

## MODELS OF FEDERAL-POWER SHARING

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### 1. INTRODUCTION: THE CHALLENGE OF MANAGING DIVERSITY

Modern developments in transportation, social communications, technology and industrial organization, have produced pressures at one and the same time for larger political organizations and for smaller ones. The pressure for larger political units has been generated by the goals shared by most Western and non-Western societies today: a desire for progress, a rising standard of living, social justice, and influence in the world arena, and by a growing awareness of world-wide interdependence in an era whose advanced technology makes both mass destruction and mass construction possible. The desire for smaller, self-governing political units has risen from the desire to make governments more responsive to the individual citizen and to give expression to primary group attachments -- linguistic and cultural ties, religious connections, historical traditions and social practices -- which provide the distinctive basis for a community's sense of identity and yearning for self-determination. Given these concurrent dual pressures throughout the world, it is not surprising that more and more peoples have come to see some form of federal political system, combining a shared government for certain specified common purposes and autonomous action by governments of constituent units for purposes related to maintaining their regional distinctiveness, as allowing the closest institutional approximation to the multinational reality of the contemporary world. In such a context, the objective of federal political systems is not to eliminate diversity but rather to accommodate, reconcile and manage social diversities within an overarching polity.

The need for such a reconciliation has been accentuated at the end of the twentieth century by the increasingly global economy that has itself unleashed economic and political forces strengthening both supranational and local pressures at the expense of the traditional nation-state. Global communications and consumership have awakened desires in the smallest and most remote villages around the world for access to the global marketplace of goods and services. As a result, governments have been faced increasingly with the desires of their people to be global consumers and local citizens at the same time. Tom Courchene has called this trend "glocalization". Thus, the nation-state itself is simultaneously proving both too small and too large to serve all the desires of its citizens. Because of the development of the world market economy, self-sufficiency of the nation-state is widely recognized as unattainable and nominal sovereignty is less appealing if it means that, in reality, people have less control over decisions that crucially affect them. At the same time, nation-states have become too remote from individual citizens to provide a sense of direct democratic control and to respond clearly to the specific concerns and preferences of their citizens. In such a context, federalism with its different levels of government has provided a way of mediating the variety of global and local citizen preferences.

The resulting increased contemporary interest in federalism is illustrated by the expanding number of journals and academic organizations focusing on its study. Twenty-five years ago there was only one journal and two centres for research on federalism in the world. There are now several journals, and the International Association of Centres for Federal Studies (IACFS) meeting annually now encompasses 23 centres and institutes in 15 countries on five continents. In addition the International Political Science Association has for more than a decade had a Research Committee on Comparative Federalism and Federation. Among the areas which have been considered by these academic enterprises have been the kinds and degrees of diversity within federal societies, the differences between territorial and non-territorial diversity, the differing impact of cross-cutting and of cumulatively reinforcing social cleavages, the impact of ethnic nationalism, the particular characteristics of bipolar societies, the trend to asymmetrical arrangements within federations, the increasing number of confederal associations, federal financial arrangements, and the role of political parties in federal systems. These are all factors affecting the attempts by federal political systems to accommodate social diversity.

## 2. MAJOR FEDERAL INSTITUTIONAL MODELS

For the sake of clarity we may distinguish three terms: "federalism", "federal political systems" and "federations".

"Federalism" is not a descriptive term but a normative one and refers to the advocacy of multi-tiered government combining elements of shared-rule and regional self-rule. It is based on the presumed value of achieving both unity and diversity by accommodating, preserving and promoting distinct identities within a larger political union.

"Federal political systems" is a descriptive term applying to a broad category of political systems in which, by contrast to the single source of central authority in unitary systems, there are two (or more) levels of government, and combining elements of shared-rule through common institutions with regional self-rule through the constituent units. This broad category encompasses a whole spectrum of more specific non-unitary forms including "federations" and "confederations".

Within the spectrum of federal political systems we may identify the following models involving elements of federal power-sharing:

Unions: These are polities compounded in such a way that the constituent units preserve their integrity primarily or exclusively through the common organs of the general government rather than through dual government structures. Belgium prior to becoming a federation in 1993 was an example (when central legislators served a dual mandate as regional or community councillors) and the role of Scotland and Wales in the United Kingdom prior to devolution was another. Such systems recognize diversity but provide no opportunity for autonomous regional self-government.

Constitutionally decentralized unions: These are basically unitary in form in the sense that ultimate constitutional authority rests with the central government, but such unions provide constitutionally protected sub-units of government with some functional autonomy. See [Table 1](#) for examples. Such systems provide for a measure of regional or local self-government, but they are ultimately vulnerable to the overriding constitutional authority of the central government.

Federations: These are compound polities, combining strong constituent units of government and a strong general government, each possessing powers delegated to it by the people through a constitution, and each empowered to deal directly with the citizens in the exercise of its legislative, administrative and taxing powers, and each directly elected and accountable to its citizens. Currently there are some 24 countries (listed in [Table 1](#)) that meet the basic criteria of a federation, although in the cases of South Africa and Spain their constitutions have not adopted the label of "federation". Federations enable both strong general and strong regional governments each directly responsible to their citizens, but this is achieved at the price of some tendencies to complexity and legalism.

Confederations: These occur where polities are joined together to form a common government for certain limited purposes such as a defence or economic purposes, but the common government is dependent upon the constituent governments. In confederations the common government has only an indirect electoral or fiscal base since the member governments act as intermediaries between the common government and the citizens. Such a system by requiring the assent of member governments for all major common policies reinforces their autonomy by comparison with the constituent units in federations, but this means that the common government is in a weaker position to deal decisively with contentious subjects or to redistribute resources. Historical examples have been Switzerland for most of the period 1291-1847 and the United States 1776-89, both superseded by federations. Examples in the contemporary world are listed in [Table 1](#). The European Union is primarily a confederation although it has increasingly incorporated some features of a federation.

Federacies: These occur where a large unit is linked to a smaller unit or units, but the smaller unit retains substantial autonomy and has a minimum role in the government of the larger one, and where the relationship can be dissolved only by mutual agreement. An example is the relationship of Puerto Rico to the United States, and others are listed in [Table 1](#). Such arrangements ensure a high level of autonomy for the smaller unit, but at the expense of having little significant influence on the policies of the larger unit.

Associated states: These relationships are similar to federacies, but can be dissolved by either of the units acting alone on prearranged terms. Consequently, the stability of these arrangements is less secure. Examples are listed in [Table 1](#).

Condominiums: These are relationships in which a political unit functions under the joint rule of two or more external states in such a way that the inhabitants have substantial

internal self-rule. An example was Andorra which functioned under the joint rule of France and Spain 1278-1993.

Leagues: These are linkages of politically independent polities for specific purposes that function through a common secretariat rather than a government and from which members may unilaterally withdraw. [Table 1](#) lists examples, including NATO.

Joint functional authorities: These are agencies established by two or more polities for joint implementation of a particular task or tasks. The North Atlantic Fisheries Organization (NAFO), the International Atomic Energy Agency (IAEA), and the International Labour Organization (ILO) are three of many examples. Such joint functional authorities may also take the form of transborder organizations established by adjoining sub-national governments such as the interstate grouping for economic development involving four regions in Italy, four Austrian Länder, two Yugoslav republics and one West German Land established in 1978, and the interstate Regio Basiliensis involving Swiss, German and French cooperation in the Basel area.

Hybrids: Some political systems combine characteristics of different models. Those which are predominantly federations in their constitutional structure and operation but which have some overriding federal government powers more typical of a unitary system have sometimes been described as "quasi-federations". Examples include Canada which initially in 1867 was basically a federation but included some overriding federal powers, but in the second half of the twentieth century these have fallen into disuse. India, Pakistan and Malaysia are predominantly federations but their constitutions include some overriding central emergency powers. More recently, the South African constitution of 1996 has most of the characteristics of a federation, but retains some unitary features. Another form of hybrid is one combining the characteristics of a confederation and federation. A prime example is the European Union after the Maastricht Treaty which is basically a confederation but has some features of a federation. Germany since 1949 has been predominantly a federation, but its federal second chamber, the Bundesrat, represents a confederal element. Hybrids occur because statesmen are more interested in pragmatic political solutions than in theoretical purity.

The applicability of any of these models will depend upon the particular circumstances of each case. Factors that need to be taken into account include the nature and strength of the motives for common action and shared-rule and the intensity and distribution of the pressures and motives in the constituent units for autonomous policy making and self-rule.

### 3. VARIATIONS AMONG FEDERATIONS

Within the range of models which we may describe as "federal political systems", as noted above, federations represent one particular model. The defining characteristic of this model is that in a federation neither the federal nor the constituent units of government are constitutionally subordinate to the other. Each order of government has sovereign powers defined by the constitution rather than by another level of government,

each is empowered to deal directly with its citizens in the exercise of its legislative, executive and taxing powers, and each is directly elected by and accountable to its citizens.

The generally common structural characteristics of federations are the following:

At least two orders of government acting directly on their citizens;

A formal constitutional distribution of legislative and executive authority and allocation of revenue resources between the orders of government that ensures some areas of genuine autonomy for each order;

Provision for the designated representation of distinct regional views within the federal policy-making institutions, usually including the representation of regional representatives in a federal second legislative chamber;

A supreme constitution not unilaterally amendable and requiring for amendment the consent of a significant proportion of the constituent units either through assent by their legislatures or by regional majorities in a referendum;

An umpire, usually in the form of courts or by provision for referendums (as in Switzerland regarding federal powers) to rule on disputes over the constitutional powers of governments;

Processes and institutions to facilitate intergovernmental collaboration in those areas where governmental powers are shared or inevitably overlap.

The extent to which federation is the appropriate model to accommodate and manage diversity in a particular situation will depend on the extent to which the social diversity is amenable to the institutional features of federations as described above.

The applicability of federation as a political solution may also depend upon the particular form of federation that is adopted. Within the basic framework of characteristics identified above as common to federations, there is considerable scope for variation, as evidenced by differences among existing federations. These variations include: variations in the number, relative population and area, and relative wealth of the constituent regional units; variations in the degree of ethnic homogeneity among the regional units and within each regional unit; variations in the degrees of centralization, decentralization and noncentralization in the powers and responsibilities exercised by the different orders of government and the resources made available to them; variations in the degree of symmetry or asymmetry in the distribution of jurisdiction or resources among the constituent units; variations in the character of the federal institutions, including whether these are presidential, collegial or parliamentary in form, and the arrangements for the selection, composition and powers of the federal second chamber; variations in the structure and scope of the judiciary and the role of judicial review; and variations in the institutions and processes through which intergovernmental consultation and

collaboration are facilitated. Thus, it must be recognized that even among federations there is no single pure or ideal model. There have been many variations and the particular form that is appropriate in a given situation may vary according to the nature and extent of the social diversity to be accommodated.

#### 4. ISSUES IN THE DESIGN OF FEDERATIONS THAT AFFECT THEIR OPERATION

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 has considerable effect on the operation of the federation. Where the number of units is relatively large, for instance 89 in the Russian federation or 50 in the United States the relative political power and leverage of individual constituent units is likely to be much less than in federations of six units (such as Australia and Belgium) or of ten provinces (such as Canada). Furthermore, those composed of only two units (such as Pakistan and Czechoslovakia before each split) seem to generate sharp bipolarizing tendencies that often result in instability. 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. In some instances, most notably India and Nigeria regional boundaries have been altered to reduce such disparities and to make the regional units coincide more closely with linguistic and ethnic concentrations. Disparities in wealth among regional units making it difficult for citizens to receive comparable services can have a corrosive effect on solidarity within a federation and that explains why so many federations have found some form of financial equalization highly desirable.

In considering the character of constituent units two other points arise for consideration. Traditionally, federations as a form of territorial political organization have seemed to be most applicable where diversities are territorially concentrated so that distinct groups can exercise their autonomy through regional units of self-government. Power-sharing among distinct non-territorial groups (i.e. distributed all across the country rather than concentrated in regional areas) has more commonly been associated with a consociational form of political organization in which the different groups affect policy primarily through their representatives in a central government. Belgium, however, when it became a federation in 1993, provided an interesting experiment in which three territorial "regions" and three non-territorial "communities" constituted self-governing governmental units within the federation.

Another noteworthy recent development is the number of federations which have themselves become constituent units within a wider federal or confederal organization, thus creating a multi-tiered federal organization. The most prominent example is the European Union which contains among its members four full-fledged federations: Austria, Belgium, Germany and Spain. This has had an impact within each of these federations upon the relative roles of their federal and state governments. Yet another trend contributing to the tendency for multi-tiered federal systems has been the increasing

attention being given to the importance of local governments, including in some cases, such as Germany and India, the constitutionalization of their role.

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, such as Canada and Belgium the exclusive jurisdiction of each order of government has been constitutionally emphasized, while in others, such as the United States, Australia, Germany and the Latin American federations, substantial areas have been constitutionally assigned to concurrent jurisdiction. In some 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 of the 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 is in terms of legislative jurisdiction much more centralized than Canada, but in administrative terms more decentralized.

There are also variations among federations in the allocation of taxing powers and revenue sources. In addition, federations 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. (These financial aspects are being dealt with more fully in the conference theme sessions on economic and fiscal federalism.)

Apart from these significant variations in the form of the distribution of legislative and executive authority and resources, 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 noncentralization. While there is no room for a complete comparative tabulation here, it is worth noting, as a broad indicator of the range of relative centralization, that in a representative group of federations federal government expenditures (after transfers) as a percentage of total federal-state-local government expenditures ranged in 1996 as follows: Malaysia 85.6; Austria 68.6; Spain 68.5; United States 61.2; India 54.8; Australia 53.0; Germany 41.2; Canada 40.6.; Switzerland 36.7; European Union 2.5 (Source: R. L. Watts, *The Spending Power in Federal Systems: A Comparative Study*, 1999, p. 53).

Symmetry or 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 some federations where the intensity of the pressure for autonomous self-government has been much stronger in some constituent units than in others, asymmetrical constitutional arrangements or practices have been adopted. Among the examples are the Canadian, Indian, Malaysian, Belgian, Spanish and Russian federations and the European Union. Two types of constitutional asymmetry can be distinguished. One is provision for permanent asymmetry among the full-fledged units

within a federation. This has occurred in Canada, India, Malaysia and Belgium. In other cases, such as Spain and the European Union, asymmetrical arrangements have been seen as transitional, intended to arrive ultimately at a more uniform autonomy, but at "varying speeds". Analysis of the various examples of asymmetry within federations 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 noncentralization exist in some regions than in others within a federal system.

The nature of the common federative institutions: While the constitutional establishment of regional units with self-government is an essential feature of federations in order to accommodate diversity, the character of representation and power-sharing within the federal institutions is also an important aspect in the ability of federations to manage and reconcile diversity. A crucial variation among federations has been the legislature-executive relationship within the common shared institutions. The different forms of this relationship B exemplified by 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, and the mixed presidential-parliamentary system in Russia B 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 the 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 such as 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 yet others, for example 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.

In comparing federations to confederations, it is worth noting that in the former, where the federal legislature and government is directly elected by and accountable to the electorate, it has been less difficult for federal governments to generate the support of the citizenry. In confederations, such as the European Union, however, the intergovernmental character of the common institutions and their indirect relationship



with the electorate has led to charges of a "democratic deficit" Indeed, the pressures within the European Union to reduce the democratic deficit by enhancing the role of the European Parliament and by increasing the extent of majority voting within the Council point towards making the Union less confederal and more federal in character. This experience raises the question whether, given the contemporary predominance of democratic ideals, confederal systems are likely to be transitional rather than permanent systems.

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, the prime model being the United States, but Canada, Australia, India and Malaysia and some of the Latin American federations are also examples, 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 provide examples. 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.

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. But populations rarely in practice are 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. The implications of such citizens' rights and the role of the courts in relation to them are covered in more depth by a separate background paper and session within the citizenship and social diversity theme at this conference.

Intergovernmental relations: Within federations the inevitability of overlaps and interdependence in the exercise by governments of 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. The institutions and processes for these interactions are being dealt with more fully at this conference by a separate series of sessions on the theme of intergovernmental relations. The subject is simply referred to in this paper to note that there are variations among federations in these intergovernmental processes, particularly in terms of the "executive federalism" that typifies most parliamentary federations and the more 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.

## CONCLUSIONS

The successes and failures of federations during the past half century point to five major lessons which have a bearing on the ability of federations and more broadly federal systems to reconcile and manage social diversity.

First, in the context of the contemporary global scene, federations combining shared-rule and self-rule do provide a practical way of combining the benefits of both unity and diversity through representative institutions. They are not a panacea for humanity's political ills, however, and there have been some significant failures, most notably the fragmentation of the West Indies Federation, Rhodesia and Nyasaland, Pakistan, the USSR and Czechoslovakia, of which account must be taken.

Second, the degree to which federations have been effective has depended upon the degree to which there has been a wide degree of public acceptance of the need to respect constitutional norms and structures and the rule of law.

Third, equally important for the effective operation of federations has been the development of mutual faith and trust among the different groups within a federation and an emphasis upon the spirit of tolerance and compromise.

Fourth, the examples of secession or fragmentation in the West Indies Federation, Rhodesia and Nyasaland, Pakistan, the USSR and Czechoslovakia have led some critics to argue that federations are prone to instability and secession. It should be noted, however, that all these cases of failed federations have occurred where democratic institutions were weak or lacking. Their failure may be attributed more to their undemocratic character than to their federal character. Indeed, there have not yet been any cases of genuinely democratic federations, no matter how diverse, that have disintegrated. This suggests that fully democratic processes are a fundamental prerequisite to effective federation.

Fifth, the extent to which a federation can accommodate political diversity is likely to depend not just on the adoption of federal arrangements, but upon whether the particular

form or variant of federation that is adopted or evolved gives adequate expression to the desires and requirements of the particular society in question. As emphasized throughout this paper, there are many variations possible in the application of the federal idea in general or even within the more specific category of federations. Ultimately the application of federalism involves a pragmatic prudential approach, and its continued applicability in different or changing circumstances in the twenty-first century may well depend upon further innovations in its application.

Table 1: Examples of Varieties of Federal Arrangements

\* South Africa and Spain, while predominantly federations in form and practice, have not adopted the label “federation” in their constitutions.