

Comments on Jan Erk's Paper on Federalism and Non-Territorial Representation

David Cameron

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David Cameron is a Professor of Political Science at the University of Toronto and a member of the Board of Directors of the Forum of Federations.

The most interesting cases, from the point of view of the Muslims of Sri Lanka, are versions of consociationalism. Many of these, but not all, are examples from unitary states, and display ways in which a divided society can manage its cleavages in the absence of federal arrangements. Despite their unitary structure, these systems still raise possibilities for consideration in the Sri Lankan situation. A few of the examples, drawn from the Austro-Hungarian and Ottoman Empires, arise in more complex political systems.

The cases of most relevance are probably Belgium, the Netherlands, Lebanon and the Ottoman and Austro-Hungarian Empires. Some of the cases that have been alluded to in the Sri Lankan debate do not seem, on inspection, to be particularly interesting or helpful: the Aaland Islands; Darjeeling and Ladakh. They all seem to be relatively straightforward examples of territorially based arrangements protecting minority cultural/linguistic rights.

Belgium, with its complex mix of regional and community federal units, has the most fully articulated set of arrangements for dealing with non-territorial representation. The most significant elements appear to be:

- What one might describe as 'innovation by necessity', namely, the creative adaptation of the Belgian state over the last 40 years in response to powerful intercommunal pressures and tensions. The successive reforms have not been designed to express a system or constitutional design, but to establish workable, if untidy, practical arrangements that would allow national unity to be preserved.
- The double layer of sub-national political units: one defined in the conventional way by territory; and the other, defined by linguistic and cultural affiliation. Policy responsibilities are associated with one or the other of this type of sub-national unit according to their character.
- The notion of 'personalisable' policy fields – i.e., policy areas, such as culture, health, social welfare, in which it is possible to offer services tailored to the

cultural/linguistic preferences of the individual, rather than based on universal service in a defined territory.

- Alarm bell protection. An arrangement by which $\frac{3}{4}$ of a linguistic group in Parliament can invoke a special procedure if they deem a decision or proposal threatens the interests of their community. The issue is then referred to the Council of Ministers which seeks to reach a compromise. (*The Charlottetown Accord had an arrangement by which bills materially affecting the French language or French culture would require a double majority in the Senate – a majority of Senators voting, and a majority of Francophone Senators voting.*)
- Community-level parliaments composed of national parliamentarians from a 'linguistic or regional registry'. This device was replaced in due course by direct election.

The Netherlands is effectively the home of consociationalism. The Dutch developed a system of 'social pillarisation' in which the nation was divided into four non-territorial pillars – Calvinist, Catholic, liberal and socialist. In their heyday, these were tightly organized groups that shaped much of the life of their members in the social, economic and political spheres; as Erk says, "schools, hospitals, universities, trade unions, newspapers, broadcasting corporations, were all divided along the pillarised social structure." The chief features of this system were:

- Executive power sharing in 'grand coalitions.'
- A high degree of autonomy for the segments.
- Proportionality.
- Minority veto.
- Depoliticisation, secrecy, and deference to leaders.

Lebanon, until the system began to break down in the 1970s, had a distinctive form of consociational arrangement, based on the three main religious groups – Sunni Muslim, Shia Muslim and Christian. The arrangements grew out of Lebanon's experience with the 'millet' system of the Ottoman Empire, of which it was a province until independence.

The Ottoman regime gave religious and cultural autonomy to 'millets', which were religious/cultural communities. Millets ran their own educational systems and religious organizations, as well as administering civil law. Membership was defined by the personality principle, not on the basis of territory.

At the end of the 19th century, theorists in the Austro-Hungarian Empire proposed a system of cultural autonomy based on the personality principle. Individuals would declare their nationality and register with their national community of choice. The various nations would be constituted by the free association of individuals no matter where in the Empire they lived. These nations would then be given jurisdiction over a number of policy fields (primarily education and culture), and would have their own legislative, administrative and executive institutions.

These are all versions of the same idea, whether they exist within a unitary system or are an overlay on a multiple governance regime of one kind or another. The basic notion is the recognition of a community defined by cultural, religious or linguistic characteristics rather than by territory, and the constitution of that community on the basis of the identification or personal choice of an individual, rather than on the basis of territorial location. The community so defined is granted legal status and endowed with communal institutions. Normally, there are multiple communities, and arrangements providing for proportional representation, minority veto, and elite accommodation at the national level to bind the system together.

In Sri Lanka, the current discussion of non-territorial representation relates specifically to the status and protection of the Muslim minority, but it is possible, as in Belgium, to imagine a Tamil/Hindu and Sinhalese/Buddhist communal overlay on top of a territorially defined federal structure. Such a system might, in fact, offer a more secure (because more broadly based) footing for the protection of the Muslim minority, while at the same time allaying the fears of Sinhalese or Tamils, caught on the 'wrong side' of a territorial boundary.
