

## **An Overview of Options for Devolved Government in Situations of Conflict**

Almost all democratic countries have some arrangements for decentralized or devolved governance, but such arrangements vary greatly in extent and form, depending on the nature of a country, its history, and its philosophy of government. Devolution has sometimes been adopted to help resolve or manage a political or violent conflict, especially when ethnically, linguistically or religiously distinct populations seek autonomy. This paper provides a brief review of approaches to devolved government in situations of conflict.

### 1. Rationale and Issues Associated with Devolved Government

The most general reason to decentralize is to “bring government closer to the people” and to permit governmental decisions that have a local or regional character be made by local or regional politicians or publics. And while this argument for decentralization applies even when the population of a country is quite homogenous, it takes on an added significance in countries in which there are distinct ethnic, religious or linguistic populations concentrated in certain areas.

While decentralization or devolution can address certain demands for more local say, it can also pose its own problems or challenges.

- It is not always easy to develop a consensus on *what should be the units of devolved government*. How many levels of sub-national government should there be: regions, districts, and local? What should be the most important level of territorial government—regional or local? And who should decide, using what criteria, the number and boundaries of territorial units? This can be especially sensitive if there are populations that are ethnically, linguistically or religiously distinct which want their own regional or local government.
- When there are such distinct populations, creating regional or local governments can empower the regional majority group but potentially *create regional minorities that may be disempowered* or fear for their rights or fair treatment.
- Some important decisions of government inevitably will remain with the central government, even in highly devolved regimes. So decentralization may only partially address the concerns of distinct, regionally concentrated populations that are minorities in a national context. Such *minority populations may seek a guaranteed role in national government* as well as measures to protect their rights and fair treatment at the national level.
- Allocating particular responsibilities to each order of government on the basis of which are national, regional or local in character confronts problem that “*water-tight compartments*” *may not work for subjects that have national, regional and local significance*. Thus in areas such as education, health, and major

infrastructure there may be a need to consider shared jurisdiction and if so to determine how that might be managed.

- Some territorially distinct populations may seek *special autonomy*, with devolved powers beyond the arrangements for decentralization that apply in the rest of the country.

The design of devolved arrangements can try to address some of these challenges.

Some such conflicts are settled by one side prevailing (whether militarily or at the polls) and imposing its views. Others involve negotiations with compromises and agreement on a new political regime. But even when an agreement is reached, there may be continuing strong mistrust amongst the parties towards one another, so that *assurances that the terms of their deal are to be honoured* become important. For example, those who fear that devolution may potentially empower secessionist groups may seek to make the deal conditional on the continued territorial integrity of the state, while a group that have sought autonomy for a region where they are the majority may seek assurances that the national majority will not be able to change the deal unilaterally.

## 2. A Focus on Decentralization in Situations of Conflict

Conflict is a normal part of democratic politics and there are many instances where there have been protracted and heated political debates in democracies around devolution of one kind or another. However, conflict over regional governance in many cases has been *violent*, with insurgency or rebellion around demands for regional autonomy—or even for secession—and this has happen both in autocratic regimes and democracies. Whether peaceful or violent, such conflicts may be rooted in a history of bad relations between different populations within the country—where one group felt dominated or exploited by the other—or perhaps by a crisis that has shattered solidarity. In any case, the conflict becomes expressed in strongly differing views regarding the desired structure of government.

Devolution of some kind has frequently been adopted as a way to resolve or manage conflict, whether that conflict has been violent or carried out within peaceful politics. Some examples are very long-standing, but many are quite recent.

The models adopted reflect the underlying character of each society, but also the process that was used to resolve the conflict (e.g. negotiations, top-down decision-making, international arbitration, electoral politics). This paper focuses on the outcomes—that is to say on the design of the different models. Their success has been varied, so it is important to consider weaknesses in design as well as strengths.

Our analysis is structured around three basic models:

- Consociationalism and power-sharing;
- Symmetrical devolution;
- Asymmetrical devolution and special autonomy.

Each of these responds to different structures of conflict. Each model is defined by a few principal characteristics, but additional features that have sometimes been important in resolving certain conflicts.

### 3. Consociationalism and power-sharing

Our first model is what is known as the “*consociational*” approach to governing. It is different from devolution, but it can be an important part of addressing territorially based political conflicts. While democracy is usually seen as “majoritarian”, a number of political communities have adopted a more inclusive approach to involve both majority and minority groups in a shared approach to government. Consociational governments are based on a *large coalition* of different parties, each rooted in a distinct segment of society, and these parties govern largely on the basis of *consensus*, with each having a veto (sometimes only on specified matters). *Representation in the bureaucracy is usually proportional* to the size of the different groups and there may be rotation of certain important offices between groups. *Each group may have autonomy for certain purposes, such as schools, hospitals, and community organizations*. Perhaps the first version of this model was in the *Netherlands* starting early in the 20<sup>th</sup> century. Some consider the power-sharing arrangements in Lebanon to be consociational. The model was more recently adopted, with some very important innovations, to resolve the long-standing conflict between the Protestant and Catholic communities in *Northern Ireland*.

While consociationalism is distinct from devolution, it can be an important element in the design of a regime where there is devolution whether at the national or regional level:

- In *Belgium*, for example, there has been quite radical devolution with a federal regime, but important responsibilities have necessarily remained with the central government. So the Belgians have developed an arrangement for sharing power within the central government.. Federal cabinets must be formed equally of representatives of the two language communities (plus the Prime Minister who may come from either) and each linguistic community has the right to require a “double-majority” in parliamentary votes on certain matters of vital interest to it.
- Similarly, *Bosnia-Herzegovina* is a federation which is highly devolved to two territorial entities, but the central or federal government is consociational in form: the chair of the joint presidency rotates every eight months amongst the Bosniak, Croat and Serb members who have been elected by their entities for four years, but the presidency is overseen by the internationally appointed High Representative, who has wide-reaching powers to arbitrate and decide. The constitutional court has six members selected by the entities and three non-citizens selected by the President of the European Court of Human Rights.
- *Cyprus* had a brief, unsuccessful experiment with consociational government with its Greek and Turkish communities in the 1970s; more recently, attempts to resolve the partition of Cyprus have included significant consociational

- arrangements in the national government, but these have proven hard to agree upon.
- Northern Ireland is an example of *consociationalism at the sub-national level* where creating a territorial government was a necessary but far from sufficient condition for resolving the problem of conflict *within* the community. The government there is a very broad coalition with elaborate rules on power-sharing and other measures to protect the rights—and address the grievances—of the two communities.
  - Similarly, *South Tyrol* in Italy, is a province with two significant minorities where the composition of the provincial government must reflect the proportions of the three ethnic groups in the parliament.

The “consociational” approach is perhaps the ultimate form of group power-sharing, but there are other, less extensive, power-sharing models. In *Switzerland* the seven member executive council has proportional representation of the country’s three language groups and traditionally it has been a grand coalition of all the major parties (though this broke down for a period). *Nigeria*, which has a presidential regime, requires that the federal cabinet have members from all 36 states; to be elected, a President must win not just a national plurality but also a minimum 25 per cent of the vote in two-thirds of the states—a measure designed to ensure the president has some real support in each major region; federal parties may not have a religious or regional character and their executive must have members from not less than two-thirds of the states.

The *constitutional amendment procedures* in many devolved countries or federations require a *special majority* of regional legislatures or voters (in referendum) to approve some or all amendments. This can provide important protection for the “deal” inherent in the territorial structure of the country and is a significant form of power-sharing over the country’s basic law. In many federal or devolved regimes, the upper house of the legislature is the “regional house”, where regional representatives (elected directly by the population, indirectly by regional legislatures or named by regional governments) can influence some national legislation and where smaller regions have a greater proportional representation than they do in the lower house.

Power-sharing can also be interpreted broadly to include power shared between the legislative, executive and judicial branches of government. Or, the role of the *courts can be seen as “power constraining”*, in that they adjudicate on what governments can do subject to a constitution and the law. Thus courts can protect individual and group rights—which may be general (freedom of religion and expression) or specific (right to denominational schools and official status of a minorities language)—as well as the powers of governments in devolved regimes. Given its importance, the representative character of a country’s highest court can be a significant issue in resolving a conflict.

We can draw some lessons from this brief review.

- *Power-sharing, whether consociational or in less developed forms, can be an important part of devolved government arrangement to manage certain political conflicts.* Even with devolution, there may still be sensitive issues regarding minority rights and protections at the centre or within devolved units. Consociational or power-sharing arrangements may be fundamental to giving minorities the confidence that their interests will be properly represented.
- *Full consociationalism carries risks, notably of dysfunctional government.* Government by consensus can be very time consuming and it may lead to blockages in deeply divided societies. It can cause resentments amongst communities, especially if a minority is seen by a majority as abusing its right to veto certain measures.
- *Consociationalism probably works best when the relative sizes of the groups in question are not too dissimilar.* The ratio of the two main groups in Belgium is 3:2 and in Northern Ireland 4.5:4, while in Cyprus it is 4:1, which is much more difficult. Full consociationalism seems not to work with very small minorities. It can also be difficult when inter-group hostility is very severe.
- *Minority protections can sometimes be addressed through lesser forms of power sharing as well as the protection of group rights.* Special voting procedures limited to certain issues of most importance to minorities may be important. Judiciable guarantees of minority language rights, their right certain institutions (such as their own schools), and their proportional access to public employment can be important.
- *Protections for minorities may vary according to the stage of the political process:* South Africa had consociational arrangements between the National Party and the African National Congress during the period when the longer-term constitution was being negotiated, but the white community was too small to expect joint power-sharing longer-term. Thus in the final constitution, the white community accepted a majoritarian system, but gave great weight to provisions for the independence of the courts and the protection of rights (including property rights).

#### 4. Symmetric devolution

The vast majority of democratic countries make some provision for local or regional government and these provisions are usually “symmetrical” in that they apply in the same manner throughout the country (though they often distinguish between cities, towns and rural communities). And in the vast majority of cases, devolution, in whatever form, has been the product of historical evolution and relatively normal politics, rather than a major political or violent conflict. But there have been several instances where a country has adopted symmetrical devolution—or gone further with its devolution—following a major conflict.

- While *Belgium* has avoided serious violence, its politics since the 1960s have been marked by major stresses between its two major language communities.

- What started as a unitary regime has evolved through a series of constitutional reforms from 1970 to 2011 into a highly decentralized federal system of very few units along with strongly consociational features in the federal government.
- When Franco died in 1975, *Spain* wrote a new constitution, which addressed some of the central issues of the civil war of the 1930s, including significant devolution to the “historic nationalities”. This new system of territorial government amalgamated many provinces into new “autonomous communities”. Although it was originally thought that the ACs of the historic nationalities would have greater powers than the other ACs, over time all opted for essentially the same devolved powers so the system is largely symmetric.
  - After *Nigeria’s* terrible civil war in Biafra concluded in 1970, the country remained under military rule for 29 years. During this time, the generals redesigned the federation taking it from 4 to 36 states, with a view to changing the country’s political dynamic and reducing conflict between the largest groups, which had dominated the previous very large states.
  - *Ethiopia* adopted a federal regime in 1995 following the end of its civil war, which was won by a coalition of ethnic groups that had historically been marginalized by the dominant Amharic elite. The rebels opted for “ethnic federalism”, with the nine states largely determined on the basis of ethnic territories.
  - The constitution of *Bosnia-Herzegovina* was created as an annex to the peace agreement of 1995, which was negotiated with international parties as well as domestic ones. It created a highly devolved two-entity federation, the “Republika Srpska” and the Federation of Bosnia and Herzegovina (which is a federation within the larger federation). The central government operates on consociational principles between three ethnic communities, though the international High Representative has extensive powers to intervene.
  - In the negotiations to end apartheid in *South Africa*, the African National Congress, which had preferred a unitary regime, agreed to a devolved system with 9 provinces as a concession to the non-black communities as well as the Zulus. At the same time, the provinces are in many ways weaker than the cities in the devolved structure so South Africa is sometimes said to have an “hour-glass” design of devolution.
  - There was serious post-election tribal violence in 2007 in *Kenya*, which led to international arbitration, a transitional grand coalition government and a constitutional reform process. The constitution adopted in 2010 led to the creation of 47 county governments in 2012. As in Nigeria, the political map was designed to break up the largest ethnic groups.
  - The issue of federalism was one of the most difficult in *Nepal* following the end of its civil war in 2006 and it took two elections and almost nine years of hard bargaining to finally adopt a federal constitution with seven provinces in 2015. The country has scores of ethnic and linguistic groups and few regions are homogenous, so provinces had no natural demographic boundaries and the

drawing of the new political map was very contentious and it is still not finally resolved.

We can draw some lessons from this brief review:

- *Symmetrical devolution can be a key approach to addressing territorial or other cleavages in a society.* In all of these cases, symmetrical devolution was adopted following major conflict amongst groups and in most it has helped stabilize their politics. However, in cases of very deep cleavages, as in Bosnia-Herzegovina, even extensive devolution has not permitted very functional government, especially at the centre where there is consociational power-sharing.
- *The number and criteria for the creation of territorial units shape the political dynamics of a devolved regime, including relations between different populations.* There is no best formula, however, regimes with very few territorial units based on distinct populations (Belgium, Bosnia-Herzegovina) tend to be hard to manage and usually have power-sharing of some kind at the centre. Regimes with a larger number of units, even if these are demographically distinct, tend to have more fluid, less conflictual politics. Regimes with a very large number of units tend to have very strong central governments.
- *Most devolved regimes have multiple territorial levels. While the first, regional level usually has more powers and responsibilities than the other levels, some regimes make the third (district or big city) level the most important.* In Spain and Belgium, for example, the regional or community units are more powerful than the provincial or local governments below, while in South Africa, the municipalities tend to have larger responsibilities than the provinces.
- *There is great variety in the extent of devolved powers:* Belgium and Spain have very strong regional units, but in the other systems regional governments tend to be much weaker. Whatever the constitutional provisions, party politics can dramatically affect the functioning of a devolved regime. In South Africa and Ethiopia there has been a dominant party that controlled all governments—this has recently changed in South Africa—and when this happens, many issues are decided within the party structure, whatever the constitution may say. In Spain and Belgium, on the other hand, the politics of government formation at the centre have frequently influenced the powers attributed to the regional governments.

##### 5. Asymmetric devolution and special autonomy

In many countries, the desire for strong devolved government is much greater in one or a few regions than it is in the majority of the country. This may have produced extensive political conflict or, not infrequently, a violent insurgency of some kind, which may be secessionist. The challenge in some cases is complicated by interference by a foreign power in support of regional militants. A national government can resist such demands, try to accommodate them through symmetric devolution, or treat the regions in question

as distinct and grant them some form of special autonomy. A symmetric approach rarely answers the need in that it would provide more devolution than the rest of the country wants (potentially seriously weakening the central government) or less than the militating region wants. So there have been a number of cases where asymmetric devolution or special autonomy has been adopted or proposed:

- The *Aland Islands* in *Finland*, which is a unitary country, have had special autonomy since the 1920s. This arose because the islands have a Swedish-speaking population (today of 30,000) whose status was recognized to be of international interest by a committee of jurists of the League of Nations. Sweden and Finland negotiated an agreement on special autonomy, which has been updated periodically with the consent of the islanders. Sweden still has the right to make representations to Finland and could, with Finnish consent, refer a question to the International Court of Justice. It could even take a matter to the UN if it affected prospects for peace.
- *India* has what is a very symmetric federal structure, with the unique exception of special status for *Jammu and Kashmir*, the only state with a Muslim majority. It acceded to India in 1947 at the time of partition and this has been a controversial issue and source of conflict, including with Pakistan, ever since. Under Article 370 of the Indian Constitution, no law of the Parliament of India, except those relating to defence, communication and foreign policy, is extendable to the state unless ratified by its legislature. It is the only state with the right to its own flag and constitution. Other Indians cannot purchase land in the state. However, despite these seemingly strong provisions, in practice, the real autonomy of the state has been severely limited by the strong presence of security forces combatting the resistance groups and—even more—by the frequent use of President’s Rule, whereby the India government can suspend elected government in a state and replace it with direct rule by the appointed Governor. In many ways, special autonomy has never really been allowed to function in Kashmir.
- The *United Kingdom*, a unitary country, created special autonomy for *Northern Ireland* at the time of the partition of Ireland in 1922. This continued, always with governments dominated by Unionists who were the majority in the province, until 1973, when the British government suspended the Northern Ireland government because of the sectarian and violent “Troubles”. Local rule was only restored in 1998, following the end of hostilities and an agreement between the local factions as well as the British and Irish governments. A key part of the agreement was the consociational government of power-sharing between Unionists and Nationalists. *Scotland* had long a distinct legal regime and administrative arrangements but no devolved Scottish government, but from the 1960s onward there were increasing calls for devolution or even secession. In 1998, Scots voted in a referendum for the creation of a Scottish Parliament, which was implemented, with progressive increasing in its devolved powers, most recently in 2016, following the independence referendum in 2015. (The UK government had agreed to the referendum and to abide by the results.) *Wales* also

- had a referendum the establishment of a local assembly, though with fewer powers than the Scottish Assembly. However, England, with 85 per cent of the UK's population, has no comparable devolution and is directly dependent on the national parliament: this has created a still controversial issue as to whether MPs from the devolved regions should vote on laws that will not apply to their constituents.
- *Italy* has a devolved structure of twenty regions, five of which have special autonomy. One of these, Trentino-South Tyrol, has two provinces, one with an Italian-speaking majority, the other with a German-speaking, so regional powers have effectively been devolved to the provincial level. *South Tyrol* was ceded to Italy in 1919 and was subjected to aggressive suppression of its German-speaking character during the Fascist period. After World War Two its inhabitants strongly favoured reunion with Austria, but at the Paris peace conference in 1946-7, the Allies decided it should remain within Italy but be given autonomy, based on an agreement to be negotiated by Italy and Austria and this was annexed to the peace agreement. While it restored the status of the German language and gave local control over many issues, it had deficiencies that were a source of tension for 25 years, including bombing incidents by activists. A new autonomy statute of 1972 greatly strengthened the autonomy of the province and there were further enhancements in 2001: these included much greater fiscal autonomy and advantages, a requirement that ethnic proportions would have to be applied to all public bodies, and a provision that councilors of one language group in parliament could call for separate voting on matters considered prejudicial to their ethnic and cultural characteristics (and if denied, the majority of that group could refer the matter to the constitutional court). Article 2 of the revised constitutional law recognizes the internationally guaranteed nature of South Tyrol autonomy, which cannot be diminished.
  - As part of its democratic reforms after 1998, *Indonesia* adopt a broad ranging system of devolution to what are now 34 provinces and 502 regencies and cities (and many thousand districts and villages); the most significant responsibilities are assigned to regencies and cities. Five provinces have some kind of special status, with the most significant being that of *Aceh*. This was negotiated, with international mediation, in 2005 to end the insurgency by the Free Aceh separatist movement, which had started in 1976. Aceh is the only province in Indonesia that is the main unit of territorial government (as opposed to the regencies) and it has unique provisions such as the right to local political parties, sharia law, and extensive powers and fiscal concessions (especially access of petroleum revenues). Under the negotiated agreement, its autonomy was to include authority over all areas except foreign affairs, external and defence policy, national security, monetary and fiscal matters, justice and freedom of religion, but the law governing Aceh backtracked significantly on this, so that the governments of Indonesia and Aceh have significant differences of view on implementation. There are provisions for monitoring and dispute resolution by international actors.

- *Iraq* faced a special constitutional challenge following the international invasion of 2004, namely how to reintegrate the region of *Kurdistan* into the country, given that it had operated independently under the “no fly zone” for fourteen years. The country had a rushed constitutional process, with a major role played by the United States, so that the constitution approved in 2005 had significant unresolved issues and relatively weak political support, especially from the Arab communities. In principle, it created what was to be a symmetrical federation in which significant powers would be devolved to regions, but only the Kurdish region was recognized initially. Provisions to create further regions have not been respected so the country is highly asymmetric, with the Kurdish region controlling all activity within its borders and still having its own army. There are serious unresolved issues over oil and gas management and the sharing of petroleum revenues.

The above examples give a reasonable representation of the variety of special autonomy arrangements that have emerged from conflict situations. There are others, including *Zanzibar* in *Tanganyika*, and for the *Serb Community* in *Kosovo* as well as the autonomy granted *Crimea* within *Ukraine*. There are currently attempts to resolve the special autonomy status of *Bangsamoro*, a Muslim majority community in the southern *Philippines*, where an earlier arrangement proved unsatisfactory. There was a brief attempt at special arrangements for the *Tamils* of northern *Sri Lanka*, but these failed and the conflict there was resolved militarily, while the political issue remains.

We can make some general observations regarding special autonomy arrangements:

- *Special autonomy arrangements are most appropriate when the autonomous units is not too populous relative to the rest of the country:* In most cases examined, the unit getting special autonomy has between 0.5 and 3 percent of the national population. The major exceptions are Iraq, where Kurdistan has 25 percent of Iraq’s population, and the UK, where Scotland has 8 percent. The Iraqi arrangement is highly unstable and in the UK the extent of devolution to 15 percent of the country has posed the issue of the right of MPs from the devolved regions to vote on matters not affecting their constituents.
- *Arrangements to give special autonomy units enhanced representation or powers in central institutions are the exception.* This is a strong contrast to such symmetrically devolved regimes such as Belgium, Bosnia-Herzegovina and potentially Cyprus, where power-sharing at the centre is critically important. When special autonomy is being granted to a relatively small population, the focus is typically on devolution rather than participation in central institutions. In most cases, the populations of special autonomous regions are represented in central institutions on the same basis as the populations of other regions, though there are exceptions (*Zanzibar*, *Kosovo*).
- *There can be special protections for one or more minorities within an autonomous territory.* In Northern Ireland the consociational arrangements guarantee

- Catholics have a full role in government; there are also special independent commissions on human rights, equality and victims. In South Tyrol, the language and representational rights of the German and Ladin-speaking minorities are protected.
- *Special autonomy arrangements may be set out in international agreements, a constitution, a special law or laws, or some combination of these.* There are international agreements relating to the Aland Islands, Northern Ireland, and South Tyrol. International actors have a role in monitoring and arbitrating the Aceh agreement. Constitutionalized arrangements usually have greater protection against change than those in ordinary laws.
  - *The right of secession is rare for contiguous territories with special autonomy.* The Northern Ireland agreement recognized the legitimacy of whatever choice the population might make and this principle has subsequently been extended, subject to procedural disciplines, to Scotland. In all other cases, secessions is excluded by national law. (Ethiopia's constitution includes a right of secession but it is questionable whether it could be exercised.)
  - *There may be restrictions on the voting, property and other rights of citizens who have not been fully established in an autonomous territory. And citizens domiciled in an autonomous territory may have special privileges.* The Aland Islands and South Tyrol both have limitations on the rights of citizens who are not domiciled in these territories. And Aland Islanders are exempt from military conscription. UK citizens domiciled in Northern Ireland have the right to Irish as well as British citizenship.
  - *There is great variety in the powers devolved to autonomous territories, though a core group of powers typically stays with the sovereign government.* The powers devolved can be very extensive or relatively limited, but national governments almost always reserve defence, foreign affairs, and some areas of taxation and monetary affairs and they usually control citizenship (at least at the national level) and immigration. Special autonomy governments may have a right to be consulted on foreign affairs affecting their direct interests. The powers most frequently devolved relate to local matters including: some aspects of education (especially primary and secondary), employment, health care, local government though some of these may be subject to national laws for certain purposes. Some regulatory powers over the environment, traffic, markets, local infrastructure can also be devolved. Policing can be sensitive and subject to special arrangements.
  - *Fiscal arrangements are important and distinct from the devolution of legislative and administrative powers.* Aceh is guaranteed 70 percent of locally generated petroleum revenues. The Aland Islands have extensive provisions for equalization transfers. South Tyrol has extensive local taxing powers and a preferential fiscal situation relative to other regions. Northern Ireland is heavily subsidized through a complex formula regarding transfers.

## 6. Conclusions

This brief overview gives a sense of the ways in which devolved governmental structures have been developed to address and manage conflict. There is no one formula, each country has had to develop its own approach. Devolution itself can take many forms—whether symmetric or asymmetric, extensive or limited, but also whether to many or a few territorial units, which themselves may have distinct populations or not. Devolution may be an important part of a design to address conflict, but depending on the configuration of the conflict other measures—notably power-sharing and measure to protect the rights of minorities—may also be required. Thus there is a “tool-kit” of measures that can be considered in designing regimes to manage territorially based conflicts. The design adopted by any country must reflect its own circumstances.

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