DEVOLUTION AND FEDERALISM

Owen E. Hughes

Introduction

The traditional bureaucratic model of public administration and management assumes that government is strong, able to exert its authority, and to have its edicts implemented without question. Even if there may not have been a direct supposition of a unitary model of government in the traditional model – as usually typified by the United Kingdom – this was implicit, in that other systems were seen as inferior.

However, the reality of governance is, that for much of the world, there are levels of government and devolution, from agreements on power sharing to explicit federal systems. Coordination, negotiation and compromise across levels are more common than the model of a single government, holding all the power that can simply carry out its wishes. Nation-states that are formally federations include: the United States, Germany, Canada, Switzerland, Australia, Argentina, Brazil and Mexico. In addition, Russia, India and China provide some function sharing and power sharing between national, state, provincial and even city governments. With states once regarded as exemplars of centralism, such as Spain and Italy, offering sub-national governments at least some role (Cepiku, Jesuit, and Roberge, 2013), it becomes more difficult to list nation-states that are actually unitary, particularly those with large populations or areas. Even the UK agreed in 1997 to power sharing with parliaments in Scotland and Wales and promised even greater devolution before the Scottish independence referendum in 2014.

If the reality of governance in much of the world involves federalism and devolution, perhaps the model of public management needs to take this reality into account. Theories where government is all-powerful are unlikely to be realistic where government is divided across levels. Once it is realized that there is no single best way of organizing and managing (Alford and Hughes, 2008), theories based on negotiation, compromise and adjustment may work rather better. Divided power, overlapping roles, the inability to assign accountability for shared programs and implementation problems may well occur with the devolution of authority, but these realities can be considered part of the price for having government closer to the people.

Much of the day-to-day work of public managers is negotiation with their counterparts in other levels of government. The field of intergovernmental relations more often becomes
management by diplomacy, management by personality, leadership and, fundamentally, management and leadership without authority (Heifetz, 1999). Federalism is perhaps surprisingly strong and persistent. The reality of government in many parts of the world is one of internal division and negotiation rather than neat systems of hierarchy and accountability.

The federal principle

Despite a history claimed to go back to biblical times (Davis, 1978), exactly what constitutes a federation is contested. Riker defines federalism as “a political organisation in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions” (1975, p. 101). To Riker “a constitution is federal if (1) two levels of government rule the same land and people (2) each level has at least one area of action in which it is autonomous, and (3) there is some guarantee (even though merely a statement in the constitution) of the autonomy of each government in its own sphere” (1964, p. 11).

These three points provide a good working definition of a formal federal state, but there is also a range of power sharing arrangements without some of these features. For instance, as the UK has no written constitution, power sharing with Scotland and Wales could be changed by an act of the parliament. It is not, then, a federal state in the formal sense. Italy and Spain have limited power sharing but this is not constitutionally protected. Neither do Russia and China. However, the key point is not the precise definition, but rather the management task of working across jurisdictions.

Formal federations, most notably the longstanding ones, arise when a group of previously independent states or colonies desires to be united for some purposes but stay separate for others. They desire, that is, to be united but not unitary. The usual motives for federating are to permit further expansion, both territorial and economic, and to achieve greater military security (Riker, 1964; Wheare, 1963).

A fundamental question in the whole theory of federalism is just how much independence or power regional governments can lose to the centre before a federal state becomes a unitary state in all but name. As a federation develops, there is an inevitable change in relative power, with the centre usually gaining in power at the expense of the periphery. This development can be interpreted by some as a sign that federalism is really a transitional system, an inherently second best or inefficient polity that is evolving somehow towards a more efficient system. Questions of efficiency from centralization are of limited relevance, given that the prospect of changing a long-lasting federal system to a unitary one is highly unlikely.

There does, though, need to be some means of preserving a degree of independence for regional governments. In practice, they cannot be separate or independent, but there are different views about what kind of independence, and how much, should be given to the states before one can have a distinctively federal system. These differences are reflected in the three main approaches to conceptualizing the nature of federalism: federal systems may be classified as coordinate, cooperative or organic.

Coordinate federalism most emphasizes the idea of governmental separateness. In carrying out its functions, each tier in the federation is independent of the other and the two tiers of jurisdiction are coordinate — equal in rank or status — so that neither is legally superior. In Wheare’s classic definition of the “federal principle”, federalism itself means “the method of dividing powers so that the general and regional governments are each, within a sphere, coordinate and independent of the other” (1963, p. 10). This represents the “highest” or purist stage of federalism: where powers and responsibilities between the central government and the
regional governments are so precise and well known that each level goes about its business without conflict.

Bryce, an even earlier theorist, saw federalism as being “like a great factory wherein two sets of machinery are at work, their revolving wheels apparently intermixed, their bands crossing one another, yet each doing its own work without touching or hampering the other” (1914, p. 432). But while this is an appealing picture, it does not convey a wholly realistic impression of the balance of power within any federation.

Coordinate federalism makes theoretical demands that have never been met by any system. It presupposes a substantial amount of independence as suggested by the phrase “coordinate and independent”. The major problem with this is the practicality of the attempt to make the two spheres of jurisdiction independent. In practice it is impossible to draw up any constitution so precisely that powers are specified clearly and unambiguously. Through events and constitutional change over time, a strictly legalistic approach can be overtaken by reality.

Cooperative federalism permits a good deal of shared activity. Rather than being highly legalistic, this type is more political. Regional governments still need some autonomy, some bargaining power, or “cooperation” could be a euphemism for “coercion”. The two levels must compromise to carry out functions jointly which, constitutionally, might belong to one level or the other. Rather than a precise division of powers, cooperative federalism incorporates and rests on a series of accommodations between the levels of government. In addition, cooperation does not necessarily mean peaceful negotiation and harmony, only that the different levels can reach agreements. Intergovernmental disputes can be seen as part of a continual, ongoing game of bargaining analogous to international diplomacy. But rather than being dysfunctional or inefficient, conflict is quite normal and even functional for the political system. Either level could prove stronger than the other without undermining the reality of federalism.

Organic federalism is where the centre is dominant. It has substantial control over financial resources and can decide the major policy questions. Regions can still have some autonomy, but more coercion from the centre is involved than in the other models. The regions may become mere administrative arms of the dominant centre. What is sometimes called “asymmetric federalism” would also fit within this category (Cepiku, Jesuit, and Roberge, 2013).

Sometimes, those who speak gloomily about the decline of federalism are presuming that real federalism is coordinate federalism. But coordinate federalism is an ideal type. Whether or not a particular system is really federal has as much or more to do with how the system functions as a political entity than with the formal legal details of how power is shared.

Federalism is a complex system of government which seems to invite conflict and in which lines of accountability are messy rather than neat and ordered. Not surprisingly, federalism is criticized strongly by those who would prefer, apparently, a more rational and efficient system.

Centralization and decentralization

Within public management and public administration, issues around centralization and decentralization are “hardy perennials” (Pollitt 2005); at one point the one appears to be in favor, at another time the other. Despite the apparent success of federalism’s reach across countries, it has always attracted criticism.

Arguments over federalism could be seen as reflecting two differing conceptions of democracy. Those who support federalism identify more with a type of consensus democracy. Those against federalist arrangements favour a form of majoritarian democracy and a greater concentration of powers in the hands of a single, elected government (Lijphart 1984). Those who sympathize with the British system of parliamentary sovereignty have frequently been
Devolution and federalism

critical of the lack of uniformity and the costs and delays in legislation and administration that accompany federalism. At the turn of the twentieth century, the British jurist Dicey expressed considerable reservations about federalism. Dicey (1959) accused it of producing conservatism and excessive legalism. Federalism, he said, means weak government; he clearly found it difficult to understand why any sensible nation would prefer to adopt a federal system ahead of British-style institutions.

Negative reactions should be seen as reflecting two underlying influences. First, there is a bias against federalism deriving from British notions of responsibility and the tradition of parliamentary sovereignty. Secondly, there may be a view that achieving a more rational society requires a strong and centralized government. Critics stress its tendency to divide and blur lines of responsibility. It is sometimes difficult to get the various governments to agree on necessary legislation.

Writers on the Left have also seen federalism as an obstacle to achieving social reform. In the early 1980s, Wilenski argued, referring to Australia, “any form of federal structure is conservative in nature. Federal arrangements, as compared to those in a unitary state, invariably limit the powers of the elected central government.” He added that in a whole range of fields “only central government can effect the changes in society that thorough-going reform would require” (1983, pp. 84–85). While of a particular time and place, this comment points to some suspicion on the Left that federalism restricts the positive power of government.

On the other hand, those who support federalism stress the need to keep government as close as possible to the people and allow regional communities who feel themselves to be separate and distinct from others a substantial measure of self-government. It is, of course, arguable as to how substantial the regional, geographic and cultural differences really are in some countries, but those who see them as real also see federalism as a highly significant device for limiting and dividing the power of the central government. Otherwise, it might pose more of a threat to the interests of citizens in parts far distant from the formal capital.

In the UK, for example, successive governments have tried to do something about regional disparities in economic and social prospects between the London region of the southeast and other areas such as the northeast. Government in the UK means mostly London government, although local governments provide a limited range of services, which are often restricted by Whitehall rules anyway. Even if distances are not far when compared to, say, Canada, it could be argued that for most UK citizens government is indeed a long way away. The economic divide may not be directly attributable to centralized government but its existence may well contribute to local disillusionment with the centre and even with government itself.

The problem with centralists who criticize federalism because of its particular flaws is that they assume that the nation-state could and should be re-made on a completely different basis, and that a new charter of association or constitution could be devised and implemented. This is extremely doubtful, precisely because many people see federalism as an important part of their conception of what a free society should entail.

Centralists tend to undervalue the importance of the link between federalism, limited government and a certain conception of the free or just society. They do not allow sufficiently for the import of federalism within the conception of liberal or constitutional democracy held especially by those on the political Right. The latter, at least those who are within the liberal democratic tradition, tend to favour limited and dispersed powers of government rather than centralization and a form of consensual rather than a majoritarian form of democracy. Elazar argues, for example:

Federalism in its most limited form is usually defined as having to do with the distribution and sharing of power, but even in that limited form there is an implicit commitment to a
conception of justice that holds, among other things, that a distribution of powers is necessary and desirable. On the other hand, federalism in its broadest sense is presented as a form of justice – emphasising liberty and citizen participation in governance – but one which is inevitably linked to political reality because it must still be concerned with the distribution of powers.

(Elazar 1987, p. 84)

The very problems which federalism tends to create, such as its opaqueness, are seen by its supporters to be an advantage for promoting individual freedom and resisting bureaucratic encroachments or statism.

Certainly there is no axiomatic link between federalism and limited government or with democracy itself. Conservative parties have traditionally supported a federalist ideology whereby the checks and balances of the federal system would constitute a safeguard against socialist centralization. They believe that individual liberty would thus be preserved, and the interests of regions be better served, by strong state-level governments in closer touch with local needs.

**Service delivery**

Even if there is acceptance of the principle of devolution of powers between levels of government, there is still substantial debate over what kinds of activities each level of government should look after. The governing constitution sets out powers at varying levels of detail. In Australia and the US, the powers of the central government are nominated in the Constitution and the states have the residual powers or what is left. In Canada, the federal government was given some specific powers, as were the provinces, which also gained residual powers. Most constitutions provide the central government with those powers that most would agree to be necessary for a national government: foreign policy, defence, currency and the like. Lower-level governments generally deal with land use and some environmental matters. Other functions are mixed, such as health care and education, but there is no set list.

There have been attempts to formalize the appropriateness of level of administration and to set principles for allocating functions to different levels (Oates, 1972). Generally, the central government should have responsibility “for the macroeconomic stabilization function and for income redistribution in the form of assistance to the poor” (Oates, 1999). The first of these is obvious, in that action by a sub-national government to stabilize the economy is unlikely to be effective. On the second point, if welfare payments are devolved to lower levels of government, there may be migration effects as potential welfare recipients relocate to a jurisdiction that pays higher amounts (Borjas, 1999). Perhaps, then, social welfare transfer payments should be a national government responsibility rather than that of local or state levels. On the other hand, having Ottawa, Berlin or Canberra responsible for the collection of garbage at household levels in other cities of their federation is unlikely to be as efficient or effective as having it dealt with locally.

One argument in favour of federalism which has enjoyed a recent resurgence is the general notion that good government means having smaller government closer to the people. Federalism can better accommodate variations in public sector tastes. It means that the public sector can provide different kinds of goods and services to suit different states. Delegating the control of local programs to local state-level communities can mean a more precise delivery of programs and better administration, which in turn reduces overall costs.

In 1992, as part of the Maastricht Treaty, the European Union prompted rethinking of the old Catholic social principle of subsidiarity, which then was applied to levels of government within the EU. The subsidiarity principle extends the principle of devolution: governmental
services should be devolved to the lowest possible level dependent on the kind of service in question – foreign policy to the EU itself and national governments, garbage collection to local authorities. However, it is difficult in practice to divide issues so neatly. Even garbage collection can affect wider areas, such as states or nations; environmental issues cross national boundaries. Perhaps subsidiarity was brought into the EU as a substitute for a federalism that some European states were not willing to contemplate. And while the principle may be good in reducing the complaint about Brussels’ centralization, in practice subsidiarity does not appear to have resolved the allocation of powers within the EU.

There does not appear to be any robust framework for the division of powers and allocation of public roles between different levels of government. The original framing document may provide only a guide with the actuality depending more on political compromise than on formal processes.

**Public management within a federation**

For serving public managers, the most pressing issues involve being able to get a result, and in ways that serve their political masters. Within a federation this means making agreements that prevail with multiple political players. If it is agreed that the strict separatism of coordinate federalism is unrealistic, there are still practical issues to be dealt with in order to achieve goals. As Agranoff and McGuire argue (2001, p. 671):

> as policy responsibilities between the national and sub-national governments have evolved and devolved, governing authority has overlapped across levels to a point where all actors are involved simultaneously to varying degrees. Attention must be given to operations in such a system.

Managing where all actors are involved is clearly challenging. Coordinate federalism at least has the advantage of being clear about who has accountability for particular policies or their implementation: it is simply the level of government with the constitutional power over that issue. If, on the other hand, and as is more realistic, there is endemic overlap and a lack of clarity, public managers need to be able to negotiate and work with other governments but without any formal authority. Principles increasingly characterizing managing within federal systems include a “shared commitment to goals and projects, independent but cooperative jurisdictions and organizations, voluntary linkages involving extensive participation and crisscrossing relationships, multiple leaders and people working at different levels within and between organizations” (Agranoff and McGuire, 2001, p. 279). These are neither neat nor directive.

Public management inside a federation is innately complex. Managers operate within constraints, notably legal and financial, along with those imposed by political arrangements involving governments at various levels, often of different ideological persuasion.

**Managing within legal constraints**

Even if strict demarcation between levels, as set out by coordinate federalism, is not possible, public managers still need to carry out their work within some formal or legal constraints. If one level of government has an explicit mandate or power expressed in the constitution, this fact needs to be respected even if another level intrudes. There will always be arguments about the legal division of powers between levels and subsequently over what governments can and cannot do. For one level of government to take legal action against another level over jurisdiction
is quite common. However, taking legal action to establish constitutional power is more often a last resort rather than a first option. If through political process and negotiation an outcome can be found that satisfies all parties, the precise legal power becomes much less relevant.

Managing the financial arrangement

The ability to spend and to tax is fundamental to all governments. It follows that much of the practice of intergovernmental relations within a federation inevitably involves arguments over finance. All federal systems have problems with deriving financial arrangements satisfactory to both levels of government (Oates, 1972). Revenue for each level is ultimately derived from the same set of taxpayers, while outlays from the different levels of government go to the same citizens in the end. Ideally, there should be a match between functions and revenue, but this rarely happens in a federation. Even if a fair balance was struck at the beginning, there is no certainty that revenues for each level will grow in precise proportion to changes in their functions.

In consequence, there are two key financial issues in all federations. The first is vertical balance where each level of government has enough revenue resources to meet its spending commitments. Vertical imbalance refers to the disparity between the taxing and spending responsibilities of each level of government. If there is great disparity, one level of government may be able to exert a degree of control over the affairs of the other. It is also desirable that each level be directly responsible to its own electors for raising taxes to finance its own proposed expenditures. For example, the Australian federation is characterized by marked vertical fiscal imbalance, in that the national government has more and better taxation assets than the states, and large-scale transfers occur from the central government to the state. Such transfers can have more or less onerous conditions placed on them. Additionally, having one level of government provide the funding for another level to spend is a recipe for blurring responsibility.

The second is horizontal balance or imbalance. Horizontal imbalance arises from the difference in economic circumstances between the regions in a federation. Any federal system has some horizontal disparity in economic conditions in the sub-national areas, and this affects the ability of the regions to provide comparable public goods and services. A revenue-sharing or grants scheme is usually set in place by the central government to reduce inequalities. There are substantial transfers of income from wealthy provinces or states to poorer ones in the federal systems of Australia, Canada and Germany. For example, the relatively less developed maritime provinces in Canada are assisted by the Canadian government to a greater extent than the wealthier provinces.

Public managers at each level constantly work within the financial constraints. Arguments over resources are intense, as funding is obviously needed for any program to work.

Managing within the political constraints

Federalism is, fundamentally, a political arrangement involving continual negotiations over the division and exercise of political power. The politics of intergovernmental relations are just as important as legal power and finance in determining the reality of the federal system. Making sense of federalism means seeing how these three aspects affect each other.

It has been argued that public management reforms cut across the democratic values of federalism (Radin, 2012). Maybe there are tensions here, but perhaps too there is simply a greater realization that getting results rests with public managers from the different levels of government being involved in constant negotiation and bargaining. More recent public
management theories of networks, coproduction and governance accommodate the ambiguity of the federal system quite well. Indeed, the traditional bureaucratic model fits the coordinate view of federalism in its clear hierarchy and clear accountability. Both are simply unrealistic.

Public management skills

In working across jurisdictions, public managers are often required to operate in circumstances in which they do not have real authority. They are then in the difficult position of having to get results from players for whom they are not personally responsible, in the sense of being able to direct or to make authoritative rulings. In turn, this means finding new organizational cultures and, for many public managers, a need to acquire a completely different set of skills.

The skills required become more akin to those of diplomacy than to the recourse to authority that might have been more common during a more bureaucratic era. Public management skills become those of personality, deal making, operating through networks and coalition building but with the invoking of actual authority rare. Collaborative managers need to “know how to bargain and how to negotiate” (O’Leary and Bingham, 2009, p. 266). Public managers need to learn to make deals, be entrepreneurs of a kind and work together (Bardach, 1998). The skills involved are essentially about personality and the exercise of soft power (Nye, 2008). As Agranoff and McGuire argue (2001, p. 679):

Managers who deal with the federal system have entered the information age through expanded contacts and networks. While bureaucracy was the hallmark of the industrial age, inter-organizational teamwork and networks are the hallmark of the information age. Managing across organizations meets the need to deal with greater complexity, scope, speed, flexibility, and adaptability.

The skills required are very different from those of traditional public servants. Governments still have authority and power to coerce citizens. However, most of the time and on most issues they do not need to do so. Furthermore, the outcomes in policy and delivery when raw power is used are likely to be sub-optimal. It would now be almost inconceivable for government to pass legislation without extensive consultation with stakeholders, including other levels of government.

Conclusion

Public management aims to deliver services and public goods to citizens in the most efficient way possible consistent with the democratic values of a government. The financial and administrative details of federalism may need some improvement, but reforms presume the need to take federalism seriously, and not to proceed as if it should evolve into a different form of government. It is simply unhelpful to continue arguing about federalism as if some radically different form of government were either available, or had enough support to be implemented. Once a federal state is established, the chances are high that if it survives, it will survive as a federation.

The reality in much of the world, particularly the developed world, is that service delivery occurs in a shared-power environment. Devolution of power in recent years seems to have come – if a single theme can be picked out of disparate movements – from the desire of citizens to have government nearer to where they are. Centralized governments do seem to have lost popularity. The task then remains for public managers from different levels to get together and work on outcomes that are beneficial to citizens on behalf of the federation for which they are
working. It is unhelpful to simply say that centralization is better. There are no axiomatic economies of scale in service delivery to be found from centralization; if having sub-national governments can help allay feelings that government is a long way away, perhaps that is no bad thing. Federalism endures.

References


