

FEDERALISM AND CONFLICT MANAGEMENT: CONCLUDING REFLECTIONS

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The title of this year's edition of the International Federalism Days Munich, "Federalism and Conflict Management", is a combination of two elements suggesting that federalism can be a tool for successful management of conflicts.

With the objective of "learning from each other", the working groups discussed which kind of conflicts may be successfully addressed with elements from the "tool box" of federalism, regionalisation and / or decentralisation. Of course, within such a diverse group of participants from 22 different countries, there are very different experiences. Many different examples for challenges, cleavages or conflicts have been given during the sessions, with each participant contributing with his or her own case. In most examples, transformation of territorial government – from a unitary to a decentralised, regional or federal system – is part of a wider change and shall offer new opportunities. However, it also poses additional challenges, which the traditional and well-studied cases of federalism do not have to face.

LEARNING FROM OTHERS: SOME REMARKS ON MODELS

Therefore, the conclusive remarks have to start with an obvious question: what kind of federalism is meant in the title? There is indeed a need to reflect on this question, as we are all very much

influenced, by our own background (i. e. the country where we come from or live in), but also by the few traditional "role models" of federalism. These models have been mentioned quite often during this conference and they are, in particular, the United States, Switzerland and Germany.

However, these models also illustrate that the underlying concepts on which they are based are already quite old. More than 200 years have passed, since the US has been transformed from a Confederacy into a federal system; the Swiss federal system has undergone two important changes in 1848 and in 1999/2000; the German federal system could be established under Allied pressure in Western Germany, in 1949, not least because of a long history of decentralisation and Confederacy in pre-democratic times.

But all three have an element in common which distinguishes them from most of the systems we have been talking about during the last days: they belong to the category of aggregative systems, because they have been established long ago, in reality or legal fiction, by a group of formerly independent States forming a new, federal State, not least by transferring powers to the new center, the federal government.

In most cases of our discussions, however, the dynamics are actually of opposite nature: usually, in systems of recent transformation we find a devolutionary logic with a gradual transfer of powers from the center to the sub-national entities, or – in the case of decentralisation – attempts to strengthen local government by creating more efficient local bodies able to autonomously administer certain functions and to provide services. This different logic, sharing power which used to be concentrated in the center, very often raises the question of trust: is such a devolution of power sustainable? Can the new entities be trusted in exercising their new powers? How much interference and control does the center need for supervision and coordination in order to avoid systemic problems? And do these powers not contradict the very process of federalisation, regionalisation or decentralisation?

The US, Switzerland and Germany are successful systems and merit to be studied as they can certainly be of inspiration for other situations. This is true in particular for certain institutional and / or procedural elements, such as the structure of the Second Chamber, the horizontal cooperation and self-coordination in inter-ministerial conferences and else. However, adaptation of these structural elements is needed. On one hand, due to the different logic and dynamics in a devolutionary system in transformation by contrast with a well established and stable one. And on the other, because of the specific historical, geographical, societal etc. context, in which each system has to operate. This is why simple "copy and paste"-operations or "constitutional transplants" usually do not work and there is no "best practice" in the literal sense, but only a range of examples for "good practice".

FEDERALISM AND DEMOCRACY: CHECKING MAJORITY RULE

It has been underlined more often that federalism provides limits to power. It is the ultimate aim of modern constitutionalism to contain and regulate power, even that of a majority. Being part of the system of checks and balances federalism reinforces the limits to majoritarian rule through the system of territorial government by introducing limits and counterweights to central power.

This is best illustrated by the well-known example of the US Senate: the Upper House of Congress represents all States through an equal number of elected Senators. Tiny Vermont or Wyoming are represented by two Senators in the same way as California, Texas or the State of New York. Although the Senate is strongly characterized by party politics, this scheme shall illustrate the equal dignity of each State according to the federal principle by contrast with the democratic representation linked to demography and to the equality of votes also in quantitative terms.

In democratic terms, however, it offers more occasions for participation on different levels, according to the principle of "self-determination" of citizens: those who are concerned by a decision

shall have a say and participate in the making of that decision. This is why an autonomous and accountable local government is so important for the success of any federalisation and decentralisation reform. For creating democratic structures a democratic culture is necessary which is favoured by a bottom-up experience of participation. It also creates occasions for making politics and politicians on different levels accountable. The role of political parties and the different dynamics of national parties or autonomous regional structures and regional parties has been discussed in this context.

One concern has been the representation and participation of minorities or marginalized groups or territories, which may be facilitated through a federal or regional system as well as through strong local government structures.

FEDERALISM AND THE RULE OF LAW: THE IMPORTANCE OF RULES

Historically, federalism has produced written Constitutions; this is the experience even in Anglo-Saxon and Common Law contexts like the US, Australia and Canada. The division of powers between center and periphery requires an agreement on how to distribute competences and functions as well as legal certainty that the same agreement will be implemented, upheld and respected. A written document enshrining those rules provides important guarantees which are usually further reinforced through the possibility to approach an arbiter for final decision in case of controversy. Conflict may be resolved politically involving the center as well as the sub-national entities in the final decision. More frequent is the involvement of Courts as independent arbiters, usually a Constitutional Court or a Supreme Court. Again, institutions, pre-established procedures and conflict-resolution mechanisms provide certainty and thus create trust between the parties, despite the reasons for the actual controversy.

This is why intergovernmental relations are of fundamental importance as a flexible, additional dimension of interaction between different levels of government or, as horizontal forms of coopera-

tion and (self-)coordination, between the sub-national entities. A system of intergovernmental relations makes it possible to transform conflict into negotiation in institutions and through procedures. It is a metaphor for institutionalised and proceduralised dialogue.

FEDERALISM AND SUSTAINABILITY: INCLUDING THE STRONGER AND THE WEAKER

For establishing a permanent dialogue in a federal or decentralised system it is essential that the weaker voices can be heard. Trust-building after a conflict can be achieved through recognition, power-sharing and inclusion of formerly marginalized groups and minorities. In a pluralistic democracy, it is of course the majority which decides; however, it is important for the quality of the same decisions as well as for laying the ground for their successful implementation through general acceptance that also the voices of those who are not the majority are heard and considered. The majority principle is acceptable, because today's minority can become tomorrow's majority. Where this change is not possible for structural reasons, special arrangements may guarantee the inclusion and participation of structural minorities. A federal system can create different, cross-cutting cleavages through the territorial dimension. This can be a means for not always emphasising the same line(s) of conflict, but for creating different and changing policy-oriented coalitions as well as an incentive for cooperation through representation of the whole population inhabiting a territory instead of separated groups.

The change of position and perspective is necessary for empathy with the other and for understanding of his or her situation and motivation. This is the first step for resolving any conflict.

It has been underlined that not all regions are the same. Some are richer, some poorer, some disadvantaged due to various reasons. The question of (re-)distribution of resources has been quite prominent in the workshop discussions. Economic differences and inequality are often a major source of conflict. Within a comprehensive system,

these differences may be compensated to some extent in the name of equity and for guaranteeing equal rights to citizens throughout a federal system. Thus, solidarity – and the consequent definition of the degree and means of such compensation – is an important topic in any federal or decentralised system. Financial relations are characterised by a tension between, on one hand, the autonomy regarding the sources of revenue and the powers of expenditure, and, on the other, necessary corrections through transfers from the center or among the entities in order to guarantee equal chances for all by creating more opportunities for the weaker parts.

Federalism is certainly not the solution for every conflict. It provides a toolbox with typical elements, but there is no "one size fits all"-model. Each system has to find its own balances as well as the right means to adapt these over time to changing circumstances and contexts. "Learning from others" through a comparative discussion of experiences shall facilitate the discovery of promising approaches and good practices providing ideas for improving the own situation.

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