# 3

# How We Apply the Coding Scheme

Credible measurement hinges on the clarity and consistency of the principles that guide scoring. Chapter One (Figure 1.1) describes six steps from the abstract to the particular. The process begins by theorizing the background concept of political authority, which is then specified as a basis for disaggregating the concept into the domains of self-rule and shared rule. This provides a frame for theorizing dimensions which, in turn, nest indicators. This takes us closer to empirics, but one still has to bridge the conceptual distance between an indicator and an observation (i.e. a score for a case). This chapter seeks to make the decisions from indicator to observation transparent. This is not a story with a plot or finale, but an exercise in grappling with puzzles, each with its own tricky facets. Be warned: the elegance that one observes in the restaurant is little in evidence in the kitchen. In short, this chapter is intended for those who are not satisfied with eating the meal we have prepared, but who wish to probe through the steam and smoke to see the cooks at work.

A coding scheme—a set of items on a limited number of dimensions—should be inter-subjective so that it can produce convergent scores. However, particular cases will usually involve expert judgment no matter how carefully an item is formulated. Expert coding cannot be reduced to an algorithm, but involves disciplined conceptual problem solving as well as detailed knowledge of the cases themselves.

Disciplined conceptual problem solving is another way of saying "theory." To get a taste of this, dip straight into the section on Constitutional Reform (p. 96ff.). In order to compare the authority of regions in the process of constitutional reform one must make a series of theoretical decisions that allow one to abstract from the particularities of individual countries and regions. The result is a conceptual framework for analysing constitutional reform. In the words of Stephen Jay Gould (1998: 155): "Theory and fact are equally strong and utterly interdependent; one has no meaning without the

other. We need theory to organize and interpret facts, even to know what we can or might observe."

If you wish to work your way through this chapter (or parts of it), you will find it helpful to have the coding scheme within reach. Each section is self-contained so readers can consult those sections that most interest them.

Scoring raises some general challenges. The first is minimalism, the principle of specifying the essential properties of a concept by eliminating its superfluous connotations. The second is specificity, the principle that each interval should identify a unique condition on a monotonous dimension. These objectives can be broken down as follows:

- *Defining content*—precision in defining what is encompassed, and what is excluded, in a dimension.
- *Specifying intervals*—clarity in specifying what a minimum score stands for, and what one expects to find with successively higher scores.
- *Avoiding formalism*—judgment in applying formal coding rules in diverse contexts.
- *Triangulating estimates*—searching for alternative sources of evidence.
- *Avoiding contagion*—insulating the object of a measure from its causes and consequences.
- *Adjudicating ambiguity*—evaluating gray cases that can plausibly be scored in more than one way.

The *modus operandi* of this chapter is to make judgments explicit, particularly on sticky issues or where we feel that we may have erred. This is especially important because we cannot assess the reliability of our measure. Rather than use independent coders whose reliability can be evaluated through comparison, we deliberate as a team to increase the validity of our estimates.[1] We indicate three kinds of uncertainty in the text of the country profiles that follow this chapter:

- For an estimate based on thin information we use the symbol $\alpha$.
- For a case that falls between intervals we use the symbol $\beta$.
- Where the sources disagree we use the symbol $\gamma$.

[1] Reliability, i.e. the extent to which estimates converge in multiple trials, is necessary but not sufficient for validity, which is the extent to which a measure accurately measures what it is supposed to.

GROUND RULES

*What is a regional government?* We define a regional government as a government that is intermediate between the national and the local. We code standard regions where the units at that level had, in 2010, an average population of 150,000 or more, and we code non-standard or differentiated regions irrespective of population. We encompass metropolitan regions where these perform regional government tasks in urban areas.

*Which year do we code?* The dataset covers the period 1950–2010. We code institutional change from the year in which a reform comes into effect. We score a reform in representation in the year of the first election to which it applies.

*How do we justify a coding decision?* Our objective is to link each coding decision with the particular formal rules that regulate regional authority as laid down in executive decrees, laws, constitutions, statutes, or other documents. The profiles reference the specific articles, paragraphs, or sections that pertain to the coding decision. We triangulate with secondary sources and with expert judgments.

The remainder of this chapter is divided into sections for each of the ten dimensions in the coding scheme set out in Chapter One. Each section explicates the meaning of the dimension and how we break it into intervals. It then examines the issues and ambiguities that arise as one applies this to empirical cases.



## Self-rule

### *Institutional Depth*

We conceive institutional depth as a continuous dimension ranging from "no autonomy from the central government" to "complete autonomy." The latter is a conceptual, but not an empirical, possibility. The variation is mostly at the lower end of the scale and the intervals are spaced accordingly.

We distinguish four categories. The first is a null category where there is no functioning general purpose regional administration. The second is described by the Napoleonic term, *déconcentration*, which refers to a regional administration that is hierarchically subordinate to central government. A deconcentrated regional administration has the paraphernalia of self-governance—buildings, personnel, budget—but is a central government outpost.[2] The final two categories distinguish between regional administrations that exercise meaningful authority. The more self-governing a regional government, the less its decisions are subject to central government veto.

[2] Hence a deconcentrated, general purpose region typically scores 1 on institutional depth, but zero on all other dimensions. A handful of deconcentrated regions add to this some representation or, in one case, shared rule.

The box below sets out the categories. Several conceptual decisions are called for. What is a functioning government? What do we mean by general purpose? What conditions can bring us to conclude that there is *no* central government veto? How do we distinguish between formal and informal authority? And finally, how does authoritarianism affect institutional depth? We discuss these in turn.

INSTITUTIONAL DEPTH

**0:** no functioning general purpose administration at the regional level;
**1:** a deconcentrated, general purpose administration;
**2:** a non-deconcentrated, general purpose administration subject to central government veto;
**3:** a non-deconcentrated, general purpose administration not subject to central government veto.

To score more than zero, a region must have a functioning administration. Purely statistical regions—regions created on paper for legal or statistical purposes—do not reach the bar. Several European and Latin American countries set up regions for statistical convenience in economic planning, and only a subset of these evolve into functioning administrations that score 1 or more. To distinguish these cases, we begin with the question: does the administration physically exist? Does it have an office, employees, a postal address? We then assess what the administration does.

Governments that are incapacitated—by war, disaster, or dictatorial imposition—score zero. Incapacitation, in this context, is a general and durable condition; it must affect most or all units in a regional tier for at least two years. Most subnational governments in El Salvador ceased operations during its civil war (1980–92) and score zero for this period. We do not downgrade subnational governments that are dysfunctional because they are strapped for funds. It is not uncommon for subnational governments in poor societies to vary in functionality, but we wish to estimate the authority of a region independently from the extent to which it functions well or poorly.

To score more than zero, a region must be general purpose—not task-specific. We use the term general purpose governance to describe jurisdictions that "bundle together multiple functions, including a range of policy responsibilities, and in many instances, a court system and representative institutions. . . . Type I jurisdictions express people's identities with a particular community" (Hooghe and Marks 2010: 17, 27; 2003). A task-specific jurisdiction, by contrast, provides a specialized public good for a constituency that happens to share a problem or circumstance.

Regions are task-specific when each national ministry controls its own regional subdivision. In Thailand, centrally appointed governors who ran

*changwat* (provinces) had little control over a parallel structure of deconcentrated units set up by sectoral ministries in Bangkok. We score the *changwat* as a weak form of general purpose governance, and the ministerial sections, which took most decisions, are task-specific. Regional governments may also be task-specific if they are responsible for just a single policy. Dutch *waterschappen* (water boards) are task-specific jurisdictions in a country that lies mainly below sea level. In Peru, neither *Organismos de Desarrollo* (Development Entities, ORDE) nor *Corporaciones de Desarrollo* (Development Corporations, CORDE) meet the criterion of general purpose government. *Organismos*, established in 1975, coordinated several regional offices that specialized in regional development. In 1981, they were replaced by *Corporaciones*, which were limited to public works management. These institutions vied with *departamentos*, which coordinated central policy across a broad sweep of policies. *Departamentos* score 1 on institutional depth; *Organismos* and *Corporaciones* score zero.

Several countries have regional administrations that shift from task-specific to general purpose governance. A 1974 reform in New Zealand replaced task-specific with general purpose regions, as did a 1994 reform in England that set up deconcentrated general purpose regions. The regions in England (except for Greater London) were abolished in 2012 and were replaced by task-specific agencies (quangos). Finland's *läanit* were abolished in 2010 and their tasks allocated to deconcentrated central government outposts (*aluehallintovirastot*) and task-specific jurisdictions (*ELY-keskus*) which manage subsidies from the European Union. Regions in Costa Rica and Lithuania took the opposite path, from general purpose to task-specific governance. In 1996, Costa Rican *departamentos* were reduced to statistical categories and task-specific *mancomunidades* filled the gap. In 2010, Lithuania abolished self-governing *apskrytis* and centralized their tasks in sectoral ministries, some of which set up regional outposts.

Scores at the upper end on this dimension depend on whether a regional administration is subject to central government veto. This turns on whether a region has legally enforceable protection against central government *ex ante* and *ex post* control. Such is the case when regional and central law have equal constitutional status. Federalism is the most common institutional expression of this, but it is worth noting that federalism is neither sufficient nor necessary.

Argentina is a federal country although its *provincias* have been subject to a constitutional clause that permits federal intervention "to guarantee the republican form of government or to repel foreign invasions, and upon request of its authorities created to sustain or re-establish them, if they have been deposed by sedition or by the invasion of another province" (C 1853, Art. 6; C 1994, Art. 6). Federal intervention was frequently invoked under both

democratic and military rule, but it fell into disuse with the return to democracy in 1983 and was formally circumscribed in the 1994 amendment of the constitution making federal intervention subject to prior congressional approval. One can debate the timing of transition (and we do in the profile), but it makes sense to increase the score to 3 ("not subject to central veto") for the recent period.[3]

On the other hand, the United Kingdom is not a federation, but the only ground on which a Secretary of State can refuse to submit a bill from the Scottish parliament for royal assent is if it has "an adverse effect on the operation of the law as it applies to reserved matters" or is "incompatible with any international obligations or the interests of defense or national security" (Law No. 46/1998, Art. 351). This has never happened. Scotland scores 3 from 1999. The same applies to Northern Ireland, which has had a similar provision from 2000, and Wales from 2011.

The distinction between 3 and 2 is nicely illustrated in Belgium. Since 1989 the communities and regions score 3 on institutional depth. A special law with constitutional force prohibits the central government from suspending or vetoing decrees passed by regions and communities. Conflicts between decrees and laws are adjudicated by an arbitration court with balanced national and subnational representation (Alen 1989). In contrast, the Brussels region continues to score 2 on institutional depth. Indeed, the national government can suspend and ultimately annul Brussels' decisions on urban development, city and regional planning, public works, and transport on the ground that they detract from Brussels' role as an international and national capital. Moreover, the legal status of Brussels' ordinances is subordinate to that of national laws and community or regional decrees. Local courts can declare Brussels' ordinances void if they are in breach of higher law (Alen 1989).

The region of Aceh in Indonesia walks a fine line between a score of 2 or 3. The 2006 Law on the Governing of Aceh, which is the bedrock for Aceh's special status, does not exclude a central government veto. For example, the stipulation that "the central government sets norms, standards, and procedures and conducts the supervision over the implementation of government functions by the Government of Aceh and District/City governments" (Art. 11.1) provides openings for substantial central government authority over areas that otherwise fall under regional governance. We lean on the secondary literature and the judgment of experts such as Al Stepan and his colleagues (2011: 242–52) to come down for a score of 3.

[3] We argue that 1983 is the more defensible date.

## How We Apply the Coding Scheme

We code formal authority—not the exercise of power—in determining the score on institutional depth. Ireland's regions illustrate how the two can diverge. A 1994 law establishes regions as "authorities" equipped with an executive, an indirectly elected assembly, and a small permanent staff under the mandate to coordinate EU structural funding and public service delivery among local authorities. In our 2010 book we considered them to be decentralized general purpose governments. We reconsidered our judgment after a recognized expert on local government wrote to us that "[w]hile it is true that this role of coordinating public services is expressed in Irish legislation establishing both the regional authorities and regional assemblies, in practice the extent to which regions have any role in this area has been extremely limited. The regional authorities have a mandate to prepare regional planning guidelines under spatial planning legislation (which is done only once every five years). A small minority have played a modest one-off coordination role in waste management. In both cases (spatial planning and waste management), the primary responsibility lies with local (not regional) authorities."

While this expert confirms the legal and operational basis of intermediate government in Ireland, his comments spurred us to recode Irish regional authorities as deconcentrated. This appears to be a close call. While they have some paraphernalia of decentralized government, including an assembly and executive composed of senior management from local authorities, we conclude that the mandate to prepare regional planning guidelines under spatial planning legislation leaves little room for autonomy.

Regime type affects institutional depth, but authoritarianism rarely operates as a light switch. Our first move is to code change in formal rules relating to each of the ten dimensions of regional authority. While we are keenly aware of the character of the regime, we wish to estimate regional authority independently from regime change. An authoritarian regime may abolish national but not regional elections; it may replace a directly elected governor by a central appointee but leave the regional assembly unaffected; or it may centralize control over police but not over economic development or social policy.

If a regional tier is suspended or abolished, we code it zero on institutional depth. Few authoritarian regimes go this length. This has happened in just two countries in our dataset—Chile (departments) and Cuba (provinces)—and in both cases abolition was temporary, partial, or counter-balanced by the creation of a new tier. We find that most cases of abolition take place in democracies, including Costa Rica (1995), Denmark (2007), Finland (2010), Germany (Regierungsbezirke in some *Länder*), Greece (2011), Lithuania (2010), and the US (counties in Connecticut).

Institutional depth drops by 1 if authoritarian rule reduces the institutional autonomy of regional governance, that is, if it tightens the overall supervision and control of central government over subnational government. Again, the incidence, timing, and severity vary.

The checkered history of Aceh in Indonesia illustrates this. Aceh, which had been a self-governing region in the dying days of Dutch colonialism, was curbed under the Sukarno and Suharto regimes. The territory lost its provincial status in 1951 and was at first run by the military (Reid 2010*a*, 2010*b*). It regained provincial status in 1957 and was declared a "special region" in 1959. But the incoming Suharto regime downgraded its special status from 1966 and, along with other *provinsi-provinsi*, it became deconcentrated in 1974. In 2001 following the transition to democracy, Aceh regained special autonomy, and in 2006 it was granted additional powers (Bertrand 2007, 2010; Stepan, Linz, and Yadav 2011). Elsewhere in Indonesia, first and second tier regional governments—*provinsi-provinsi* and *kabupaten-kabupaten/kota-kota*—retained self-government under Sukarno, but the New Order regime of Suharto gradually tightened central control, and in 1974 the regime formally revoked the self-government legislation of the 1950s (Bertrand 2007: 577).

Our coding seeks to capture these developments in the following way. We code Aceh separately from 1950 when its path already diverged from the *provinsi-provinsi*. Aceh has zero institutional depth for 1951–56; it scores 2 for 1957–73 to reflect limited institutional self-governance, and then 1 from 1974; 2 from 2001–06, and 3 thereafter. We distinguish between the Sukarno and Suharto periods for all *provinsi-provinsi*. The exact timing of the downscaling to deconcentrated government under Suharto is debatable. We opt for 1974 rather than 1966, because, while the Suharto regime moved fast to weaken provincial and district governance through executive and military orders soon after the 1966 coup, regional self-governance was not formally repealed until the law of 1974. Even after 1974, the regime continued to tolerate direct elections of provincial and district assemblies, but these were heavily regulated and the center wielded a veto over provincial governors and district mayors (Shair-Rosenfield, Marks, and Hooghe 2014). Indonesia under the New Order was highly centralized with "the lower levels of government simply implement[ing] directives" (Bertrand 2010: 175).

In contrast, the transition in Malaysia from democracy to authoritarianism after the 1969 race riots did not significantly redraw authority relations. The first postcolonial Malaysian constitution of 1957 put in place a relatively centralized federal framework that favored the central government over the *negeri* (Kok Wah Loh 2010; Stubbs 1989; Taylor 2007). *Negeri* score 2 on institutional depth, except Sabah and Sarawak which score 3 on the basis of their special constitutional status. After 1969, the "soft authoritarian"

government fortified its control over economic policy making but did not challenge federalism, so we score 2 on institutional depth.

In Brazil, institutional depth is decreased from 3 to 2 in 1964 following the *atos institucionais* (institutional acts) which enhanced central control over *estados*. The acts made it easier for the regime to displace opposition governors, which it proceeded to do. Central control was enhanced under the 1967 constitution, but this did not reduce *estados* to deconcentrated units (Eaton 2001*b*; see also Dickovick 2011; Falleti 2011). There is, then, no reason to drop institutional depth to a score of 1.

### *Policy Scope*

Policy scope taps regional authority over the range of government policies, which we group in the following five categories:

- economic policy: regional development, public utilities, transport including roads, environment, and energy;
- cultural–educational policy: schools, universities, vocational training, libraries, sports, cultural centers;
- welfare policy: health, hospitals, social welfare (e.g. elderly homes, poor relief, social care), pensions, social housing;
- institutional–coercive policy: residual powers,[4] police, own institutional set–up, control over local government;
- policy on community membership: immigration, citizenship, right of domicile.

In this section we discuss four basic scoring issues. First, we outline criteria for determining whether a regional government has authoritative competences in one or more of these policy areas. Second, we explain why we think authority regarding community membership is special. Third, we come to grips with the fact that central governments and regions often share authority. And finally, we take up the perennial challenge of deciding where formal rules end and practice begins.

The box below operationalizes regional policy scope across four intervals. These do not interpret themselves, but rest on a set of "rules about the application of rules" which are best explained using examples.

[4] Residual powers are competences not constitutionally mandated to other jurisdictions.

| POLICY SCOPE | |
|---|---|
| **0:** | the regional government has very weak or no authoritative competence over (a) economic policy, (b) cultural–educational policy, (c) welfare policy, or (d) institutional–coercive policy; |
| **1:** | the regional government has authoritative competence in *one* of (a), (b), (c), or (d); |
| **2:** | the regional government has authoritative competences in *at least two* of (a), (b), (c), or (d); |
| **3:** | the regional government has authority in (d) plus at least two of (a), (b), or (c); |
| **4:** | the regional government meets the criteria for *3, and* has authority over immigration, citizenship, or right of domicile. |

By "authoritative" we mean having the capacity to develop binding rules through legislation or executive orders. This capacity can be exercised solely by a regional government or, more usually, it is exercised concurrently with governments at other scales. If regional office holders have meaningful discretion—an autonomous capacity to set and pursue priorities—they need not have primary authority to warrant a positive score on this dimension.

Competence in the field of community membership is required for a maximum score. Authority over immigration, citizenship, or right of domicile are "fundamental sovereign attributes,"[5] and regions that meet this high hurdle will already have authority in several substantive policies. Every region in the dataset that has competence in community membership also meets the criteria for a score of 3.

Many regional governments execute aspects of immigration or citizenship policy on behalf of central governments, but few have significant legislative authority over one, let alone both, areas. Just four regional tiers and six individual regions in our sample meet this criterion: the Australian states, Swiss cantons, Quebec, the Finnish Åland islands, Sabah and Sarawak in Malaysia, the two entities in Bosnia and Herzegovina, the republics in Serbia-Montenegro (until 2006), and Bashkortostan (until 2004) and Tatarstan (until 2006) in Russia.

In Switzerland, immigration and asylum is a confederal competence, but citizenship is primarily cantonal (Church and Dardanelli 2005: 173). The confederation regulates citizenship by birth, marriage, or adoption, and lays down minimum requirements for naturalization. However, the cantons can specify residence requirements and can require a language or naturalization test. In Australia, citizenship is federal (following the Australia Citizenship Act

[5] US Supreme Court, in *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n. 21 (1976).

of 1948), but regulation of immigration is a concurrent competence. A state can grant a visa to a skilled worker provided he or she passes a federal points test. The federal government has its own skills program, and also allocates family and student visas. By contrast, the states of the US score 3, not 4, on this dimension. The US constitution grants states some authority to regulate the conduct of foreigners, but immigration and naturalization are exclusive federal competences.

Canada and Quebec illustrate what it takes to move from 3 to 4. While immigration is a concurrent competence in the constitution, provincial authority remained a dead letter for decades. One might say that there was no "enabling law" until pressure from Quebec finally led to the 1978 Canada Immigration Act authorizing the federal government to conclude federal–provincial cooperation agreements on the subject. Cooperation became exclusive regional control following the Canada–Quebec Accord of 1991 which gave Quebec "sole responsibility for the selection of immigrants destined to that province" and commanded the Canadian government to "admit any immigrant destined to Quebec who meets Quebec's selection criteria" (Canada–Quebec Accord 1991, Art. 12; Simeon and Papillon 2006). After 1996, all Canadian provinces were able to "nominate" immigrants, and most do so, though, outside Quebec, the federal government still makes the final decision. Canadian provinces are, then, in a weaker position than Australian states, which can select immigrants within federal regulations. Quebec receives a score of 3 on policy scope from 1950–90 and 4 from 1991–2010, and provinces score 3 throughout the period.

The Åland islands score 4 since its government has exclusive authority to determine right of domicile in the islands which an individual needs in order to vote, stand for election, purchase, lease, or inherit property, or open a business on the islands. The Åland government grants domicile to all individuals with a parent who has the right of domicile and to others on a case-by-case basis. Similar provisions exist for Sabah and Sarawak which control immigration within their borders and issue visas to foreign visitors traveling from other countries or from other parts of Malaysia.

The Russian republics of Bashkortostan and Tatarstan had joint jurisdiction over citizenship under their bilateral treaties, but president Putin clawed back these provisions in 2005 and 2007, respectively (Chuman 2011: 135; Chebankova 2008: 1002).

Authority in systems of multilevel governance is often shared. Regional policy competences tend to be concurrent with central or, occasionally, local government. When does it make sense to say that a regional government has authority over a certain policy? To make headway, we must make some distinctions. Our primary concern is with constraints stemming from central control which can take several forms:

- a dual structure of regional government in the form of parallel deconcentrated and decentralized administrations (e.g. military councils and *estados* in Venezuela (after 2000), or *län* and *landstinge* in Sweden);
- a mixed administration (e.g. a directly elected assembly and centrally appointed executive, as in Bolivia, France, or Thailand);
- a single administration that combines self-government and deconcentration (e.g. Dutch *provincies*).

In each of these situations, the score for policy scope reflects central constraints on a regional government's authority.

In Venezuela, Chávez' *Plan Bolívar 2000* established a parallel system to vie with *estado* and municipal governments (Hawkins 2010; Leon and Smilde 2009). The plan authorized the military to set up communal councils to arrange social services, including vaccinations, food distribution, and education, which would be implemented by "bolivarian missions" staffed by 40,000 soldiers. The dual system was constitutionalized in 2009. We acknowledge this shift in policy scope by reducing the score for *estados* from 2 to 1 in 2000.

In Sweden, responsibilities for governing the *län* (counties) are divided between *landstinge* (elected councils) and centrally appointed governors. Until 1970, *landstinge* provided health care along with occupational retraining. Centrally appointed governors had primary responsibility for law and order, local government, and implemented state legislation in health, education, and a broad range of economic policies. *Landstinge* score 1 for welfare, the core of their policy portfolio, but zero for economic development, which was heavily constrained by central regulation. In 1971, *landstinge* were given new tasks in regional development and public transport, at which point they score 2 for economic policy in addition to welfare.

Bolivian *departamentos* are dual structures with directly elected departmental councils which could propose policy initiatives and a centrally appointed prefect who made final decisions. The World Bank describes *departamentos* as "not yet fully autonomous subnational governments" (World Bank 2006: 13). *Departamentos* acquired competences in public investment, research, tourism, and welfare from 1995, but given the dominant role of the prefect we maintain a score of zero. With the introduction of direct elections for *prefectos* in 2005 we score policy scope 2. French *départements* and *régions* have a similar dual system in which the centrally appointed *préfet* has also lost some authority in recent years.

Thai *changwat* illustrate how the balance between decentralization and deconcentration can shift. Before 2004, the authority of directly elected assemblies in culture and education, infrastructure, and hospitals was shared with a centrally appointed governor. We adjust the score for policy from 1 to 2 when a regionally selected executive with competences in education, welfare, and economic planning, was established alongside the governor.

Finally, what is written and what is practiced may differ. Constitutional changes often require enabling legislation which may be scrapped, delayed, or diluted. To assess South Korean *do* (provinces) and *gwangyeoksi* (metropolitan cities) one must look beyond headline legislation to detect the timing of decentralization. The 1991 Local Autonomy Act authorized devolution in four broad areas: education, general welfare, and health; environment; agriculture and industry; and local government (Choi and Wright 2004). However, only education was devolved right away (hence, a score of 1). Decentralization took another step forward in 1999, when a new law laid down a procedure for transferring central competences in a broad swath of policies. However central departments and agencies continued to have the right to veto transfers—and actively used this to slow implementation of the law—a central constraint that is reflected in a score of 2, which would otherwise have been 3. After a third major law in 2003, which deprived central departments and agencies of the discretion to block or delay decentralization, the formal transfer of competences gathered pace (Bae 2007). From 2004, *do* and *gwangyeoksi* score 3 for policy scope. In this case, the implementation of the 1991 framework law stretched over twelve years.

### *Fiscal Autonomy*

Regions may have fiscal authority in the form of taxation autonomy, co-decision on national tax regimes, and co-decision on intergovernmental grants (Swenden 2006). Our measure of fiscal autonomy captures the first of these, while the latter two fall under fiscal shared rule. Fiscal autonomy assesses a regional government's authority over its fiscal resources independently of their extent.[6]

The box describes how variation in fiscal autonomy is estimated across four intervals which distinguish between major and minor taxes and within these, between the capacity to control base and rate, or rate only.[7] Below we delineate more precisely what is included in taxation (and what is not), which taxes are major or minor, and how we assess partial autonomy on setting the rate or base of taxes.

[6] A 1999 OECD study distinguishes two notions of authority (control independent from central government, and shared rule with central government), and three areas of control (tax base, tax rate, and revenue split). Subsequent OECD studies refine these distinctions with an eye to estimating them (Sutherland, Price, and Joumard 2005; Blöchliger 2015; Blöchliger and King 2006: 10).

[7] A tax is a "pecuniary burden upon individuals or property to support the government. . . . a payment exacted by legislative authority . . . [It is] an enforced contribution . . . imposed by government whether under the name of toll, tribute, tallage, gabel, impost, duty, custom, excise, subsidy, aid, supply, or other name" (Campbell 1979: 307). Similar taxes often have different labels. For example, the income tax on profits made by companies or associations is called corporate tax in the US, corporation tax in the UK and Ireland, and tax on enterprise profits in Russia. In Japan, it goes by several names depending on the taxing authority.

FISCAL AUTONOMY

**0:** the central government sets the base and rate of all regional taxes;
**1:** the regional government sets the rate of minor taxes;
**2:** the regional government sets the base and rate of minor taxes;
**3:** the regional government sets the rate of at least one major tax: personal income, corporate, value added, or sales tax;
**4:** the regional government sets the base and rate of at least one major tax: personal income, corporate, value added, or sales tax.

Fiscal autonomy "encompasses features such as a sub-central government's right to introduce or to abolish a tax, to set tax rates, to define the tax base, or to grant tax allowances or reliefs to individuals and firms" (Blöchliger and King 2006: 9). It does not include a region's authority to set fees or charges in return for specific services, such as fees for the preparation or deposit of official documents, bus charges, or public utilities. Fees are always tied to particular services and typically earmarked to be spent on sustaining these services. Thus, the Greater London Authority scores 1 because it can levy a property tax for which it can set rates, not because it can determine tube or bus fares or because it imposes a congestion charge for personal vehicles in central London. Royalties on mineral or other resources are considered a resource tax, not a fee, and fall under the category of minor taxes.

The distinction between major and minor taxes is somewhat arbitrary, though it is conventional to categorize personal income, corporate, value added, and sales taxes as major (Boadway and Shah 2009). Property taxes, resource taxes, excise taxes (e.g. on alcohol or cigarettes), registration taxes, etc. are usually considered minor. There are, of course, border cases. Argentine *provincias* signed away authority to tax income and sales in the 1930s in return for a share in federal taxes, though they retain control over the rate and base of a sales turnover tax, *ingresos brutos*, on companies' gross revenues (Bonvecchi 2010; Falleti 2010). Until 1975, *provincias* also set a general tax on gross sales, which was eliminated when a federal VAT was introduced. Are these provincial sales taxes major? We argue that they are and that the abolition of the general provincial sales tax in 1975 constituted an important reduction in provincial tax autonomy which reduces fiscal autonomy from 4 to 2. *Provincias* also control inheritance tax, vehicle registration, and a stamp tax on property transactions, which are unambiguously minor taxes.

The Argentine example raises the broader issue of tax autonomy. National law may set parameters within which regions control the tax rate or base. In such cases one must assess the extent to which a regional government has discretion. Peru is a case where we judge this to be small. The 1979 constitution

gives *provincias* authority to decide the base and rate of several minor taxes, but leaves it to the central government to work out the modalities. Successive governments have consistently interpreted regional competences narrowly. The central government sets the base and determines the parameters for rate variation so that "such revenues are closer in concept to shared revenues (with a 100 percent share) than own-source taxes" (Ahmad and García-Escribano 2006: 15). We conclude that the tax base and rate are set centrally.

### *Borrowing Autonomy*

Borrowing refers to the acquisition of money (on domestic or international financial markets or from domestic or international banks) against the obligation of future payment. For regional governments this can be a major source of income in addition to own taxes and intergovernmental grants. The extent to which regional governments have the authority to take on debt varies considerably across regions and over time.

The literature on public borrowing distinguishes numerical fiscal rules from procedural and transparency rules (Crivelli and Shah 2009; Ter-Minassian and Craig 1997). Numerical fiscal rules introduce some kind of ceiling on debt (Filc and Scartascini 2007; Rodden 2002). Procedural and transparency rules enhance transparency and accountability by requiring a government to publish a fiscal policy strategy and to routinely report fiscal outcomes (Ter-Minassian 2007).

Our measure of borrowing autonomy evaluates fiscal rules that constrain a region's authority to borrow. The box below describes how we assess the extent of central government restriction. In this section we illustrate how we tackle a) differences between formal rules and practice, b) ambiguities in the bindingness of rules, and c) situations where more than two regulatory regimes co-exist. We begin by clarifying the concept of borrowing autonomy, and explaining what falls under the rubric of borrowing by a regional government.



BORROWING AUTONOMY

**0:** The regional government does not borrow (e.g. centrally imposed rules prohibit borrowing).

**1:** The regional government may borrow *under prior authorization (ex ante)* by the central government and it borrows under one or more of the following centrally imposed restrictions:
- golden rule (e.g. no borrowing to cover current account deficits)
- no foreign borrowing or borrowing from the central bank
- no borrowing above a ceiling
- borrowing is limited to specific purposes

**2:** The regional government may borrow *without prior authorization (ex post)* under one or more of the same centrally imposed restrictions.

**3:** The regional government may borrow without centrally imposed restrictions.

In the domain of self-rule, we consider the extent to which a region may borrow autonomously, and in the domain of shared rule, we consider whether regions may collectively constrain subnational borrowing. We designate the former as "borrowing autonomy" and the latter as "borrowing control."

We also need to be clear about what we understand by "regional government" in this context. A regional government may borrow for its own account or it may use intermediaries such as public companies or local saving banks. We encompass intermediaries provided the regional government controls the institution that contracts to borrow or, in the case of publicly listed companies, owns at least half of the shares. Particularly in countries with a statist tradition, governments sometimes provide public goods through public companies that they control at arm's length. In such cases, the debts incurred may not show up in the core regional government budget. Still, they are financial commitments for which the regional government is ultimately accountable. In Croatia, a *županija* (canton) can issue guarantees for bank loans to a public institution/company in which it is a majority shareholder. A national law limits borrowing to 20 percent of total annual revenues which gives *županije* a score of 1.

The extreme values in the scoring scheme for borrowing autonomy are conceptually simple, but distinguishing them empirically can be challenging because the existence of rules constraining borrowing presumes that a regional government is able to borrow. A region scores zero under one of three conditions: when borrowing is explicitly prohibited by the central government; when a region has no history of borrowing; or when the regional government has no discretion over borrowing (i.e. it is deconcentrated).

At the top end of the scale, a region scores 3 when the following two conditions are met: a) there are no formal central rules regulating borrowing, and b) there is routine evidence of regional borrowing. The first of these criteria is met when a region is free to decide how much to borrow, from whom to borrow, and on what to spend the loan. Market constraints or self-imposed constraints do not negate this condition.[8] It is not uncommon for regional governments to tie their own hands in order to enhance their credit standing, as has happened in Argentina, Canada, Switzerland, and the US. Many US states have constitutional or statutory provisions for a balanced operating budget and that allow borrowing only for capital projects (e.g. the construction of highways or schools) (Joumard and Kongsrud 2003; Plekhanov and Singh 2007). Some *provincias* in Argentina restrict borrowing

[8] Discipline usually comes through credit ratings on subnational debt (Liu and Song Tan 2009: 2).

in their constitutions (Cetrángolo and Jiménez 2003; Nicoloni et al. 2002: 10). In such cases, regions score the maximum on borrowing autonomy.

The second criterion for a maximum score is that regions (or a significant proportion of regions in a regional tier) exercise their right to borrow. Rules on regional borrowing are of relatively recent vintage. In many countries there were no formal rules until the 1970s, but there was a clear norm that borrowing was not allowed. In recent decades, subnational borrowing has become more regulated, often in response to debt crises or, in the EU, in anticipation of monetary union (European Commission 2012; Rodden 2002, 2006; Sutherland, Price, and Joumard 2005). When there are no rules, we require systematic evidence of borrowing before assessing a maximum score. Does the absence of constraint indicate regional authority or does it simply indicate the perception that regulation is unnecessary because regions are not in the game of borrowing?

Naturally, there are gray cases. When Czech *kraje* (regions) were set up in 2000 they were not subject to constraints on borrowing. However, one region—Prague—did borrow, excessively it turned out. In 2001, a national law required prior central government approval for regional borrowing, and limited it to 15 percent of a region's budget. The central government refused to pay Prague's debt and the city resorted to selling property. We score *kraje* 1 on borrowing autonomy as of 2000 even though the law came into effect a year later.

Colombian *departamentos* show how borrowing evidence, regional government status, and rules all need consideration. Until the mid-1970s, *departamentos* were primarily deconcentrated: the governors, who decided on borrowing, were centrally appointed and received instructions from Bogotá. There was no regulatory framework, but regional borrowing was prohibited by the ministry of finance (Dillinger and Webb 1999*b*: 17, 19). By virtue of their deconcentrated status, *departamentos* score zero in this period. From the mid-1970s, *departamentos* acquired limited self-governance (Penfold-Becerra 1999: 199). Absence of borrowing and of explicit rules means we continue to score zero.

The two middle categories on this scale apply when regional borrowing is constrained by the central government, for example, to some proportion of a region's budget or to finance capital projects only. The distinction we make here is between central authorization that is *ex ante* (score=1) or *ex post* (score=2). Our premise is that *ex ante* control is substantially more imposing than control after the fact.[9]

[9] The distinction between *ex ante* and *post hoc* control is consistent with that between an administrative and rule-bound approach to subnational borrowing (Ter-Minassian and Craig 1997).

Contrast Colombia's regulatory framework of 1981 with that of 1997. The 1981 regime was rule-based. *Departamentos* and Bogotá could borrow after approval by the *asambleas departamentales* and the governor, in the case of *departamentos*, and the *concejo distrital*, in the case of Bogotá. Except for the prohibition to issue foreign bonds, restrictions on subnational borrowing were light. There was, for example, no *ex ante* control of cash advances from banks (Dillinger and Webb 1999*b*: 17–18). *Departamentos* receive a score of 2. In 1997, the Colombian government introduced a much more restrictive regulatory framework: it set strict ceilings on debt, created a fiscal and financial monitoring system involving a green, yellow, or red light, and authorized the central government to prohibit particular *departamentos* from borrowing (Daughters and Harpers 2007: 250; Olivera, Pachón, and Perry 2010: 29). That amounts to *ex ante* control, and so from 1997, *departamentos* score 1 on borrowing.

We code formal rules—even if not all governments abide by them. For example, since 1997 borrowing by Austrian *Länder* (states) is governed by the *Voranschlags-und Rechnungsabschlussverordnung* (federal financial decree), which limits borrowing to extraordinary expenses (Thöni, Garbislander, and Haas 2002). Since there is no *ex ante* control, this meets our criterion for 2, even though *Länder* have on occasion circumvented the rule by financing public investment via extraordinary budgets (Balassone, Franco, and Zotteri 2003).

Gray cases arise when violation of formal rules becomes routinized. *Estados* in Brazil between 1950 and 1963 provide an example. Their borrowing autonomy was virtually uncontrolled even though the 1946 constitution stipulated that regional borrowing required prior approval by the senate (C 1946, Art. 62). *Estados* routinely circumvented senate approval by resorting to contractual borrowing from foreign or domestic banks (especially state-owned banks), by issuing domestic or foreign bonds, or running up arrears to suppliers and personnel. This became so rooted that we judge the lack of central control to be an institutional feature of regional authority (Rodden 2006). Things changed in 1964 when the military regime shifted control over borrowing from the senate to the executive, which proceeded to enforce the rule of prior approval. At that point *estados* score 1.

Once formal rules are in place we pay attention to them even if regions do not make use of their borrowing authority. Until 2003, *provincias* in Peru could borrow without prior central authorization as long as debt was not used for current expenditures. Except for the big cities of Lima, Arequipa, and Cusco, borrowing was almost non-existent and it continues to be low to this day. The authority of a region to borrow is our target. The conditions under which a region is induced to borrow are something else. Hence, we score *provincias* 2.

We need to assess the extent to which central rules on regional borrowing are intended to be binding. For example, in 1983 the Australian federal

government relaxed controls on borrowing provided that states complied with an aggregate borrowing limit determined by the Loan Council, a central body (Craig 1997; Von Hagen et al. 2000). However, compliance was voluntary, and we allocate the maximum score for borrowing autonomy to Australian states and territories until 1995, when central constraints were tightened.

Argentina illustrates how bindingness can be contractual. In 2004 all *provincias* signed a contract with the federal government saying they would adhere to the new Fiscal Responsibility Law setting limits on provincial spending, an annual ceiling on borrowing, and prohibiting borrowing for current expenditure. There is no prior central government oversight. The conditions meet the criteria for a score of 2. The commitment is in the form of a contract, which *provincias* can opt out of with the consent of their legislature. However, until they cancel the contract, they are bound by its terms.[10]

Finally, we assess the existence of multiple borrowing channels. Mexican *estados* have this option. The national constitution limits subnational debt to domestic borrowing for productive investment. The federal congress can add conditions, which it did in 1980 by requiring *estado* governments to ensure prior approval in their assemblies. Together these conditions amount to a score of 2. The law also gave *estados* the option to use revenue-sharing funds as collateral for new debt provided that the ministry of finance approved *ex ante*, which would be a score of 1 (Haggard and Webb 2004). Because *estados* continued to have the option of the first borrowing route, we score 2. However, this was closed off in 2000, at which point *estados* could only borrow with *ex ante* approval and score 1.



### *Representation*

Regional authority with respect to representation is the legal capacity of regional actors to select regional office holders. For regional legislators we distinguish direct election in the region from indirect election by subnational office holders. For a regional executive we distinguish selection by the regional assembly from a mixed system of a regional/central dual executive.

The box below summarizes these categories. We need to clarify the concepts of assembly, executive and, in particular, the notion of a dual executive. Among the ten dimensions of the regional authority index (RAI), representation is most easily confounded with the character of the political regime.

[10] All jurisdictions opted in when it was enacted, but one province opted out in 2012 (Córdoba) and another two (Buenos Aires and Santa Fe) had legislative initiatives to do so. Incidentally, this is also how we would code the 2012 Fiscal Compact, which commits Eurozone member states to write a structural balanced budget and debt ceiling in their constitution.

However, regional representation is not governed by the national political regime. Authoritative regional assemblies and executives can in principle co-exist with non-democratic national regimes.

ASSEMBLY

**0:** the region has no regional assembly;
**1:** the region has an indirectly elected regional assembly;
**2:** the region has a directly elected assembly.

EXECUTIVE

**0:** the region has no regional executive or the regional executive is appointed by central government;
**1:** the region has a dual executive appointed by central government and the regional assembly;
**2:** the region has an executive appointed by a regional assembly or that is directly elected.



We define an assembly as a self-standing institution in which a fixed membership using parliamentary procedures exercises legitimate authority. A regional assembly exercises legitimate authority for a regional jurisdiction. It cannot be a committee or subsidiary body that is a subset of a national assembly. This excludes grand committees composed of Scottish, Welsh, or Northern Irish members of the House of Commons who meet as caucuses to discuss bills affecting their regions.[11]

We code the predominant principle of representation in regional assemblies. Where some legislators are directly elected and some indirectly elected, we count voting members. Hence, Hungarian regional councils (*Tervezési-statisztikai régiók*) score zero because a majority of their members are central government appointees, while Romanian regional councils (*Regiuni de dezvoltare*) score 1 because subnational appointees predominate and, unlike central appointees, can vote on regional legislation. In Ecuador, provincial councils score 2 from 1950–63 and from 1998–2008 when directly elected members predominate and members elected by *concejos municipales* are a minority. Conversely, Peru's *regiones* (1988–92) score 1 because only a minority (40 percent) is directly elected; the rest are sent by lower tier *provincias* or selected by interest associations.

Indirectly elected assemblies score 1 when the selectors are subnational. In most cases, these selectors are local governments or local government assemblies, but in Belgium until 1995, regional and community councils consisted of national parliamentarians elected for the relevant region (Flanders/

[11] However, these grand committees do constitute a modest channel for shared law making, discussed below.

Wallonia/Brussels) or community (French/Dutch speaking). From 1972–81, regional councils in France housed nationally elected politicians from the region alongside indirectly elected representatives from subnational governments. From 2008, Ecuadorian provincial councils were comprised of representatives from the *cantones* and rotating presidents of *juntas parroquiales* (parochial boards).

We define an executive as a legitimate authority that puts rules of general applicability into effect, and we assess whether the head of a regional executive is appointed by central government, the regional government, or a dual executive consisting of both the central and regional government.

The intermediate category encompasses cases where both the central and regional appointees have executive authority. Dual executives can take several forms. Some are two headed, with a central government appointee and a regional appointee, directly elected or selected by the regional assembly. Regional and departmental councils in France elect a president who presides over the executive alongside a centrally appointed prefect with *post hoc* oversight. Thai *changwat* have a directly elected regional chair alongside a centrally appointed governor. Some dual executives vest central and regional authority in a single body. In the Netherlands, the *Commissaris van de Koning* is appointed by the central government on nomination by the provincial assembly. This person chairs the provincial council as well as the executive and formally represents central authority in the province. The remaining members of the executive are elected by the provincial assembly. Several Latin American countries have similar arrangements.

Executives in Indonesian *provinsi-provinsi* and *kabupaten-kabupaten* run the gamut of institutional possibilities. In the first ten years after independence, governors and mayors were elected by their respective assemblies and fully accountable to them, scoring 2 on representation. In 1959, governors and mayors became dual local and central representatives, and were no longer accountable to regional assemblies. Nevertheless, they were still elected by regional assemblies, and we assess this as a dual executive. In 1974, governors were appointed by the president, and mayors followed in 1979, reducing the score to zero. The 1999 constitution restored the pre-1959 situation, and from 2005, governors and mayors became directly elected.

Ecuador had a dual executive for the briefest of times, from 1967 and 1971, when presidentially appointed *gobernadors* co-existed with directly elected *prefectos*—each with executive competences (score=1). When the military took over, *prefectos* were appointed (score=0), and from 2008, the *prefecto* became again popularly elected and the role of governor was abolished (score=2). In Canada, provincial heads responsible to regional legislatures direct the executive alongside lieutenant-governors, ceremonial posts that are too marginal to dilute the executive power of the provincial head, so we score 2.

Belgium provides a gray case: provinces combine some features of centrally controlled and dual executives. Until 1987, the centrally appointed governor was pre-eminent in the regional executive. The governor's formal approval was required for legislation, and regionally elected executive members could not reverse this. The governor also opened and closed council meetings, determined their length, and could demand to be heard. Moreover, he saw to it that the provincial council and the executive did not break any laws or decide upon matters beyond their competences.

Is this pre-eminence enough to score provincial executive representation as zero? We think not since the six remaining members of the executive were in charge of day-to-day management and served as heads of departments. The regional members of the executive have gained some authority since 1987, but we continue to interpret it as a dual executive. A reform in that year granted the provincial executive shared executive powers with the governor and reduced the governor's role. In 1997 the governor lost voting rights in the executive. "In purely legal terms, the Belgian governor no longer has the real policy power since 1997" (Valcke et al. 2008: 254). However, the governor retains sole responsibility for public order, security, and the police. The governor is undoubtedly the junior partner in policy making, but this is not enough to tip the score to 2.

Finally, we wish to clarify the distinction between the character of the central regime and the authoritative competences of regions. There is no doubt that an authoritarian regime can destroy the autonomy of its constituent jurisdictions. But the effect of authoritarian regimes in the countries we observe varies along the dimensions of the RAI. Authoritarian regimes do not always suspend or abolish regional elections or disempower or replace elected regional governors.

Russia illustrates this. *Subyekty federacii* (federal jurisdictions) score 2 for assembly and zero for executive from 1993 to 1995, 2 and 2 from 1996 to 2004, and 2 and 1 from 2005 to 2010. The first change corresponds to Yeltsin's decision in 1996 to replace appointment of governors from Moscow with popular regional elections. The second change, a drop in executive representation from 2 to 1 in 2005, was Putin's decision to replace direct election with a procedure in which the president proposes a candidate for governor to each regional legislature.

Argentina reveals the scope for variation. The 1955 military coup ousted the national government but left subnational institutions substantially intact (Eaton 2004*a*: 71). By contrast the *Revolución Argentina* (1966–72) led to the replacement of elected governors by central government appointees who were put in control of provincial legislatures. The dictatorship of 1976–82 had a similarly drastic effect. Provincial assemblies were disbanded and provincial administration was divided among the army, navy, and air force (Eaton

2004*a*: 71, 117–18; Falleti 2010). Regions score 4 on representation in the first authoritarian episode, and zero in the subsequent ones.

The military regime in Brazil (1964–85) lies between these extremes. It maintained direct elections for governors and assemblies before introducing a system in which assemblies chose governors from a central government shortlist (Samuels and Abrucio 2000: 48). Elections were never canceled, but representative authority was restricted. Governors could be replaced by the military regime (and some 25 percent were in 1964 alone), and direct elections for assemblies took place under a new constitutional framework restricting political parties and civil liberties (Samuels and Abrucio 2000: 49). Our scoring reflects the contrasting strategies of the military in Argentina and Brazil: a sharp drop from the maximum to the minimum score on representation in Argentina, and an intermediate score for both assembly and executive in Brazil.



## Shared Rule

A regional government may co-determine decision making at the national level. The coding scheme distinguishes five dimensions and two modes of shared rule.

A region may a) participate in making national law through its representation in the national legislature, usually in the upper chamber; b) share executive responsibility with the national government for designing and implementing policy; c) co-determine the distribution of tax revenues in the country; d) co-determine borrowing conditions and public debt management; and e) exercise authority over the constitutional set up.

A region may exercise multilateral shared rule or bilateral shared rule. Under multilateral shared rule the region relates to the central state as part of a standard tier. It is contingent on coordination with other regions in the same tier. Under bilateral shared rule the region relates to the central state directly. It can be exercised by the region acting alone. The criteria for these forms of shared rule are the same for executive, fiscal, and borrowing control, but vary when it comes to law making and constitutional reform. We detail these differences in the sections that follow.

### *Law Making*

The legislative arena in which regions or their governments directly influence national law is usually the upper, or second, chamber. Most upper chambers came to serve as bulwarks against the principle of one citizen, one vote. They

were conservative, sometimes reactionary, bodies representing the aristocracy, the church, corporatist groups, or territorial communities with pre-modern roots. Upper houses are in decline. Thirty-six of the eighty-one countries we observe had a bicameral parliament in 2010, whereas forty-three countries had one at the time they enter the dataset. Nineteen of these upper chambers represent territorial communities in 2010.

Multilateral or bilateral law making accounts for a total of two points in our schema. The scoring is additive in units of 0.5. First we establish whether the composition of a national legislature is primarily regional. One possibility is that its principle of representation is territorial rather than population-based. Are regions the unit of popular representation? The other possibility is that regional governments or assemblies themselves designate representatives to the national legislature. These are the first two items in the scoring scheme for law making. Unless one of these criteria is met, a region will score zero on this dimension. Only if one (or both) of these take place, do we need to assess the law making role of regions at the national level.

| MULTILATERAL LAW MAKING | | BILATERAL LAW MAKING |
|---|---|---|
| Regions are the unit of representation in a national legislature. | **0.5** | The region is a unit of representation in a national legislature. |
| Regional governments designate representatives in a national legislature. | **0.5** | The regional government designates representatives in a national legislature. |
| Regions have majority representation in a national legislature based on regional representation. | **0.5** | The regional government or its representatives in a national legislature are consulted on national legislation affecting the region. |
| The legislature based on regional representation has extensive legislative authority. | **0.5** | The regional government or its representatives in a national legislature have veto power over national legislation affecting the region. |



To assess the regional character of a chamber's composition we need to answer three questions: a) are regions represented in the national legislature *qua* regions or in proportion to their population; b) are representatives to the national legislature chosen directly by regional governments or assemblies; and c) what is the regional role in mixed chambers?

The allocation of seats with respect to territory and population is often categorical. Many countries are divided into roughly equal political constituencies based on population or have some system of proportionality based on population. The Colombian and Peruvian (until 1993) upper chambers are elected on the basis of a single national district. Other countries, by contrast, have second chambers based on territorial representation, including Australia,

Russia, Switzerland, Brazil, and Indonesia. In order to score 0.5, the territorial principle must bias the population criterion. This excludes Austria where each *Land* receives seats in the upper chamber in relation to its population in accord with the prior population census. The representation of regions in the Italian senate (2010) also falls short. The 315 constituencies of the senate are distributed among the twenty Italian regions in proportion to their population, save for six seats assigned to Italians living overseas and two life-time senators.

There are some judgment calls. The Italian electoral law for the senate mentions the principles of territory and population in the same paragraph: "The Senate of the Republic is elected on the basis of the region. Except for the seats assigned to the Overseas, the seats are divided among the regions in accordance with Article 57 of the Constitution on the basis of the results of the last general census of the population."[12] However, the allocation of seats reveals that population trumps territory. The smallest *regioni*, Valle d'Aosta and Molise, have just one and two seats, respectively. The other eighteen *regioni* range from seven to forty-nine seats in step with population.

For the regional principle to prevail, seats do not have to be allocated equally across regions. What matters is the principle that is articulated in the constitution and the extent of disproportionality between seats and population. Where the constitutional principle is explicitly territorial this meets the criterion even if regions happen to be represented in rough proportion to their population. A rule of thumb for territorial representation is where the disproportion of seats per voter exceeds 5.0 between the most and least represented regions.

The German *Bundesrat* establishes regions as the unit of representation even though the number of seats per *Land* ranges from three to six. Each *Land* has at least three votes, and most have more in line with a constitutionally mandated population rule that gives four seats to *Länder* with more than two million inhabitants, five seats to *Länder* with more than six million, and six seats to *Länder* with more than seven million. The disproportion of seats to population across *Länder* reaches a whopping 1:13. This compares with less than 1:3 for the Italian senate. Between 1997 and 2006 each Thai *changwat* received between one and four seats in the senate which yields a disproportion of 1:3.5 between the most and least represented region. This is a gray case, but given that the Thai constitution does not articulate the territorial principle, we score *changwat* zero on this item.

Uncertainty can arise from thin information and abstruse legal texts. Haiti provides an illustration. Between 1950 and 1956 senators were directly elected. The constitution provisionally allocated between three and six seats

[12] Law No. 270/2005, Art. 4.

to each *département* until a law fixed the number of senators for existing and new *départements* "taking into account the population of certain regions and, especially, their economic and political importance" (C 1950, Art. 40). Policy makers never got around to passing the law since the senate was abolished in 1957 by the Duvalier dictatorship, but elections took place in this period. Is this a region-based or population-based chamber? Given the mildness of disproportionality and the intention of the law maker to allocate seats on population, we score *départements* zero on the first component of law making. In Peru, the 1979 constitution explicitly envisages a senate elected by the *regiones*, but since this provision never came into effect, we score zero.

Direct representation of regional governments or assemblies in a second chamber is an important additional feature of regional authority because it provides institutional access to law making. This is usually clear-cut. Each German *Land* is directly represented in the *Bundesrat* by a representative designated by the *Land* itself. Regional parliaments rather than regional executives are represented in the Malaysian *Dewan Negara*, the Austrian *Bundesrat*, the Dutch *Eerste Kamer*,[13] the Argentine senate (until 2001), and in part of the Spanish senate. In Russia, each *subyekt federacii* sends a delegate from its legislature and one from its executive to sit in the upper chamber, the *Sovet Federatsii*. Each of these variants scores 0.5.

And, finally, how should mixed chambers be evaluated? We assess regional representation as positive if one or more groups of senators are selected on the principle of regional representation or direct government representation in the chamber. We then go about estimating the extent of authority on this dimension, but we wish to pick up the role of regions in national law-making even when they do not have a majority in the chamber.

Belgium and Malaysia illustrate this. Since 1995, the Belgian senate comprises three kinds of community representatives: forty directly elected senators, twenty-one indirectly elected community senators, plus ten senators selected by these groups. The community senators are selected on the principle of regional representation (the Flemish and Francophone communities each have ten seats with one seat for the tiny German-speaking community) and they serve as delegates of the communities. We score 0.5 on each criterion even though community senators make up less than one-third of the senate. Directly elected and co-opted senators do not meet the second criterion, but arguably meet the first. Both cases are gray: equality of regional representation is finely balanced with "one citizen, one vote." While the distribution of seats is roughly in line with population, it is fixed on territorial principles in the

[13] The Eerste Kamer is a complex case because provincial representatives vote for candidates on party lists which structure the outcome. We score this 0.5 because the voters are regional representatives.

constitution. Contrary to the Austrian or Italian second chambers, seats are not reallocated following a census.

In Malaysia, the senate is composed of regional representatives appointed by *negeri* assemblies, and they meet both criteria. The senate also has federal appointees who meet neither criterion. Initially, *negeri* representatives had a majority but since 1964 they have been outnumbered; by 2010 they controlled just under 40 percent of the seats. We reflect the loss of a collective majority in the third criterion of law making discussed below.

Before evaluating the authoritative character of the second chamber, we need to address bilateral law making. A region, like Åland or Quebec, may be represented as a territory in the upper chamber even when the regions in its tier are not. Unlike regions in the rest of Britain, Scotland, Wales, and Northern Ireland have special caucuses in the House of Commons that convene as grand committees to discuss bills affecting their regions. Senators from Quebec are selected individually by twenty-four electoral districts within the province rather than by nomination of the prime minister. Indigenous populations in Bolivia have reserved delegates in *departamento* representation at the national level.

In contrast, the Portuguese autonomous regions have no bilateral access to law making. Regional representatives from the Azores and Madeira are no different from other Portuguese law makers in the unicameral parliament. Nor do the powerful Malaysian states of Sabah and Sarawak have bilateral shared rule. Like any other *negeri*, the parliaments of Sabah and Sarawak can send two representatives to the upper chamber, which is consulted on national legislation. Sabah and Sarawak representatives can of course weigh in on legislation relevant to their region in general proceedings, but they do not have special rights to be consulted or co-decide.

The Belgian communities are a border case; we code them as having multilateral but not bilateral law making. Multilateral law making takes place through elected and appointed representatives in the senate. There are, then, no special provisions for particular communities or regions to influence ordinary legislation affecting their territory.[14] Fiscal legislation and constitutional reform require majorities of each community, but not ordinary legislation.[15]

We assess the extent of regional authority in shared law making for regions that are represented as territories or have institutional representation in the upper chamber. The criteria are different for multilateral law making and for bilateral law making, and we discuss them seperately.

[14] A partial exception is the alarm bell procedure, introduced in the 1970 constitution, which enables one language group to postpone legislation for thirty days with a three-quarters majority. Its conditions of use are highly restrictive and it has only been invoked twice since 1970.

[15] We consider shared rule in fiscal policy and constitutional reform as distinct dimensions, discussed later.

An additional half point goes to regions if their representatives constitute a majority of the chamber. The unit of analysis here is the tier or, for bilateral shared rule, the individual region. Legislatures in which regional representatives constitute a majority include the US senate, the Argentine senate, the German *Bundesrat,* the Dutch *Eerste Kamer*, the Haitian senate, and the *Dewan Perwakilan Daerah* in Indonesia. Belgian provinces, which, until 1995, were allocated one-third of the seats in the senate, fall short, as do *comunidades autónomas* in Spain, and *negeri* in Malaysia. Ecuador's pre-1978 senate meets the criterion because provincial senators outnumbered the *Senadores funcionales* who were elected by corporatist associations. In some countries, such as Bolivia, just a small number of seats are reserved for particular regions, in this case, regions with indigenous communities.

A further half point is scored if a legislature with regional representation can veto ordinary legislation or if its amendments can be overridden only by a supermajority in the other chamber. The Austrian *Bundesrat* scores zero because it can be overridden by a simple majority in the lower chamber, as can the *Županijski dom* (chamber of counties) in Croatia, which, until it was abolished in 2001, was a consultative chamber.

A legislature is judged to have extensive authority if it can veto ordinary legislation or if a supermajority in the other chamber is needed to override its veto. This applies even if the veto powers of the legislature are restricted to a subset of policies as long as these are recognized to be central to the body politic. The Belgian senate scores 0.5 on this criterion. Since the 1995 reform, the senate is conceived as a *reflectiekamer* (reflection chamber) with limited authority over ordinary legislation and none over the budget. However, it exercises equal legislative powers with the lower chamber on freedom of religion, language use, the judicial system, international treaties, and constitutional change, subjects that are close to the heart of the body politic (Deschouwer 2012; Hooghe 2004; Swenden 2006).

We must customize this criterion to tap bilateral law making. What matters here is how a region is involved in law making. A region receives a score of 0.5 if its representatives or government must be consulted on legislation affecting the region and an additional 0.5 if either can veto a legislative proposal.[16]

For example, the 1982 reforms gave the Corsican assembly the right to be consulted by the French government on all matters concerning Corsica. Nonbinding consultation is also the rule for the Azores and Madeira. Their statutes

[16] In principle a differentiated region can combine authority over multilateral and bilateral law making. In practice this appears to be extremely uncommon. There is only one instance in our dataset: Montenegro and Serbia in the Serbia–Montenegrian confederation between 2003 and 2006. We use the larger of the total scores for multilateral and bilateral law making in aggregating the score for a region.

specify that the Portuguese parliament is constitutionally bound to consult the regional assemblies, and each regional assembly can submit amendments or legislative drafts on taxation, environmental policy, criminal law, law and order, regional planning, and social security.

The Korean island of Jeju is a gray case that illustrates the lower bound for bilateral shared rule. Jeju does not have special representation in the legislature, but the governor "may present his/her opinion on any matter he/she considers necessary to deliberate on legislation concerning the Province upon obtaining consent from two-thirds of the incumbent Provincial Council Members" (2006 Special Act, Art. 9.1). These views are then presented to a "Supporting Committee," a thirty-member body comprised of heads of central government departments and chaired by the prime minister, which negotiates on behalf of Jeju. Hence the Jeju government has a right to put legislative proposals on the agenda but it is held at arm's length from the negotiations. Still, the right is legally embedded. We score bilateral shared rule only if it has a legal basis in the constitution, the statute, a law, or an executive decree.[17]

There are just five cases in the dataset where an individual region has formal veto rights over national legislation affecting its territory: Montenegro and Serbia in the former Yugoslav confederation (2003–06), and the special regions of Northern Ireland (since 2000) and Scotland and Wales (since 1999).

Montenegro and Serbia had a veto because ordinary legislation required a double majority: a majority of representatives of each republic and an overall absolute majority. Note the difference with Belgium, where only laws concerned with the fiscal framework and constitutional change require a majority in both large language groups.

The three UK regions have a veto over national legislation pertaining to their region on account of the Sewel convention which states that the "UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature" (Cairney 2006; Devolution Guidance Notes Nos. 8–10 2014). The Sewel convention was written into a memorandum of understanding between the UK and its regional parliaments in 1999 (Memorandum of Understanding 2002 paragraph 13; 2013 paragraph 14).

It is interesting that no other autonomous region has veto power over ordinary legislation. Greenland, the Farøer islands, and the Åland islands narrowly miss. The governments of Greenland and the Farøer islands are required to be consulted on all national bills, administrative orders, and statutes of importance to them before the legislation can be put before the

[17] Two other regions can propose (or oppose) legislation in the national parliament: Vojvodina in Serbia, and London in the United Kingdom.

Danish parliament. In case of disagreement, the question is tabled before a board consisting of two members nominated by the Danish government, two members nominated by the home-rule authorities, and three judges nominated by the Danish highest court. This falls short of giving the islands a veto. Similarly, the Åland government must be consulted by the Finnish parliament on any act of special importance to the islands, but national legislation is not conditional upon its assent. The Åland government also participates in EU decision making for matters within its powers, and the parliament of Åland must give its consent to international treaties in areas under its competence.

### *Executive Control*

Regional governments may share executive authority with the central government in the context of intergovernmental meetings. To score on this dimension, such meetings must be routinized, not ad hoc. To score the maximum two points, such meetings must be authoritative, i.e. reach decisions that formally bind the participants. The criteria are the same for bilateral and multilateral executive control.

| EXECUTIVE CONTROL | |
|---|---|
| **0:** | no routine meetings between the central government and the regional government(s) to negotiate national policy affecting the region; |
| **1:** | routine meetings between the central government and the regional government(s) without legally binding authority; |
| **2:** | routine meetings between the central government and the regional government(s) with legally binding authority. |



The distinctions on this dimension are illustrated in the history of German intergovernmental relations from the early days of the Federal Republic (Benz 1999; Scharpf, Reissert, and Schnabel 1976). In 1947, a first consultative meeting was held between *Land* premiers (*Ministerpräsidenten)* and the federal chancellor, but it was one-off. In 1954, the *Ministerpräsidentenkonferenz*, which combines all *Land* presidents, became a standing, but still consultative, meeting. It scores 1 in our schema. In 1964, the two government levels agreed to negotiate on joint policy tasks in routine, binding intergovernmental meetings. In 1969, these were anchored in a revision of the Basic Law concerning joint federal-*Länder* tasks. In most meetings unanimity is the rule but some can make majoritarian binding decisions (with thirteen of sixteen *Länder*), scoring 2.

Executive control in Germany from 1969 fully meets the criteria for a maximum score. Meetings between regional and central governments are highly institutionalized, general purpose in policy scope, and produce legally

binding agreements. Few cases are so clear-cut. We draw on several examples to explicate how we adjudicate ambiguities, in particular when the rules differ across policy. We conclude with examples of bilateral executive control.

Executive shared rule involves routinized negotiation among regional and central governments. There are several requirements for a positive score. Both central and regional governments—not professional or sectoral groups—must be involved. Regional governments must be able to select their own representatives. Negotiation must be institutionalized. The framework must be general purpose governance. Let us engage each in turn.

The system of *conselhos* in Brazil illustrates that the criterion of government involvement is not always black and white. Since the early twentieth century, *conselhos* composed of professional groups have existed in health and education, but with tenuous connections to *estado* governments. We therefore score the *estados* zero for the first decades. In 1990 a routinized system of multilevel governmental *conselhos* emerged. Local *conselhos* are represented in *estado conselhos*, which are in turn represented in a nation-wide *conselho* (Pogrebischini and Santos 2009). While the *conselhos* convene societal users and providers, they are led by government representatives. The system is most developed in the health sector, but is also present in education, transport, and other areas. We score *estados* 1 from 1990.

Executive power sharing must be vertical, that is, it must include both regional and national government. Horizontal coordination among regions does not amount to shared national control of policy making. Intergovernmental coordination in Switzerland is instructive. This chiefly takes the form of inter-cantonal *concordats*, which often lead to binding agreements among cantons, but rarely include the federal government (Blatter 2010; Sciarini 2005). However, from 1978 vertical cantonal–federal coordination was organized through the *Kontaktgremium Bund-Kantone*; and this was replaced in 1997 with the twice-yearly *Föderalistischer Dialog* (federal dialogue). A constitutional revision of 2008 opened the door to binding, not just voluntary, cooperation. Article 48a of the constitution authorizes the confederation to declare inter-cantonal agreements binding or require cantons to participate in inter-cantonal agreements in nine constitutionally defined domains, including tertiary education, urban public transport, and waste processing. The confederation can initiate binding cooperation only at the request of the cantons. The reform facilitates inter-cantonal conventions with federal involvement and the equalization of burdens among cantons (Cappelletti, Fischer, and Sciarini 2014). Cantons score 1 on executive control until 2007 at which point they score 2.

Mexico provides a gray case which we score zero because the vertical component is weak. Since 1999 Mexican governors have held meetings to discuss decentralization in health and education. These became formalized as a

standing *conferencia nacional de gobernadores* (national conference of governors, CONAGO) with regular meetings, a permanent secretariat, and executive committees. Although federal representatives sometimes attend, CONAGO meetings are inter-state (Falleti 2010). CONAGO has brokered a few binding agreements, but there is no formal role for the federal government.

Executive control may enhance regional authority only if regional governments can select their own representatives. Colombia is a negative example. *Departamentos* have been consulted since 1991 on economic development through a standing body, the National Planning Council. However, the five members representing the *departamentos* are selected by the president from a list of governors submitted by the *departamentos*.

A positive score requires that executive control is routinized on a legal basis. Since the 1990s, Mexican *estados* have organized occasional informal meetings to put pressure on the federal government. Such meetings led to health care decentralization in 1996. However, none of these initiatives has thus far generated a routinized system that encompasses both *estados* and the federal government (Jordana 2001; Falleti 2010). This is a fairly clear example. Italy provides a gray case. Intergovernmental conferences between the central government and *regioni* took place in 1983, 1984, and 1985, with none the following year. In 1987 the constitutional court ruled that the principle of "fair cooperation" should guide regional–national relations, which prompted a 1988 law creating a standing conference on state–regional relations with routinized bi-annual meetings (Ceccherini 2009). We score 1 from the time of the first meeting in 1989.

Consistent with our focus on general purpose rather than task-specific governance, executive control must cover significant policies to warrant a positive score. At the margin are a handful of cases where we score executive control with limited policy coverage, but where the policies are central to the authority of regional governments. Argentina illustrates this. Executive coordination was virtually non-existent in the 1950s and 1960s. In 1972 the *Consejo Federal de Educación* (Federal Council of Education) was created to coordinate provincial and federal educational policy (Falleti 2010). Meetings between *provincias* and the central government were routinized and took place at least once a year, but their scope was narrow. In 1979 the council was expanded to include culture, at which point we score 1. When its decisions became legally binding in 2006, *provincias* score 2.

Coordination can be binding (score=2) or non-binding (score=1). Where there are multiple meetings with different decision rules, we score the predominant pattern. Malaysian federalism is characterized by numerous national councils that interweave state and federal policy making on a broad range of issues, and only two of these produce legally binding decisions: the National Land Council and, since 1986, the National Council on Local

Government (Loh 2010). The councils make binding nation-wide policy on matters that are constitutionally reserved for the *negeri*, so shared rule counterbalances federal usurpation of *negeri* self-rule. Though land use and local government have gained importance, they are much less central to *negeri* authority than the regulation of religious and cultural life, which remains largely in the realm of non-binding coordination (Harper 1999; Reid 2010*b*). A score of 1 reflects the predominance of non-binding executive shared rule.

Finally, it is useful to compare bilateral and multilateral executive shared rule. To score 1 or 2 either type must be routinized, general purpose, and government-dominated. And for a provision to receive a positive score, it needs to be in operation. The difference between bilateral and multilateral is whether the meetings with the central government involve a single region or all regions in a particular tier.

The five indigenous *comarcas* in Panama have bilateral meetings that arrive at binding decisions with the central government in the *Consejo Nacional de Desarrollo Indígena* (National Council on Indigenous Development). Panama's *provincias* are not involved. The two indigenous *regiones autónomas* in Nicaragua are consulted on, and can veto, national executive decisions on natural resources and communal land. Several autonomous regions have non-binding bilateral control, including the Åland islands, Greenland and the Farøer islands, Scotland, Wales, and Northern Ireland, and Azores and Madeira.

Bilateral executive shared rule normally has a legal basis in statute, the constitution, a special law, or executive order. It is, for example, explicitly set out in the Åland Act, the Greenland Act, and the special statutes for Azores and Madeira, all of which are enforceable in court. Despite the informality of its constitution, the United Kingdom is no exception. The devolution acts mandate statutory consultation by the British government.

The US states have an unusual form of bilateral executive control, which we assess to be binding. States can opt to accept or reject regulations or programs that the federal government offers within concurrent policy areas such as health, environment, or transport (Bakvis and Brown 2010). The implementation of many national laws in these areas hinges on one-to-one bilateral agreements with state governments. While there is no particular passage in the constitution, law, or executive order that regulates these meetings, the legal basis for the right to be consulted on (and veto) the implementation of many federal policies lies in the Commerce Clause, the Fifth and the Fourteenth Amendment, and in Supreme Court jurisprudence (Christensen and Wise 2009; Wright 1988).

Mexican *estados*, Aceh, and the Spanish *comunidades* illustrate the distinction between routinized and ad hoc consultation. The predominant mode of coordination in Mexico has been ad hoc bilateral agreements between the federal government and an *estado* (Jordana 2001). There is no formal legal

basis and we score zero. In Indonesia, the 2006 Aceh statute promised non-binding consultation on law making, administrative policy, and international relations (Art. 8). Once this was implemented in a presidential decree of 2008, Aceh scores 1 for bilateral executive control.[18]

Finally, Spain demonstrates complex interplay between bilateral and multilateral shared rule. In the first decade after democratic transition, bilateral negotiations between the national government and individual *comunidades autónomas* predominated (Bolleyer and Thorlakson 2012). These lacked predictability and structure, which translates into a score of zero. Since the 1980s, Spain has shifted to a multilateral frame including routinized conferences producing binding decisions in health and European affairs which sustain a score of 2. Routinized bilateral shared rule is limited to taxation policy for the Basque Country (and its provinces) and Navarre.

### *Fiscal Control*

Shared rule on taxation is a special case of legislative and executive shared rule. Scoring fiscal control requires a few ground rules. First, we conceptualize fiscal policy as distinct from executive policy or borrowing policy. Second, we identify the institutional framework for fiscal control. Regional influence on fiscal policy may employ one of two institutional routes: a *Bundesrat*-type chamber composed of regional government representatives or a routinized intergovernmental forum. Third, we explain what happens when both routes are present. We conclude with a brief discussion of bilateral fiscal control.

We assess regional fiscal shared rule as the role of regional governments in legislation or executive regulation regarding the collection and allocation of taxes. The collection and allocation of taxes includes distribution keys, tax rates, tax bases, intergovernmental transfers, grants, and annual or multi-annual central budgets. We assess regional debt management and borrowing in a separate dimension. To qualify as shared rule, coordination must be encompassing; it cannot be limited to consultation on a particular fund or grant. For example, Uruguayan *departamentos* score 1 on fiscal control because they are consulted on the percentage of tax revenue to be shared—not because they provide input on how to spend some 25 percent of the *Fondo de Desarrollo del Interior* (Fund for the Development of the Interior).

Two routes are available for regional governments to influence the generation and distribution of national tax revenues. The executive route provides direct access via intergovernmental meetings. The legislative route gives indirect access through a national chamber with regional representation. If

[18] The 2006 legislation included bilateral law making, but this was excluded from the 2008 presidential decree, and Aceh scores zero on this dimension (Ahtisaari 2012; Suksi 2011: 363–5).

regional governments negotiate over the distribution of tax revenues via either channel they score 1; if they have a veto, they score 2. The box below summarizes the three alternatives.

FISCAL CONTROL

**0:** neither the regional government(s) nor their representatives in the national legislature are consulted over the distribution of tax revenues;
**1:** the regional government(s) or their representatives in the national legislature negotiate over the distribution of tax revenues, but do not have a veto;
**2:** the regional government(s) or their representatives in the national legislature have a veto over the distribution of tax revenues.

To score 1 via the legislative route, the legislature must have authority over the distribution of tax revenues. If the representatives of regional governments constitute a *majority* in a legislature and the legislature has a *veto* on the distribution of tax revenues, this scores 2. This avenue requires that regional governments (not their populations through the ballot box) send representatives to the legislature.

Dutch *provincies* and Swedish *landstinge* (until the abolition of the upper chamber in 1971) meet the conditions for a score of 2: they form or formed a majority in the upper chamber with that chamber having a veto on tax revenue allocation. Spanish *comunidades* score 1 both because they are a minority in an upper chamber and because that chamber can be overridden by a majority in the lower chamber. Belgian provinces were (until 1995) represented in an upper chamber with a tax veto, but they never constituted a majority and also score 1. However, Belgian communities (1970–95) and regions (1980–95) did have a majority in the senate by virtue of their institutional representation through the so-called double mandate. Senators wore two hats in addition to their national mandate: as members of a community council (linguistic affiliation) and of a regional council (residence-based). Since the senate could veto financial regulations, communities and regions score 2. Since 1995, community senators constitute a minority and can influence but not block fiscal decisions.

To score 1 via the executive route, regional governments must be directly involved in negotiation and to score 2, they must be able to exercise a veto. Such involvement could, in principle, be exercised through a peak association if that association could bind its members, but this is rare. Denmark and Sweden provide gray cases. Peak associations of regional and local governments meet with the central government, but we score zero for fiscal control because these associations are best seen as lobby groups rather than negotiators. Similarly, the Ecuadorian *Comisión Nacional de Descentralización y Organización Territorial* (National Commission on Decentralization and Territorial

Organization, CONADE) does not provide regions with direct involvement. The eight-member committee is headed by a government official, and includes representatives of the municipal and provincial associations alongside sectoral and legislative representatives. The peak organizations cannot legally commit their members and the national parliament reserves the right to take unilateral action.

Uruguayan *departamentos* meet the criteria for a score of 1 through their participation in the *Comisión Sectorial de Descentralización* (Sectoral Commission on Decentralization, COSEDE), which advises the national government on the percentage of revenue to be shared. The *Comisión* is composed of representatives of national and regional governments and makes non-binding recommendations (Eaton 2004*a*).

Some regions have access to both the legislative and the executive routes, in which case we count the route that produces the highest score. Until 2001, Argentine *provincias* could operate along both routes, barring authoritarian periods. A senate composed of provincial delegates wielded a veto over taxation and intergovernmental grants, which we score 2. When direct elections for the senate replaced institutional representation of *provincias* in 2001, the score for the legislative route becomes zero. However, *provincias* also had access to an institutionalized system of regular intergovernmental negotiations, formalized in a 1951 law, which produced binding *co-participación* agreements on national revenue sharing. Both this system and the 1994 constitutionalized arrangement of binding *co-participación* agreements with a provincial veto score 2.

We conclude by emphasizing the criterion of routinization. We assess Brazilian *estados* to have neither multilateral nor bilateral fiscal control. There is no standing collective body in which *estados* and federal government convene to discuss fiscal policy and, since the senate is composed of directly elected senators rather than regional government delegates, there is also no legislative route. Moreover, no *estado* has legally protected bilateral fiscal control. This induces *estados* to engage in bilateral deals with the federal government in time of need, but these deals typically provide one-off transfers, and we score them zero (Diaz-Cayeros 2006; Dillinger and Webb 1999*a*; Rodden 2004).



### *Borrowing Control*

Shared rule on borrowing is a special case of executive control. The scoring rules are parallel: we assess the representation of regions in meetings with the central government, the extent to which they are institutionalized, and the extent to which they make binding decisions. Here, however, we are

concerned with the national regulatory framework on government borrowing and debt management. The box below lays out the categories.

We begin by outlining the distinction between borrowing control and fiscal control on the one hand, and between borrowing control and constitutional reform or law making, on the other. We then explain how we operationalize bilateral borrowing control.

BORROWING CONTROL

**0:** regional government(s) are not routinely consulted over borrowing constraints;
**1:** regional government(s) negotiate routinely over borrowing constraints but do not have a veto;
**2:** regional government(s) negotiate routinely over borrowing constraints and have a veto.

This dimension encompasses subnational and national borrowing or debt control. It considers fiscal policy only to the extent that fiscal decisions affect borrowing, and does not include raising or spending taxes. There is minimal overlap between this dimension and others that we assess independently. Hence the association between regional authority in borrowing and in fiscal policy can be investigated empirically.

Drawing the line between fiscal and borrowing policy can be tricky. Rules that constrain spending or revenues are technically within the remit of fiscal policy, but they can affect debt levels (Schaechter et al. 2012). Our approach is to examine the authoritative connection between routinized coordination on fiscal rules and subnational borrowing. We begin with two clear, but contrasting cases: Australia and Argentina. Australia's Loan Council is the venue for routinized coordination on fiscal as well as borrowing policy. It is composed of one federal representative and one representative of each state. It approves state borrowing and determines, with the consent of the states, the amount of borrowing, and the interest rate. Its second role is to advise the premiers' conference on fiscal matters. We score 2 points on borrowing and 1 on fiscal control.[19]

In contrast, Argentina has separate intergovernmental fora: the *Comisión Federal de Impuestos* (Federal Tax Commission), a long-standing body, deals only with taxation and intergovernmental transfers, while the *Consejo Federal de Responsabilidad Fiscal* (Federal Fiscal Responsibility Commission), created in 2004, monitors budgetary transparency and borrowing. Both consist of federal and provincial governmental representatives, but while the former has binding authority based on regional agreement, and scores 2, the latter does not, and scores 1.

[19] Until 1999, when the score for fiscal control becomes 2 following the creation of a Ministerial Council for Commonwealth–State Financial Relations.

Austria illustrates how fiscal rule making can affect borrowing authority, and is best coded as borrowing control. In an effort to meet the Maastricht stability criteria for the European Monetary Union, in 1999 all levels of government agreed to a domestic stability pact with far-reaching fiscal targets. *Länder* as a group must achieve an annual budgetary surplus of 0.75 percent of gross domestic product (GDP). Each *Land* is given a target but can transfer surplus or deficit rights to other *Länder*, and sanctions are applied in case of non-compliance (Balassone, Franco, and Zotteri 2003; Joumard and Kongsrud 2003). A commission composed of *Bund-Land* municipality representatives takes decisions by unanimity. While the pact does not address borrowing constraints directly, the intended effect was to impose collective binding control over *Land* (and *Bund*) borrowing. We score 2 on borrowing control.

Contrast this with Bolivia. The *Consejo Nacional para las Autonomías y la Descentralización* (National Council on Autonomy and Decentralization) is a forum for the national government, *departamentos*, municipalities, indigenous communities, and autonomous regions. It meets twice a year to advise on, among other things, fiscal policy, but congress remains the venue for borrowing policy (Frank 2010).

The overlap between borrowing and constitutional reform or law making is minimized by focusing on the intergovernmental arena. It is not uncommon for constitutions to have provisions on subnational borrowing. The authority of regions to influence these rules is assessed under constitutional reform. Similarly, since the 1990s, several countries have passed fiscal responsibility laws with the aim of constraining subnational borrowing (Liu and Webb 2011). We code these under borrowing control only if they are accompanied by an institutionalized intergovernmental forum that monitors, regulates, or sanctions. Otherwise this falls under law making.

Early examples of institutionalized intergovernmental coordination are the Australian Loan Council, regulating multilevel borrowing since 1923, and the Malaysian National Finance Council set up in 1957 to advise on "the annual loan requirements of the Federation and the States and the exercise by the Federation and the States of their borrowing powers; the making of loans to any of the States" (C 1957, Art. 108). The German *Finanzplanungsrat*, created in 1968 to coordinate federal and subnational budgetary planning, is another early example, though it became binding with respect to *Länder* borrowing in from 2010.[20]

Subnational borrowing was on the backburner until the debt crises of the 1980s and 1990s (Rodden 2002: 670). In 1989 Belgium reformed its *Hoge Raad van Financiën* into a body with equal federal–community representation

[20] It was renamed the *Stabilitätsrat* (Stability Council) in 2010.

and tasked it to advise on subnational and national borrowing. In 1980 Spain created the *Consejo de Política Fiscal y Financiera* (Fiscal and Financial Policy Council) composed of national and *comunidad* finance ministers to coordinate fiscal policy and, since 1992, set deficit and debt ceilings. In 1999 Austria established a committee with equal *Land* and federal representation with the authority to fine *Länder* that violate budget and borrowing targets.

The criteria for bilateral borrowing control are the same as for multilateral borrowing. Hence, a positive score requires evidence of institutionalization. In our dataset we detect only one instance, the Argentine *provincias*, including Buenos Aires. This case epitomizes the gray zone between bilateral and multilateral shared rule. In 2004, congress passed a fiscal responsibility law which in principle applies to provincial as well as the national government, and created a federal council for fiscal responsibility composed of the national and provincial ministries of finance. The law has a covenant format, i.e. provincial governments must actively consent one by one for it to be binding. There is, then, no collective contract, though initially twenty-one of twenty-four *provincias* and the city of Buenos Aires signed up. For those who sign up, the law creates a routinized system for intergovernmental coordination and monitoring on budgets and borrowing (Liu and Webb 2011). We code this as bilateral rule because individual *provincias* retain the right to withdraw at any time, though the *modus operandi* is multilateral.



### *Constitutional Reform*

Constitutional authority is fundamental for it concerns the rules of the game. Subnational control over the constitution is often seen as the defining characteristic of federalism (e.g. Riker 1964). Here we suspend this assumption and explore how the constitutional role of regions can be estimated in non-federal and federal countries.

The coding scheme attaches greater weight to regional governments (or their representatives in the legislature) than to other regional actors (i.e. electorates or regionally elected representatives), and it rates binding authority (i.e. veto power) as more authoritative than non-binding involvement. For multilateral control over constitutional reform the schema is as follows: a score of 1 if regional electorates or their representatives can raise the hurdle for constitutional change; 2 if regional governments can raise the barrier for constitutional change; 3 if regional electorates or their representatives can veto constitutional change; and 4 if regional governments can veto constitutional change. The box below details this. Since bilateral constitutional reform requires different criteria, it will be discussed separately.

MULTILATERAL CONSTITUTIONAL REFORM

**0:** the central government or national electorate can unilaterally change the constitution;
**1:** a national legislature based on regional representation can propose or postpone constitutional reform, raise the decision hurdle in the other chamber, require a second vote in the other chamber, or require a popular referendum;
**2:** regional governments or their representatives in a national legislature propose or postpone constitutional reform, raise the decision hurdle in the other chamber, require a second vote in the other chamber, or require a popular referendum;
**3:** a legislature based on regional representation can veto constitutional change; or constitutional change requires a referendum based on the principle of equal regional representation;
**4:** regional governments or their representatives in a national legislature can veto constitutional change.

Scoring multilateral constitutional reform poses several challenges. Under what circumstances does it make sense to say regional intervention raises the hurdle for central actors to pass reform? What is an appropriate floor for scoring regional authority in constitutional reform. What is an appropriate ceiling? Finally, we discuss scoring rules for four sources of ambiguity arising where regions have more than one option for constitutional shared rule, where constitutions have more than one amendment procedure, where constitutional reform is unwritten, and where formal rules and political practice diverge.

We score zero when regional actors or regional governments cannot legally veto or raise the hurdle for constitutional reform. Being consulted or having the right to propose reforms is not sufficient to score 1. For example, until 2001 the Croatian upper chamber, composed of *županija*-appointed representatives, was consulted on constitutional reform but could not amend or raise the hurdle.

A non-blocking minority is insufficient. In Spain, *comunidad*-appointed senators make up less than 20 percent of the senate, too few to block constitutional reform or raise the hurdle in the other chamber, and therefore score zero. Directly elected senators from Spanish *provincias*, by contrast, can veto constitutional bills and consequently score 3. Since the reorganization of the Belgian senate in 1995, the twenty-one senators elected from community parliaments make up 30 percent of the senate and cannot raise the hurdle or veto constitutional reform, which requires a two-thirds majority in both chambers. Belgian communities/regions do not have the institutional representation to warrant a positive score. However, there are also forty popularly elected senators from Belgian communities and regions. Hence a legislature based on regional representation can veto constitutional change and the communities and regions score 3.

The criterion for a regional veto depends on the rules of a chamber in which constitutional reform is decided. For example, *negeri* currently occupy

37 percent of the seats in the Malaysian senate, but this is sufficient to score 4 because reform requires a two-thirds majority.

Regions can raise the hurdle for central actors to change the constitution in several ways. They may be able to require a referendum, force a second vote, change the voting rule in the other chamber, or postpone reform. We score 1 when a legislature with regional representation (via the regional electorate) is involved, and 2 when regional governments act through their delegates. In Australia, the Northern Territory and the Canberra Capital Region score 1 between 1975 and 1977 because they had elected representatives in a chamber with regional representation (the senate) which could raise the hurdle, but not veto, a reform of the Australian constitution.[21] Until 1984, Austrian *Länder* score 2 because they had, through their delegates in the federal council, the power to delay: they could demand a second vote in the first chamber or require a national referendum.

It is useful to specify the floor for a score of 1 or 2. Minimally, this requires that regional intervention is part of a legal process in which regional proposals must be discussed in a parliamentary committee, debated in plenary session, or formally considered by the central government. Portugal provides a clear example. The regional assemblies of Madeira and Azores must initiate the process of revising their statute (C 1976, Art. 228). If the national assembly amends the draft, it is sent back to the regional assembly for consultation. However, the final word lies with the Portuguese parliament. Hence they score 2.

To contribute to regional shared rule, referenda must be regional, that is, preferences are aggregated on the principle of regional, not individual, representation. This is the case in Switzerland and Australia, where constitutional reform requires a double majority in a referendum—a majority of voters in a majority of regions as well as in the country as a whole. This is not so in the Philippines, Ireland, South Korea, Bolivia, Colombia, Peru, or Venezuela, where constitutional amendments require approval by a nation-wide referendum without a regional hurdle.

Scores of 3 or 4 require the authority to veto. We conceptualize the maximum score for the constitutional role of regions in terms of the veto rather their positive capacity to impose their will on the central government because this would be an almost empty category. The one case that arguably meets the bar of regional imposition was the short-lived confederation of Serbia-Montenegro (2003–06). Constitutional change required the consent of both

[21] A negative vote in the senate triggers a reflection period of three months. Thereafter, an amendment can pass over the objections of the senate if it obtains an absolute majority in the lower house followed by a referendum in which a majority of states and a majority of the Australian electorate endorse the reform. Until 1978, residents of the Northern Territory and Canberra could not participate in such a referendum, and could influence constitutional change only through the senate.

republics' legislatures in addition to a double majority in the unicameral legislature: a majority of representatives of each republic, and an overall absolute majority. Since the unicameral parliament was regional—all its members were delegates from the republics' assemblies—one can argue that the constituent republics could indeed impose constitutional change upon a very weak center. That included the right of each republic to secede unilaterally, which Montenegro promptly did in 2006.

Few other cases are gray. Australian states cannot impose constitutional reform upon the central government. They have an indirect veto over unilateral federal imposition because their representatives can require a binding referendum based on the principle of equal regional representation, and therefore score 3. Similarly, Malaysian *negeri* are in no position to reform the constitution by themselves, which requires approval by two-thirds of the members of each chamber, but they can collectively block amendments—just. *Negeri* representatives now make up twenty-six of the seventy seats in the upper chamber, which gives them two seats to spare for a collective veto. *Negeri* score 4 on constitutional reform. Mexican *estados* cannot initiate reform, which requires a two-thirds majority in the congress. However, they can block because amendments require approval by a majority of *estado* legislatures. They also score 4.

There are several possible sources of ambiguity. First, more than one option for constitutional shared rule may apply. The simple rule is to take the highest score. In Australia constitutional amendments require absolute majorities in both chambers of parliament and then must pass referenda in a majority of states/territories while obtaining an overall majority of the Australian electorate. If there is disagreement between the house and the senate, the objections of the senate can be overridden provided the amendment passes the house by absolute majority after a reflection period of at least three months and after it passes a national referendum. So there are three options: raising the hurdle by requiring a three-month cooling-off period *and* a regional referendum (=1); veto via a regional referendum after both houses pass the amendment (=3); veto via a regional referendum after the lower house passes the amendment (=3). We take the higher score.

Along similar lines, a declaration to reform the Haitian constitution must be approved by two-thirds of each national legislature. Revisions require final approval of at least two-thirds of the national assembly (C 1987, Arts. 281.1–282). The ratio of senators to deputies has changed over time. Until 2000, senators made up more than a third of the national assembly, and hence could block constitutional change. In the 2010 parliament, this is no longer the case (thirty of ninety-nine MPs), but since senate consent is required to initiate constitutional reform (first step of the process), we continue to code the senate as having veto power over constitutional change, giving Haitian regions a score of 3.

A second source of ambiguity is that constitutions may contain more than one amendment procedure. One might be for partial constitutional reform and the other for comprehensive reform. These may engage regional actors differently. Our rule is to score the most authoritative route. Bolivia and Venezuela provide examples. Until 2002, the Bolivian constitution regulated only partial reform, that is, reform that did not involve the fundamental principles and rights in the constitution. Such reform required a two-thirds majority in the senate, giving *departamentos* a veto. A revision in 2002 inserted a path for comprehensive constitutional reform which bypasses the senate in favor of a two-thirds vote in the combined congress. The senate contributes just twenty-seven of 157 seats in this congress and *departamentos* are unable to propose or postpone reform. Because they retained their veto role in one of the two procedures for constitutional reform, we continue to score *departamentos* 3 until a 2009 reform eliminated the partial reform process.

Venezuela had two tracks with separate rules until 1999. Partial reform required a positive vote in two-thirds of the *estado* assemblies, while comprehensive reform required a majority in the senate and ratification by national referendum. So the former route produces a score of 4, and the latter a score of 3. We take the highest score. Under the 1999 constitution, reform requires a two-thirds majority in the combined assembly (where senators hold less than one-third of the seats) and a simple majority in a nation-wide referendum, neither of which give the *estados* traction in proposing or postponing reform.

Constitutional norms may be unwritten or dispersed across written documents as in Britain and some of its former colonies. Canada provides an instructive example. Until 1982, the ultimate authority for constitutional change in Canada was vested in the British parliament with the formal understanding (recognized in the 1949 British North America Act) that reform would be proposed by the parliament of Canada. There was also a precedent from 1940 that amendments would need the consent of at least a majority of provinces. When in 1980, Prime Minister Pierre Trudeau sought to patriate the constitution without provincial consent, several provinces objected. In the famous patriation reference of 1981 (SCR 753), the Canadian Supreme Court ruled that federal unilateralism, though legal in a narrow sense, violated a constitutional convention. This persuaded the federal government to negotiate the consent of nine of the ten provinces. The 1982 Canadian constitution consolidated the precedent of Article 38 which states that most amendments require the consent of at least two-thirds of the provincial legislatures representing at least 50 percent of the population.[22] Hence we score 4 from 1950, even though the legal status of a collective provincial veto was clarified only in 1982.

[22] The consent of Quebec is not legally necessary, although Quebec, along with other provinces, can veto constitutional change regarding English and French language use.

Finally, ambiguity can arise where formal rules and established practice diverge. Established practice must be generally regarded as having the force of law if it is to substitute for existing legislation (or its absence) in our assessment. In Canada, neither the Northwest Territories nor Nunavut has a formal role in multilateral constitutional negotiations. Both were full partners in the Charlottetown negotiations of 1992, but until this becomes institutionalized in practice or recognized by the courts we do not assume that they have the rights of Canadian provinces and we do not upgrade their score from zero to 4. In Australia, the Northern Territory does not have the formal right to be consulted on reforming its statute. While the federal government has been receptive to negotiation, it has insisted on keeping the final decision with the Commonwealth parliament, and we score the territory zero on bilateral constitutional reform.[23]

We conclude this section with a discussion of bilateral constitutional reform. The criteria are parallel to those for multilateral constitutional reform, and the target becomes the constitutional position of the region, rather than the regional tier. No region can be expected to gain a majority in a national chamber, but a regional government or a regional electorate might be able to propose, postpone or even veto reform of its constitutional position.

Two further issues need clarification: how do we define bilateral constitutional reform, and how do we adjudicate cases with access to bilateral and multilateral reform?



BILATERAL CONSTITUTIONAL REFORM

**0:** the central government or national electorate can unilaterally reform the region's constitutional relation with the center;
**1:** a regional referendum can propose or postpone reform of the region's constitutional relation with the center;
**2:** the regional government can propose or postpone reform of the region's constitutional relation with the center or require a popular referendum;
**3:** a regional referendum can veto a reform of a region's constitutional relation with the center;
**4:** the regional government can veto a reform of the region's constitutional relation with the center.

The bilateral constitutional relationship between a region and the center is usually specified in a special statute, law, or section of the constitution and

[23] Statehood for the Northern Territory has long been in prospect. In 1978, Prime Minister Fraser anticipated statehood within five years. In August 1998, Prime Minister Howard announced Commonwealth support for the territory becoming a state. In 2009–12, the federal government expressed its support for a new attempt to grant the Northern Territory statehood, but the government put the plans on ice when popular support in the Northern Territory appeared to slip, partly because it seemed unlikely that the Northern Territory would be given the same number of senate seats as the other six states.

enforceable in a court, independent committee, and occasionally in international law. This precludes two things: (a) the authority of a region to write its own constitution, which is part of self-rule; (b) the capacity of an individual region to affect nation-wide constitutional reform, which falls under multilateral constitutional reform. Especially (a) deserves note, because, almost by definition, every constituent unit in a federation has the authority to write its own constitution, and many regions in decentralized countries do as well. That is starkly different from a region's right to redefine the bilateral constitutional relationship with the center, which is at the core of bilateral constitutional control.

How do we adjudicate cases with access to multilateral as well as bilateral constitutional reform? Our dataset contains just four regions in that situation: the Malaysian special regions of Sabah and Sarawak, and Serbia and Montenegro in the Yugoslav federation until 2002. Sabah and Sarawak have full bilateral rights because no constitutional change on existing legislative authority, powers over judicial administration, religion, language, immigration, and residence within the state shall be made "without the concurrence of the Yang di-Pertua Negeri of the State of Sabah or Sarawak or each of the States of Sabah and Sarawak concerned" (C 1957, Art. 161E). They are also full participants in multilateral constitutional reform, and their votes are pivotal in the senate to block unilateral federal reform of the constitution. These regions therefore have both full multilateral and bilateral scores.

Serbia and Montenegro (1992–2002) is more ambiguous. A change in the constitution required a two-thirds majority in both federal chambers, which is multilateral shared rule. But some key constitutional articles, including those relating to secession, boundaries, the federal character of the state, and competence allocation, fall under stricter, bilateral control: they require legislative majorities in each republic as well as a two-thirds majority in the lower house of the federation. These provisions allow an individual republic to block change to its one-on-one relationship with the center. In a two-member federation, the differences between bilateral and multilateral shared rule shrink. In 2003, Serbia-Montenegro becomes a confederation, and from then on, constitutional change requires the consent of both republics' legislatures, which we interpret to be bilateral. Serbia and Montenegro score 4 on both multilateral and bilateral constitutional reform until 2002.

Bosnia and Herzegovina is a clear-cut example of multilateral shared rule. The upper house has a veto on constitutional amendments; there is no vote in the *Republika Srpska* or the *Federacija Bosne i Hercegovine*, the individual entities. The entities score 4 on multilateral constitutional reform through their delegates in the upper house. A possible complexity may come from the fact that an ethnic group can invoke an alarm bell procedure in the upper house, which then requires that a law (including a constitutional law)

be supported by a majority in each of the three ethnic groups in order to pass. However, since all of this neither requires a regional referendum nor intervention by the entity governments, this does not amount to bilateral control.

No other regions combine multilateral and bilateral shared rule. Differentiated regions in Bolivia, Denmark, Finland, Spain, Italy, Panama, the Philippines, Portugal, Nicaragua, the United Kingdom, and the US have bilateral but no multilateral control over constitutional reform. In Spain, each *comunidad* can veto changes to its statute of autonomy, which regulates its particular relationship with the center within the confines of the constitution. A revised statute requires a supermajority in the *comunidad* assembly (two-thirds to three-fifths, depending on the *comunidad*) as well as a majority in both chambers of the legislature. In *comunidades* that took the fast track to autonomy, changes also need to be ratified by regional referendum. Bilateral shared rule is balanced by the fact that the *comunidades* do not have multilateral shared rule.



## Types of Regions

We indicate four types of region in the appendix using the notation *S Y A D*.[24]

- A *standard region* (*S*) is part of a regional tier and has a multilateral association with the central state. Standard regions have a uniform institutional set up within a tier, and we estimate them as such.
- An *asymmetric region* (*Y*) is embedded in a national tier, yet has distinctive authority on one or several dimensions of the RAI. Asymmetry is usually specified in an executive decision, constitutional article, or special clause in framework legislation.
- An *autonomous region* (*A*) is exempt from the country-wide constitutional framework and receives special treatment as an individual jurisdiction. It operates mostly in a bilateral setting with the central state alone. The arrangement is laid down in a special protocol, statute, special law, or separate section of the constitution.
- A *dependent region* (*D*) is not part of a standard tier, but is governed hierarchically by the central state. It has a separate government with no, or very little, authority.

[24] This analytical framework is developed in Volume II of this study (Hooghe and Marks forthcoming).

Two key features underpin these distinctions. The first concerns how a region stands in relation to other regions. Is the region part of a tier (*S*); is it part of a tier, yet has distinctive authority (*Y*) (e.g. Quebec or Catalonia); is the region anomalous (*A*) (e.g. Scotland or Aceh); or is the region excluded from a regional tier (*D*) (e.g. Misiones, Isla de la Juventud, Labuan)? The second feature concerns how a region stands in relation to the central state. Is the association multilateral, as part of a tier (*S* and *Y*); is it bilateral, so that the region relates to the central state individually (*A*); or is the relationship a unilateral one in which the region is governed by the central state (*D*)?

It is not uncommon for two or more of these types to co-exist in a country. Contemporary Canada has all four: standard regions (nine provinces and a lower tier of counties in Ontario and regional conferences in Quebec), asymmetry (Quebec), autonomy (Northwest Territories, Yukon, Nunavut, Self-governing Aboriginal Peoples), and dependency (Indian Act bands).

The status of individual regions may change over time. In 1950, Argentina had ten dependent territories. In the next decade eight of these became standard provinces and Tierra del Fuego followed in 1991. In 1996 Buenos Aires became autonomous. Sometimes a region switches back and forth between one or the other status. Aceh became a standard *provinsi* of Indonesia in 1957. It was granted an autonomous statute two years later, which was rescinded when the region was re-absorbed as a standard *provinsi* in 1966. In 2001 Aceh regained its special autonomous status. Northern Ireland alternated between home rule and dependency four times in thirty-five years.

Most regions fit clearly into this typology, but there are some gray cases. A distinction that appears translucent in theory can become opaque when applied to Belgium. Belgium is the only country in our dataset that has a regional tier with no standard regions. Each of the five jurisdictions in its upper tier has distinct competences. The Flemish community combines regional and community competences that are exercised separately by the Francophone community and the Walloon region. The German community exercises some bilateral shared rule, and is not a routine partner in intergovernmental meetings on executive policy (though it can send a representative if it maintains that its competences are affected). Because these regions/communities are regulated by the same constitutional provisions and the same special laws we consider them to be asymmetric rather than autonomous. However, we consider the Brussels region to be autonomous because it is governed by its own special law, has a unique consociational governance structure, and has distinct legal output (ordinances instead of decrees or laws). It is also subject to special federal tutelage to safeguard its role as an international capital, which is the foundation for a direct bilateral link with the federal government. It is also exempt from (or denied) institutional representation in the senate, and it has no role in constitutional reform—either multilaterally or bilaterally.

Many dependencies have shed their subordination to the center and acquired self-governance. We observe forty-three dependencies in 1950 and just nine in 2010. Most have been transformed into standard provinces, states, or departments in big bang reforms, as in Argentina, Brazil, Colombia, and Venezuela. However some dependencies gain autonomy in steps, and this poses the question: at what point do we assess the transition away from dependence?

The Australian Northern Territory provides an example. The Northern Territory became a dependency in 1910 when South Australia ceded the territory to the federal government. At first it was run by the federal government, but over time the territory received some autonomy. We regard the decisive break from a dependent to an autonomous region to be the Northern Territory (Self-Government) Act which set up "separate political, representative and administrative institutions and . . . control over its own Treasury" (Preamble, Northern Territory Act 1978). The territory gained authority over the same range of policies as states (including health, education, social welfare, criminal and civil law, local government, residual powers, and concurrent powers over economic policy), except for control over immigration, uranium mining, and Aboriginal lands. Like states, the territory can set the base and rate of minor taxes, and it can borrow under the same rules. We classify the Northern Territory as an autonomous rather than a standard region chiefly because its relationship with the center remains primarily bilateral—and somewhat unequal: it has only one senator (against six for a state), its powers are not constitutionally guaranteed, the governor-general may withhold assent or recommend amendments to proposed territory laws, and, in contrast to standard Australian states, the territory's autonomy statute can be changed unilaterally by the federal parliament.

The Philippine region of Mindanao has shifted from dependency to autonomy, but only after some false starts. The initial step was the internationally brokered Tripoli Accord of 1976, which set out extensive autonomy for thirteen provinces. However, implementation was lacking. The *Batas Pambansa BLG. 20* Act of 1979 divided the area in two regions, the regions of Central and Western Mindanao, each with a region-wide partially elected assembly and a dual executive, but it did not put decentralization into effect. After democratic transition a new attempt was made to grant autonomy. The key document is the Organic Act of 1989, which recognizes a single region as the Autonomous Region of Muslim Mindanao (ARMM) with boundaries to be determined by referendum. This Act installed a directly elected assembly and governor, devolved taxation powers, and gave Mindanao competences in regional and urban development. The new constitution of 1990 formally enshrined autonomy for "Muslim Mindanao" and introduced Sharia law in some parts of Muslim Mindanao's justice system. Most scholars date autonomy in 1990 to coincide with the constitutional reform and the first elections (Bertrand 2010:

178). We begin coding ARMM as an autonomous region from 1990, and we introduce the two Mindanao regions as dependencies in the dataset when they were set up under President Marcos.

## Aggregating the Scores

We score at the level of the individual region, or, in the case of standard regions, at the level of the regional tier, and we provide annual scores for ten dimensions.

**Self-rule (0–18)**

| Institutional depth | Policy scope | Fiscal autonomy | Borrowing autonomy | Representation | |
|---|---|---|---|---|---|
| | | | | Assembly | Executive |
| 0–3 | 0–4 | 0–4 | 0–3 | 0–2 | 0–2 |

**Shared rule (0–12)**

| Law making | | | | | | | | Executive control | | Fiscal control | | Borrowing control | | Constitutional reform | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| L1 | L2 | L3 | L4 | L1 | L2 | L5 | L6 | | | | | | | | |
| Multilateral | | | | Bilateral | | | | Multilateral | Bilateral | Multilateral | Bilateral | Multilateral | Bilateral | Multilateral | Bilateral |
| 0–2 | or | | | 0–2 | | | | 0–2 | or 0–2 | 0–2 | or 0–2 | 0–2 | or 0–2 | 0–4 | or 0–4 |



The RAI for an individual region is the sum of scores for self-rule and shared rule. Self-rule is the sum of scores for institutional depth, policy scope, fiscal autonomy, borrowing autonomy, and representation (assembly representation plus executive representation). Shared rule is the sum of scores for law making, executive control, fiscal control, borrowing control, and constitutional reform.[25]

Under exceptional circumstances a region or regional tier may receive a score for both multilateral and bilateral rule. For each shared rule dimension we use the greater of the multilateral or bilateral score in aggregating a region's RAI. The

[25] We design the intervals within the ordinal scale to be equivalent and hence arithmetically summable. Chapter One finds that the RAI is robust when we vary weights across self-rule and shared rule.

maximum regional score for self-rule is 18 and the maximum score for shared rule is 12, yielding a maximum RAI of 30 for a region or regional tier.

We aggregate regional scores to country scores in three steps. First, we calculate a score for each standard tier and each non-standard region. Second, we weight scores by population for each tier.[26] Third, we sum the weighted regional scores for each tier.[27]

The data is accessible on the project's website (http://www.falw.vu/~mlg/). It consists of the following:

- A dataset and codebook, "RAI regional scores," with annual scores for 240 regional governments/tiers in sixty-five countries for the period 1950–2010.
- A dataset and codebook, "RAI country scores," with annual scores for all countries in the regional dataset plus scores for sixteen countries that do not have regional governance.
- Three calculation datasets with population figures and aggregation formula.

This chapter concludes the discussion of the general principles that guide our measurement. It is now time to introduce the reader to the implementation of those principles. We have designed an instrument for measuring regional authority. Will it fly? That is to say, will it produce estimates that make sense both to experts on particular countries and regions and to comparativists who may find it useful to summarize a vast amount of information in a systematic and accessible way?



[26] Where a tier is composed of regions with different RAI scores, we weight each region's score by its share in the national population. Where lower level regions exist only in a subset of higher level regions or where scores for lower level regions vary across higher level regions, the lower level scores are weighted by the population of the higher level regions of which they are part. We use population figures for 2010 or the nearest year except in the rare case that a country gains or loses territory or if the country is partitioned. A robustness check indicates RAI estimates using 2010 population data are not measurably different from estimates using decadal census data.

[27] Hence, the more regional tiers a country has, the greater the country score, all else equal.