

**FEDERALISM AND MULTICULTURALISM: ISSUES
OF SELF-GOVERNMENT AND MINORITY
PARTICIPATION**

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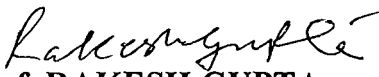
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CERTIFICATE

This is to certify that the dissertation entitled **Federalism and Multiculturalism: Issues of Self-Government and Minority Participation**, submitted by **Rakesh Mohan Chaturvedi**, in partial fulfillment of the requirements for the award of the degree of **Master of Philosophy**, is his own work, and has not been previously submitted for any other degree in this or any other University.

We therefore, recommend that this dissertation be placed before the examiners for evaluation.


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*To,
My Parents,
with Love.*

Contents

	Acknowledgements	i
	Introduction	1
Chapter I	Federalism in a Multicultural Society	6
Chapter II	Multiculturalism in a Federal State	38
Chapter III	Multicultural Federations: Issues of Minority Participation	60
	Conclusion	89
	Bibliography	97

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Introduction

The discourse in Liberalism gives lexical priority to equality over liberty. The *raison d'être* lies in the milieu in which liberalism emerged as a challenge to the conservative philosophy. Conservatives have undying faith in liberty as being indispensable for the material evolution of mankind. All preaching about equality as a necessary precursor to the foundation of a just and humane society would find no buyers in the Conservative household. Equality is blamed for all the mediocrity that pervades society, and is subsequently credited with suffocating competition and progress. Much ink has been consumed in the unsuccessful persuasion of the die-hard conservatives. In this endeavor the liberals are the ones who have tasted some remarkable success though, if not in converting the conservatives to their cause then at least to have checked the erosion in favor of the latter. It can be happily declared that in our times we have more liberals holding their ground than any other crusader- though the radicals are even more fanatical about equality.

My understanding of these two concepts of equality and liberty has been that they are relative and not absolute. I would always put equality first, though liberty would be a close second. It is widely acknowledged that the interpretation of these concepts is very much determined by the ideology an individual or group holds dear. Which also leads to the inference that this perception can be contextual as well.

It is equality that is the cause celebre of this dissertation. However, here the concept of equality has been put under the microscope with the perusal of its different strands and its application in varying contexts as the primary aim. It was realized in the

latter half of the Twentieth Century, by a new breed of scholars known as the multiculturalists, that the liberal notion of equality was discriminatory and therefore inadequate.

The liberals have taken pride in their belief that laws should be the same for every individual irrespective of caste, creed, religion, gender or the station one is born into.¹ This approach of adopting colorblind laws was upheld as the epitome of a just society till the multiculturalists arrived on the scene and demolished the model. The thought that materialized now was that individuals and groups were not endowed with the same advantages and disadvantages and so an approach of positive discrimination was required. This is the crux of the multiculturalist position.

The liberals believe in the equal distribution of resources. As Dworkin reminds us “a liberal will arrive initially at something like this principle of rough equality: resources and opportunities should be distributed, so far as possible, equally, so that roughly the same share of whatever is available is devoted to satisfying the ambitions of each” (Dworkin, 1986: 192). The multiculturalist agenda begs to make a digression. It argues that the various cultures that coexist within the confines of a society are not at par with each other. It is the majority culture that plays a crucial, though mostly subtle, role in determining the state of affairs in other cultures. The conception of the good as defined and pursued by the majority becomes the aspiration of the minority cultures as well. Equal laws do not ensure an egalitarian society in such circumstances. Equality demands something more here, namely, a theory of special rights to safeguard the interests of these minority cultures. In the absence of such special rights these minority cultures are likely

¹ As Aristotle said, “A state aims at being, as far as it can be, a society composed of equals and peers.” However, his understanding of equality was even more inferior to that of the classic liberals.

to loose their members to the majority culture or to the so-called secular realm and thus wither away.

It is this pursuit of equality that compels multiculturalists to seek ways and means to reform a given society and the thinking dominant within it. The means resorted to by the multiculturalists to usher in equality among the different cultures is one of dependence on the fundamental institutions and the constitution of the state. Equal rights, whether in the classic liberal or the multicultural sense, can have teeth only when they are legally enforceable. This, of course, does not negate the significance of building a consensus on these issues in the arena of civil society.

The concentrated location of minority cultures, or more specifically national minorities², within a certain territory in such a manner that they are turned into regional majorities has given the multiculturalists the ultimate playground to implement their dream plan. Wherever this condition is satisfied the likelihood of giving these national minorities self-government rights is increased manifold. A federal architecture of governance is the most suitable in this scenario.

Federalism is the division of powers between the Center and the constituent states, with the latter as the periphery. There are various ways in which this idea has been mooted though the basic premise remains, more or less, the same. The states are granted as much independence as is feasible in the given situation. Hence, federations have changed colors with differing terrain and age. Their own aging process has also affected their ebullience, with the ones formed after decolonization having a more centralist tendency, and so on.

² Will Kymlicka coined the term national minority to define those who have been colonized but were self-governing societies earlier. (Kymlicka, 1995).

Federalism and multiculturalism have much in common (as the following pages of this dissertation bring out fully). Both had their origin in former colonies. They both found firm footing in diverse, plural societies. What is of utmost significance here is that they both find in each other the ethos to turn their utopian dreams into reality. To clarify this and the questions that arise thereof is the endeavor of this dissertation. A gist of how I have pursued it follows.

The first chapter deals with the whole issue of federalism. It discusses the causes and the conditions that led to the birth and growth of federations; the form of government that would uphold the federal agenda more competently; the issue of sharing of powers in a federation; the subject of sovereignty and how it affects the functioning of a federation; the place occupied by group and individual rights in such a set up; also, the significant role played by conventions and the constitution in a federal structure; and a host of other questions related to the subject.

The second chapter introduces the concerns of multiculturalism. The debate surrounding identity and recognition, and the difference between pluralism, diversity, and multiculturalism, are some of the questions that are dealt with here. The subject of citizenship; the importance attached to special rights in a multicultural society; the limits of permissible diversity within such a system; as well as the need behind an understanding of multiculturalism within a federation have been discussed threadbare.

The third chapter pertains to the inquiry a propos the issues of participation and accountability in a multicultural federation. First of all, the early debates and concerns of liberal democrats on this topic has been deliberated upon; then follows the explanation for the leaning towards a federal form instead of a unitary one; followed by the answer to

what is the most suitable criteria to be adopted for defining a population-whether it should be territorial or based on membership of a cultural community, or both. This is in part I of this chapter. Part II looks at the viability of a federal set up in tackling the issues of participation and accountability vis-à-vis other forms of government. This part also examines the provisos of referendum, initiative and recall. Most importantly, this chapter suggests the models and configurations that can be incorporated within a federal system to make it more participative and accountable.

This is followed by a short conclusion. Here a brief summary of the whole dissertation has been presented. It also pinpoints the questions that remain unanswered and the efforts called for their countenance. Some clarifications have been issued to dispel certain confusions that may have entered the minds of the readers in their interface with this dissertation.

CHAPTER I

Federalism In A Multicultural Society

A universal consensus on the definition of federalism has been elusive. Scholars have been very accommodative and flexible and on the one hand and quite rigid and focused (perhaps narrow) on the other. A comprehensive, all-encompassing definition acceptable to all is, perhaps, non-existent. One reason for this lack of consensus is that federations, like all institutions, have undergone a lot of significant changes over the years. Divergence of views pertains to – the causes responsible for the formation of federations; the form of government (Parliamentary or Presidential) more conducive for a federal structure; the manner in which sharing of powers between the states and the Union should take place; the significance of the issue of sovereignty within a federal system; the struggle between group rights and individual rights in a federal form; the role played by conventions and the rule of law as upheld by the Constitution in the Center-state relations; and a host of other issues.

The disparity of opinion among the researchers can be blamed on the various forms of federations that have existed or exist today. Had there been only one set of circumstances responsible for the formation of federations or had federations been carbon copies of each other, then defining them would not have led to very diverse paths. “The trouble is that the identity of a federation has not the obviousness of a stone, a tree, a sand dune or any other physical object” (King 1982: 11). Inadequate definitions have been a consequence also of the undue significance attached to quantification over logical analysis, as is the case in most branches of social sciences. The scholars involved in the study of federations have engaged themselves more in a comparative analysis of

federations rather than concentrating on the individual significance of each federation. The comparative method has lost some of its credibility today as it relies on quantification to a degree that becomes problematic and implausible. Too much reliance on data would lead to narrow and short-lived definitions. Moreover, it is generally believed by many intellectuals that federalism is not an ideology but a mere institutional arrangement. This shows that federalism has not found serious reflection from the scholars of repute. They have denied federalism its rightful place among the theories that stand for equality and rights.

A very simplified description of federalism is that it deals with sharing of powers between the Core (i.e. the Center) and the Periphery (be it constituent states or regions or provinces). Needless to say, democracy is a must for the existence of a federation.¹ However, this is a highly inadequate description, as it does not describe the type of relationship that should exist between the core and the periphery in an ideal federation. Other details like the criteria to be adopted for the formation of federations, and so on have also been ignored here. Another method, again incomplete, is of describing a federation is by contrasting it with unitary and confederal forms of government. *The Federalist* gave birth to this typology. A unitary form of government is one where the Central government is sovereign; a confederal government is one where the local government is sovereign; and in a federal form none of the two governments is fully sovereign.²

¹ Dahl gave the concept of 'Polyarchy', which is an improved form of democracy, where public participation and public contestation is at the maximum. (Dahl, 1971).

² The distinction between 'unitary' and 'confederal' states did not significantly exist prior to the emergence of federations. The Renaissance and the post-Renaissance distinction, stressed so dramatically by figures like Bodin, Hobbes and Benedict Spinoza, was simply that between sovereign and non-sovereign states.

A defensible common identity (read definition) has to be established for understanding federations (or any other social organization). There are certain issues on which there is a consensus among students of federalism. The term 'Federal' is derived from the Latin 'Foedus'. It implies a covenant, a pact or treaty among independent states. Federalism should have three conditions—a written constitution, demarcation of the spheres of power and the idea of federal and state authorities (Saxena, 1982).

There are three leading characteristics of a completely developed federalism—the supremacy of the constitution, the distribution among bodies with limited and co-ordinate authority of the different powers of government, the authority of the courts to act as interpreters of the constitution. As is amply clear from above, the constitution of a federal state has to be a written document, clearly stating the division of powers between the union and the states (as also between the states themselves). This is necessary to avoid any discrepancy or allegations of injustice by the various parties involved in a dispute. “A federal state derives its existence from the constitution, just as a corporation derives its existence from the grant by which it is created.” (Dicey, 1952: 144). Here the constitution constitutes the “supreme law of the land”.

A federation should also possess a constitution that is rigid. Lord Bryce defined a constitution as 'rigid' wherein the constitution cannot be amended without the willful consent of both the Center and the constituent states. “The supremacy of the constitution over all the legislatures of the country, and the rigidity of the constitution, are essential characteristics of a federal constitution and they flow necessarily from the idea of federalism itself.” (Wheare, 1951: 31). Thus, a federal state should possess a constitution that is “rigid” or “inexpansive”. This is in order to prevent the amendment of the

constitution by some states for their vested interests without the consent of the other states. Making the amendment procedures difficult is one method of ensuring the rights of the constituent states. A federal constitution is capable of change, but is apt to be unchangeable.

Regional units, which are contemplating a federal union, are apprehensive and would like to set down explicitly the limits of the powers that they are handing over to the central government. "They are afraid of delivering a blank cheque." (Wheare, 1951: 54). Not surprisingly, in some cases the uncertainty on the part of the regional units over joining the federation was substantial and was dispelled only when the residual powers were left with the federating units by a written, rigid constitution. However, in many cases (e.g. India) the federating units were either not given such a choice in a substantial manner by the constitution, or they were lucky enough to find themselves with these rights. The causes and consequences of these have been dealt with in detail later in this chapter.

Federations have been defined also according to the form they have acquired in their functioning. '*Cooperative federalism*' is one in which the state and the Center enjoy equal powers (usually the Center has overriding powers in case of a conflict). There is no question of subordination among them. The US is moving towards achieving this goal.³ The traditional theory of '*Dual Federalism*' envisages a situation in which the regional and the central governments are independent of each other and operate in strictly demarcated fields. A new type of federalism developed in the 1960s in the US is "*Creative Federalism*". It seeks to mobilize private interests as well as public agencies in

³ Watts finds the term "interdependent federalism" more apt to describe this simultaneous cooperation and rivalry among all federal governments, instead of "cooperative federalism". (Watts, 1970: 7)

intergovernmental programs. Here private economic groups are included in the processes of governance. Other terms used to describe federations, based on their style of functioning, are '*contractual*', '*centralized*', '*peripheralized*' and so on. These terms have been used because federations have undergone changes over the years, leading to the coinage of new terminology.⁴ Contractual federalism stands for that form of federalism where the relationship between the Center and the states is more in the form of a contract. Centralized federalism signifies a federal state that has a Center, which exerts undue dominance on the states. Peripheralized federalism is one where the constituent states have more freedom and greater say in the affairs of the state. Here the periphery, i.e. the states, is in a stronger position.

However, a federation does not establish equality between the Center and the states, contrary to Wheare's argument. Even the distinctive federal balance of territory is not ensured in a federation always. A political balance, along-with the territorial balance is a pre-requisite for checking abuse of power.⁵ Montesquieu's formula that 'power should place a limit on power' and that 'every man given power is apt to abuse it' (Book XI), is a clear warning in this regard. Yet it should also be remembered that the pure model of dual federalism has never been applicable in any federation, not even the US as pointed out by Daniel Elazar (Watts, 1970).

Theories of Federalism

There are three types of Federal theories: Classical theory, which emphasizes on what federalism is; Theories of origin on why and how federalism was established; and

⁴ "While stones have a way of lying quite still, holding themselves out to inspection, federations, like all institutions, are not so obliging. Federations move, they change, ..." (King, 1982).

⁵ The narrow and strict definition of federalism as propounded by Wheare led to his classification of Canada, India, USSR, and Weimar Republic of Germany (from 1918 to 1933) as "quasi-federal".

Functional theories, which deal with how federalism works. Another categorization of theories is into Sociological theory, Political theory, and Multiple Factor Theory (Venkatrangaiya, 1971). The first set of categorization has not been dealt with in detail under any specific section, but figures in this chapter along with other debates. It is the second categorization that I wish to draw the reader's attention to below.

Livingston is credited with having propounded the Sociological Theory of Federalism. His central argument is that the federal nature of a society gives birth to the federal political system. This federal nature he attributes to the elements of diversity present in a society. He described a Spectrum in which all societies would fall somewhere. Groups within a society keep clamoring for political recognition and adequate opportunities to express their personality and individuality through political instrumentalities. Livingston restricted the federal society to one in which diversity is territorially grouped.

A political system is essentially a territorial one and the division of powers between governments in it should be only on a territorial basis. If the diversity is distributed throughout the whole of society, if for instance members professing different religions or speaking different languages are scattered in the society as a whole, then Livingston names it a plural society. Here Livingston feels that the federal architecture would be inadequate and so recommends other devices like a Bill of Rights. Livingston warns that the instrumentalities through which diversity is found cannot all be expressed in a written constitution. This moves the debate into the arena of civil society. More significantly, the constitution can also be misused by creating diversities.

Watts applied the term federal only to a particular segment of societies and defines federal societies as those in which there is an approximate equilibrium between the forces of unity and diversity. Livingston had applied 'federal' to the whole spectrum of societies. Watts rightly blames the variation in centralization on the degree of diversity and the equilibrium between the groups. Watts refined Livingston's thesis and added that even in societies where these diverse groups are not so distributed a federal system might exist. His argument is that federalism in these circumstances might serve as a means to restrict the regional majority from acquiring tyrannical tendencies over the regional minorities. Secondly, the federal system might lessen the risk of political power being monopolized by one party, as a party that is a minority party at the national level, may become a regional majority party.

Sociological theory falls short in the sense that it ignores causes other than that of the presence of diversity in society. Though I attribute the maximum priority to diversity as a criterion to be adopted while forming federations, I feel that to argue that it has been the only reason *till now* in the formation of federations is untrue. If this were true then half the purpose of writing this dissertation would be done away with. Livingston's theory is effective to some extent in ensuring the participation of the diverse elements of society in the functioning of the state and should attract kudos for that.

Political Theory of Federalism is the same as the Theory of Origin, mentioned in the first category above. It is so called because it considers federalism as a solution to what is essentially and primarily a political and not a sociological problem. Riker propounded this theory and refuted the sociological theory, arguing that Arab states did not form a federation even though sociological conditions prevailed. Similarly, the Central American Federation broke up even though it had all the ingredients necessary

for a federation, according to the sociological theory. The problem with Riker's thesis is that it accords undue significance to 'fear' as the basis of the formation of a federal state. While it is agreed that external threat and internal dissension were contributory factors in the formation of federations, to believe that these were the only ones would be incorrect.

K.C. Wheare and Karl Deutsch advocated the Multiple Factor theory. Karl Deutsch gave the concept of "Amalgamated Security Community" which would include all the forms of union with any reasonable claim to be regarded as federations. (Venkatrangaiya, 1971). This theory tries to assign more than one factor for the formation of a federation and carries some aspects of the above two theories. The reasons cited for the creation of federations by this theory are- external threat, a desire for security (along with the realistic understanding that it is not feasible unless these small states join hands), and economic and social factors. The small states realized that they would have to face threats from the big countries and so decided to enter a federation in order to protect their interests. The economic and social factors also played a significant role here. The threats of neo-colonialism and the economic power that would percolate from a federation to its federal units encouraged them to become a part of a federation. Social factors, of course, played a major part as a federation took care of the various elements in the society and their needs in a manner much better than a unitary state. These factors are dealt with in more detail in the forthcoming pages.

Though all three theories are lacking in some respect or the other- due to the simple reason that they are reductionist in nature and hence ignore other causes - yet the most acceptable, perhaps, is the Multiple Factor Theory. It endeavors to incorporate more plausible factors and is consequently somewhat comprehensive.

The Background of Federalism

Before federalism was realized on the ground, the idea had been brewing for quite a long time. The concept of federalism was formulated- perhaps for the first time in the proper sense of the term- by Johannes Althusius (1562-1638), who, fully conversant with the Swiss and Dutch federal regimes, made the 'bond of union' (consociatio) one of the cornerstones of his political thought (see Fredrich, 1968: 12). In his 'Politica' (1610), he argued for a federal system where only the provinces and free cities were to be taken into consideration and not the individuals or communities.

The federal form of government is envisaged for a country having vast territories. Since the concept of city-states was in prevalence during the ancient times, the thinkers of that age like Plato and Aristotle did not find the need for a federal regime. Similarly, Hobbes and Locke also did not comment on such a form of administration. A federal notion was in existence only to fulfill the concern of universal peace. A belief of an all-inclusive federal union continued to play a certain role, from Henry IV's Grand Design to the Abbe' de Saint-Pierre's (1658-1743) *Projet* (1713). This was as "a utopian future order, cast in the form of a mere league, than as a form of government." (Fredrich, 1968)

Montesquieu (1689-1755) discusses the notion of a 'federative republic' in Book IX of his *Spirit of the Laws* (1748). However, it is largely in terms of giving defensive strength to several republics. He calls it a "society of societies." Thus, here the understanding of federalism is more in the confederative sense- a group of independent states forming a union to usher in peace and amity and to prevent oft- occurring conflicts. A confederation, as we very well know, is formed by sovereign states to accomplish a mission- fight against a common, formidable enemy; join hands to bring peace, and so

on. The members constituting a confederation can leave its membership whenever they feel that they cannot work together any longer, or once the job is done. In a federation the members are not sovereign, cannot walkout of the fold anytime they want and follow a single constitution.

It was in the USA, credited by many as the original home of federalism, that federalism- as it is widely known today- found a serious expression. The constituent states of US could come under one banner only when their self-government rights were ensured to a respectable degree. *The Federalist* marks the beginning of a new epoch in federalism. It built its defense of the concept of federalism on two basic propositions, as it had been worked out at Philadelphia. The first of these propositions was concerned with the ends of a federal union and argued that it was safety of its citizens from the external attack and internal rebellion. Studied in the American context, this would be interpreted as the protection of the original thirteen colonies from any external threat- at that time it was England- whenever it arose. The danger of internal dissension was looming large as well at that point in time. The constituent states found the thought of forming a federal state as the panacea for the ills plaguing them. The second proposition was focused on the need for a federal government sufficiently strong to carry out its functions. This meant vesting the Center with enough powers- both over riding powers over the states, as also in matters of foreign affairs, communication and defense- to make it the ultimate authority in case of disputes between the Center and the states as well as between the states themselves.

Federalism found a new meaning with the thoughts of Rousseau and Kant. Rousseau's belief in small communities as the only sound basis for democratic politics

(and probably his Swiss background) convinced him of the importance of federating such communities. He fully realized that in a big democratic set up, the voice of many citizens would be stifled. But since these democracies were more or less inevitable, the solution lay in forming federations. These federations would make influencing decision-making more accessible for the people. The woes of the people would not reach the ears of the mandarins seated at the Center. However, he did not envisage the working of a real federal order. Perhaps, the reason lay in his apprehensions regarding representation. He wanted the citizens to have a direct say in the formulation of policies. This was not possible within a large democracy or even a federation (though a federation would be more representative than a unitary system).

Kant advocated a worldwide federation of republics, not so much for military defense but more for a universal political order based on law. Hence, his understanding of federations was again of the confederative variety, the only difference being that he envisaged it strictly with the aim of establishing long-lasting peace. This scheme of Kant has made him immortal in the area of world peace understanding. He felt that if the states would form a federation (read confederation) then it would make the world a peaceful place to live in. His idea was quite utopian and has not found much success in its practical implementations.

The Causes and Conditions attributed to the Formation of Federations

The lack of consensus on a universal definition of federalism extends to the causes and conditions enumerated by scholars and thinkers for the birth and growth of a federation. Wheare (according to his Multiple Factor Theory as mentioned above) observes that at least six factors – need for common defense, desire to be independent of

foreign powers, hope of economic advantage from union, some political association prior to the desire for political union, geographical neighborhood, and similarity of political institutions- have directly contributed to a desire for a federal union. (Saxena, 1982: 72). The small kingdoms formed a federation after gaining independence from the Colonizer due to a sense of economic and military trepidation.

It is argued that a federation can be formed when states having almost equal strength (in terms of population, wealth and historical position) agree to form a federation. In other words, the presence of roughly equal social forces, which support union, but oppose unity, is a condition that can lead to the establishment of a federation. However, in practice it is not always the case as is borne out by the example of India and some other federal countries.

The internal and external threat factor has been another primary reason for the creation of federations. Since the small states, which shared some common features like territorial contiguity and a common history, felt insecure in the face of threats from a formidable neighbor they decided to establish a federation. The threat perception can also be from the external forces (like the Colonizer earlier) as learnt the hard way by the former Colonies.

Riker and a few other scholars have overplayed the criterion of threat being the cause for the formation and continuance of a federation. He argues that for a European or a world federation to come into being there must exist some 'significant threat' (King, 1982). For it is 'naïve' to recommend federal union, regionally or globally, on grounds that there are sound economic and social reasons for it. Not surprisingly, there are few adherents of this reductionism of Riker. External threat is and can be one of the reasons

but is not the only cause for the formation of a federation. If fear is the basis of a federation then no federation should ever fail. Likewise, increase of threat perception may not necessarily strengthen a federation. In fact, there are many cases of the demands of autonomy and/ or secession by the states increasing during such crises. Another interesting argument put forward here is that state sovereignty leads to conflict and a federal union of such competing states leads to peace. (Pritt, 1940: 85).

Economic and social causes have also been responsible for the formation of a federation. Economic potency was at low ebb due to the draining of resources by the imperial forces during their reign. Smaller, newly independent states would not be able to withstand the might of the bigger, economically powerful states. Hence, it is beneficial to form a union, while at the same time retaining one's independence. This is ensured in a federation.⁶

Federalism owes much to colonialism. For most federations that exist today are in countries, which are former Colonies.⁷ The reasons are not far to seek.

With the growth of capitalism, imperialism soon followed. Small kingdoms lost their independence and were brought under the yoke of a single dominant power, the Colonizer. For the first time, a union was formed whereas earlier (when these kingdoms were subjugated by a powerful ruler) an enforced unity was imposed. This was, perhaps, because the white colonizer was an outsider and more aloof. Therefore, the native elites,

⁶ A manifestation of such a federation, as mentioned above, is the coming up of these regional organizations (like SAARC, etc.) and most importantly the formation of the European Union. Though these are not federations in the true sense of the term, yet they stem from federalism.

⁷ Here Laski was proved wrong that "Federalism is the appropriate governmental technique for an expanding capitalism, but a contracting capitalism cannot afford the luxury of federalism." (Saxena, 1982).

though no community as a whole, did emulate the Colonizer's way of life- both in awe and through selective encouragement by the Colonizer himself.

After the colonial masters withdrew- either because they were vanquished or found it difficult to rule anymore in the face of stiff opposition- the colonial dependencies were left with the task of choosing a government for themselves. Since the former kingdoms were small and incapable of defending themselves if they stayed independent on their own, they joined together and formed a federation. A federation gave them a certain degree of independence to rule themselves while at the same time providing security from external threat, and economic benefits. Since a process of democratization had already begun at the fag end of colonial rule in most countries, it was more or less inevitable that these states would choose federalism. However, federalism was not the panacea for all their ailments.

Ironically, a lot of problems with federalism have arisen in the post-colonial phase, when it was adopted by many of the newly independent countries. Federal theorists argue that federalism is a pact among equal forces (states). However, many federations have neither seen a pact among the member-states, nor are the states equal in strength. In the case of West Germany, the federation was given shape and its boundary demarcated by the Center with the regional units having little or no say in the matter. In the case of the newly independent colonies the former kingdoms, which did not wish to join the union, were – in some instances- coerced into doing so. Even if the regional units did join without any overt or covert coercion, the boundaries of the states were not always drawn after taking the regional units into confidence. Few federations, other than US and Switzerland, were witness to the signing of a pact among the member-states and

the union. Secondly, even today not all the member-states have an equal say in decision-making by the union in most federations (except, perhaps if the matter concerns them). These countries needed a federation but the manner in which these federations were conceived, and the way they have been functioning, is problematic.⁸

Since the fear of secession by the units of the federation loomed large, these new federations were highly centralized, with the entire policy-making taking place at the Center. The Center was all-powerful and the states were subdued beyond the limits set by federalism. This seems to have made the Centralists' worst fears come true. For, the states have suffocated under the terms dictated by an all-powerful and interventionist Center. The states find that their freedom is being curbed and seek independence.

There is difference of views on the causes for the formation of federations. According to Dicey, a federal state requires two conditions for its creation:

a) There must exist in the first place, a body of countries such as the Cantons of Switzerland, the Colonies of America, or the Provinces of Canada, so closely connected by locality, by history, by race, or the like, as to be capable of bearing, in the eyes of their inhabitants, an impress of common nationality. It will also be generally found (if we appeal to experience) that lands that now form part of a federal state were at some stage of their existence bound together by close alliance or by subjection to a common sovereign.

⁸ On the other hand, federalism itself can be anathema for a country. Brazil is a classic example of federalism going through a lot of ordeals, all because it was artificially imposed in this country, which had lived under a unitary monarchy. The US model was copied. Perhaps, radical decentralization would have been a more sensible idea. This is an example of federalism failing simply because it was imposed on a people without their consent.

b) The existence of a very peculiar state of sentiment among the inhabitants of the countries that it is proposed to unite. They must desire union, and must not desire unity. If there be no desire to unite, there clearly is no basis for federalism (Dicey, 1952: 141).

I beg to disagree with Dicey, for to my mind commonality does not require a federal structure to express itself. In a homogeneous society, a federal organization can only help in administrative convenience. The real utility of a federation would not see the light of day here. Commonality would find apposite expression within a unitary form of government, and perhaps in a more admirable style as well.⁹ Therefore, to argue that people of same race, common nationality and the like are more suited to forming a federation is unpalatable. It is agreeable, however, that there should be a common thread to carry these various groups together; in the absence of some commonality the groups would be suspicious of each other and an alliance cannot materialize. This commonality could be having the same history (say, of colonial suppression) or these groups could have been located in geographically contiguous areas.

A federal architecture is an instrument to bring people of diverse backgrounds (read cultures) together. Geographical contiguity is important and so is some commonality. Yet these groups should be unique in themselves as otherwise they would not require self-government rights. Dicey is absolutely right in his second argument that the groups should have a desire for union but not unity. But this is also a sentiment one would associate with groups that are at least somewhat different from each other. Thus,

⁹ The desire to unite may also lead to a Unitarian constitution like in the case of England and Scotland in the eighteenth century and in the case of Italy in the nineteenth century. Here the sense of common interests, or common national feeling may be too strong to permit the type of union and separation that is the foundation of Federalism.



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the reasons cited by the Sociological Theory, as discussed in the previous pages, are more plausible.

Centralist Federalism versus Decentralist Federalism

Federalism has been preoccupied with the Center-state debate. A consensus on who should wield how much power and control has been a bone of contention. The doctrine of sovereignty as expounded by Bodin and Hobbes maintains at points that no integration, which is incomplete, can be stable. Here is a clear urge that all power be transferred to the Center.

Proponents of Centralist Federalism proposed that a closer union forges a better defense against external threats, against conflict between the states, and against domestic faction and insurrection, while simultaneously providing a more solid base for external trade and private prosperity. *The Federalist* (1788) went to the extent of maintaining that the state authorities, as opposed to the national, would tend to exercise the strongest hold upon the citizenry, and thus that ‘ it will always be far more easy for the state governments to encroach upon the national authorities, than for the national government to encroach upon the state authorities (No. 17, Nos. 45 and 46). It further argues that – at least in the American context and perhaps generally- the greater danger stems more from a powerful periphery than from a strong Center.¹⁰

As discussed earlier, the traditional doctrine of sovereignty makes a case for the illimitable concentration of power at a given Center, and that this power must be absolute, total, unlimited and indivisible. *The Federalist* supports the view that the protection of the interests of the citizenry vis-à-vis the state requires a central government

¹⁰ It is to be noted that an interesting argument is put forth about the West German federation. It is said that the Allies imposed it in order to make it easier to split up the country after her defeat.

possessing the essential attributes of sovereignty. The whole idea is very Hobbesian. Grotius, Spinoza, Pufendorf, and Bodin were also votaries of Centralization for similar reasons.

In countries which had newly acquired independence and immediately opted for democracy, there was an extremely centralist administration that came into being. This was because of the fear of secession by the states, external threats, and the other reasons referred to above that need no repetition here.

Centralist Federalism has drawn a lot of flak for obvious reasons. The most important concern of *The Federalist* (perhaps, the strongest supporter of Centralism) was to promote efficient, centralized government, not to retain local state identities; and to promote such a government on the basis of popular consent, not via such delegated authority as might be grudgingly conceded by the states.

Just as the Centralist Federalists have argued for centralization bordering on absolutism, so have the Decentralist federalists' advocated decentralization brinking on anarchism. Well-known proponents of universal federalist decentralism have often been known- and have most often called themselves- anarchists, underlining the identity between such decentralism and anarchism. Proudhon, Bakunin and Kropotkin were anarchists who supported a highly decentralized federation.

The German federal Constitution of 1949 was designed to create a less powerful Center than that provided for under Hitler's Third Reich (completely opposed to the American federal Constitution of 1787 which was designed to create a more powerful Center than that provided for by the Articles of Confederation).

Pi'y Margall, who led the Federal Republican Party which overthrew Isabella II in the Spanish Revolution of 1868, was a striking proponent of federalism as a decentralism, seeing it ultimately as a means of destroying power, but intermediately as a means of dividing and reducing it. He considered power as merely temporary, and therefore eliminable. He was an anarchist whose liberal ideal, like Proudhon (whom he admired much), was ultimately to eliminate power.

Proudhon stood for federalism as an instrument of promoting individual liberty. He defended property, inheritance and non-violence. However, other anarchists were not that liberal. Bakunin was all for the triumph of violent revolution and class-war. He rejects the liberal view that individual liberty somehow exists prior to society itself. For anarchists like Pi'y Margall, Proudhon and Kropotkin federalism was an expression of particularity, individualism and democracy. For them, federal institutions were a source of realizing such ideals of checking the concentration of power, or even as a means of destroying power.

Proponents of autonomy assert a principle which goes beyond mere autonomy; they demand self-sufficiency, constitutional autarchy or, to use a less familiar but accurate term, a notion of constitutional *autochthony*, of being constitutionally rooted in their own native soil.¹¹ However, in a federation the question of autonomy has been dealt with in a very cautious manner, as it has its own dynamics that may lead to the tyranny of a local majority and other complications.

Other proponents of federalism, such as Tocqueville, John Calhoun, James Bryce, Edward Freeman, Gierke, Figgis, Krabbe, the early Laski and Sobei Mogi, were

¹¹ Autochthony stands for 'sprung from that land itself' -Greek origin (see Wheare, 1960).

prejudiced in favor of an a priori decentralism, but simultaneously and consciously resisted the clear, anarchical implications of such an orientation. They preached 'balance' as the solution and as an ideal.

However, there are problems even with balanced federalism, which is sold as a panacea for all ills plaguing federalism. Nevertheless, a federalist balance should be the aim even for the multiculturalists, as it is here that every group is likely to find its agenda being paid heed to. Many scholars of multiculturalism would be attracted to the highly decentralized federalism discussed above, but they should be warned that there are myriad problems with this system. The regional majority should not be given too much freedom, as is likely in a decentralized federation, as this may lead to their tyranny on the minority. Other questions pertaining to decentralized federalism have already been discussed above. A 'balanced' federalism is the safest bet out of the three choices offered above.

In the US, Calhoun argued for a theoretical balance, for a countervailing force. But he was doing so to further entrench local power- in this case, the power of a rural, slave-holding South. Hence, his theory was meant to uphold the power of a particular oligarchy. In a decentralist federation the local, territorial autonomy may easily prejudice the rights of other groups or interests (especially where these form less than a majority) within the local community in question. Local decentralization may only aggravate some ethnic, class, racial and sexual bias of the minorities. We cannot be sure that federalist or any other decentralism will do more than protect the interests of that subsection of the overall community which controls or dominates the locality. To protect local, territorial

rights may easily conflict with the protection of the rights of minorities resident in the locality.

The power that a local oligarchy commands due to majoritarianism will always in some degree permit it to be atrocious, sometimes significantly so, with the minority groups. This situation becomes more acute when the other groups have no important role in local deliberations. The moral propriety of decentralist federalism comes under a cloud unless due account is taken of the infringement of rights of the minorities. So, what we are moving towards is safeguarding the rights of the national minorities at the Center as well as ensuring that the rights of the minorities at the state level within a federation are protected as well. This can be done by: (a) giving the Center over-riding judicial powers of arbitration in the affairs of the state; (b) ensuring institutional protection to the minorities at the state level; (c) veto power to the significant minorities within the state in the affairs concerning their welfare. Moreover, an understanding and a consensus will have to be built into the lifestyle of the civil society about the presence of the minority cultures.¹² An understanding of multiculturalism would make these societies more conscious of the rights of the minority groups and would enlighten the path to their emancipation. The above issues raise questions that federalism can ignore only at its own peril. It would find the answers within multiculturalism.

Government: Parliamentary or Presidential

One of the contentious issues in a federation has been about which form of government would be stable and, at the same time, most representative. It is argued that it

¹² Two points should be heeded here. One, utmost caution should be exercised while allowing the Center the powers of arbitration in the affairs of the state. Otherwise the Center may become overbearing. Two, the decision on who constitute the significant minorities (group rights cannot be granted to each group) will have to be done on a case-by-case approach.

is a difficult task to combine a federal form with a Parliamentary executive of the British Cabinet type. This is the case in Australia, Canada, and Federal Republic of Germany.

It is presupposed that a bicameral legislature is a must in a federal regime, since the states have to be equally represented in a separate body. The purpose behind the proviso for an upper house is equal representation to the states (though this is not always the case, e.g. India). The survival of the cabinet is dependent upon the confidence of the lower House. However, there are certain problems with this whole plan. If a federation has provision for only one House, it will possess a monopoly thus endangering the federal balance. Granting both the Houses equal powers will lead to instability as there is bound to be some difference of opinion between them. In this situation the government (and consequently the cabinet) will have to be made accountable to one of the two Houses. Hence, a federal regime ought to, practically speaking, avoid the classic parliamentary system. The parliamentary tradition itself has demanded the abolition of federalism, perhaps, because of these reasons.

A truly federal system should not have single party dominance. A plurality of parties is a must to make federations representative; some organizations and interest groups will fail to get their demands fulfilled (Watts, 1970). In a parliamentary system the minorities have a better opportunity to find representation in the government. It is closer to a 'layer cake' than a 'marble cake'.

The scholars of federalism feel that the Presidential form of Government is more suited to it. Then are federalism and "responsible government" incompatible? Empirical analysis presents a mixed picture.

Group Rights over Individual Rights

The whole orientation in a federation is towards privileging the constituent states even if it is at the expense of some minor groups who do not have the numbers or the resources to raise their voice in the corridors of power. Thus, unless a federation has institutional safeguards woven into it the minorities may find themselves at a disadvantage. Of course, the best solution would be to form the states within a federation keeping the location of national minorities in mind. A federation should serve as a mechanism for turning a national minority into a regional majority. A more centralist federation is even more unaware of the issues at the grassroots level. All this gives the impression that a federation leans heavily towards group rights, and does so mostly at the expense of individual rights. However, this allegation is only partly true. For, to my mind group rights are as important as individual rights, and as long as group rights do not encroach upon individual rights, they should be guaranteed as well (for more details on this see the section on collective rights vs. individual rights in the next chapter).

As Dicey points out, “A federal state is a political contrivance intended to reconcile national unity and power with the maintenance of “state rights.” (Dicey, 1952: 143).

“Federalism, when successful, has generally been a stage towards unitary government. In other words, federalism tends to pass into nationalism.” (ibid: 604). This awakens us against the impending threat of the majority misusing the tenets of federalism for majoritarianism. Multiculturalists warn against this as it may lead to the predominance of the majoritarian culture, as is the case in the emergence of Nations.

It should be borne in mind that even the group rights enshrined in the constitution may not translate into practice. A consensus has to be developed in civil society for the acceptance of these rights. It is well known that in the US, the XV Amendment in 1870 itself granted the Negroes the right to exercise their franchise but this right was seldom exercised. But to give credit where it is due, it cannot be denied that a resolution of the slavery question was essential to the maintenance of American Federalism.¹³ It thereby implicitly implies that the people (in this case Lincoln) and circumstances are crucial to the solving of the problem. In the time of Kennedy's presidency a commendable endeavor was made to enforce the equal rights of the Blacks with the existing laws itself.

Federalism increases the opportunities for the dissenting minorities to voice their dissent, as it institutionalizes diversity. The case of Belgium is worth mentioning where one section of the population, the Flemings, demanded the formation of a federal union till they were in a minority but today the Walloons demand it, as they are a minority now. This upholds the Sociological Theory discussed in the earlier pages of this chapter.

The example of Puerto Rico and Quebec shows the neutralization of grievances through a federal structuring of the political order.

Political parties and pressure groups in a federation can enjoy a considerable amount of clout and thus affect decision and policy-making. "What for centuries was held to be the lethal poison of republic, the spirit of faction, is in modern democracies institutionalized in parties and interest groups." (Dahl, 1982: 28). Oligarchies develop in democratic regimes, stifling the voice of the weaker sections. Organizations strengthen solidarity and division, cohesion and conflict; they reinforce solidarity among members and conflict among non-members. Dahl points out that the famous "Iron Triangles" of

¹³ Lincoln said, "This government cannot endure permanently half slave and half free." (Fredrich, 1968).

Congressional committees, bureaucracies, and interest organizations exercise great influence over policy-making. (Dahl, 1986). In a federal architecture the pressure groups and political parties espouse the cause of more specific, regional groups and so help the cause of cultural groups in general (the third chapter deals with this issue in more detail).

Conventions and the Constitution in Federalism

The term 'Constitution' is commonly used in at least two senses. One is to describe the whole system of government of a country, the collection of rules, which establish and regulate or even govern the government. These rules are partly legal, as the courts apply them, and partly non-legal or extra-legal, taking the form of usages, understandings, customs, or conventions which are not recognized by law but which are quite influential in the day to day working of the government. "It is perhaps necessary to add what is probably fairly obvious, namely that what a constitution says is one thing, and what actually happens in practice is quite another." (Wheare, 1951: 5)¹⁴. Legislatures are not the only source of legal rules. Constitutions are supplemented and modified by rules of law, which emerge from the interpretations of the courts. And, other than the legal provisions, constitutions are "supplemented or modified or even nullified by usages, customs, and conventions." (ibid). It is to this that attention needs to be focused in order to make the system more representative. Or else the norms established by the majority are likely to prevail.

Legalism comes along with the federal baggage. This translates into the predominance of the judiciary in the constitution. The judgments of courts are without force, at any rate as against a State, if the President (or whoever is the Head of State)

¹⁴It is important to note that a country may have a federal constitution but in practice may work that constitution in a unitary fashion (Latin American countries) and vice versa (Canada).

refuses the means of putting them into execution.¹⁵ The people in power can misuse it in various ways –appointment of judges, other office- holders, etc.

The significance of conventions in the working of any society cannot be ignored. Too much stress on the rules and laws at the expense of conventions will create complications, which could be impossible to address.¹⁶ This is not to disregard the importance of the constitution. Dicey warned of the danger of not paying “sufficient attention to the law of the constitution as it now actually exists.” There has been an even greater danger of “looking too exclusively at the steps by which the constitution has been developed”, thus paying inadequate attention to the present state of the law. (Dicey, 1952: xxvii).

The conventions are indeed a part and parcel of Constitutional law. With the widening of the scope of conventions there has come the realization that the dividing line between law and convention is by no means clear. “They (conventions) provide for the whole working of the complicated government machine...the cabinet has a life and an authority of its own. It is not concerned with prerogative powers alone; it acts, whether they are already legal powers or not. It co-ordinates the constitutional system.”(Dicey 1938: 86-87).

An obvious fear that emerges here is that if a group is not well represented or is weak then its Causes and demands will go unheeded. The groups living on the margins of mainstream society will get further eroded and oppressed. It is therefore imperative that these groups find adequate representation at the policy-making level; otherwise the

¹⁵ “John Marshall,” said President Jackson, according to a current story, “has delivered his judgment; let him now enforce it, if he can.” (quoted in Dicey, 1952: 177).

¹⁶ As Bentham said “ legislation and morals have the same center but not the same circumference”.

conventions upheld and beneficial to the dominant sections of the society will hold sway much to the detriment of the former.¹⁷

Federal Theorists have been obsessed with constitutionalism to a degree problematic for the Communitarians and the Multiculturalists. This obsession was especially severe in the classical theory of federalism (Venkatrangaiya, 1971). But federalism can exist in its true sense only when the laws are clearly laid down about Center-state relations. This is a must for the working of any institution. But the definition of concepts like liberty, rights, justice and equality should move beyond the confines of the Constitution and into the realm of society. The treatment given to these concepts by any constitution will be very legal and hence narrow. Unless it is reflected in the behavior of the citizens in the day-to-day life it is insufficient. For example, the multiculturalists argue that the mere recognition of a culture is not enough; it should be treated at par with the other cultures and should have an equal say in such matters.

The authors of *The Federalist* conceived of liberty in a joint concern with the avoidance of tyranny and with securing self-government, both of which equate with a republican state of affairs. Understanding of freedom here was limited to the electoral control of rulers by the ruled. This is a very archaic definition of freedom in a democracy.

Even Proudhon (1809-65) declares federation as the perfect institutional reconciliation of liberty and authority. His claims, in *Du Principe Federatif*, are uninhibited: 'Among so many systems of government which philosophy proposes and which history tests, the only one which combines the individually and socially

¹⁷ It can be mentioned here that Plato was in a way referring to in the *Republic* the local conventions and practices when he argued that "constitutions are not born of oak and rock, but grow out of the characters in each city."

indispensable features of justice, order, liberty and stability is.Federalism (King, 1982). Federations, in their practical manifestation (which Proudhon bothered about more than the theoretical) have been acutely lacking in these respects. In the name of secular laws and benign neglect, a liberal democratic federalism may actually be blind to the freedom and equality that all cultures cherish and strive for. Proudhon's claim that federation is 'liberty' and 'excludes any idea of idea of constraint' is contestable in today's multiculturally conscious world.

The purpose of this whole debate on the role played by conventions in the working of any constitution is to pinpoint that even where the laws have been laid down, their working may be hampered by a lack of sympathy in the society for those causes not dear to the majority. And since in a federation the constitution plays an even more significant role- there cannot be a federation without a written constitution- it is very necessary that the rights of minorities be espoused by the society as much as it is by the institutions of the state. A federation can ensure this by forming the federal units with a view to making the national minority into a regional majority. Here the rights of the national minority cultures would be insured in the realm of civil society, aided by the local conventions.

Issues of diversity are the major concern in this scheme of things. This diversity can be best guaranteed by accommodating the national minorities into federal units in a manner that they become a regional majority. This is possible only in an ideal federation.

A federation lays great emphasis on the rights of constitutive territorial units. Since many federations were not formed taking regional cultural homogeneity (wherever feasible) into consideration, hence there is an absence of a multiculturalist sensibility in

granting and safeguarding rights. An overbearing concern for sovereignty¹⁸ has also had a negative impact on issues of liberty, equality and rights.

Constitutionalism and Federalism

Legally, both the Center and the states are subordinate to the constitution. However, to argue that a constitution represents the views of every section of the society may not be credible. “ A constitution is indeed the resultant of a parallelogram of forces- political, economic, and social- which operate at the time of its adoption.” (Wheare 1951: 98). Wheare further argues quite rightly that ‘the people’ can be said to do very little in framing a constitution. They have never and can never unanimously enact a constitution. As such, words like ‘We, the people’ in the preamble of a constitution can be quite misleading.

It is generally believed that the constitution enshrines the interests and opinions of the framers of the constitution, which is a very eclectic body always (I can almost visualize Rousseau jumping in his grave). Not surprisingly, the constitution is likely to embody and reflect the social concerns of these people.

Both democracy and constitution are essential prerequisites for a federation to exist. If democracy means mere universal suffrage or equality of conditions then it can be as tyrannous as any other regime. This tyranny can be legitimized by an unrepresentative constitution.

¹⁸ For a detailed understanding of citizenship rights and the issue of territorial sovereignty, see (Baubock, 1997).

Conclusion

There is an inherent dichotomy in the two causes enumerated for the formation of a federation. If the federation is formed because of some external threat or internal coercion, than how can it be truly contractual at the same time? There will be some compromise on the part of the weaker party in this process. Secondly, the assumption that since a federation is established only in a democracy it will promote liberty and egalitarianism is an incredibly raw argument. "Democracy in the ideal sense is a necessary condition for the best political order. It is not a sufficient one." (Dahl 1982: 4). Liberty in a federal regime has been described as the right to self-rule and avoidance of tyranny. Freedom here consists of the electoral control of the rulers by the ruled. Democracies, over the years, have been breeding grounds for a lot of tyranny in the name of the will of the majority. It has been realized that a game of absolute majority is not conducive for justice to all sections of the society. "If the liberty of association is a fruitful source of advantages and prosperity to some nations, it may be perverted or carried to excess by others, and the element of life may be changed into an element of destruction." (Tocqueville, 1835).

Thirdly, the federal regimes in most cases have been top-heavy, i.e. they have a highly centralized administration leading to the suffocation of demands and aspirations of the local cultures and communities. This has been done with the excuse of bringing in stability in a nascent federal state and it was carried on even after the threat had died down. No wonder, so many federal states have faced demands for autonomy and secession. Fourthly, the federal system is more concerned about territory and government than about social and individual issues in most cases. The interests of the powerful and active pressure groups (be they states, majority cultures or economic groups) are more

likely to be served in this scenario. Fifthly, federalism as balance has more to do with constitutionalism in general than with territoriality in particular. But as pointed out in this paper above, federalism lays too great an emphasis on the constitutional provisions than on the reality on the ground. Many issues can be sorted out only in the realm of civil society and an understanding of the conventions and practices is a dire necessity in this regard.

Sixthly, there are problems with the way most of the federations have been formed. Most of the time the constitutive territorial units of federations did not agree to either enter or remain in the union. They were coerced (either through physical force or by circumstances) to enter into the contract. Seventhly, there should be some meeting grounds between the constitutive states in terms of common values, interests and beliefs. If this aspect is lacking then the will to federal cooperation is bound to be weak, especially when only two partners exist, of whom one constitutes a clear majority.¹⁹

A federal system sometimes makes it possible for different communities to be united as one state when they otherwise could not be united at all. The bond of federal union may be weak, but it may be the strongest bond that circumstances allow. On the other hand, a flawed federal system may even lead to the separation of certain groups and communities.

Federalism can be arguably put into both social and governmental categories. If the contractors are groups, the assumption must be that certain rights naturally attach to these groups (as for example, churches or families or corporations, or regions) and the government has a duty to protect these group rights. Federalism, however, has stopped short by extending this protection only to survival, to property, and the like. The federal

¹⁹ Cyprus is one such example. The gulf between the Turks and the Greeks dates back to the Turkish conquest and the Greek struggle for liberation.

system is, thus, preoccupied with the governmental aspects and has ignored its social role. A multicultural ethos, built into the federal system, can lead to redressing this complaint.

Forcing a political unity among people where none exists can also result in failure as was manifested by the calamities of the Helvetic Republic.

Federalism leads to a confused loyalty –to the state or the union; which comes first?

What we need to solicit is not the “federal structure” but the function of a federal relationship. A “federal spirit” must exist, meaning thereby a firm determination to maintain both diversity and unity through a continuous process of mutual adaptation. If the spirit of unity is very strong, then the state may become a unitary state; if the centrifugal forces of localism are very powerful then the federal regime may break into its component parts. History has been a witness to both these processes. Also, federal loyalty and federal comity are a must.²⁰ “Comity is oil on the complex machinery of federal regimes.” (Fredrich, 1968).

Some scholars predicted the end of federalism in the twentieth century with the ushering in of a Welfare state and the expansion of national controls over economic life. Conversely, now federalism has witnessed a new resurgence with Liberalisation and Globalisation. Though a federation is the best institution to safeguard multicultural concerns, yet this is possible only when a federation is formed and nurtured in a multicultural ethos.

²⁰ Federal comity is the practice of fair play and a readiness for compromise between the federal and the local officials.

CHAPTER II

Multiculturalism In A Federal State

This chapter introduces multiculturalism. It explicates the debate surrounding identity and recognition; elucidates the difference between pluralism, diversity and multiculturalism; deals with the issue of citizenship in a liberal democracy and the changes that multiculturalism envisages therein. Further, it discusses the issue of special rights; clarifies the limits of permissible diversity; and most importantly it explains why we need an understanding of multiculturalism within a federation. Every society is multicultural today, though the degree may vary. The multiculturalists argue that the measures required to safeguard the minority cultures and create conditions conducive for them to flourish differs for each society (Carens, 1992). As such, multiculturalism does not follow a dogmatic policy of a universal rule for all multicultural societies. Instead it advocates a case-by-case approach and argues that each culture has its own ethos and should be dealt with accordingly.

Introducing Multiculturalism

Multiculturalism can be described as the presence of a society in which all the cultural communities have the maximum liberty to practice their way of life and to flourish in a manner, which is at par with the dominant culture. Thus, it does not rest satisfied with the presence of various cultures in one society but also ensures an equality of status to all these cultures. The nation-state includes people of diverse but equal ethnic groups. It should be understood here that the liberty enjoyed by the various cultures is not to be at the expense of the other cultures, nor should it encroach on the rights of any

community or group. All cultural and religious groups participate in the political life of the state as equals.

Democracy is a must for the thriving of a truly multicultural society. To visualize a multicultural society in any other form of government is impracticable. However, just the mere presence of a democracy is not a sufficient condition for multiculturalism. Democracy in its rudimentary form means the rule of the majority. Multiculturalists argue that this can lead to the imposition of the will of the dominant culture, resulting in the suffocation of the minority cultures. Multiculturalism believes that there is no one ultimate conception of the good; each culture can borrow some worthy features from the other cultures. A second pre-requisite for multiculturalism is the presence of a strong state. For in the absence of a strong state the multicultural agenda of providing equal space to all the cultures, irrespective of the numerical strength of their followers or resources at its command, would not see the light of day.

Multiculturalism emerged as a movement first in Canada (the Quebec issue) and Australia and then in the USA, U.K., Germany, and elsewhere (Parekh, 1999). Parekh lists three insights as being central to multiculturalism. First, human beings are 'culturally embedded'. They live within a culturally structured world and organize their lives and social relations in terms of a culturally derived system of meaning and significance. Second, different cultures represent different systems of meaning and visions of the good life. So each culture enriches itself by looking at the other cultures and learning from them. No culture is inferior or wholly worthless. Third, each culture is internally plural and reflects a continuing conversation between its different traditions and strands of thought. A culture cannot appreciate the value of others unless it appreciates the plurality

within it; the converse is just as true. One very important factor to be kept in mind is that cultures are best changed from within (ibid).

Multiculturalists understand that changes within a community should be initiated internally and should be non-coercive, even when the idea was originated by the state and its institutions. If ample reasons are given by the state for ushering in a new law or removing an archaic one, and these reasons are palatable to the communities concerned then it prepares the grounds for internal reforms within these communities. Bilgrami issues a caveat here that this is possible only in societies that do not have the numerical dominance of the fundamentalist elements in these communities (Bilgrami, 1999).

The members of a community cannot feel for the political community unless it is also committed to them and accepts them as one of their own. This does not merely entail equal rights of citizenship (this is dealt with in more detail later). Since all the communities are not placed at an equal station in the larger scheme of the state- even if the liberal laws are color-blind – hence both justice and a sense of belonging can be ensured only through special group-differentiated rights, culturally differentiated application of laws and policies, special support to minority institutions and affirmative action.

Identity and Recognition in a Multicultural Society

The crux of the debate in multiculturalism is about the issue of identity and recognition. Each culture possesses a unique identity and craves for recognition of its way of life and its conception of the good. There is a constant fear of losing out to the majority or the dominant culture. In its extreme manifestation it can even lead to the slow death of a culture. Multiculturalism is a struggle for recognition, sharing this sentiment

with the nationalist movements and acquiring the same zeal at times. Non-recognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being (Taylor, 1992). Women and Blacks are two categories who have had to bear this form of oppression.

A person may be socialized in such a manner that even when some opportunity to emancipate her arises, she may not be capable of taking advantage of that. Dominant cultures generate stereotypes of the dominated and the minority cultures end up accepting these definitions. This results in a lack of confidence on the part of the latter thus triggering a process of homogenization. Women in a patriarchal society have imbibed the thought that they are inferior to men and here no amount of laws will suffice, unless conditions are created for the transformation in their thinking. Till the time this self-depreciation changes all reforms will be futile. Misrecognition can, as Taylor puts it, “inflict a grievous wound, saddling its victims with a crippling self-hatred. Due recognition is not just a courtesy we owe people. It is a vital human need.” (ibid).

Identity changes with time due to internal as well as external factors. At the same time some aspects of the ‘identity’ survives. It is the part that has survived which makes one realize the extent of the changes that have occurred over time. The concern here should be to ensure the protection of those aspects, both old and new, of a particular culture that are held dear by a majority of the adherents of that particular culture. This is possible only when the society provides ample space and opportunity to the minority cultures to practice their culture without let or hindrance. Here both the institutions of the state and the society at large play a vital role.

The more a culture is pushed into a corner by the dominant forces in society, the more it tries to assert itself. This can lead to violent reprisals and conflict. It becomes a question of honor for the minority culture to affirm its identity.¹ Today dignity is a more significant term as honor has connotations of inequality. The first instance of a person coming to terms with ones identity is after realizing who ones '*significant others*'² are- our parents, relatives, friends, etc. This influence is always there in our lives. It is obvious here that identity is dialogical in character. Extending this argument further, one realizes that a culture cannot survive without due recognition from other adjacent cultures. So, this discourse on recognition runs at two levels- with significant others in the private realm and with other individuals and cultures, which is in the public sphere. Issues of feminism and multiculturalism need to be located and discussed within this framework of recognition.

Rousseau is considered the originator of the discourse on recognition. He associates other-dependence with the need for others' good opinion. Hegel had a similar argument when he gave the master-slave analogy. Both emphasize the need for mutual recognition, by both the superior and the subordinate. However, multiculturalism stands for *equal* recognition and reciprocity and not a sense of the superior-subordinate among cultures.

It should be spelt out here that even the terms we use today as neutral terms were not so earlier. 'Secular' was originally part of the Christian vocabulary. When we invoke our standards for judging others, we make an implicit attempt at homogenizing the other.

¹ Here honor has been used in the sense of giving what respect is due to a person or culture unlike Taylor, who uses it in the ancien regime sense where honor is a matter of preferences- for one to have it, it is imperative that the others don't have it. It is linked to inequalities.

² George Herbert Mead's term.

To feel that a certain culture doesn't have a Shakespeare and so is inferior is clearly an indication of imposing one's standards on the other cultures. Who are the others to set the standards for a particular culture?

Citizenship and Equality as Sameness

Citizenship is about status and rights; belonging is about acceptance, feeling welcome, a sense of identification. Parekh feels that Taylor is taking a naïve liberal view when he says that recognition can come for the minority community by rationally persuading the dominant community to change its views through intellectual arguments and moral appeals. Parekh feels that recognition has to be fought for and can sometimes even involve violence as pointed out by Hegel and ignored by Taylor (Parekh, 1999).

Parekh coined a term '*Operative Public Values*' to define the public moral and political rules that bind a particular group of people into a common society. It is these values that ensure cohesiveness in a group, despite the presence of conflicting elements in a society. They embody a shared form of public life. "They are not derived from a thick conception of the moral life or of the human good, but they are inevitably influenced by such a perspective." (Kelly, 2001). It is these operative public values that are summoned whenever any claim for the recognition of a practice by a minority group is put forward. The process of dialogue between the minority community and the majority community takes place on the basis of these values. The majority community tries to explain how a particular practice of the minority infringes on these values. If the minority is able to defend its case then it is given recognition.

Two issues are at stake here. One, how can one be sure that the society one lives in is liberal enough to ensure such an impartial dialogue. Two, the operative public values

have a majoritarian bias (and are hence inclusionary) which has to be contested by the minority. How much space and opportunity is provided by the state is a matter of conjecture. It is here that the constitution and the institutions of the state come into the picture. It is ostensibly clear that both the constitution and the various institutions of the state are tempered by these operative public values. As such, the battle for sensitization and reforms has to be fought and won here, as much as in the arena of society.

Plurality, Diversity and Multiculturalism

Plurality has been in existence in many societies since ages. However, plurality is not the same as multiculturalism. It only denotes the presence of many cultures. The arrangement of these cultures, their interpersonal juxtaposition, the hierarchies that may exist (it is always there) among them- these are aspects on which plurality is silent. In most plural societies of the past there was peaceful co-existence as the religion and culture of the dominant or the majority community was understood to be hierarchically superior to the other cultures that were present. Usually, the religion of the ruler was considered to be the superior religion in the hierarchy and the other religions were inferior to it. Consequently, the members of the superior religion possessed a sense of superiority over the members of the other religions. This explicates the reason behind the majority community not being the dominant community at all times (e.g. Islam was the dominant religion during the Mughal rule even though the Hindus were in a majority). “What characterizes structures of pluralism is that power is displayed and conceded frequently in the domain of the symbolic. The dominant community asserts its supremacy by stamping its presence in public places, and *vice versa*, challenges to these symbols are taken as a sign of rebellion, to be strongly resisted” (Mahajan, 2002:13).

Diversity, on the other hand, moves a step further from pluralism. It points to the existence of many that are not the same, are heterogeneous and often incommensurable. To put it in another way, when we speak of diversity we refer to multiplicity that is not collapsible into one (Mahajan, 1999). In the 16th and 17th century the cultural anthropologists who started the tradition of field-work had an air of superiority over the other cultures that were the subject of their study. The result was the arrangement of these cultures in a hierarchy with the ones closest to the European way of life finding themselves nearer to the top in the list. Things changed somewhat after Malinowski, whose guidelines for the field worker were adhered to by later scholars. The comparative approach was, more or less, abandoned and a study of culture *per se* was undertaken.

The German historians like Herder redefined the concept of diversity during the age of Enlightenment. He argued that each culture is the creation of the people who constitute it. As such each culture is unique in its own way and has a historical specificity all its own. For Herder, this was welcome, as he dreaded 'deadly uniformity' more than any other cultural malaise (Madan, 1999). He further emphasized the unique nature of each culture by calling them 'children' of God, all having a distinct identity and future³. Herder applied his concept of originality both at the individual and the culture-group level. However, as Mahajan points this diversity of cultures was accommodated only historically. Each maintained that history is defined by a succession of diverse cultures or values, but each culture manifests a single idea (Mahajan, 1999). Another important point of departure here between the multiculturalists and these German historians is that while the former discuss diversity within the boundaries of the nation-state, the latter pushed it

³ Herder put forward the idea that each of us has an original way of being human: each person has his or her own "measure".

out of the boundaries of the state (for more details on Herder's argument see Parekh, 2000).

The primary concern of both- a liberal democracy and multiculturalism is to ensure the equality of all individuals, though the method of approaching the issue differs. In fact, multiculturalism is widely understood to stand more for the right of the minority groups. A liberal democracy emerged as a challenge to the earlier forms of monarchical regimes, which discriminated against individuals on the basis of ones birth. Hence the most imperative goal of the liberals while espousing the cause of democracy was to have neutral, color-blind rules and laws to govern the people. Here the ascriptive identities of the individual like caste, creed, class, gender and religion were discarded as criteria for any special treatment. Community membership was not taken into consideration. With the advent of multicultural thought in the 1970s, things changed.

Multiculturalism made a case for the identification of cultural identity as an important criterion to be adhered to while granting rights to the citizens. It also argued for special rights to be granted to the minority cultural groups. These were termed as group-differentiated rights. The advocates of multiculturalism posit that giving special rights to these minority cultures help them survive the onslaught of the majority culture. In the absence of these rights, these cultures would die and wither away. As the minority cultures survive and flourish due to the institutional representation given to them, they are bound to feel a sense of attachment and loyalty to the state. This is likely to produce harmony in the state and curb fissiparous tendencies (Carens, 1999).

Multiculturalists were the first to pin point the difference between assimilation and inclusion. While in 1970s, in US the Blacks under Martin Luther King were

demanding equal rights and wanted to be like other Americans⁴, it was later realized by Black leaders like Malcolm X that the emancipation of the Black community lay in being recognized by the others for what they were- for their distinct way of life rather than trying to prove that they are intelligent, strong and civilized enough like the Whites (see Malcolm X, 1965). The new debate now was all about recognition on the terms dictated by the community itself instead of the criterion being set by the dominant community. Following the White Man's conception of what is good was thrown out of the window.

The liberal tradition was one of forming a 'melting pot' instead of a 'salad bowl', meaning thereby that the other cultures, which were inferior to the American White culture, would learn with time and mend their ways. They would be committed to the melting pot of culture. They could not stand out as if in a salad bowl.⁵

The debate of Multiculturalism involves different moments. A study of these moments throws light on the path taken by Multiculturalism to arrive at the juncture that it has today. Bhargava points out three major moments. The first moment is that of *particularized hierarchy*, where two or more communities live in a hierarchical relationship with the dominant community calling the shots. There is recognition of the presence of other cultures but it is understood by all that there is a dominant culture among them. This is the secret of peaceful coexistence in such a society. The second moment is that of *universalistic equality* where equality is ensured by having a color-blind approach i.e. the significance of cultural difference is denied here. This is the stage of a liberal democracy. The thinking here is that since giving recognition to birth and race

⁴ Martin Luther said " I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin, but by the content of their character."

⁵ Emerson pointed out in 1845 that America was an 'asylum of nations'. He coined the term 'smelting pot', which popularly came to be known as 'melting pot' later.

leads to negative discrimination, hence there should be prevalence of same laws for every individual in the society, irrespective of his caste, creed, race, religion, and gender. Recognition of cultures would thus lead to discrimination. The third moment is that of *particularized equality*. Here difference is given its due importance. People are equal and there is a relationship of equality between the various cultures (Bhargava, 1999). This is the state of multiculturalism. The realization dawns that color-blind laws would actually result in discrimination. Since in a liberal democracy, where all laws are the same, the public sphere witnesses an overbearing presence of the culture of the majority (without any deliberate or harmful intention to do so), it is pertinent that the minority cultures are provided with certain safeguards to practice their culture. Otherwise, even if there are equal laws, the minority cultures would feel inhibited to practice their culture. A sense of inferiority envelops these cultures here.

Today the contestation is for *egalitarian multiculturalism*. This entails the assurance of *particularized equality* by a democratic state. *Egalitarian multiculturalism* has two components. The first one is *liberal multiculturalism* – where equal recognition of cultural groups must be compatible with requirements of basic individual liberties and perhaps even with individual autonomy. Here the individual has the right to express his dissent within a culture and even a right to exit from the culture if she feels that it is very archaic or suffocating in its practices. The second component is *authoritarian multiculturalism*, which confirms equal recognition of all cultural groups including ones that violate freedom of individuals. An example of such a system was the Millet system during the Ottoman. The subjects had to choose one religion and had to then follow the rules, customs and practices of that religion, however oppressive they maybe. The state

had no right to interfere in the internal affairs of these religions. This chapter leans towards liberal multiculturalism and has the least sympathy for authoritarian multiculturalism. The stand of the author becomes clearer later in this chapter when the limits of permissible diversity have been discussed.

Special Rights

The multicultural discourse believes that the minority cultures are undoubtedly at a disadvantage vis-à-vis the majority culture. For these cultures to thrive and acquire the same high status and power as that enjoyed by the dominant culture it is imperative that they be given certain special rights. This goes against the grain of liberalism which believes in an equality and sameness of laws for all citizens. But it must be realized that this liberal thinking has its roots in the revolution that overthrew the monarchical system of government. As such it is against all types of positive discrimination on the basis of birth or one's status and position in society. Multiculturalism has explicated that this is another form of oppression, as people are not equally placed in life. It advocates special rights for the less advantaged in society.

Some scholars have argued for special rights on the grounds that the wrongs done by the majority in the past have repercussions on the descendents of the minority community in contemporary times as well.⁶ The torture that their ancestors faced in the earlier generations makes them feel inferior and ashamed even today. Hence to overcome this, special rights are a necessity.

⁶ Parekh argues that "The American state, which once sanctioned and enforced slavery, remains morally accountable for its deeds for broadly the same reasons that it remains legally bound by past treaties." (Parekh, in Mahajan (ed.), 1998: 386).

Special rights can be put into two categories- (a) those that are assimilative in character and (b) those that are given to safeguard the uniqueness of a culture. The former consists of policies of affirmative action. The latter again can be put into three categories (i) *Cultural Rights*, in the form of *exemptions, assistance and recognition*; (ii) *self-government rights*, and (iii) *special representation rights* (Mahajan, 2002:93).

It should be mentioned here that affirmative action is also a temporary measure, put in place for a short time. Once the minority community is found to be at par with the dominant community, this measure can be taken back by the state.⁷ The other measures like self-government rights, etc. are permanent in nature and are here to stay.

One factor to be borne in mind is that special rights also lead to stigmatization. However, it should be understood that even in such circumstances special rights should be granted as they serve to safeguard the interests of the minority communities. At the same time an effort should be made to bring about an awareness of the need for a sensitive approach to the understanding of these minority cultures.

One important aim of multiculturalism is to bring about a feeling of equality among the adherents of different cultures. The sense of superiority and inferiority among people of diverse cultures has to be driven out. Mere institutional changes won't suffice.

Limits of Permissible Diversity

Multiculturalism is not about granting any right or demand that the minority community may raise. It takes the rights of the individual and the state-at-large into consideration as well. Thus, the state has the right to deliberate on each new demand and

⁷ This, however, is easier said than done as the political parties and pressure groups would not like to lose the support of this weaker section of the society. I feel that even if such a scenario is likely to arise, affirmative action is welcome for the sheer benefits it brings about to the minority groups.

take a decision based on the feasibility of the demand. Demands that are atrocious and result in practices inhuman in nature cannot be permitted. If the members of the community concerned refuse to adhere to such customs and practices then they have every right to seek redressal from the state. In the end the right to exit should be permitted and exercised if the need is felt by the individual(s). More importantly, if a stipulation is such that the interest of the state is harmed in any way, then such a practice cannot be tolerated. Parekh uses the term 'limits of permissible diversity' for this (Parekh, 1995).

It has been brought to light that there are a lot of demands which bring no harm to the society. In fact, they make the state machinery more efficient and most significantly more representative. Some such examples are – the permission to Sikhs to wear turbans instead of helmets or any other headgear; allowing women to wear *hijab* to their work place; permitting Jew and Muslim shopkeepers to close shop on Fridays instead of on Sundays as their day of prayers is on Fridays unlike the Christians who go to church on Sundays; allowing some women to wear long dresses to work as their community does not allow them to wear short skirts which may be a part of the uniform, and other cases of a similar nature where the quality of work would not be compromised.

In all such cases the state does not stand to lose anything, as the people being employed here are capable of doing their job well and all they ask for is a little concession in order to practice their culture and religion. Liberalism has always stood for equal treatment of all and discrimination to none. It has to realize that not giving these concessions to the members of the minority community will actually lead to discrimination. If the Sikh men are not permitted to sport their turbans then they will have

to forgo the jobs in the army and police force. Being a martial race, they are capable of doing this job as well as any other. Not granting them consent will lead to injustice.

Collective Rights vs. Individual Rights

Let me state at the very outset that to my mind individual rights have a lexical priority over group rights. Group rights are ensured to an individual by the institutions of the state and civil society in order to ensure in turn the larger goal of safeguarding her individual rights. For, the individual is not an unencumbered self but is deeply embedded in the culture she is born into and grows up in. Thus, to guarantee the type of individual rights-by granting the same colorblind laws to one and all- as is done by a procedural republic is to miss the wood for the trees. This is necessary though not sufficient. The individual is incomplete if the state fails to secure the cultural and religious rights to her. "In case a law is changed unilaterally which affects the minority community (like changing boundaries of a state so that the national minority becomes a minority there as well) can we say that no one's rights have been violated as long as all individual rights of members of the minority as citizens of the federal state are fully retained?" (Baubock, 1999). Therefore, it is imperative that the state guarantee cultural and religious rights (read special rights) along with the individual rights. As argued earlier, the multiculturalists have fought for special rights because neutral, equal laws fail to create conditions conducive for the unhindered and dignified growth of minority cultures. The majority imposes its culture on the minority cultures in numerous subtle and not-so-subtle ways.

"The theory of rights present in modern constitutionalism is individualistically construed in that the rights protect the vulnerable integrity of legal subjects who are in

every case individuals. Their only focus remains the individual legal person.” (Kymlicka, 1989). This statement clearly brings out the problem with law making in a liberal democracy. Unless due recognition is granted to the cultural communities their interest will be harmed in some way or the other when these laws are implemented. As mentioned above, these so-called neutral laws have an inherent, though unintentional, majoritarian bias.

However, I submit that the space provided by the liberal democracies for equality of all individuals in the eyes of the law has its own indispensable significance. This provides the much-needed environment to the individual to exit one’s culture if she finds the customs and practices of her culture too regressive and atrocious. The argument forwarded by the guardians of these communities that it cannot afford to lose its members to the so-called secular realm, is a shallow one as it is tantamount to punishing an individual for being born in such a community. The individual obviously did not control this aspect of her life; namely, which culture to be born into⁸. The institutions of the community cannot be allowed to become structures of dominance and atrocity. This argument does not even remotely imply that any culture is inferior to any other, but simply states that all cultures need to revise their position if it is problematic to its members. Two points would be in order here. First, that the community concerned is free to decide whether it needs to revise its position at all or not. Some orthodox cultures may resolve not to bring about any reforms in their customs and practices to maintain their cultural purity even in the midst of rising discontent and, perhaps, departure by some of

⁸ As Habermas points out ‘ the members must first come to see that the inherited traditions are worth the existential effort of continuation. But new generations can acquire such a belief only on the condition that they are capable- and have the right - of saying yes or no. (Habermas, 1995).

its members. The state has no say in such matters except in cases where there is a violation of the rights of other individuals living in that society, or if a member of any cultural community complains of a human rights violation by the group concerned. Second, the community concerned is, of course, free to decide the degree and extent of the internal reforms it wishes to pursue. Experience teaches us that in some cases where the community did not sit up and take notice of the changes taking place in society it had to face a division within its ranks and formation of new sects and sub-groups. Multiculturalists may rightly argue here that some such cases occurred due to the overbearing influence of the majority on the minority cultures. Of course, the majority communities have also carried out extensive reforms with the changing milieu.

The multiculturalists strongly advocate that the cultures are best changed from within. The state should play no role in such matters, other than prevention of encroachment on individual human rights. No culture's conception of the good is perfect and is worth revising in the light of experiences of other cultures as well as its own. This amply proves that the presence of other cultures enriches each of them and prevents them from acquiring absolutist tendencies. The status of equal dignity envisaged by the multiculturalists for such diverse societies is a clear indicator of the fact that no culture is more 'civilized' than the others, however popular or 'liberal' it may be.

Why do we need a Multicultural Federation?

Multiculturalism and Federalism share a lot of common ground. They both flourish only in a democracy. They emerged in countries which were former colonies of the European imperial powers. All large democracies are multicultural and federation is the best form of government for such a society. Since they uphold a similar legacy it is

easier to relate the two. Nevertheless, there are major differences between the two and this is the subject of study here. Multiculturalism finds a lot of lacunae in the functioning of federations. Even though federations are supposed to have set out with the purpose of establishing a state with a multicultural agenda, yet the process seems either to have got derailed somewhere or else was abandoned altogether after paying some initial lip-service to the multicultural ethos. This is clearly manifest in the functioning of federations today.

A federation is formed to grant self-government rights to the federating units. The foremost concern here should be to form federations in such a manner that the national minorities have self-government rights. The federations that we know today are termed regional federations and have either been established for administrative convenience or the pre-colonial kingdoms were allowed to form federations in order to grant them some self-government rights, thereby giving them a semblance of independence. Even the federations that were structured keeping the rights of minorities in view have failed to assert themselves due to unwanted and sometimes needless meddling in their internal affairs by the Center. Since most of the federations were formed in newly decolonized countries the Center was always apprehensive about secession, as these countries had a diverse society that was kept united by the colonizer through the use of force and coercion. The vestiges of this system of an overarching Center still persist in many of these federations. Another factor that has disturbed the multicultural agenda in federations today is that some of these federal countries have tried to suppress the demands of national minorities for new states. The suppression has taken a violent turn as well at times, thus souring the Center- state relations further.

If geographical topography permits then the aim of a large democracy should be to establish a federation with the demarcation of states based on cultural homogeneity as far as possible. This clearly states that federation can be the tool for fulfilling the multicultural concerns. However, this may not always be feasible. One, because the national minorities are not always located within a certain territory. And two, the fear of cultural segregation playing on the minds of some of these minority cultures may prevent them from asking for separate statehood. I would like to clarify to the skeptics that cultural segregation is not the goal here. Statehood is not being imposed on these minority cultures; it is granted to those who ask for it. The purpose of granting statehood is to give maximum autonomy to the various cultures. Even after such a measure is adopted there will still be certain groups in these new federations which will be in a minority. It is the responsibility of the local majority to safeguard the interests of these minorities. As Mahajan points out, multiculturalism is not just the acceptance of diversity and multiple solitudes without a common public agenda (Mahajan, 1999). To my mind, the threat to the local minority from the regional majority is more a figment of their imagination; the Center will have over-riding powers to quell any such threat. Moreover, the regional minority may be the national majority and this will act as a deterrent. In some cases, though, special safeguards may be required. I would recommend a case-by-case approach.

A policy of benign neglect that is practiced by many of the liberal democratic federations today is not sufficient to safeguard the minority cultures, as has been brought out in the arguments in this chapter above. The federations, which were formed keeping in mind the multicultural composition of the society, failed to incorporate the concerns of

multiculturalism in many cases. This was a consequence of the liberal way of life that was put into effect through laws and the founding of the various institutions in society. Most multicultural concerns stopped short at the theoretical level.

These federations were formed in the former colonies immediately after they gained independence. A process of selective democratization had already begun during the sunset days of colonial rule (though the colonial rule is not really known for justice and equality in the truly liberal sense) in most of these colonies. Not surprisingly most of them chose a democratic form of government. Federation was also a more or less natural consequence of this as this was the only way of forming a strong state while giving the units a fair degree of freedom to rule themselves. The colonial masters had changed the original boundaries of these small and big kingdoms of the past in their quest for more and more areas for domination and exploitation. As a consequence the colonial state was quite heterogeneous in its composition. After gaining independence these states could come together only if their freedom to govern was ensured while at the same time they were provided with protection from external and internal threats. Once this was guaranteed, it convinced them to come under one dispensation. However, consequences were much removed from the one promised, for though the threat against internal and external subversion of any kind was taken care of, yet the boundaries of states were not demarcated in keeping with the pre-colonial arrangement.

As mentioned in detail in the previous chapter, the above factors led to the formation of a very strong Center which severely curbed the powers of the constituent states. The fear of secession was the excuse for this overbearing attitude of the Center. Our concern here, namely the growth and equal status to the minority cultures, was swept

under the carpet. Whatever safeguards were ensured were done under the liberal framework of benign neglect. Some of the not so minor cultures did get certain special rights- due to the power they wielded, which clearly shows that they were not really weak- but the marginal cultures were left at the margins to fend for themselves.

It should not be forgotten that if fear was the basis of the formation of some of these federations then equality would obviously have not been ensured to all of the constituent states. The more powerful would have got away with more territory, resources and a greater say in the affairs of the new government and the constitution.

Sovereignty, which has been dealt with in greater detail in the last chapter, was one reason which led to scuttling the multicultural agenda in the new democracies. The excuse put forward, though with some substance at some points in time and space, was that giving too much freedom to the federal units would lead to secession. The same reason was given for domineering centralization as well.

Another aspect to be specified here is that even though a federation leans heavily on a written and a rigid constitution, the possibility of wrongs being done to a culture or community would not be done away with until precautions are taken. A rigid, written constitution is difficult to amend and so special efforts should be made to instill a multicultural ethos in the constitution at the time of its inception itself. It is a double-edged weapon and the minority cultures may find themselves in a quandary, if the constitution does not ensure them certain safeguards. One such insurance can be the veto power in matters concerning the minorities (There are other provisions as well. Turn to chapter III for details). Absence of a veto power can harm the interests of a state even

with a written constitution. To build a consensus for amendments may not be that easy for the minorities in times of crises.

Though the significance of the rule of law cannot be denied it should be remembered that the battle for equality between the various cultures in a state is fought equally in the society. Rule of law alone is not the panacea for cultural conflicts (Sudershan, 1999).

Dicey had warned that federalism when successful tends to move towards a unitary form of government. In other words, it moves towards nationalism (Dicey, 1952: 604). Multiculturalism warns against this turn in a federation.

Federalism lays stress only on the territorial and governmental aspects, ignoring the other significant issues. “Federal relationship” and not “federal structure” should be the aim. A federal spirit must exist. Similarly, to argue that since federations exist only in a democracy they are highly representative and safeguard the interests and aspirations of all sections of the society is incorrect.

Herder said that the presence of a variety of cultures was a divine intervention to create greater harmony among the peoples of this world. He forgot to mention that Providence left the job of ushering in harmony –through suitable arrangements- to the individuals and cultures that share the time and space together. It is to these institutional arrangements and safeguards required in a federation that we turn to in the next chapter.

CHAPTER III

Multicultural Federations: Issues of Minority Participation

After a careful study of federalism and multiculturalism in the previous two chapters, we now move on to a discussion pertaining to the issues of participation and accountability in a multicultural federation. This chapter opens with the early debates and concerns of liberal democrats on this subject, and then explicates why a federal form- and not a unitary form- of government is better suited to a multicultural society. It also deals with the various ways of defining a population- whether in terms of territory or community membership. This forms Part I of the chapter. In Part II it progresses to the question of why a federation is more suited to addressing the issues of minority participation and ensuring the accountability of government institutions in comparison to any other form of government. Here a considerable amount of space has been used to elucidate on the various nuances and problems involved in employing the provisos of Referendum, Initiative and Recall. It focuses on the factors that make a federation a better choice in some cases by emphasizing on the range of provisions that can be incorporated in a federal setup, thus making it more accountable and participative. Needless to say, the concerns of multiculturalism are reflected in most of these suggestions.

Part I

The Early Debates on Democracy

The early liberals had views much removed from their more worthy successors. Their understanding of democracy as the will of the majority was a pretty naïve one. For the likelihood of such a democracy turning into a tyranny of the majority against the minority is extremely high. The larger the democracy, the more the chances of it having

people of diverse backgrounds. It is imperative that some safeguards are incorporated into the system to make it as compassionate as possible towards the minority community, so that they can practice their culture and religion without let or hindrance.

Democracy was advocated as suitable for a homogeneous population alone, till as late as the 20th century. John Stuart Mill, in the 19th Century, argued that democracy couldn't survive in a non-homogeneous society. He was a strong advocate of this principle, and went to the extent of arguing "free institutions are next to impossible in a country made up of different nationalities"(in Acton ed., 1972). His extreme position on this issue, along with his open support for colonialism- in order to civilize the savage, nearly earned him the epithet of a racist. The reasons behind such a belief are not far to seek.

Interestingly, Mill's argument " Among a people without fellow-feelings, especially if they read and speak different languages, the united public opinion necessary to the workings of representative institutions cannot exist...[It] is in general a necessary condition of free institutions that the boundaries of governments should coincide in the main with those of nationalities" (ibid: 230-233) can be read differently. It shows that Mill would be a supporter of those federations that are formed keeping the concentration of national minorities in a particular region in mind. For liberals like Mill (and Green) democracy is government 'by the people', but self- rule is only possible if 'the people' are 'a people'- a nation (Kymlicka, 1995).

Liberalism and Colonialism developed alongside each other in nineteenth century Europe. The Liberals approved of colonialism and thought of it as more or less a boon for the colonies. The European way of life was considered the only civilized manner of

living and the others were required to learn a lesson or two from their colonial masters. It was all in the right spirit, they argued, as the European way of living was *the* Liberal way of living. Such backward societies, as were the colonies, did not possess the rationality to judge for themselves what was good for them. The right to non-intervention, like the right to individual liberty, only belonged to those capable of making good use of it, that is, to those “mature” enough to think and judge for themselves and to develop unaided (Parekh, 1994).

As mentioned above, so much was the mistrust and apprehension in the minds of scholars like Mill that they come pretty close to being called racists. Only the fact that they recognized the past glory of civilizations like the Indian and the Chinese, and because they did not cite biological inferiority as the reason for the poor state of affairs in these countries, prevents them from such a blame tag. But their crime is no less. These early liberals blamed custom and tradition for their backwardness and called them illiberal. Mill argued that they had lost their individuality as they were too steeped in customs. And when one loses one's individuality one ceases to be a liberal.

Since the whole attitude of the colonizer was to socialize the colonized into the European way, a “blending” or “admixture of nationalities” was also preached as a mode of bringing about this change (Parekh, 1994). Lord Durham's report on the French Canadians and Macaulay's opinion on the education to be provided to the Indians makes these fears come true.¹

¹ Lord Durham submitted a report on the status to be granted to the French Canadians living in Quebec. This report was declared racist and he was rightly accused of treating these people as inferior and backward to the English Canadians. He had suggested assimilation for their well-being and progress.

The relation of the indigenous population with the colonizer was loosely based on treaties but these did not establish multinational federations. What they did establish instead were separate polities sharing a territory without a common citizenship. The treaties failed to check the asymmetrical power relations with the colonizer. The end result was coercive integration. The original construction of indigenous peoples as separate nations inside the territory yet outside the polity and the subsequent history of oppression and coercive integration make for a strong case to respect indigenous constructions of membership as long as they provide for individual exit options (Baubock, 2001)².

European history was seen as a contest between the customs, traditions and religion on the one hand and rationality and critical thought on the other. Liberalism marked the triumph of the latter. Individuality could triumph only when the latter held sway over the former. Mill linked diversity to individuality and choice, and valued the former only where it was linked to the individualist conception of many. Here the traditional and customary ways of life, as well as those centered on the community were ruled out. Thus, the Millian diversity is confined to the narrow liberal diversity, i.e. the individualist model of human excellence.

In the 19th Century, the Utilitarians, like Jeremy Bentham and James Mill, while arguing for the greatest good of the greatest number also uphold the majoritarian principle. In their scheme of things it is the happiness of the greatest number of people that should be the criteria for determining the policies of the government. The Utilitarians

² It is pretty interesting to note that all the colonizers were democracies- Britain, France, US, Belgium. Also interesting to note is the fact that the colonies aspired towards a democratic form of government once they attained independence.

did not realize that this would surely lead to the imposition of the will of the majority on the minority. Since the minorities are always going to end up as losers in the numbers game, their interest would never be served unless the majority so desired. Obviously, the majority would never compromise on its own interests to favor the minority. Only the presence of certain institutional safeguards, like a veto or a concurrent democracy can ensure this (these safeguards have been discussed in detail later in this chapter).

In the 20th Century, Joseph Raz has views similar to that of Mill. He argues that autonomy is an essential feature of Liberalism. Like Mill he is worried that the immigrant communities, indigenous people and religious sects do not value autonomy and hence such cultures and communities should be checked. Raz associates autonomy with the western way of life and its absence with the indigenous people and the immigrants, both belonging to the Black community. He westernizes liberalism and sees it as a uniquely Western phenomenon (Parekh, 1994).

The problem with the above set of arguments is that they treat everything that is not liberal as illiberal. Also, the attitude towards other cultures- the ones which are not western- is one of superiority. This is reflected in the form of government that is established and the policies that it adopts. Some of the liberal scholars have argued for fighting the anachronistic and oppressive practices pursued by the communities and imparting liberal education and inculcating liberal values. John Rawls does not consider cultural identity as a primary good and so the state has no obligation to ensure its safe and unhindered practice.

Even the communitarians today, for example, Michael Walzer, argue that justice requires a shared system of meanings and values, that this in turn presupposes a

homogeneous cultural community.³ Such a homogeneous community is inherently inhospitable to minority claims regarding their preservation and so they must either get assimilated or leave the country. Multiculturalists point out that human beings are culturally embedded and one cannot respect an individual and ignore his culture. It amounts to his disrespect. Every culture is unique in its own way and is a product of centuries of experiences and struggles.

One factor, which is dominant in the above discourses in liberal democracies, is that only a non-cultural entity was recognized as a collectivity or a group. Only groups with aggregate interests were taken into consideration and the whole debate was centered around the individual rights versus group rights (of the non-cultural variety). Culture was *not* considered a criterion worthy of recognition in these liberal democratic states. Religious differences, of course, do not arouse the same passions in the hearts of the Europeans as it does in, say India, and so was understandably not given as much importance. Secondly, the matter of representation and accountability in the institutions of the government was discussed in the light of the fact that this was a homogeneous population and required no special rights for the minorities. In fact, in practice, as is amply clear from the debate above, some sections of the population were kept away from being a part of the dispensation, even if it was not by some ulterior design or done intentionally. Most of the differences, which were acknowledged and cured, were regarding the rights of individual citizens vis-à-vis collectivities such as guilds and unions.

³ Walzer is against open borders for immigration: "If states ever become large neighborhoods, it is likely that neighborhoods will become little states... Neighborhoods can be open only if countries are at least potentially closed" (Walzer, 1983: 38).

Later, in the second half of the 20th century, emerged an understanding of the plural nature of democratic societies and the multiculturalists made the world realize that a new perspective on this whole issue was called for. The fear in the beginning was that the recognition of plurality in a society would lead to unwanted complications. It would cause instability in government and so could be harmful for the survival of a democracy. Scholars felt that it was safe for democracy if only one community was dominant in all matters of governance.

Today, gradually there is an understanding emerging that equality requires equal respect and equal space for diverse cultures. This should be reflected in the institutions of the state, its laws, and the constitution, as well as in the arena of civil society. All cultures should find equal acceptance among the members of the society. And this is possible only when adequate safeguards are ensured to the minority cultures within a multicultural state. A federal structure is most suited to ensure the fulfillment of this agenda, provided certain criteria are followed. Let me clarify, however, that federalism may not fit into every democratic plural society. These questions are addressed in the later part of this chapter in detail.

Form of Government: Federal or Unitary?

Federalism is being discussed in this chapter in the background of the above factors. My argument is not that federalism scores over a unitary form of government in all circumstances. Neither am I advocating federalism as a solution for all that ails the minorities in a democracy. One should also not forget that federalism has its own limitations and can be applied only to the territorially concentrated populations. Nevertheless, I feel that though federalism as a concept has been more or less acceptable,

perhaps with a few changes, it has failed in its endeavors due to lack of proper implementation of the original objectives. Most federations today were either formed under duress or are not the types of federations that this author feels would emancipate the minorities. These questions have been dealt with in the following pages, along with their worthiness on issues of accountability and the space for the participation of the minorities.

First of all let us deal with the whole debate surrounding the form of government- whether it should be federal or unitary. The purpose of forming a federal form of government is to ensure that the national minorities are given as much freedom as is practically feasible. Here the powers given to them may be a little less than autonomy. Autonomy is problematic, as secessionism looms large in such circumstances.

When dealing with the subject of nationality⁴ the first question that comes to mind is whether the subjects should be defined in terms of territory or in terms of membership of a cultural community. If the former is the criterion employed then federalism is a more appropriate solution to meet the requirements of the people. The latter is better equipped to solve the problems of rival claims, of contiguity and of size- that are faced by a federal set-up. However, it is widely acknowledged that such non-territorial solutions are incapable of fully replacing territorially based polities, and a dual membership is the solution. Here individuals would be both citizens of territorial states and members of autonomous non-territorial communities.

It is interesting to note, “the exclusive link between cultural affiliation and self-government that is characteristic for nationalism is inherently problematic from a liberal

⁴ I would like to clarify here that the term nationality and national minority have been used interchangeably in this chapter but connote the same meaning, unless otherwise stated.

perspective” (Baubock, 2001). It is this that the multiculturalists wish to remedy. Opinions differ on the amount of space to be granted. Yael Tamir argues that nations are entitled to self-determination but not comprehensive self-rule (Tamir, 1993: 69-77). Self-determination for Tamir means the right of individuals to determine their own national identity and a corresponding right to a public sphere where their culture is expressed. Baubock disagrees with Tamir and argues that all national conflicts are a consequence of a desire for self-government. He points out that while cultural liberties and protection can and should be offered on a non-territorial basis, the desire for self-government always has a territorial component to it that must not be ignored in the design of institutions and settlements that are meant to prevent the escalation of these conflicts (Baubock, 2001). Baubock posits nationalism in the context of a self-rule in a defined territory and never without it.

Political authority is established in a well-defined territory. A multiculturalist state would at the same moment ensure recognition of the cultural groups as well. In fact, the primary focus of federalism is to establish states based on cultural groups, wherever they are territorially concentrated. “Federalism in its broadest sense is a conception of multilevel governance within nested polities” (ibid.). Even unitary states have institutions of local government and local citizenship, thus accepting the need for devolution of powers for effective governance and representation.

Self-government has to be understood as one in which collection of taxes and establishment of laws is binding on all its members. As such, to argue that a community, which collects funds from its members, is a self-governing body would be incorrect. Only when such a body makes it legally binding on its members to pay taxes can it be

categorized as self-governing. It is obvious that both the regional units of government and autonomous cultural communities can be regarded as political communities.

It should be clear that even though in a federation the members are free to enter or leave, they do not shun their membership in a particular federal state. The federal constitution should not have provisions which cage an individual in a state; its purpose is to create conditions for an individual or group to practice its culture and traditions unhindered.

Wherever a national minority becomes secure as a regional majority through a federal arrangement, it will refrain from rallying its members against its own internal minorities and against the federal majorities. This problem arises only when the internal boundaries are either contested or exposed to frequent revisions. In such a scenario the membership question will acquire more serious proportions.

Baubock has listed three basic types of territorial solutions to conflicts over national demands for self-government (ibid). The first one is to redraw or erase international borders inside disputed territories. This may involve consensual partition, unilateral secession leading to an independent state (Slovenia in 1991), or to unification with a neighboring state, or consensual unification of two states (Germany). The second solution is territorial federation if internal borders are drawn in such a way as to allow groups who demand self-government to form regional majorities. This is the main thrust of this dissertation. It is the defining feature of multinational federations that distinguishes them from purely regional federations such as Australia, Austria, Brazil, Germany or the USA. I feel that this is the crux of the whole issue. The multicultural states would be better served if the federal form of government were formed. The federal

form of government would be served better still if the federation is not a regional federation, as in the countries named above, but is a federation based on the groups which wish to form a self- government. There would obviously be certain caveats to be kept in mind, which have been discussed later in this chapter.

The third type of solution, one that does not require symmetry, is what Daniel Elazar has named a Federacy. “[A] Larger power and a smaller polity are linked asymmetrically in a federal relationship whereby the latter has greater autonomy than other segments of the former and, in return, has a smaller role in the governance of the larger power” (Elazar, 1987: 7). In a federacy there is no special demand for self-government to be incorporated into the constitutional architecture of the larger polity. This system can be useful for both federal and unitary states and is more suited to the islands under the countries like US and Canada.

The whole endeavor in this section is to convert the reader to my belief that a federal structure is more effective and competent in addressing the concerns of the national minorities than a unitary form. It makes the organization and functioning of the government more accountable and participative.

If the preferred system is federal devolution in order to establish a national minority as a regional majority then the question that arises is whether to make these autonomous territories as large as possible so as to minimize the number of minority members who live outside the autonomous region, or as small as possible so as to minimize the number of federal majority members who are subjected to the self-government of the minority (see Baubock, 2001). I guess one would have to follow a case-by-case approach.

The nationalists believe that quasi-natural boundaries of territory are already determined by history. This creates a problem as they are unwilling to concede territory in order to gain numerical majorities. On the other hand is the opinion that borders are completely contingent and are determined by the subjective affiliation of membership. The question of partition and secession, which sprouts in the minds of many at this juncture, is one of last resort in such circumstances. Contrary to the argument forwarded by some scholars that federalism may sow the seeds of secessionism and partition, to my mind devolution of powers is the strongest means of establishing cohesion in a polity having a lot of cleavages within. The unitary states like the United Kingdom have realized this after paying a dear price. UK is moving towards building a federal architecture by granting more powers to Scotland and Ireland.

Transforming unitary states into federal ones takes care of both the integration (of the minorities into the mainstream) and the self-government (for the minorities) issues. Federal models combine the devolution of power towards constitutive units with an aggregation of power at the federal level, though some federal states have had a more centralist tendency that should be checked. All federal regimes impose certain constraints on the local self-government. To counter this the citizens of the local unit must enjoy rights against their local government that are protected by federal institutions. Individual rights of federal citizenship must be basically the same throughout a federal state.

Federal integration should be understood as a normative value “insofar as it responds to legitimate demands for self-government and insofar as the alternatives of unitary government in a multinational society or territorial separation are inherently undesirable” (Baubock, 2001).

Arguing in favor of federalism, James Madison in the *Federal Papers* pointed out that subdividing the polity makes it difficult for a democratic majority to muster the strength to inflict any harm on the individual liberties or to abhor minority interests. He advocates that the minorities should support a dispensation in which the institutions of government support their interests. This argument should be applicable to national minority conflicts by subdividing the polity in such a style that minorities are able to block or annul majority decisions against their fundamental and legitimate interests. This reasoning was used by John Calhoun to propound his theory of concurrent majority, which has been discussed in some detail later in this chapter.

There have been arguments put forward that there can be non-territorial solutions for plural societies. Some of these suggestions are that in the state the territorial boundaries could be abolished; their powers be minimized; or their citizenship could be deterritorialized. Earlier the first groups formed were based on the kinship ties. These later split into other groups as the primary group had become too unwieldy to govern. This is not feasible in the modern world.⁵ As Baubock argues, “However, in the context of modernity the idea of replacing the system of territorial states with one of non-territorial polities is most certainly a weird fantasy rather than a realistic utopia... It does not take a lot of imagination to regard such a society as close to a Hobbesian state of nature” (ibid.).

The Libertarian arguments of scholars like Chandran Kukathas that the “cultural communities should be seen as private associations whose internal powers of self-government are only constrained by their members’ right to leave” (Kukathas, 1992), is

⁵ Luhmann uses the term ‘segmentary differentiation’ for this breaking of the primary group into smaller groups. (quoted in Baubock, 2001).

very problematic. As Baubock cautions, "if territorial state power is dissociated from political community, then some associations of civil society will grab this footloose and disaggregated power and turn into little states. They will provide essential public goods exclusively for their members, will establish internally coercive regimes and will regard rival associations as potential aggressors" (op. cit.).

Karl Renner's model of Mixed Federations is not very far-reaching either. In this model the onus of declaring membership to a group lies with individual and this determines the shape of territorial units. It allows for some representation of geographically dispersed minorities. Here the national communities are autonomous but not really federated. Each national council decides separately for its own community, but there is no common assembly where the delegates of national communities have a say with regard to general legislation. In this scheme integration is not achieved through power-sharing but through a division of powers that separates the political agendas of nations and states. To my mind the consociational model of Arend Lijphart is more suitable. It has been discussed in detail in the latter part of this chapter. A mixed federation would pull in either a unitary direction or towards an assortment of groups each out to throttle the other.

Some scholars have advocated a non-territorial federation. However, there are certain problems with such a federation. First of all, it is practically not feasible to integrate the diverse political communities into a stable federal framework as the dissimilarity would be too wide. Secondly, there is bound to be less cohesion and unity in such a federation because of the wide-ranging cultural autonomy granted to the various communities. They will act as segregated units, each acting oblivious of the other, even

though contiguous to each other. Thirdly, internal oppression would be a serious problem here as the individuals would have problems in exercising the option to exit- the other communities may not welcome them. More importantly, the community would have a freer hand in continuing with its atrocious practices unhindered in the name of freedom to practice their customs and traditions. After all, the strength of a community in such circumstances would lie in its numbers and so it would follow stringent customs just to prevent the exit of its members. Such a federal arrangement would also create problems in governance and controlling antagonism among groups. The territorial structure paints a very clear picture of the demarcated populations and so is a more welcome option.

Part II

In a federal structure the subject of participation of all sections of the polity, including the cultural minorities, is addressed more comprehensively than in any other form of government. But not all types of federations are conducive to the espousal of the cause of the minorities and so need some changes for them to be as effective as federations are meant to be in theory. This section of the chapter discusses the subject of participation in the light of the various models presented by the scholars dealing with the question of equality in multicultural societies over the years. But before this the wisdom of having the provision of Referendum, Initiative and Recall, and how they help or hinder participation and enforce accountability, is discussed.

Referendum, Initiative and Recall

Some of the democratic regimes have the provision of referendums, and/or Initiative, and maybe also the stipulation of Recall. All these three provisions are a consequence of Direct Democracy that most of us regard as the best form of democracy.

The only and most common refrain is that it is difficult to implement it in a large democracy. The other familiar reasons cited are that it hampers expediency in decision-making and that it is not suitable for a democracy having a low-level of education as the people may vote without rational thinking. Otherwise, it seems that everything is right with enforcing the General Will and, as Rousseau would have us believe, it is the best form of government. Here, the sovereign loses his supremacy at the drop of a vote, as it were.

Let us deal with some details of what these three stipulations of Referendum, Initiative and Recall entail. Referendum is the proviso where any legislation, which is to be passed, is put up to the citizens of the country for their vote. In case it is rejected by a certain proportion (this may vary in different countries from 50% to more than that) of the total population then the legislation is dropped. This is a form of direct democracy that ensures the participation of the whole population, with a franchise, to control legislation and thus affect policy-making.

Initiative is the process where the people themselves have initiated the demand for a particular legislation. Here a certain number of signatures are needed for the legislation to be considered by the government. The legislation is passed in such cases without much ado by the government as it already has the consent of a majority. Initiative combines both the right of participation and the power of enforcing accountability.

Recall is prevalent in some democratic countries. This involves a procedure whereby the people have a right to call-back a Representative if they feel that he/she has failed in discharging his/her duty as per the constitutional norms and procedures. This is the most potent manner of monitoring and controlling the functioning of the government

and thus enforcing accountability. Also, it can be the next most effective weapon in the hands of the people in case the government fails to implement a passed referendum.

However, the provisions of Referendum, Initiative and Recall are not the best forms of exercising control on the government. All these three conditions are effective and just only in a democracy having a very homogeneous population. For, if there is a legislation that may hamper the prospects of any of the minorities in the country, then their voice may get stifled. The majority may vote on the issue taking into consideration only the welfare of the whole country (which actually may be the welfare of the majority only). If the minorities are not given any power to prevent such legislation then a Referendum, or an Initiative or a Recall may actually become an instrument of oppression of the minority communities. Such Direct Democracy is not what Rousseau (he advocated it only for a small, *homogeneous* population) and others had envisaged.

However, if the above three powers are granted to a federal unit formed on the basis of nationality then these can be very effective in the implementation of the will of the majority. To make it even more foolproof, the minorities within such a federation should be given a veto power if the matter being put to vote affects them in any manner. A referendum was successfully employed in Quebec to decide the question of autonomy. But the same prerequisite of a referendum may be harmful to the Kashmiri Pundits if it is employed in Jammu and Kashmir. As such, I advocate a very cautious approach towards harnessing these three rights.

Participation and Accountability

Here the various models and suggestions to make a diverse society more participative and accountable, as advocated by some prominent scholars, have been

discussed. It incorporates John Calhoun's model of Concurrent Majority, Arend Lijphart's Consociational Democracy, Will Kymlicka's Differentiated Citizenship and his views on National Minorities and Immigrants.

John Calhoun in *Disquisition on Government and Selections from the Discourse* (ed. C. Gordon Post, 1953) has argued at length about the weaknesses of a government based on the simple majority principle. The protagonists of concurrent majority do not share Rousseau's hope that in seeking the will of the people a consensus will emerge. Said to have its origin in the *Federalist Papers* of James Madison⁶, where Madison advocates a federal system of government taking groups into consideration, Calhoun argues "State rights, nullification⁷, and secession developed primarily from a profound conviction that an economic system and the way of life of a minority were endangered by a political majority."

However, our interest in Calhoun here pertains to his theory of group rights and a competent federal structure to uphold it. "It is of great importance in a republic," declares James Madison in *The Federalist*, number 51, "not only to guard the society against the oppression of its rulers, but to guard one part of society against the injustice of the other part." There were two ways of going about it. One was "by creating a will in the community independent of the majority- that is, of the society itself." This was rejected on the grounds that it would pertain only to governments possessing "an hereditary or self- appointed authority." It was not feasible in a democratic set-up. The second method was more of a hoped-for condition arising from the nature of a federal republic: society

⁶ Said Madison, "If a majority be united by a common interest, the rights of the minority will be insecure."

⁷ Nullification is the alleged right of a state of the union to declare an Act of Congress (US) inapplicable, null and void, and without force or effect, within its own borders.

would be broken into so many parts, interests, classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.” The South (USA) realized the futility of the second method quite soon when slavery was upheld there even though this condition was satisfied.

Calhoun propounded the doctrine of the concurrent majority to defeat the oppression of the majority principle. Under this schema each sectional majority or each major- interest majority should have the constitutional power to veto acts of the federal government, which represented the numerical majority, when those acts were deemed, by a majority of the people comprising the section or interest, to be adverse to the welfare of that section or interest. It would be the will of each sectional majority, acting concurrently with the numerical majority, the former endowed with the power to nullify the acts of the latter (ibid: xxii). Such a system is said to have existed in Rome, Poland and Great Britain at some point in time.

The principle of Concurrent Majority is the ‘unwritten law’ in the US federal system as the consent of at least three- fourths (3/4) of the constituent states is required to affect a proposed amendment. This is a respectable minority to forestall the will of the majority. “It is this negative power, the power of preventing or arresting the action of the government, be it called by what term it may- veto, interposition, nullification, check, or balance of power- which, in fact, forms the constitution. They are all but different names for the negative power. In all its forms, and under all its names, it results from the concurrent majority” (ibid: 28).

Calhoun’s fear of the majoritarian oppression was upheld in the case of USSR, Mussolini’s Italy, and Hitler’s Germany where the brutal suppression of the minorities by

predatory collectivist systems was witnessed. This proves that even a government, which enjoys the support of the democratic majority, could be as tyrannous and as arbitrary as any absolute monarch or a dictator. All these regimes were democratic in origin, as they had won the elections in which they claimed the support of the majority of their countrymen.

The way to establishing a concurrent voice is through the Constitutional provisions. It is the constitution that gives strength and stability to political institutions. Along with universal suffrage, concurrent majority is sufficient to safeguard the rights of the minorities in a democratic republic. This republic will obviously be a federation. The negative power granted by the concurrent voice is the soul of the constitution. The positive power is what makes the government. "There can be no constitution without the negative power and no negative power without the concurrent majority" (ibid). It is the negative power that ensures equality in a republic. Calhoun feels strongly that a concurrent voice brings the communities closer as they interact and try to understand each other's point of view.

Arend Lijphart's model of consociational democracy is also a step in the direction of granting the minorities a negative power in matters concerning their interests. He quotes Aristotle as having said, "A state aims at being, as far as it can be, a society composed of equals and peers." The works of Val R. Lorwin and Lehbruch on the rights of minorities are somewhat similar to Lijphart's and precede him. Lorwin focuses on the 'segmented pluralism' in a democracy. But he leaves out the influence of elite responses and the consequences of deep cleavages within a plural society. He restricted the understanding of cleavages to that of a religious and ideological nature. Lehbruch

defines 'concordant democracy' as a strategy of conflict management by cooperation and agreement among the different elites rather than by competition and majority decision; this is considered the second feature of consociational government (see Lijphart, 1982:5).

Lijphart's model is different from the above two. Consociational Democracy is inspired by the concern for political stability and in particular by G.A. Almond's classic typology of political systems. Among the third world countries it has been successful in Lebanon and Malaysia. The Continental Europe and the Third World is characteristic of instability because of its fragmented culture. These plural societies have a 'totalitarian potentiality', according to Almond. In plural societies not only the formal structures but also the informal political substructures like the parties, interest groups, and the media of communication, play a significant role. Overlapping membership is a characteristic of the homogeneous population whereas in distinct subcultures the membership is exclusive to one group and there is no overlapping.

Emphasizing on the party system, Lijphart submits that the lesser the number of parties the more stable is the political system. A stable polity is a must for effective aggregation of groups and proper maintenance of boundaries. To my mind, in a plural society having a unitary form of government the number of political parties is either likely to be high, or, if it is low then, many groups and interests will go unrepresented. In both the cases the instability factor will definitely be acute. The solution lies in having a federal republic, as here the parties will champion the cause of the federal units more than, though not necessarily at the expense of, the national ones. The more a system moves towards the ideal federal republic, the stronger will be the presence of the regional parties, adopting the local cause more vehemently. In sum, the parties at the federal level

are likely to be very few in number – the chances of an aggregation of interests is high leading to coalitions and alliances between these regional parties at the national level.⁸ This is because the regional parties are highly unlikely to possess much clout at the federal level and so interest aggregation would be the only plausible solution. Consequently, a federation is likely to be more stable in a society with significant cleavages. The fear of instability and secession at the regional level is much less as the cleavages are almost nil in an ideal federal unit. The federal arbitration system should always be quite powerful, though at the same time non-interfering unless called upon to do so by circumstances. One should also remember that the political stability of the consociational democracies owes appreciably to the cooperation of the leaders of the different groups that transcend the sub-cultural cleavages at the mass level.

Elite cooperation is the primary distinguishing feature of consociational democracy. The consociational method provides an opportunity for plural societies to have true democracy. The characteristics of a consociational democracy are the following:

- a) Grand coalition of the political leaders of all the significant segments of the plural society.
- b) Mutual veto or “concurrent majority” rule, which serves as an additional protection of vital minority interests.
- c) Proportionality as the principal standard of political representation, civil service appointments, and allocation of public funds.

⁸ The logical consequence of self-government is reduced representation, not increased representation. As such, the number of political parties is likely to be less in a federal state that follows the criterion of division of states on the basis of territorial concentration of national minorities.

d) A high degree of autonomy for each segment to run its own internal affairs.

In a plural society coalitions are likely to be a normal feature. But unlike homogeneous societies, where the coalitions are grand, here the coalitions are likely to be of a standard range. One form of coalition can be such where the linking of the presidency with a number of other top executive posts like the Prime Minister, the Deputy Prime Minister, and Speaker of the Assembly. Consociational democracy faces criticism as well for these coalitions. It makes the administration slow in decision-making. Mutual veto can make things worse. Critics also express the fear that due to the recruitment of civil servants on the basis of proportionality, rather than merit, administrative efficiency is further hampered. Segmental autonomy leads to a big administrative machinery, thus making the consociational approach more expensive.

Other reservations about consociational democracy are that it is not democratic enough, that there is dominance of the elite, that the focus is on group equality and individual equality is given a back seat. Let us also remember that consociationalism guarantees only 'negative peace' unlike, say, fraternity which ensures 'positive' peace (Lijphart, 1982: 49). Lijphart agrees that consociational engineering is neither a necessary nor a sufficient condition for achieving a stable democracy. It may not work in some societies. However, it is worth understanding that in some societies the choice is not between a British system of democracy or a consociational form but between consociational form and no democracy at all. Despite some shortcomings it is one of the safest systems of democracy for ushering in stability in plural societies.

Will Kymlicka deals with the concept of national minorities. He makes a differentiation in the types of minorities and feels that rights should be accorded to them taking this categorization into consideration. There are two types of minorities- those who have been colonized but were self-governing societies earlier and those who have voluntarily immigrated to this land. The first category he terms as 'national minorities' and the second as 'ethnic groups'. The former wish to maintain themselves as distinct groups, and the latter wish to get integrated into the mainstream larger society and find acceptance as full members (Kymlicka, 1995). It is the first category that concerns us here.

There are at least three forms of group-specific rights:

- a) Self-government rights
- b) Polyethnic rights
- c) Special representation rights

Let us deal with these in detail one by one.

Self-government rights - one mechanism for recognizing claims to self-government is federalism. In regions where national minorities are regionally concentrated, the boundaries of federal subunits can be drawn so that the national minority becomes the regional majority. Under these circumstances, federalism can provide extensive self-government for a national minority, guaranteeing it ability to make decisions in certain areas without being outvoted by the larger society (ibid: 28). This to my mind is the best solution to the problems faced by the national minorities. A federal system gives (or is capable of giving) jurisdiction over the preservation of culture,

including control over education, language, as well as immigration policy. Some states may need asymmetrical federalism.

However, this provision is applicable only in some cases. Problems arise when the indigenous people are scattered across states or are few in number within a particular region. Another form of self-government that can be created is that of autonomous regions within a state- e.g. tribal reservation in US, band reserves in Canada, (and autonomous Councils in India). Indian tribes/ bands have been acquiring increasing control over health, education, family law, policing, criminal justice, and resource development. They are becoming a third order of government after the federal and the state jurisdictions. The largest cause of conflict in the world today is the struggle by the indigenous peoples for the protection of their land rights. The primary concern in these parts is protection of their land from settlers and resource developers.

Self-government rights are of a permanent nature and hence should be incorporated in the constitution.

Polyethnic rights - The immigrant groups demand the right to freely express their particularity without fear of prejudice or discrimination in the mainstream society. Since the immigrant population is at a disadvantage vis-à-vis the majority community, they should be given special rights. These could be-funding of minority institutions, festivals, teaching of their language in schools, etc. However, Polyethnic rights are usually intended to promote integration into the larger society, not self-government. It should be mentioned though that polyethnic rights would be better served in a federation, as here the focus on ethnic communities would be easier (the canvas being smaller) and the chances of any community being left out would be less.

Special representation rights - The question of special representation rights for groups sometimes defended, not on grounds of oppression, but as a corollary of self-government. A minority's right to self-government would be severely weakened if some external body could unilaterally revise or revoke its powers without consulting the minority or securing its consent. Hence, it would be a corollary of self-government that the national minority is guaranteed representation on any body that can interpret or modify its powers of self-government (e.g. the Supreme Court). Lijphart's model has some relevance here.

Virtually every modern democracy employs one or more of these three mechanisms. Obviously, these three kinds of rights can overlap.

Kymlicka makes a distinction between collective rights and group-differentiated rights. The former deals with the rights of any collectivity- trade union, corporation, etc.- whereas the latter deals with homogenous rights of a group. Some of these rights are territorial autonomy, veto powers, guaranteed representation in central institutions, land claims, and language rights. They are accorded on the basis of cultural membership. But some are accorded to individuals, some to the group, some to a province or territory, and some where numbers warrant.

Other than the suggestions given by Calhoun, Lijphart and Kymlicka above there are issues of affirmative action and other special rights that need to be discussed. Language rights are very important for the national minorities and is the most important criterion adopted while forming new states within a federal state following a multicultural agenda. The question of affirmative action should be seen in the light of two facts; one, that they are assimilative in character, and two, that they are supposedly for a short term.

Because of these reasons they don't find much space in this chapter as the concern here is over federal rights to national minorities, a process which endeavors to protect the right to practice one's own culture within a territory (most likely a homeland). However, affirmative action would be better served in a federal set up, as it would be easier to locate the beneficiaries.

Proportional representation is another important stipulation that should preferably be incorporated in a federal state. It leads to a more representative legislature than a single-member, first-past-the-post system. Another term for proportional representation is 'mirror representation'. Whatever method of representation and participation is followed one should not forget that accountability towards the minorities is more pertinent.

The Fairest of them All

Let us examine each of the three models proposed above and judge for ourselves the practical feasibility and the lacunae in each of them. This would help us arrive at a conclusion about which of these would be the best bet for a federation in a multicultural democracy.

Calhoun's model of concurrent majority is a step in the direction of ensuring an effective voice to the minority community by forming a federation in a manner that makes the national minorities a regional majority. However, there is a major flaw in this model because of which it did not gain much currency (though it is the unwritten law in the US- see above). Calhoun has not argued for safeguarding the rights of the *regional* minorities within an ideal federal unit. The regional minorities may face the wrath of the regional majority. Here also the same system of veto power to the minorities on matters concerning them, as is advocated for the Center, should prevail within a federal unit. In

the absence of such a provision the results can be quite disastrous as was witnessed in the US when the Southern states tried to uphold slavery by stifling the voice of the minority. The slaves did not have any rights of participation in the government and could not stop their owners from laying atrocities by legislating discriminatory laws. In addition, the Center should have the right of arbitration in case of disputes (though here the central judiciary should preferably have representation from the regional units in the right proportion). The Center should have the final word in these matters.

The Consociational Democracy model propounded by Arend Lijphart would be one of the safest models for a plural society moving towards a multicultural ethos, though the best one would be Kymlicka's model. Consociational Democracy would work best under a federal system of governance. To my mind, in an unstable plural society federalism is *the* solution. However, such a federation would lose its main thrust without the consociational model. Not everything can be set right with consociational engineering though. These reasons have been discussed in explicit detail above to bear any repetition here.

Will Kymlicka's contribution to the issue of minority rights in a multicultural society is, perhaps, the most comprehensive and the most acceptable. His self-government rights make a case for a federation for the regionally concentrated national minorities. All the national minorities that are located in a region in significant numbers, so as to form a regional majority, are entitled to form themselves into a federal unit if they so wish. Of course, certain conditions ought to be met- for not all such demands can always be granted; a case-by-case approach should be adopted. What makes this model foolproof is the addition of special representation rights to the minorities, along with the

self-government rights. However, Kymlicka has stopped short at granting these special representation rights to the national minorities at the federal level. The lessons learnt from the weaknesses of the concurrent majority model of Calhoun, where the regional majorities indulged in violations of the rights of the slaves in the Southern states in the US, should not be forgotten so easily. To make Kymlicka's theory more infallible special representation rights are a must for the *regional minorities* within a federal unit. Otherwise, these groups would be deprived of a means of voicing their interests and concerns in an effective manner. In these circumstances, the laws passed within the confines of a federal unit may be atrocious for these regional minorities.

Thus, we realize that none of the three models discussed above are perfect. It would be naïve to even expect any such theory to be foolproof. Even an infallible theory cannot be universally applicable. Therefore, a case-by-case approach is advocated. Will Kymlicka's plan is the most plausible, albeit with a few corrections as suggested above. Arend Lijphart's scheme of consociational democracy would take the next place. Together with proportional representation and a few additions that the specific cases may warrant, these can transform an unstable plural democracy into a vibrant multicultural federation.

Conclusion

First of all I wish to dispel all fears by stating that I am not wedded to the idea of imposing federalism for all forms of societies that exists today. A federal form of government is relevant only for some specific kind of societies. However, as far as my understanding of a large democracy goes, I feel that it cannot be homogeneous in the strict sense of the term. Plurality is bound to make its presence felt in such a free social order sooner or later. This will definitely lead to a struggle by the minorities for public space to practice their culture. A multicultural state would ensure this space to the minorities. In some cases the national minorities would be regionally concentrated and it is here that self-government can be granted. The federal architecture of the brand that I have promoted in the last few pages can then be harnessed. I do realize that all this may be a little too utopian for comfort.

Some of the regional federations that are in existence today in many liberal democracies around the world have dispensed their duty in a somewhat commendable manner. However, the strife championed by the national minorities within the boundaries of these regional federations has awakened the scholars of federalism to the reality that demarcation of boundaries should be done preferably on the model argued for in this dissertation. But it is also understood that to overhaul these federations and bring in the so-called 'ideal federation', espoused in these pages, would not be a cakewalk. Similarly, to transform some of the plural democracies, which have a unitary form of government, into a federation would be a Herculean task. More importantly, this may actually lead to complications rather than serve the cause of the minorities. To bring about a

revolutionary change in the type of government and the constitution that is already in force is extremely unviable. It is possible only when there is an all-pervasive consensus on the issue. Such a consensus, as borne out by history, is possible only in the immediate aftermath of a revolution or when some such crisis appears on the horizon.

Nevertheless, there are many unitary states like Belgium, and now the western European countries like Spain, United Kingdom, Italy, and even France which are progressing towards federalism that need to pay heed to the style of federation that this dissertation advocates. These countries have discretely followed the path of first building a consensus within civil society (the process has also moved the other way round in some countries) in favor of a federal form of government. Such a gradual progression has prevented the blowing up of the whole agenda. Change is always problematic in a settled society and only the frequent recurrence or persistence of a crisis- when it acquires the proportions of a movement- forces the dawning of the realization that change is inevitable for solving the issue.

The main thrust of this dissertation is to argue that the principle behind the formation of a federation is not realized to its optimum extent unless the multicultural ethos is sewn into it. The demarcation of state borders should be done keeping in mind the concentration of a national minority within the region. This would provide these national minorities self-government rights if they so desire. The sociological theory of federalism is the one that comes closest to endorsing the multicultural concerns, but the multiple-choice theory is more in currency, and has my vote, as it is more comprehensive.

Identity and recognition are the primary concerns for any culture. The pride one associates with one's culture can be manifested only when the public space is open to the idea of welcoming cultures of all hues. The liberal paradigm of providing equal opportunity falls short in its promise, as all cultures are not equally placed in the public arena. Certain special rights are required to usher in this equality. Federalism is an instrument in the direction of providing that space for the national minorities to practice their culture unhindered, by turning these national minorities into regional majorities. The fear that the *regional minorities* may be brought to harm has been dealt with by suggesting a veto to them to stall any policy that would harm their interest.

Some of the special rights are assimilative in nature. One example is that of affirmative action, where reservation is provided to the minorities for jobs in the mainstream sectors of the government. Self-government rights, as envisaged within a federation, are demanded with the aim of preserving a culture's own conception of the good. The presence of a variety of cultures adds color to a society and helps each culture learn from the others, for no culture is perfect. It also kills 'deadly uniformity' that Herder dreaded so much.

The complete definition of a culture will always have a territorial component to it. People in all moments in time have identified themselves with a region- call it motherland, fatherland, nation, or what you will. And as Machiavelli argues (though in a very different context), people don't forget their patrimony so easily. Any alienation- even the denial of a right to rule ones own territory- would create acrimony, however minor. To grant a minority the right to self-rule would evolve a feeling of brotherhood with the Center. An imposing, all-interfering Center would alienate the regional cultures.

I would concede that there are certain problems connected to the concept of granting too much freedom to the federal units within a federation. Being protective about sovereignty is quite common in such circumstances. Many scholars, quite rightly, argue that beyond a certain limit the threat to a federation intensifies in direct proportion to the amount of freedom granted to the constituent units. Thus, the theory of autonomy is, and should be, addressed with extreme caution. As per my understanding, the unity and integrity of a country comes first. This can be guaranteed only when ultimate sovereignty lies with the Center. Secession should not rear its head and is to be permitted only when nothing else is viable. However, the argument that federalism breeds feelings of secessionism does not hold much water, as even the unitary states have had to confront this challenge. To think that a unitary form of government would solve the discontent in the minds of a minority culture is a very naïve way of looking at the problem. In fact, the whole question becomes more complicated in a unitary state. Moreover, a unitary state would solve this matter only by suppressing the rights of the minority culture more effectively.

Another matter raised in this regard is that of segregation. It is argued by some scholars that creating states for the national minorities would alienate them from the mainstream. This is a completely baseless allegation. These scholars forget that these states are not being *imposed* on the national minorities; they have been created to meet the demand for a separate state and self-rule raised by these national minorities to help them preserve their culture and way of life. In fact, many such demands are rejected (or are likely to be) because of fears of secession or practical infeasibility- e.g. every

neighborhood cannot be made into a state. Significantly, not all national minorities are regionally concentrated, making the implementation of this formula even more restricted.

The troubles that plague many federations today are caused due to the faults in their very genesis. As discussed in the first chapter, these federations were formed after the colonies gained independence. The reason behind this act was to bring together the various small kingdoms of pre-colonial vintage together. Since these kingdoms wanted to assert their independence and at the same time realized that they could be strong only within a large country, they decided to form a federation. The colonizers had subjugated these kingdoms and formed the states based on administrative convenience. As a consequence, the demand for self-government by the national minorities was either not raised or largely stifled. The federations were mostly formed through covert or overt coercion.

As pointed out above as well as in the earlier pages of this dissertation, if decentralization is not done according to the plan suggested- national minority turned into regional majority- then the minority groups in the area may have to face opposition from the majority. Such opposition, which can be violent as well, has been more ruthless than the one that flows from the Center.

It should be cautioned that drawing borders within states could even be consciously used to prevent the formation of national minority-regional majority polities by dividing their territories, by extending state borders to include a larger national majority population, or by delaying self-government until national immigrants form the regional majority as well. Safeguards against such a mischief should be built into the constitution wherever possible.

The individual should have a right to exit in case she feels suppressed within her community. It is common knowledge that a federal unit does not impose any restrictions on the movement of people across its frontiers. Hence, the ideal federation as promoted by this dissertation, will not prevent a person from becoming free from the shackles of any federally concentrated culture having regressive practices. Such a federation is much removed from the Millet System that was prevalent in the Ottoman Empire (for a recap see earlier chapters). In the multicultural federal structure, the federal institutions provide external protections for national minorities- by limiting the power of other groups over them- while still constitutionally respecting the civil and political rights of individual members.

Such a society upholds the liberal ethos of providing a wide choice to the individual. The right to exit and the presence of a variety of cultures within the same society leads to revision of one's own conception of the good. No culture is perfect and learns something from the others. "To have engaged in a process of choosing who one is or what one has done is an essential part of what it means to be free. One cannot be a free person without continually engaging in processes of choice." (Gutmann, 1980: 10). A federation does not restrict this choice; in fact, it only enhances it by providing more freedom and power to the minority cultures to proliferate unhindered.

The issue of referendums, initiative and recall has been discussed in the previous chapters. The government should under no circumstances be made too powerful. If these three provisions are upheld without taking the minorities into account, then the minorities are bound to loose in the numbers game. Similarly, the proviso of veto power should be incorporated in any policy-making body.

A federal architecture brings us closest to direct democracy, if we assume a scale starting from the grassroots level and going up to the unitary stage. Since real direct democracy is not possible in a large democracy, the break up of the country into federations- preferably of the variety espoused here- would lead to people to voice their concerns in a more effective manner.

There are certain practical difficulties in the federal structure envisaged here. Firstly, this model has not been propounded keeping any particular country- federal or otherwise- in mind. It is a model aspiring towards perfection and the plural societies should work towards attaining it to the extent practically feasible. It is expected that they will fall short by some degrees. Secondly, building a consensus in civil society for the amount of reforms required to implement such a model could be very difficult, especially if the fundamentalist elements are in big numbers within the majority community. Thirdly, the judiciary at the federal level should be quite powerful, while at the same time being understanding and aware of the various cultures in existence in the state. The judiciary should have adequate representation of the minority cultures within its ranks to help it in this endeavor. Fourthly, one should not forget the limitations of any constitution and the role played by conventions. A lot depends on the behavior of the society at large. Fifthly, the majority community cannot bear assuaging the feelings of the minority beyond a certain limit. They may rebel causing the whole edifice to crumble. A cautious approach is called for. Lastly, a case-by-case approach is the best policy. Each society may require a different treatment.

It is imperative to clarify that the consensus on support for the minority cultures has to be construed both in the realm of institutions and the law, as well as in the court of

civil society. The absence of any of the two will lead to a void in its fruition. Also to be borne in mind is the fact that no form of government is perfect. Perfection has to be worked into it. Some aspects appear perfect in theory (those may also be rare in themselves) but none is perfect in practice. Federalism is no exception to this rule. Therefore, the best way out is to choose that which be nearest to the ideal.

Lastly, I wish to state that the arguments put forward in this dissertation stem from a concern that federations have failed to live up to their expectations and a diagnosis of the pathology behind the illness was required to remedy the state of affairs. I feel that a multicultural ethos would act as an elixir for some of these federations.

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