



Building Federalism: International Lessons and Perspectives
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Thank you for this generous invitation to speak to you this evening. For someone visiting Cyprus for the first time, it is indeed surreal to participate in an event right in the green zone. The fact that we are able to do so is of course a good sign and hopefully points to a brighter more settled future.

Let me begin the substantive part of this evening by saying that I am not an expert on Cyprus. Indeed my knowledge of what is going on here is gleaned primarily from afar and from secondary sources.

My talk this evening will therefore focus on what we have learnt globally about how to build federal systems; focused particularly on issues of design that affect the operation and viability of such systems.

The FoF was established by the government of Canada in 1997, which has only just lived through a major existential crisis with the failed referendum on Quebec separation. The Forum of Federations was created as a clearing house for sharing international best practices on federalism among the practitioner community in established federations. In the last 15 years, the Forum has increasingly engaged with emerging federations and devolving countries to provide them with access to comparative expertise on a range of issues related to federalization and offer technical advice as needed. The Forum is not an advocacy organization and doesn't advocate either for a particular model of federalism, nor does it suggest that federalism is the only solution in divided societies.

This is because we recognize that each federation and its institutions is the product of its own particular history and socio-economic realities.

Some general facts about federations— there are today approximately 25-30 federations or federal type systems around the world, which are home to 40% of the world's population. These range in size from India and the US at one of the scale with several hundred million people to St Kitts and Nevis and Federated States of Micronesia with tens of thousands of people.

Some federations are parliamentary, some are presidential, some are constitutional monarchies, and others are republics.

This range of institutional arrangements aside, each of these countries has come to value federal principles when dealing with issues of diversity – cultural, ethnic, linguistic, economic, etc.

Some like Switzerland were created after a civil war; others like Canada were federalized to avert a civil war.

Federalism has flourished where diversities are territorially concentrated so that distinct groups can exercise their autonomy through regional units of self-government. Some scholars differentiate federal solutions from consociational forms of political organization. However, to me, consociationalism is inherent in any federal system. If we accept the widely shared understanding of federalism as 'shared rule-self-rule' then federalism has two components. It is about power-sharing (at the centre) and the allocation of power (among constituent units).

It is no surprise that Cyprus too should be contemplating a federal future.

For obvious reasons, since the end of the Cold War, federalism and federal type solutions have become particularly attractive to countries dealing with the challenge of reconciling diversity with national unity.

Even without commenting on the specific situation in Cyprus, I want to highlight certain issues in the design of federal systems that have significant bearing on way that they operate. These are worth keeping in mind as this country looks more closely at the nuts and bolts of institution building.

Cyprus is more fortunate than most other countries because the process of federalization in Cyprus is preceded by a long local tradition of debate on federalism. And so when a federal state is created it will be one that is rooted in local realities and largely organic – a product of dialogue between communities. I hope therefore that you will find this talk of some value.

The process of federalization consists of two simultaneous processes – namely, building the appropriate institutional structure that responds to a particular countries unique needs and managing the transition to a new system.

All federal states have non-federal origins! The journey to federalism is usually a long and sometimes difficult one. Federations are works-in-progress and even established ones have to recalibrate institutions and processes from time to time. The United States didn't quite get it right the first time around!

The journey usually begins well before the institutional structure is worked out. The moment a society opens the door to federalism you have to start managing expectations about what it will deliver and what it won't.

Federalization is an inherently political, not a purely technical processes. Constitutions are worthless pieces of paper without the political will to abide by their letter and spirit. Therefore leadership matters and remains very important throughout the journey. Leadership in the early years of federalization sets the tone for collaboration and cooperation between communities. But it has to be a collaborative effort between the leadership and civil society. The leadership needs the support of the population at large and the vision to make timely and necessary compromises when required, and it needs to simultaneously engage with the population to remind them constantly of their stake in the success of the system that they are building.

I now turn to the issue of institutional design. I will look here at nine issues of constitutional design which need particular attention when building a federal state. Eight of these are well established in the literature and the late Ron Watts wrote extensively on them. The 9th is a more recent development.

1. The Number and Character of the Constituent Units

The number and relative area, population, and wealth of the constituent units in relation to each other within a federation have considerable effect on the operations of the federation. Where the number of units is relatively large (USA 50, India 36) the relative political power and leverage of individual constituent units is likely to be much less than in federations of six to ten units (Australia, Belgium, and Canada).

Federations that are split in only two units seem to generate sharp bipolarizing tendencies that often result in instability (erstwhile Pakistan and Czechoslovakia). I will return to this issue later.

Where there are substantial disparities in area and population among constituent units these may become sources of dissension over the relative influence of particular regions in federal policy-making.

2. The Distribution of Legislative and Executive Authority

The constitutional distribution of legislative and executive jurisdiction and of financial resources is a key characteristic of federations, but the form and scope of the distribution of powers may vary enormously.

In some countries, like Canada and Belgium, the exclusive jurisdiction of each order of government has been constitutionally emphasized. In others, like the United States, Australia, Germany, and Latin American federations, substantial areas have been constitutionally assigned to concurrent jurisdiction.

In federations such as the United States, Canada and Australia, executive responsibility for a particular matter is generally assigned to the same order of government that has legislative responsibility over that matter.

In many European federations, on the other hand, most notably Germany, Austria and Switzerland, there is constitutional provision for much federal legislation to be administered by the states. Thus, for instance, Germany, in terms of legislative jurisdiction, is more centralized than Canada, but administratively more decentralized. This, in turn translates into a relatively smaller public service at the federal level in Germany.

3. Fiscal Architecture

If the distribution of powers provides the structure of the federation, finances are its life blood. But there is considerable variation in the assignment of taxing powers and revenue sources between federations.

Federations also vary in the employment of financial transfers to assist constituent units and in the degree to which these are conditional or unconditional thereby affecting the relative dependence of the constituent units upon the federal government

There has been considerable variety among federations in the actual scope of specific responsibilities assigned to each order of government. The net effect has been wide differences among federations in the degrees of centralization or decentralization.

4. Asymmetry in the allocation of powers to constituent units

In most federations, the formal allocation of jurisdiction to the constituent units has been symmetrical. However, in federations where the intensity of the pressure for autonomous self-government has been much stronger in certain constituent units than in others, asymmetrical constitutional arrangements have been adopted. Examples Canada, India, Malaysia, Belgium, Spain.

Even when constitutional distribution of powers is broadly symmetric, as in Canada, a degree of asymmetry can be created as a result of individual federal-provincial agreements, and judicial interpretation.

Experience suggests that asymmetrical arrangements may become complex and contentious, as exemplified by the efforts in the last three decades within Canada to increase the autonomy of Quebec. But experience suggests that there may be cases where constitutional asymmetry is the only way to resolve sharp differences when much greater impulses for decentralization exist in some regions than in others within a federal system.

5. The Nature of the Common Federative Institutions

This goes to the issue of shared rule in a federal system. The character of representation and nature of power-sharing within the federal institutions is important in managing and reconciling diversity.

As noted earlier there is considerable institution variation among federations depending on whether they are presidential or parliamentary, or mixed systems.

We see:

- The separation of powers in the presidential-congressional structure in the United States and most of the Latin American federations
- The fixed-term collegial executive in Switzerland
- The executive-legislative fusion with responsible parliamentary cabinets in Canada, Australia, Germany (with some modifications), India, Malaysia, Belgium and Spain
- The mixed presidential-parliamentary system in Russia

These relationships have shaped the character of politics and administration, and the role of political parties in coalition-building and consensus generation within the shared institutions in these federations.

They have also affected the nature of intergovernmental relations. Within parliamentary federations, for example, the general tendency to cabinet dominance has usually given rise to "executive federalism" where most negotiations are carried out between the executives of the governments within the federation.

A key issue is what special provisions are made for the proportionate representation of the diverse groups in the federal executive, legislature (particularly second chambers), public service, and agencies.

With regard to federal second chambers, in some federations, constituent units are equally represented, whereas in others there is not strict equality but a weighting to favour smaller units (to correct their small representation in the popularly elected house).

In some like the United States, Switzerland and Australia, the members of the federal second chamber are elected directly.

In others such as India and Austria they are elected by the state legislatures; in Germany, the Bundesrat consists of delegates of the state governments, and in others like Belgium, Spain, and Malaysia; there is a mixed form of selection.

The relative powers of federal second chambers also vary, tending to be less in the parliamentary federations where the cabinets are responsible to the popularly elected chamber.

6. The Role of Courts

With the exception of Switzerland, where the legislative referendum plays a major adjudicating role in defining the limits of federal jurisdiction, most federations and also the European Union, rely on courts to play the primary adjudicating role in interpreting the constitution and adapting the constitution to changing circumstances.

But here too there are variations

In some federations, like the United States, Canada, Australia, India, Malaysia and some Latin American federations, a supreme court serves as the final adjudicator for all laws.

In others, there is a federal constitutional court specializing in constitutional interpretation (Germany, Belgium and Spain).

In most, there is a clear effort to ensure the independence from influence of the supreme or constitutional courts, and in a number of cases there is an effort by constitutional requirement or by practice to ensure a measure of regional representativeness in the ultimate court.

7. Constitutional Rights

Federations are essentially a territorial form of political organization. Thus, as a means of safeguarding distinct groups or minorities, they do this best when those groups and minorities are geographically concentrated in such a way that they may achieve self-governance as a majority within a regional unit of government. However, in practice, populations are rarely distributed into neat watertight regions.

In virtually all federations some intra-unit minorities within the regional units have been unavoidable. Where significant intra-unit minorities have existed three types of solutions have been attempted.

The first has been to redraw the boundaries of the constituent units to coincide better with the concentration of the linguistic and ethnic groups. Examples have been the creation of the Jura canton in Switzerland, the reorganization of state boundaries in India in 1956 and subsequently, and the progressive devolution of Nigeria from 3 regions to 36 states.

A second approach has been to assign to the federal government a special responsibility as guardian of intra-regional minorities against possible repression by a regional majority. Such provisions have existed in a number of federations, particularly in relation to indigenous or aboriginal peoples.

The third and most widely used approach to protect intra-regional minorities has been through embodying a comprehensive set of fundamental citizens' rights in the constitution to be enforced by the courts. This pattern is now found in most federations except in Australia and Austria.

8. Intergovernmental relations

Within federations, the inevitability of overlaps and interdependence when governments exercise their constitutional powers has generally required extensive intergovernmental consultation, cooperation, and coordination.

These processes have served two important functions: resolving conflicts and providing a means of pragmatic adaptation to changing circumstances.

There are variations among federations in intergovernmental processes, particularly in terms of the "executive federalism" that typifies most parliamentary federations. There are

also variations in the multifaceted character of intergovernmental relations in those federations marked by the separation of powers between the executives and legislatures within each government. These different arrangements affect the extent to which regional units of government themselves effectively participate in federal power-sharing.

In recent years, a number of federations have themselves become constituent units within wider federal or confederal organizations, thus creating multi-tiered federal organizations. For example the European Union which contains among its members four full-fledged federations: Austria, Belgium, Germany and Spain. This has had remarkable influence within the federal states on the roles of their federal and state governments. This would certainly be true in Cyprus

9. Place of local government

Another trend contributing to the tendency of multi-tiered federal systems has been the increasing attention being given to the importance of local governments, including in some cases, such as Brazil, Germany and India, the constitutionalization of their role. This is both a function of rapid urbanization, as well as the political importance that rural constituencies have on politics.

In a country as urbanized as Cyprus, any federal system that doesn't carefully consider the role and mandate of municipal government would be essentially be falling short.

But investing in strong local government in Cyprus is important because it could be one approach used to defuse sharp polarization that usually occurs in bi-zonal/two-unit federations.

Let me conclude by observing that there are clearly challenges ahead in terms of building national institutions and operationalizing a bi-national bi-zonal federations. However, unlike many other countries which look at federal solutions as a tool for post-conflict political settlement, Cyprus has a long history of domestic scholarship on the subject. That civil society and politicians have thought long about federalism, makes me optimistic that when Cyprus embarks on its federal journey, the institutions and process that are built will be organically rooted in the island's realities.

Thank you.