

"Real" Federalism: a system that adapts to countries' needs

With this issue of *Federations* we launch a new format: half of the articles are written about a theme of vital interest to federal countries, while the other half continues to be focused on recent news developments in federal countries.

The theme of this issue is fiscal federalism, which is a central and perennial issue in all federations. How money is raised, shared and spent goes to the heart of each federation's character and dynamic.

Passions can rage on these issues. But even with examples such as those in this issue, how do you really know which template of federalism is best for your circumstances? This was brought home to me when I was in Nigeria last November at the time of a raging debate around the proposed Fiscal Responsibility Law of the government of Nigerian President Olusegun Obasanjo. Opponents argued that its provisions to subject the states to various requirements of fiscal transparency and accountability and to improved inter-governmental macroeconomic coordination were inconsistent with "real" federalism.

It is striking how often debates in federations turn on different views of "real federalism." One side or the other argues that such-and-such a measure is not consistent with real federalism and therefore should be opposed or undone. What to make of such arguments? Experts largely agree that a few core elements define federalism: a two-tier regime of central and regional governments, where each has constitutionally defined and distinct powers, and amendment of the constitution requires substantial consent from both orders, with an independent umpire to interpret the constitution. Some would add a second chamber representing regional views within the central legislature.

These elements are not just few, but quite soft. For one thing, they say nothing about the relative importance of the powers of each order of government. A country could be highly centralized and still meet such criteria of federalism.

Moreover, federal countries on anyone's short list may have non-federal features. The government of India can put states under presidential rule and suspend local government for a period. The central Parliament can amend the Constitution, including the matter of state boundaries, without state agreement. Canada has had the so-called declaratory power and power of disallowance that permitted the federal government to invade provincial jurisdiction.



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Spain's autonomous communities are not constitutionally established. A number of federations have emergency powers that permit the suspension of normal constitutional rules. There are many other such anomalies.

Is it always a fault for a federal system to have non-federal elements? The great "isms," such as liberalism, socialism and communism, all set themselves up as systems of universal belief and values. Democracy, though not an ism, is the same—a system that is meant to have universal application.

No one has ever put federalism in the category of a true ism. It has always been accepted that federalism is a system—almost always agreed to be a democratic system—that may be appropriate in some countries or contexts but not in others. Federal regimes are not universally superior to unitary regimes.

The arguments around federalism are both normative and pragmatic. The normative arguments in favour go back at least to the *Federalist Papers* of the American founding fathers. There are also normative arguments *against* federalism. For example, the political scientist Alfred Stepan attacks certain federal features – such as an upper house with equal representation for even the least-populous states or provinces – as limiting popular sovereignty. Typically, even these normative arguments depend on context.

Most federations arose in pragmatic circumstances, based on a political deal and some key values or principles. They rarely measured themselves against an ideal of federalism. India, South Africa and Spain do not even use the word "federal" in their constitutions. Canada called itself a confederation, though its original design was actually that of a centralized, quasi-federation.

So what does this mean for how we evaluate arrangements in different federal countries? First, invoking an ideal of real federalism has limited relevance, since the core definitional elements of federalism are themselves quite limited. And there is nothing inherently wrong with unitary or quasi-federal arrangements. Second, context is king. It is most persuasive to argue from basic principles to reach a conclusion about the appropriateness of federalism, or federal arrangements, but only within a particular country or context. Of course, one element of local context can be the history of understandings on federalism in that country. That, however, is not an appeal to real federalism but to one's local brand of federalism. Finally, we can learn from other federations. The Forum's mission is precisely to promote mutual learning across our network on federalism. We learn what others have done that might inspire or caution us, not who has found the mythical Holy Grail of real federalism. ☺

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