



FEDERALISM AND INTERNAL CONFLICTS

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Federalism and National Diversity in the 21st Century

Edited by
Alain-G. Gagnon · Arjun Tremblay

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Federalism and Internal Conflicts

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CHAPTER 1

Introduction: Puzzles of Multinational Federalism

Alain-G. Gagnon and Arjun Tremblay

INTRODUCTION

Scholars continue to envision a world in which different national and ethnic groups can co-exist under the ambit of democratic institutions that combine shared rule with self-rule. However, the development and entrenchment of multinational and multiethnic federalism continues to lag behind. Despite this striking contrast, there has been very little discussion on the obstacles to and opportunities for the development and entrenchment of a sustainable, representative and deeply democratic multinational federalism. Authors mobilized for this project bring these issues to the fore. Our hope is that this volume can play an important role in helping to fulfill, at the outset of the twenty-first century, the federal

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promise of multinational democracies built on the dual principles of unity and diversity.

We are presented with a striking puzzle when we contrast recent developments in federal theory with the institutional status quo in multinational polities. On the one hand, there is ever-growing scholarly agreement on the value of institutionalizing multinational federalism, a framework for a division of powers that reflects, respects and accommodates territorially concentrated diversity and that is meant to empower minority nations and large ethnic groups. This ever-growing agreement has been buttressed by the emergence of the paradigm of ‘liberal nationalism’, according to which ‘it is a legitimate function of the state to protect and promote the national cultures and languages of the nations within its borders’ (Kymlicka 2001, p. 39).

On the other hand, there has also been a glaring absence of institutional and substantive transitions to multinational federalism in deeply diverse multinational and multiethnic polities. As Leonce Röth and André Kaiser (2019, p. 557) put it: ‘Concessions via autonomy or asymmetric decentralization have been a familiar, albeit rarely implemented, mechanism of statecraft to accommodate the demands of territorially based ethnic groups for at least the past two centuries.’ In fact, the recent referenda on independence in Scotland (in 2014) and Catalonia (in 2017) can be taken as indications that the UK and Spanish governments, respectively, failed to respond to proponents of multinational federalism much as the Canadian government did in the lead-up to the Quebec referenda in 1980 and 1995 (see Gagnon 2010, p. 5).

In brief, the emerging normative consensus on multinational federalism and demands for national recognition have yet to translate into the development and entrenchment of a sustainable, representative and substantively democratic multinational federalism in and across deeply diverse states. In light of these contrasting trends, this volume asks the following questions: Why is this happening? What are the main ‘roadblocks’ to the institutionalization of multinational federalism? Can we imagine ‘road-maps’ that can help policymakers and state managers achieve multinational federalism in the twenty-first century?

The chapters in this volume contribute, albeit in different ways and to different degrees, to developing answers to these questions—which are summarized in the volume’s conclusion. The volume’s chapters also intersect with other concerns in the scholarly discussion on federalism and national diversity and, in so doing, explore other puzzles of multinational

federalism. Some chapters identify the factors that have led multinational federations to fail despite democratic consolidation and legacies of sub-national accommodation, while others set out to understand why some types of multinational federations have succeeded despite multinational federalism's seemingly 'abysmal track record' (McGarry and O'Leary 2015, p. 43). Other chapters focus on cases that show no signs of moving towards multinational federalism despite indications of increasing national polarization (the U.S. for example) and previous optimistic accounts (in the 2000s for the China-Hong Kong case). Several chapters explore cases that, despite their seeming openness to the accommodation of national diversity, obviate or neglect minority groups that can and should be considered under the ambit of multinational federalism.

Overall, this volume's chapters address an array of puzzles of multinational federalism. They aid in identifying, understanding and explaining both the main challenges to and the opportunities for truly fulfilling, at the outset of the twenty-first century, the federal promise of multinational democracies built on the dual principles of unity and diversity. This endeavour is both important and timely, for despite the mainstreaming of an anti-diversity public discourse, national minorities as well as other collective identities continue to demand greater institutional recognition in democracies, in democratising states and in 'federalizing' polities.

CONTEXT AND BACKGROUND

This volume situates itself against the backdrop of renewed interest in the study of federalism, driven in recent years by a critique of the American tradition of federalism. This critique is based first and foremost on the acknowledgement that many modern democracies, emerging democracies and democratising polities comprise multiple demoi/peoples or, in other words, are multinational and multiethnic in composition. In turn, a growing number of social scientists and philosophers (e.g. Tillin 2007; Smith 2007; Seymour and Laforest 2011; Stepan et al. 2011; Seymour and Gagnon 2012; Burgess 2013; Gagnon 2010; Gagnon and Schwartz 2015; Keil 2016; Requejo 2016) now advocate the design and implementation of multinational federalism—albeit with some disagreement over specific institutional arrangements as a way of both 'holding-together' (Stepan 1999) deeply diverse societies and recognizing and empowering the polity's constituent nations and ethnic groups.

A multinational or multiethnic polity (e.g. Canada, South Africa, Belgium, the United Kingdom, Ethiopia, Spain) comprises a national majority as well as one or several minority nations/national minorities/territorially concentrated ethnic groups. Public institutions in multinational or multiethnic polities (we use the terms interchangeably in this volume) tend to reflect the culture, language, customs, traditions and religion of the national majority. Consequently, many minority nations/national minorities/territorially concentrated ethnic groups have made and continue to make demands for the recognition of group-differentiated rights (i.e. demands for linguistic, religious autonomy) that, in a federal setting, would require the design and implementation of an asymmetrical federal arrangement. However, the American tradition of federalism views all constituent units of a federation as equal and therefore advocates a federalism that is “constitutionally symmetrical” (Stepan 1999, p. 21). At a more fundamental level, the American tradition of federalism embraces a territorial logic that fails to recognize the co-existence of different ‘peoples’ within the same state (Seymour and Gagnon 2012).

Studies that examine deeply diverse democracies (e.g. Codagnone and Filippov 2000; McGarry and O’Leary 2005; De Schutter 2011; Gagnon and Tremblay 2019) agree that the American tradition of federalism is antiquated and that democracies marked by deep national and ethnic diversity must embrace a type of federalism with institutions that reflect, respect, accommodate, enrich and protect this diversity. To be clear, akin to an American-inspired model of federalism, a multinational federation would also constitutionally enshrine a division of powers between different levels of government, yet it would also differ in significant ways. Examples of its unique institutional features could include: the formal recognition of the distinct status of national minorities, the inclusion of national minorities in foreign policymaking and asymmetrical federal arrangements (McGarry and O’Leary 2005). Perhaps what is less clear is how multinational federalism might differ from other diversity-oriented federal models, such as ‘multicultural federalism’ (Tremblay 2005).

Despite the developing consensus on the desirability of multinational federalism, there are also a number of critical concerns about the near and longer-term prospects of multinational federal arrangements. For one, studies of federalism show that very few multinational democracies have in fact formally institutionalized multinational federalism (Kymlicka 1998; Habtu 2005; Gagnon and Iacovino 2007; Gagnon et al. 2017) and that, where this project has been undertaken, multinational federal institutions

have a symbolic/‘inconsequential’ effect (Caron and Laforest 2009). Recent studies of federalism also show that national/central/federal governments tend to be driven by ‘unitarist’ or centralizing imperatives and, consequently, that they rarely accept that sub-national governments are their equal partners (Requejo 2004; Bohman 2007; Lajoie 2009). And emerging trends in the study of federalism illustrate that transitions to multinational federalism have, in many cases, failed (McGarry 2004; Kavalski and Żółkoś 2008; Basta et al. 2015). They also show that multinational federalism is rooted in a ‘multinationalism’ that may be neglecting Indigenous Peoples, the distinct cultures of minorities borne out of individual and familial immigration as well as those of collective identities, including those founded on lifestyles, gender and sexual orientation (Karmis 2008, 2009; Smith 2010; Woods 2012; Dubois and Saunders 2013).

This volume therefore situates itself at the cross-roads of the developing consensus on the desirability of multinational federalism, continued demands for national recognition (evidenced in part by recent referenda in Scotland and Catalonia) and the absence of institutional and substantive transitions to multinational federalism, as well as growing critical concerns about the near and longer-term prospects of multinational federal arrangements. The volume’s overall goal is to contribute in identifying the challenges to (i.e. ‘roadblocks’) and opportunities for (i.e. ‘roadmaps’) fulfilling the promise of multinational federalism; that is of democracies built on the dual principles of unity and diversity. Along the way the volume intersects with longstanding and developing concerns in the study of deeply diverse federal polities.

CHAPTER OVERVIEW

The volume consists of 11 chapters divided in three parts as well as an editors’ conclusion that addresses its main research questions. In examining a range of cases (e.g. Spain, Canada, Belgium, Nigeria), the three chapters in Part I (Multinational Federations at Risk and in Retreat) bring to light factors that may prevent the long-term success/persistence of a multinational federation, such as the implementation of a simple member plurality electoral system, the uneven distribution of economic resources across the multinational federation’s constituent units and ensuring that federalism is both institutionalized but forgetting to ‘practice’ federalism. Cases analysed in Part I also provide evidence that the institutional protection of

autonomy can be both beneficial and detrimental to sustainable multinational federalism.

In 'Diverse Democracies and the Practice of Federalism,' James Kennedy draws a distinction between the institutions of federalism and the informal practices of federalism within the context of multinational democracies. Building on this distinction, the chapter argues that informal practices of federalism may be just as important, if not more important, than the formal institutions of federalism in reconciling unity and diversity in multinational settings. The argument is developed through a comparison of the workings of four multinational democracies: interwar Czechoslovakia, post-Quiet Revolution Québec, post-Franco Spain, and post-devolution United Kingdom. In the chapter's conclusion, Kennedy applies the argument to understanding the possible implications, in India, of the Modi government's decision to impose direct rule on Jammu and Kashmir.

In 'When Have Dyadic Federations Succeeded and When Have They Failed? A Comparative Analysis of Bipolar Federalism around the World', Christoph Niessen, Min Reuchamps, Dejan Stjepanović and Augustin Habra highlight the conditions under which *dyadic federations*—a genus of the multinational federation family that comprises federations where two communities or national groups dominate control of sociopolitical institutions—have 'succeeded' (i.e. survived) and have 'failed' (i.e. broken apart). These conditions are identified through a fuzzy-set Qualitative Comparative Analysis of all dyadic federations, past and present. In brief, the results of the comparative analysis suggests that a dyadic federation is most likely to 'succeed' if geographical factors such as the territorial dispersion of the dominant groups play in its favour and in the presence of institutional arrangements such as a proportional electoral system or a national party system. The comparison also shows that a dyadic federation is more likely to succeed the longer it endures, meaning that, under certain conditions, these types of federations might actually 'consolidate.' By contrast, the comparison also suggests that a dyadic federation is more likely to 'fail' (i.e. break-up) in the absence of stabilizing institutional factors like executive inclusiveness and a national party system, especially when economic resource are unequally distributed among groups and when the latter are clearly separable along territorial lines.

In 'Assessing the Spanish State's Response to Catalan Independence: The Application of Federal Coercion', Lucía Payero-López explores recent developments in Spain, a multinational unitary democracy with

quasi-federal features currently experiencing a constitutional and democratic crisis. The chapter provides detailed accounts of the lead-up to and of the response by the Spanish central government to the Catalan declaration of independence on 1 October 2017. It shows that the Spanish central government's response to the declaration has entailed the application of *federal coercion*, an ostensibly exceptional mechanism established in Article 155 of the 1978 Constitution of Spain. The chapter argues that the actual application of Article 155 has been 'excessive' and that measures adopted under the aegis of Article 155 can be seen as unconstitutional. The chapter concludes that the application of Article 155 is in actuality indicative of an ongoing trend towards the 'recentralization' of authority in Spain and at that despite the existence of the Statutes of Autonomy.

The three chapters in Part II (The Stalled Emergence of Multinational Federalism) explore two cases—the United States and Hong Kong—that are often overlooked in comparative studies of multinational federations but that can reveal a lot about the relationship between diversity and federalism. These chapters argue, albeit in different ways, that overcoming obstacles to the development of meaningfully democratic and internally inclusive minority autonomy arrangements, such as multinational federalism, may depend on an acute understanding of a polity's history and institutional legacies.

In 'Origins and Consequences of American Multicultural Federalism: Constitutional Patriotism, Territorial Neutrality, and National Polarisation', John Kincaid explores the key counter-example in the study of multinational federalism and explains why it is that the United States became a *multicultural federation*. In brief, the chapter argues that, in deciding not to impose culturally homogenizing policies on a heterogeneous society, the founders opted to foster national unity around the Constitution, thus allowing expressions of cultural preferences to differ across constituent territories. Consequently, American multicultural federalism has proven to be a 'double-edged sword.' Kincaid argues that, on one edge, federal tolerance of territorial and non-territorial expressions of diverse cultural preferences has fostered national unity. He also argues that, on the other edge, some of the most ardent expressions of such preferences, especially those pivoting on racism, have provoked moral approbation that has generated calls for federal intervention that, in turn, have triggered national polarization. Overall, Kincaid's chapter helps to conceptually distinguish multinational from multicultural federalism and to highlight the factors that led one polity to veer towards the latter rather than the former.

The examination of exceptional cases continues in the following two chapters, both of which apply an institutional explanatory framework to understanding the flagging autonomy of the Hong Kong Special Administrative Region. In “Nested Newness” and the Quality of Self-Government: The Case of the Hong Kong Special Administrative Region’, Susan J. Henders employs an analytical framework, drawn from feminist institutional theories, to assess the quality of minority accommodation, understanding it as shaped by continuities and changes in the multi-levelled structural, institutional, relational and other contexts of such arrangements. The framework is used to examine the emergence and outcomes to date of the post-1997 quasi-federal autonomy arrangement for Hong Kong, where many residents claim a distinctive collective identity and values vis-à-vis the wider People’s Republic of China. Henders argues that the Hong Kong autonomy arrangement underscores the need for analyses of multinational accommodation that go beyond political institutions and policies and state architectures, to also assess how these are shaped by their nestedness in contexts, histories and relations. For Henders, the very explicit and institutionalized nature of the political economy of Hong Kong’s autonomy arrangement is a reminder of the need to situate particular instances of multinational accommodation and the political contestation surrounding them, within evolving structures of world order, to understand current and potential future possibilities for meaningful and inclusive minority self-government.

In ‘Federalism, Democracy and National Diversity in 21st Century China: Reinterpreting Hong Kong’s Autonomy, Subverting its Democracy’, Jean-François Dupré investigates the politics of federalism, democracy and national diversity in China, tracing the process through which the central and local governments have furthered *national integration* and *authoritarianisation* in Hong Kong. Dupré argues that these joint processes were enabled not by a sudden and drastic institutional takeover by China, but by an incremental process of institutional conversion in which institutions governing Hong Kong’s autonomy and democratisation were brought to serve objectives that seem contrary to their stated purposes. Beijing and the local establishment carried out this institutional conversion process in part by reframing and reinterpreting institutions and their purposes, and by taking advantage of power asymmetries entrenched in institutions. This was itself enabled by a weakly defined constitutional order, the lack of a tradition of multi-level governance, and an institutional setting that was designed to facilitate elite co-option by the establishment. On a more theoretical

note, this chapter draws attention to the social constructedness of autonomy and points to the importance of observing ‘multi-level governance’ in practice. Dupré concludes his chapter by briefly discussing the implications of his argument in light of the wide-spread protests in Hong Kong and by providing preliminary speculation about the possibility of institutional conversion giving way to institutional displacement.

The five chapters in Part III (Recognizing and Accommodating National and Other Diversities: Success or Failure?) explore the intersection between national diversity and non-territorial collective identities in multinational federations. More precisely, they examine the ways in which national minorities and federal institutions have responded, for better and worse, to the dynamics of internal migration and immigration and to demands by receding national majorities and by Indigenous Peoples for greater recognition. In so doing, they point to local governments and political elites as both facilitators and opponents of accommodation in multinational federations. These chapters also offer a critical assessment of the study of multinational federalism—which may even be its own worst enemy—and open up new comparative and conceptual horizons in the discussion on the protection and empowerment of national minorities/minority nations/territorially concentrated ethnic groups and other collective identities in federal states.

In ‘Internal Migration in Asian Multinational Countries: Attitudes, Challenges and Institutions’, Isabelle Côté and Mira Raatikainen discuss the regulation of population movements in multinational settings. While regulation has historically been the domain of the state, provinces and other sub-national units have recently started to ask for a larger say over both international and *internal* migration. In exploring the dynamics of internal migration in multinational federations in Asia, Côté and Raatikainen ask three questions: (1) What factors shape local attitudes towards internal migrants? (2) How do sub-national and national actors recognize and accommodate the challenges of national diversity resulting from increased levels of population mobility? (3) Does federalism matter in cases of sub-national migration governance? The chapter provides an examination of the economic/utilitarian motives and nativist discourses used to curtail flows of inter-provincial migrants in India and Malaysia; it also includes a brief comparison with the dynamics of internal migration in China. Overall, Côté and Raatikainen illustrate that local resentment towards incoming domestic migrants is fueled by a myriad of factors, from language and ethnicity to labour market considerations and a fear of loss

of amenities. They argue that opposition to internal migration is not unique to a unitary or federal political systems. However, they also establish that federal states and other decentralized systems actually facilitate the creation and implementation of sub-national barriers to internal mobility.

In ‘Immigration Federalism, Multinational States, and Subnational Communities: Comparing Flanders and Quebec’, Catherine Xhardez discusses the dynamics of international migration in multinational federations. More specifically, she explores parliamentary debates (between 1999 and 2014) in two sub-national communities in multinational federal states. She does so with an eye to highlighting arguments in favour and against ‘immigration federalism,’ which is to say the ‘involvement of different levels of government in immigration-related activities.’ In so doing, Xhardez’ chapter addresses three main questions: (1) Has the issue of immigration federalism been handled in similar or different ways in Flanders and Quebec? (2) Within each of these sub-national communities (SNCs), what are the points of tension and convergence in debates over immigration federalism? (3) What are the key similarities and differences in approaches to immigration federalism in the two SNCs? In brief, her comparison shows that Flemish and Québécois political elites have deployed different approaches to using immigrant integration regulation both as a way of strengthening their respective claims for recognizing cultural and linguistic diversity along national lines as well as for influencing the balance of power between sub-national and national jurisdictions.

In ‘Relative Deprivation and Perceived Discrimination among Quebec’s English-Speaking Minority Communities: “Second-Class Citizens” in a Multi-National Context?’, Pierre-Olivier Bonin investigates the perceptions of disenfranchisement in English-speaking communities living in Quebec. The chapter draws upon original data from an online survey conducted in 2017 and tests two hypotheses: (1) The Relative Deprivation Hypothesis and (2) The Perceived Discrimination Hypothesis. The evidence presented in the chapter suggests that there exists a state of ‘relative deprivation’ in English-speaking minority communities in Quebec and that a strong majority of Anglo-Quebecers believe that their group faces discrimination often if not most of the time. Contrary to theoretical expectations, however, these two factors predict a lower likelihood of Anglo-Quebecer organizational engagement and volunteerism. In light of these findings, the chapter discusses implications for the accommodation

of minorities (in this case a ‘receding’ majority) within multinational federal settings that perceive discrimination but fail to mobilize around their concerns.

Yonatan T. Fessha and Beza Dessalegn continue to enrich the discussion on internal migration in ‘Internal Migration, Ethnic Federalism, and Differentiated Citizenship in an African Federation: the Case of Ethiopia’. Their chapter brings to light a ‘tension’ between internal migration and the self-rule rights of ethnic communities in Ethiopia. Making ethnicity the basis for the political and administrative organization of the Ethiopian federation has set the stage for the emergence of tacit (what they refer to as ‘traces of’) group-differentiated rights that, the authors argue, are coming into conflict with the protection of the individual rights of internal migrants. This leads Fessha and Dessalegn to argue that differentiated citizenship is necessary but insufficient to deal with the increasingly complex dynamics of ethnic diversity within the context of multiethnic (and multinational) federations. They conclude their chapter by arguing that the enshrinement of rights in multinational and multiethnic settings must be done in such a way as to ensure that the protection and empowerment of ethnic communities does not unreasonably restrict the rights of individuals who do not belong to the empowered group.

In ‘Ensuring a Future for Indigenous Languages in Canada: Can ‘Consequentialist’ Multinational Federalism Provide an Answer?’, Emmanuelle Richez and Tejas Pandya highlight the precarious position in which Indigenous language minorities continue to find themselves in Canada and ask whether ‘consequentialist’ multinational federalism can help to ensure a future for Indigenous languages in Canada. In so doing, they highlight potential ‘symbolic’, ‘hybrid’ and ‘consequentialist’ solutions to Indigenous language revitalization in Canada. The chapter concludes that a ‘consequential’ multinational approach to federalism in the area of Indigenous languages can only be achieved if three conditions are met: (1) treaty scope expansion; (2) treaty negotiation that emphasizes a nation-to-nation relationship between Indigenous Peoples and the Crown; (3) the empowerment of indigenous self-government (given that linguistic expertise and knowledge is highly localized and based primarily in Indigenous communities).

Building on the preceding chapters, the volume’s conclusion sets out to highlight the main challenges (i.e. ‘roadblocks’) to and the potential opportunities for (i.e. ‘roadmaps’) fully realizing the federal promise in deeply diverse multinational states in the twenty-first century. Before doing so,