BUILDING ON AND
ACCOMMODATING DIVERSITIES

UNITY IN DIVERSITY
LEARNING FROM EACH OTHER

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VOLUME 1

Building on and Accommodating Diversities

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ANALYTICAL SUMMARIES OF WORK SESSIONS

Preface

Rupak Chattopadhyay

This volume is one of five books that cover the proceedings of the 4th International Conference on Federalism. This conference, entitled *Unity in Diversity: Learning from Each Other,* was held in New Delhi between 5 and 7 November 2007, and coincided with the Diamond Jubilee of India's independence in 1947. This was the fourth in a series of major international conferences organized in partnership between host governments and the Forum of Federations. The earlier conferences were held in Canada in 1999, Switzerland in 2002, and Belgium in 2005.

The Forum of Federations was established by the Government of Canada as the secretariat for the 1st International Conference on Federalism held at Mont Tremblant in October 1999. This event provided the first opportunity for experts and practitioners from around the world to ponder the relevance of *Federalism in an Age of Globalization*. Following the Mont Tremblant conference, the Swiss government invited the second conference to be held in Switzerland. A joint initiative by the federal and cantonal authorities, the 2nd International Conference was held in August 2002 at St. Gallen under the title *Federalism in a Changing World: Learning from Each Other*. At the conclusion of the Swiss event, the Belgian prime minister invited the next conference to Brussels. This third conference was held in March 2005 in Brussels under the title *Federalism: Turning Diversity into Harmony, Sharing Best Practices*. The conference was timed to coincide with a series of events aiming to celebrate the 175th anniversary of Belgium's independence, and the 25th anniversary of federalism in the country.

India announced its intention to host the 4th International Conference on Federalism at the conference in Brussels. The Inter-State Council Secretariat (ISCS), Government of India, was identified as the nodal agency to organize the 2007 conference in India, and the Forum of Federations as the permanent secretariat to the International Conferences on Federalism was invited to cooperate with the ISCS. The objective of the 4th International Conference on Federalism was to promote dialogue on the renewal and development of federalism and greater cooperation among practitioners in pursuit of better governance.

The 4th International Conference on Federalism was a two-and-a-half-day event based around four broad themes and twelve subthemes. Each theme was developed by a panel of Indian and international experts. Thematic papers were peer reviewed at a pre-conference held from 21 to 23 February 2007, before being published as background reading for the conference. These papers were not presented at the conference but were made available to practitioners sufficiently in advance to serve as input for informed discussions. These papers influenced the selection of issues and case studies for discussions at the conference work sessions. The rationale and relevance of the themes selected is discussed in the introductory essay by the co-editors of the post-conference publications, Ronald Watts and John Kincaid. The pieces published as part of this series include the revised background papers—revised in the light of discussions at the conference—and analytical summaries of the proceedings from the work sessions. The analytical summaries represent the authors' analysis of discussions at the work sessions that they participated in. Each volume is organized by theme— *Building on and Accommodating Diversities, Emerging Issues in Fiscal Federalism, Interaction in Federal Systems,* and *Local Government in Federal Systems.*

The organization and structure of the 4th International Conference was inspired by the example of International Conference in St. Gallen. The triennial conferences provide a unique forum where practitioners of federalism, academics, and members of NGOs are able to interact and learn from one another. The thematic work sessions are the core events of these conferences. Unlike inter-

governmental conferences, senior officials and ministers present did not present existing government positions from prepared texts. Rather, senior practitioners were expected to participate actively in the interactive work sessions, where colleagues from around the world were exposed to diverse points of view and new insights arising from the dialogue. Such a format allowed for maximum participation, while providing an opportunity for peers to draw inspiration from each others' experiences. The work sessions fed their conclusions to theme sessions on each day of the conference. The working days of the conference were capped by plenary sessions where participating heads of state and senior ministers were invited to share their observations on issues of federalism.

The integration of young professionals into the program of the main conference provided an additional international facet. Fifty young professionals from India and other countries were paired up to produce policy-relevant pieces on the conference themes and present their perspectives at the work sessions. The Forum intends to publish a selection of these papers in due course.

Because these conferences are designed to address the needs of all who share an interest in the practice of federalism, these volumes are meant to be accessible even to "non-experts". The volumes are meant to provide surveys of the themes and subthemes. However, each volume contains a select bibliography of suggested readings for anyone interested in pursuing any of the topics in greater depth.

The publication of these volumes constitutes the final step in a process that first began three years ago and would not have been possible without the support of a great many people. The conference would not have been possible without the support and generosity of the Government of India, particularly the Prime Minister's Office and the Ministry of Home Affairs. The Honourable Prithviraj Chavan, Minister of State, Prime Minister's Office, at the initiative of Prime Minister Manmohan Singh, invited the Forum of Federations to partner with the Indian Government in organizing the 4th International Conference on Federalism in New Delhi. The Honourable Shivraj V. Patil, the Home Minister of India, served as host and took great personal interest in ensuring the success of the conference.

Credit is due to the staff of the Inter-State Council Secretariat, the Forum's partner and co-organizer, who, against all odds, successfully organized the largest International Conference on Federalism to date with 1300 participants from more than 100 countries. The Forum could not have hoped for a better partner. In particular, we offer our thanks to Amitabha Pande and S. Lakshminarayanan, who, as Chairs of the Organizing Committee, oversaw management of the whole process. Thanks are also due to the Additional Secretaries, past and present—Ravi Dhingra, S.D. Sharma, Atul Gupta, and Veena Upadhyaya for their diligence and support. On the administrative side, Deputy Secretaries Sudhir Kumar and Amaresh Singh were instrumental in keeping the organizational machinery running and in good order. Raoul Blindenbacher, then Vice President of the Forum, based on his experience of St. Gallen, contributed immensely to the development of the conference design. The Young Professionals Programme was ably coordinated by Assefa Fiseha, Andrea Iff, Paul Morton, and Rekha Saxena. Arif Ali Khan, in addition to the many other hats he wore during the conference, and Libby Johnston helped with the copy-editing of the analytical summaries. Rod MacDonnell deserves special thanks for managing the entire publications process.

Following the tradition of past conferences, we had initially planned on producing a single volume post-conference publication. Significantly, it was George Anderson who first suggested a series of more accessible publications by theme, an idea embraced enthusiastically by Amitabha Pande and the Inter-State Council. Last but not the least, gratitude is due to both the authors of the papers and all those who actively participated in the conference, without whose inputs these volumes would have been difficult to produce.

Introduction

Ronald L. Watts
John Kincaid

The overall theme of the 4th International Conference on Federalism held in New Delhi, 5-7 November 2007, was "Unity in Diversity: Learning from Each Other". Internationally, this topic was a highly relevant focus because in the contemporary world, federalism as a political idea has become increasingly important as a way of peacefully reconciling unity and diversity within political systems. Diversity is seen here primarily as qualitative collective characteristics based on language, religion, ethnicity, nationality, culture, and race rather than gender, class, status, occupation, and the like (although the latter are certainly not unimportant). Use of the word "in" purposely signifies that unity can be grounded in diversity, that diversity can give rise to unity, that unity need not dissolve diversity into homogeneity, and that there is no necessary contradiction between unity and diversity. Indirectly, the title also signifies the diversity of federal systems in today's world and the need for citizens and public officials in those systems, as well as in emergent and would-be federations, to learn from each other in both practical and theoretical ways.

Federalism has grown in importance, in part because modern developments in transportation, social communications, technology, industrial organization, globalization and knowledge-based societies have all contributed to simultaneous needs for both larger and smaller political units. Thus, there have developed two powerful, thoroughly interdependent, yet distinct and often actually

opposed motives for federating. One is the desire to build dynamic, efficient, and modern nation states (e.g. India and the United States) or supranational political systems (e.g. the European Union) for economic progress, for security, and for influence in the world arena. The other is the desire to express distinctive identities through smaller, directly accountable self-governing political units able to give expression to historical, social, linguistic or cultural diversity.

In such a context, federal solutions have had an increasingly widespread appeal. They enable a combination of (a) shared governance in a large political unit for certain common purposes, and (b) autonomous self-governance for the various diverse groups in smaller constituent units of government directly and democratically responsible to their own electorates. By combining elements of shared rule in larger units and self-rule in smaller regional units, federal political systems provide the closest institutional approximation to the complex multicultural and multidimensional economic, social and political reality of the contemporary world.

As a result, there are in the world today some two dozen countries that are federal in their character, claim to be federal, or exhibit the characteristics typical of federations. Although federal institutions are not applicable to all situations, nearly 40 per cent of the world's population encompassing a total of some 510 federated political communities (e.g. cantons, provinces, or states) now live in countries that can be considered or claim to be federations, many of which are multicultural or even multinational in their composition. Furthermore, a number of countries such as Belgium, Ethiopia, Italy, South Africa, and Spain, among others, appear to be forging new and innovative variants of traditional federal forms.

Another notable contemporary trend in response to changing world conditions has been the evolving character of the existing and older federations. Many are undertaking reforms and modifications of institutional arrangements and processes in order to adapt to these new conditions. It is these developments that led to the formation of the International Forum of Federations in 1998 as a way of facilitating the exchange of experience among practitioners, politicians, civil servants and academics in federations. A key feature of the operation of the Forum of Federations has been

the holding of large triennial international conferences on federalism. The one held in New Delhi in November 2007 was the fourth.

Indeed, it was particularly appropriate that the 4th International Conference on federalism provided an opportunity for participants from other federations, as well as many other countries, to learn from the experience of the Indian Union in uniting its rich diversity of 1.1 billion people within an embracing unity. Among federations, the magnitude of India's diversity and its achievement of an encompassing unity stand out, although partition into the Dominion of India and the Dominion of Pakistan, along with some population exchanges, were required at the time of independence in 1947, and certain intergroup conflicts have persisted since independence. There are more linguistic variations in India than in any other federation on the globe. But also there is an enormous range of other forms of diversity. Four of the world's major religions—Hinduism, Buddhism, Jainism and Sikhism—originated on the Indian subcontinent, and Judaism, Zoroastrianism, Christianity, and Islam arrived there long ago. Indeed, Pandit Jawaharlal Nehru's *Discovery of India* (1946) described in lyrical terms the diversity of India from north to south and east to west. Hence, the appropriateness of the holding of the 4th International Conference in India.

Within the general focus of reconciling unity and diversity, the 4th International Conference was based on four broad themes; within each of these, there were three subthemes. These themes and subthemes were developed by a panel made half of Indian and half of international experts. The four theme and the twelve subtheme papers were prepared by expert scholars and were distributed in advance as background reading for the participants in the conference. These papers provided a framework for identifying specific cases and issues that were considered and discussed at the working sessions of the conference.

The four broad themes identified for the 4th International Conference on Federalism were: (1) building on and accommodating diversities, (2) emerging issues in fiscal federalism, (3) interaction within federal systems, and (4) local governments and metropolitan regions in federal systems.

The first theme, *Building on and Accommodating Diversities*, was chosen as the lead-off theme because of the widespread use of federalism throughout the world to accommodate diversities and the variety of arrangements that have been developed for doing this in different federations (e.g. Belgium, India, Nigeria, and Switzerland). The theme paper draws attention to the extent to which diversity is not to be viewed simply as a problem but as an asset to be built upon in the process of nation-building. This paper also makes the very important point that diversity can enrich a polity. Subtheme paper "Nation Building and Diversity" deals with the various forms of diversity that have to be accommodated in the process of nation-building. Nation-building is a necessity when the social milieu is diverse, and the various constituent groups need both identity and voice within the nation state rather than marginalization or homogenization. Subtheme paper "Autonomy and Diversity" relates to the use of autonomy by the constituent orders of government to accommodate the distinctive interests of diverse groups. The paper attempts to elucidate the concept of autonomy, suggest which groups can legitimately and realistically claim institutional autonomy, and examine the pros and cons of various territorial and personal accommodations of diversity. Subtheme paper "Managing Conflicts of Diversity", deals with the various ways in which conflict among diverse groups has been moderated in federations, including lessons for mature federations drawn from the experience and innovations of newer federations. The author emphasizes that there are various good and effective conflict-management devices even while there are no universally applicable best practices. The preceding four papers constitute Volume I of four published volumes of the conference papers.

The second broad theme was *Emerging Issues in Fiscal Federalism*. This theme was considered to be of particular importance because the financial arrangements within a federation have significant impact on its operation. These arrangements can be especially salient and volatile in federations characterized by high levels of diversity wherein various groups are highly sensitive to who pays what and who gets what out of any given system of fiscal federalism. Here too, three subthemes were identified. The theme paper

examines the appropriate allocation of revenue and expenditure responsibilities, an important issue in all federations. The authors attempt to base the analysis on neutral principles derived from empirical research in political economy. Subtheme paper "Assignment Systems in Federations" examines the problems of establishing a harmonized VAT (value added tax)—which is a very widely used tax internationally—in a federal system, especially because of the difficulty of designing a destination-based subnational VAT. Subtheme paper "Managing Fiscal Conflicts" includes lessons from the experience in different federations. Fiscal conflicts, which are a regular feature of federal systems, can arise intergovernmentally between the national, regional, and/or local governments or interjurisdictionally between constituent governments or between local governments themselves. The existence of viable and long-lasting federations (e.g. Australia, Canada, Germany, Switzerland, and the United States) clearly indicates that such conflicts can be managed pacifically, but the existence of societal diversity and cultural cleavages within a federation can certainly make conflict management challenging. Subtheme paper "Fiscal Federalism and Regional Equity" includes appropriate corrective objectives and methods, especially in light of the mismatches between the resource-raising capacities and expenditure responsibilities of the various constituent governments of a federation. Issues associated with such mismatches can be heightened in federations characterized by diversity because various groups are desirous of remaining within various territorial units rather than being mobile across territorial jurisdictions. The preceding four papers make up Volume II of four published volumes of the conference papers.

The third overall theme was *Interaction in Federal Systems*. Given the unavoidability of overlaps in the responsibilities of governments within a federation, as well as the existence of culturally diverse constituent political communities in most federations, intergovernmental interaction has been an important element in all federations. The authors chose the term "interaction" in order to emphasize the breadth of the topic and the blurring that has occurred between government institutions and the many private and non-profit organizations in the market and in civil society that engage

governments. Three subthemes were selected for this discussion, too. Subtheme paper "Anticipating and Managing Tension and Conflicts" examines judicial, legislative, and executive approaches to managing conflicts that go beyond those associated with fiscal federalism. The author focuses particularly on financial equity across constituent units, threats of terrorism, and the ownership and taxation of natural resources. Subtheme paper "Techniques, Structures, and Processes" examines principally relations between federal or national governments and their constituent units. The author looks at both intra-state and inter-state interactions and seeks to uncover common features and converging trends of intergovernmental relations across federal countries. Subtheme paper "Accountability and Transparency" focuses on problems of corruption and on the importance of ensuring accountability and transparency in intergovernmental interactions. The preceding four papers constitute Volume III of four published volumes of the conference papers.

The fourth theme, *Local Government in Federal Systems*, was not a focus in any of the three previous international conferences. In all federations in recent years, there has been a growing awareness of the importance of local governments and also metropolitan regions. The fourth theme overview paper emphasizes local government's closeness to civil society and its role in enabling disadvantaged groups, including women, to participate in governance. The authors also look at the differential constitutional arrangements for local governments in federal countries and highlight the complex challenges of governing megacities. The three subthemes include the following. Subtheme "Enhancement of Democracy through Empowerment of Disadvantaged Groups" focuses on enhancing democracy through the empowerment of disadvantaged groups and civil society in local government arenas. The author argues that there is a need to establish inclusive local democratic institutions by strengthening civil-society organizations locally, empowering women and disadvantaged groups, making local decision-making more participatory, and making participatory decision-making itself more inclusive. Subtheme papers "The Functioning of Local Governments and their Relationship with Upper Levels of Government" and "The Functioning of Local Government in

Federal Systems: Perspectives from India" focuses primarily on local government in India and critically examines a number of issues involving India's local self-governments, including the utility of using the term "local self-government" as opposed simply to "local government". Subtheme paper "Governance of Megacities in Federal Orders" examines the challenges and options for governing metropolitan regions and megacities, namely, cities of more than 10 million inhabitants. Given the growth of the number of megacities around the world, the importance of these regions as drivers of the economy and their position and relation to other governments and to states within federal systems make them somewhat anomalous in relation to traditional federal structures. According to the United Nations, 2007 was the first year in human history that the world's urban population exceeded the rural population, a trend which indicates the importance of including an examination of the role of megacities within federations. The preceding four papers make up Volume IV of four published volumes of the conference papers.

These four sets of significant issues in contemporary federations are of interest to those working in all federations, old and new. Each set is related to the overall theme of the conference, the reconciling of diversity and unity. The theme and subtheme papers, revised to take account of discussions at the conference, and the analytical summaries of the workshop discussions, are now published in the form of four post-conference volumes, one for each theme. These issues discussed at the conference involve problems common to many federations. There is, therefore, a genuine value to those working in each federation, whether old or new, in learning from the experience of federations elsewhere. Of course, each federation reflects the particular circumstances and conditions that produce it; therefore, there is no pure ideal model of federalism that is applicable everywhere. Nevertheless, there are useful lessons to be learned from the discussions of the themes that served as the key foci for the 4th International Conference on Federalism.

THEME AND SUBTHEME PAPERS

Theme Paper

Building on and Accommodating Diversities

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Abstract

Diversities are not to be considered as a burden but as an asset that states can build upon. Unfortunately, however, diversity is often considered by politicians as a problem that states have to accommodate. On the contrary, one has to consider diversities as an opportunity for states that are enriched by different languages, cultures, religions and traditions. Only if a state is able not only to cope with and accommodate diversities but also to build on the diversities and cherish its diversities will it be able to contribute to a sustainable peaceful development.

Prejudice arises out of mistrust that, in itself, is a result of ignorance and lack of awareness about others. The absence of social interaction between groups and ethnic segments of a society forces the numerically small and socially weak groups to adopt a self-imposed apartheid. But avoiding contact with others cannot be an effective way of protecting one's own identity and culture. The insular existence (self-imposed or forced) results in communication gaps, developing prejudiced perceptions. On the other hand, accepting differences in a plural diverse society is the basic principle of a liberal society. The need is not to target the values of others but to abandon the stereotyped images about others.

In the Indian example, secularism does not mean anti-religion but is associated with respect for all religions, and the community loyalties are viewed as various levels of a wider national loyalty, crystallizing themselves at different gradients with different sectional interests. In their totality, these are the best objectives of national integration. As the political systems of various diverse societies, like Belgian and Indian, show it is possible to have both equality and identity; and there is no reason to trade off one's identity for constitutional equality.

1. Purpose of this Paper

The purpose is to analyse the state of the art with regard to the relation between federalism and diversities. Whereas some countries chose federal structures because federalism is an additional tool to limit governmental powers (e.g. USA and Germany), others made the choice for federalism because it accommodates their diversity (e.g. India, Canada, Ethiopia, South Africa, Spain, Switzerland and many others). Federalist structures, by experience, provided the best possibilities to accommodate diversities and, in many cases, it was the only possible compromise to build on a common consensus for the structure of a multicultural state.

What makes federalism special as a tool to profit from and to accommodate diversities in comparison to other governmental systems? Is federalism at all relevant for constitutional and structural solutions with regard to diversities? What are the main structural, institutional and procedural elements that would enable multicultural federal states to build on their diversities? These questions raise a number of issues. The first issue concerns the relationship between diversity and the modern polity. Diversity in the past was usually not considered as a foundation for the building of a polity. Traditionally constitutions either denied diversity as a basic element for the nation-building, pretending rather that the nation is composed only of citizens, or they built on the majority culture of the nation (e.g. Germany). "Immigration countries" have often tried to integrate the diversities of the immigrants based on a "melting pot" concept.

The need, however, is for modern polities to consider diversity as a basic foundation for building their polity. Excluded diversities disintegrate society and consider themselves as discriminated and permanent losers within the majoritarian democracy. Culture, tradition, language and religion are an integral part of the human personality. Polities cannot ignore this and choose only those dimensions that they consider important.

Historically federalism has been designed to limit governmental powers by dividing sovereignty between the federal and the state powers. Whereas the US constitution was based on the principle that a government was best when it governed the least, constitutions like the Indian believed that a government was best when it was able to bring about social transformation and development for *all* the citizens. How then, in this context, can federalism be a foundation for a multicultural polity?

1.1 *Dimension of Diversities*

The diverse features of a multicultural society create conditions that cannot be changed because they are rooted in a common history. Nor can they be effectively modified by violating fundamental human rights such as religion or language. Compared to economic diversities that can be changed in a society by improved equality or by political decisions approved by the majority, these diversities are not quantitative but qualitative, thus, cannot be changed only by a majority. Furthermore, they are often rooted in symbols and emotions.

Since peoples and nations are granted, according to domestic or international law, some fundamental rights (autonomy or minority rights) we consider those features as essential that facilitate the demands of a collectivity to such rights. In most cases those features depend, on one hand, on objective characteristics such as language and religion and, on the other hand, on subjective feelings of a "we" as distinct from "them" that is the "other". If the "we" is mainly defined by a *negative feeling* of the "other" a situation close to ethnonationalism arises. If the "we" on the other hand is based on *common values* that do not exclude but rather accommodate other values, the preconditions for commonalities within a polity are provided.

To achieve these goals the essential elements are: shared rule in law-making (constitution, legislation and, eventually, executive) processes, *and* regional self rule (autonomy) including group rights. Individual nations consider themselves to have a constitutional status based on their right to self-determination. In cases where peoples create common polities with other nations they need to be recognized as a state-building nation. In polities, building on different diversities, democracy needs to be consensus driven in the sense that besides the simple majority the decisions with regard to vital interests of minority groups are also accepted by the majorities of the different communities. In general, they need to *participate* in the decision-making process in order to be able to identify with the result.

Different communities need also to be able to foster their identities with regard to education, religion, communication, media, social networks, etc. However, they can only foster their identities through autonomy and self-rule. Multi-ethnic polities need to provide autonomy with regard to those vital issues that foster local identities and then to build on a common identity. If vital issues concerning the minorities are decided upon without the participation of the minorities in the decision-making process then the minority groups become losers likely to reject the legitimacy of the polity.

Communities built on diversity need to grant those diversities collective group rights. Citizens belonging to minorities need to have the feeling that the cultural value of their minority is considered equal to other majority or minority values. Minority alienation can only be transcended if the distinct communities are enhanced with group rights. Such group rights should, however, not enable the group to interfere with basic human rights. An exception, however, is where such a group may interfere in language rights to the extent of imposing within its territory their language in order to defend the threatened language of the minority. For the sake of peace within the polity some human rights may be limited for the protection of the group rights.

Polities building on group identities provide both some overarching shared-rule among different diversities and some regional

self-rule by decentralization or federalization. The most challenging issue, though, relates to the constitution-making procedure for the design of those institutions. What should be the impact of diversities at the level of constitution-making? The main principle to be considered is the principle of inclusiveness, consensus and compromise. The final goal to be achieved must be to get the great bulk of the society and of the different diversities to have ownership of the constitution. Thus, the process must find a good balance between efficiency-building and accommodating diversities. Negotiators must be aware that such processes can only achieve these goals if they are able to build trust and tolerance among the diversities based on a spirit of reconciliation, partnership and mutual respect.

Unitary states do not build on diversities although they can accommodate diversities partly by centrally determined decentralization. Federations, on the other hand, can provide at the same time not only constitutionally guaranteed regional self-rule for the federal units and but also shared-rule at the central level, such as by a two chamber system or even in the organization of the executive. Additionally, federal systems can install mechanisms for peaceful management of conflicts among different diversities or recognize diversities with the formation of new constituent units. Special procedures for the protection of vital interests of minorities, organization of the executive with several members representing diversities, and other special arrangements are also possible. Finally, one can imagine even a very loose federation, such as the Union between Serbia and Montenegro that was almost confederal and which provided even the possibility for a unilateral secession of the federal units. The latter provision has existed also in the constitution of Ethiopia.

Diversities enrich politics, culture, legislation and the judiciary. They educate people to tolerance, flexibility and mutual respect. By their nature human beings are diverse. A polity that builds on and accommodates diversities provides for more justice and better guarantees of human dignity because it respects the reality of the diversity of the human nature. On the other hand, the main risks of such diversities are stalemates and inefficiency. Any decision-

making process has to find a good balance between the vital interests of the different diversities as groups and the interests of each citizen. Account must also be taken of the interest of the majority. In these cases it is particularly challenging and difficult to find a good balance that will be accepted by all the concerned diversities. In most cases, secession is the worst solution possible because it generally creates new minority problems when diversities which do not belong to the newly created ethnic majority are created.

Diversities can also be accommodated by a confederal model based on an international treaty. An example is the European Union which has drafted a treaty constitution in order to take into account the grey zone between a classical alliance of states and a new sovereign member of the international community composed of different constituent units. The confederal model has historically been used as a bottom up approach which in practice has often culminated in a federal system such as in the United States and the Swiss Confederation.

2. The Issue of Legitimacy and Nation-Building

Constitutionalism of the Enlightenment period turned the legitimacy of the state from the grace of God into the secularized grace of the people. But today, the most challenging issue with regard to diversity is that of the legitimacy of the state based on the notion of the nation. The system of law and justice, based on political authority, derives its legitimacy from the basis that no one group should eliminate and overshadow the needs of others. At the same time, the desire and need to identify some common goals and purposes, and to establish not just political legitimacy but political accountability, becomes the basis of nationhood in plural and diverse societies. Thus within the broad theme of building on diversities, nation-building in a diverse society is the first subtheme we have identified for consideration.

In principle, nations either exclude diversity because they are only composed of rational "citoyens" (e.g. France, Turkey), are based on common language, culture and tradition (e.g. Germany), or

ignore diversity because they set up new communities integrating diversities into a melting pot (e.g. USA which additionally considers native nations as special units). Actually almost all countries have to cope with the reality of multi-ethnicity. To whom does the state belong in these cases: to the rainbow nation (South Africa), to the peoples of the cantons (Switzerland), to the Spanish nation excluding nationalities (Spain), to the Regions and the Communities (Belgium), to the nations, nationalities and the peoples (Ethiopia), or to the people representing a "unity in diversity" (India)?

All these concrete examples reveal that practitioners and scholars need to explore the different possibilities for including diversities within the concept of one nation without discriminating against minorities. Indeed, each polity should belong to the nation that is the bearer of people's sovereignty. But what is that nation?

Can one solve the problem by inclusiveness and label the nation as a "composed nation"? By accepting such solution the state needs to define the status of these different diversities composing the nation. Do they have the status of a state and thus need to be all on an equal footing? Does the polity only belong to the majority within the nation? Then minorities will feel discriminated as permanent losers within the majoritarian democracy. Does, on the other hand, the state belong to all the nations on an equal footing? Then the majority nation may feel discriminated in its relationship to the minorities.

These challenges are mainly caused by the emotional and subjective feelings peoples have considering themselves to be part of a certain ethnicity. Such feelings of belonging depend often on a negative label of the "others" as opposed to the "we". How can someone, who considers him or herself to belong to a certain minority, accept being part of a composed nation, when this nation is composed mainly by negative feelings towards the majority nation? How can one include different nations into a composed nation, when those ethnicities mainly depend on a negative outlook to ethnicity? The only way to turn these dilemmas into an asset is a creative concept for an integrating nation-building process. This explains the importance of the first subtheme we have identified.

2.1 *Nation Building*

A nation-building process needs to generate, for all members of a nation, the feeling of belongingness in the sense of the "we" in relation to the "others". For composed nations such a nation-building process needs to unite diversities through common values shared by the respective ethnicities and distinct from values of the particular nations. Universal values such as rule of law, democracy and human rights by themselves will not bring diversities together because they apply too broadly to mankind and not particular federal polities. A more specific value could be federalism, direct democracy or the bottom up process of a consensus driven democracy with a concept of regional autonomy close to collective group rights.

If values, that hold and bring the concerned nations together are commonly accepted, the composed nation can build a new feeling of a broader "we" including all nations within the polity. Such a nation-building process, determined by democratic decision-making processes that involve the entire society by elections or by votes on referenda can create the necessary feeling of togetherness and belongingness. For the rainbow nation in South Africa, most important for the nation-building process was the double phased constitution-making process that required the adoption of an interim constitution followed by election processes for the constitution-making assembly and parliament creating the final constitution.

One must acknowledge the fact that ultimately the nation-building process is a never ending process. The nation-building process of composed nations is in fact a permanent evolving process with its normal ups and downs.

Processes with the aim of nation-building that discriminate within the procedure against one or several communities, will never achieve a common feeling of togetherness. Only, if an equal footing is respected, will the nation-building process have a chance to integrate the less numerous nations into an overall composed nation. Article 2 of the Spanish constitution has until recently only recognized the Spanish (Castilian) nation and considered the other peoples as subordinate nationalities. This discrimination of the nationalities has been one of the main impediments for the creation of a broader Spanish nation. Logically the shared rule principle with regard to

all concerned nations has to be fully implemented in the nation-building process. This principle has also to be widely implemented in the civil society particularly in the field of media and communication.

2.2 *Asymmetry and Nation*

Federal polities may have to take care of at least some asymmetries with regard to the complexity of their multicultural population. Some federations have tried to overcome this asymmetry by turning social asymmetries into legal equality. Although, in Switzerland, the number of German, French, Italian and Romansh speaking peoples is strongly asymmetric, the first three languages are constitutionally treated as equal official languages although in practice there are important asymmetries. The main problem for all multicultural states is how to take such asymmetries into account during the process of constitution-making. Some federations provided for instance equal status of the unequal federal units. As a result, the value of a vote of a citizen of Appenzell i.Rh. in Switzerland, for instance, counts 37 times more than the vote of a citizen of the canton of Zurich with the largest population.

In Canada the "Meech Lake Accord" failed because it appeared to privilege the province of Quebec and would have created greater asymmetry with regard to the other provinces. The Annan Plan for Cyprus was rejected by the Greek Cypriots mainly because it had supposedly privileged the much smaller Turkish Cypriot population. One of the main problems of the failed union between Serbia and Montenegro was the extreme asymmetry in size of the two units equalized legally by the Union. Cyprus, Serbia-Montenegro, Sri Lanka, Saint Kitts and Nevis, and Belgium teach us that the most difficult challenge with regard to asymmetry has to be tackled in countries divided by only two asymmetric groups. Other countries such as Russia, India and Australia, with multiple types of different federal units, have faced less explosive challenges.

Most federations composed of different diversities are confronted with the claims of multiple loyalties. In particular political leaders in the less numerous communities often foster the loyalty of their "nationals" against loyalty towards the majority nation. Such controversies turn often into violent ethnic conflicts. Federations

composed of diversities need to accept and develop the multiple loyalties of their citizens. The Swiss federation for instance has a distinctive threefolded citizenship concept. Each Swiss national needs to be a citizen of its municipality and its canton in order to become a Swiss citizen. This legal concept of citizenship reflects the acceptance of the principle of multiple loyalties as a foundation of the Swiss diversity.

One of the most important challenges of asymmetry is the principle of equality. What has to be considered as equal: each individual or each community notwithstanding the number of its citizens? For the French, with the concept of the unitary state based on the individual "citoyen" the answer is clear: only equality of the individual citizen counts. Based on this concept minorities, and in particular diversities and thus ethnic communities, will have to be ignored as political entities. The other extreme would be to consider only the equality of each community. This is in principle the concept of international law that considers all sovereign states as equal no matter what their size. Which should have priority: equal rights of citizens or the right to be equal as a member of a community? A bicameral federal system can provide a valid compromise for such a dilemma by providing a two-chamber legislative structure—one chamber composed according to the number of the citizens and one chamber composed according to the number of the federal units. The difficult issues with regard to different quotas in the second chamber and to the relationship between the chambers will then still have to be decided.

3. Autonomy

A second subtheme we have identified for consideration is the role of "autonomy" in accommodating social and political diversity.

3.1 Notion and Function of Autonomy

Autonomy is often described as the principle of self-rule. In this sense regional autonomy is the right of a constituent unit in a state to rule on the issues within its constitutional competences. Constituent units may have self-rule with regard to their own constitution-making and thus have their own constitution relating to their

own legislative, executive and judicial powers. With regard to the content of regional autonomy there are different varieties and degrees of decentralization possible. The member states of the European Union consider themselves sovereign although an important part of their legislation is ruled by the European Union. Hong Kong is under the sovereignty of China but has its distinct legal system. Greenland belongs to Denmark but is not a member of the European Union. On the other hand, the federal units in the Russian Federation or in Austria have less autonomy than the autonomous regions in the unitary (but decentralized) system of Sweden.

Most important with regard to autonomy is the allocation of financial resources. In fact real autonomy is only possible when the autonomous units can also levy their own taxes and have the ability to finance their tasks with their own income. With regard to the finances, it is of utmost importance, nevertheless, that financial inequalities among the different autonomous units are equalised by special tools for fiscal equalization since financial disparities can be corrosive. Such equalization is politically feasible, however, only if there is a minimum solidarity among the different autonomous units.

With regard to the challenge of diversity, regional self rule and autonomy is, together with the shared-rule principle, the most important structural tool to accommodate different diversities within a state. The various diverse groups can foster their own culture and identity if they have a measure of autonomy. In a federal system different communities are able within the overarching federation to enhance their own interests based on their special identities by enjoying at the same time both the advantages of profiting from being members of the superior federation and retaining their cultural identity through the guarantee of autonomy for their cultural development.

Autonomy in order to accommodate different diversities can be provided in different ways. A unitary system can decentralize, by central legislation and assigning special competences accommo-dating the particular demands of different regions with regard to their vital interests. In such a system autonomy depends totally on the whim of the majority in the central legislature. In states where particularly minorities desire stronger autonomy and devolu-

tion, some constitutional guarantees with regard to the autonomy granted are indispensable to protect minorities. In federal systems the distribution of powers is generally defined by the constitution. Thus, the constituent units enjoy constitutionally guaranteed legislative, executive and judicial powers. Furthermore, through their constitutional autonomy they can in addition also accommodate local diversities by internal decentralization granting autonomy to their municipalities.

3.2 *Integration and Autonomy*

Autonomy as a tool to accommodate diversities is often rejected with arguments that it prepares the way to secession, leads to disintegration, undermines solidarity within the state, and creates important inequalities. Consequently autonomy is often regarded as an impediment to integration and instead systems of multi-ethnicity based on individual human rights are advocated in the belief that minorities will be able to foster their special identities within the melting-pot or multi-ethnic system.

Whoever explores these challenges will detect, however, that federations with the guarantee of strong autonomy for their constituent units have in fact had the opposite experience. Indeed, strong autonomy has often fostered the real accommodation of diversities because unity can only be sustained on the basis of mutual respect and tolerance. If the citizens feel at home and secure within their regional and local community, they are more willing also to identify as citizens of the larger federation. They will be convinced of the win-win benefit from being part of a federal system. They can both foster their identity within the constituent unit and profit from the advantage of the bigger state through cooperating in the shared rule with other diversities at the central level of the federation.

3.3 *Diversity as a Foundation or Goal of Autonomy?*

Different concepts of autonomy are possible. In most cases autonomy is granted on the basis of territory. Autonomous regions, constituent units or even municipalities controlling a specific territory

are granted autonomy. In cases where diversities are dispersed throughout the entire territory of the federation and where they cannot therefore be accommodated on a territorial basis, the only alternative possible is so called "personal autonomy" which may be granted as a collective right to certain communities. Belgium and in particular Lebanon have partially provided in their constitutional systems for such a concept of personal autonomy.

Diversities should not be tolerated only as a special burden by the majority. Diversities in fact enrich the polity with additional values. Only by granting autonomy, which can foster the diversities and the different identities, are federations able to profit from this enrichment. By providing autonomy to different communities a federation both builds on and fosters the diversities. By enhancing diversities it enables all inhabitants of the country to feel at home within their motherland. A country challenged and enriched by its diversities has to build on these diversities. This again requires that the diversities are given the possibility to develop according to their own ideas, values and interests. Only when the diversities are able to define themselves and build on their own self-consciousness are they able to cooperate on a basis of partnership with other diversities and thus contribute to the added value of the common nation.

Autonomy guarantees that communities develop from the bottom up in order to achieve finally the overall composite identity of the federation.

4. Conflict Management

A third subtheme we have identified for consideration is the management of conflict between diverse groups within a federal polity.

Countries challenged and enriched by diversities will never find "the end of history" of their country. As long as diversities exist, they will foster their identities and their own interests. With the flourishing of their diversities a federation will itself evolve and develop continuously in the design of its polity. One should in principle not seek final solutions. One should rather permanently seek processes, procedures, institutions and tools that enable a continuing and peaceful management of any conflicts among controversial diversities.

4.1 *Purpose of Conflict Management*

The main goal of the classical liberal state is liberty. The state has to provide security for the citizens in order to enable them to pursue their happiness in liberty. A state with diversities needs not only to seek individual liberty for all its citizens, but also to look for peace among the different diversities. Besides individual freedom, peace among communities is one of the main goals to seek in multicultural states. In order to promote peace among the different groups, federal political systems can provide special tools to facilitate the reduction of overpowering nationalism and emphasize multiple loyalties. Moderating nationalism is made possible by providing autonomy for the different communities on a territorial or a personal basis. The Swiss experience with direct democracy in addition reveals that decision-making through direct democracy in most cases moderates nationalism because often it is the political elites that foster nationalism. Voters are usually less induced by nationalistic feelings, tending to seek more their personal rather than ethnic interests. Party systems which avoid or prohibit parties from uniting along ethnic lines and which include different diversities within individual parties or coalitions are additional tools for reducing the intensity of the regional nationalism.

It is sometimes thought that emphasis on the cohesive and exclusive nation state is the only way to manage conflict among distinct groups. Cohesion can be fostered, however, by processes emphasizing inclusiveness of all the different diversities. This inclusiveness must be based on the values of justice, democracy, tolerance, respect of diversity and rule of law that are not only accepted by all different ethnic communities but that establish for all communities a new and stronger identity making possible a solidarity among the different communities.

4.2 *Institutions of Conflict Management*

The usual institutions for conflict management are the judiciary, the legislature, the constitution-making power, and the executive and administrative institutions. These traditional conflict management institutions will only be useful for conflict management,

however, if they are able to recognize and respect the vital interests of the different diversities. Special procedures within the legislature may be needed for such protection.

In order to enable the judiciary to respect the interests of different ethnicities there will need to be some constitutional guarantees such as group rights that can be applied to particular cases by the judiciary. Moreover the judiciary needs to be composed of judges representing the different communities to ensure confidence in the impartiality. In addition, a federal system may allow delegation to the constituent units of some of the organization of the courts, the appointment of the judges and their procedures in order to accommodate the different interests and traditions of different legal cultures.

On the level of the executive, the various diversities will also have to be somehow taken into account. In Belgium the executive cabinet is composed half of Flemish-speaking and half of French-speaking members. In Switzerland the federal council as executive must be composed of seven equal members but with different language communities and regions being adequately represented.

One of the most challenging features with regard to accommodation of diversities is the police. In federal countries the police power can be delegated to the constituent units and within these it can again be delegated to autonomous municipalities. Where the police forces have to guarantee security among different communities they need to be composed of officers and ranks that belong to those different diversities in order to achieve credibility and trust among all the different communities.

Civil society needs to have the organizational tools that enable associations, parties, gender and professional groups such as labour unions that cut across the borders of the fragmentation within the polity. Furthermore, the civil society needs to enhance linkages and common values among the different groups. Thus it is most important that a federation promotes cross-cutting organizations and tries to prevent the sharp fragmentation of civil society along ethnic lines.

4.3 *Processes of Conflict Management*

Delicate but important processes for conflict management are those procedures providing for shared-rule in decision-making. These

include constitution-making and legislation, but one should not overlook procedures within the executive and its administration as well as within the judiciary. Shared-rule procedures will only contribute to peaceful conflict management if they have legitimacy and credibility among all the different communities. Such credibility depends on the fairness of the processes and the opportunities each group considers it has to convince other groups to support its interests. Where the vital interests of one of the communities are at stake, special procedures may be indispensable in order to give the concerned communities security that their minority position will be protected.

In Switzerland the consensus driven democracy has proved to be one of the most important tools for legitimate conflict management. As it is very difficult to convince the population to support a positive vote in a referendum, all major parties find it necessary to seek compromise in order to achieve a comprehensive majority in support of a referendum. Thus, indirectly direct democracy—although majority based—forces the political elites to seek compromise and consensus.

As already mentioned with regard to law-making, the second chamber and its powers in relation to the primary federal chamber are of utmost importance. In addition to the legislative process in parliament, consultative procedures and hearings that would provide for all communities to present their specific interests within the law-making procedure are additional valuable tools. As a basic principle one should guarantee that the law-making processes are inclusive with regard to the diverse groups and even more so when they deal with law-making at the constitution making level.

The most difficult question with regard to the procedures of shared rule concerns decisions relating to categorical conflicts. These are conflicts which turn on an absolute either-or position where any kind of compromise is virtually excluded. In such cases often the vital interests of the different communities are at stake. Categorical conflicts may also involve issues with religious implications for instance in the field of criminal law. As long as the decision in such a conflict is not final and can be changed later with a newly convinced majority the issue is likely to be less explosive than when

the decision is irrevocable such as in the case of advocacy of seces-
sion. In such instances, it may be advisable to give all the small
units the opportunity to take their decisions autonomously in order
to avoid important minorities being finally overruled by a small
majority.

In cases of categorical conflicts it may be possible to delegate
the issue to the different autonomous constituent units if a solution
at the federal level is not necessary. Then constituent units may
decide for themselves on an issue in which their vital interests are
involved. For instance in this way religious communities may have
their own special criminal and family law, decide on religious
holidays and provide special educational programs for their children
without imposing these on the other constituent units.

5. Conclusions: Management and Accommodation

Some of the issues that have been highlighted in this paper include:
the dimensions of diversity, the legitimacy of states, autonomy in
the context of nation and nation-building, interaction between
autonomy and integration, and institutions and processes of conlict
management. If the nation is an "imagined community" then the
various diversities also have to be incorporated within the "compos-
ed nation". Difficulty arises when there are attempts to "manage"
identities and when an "official nationalism" emanates from the
nation state, serving not the people but the state structure. This
difficulty can be overcome if the concerns of diverse groups are
accommodated within concerns for the proper and just functioning
of the state. Once the state is just in its treatment of the constituents
of society, the latter are less likely to have difficulty in recognizing
the legitimacy of the composed nation state. It is in this context
that federalism can accommodate diversities and provide the
mechanisms for achieving this.

Among the issues raised for consideration are several. How can
the conscious policies of governance achieve legitimacy in diverse
societies? How can we develop institutions that can accommodate
different group identities? How can a federal system handle diver-

sities that may seem to be mutually exclusive? A notable observation is to recognize the extent to which contemporary federations are actually facing the issue of diversity and the various ways they are accommodating diversity in practice. Rather than treating diversities as *problems that need to be managed,* where federations have treated diversities as strengths that are assets, as opportunities through which a plural society is enriched, they have succeeded. This enrichment gets lost if there is ignorance and lack of awareness among groups about each other. Absence of social interaction weakens a society. On the other hand, in a liberal federal democracy, respect for various differences and loyalties may be viewed as loyalties towards the inclusive nation. In this paper we have attempted to point how diversities can be accommodated by means of effective sharing in federal policy making, how autonomy within federations can foster diversities, and how federalism can be a mechanism for good governance in plural societies.

Nation Building and Diversity

T.K. Oommen

Abstract

"Nation-building" becomes a necessity when the internal social milieu of the "nation" is characterized by diversity. Diversity as a social fact has always existed; it becomes a problem when the groups or communities in the polity are unequal or discriminated.

Nation states of West Europe attempted to create culturally homogeneous polities, which are inimical to the very idea of diversity. Therefore, it is necessary to endorse the notion of the national state which consciously nurtures and celebrates diversity. The demand for nurturing diversity surfaces in national states when minorities are denied security, equality or identity. The distinction between the territorially anchored national minorities and the spatially dispersed ethnic minorities is crucial because the former can acquire striking power to destabilize the state.

The tendency on the part of states to indulge in ethnification and culturocide, processes that are destructive of diversity, in the name of national integration, is widespread. To accommodate diversity states should not only stop ethnification but also nationalize minorities so that they develop a stake in building nations. Decoupling citizenship, an instrument of equality, and nationality, the anchorage of a crucial identity, is the necessary first step. It needs to be emphasized that not only states and cultural mainstreams but also minorities, particularly state-seeking national minorities, can be a threat to diversity. Therefore, the ultimate hope of sustaining diversity lies in the combination of a federal state and cultural pluralism.

1. Introduction

Nation is not a built but a felt entity, but the intensity of attachment to it varies across nations depending upon the degree of nation-ness. As is well known some "nations" are well integrated and others are loosely knit. One may assert without the fear of being contradicted that the lesser the diversity of the population which constitutes the nation the greater is the possibility of the nation being integrated and vice versa. Diversities are of different kinds—cultural (i.e. religious, linguistic, tribal), social (caste), racial and spatial (regional, rural/urban) to mention a few. In this paper I shall deal mainly with cultural diversity although it often intersects with other diversities.

1.1 *The Problematique of Diversity*

Diversity as a social fact always existed in the world-at-large but it becomes a "problem" mainly when it exists *within* the territory of a state. There are two reasons why diversity within the state territory becomes a problem. One, when the social, cultural, or racial differences become the basis of group inequality. Two, when the different groups perceive one another as inferiors or superiors. Viewed thus, nation-building would imply developing an egalitarian society and the creation of a societal ethos which facilitates the dignified coexistence of diverse groups within the polity, that is, endorsing pluralism as a value. This would entail nurturing of both equity *and* identity within the polity.

    Two cautionary remarks are in order here. First, the constitutions of all democratic polities promise equality. To translate this ontological equality into reality it is necessary to provide equality of opportunity. While it is relatively easy to realize equality of opportunity in culturally homogeneous societies, differences and disparities based on gender, regions and rural-urban differences are obstacles even in such societies. The situation in societies characterized by cultural, social or racial diversity is rendered much more complex where there is group-based inequality. Therefore, it is necessary to create *equality of condition* so that citizens with differing backgrounds are equipped to compete successfully with one

another. This is a crucial tool of nation-building in culturally, socially and racially heterogeneous societies and yet there is no consensus in invoking this tool. For example, affirmative action in USA and protective discrimination in India remain contentious. And yet such instruments are necessary to accommodate and build diversity within the nation.

The second cautionary remark I want to make relates to the notion of identity which is related to the creation of equality of condition. The polarization between class politics and identity politics is widely discussed. But it is often forgotten that identity groups are often, not always, unequal groups too. Therefore it is necessary to draw a distinction between hegemonic identity and emancipatory identity. The politics of hegemonic identity groups is intended to perpetuate the existing inequalities. In contrast, the politics of emancipatory identity groups aims to bring about equity. If the former is inimical to nation-building, the latter is its facilitator.

1.2 *Nation State and Diversity*

Historically viewed the notion of nation-building has undergone radical changes. The avowed objective of the institution of the nation state, which emerged out of the Treaty of Westphalia signed in 1648, was to create culturally homogeneous polities. Nation-building in Western Europe, the cradle of the nation state, was an exercise in the destruction of diversity; the weaker and smaller nations within the polity were denied their identity. In contrast, nation-building in federal states calls for the accommodation of diversity; it is an institutional innovation to govern democratically culturally diverse peoples located under one political roof. The federal arrangement has arisen out of the lack of correspondence between the concept of nation state and the empirical reality it had to grapple with. Three problems are inherent in the institution of the nation state all of which militate against cultural diversity within its territory.

The first problem is the manner in which the principle of national self-determination, the foundation principle of the nation

state, is practiced. To recall the pregnant words of Ivor Jennings: "The people cannot decide until somebody decides who the people are." By denying people-hood to several peoples within its territory nation states endanger the principle of national self-determination. The Scottish, Welsh and Irish peoples (who had to abandon their linguistic identity) in Great Britain, the first nation of the world; the Alsatians, Basques, Bretons, Catalans, Corsicans, Flemings and Occitanians in France, the nation which was born out of revolution, are just two examples of the denial of people-hood within nation states.

Second, the nation state ineluctably links citizenship and nationality; citizenship is conferred on the basis of membership in the nation. This practice gravely endangers the possibility of nurturing cultural diversity within the nation state. Cultural diversity within the state territory requires decoupling of citizenship and nationality; in fact the acceptance of the idea of multicultural citizenship makes it imperative. The conceptual distinction between citizenship and nationality was endorsed in the erstwhile Soviet Union but the practice of Great Nation (Russian) Chauvinism endangered its diversity.

Third, nation states relentlessly pursue the ideal of creating culturally homogeneous societies but only a tiny proportion of world's distinctive religious, linguistic and cultural groupings have formed their own states. Indeed only a precious few of the world's existing states have approximated the cultural homogeneity conjured up by the label nation state. To put it pithily, the concept of nation state and the empirical reality on the ground vary enormously.

To get out of this impasse and to accommodate and nurture diversity within the territory of the state, we should abandon the concept of nation state and substitute for it the notion of the national state. Charles Tilly defines national states as "relatively centralized, differentiated and autonomous organizations successfully claiming priority in the use of force, within large, contiguous and clearly bounded Territories". But this conceptualization fits states rather than nations; it focuses on the structure of the state and ignores the sentiment necessary for the population of the nation

to be glued together. Further, Tilly conceives national states as transitory structures; they are nation states in the making.

In contrast, I conceptualize a national state as a multi-national and poly-ethnic state, often a combination of the two, in which cultural diversity is viewed as an asset to be celebrated and not a liability to be "managed". The difference between nation state and national state is fundamental: if nation states aim at cultural homogenization, national states consciously nurture and celebrate cultural diversity within their territories and endorse cultural pluralism as a value. Cultural pluralism upholds the principle of dignified coexistence of all cultural groups. This provides minorities with a stake in nation-building.

2. National and Ethnic Minorities

It is necessary to distinguish between national minorities and ethnic minorities. Although both augment diversity within the polity their striking power to destabilise the national state and contribute to nation-building vary vastly. National minorities have historically legitimate claims to an ancestral homeland; as in the case of Scottish and Welsh peoples in Great Britain or an adopted homeland, as in the case of the French in Quebec in Canada and the Spanish and Portuguese peoples in Latin America. That is, national minorities, like nations, are products of fusion between territory and culture; they are nations without sovereign states.

It needs to be underlined here that national minorities are minorities only when viewed in the wider context of the federal polity but they are usually majorities within their homeland. This gives them the required bargaining power with the central authority of the federal state for the right to preserve their cultural identity, particularly through the use of their language, following customs and practicing religion. Further, national minorities invariably demand their own politico-administrative units. If the federal state concedes this demand it helps to maintain diversity within the polity. But if the federal state attempts to suppress the identity assertions of national minorities, and if the latter transform from a nation-in-itself to a nation-for-itself, the possibility of the demand

for a sovereign state in the form of a secessionist movement is high. If the movement succeeds it would diminish diversity within the national state to which it had previously belonged.

Ethnic minorities are products of the turbulence brought about by migration, within or across polities, which can occur due to a variety of reasons: political and/or religious persecution at home, search for better economic prospects and the like. Irrespective of the cause of migration, a rupture between territory and culture occurs. That is, ethnic minorities attempt to sustain their cultural identity markers outside their ancestral homeland. Being territorially dispersed ethnic minorities neither have the political striking power nor the cultural legitimacy to demand exclusive politico-administrative units within the federal polity. However, they have every right to demand and get their cultural rights. But even if these rights are constitutionally guaranteed they may not be always realized as illustrated by the territorially dispersed Sindhi and Urdu speaking communities in India.

The existential conditions of national minorities favour the flowering of cultural diversity if the state pursues an appropriate policy, but the existential conditions of an ethnic minority call for extra efforts on the part of the state to preserve and sustain cultural diversity. However, the state policy may often be destructive of cultural diversity if it indulges in what may be designated as ethnification or culturocide, that is the systematic dismantling of cultural identities.

2.1 *Ethnification and Destruction of Diversity*

Ethnification is a process through which the link between territory and culture is attenuated, and the possibility of a nation sustaining its integrity is put into jeopardy. There are at least six types of ethnification. First, a national minority may continue to be in its ancestral or adopted homeland and yet it may be ethnified by state-sponsored colonization, particularly by a native dominant collectivity. That is, the link between territory and culture should not be viewed merely as a physical phenomenon.

There are three main variants of this: (a) Transforming the original inhabitants of a territory into a minoritized and marginalized

collectivity. The most obvious example of this is the First Nations in the New World; although they continue to live in their ancestral homeland, they have been dispossessed of it. (b) Labeling a collectivity in such a way as to imply that it has no moral claim over its ancestral or adopted homeland. This is precisely what analysts do when, in labeling some collectivities, they ignore their nationality and invoke their religious identities instead. The Muslims of Bosnia, the Hindus of the Kashmir Valley and the Jews in Europe are examples of "ethnified" collectivities that have been created by wrong labeling. (c) Some nations are subjected to ethnification as a result of a division of their ancestral homeland into two or more state territories, thereby endangering their integrity as nations. This is the case with regard to Kurds, Basques, Nagas, Mizos and several others.

A second type of ethnification is the denial of fully-fledged participation in the economy and polity to an immigrant collectivity which had adopted the land into which it has migrated as its homeland. The case of indentured Indian and Chinese labour brought to the plantations and mines in colonial societies exemplifies this. It is not enough that immigrants are willing to become nationals in their new homeland; their claim and aspiration ought to be respected not only by the state, but also by the original and earlier inhabitants so that their ethnic identity is transformed into a national identity. But this may not always happen. The Fijians of Indian origin, in spite of adopting Fiji as their homeland and having become citizens, are not yet fully-fledged nationals. A similar situation existed in the case of the Jews in Europe.

A third, is the tendency on the part of a settler collectivity to identify with its ancestral homeland even after several decades, sometimes even after centuries, of immigration. This is manifested in the United States of America when collectivities refer to themselves as Anglo-Americans, Asian-Americans, Afro-Americans, and the like. It may be noted that the dominant ethnies' self-definition connotes only a symbolic identification with their ancestral homeland. In contrast, the dominated ethnies experience collective alienation because of continued discrimination and oppression in the land to which they have been brought, and where they have

been assigned a subordinate status and a stigmatized identity. While the dominant ethnie may not question the internality of the dominated ethnie, as both are immigrants, members of the latter may not completely identify with their adopted homeland. This self-externalization is the route to their ethnification. The persistent tendency on the part of the erstwhile African slaves in the New World to describe themselves as Afro-Americans, Afro-Brazilians and so on, should be viewed in this light.

Fourth, ethnification also occurs when a state attempts to "integrate" and homogenize the different nations in its territory into a common "people". The mechanisms resorted to are physical uprooting, creation of artificial politico-administrative units, state-sponsored colonization of the territory of the weaker and smaller nations, prevention of the use of their mother tongue, and the distortion of a people's national history. Both socialist multi-national states and capitalist nation states have resorted to this, although their ideological motivations and strategic weapons have differed vastly.

Fifth, if those who migrate to alien lands are denied citizenship rights even when they become eligible for them, they are ethnified in that they are treated as strangers and outsiders. The situation worsens when they are denied human rights which ought to be available to all irrespective of citizenship status. The cases of guest workers in Western Europe, particularly those from ex-colonial countries, and immigrant workers in the Middle East from Asian countries and the like belong to this category.

Finally, even when immigrants are accepted as co-nationals by the host society, the former may not want that identity and might wish to return to their homeland. This ambivalence emanates partly from their assessment of the impossibility of complete acceptance in the host society, and partly from the prospects awaiting them back home. For example, in the 1950s and 1960s Italy was a "sending" country, but by the 1970s and 1980s it became prosperous and a "receiving" country. Italian guest workers who had been readily accepted in some of the affluent Catholic countries of West Europe gradually started returning home. On the other hand, the prospects for guest workers in Europe from Tunisia or Turkey,

even if they wish to settle down, are limited, because the chances of their being accepted as fully-fledged members in Western Christian countries are slim. In other words, the process of transformation of an ethnic minority into a national minority calls for a change in the attitudes and value orientations of both collectivities, namely, the immigrants and the host society. This transformation is vital for building authentic diversity.

It is of great importance to emphasize the following points here. While in all the different varieties of ethnies there is a weakening of the relationship between territory and culture, in most cases it is both physical and psychological. But in some cases it is only a psychological phenomenon; those ethnies are aliens in their own homeland. Further, most of them are deprived collectivities, both in symbolic and material terms.

2.2 *Ethnies, Nationals and Diversity*

The above analysis should not be taken to mean that there is no possibility of an ethnie transforming itself into a nation. There are several possibilities. An ethnie may assert its identity as a "nation" at the point of its arrival if it acquires sufficient resources—economic and political. Thus, European settlers in North America became the first "new nation": the United States of America. However, at that early stage the USA became only a polity and not a nation, as most settlers still looked to Europe as their homeland. A second possibility is that an ethnie that was spatially dispersed, even for centuries, may recover its nationhood by returning to its ancestral homeland, as exemplified by the Jewish case. But such a possibility is very slim if a dispersed ethnie is not in a position to stake its moral claim vis-à-vis any territory. This is the case even now with the gypsies who are scattered in Europe. Finally, the liquidation of an earlier basis of identity (say race) and the acquisition of a new basis of identity (say culture) is possible through race mixture. Mestizos and ladinos in Latin America are products of miscegenation, and their identity is now anchored to culture rather than to race. They gradually became part of the cultural mainstream and came to be completely identified with Latin America.

If the transformation of an ethnie into a nation is a matter of subjective perception on the part of the collectivities involved, acquisition of citizenship is a legal and individual act between particular individuals and two states, one at the point of departure and another at the point of arrival. Clearly, this condition is not applicable in situations of colonization and conquest. In such cases, the state and government may be absent at the point of arrival (as when Columbus and Captain Cook arrived at America and Australia respectively) or may not be legitimate as was the case of colonial governments in Africa and Asia. In the case of inter-state migrations, acquiring citizenship at the point of arrival is a matter between the individual migrants and the two state apparatuses. Even when one has acquired citizenship through due process, that is, by renunciation of the old citizenship if required at the point of arrival, one may encounter prejudices and discriminations from the host community. Legislation is not an appropriate or adequate instrument to cope with such a situation, but education in the broadest sense of the term is. The sources of prejudice and discrimination are both a matter of visibility (physical appearance, dress pattern, etc.) as well as a product of interaction, as religious faith, style of speaking the local language or dietary preferences are soon revealed.

In the final analysis, ethnification is a process through which some collectivities are defined and perceived as outsiders. This has nothing to do with facts of history, length of residence, or degree of assimilation. There are at least four contexts in which this happens. The first is when the mainstream cultural community in a multi-national or poly-ethnic state asserts that it constitutes the nation, and that others should assimilate in the interests of the "nation". Waspization in the United States, Russification in the former Soviet Union and Hanization in China are examples of this. Second, even when a collectivity belongs and lives in its homeland, it may be perceived as cultural outsider because of its actual or attributed association with conquest and colonization. This is why Hindu nationalists view Muslims and Christians who are natives of India as cultural outsiders, and not as a part of the nation. A third instance is when descendants of a people may be defined as aliens and driven out, even after they have been in a country for several centuries.

This was the case of the Turks in Bulgaria. Fourth, a people may be driven out of its ancestral homeland because their religion is different. Examples of such types of ethnification are that of the Zoroastrians and Baha'is of the Persian Gulf earlier and the Hindus of Kashmir Valley recently. This process is referred to as "ethnic cleansing" in the media and even in social science writing. However, in terms of the conceptualization I propose in this paper that it is an incorrect description, because what is actually happening is the de-nationalization of a people vis-à-vis their ancestral homeland.

The reverse of ethnification is nationalization, which happens when an elective affinity develops between the people who are believed to be ancestral kin. Thus, if Germans who have lived outside Germany for several decades or centuries declare that their ancestors were Germans, they are instantly acknowledged as nationals. When they arrive in Germany, they are given the status of returnees or refugees. Whether or not they speak the German language and pursue the local lifestyle, they are German nationals because their nationality is defined by blood. This is also true of Italy and Japan, perhaps to a lesser extent. Both the German and Italian states reinforce this conception of nationality by conferring citizenship on those who claim to be Germans or Italians by blood. Thus, those who are in reality ethnies are unhesitatingly transformed into nationals and citizens.

2.3 *Dynamics of Transformation: Nationals and Ethnies*

It would be rewarding to examine at this juncture, albeit briefly, the processes involved in ethnies becoming nationals, and nationals being transformed into ethnies or marginalized as minorities. Often immigrants (not to be confused with those who migrate for employment for brief periods, or students, etc.) initially have a sojourner's attitude; they hope to return to their ancestral homeland. Whether or not the sojourner orientation persists depends upon a variety of factors, the most important being the motivating factors behind migration and the existential conditions at the points of departure and destination. As long as ambivalence about one's homeland,

ancestral or adopted, persists one is clearly an ethnie. That is, ethnicity is an outsider status, either because one is considered as such by the nationals at one's point of arrival, or because one has not made up one's mind to become a settler.

Becoming a citizen often facilitates the process of overcoming the sojourner attitude, but it does not follow automatically that citizens instantly become nationals. To put it differently, to be national is not a matter of formal definition and legal entitlements, but one of isomorphism between one's self-definition and other's definition of the self. Viewed thus, it would be easy to understand why quite a sizeable proportion of sojourners are citizens but not nationals, a trend accelerated by globalization. In order to become nationals they are required to eschew their sojourner ambivalence and view the territory into which they have migrated as their new homeland; that is, they should become nationals. This process may be legitimately designated as nationalization. In contrast, the act of terrorizing and flushing out people from their ancestral homeland is ethnification, a process through which nationals are transformed into ethnies, and through which insiders are forced to become outsiders. This variety of ethnification entails de-territorialization of the nationals.

What I am suggesting is that the processes of nationalization and ethnification should be clearly distinguished, as the former fosters diversity and the latter destroys diversity. More importantly, the implications for the collectivities subjected to these processes vary enormously in terms of achieving equality and maintaining identity. The ethnification of First Nations of Americas and Australia implies robbing them off of their ancestral land; they are in their ancestral territory but not of it. The nationalization of immigrants entails a process of acquiring identification with the land on which they have settled. Either way the link between territory and nation is clear.

The crucial importance of territory as a social fact has been perceived as eroded substantially in recent times in the context of the much-heralded process of globalization. Territory needs to be rehabilitated as a crucial social reality if we are to build diversity within national states. It takes a few generations for a relocated

collectivity—be they voluntary migrants, refugees, exiles, exported labour, colonizers or conquerors, that is, an ethnic group—to feel at home as settlers. For first generation migrants, perhaps, this never happens, and they invariably look towards the ancestral homeland with nostalgia. Conversely, it is difficult for nationals, be they marginalized First Nations or those who have been flushed out of their territory, to get reconciled to the fact that their legitimate claim over their ancestral homeland has been eroded. They persist with their moral claim, even as their legal claim has been usurped. Nations are not simply territorial entities but consist of communities to which their members have a sense of belonging and an intense emotional attachment. When a collectivity develops the feeling that it does not belong or is treated as an outsider because of its specific identity, it becomes an ethnie which is an obstacle to nurturing diversity. Citizenship in such cases can provide at least partial succor to ethnies, because it is essentially an instrument of equality.

3. Minorities: Threat to Diversity?

It is not only the state or the cultural mainstream which can endanger diversity; national minorities in federal polities too can do this. There are two types of national minorities: state seeking minorities and state renouncing ones. Most of the national minorities in the contemporary world are state-renouncing in that they do not aspire for a sovereign state and opt for only provincial states within the federal polity which they perceive as an adequate condition for nurturing their cultural identity. However, the proclivity to seek sovereign states is not altogether absent among national minorities. But this aspiration sits uneasily with the principle of sustaining diversity within the federal polity. It needs to be recognized here that the tendency on the part of national minorities to demand exclusive sovereign states usually surfaces because of one or more of the following reasons, often a combination of them: (a) denial of adequate level of political autonomy, (b) absence of economic equity between different federal units, and (c) the impossibility of cultural groups upholding their identity markers within

the polity. If both the federal polity and the national minorities appreciate each other's needs and aspirations the possibility of accommodating and nurturing diversity is substantial.

National minorities are by and large linguistic minorities with an identifiable homeland and a common language. This is also true of tribal communities. But the main problem in the case of tribes is the size factor; majority of them are too tiny and lack financial and administrative viability to have their own provincial states and for pursuing development. In such cases structures below the provincial states such as Autonomous Regions and Local Self Governments are feasible arrangements. Thus, in a federal polity the state should be conceptualized as a layered system consisting of federal government, provincial states, autonomous regions and local self-governments. But in the formation of these layers the cultural factor needs to be accepted as crucial.

If linguistic and tribal communities are natural candidates to be national minorities, religious communities tend to be ethnic minorities because of their de-territorialization. This is not to suggest that religious communities cannot be national minorities; if they have an accredited homeland and a common language they can be, as exemplified by the case of Sikhs in the Indian Punjab. By the same tenet Sikhs outside the Punjab can only be ethnic minorities.

Broadly speaking there are two types of religious communities viewed from the perspective of their territorial attachments. Proselytizing religions such as Buddhism, Christianity and Islam are necessarily geographically dispersed and their attachments to territory are tenuous. But even non-proselytizing religions tend to get spatially dispersed as exemplified by the Jewish case. Further, in so far as a particular religious community cannot lay an exclusive claim to a specified territory it cannot be the only national community in that territory. For example Jews, Christians and Muslims have legitimate nativity claims in the territory of Israel. Similarly, Hindus, Buddhists, Jains and Sikhs are perceived as "national" communities in India, Hindus being a majority and the rest minorities. However, Muslims and Christians are defined and viewed as ethnic minorities, that is, as cultural outsiders, by a section of Hindus.

Here the question of the time period for the nativization of a religious community, for its transformation from an ethnie to a national community or minority, becomes pertinent. But the question is relevant only for immigrants and if they adopt the territory to which they have migrated as their homeland they become a national community or minority gradually. This is the case with Christians in the New World—the Americas, Australia and New Zealand. But those who embrace a religion alien to their homeland are also nationals because nationality cannot and should not be defined on the basis of religion. Thus Muslims and Christians of India are national minorities as they are converts from local castes and tribes. But some sections of the Hindu majority tend to define them as outsiders thereby subjecting them to a process of ethnification as noted above, endangering the process of accommodating diversity.

Embracing a new religion by a section of citizens often brings cultural diversity to the polity; which may range from food and dress to legal system and education. Following the first set, namely, food and dress can become contentious only if they are insisted upon by the religion in question and only if objections are articulated against them by others; eating beef in India and putting on the veil by Muslim women in public places in France are examples of this. Resistance to a Uniform Civil Code by some of the religious minorities in India and preference for Madrasa education (which nurtures Islamic identity) by a section of Muslims in India exemplify the second set. Accommodation of cultural practices specific to religious minorities is an expression of accepting cultural diversity within a federal polity. But this can only be done if these practices do not compromise citizenship values and human rights.

4. Conclusion

National states may often be composed of religious, linguistic and tribal communities some of which are national or ethnic minorities. To accommodate and nurture them political federalism is an imperative. Therefore, the essence of federalism lies not in the constitutional or institutional structure but in the underlying society itself. Federal Government is a device through which the federal qualities

of the society are articulated and protected as Livingston argued five decades ago. Federal institutions facilitate nation-building in a diverse society, and therefore an examination of how different forms of federation contribute to the accommodation for the different kinds of diversities outlined in this paper is an important task of nation-building.

Autonomy and Diversity

Johanne Poirier

Abstract

While closely related to collective rights, autonomy in a diverse society is about empowerment. It relates to the capacity to adopt one's own ("*auto*") norms or laws ("*nomos*"). This paper offers a brief reflection on the meaning of autonomy and on the groups which may legitimately and realistically claim forms of institutional autonomy. It then explores how the concept of "autonomy" can be translated into various forms of institutional design in contemporary states "blessed" with the asset of diversity. Advantages and disadvantages of various options are canvassed. The importance of trust-building mechanisms is also emphasised as a counter-balance for the segmentation which can result from otherwise legitimate schemes meant to promote the autonomy of certain culturally distinct groups.

1. Introduction

In the enlightening introductory paper to the theme of "Building on and Accommodating Diversities", we are reminded that "[d]iversities are not to be considered as a burden but as an asset that states can build upon". While this very conviction is not—by any stretch of the imagination—universally shared, it is fortunately gaining in legitimacy around the world, in academia as well as in political discourse and practice. Translating this moral and political imperative into specific practices and institutions is a major chal-

lenge, however. As they say: "the proof is in the pudding". And the same pudding cannot be served to everyone, on every occasion.

This subtheme paper explores how the concept of "autonomy" can be translated into various forms of institutional design in contemporary states "blessed" with the asset of diversity. It offers a few recipes for the pudding. The objective is to encourage participants to confirm, challenge, test, and complete some contemporary theories concerning the accommodation of diversity through the recognition of autonomy.

Before turning to the "plumbing" of institutional autonomy (section 4), however, the concept of autonomy is explored (section 2), as well as the question of who is entitled to institutional autonomy (section 3). The final section offers some concluding thoughts on the importance of trust-building mechanisms, including the effective participation of groups who enjoy degrees of normative autonomy, in central institutions (section 5).

2. What is Autonomy?

Over recent decades, through a limited number of binding norms, and a greater range of soft law instruments, international law has gradually widened the classic concept of self-determination to incorporate that of internal self-determination. The former was traditionally understood as the right of colonized or severely oppressed people to create an independent nation state. The latter includes measures of independent control over areas deemed to be crucial to the group's well-being within the existing state. Similarly, some constitutions recognize, either explicitly or through unwritten constitutional principles that the protection of minorities—and aboriginal populations—can entail a certain degree of organizational autonomy, that is "self-management" or "self-government".

The concept of autonomy is closely connected to the notion of collective rights, although they are not coterminous. While individual rights are held by all individuals simply by virtue of being human, collective rights refer to the rights of cohesive groups to have their collective identity and interests protected. The exact reach of collective rights is controversial, and will depend on the

collectivity's particular circumstances and standing in the state. They do not necessarily entail a form of self-government. Let us presume, for instance, that a group that has been historically disadvantaged obtains redress in the form of various quotas (as is the case of the "scheduled castes" in India). This arguably is a group right. However, this does not inevitably translate into institutional autonomy.

The etymology of the word "autonomy" underlines the importance that groups (or individuals, for that matter) should be able to adopt their own ("*auto*") norms ("*nomos*"). Autonomy is not about having rights—though this is crucially important. Autonomy is about having some space (both physical and political) in which to exercise the right to decide about one's rights. Autonomy is about empowerment. The paradigm shifts from "rights" to "power".

3. Who is Entitled to Autonomy?

Some well-accepted contemporary theories, notably developed by political philosopher Will Kymlicka, distinguish between "old" or "national minorities" on the one hand, and more recent ones, on the other. The first category refers to groups which have enjoyed a long-standing history in a particular country, including a degree of political autonomy, prior to their forceful or voluntary annexation within the larger entity that transformed them into minorities or largely disenfranchised aboriginal peoples. Groups belonging to this category often wish to maintain specific and distinct institutions to protect their specificity.

By contrast, these theories postulate that groups belonging to the second category, mostly made up of recent immigrants, seek to integrate in their host country. This alleged preference, combined with that country's legitimate concern with maintaining a certain degree of cultural and linguistic stability, means that "new minorities" will be entitled to the protection offered by enshrined fundamental rights (notably, freedom of expression, of religion, the right to equality and non-discrimination). It is assumed that their wish is to fit in and that consequently, they will not claim institutional autonomy. For its part, the host state has no moral or legal

imperative to alter its structure so as to grant self-government to such communities.

This dichotomous distinction between "national minorities" and other minority groups does bring clarity to the debate, but it leaves a number of grey zones. It probably applies more adequately to "countries of immigration", rather than those in which recent diversity results notably from the incoming of international refugees or internally displaced persons, or the arbitrariness of some international border drawing. Adapting this typology requires substantial empirical and contextualized analysis. It is by reflecting on some hard cases that our collective can best be enriched.

As a way of fostering comparative deliberation, let us consider in some detail a particular case which is difficult to classify according to the "either/or" scheme. A million French-speaking Canadians live outside Québec, the sole constitutive unit in Canada in which French-speakers form a majority and thus command a provincial state apparatus through the simple application of majority rule. The other French Canadians are scattered throughout Canada, though more concentrated in some areas than in others. They constitute minorities in each of the other provinces (only one of which, New Brunswick, is officially bilingual). These French-Canadians have a long-standing history in the country. They are not immigrants (except in the extended sense that all people of European descent in the New World could be considered immigrants). Few of the French-speakers outside Québec—if any—ever enjoyed a degree of prior political autonomy before becoming minorities in English-speaking provinces.

Over the last forty years, the linguistic rights of this population have been greatly strengthened (e.g. rights to schooling, school management, bilingual services, etc.). However, apart from the right to manage the minority language school system, they do not enjoy special rights of representation in federal or provincial institutions, nor do they enjoy autonomous institutions. They are rights holders, but they have very little control or input on the definition of these rights, or the resources which are to be allocated to their protection, for instance. It is not clear on which side of the fence they would fall according to the binary approach. Are they entitled to autonomy

—including measures of self-government? And if not, why not?

In the end, resolving the issue of who is entitled to autonomy may come down to a mixture of corrective justice for past injustice (e.g. previous attempts at assimilation, oppression, acculturation, exclusion from one's homeland in the case of many aboriginal peoples, etc.) as well as *realpolitik*. Those who can claim autonomy, are those who either pose a substantial threat to the survival of the overall state by being in a position to consider secession, or groups which may not have that capacity, but whose vitality is considered paramount by the state for some ideological or political factor. They can mobilize to negotiate their claims with the state. Hence, the "French factor" clearly partakes of Canada's very identity, and of its distinctiveness from the United States. In that context, it is arguable that French-Canadians outside Québec could claim a form of autonomy, which immigrant groups, even long-standing ones, cannot, both in terms of corrective justice and by reason of their political weight in the context of Canadian society.

Iris Young has challenged Kymlicka's dual classification and posits a continuum on which various minority groups will be positioned, not necessarily in a stable and permanent fashion. She gives the example of African Americans who clearly did not come voluntarily to North America, but who, as a rule do not seek autonomous institutions. Unfortunately, what the continuum concept gains in diagnostic potential, it loses in terms of the ability to identify distinct solutions (e.g. temporary measures to promote substantive equality *vs.* permanent institutional design to allow for the maintenance of difference). To return to our previous example, it may be that French-Canadians outside Québec fall somewhere between "national minorities" and "immigrants". But that does not answer the question of their entitlements: individual and collective rights solely? Or measures of self-government?

As a way of partly filling the *continuum*, let us consider a multiple pronged typology (adapted from those elaborated by Paul Chartrand and Alain Cairns). In a complex polity, we can posit at least four categories of citizenship status: "citizen minus", "citizen equal", "citizen plus" and "citizen plural".

Every member of the state has right to equal citizenship and

should never be treated as a citizen "minus". "Citizen minus" conveys repression and likely forced assimilation. Aboriginals who have been deprived of basic rights of citizenship—such as the right to vote—would fall in that category. This is surely easily discarded in a contemporary democratic context.

Next, comes the "citizen equal" model. Here, the assumption is that all citizens are entitled to the same rights and services. Fundamental rights which should not be curbed, even on grounds of accommodating diversity, would provide the foundations of this category (we return to this question in the last section of the paper). In some cases, equality could entail temporary measures to redress systemic disadvantage, such as affirmative action. This is a basic citizenship regime for any member of a multicultural—and even multinational—society. These measures do not amount to institutional autonomy in the sense considered here.

Institutional autonomy would be reserved to the "citizen plus" or the "citizen plural" categories, who *in addition* to their "citizen equal" status, can also claim measures of self-government. These two categories vary in terms of the degree of autonomy which each group can claim (both from a normative and a *realpolitik* perspective). It may be that the distinction between the "plus" and the "plural" revolves around the political power, degree of political mobilization and conception of self apart from the mainstream. For Chartrand, First Nations ought to be considered "citizen plural" because of their inherent entitlement to self-government.

I proposed this typology as a working hypothesis for our subtheme discussions. No groups should ever belong to the "citizen minus" model. Some groups in a complex society can legitimately claim accommodation according to the "citizen equal" model (including temporary quotas, etc.). Others, by virtue of their history, social cohesion, or political power within the overall state, may qualify as "citizen plus or plural". The degree of institutional autonomy to which they can aspire would be reflected by this qualification. In that context, and to conclude with our prior examples, Québec and aboriginal populations in Canada could claim "plural status"—and thus a very high degree of institutional autonomy. French Canadians outside Quebec could claim a "citizen plus" status,

which would entitle them to certain attenuated forms of self-government. Other diversities can claim special accommodation measures—short of autonomy—to enable them to be "citizens equal".

Obviously, the requirements for accommodating diversity will always depend on a particular country's circumstances, including its specific diversity mix (e.g. nature of diversity, territorial distribution, respective proportions in the over-all population, etc.). Each multinational state will be faced with these types of conundrum, to which there is no ready-made answer. Again, contextualized discussion would benefit from exploring this issue in a variety of settings, including in developing or emerging federations or quasi-federations. It may also be that discussion grounded in concrete examples—particularly different hard cases—will lead to a clarification or rejection of this typology.

4. Institutional Options to Promote Autonomy

"Autonomy" can take the form of "territorial" or "non-territorial" solutions, or of a combination of both. Institutions can be set up at the central, regional or local level. In other words, it is not only at the national or central level that adaptations have to be made, but also, in some cases, within constitutive units. Asymmetrical solutions may also offer appropriate responses to the heterogeneity of diversities found in a particular polity.

Every option carries with it a number of advantages and disadvantages. It is worth considering who wins and who loses with each of these options. The idea is not to insert a form of Manichean accounting, but to underline that preserving both diversity and some form of cohesion, necessarily entails compromises.

4.1 *Territorial Solutions*

Short of full-fledged independence, one of the most advanced forms of autonomy is a federal system which transforms a particular minority into a majority within one or several of the constitutive units. To the extent that competences and fiscal resources allow for effective decision making and implementation of policies, autonomy

flows from an application of majoritarian politics within that unit. The distinct group can then develop policies adapted to its cultural preferences, without having to constantly negotiate with the federal majority.

Some federations were at least partly built on that principle from their inception: that is the case of Switzerland or Canada, for instance. Others have gradually chosen that route as a means of accommodating diversity and reducing tension within a former unitary State. Since the 1970s, Spain, South Africa, Ethiopia and Belgium have gradually adopted forms and shades of territorial federalism (although in some cases, the "F-word" is not formally used, for historical and political reasons). Devolution in the United Kingdom follows a similar logic, particularly with regards to Scotland.

In some cases, the territorial federal option will entail the redesigning of borders between units, or the creation of additional constitutive entities. Switzerland and India offer relatively recent examples of such restructuring. The objective is to seek a better fit between relatively homogeneous and geographically concentrated minorities and the political borders which define the territorial competence of legislative and executive organs.

Hence, under the pressure from a catholic French-speaking minority, the canton of Bern was split in 1975 to give rise to the new canton of Jura. This was accomplished through a remarkable series of public consultations with the affected population (both minorities and majorities). Since the late 1950s, 14 new states have been created in India, in order to provide the institutional advantages which flow from territorial federalism to linguistic/ethnic/religious minorities.

While territorial solutions offer an effective mechanism for accommodating diversity for geographically concentrated minorities and aboriginal populations, they also raise a number of concerns. Let us consider three.

First, in highly diverse societies, a significant degree of cultural homogeneity within constitutive units will rarely be attainable, short of an ever increasing number of very small units. In many cases, and notably in major cities, the intermingling of diverse

groups is simply unavoidable. Nigeria has moved from 3 to 36 units, in an attempt to appease tensions between its 250 or so ethnic groups. This appeasement has only been partially successful. The Nigerian example invites us to reflect on the risk of extreme fragmentation that can come with constant restructuring.

Second, fear is sometimes expressed that territorial solutions may foster secessionist tendencies. Empirically, such occurrences are rare. An appropriate federal structure and spirit are not absolute antidotes against secession. However, they may be the most effective means of limiting the risk that it occurs, while also reducing the threat of oppression of the group which seeks this ultimate form of autonomy.

Third, recent history has shown the devastating effect of some searches for autonomy based on cultural homogeneity. Ethnic cleansing or major involuntary displacement is a particularly perverse way of generating conditions for a diverse group to be geographically concentrated in a particular territory. The war in Bosnia represents a good and difficult case in point.

The 1995 Dayton Agreement divided that territory into two main entities. At present, the *Republika Srpska* can claim a relatively high level of ethnic homogeneity, compared with the heterogeneity that characterized the region until the early 1990s. Building a permanent federal solution partly on today's socio-demographic reality is vigorously opposed by Bosniaks who were displaced (or whose families were eliminated) during the war. On the other hand, a return to a more unified and mixed Bosnia is opposed by Serbs of the *Republika Srpska,* who wish to maintain and strengthen the autonomous institutions which they obtained through the Dayton Agreement. These institutions are notably conceived as measures of cultural protection, given the minority status of the Bosnian Serbs, which resulted from the explosion of Yugoslavia and the independence of Bosnia. They are also viewed as a shield against reprisals for war exactions.

I certainly have no solution to propose to this particular conundrum. I simply raise it in order to encourage a contextualized discussion on the pros and cons of territorial federal options.

Apart from these risks associated with territorial solutions, some

other concerns can be raised by specific groups which are affected by territorial solutions: a majority at the central level, minorities within the minority and those that are left out.

4.1.1 *What's in it for the "Majority"?*

The advantages of a territorial solution for a geographically concentrated minority are obvious. But why—as a participant in a civil society seminar in Sri Lanka candidly and perceptively once asked—should the majority agree to this?

Indeed, agreeing to institutional autonomy for the benefit of distinct groups is not necessarily without cost. The majority may fear the lack of consistency in a number of policy areas. It may also resist practices in some constitutive units which it deems to be contrary to fundamental rights (the controversy regarding a particularly harsh application of the sharia by certain Nigerian constitutive units is a good illustration). Some may reject asymmetrical arrangements as an assault on the principle of equality between constitutive units. There may be concerns that solidarity between citizens of the overall state will be threatened by such territorial restructuring. The majority may experience a sense of loss regarding a unified nation which it perceives—rightly to wrongly—to be inclusive of every citizen in the state, over and beyond the various types of socio-demographic and cultural differences. These concerns ought to be taken seriously.

This being said, there are advantages in federal arrangements, even for the majority. Territorial federalism may offer advantages that are similar to those found in classic non-multinational federations such as Germany, Australia or the United States. Federalism multiplies levels of entry for citizens as well as checks and balances between centres of power. It brings power closer to the people, while allowing joint action in some cases. It counterbalances management from afar in geographically vast countries. The fact that some units are composed of a minority—which is transformed into a majority within a constitutive unit—should not represent a hurdle in that context.

More prosaically, the majority may simply not have a choice, if it wants to live in a peaceful, stable and democratic state. Oppression is neither legitimate nor effective. Attempts at minimizing

differences by appealing to a single nation are likely to be counter-productive. In some cases, it is only by conceding "citizen plus" or "citizen plural" status to a segment of the population, that the risks of violence and instability will be reduced.

4.1.2 *"Minorities Within the Minority"*

A side effect of territorial federalism is that even with a meticulous drawing of borders, a constitutive unit will rarely contain an entirely homogeneous population. And even if substantial homogeneity could be attained, it may not resist the test of time. People move and diversity has a tendency to erupt at every level of most societies. In other words, there are likely to be minorities within the minority-transformed-into-a-majority at the level of a federated entity. The debate concerning the adequacy of various options then shifts from the overall state to that entity.

Again, the "citizen minus" status ought to be avoided, and all members of the constituent unit should at the minimum enjoy the status of "citizen equal". In some cases, this could imply some form of affirmative action or temporary quotas. Arguably, in other cases, however, the "minority within the minority" may be entitled to "citizen plus" status (with guaranteed linguistic rights, for instance) or even to the status of "citizen plural" (with decentralized autonomous institutions). For instance, in Switzerland, control over schools can be delegated to municipalities within some unilingual cantons, so that a geographically concentrated minority at that level can exercise control over a vital institution. This, of course, falls short of "full institutional autonomy" (we cannot multiply parliaments *ad infinitum*). Finally, some mechanisms to guarantee effective participation of a minority at the overall federal level can be implemented in favour of the "minority within the minority" to ensure that their voice, and the asset that their very existence represents within their constitutive unit, is not ignored.

4.1.3 *And "Those Who are Left Out"*

Drawing borders means some people are in, some people are out. "Minorities within the minority" are incorporated sometimes against their will, or their interests. Similarly, territorial solutions

have the effect of leaving some people out. To illustrate this other side effect of a territorial solution, let us return to the Canadian example. The territorial solution in Canada has been beneficial for the French-speakers in Québec. But it has further marginalized the French-speakers who live in the other provinces. Federal (central) institutions, function in a bilingual mode. However, apart from the right to manage their own educational institutions (and much more timidly, the right to have their interest considered with regards to health institutions), these various minorities do not enjoy any form institutional autonomy either in their province, or at the federal level.

4.2 "Cultural Autonomy" and "Personal Federalism"

When territorial autonomy is not a viable option in a particular state, it may be adequate to provide for a form of "personal or cultural autonomy" which is "de-territorialized". This will notably—but not exclusively—occur when a group linked on the basis of some "personal characteristic" (e.g. religion, language, ethnicity, etc.) is geographically dispersed.

For instance, a number of federal (India being one) and nonfederal countries recognize the right of religious communities to be governed by their "personal law" particularly with regards to family matters, regardless of where they live. Such laws are not necessarily determined by democratic institutions, although, in theory, they could be.

"Cultural autonomy" refers to a more institutionalized version of the personality principle. Developed by theorists in Eastern Europe, it has known some partial implementation in that region as a means of managing diversity in highly heterogeneous contexts. In some cases, it is also favoured despite the existence of geographically concentrated minorities, as an alternative to territorial subdivisions. Cultural autonomy translates into various shades of self-government for certain communities, with regards to matters considered to be crucial to their vitality. Again, the purpose is not solely to guarantee collective rights to those groups, but also to institute forms of normative autonomy: the right to determine one's

own law. In other words, we are not only in the "citizen equal" paradigm, but also in some versions of the "citizen plus" or even "plural" models.

For instance, non-territorialized "cultural councils" have been instituted in Estonia, Slovenia or Romania, in favour of certain "historical minorities". With some variations, these institutions exercise a degree of control over education or certain social services. Some of these councils can levy taxes. They are either elected or nominated by their constituency.

The most advanced form of personal autonomy would posit the existence of actual constitutive units based on linguistic, ethnic, religious—or even racial—criteria. In theory, these units would enjoy normative autonomy to be exercised by distinct legislative and executive organs. Membership in such a "community" carries with it a number of rights (e.g. to vote, to obtain services, to participate in the institutions, etc.), as well as obligations (e.g. to respect the laws of the community, to pay taxes). The logistical problems generated by people simultaneously or successively belonging to different communities can be daunting. Partly for this reason, such a high degree of non-territorialized autonomy remains largely elusive.

But the most critical obstacle facing this type of institutional option lies with the "*connecting factors*" or criteria for belonging to the group. It is generally agreed that there should be a significant degree of self-identification. Furthermore, to avoid false intrusions within the group, a certain degree of group control over membership is also generally considered legitimate. The fundamental right of association and the principle of individual self-determination entail that individuals should be entitled to "opt in" the minority system, be governed by the "general law", or belong to a "neutral" group, were the entire society to be divided into "cultural segments". Moreover, given the objective which is to nurture diversity, it is important to allow for multiple, superimposed and shifting identities.

Given these major difficulties, it is not surprising that there are no actual examples of full-fledged "personal federalism". As we shall see, Belgium has instituted an attenuated form of personal federalism. The closest example might be Lebanon, where the entire population of this consensus-driven but officially unitary state is

divided into 18 distinct "religious" groups. While a "neutral" category was originally envisaged when the regime was set up in 1943, it was never put into place. Half-way between "personal law" and "cultural pluralism", the actual workability of a non-territorial form of autonomy is difficult to assess from the Lebanese example given the weakness of that country's democratic institutions. In any event, Lebanon may represent a better example of normative power-sharing at the centre—a version of consensual democracy—than of normative autonomy for non-territorial constitutive units.

4.2.1 *Who Wins? Who Loses?*

Who wins and who loses in such a (still rather theoretical) system? On the positive side, distinct groups that are geographically dispersed can aspire to democratic self-government, while the majority need not fear territorial disintegration. On the negative side, the risk of consolidating systemic mono-identities and of forcing people into fossilized ghettos is undeniable. This is likely not the best way of fostering the peaceful sharing of the same physical and political space. Moreover, it is difficult to imagine how such a system can work for matters which are not closely connected with language, culture or religions. Yet, the interests of minority groups may be related to territorially-based issues, such as natural resources. Creating self-governing institutions could deflect from the real issues which require that their concerns be taken seriously by the overall state or the constituent unit in which they live.

   This being said, in a world in which the geographic concentration of culturally distinct groups is no longer the norm, the idea that some degree of normative power can be held by groups of individuals on criteria other than those of nationality or place of residence, deserves consideration.

4.3 *A Mixture of Territorial and "Personal" Solutions*

Some intermingling of territorial and non-territorial options has actually been attempted in particular instances as a means of drawing on the advantages of each, while minimising their drawbacks.

This is the case in certain forms of aboriginal self-government. In Canada, aboriginal self-government (still in its infancy) translates into institutional autonomy for groups who reside on certain traditional lands. However, given the high proportion of aboriginal people who now live in urban settings, contemporary schemes introduce extra-territorial law-making that draw upon principles of cultural autonomy. Concretely, this means that self-governing institutions can legislate with regards to individuals who reside on the group's homeland, but also with regards to those who are connected to the community but who do not habitually reside in the community. Criteria for determining membership in the community are outlined in specific agreements and legislation elaborated by the community itself. Services can thus be developed by those autonomous institutions, but offered to members who live away from the traditional territory.

The Belgian federation offers another example of this mixed configuration. The country is divided into three Regions, which have competences over matters related to territory (land use, agriculture, environment, transport). The same territory is also divided into three Communities, which are responsible for matters in which culture and language are deemed to be of particular salience. A person is thus simultaneously a citizen of Belgium, of a Region, and of a Community. The distribution of competences is divided threefold, rather than between two orders of government. While Regions have directly elected Parliaments, Communities have indirectly elected legislative organs. All have their own government and civil service. We are clearly in a three-way federal paradigm.

The logic of the system would lead one to think that any person belonging to the Flemish Community, for instance, could receive services in Dutch anywhere in Belgium. This is not the case. For a number of historical and political reasons, Communities only exercise their competences in specific areas. In other words, this "personal federalism" is—paradoxically—also "territorialized". The main advantage of the system is that it allows the two major Communities to exercise some competences simultaneously in Brussels, the capital city.

To avoid the permanent labelling of people, an original solution

was designed. In bilingual Brussels, both the French and the Flemish communities can organize *services* in either language, to which *anyone* can have access. In other words, no one need declare an indelible identity. Concretely, this means that any resident of Brussels can send his or her children to French or Dutch-speaking schools, join a choir financed by either Community, or receive certain types of social services organized by one or the other Community. The freedom of choice discussed above is thus largely respected and the fossilization of identities is partially avoided.

The system is eminently creative and has been studied in a large number of conflict resolution settings. It has drawbacks, however, notably in terms of social cohesion and distrust. Hence, while no one is forced to choose a single identity, the Communities largely function in isolation, creating ever increasing schism between citizens, rather than creating bridges between them.

5. Conclusion

As was mentioned earlier, adapting state structures so that certain groups enjoy a degree of institutional autonomy may be the best insurance for peaceful living together. This being said, such autonomy can also lead to isolation, polarization and a lack of solidarity between peoples who self-govern separately. This is where federal principles, which need not be incarnated in actual federal institutions, come into play. Some balance between self-rule and joint-rule must be found. The balance requires a certain degree of trust, or at least a leap of faith that the "Other[s]" can be trusted. If the proper balance is reached, trust will be consolidated.

Diversity as an asset implies that the interest of diverse groups be duly considered at the federal level, and not merely relegated to autonomous institutions. To avoid excessive fragmentation, polarization and isolation, it is crucial that groups which enjoy institutional autonomy also partake in various forms in common institutions. For one thing, it is likely that a number of policies developed at the central level would impact on them. Their concerns ought not to be set aside on grounds that their major concerns are being dealt with elsewhere. Proper participation through

consultation, guaranteed seats in legislative assemblies, quotas in the executive, the civil services, the judiciary, the police, may be justified to ensure that the voices of diversity are heard. However, such measures also carry a risk of segmentation and the promotion of mono-identities, which can contradict the very objective of promoting diversity.

The risk of segmentation inherent in autonomous institutions and guaranteed rights of participation should be met by deliberate bridges built into the system. If every citizen of Bosnia can only elect their own member of the three-person-Presidency, by declaring their mono-identity, collective action may be illusory. If every Belgian pupil follows a course solely designed by a single community with very little connection with the others, while their parents only watch television in a single language, there are risks not only of ignorance of the other communities, but also of prejudice and of the demonization of the others.

While autonomy may be the best guarantee against oppression on the one hand, and territorial disintegration on the other, it can also have the effect of erecting a "Berlin wall" between people. The metaphor is admittedly strong. But mechanisms for ensuring that children, students, all walks of civil society, politicians, artists, get to know people behind the self-governing diversity are vital. They can include exchanges, common projects and effective communication. At the institutional level, they can lead to limiting or prohibiting mono-ethnic political parties and to promoting cooperation between policy makers. While such trust-building strategies are surely beneficial in any federation, they would appear to be even more so in "post-conflict" situations. Only then can diversity be appreciated as an "asset".

Subtheme Paper

Managing Conflicts of Diversity

Richard Simeon

Abstract

This paper surveys the range, or repertoire, of institutional and constitutional design options that may be considered by policy-makers and citizens seeking better ways to accommodate and manage conflicts associated with ethnic, cultural, and linguistic diversity. While alternative designs for federalism—one of the most wide-spread sets of devices for the effective and democratic management of such conflicts—form the core of the paper, we also address a variety of other institutions whose design will also influence the capacity to manage conflict, and which interact with federalism in important ways. These include electoral systems, the organization of legislatures and executives, the courts, and other institutions such as the bureaucracy and security services. The paper suggests that approaches to conflict management can be grouped into two sets of alternative strategies: those broadly aimed at integrating minorities into the larger whole, and those that stress the political empowerment of minority groups, through devices such as federalism. There is no universal single set of "best practices" for institutional design in divided societies. Much will depend on each country's history, demographic characteristics and culture; as well as on the preferences and political strengths of the various groups. But international and comparative experience shows that countries have experimented with a rich array of options, opening the possibility for much mutual learning.

1. Introduction

The diversities that exist in contemporary societies are themselves diverse. They have varying historical origins. They may be rooted in language, ethnicity, religion, culture, or indigenous status, or in complex combinations of these. They may or may not be associated with systematic differences in wealth or political power. Differences may take the form of a single dominant majority that is associated with one or more cultural minorities, or of multiple minorities with no single majority. Two (or more) self-conscious nations may coexist in a single state (multinationalism); or many cultures may intermingle without seeing themselves as "national" entities (multiculturalism). Distinct ethno-cultural groups may be dispersed throughout the population, or they may be territorially concentrated.

This "diversity of diversities" means that there can be no single or universal set of strategies for the successful management of conflicts of diversity. Any set of constitutional arrangements, institutional structures, public policies, and political practices designed to manage or mitigate conflict must be rooted in a deep understanding of the particular contexts in which differences appear. One size fits all solutions are thus to be assiduously avoided. One of the advantages of federalism is that it comes in so many shapes and sizes; and federalist alternatives will be the major concern of this paper.

However, it is important to explore the broader range or repertoire of responses to cultural diversity that has emerged in modern societies, and to explore some of the conditions under which each might be applicable or appropriate before we turn to federalism itself.

2. Managing Conflicts of Diversity: Normative Values

In a world of politically mobilized difference, it is important to realize that the language and terminology of the debate is itself often contested. The "management" of difference may suggest a top-down concern of the majority that tends to see ethno-cultural

diversities in their midst as a "problem" to be contained, in order to ensure peace and stability, or even to maintain the continued hegemony of the majority. The resulting strategies will not necessarily be aimed at full inclusion and social justice for the minorities. Minorities might look at the problem in a quite different way: for them, "management" will more likely stress recognition, accommodation, inclusion, or empowerment. They will ask whether the regime considers their cultures acceptable, legitimate, and valued. The starting point for the analysis is thus critical. The analysis must distinguish, and take into account, the concerns of minorities for their own preservation and development; and the concerns of majorities.

It is therefore desirable to broaden and extend our meaning of the term "managing conflicts of diversity" to encompass a broader set of values. We may suggest the following more inclusive criteria.

First is *stability*. Indeed countries must find ways to manage their diversities in ways that minimize the likelihood of violence and of threats to the integrity of the state itself. But the danger to avoid is policies that may involve the repression or suppression of minority claims in the name of order.

This suggests, second, that the management of conflict must be fully consistent with the values of *constitutionalism, the rule of law, and democratic practice*, including especially the full inclusion of minority groups in democratic politics, and their rights to free expression and participation in the political process.

Third, the normatively justified management of intergroup conflict must include some measure of *"recognition"*. That is to say that the existence and the identity of minority groups must be accepted and valued; they are not to be seen as the alien and dangerous "other". Difference is not simply something to be managed; it is also something that must be accommodated. The varying forms that recognition and accommodation might take are further discussed below.

Fourth, the successful management of difference requires that we pay attention to *social justice or equality*. Stability and order that leaves some groups permanently disadvantaged economically or socially is unacceptable.

Fifth, no set of institutional arrangements designed to manage diversity can be successful without some *minimum level of trust* among groups, and without a basic commitment of all to *"vouloir vivre ensemble"*, to "*convivencia*", or to *"bundestreue"*. It is true that appropriate institutions and policies can build and strengthen trust, but at the same time these cannot themselves be constructed from scratch. Institution-building to *reflect* an underlying commitment to unity is relatively easy; institution-building to *create* such a commitment in a diverse society is a great deal more difficult. This is one of the major dilemmas for institutional designers in divided societies.

These are, of course, very broad and general criteria for assessing what the desirable "management" of difference might look like. They may, indeed, sometimes be in tension with each other. But as diverse societies address diversity in their own multiple settings, this broader view of successful management is essential.

3. Managing Conflict: A Continuum

The fact is that, given diversity, the range of responses to it, both historically and in the present, is very wide. They can be seen as a continuum.

At one extreme is *repression*, which has all too often taken the form of genocide and forced ethnic cleansing. Next is *exclusion and marginalization*, where minority groups simply exist without meaningful participation in the economic or political life of the larger society. Next is *assimilation*. Here the dominant society puts strong pressures on minority cultural groups to abandon their own values, beliefs, languages, and traditions and adopt those of the wider society if they wish to be regarded as full citizens. Minority cultures and languages will be subordinated, sometimes by force, at other times by persuasion. This was the pattern of eighteenth and nineteenth century nation-building in many European countries, as Catalans in Spain, Bretons in France, or Scots and Welsh in the United Kingdom were "integrated" into the larger whole. It was also the dominant strategy in immigrant societies such as the United States, where immigrant groups were encouraged to

join in the "melting pot". Assimilation need not always be a deliberate strategy of the dominant group; indeed it will often be desired by members of the immigrant groups themselves. Larger social and economic forces will also affect the extent to which new groups either retain their language and culture or gradually lose them.

Repression, marginalization, and assimilation—while unhappily common—do not fall within our criteria for effective management of difference. They do not meet the minimal normative criteria set out above. We need to focus our attention to the next steps on the continuum, *inclusion, integration* and *empowerment*, for this is where federalism joins the tool-kit for effective management of diversity.

3.1 *Integrationist Strategies*

The first set of options to be considered here are what we might label "integrationist". This is a large step away from repression or assimilation. It is based on the recognition of diversity as a defining characteristic of the polity. No longer is it to be seen as mono-ethnic or mono-cultural. It is, as the South African Constitution puts it, to be "united in our diversities". Such recognition can take a great many forms, and embrace narrower or broader conceptions of acceptable diversity, a question that is frequently contested. The fundamental principle, however, is the recognition that to be a full member of the society, economy and political system, it is not required to be of the same ethnic, cultural or religious stock as the majority. Each constituent group is free to use its own language, follow its own culture and customs, and participate fully in the political process without discrimination.

This principle is easy to state in general, but sometimes difficult to apply in practice. In particular, previously relatively homogeneous societies, such as in Europe, have often found it difficult to accept visible differences, and there have sometimes been tensions between the liberal values of their constitutions and the cultural practices of some immigrant groups.

There is a wide array of alternative means of managing diffe-
rence through integrationist strategies. The *constitution* in its
preamble or statement of fundamental principles may include a
declaration that the society recognizes or even celebrates its diver-
sity, may disavow the hegemony of any dominant group, may establish
two or more official languages, and so on. There are many forms
of words by which the principle of diversity and inclusion can be
symbolically stated in broad constitutional language. They may
be of such generality that they have little impact; alternatively, they
may provide an interpretive framework that courts and legisla-
tures will take into account as they assess the constitutionality of
legislation.

Constitutional *Bills* or *Charters of Rights* can also be used to
respond to diversity. Possible provisions include the assertion of
the right of dignity and equality to all persons; and clauses that
ban discrimination on the basis of race, religion, and the like (which
themselves may or may not include specific endorsement of affirma-
tive action to benefit disadvantaged minorities). Individual rights
to freedom of speech, religion, association and the like create condi-
tions in which personal and group differences can flourish. However,
in highly diverse societies, Bills of Rights may also contain certain
collective or group rights, including rights to education and other
services in more than one official language; rights to religious
schools; or interpretive clauses that require the Bill of Rights to be
read in an inclusive manner. They may also include "positive"
rights, such as to clean air, education, or housing, and these may
have particular application to various minorities.

Rules governing *constitutional amendment* in divided societies
will seek to ensure that they do not permit a dominant majority
to impose its will on minorities. Hence, constitutional change will
normally require "super-majorities" and perhaps the specific consent
of minority groups on critical issues relevant to their identity (i.e.
"multiple majorities").

The integrationist approach to managing difference through
electoral systems seeks to blend two different elements. The first is
inclusion: all the constituent groups need to have a voice, and to

be represented in legislative institutions. The system needs to be designed to avoid "winner take all" or simple majority systems of representation, which can leave some groups on the outside looking in. This argues strongly for proportional representation, rather than the "first past the post" or single member district systems characteristic of the Anglo-American democracies. On the other hand, there is a potential danger in proportional systems that political leaders will try to build a base on narrow appeals to specific groups, thus contributing to excessive fragmentation and a multiplicity of sectarian parties. Thus, the integrationist approach seeks as well to create incentives for political leaders to build electoral coalitions that build bridges across groups. Electoral systems that embrace run-off elections, preferential (STV) voting systems, and systems (as in Nigeria) that require presidential candidates to win a majority in a number of regions are said to encourage this. But the impact of voting systems on election outcomes is highly controversial: the effect of any given system depends greatly on the context in which it is being applied. The history of electoral system "reform" is littered with unanticipated consequences.

There is considerable debate in the scholarly literature about the relative merits of *presidential/congressional* versus *parliamentary* systems of executives and legislatures. However, the literature leans strongly to parliamentary options, especially when combined with proportional electoral systems. There are two reasons for this. First, such regimes encourage the formation of inclusive coalition governments, in which multiple interests can be represented; it thus encourages a bargaining and negotiating relationship among contending groups. Second, and closely associated, coalition based parliamentary government helps avoid the potential "tyranny of the majority", and "winner take all" by requiring broad representation in the cabinet and more consensual decision-making. Majoritarianism may well provide for strong and effective government; but diverse societies must find ways to temper majority rule with greater weight for minority interests. Thus Westminster parliamentary systems with one-party majority governments are often problematic for diverse societies especially if political parties are themselves based on group interests or if electoral support for the governing

party is concentrated in only a few regions, leaving the other regions feeling excluded from power. Similarly, presidential systems may be problematic, again because so much power is concentrated in a single set of hands, though countries such as Nigeria have sought to ensure more inclusive presidencies by requiring that winning candidates win support across the country.

Second chambers in national legislatures—Senates—may also be designed to temper majority rule and to ensure representation of minorities.

Other institutions also need to be representative and inclusive of diversity. Among these are the *courts* whose membership should reflect, in law or practice, the constituent groups within a diverse society. This is necessary if their decisions, which must often deal with reconciling group differences, are to be considered legitimate by all parties. *Public services* or bureaucracies should similarly be designed to ensure representation of all groups, and to be equipped to provide services to citizens in ways sensitive to their linguistic and cultural diversity.

Public policies also need to be responsive to diversity. This begins with equal citizenship, and equal rights to the entitlements and services provided by the modern state. But integration frequently requires more—courts, police, and other services able to serve citizens in their own languages and in culturally sensitive ways, and schools that both permit education in minority languages and provide special education for immigrants in the majority language. Policies to facilitate the successful integration of new groups are especially important for those societies (such as Western Europe) that have previously been relatively homogeneous but which now must adapt to the presence of new immigrants.

Integrationist strategies for managing diversity also require that we pay attention to the structure and organization of *civil society.* Here again, two principles are at work. The first is to ensure that minority groups are free to develop their own associations and institutions, in order to ensure their ability to express their own cultures, languages, and values in the private sphere without interference. The potential danger here is that the society becomes defined by mutually exclusive "silos"—"plural monoculturalism"

in the words of Amartya Sen—in which each group lives in its own homogeneous world, with little contact with others. Thus, integration also requires that there be strong associations that bring citizens together across social and cultural divisions—"bridging capital" in the words of Robert Putnam. Public policy can be designed to facilitate such developments in civil society. For example, European Union support for development projects in Northern Ireland has required that the sponsors demonstrate how their work will bring the disparate groups together. Canada has in the past subsidised translation services in Canadian associations.

Federalism may also play an important role in integrationist strategies for the management of diversity. But recall that the dominant idea in terms of integration is, as much as possible, to blur, transcend and cut across differences, rather than to emphasize and institutionalize them. Hence, integrationist approaches to federalism are sceptical of defining state or provincial boundaries along ethnic or linguistic lines, are worried about asymmetry in state/provincial powers, and place greater emphasis on regional/provincial representation at the centre, through strong second chambers. Federalism in this approach is more about limiting power at the centre through "checks and balances", and about ensuring responsiveness to local needs in public policy and administration through devolution and decentralization than it is about empowering minorities.

These integrationist strategies with respect to the management of diversity reflect a basic national commitment to "coming together" rather than "coming apart". They tend to emphasize the "shared rule" dimension of federalism, rather than "self-rule". They constitute a powerful array of institutions and practices for managing diversity. Within this family of alternatives, the debate will be between those that emphasize unity and cohesion, and thus stress the subordination of minority identities to the national community, and those that emphasize more fulsome recognition of difference within the national polity.

But such strategies are more likely to be workable and effective in some contexts rather than others. They may be more successful

in societies with a single dominant culture and a broad variety of minorities; more successful in immigrant societies, where new groups have arrived within a homogeneous society that now has to learn to adapt to the new politics of difference; and more successful when the minority groups are dispersed throughout the society, rather than territorially concentrated.

They will be less successful when these conditions do not apply—when the minority constituent groups have a long established presence within the larger society; when they are concentrated within a particular geographic area; and when their political identities are strong and politically mobilized. In such circumstances another set of strategies needs to be explored: *autonomy and empowerment.*

3.2 *Strategies for Empowerment*

For some groups in divided societies, the tolerance of difference and politics of inclusion implied by the integrationist approach will not be enough. This will likely be the case, for example, when several dimensions of difference—language, ethnicity, race, etc.—coincide, and reinforce each other. The more distinctive the group, if it is a minority, the more it is likely to seek some form of self government. The more disadvantaged—economically or politically—it is in comparison with larger or dominant groups, the more this will be so. But this not always the case: in some countries—Spain, Belgium, Canada and Bolivia, to take just three examples—it is often the wealthiest regions that seek autonomy, in order to preserve the advantages for themselves. The stronger a group's historical roots and associated culture, the more likely it will seek empowerment in order to protect the culture and to possess the institutional tools for its growth and development. When these elements combine, the more likely it is that the group will have a strong sense of its own identity and values, perceive differences with the wider society that are not easily reconciled, and have a high degree of political mobilization. Hence, successful management of this level of diversity will most often require institutions and practices that

permit significant autonomy. This is especially the case in countries that can be called multinational, in which two or more nations coexist in a single state.

The most widely practiced political arrangement with respect to these differences is federalism. It is not the only one. Where the groups are dispersed through the population, rather than concentrated territorially, other methods may be used. For example, in the Dutch case first described by Arend Lijpart, the separate religious and cultural "pillars" had considerable autonomy over their educational, social welfare and other policy areas, but without the structures of federalism. His term for this is *consociationalism*; another is *power-sharing.*

Indeed, there is a wide array of non-federal arrangements aimed at empowerment and autonomy. The *constitution* may explicitly recognize the presence of multiple nations. *Bills of rights* may give greater weight to collective rights; and constituent units may be allowed to develop their own distinctive Bills of Rights. *Electoral systems* are likely to be highly proportional—especially important when group members are not territorially concentrated. *Legislatures* may embody specific quotas for under-represented minorities. Whether presidential or parliamentary, the *executive* will likely embody power sharing among the groups. This may be achieved by a collective or rotating presidency; or by inclusive coalition cabinets, rather than single-party governments. The organizing principle for central government institutions is likely to stress consensus decision-making rather than winner take all majority rule or minimum winning coalitions. On issues of critical importance to minority groups "double majorities" or "mutual veto" may be employed. *Public policies* may apply differently to different groups; and, as much as possible, decision-making will be delegated to them. Approaches to *civil society* will be less concerned with building "bridging" capital; and more willing to accept that there will be strong group-based civic organizations, often called "bonding capital".

But where, as is most often the case, the groups are territorially concentrated, then federalism is the preferred strategy for successful management. Indeed, it has been pointed out that all countries

with territorially organized differences practice some form of federalism. The rationale is simple. Federalism provides the institutional space within which the minority can make its own decisions and pursue its own values, without requiring the consent of the majority in the central government. Similarly, clear areas of provincial jurisdiction protect the group from the values or preferences of the majority being imposed on them. In linguistically divided societies, federalism provides the social and political space in which minority languages can flourish. In general, integrationist strategies aim for managing conflict through the full *engagement* of minorities; empowerment strategies do so through a measure of *dis-engagement.* The two strategies may, however, be combined. Institutions, politics and policy in many countries often embody elements of both.

There are of course almost as many varieties of federalism as there are countries that call themselves federal. And of course some countries that do not call themselves federal have very significant degrees of devolution of authority and autonomy to specific groups. Nevertheless federal systems that emphasize group autonomy and empowerment will likely embody some or all of the following characteristics.

First, it is likely that the *boundaries* of states or provinces will be designed to coincide with group differences. This is the direction in which India has moved since independence. This is of course, not easily achieved when populations are interspersed. In such cases a central challenge is to find ways to ensure the rights of the minorities within the constituent units.

Second, the constitutional *amending formula* is likely to require a high level of agreement, and to be designed to require the consent of a large majority of the constituent units, or, in some cases, unanimity.

Third, the *division of powers* will assign a wide range of responsibility to the units, allowing them considerable discretion in developing and implementing their own public policies. This may not always be the case. In some of the most diverse federations, central governments, fearing demands for ever-greater autonomy by states and provinces, have sought to constrain and limit the degree of decentralization, but often at the cost of severe resistance and

counter claims by the minority. Sometimes, residual clauses may allocate un-assigned powers to states or provinces. In some or all areas units may have paramountcy when policies conflict, rather than always assigning paramountcy to the central government. In general these federations will have strict limits on the power of central governments to monitor or influence provincial policies. An important question is whether powers will be assigned in the same way to all units ("*symmetry*") or whether some units—those that come closest to embracing a distinct nation—will exercise a broader range of powers ("*asymmetry*"). Asymmetry may be written into the constitution, or, more commonly, exist in the political practice of the federation. It is often controversial, and may be especially de-stabilizing if one or two large regions are accorded differential status.

Fourth, *fiscal arrangements* are likely to assign wide revenue raising and spending powers to the states and provinces. Inter-governmental transfers from the centre to the units are likely to include few—or no—conditions.

Fifth, *intergovernmental relations* are likely to be structured as a relationship among equal "orders" of government rather than as a hierarchy between "levels" of government.

Sixth, *second chambers* may be designed to directly represent states or provinces at the centre, perhaps with their members directly accountable or responsible to unit governments. This may also be the case in some more ethnically homogenous countries such as Germany.

Thus, federalism in deeply divided societies, those with territorially concentrated, self-conscious, politically mobilized minorities—or nations—are likely to be more decentralized than federations in societies that are more homogeneous, or whose minorities are numerous and geographically dispersed. In the former the dynamic forces are likely to be centrifugal; in the latter centripetal.

The design of federal systems is often contested. Self-conscious regional groups are likely to argue for greater decentralization, more asymmetry, and so on. Majority groups may well be much more concerned with ensuring the capacity of the central government to enact country-wide policies, and to establish "national standards"

in public policy. Whether responsibilities should be distributed symmetrically or asymmetrically is also often contested. So is the status of "minorities" within the units. The worry is that when a state or provincial government is dominated by a single group, the rights of others within the community may be undermined. There are, however, solutions to this problem. They may include a strong country-wide bill of rights that prevents discrimination at the provincial level; or policies of devolution or decentralization within the province to ensure that their minorities too have their own political space.

Another common challenge to federalism arises when there are major disparities in size, wealth, and resources among the constituent units. Perhaps the most contentious recent issues concern cases where natural resources such as oil and gas are territorially concentrated. The natural tendency is for groups in resource-rich regions to wish to benefit from them as much as possible. Indeed, possession of such resources may stimulate the growth of nationalist autonomous movements. On the other hand, national majorities and units without resources will argue for central control and the distribution of benefits across the whole country. Finding the right balance between autonomy and a "sharing community" is an immense challenge.

Perhaps the most difficult issue is rooted in the idea that federalism is always as much a process as a permanent state. The question then becomes whether the underlying dynamic is a continued "*coming together*" or instead one of a "*coming apart*". The minority may worry that the existing federal model provides insufficient recognition of its distinctiveness, and too few powers to express their values and preferences. They are likely to push for further decentralization and greater asymmetry. The majority fear is that such a dynamic may lead down a "slippery slope" in which the logical stopping point is not decentralized federalism, but secession.

Indeed a critical question, given mobilised autonomist groups, is whether the most effective way to ensure their continued membership in the country is to accede to claims for greater recognition and empowerment; or whether to emphasize the equality of provinces, and the integration of the minority into the institutions

and processes of the wider society. A reconciliation of these contending views may be found not in seeing these as fundamentally incompatible strategies, but rather in seeing them as complementary. That is, empowerment of the minority requires "building out" in the sense of strong provinces and a decentralized federation. Maintenance of unity also requires strong measures to represent the minorities within the institutions of the central government— "building in". Thus, the most successful strategies for managing diversity will not be found in a debate between "either/or" but rather in the search for "and/and" solutions.

4. Conclusion

This overview has drawn two sets of distinctions. The first was that between strategies for managing conflict that emphasise inclusion and responsiveness to ethno-cultural differences—integrationist strategies—and those that emphasize the autonomy and empowerment. Each of these families of alternative responses has of course many variants, only a few of which have been sketched out here. It is not possible to specify whether one or other strategy is "better". That depends on the particular characteristics of the individual country, and on the aspirations and values of its citizens and leaders.

Moreover, in many countries we find combinations of elements of the two approaches. This is because in many countries different types of diversity coexist—they are both multicultural and multinational. Responses will need to differ for each situation.

The second distinction was between responses to diversity that focus on the institutions and processes within the central government and those that focus on federalist options. Again, there is no either/or choice here. Federalist solutions on their own can never be sufficient; but centrally-focused solutions cannot work on their own wherever regionally based groups exist.

The purpose of this paper has not been to argue the case for any particular set of options for managing diversity, either in general, or for any single country. Rather it has been to show the enormous variety of responses to diversity, and to underline the wide range of choices that citizens and leaders have before them. Those choices

will be unique to their circumstances. But they will be enriched by an awareness of the available palette, and by coming to a fuller understanding of the choices that others have made, and their experience of successes and failures.

Finally, to repeat, successful management of diversity must respond both to those groups making claims on the majority and to majority concerns. They must embrace not only the value of peace and stability—critical as they are. They must also embrace democracy, equality, and the capacity for effective government in a complex world.

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ANALYTICAL SUMMARIES OF WORK SESSIONS

Nation Building and Diversity

Work Session 1: Can Unity and
Diversity be Reconciled?

Work Session 13: Can Deep
Differences be Accommodated?

Lidija R. Basta Fleiner

1. Introduction

John Stuart Mill's conception of liberal democracy was built upon
the assumption that "free institutions are next to impossible in
societies with different nationalities". Since then, the nation state's
evolution from a mono-national into a multicultural state has
become a reality both in the constitutional politics of many states
worldwide, notably multinational federations, and in the largely
embraced scholarship on multicultural citizenship. More impor-
tantly, the same issue already became addressed within interna-
tional settings outside academic debates.[1] The prevailing debates
are now between differing conceptions of multicultural states such
as assimilation model-citizenship without nationalities and civic
state for a majority nationality[2]—and the integration model-
citizenship out of democratically integrated nationalities (pluralistic
democracies).[3] These taken together with identities emerging from
migration, where a "rupture" between territory and cultural identity
occurs, creates a global paradox of two processes running parallel:

"nation-building" on one side, and "breaking of nations", on the other.

In this context, the major questions and arguments outlined in the background readings for this subtheme flagged some of the most important ambiguities related to nation-building in multi-cultural (multi-ethnic, religious and linguistic) societies. Both work sessions had first and foremost to address the viability of nation-building in multicultural societies, although from different perspectives: those of constitutive principles and institutional set-up of federal politiy respectively.

2. Case Studies, Key Issues and Lessons Learnt

2.1 Reconciling Unity and Diversity: Malaysia, South Africa and India

Discussions at the work session with the presentation of the cases of Malaysia, South Africa and India "did not convince" that unity and diversity could be accommodated by different federal designs. Normative arguments and description prevailed over policy analysis and reflection on why and how more in particular this reconciliation can effectively work. The following key questions remained un-addressed: (a) in what phase of constitution making as a nation-building process diversity has to be built already into unity, and (b) why a given federal design not only accommodates but also further promotes diversity? In particular, the session missed the opportunity to demonstrate the centrality of trust and tolerance as state-making and nation-building values that sustain "federal qualities of the society". This is why it also fell short to identify a critical level of reconciliation between unity and diversity, as a condition sine qua non for nation-building. Nevertheless, the case presentations and the debate did cover some of the pertinent issues, and did provide quite a few relevant lessons learnt.

To start with, the three cases demonstrated commonalities, but also significant differences. In particular all three made a relatively smooth transition from colonial rule to representative democracy during the second half of the twentieth century. The main chal-

lenge for all three states post-democratization was the reconciliation of various divisive forces that the policies of the colonial regimes had created to preserve their own interests. Considerable success has been achieved in making the necessary changes, albeit using different approaches in each state.

2.1.1 *Malaysia: Constitutional Judicial Review Matters*

Malaysian presentation focused on constitutional aspects of reconciling unity and diversity, with respect to the jurisdiction of Sharia Court over non-Muslims. The framers of the Malaysian constitution interpreted the role of Islam more broadly than the colonial government, which confined it to cover personal law. Article 3(1) of the constitution proclaims that "Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation." Unlike earlier rulings, which applied Islamic law only to Moslems, the majority, more recent judgements, including those arrived at by the Federal Court, interpret Article 3 as a constitutional basis for the application of Islamic Law to also cover non-Muslims. This "new approach" has become a critical factor in raising religious and communal tensions, thereby undermining respect for religious diversity that character- ized post-colonial Malaysia.

The Malaysian case underscores the paramount role of judiciary in protecting minority rights. The absence of judicial restraint and a growing practice of the Court to use implied-powers doctrine in order to expand the application of what was intended as personal law proved detrimental for intercommunal peace. The role of formal institutions notwithstanding, the Malaysian presentation con- cluded that "fairness of state action and multicultural civil service, including the role of personalities within, can reconcile between unity and diversity". However, a major issue in the Malaysian example appears to be the ambiguous formulation, and indeed paradox, of Article 3(1) of the Constitution, which proclaims Islam as official religion and at the same time guarantees religious freedom. Indeed, this case highlights structural obstacles in recon- ciling unity and diversity where the public sphere remains domi- nated by a majority community.

2.1.2 *South Africa: A Two-Stage Constitution Making Becomes a Stepping-Stone for Nation Building*

The peaceful democratic transformation of South Africa's emerging nation is one of the unique political events of our time. [4] The new Constitution "proclaimed non-discrimination on every page" because of the recent history of apartheid. The challenge posed by racial diversity (paramount amongst other forms of diversity) was defused by emphasizing individualized identity rights and creating a robust constitutional court. In 1996, when the Constitution of South Africa was passed, constitution making, at least, seemed to be the easiest part of nation-building. The more difficult part concerned state organization. For the great majority of the country's black population, federalism was compromised because of its association with apartheid policies—particularly the creation of native 'homelands'. This is why the constitution has no mention of the 'F' word and has strong unitary features. Consequently, federal elements, such as separated lists of competences, shared power and a supremacy clause, were left to the interpretation of the courts. Moreover, the Court has the power to review the compliance with some of the unamendable constitutional principles in the interim Constitution. Not surprisingly, this has allowed courts to play a very active role. Some have criticized the "judicialization of federal claims" in South Africa. In the long run it remains to be seen whether the emphasis on racial diversity precludes the accommodation of other cleavages. Furthermore, the existence of a dominant national party in the form of the ANC makes the functioning National Council of Provinces less effective.

As we have seen in both Malaysia and South Africa, judicial activism has the potential to exacerbate cleavages in multicultural federal states and bring into question the long-term viability of reconciliation between unity and diversity. In addition, both cases illustrate settings in multicultural societies where nation-building takes a form of a "daily plebiscite". This is why both state organizations and their functioning are sensitive elements that sustain or menace the balance between unity and diversity. Striking the balance between unity and diversity is a never-ending process.

The South African two stage model of negotiating an interim constitution and constitutional principles that were binding also

for the freely elected democratic assembly—notably the inclusion of a constitutional court created under the interim constitution in the process of reviewing the final one—is particularly instructive. The South Africans successfully combined the need for a provisional government with the requirement of subjecting this form too to constitutional limitation, The constitutional assembly in South Africa was built on the pluralistic inclusion of the main political forces, publicity and adherence to the rule of law, which was supposed to compensate for the missing principle of democratic legitimacy, since the interim constitution had no link to the will of the electorate.[5] The experience leads to a key question of constitutional politics: How to *democratically* reconcile between unity and diversity? Can the sources of *democratic* unity in a multicultural state remain liberal? The questions are by no means purely academic. They directly affect the chosen nation-building policy in bringing unity and diversity together, as in the case of the Indian constitution.

2.1.3 *India: "A Unique Civilization of Togetherness"*

The largest and most populous multicultural federation worldwide, India, best illustrates that diversity in embracing the values to compose the state human rights policy, is first of all historically and culturally driven. For instance, although United States and India are two federal constitutional democracies that even share the same legal tradition of common law, conceptual settings on policy choices in human rights protection cannot be more different.[6] Whereas in the United States federation individualism and equality of opportunity back an absolute nature of civil and political rights, in India, the logic of constitutional design draws heavily on negotiating the values of citizenship which affirms positive group difference and differential rights of minorities through personal application of laws in a pluralist and historically unequal society. Constitutional and statutory provisions for preferential discrimination in favour of disadvantaged groups are sharply at odds with liberal principles of equality.

    In matters of religions, social practices and political philosophies, India always stood against monolithic structures. Historically, the challenge of governance mainly lay in persuading people to live with conflicts by accepting them as facts of life and by iden-

tifying areas of unanimity. Religion has always been a driving force in India. This is why two pillars equally stand for modern India: (a) respect for the inherent spirit of diversity, and (b) the centrality of secularism in creating a sense of unity. A cohesive nation-building out of manifold, complex diversity went hand in hand with extremes of social and economic inequalities. Nevertheless, when compared with most of other post-colonial countries, India's achievements are impressive indeed. In a nutshell, India could be taken as a "classic example that unity and diversity can be reconciled", provided that the system proves to be flexible and adaptable enough to new challenges for unity in diversity. Against the background of globalization and ever growing social and economic disparities, an adequate and effective developmental and social policy is of the utmost importance for keeping unity and diversity together.

It is regrettable that due to lack of time more attention could not be paid to the effects of economic globalization upon federalism and, in consequence, upon national unity in India. This issue has already been for some time on the research agenda in India, and a major question has already been posed: "Does globalization signal the decline, or regeneration of Indian federalism?" Some claim that in India, globalization has augmented disparities among states and produced paradoxical results. The Indian Constitution entrusts the states with the major tasks of development including infrastructural development. Consequently, it has significantly increased the importance of the states. Hence there has developed a fierce competition among the states for benefits. In other words, while globalization has allowed more autonomy of action in favour of the states to reap the benefits of global economy, this has at the same time prepared the long-term basis of crisis in Indian federalism itself. [7] This is why today the All-India services play an important role because they allow for the participation of the states in a centre policy. This can be seen as an institutional chance for a better promotion of inclusive economic and social policies, as a condition sine qua non for a critical level of unity in diversity.

The discussion also raised important questions about the success of the Indian model. Indian civilization dates back 3000 years, with strong liberal values having been carried through each

generation. The process of constitution-making has historically produced widespread problems in India. Little effort is made towards identifying the problems and suggesting systematic strategies to solve these issues, which have consequently become a perpetual problem in India. Founding fathers of India were anxious in keeping and strengthening its unity by means of a secular state. And yet, 60 years after independence India still does not yet have a common civil code, which shows that a significant part of the population does not accept secularism. India's public policy has to be further developed, in order to strike a proper balance between unity and diversity. In this respect grass roots policy becomes especially important. There is not enough unity at micro level, which is at the periphery and feels marginalized.

2.2 Accommodating Deep Differences: Ethiopia, Nigeria and Iraq

Many experts uncritically promote federalism in its various forms as a panacea for multicultural societies with deep community cleavages, notably those coming out of ethnic wars. According to them federal arrangements offer the best option for governance designed to reflect diversity and consociation, in terms of political recognition and representation. However, in multi-ethnic/multicultural societies, quality of governance and accommodating diversity depends heavily on a type of democracy within which they function—majoritarian or consensual. It is interesting to note that globally, the power-sharing constitutions combining proportional representation and federalism are relatively few (only 13 out of 191 states). Indeed, empirical evidence suggests that proportional representation based electoral systems, and not federalism or other types of power-sharing arrangements, better allow for democratic inclusion and participation. The implications for policy makers are clear: investing in basic human development is probably a more reliable route to achieve stable democratic governance than constitutional design alone.[8]

Work Session 1, repeatedly underlined the importance of inclusive developmental and social policy both for national unity and for the accommodation and promotion of existing diversities

in one country. Work Session 13 also followed up on this major argument. The effects of federal arrangements in all three countries on accommodating deep community differences were considerably contextualized. Common to all three cases in this session are the problems of poverty, inequality and security, to a certain extent also manipulation with diversities. In all these countries security has the priority over equality and poverty.

2.2.1 *Ethiopia: Can Ethnic Federalism Work?*

One of the consequences of the secession of Eritrea was a new federal design for Ethiopia. Usually known as a paradigm for ethnic federalism, the federation has two unique elements in its constitution: (a) right to secession is constitutionally guaranteed, and (b) the federation is organized on ethnic and not territorial lines. The principal difference with other two federations discussed in this session is that both Nigeria and Iraq are organized on a territorial basis. Ethiopian recognition of both ethnic and territorial identities shows that ethnic federalism too is "looking for its territory", since federation is per se a form of territorial federalism.

The right of people to self-determination based on secession is by its very nature radical. Even more radical is the inclusion of such a right into a constitution of an African state, given that empowered regions are controlled by various ethnic groups. During the discussion a caution was raised against encouraging secession. For example, the Gorkhaland issue in West Bengal, India was at one point secessionist, but the negotiations "convinced them to stay". However, the main condition for such an outcome is that the negotiations in case of the secession demands must start without any conditions. International and internal actors of Kosovo secession on both sides obviously decided to ignore this key rule of conflict-mediation. Besides, Biafra is today still part of Nigeria, albeit it at the cost of civil war.

Two more general lessons followed from the discussion—First, the constitutionalization of the right to ethnic self-determination as the right to secession ("ethics of secession") may be an effective way to discourage secession. Indeed it can enhance stability of the federal order by taking the form of an instrument in constitutional

politics to manage intercommunity conflicts, and a strategy to make the common state legitimate for all its community: hence the centrality of constitutional safeguards against unilateral secession. Second, building on ethnic lines may very well mean ignoring heterogeneity within ethnic groups. Ethnic, multicultural federalism as inherently group-accommodating does bear illiberal challenges to democracy in the sense of individualist equality and liberty.

2.2.2 *Nigeria: Big Cost of Diversity Accommodation*

The cost of accommodating diversity in Nigeria has indeed been big: civil war, continued and endemic civil and ethnic strife, and conflict over oil resources matter more and more, thus becoming a new source of conflicts. How to build a nation was and remained a challenge. The Constitution says "we the people", but "who are the people?" Territorial accommodation has not solved the problems: Nigeria already has 36 states. The courts are audacious in supporting the Constitution—this is how diversity tensions were managed. There is no single state religion, which is important considering the ongoing debate on implementation and applicability of Sharia law. The ongoing debate cuts across the process of re-defining identity politics, inter-confessional conflicts and state legal policy, and is highly politicized. Still, Nigerians have passed a critical threshold of nationhood and agreed to stay together, with the centre getting very strong. On the other hand, Nigeria has to address the problem of new federal arrangements "otherwise it will be reduced to an asset sharing instead of nation-building taking place".

The following lessons of principal importance were drawn from the Nigerian experience: Territoriality alone is certainly a challenge for the indigeneity. When states are building blocks of federalism, rather than ethnic, religious and linguistic groups, identity politics as a way to accommodate differences is put in question since new states formation becomes a leading principle of territorial federalism. The Sharia debate on related practice and policy-based issues is in fact linked to fundamental questions on the relationship between the state and religion, as well as on state's institutional design within multi-religious African context. Such issues will undoub-

tedly have an impact on the secularism of the modern state, the supremacy of the federal constitution, equality before the law and the immanent limits of legal pluralism within a federal state organized as constitutional democracy.

2.2.3 *Iraq: Is Federalism at All a Solution?*

In discussing the case of Iraq there was, paradoxically, no mention of the most important issue related to nation-building: the crisis of democratic legitimacy in a post sovereign state. The sharp polarization over federalism in Iraq today highlights this crisis since the constitution making process is at odds with the process of nation-building and, consequently, against democratic legitimacy. Both nation-building and nation sustainability inherently require democratic legitimation, particularly in the context of building a viable federation. The process of constitution making in Iraq was non-inclusive and did not adequately address concerns of nation-building, nor did it articulate a rationale for national unity. More importantly, the process irreversibly brought into play external actors, particularly the "international community". In other words, Iraq is a telling example for the process and results of a supranational constitutionalism without "constitutional demos".[9]

How else does one understand the key message in the presentation of the case on Iraq: that federalism in Iraq is facing prematurely rejected, since except Kurdistan no region has been formed until now! The fears that federalism will lead to the dissolution of the country, shared by many, demonstrate the lack of democratic federal consensus, which is of foundational importance. To date, Iraq seems to be a contested and manipulated state, where mistrust dominates community conflicts. It almost equally stands for those who embraced federalism as a solution, associated it with liberty and the rule of law; hence their feeling of betrayal. Another important message: "Sunni-Shia conflict is only partly true." The managed constitution-making, like "managed democracy" has "a soft representation and hard manipulation". To put it in a broader perspective: like in democracy's doubles, the distinctive feature of these new constitutional constructs is that they bring "not so much hope but the sense of betrayal".[10]

3. Federalism and Diversity Accommodation: Major Paradox

The issue cutting across both work sessions can be formulated as follows: How, and under what conditions can federalism become conducive to reconciling unity and diversity, by accommodating deep differences? Understandably, this question of the utmost relevance can not have a straightforward answer. On the other side, one of the indisputable conditions sine qua non, recognition and representation of diversities, faced in all six cases the same problem: representing all relevant groups is almost always possible, until one group or another uses its presence in power sharing only to bring down a common state. Does exclusion become legitimate in such cases? Definitely not; it is only here that the issue of striking a viable balance between unity and diversity starts. Federalism cannot be imposed and must remain open for re-negotiations, however far-reaching the outcomes might be in some cases. How to democratically reconcile political and cultural (ethnic, religious, linguistic) pluralism? This is a major issue of multicultural federalism. Consequently, federalism can democratically meet multicultural challenge only if it becomes intrinsic part of democracy, i.e. if not only unity, but also diversity becomes a constitutive principle of democracy. If that is not the case, federalism fails to meet its major challenge: not to radicalize the differences to which it was supposed to be a solution. It means that federalism should address and accommodate structural causes of mistrust and intolerance in a given society (for instance, constitutional conflicts as per se ethnic conflicts). This is why multicultural federalism has an immanently built-in paradox: Multicultural federalism starts with a low level of legitimacy due to the lack of trust and tolerance. Multicultural federalism has in fact to create its own preconditions.

Notes

1. See Parliamentary Assembly Recommendation 1735 (2006) of the Council of Europe.
2. Civic and ethno-civic concepts of nation.
3. The Swiss concept of "Willensnation": Nation as a will to democratically

accommodate and promote traditional language and religious diversities in the country.

4. In South Africa, e.g. the ANC had almost 2/3 of the seats in the constitutional Assembly, and yet it was limited by the 34 constitutional principles and the power of the Constitutional Court, a mere *constitué*. Without analyzing that old distinction in detail, should not democratic legitimacy trump all other forms in the process of building a democracy? Should restrictions insisted on by small groups tied to the oppression of the past, and still having the forces of violence at their disposal, bind the will of the people as the *pouvoir constituant*? The question ultimately has to do with the identity of the people. Cf. A. Arato, supra.

5. See more in A. Arato, 'Post Sovereign Constitution Making and Democratic Legitimacy' in Tine Stein, Hubertus Buchstein, Claus Offe (Hrsg.), *Souveränität, Recht, Moral: Die Grundlagen politischer Gemeinschaft*, Campus Verlag, Frankfurt/New York 2007, pp. 92-105.

6. G. Johnson, 'Human Rights in Divergent Conceptual Settings: How Do Ideas Influence Policy Choices?' in D.L. Cingranelli, *Human Rights. Theory and Measurement*, St. Martin's Press, New York 1988, pp. 41-59.

7. The so-called states' rights may not be as much people's rights assuring. It must not be forgotten that this re-federalization of the Indian polity, or true federalization ever taken place, is market oriented and globalization-friendly! Second, given the growing inter-state and inter-regional disparities in terms of investment, whether by FDI, or otherwise, when placed in the context of the withdrawal of the Central state, there is genuine ground for fear that the situation will accentuate inter-regional tensions and encourage ethnic conflicts, which will affect adversely the sense of national identity. The researchers are already making the distinction between the 'forward states' and 'backward states' in development terms, which have immense ideological and political implications for India's unity and integrity. (H. Bhattacharyya, *Globalization and Indian Federalism: Current Trends*, online publication, www.federalism.ch, 2007)

8. More in P. Norris, *Stable democracy and good governance in divided societies: Do power-sharing institutions work?*, Online publication of the Harvard School of Governance, RWP 05-014, 2005.

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Autonomy and Diversity

Work Session 2: How do Institutional Arrangements for Diversity Evolve over Time?

Work Session 14: How do Devolved Systems Deal with Autonomy?

Christian Leuprecht

Cultural, ethnic, and other forms of diversity pervade many of the world's federations. As a matter of fact, they are the reason why a majority of federal countries in the world, and virtually all federations in the developing world, opted for a federal *modus vivendi* in the first place. Deep societal diversity is also the reason why in several unitary countries that have been marred by notoriously intractable conflicts, such as Ethiopia, Sri Lanka, Sudan, Iraq, and Nepal, a reluctant consensus in favour of federalism as the only workable political solution is gradually emerging. Diversity, then, is a political liability. At the same time, however, it is an asset, both in terms of societal flourishing as well as a testament to political and democratic maturity. On the one hand, diversity poses perhaps the single most formidable "problem" to be "managed" in modern polities. On the other hand, in heterogeneous federal systems, diversity has actually proven a source of great resilience and strength, to the point where it becomes a hallmark of national identity and pride.

The objective of this theme was to examine the relationship between autonomy and diversity, that is, to explore accommodation as a source of strength. Like other themes, it was broken up into six subthemes, from the deceptively simple "can unity and diversity be reconciled?" to the truly complex "can deep differences be accommodated?" Accommodation is not necessarily a source of strength. Similarly, diversity's potential as a source of strength may easily be squandered if it is not appropriately accommodated. Among the great challenges of federative and prospective federal arrangements in the twenty-first century is the balance between shared rule and self rule. That balance hinges on the way autonomy is understood and operationalized. The great federal challenge with respect to diversity in the twenty-first century is to ascertain what sort and degree of autonomy is best suited to what circumstances. The challenge, then, is to gain a better understanding of the micro-causal mechanisms and contexts that allow autonomy to be harnessed as the key variable to intervene in diverse societies to maximize returns on both political accommodation and societal strength.

This is the sort of question for which the experience from comparative case studies is indispensable. As such, the subject optimally suited for discussion in the sort of multi-national forum the 4th International Conference on Federalism provided. The issues were broached by means of case-study presentations from old and settled federations (Switzerland/Canada), young federations (India, South Africa, Nigeria), and aspiring federations (the Philippines and Iraq), to conflict-ridden countries (Nepal) which are pursuing a federal solution.

In the run-up to the conference, the background paper by Johanne Poirier, a Belgian-Canadian comparative legal scholar, had identified several key possible sources of contention. In diverse societies, linguistic rights for the protection of minorities can be understood as collective rights. The right to autonomy, however, extends beyond the benefit of rights and certain constitutional protections. Autonomy is the right to determine the norms which governs one's society. As such, autonomy is a source of empowerment, usually for a minority group. In return, it means a majority group has to relinquish some of its power. (That means

having to establish those sort of minority groups that have legiti-
mate recourse to stake which sort of claims against the state.) The
nature of these claims will determine and constrain the possible
institutional solutions to these demands for autonomy. Such claims,
however, are grounded in "thick" conceptions of identity such as
culture, ethnicity, language, or religion. These are primordial in
character in the sense that they are difficult for outsiders to acquire.
By essentializing ethnic identity, they end up segmenting society
precisely along these faultlines. Hence the need for deliberate and
intentional trust-building schemes to counteract the propensity
towards societal segmentation that is inherent to collective-rights
claims.

In the course of group discussions, however, it turned out that
often this may not be the whole story. Were it simply a matter of
finding a *modus vivendi*, why is it that the most virulent and divi-
sive debates are about entrenching these institutional arrangements
in the Constitution, with the minority insisting on constitutionally
entrenched mechanisms and the majority resistant to such formal
solutions? In effect, the causality between institutional arrange-
ments, societal segmentation, and inter-communal mistrust in most
cases has problematic antecedents that are exactly the reverse.
Frequently, the majority group has monopolized power for a long
time and has exercised it to dominate the minority group. That
has given rise to grievances, resentment, and mistrust on the part
of the minority. As a result, the enterprise of accommodation is
already characterized by mistrust long before the parties might ever
even arrive at a consensus. In fact, precisely this mistrust makes
agreement so exceedingly difficult to reach. The degree of mistrust
often implies that the minority groups are unwilling to settle for
anything less than an institutional arrangement which is entrenched
constitutionally.

Mistrust between the groups in conflict requires the solution
that is profoundly political in nature. However, for that solution
to be acceptable to the minority, it has to be placed beyond the
reach of vernacular politics. While the minority does not trust the
majority to hold up its end of the bargain, the majority is
mistrustful of the way the minority might use any newfound

autonomy. In short, mistrust is not just the result of institutional solutions that foster societal segmentation. Rather, the whole process is marred by mistrust from the very beginning. For precisely that reason, the process is profoundly political: The challenge is not just to find a solution to some everyday problem; instead, the challenge is to reach agreement on the foundations that will frame future cohabitation and prevent those abuses of power that conjured up intercommunal mistrust in the first place. In short, one might say that the politics of diversity in federal systems is, ultimately, not about consummating a marriage but about sealing the terms of a separation agreement and an eventual divorce, were the conditions of respectful cohabitation not to be respected.

It is customary to think about federalism in terms of state structures. As a result, institutions are often the primary object of inquiry in discussions on federalism. How are institutions that recognize diversity but prevent ethnic differences from being politicized, or prevent ethnic identities from being entrenched and reified, to be designed? To what extent it is needed to have territory-based federal solutions balanced with non-territorial, i.e. ethnicity/culturally/religious/linguistic-based federal solutions? Is one better than the other, or would perhaps a combination of the two principles of territory and ethnicity/culture/language/religion work best? The discussions around the first theme "Building on and Accommodating Diversities" complemented the institutional preoccupation with a greater emphasis on society as well as the state as the authors of federalism. A social compromise on living together—and willingness to compromise—is of foundational importance. The importance of dialogue, trust-building, and tolerance were emphasized repeatedly, especially as an indispensable source of legitimacy of a federation.

Countries where federalism is emerging as the sole workable *modus vivendi* often lack a strong tradition of the rule of law, of popular sovereignty, or of constitutionalism. That is, the law is not necessarily applied equally to all citizens by impartial courts, the locus of sovereignty is often not the citizenry itself but only a fraction of that citizenry and/or the institutions of the state it controls, and the constitution is either not applied systematically and consistently

and/or it is not considered legitimate by parts of the population. Of course, such societies also lack many of the other prerequisites of a functioning federal system, such as a civic culture which accepts, respects, and tolerates difference, interest groups with cross-cutting cleavages (that is, where interests are not aggregated solely along ethnicity, language or religion), a functioning multi-party system, and a capitalist system as a means for the indispensable redistribution of wealth. So, aspiring federations often lack the sort of political, societal and economic cultural prerequisites that are necessary for a federal system to function, that is, for norms of accommodation to be diffused, for them to work and for them to be a source of strength. In other words, the deck appears to be stacked against federalism as a political solution to intercommunal conflict.

This presents a formidable challenge: Which of these prerequisites must be in place for a federal model of accommodation to prove a source of strength for its society? Which conditions are necessary, which are merely sufficient? Is there a particular order in which these conditions must be established, that is, does path-dependency matter and, if so, in what way? Can a federal solution be implemented successfully when some or even most of these conditions are not yet in place? To what extent can federalism represent an antecedent that may actually provide a fertile impetus for these other conditions to emerge and flourish? Intriguingly, faced with such unfavourable odds, genuine federal solutions—that is, those that endeavour to establish all the requisite conditions—are actually surprisingly resilient. In deeply divided societies such as Canada, Belgium, Switzerland as well as India, South Africa, and Bosnia Herzegovina, federalism is not only a *modus vivendi* of last resort but also a source of strength (or "value added" as economists might say). As federal societies, they are a testament to a collective recognition that the whole (and the common good) is greater than the sum of its parts.

So, institutional and constitutional architecture is key to the accommodation of diversity in federations. But we do not yet know enough about the endogenous and exogenous conditions, circumstances, and variables that determine the probability of success. In the course of the discussion there was, for instance, broad

agreement that it is desirable that structures of governance represent ethnic diversity. But there was also a general sense that institutions in and of themselves and solutions premised solely on institutional design have inherent limitations. In the course of the discussion it became evident that sociological research into federalism is a new frontier in this area of research, one that requires much greater attention than it has received thus far.

Federalism, in other words, is as much—if not more so—a bottom-up enterprise as it is a matter of top-down design. This source of legitimation warrants far greater attention than it has received so far. For an effective, bottom-up federalism, civic education and an active civil society are essential so that for citizens—especially those belonging to minorities or marginalized groups—have a sense of being stakeholders in the federal arrangement of governance. Successful federalism, then, is not a matter of passive implementation. Rather, it is a process marked by active democratic and political participation especially by those segments of the citizenry that had hitherto felt alienated from the political process. These include mostly—but not exclusively—those citizens whose interests—and usually whose needs for "ontological security" had hitherto been accommodated neither institutionally nor procedurally and whose participation is thus an indispensable way of legitimatizing the federal compromise.

Institutional arrangements for diversity are usually designed at the federal/national level. But, of course, the real challenges of diversity are experienced, on an everyday basis, in the lives of ordinary citizens, in their everyday negotiations with each other and with the state, much of which takes place at the local level. If federalism—as the institutional arrangement for the recognition of diversity—is to become "a habit of the heart", it will, first and foremost, have to be grounded locally. The success of a federation is to be sought not merely in state structures but in the extent to which it is socially embedded. For the societal embeddedness at the local level is federalism's ultimate source of legitimacy and thus its ultimate source of strength.

Of course, the particular form that federalism takes will and should depend upon a society's specific attributes. The particularity

of context, as well as the democratic imperative, implies that federalism cannot be imposed (and, thus, the institutional-design approach faces severe limitations). It also suggests that the objective of accommodating diversity may, at times, possibly be better accomplished through routes other than federalism. In Belgium, for instance, federalism has turned out to be a manifest source of tension and reluctance to accommodate diversity. Rather than presuming that federalism is necessarily the ultimate panacea where claims of autonomy are being staked by minority groups, the circumstances, conditions, and variables under which a federal accommodation of diversity is indeed the most suitable and promising, warrant greater consideration than they have received thus far.

While the presumption that a successful federation must be ready to continuously renegotiate the rules of cohabitation was uncontroversial, there was a suggestion—though not one on which consensus was reached—that, if necessary, provisions for secession should be constitutionalized. Taken to its logical conclusion, this could arguably be seen as undermining the very justification for federalism itself. Yet, enshrining the option to "exit" in a formal and legal framework may actually end up having a stabilizing and thus strengthening effect as it might help focus attention during the process of continuous renegotiation on the common good and ensuring that, in the end, politics and policy is always and clearly a positive-sum game. The possibility of secession is often one of the greatest impediments to the implementation of a federal solution to demands for autonomy. Ergo, a better empirical and theoretical understanding of the possibilities and constraints, an enshrined exit option is needed to assess better the circumstances under which it might actually strengthen a federal accommodation of difference.

The central message that crystallizes around the discussions from first theme "Building on and Accommodating Diversities" is that a social spirit of compromise must underpin a successful federal experiment. The salience of institutions and their design notwithstanding, to achieve this consensus, civil society and civic education were emphasised but there are conceivably other means to this end. However, participants cautioned repeatedly that there

is no silver bullet, and one size does not fit all. Every society must fashion federal (or indeed non-federal) institutions in response to its own needs, democratically determined at every level, from the local to the national, if group autonomy and institutional accommodation are to be a source of strength.

Managing Conflicts of Diversity

Work Session 3: How Important is Language Policy as a Tool of Conflict Resolution?

Work Session 15: Is Federalism an Option for Managing Conflict?

Daniel Thürer

The main purpose of this paper is to provide an analysis of the discussion of the two work sessions on the subtheme "Managing Conflict and Diversity". In that capacity this piece seeks to highlight issues of policy importance which were not discussed in great detail during the work session and merit consideration at future International Conferences on Federalism. Throughout the New Delhi Conference, federalism was alternatively characterized as an "idea" or as a "mechanism", a "device" and a "set of tools" to solve particular problems and to facilitate harmonious relations between majority and minority communities in a shared state. However, these characterizations are inadequate. Characterizing federalism as merely a philosophical or political idea is too limited and confined since its practice is expressed and embedded in complex governance processes and institutions. Characterizing

federalism as an essentially technical approach to managing diversity overestimates the potential of legal and political engineering in areas of public life that are deeply rooted in history, human beliefs and even geography. Napoleon, after all, noted that nature had predestined Switzerland to have a federal form with a vibrant political culture. Social realities influence institution building and peoples' thinking.

Federalism was, in the working sessions, often conceived of as a means of "coping with" diversity and problems related to the minorities. In extreme cases where the state's integrity was in danger, federalism was also conceived as a means of "preventing" the secession of peoples and groups with distinct identities. In contrast, at the beginning of the Conference, federalism had been embraced more optimistically as a source of enrichment for life, as a means—according to or following the Indian economist Amartya Sen—of sharing or enlarging individual and social identities or as—the Swiss writer Denis de Rougemont would have put it—*un état d'esprit.*

This message of true and lived pluralism has perhaps found its purest expression in the international and supranational regimes of governance emerging in Europe. Within the process of European integration, set off in the much contested multicultural bordering areas of Alsace-Lorraine, new institutions of European order emerged from centuries of conflict between powers and peoples. Once these institutions began to function, they helped to mitigate longstanding problems related to the minorities. They helped to foster linguistic, religious and cultural pluralism by favouring new multilingual and more tolerant thinking and by facilitating dialogue within common fora. In South Tyrol, for example, conflicts and prejudices seem to have given way gradually to open, living forms of bilingualism due to a softening of relations between Austria and Italy in the context of an "approchement européen". European institutions, which are an outstanding modern version of federalism, reflect true federal principles in their functioning. Various fora within the European Union, the Council of Europe and the OSCE demonstrate every now and then how enriching and inspiring multilingual and multicultural decision-making processes can be.

Are (federal) group rights an attribute of federal constitutional

systems, or do they constitute an emerging feature of international law? Might autonomy rights be derived from the right of self-determination of peoples, human rights or other sources? Indeed, the concept of collective rights should not be overrated. Switzerland provides an example. The country's language regime is based on the constitutional right of individuals to use the language of their choice, whereas cultural groups are protected by the territorial principle. Within the scheme of federalism, the task of striking an appropriate balance between personal liberty and protection of traditional identities lies mainly with the cantons. Group rights as such are not part of the Swiss arrangement. This arrangement may be no different in other federal systems. Group rights in international law are only gradually emerging within regimes for indigenous peoples and other minorities.

Democracy is an essential element of federalism, as polities composing federal systems are, directly or indirectly, based on regular or periodic expression of the popular will. This point was rightly stressed on various occasions at the Conference. History demonstrates, however, that "democracy" can also take radical forms and foster a disrespectful domination or a tyranny of the majority, a sense of exclusion and even hate against minorities. Federalism is built on diversity, but if ethno-nationalism is its basis, it can degenerate into marginalization, discrimination, separation, exclusion and in its final tragic manifestation, genocide. Immanuel Kant, the German philosopher, was right in stating that, "democracy generally is, as a barrier to arbitrary regimes and other forms of abuse of power, a strong safeguard of peace". Indeed, federalism might in light of the modern experiences of states and international regimes be added to democracy as a cornerstone of lasting peace between groups, peoples and nations. These principles in the degenerated forms of absolute (majoritarian) democracy and ethnically based federalism can, however, fuel division and conflict.

Experiences of racial and other forms of discrimination as well as of ethnic cleansing demonstrate that human rights and citizenship and, in case of armed conflict, humanitarian law are the ultimate measure of good federalism. However, human rights, in these two work sessions at least, were hardly mentioned. It seems that

the most familiar and repeated usage of the term "ethnic", in the discussion, is not a term of Swiss political and legal vocabulary; instead, the figure of the responsible citizen (be he/she German-, French-, Italian- or Romansh-speaking; and an adherent of Catholicism, Protestantism or another religion) is an established principle of Swiss federalism.

Besides political culture, federalism is based on the common will of the people as well as on leadership and trust in the capacity of organs of governance. Respect for negotiations and equitable forms of compromise-building and the "rule of law" are integral to the federal scheme. When a federation emerges out of war, honest warriors will be the most credible and effective promoters of peace; exemplary among them are President Lincoln and Francis Lieber in context of the US Civil War (1861-5) and General Dufour in Switzerland during the "Sonderbundskrieg" and the country's transition from a Confederation to a Federal State (1847-8).

Specifically with regards to language, the case of Switzerland is again quite interesting. The Swiss Constitution recognizes four national languages and three official languages. (Romansh was accepted as the fourth national language in a constitutional vote by 92 per cent of the voters in 1938 in response to the Italian "Duce" Mussolini's claim that Romansh was an Italian dialect and that the territory in which Romansh-speakers lived rightfully belonged to his country.) The Swiss language regime might be explained with the help of two axes. On the "individual/community" axis, the basic principle is the liberty of each individual to use the language of his/her choice; this "linguistic freedom" is, however, in official relations of people limited by the territorial principle, which protects the integrity of a traditional "Sprachraum". On the "the distribution of competences" axis, responsibility for balancing personal freedom with protection of traditional linguistic groups is conferred principally upon the cantons.

Above all, in Europe, matters of language or linguistic policy cannot be adequately dealt without referring to international law. Among the regimes emerging in Europe, two conventions of the Council of Europe are particularly important, namely, the Framework Convention on National Minorities and the Charter for

Minority Rights. Beyond these, specific geographical and historical areas have an importance either because of their bilingualism and the pivotal role that conflict in that area played in European integration (e.g. Alsace-Lorraine) or because these areas represent success stories of European and international legal institutions (e.g. South Tyrol). Bi- and multilingualism should be considered as an asset (leading to shared identities per se) and plans and projects favouring them should be fostered (e.g. bilingual cities like Brussels or Biel/ Bienne in Switzerland and multilingual institutions of higher learning). Is not cultural diversity (and equality) a special characteristic of Europe?

With regards to conflict management one would like to add to the issues discussed at the Conference, the worst case scenario of armed conflict (international and civil war). Three dimensions might be considered in this context. Like democracy, federalism may be, but is not necessarily, a safeguard against going to war (a means of ensuring peace according to Kant). Once violence has erupted, power within de- or non-centralized polities is typically centralized. It is then the responsibility of the authorities to guarantee human rights (a core of which is non-derogable in states of emergency) in armed conflicts and abide by international humanitarian law. Ceasefire and peace negotiations among the conflicting parties are the more challenging tasks and to see to it that the enemy soldiers are treated honourably. Once violence has ended, a positive peace must be established; this peace will be the more durable only when the differences of the relevant parties are properly attended to.

To sum up, one notes that the basic elements of the federal idea are political and cultural loyalties instead of ethnic divisions, and the basic attribute of a functioning federal system is a common political will of citizens and groups of citizens to live together in harmony. Mechanisms of negotiation, conciliation and compromise have to be created. In Switzerland, one such mechanism is the popular referendum. The risk of interest groups launching referenda encourages parties to find compromises in Parliament.

From the formulae developed for the International Conferences on Federalism so far, the St. Gallen formula should be retained.

Participants' memory of—as Forum of Federations President George Anderson put it—"the parade of people and the avalanche of information at the Conference may soon fade". So the closing recommendation by the summary writer is therefore twofold: new subjects might be chosen for thorough treatment at the Conference in Ethiopia, e.g. Africa and federalism, federalism within supranational and international governance, federalism and the tension of public and private power, effects of globalization on federalism, migration and federalism, economy and federalism, civil society and political parties and federalism, model areas or regions. Efforts might also be undertaken to apply the knowledge developed so far in the future conferences. We might, as Forum Chairman Arnold Koller proposed in his opening speech in New Delhi, draw up a set of principles upon which we could build in future. In this endeavour basic questions of values underlining federal systems should always be kept in mind as Bob Rae stressed in a final statement.

Contributors

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