

Federalism in the Twenty-First Century

Notes for George Anderson
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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

Established

- Belgium
- Spain
- South Africa
- United Kingdom?

Potential

- Philippines
- Indonesia
- Italy
- Bolivia

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

Established

- Bosnia
- Ethiopia
- Iraq
- Sudan
- South Africa

Potential

- Sri Lanka
- Somalia
- Congo
- Cyprus
- Nepal

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; consociationalism

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 20th 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.