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BACKGROUND PAPER**

ADAPTABILITY AND CHANGE IN FEDERATIONS

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Federalism has proved to be a marvelously flexible and adaptable instrument of governance. This evident in two senses: in the variety of federal forms and practices to be found around the world, in many different economic and social systems; and in the ways in which individual federations have been able to respond to changing economic and social realities and the policy agendas that they generate. Indeed, if shifting citizen needs are to be met, then it is critical that governing institutions of all types be able to adapt to changing circumstances. But at the same time, there is, again as in all institutions, a reluctance to change. This may simply be because of the vested interests of the elites who currently manage the system. But it may also arise from the fact that federalism often involves a delicate balance between territorially defined regions and groups, so that changes in its institutions and practices may engender division and conflict. Hence the challenge: stability without ossification; flexibility without eroding the basic principles that underpin the original federal 'bargain.'

What drives change?

Many factors can generate calls for change in federal systems. Some are internal to the federal institutions themselves; others arise from change in the economic, cultural, social and global environment in which federalism is embedded. The most powerful drivers of change arise when citizens and leaders alike come to perceive that the institutions designed to serve them are failing to do so.

Some of the factors to be considered here are the following:

1. Changing citizens attitudes and orientations.

Two sets of orientations are important. First, the practices of federal institutions may diverge from evolving conceptions of democratic participation and accountability. If intergovernmental relations are seen to be secretive, elitist, and unaccountable, there will be calls for change. This is the 'democratic deficit' that has received attention in Canada, Germany, the European Union and elsewhere.

Second, are changes in the degree of identification with central, or state/provincial governments. If national concerns and identities predominate, the pressure will be to shift power to the centre. If regional identities grow, especially in multinational federations like Canada, or Belgium, the pressure will be for increased decentralization, and perhaps for elements of asymmetry, to respond to the aspirations of territorially concentrated ethno-national groups.

2. Changing policy agendas.

Many federations were established when the size and roles of government were quite different from those that face governments today, and when contemporary issues such as the environment and telecommunications had not been thought of. The division of powers and fiscal resources suitable at the founding may prove unable to respond to changing conceptions of the role of government in society. Perhaps the most dramatic example, for several federations, was the advent of the postwar Keynesian welfare state, where many observers questioned whether this project could be achieved within existing federal

regimes. More recently, attention has shifted to ways to limit and constrain the growth of government, and here too federal institutions are engaged. How, then, to adapt to these changing views about government and policy, while retaining the values of federalism?

Thus, flexibility and adjustment in federal systems can be thought about in a number of different ways, each of which draws on a different set of criteria for evaluating success and recommending change, and each of which may engage different interests in different ways. Democracy, efficiency, and response to alternative conceptions of community and identity can all pull in different directions. Successful adjustment from one perspective may be perverse from another.

3. Globalization

Globalization creates many challenges for federations. One perspective sees it as setting up pressures for decentralization – as national governments lose control over the policy instruments that are traditionally in their hands, and as national economies become less integrated internally and differentially integrated into the wider world. Another view, however, suggests that globalization has the opposite effect because it places such a high premium on the international roles exercised by national governments, and because to be effective in the international arena requires that a country be able to speak with one voice abroad. Whichever perspective is correct, it seems clear that in a globalized world, federalism no longer stops at the border: global forces have powerful effects on domestic relationships; and the federal character of the country is inevitably projected into the international arena.

4. New Approaches to Governance

Recent theories of public management, place a strong emphasis on a number of values highly relevant to the practice of federalism. Among these are 'subsidiarity,' with its emphasis on placing responsibility as close to the citizen as possible; efficiency and the control of costs, with their implications for overlap, duplication and the like that are endemic to federal systems; 'best practices' with its emphasis on experimentation and innovation; 'customer service,' with its association with one stop shopping and other ways to link citizens to governments as seamlessly as possible, and so on. All these ideas embody the need for close coordination among governments. They suggest the federal division of powers should not stand in the way of the efficient delivery of services, and that citizens are likely to be less concerned with the niceties of federalism than they are in the seamless provision of publicly provided goods.

Instruments for Adaptation

Federations are complex, multidimensional sets of institutions. When we discuss change and adaptation, therefore, it can take many forms and a wide variety of instruments are available in order to adjust to new circumstances.

1. Constitutional Change:

The most definitive and long-lasting way to change a federation is to change the constitution – whether by altering the divisions of powers, changing fiscal relations, creating or disbanding intergovernmental machinery, or, more broadly, by making more fundamental changes to the broader political structure. Examples of the last would include introduction of a Charter of Rights and Freedoms into the Canadian constitution in 1982, or the introduction of the direct election of Senators in the US in 1913.

Constitutional change might seem to be the most obvious instrument for adapting a federation to new needs. But this may well not be so, and for several reasons. First, constitutional change is seldom easy to achieve. It almost always requires super-majorities and a combination of support from both orders of government in order to be adopted. The symbolic force of constitutions, combined with the difficulty of making change, makes constitutional debates typically highly conflictual. Second, constitutional changes may generate their own new rigidities, which are difficult to correct later. Third, harmony in divided federations may be better achieved through 'constitutional silences,'

leaving some matters unresolved, rather than by trying to spell out all issues of identity and power in precise constitutional language.

As a result major constitutional change is a relatively rare event in federal systems. Instead most federations have looked to less formal ways to modernize their institutions and processes.

Whether it will be necessary to resort to formal constitutional amendment will depend in part on the nature of the original constitutional design. The more that powers are assigned to relatively closed 'watertight compartments,' the harder it will be to achieve adaptation through political and administrative means. Conversely, where the constitution provides for wide areas of shared or concurrent powers, informal adjustment is more accessible. Similarly, constitutions that contain gaps and 'silences' may be easier to adapt informally than those that spell out powers in great detail.

2. Judicial Interpretation

All federations have some kind of judicial umpire, whether in a general Supreme Court, or a more specialized Constitutional Court. Their interpretations of the constitutional document can have powerful effects in the evolution of the federal system. While there may be strong debate about whether the courts are wisely responding to social change, or are imposing their own views, there is little doubt that the shape of federalism in countries as diverse as Canada, the United States, Germany, and India have been greatly shaped by decisions of the courts.

The degree to which they shape the evolution of the federal system depends in part on the ways judges conceive their role, and on the character of the constitutional document they are called on to interpret, but it also depends on whether the political actors in the federation tend to look to the courts to resolve their differences, or whether instead, they rely more on informal bargaining and negotiation. In Canada, at least, frequent recourse to the courts is sometimes seen as an indicator of the breakdown of these more consensual, administrative mechanisms.

3. Formal Intergovernmental Agreements

Where formal constitutional change is difficult or impossible, governments may have recourse to formal agreements or accords among themselves. Such agreements can vary in several ways.

- They may be broad, framework agreements, setting out basic principles and values and specifying the general responsibilities of each level of government. A recent example is the Canadian Framework Agreement on the Social Union. Or they may be detailed administrative arrangements concerning the delivery of services in shared or overlapping areas.
- They may entail agreement among two, or even three, orders of government, or they may be 'compacts' among states or provinces.
- They may or may not contain explicit enforcement mechanisms, including dispute settlement procedures.
- They be more or less open, transparent, and accessible to public scrutiny and participation.

4. Conditional Grants and the Power to Tax and Spend

A common form of rigidity in federal systems is an imbalance between expenditure responsibilities and the ability to raise revenue. Typically, the federal or central government has greater access to revenues, while provinces and municipalities are responsible for a wider range of service delivery. Hence all federations have developed extensive mechanisms of intergovernmental transfers in order to achieve through fiscal federalism what is not possible through constitutional amendment.

Moreover, in many federations, the central government has, either explicitly or implicitly, a broad power to spend public revenues even in areas of state or provincial jurisdiction. Central governments can make 'conditional' or 'shared cost' grants to the provinces in particular policy areas, and can attach conditions to how these funds will be spent. They can also make grants to help 'equalize' the ability of richer and poorer provinces to provide comparable levels of services at comparable rates of taxation, thus powerfully assisting weaker provinces to adapt to new policy concerns, and reinforcing the overall adaptability of the system.

Such intergovernmental transfers have been perhaps the most important single instrument or adjustment in federal systems. It was largely through the use of the 'spending power' that countries such as Canada, the United States and Australia were able to embrace new state roles in fields such as health care and public welfare that the states or provinces might not have been able to achieve on their own. Recently, however, fiscal and budgetary constraints have limited the ability of governments to foster flexibility in the federal system.

These transfer mechanisms also vary considerably across federations:

- They differ widely in the contribution they make to total state/provincial budgets.
- They may take the form of highly specific and detailed conditional grants that leave little room for variation among provinces; or they may take the form of general block grants, with few if any conditions. The nature and content of the conditions central governments attach to transfers are important indicators of the degree of centralization or decentralization in federal systems. In the postwar period, the spending power was seen as a major centralizing force in federations, permitting the federal government to intervene in many areas nominally within provincial jurisdiction. They have therefore, frequently been controversial. More recently, in a number of federations, the pressure has been to reduce the number of conditions, and to ensure full state/provincial involvement in the development of any shared cost programs. Fiscal restraint has in some cases led to federal withdrawal from provincial affairs.
- The extent to which the transfer system achieves equality among provinces also varies.
- The central power to tax is generally even less constrained than the power to spend; hence central governments may be able to influence policy in areas of provincial jurisdiction through tax expenditures and tax credits, especially if provincial agreement on spending programs is not easily achieved.

5. The Delegation of Powers

An attractive alternative to constitutional amendment is the common provision to permit governments to delegate legislative or administrative powers, either upwards or downwards. Normally this requires a high degree of intergovernmental consensus, and federal constitutions vary in the degree to which this instrument is available.

6. 'Opting-out' and de Facto Asymmetry

When instruments of adjustment such as constitutional amendment or shared cost programs are being discussed an immediate issue may arise: will these changes apply to all states and provinces or not? Almost by definition, provinces in federal systems will vary in their fiscal capacity, their political objectives, and in their identities. Hence, one or more units may either resist federal involvement in their jurisdiction through such devices as the spending power, or will seek additional jurisdiction not necessarily desired by the other units in order to make their own adjustments to new needs.

One device for recognizing these inter-provincial differences in interest and capacity is that of 'opting out' and 'opting in.' In the former, one or more provinces may decide not to participate in a national shared cost program, and may receive unconditional payments

from the central government, reflecting the amount the centre would have spent if the province were a participant in the program. In the latter, the centre can establish the program, and it is up to each province to decide whether or not to participate. Over time, such adjustments may cumulate, so that one (or more) provinces may develop a relationship with the centre quite different from the others. Or, put another way, the federal presence in one province may become quite different from its presence elsewhere.

Alternatively, one province may call for constitutional changes that recognize its distinct character, and provide it with legislative tools that might not be available to – or taken up by -- others.

Such devices may provide a valuable avenue of adjustment, especially in responding to the needs of significant minorities in multinational federations. On the other hand, they can be highly controversial. Some may believe that asymmetry may set the stage for a progressive de-linking of one province from the federal government and its provincial counterparts, and that 'equality of the provinces' is a fundamental principle of federalism. Others believe that asymmetry simply reflects the reality of different kinds of community within a single system, and that some recognition of asymmetry is essential if minority groups are to be reconciled to the federal system in the long run. Such disagreements illustrate that 'adaptability' is not always a neutral term.

The experience of a number of federations suggests that formal constitutional asymmetry is a great deal more difficult to bring about than are informal differences in the financial, administrative and other arrangements between federal and state/provincial governments. Asymmetry in the latter sense is common to all federal systems.

7. Emergency Powers

External crises, such as war, or internal crises such as economic depression or civil unrest, may require a rapid assertion of central power. The danger, of course, is that use of such power may powerfully undermine the autonomy of the provinces and the values of federalism. Hence, we should not consider this a normal instrument of adjustment in federal systems, but for some it does remain in the background

This review suggests that most, if not all, federal regimes have at their disposal a wide variety of tools and instruments that can be employed to ensure that their political and administrative machinery is capable of responding to changing demands and interests. If federal systems were inherently rigid and frozen in time, then few would survive. As it is, experience shows that indeed the 'complexities of federalism' may complicate the lives of citizens and policy-makers, but they are seldom, if ever, a strait jacket.

The Politics and Machinery of Adjustment

As noted at the outset, change in federal systems is driven by broad changes in economic and social conditions, by the changing global environment, and by the changing identities and orientations of citizens. These in turn are reflected in ideological trends, social movements, political parties and election results. These system-wide factors explain change in the long-term.

But in the short term, the keys to flexibility and adaptation lie with the federal and state/provincial governments, the executives who occupy political power within them, and the machinery that they develop to conduct the intergovernmental relationship. Effective coordination, cooperation and response to emerging needs depends in large part on a robust and transparent system of intergovernmental relations (IGR). This is one that facilitates full, continuous and open communications among governments about the issues and alternatives that they face, that allows each order of government to play its distinctive role while simultaneously encouraging cooperation where necessary, and that remains closely connected to the society that all governments serve.

Flexibility in federal systems depends on a balance between autonomy and cooperation. Autonomy is necessary because each government needs to be free to respond to the changing needs and aspirations of its citizens, in ways distinctive to local needs, without

fear of veto or watering down by national majorities. One of the great virtues in terms of the flexibility of federalism is precisely that it is made up of a number of relatively autonomous governments, each able to experiment and innovate. Flexibility and adjustment to new needs is not facilitated by an intergovernmentally agreed homogeneity any more than it is by unconstrained federal dominance. In an uncertain and rapidly changing world the healthy competition among governments to find the most appropriate policy response is one of federalism's greatest virtues.

But cooperation is equally necessary for effective adaptation, because so many of the emerging areas of policy concern cut across jurisdictional lines, and because so many of the tools and instruments to respond to them are shared by both orders of government. Even in federations predicated on the 'watertight compartments' model for the division of powers de facto concurrency and interdependence are pervasive.

The appropriate balance will vary among federations: the more culturally diverse they are, the more their intergovernmental systems will tilt to individual provincial autonomy; the more homogeneous they are, the more emphasis there will be on common standards and practices achieved through central leadership and intergovernmental cooperation. The more unified the party system, the more mobility of leaders between levels of government, and the stronger the representation of constituent units in the national government, the greater the emphasis on cooperation and consensus. The more divided the party and governmental system, the more likely is conflict and competition.

This balance is also likely to vary over time, in response to the issues confronting the society. The common postwar project of constructing the modern welfare state necessarily involved both levels of government, and placed a high premium on cooperation to meet the aspirations of citizens. In other periods, such nation-wide projects might be somewhat muted, and concerns focus more on local and provincial matters; hence the focus would shift to provincial autonomy.

Moreover, both autonomy and cooperation have their darker sides. In some circumstances provincial autonomy unconstrained by norms of trust and cooperation can lead to contradiction and duplication in policy, to a competitive 'race to the bottom' in social policy, to a narrowly focused struggle for political popularity, bureaucratic 'turf' and credit-seeking, and to an artificial heightening of regional tensions as governments seek to mobilize their voters behind them. Hence the need for strong mechanisms of cooperation, and for an intergovernmental system open to the public and thus disciplined by public awareness.

Cooperative federalism can also have a darker side. Excessive emphasis on harmony and cooperation can mean intergovernmental agreements that are the lowest common denominator, or that are too watered down to be effective. They can lead to excessive delay as governments work towards agreement. They can become so focused on maintaining harmony that the substantive policy concerns and interests of citizens are pushed aside.

The trick, then, is for each federal system to find its own balance between autonomy and interdependence, competition and consensus. Both sides of the coin are essential to the broad goal of ensuring that federal systems can respond and adapt to the changing world in which they are embedded, and which they serve.

Issues for Roundtable Discussion

1. How do we maximize the responsiveness and flexibility of federalism in light of new needs and concerns, while retaining the essential elements of federalism?
2. How do we think through the advantages and disadvantages of alternative instruments of adaptation, from formal amendment, to informal agreement?
3. Among the federations represented at this conference, which appear to have been most successful in adapting to change, and which the least successful? How can we explain these differences and use the lessons learned to improve practice across federations?

4. How do we ensure that the values, interests, and preferences of citizens remain the central concern when governments address the need for change?

5. How to we maximize the ability of federations, with their multilevel governmental systems, to participate effectively in a globalizing world?

6. Is the ability to respond to change facilitated, or hampered, by an emphasis on symmetry in the distribution of competences?

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