

Truths and untruths: Federalism, autonomy and decentralization

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Constitutional engineering is an increasingly popular conflict resolution tool. The decentralization of state power through constitutional change is especially common when conflicts are fought along ethnic or communal lines. It is not always clear, however, what new constitutional arrangements can achieve, and constitutional changes are often viewed sceptically by different sides to a dispute. Governments fear that decentralizing state power is a slippery slope eventually leading to secession, and in any case too complicated to untangle conflicting interests, powers and jurisdictions. Minorities and rebel groups do not trust governments to respect autonomy arrangements, even if constitutionally agreed, and often prefer the clean break of independence. Commentators and those assisting peace processes often disagree on the appropriate forms of decentralization, or on the workability of different models. Some place too much faith in a constitutional ‘fix’, others too little.

Where ethnic, linguistic and/or religious grievance lies at the heart of the conflict, it is certain that a durable peace will require some changes in governance so that it is addressed. Decentralization and autonomy arrangements are important, but they are not a magic bullet and certainly cannot be applied in a one-size-fits-all model. Their appropriateness and consequences will vary enormously according to context. This short paper examines some of the common misunderstandings.

“Autonomy and federalism lead to secession”

Only rarely; real federalism keeps states together.

Governments negotiating with rebel groups to end or prevent civil wars often fear that the decentralization of state powers through federalism or territorial autonomy will allow separatists to mobilize their resources, gain strength and eventually secede. The collapse of the former communist federations, Yugoslavia, Czechoslovakia and the Soviet Union itself is often seen as proof that federalism and autonomy lead to the disintegration of the state. Some scholars, for example, have argued that the communist federal states offered to their provinces ‘virtually all the building blocks that are necessary for the rise of nationalist movements and the formation of [separate] states’ (Bunce, 1999, 49).

However, the collapse of the communist federations can be explained by the fact that these states did not allow for meaningful regional and local autonomy. The break-up of the communist federations, some argue, was caused by the impact

of authoritarian rule rather than by the federal institutions themselves. Furthermore, the strain of rapid democratization, of opening up the political process to multiple contenders and of allowing electoral competition, also contributed to the disintegration of these federations. This risk was particularly real when elections were introduced in the sub-state units of formerly nondemocratic federal states prior to democratic nationwide elections, and in the absence of democratic country-wide parties.

Scholars point out that no violent separatist movement has ever succeeded in winning independent statehood from a federal democracy. Rather, every federal system that broke apart or transformed itself to a unitary state was imposed by an outside power (Bermeo, 1999, 108). Research points out that all long-standing, multi-ethnic democracies are federal (Switzerland, Canada, Belgium, Spain and India). There are of course many unitary, multi-ethnic states in the world. However, these states also tend to not be democratic (Stepan, 1999, 19). Overall, the evidence suggests federalism helps multiethnic and multilingual societies sustain democracy in the long-term.

A wide variety of countries have benefited from federal arrangements: India with a long electoral and democratic history, Mexico with a relatively short democratic history and Nigeria with mixed democratic experience. One study examining 112 territorially concentrated minorities living in 46 federal states and 66 unitary states, found that minorities in federal states engage in fewer acts of armed rebellion, experience lower levels of economic and political discrimination, and harbour lower levels of grievance. Furthermore, on average, this finding holds independent of the wealth, stability and regime of a country (Bermeo, 1999, 98-99; Stepan, 1999).

However, although statistical evidence seems to support the proposal that federal and autonomy arrangements are durable, some federations have disintegrated and some territories have seceded. Researchers have offered a number of explanations to understand the conditions under which devolution of state powers may lead to secession:

Devolution may lead to ethnic conflict and secessionism when it increases the strength of identity-based, regional parties. These parties tend to mobilize groups along identity lines and, when in power, they tend to produce legislation that favours certain groups over others. However, a number of techniques may diminish the strength of regional parties: the presence of strong national parties in regional elections; smaller regions; and, direct elections for Upper Houses as opposed to appointment of Upper Houses by regions (Brancati, 2005, 2, 39).

Ethno-federal states are more likely to collapse when they contain a core ethnic region that is significantly more powerful and populous compared to the other federal units, and which exerts great influence over the central government. Examples of dominant regions include the Russian Republic within the Soviet Union, and the Northern region within the Nigerian First Republic which

included a majority of the country's population. Such regions reduce the ability of the centre to commit credibly to the security of the minority regions and increase the suspicion of the smaller regions vis-à-vis the centre (Hale, 2004).

Some argue that where there are only two units representing two communities (e.g. East and West Pakistan, Czech Republic and Slovakia), federations tend to be prone to extreme tension and are not durable. In India, Spain and Switzerland, on the other hand, multiple ethnicities and units have been better able to achieve a balance within the state.

“States are born federal; they do not become federal”

Not always. Some states were indeed born federal, as for example the United States. However, many unitary states evolved to become federal or gradually devolved powers to their regions and created substantial autonomy arrangements within their borders. Spain is an example of a unitary state which adopted a federal constitution in 1978 as part of its transition from authoritarianism to democracy. Similarly, the United Kingdom has gradually devolved authority to Scotland and Wales over the past twenty years. Also, Indonesia and the Philippines, although not federal states, have gradually decentralized powers to provinces and municipalities throughout their territories.

Furthermore, in the particularly challenging circumstances of negotiated settlements to end civil wars, conflict parties often rely on institutions which share and decentralize state power. In these cases, new institutions offering various forms of territorial autonomy, on the one hand, and 'shared rule' at the central government level, on the other (Ghai, CIC, 3) attempt to accommodate the demands of armed groups and their constituencies, while also preserving the territorial integrity of the state. In Asia, the examples of Aceh's autonomy within Indonesia and Bougainville's autonomy within Papua New Guinea point to the reliance on these arrangements to end armed conflict.

“There is no difference between federalism and autonomy”

Not quite. The key difference between the two is that federalism combines self-rule by regions with shared rule at the centre: regions govern themselves autonomously, while at the same time sharing power in the central government. Some scholars and policy-makers often include in the category of autonomy federal arrangements, such as Bosnia, Nigeria, India and Canada. However, there is an important difference between the two: autonomy is a special arrangement between the centre and one or two regions, as for example Scotland in the United Kingdom and South Tyrol in Italy. This arrangement does not include institutions through which autonomous territories share legislative power at the central government. Autonomy models do not include Upper Houses.

In terms of definitions: a federal system exists where there is a layer of state institutions between a state's centre and its localities, when this layer of institutions

features its own leaders and elected bodies, and when those leaders and bodies share decision-making power with the centre (Bermeo, 1999, 98). Other definitions add that, for a state to be federal, it needs to guarantee in its constitution that both levels of government have at least one area of action in which they have exclusive jurisdiction. Also, there is some agreement that a federal state needs to have a minimum level of democracy in order for the concept of sub-state autonomy to have meaning (Hale, 2004, 168).

On the other hand, territorial autonomy devolves to minority groups the power to exercise direct control over agreed upon issues of special concern to them. At the same time, these arrangements allow the central state to exercise power over other policies of concern to the whole state, including on the territory of the autonomous region (Ghai, 2001). Territorial autonomy may include the right to tax as well as to establish regional institutions charged with legislative and executive functions. It usually provides for the minority language to be the official language of the region. Also, it usually defines primary and sometimes secondary education as the responsibility of regional governments. Territorial autonomy is possible when the minority is concentrated in one region of the country and when it constitutes a majority in that region. Thus, territorial autonomy attempts to address local concerns (Ghai, 2001, 22).

Thus, territorial autonomy, rather than federalism, is adopted when the primary goal is to address the local concerns of territorially concentrated minorities. When the regions and minority groups are small, their priority is often to manage their internal affairs with minimal state intervention, but not necessarily influence policy at the centre. This is the case of the Sami in Scandinavian countries, for example.

“All parts of a country must enjoy the same constitutional rights and responsibilities”

No, diversity and flexibility are hallmarks of most federation decentralisation arrangements. Some federal states do offer the same constitutional competences to all of their sub-units and are described as symmetric. The US federal model is a symmetric one. Others, however, are asymmetric: they grant different competencies and rights to different sub-units (Stepan, 1999, 20). The Canadian federation, for example, is asymmetric as Quebec enjoys distinct powers not granted to other provinces. Also, India has formed a great variety of arrangements with its provinces.

An asymmetric federal model may emerge when a unitary state develops a federal relationship with a territorially, ethnically, or culturally distinct community, while the rest of the country remains under unitary rule. Denmark has an asymmetric relationship with Greenland (Stepan, 1999, 20). Greenland’s Autonomy Act spells out the institutions of government, defines competencies and divides functions. Greenlandic is designated as the principal language, but Danish is recognized for official purposes and is taught in schools. Greenland has a parliament and cabinet.

One way of introducing asymmetric federalism is through bilateral agreements between the centre and particular regions. For example, Spain's 1978 constitution provided for a federal state by dividing the country into autonomous regional communities, while also offering the Basques and the Catalans, plus other interested regional communities, to negotiate their own arrangements with Madrid. Eventually, the Galicians and Andalusians also negotiated such arrangements. Independent of these bilateral agreements, every constituent unit in Spain has its own regional government with a minimum of powers constitutionally allocated to it (Elazar, 1993, 193).

Asymmetry is also possible in non-federal arrangements. For example, Crimea enjoys special rights in Ukraine, although it has the constitutional status of oblast (province) similar to other Ukrainian oblasts. This means that Ukraine is already organized in oblasts, Crimea being one of them and enjoying some extra privileges. For example, Crimea has a Regional Parliament and Cabinet (unlike the other oblasts).

Also, the United Kingdom has devolved different types of powers and at different times to Scotland and Wales. For example, Scotland enjoys self-rule under the legislative supremacy of the national parliament. The Scottish parliament can make laws within its areas of competence, many of which need to be submitted for judicial review by the center. There is also a Scottish Parliament and cabinet. Furthermore, Aceh and Bougainville enjoy special arrangements within Indonesia and Papua New Guinea that other regions in the two countries do not enjoy. Similarly, Zanzibar is the only autonomous region in Tanzania.

It is true, however, that it is a lot more common to strike asymmetrical agreements in a federal state or a state that has already devolved some powers to its provinces. There are very few cases in which a state which was originally unitary (i.e., centralized) gave one territory or minority group asymmetrical privileges, meaning privileges that other regions or groups do not enjoy. In unitary states which have not devolved power to the provinces significantly, it is rare that such asymmetrical privileges are granted. Examples include Scotland (which later was joined with Wales in a devolution arrangement) and the Sami indigenous peoples in Norway. Most often, however, we observe resistance by centralized states to regional autonomy: Slovakia and Romania resist territorial autonomy for their ethnic Hungarian minorities, and similarly Thailand resists meaningful regional autonomy for its mostly Malay Muslim southern provinces.

“Asymmetrical arrangements create tension and are unworkable”

They can do, but do not have to. On one hand, tensions may arise when powers or resources are asymmetric within a state. On the other hand, asymmetry may be well-suited to respond to unique conditions in different parts of a

country. Some scholars point out that asymmetric federalism is not dangerous to the survival of the state as long as no single unit dominates and has the power to compromise the integrity of the others. Also, asymmetric arrangements inject flexibility to the state and enable it to accommodate a wide range of identities and interests. It is worth noting that, with the exception of Switzerland, all democratic federations that are ethnically and linguistically diverse are constitutionally asymmetric. Federations that are constitutionally symmetric are mono-national (Stepan, 1999).

“Can central governments and autonomous regions really share power?”

Yes. Agreements creating autonomous regions usually define how central governments share power in these regions with the regional authorities. For example, central governments may appoint jointly with the regional authorities a number of officials working in the autonomous region: police officers, judges, and heads of school districts, border guards, and religious officials. Also, central governments may share powers with regional governments in a number of policy areas as for example higher education and taxation, while superseding regional governments in other areas such as foreign policy.

The management of the relationship between central and regional governments is not straightforward. It usually involves disagreements in interpreting the powers of each level of government. Therefore, autonomy arrangements usually set up institutions which manage the relationship between the autonomous territory and the centre. For example, Crimea’s provincial government deals with the Representative of the Ukrainian government, while Greenland has a Danish Commissioner, a Board of Settlement, and an Autonomy Commission which was set up to review the home-rule situation and a 7-member Board of Settlement which is mandated to settle disputes between the central and regional governments.

“States can abolish federal and autonomy arrangements whenever they see fit”

Most often not. At least, not legally. Ethnic groups demanding greater autonomy in running their affairs often argue that only independence can afford them the autonomy they need, because the central government can at any time unilaterally revoke the autonomy agreement. They want reliable guarantees for the maintenance of their federal or autonomous status.

Different federal systems offer different types of protection to their sub-units. Some federal states offer strong constitutional protection by specifying the powers of the centre and the sub-units in the constitution. This means that any change in the legal status or the powers of the sub-units requires their consent (Ghai, CIC, 3). For example, in the US, Swiss and Australian models, all levels of government are considered equal and are protected by the constitution. In the US, the federal govern-

ment cannot abolish a state or dissolve a state government. Similarly, the 1988 Brazilian constitution is extremely detailed and offers strong protection to the 26 states. In order to change the Brazilian constitution, 60 per cent of the members of both houses must vote in favor of an amendment twice (Stepan, 1999, 29).

A weaker form of constitutional protection is offered when federal institutions or the institutions of the sub-units can be changed by a strong majority in the legislature of the central government. This is the case in India and Malaysia. In India, the Lower House of the national legislature, by a simple majority vote, can eliminate any state, carve new states out of existing ones, or change their names.

In a confederation, the constituent units enjoy the strongest protection: they form a union, but maintain many sovereign powers. This means that they maintain control over the central government, which must work through them to reach the citizens. Also, the secession of individual units may be possible, as defined by the constitutional agreement, without the consent of all units.

A variety of guarantees to the regions may also be offered in the context of autonomy arrangements. For example, autonomy arrangements can be enshrined in the constitution with a high voting threshold for amendment and a long amendment procedure that requires consultation with the autonomous region and approval by the regional entity (e.g. the regional parliament). For example, the procedures of the Macedonian parliament require a majority also of the Representatives claiming to belong to the communities not in the majority in the population of Macedonia' in order to pass laws which directly affect culture, use of language, education, personal administration, and use of symbols'. This provision also applies to the election of a third of the judges at the Constitutional Court, the members of the Republican Judicial Council and the Ombudsman.

An additional example is the predominantly Swedish-speaking region of Åland in Finland, which enjoys significant cultural and political autonomy, and has its own legislative and executive bodies. Ålanders are represented in the national parliament, while the Åland legislature may introduce bills in the national parliament even on issues that are under the authority of the national government. Furthermore, there is strong protection for the autonomy of the region: the autonomy provisions may not be altered without the consent of both the national and Åland legislatures (Ghai, 2001, 22).

Of course, central governments may choose to violate the constitution, or to use illegal means to withdraw devolved powers and reassert their control. Hence, the importance of democratic institutions – and their relative strength – to the success of autonomy models.

“It is easy to transplant federal and autonomy models to different contexts”

Definitely not. Although federal and autonomy arrangements share key characteristics as discussed above, no two federal systems or autonomy models share

exactly the same ingredients. There is no one model for any given situation and no two institutional designs are identical. Most countries adopt hybrid institutions, which combine aspects of various models.

Federal systems may vary along the powers of the Upper House, the presence/absence and role of the presidency, the electoral laws for the federal and sub-state institutions, the powers devolved to the federal units, the role of the Constitutional Court, the guarantees offered to the federal units, etc.

Autonomy arrangements also vary along several dimensions: the types of powers given to the regions, the numbers of regions, the guarantees offered to the autonomous regions, the mechanisms for resolving disputes arising in the interpretation of the autonomy arrangements, the protection offered to ethnic, religious and cultural minorities within autonomous regions, and the powers of the central government in the autonomous region.

Furthermore, some states combine federal or autonomy arrangements with special power-sharing arrangements at the centre. Power-sharing involves arrangements which guarantee the participation of representatives of all significant communal or ethnic groups in the central government and especially in the executive (Lijphart, 2004, 97). . Power-sharing usually provide for proportional representation of all minorities in cabinets, and proportional allocations of funds and positions. For example, Bosnia and Herzegovina is not only a federal state composed of two constituent entities (the Croat and Muslim Federation and Republika Srpska), but also provides for power-sharing in the central government among the 3 constituent ethnic groups. Also, in Sudan, the 2005 Comprehensive Peace Agreement, defined in great detail how the centre and the South will share power in the central executive, while also establishing a full-fledged federal system.

Given the above, it is crucial that mediators and parties to a conflict do not seek 'prefabricated' constitutional solutions, which are imported from other countries. Chances are that an arrangement specifically designed for a particular country needs to emerge from arduous negotiations and meticulous analysis of the plus and minuses of different institutions for that country.

“Some form of autonomy and/or power-sharing is necessary to end internal conflicts”

Generally yes and especially when ethnic or religious grievances are at stake. Since the end of the Cold War, many civil wars have ended with agreements which contained combinations of power-sharing and autonomy arrangements. Peace agreements following African conflicts have increasingly featured the power-sharing model, as for example in Burundi (2000), Liberia (2003), and Sierra Leone (1999). Federal systems with power-sharing provisions at the central government were adopted after civil wars as in Bosnia (1995) and Sudan (2005).

Some scholars find that federalism and territorial autonomy contribute positively to the sustainability of peace, especially when combined with international military and financial assistance. Such arrangements provide guarantees to minority groups that their interests will be protected after they have laid down their arms. Devolution (including federalism and territorial autonomy) contributes positively to the durability of peace agreements according to a study of civil wars of 1945–1998 (Hartzell et al, 2001). Also, a study of 233 politically active minority groups covering the period 1945–1989 finds that ‘negotiated regional autonomy has proven to be an effective antidote for ethno-national wars of secessions in Western and Third World states’ (Gurr, 1994, 366).

However, not all civil wars ending with negotiated agreements lead to power-sharing or autonomy arrangements. For example, Afghanistan’s 2004 constitution provides for a centralized state. Furthermore, the agreements following the conflicts in El Salvador, Nicaragua, Namibia and Mozambique did not include power-sharing or territorial guarantees. However, ethnic or religious-based conflicts rarely end without such guarantees. One such example is Croatia which has offered to its ethnic Serb minority legal protection of their linguistic and cultural rights, but no autonomy. Also, the brief Macedonian conflict of 2001 led to a decentralization of state powers, but not to territorial autonomy

Thus, autonomy and power-sharing are not panaceas and should not be seen as the default solutions to all conflicts. Whether they are needed is likely to depend on the longevity of the conflict, the balance of power among the belligerents, the power and agenda of external actors, and on whether the conflict was fought along ethnic or religious lines. In the latter case, it is likely that some form of autonomy and/or power-sharing will be adopted.

“Constitutions must be final when peace agreements are signed”

Not necessarily. There are those who argue that peace agreements should clearly define the constitutional design of post-conflict states. An example of a comprehensive peace agreement is the 1995 Dayton Peace Agreement for Bosnia and Herzegovina, which included the constitution that still governs the country.

Others, however, argue that defining in detail the state’s institutions at the moment of signing a peace agreement is misguided: constitution-making affects the long-term, while peacemaking is concerned with the short-term demands of laying down weapons. Therefore, the argument goes, short-term needs should not influence society’s long-term development. Along the lines of these critics, the practice of peacemaking has offered two alternatives to the detailed, comprehensive peace agreements such as Dayton.

First, agreements may define the way the country will be governed during a brief interim period and the way in which competing groups will share power

during that period. They may also define the process through which political actors will decide the permanent constitution. Such agreements do not define the permanent constitution of the country: they guarantee to the major factions participation in the interim period, but they do not guarantee a share of power in the permanent state institutions. An example of such an agreement is Afghanistan's Bonn Agreement of December 2001, which defined the country's three year transitional process, but not its final constitution. South Africa offers a similar example albeit for a longer interim period. South Africa adopted in 1993 an interim constitution, which provided for governing the country through power-sharing between the incumbent government and the opposition. The agreement was to expire within five years and indeed it was eventually replaced by a majority-rule democracy.

A second alternative is offered by the cases of South Sudan and Bougainville, both of which were given in 2005 and 2001 respectively lengthy transitional periods before decisions on whether these units should remain within Sudan and Papua New Guinea (PNG). In the interim period of six and eleven years respectively, South Sudan and Bougainville are given significant autonomy within the borders of Sudan and PNG as well as a stake in the national governments. Critics of these arrangements argue that they are bound to lead to secession and to prevent the strengthening of regional institutions due to the absence of long-term constitutional clarity. In the cases of South Sudan and Bougainville it is too soon to tell. Some have argued that the ambiguity of Kosovo's status since 1999 has prevented the strengthening of its institutions and is at least partly at fault for the province's low performance in the areas of rule of law and good governance (Yannis, 2004). As always, there are pluses and minuses in choosing a long-term versus an interim constitution in post-conflict countries.

“The right institutional mix can resolve most internal conflicts”

Caution is needed about excessive faith in the power of institutions to change underlying political realities and interests. Indeed, conflict parties and external actors should be wary about the ability of new institutions to contribute to accommodation. Optimists argue that institutions can transform politics by offering political leaders incentives for accommodation and by habituating them to collaborate with each other. However, it is important to remember that, in the immediate post-agreement period, newly-established institutions are unlikely to enjoy wide support. New institutions are initially empty shells which become real only after lengthy political processes and after they start delivering tangible benefits, such as public services and security, to the population. Thus, even if institutions are able to foster accommodation in the long-term, they are likely to require a lot of support in the short-term in order to survive.

Also, in the immediate post-agreement period, several simultaneous processes are going on which impact the sustainability of institutional arrangements. These

include crucially the disarmament of rebel groups, the return of refugees and displaced persons, and the commencement of economic development efforts. Again, success of these processes determines the sustainability of institutions.

Ultimately, institutions which decentralize state power contribute to conflict resolution when they are supported by political processes and practices which favor accommodation and the survival of the state. In the absence of that, the sustainability of these institutions is difficult.

