

Federal Spirit and Multilayered Federalism

Public Lecture at the Myanmar Peace Centre

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I would like to begin by thanking the MPC and Myanmar EGRESS for inviting me to speak in Yangon today.

I am informed that in the last week MPC has hosted a couple of the world's top public speakers – former President Clinton and Prime Minister Blair.

So I have very high standards to live up to!

It is indeed a privilege for me to learn from this process of historic political transformation here in Myanmar and share with you some experiences from other countries where the Forum of Federations has worked since its founding.

I will speak for about 20 minutes this afternoon and explore what some have called the federal idea, or federal spirit and the impact that this ideas has had on the governance of diverse societies.

Let me state at the very outset that even though I am a product of federal systems– I was born in India, grew up in Nigeria, studied in the US and now live in Canada - I am not here as an advocate or salesman for federalism.

I use the phrase federal idea rather than federalism. This is because adding the suffix –ism to a word has a way of limiting understanding and debate, and to most people signals an systemic ideology like communism or capitalism.

But, there is no one correct way to be federal. Indeed each federation is unique and different – some have parliamentary systems, others are presidential, some are large (India), others small (Switzerland), some are ethnically diverse, others are not, some have voting systems based on majoritarian first-past-the-post system, others have proportional representation.

And indeed the constitutions of some federal countries don't use the word federal at all – Spain, India, South Africa.

Yet in all of these countries what matters is that these arrangements of cooperation and association have certain clearly identifiable features.

- The modern federal idea is first and foremost a democratic idea. It implies a respect for people's identities and their political choices, freely expressed and has to start from that premise. It is incompatible with populist concepts of democracy that are not based on a respect for individual rights, constitutional process, and the rule of law.
- Secondly, the federal idea is rooted in the notion of solidarity and subsidiarity. This implies the establishment of multi-tier government, with delineated areas of responsibility. Solidarity because each of the constituents of a federation is interdependent and each has an obligation to move beyond narrow parochialism so that the union is mutually beneficial. Subsidiarity implies solving the problem of government at the lowest possible level, so that government can be more responsive and accountable. Solidarity and subsidiarity must co-exist.
- Third, because of multiple governments, federal systems need a neutral referee to resolve disputes between them based on the rule of law. What this implies is that there should be a written and agreed upon constitution that regulates the relations between the orders of government and is enforceable by a supreme court or constitutional court.

Federalization implies a common agreement to do certain things separately and other things collectively. It is about more than just devolution, because the premise is that state or provincial governments have as much sovereignty in their sphere as the national or federal government have in theirs. There are different governments doing different things within a common framework. Nor is the national government a mere creature of the provinces, delegated by them to do certain tasks. It too has its own sovereignty, its own direct connection to the people.

Federalism therefore should be seen as a toolkit, to be adapted according to the needs of specific countries. It is not surprising, therefore, that there has been a profound resurgence in interest in the federal idea in the last two decades.

The resurgence of the federal idea has at its core many different causes. The vitality of the values of democracy, the revolutions in the politics of identity and human rights, the twin collapse of apartheid

and bureaucratic communism, the impact of the technological revolution, the social and economic changes we associate with globalization, all these have made their contribution.

In practice, this has meant that unitary states such as the UK have moved in the direction of greater devolution, whereas constitutional federations like Spain, South Africa, India, Pakistan have become more decentralized i.e. provided more responsibilities to their constituent units.

More recently, even countries like Indonesia and the Philippines, which are not federations, have found it convenient to borrow from the federal toolkit to provide formerly separatist provinces in Aceh and Mindanao with greater autonomy. And a number of the Arab Spring countries are toying with institutions built around the federal idea.

There is certainly more than one way to be federal; it is the common ideas that matters. For diverse societies, therefore, the federal idea provides the means with which to preserve national unity.

Social, economic, ethnic and linguistic diversity are a reality in most countries and also these are traditional markers of identity along which groups have politically mobilized from time to time. Several federations like Belgium, Nigeria, Ethiopia, some de facto federations like Spain, and older federations like Switzerland for example, were so constituted precisely to deal with issues of social and ethnic diversity.

While each country has its own unique history and political context, many of the themes being discussed as part of Myanmar's process of federalization are familiar.

Discussions of the distribution of power, discussions on cultural and ethnic rights and even discussions about changing the constitution have happened elsewhere.

The timing of Myanmar's transition puts it a big advantage.

In building its own system, Myanmar is well placed to learn from the success, but more importantly, the failures of other countries which have undergone a process of federalization before.

As I said before, I think it is also important to acknowledge that there is no one perfect model for dealing with diversity. And countries that have succeeded in their search for reconciling unity and diversity have done so by experimenting with a wide range of institutions crafted from the federal toolkit.

But what is truly important to emphasize, and you know this better than me, is that countries which have tried to deal with the challenge of unity through repression, exclusion, or forced assimilation have paid a high price. A price not only in the blood of their young, but also in terms of political instability and economic stagnation.

It is true that there have been secessionist and separatist movements in many of the world's established federations. In the 1960's Nigeria dealt with separatism in Biafra in the east of the country. For many decades Canada had to deal with Quebec separatism. In Spain, Catalonia has had a sovereignist movement and Basque country has had a militarized separatist movement for decades. 140 years ago, the United States fought a civil war to preserve the union and in India of course there have been constant insurgences on the periphery.

And while it is true that in each case of militarized separatism the state has used force to put these down, the continued unity of these countries and the viability of their democracy has resulted from the state's willingness to explore institutional mechanisms for accommodating divergent points of view rather than from ceaseless coercion.

Canada's determination to recognize and resolve our internal conflicts explains our own federal story, which is in many ways similar to so many in the world today. We originally adopted the federal model in 1867 because it was the only way the French and English could live together. We dealt with ethnic, linguistic and religious conflict long before it was fashionable. Equally, it is impossible to imagine a united India without the federal idea.

Over the last decade and a half that I have worked in transitional contexts, it is striking how often debates on federalization turn on different conceptions of what genuine or real federalism is.

The truth is that there is no one gold standard against which federal systems are measured. Federalization has often been a pragmatic response to a particular set of political challenges. So, beyond the three attributes I listed at the beginning of the talk, each federal system is a creature of its particular context.

So, a country could be highly centralized and still meet such criteria of federalism. Moreover, federal countries on anyone's short list may have non-federal features. The government of India can put states under presidential rule and suspend local government for a period. Spain's autonomous communities are not constitutionally established and many other federations have emergency features which can suspend the rights of states.

So what does this mean for how we evaluate arrangements in different federal countries? Invoking the idea of 'genuine' federalism has limited relevance, since the core definitional elements of federalism are themselves quite limited. And there is nothing inherently wrong with unitary or quasi-federal arrangements. To this extent, and depending on the context, as long as the negotiated constitutional arrangements meet the aspirations of constituents, they may be considered legitimate.

But politics is never static and societies evolve over time.

Federal systems are evolutionary, and the balance of power may change over time. Canada and the US are cases in point. The US came together as a bottom up federation with a weak central government, whereas Canada was established as a centralized quasi-federation. In the intervening 150 years, the US has become very centralized, whereas Canada has moved in the opposite direction.

From time to time it will be important to re-visit constitutional arrangements.

It is therefore more helpful to think in terms of whether each order of government has the financial means to carry out the responsibilities that have been assigned to them, and if they change, that the assignment of resources is adjusted accordingly.

Before I conclude, I wanted to touch on one last but very important issue.

We normally think of federations as being composed of two tiers of government: one at the centre (the "federal government") and others in the constituent units (the states, provinces, etc.). But reality is more complicated because almost every country also has local and municipal governments.

As countries become more urban, big cities are changing the dynamics of politics in federations. They want direct relations with the central government. Indeed, the governance and management of large cities has a great impact on the economic dynamism of a country.

While the older federations, US/Canada/Australia provide no constitutional recognition for local governments, a number of federations have addressed the claims of local democracy by giving constitutional status to local or district (municipal or regional) governments.

As Myanmar reforms, it is important to consider the constitutional place of local and city governments, because more and more they are emerging as the frontline entities for service delivery for the population. In diverse countries, local governments below the state level can play an important role in protecting and empowering minorities in the ethnic areas, thereby consolidating democracy and providing all communities with a stake in the political system.

In the last two years, as I have followed events in Myanmar, one conclusion is clear. Politics and governance matter. The speed with which reforms have moved forward underscores the important role that political will, on all sides, has played in underwriting the whole process. At the end of the day, constitutions are pieces of paper and the durability of institutions depends on the practices of those who participate in them. Without commiserate political commitment, no system can function.

Governments at all levels will have to learn to work more effectively together. I suspect too that the public will insist that their governments cooperate. Federalism is about integration as much as it is about diversity.

There is a lot about federalism that is controversial.

In all federal countries there are rivalries, conflicting political agendas, and unsettled issues. Getting beyond all that and bringing together practitioners and experts willing to roll up their sleeves and get to work in a non-partisan fashion is key to consolidating democracy.

And it is our obligation as practitioners to learn all we can about all the possibilities and potentialities of building a system that best meets the needs of a country— call it federalism, devolution or anything else — and to learn from the experience of others before us.

That's where the Forum of Federations can help.

THANK YOU!