

Chapter Two

Choosing Federalism

Origins of federations

Federations have arisen in very different circumstances, each being the unique result of choices by political leaders and larger historical forces. Federalism has been chosen to bring together formerly separate units into a new country, or to rearrange a previously unitary country, and even as a product of both processes together.

Every federation is unique. Few generalizations can safely be made about how and why federations are created and evolve. However, in every case of federalization, political leaders have constitutionalized two tiers of government as a way to realize and reconcile their respective goals while minimizing violence—or in some cases in order to end it.

Today there are 192 countries in the United Nations, and approximately 28 are federal. Most countries did not exist within their current boundaries a century ago and only a handful did so two centuries ago. Each country has its own story regarding its origins and its territorial and political evolution. These stories involve wars and revolutions, dynastic marriages, colonial empires, international treaties, and peaceful democratic processes.

Federations have emerged within these larger processes of country formation and evolution in a variety of ways:

- In some cases, **coming together** was central to the emergence of a new, federal country. Previously separate units—independent states

or colonies—concluded that they had enough common interest and shared identity to join together in a federal arrangement. Why federal? Because a federal structure permitted each unit to preserve some of its autonomy while pooling other aspects in the new community.

- In other cases, the country may have originally been created with a unitary and highly centralized (often authoritarian and undemocratic) structure. The eventual choice of federalism was in response to democratic political pressures for **devolution** because of the country's multiple languages, religions or ethnicities, and, perhaps, major economic differences between regions. In some countries, the regions pressing for autonomy may have been distinct political entities in the past.
- In yet other cases, these two processes combined. Canada emerged from the creation of Ontario and Quebec out of a previously unitary regime and from the addition of new provinces. India too combined these two processes.

Historic waves of federalism

Federations have been formed in a series of historical waves over the last two centuries.

The first wave, from the late eighteenth to the early twentieth centuries, saw the **creation of new countries with formerly independent units coming together in a federal form**. Switzerland and the United States initially came together as confederations: the American experiment with confederation lasted for only eight years, from 1781 to 1789, when the 13 states addressed a weakness at the centre by forming the first modern federation; the Swiss confederation evolved over more than five centuries, but after a brief civil conflict it adopted, in 1848, a federal constitution modeled on the American example. Germany's first federal constitution emerged in 1871 as a successor to loose confederal arrangements. While Canada was initially formed in 1867 out of the coming together of three colonies in British North America (and in due course expanded by the addition of others), its federal bargain included splitting the largest of these into 2 provinces—

so its origins were both in coming together and devolution. The 6 colonies in Australia came together as a federation in 1901.

In Latin America, four federations emerged in the nineteenth and early twentieth centuries. They all won independence in the wake of the Peninsular War, but then had checkered constitutional histories with periods of dictatorship and civil unrest. Their federal constitutions emerged over time, sometimes after earlier experiments with both federal and unitary regimes. In the last twenty years, the transition to genuine democracy in Argentina, Brazil, and Mexico has brought real life to their federal constitutional arrangements. Venezuela is now highly centralized.

The post-war break-up of the European empires saw the creation of various **post-colonial federations**, as well as some failed attempts. India, Pakistan, Malaysia, and Nigeria have endured as federal systems. The efforts by the departing colonial powers to bring together formerly separate colonies into new federal countries were not a success in the West Indies, Central Africa, French West Africa, and East Africa, nor were attempts to introduce federal arrangements in Indonesia, Mali, and Uganda. The very small federations of Belau, Comoros, Micronesia, and St. Kitts and Nevis also emerged from decolonization.

The next significant wave came with **new federations emerging from the collapse of communism**. The communist Soviet Union, Czechoslovakia, and Yugoslavia all had nominally federal constitutions, but were in reality centrally controlled one-party regimes. However, as they democratized, their federal structures took on real political significance. With little experience of democracy and the tremendous stresses of transition, all these federations failed. However, Russia, which itself had been a federation within the old structures of the Soviet Union, did emerge as a post-communist federation. And Bosnia-Herzegovina emerged out of Yugoslavia with a federal structure, though it remains under a strong measure of international tutelage.

About the same time, **new federations were emerging from unitary states**. Belgium is the clearest example, formally adopting a federal constitution in 1993. As Spain democratized after Franco, it devolved

significant powers to its autonomous regions and became effectively federal. South Africa also adopted an essentially federal structure (along German lines), when it democratized after the end of apartheid. Other countries—Italy, Indonesia, Peru, the UK—moved towards substantial devolution to regional governments, but they are not yet fully federal. Both Bolivia and the Philippines have debated adopting federalism.

The most difficult cases have been the **new federations emerging from post-conflict situations**. Under the Dayton Accord, Bosnia-Herzegovina was established as a federal regime; however, it has remained under a kind of international tutelage. Ethiopia, which had never been democratic, adopted federalism after rebels defeated the Mengistu regime, as did Sudan as part of a comprehensive peace accord that ended its long civil war with the South. The Congo's new constitution, under which it recently conducted the first nation-wide elections, is effectively federal. Iraq's voters ratified a federal constitution in 2005, but its implementation is proving to be very challenging. All of these situations remain difficult. In other cases, such as Sri Lanka and Cyprus, efforts to find a federal formula to end conflict and division have failed so far. Nepal is currently looking at the possibility of federalism, following the end of its Maoist insurgency.

The last case that should be mentioned in the history of federalism is the European Union. The EU is a unique political institution, perhaps more confederal than federal, but it has a number of federal features, and there is a continuing debate amongst Europeans about whether to move more fully in a federal direction. In any case, the EU experiment remains highly relevant for students of federalism.

Evolution of federations

All federations evolve over time. Some have gone through major formal constitutional changes, while others have changed significantly despite largely stable constitutions. Factors such as the creation of new constituent units, urbanization, major demographic and economic shifts, new technologies, major global and domestic political developments, and the experience of democracy have been critical in shaping federal experiences.

The oldest federation, the United States, has had the same constitution for over 200 years and has made only 27 amendments to it. India has made 94 amendments to its constitution in 60 years. Brazil has had 7 constitutions since independence, Mexico 6, and Venezuela 26. Some federations have maintained constitutional continuity, while others have had legal breaks because of revolutions or military regimes. As will be noted, in many federations the number and character of constituent units have changed dramatically over time. Whatever the extent of formal constitutional changes, every federation has changed over time, often in ways that would have surprised the founders. The United States and Australia were to be decentralized federations, but have become centralized, while Canada, which was to be centralized, evolved in the opposite direction.

In all long-established federations, transportation and communications technologies have shrunk distances and shaped the development of politically conscious communities within them. As well, parts of a country that in the early history of the federation may not have existed or have counted for little—the west of the United States and Canada, the interior and north of Brazil—have assumed greater weight over time. The world wars, which called for major national efforts, greatly strengthened some central governments in federations, as has the rise of the welfare state.

The experience of democracy has been critically important in the changing shape of many federations. Mexico and Brazil have become more federal as democracy has shifted power to multiple centres and parties. India has defied skeptics and maintained the world's largest democracy, but it functions very differently today than in the period

after independence when the Congress Party controlled both the Union and all the state governments.

Suitability of federalism

Federalism is not always best, and there is no best version of federalism. Federalism seems particularly suited to democracies with very large populations or territories or with highly diverse populations that are regionally concentrated. Over time, federalism requires a significant part of the population to have a sense of identity with the whole country, as well as lively and engaged political communities at the regional level.

Federalism is suitable for some countries, not all. Federalism is a democratic form of government, rooted in constitutionalism and the rule of law. It can be a sham in non-democratic countries, though there have been cases of partial democracy or liberalization where federal structures had some real life.

Federalism and Democracy

The **Soviet Union**, **Yugoslavia**, and **Czechoslovakia** were not true federations during the period of Communist rule, even though they had federal constitutions. All real power was centralized in the Communist Party. The situation was more complex in Latin America: **Brazil** and **Argentina** had periods of military rule at the centre, but sometimes allowed relatively free elections within their states or provinces (particularly during transition from military rule; in Brazil, the states played a key role in designing the constitution to end such rule). In **Mexico**, the Institutional Revolutionary Party (PRI) largely controlled elections for many years, but over time its grip loosened, particularly in certain states. **Nigeria** and **Pakistan** have had similar experiences of intermittent military rule and federal democracy. Thus, some undemocratic federations are clearly for show, but in others their federal structure might have some reality. Moreover, in all these countries, federal constitutional arrangements came to have real significance during the transition to democracy as previously subservient constituent units were

empowered. In the formerly communist countries, the federal structure played a role in their break-up.

It is no accident that all democracies with populations much larger than 100 million people are federal (Japan and Indonesia are the largest non-federal democracies, but both are regionalized) and all continental-sized democracies are federal. There seems to be a limit to the size of population or territory that a single, popularly elected government can manage effectively. As well, highly diverse democracies, especially those with distinct, regionally concentrated populations, typically have pressures to give these populations their own governments for certain purposes. Thus federalism is increasingly proving to be attractive to some formerly unitary countries, as well as to developing or transitional countries that are seeking a viable form of democracy.

Of course, federal democracies, like unitary democracies, require certain cultural and other characteristics, including respect for the rule of law and minority rights and an element of shared identity. Judgments can be wrong about where democracy can survive. There are many more democracies today than twenty or forty years ago. Sixty years ago, many doubted that India could hold together as a peaceful democracy, but it has. Moreover, India's success in surviving as a democracy was actually dependent on its adopting federalism.

However, a number of federations have failed, especially early in their existence. Most had had little experience of democracy, little history as a shared country, and a weak sense of common identity. The post-communist and some post-colonial federations failed because of the stresses of democracy as well as other factors, such as extreme imbalance of constituent units or fatally weak central governments. Local or regional identities were stronger than any larger national identity and were seen as inconsistent with or opposed to such an identity. Failure took the form of break-up or secession (or even expulsion in the case of Singapore's leaving Malaysia).