



Ways of diffusing power

Could the labyrinth of terms to describe sharing, distributing and decentralizing political control have relevance for the Middle East?

THEME II: FEDERALISM, DECENTRALISATION AND CONFLICT MANAGEMENT IN MULTICULTURAL SOCIETIES

BY RUTH LAPIDOTH

Why does Switzerland call its Constitution federal but preserve its official name “Confederation Helvetique”? Why are the federal units of the U.S.A., Australia, India and Malaysia called states, while elsewhere only independent countries bear that name? What is the difference between a federal unit, an autonomous region and a decentralized district? How can these institutions serve the interests of ethnic and religious minorities?

Cooperating independent countries

A *confederation* is a more or less institutionalized system of cooperation among independent states. It is usually established by an international agreement, members are free to leave it, and resolutions have to be adopted unanimously. At least, opposing members do not have to implement resolutions to which they objected. Confederations are usually established in order to enhance security cooperation, and have no impact on minorities. The most famous examples are the U.S. *in the past* (1781-1787) and Switzerland *in the past* (1815-1848). Today perhaps the Commonwealth of Independent States (CIS) could be described as a confederation.

One country with a federal constitution

Despite the similarity in name, a *federal state* is very different (see box 1). It is a full-fledged independent state. It has a constitutional structure under which the state is divided into regions that assume different names in various countries, such as “state” in the United States, “province” in Canada, “Land” in Germany, and “canton” in Switzerland.

Federal states are usually established for economic or security reasons. However, they may also help to combine political unity with multiculturalism or multilingualism, as Canada and Switzerland demonstrate.

The Federal State

A federal constitution often allocates powers to both the central authorities and the regional ones. Sometimes only the powers of either the center or the periphery are enumerated, leaving all the rest to the other one respectively. In cases where the entities that make up the federal state existed before the latter and united in order to establish it, these entities are often in control of residual powers.

The division of powers is not the same in all federal states, but one can safely observe that usually the center is in charge of foreign affairs, defense, immigration, border and customs control, monetary and fiscal matters as well as citizenship. The federal units, on the other hand, are in control of local matters. The regions, as such, participate in the legislative function of the central authorities: their representatives are members in an upper house, and the consent of the local parliaments is required to amend the federal constitution. Usually, there is a special tribunal for settling disputes among the various regions or between a region and the center.

Among the most famous federal states are the U.S.A., Switzerland, Germany, Australia, Canada, Brazil, India and Argentina. According to its Constitution, Switzerland is today a federal state, but it has kept its name from the time it was a confederation. This explains the discrepancy between the name and the actual regime.

A third related term is *federation*. It is an “ideal” term likely to confuse students. Some use it as a synonym of confederation, while for others it equals federal state.

Response to demands for self-rule

The term *autonomy* is widely used, with rather varying meanings (see box 2). Territorial political autonomy is an arrangement aimed at granting to a group that differs from the majority of the population in the state, but that constitutes the majority in a specific region, a means by which it can express its distinct identity. It is a well-known means of satisfying groups’ demands for self-determination while preserving the unity of the state. Opinions differ on whether minorities have a right to autonomy. With regard to indigenous populations, the international community tends to admit that they do have a valid claim to autonomy.

The powers of the autonomous region usually relate to education, culture, use of language, environment, local planning, natural resources, economic development, local policing functions,

and housing, health and other social services. There are, however, different degrees of autonomy, and the extent of the transferred powers varies accordingly, ranging from very limited to larger and up to a high concentration of major powers in all or some of the above spheres. The central authorities, on the other hand, are usually in charge of defense, foreign affairs, immigration and customs, macro-economic policy and monetary affairs. The control of the center over the activities of the autonomous authorities is limited to extreme cases, such as excess of powers or acts endangering the security of the state.

The most famous examples of territorial autonomy are the Aland Islands, (a group of islands in the Baltic sea; they are under Finnish sovereignty, but the great majority of the population speak Swedish); Scotland; Greenland/Kalaallit Nunaat (the island, inhabited by an indigenous majority, is part of the Danish realm); Puerto Rico (this Estado Libre Asociado, with its Spanish speaking majority, is part of the U.S.A.); South Tyrol/Alto Adige (a province in Northern Italy with a German speaking majority);



and Hong Kong (in the wake of its return from Britain to China). There are great differences among the various cases of autonomy.

At first sight, territorial autonomy may look similar to the system of a federal state. However, there are some very important differences. In most cases, the autonomous entity, as such, does not participate in the activities of the central authorities, whereas the cantons in a federal state (see box 1) play an important role in the central authorities (membership in the upper house and participation in the process of amending the federal constitution). Autonomy is usually established in regions that have a particular ethnic character, whereas the federal structure applies to the entire territory of the country.

Last but not least, one should mention the term *decentralization*. Some authors use this word as a general term for all types of diffusion of power from the center to the periphery. However, in a narrower and perhaps more accurate sense, decentralization implies a limited delegation (not transfer) of powers, subject to the full control and overriding responsibility of the center. There are various degrees of decentralization, depending upon the scope of the delegated powers, the extent of participation of locally elected officials, and the degree of supervision by the center.

Of course, not all constitutional arrangements fit into the various categories identified here – such as the state of Bosnia and Herzegovina, for example.

Autonomy in the 1978 Camp David Accord and the Oslo process

Are any of these institutions relevant to the Israel-Palestinian issue? Already in 1978, the Framework for Peace in the Middle East negotiated at Camp David by Egypt and Israel, with the mediation of President Carter, foresaw an interim regime of “full autonomy” for the West Bank and Gaza. However, the negotiations for the establishment of that regime did not lead to an agreement.

Much later, in 1993, Israel and the PLO agreed – in the Declaration of Principles on Interim Self-Government Arrangements (sometimes referred to as the Oslo accord) – to establish a self-governing Palestinian Council for five years. Various sets of negotiations led to a staged transfer of powers from the

Autonomy

The term autonomy is used in philosophy and its derivatives, in natural sciences, and in the sphere of law and political science. In the last mentioned category, for some it means a right to act upon one's own discretion in certain matters; for others autonomy is more or less a synonym of independence. In the sphere of diffusion of powers autonomy can mean decentralization but more often the term means that a certain entity has exclusive powers of legislation and administration – in some cases also adjudication – in specific areas. A distinction is made among “administrative autonomy” which resembles mere decentralization, “political autonomy” which involves a transfer of authority to legislate for a certain territorial unit in certain spheres, and “personal (or cultural) autonomy.”

Personal or cultural autonomy differs from territorial autonomy at least in three respects. The self-rule is allocated to a culturally, ethnically or religiously rather than territorially defined group; the scope of self-management is usually limited to matters of education, culture, use of minority language, religion and welfare; and the institutions of the autonomous group can exercise authority only over those individuals who are part of that specific group. This kind of autonomy is helpful if the minority is not concentrated in a certain area, but is scattered in the whole country or region. The most famous example of personal autonomy was the millet system of the Ottoman Empire. It has also been established in some of the countries that regained or acquired independence after the break-up of the Soviet Union and Yugoslavia, such as Estonia, Latvia, Slovenia, Croatia and the Russian Federation.

Certain other institutions of diffusion of powers are quite similar to autonomy though not identical: self-government, self-rule, home-rule, and devolution.

Israeli military government to the Palestinians, accompanied by a withdrawal and redeployment of Israel's forces. The regime was one of self-government or autonomy with a high degree of powers and responsibilities, in both civil and security matters. The parties had also agreed to negotiate on the terms of the permanent status of the relevant territories, but these negotiations were interrupted in 2001 due to an outbreak in 2000 of violent attacks by Palestinians against Israelis, which provoked violent reactions by Israel.

Possible confederation?

When the violence stops, and we hope very much that it will, the negotiations on a permanent solution will probably resume. The geographic, strategic and economic circumstances may lead to a need for cooperation, but it is doubtful that the parties would establish a federal or a confederal relationship in the foreseeable future due to the lack of confidence and the bitter memories.

On the other hand, it is quite possible that a confederation between Jordan and the Palestinian entity may be established. Already in 1985 King Hussein of Jordan and Yasir Arafat, chairman of the PLO, expressed the wish to unite Jordan and the future Palestinian state in an “Arab Confederation”. The idea was mentioned again in an unofficial Israeli-Palestinian

peace plan – the Beilin-Abu Mazin plan – of 1995. Such a confederation would be justified because of the ethnic affinity between the population of Jordan and of the West Bank and because of their common history. It could contribute to a peaceful coexistence with Israel. In the remote future, if confidence is established, perhaps a trilateral confederal arrangement that would include Israel could be envisaged.

Human ingenuity the key

Two phenomena characterize our times: integration or globalization on the one hand, and fragmentation or subsidiarity on the other hand.

The common umbrella established by integration makes it easier for a country to give up some of its powers to sub-state or regional entities. When choosing among the various means for diffusion of powers - federalism, autonomy, decentralization or a combination of them - one has to take into consideration all relevant circumstances, such as geography, demography, history, tradition and culture, as well as economic aspects.

Most of the above means for diffusion are flexible and can be adapted to the special needs of different countries. Moreover, there is no obligation to choose one of the solutions studied above, and human ingenuity may invent new regimes for new situations. ☺