

Federalism in Asia and Africa beyond India

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Abstract

Federalism, first born in North America in pioneering presidential-federal and parliamentary-federal forms in the USA and Canada respectively, is not particularly popular in Asia and Africa. Only five of Asia's 48 sovereign states have adopted some kinds of federal or quasi-federal forms of government. In Africa it is even more unpopular. Of 54 African states, only three can be counted as some kind of federal or hybrid federal formations. I offer some speculative but empirically and theoretically relevant explanations why it might be so.

Keywords: *Presidential-federal government, Parliamentary-federal government, Federal structure, Federal division of powers, Quasi-federal, federal second chamber, Independent judiciary*

Federalism has been particularly popular in Asia, the world's largest continent. Only five out of the continent's 48 sovereign states have adopted some form of formal or substantively federal constitutions : India (1950), Pakistan (1956, 1962, 1973), Myanmar, formerly Burma (1947, 1974, 2008), Malaysia (1956), Iraq (2005), and Nepal (2015). The first four were British colonies that attained independence after the Second World War. The first three had been governed under the Government of India Act, 1935, enacted by the imperial power in London. Malaysia too, in its earlier incarnations as Malayan Union and Federation of Malaya, had been governed by the British under an act similar to the Government of India Act, 1935, was itself modelled after the British North America Act or Canada Constitution Act, 1867. The

constitution of India and first post-independence constitutions of Pakistan, Burma, and Malaysia and their centralised parliamentary-federal constitutions owed heavily to the colonial India and Canada constitution Acts mentioned above. Nepal and Iraq too had some British connections. The former was a protectorate of the British in India during 1850 and 1923 and thereafter a sovereign monarchy until 2008 when it became a republic. A part of the Ottoman Empire until the First World War, Iraq was placed under the British Mandate under the League of Nations from 1920 to 1932, when it became an independent monarchy. After a decade-long civil war, a comprehensive peace agreement between the Government of Nepal and the Communist Party of Nepal (Maoist) in 2006 set Nepal on a course of democratisation and constitution making featured by the abolition of monarchy in 2008 and adoption of a parliamentary-federal constitution and an independent judiciary with powers of judicial review in 2015. From its gradual independent statehood in 1932, Iraq experienced a series of monarchical, military, and republican autocracies until the ouster of Saddam Hussain in 2003 by the United States of America-led coalition force. Following the US withdrawal, Iraq adopted a centralised parliamentary-federal constitution made by an Iraqi drafting committee and ratified by a popular referendum in 2005.

The general direction of constitutional change in Asian federations is towards centralised parliamentary-federalism in India and a variegated hybrid of 'semi-democracy and minimalist federalism' in Malaysia, which have worked reasonably well, though not without problems, for over a half a century (Case, 2007, pp. 124-143). Nepal has just adopted a model of federalism broadly similar to India, but has faced instant serious discontents and violent protests from sizeable sections of the population among the Madhesis and Tharus in Southern Nepal (The Terai) bordering India on territorial rather than ethnic provinces and discriminatory citizenship clauses. In any case, its working in highly politicised and socially fragmented Nepal is still in the future. Ambivalent between parliamentarism and presidentialism, militarism and civilianism, Islamic democracy and Islamic jihadism, Pakistan has never settled for a democratic constitution, let alone federalism and constitutionalism, notwithstanding a half-hearted parliamentary federal 18th Constitutional Amendment (2010). Following the record of failed federalism in 1971, prognosis of its future is haunted by the spectre of a 'failed state'. The

best that can be said about it at the present is,

Even with the relatively powerful parliament, independent judiciary, free media and vibrant civil society, Pakistan has yet to fully right itself on the path of substantial democracy and democratic federalism based on a complete autonomy for the constituent federating units (Chandido, 2013, p. 2)

The constitution of Iraq describes the state as federal, democratic, and parliamentary under which the cabinet is continuously accountable and responsible to the legislature. Provisions regarding judicial independence appear somewhat ambiguous or insufficient. Status, structure and procedures of subnational units are subject to further parliamentary legislation or constitutions of the regions. The existing region of Kurdistan with its 'regional' and federal authorities is recognised by the constitution keeping the door open for creation of further regions. Division of powers provides for exclusive federal powers as well as those shared with subnational regions and governorates, the latter coming directly under the federal authorities. Even eight years after promulgation of the constitution and three rounds of elections, Iraq continues to be one of the most dangerous, unstable and corrupt countries in the world (Jawad, 2013). Among the major impediments to peace and stability, in the opinion of one observer, are the constitution's vagueness and ambiguities, the excessive concessions granted to the Kurds on the issues of federal government, natural resources, and Kirkuk crude oil (Jawad, 2013).

Beginning as a promising parliamentary federal republic in 1948, Burma suffered a military coup in 1962. After 26 years of its rule, the Army government promulgated a presidential constitution in 1008 with 25 per cent of seats in the Parliament reserved for the Army and key ministerial offices also reserved for them. In October 2015, President The in Se in held peace talks with rebels of eight regional ethnic groups and held national elections in November 2015, in which the National League for Democracy (NLD) led by the Nobel Prize Winning Aung San Suu Kyi won an impressive victory with the agenda of amending the military made constitution of 2008. Observers are keeping their fingers crossed regarding the prospects of the intended amendments in the present constitution.

Africa, even less than Asia, has not been a hospitable continent for federalism. Presently, among 54 African states, only three can be counted as some kind of

federal political systems: Ethiopia, South Africa, and Nigeria. During the 1960s and 1970s, in the wake of decolonisation from European powers, several federal experiments were made but none survived in the face of relentless trend towards single-party states and military dictatorships. As Michel Burgess (1912, p. 13) in his short survey of federalism in Africa noted, "The early appeal of the federal ideal among several groups and communities in some newly independent states quickly faded and had all but disappeared by the early 1970s. The Congolese (Zaire) federation (1960-65) was abrogated in 1965, Uganda's federal system (1962-66), originally designed to accommodate the Kingdom of Buganda, went the same way in 1966 and the Anglo-French project of the Cameroonian federation (1962-72) was abolished in 1972. Federal experiments were similarly undermined in Kenya, Sudan, and Ethiopia leaving only Nigeria, and Tanzania-itself only a borderline federacy with the islands of the Zanzibar and Pemba (having only 5 per cent of the total population) as the sole remaining federal survivors in the 1970s.

In this desolate scenario, the 1990s witnesses some new federal sprouts and plants in Ethiopia (1995), South Africa (1996), and Nigeria (1999) having a longer defunct federal past than others. Over the last four decades, Ethiopia went through the end of the imperial era as well as the military regime (1974-1991) and a dramatic shift from a centralised unitary state to a somewhat unconventional parliamentary-federal constitution brought into existence liberation movement in a country that was not a colony waged by ethno-linguistic groups in different parts of the country. The executive comprises a nominated president indirectly elected by the Parliament and the Prime Minister elected by the House of People, the popularly elected parliamentary chamber. The federal second chamber, the House of Federation, has a special say in matters concerning nationalities and division of revenues derived from joint federal and state taxes among the two orders of governments, on the proposal of the federal executive. The President and Vice-President of the federal Supreme Court are nominated by the Prime Minister and approved by the House of People. Other judges of the Supreme Court are nominated by a federal judiciary administrative council and approved by the House of People. The constitution provides the power to 'interpret' the constitution to the House of Federation, uniquely in the world. The constitution also establishes a related institution, the council of constitutional Inquiry, consisting of the members of the judiciary, legal experts appointed by House of People's Representatives

and three persons designated by the House itself from among its members to examine the constitutional issues and submit its recommendations to the house for the final decision. Matters in this context are referred to the council for interpretation by a court or the 'interested party', to a dispute (University of Pretoria, 2004).

South Africa has adapted its British Westminster constitutional heritage to its needs and also added on a weak form of federalism, and the term itself does not appear in the constitution or in official documents (Murray, 2006, pp. 258-88). Legislature and executive on the parliamentary model are established at both the federal and provincial levels, but the federal government is very strong. The bicameral parliament comprises a directly elected National Assembly and the National Council of Provinces consisting a ten-member delegation from each province, which includes members of the provincial legislatures (drawn from different parties) and the executive. They must vote as instructed by provincial governments. This is designed to ensure provincial participation in the federal legislation which the provinces must implement. The federal cabinet is headed by the President who is functionally equivalent to the Prime Minister in a parliamentary system. Elected from among the members of the National Assembly, he resigns as a Member of Parliament and forms his cabinet from among his cabinet from among the members of the National Assembly.

The judiciary is structured as a common national hierarchy of courts, with the constitutional court having the final power of interpretation of the constitution and power of judicial review of federal and provincial legislative and executive acts.

After its independence from the British rule in 1960, Nigeria began as a parliamentary monarchy under the British and adopted a parliamentary federal republican constitution in 1963 but it was overturned by a military coup in 1966. The present constitution of 1999 was bequeathed to the people by the military after the last spell of its authoritarian rule (1983-1999). The 1999 constitution harks back to the 1979 constitution which had turned its back to the parliamentary federal system and adopted a presidential system of government. Constitutional power in the federation is heavily skewed toward the federal government in Abuja whose primary task is seen by national and military elites to hold the country together (Burgess, 2012, p. 11).

In sum, the three present African federal political systems are more African than European. Nevertheless, Ethiopia broadly reminiscent of parliamentary-federations of Europe, South Africa leans somewhat towards the commonwealth parliamentary-federations, and Nigeria reminds one of the Latin American presidential federal systems.

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