

## Subtheme

# 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?

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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 legitimate 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 divisive 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 arrangements, 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 legitimizing 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.