

## Introduction to Federal Countries

By John Kincaid

Creation of the Forum of Federations in 1999, the publication of the *Handbook of Federal Countries 2002*, as well as the growth of the International Association of Centers for Federal Studies in recent years, all reflect the increasing interest in federalism itself and the spread of federal ideas during the past decade.<sup>1</sup> In 1968, Carl J. Friedrich, a prominent Harvard political scientist, suggested that federalism was not, as many observers then believed, an anomaly in the modern era but rather a mode of governance that was moving to the forefront of political necessity and desirability in the second half of the twentieth century.<sup>2</sup> This was a prescient observation, especially at a time when federalism seemed to be retreating rather than advancing. In the United States of America, the archetype of the modern federal polity, federalism had become widely associated with the racism of southern states' rights. Elsewhere, several formally federal countries, such as the USSR, were actually highly centralized authoritarian or totalitarian regimes. A number of federal experiments had come to failure, while new federations, such as India, were experiencing centralization and developmental difficulties or, more severely, civil war and corrupt military rule, as in Nigeria. Three older federal democracies—Australia, Canada and Switzerland—prospered contentedly but rather invisibly behind the dramatic conflicts of the Cold War. Germany had built a successful federal democracy on the rubble of the Nazi era, Austria had reconstituted federalism, and a small group of Western European countries was slowly building an economic union, but these, too, seemed like sideshows on a continent in which dictatorships still outnumbered democracies. The United Nations, a global federal experiment of sorts, was a hot-air balloon grounded by the deadweights of nationalism and superpower rivalry.

Yet, the publication of this handbook is a sign that the times have changed since 1968, so much so that as Carlos Fuentes wrote in 1990, “My hope is that we will witness a reevaluation of the federalist theme as a compromise between three equally real forces—the nation, the region and the world. To this end, *The Federalist Papers* should be distributed in the millions.”<sup>3</sup> What happened between Friedrich's

prescience and Fuentes' advocacy was the fall of the Berlin Wall in 1989. This was a monumental event that marked the collapse of an empire, ended the more than 40-year-old Cold War, unleashed democratic and nationalist forces worldwide, and discredited political theories and practices that had legitimized command-and-control centralization in the name of abstractions such as the people, democracy and nationhood.

### ***The Federalist Ferment***

The painfully constructed union in Western Europe is now the European Union (EU), a body that is in the process of enlarging considerably.<sup>4</sup> The EU is a remarkable accomplishment in light of the centuries of war and terror that have plagued the continent. Federal Germany, now united, is a key leader in the European Union; Belgium has become formally federal; Spain's post-fascist state is quasi-federal; Austria sustains its federal system; and Switzerland, still outside the European Union, remains a robust federation with a newly revised constitution. These successes are countered partly, however, with the failure, or potential failure of several other European federations. Thus, Czechoslovakia is now two countries, Slovakia and the Czech Republic. Yugoslavia experienced traumatic disintegration into a shadow of its former self, and with a new federal arrangement, Bosnia-Herzegovina, having been carved out of former Yugoslav territory and now under Western military guarantees. Sprawling Russia, the largest geographic remnant of the USSR, with its 89 constituent units and thousands of nuclear weapons, is severely strained by centrifugal and centripetal forces, among other problems. These three cases—Czechoslovakia, Soviet Russia and Yugoslavia—however, were federal only in form, not in reality.

In Africa, the Middle East and Asia/Oceania, federalism has had mixed success. In Africa, Nigeria is again embarked on an effort to make democratic civilian government work; Ethiopia has established a federal democracy with a right of secession in its constitution; and post-apartheid South Africa established a quasi-federal democracy. However, the Federal Islamic Republic of the Comoros continues to be a fractious and troubled arrangement, and Senegambia was dissolved in 1989.

The Middle East is one region where federalism has not gained a firm foothold. The United Arab Emirates is the only entity in the region that has adopted federal principles. It consists of seven emirates in a federal-type alliance of chieftains. In Asia, India has sustained its federal "Union of States" for more than 50 years, but it is

facing significant changes arising from the decline of the Congress Party and the end of the Cold War. Pakistan, again experiencing military rule, has had considerable difficulty building federalism and democracy. Malaysia, one of the few federations to expel a member (i.e., Singapore in 1965), remains highly centralized and troubled by ethnic conflict. The Federated States of Micronesia continues to be a federal country more as a result of its US trusteeship status than internal cohesion. Australia's federal system, however, has celebrated 100 years of democratic prosperity, and with the British Crown still in place.

In the Americas, the last decade witnessed the revival of more federal and democratic governments in Argentina, Brazil and Mexico, but oil-rich Venezuela, though nominally federal, is still held tightly by the centre. In the Caribbean, the Federation of St. Kitts and Nevis, the remnant of the short-lived British West Indies Federation, continues to be an uneasy marriage. Canada, however, remains one federation, with Quebec still in the fold, and carefully balanced mechanisms of accommodation and toleration sustain a prosperous, democratic federal polity. The United States, which became the world's only superpower in the 1990s, also experienced a revival of its more traditional federalist principles during the 1990s, especially in decisions emanating from the US Supreme Court—the umpire of the country's constitutional federal system. In so doing, the Court reiterated a more general point about the ends of federalism.

The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States, . . . the Constitution divides authority between federal and state governments for the protection of individuals. State sovereignty is not just an end in itself: “Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power”.<sup>5</sup>

The federalist ferment afoot today is broader than ever because federalism is one of the key elements of debates and discussions about democratization, decentralization, marketization, individual rights protection, and minority community guarantees. The federalist ferment is very much a searching reaction against the era of highly centralized nation-states which so often proved to be internally oppressive and externally aggressive. As the case studies in this handbook clearly indicate, federalism can be an extraordinarily successful and democratic mode of governance; yet, it can also be a difficult mode of governance to bring into being and maintain

over time.

The federalist ferment also reflects the necessity and desirability of federalism rather than statism in the twenty-first century.<sup>6</sup> The necessity for federalism lies in the need to develop modes of inter-governmental governance for our global village that can perform functions that progressively extend outside the competent reach of one's home, village, city, province, nation-state, region and continent. Such new modes of governance and orders of government cannot and should not be imposed by a central power but, rather, constructed by the coming together of all who live on the planet. The desirability of federalism lies in, among other things, its commitment to diversity rather than homogeneity and in its promise not to obliterate one's home, village, city, province, nation, region, or continent in the course of delegating powers to general and functional jurisdictions of larger territorial scope. This desirability is also a necessity insofar as the world's many diverse racial, ethnic, religious, linguistic and nationality communities seek to retain their identities. These identities must be accommodated if the world is to move away from statism toward federalism.

### ***What is Federalism?***

Federalism is essentially a system of voluntary self-rule and shared rule.<sup>7</sup> This is implied in the derivation of the word "federal", which comes from the Latin *foedus*, meaning covenant.<sup>8</sup> A covenant signifies a binding partnership among co-equals in which the parties to the covenant retain their individual identity and integrity while creating a new entity, such as a family or a body politic, that has its own identity and integrity as well. A covenant also signifies a morally binding commitment in which the partners behave toward each other in accord with the spirit of the law rather than merely the letter of the law. Thus, the binding agreement is more than a contract. A covenant commits the parties to an enduring, even perpetual, relationship and to an obligation to cooperate to achieve the ends of the agreement and to resolve peacefully the conflicts that invariably arise in every relationship.

Federalism, then, can be said to be both a structure and a process of governance that establishes unity on the basis of consent while preserving diversity by constitutionally uniting separate political communities into a limited, but encompassing, polity. Powers are divided and shared between a general government having certain nation-wide, continent-wide, or world-wide responsibilities. This division of powers is combined with authoritative capacity to carry out those responsibilities on behalf of the people of the federal polity. Hence, the constituent

governments also have broad local responsibilities and sufficiently autonomous self-government to carry out their responsibilities on behalf of their own people in concert with the whole people of the federal polity. The distribution of powers is intended to protect the integral authority of both the general and the constituent governments as well as the existence of their respective communities. A democratic federation is, in effect, a republic of republics, which emphasizes partnership and cooperation for the common good, while also allowing diversity and competition to foster liberty and efficiency.

Advocates of federalism view it as a way to establish peace and security, and to construct common values and an overarching identity while still fostering pluralist democracy. They also view it as a way of protecting and also moderating human diversity, guarding against centralized tyranny by either a minority or a majority, and preserving both individual and communitarian liberty. As well, it can be seen as a way of promoting common-market prosperity, enhancing citizen participation and local self-government, giving citizens multiple points of access to public power, allowing citizens freedom to make choices among government jurisdictions, encouraging creative experimentation (e.g., the constituent units as laboratories of democracy and policy innovation), and improving public service efficiency by enabling governments to provide public goods that are economically appropriate to their territorial jurisdiction. Federalism can also be seen as a means to promote justice in a variety of ways, including matching the benefits of government closely to the burdens of paying for government, fostering mutual aid, and recognizing, within limits, diverse conceptions of justice held by the peoples of the constituent political communities.

Critics of federalism argue that it is a complex and complicated mode of governance that is slow to respond to change and challenges. They claim, as well, that it is inherently given to inequality and uneven development across jurisdictions, prone to wasteful duplication of functions and services, rife with recalcitrant veto points, cumbersome in implementing policy, and subject to decision-making paralysis.

### ***Structural Varieties and Procedural Fundamentals of Federalism***

In terms of constitutional design and government structure, federal arrangements can, and do, take many forms. Although there are some general guidelines for appropriately allocating functions in a federal system (e.g., equity, accountability,

externalities and economies of scale), there is no one best, or ideal, federal constitution or structure of government, and no universal list of which functions or competences must be assigned to the general government and which to the constituent governments. As well, there is no one best way to mix delegated, enumerated, implied, inherent, exclusive, plenary, concurrent and reserved (or residual) powers in a federal democracy. In Canada, for example, the reserved powers lie with the federal government; in the United States, the reserved powers lie with the constituent states. A federal system can be parliamentary, presidential, or some hybrid. Ordinarily, a federal system has an umpire, usually a high court, that can resolve inter-governmental and inter-jurisdictional conflicts. High courts vary in their structures and powers, however, and recourse in some federations may be made to the people as the ultimate umpire. In these respects, there are varieties of federalism.<sup>9</sup>

In terms of process, there appear to be certain fundamentals characteristic of successful federal democracies. One is continual inter-governmental consultation and negotiation within and outside of the formal institutions of government, including diverse mechanisms for citizen participation and rules of public transparency. The outcomes of inter-governmental negotiations must ultimately be accepted by the people. Another is inter-governmental cooperation, especially a pragmatic approach to solving public problems. In the final analysis, all governments in a federal democracy serve all the people. Such cooperation is highly formalized and institutionalized in some federations; in others, it is fluid and informal. There is a need for federal loyalty as well, *Bundestreue* or *loyauté fédérale*. Federal loyalty is the moral commitment to work together to achieve the objectives and fulfill the needs of the federal polity. Federal comity is the willingness to compromise, exercise forbearance, and understand the point of view of others. At the same time, some inter-governmental and inter-jurisdictional competition is vital as well—to restrain power, promote efficiency, and foster innovation. Such competition is enhanced when there is freedom of mobility for citizens.

Generally, each government needs sufficient autonomous capacity—legislative, administrative, fiscal, and the like—to fulfill its duties rather than being dependent on, and thus potentially subservient to, another order of government. Most often, it is the allocation of revenues and especially of revenue-raising authority that is most contentious. For purposes of democratic accountability, it is best to keep spending and taxing authority tied together; that is, any politician who experiences the pleasure of spending tax money on constituents ought first to experience the pain of extracting it from his or her constituents. Inter-governmental transfers, or grants-in-aid, separate the acts of spending and taxing by giving one order of government the pleasure of



spending while shifting the pain of taxation to another. However, for many historical and political reasons, all federations engage in inter-governmental transfers. Frequently, these transfers reflect a desire by the national government to maintain control over the constituent governments by decentralizing revenue expenditures while centralizing revenue-raising authority. Most federations engage in fiscal equalization, whereby the federal government (and sometimes wealthy constituent units too) supply revenue to poor constituent governments in order to lift their fiscal capacity for service provision up to the national average or to fulfill a constitutional command, such as the provision for “uniform living standards” in Germany’s Basic Law.

### ***Federalizing or Decentralizing Centralized Systems***

Historically, federalism has involved a coming together of separate, independent communities in classic covenantal fashion. In the late twentieth century, however, many efforts emerged to federalize previously centralized, dictatorial regimes by deconstructing the centre and deconcentrating powers so as to reconstitute the polity on a federal basis. Such efforts are novel and important experiments in federalism. However, even though the process is different from the classic pattern, the end requirement is the same; the constituent political communities that emerge from beneath the pall of suppression must still want to stay together. It is a process of coming apart and then voluntarily coming back together again. This process can be symmetrical, in which all the constituent units reach a federal bargain on an equal footing at about the same constitutional moment. Alternatively, it can be an asymmetrical process, in which the various constituent units obtain different levels of self-governing autonomy through bilateral constitutional agreements or treaties with the deconstructing centre or through a general constitutional provision that allows constituent political communities to assume more self-governing autonomy at variable speeds according to their preferences and capacities.

It is the coming apart stage of deconstruction, however, that often raises the most alarm about federalism, principally the fear that in coming apart, the constituent units will not unite again. Nationalist leaders, therefore, often decry federalism and reject it as a subterfuge for secession or a route to disintegration. At best, they express support for devolution or decentralization while assiduously avoiding the “F” word.<sup>10</sup> Although such resistance to federalism can itself be a subterfuge for resisting democratization, the possibility of disintegration of a formally centralized state is

always present, especially where constituent racial, ethnic, religious and/or linguistic communities have experienced severe oppression or genocidal assaults. Even a minimum level of trust needed for federalization may not be present. However, efforts to hold onto centralized power and impose unity can exacerbate disintegration or else destroy both federalism and democracy.

Given that most nation-states are multi-national or multi-cultural, one of the leading appeals of federalism in recent decades has been its potential for accommodating racial, ethnic, religious and linguistic political communities within a single polity. Switzerland is the most venerable and successful model of this potential. Spain is a recent example of a deconstructing system thus far successfully accommodating such diversity. Canada is viewed by many citizens of Quebec as a compact between two peoples rather than as a federation of ten provinces, and India is a cacophony of multi-nationalism and multi-culturalism. Although such potential is clearly evident in federalism, it is also evident that federal accommodations of such diversity are difficult and delicate achievements. Yet, this points back to the seeming necessity of federalism; otherwise, what is the alternative? A centralized unitary system might hold a multi-national or multi-cultural society together, but the price of togetherness where the constituent communities do not really wish to be together may be the sacrifice of democracy and the burden of authoritarian rule. Such rule often fails as well, as indicated by the high levels of ethno-religious conflict and bloodshed in so many nation-states.

### ***Federalism versus Decentralization***

There is, therefore, usually more interest in the decentralization of centralized systems than in federalism. The reason is simple. Federalism entails a level of political autonomy, even sovereignty, for constituent communities that rests uneasily, even threateningly, with traditional or elite conceptions of national unity. Federalism involves a polycentric non-centralized arrangement in which neither the constituent governments nor the general government can unilaterally alter the constitutional distribution of power. As Friedrich noted:

A federal order typically preserves the institutional and behavioral features of a *foedus*, a compact between equals to act jointly on specific issues of general policy. Effective separate representation of the component units for the purpose of participating in legislation and the shaping of public policy, and,



more especially, effective separate representation in the amending of the constitutional charter itself may be said to provide reasonably precise criteria for a federal as contrasted with a merely decentralized order of government.<sup>11</sup>

Decentralization involves a central power possessing authority to decentralize or devolve functional and administrative responsibilities to lower levels of government. The authority to decentralize, however, also includes the authority to *recentralize* power. Decentralization is concerned with administrative efficiency and functional efficacy in an otherwise unitary system.

This is not to say, however, that federal systems are not more or less centralized in terms of the balance of power between the general and constituent governments. In principle, a federal system can be more constitutionally and/or politically centralized than a decentralized unitary system. In turn, decentralization can occur in a federal system when the general government transfers shares of its own revenue, delegates implementation authority, and assigns administrative responsibilities to its constituent governments. In practice, moreover, the distinction between federalism and decentralization can be blurred where lower levels of government in decentralized unitary systems seek to enshrine autonomy guarantees of a federal nature in ordinary law or the constitution and where constituent governments in federal systems find their powers of self-government being eroded by the national government and replaced by mere administrative discretion.

### ***Challenges to the Future of Federalism***

The potential erosion of constituent self-government in federal systems has become of heightened concern in today's era of regional integration and globalization. In Western Europe, for example, regional and local governments, as well as national governments, have ceded considerable authority to the European Union. As well, global free-trade regimes, such as the World Trade Organization, pose threats to a wide range of constituent government powers that can generate non-tariff trade barriers. Meanwhile, global market competition places pressures on federal and unitary systems to deconcentrate or decentralize certain powers in order to give constituent governments more freedom and capacity to compete for investment and tourists, and to export local goods and services in the global marketplace.

The accommodation of human diversity, however, remains the leading challenge for federalism. It is also the leading challenge for the world. The flowering of

cultural and national identities has created conflict worldwide. Equitable, democratic resolutions of these conflicts will require negotiated governance arrangements of a federal nature within and between nation-states.

At the same time, issues of environmental protection, global equity, and world peace all point to a need to employ federal principles and practices to help guarantee the future against catastrophe.

### ***Notes***

1. See also, Daniel J. Elazar (ed.), *Federal Systems of the World: A Handbook of Federal, Confederal, and Autonomy Arrangements* (2<sup>nd</sup> ed., Essex, UK: Longman, 1994).
2. Carl J. Friedrich, *Trends of Federalism in Theory and Practice* (New York: Praeger, 1968).
3. Carlos Fuentes, “Federalism is the Great Healer”, *Los Angeles Times*, 16 December 1990, p. M1.
4. John Kincaid, “Confederal Federalism and Citizen Representation in the European Union”, *West European Politics*, Vol. 22, No. 2 (April 1999), pp. 34-58.
5. *New York v. United States*, 505 U.S. 144 (1992).
6. Daniel J. Elazar, “From Statism to Federalism: A Paradigm Shift”, *Publius: The Journal of Federalism*, Vol. 25, No. 2 (Winter 1995), pp. 5-18.
7. Daniel J. Elazar, *Exploring Federalism* (Tuscaloosa, AL: University of Alabama Press, 1987), p. 5.
8. Daniel J. Elazar and John Kincaid (eds), *The Covenant Connection: From Federal Theology to Modern Federalism* (Lanham, MD: Lexington Books, 2000).
9. Valeria Earle (ed.), *Federalism: Infinite Variety in Theory and Practice* (Itasca, IL: F.E. Peacock, 1968).

10. John Kincaid, “Values and Value Tradeoffs in Federalism”, *Publius: The Journal of Federalism*, Vol. 23, No. 1 (Spring 1995), pp. 29-44; Gabriele Ferrazzi, “Using the ‘F’ Word: Federalism in the Indonesian Decentralization Discourse”, *Publius: The Journal of Federalism*, Vol. 30, No. 2 (Spring 2000), pp. 63-85.

11. Friedrich, *Trends of Federalism in Theory and Practice*, p. 6.