Trust and Tolerance as State Making Values in Multicultural Societies

Paradoxes and Chances of Federalism as a Conflict-Management Tool

I – Introduction: Mapping the Issues

Any discourse on federalism as a conflict-management device for segmented societies that aims at identifying major paradoxes and viable chances of this case of “political use of federalism”, ends up in a trouble of explaining why multicultural federalism\(^1\) can hardly work. Federalism in general and federation in particular are about responding to societal demands for group liberty.\(^2\) Since multicultural federalism (at least in a normative sense) bases on the recognition of existing ethnic, religious, or linguistic diversities as legitimate, as well as on the desirability of maintaining these legitimate diversities, that goes against a modern democratic principle of political liberty as an absolute political equality, and against majority as a sole legitimate representative expression of popular government. Federalism has at the same time correlated to the modern statehood and remained an immanent challenge to this statehood as that of democratic republic. The very idea of “group liberty” as a virtue of itself also principally questions individualist underpinning of human rights as another major pillar of liberal constitutional democracy. On the other side, a structural tension between democracy and human rights will remain immanent to modern polity despite a familiar

\(^1\) By « multicultural federalism » I shall understand all federal arrangements for the societies with major cultural cleavages, be it of ethnic, religious, linguistic nature, designated and designed to accommodate given multicultural differences.

\(^2\) I shall understand federalism in a very general sense, as an eminently anti-majoritarian device, structurally linked to the constitutionalist argument of legally established limits and control for power-holders (shared-rule and self-rule). It is precisely this power balance which makes of federalism an institutional pillar of vertical separation of powers, aimed at providing mutual control between different levels of government in particular, and of political system in general When translated into the terms of federal polity, these institutional requirements imply contractual arrangement and partnership as a socio-political underpinning of a non-centralised state organisation.
argument that democratic rights are justified only to the extent that they safeguard others, more fundamental rights. Moreover, both individual liberty and democracy are structurally related to two major civic virtues or values – those of tolerance and trust respectively. Together with solidarity, these two moral resources, sometimes referred to as a “political culture”, are viable only against a powerful background of citizenship/nationhood that is constitutive to political community.³

These eminently liberal virtues either lack or are not forceful enough in the cases of segmented multicultural societies. Mistrust and intolerance intrinsically belong to identity conflicts; and federalism, as part and parcel of conflict transformation, should be instrumental in building up trust and tolerance that are sine qua non for solidarity. In consequence, a major question would read as follows: Can federal arrangements at all, and if so, under what conditions (liberal or others), address structural causes for mistrust and intolerance in a given multicultural environment and thus critically contribute both to state making and nation building?

The question reveals the aim of the paper. It will argue that a major paradox of multicultural federalism lies in the fact that it should create trust and tolerance, which in fact are its own preconditions! Indeed, multicultural federalism can work only if it succeeds in democratically commanding a loyalty that would transcend cultural cleavages, i.e., if it democratically reconciles cultural and political pluralism. The paper will also argue that such reconciliation is structurally unfeasible within a consequently liberal democratic set up.

The paper will address structural causes for the lack of trust and tolerance in the cases where federal design of some kind is expected to mitigate cultural cleavages, especially as a part of conflict transformation strategy in state building and nation making processes, including the role of the international community.

II – Paradoxes of Multicultural Federalism: Trust and Tolerance as Cross-Cutting Issues

A trusting and tolerant citizen, and a government that is trustworthy due to its acceptance by majority of its people and due to its effective protection of human rights - this is what liberal democracy is about. So defined a sine qua non testifies of a structural ambivalence within both liberty and democracy. A legally guaranteed liberty of an individual protects an individual from the state power, but leaves her/him nonetheless exposed to the liberty of others. These “others” he/she need not necessarily accept as persons, but remains principally confident that their liberty – although limiting his/her own - will not basically bring it in danger. She/he is prepared to tolerate other’s liberty because the values and identity principles that they all commonly share prevail. On the contrary, if a common denominator lacks, which is often the case with segmented multicultural societies, no tolerance is viable in terms of a major pattern of behaviour. Claus Offe rightly says that “the step from liberty to democratic rights follows the same ambivalence”, which made the entire early history of democratic political thought - from Rousseau to John S. Mill - advocate democracy while at the same time preventing its destructive potentials. 4 This immanent tension between desirable and frightening aspects of popular sovereignty is resolved by trust. The fact that majority decisions are principally accepted also by those who disagree, is due to trust in the reasonableness and good intention of fellow citizens. It means that someone accepts some amount of risk for potential harm in exchange for the benefit of co-operation.
In the end, it is trust, which fundamentally matters, since tolerance is also contingent upon the presence of trust. However, it is a well-known argument that trust has a paradoxical place within democracy given that politics as such would seem to throw the very conditions of trust into question. Political relationships are about conflicts over goods and power. This is why trust complements and supports deliberative resolutions of political conflicts. At the same time deliberative approach to political conflict can generate trust, both among individuals and among groups, as well as between both and the institutions.  

Such an interrelationship between democracy and trust has “altered an ethos of democratic theory”, moving it away from strictly egalitarian conceptions of the responsibilities of individual citizens and towards a “pluralized egalitarianism”. In consequence, trust raises the question as to the means and mechanisms through which such a pluralized conception might become more operative. This argument of Mark Warren seems to me more than pertinent for the topic of the paper. The process of deliberation and opinion formation that precedes voting is critically important for building up trust within multicultural societies. A “vote-centric” majoritarian democracy has proven to be one of decisive reasons for mistrust between majority and minority cleavages running along ethnic, religious or linguistic lines. Violent elections and refusal to accept the results coming out of democratic procedure, or even a refusal to take part in the elections, remains one of the major paradoxes of majoritarian democracies in multicultural societies. Without entering this time into the debate whether a community-driven multiculturalism, once accommodated also within public sphere, still remains faithful to authentic liberalism, hardly anyone would today put in question some sort of consensual democracy as critically instrumental and supportive of trust in segmented multicultural societies.

6 Ibidem, p. 337.
Paradoxically enough trust can also be broken by power-sharing federal arrangements that provide a veto possibility for each group against policies that it would find particularly harmful for its interest. Impartial institutions, including those to protect minorities without unduly offending majority concepts of fairness, are a necessary but not sufficient condition for the perception of fairness. Consensus-driven democracy is based on a premise that the functioning of society depends not only on justice of its institutions or constitution, but also on the virtues, identities, and practices of its citizens, including their ability to co-operate, deliberate, and feel solidarity with those who belong to different ethnic and religious groups.7

Here, it is worth reminding of what Will Kymlicka sees as major fears about citizenship in the face of minority rights, namely: loss of equal citizenship status, fragmentation or weakening of citizenship identities, erosion of civic virtues and participation, as well as weakening of social cohesion and political unity. He also shows where to look for the reasons.8 In fact, these convincingly show that the inclusiveness of liberal state relies on indeed a “thin” conception of nationhood. In other words, a normative basis of liberal theory of justice is too “tight” to include minorities as a state building element without at the same time putting into question the promotion of responsible democratic citizenship under liberal terms. This is of course the conclusion Kymlicka himself would never draw out of his own arguments.9 I would nonetheless claim that any plausible nation building within segmented multicultural societies has to redefine the very fundamentals of liberal nationhood, in order to provide a proper framework for building trust and tolerance. A negative value standing towards ethnic concepts of nationhood is

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consequently liberal and, as such, immanent. Understandably enough, it remains stuck in its narrow normative basis. Liberal tolerance is that of individual freedom, absolute formal equality and justice as equal distribution of rights. On the other hand, federalism as a conflict management device for multicultural cleavages can work only if tolerance as part of responsible citizenship goes much further, beyond co-existence and even beyond respect, and ends up as a value-driven tolerance, which would accept major cultural diversities (ethnic, religious and linguistic) as intrinsic value.

One of the first and major questions in this context would be that on the role, which federal arrangements could play (multicultural federalism). As I have already said at the outset, I argue that major paradox of multicultural federalism lies in the fact that it should create trust and tolerance, which in fact should make this same federal design viable. I also related this paradox to constitutive features of liberal democracy which have always been challenged by federalism and since two decades have also been challenged by multiculturalism. Now I shall explain how I understand these challenges (1) and what would be major reasons that federal arrangements cannot work as conflict transformation strategy in all those cases where (new) state building and nation making are supposed to take place (2).

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10 Though he is aware of the fact that, in terms of logic, ethnic nationhood is not causally linked to the phenomenon of intolerance and hatred toward “others”, Ignatieff, nevertheless, draws a conclusion that there is much greater probability that a society of a civic nationalist type i.e. “a society anchored in a culture of individual rights and liberties”, even if it ran, for the moment, off the road of tolerance, “is more easily returned to the practice of toleration than one where social allegiance is invested in ethnicity. See e.g, Michael Ignatieff, Nationalism and Toleration, in Richard Caplan and John Feffer (eds.), Europe’s New Nationalism – States and Minorities in Conflict, Oxford University Press, New York, Oxford, 1996, p. 219. In his other book Blood and Belonging, he is, however, much more explicit in stating that only a civic nation, which is “a community of equal, rights-bearing citizens, united in patriotic attachment to a shared set of political practices and values”, is compatible with Enlightenment’s values of rationalism and individualism, since this sort of community is created by choice and rational attachment of its members. On the other hand, what constitutes ethnic nation is the inherited belonging, or more precisely, “it is the national community that defines the individual, not the individuals who define the national community.” Michael Ignatieff, Blood and Belonging – Journeys into the New Nationalism, Vintage, London, 1994, pp. 7-8. (M. Jovanovic, From Ethnic Nationhood to Multicultural Citizenship, forthcoming in Peter Lang, Brussels).

11 More on various types of tolerance in R. FROST, Vier Konzeptionen der Toleranz, in M. KAUFMANN (Hg.) Integration oder Toleranz, Verlag Karl Alber Freiburg/München2001, S. 106-117.
II.1

II.1.1. - As already said, federalism puts in question and aims at redefining the absolute political equality as political liberty – the latter being a consequence of the liberal principle of formal equality, which reduces justice to equal distribution of rights. Federalism has always questioned the two pillars of the modern liberal state – those of democratic sovereignty and procedural legitimacy: First, Federalism denies to the national majority the claim to be the (only) legitimate expression of the sovereignty of the people. Besides, federation replaces sovereignty with more diffuse sovereign powers of the federal state, on the one hand, and of its constitutive entities, on the other. In other words, by its inherent response to group liberty, federalism redefines democratic sovereignty both as a legitimacy basis and as suprema potestas. Secondly, Multicultural federalism also substantialises a modern procedural legitimacy formula in all those cases in which the federal institutional set-up represents a strategy of diversity accommodation through public recognition of the latter within a given multiethnic/multicultural society. A procedural design of secession of three northern Catholic and French speaking districts from the canton of Bern and the creation of the new canton of Jury in 1978 can be indeed invoked as a paradigmatic example for the substantialisation of the modern procedural legitimacy formula.12

Federalism emerged as a possible conflict-management device of inter-ethnic conflicts precisely because of its “illiberal” underpinnings. In many cases until

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12 A cascade system of popular votes within the Jura region, composed of three downward levels - the Jura region, districts, communes - transparently testifies of the basic element to give validity to the Swiss federation: /cultural/ minorities cannot be overruled on constitutive issues, because these affect state legitimacy itself. Had the procedure been strictly majoritarian, it would have complied with the procedural democracy formula. Under the principles of procedural legitimacy, strictly taken, the separation process would have been valid by the very fact that the Bernese authorities decided first to establish a constitutional framework and the procedure under which the majority - at the level of the whole canton of Bern only! - could have arrived at a consensus. However, the Bernese people did not vote on secession procedure merely to make secession procedurally legitimate. i.e. valid for the majority. The procedure simultaneously took into consideration the founding tenet of Swiss federalist political culture - that of a decentralised loyalty; minority issue was addressed as the issue of political integration already at the constitutive phase of the new canton. By being given the possibility to decide against majority, minority also democratically legitimised the creation of the new canton. The Protestant French speaking population, who wanted to stay within the canton of Bern, were themselves vested with the same right to territorial self-determination as the separatist majority.
now, however, it radicalised the problem to which it was supposed to be a solution. Why? Because the major challenge of multicultural federalism could be summed up as follows: *How to provide political solutions to cultural conflicts?* Ethnic, religious, linguistic demands should be instead translated into *multicultural civic principles and designs*. Again, multicultural citizenship in liberal terms is, structurally speaking, a contradiction in adjecto.

II.1.2. - Like federalism, multiculturalism persists as endemic, anti-liberal challenge to constitutional democracy. Together with federalism, it calls for revision of the major liberal democratic principle, namely, that majority as such is the legitimate expression of the sovereign will of the people. This has been done in a two-fold manner: First. Multiculturalism questions the intrinsic premise behind the modern nation state, which is that only a society homogenized in (one) identity can lead to political consensus as democratic consensus. Second. The communitarian demand that ethnic, religious, cultural dientities should *publicly* matter makes an epochal departure from the constitutive principle of modern politics, that of neutrality of public sphere against ethnic, cultural and religious group identities.  

The case multiculturalism makes for positive collective freedom also contests constitutional democracy on the issue of how far the "politics of differences" should be placed on state-building level. Given the individualist and majoritarian underpinning of liberal constitutional democracy, the latter cannot of itself accept the politics of group differences on a state-building level, and therefore is structurally incapable of meeting the multiculturalism claims on the values of diversities and collective rights as such. It remains defensive towards the multiculturalism argument that formal equal rights alone cannot guarantee equality, as long as they are not accompanied by the rights to be equal in respective differences. The liberal democratic defence of

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diversity is based upon a universalistic rather than a particularistic perspective. This explains why some teleological reinterpretations of modern constitution, which try to re-legitimate the political symbolism of human rights, principally question the very liberal leitmotiv of the French Revolution of (merely) Liberté – Egalité – Fraternité (Liberty – Equality – Fraternity), and articulate instead an alternative syntagm of Securité- Diversité-Solidarité (Security – Diversity – Solidarity).14

Given that multiculturalism understands equality as the right to diversity, it logically implies that formalism of the liberal equality, based upon ontological individualism, is to be transcended. To put it in a more pointed out manner: There has emerged a need for substantialization of human rights based also upon ethnic, religious and cultural diversities. This appears to be a clear-cut consequence of putting forward the thesis that man’s dignity has to be regarded as an open concept.15 Accordingly, pluralism introduces a new reading of constitutionally spelled out principle of tolerance. As already said, the latter cannot be reduced to the receptiveness of diversities merely on individual level, but has to do with diversities on group level, too. Common good starts to be pursued along co-existence of differences, where also group identity is immanently imbedded into constitutional identity of a given society. When so interpreted, the principle of tolerance renounces “eurocentrism” which underlies modernity as such. At the same time it makes democratic principles of constitution of given polity more receptive for the basically community-driven, as opposed to individual, social organisation and nation building.

Kymlicka highlights nine differences between liberal and illiberal nation building, and claims these are a matter of “degree”, in order to argue that, “what distinguishes liberal nation-building from illiberal nationalism is not the

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absence of any concern with language, culture, and national identity, but rather the content, scope, and inclusiveness of this national culture, and the modes of incorporation into it.”

However, there are convincing empirical arguments to claim that an authentically liberal nation-state has principally failed to accommodate cultural diversities and has proven a fallacy for national minorities, be it constituted upon ethnic or civic understanding of nationhood as citizenship. Modern concepts of nation were precisely the attempt to answer the question on the legitimate bearer of the constitution-making power. At the same time, they all, with different underlying principles in mind, tried to cover-up one and the same thing: That citizenship as the major founding principle of the modern state symbolises the universality of a democratic political community within a particular nation-state. The problem arose once the given concept of nation became no more inclusive, „universal” but rather exclusive within one and the same nation-state: When exactly (ethno)-nation and demos no more coincided.

Minority rights as (not only) individual rights have cast a new light on the citizenship as the principle to symbolize universality within a particular nation-state. Minorities do not fit in the constitutive principles of modern polity as (through majority defined) democratic polity. The two basically different concepts of nation, which underlie the citizenship of contemporary Western constitutional democracies, could be qualified as those of democratic civism without/against multiculturality (American and French respectively) and democratic civism out of monoculturality (the German model). Both concepts fall short of bringing viable solutions to ethnic, religious, linguistic and the like minorities. In both cases minorities as groups - principally - have nothing to say on fundamental constitutional issues. In consequence, minorities cannot

participate in the citizenship they have not consented to. They have been sending the message that universality of the modern polity does not work for them, since, for them, it is “exclusive” universality.

Put differently, structural tenets of liberally grounded universality have to be reconsidered and redefined. In terms of constitution making and nation building, this means that the problems of design of pouvoir constituant and of citizenship have to be revisited. A new answer is needed for a critical question on legitimacy foundations: Whose is the state? A democratic integration of multicultural societies as a new type of corporative societies is a structural pre-condition for the viability of human rights policy. This is why major questions are: What would be the sources of democratic unity in a multinational state? What role can constitution making/constitutional consensus play in a democratic inclusion of cultural diversities? Is “citizenship out of democratically integrated ethnicities” possible, and if so, within which constitutive and constitutional framework?

Only if multicultural federalism succeeds in answering these questions effectively, it can prove instrumental to building trust and tolerance. Swiss multicultural federalism is a proof that it is possible, however, at the cost of liberal principles. The Swiss federal polity is first of all a democracy of institutionalised cultural differences and its nationhood is that of democratically integrated cultural diversities. Here, federalism has been introduced as a structural principle of democracy. In other words, unlike United States and Canada, which represent democratic federations,

18 For example, a communitarian concept of citizenship, which prevails in the new constitutions of Central and Eastern Europe, certainly testifies to a deficit in the identity and homogeneity of the new polities in statu nascendi. The fact that this concept is much more concerned with civic duties turns it into a promising integrative force. However, the major underlying principle, namely, that it is the community which is constitutive of the individual’s identity, ran counter real-existing communities within what is constitutionally laid down, i.e. positivated as a (supposedly one) community. This is what “ethnification” of polities and politics in Eastern Europe is about: communitarian concept of citizenship as in fact ethnicity remains an intrinsic obstacle for an authentic communitarianism. The protective state policy vis-à-vis all its citizens gives way to a systematically invasive state policy against certain ethnic groups of citizens.

Switzerland is to be seen as a *federalized democracy*. Here, communal civism has embraced *participatory democracy as a federalist element* to protect interests of structural minorities within a given multicultural society. Swiss consensus-driven democracy has made the abstract principle of people’s sovereignty more concrete and operational through traditional Swiss instruments of democratic decentralisation, those of municipal self-government and of direct democracy.

**Il.2.**

Unfortunately, there are hardly better examples to sustain the argument on structural paradoxes of multicultural federalism as a conflict management device than those related to state reconstruction and nation-building after ethnic or religious wars. The involvement of the international community, however legitimate it may be in terms of peace-keeping or even peace-enforcement, opens new dilemmas, especially in the cases where the international community facilitates constitution-making. The “transfer” of pouvoir constituant from a polity in statu nascendi to international major players cannot but make a legitimacy paradox of multicultural federalism even more complicated.

All major federal arrangements in general, and federations in particular, share something in common. In order to be legitimate, a consensus underlying such arrangements need not only democratic support but also a federal consensus, a federal compact, which would in form of a constitution, define the terms of federal loyalty – the terms of federal trust. The interrelationship of constitution making and nation building, thus, shows that state building is at stake.

This is why constitution-making process is so important. For example, all three ex-communist federations inevitable dissolved because federal trust in particular was missing; the truth of the matter is that it could not be viable within constitutive foundations of communist politics, which used constitution
as a means to simulate legitimacy foundations and provide party decision with the image of constitutionality.\textsuperscript{20}

In post-conflict situations an absence of tolerance and trust as necessary conditions for peaceful and democratic society is evident already at a symbolic level. A profoundly different reading of key causes of a conflict as well as a fully contradicting assessment of present situation is often at hand. In consequence, it is almost impossible to reach agreement on the constitutive nature of future common state framework. There is not enough political will to understand the other side, however critically important it may be. The role of the elite is in this sense critical, and the paradox of the situation lies in the fact that the positions of the elites cannot be democratically verified. Besides, given that the international community has to negotiate with elites, it offers the latter a comfortable position in which they often trade off constitutional solutions for own political survival. This is how – instead of state building – a real politics in its dirtiest meaning is taking place.

More in particular, in cases of territorial accommodation, it is minorities that focus on external rights for their territorial entities. This shows that they take negotiated solutions as somehow “transitory”. In the “internationalisation” of their position they see a “manoeuvring space” to sometimes again open up their issue. Moreover, although territorially based federal solutions would be in many cases desirable, it is exactly the conflict over territory, which makes ethnic demands end up as irreversible and thus categorical. Again, the ex-communist federations show that a crucial paradox of federalism as a conflict-management device for multiethnic societies lies in “hidden potentials” of the correlation between territory on one side, and ethnic-driven constitutional solutions in a given multiethnic federation, on the other. The major challenge that any multicultural federalism has to face in such a situation, moreover the “trap” with sometimes-fatal consequences for inner peace remains as to how to avoid that - due to constitutional foundations and established decision-

making process at a federal level - every constitutional conflict turns into ethnic conflict. Equally indispensable is that, whatever institutional designs may be pursued, they do not leave space for “re-opening” and re-negotiating constitutive foundations of the common state on almost day-to-day basis, when differences occur between the elites representing different communities.

A far-reaching ambivalence of the involvement of the international community in designing federal solutions as part and parcel of conflict transformation strategy has also to do with the following reasons:

First and foremost, there is a principal shift in the objective of constitution making which of itself makes an authentic constitutional consensus obsolete. International community operates under geo-strategic terms of reference, and these usually have nothing to do with internal viability, i.e., inside legitimacy of the proposed solution. Not common identity, but geo-strategic stability in the region is the matter of major concern, and internationally negotiated, in a way imposed framework for the solutions remains in principle non-negotiable. (Bosnia, Serbia and Montenegro, Cyprus, East Timor…)

Not surprisingly, the results until now have not been much convincing. To start with, negative effects for the nation building process have been demonstrated. Namely, nation-building processes form power relations from the inside, which the foreign interventions can only distort. In addition, this is also the reason why foreign pressure usually proves as ineffective: power relations are distorted and there remain no reliable actors to respond to the pressure. Moreover, internationally facilitated or negotiated constitutional arrangements have failed to fulfil three important conditions for the constitution-making and nation-building in multicultural societies: a/ the process should ensure that the constitution is legitimate and legal; b/ it should guarantee inclusion as a proof of the respect for diversity c/ the process should promote a direct participation of the public in constitution making.21

Last but not least, “international constitution making”, which often imposes unviable solutions, and the lack of effective guarantees for international rule of law, inherently challenge the credibility also of federal arrangements in such cases, since – in the end – federalism is about constitutionally defined and respected rules of the game. Unlike post conflict societies, Western democracies build upon inherent identity between legality and legitimacy. More importantly for democratic constitutionalism, legality as such is immanently legitimate only under two, equally indispensable conditions: a/ that legality relies upon a consensus of those concerned (government by consent), and b/ that it is “universalisable”, i.e. generally applied (legal security and equality before the law). I have tried to show why these conditions have not been fully accommodated in the cases of “international constitution making”. It remains to say something on the international rule of law.

New models of peacekeeping and peace-enforcement rely more and more upon some nation states as global and regional actors, mainly but not always under the authorisation of the United Nations. Here, international rule of law in the sense of international legitimacy for human rights protection has been often more than seriously challenged. The problem becomes even more serious if the actors in case are international financial institutions. Here, the mechanisms for judicial review in order to ensure that there is no violation of human rights are “sadly lacking”. Such global actors “operate outside the established international human rights law framework” and “no particular judicial or other instance can hold them accountable.”22 As a result, the credibility of the role of the international community in the transition from negotiation to democratic legitimacy has been principally put in question.

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