at the local level or a central force working at the central level for example).

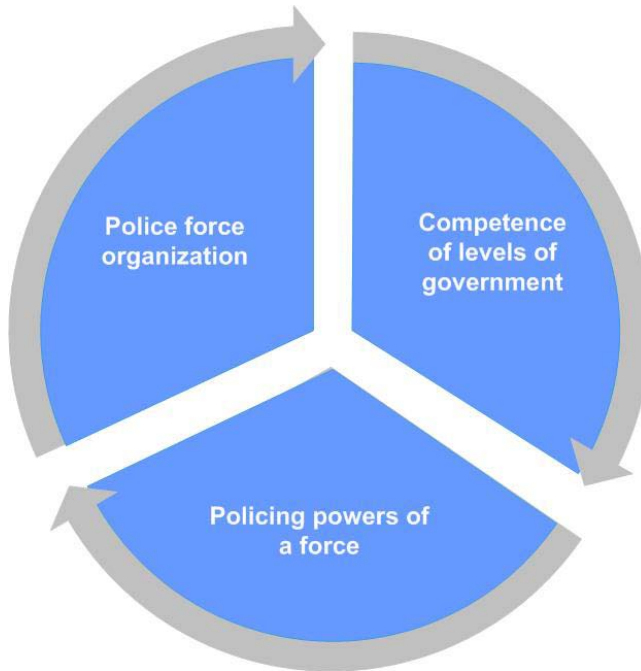


Figure 5: A Police System in a Country is Based on Three Core Elements.

Table 5: The Syncretism of Police Architecture: The Case of Spain.

	<i>Federal police forces</i>	<i>National government forces</i>	<i>Regional government forces</i>	<i>Municipal government forces</i>
Country	None	YES, full powers (police & gendarmerie)	NO	NO
Member units	None	YES, full powers (police & gendarmerie)	YES 3 regions (full powers in region)	NO
Municipality	None	YES, full powers (police)	YES	YES (limited powers)
Rural areas	None	YES, full powers (gendarmerie)	YES	NO

Taken together, these elements organize a given police system. For example, in Spain (see Table 5), the municipal forces with limited police powers operate only in municipalities and respond to the mayor. Each regional force (when they exist) has full police powers but limited to its *autonomia* while the two national forces are permanently settled throughout the country and have the power to deal with all crimes (contrary to federal forces which have limited jurisdiction).

The Spanish case clearly departs from the Indian one (see Tables 5 and 6) or any other in fact. While there is no federal force in Spain, there are several in India. While all states have full competence in India, only a couple of *autonomias* have set up their own force in Spain.

Table 6: The Syncretism of Police Architecture: The Case of India.

	<i>Federal police forces</i>	<i>National government forces</i>	<i>Regional government force</i>	<i>Municipal government forces</i>
<i>Country</i>	Yes, limited jurisdiction	None	NO	NO
<i>Member units</i>	If disturbances	None	YES, all states (full powers)	NO
<i>Municipality</i>	If disturbances	None	YES	NO
<i>Rural areas</i>	If disturbances	None	YES	NO

Checklist for the Core Elements Constituting a Police System

Federal political orders require attention to several constitutional and other institutional issues and most importantly the distribution of police competence. The distribution of legislative, executive, judicial and constitution-amending power between the member units and the central institutions is crucial. In asymmetric arrangements some of these may differ among member units.

Box 6. Police and Federalism: The Four Questions to be Addressed

1. What is the desired distribution of police competences to levels of governments?
 - Which levels?
 - What competences?
2. What are the policing powers given to a force?
 - Full jurisdiction (all territories, all crimes)?
 - Limited jurisdiction (territories)?
3. Leaving aside very specialized units, how centralized should the organization of daily policing forces be?
 - National forces operating locally under central control?
 - National corps operating locally under member unit control?
 - State level forces responding to state authorities?
 - More local level forces answering to those authorities.
4. In case of opting for state or lower level forces, shall there be:
 - A national police law?
 - A national recruitment procedure and managed force?
 - National training standards?
 - A national penal code and criminal procedure code?
 - A national information system?

The “Principle of Subsidiarity” has often been used to guide the decisions about the allocation of competences. This principle can be specified in several ways, for instance concerning which units are included, which goals are to be achieved, and who has the authority to apply them.

Federal arrangements are often more complex, thereby challenging standards of transparency and accountability.

In order to institutionalize or upgrade a police system, four sets of questions should be addressed (see Box 6): (1) What is the desired distribution of police competences to levels of governments? (2) What are the policing powers given to a force? (3) Leaving aside very specialized units, how centralized should the organization of daily policing forces be? (4) In case of opting for state or lower level forces, how shall they be organized?

A General Checklist for Introducing Federalism

Main Findings

This report identifies the dimensions of police systems in federal polities with the aim of helping decision-making in the selection of its most important features and of facilitating a transition process.

In total, four main points have been highlighted, all of them being critical in the establishment of a police system:

- Structure of political system (federal, state, region, municipalities)
- Structure of police forces (national, local)
- Nature of police forces (ministerial affiliation)
- Powers of police forces.

A first observation consists of the constitutional arrangement itself. We recommend paying attention to two sets of decisions that can be of utmost importance:

- To protect the rights and freedoms unambiguously and without restriction, for example on the basis of the Bill of Rights or similar documents;
- To establish the foundations of the police system within the constitution itself, the Spanish model being the most convincing example in our review.

Among democracies, various patterns of government can be found. One distinctive feature among them is the degree to which they are centralized.

It is generally accepted that one if not the most critical variable when studying police in comparative political contexts is centralization *versus* decentralization.¹ The main differences which can be found between various police systems undoubtedly stem from the conception inspired by the Anglo-American tradition on the one

¹ Bayley constructed a two-by-two table in which one of the axes is singular vs. multiple and the other is centralized vs. decentralized.

hand, and the one inspired by the French-Continental tradition on the other. The former is highly decentralized, featuring independent local police forces, initially little if any national coordination, and a focus on serving the needs of citizens.

However, this report suggests that identifying the core dimensions of police systems is more complicated than simply dividing them into two categories. In fact, a federal polity such as the Indian one should lead to the creation of a decentralized and service-oriented police system. This is not the case, since the Indian government established a centralized police system in a decentralized polity, with a military-style police and interference of the union in state affairs.

The second main finding of this review is that the form of a politically organized unit does not determine the form of every organ, including that of the policing agencies.

We have proposed that, in addition to the type of polity, the key distinctions for properly crafting a police system are:

- Its degree of centralization
- Its security configuration (other factors than centralization impacting the governance of the security sector), including ministerial affiliation
- The powers vested in the various police agencies.

A General Checklist

In order to institutionalize or upgrade a police system, three sets of questions should be addressed:

1. What is the desired distribution of police competences to levels of governments?
2. What are the policing powers given to a force?
3. Leaving aside very specialized units, how centralized should the organization of daily policing forces be?

These questions are intended to examine the options available for establishing a police system in a federal polity.

Section 1: Constitutional Checklist

- There are two options concerning constitution: dual and cooperative federalism

- Constitution protects the human rights and liberties unambiguously and without restriction since those provisions will bind police agents and forces
- Constitution asserts that policing is placed under civilian authorities, that the agents and forces are fully accountable to the civilian authorities
- Constitution ensures that policing is a service to the public and that law enforcement and public order maintenance (internal security) is bestowed to civilian police forces
- Constitution determines which level of government will primarily be in charge of public policing; it encloses a “list of police competences” to be distributed between the central level, the member units and the local levels and those to be shared by different levels of government
- Constitution sets up a coordination mechanism in order to counterbalance a risk of fragmentation observed in some federal polities
- Constitution imposes “a national police act” in order to regulate in a detailed fashion policing responsibilities of the forces and disciplinary rules
- Constitution indicates what the institutional mechanism is that needs to be established in order to resolve problems that may arise in relation with the distribution of competences (advisory decisions, court orders).

Section 2: Central Competences Checklist

- Sovereignty (border protection, protection of government, anti-terrorism, counterfeit currency)
- Public order (central police intervention if disturbances, army supporting civil power)
- Intelligence (threat analysis, counter-intelligence, etc.)
- Investigation (restricted to certain crimes: corruption, trafficking, weapons)
- Statistics (collecting and analysing data, setting up IT systems)

Section 3: Degree in homogeneity and centralization of a police system checklist. Elements of commonality across forces of a police system are brought about by many factors:

- The existence of a national police law
- The enforcement of a unique penal code throughout the country
- The existence of national information systems
- The existence of a national police force or national standards
- The existence of a national disciplinary system
- Means of influencing local decision-making on police issues (local delegates of the central government, appointment of state police chief)
- The size and capability of central forces to be projected locally in case of troubles.

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