

Cheryl Saunders

Federalism, Decentralisation and Conflict

Management in Multicultural Societies

It is trite that multicultural societies are a feature of the late twentieth century and the early twenty-first century. This is not because multicultural societies are new, although the phenomenon of multiculturalism may also be growing and changing through population movements of various kinds. Rather, it is because of the greater prominence of the multicultural character of societies. This in turn is a response to a variety of factors. One is the end of the Cold War, and the relaxation of the somewhat macabre discipline that it imposed upon the world. Another is the greater consciousness of racism, associated with the rights revolution. A third is a reaction against globalism. In this connection, Raoul Blindenbacher and Ronald L. Watts (see Blindenbacher and Watts, Part A) suggest in their paper that the desire for identity is leading to renewed emphasis on “primary group attachments – language, culture, religion, history and social practices”. A final factor explaining the new prominence of multicultural issues is the terrible evidence of what happens when a multicultural society cannot live in peace, which we have witnessed in so many parts of the world over the past decade: Africa, the Middle East, Eastern Europe, South and South East Asia.

The issue for this theme is the extent to which, and in which circumstances, federalism is an answer for the governance of multicultural societies. In the theme paper we define federalism broadly for this purpose as “a

constitutionally established balance between self-rule and shared rule”; a balance that may be struck in a wide variety of ways. We note, however, that in some cases federalism is not the only possible answer, and that in any event it is never the exclusive answer. There are other ways of protecting minorities from majorities: most obviously, through effective recognition of rights. There are other ways of including minorities in governance. Examples include power sharing, proportionate electoral systems and other institutional arrangements. These mechanisms are part of the constitutional tool kit from which solutions must be constructed. But the detail of an appropriate and workable solution for a multicultural society will depend in part on its specific circumstances.

It may be worth drawing attention at this point to the very wide range of societies that meet the description of multicultural and to their very diverse circumstances. In some cases, the different cultural groups are of long standing. In others, cultural differences are the result of waves of relatively recent immigration. In some cases, cultural groups are territorially located: in others they are not. In some cases, other values compete strongly with the value of cultural diversity: the value of legitimacy derived from majority rule in South Africa after decades of apartheid is an example. In some cases, multicultural societies are peaceful and harmonious or relatively so. In others they are, or have been, (or could be), in violent conflict.

An impression of the range of multicultural societies can be gleaned more directly from the cases that will be used as examples for this theme. Our host, Switzerland, is an established multicultural society. So, in a very different form, is the United Kingdom. So, but more recently or tentatively or both are

South Africa, Italy, India, Mexico, Brazil and Nigeria. In three of our cases, however, there has been violent conflict in the recent past, from which lessons might be drawn. The three to which I refer are Yugoslavia, Bosnia and East Timor. In another three there is existing conflict awaiting resolution: Somalia, Cyprus and Sri Lanka. Generalisations about the governance of multicultural societies must encompass all of these.

Nevertheless, let us generalise and say that in all such cases, federalism is or can be an attractive option, for a range of reasons. The combination of unity and diversity that federalism offers potentially enables a multicultural society to have its cake and eat it too. It enables minorities to become majorities in sub-national units thus assisting to answer the question “who should govern whom?” It provides a means for the recognition and acceptance of different languages, religions and cultures. Most importantly of all, perhaps, it embraces diversity, it positively values diversity, it can promote diversity, and thus can capture the benefits of diversity. In this way it increases the legitimacy of the state in the eyes and hearts of its entire people and not merely of a dominant group. In societies in conflict or potential conflict, this has the further advantage of increasing the likelihood that a real peace will be made and will hold.

A federal approach also compensates for the deficiencies of traditional constitutional principles in the face of cultural diversity. We suggest in our theme paper that the assumptions on which paradigm nation states are based tend to deny, to ignore or to exclude culture, at least in relation to questions of governance. This is reflected in the uneasy compatibility of cultural difference with some key constitutional principles: equality, citizenship, majoritarian

decision making, and the separation of the public and private spheres. This is not to say, of course, that modern constitutionalism does not offer mechanisms to protect aspects of culture through mandated tolerance and rights of various kinds. These are valuable and important concessions but they do not and cannot impart a sense of ownership of the state to different cultural communities, in theory or in practice.

Ours is a huge topic. Consistently with the format for this conference, we have identified four aspects of it for thorough examination. The four subthemes focus respectively on:

- Making and building a multicultural state;
- The governance of the constituent units;
- The role of civil society in multicultural states;
- The circumstances and manner of international intervention in ethnic conflict.

Each approaches the question of the governance of a multicultural society from a different but key perspective; those of the state itself, its constituent units, society and the international community. Each is discrete in its conception, although inevitably there is overlap between subthemes on such key questions as ethnic federalism; how to deal with a threat of secession; where to strike the balance between unity and diversity; and the extent and significance of the conflict between federal arrangements that recognise and value cultural diversity and other constitutional values.

In what follows, I briefly outline each of the sessions by way of an introduction to them.

1. Constitution Making and Nation Building

Federalism interacts with this subtheme in several ways.

First, there is a question of the extent to which a federal solution can contribute to establishing and maintaining peace in a multicultural society by making a state and by building a nation. As I suggested earlier, the answer to that question is complex and may require consideration of other ways of ensuring the inclusion of different cultural groups while preserving the democratic legitimacy and effectiveness of the state. Secondly, there is a question about how peace making and the constitutional processes that follow it should be conducted so as to maximise the likelihood that the chosen solutions, including federal solutions, will work and will last.

There is thus an opportunity, under the auspices of this subtheme, to examine a range of highly pertinent and practical questions. How can the various groups with a stake in the outcome be given confidence in the constitutional process and in federalism as a solution? Is federalism necessarily an obstacle to nation building, as is so often feared? How, when, and where should the necessary compromises be struck between centralisation and non-centralisation in a federation? What are the real pros and cons of ethnic federalism? How can the bogey of secession be avoided or handled in the precarious federal state?

2. Decentralisation and Good Governance

By definition, an advantage of federalism is its capacity to deliver government that is more local, more accessible and more responsive, and thus to enhance democracy. These are valuable outcomes for any society offering particular benefits for multicultural societies.

But local government is not much use unless it is good government which is genuinely accessible and responsive and which serves the community's needs. Even without the complication of multiculturalism, as a generalisation the smaller the polity the greater the potential for its capture by small political elites, detracting from the purpose of decentralisation and leading to corruption and other forms of abuse. Even without the complication of multiculturalism, self governing sub-national units almost inevitably will be unequal in economic development and prospects, presenting the familiar federal dilemma of the extent to which equalisation is appropriate or necessary. These and other issues are raised by this subtheme. The latter also, of course, is raised by Theme III.

In addition, however, in multicultural societies, the link between the operation of the federal principle and the presence of culturally diverse communities adds further dimensions to the issue of sub-national governance. Should the sub-national units coincide with ethnic groupings? Should such coincidence be regarded as beneficial, enhancing cultural autonomy and promoting their legitimacy of the governing arrangements? Or is such a coincidence problematic, reinforcing ethnicity as a basis for political actions? How can the potential benefits of decentralisation in multicultural communities be

maximised, while minimising the disadvantages? And an associated question: what to do about the position of minorities in culturally defined sub-national units?

3. Communities – Civil Society and Conflict Management

We know that civil society is critical for effective democracy. In a multicultural community, however, civil society takes on an additional or new significance. Part, perhaps all, of society may itself comprise culturally divided groups. The underlying issue for this subtheme therefore is: what implications does this have for the manner in which the state is built, for its prospects of success, and for the governance techniques to be used?

Several questions arise. The first raises, once again, the link between federalism and ethnic grouping. The now familiar question is whether and in what circumstances geographic boundaries should coincide with ethnic boundaries, thus reinforcing the divisions within civil society, but preserving an identity to which people can readily relate. In this context, the question can be presented even in the absence of territorially-based cultural groupings, by the possibility of non-territorial or personal federalism, as demonstrated by the case of Belgium.

The second group of questions deals with the balances, compromises and accommodations that federalism requires. In the circumstances of a multicultural federal society, how can a national civil society be built? How can strongly delineated cultural groupings be reconciled with the principles of democracy and human rights? These questions are raised in a particularly acute form in relation to linguistic, religious and other cultural rights. Should

there be group rights (and should the groups coincide with federal units)? Can these be equated with individual rights? How can group rights, including rights to self-determination, be reconciled with individual rights and the rights of citizenship?

4. International and Regional Action with regard to Conflicts in Multicultural Societies

International intervention in intra-state ethnic conflict is another phenomenon of the late twentieth century involving a departure from traditional principles of state sovereignty.

The phenomenon interacts with federalism in a number of ways. First, the emergence of the international community, in various different manifestations, as a significant player in multicultural conflict in fact represents the involvement of another level of government and in that sense might loosely be described as having a federalist dimension. This perception in turn raises questions about the rule of law, transparency and accountability as it applies to the international sphere. There is a further question as well, about whether new procedures or institutions are needed through which the international community may act.

Secondly, intervention by the international community has implications for the questions of legitimacy, inclusion, constitution making and peace building raised in the first subtheme (Constitution Making and Nation Building). The extent of these implications depends on the nature of the international intervention, which can, of course, take a wide variety of forms. But where international action involves military intervention and a physical international

presence, there is a question about how to maximise its positive effects and to minimise the problems that it presents for the future of the society. When, how, and on what basis should intervention occur? What are the pitfalls? How can the international community inform itself about local circumstances and avoid capture by particular groups? What are the legitimate and sensible limits of international action? How far can and should the international community go, beyond peace making and keeping, when involving itself in the maintenance of law and order and in the construction of a state? In the circumstances of international intervention how can all parts of the multicultural community be given ownership of the process and of its outcome?

Finally, international action also is relevant to the theme in the following way. Where the international community has some influence on the outcome there is a question of when it should favour federalism and when it should act so as to facilitate secession. In other words, when should it strain to hold a state together? These questions raise once again the issue of whether and when federalism can resolve ethnic tension. In this way, the subtheme takes us back to and neatly ties together the rest of the theme.