

Federalism and Other Means for Diffusion of Powers: A Guide to the Terminological Labyrinth

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“Why do you say that Switzerland is a federal state, although its official name is Confederation Helvetique?” “Why are the federal units of the U.S.A. called states, while everywhere else only independent countries bear that name?” “What is the difference between a federal unit, an autonomous region and a decentralized district?” In this short essay an attempt will be made to answer these and some other questions. However, it is important to remember that the following definitions may not be universally accepted. Thus, different people may have somewhat differing conceptions of the various terms. Moreover, in actual life, the distinctions are not always clear-cut, and therefore a political entity may have characteristics of more than one institution. A few structures, like the state of Bosnia and Herzegovina, and its two “entities” may not fit into any of the ordinary categories.

With these caveats in mind, we will now try to explain the relevant terms.

A *confederation* is a more or less institutionalized system of cooperation among independent states. It is usually established by an international agreement, members are free to leave it, and resolutions have to be adopted unanimously. At least, opposing members do not have to implement resolutions to which they objected.

The most famous examples are the U.S. in the past (1781-1787) and Switzerland in the past (1815-1848).

Despite the similarity of name, a *federal state* is very different. It is a full fledged independent state. It has a constitutional structure under which the state is divided into regions that assume different names in various countries, such as “state” in the United States, “province” in Canada, “Land” in Germany, and “canton” in Switzerland. The constitution often allocates powers to both the central authorities and the regional ones. Sometimes only the powers of either the center or the periphery are enumerated, leaving all the rest to the other one respectively. In cases where the entities that make up the federal state existed before the latter and united in order to establish it, these entities are often in control of residual powers.

The division of powers is not the same in all federal states, but one can safely observe that usually the center is in charge of foreign affairs, defense, immigration, border and customs control, monetary and fiscal matters as well as citizenship. The federal units, on the other hand, are in control of local matters. The regions, as such, participate in the legislative function of the central authorities: Their representatives are members in an upper house, and the consent of the local parliaments is required to amend the federal constitution. Usually, there is a special tribunal for settling disputes among the various regions or between a region and the center.

Among the most famous federal states are the U.S.A., Switzerland, Germany, Australia, Canada and Argentina. According to its constitution, Switzerland is today a federal state, but it has kept its name from the time it was a confederation. This explains the discrepancy between the name and the actual regime.

A third related term is *federation*. It is an “ideal” term in order to confuse students. Some use it as a synonym of confederation, while for others it equals federal state.

The term *autonomy* is widely used, with rather varying meanings. It is used in philosophy and its derivates, in natural sciences, and in the sphere of law and political science. In the last mentioned category, for some it means a right to act upon one's own discretion in certain matters; for others autonomy is more or less a synonym of independence; in the sphere of diffusion of powers autonomy can mean decentralization; but more often the term means that a certain entity has exclusive powers of legislation and administration – in some cases also adjudication – in specific areas. A distinction is made among “administrative autonomy” which resembles mere decentralization, “political autonomy” which involves a transfer of authority to legislate for a certain territorial unit in certain spheres, and “personal (or cultural) autonomy” to be discussed below.

Territorial political autonomy is an arrangement aimed at granting to a group that differs from the majority of the population in the state, but that constitutes the majority in a specific region, a means by which it can express its distinct identity. The powers of the autonomous region usually relate to education, culture, use of language, environment, local planning, natural resources, economic development, local policing functions, and housing, health and other social services. There are, however, different degrees of autonomy, and the extent of the transferred powers varies accordingly, ranging from very limited to larger and up to a high concentration of major powers in all or some of the above spheres. The central authorities, on the other hand, are in charge of defense, foreign affairs, immigration and customs, macro-economic policy and monetary affairs.

In fact, there are usually four different areas of powers to be considered: powers reserved for the central authorities, those fully transferred to the autonomous entity, parallel powers and powers that can only be exercised jointly. The control of the center over the activities of the autonomous authorities is limited to extreme cases, such as excess of powers or acts endangering the security of the state.

Autonomy can be established by an international agreement, by the constitution, by an organic law, by a regular law, even perhaps by custom, or by a combination of some of these measures.

The most famous cases of territorial autonomy are the Aland Islands, (a group of islands in the Baltic sea; they are under Finnish sovereignty, but the great majority of the population speak Swedish); Scotland; Greenland/Kalaallit Nunaat (the island, inhabited by an indigenous majority, is part of the Danish realm); Puerto Rico (this Estado Libre Asociado, with its Spanish speaking majority, is part of the U.S.A.); South Tyrol/Alto Adige (a province in Northern Italy with a German speaking majority); the autonomous communities of Spain (such as Catalunya), and Hong Kong (in the wake of its return from Britain to China).

It has to be emphasized that there are great differences among the various examples of territorial autonomy. Certain other institutions of diffusion of powers are quite similar to autonomy though not identical: self-government, self-rule, home-rule, and devolution.

Personal or cultural autonomy differs from territorial autonomy at least in three respects. The self-rule is allocated to a culturally, ethnically or religiously rather than territorially defined group; the scope of self-management is usually limited to matters of education, culture, use of minority language, religion and welfare; and the institutions of the autonomous group can exercise authority only over those individuals who are part of that specific group. The most famous example of personal autonomy was the millet system of the Ottoman Empire.

At first sight, territorial autonomy may look similar to the system of a federal state. However, there are some very important differences. In most cases, the autonomous entity, as such, does not participate in the activities of the central authorities, whereas the cantons in a federal state, as already mentioned, play an important role in the central authorities (membership in the upper house and participation in the process of amending the federal constitution). Autonomy is usually established in regions that have a particular ethnic character, whereas the federal structure applies to the entire territory of the country.

Last but not least, one should mention the term *decentralization*. Some authors use this word as a general term for all types of diffusion of power from the center to the periphery. However, in a narrower and perhaps more accurate sense, decentralization implies a limited delegation (not transfer) of powers, subject to the full control and overriding responsibility of the center. There are various degrees of decentralization, depending upon the scope of the delegated powers, the extent of participation of locally elected officials, and the degree of supervision by the center.

To conclude: two phenomena characterize our times: integration or globalization on the one hand, and fragmentation or subsidiarity on the other hand. The common umbrella established by integration makes it easier for the state to give up some of its powers to sub-state or regional entities. When choosing among the various means for diffusion of powers, - federalism, autonomy, decentralization or a combination of them - one has to take into consideration all relevant circumstances, such as geography, demography, history, tradition and culture, as well as economic aspects. Most of the above means for diffusion are flexible and can be adapted to the special needs of different countries. Moreover, there is no obligation to choose one of the solutions studied above, and human ingenuity may invent new regimes for new situations.