Federalism in the Twenty-First Century

Notes for George Anderson
President, Forum of Federations
Meetings in Sao Paulo and Brasilia
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Introduction

• Brasil one of the world’s most dynamic federations: of great interest comparatively

• Forum of Federations active here since 2000, shortly after its founding

• Propose today to give outline of federalism in its global context and to draw out some issues of particular interest in Brasil
A few words about the Forum of Federations

- Established in 1999
- Now supported by Brasil, Mexico, Canada, Switzerland, Germany, Nigeria, Ethiopia, India and Australia
- An NGO but supported by governments
- Activities in 20 countries a year
- Every 3 years international conference: next Addis
- Development assistance programs in six countries
- Extensive publications and website
- A knowledge based organization
- Not an advocacy organization
What is federalism?

- **Two orders of government** (central/regional) each with independent powers
- **Constitutionally created**—not creature of other order (vs. unitary or confederal)
- **Arbitration mechanism** for constitution, usually a court
- **Elected governments at both levels:** goes with divided power, rule of law
- **Special federal protections:** upper house; amendment formula; court composition; language
Variety of federations: societies

- 25 in world and 40% of population
- All democracies with very large populations or territories
- Some small countries with great social diversity: language, ethnicity, religion, regions
- High, middle and low income countries
Variety of federations: institutions

• Legislative-executive arrangements:
  – Parliamentary
  – Presidential
  – Mixed

• Upper houses:
  – directly-indirectly elected
  – powers

• Electoral and party systems

• Protections of minority rights

• Distribution of powers

• Fiscal sharing
“Federalism”: A Politically Sensitive Word

• Not all 25 federations always meet all elements of definition and experts sometimes disagree
• In some countries ‘federal’ carries negative political baggage: South Africa, Spain, Indonesia—even India
• Some unitary countries are highly decentralized
• Issue is not use of word ‘federal’, but value of ‘tool kit’ of federal techniques
• Every country must find its own formula
Classic Federations

- United States (1780)
- Switzerland (1848)
- Canada (1867)
- Australia (1901)
- Germany (1871-1918) (1948)
- Austria (1918-1933) (1945)

- All are now well established and successful but three broke down at some point in their history
Latin American Federations

- Venezuela (1811)
- Mexico (1824)
- Argentina (1853)
- Brazil (1891)

- History of military rule and major constitutional rewrites
- Transition to democracy in late twentieth century
  - All but Venezuela now quite stable democracies
Post-Colonial Federations

• Continuing:
  • India (1950)
  • Malaysia (1948 and 1963) (lost Singapore)
  • Nigeria (1954)
  • Pakistan (1956) (lost Bangladesh)

• Failed
  • West Indies (1958)
  • Indochina (1945-7)
  • French West Africa and Mali (1959)
  • Indonesia (1945-9)
  • Uganda
  • Central African Federation
New Wave of Federalism

- Post-Soviet federations
- Federations emerging from unitary regimes
- European Union
- Post-conflict situations

- Mixed picture regarding prospects
Federalism and the ex-Soviet Bloc

- Soviet Union, Yugoslavia and Czechoslovakia were nominal, not real, federations. Power was always centralized in the party and courts not independent.
- They did not survive the transition to democracy.
- However, Russia, which was half the Soviet Union held together as a federation. Though Putin has moved to centralize, still a federation.
New federations emerging peacefully from unitary systems

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<td>Belgium</td>
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<td>South Africa</td>
<td>Italy</td>
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<td>United Kingdom?</td>
<td>Bolivia</td>
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The European Union

• Unique regime
  – Federal: Parliament, Court
  – Confederal: Council of Ministers

• Central motivation was to bring peace to Europe but now much broader

• Started from different functional focus than most federations: economic, not defence and foreign policy
New federations emerging from post-conflict situations

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Bosnia

- Federal regime imposed by Dayton accord
- Very small country
- Elaborate mechanisms for protecting three communities at centre: not functional
Ethiopia

- Federal regime emerged from victorious revolution—liberation armies based in different regions
- Highly diverse society, undeveloped politics
- Significant push to develop regional structures and politics
- Still one party in control at both levels, but party competition becoming more active
Iraq

- Federalism only solution acceptable to Kurds
- Highly decentralized design but not yet implemented. Many unresolved issues
- Oil dependent state
- Emergence of sectarian politics
- An asymmetric model?
Sudan

• Federal solution central to Comprehensive Peace Agreement
• Special features:
  – Government of national unity
  – Eventual referendum on southern independence
  – South Sudan as federation within federation
  – Oil revenue sharing
• Transitional period before elections
• Unresolved problems of Darfur and North-east
South Africa

• African National Congress traditionally opposed federalism
• But agreed:
  – Inkatha
  – Europeans
  – Asians
• Needed to create provinces
• Successful transition to democracy
Innovations in New Federations

• **Territorial and cultural federalism**: Belgian model
• **Asymmetry**:
  – Spanish separate treaties with autonomous communities
  – UK: Scotland, Wales, Northern Ireland
  – Sudan: federation within a federation
• **Constitution-making**:
  – Reconciliation and constitution-making in South Africa
• **Federalism at the centre**
  – 50-50 Cabinet, ‘alarm bells’ in Belgium
  – Mixed executive in Iraq
Conditions for Federal Success

- **Federal culture**: can be very divided, but need some elements of shared identity and respect for difference, tolerance; cross-cutting cleavages

- **Federal politics**: rule of law, leaders (Nehru, Mandele, Trudeau), political game (peaceful, democratic)

- **Federal techniques**: fiscal federalism, ethnic and language laws, decentralization; consocialtionalism
The Evolution of Federations

• A classic distinction was made between dualist and integrated federations: former clear separation of powers; latter federal lead on most issues

• Over time, entanglement
  – Overlapping responsibilities (concurrent, joint, shared)
  – Joined-up government: break down silos
  – Public opinion
  – International pressures

• Countervailing pressures to centralization:
  – Identity politics
  – Established programs
  – Administrative flexibility
  – Escaping joint decision trap
Federalism and Brazil

• Brazil a large and diverse country has always had a strongly regionally character
• But first federal constitution in 1889, followed by episodes of centralized dictatorship or military rule.
• Constitution of 1988 truly federal.
• Some distinctive features of Brazilian federalism:
  – Weight of small states in central structures
  – Municipal order of government constitutionalized
  – Highly detailed constitutional provisions
  – Special decision-rules, e.g. on fiscal reform
  – Fiscal accountability and responsibility law
Federalism and Brazil

• Current issues:
  – Tax reform
  – Intergovernmental relations
  – Oil and gas sharing
  – Designing social programs with more local flexibility
Forum Projects Globally

- **Global dialogue subjects**: central institutions; constitutional origins and structures (B); division of powers (B); fiscal federalism (B); international relations; local governments and metro regions (B); diversity and unity (B); intergovernmental relations; political parties and civil society

- **Major theme work**: oil and gas; internal markets; environmental assessment; indigenous government; immigration and integration; public security; benchmarking

- **Future themes**: fiscal responsibility, accountability and transparency arrangements; climate change; water; emergency measures
Forum Activities in and with Brazil

- Global dialogue: five themes, plus international conference on fiscal federalism
- Fiscal federalism: over a dozen conferences since 2000
- Health policy: a conference
- Cities: a number of events
- Intergovernmental relations and cooperative federalism: two conferences
- Oil and gas: a Brazilian chapter
- Publications in Portuguese: on fiscal federalism, on intergovernmental relations, and an introduction to federalism
- Large Brazilian delegations at triennial international conferences on federalism
Conclusions

• Second half of 20\textsuperscript{th} century saw tremendous growth in federalism around world
• Driven largely by democratization
• Federations face significant challenges, but federalism especially suited to large or highly diverse countries: Brazil is a natural federation
• Federations can learn from one another
• We look forward to greater opportunities to learn from our Brazilian colleagues and to share international experiences with them.