

Comment

The difficult equation of territorial reforms: from big is beautiful to the impossible simplification of the institutional layer-cake

Comment on articles “*Disparities and territorial discontinuities in France with its new regions: A multiscalar and multidimensional interpretation*” by Kim Antunez, Brigitte Baccaïni, Marianne Guéris, Ronan Ysebaert and “*Does the decentralisation theorem apply to the French local governments? An empirical test on intermunicipal competences*” by Quentin Frère and Lionel Védrine

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Abstract – Do territorial reforms have a meaning, an economic and spatial rationale or are they the result of a legislative whim? In this comment on the articles by Frère and Védrine, and Antunez *et al.*, we will go back over the slow process of France’s territorial organisation and the attempts at simplification introduced by the recent reforms, as well as the issues they raise, in particular in terms of transfer of powers between local authorities and disparities in the new organisation of the regions in mainland France. We emphasise that the territorial layer-cake was shaped patiently over the centuries, to the point of becoming very heavy indeed, and that the NOTRe and MAPTAM laws, enacted to modify the institutional architecture of the French territories by giving priority to large structures, raise questions regarding the transfer of powers and resources, as well as on spatial inequalities, yet without providing definitive solutions toward the aim of administrative simplification.

Keywords: decentralisation, territorial reforms, transfer of skills, spatial inequalities

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Reshaping, carving and redefining the map of the territories is a very French game, which ignites political minds and mobilises local players, in a never-ending endeavour to delineate the strata that form the territorial layer-cake, from basic surface simplifications to the development of new spaces for growth. Yet this national passion for land planning (Béhar *et al.*, 2009; Esteath, 2015) is not futile. It reflects the tension, which constantly springs anew, between different conceptions of France's geographical and institutional structure, torn between Jacobine temptations and decentralising advances, between efforts to concentrate developing zones and preserve natural spaces, between conurbations of globalised activity and the desire to keep local communities strongly-rooted.

In this comment on the articles by Quentin Frère and Lionel Védrine, and by Kim Antunez, Brigitte Baccaïni, Marianne Guérois and Ronan Ysebaert (this issue) we go back over the slow preparation of France's territorial architecture and the attempts at simplification introduced by the recent reforms, as well as on the issues they raise, particularly as regards the transfer of powers between local authorities and territorial disparities in the new organisation of mainland France's regions.

The slow preparation of the territorial layer-cake

The history of the tensions between the absolute power of the State and the local level advocating for more freedoms is as old as France and the patiently carried-out annexation of its provinces. It was with the French Revolution, however, and the fall of the *Ancien Régime* that the administrative structures still familiar to us today first took shape. 36,000 municipalities, designed as the local administrative level at the citizens' doorsteps, became the successors to the pre-1789 parishes. The same year, the *départements* were formed, each headed by a prefect representing the State, while the provinces faded away. From this point on, the country would be organised in a uniform manner, with four administrative layers: the *département*, the *arrondissement*, the canton and the municipality. Far from being decentralising, this unification of territorial organisation, desired by the Jacobins, made France a "one and indivisible" Republic, centred around Paris. The Consulate, and thereafter the Empire, would only complete the centralisation of power and the search for a unitary State.

It would not be until 1861 that the first "Decentralisation" Act, in reality a De-concentration Act, would emerge. The State transferred powers to the prefects, while the prerogatives of the municipalities and *départements* were gradually extended. Despite the enactment of the 1884 law instituting the election of the mayor by the city council, prefectural guardianship remained omnipresent at all administrative levels. Given the large number of municipalities, the 3rd Republic instituted, in 1890, an additional layer, with the inter-municipal syndicates. And it was only in 1955-56 that 21 "programme regions" were created, not yet considered as local authorities but supposed to provide responses, in terms of regional action and economic development, to critics describing the unequal distribution of wealth – this was described as "Paris and the French desert" (Gravier, 1947).

General de Gaulle would launch multiple attempts at regionalisation. From as early as January 1946, French economic planning came into being, with the creation of the *Commissariat du Plan*, the "burning obligation" born of the realisation that municipalities and *départements* as administrative bodies are unsuited to socio-economic issues. In March 1964, he proposed the creation of regions based on the pre-revolutionary provinces: under the supervision of a prefect, they would be the armed wing of the central government in implementing its economic planning and regional development policy. Five years later, the French would reject, by referendum, the constitutional reform instituting the regions as territorial communities, and thereby set the process for his departure in motion. The following presidencies would continue that "quiet revolution", in the words of President Giscard d'Estaing, who called for a basic law to determine the real powers of the State, *départements* and municipalities, while President Pompidou's mandate gave the regions status as public institutions and their own budget.

François Mitterrand's rise to power would break with 200 years of centralism, with "Decentralisation: Act I". The 2 March 1982 Law instituted the region as new local authority, while the President of the General Council replaced the prefect as the head of the *département's* executive. With the various councils of the municipal, *départements* and regional bodies then elected by the people, the Regional Audit Chamber was created, in charge of auditing local finance. In 1988, two new layers were

added: the districts and the urban communities. Ten years later, the Chevènement Act of 12 July 1999 promoted the strengthening of the inter-municipality, but it would take until 2004 for the regions to be recognised in the Constitution.

The legislative package spearheaded by President Chirac was “Decentralisation: Act II”, with a significant transfer of powers to the local authorities. The region is conceived of as the active driver in economic development, while the social side is left more to the *département*. It is also during this period that the reference to participatory democracy emerged explicitly: regions, *départements* and municipalities would now be able to consult their constituents by referendum. Lastly, local authorities were granted their own resources with financial autonomy and the possibility to setting and levy local taxes. In the 2000s, with the 2010 Finance Act, President Sarkozy removed the business tax, which was accused of weighing down companies’ budget, and force them into offshoring. A territorial economic contribution and a fixed tax were instituted to replace it. That same year, the bill to reform the local authorities was adopted: it is simplifying, strengthening and strongly encouraging inter-municipality. The opportunity was also taken to add a new segment to the territorial layer-cake, with the creation of metropolises.

Territorial reforms: the NOTRe and MAPTAM laws

The election of François Hollande marked a new stage in the territorial development process. The President wished to run “Decentralisation: Act III”. On 3 June 2014, he announced the launch of a reform aimed at modifying the Republic’s territorial architecture and attaining its ambition to simplify and clarify the territorial organisation of France, so that everyone would know who decides, who finances and using what resources. The debate quickly turned into a conflict around two points: the borders of the future regions (and their Capitals) and the maintenance or removal of the *départements*. It revealed deep divisions about the objectives and means of possible reform, as well as the very design of the decentralized structure of the Republic. The differences were particularly stark as regards the levels to be eliminated, the initial idea of abolishing the *départements* having slowly died out, due to the mobilisation of local elected officials, but also the difficulty inherent in distributing their many powers and related financing to other parts of the institutional system.

The other question pertained to the boundaries of the new regions, as well as the merger of some of them, with identical scopes as no internal reconfiguration was allowed. The initial map was replaced, as discussions went along, with varying configurations and architectures, which more often than not gave primacy to local alliances rather than to rationalisation imperatives or economies of scale. The solution ultimately selected, consisting of 13 mainland regions, concentrated the alliances in the South-West, North and East of France. On 1 January 2015, the law aimed at modernising territorial public action and the affirmation of the metropolises, known as the “MAPAM Law” or “MAPTAM”, created a new status for 11 metropolises¹ (conurbations of more than 400,000 inhabitants) with powers in economic development, innovation, the energy transition and city policy. Lastly, on 16 July, the law on the new territorial organisation of the Republic (or NOTRe Act) was definitively adopted, and published in the Official Gazette of 8 August 2015.

How many layers are there currently in the territorial layer cake? In addition to the three main levels of local authorities - the municipality, the *département* and the region - there are a multitude of other layers: metropolises, cantons, lands, communities of municipalities, urban communities, conurbation communities, conurbation syndicates, etc. These administrative levels, public institutions and intermunicipal groups are the heirs to the history of the French State’s construction. There is creation, recombination, but rarely any removal.

Like many commentators, we can question the merits of these successive reforms and their advantages for people and economic activity, on the need to continuously add layers, or, conversely, group together entities that had proven themselves in the past (Torre & Bourdin, 2015). In recent years, the mantra *Big is beautiful* prevailed, whether with regard to large regions, metropolises or large inter-municipalities. The articles by Frère and Védrine, and Antunez *et al.* examine alliances and groupings between EPCIs (Public Intermunicipal Cooperation Institutions), and in particular municipalities and regions, which have reshaped the map of territorial France and led to numerous questions about their legitimacy and efficiency, as well as about the consistency of the new units formed.

1. In addition to the Nice Côte d’Azur metropolis, already created on the basis of the 2010 Law, as well as the special-status metropolises, Grand Paris and Lyon. As at 1st January 2018, there were 21 metropolises.

The reform of the regions in question: useful or high-risk?

The article by Kim Antunez, Brigitte Baccaïni, Marianne Guérois and Ronan Ysebaert discusses the merging of the regions, resulting from the NOTRe Act, and raises questions about the legitimacy and homogeneity of those groupings. The new regions are often criticised as being rather heterogeneous and not being based on a strong internal logic, or even bringing together extremely different entities, and doing nothing more than setting institutions side by side. The transition to 13 mainland regions may sometimes appear a whim of the legislator or a step toward longer-term merging within mega-entities, without any real grounds, except the attempt to achieve larger size. Why such groupings? And what underlying logic? The authors respond in different ways, seeking to measure the heterogeneity of the new regions and territories that form them, based on data on the level of employment (rate and development), standard of living (per capita income) and demographics (youth and population density) in 2014.

The first question pertains to territorial disparities within the 13 new mainland regions, examined based on principal component factorial analysis to show the similarities and differences between the 22 initial regions. The contrasting results reveal significant disparities along two main lines of differentiation. The first contrasts the regions where the situation on the labour market is favourable (high rate of employment and levels of standard of living) with those where it is less so. The second contrasts densely populated and young areas with the more rural and ageing regions. A number of similarities can be seen between the merged regions as in the case of Nouvelle-Aquitaine (between Poitou-Charentes and Limousin in particular), but also numerous dissimilarities. This is the case with the very particular situation of Hauts-de-France, due to the unusual position of Nord-Pas-de-Calais, which is characterised by a very significant demographic dynamic compared with its low employment rate. A similar observation can be made for the new AURA region (Auvergne-Rhône-Alpes), where Auvergne appears quite aged and sparsely populated compared to Rhône-Alpes. Lastly, given the extremely advantageous position of Alsace, its reluctance to tie its fate, within the Grand Est region, with Lorraine and Champagne-Ardenne is understandable, given their far less favourable profiles (Beyer, 2017).

A second approach consists of studying possible disparities within the regions themselves, based on an analysis of the employment zones using three composite indicators relating to the labour market, shifting patterns in employment and demography. With the exception of Île-de-France and Corsica, which show a certain homogeneity, the other regions are characterised by a highly-contrasting panorama, with the coexistence of different types of job areas, from the most favourable (mainly in the Paris region, Rhône-Alpes or in the West), to those facing the most struggles, and which form the “diagonal of emptiness” (Oliveau & Doignon, 2016). This result shows that disparities persist even within metropolitan regions; moreover, the authors show that the main heterogeneities are at the heart of the latter, and not at their borders, further accentuating the idea that it is the differences between the various types of zones (urban, outer-suburban, rural, etc.) that matter above all, casting doubt on the value of the recent regional mergers in terms of territorial cohesion.

Besides these important elements, the reform of the regions also raises other questions. One may wonder, for instance, about the reconfigurations’ possible negative impact on territorial equity, with greater concentration of activities in the most productive zones, but also a reduction in the quality, or even outright lack of local services with a view to reducing costs. Concerns might also be raised for inhabitants living in territories remote from major cities, in a context of reduced public resources, rationalisation of equipment and elimination of local services (high schools, hospitals, jobs, etc.) or railway lines. Some new regions are true giants, the expanse of which may cause some of the populations to be significantly removed from the decision-making centres. Many local officials or decision-makers are located far from their regional Capital, hence difficulty being heard and relaying peoples’ voices and interests. The latter, meanwhile, can experience the authorities’ remoteness as further withdrawal of the State from the peripheral or rural territories.

There is also concern due to the uncertainties on the links between local authorities, and especially the regions/metropoles tandem. Above and beyond collaborations between levels, it is primarily the ability to generate positive peer pressure or development effects and set shared dynamics in motion. Abolishing the universal powers clause is a step toward rationalising public action and clarifying powers; it helps

identify the devolutions, slows down the fragmentation of expenditure and limits the desire for unbridled intervention. The risk of a lack of specialisation is actually significant. While the European strategy for smart, sustainable and inclusive growth, “EU 2020”, puts the focus on the choice, by each region, of a limited number of activities or technologies within a value chain, and therefore a differentiation in functions and output (Foray, 2014), the opposite effect is to be feared here. Organised around their metropolises, macro-regions can be tempted to behave like small States, reproducing all the internal powers and specialisations, without making real development choices.

Moreover, the French regions continue to receive very little financial endowment, the transfer of powers having been completed without the related transfer of resources. Compared to their European neighbours, their budget is very low: whereas, on average, the expenditure of European regions amounts to EUR 4,000 per inhabitant per year, that of the French regions is ten times lower. Lastly, the reform raises different questions about the role and place of the State. What is the future of regional civil servants and decentralised agencies? What is the foreseeable economic and social impact of site shutdowns, staffing reductions or staffing transfers on development or land dynamics, for example? Not to mention the related costs of reform, estimated at around EUR 1 million, for relocating the services, integrating them and aligning pay grids for civil servants, while the savings to be expected would be low according to a Standard & Poor’s report (2015).

The intermunicipality: a response to the impossibility of merging municipalities

The article by Quentin Frère and Lionel Védrine is about the – somewhat unexpected – success of the 1999 Chevènement Acts. After previous failed attempts to reduce the number of municipalities (in contrast to the United Kingdom and Germany or Scandinavian and Central European countries), the intermunicipality has stirred deeply-rooted support in France as a credible alternative to merging, and one acceptable to the local populations. Accused of being the most profligate territorial level, the municipality, the lowest common denominator of the territorial organisation, tends to be increasingly questioned in territorial reforms. Today, each

municipality is covered by an EPCI (community of municipalities, conurbation or urban areas, metropolitan areas and agglomeration trades), and variable rules, particularly in terms of powers transfer. However, these groupings raise numerous questions, particularly in terms of efficiency of sharing, modalities of contribution to operations delegated to the EPCI, equity between the inhabitants of the different municipalities, or social justice for the populations involved.

The authors focus on the municipalities’ decision as to whether a given power should be transferred to an EPCI. This is a matter of importance because the menu of powers to be transferred is not clearly established by the legislator and the municipalities are therefore required to make choices in this regard. There can be questions in particular about their cooperative behaviour: should they transfer competences and if so, which ones? Under what circumstances should they do so? Does the size of the municipality and its specific characteristics – particularly the greater homogeneity or heterogeneity of the populations – play a part in this regard, and should they encourage different choices based on internal characteristics?

Economic theory provides responses in terms of economies of scale or ranges. For the purely territorial dimension, the Oates Theorem (1972), which inspires the article, states that the decision of the municipalities to transfer powers is the result of arbitration between the cost of citizen preferences’ spatial heterogeneity and the benefits of economies of scale. In other words, considerable heterogeneity between municipality populations (and thus between the preferences of players) will plead in favour of a transfer of powers to the inter-municipality, the latter however enabling the construction of non-rival public goods such as pools or schools, which are too costly for small municipalities. The analysis is carried out on 2012 data, before the NOTRe Act, which makes certain transfers mandatory, as the heterogeneity of preferences is based on the principal component analysis of a heterogeneity indicator based on 15 socio-demographic variables. It must make it possible to assess the mechanisms that drive municipalities to transfer powers.

The results of the econometric study, based on the powers least frequently transferred, are clear and largely verify the Oates Theorem. First of all, the search for economies of scale spurs municipalities to cooperate and therefore

to transfer powers, probably in order to be able to finance infrastructure or joint local-level programmes. Secondly, the significant heterogeneity of the population puts a brake on the transfer of powers and the creation of intermunicipalities, thus confirming Tiebout's (1956) arguments on citizens "voting with their feet".

Far from being a French exception, municipal fragmentation can also be found in other countries, although rarely to the same extent. Throughout Europe, the economic crisis has fostered grouping aimed at reducing the cost of everyday operations, globalisation and increased competition between local authorities, hence better pooling of resources. It raises questions about local finances, such as the collection of funds, an issue at the fore when the aim is to lower funding from the various local authorities, and equalisation thereof in terms of financial federalism (Wildasin, 2004). Still other questions can be raised about land, with the abolition of the housing tax and the search for alternative ways of collecting funds by municipalities, such as fines on public roads, for example, and questions about land occupancy and management modes, with the intermunicipal PLUs (Local Urbanism Plans) coming into widespread use.

Lastly, no discussion of inter-municipalities would be complete without mention of the heightened role and powers of the metropolises (Brennetot & de Ruffray, 2015), which are now being given greater autonomy and extensive functions – in particular through the possibility of contracting with other EPCIs, or even adopting a driving role. This option could generate

new dynamics, giving the urban populations, the largest in terms of volume, the power to take initiative. At the same time, it raises the issue of the isolation of remote rural or outer suburban spaces and the problem of a fictional urban France, at the risk of leaving many territories in dire circumstances.

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The territorial reform processes initiated in Europe (Italy, Portugal, Spain, Netherlands, etc.) share a common feature. Regions and metropolises are pushed into the limelight, while intermediate territorial levels such as *départements* appear to be challenged. Like other European countries, the French territorial reform follows this twofold trend of deepening the role of the regional level and large cities, with a transfer of competences to the regions and large-scale intermunicipalities. However, unlike France, most European countries have only one or two levels of local authorities. The allocation of powers and financial resources between these different entities is very heterogeneous and often depends on the level of regionalism or federalism of the State in question. As a result, the process of transferring powers proves less complex to implement than in France, although this still does nothing to erase inequalities. Lastly, in France as elsewhere, size is not the determining factor. It is economic dynamism, along with the powers and resources allocated to each local authority that play the predominant role in the development of the territories. □

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