Federalism and the challenges of accommodating ethnic diversity

Dr. Yonatan Fessha
Research Fellow, Community Law Centre
University of the Western Cape
This paper examines how a state can use its institutional designs to accommodate ethnic diversity without posing a threat to the political and territorial integrity of the state. In particular, it examines the relevance of the federal design to the political crisis and continuous tension that dominate multi-ethnic states around the world. It investigates whether adopting institutional principles in a federal form helps us to adequately respond to ethnic claims and build a state that belongs to all who live in it. With the view to achieve the above mentioned objective, the paper seeks to answer the following questions:

- Should a multi-ethnic state recognise its multi-ethnic character?
- Is ethnic recognition categorical?
- Can federalism serve as an effective instrument to accommodate ethnic claims while at the same time building national unity and maintaining political integration in a multi-ethnic society?
- How should a multi-ethnic state design its institutions, within the context of federalism, to respond to the challenges of ethnic diversity?
- Does federalism provide multi-ethnic states with institutional principles that are a panacea to the challenges of ethnic diversity?

**Recognizing Ethnic Diversity**

If a state is ethnically plural, there are, broadly speaking, two options that it might wish to follow. One approach is to disregard the ethnic mosaic feature of the state and attempt to develop a single national identity along a single culture or ideology that transcends ethnic differences. This would be a decision to create a single national identity – a mono-cultural society. The other option is to embrace the ethnic diversity of the state. The state in this case can choose to promote a harmonious coexistence of separate ethnic groups. Until very recently, states, in all parts of the globe, have adhered to the first option and sought to establish nation-states. There are plenty examples of states that attempted to take away the ethnic mosaic feature of the state and develop a single national identity along a single language, culture or ideology that transcends ethnic differences only to find themselves in ethnic turmoil. States in
Africa, Europe and Asia attempted to promote national unity at the expense of cultural diversity. Some did this by denying that there are linguistic minorities within their respective territory and presenting themselves as mono-cultural states. Others sought to build a national identity along the languages and cultures of a particular ethnic group.

The approach that seeks to transform a multi-ethnic state into a nation-state, as the empirical evidence show, falls short of what is required to build, to use the words of the South African Constitution, ‘a state that belongs to all who live in it’. The state was instead identified with the ethnic group whose culture and language was recognized in the public sphere. This created the feeling of alienation among other ethnic groups who had to assimilate to the languages and cultures of the majority group in order to be regarded as one among equals. The alienated groups eventually responded by politically mobilizing against what they considered as a relegation of their culture and identity to secondary status. Explicit ethnic mobilization dominated the political arena. Ethnic nationalist movements that seek recognition, autonomy and representation or, in extreme cases, a state of their own became a common feature of ethnically plural states. In short, the nation-state-building project, as it is often referred to, failed to achieve the desired result of creating a common national identity. The clear empirical message was that a state that is predicated on suppressing ethnic diversity is bound to generate ethnic particularism and ethnic tension much less to create a homogenized society.

The empirical evidence is also supported by other arguments. The point is that a state that does not recognize its ethnic diversity cannot go without empowering, advertently or inadvertently, a particular group and alienating another. In other words, a multi-ethnic state cannot remain neutral to ethnicity or in matters where ethnic relationships are concerned. Requiring the state to remain neutral in relation to ethnic relationships, leaving the matter to the so called ‘cultural market place’ is, as argued by Kymlicka (1995) and many others, as good as calling for the separation of state and ethnicity. The state should not promote or inhibit the practice of the culture and language of a particular ethnic group. The ‘cultural market place’ should instead decide if a certain culture is going to survive or decay. In short, there should be a ‘benign neglect’ of ethnic differences. However, the call for benign neglect, as noted
by Kymlicka (1995) and many others, does not make sense. Simply put, the state cannot remain neutral with respect to matters that have a bearing on ethnic relationships as there will always be contexts in which the state cannot help but adopt, for example, state symbols that recognize at least an identity of a particular ethnic group (Patten 2001: 288). When a government opts to use a certain language as official language, the state is recognizing the linguistic identity of the group that speaks the language. The same applies to the choices of public holidays and other similar issues. Of course, some states might circumvent the challenges of the symbolism of language by opting for a culturally neutral language, which is particularly the case in most decolonized states of Africa and Asia (i.e., English, Portuguese and French). This is not, however, an option that is always available. In most instances, the state cannot avoid but recognize and promote the identities of a particular ethnic group.

Based on these arguments, this paper concludes that the state has to somehow recognize its ethnic diversity. A multi-ethnic state that seeks to suppress diversity and attempt to build a common national identity based on the core culture of a particular ethnic group is bound to provoke violent ethnic nationalist movements. Similarly, a state that ostensibly follows a policy of neutrality when it comes to ethnic relationships often ends up identifying itself with a particular group. In short, a multi-ethnic state should seek to avoid an attempt to homogenize its ethnically diverse population and transform it into a nation-state or remain ‘culturally neutral’. Recognition of ethnic diversity is an important element of building an inclusive state in a multi-ethnic society.

The Contingent Nature of Politicized Ethnicity and its Implication on the Recognition of Ethnic Diversity

The next issue pertains to the nature and degree of recognition that a multi-ethnic state should provide to ethnic diversity. This paper puts forward two main arguments in this regard, based on the political relevance of ethnic identity. First, there is nothing about ethnic identity that makes it a peerless and paramount identity that it should receive recognition in the public sphere to the exclusion of all other competing
interests. The saliency and relevance of ethnicity as a rallying point for political mobilization often depends on historical and political contingents that attend the so-called nation-state-building project. In other words, ethnicity is often the function of the nation-state-building project. This says ethnic cleavage does not necessarily translate into a political divide. Hence, the contingent nature of politicized ethnicity. Second, if we accept the argument that ethnic difference does not always translate into a political divide, then the nature and degree of recognition that a multi-ethnic state accords to ethnic difference, as a politically relevant divide, should consequently reflect the political saliency of ethnicity in the state under consideration.

The argument on the political relevance of ethnicity as a contingent process can be demonstrated by briefly reiterating the political role of ethnicity in South Africa. The political saliency of ethnicity is of limited significance in post-apartheid South Africa. Despite the fact that the country’s black community is composed of 10 ethnic groups, political mobilization along these ethnic groups is not common. The performance of political parties that sought to mobilize the black population along ethnic lines has been limited. Even the Inkatha Freedom Party (IFP) that relied on ethnic sentiments of the Zulu population group has seen its support dwindling as South Africa moves away from the apartheid era. The Afrikaner-based parties have not also been able to convince their community to rally behind programs that promote a “nationalist Afrikaner” agenda. The potential amenability of the territorial structure of the state to ethnic mobilization, owing to the relative concentration of each ethnic group in a particular province, has also not given rise to the formation of territorially based ethnic mobilization. Despite predictions that ethnic rivalries will emerge among the black community when the white domination comes to an end, the solidarity of the black community that, to a large, extent, has muted inter-ethnic rivalry has persisted into post-apartheid South Africa. In short, ethnicity is still not the most relevant divide in post-apartheid South Africa.

The limited saliency of ethnicity in the South African political discourse can only be explained by the particular historical and political context of the South African state and society. Unlike many other multi-ethnic states, South Africa has not yet experienced an exclusive nation-state-building project that empowers a particular ethnic group and marginalizes the rest. In fact, the political experience of South
Africa was such that it united the different ethnic groups that inhabit the country to forge a common national identity against the apartheid government. At the centre of this struggle are also the ideology of the ANC that regards ethnicity as artificial and the manipulation of ethnicity by the apartheid government which contributed to the maligned concept of ethnicity in South Africa. In post-apartheid South Africa, the limited significance of ethnicity is further facilitated by the absence of a central power that arranges groups in hierarchical relations or imposes the domination of a particular ethnic group or groups over others. The best possible explanation for the limited saliency of ethnicity thus lies in the absence of strong indication that the state is strongly identified with a particular ethnic group or a state policy that favours a particular ethnic group to the detriment of others. The South African experience suggests that ethnicity is not usually a primary rallying point of political mobilization, but often a function of state policies that deny, accommodate or promote ethnic diversity.

The South African experience demonstrates that the saliency of ethnicity is not static. There is nothing about ethnicity that is ahistorical, immutable or universal. There is no necessary parallelism between social cleavages and political mobilization. The relevance of ethnicity as a rallying point for political mobilization depends on the historical and political contingents of each state. This, of course, does not change the basic position that mandates the recognition of ethnic diversity. The fact that ethnic identity is not a primal identity and that it is often the product of the nation-state-building project does not mean that ethnic diversity should not be recognized. If anything, this particular understanding of the nature of ethnicity suggests that a multi-ethnic state, if it is to avoid ethnic based political mobilization and the resultant ethnic turmoil, has to either remain neutral in ethnic relationships or recognize and accommodate the ethnic diversity that characterizes its society. As indicated earlier, the state cannot simply remain neutral, which leaves it only with the latter option.

Some might yet have difficulty in accepting the position that multi-ethnic states should worry about recognizing ethnic diversity. They point to multi-ethnic states that seemingly are centrist, but yet stable, and argue that ethnic diversity is not necessarily a relevant challenge to these states. As the foregoing discussion indicates, recognition of ethnic diversity is not categorical. The relevance of ethnic differences as a political
divide is not always guaranteed as this often depends on political and historical circumstances. This does not, however, mean that ethnic divide is not a relevant challenge. The political and historical circumstances that made ethnicity a non-issue are not necessarily static. Depending on state policies that affect ethnic relationships (i.e., depending on how state institutions deny, accommodate or promote ethnicity), ethnicity may emerge as the dominant political force. This means even in conditions where ethnicity does not appear to be the most relevant political divide, the state has to ensure that it adopts policies that prevent the emergence of conditions that gives rise to the political mobilization of ethnicity. The issue should not thus be about the mere recognition of ethnic diversity, but about the nature and extent of recognition that a multi-ethnic state has to accord to ethnic diversity. This is what the next section deals with.

**The Implication of Politicized Ethnicity as a Contingent Process**

An important implication of regarding the political relevance of ethnicity as a contingent process is its effect on the extent to which a state should recognize ethnic diversity and consequently on the institutional arrangement that a state has to fashion to respond to the challenges of ethnic diversity. The non-singular position of ethnic identity means, among other things, that ethnicity should not be recognized as a single organizing principle of society. If possible, a state, in its attempt to manage ethnic diversity, must, to the extent possible, avoid the institutionalization of ethnic identity. It should strive to accommodate ethnicity without creating conditions that make the latter a single rallying point of political mobilization. This helps to avoid the accentuation of ethnic cleavage while at the same time recognizing and accommodating ethnic diversity. Positioning ethnicity as a major basis for the organization of the state would reduce the institutional response to a mere ‘ethnic solution’ with the potential effect of rendering the interaction between ethnic groups a zero-sum game. Of course, extreme circumstances might require extreme measures. In a particular multi-ethnic context, a constitutional system that institutionalizes ethnicity might be the only way of keeping a very deeply divided society together. This, however, does not detract from the main position that the nature and degree of recognition that a multi-ethnic state accords to ethnic identity as a political identity should mirror the political saliency of ethnicity in the state under consideration.
Federalism as institutional design to recognize and accommodate diversity

A multi-ethnic state is confronted with the complex problem of managing ethnic diversity. As the foregoing discussion indicates, the state cannot overcome this challenge by suppressing ethnic groups. That can only lead to further ethnic strife. It can neither be done by attempting to establish an ethnically neutral state nor, put differently, by separating state and ethnicity. A multi-ethnic state has to instead focus on other ways through which it can respond to the challenges of ethnic diversity without trying to transform itself into a nation-state. The principle of recognition, as argued above, provides one such alternative. According to this principle, if the needs and demands of ethnic groups are to be accommodated, the state needs to recognize its multi-ethnic character. It must supplement universal individual rights with institutional measures that reflect the recognition of ethnic diversity. Recognition is not, however, sufficient. The state should design institutional structures that help it to translate its recognition of ethnic diversity into tangible institutional reality and establish an all-inclusive state.

One form of institutional response that this paper will focus on involves the adoption of some sort of federal arrangement as the basis for the organization of multi-ethnic states. In the following section, the discussion examines whether federalism, as an institutional design, has the capacity to accommodate ethnic diversity and thereby supplements the act of recognition. The discussion commences by introducing the meaning and nature of federalism.

Federalism and Federation

The term federalism has usually been used interchangeably with the term federation. There is, however, an important distinction between the two terms. Federalism, as a

---

1This distinction was explicitly stated first in King’s seminal study, Federalism and Federation (1982: 91). The distinction was further elaborated when Elazar discussed the variety of federal arrangements. Elazar (1987: 12) considered federalism as a broad generic term encompassing a variety of forms of which federation was but one specific form. However, the problem with Elazar’s use of the two terms is that though he was well aware of the distinction between normative and descriptive discourse, he tended to use the term federalism as both a normative and descriptive term. (Watts 2000:162). Watts (1994: 8), on the other hand, advises students of federalism to keep three terms distinct: federalism, federal political systems and federation.

2Clear-cut definitions of federalism do not come by easily. Rufu Davis, in his book on the federal principle, endeavoured to find a common definition of federalism, only to abandon his quest as ‘one that interferes with the pragmatic understanding of political systems organized on a federal principle’ (quoted in Elazar 1987: 28).
normative concept, has two essential aspects: autonomy and union. Simply put, the autonomy aspect is a reference to self-government and about making self-rule possible for the constituent units. The union aspect is, on the other hand, a reference to the co-management of the whole society and about the desire of people and polities to come or stay together for common purposes. With the notion of multi-level government that it embodies, federalism therefore seeks to accommodate ‘the existence at one and the same time of powerful motives to be united for certain purposes and of deep-rooted motives for autonomous regional governments for other purpose’ (Watts 1999: 31). As famously put by Elazar (1987: 4–5), federalism is ‘self rule plus shared rule’. For the purpose of this paper, federalism refers to the combination of elements of self-rule for some purposes and ‘shared rule’ for others with the aim of accommodating and promoting distinct identities within a larger political union on some constitutionally entrenched basis.

As a normative concept, federalism represents an organizing principle that prescribes the adoption of institutional arrangements that we generically refer to as federal political systems, a descriptive term that encompasses a range of possible political organizations that reflect the principles of federalism: federations, certain kinds of unions, federacies, associated states, leagues and cross-border functional authorities (Watts 1994: 8; see also O’Leary 2003: 3). Federalism can manifest in different kinds of organizational forms in so far as the organization in question reflects the combination of self-rule and shared rule (see also Watts 2000: 164). In fact, the term federal political systems may come to represent other types of political formations that we have not yet come across. The focus here is on federation.

The term federation refers to ‘a specific species within the genus of federal political systems’, (Watts 1998: 121) which was first invented by the founding fathers of the United States of America at the city of Philadelphia in 1787. As a tangible institutional reality of the federal principle, federation includes structures, institutions and techniques, which serve to translate the federal idea into an institutional reality.

---

3These two elements of federalism are evident in many definitions of federalism (see Wheare 1963: 10; Kriek 1992: 36; Livingstone 1968: 22; Friedrich 1964: 121; Duchacek 1970: 194).

4Two processes of federalism may be identified. In its classic conventional form, federalism involves the coming together of separate communities to create a new entity, which is the case with the USA, Switzerland and Australia. On the other hand, what we have been witnessing in the twentieth century has been the federalization of what has been a unitary government. Examples of these so-called holding-together federations include India, Belgium, Canada and Spain.
The problem is, however, that federations themselves vary extensively. The fact that certain states consider themselves as a federation does not help much in this regard. Closer scrutiny reveals that it is difficult to distinguish polities that claim to be federations from unitary state structures (Elazar 1987: 12). Nor has the reluctance of states to consider themselves as federal prohibited the literature from referring to them as federations. A good example is India. The point is that the work of translating the federal idea into an institutional reality can and has taken many forms.

Federations vary in the extent to which component units are represented within the national institutions of the government institutions, in the powers they distribute to the different levels of government and in the manner that these competencies are distributed (see also Chen 1999 and O’Leary 2003). As aptly identified by Watts (1994: 8–9) and O’Leary (2003: 3), however, there is a minimum set of elements that characterizes any genuine federation. In a true federation, there are at least two governmental units (the federal and regional), each acting directly for their citizens, thus allowing self-rule for the constituent units. Both the federal and regional governmental units enjoy separate powers or competencies allocated to each level via a written constitution – although they may have concurrent or shared powers. Furthermore, in true federations, the constitutional division of power between levels of government can not be amended unilaterally by either level of government. Federations also provide for shared rule in the form of a provision for the representation of regional views within the federal policy-making institutions. This is usually addressed in the form of a bicameral legislature with the second chamber usually representing the constituent units. They also require an umpire (which usually is the courts and referendums) entrusted with the duty of upholding the constitution and ruling on disputes between the governmental tiers. To sum up, the appropriate working definition for this paper regards federation as an institutional arrangement that involves at least two territorially based orders of government with self-rule and shared rule incorporated into the system on some constitutionally entrenched basis.

**Accommodating Ethnic Diversity through Federalism**

---

5The difficulty of distinguishing a federation from other political formations has led one eminent federal theorist to go so far as to conclude that federation in political practice is a myth (see generally Riker 1964)
Federalism is increasingly being presented as a counter-majoritarian political settlement that can be used to manage ethnic diversity. Others, however, contend that federalism intensifies ethnic conflict that it is meant to prevent and thus advise against the adoption of federalism for the multi-ethnic challenge. As the following discussion shows, there is little consensus on the utility of federalism in managing ethnic diversity.

For most ethnic groups and territorially structured communities, federalism offers the most realistic way to maintain state unity in the face of important centres of power and ethnic divides. It is generally argued that federalism serves as a device for accommodating the interests of two or more distinct ethnic communities locked within the boundaries of a single state thus providing a ‘sound strategy for promoting national unity and political legitimacy’ (Alemante 2003: 83.). Watts argued that ‘[i]n many societies where the political demands for integration and for separatism have been at odds with each other, the adoption of a federal system has seemed a solution to the problem of reconciling these conflicting pressures’ (as quoted in Gagnon 1993: 25). Fleiner et al. (2003: 206) argue that the appeal of federalism in handling ethnic diversity lies in the fact that it offers a constitutional mechanism that not only tolerates, but also promotes, diversity. Federalism does not see diversity as a problem that requires a careful diagnosis. It instead embraces diversity as a virtue and an advantage that deserves state protection and promotion. Some have even gone to the extreme and asserted that federalism is the only political system that allows ‘two cultures to live and develop side by side within a single state’.

Many academics and politicians have reservations about the effectiveness of federalism in the management of ethnic diversity and the prevention of conflict. Some even consider it as a poor constitutional approach to forge unity among the medley of ethnic communities that characterize the majority of states in the world. They consider this form of government inherently at odds with the purposes that it is meant to achieve Smiley (1987: 14). Federalism, according to this view, results in the erosion of national unity and the promotion of ethnic hostility or inter-group rivalry. Apart from escalating ethnic tensions, it erodes the limited national identity or sense of common political destiny (Haysom 2003: 224). Federalism, he argues, has the propensity to promote ‘ethnic fundamentalism’. In a state that promotes politics of
difference, ‘those who seek popular support must strive to be the most authentic and “ethnic” of the candidates or parties, and the most resolute in asserting the ethnic interest as against the “others”’ (Haysom 2003: 225). Proponents of this view refer to the historical records of federalism and argue that federalism does not have an encouraging record as a stable form of government. For Carven (1991: 243), this must be admitted as a simple matter of statistics. This was especially true in the twentieth century during which federations in multi-ethnic states broke down, mainly in both the communist and post-communist world of Yugoslavia, Czechoslovakia, the USSR and in the post-colonial world of sub-Saharan Africa, South Asia and the Caribbean. Based on this, many conclude that federal option is not a successful model to imitate especially in a multi-ethnic context.

It must first be admitted that federalism does not prevent conflict. Neither does it eliminate political conflicts. Conflicts are an inherent component of all federal societies (Gagnon 1993; Watts 1994: 15). Conflict is considered as ‘an intrinsic and inevitable aspect of social change and an expression of the heterogeneity of interests, values and beliefs that arise as new formations generated by social change come up against inherited constraints’ (see generally Oliver, Woodhouse and Miall 1999). In fact, the literature on conflict and conflict resolution maintains that conflicts cannot be prevented, but managed. In this context, what federalism does is instead provide an institutional framework within which diversity can be fully managed and solutions acceptable to all can be found (Gagnon 1993: 24). As Gangon (1993: 24) aptly reminds us, ‘the success of federal systems is not to be measured in terms of the elimination of social conflicts but instead in their capacity to regulate and manage such conflicts’.

Furthermore, care must be taken not to suggest that federalism necessarily ensures the harmonious coexistence of all ethnic groups. Due to the dynamic forces that are competing for political resources, it is difficult to guarantee the success of federalism in managing ethnic diversity. What must be emphasized is the capacity of a system based on the principles of federalism to strike a deal that has the potential to satisfy ethnic communities sharing a common territory for the long haul (Burgess 1993: 24). After all, state-building is a risky endeavour, especially in a multi-ethnic state where long-standing cleavages are often involved.
One cannot also simply rely on failed federations and argue that federalism is a poor device to manage ethnic diversity. As much as there have been examples of failed federations, one must also be careful not to overlook federations that have been relatively effective in managing ethnic diversity. The federations of Switzerland and Canada have survived and progressed for well over a century. India has survived for a half century. These federations, of course, are not without problems. Some level of strain characterizes these and other federations in multi-ethnic states. In fact, certain federations are characterized by a perpetual state of crisis. Be that as it may, it is these federations that have managed the challenges of ethnic diversity better than other systems of government. It is this form of governance that has provided an effective means of regulating deep divisions within society and preventing their spill over into inter-communal violence. One must not also lose sight of the reason for the establishment of some form of federal political systems in multi-ethnic polities, that being very fact that the latter are ‘difficult to govern’ (Watts 2000: 166).

Considered in such context of relativity, federalism emerges as a promising alternative. Rather than undermining a state’s stability, federalism can actually lead to a strengthening of the state as it allows it to avoid the threat of a devastating civil war provoked by decades of a policy of repression against ethnic groups or distinct territories. When issues like devolution of power, self-government, shared responsibility, internal self-determination are adequately addressed in a properly designed federal system, they present a promising perspective for many countries that have, for decades, been engaged in a massive civil war and/or characterized by long histories of inter-communal tensions.

However, it is important to note that this paper does not present the mere adoption of federalism as a solution to deal with ethnic diversity. It has rather emphasized the capacity of federalism to respond to the challenges of ethnic diversity. That means even if one agrees that the federal design is relevant in building an all-inclusive state in multi-ethnic societies, it is the particular configuration of the federal design that determines the extent to which it can build a multi-ethnic state that successfully embraces unity and diversity. The realization of the capacity inherent in federalism to respond to the multi-ethnic challenge thus depends on how the underlying
institutional principles of self-rule and shared rule are translated into institutional reality.

The following section, by focusing on how the principles of recognition, self-rule and shared rule can be translated into institutional reality, looks into how a federation can strike a balance between unity and diversity in order to effectively respond to the challenges of ethnic diversity. By making references, whenever relevant, to the experiences of multi-ethnic states that have adopted federalism to deal with ethnic claims, it identifies key institutional issues that constitution-makers have to consider when using federalism as institutional design to accommodate ethnic diversity.

Federalism as self-rule plus shared rule: Institutional Arrangements for Recognizing and Accommodating Ethnic Diversity

The discussion commences by examining how a state’s decision to recognize its multi-ethnic character can be translated into institutional reality. It then proceeds to examine how states, once they recognize the multi-ethnic fact, can supplement this act of recognition using the institutional principles embodied in a federal frame. In this regard, the discussion first focuses on the institutional principle of self-rule and sheds light on state practices and sub-national autonomy. The sections that follow discuss, in a similar fashion, the institutional principle of shared rule and how this principle can and has been given effect through practical and institutional expressions within the federal frame.

Recognition

The institutional principle of recognition basically relates to the state’s self-definition – how the state views itself. It concerns itself with the type of nationalism that the state promotes; whether the state considers itself as a nation-state (or aspiring nation-state) or as a state with multi-ethnic character. There is an emerging consensus that the way that the state defines itself informs, to a large extent, the policy that it follows when dealing with ethnic claims. A state that strongly views itself as a nation-state is
likely to deny or repress claims made by ethnic groups. On the other hand, a state that projects itself as a multi-ethnic state is less likely to ignore the demands of ethnic groups. A state’s self definition thus sets ‘a normative framework for the constitution which can then inform constitutional process in a broader way’ (Tierney 2004: 235). This says that the identity of a state as defined by the state itself embodies not only symbolical value, which the act of recognition seems to largely represent, but also has practical significance as it informs the institutional choices a state has to make.

The act of recognition can find expression in different forms. In some cases, it can be explicitly articulated in the preamble to constitutions. In other cases, it can be embedded in the constitution’s design, especially in language-related sections of the constitution. It can also find expression in the various state symbols including the use of flags, anthems, public holidays and even the name of the state itself.

**Preamble**

The preamble to a constitution often reflects the orientation of a state. It gives an indication as to whether the state aims at a nation-state construction or readily recognizes its multi-ethnic character. The preamble to the Swiss Constitution, for example, expresses the determinations of the cantons ‘to live together with our diversities, with respect for one another and in equity’ (Schmitt 2005:348). As noted by Fleiner, this indicates that the cantons and the Swiss federation did not adopt the homogenization solution of ‘We the people of the …’ (as in the United States Constitution) (Fleiner 2002: 4). On the contrary, they decided to remain ‘the peoples of the cantons’. 6 A slightly different formulation is adopted in the Spanish Constitution. The preamble affirms the will of the ‘Spanish nation to protect all Spaniards and all the peoples of Spain in the exercise of human rights, their cultures and traditions, languages and institutions’. Article 2 further states that ‘[t]he Constitution is founded upon the indissoluble unity of the Spanish nation, the common and indivisible patria of all Spaniards, and recognises and guarantees the right to self government of the nationalities and regions of which it is composed and

---

6 A recently amended version of the preamble to the Swiss Constitution reads: ‘We the Swiss people and cantons.’ This suggests the emergence of ‘the Swiss people’ out of a process that recognized the diversity of ‘the people of the cantons’. This could be interpreted as an indication where the recognition of ethnic diversity can eventually give rise to ‘civic nationalism’ or what some authors refer as ‘patriotism’.
the solidarity among them all’. Tierney argues that the Constitution has fallen short of fully recognizing the national diversity of the Spanish state (Tierney 2004: 242). He argues that different visions of the state are entrenched in the constitution which must qualify any claim that the constitution represents a complete acknowledgement of internal diversity. The recognition of ‘nationalities’ is qualified by the first phrase in Article 2 which emphasizes ‘the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards’. A different interpretation of the Constitution is provided by others who argue that the Spanish approach represents a balanced approach to the issue of ethnic diversity. The Constitution, by emphasizing the indissoluble unity of Spain while at the same time recognizing Spain as ‘an ensemble of diverse peoples, historic nationalities and regions’, is seeking to reconcile unity with diversity (Guibernau 2003). It embodies a balance, albeit difficult, between two historical elements of Spanish history: the federalist and the centralist (Conversi 2001).

The opening paragraph of the preamble of the South African Constitution begins with the homogenization solution of ‘We the people of South Africa’. It presents the Constitution as a social contract entered into by South Africans acting in their capacities as individuals, unconstrained by their ethnic or other group allegiances. Far from viewing South Africa as a state divided into different groups, section 1 of the Constitution describes South Africa as ‘one, sovereign, democratic state’ (emphasis added). A clear emphasis on the promotion and achievement of national unity is also visible both in the preamble and other parts of the Constitution. The preamble, seeking to achieve national solidarity, identifies ‘building a united … South Africa’ as one of the principal objectives of the Constitution. Section 41(1)(a) also enjoins all spheres of government and all organs of state to preserve ‘the national unity and the indivisibility of the Republic’.

Given the political history of South Africa, the preamble’s emphasis on national unity should not come as any surprise. The preamble and the various sections of the Constitution that emphasize national cohesion represent a clear break from the previous dispensation that segmented the population into different groups. This, for example, explains why the Constitution needed to explicitly describe South Africa as ‘one state’, a direct rejection of the bantustanization of the South African state. That
also explains why it eschews the apartheid-style identity ascription and the expression of diversity in terms of explicitly identified groups and corresponding territories. The Swiss model, which, through the preamble to the Constitution (i.e., ‘We the people of the cantons’), recognizes the division of the Swiss population into different territorial groups, was rejected as it would echo the old apartheid dispensation. It is based on this perspective that some considered the emphasis on national unity as the only sensible option in the context of South Africa. Brown (2001: 757–8) commented that ‘a simple retreat from nationalism into multiplicity, division and difference can be immensely disabling in contexts, such as [South Africa], in which the rebuilding of society requires a common commitment and a shared sense of responsibility’.

Many may readily interpret the emphasis on national unity as a reluctance to fully recognize the internal diversity that characterizes the South African society. The preamble does not, however, go without acknowledging the multi-ethnic character of South African society, albeit with no reference to territoriality. It explicitly declares that ‘South Africa belongs to all who live in it, united in their diversity’, the catchphrase being ‘united in their diversity’. This recognizes that South Africa is composed of diverse peoples. Out of this has also developed a commonly used phrase in South African constitutional discourse: ‘Unity in diversity.’ Archbishop Tutu’s (1994) description of South Africa as the ‘rainbow nation’ is also often used to describe the diverse character of the South African society. Although the description of South Africa as the ‘rainbow nation’ embodies an element of togetherness, it does not envisage the realization of national unity at the expense of diversity. In fact, it represents the possibility of building national unity without destroying cultural distinctiveness and diversity (Lenta 2004). This phrase is borrowed by many including Mandela who, in his inauguration speech, said that ‘we shall build … a rainbow nation at peace with itself and the world’ (quoted in Ramsamy 2002: 208).

The preamble to the South African Constitution emphasizes national unity and the indissolubility of the state while at the same time recognizing the diversity of its population. The Constitution therefore mirrors the Spanish Constitution which attempts to maintain the difficult balance between unity and the need to recognize diversity. The South African Constitution, unlike the Spanish Constitution, does not
explicitly refer to the different groups that make up the South African society. Its recognition of the diverse character of the society, however, represents an implicit acknowledgement of the fact that South African society is divided into different groups. The nation-building discourse one often encounters in South Africa also indicates a tacit recognition that South Africa is not a nation, although the emphasis on national unity and nation building might suggest an aspiring nation-state.

From the foregoing, it is clear that even if many may agree that the preamble to the constitution should somehow reflect a state that recognizes its multi-ethnic character, this does not necessarily require that the country be presented as a mere ensemble of diverse ethnic groups. The preamble can be used to reflect recognition of both the diversity of the state and the common political union that it seeks to establish and promote. A good example in this regard is the preamble to the Swiss Constitution which commences with the opening statement ‘we the Swiss people and cantons’, reflecting an equal emphasis both on national unity and its diversity. Of course, there might be particular contexts where the preamble has to emphasize the distinctiveness of the diverse groups that constitute the country or national unity. As long as the emphasis can be explained by the particular political history of each country, it should not be problematic, provided that it is not excessive and does not go without acknowledging ethnic diversity or promoting national unity as the case may be.

Symbolic codes
The image of a state is reflected in the various types of symbolism that the state adopts. Symbolic codes of the state are often used to provide public affirmation of the culture and history of the dominant group, thereby portraying the state in the image of that particular group. As the experience of South Africa and other federations show, there seems to be an increasing understanding that the reorientation of the state towards the direction of recognition should also involve the redesigning of symbolic codes in a manner that takes into account the practices, cultures and history of the different ethnic groups. Symbolic codes of a state, including the name of the state itself, the public holidays it celebrates, the flag(s) used in public buildings, official emblems and the like are used to reflect the multi-ethnic character of the state.

7The Spanish Constitution refers to nationalities and regions.
The use of terminologies and names has, for example, important symbolic values. One such important and often contested symbolic value relates to the name of the state. Some multi-ethnic states are reluctant to refer to themselves as federal despite the fact they reflect many of the characteristics of a federal state. They believe that describing the state as a federal encourages centrifugal tendencies. The Indian Constitution, for example, does not describe the state as federal despite the federal features that characterize the state. In fact, amendments to describe India as a federation were rejected in the Constituent Assembly and official documents rarely use the term ‘federal’ (Majeed 2005: 183). In other circumstances, the description of the state as federal is taken as an important measure that marks the move towards institutional recognition and accommodation of ethnic diversity. The 1994 Constitution of Belgium, which was based on the 1993 reform, describes Belgium, in the first article, as a ‘federal state, composed of communities and Regions’, thus sanctioning its move toward a greater degree of accommodation with symbolic value (Karmis and Gagnon 2001: 164). Several institutions were renamed: central institutions would henceforth be called ‘federal’, while regional and community executive bodies would be referred to as ‘governments’. In short, the formal description of the state may reflect the level of the commitment of the state to the recognition of ethnic diversity.

The official name of South Africa is the Republic of South Africa (section 1 of the Constitution). Despite the fact that the state reflects many of the characteristics of a federal state, the Constitution does not describe the country as a federal country. Nowhere in the text of the Constitution can one find the term federalism. In fact, this was the major bone of contention during the making of the Constitution. The use of the term federalism was seen as promoting a system that would frustrate the majoritarian democracy, introducing apartheid through the backdoor. It was associated with the ‘bantustanization’ of South Africa and the retrenchment of ethnic divisions. Later, an agreement was reached to drop the ‘F’ word and focus on an appropriate system of a constitutional government that provides for ‘good and effective government’ (Murray 2006: 263). The name of the state does not, therefore,

---

8Haysom (2001: 43) remarks that ‘if the South African constitutional scheme were to be analyzed against a formal federal checklist, it could, with justification, be classified as federal’.
reflect the institutional realities of the state, which incorporate important federal features.

The use of flags also reflects on the image that a state aims to promote. Article 4 of the Spanish Constitution describes ‘the flag of Spain’. It, however, also recognizes flags and ensigns of the sub-national units or autonomous communities, as they are referred to in Spain. It stresses that these flags may be used together with the flag of Spain on public buildings and in the official ceremonies of autonomous communities (Tierney 2004: 243). This represents an acknowledgement of the diverse identity that characterizes the Spanish society. In South Africa, the national anthem is a combination of the African hymn *Nkosisikelel’ iAfrika* (God Bless Africa)\(^9\) and the old national anthem, *Die Stem van Suid-Afrika* (the Call of South Africa). The first part is sung in isiXhosa or isiZulu and then in Sesotho. The old anthem is sung in Afrikaans and finally a verse in English. By merging the two old anthems and using four languages, the Constitution recognized both sides of South African history as well as the different linguistic groups that inhabit the country.

Other symbolic codes that reflect on how the state defines itself include coat of arms, the designation by the state of certain dates as public holidays and even the naming of places and towns. Historically, in most countries the choices of these codes reflect the identity and practice of the historically dominant group (Patten 2001: 285). It has often been argued that a state that promotes itself as an accommodating state has to take into account the practices and values of the different ethnic groups in the designation of these symbolic codes as well. Not all public holidays are, for example, equally important to all ethnic groups. Based on their culture and history, some ethnic groups might prefer other particular holidays. Multi-ethnic federations like Canada and Belgium have tried to be more accommodating by allowing the adoption of holidays at the level of the constituent units in addition to statewide public holidays (Keating 2001: 105). South Africa also provides a creative approach towards managing public holidays. For example, in the apartheid South Africa, 16 December represented a commemoration of the Vooortrekkers victory over a Zulu army in 1838.

\(^9\)The African song *Nkosisikelel’ iAfrika* was usually referred to as the unofficial anthem of South Africa during the apartheid era and it was sung at all anti-apartheid rallies and gatherings. It was regarded as a symbol of independence and resistance to apartheid.
in what is usually referred to as the Battle of Blood River.\textsuperscript{10} Also, 16 December is the day on which the ANC began its armed struggle in 1961. In the post-apartheid South Africa, the government maintained 16 December as a public holiday. In view of the nation-building and reconciliation spirit it seeks to promote, however, the government declared 16 December as the Day of Reconciliation. This marks a departure from ‘divisive symbolism’ (Ehlers 2000: 17–8). This unique adoption of a public holiday in a manner that is inclusive and reconciliatory of the warring factions of the past is often regarded as a very good example of ‘accommodative symbolism’.

The symbolic codes adopted by South Africa reinforce the unity in diversity theme adopted by the preamble of the Constitution. Both the recognition of the diversity of the society and the emphasis on national unity are apparent in the symbolic codes. The national anthem and the flag of South Africa represent the recognition of the diverse communities of the country. A common theme of these symbolic codes is also national unity. Each symbolic code that celebrates the diversity of the population equally presents a countervailing concern for national unity. The symbolic codes do not present South Africa as a mere collection of diverse groups (living in their enclaves), but as diverse groups that seek to live in unison. Its decision not to abolish a public holiday that was celebrated by a particular group of the society, but to turn that holiday into a day where the different groups come together to reconcile their differences and thereby promote national unity is an illustration of the state’s choice of inclusive symbolism. The decision to recognize diversity while desisting from encouraging ethnic particularism is also reflected in the nomenclature of the state. The aversion to using the ‘F’ word (i.e., federalism) while incorporating important federal features indicates a decision to recognize ethnic diversity without encouraging centrifugal tendencies.

Yet some question the practicality of recognition through symbolical codes. They wonder how, as a practical matter, one can include the images, stories, languages and festivals of all or even most ethnic groups in the official document and codes of states. ‘How many images can reasonably appear on a flag? How many languages can be squeezed into a letterhead? How many cultural groups’ festivals can be recognised as public holidays?’ (Levey 2001: 4) In South Africa, some suggest that the symbolic

\textsuperscript{10}The Battle of Blood River was fought near the Ncome River, which became red with blood. The river was thereafter named Blood River. For a detailed discussion, see Ehlers 2000.
codes do not adequately accommodate all communities. This point is, for example, raised in reference to the national anthem: ‘Now this might satisfy speakers of those four (or five) languages, but what about the other seven official languages not represented?’ (Neethling 2001: 6).

It is, of course, not practicable to ensure the representation of each and every ethnic community in the symbolic codes of the state. But that should not give the majority group or any particular group, for that matter, the right to prevail at the symbolic level as doing so would alienate other ethnic groups from the state. In this context, the best option might be for the state to avoid symbolic codes that recognize any identity at all. Doing so, where there is an option, avoids the problem of creating insiders and outsiders (Patten 2001). That, however, is not possible since a state cannot remain neutral as it cannot help but adopt state symbols that recognize at least one identity (Kymlicka 1995; Patten 2001). The argument has instead been that a state, to the extent possible, should strive to ensure that its symbolic codes reflect the culture, histories and identities of a broader range of communities. This, of course, requires some degree of innovation. Nevertheless, federalism, with its multiple levels of government, provides ample opportunities to do so. A good example in this regard is the practice in some federations, whereby each constituent unit is able to have holidays that are separate from or additional to the state-wide public holidays.

Language policy

It is true that the success of a federal arrangement in accommodating ethnic diversity cannot be measured solely on the basis of its language rights regime. It is, however, generally agreed that a well-designed language policy goes a long way in contributing either to the effective reconciliation of unity and diversity or to the eventual polarization of the cultural communities (Balmer 1992: 447–8). A language rights regime that operates within the context of a multi-ethnic federation should represent the recognition of the linguistic identities of the constituent units. This entails the framing of the language rights regime as a concrete expression of the federalist
principle and attempting to achieve a delicate balance between unity and diversity (Coulombe 2001: 242). It involves the adoption of a language policy that enables cultural communities to promote their language and cultural identity while at the same time promoting inter-ethnic solidarity (Balmer 1992: 447). In this regard, the recognition of all languages as equal is an imperative element of any state that seeks to recognize ethnic diversity. Beyond that, however, there is no definite answer on determining the official language(s) of the federal as well as sub-national governments.

Multi-ethnic states have adopted different language policies. Some adopted a policy modelled on the individualistic approach – commonly known as the personality principle – while others opted for the territorial model of language planning. According to the personality approach, individuals are entitled to use their mother tongue in every part of the country with few territorial restrictions. It vests individuals with a right in their personal capacity, regardless of where they live. In other words, the linguistic preferences of speakers, wherever they reside, are given a central place in the regulation of language use. An important element of this principle is, however, the criterion ‘where numbers warrant’, which implies that ‘language rights may be granted only when there are sufficient number of particular language speakers to warrant language protection’. The language policy adopted by Canada represents this approach. Under the Official Languages Act, passed in 1969, both French and English were granted official status for all purposes of the federal government (Balmer 1992: 445). As a result of these language rights, which were later included in the 1982 constitutionally entrenched Charter of Rights and Freedoms, Canadian citizens are entitled to federal government services in either official language where there is a significant demand (Coulombe 2001: 248–9).

As the foregoing discussion shows, the personality approach to language-planning follows a non-exclusive approach and allows individuals to use the language of their preference across the country. In short, the personality approach emphasizes an individualistic orientation of the right. In such a vision, linguistic differences are individual attributes, protected from ‘coast to coast’ by a central state. A common criticism directed against the personality approach is that it has the tendency to perpetuate the dominant position that a historically privileged language group enjoys in the state; it is likely to have the effect of strengthening the pressures for
assimilation to the dominant group (Karmis and Gagnon 2001: 154–5). This is illustrated by the fact that the secondary status of French has not changed with the adoption of the policy of official bilingualism. In Quebec, the cultural division of labour was such that ‘capital spoke English and labour spoke French’, thus resulting in English occupying a disproportionate place in Quebec in relation to French (Balmer 1992: 446; Coulombe 2001: 248), which in a way encouraged people from the other group to assimilate to that language group, thus resulting in providing a disproportionate place to the historically dominant group.¹¹ Thus, despite the application of the federal policy of bilingualism, English continued to remain as the majority status language with French relegated to a secondary level. That prompted Quebec to embark upon what is often called ‘the language normalization process’ – the adoption of a series of language policies that aimed to elevate the status of French within the province by reversing the disproportionate place it occupies in its own province.

Other states have responded to the language problem by adopting the territorial model of language planning. Under such systems, the official language would often be that of the majority in the locality. Individuals have a right to services in that language only, regardless of what their mother tongue is. This often has the effect of promoting unilingualism although ‘the connection between the territorial dimension of language policy and unilingualism is not a logical one’. A good example of the territorial model is Belgium where both French-speaking Flanders and Dutch-speaking Walloon endorse unilingualism with Brussels being the only region that has adopted official bilingualism. Individuals moving into the either parts of Belgium must assimilate. French-speaking Belgians moving to a Flanders territory will have to send their children to Flanders schools and vice versa. Similarly, in Switzerland, language guarantees are provided on the bases of the principle of territoriality. A German-speaking Swiss moving to a French-speaking canton has to leave behind any prior claim to language protection (Fleiner 2000). A variant of the territorial model of language policy is adopted in Spain. The 1978 Constitution made Castilian the official language of the central government, statewide, while making languages of the

¹¹The Commissioner of Official Languages, in his 1995 Report, noted this fact. The Report concluded that French still had a disproportionate place in relation to English, even in the federal administration where the progress in the use and status of French is more visible. The Commissioner concluded that French did not achieve ‘a fair status as a language of services and work’. The 1996 Census also revealed that ‘the historical pattern of assimilation among francophone minorities has not yet been overcome’ (Karmis and Gagnon 2001:155).
autonomous communities co-officials in their respective communities. It further imposes a duty on all citizens of Spain to learn Castilian and gives the right to use it.

South Africa regards all languages spoken by the different ethnic groups as official languages of the country. The South African option is obviously viable in a country with few linguistic groups. As it is evident from the South African experience, a country with more than at least 10 ethnic groups cannot, for example, expect to practically realize the usage of all languages in all or most business of the federal government. Such kind of policy, as again proved by the experience of South Africa, is an ‘impractical egalitarianism’ (Sacks 1997: 683). Despite the multilingual reality that characterizes South African society and a constitution that declares official multilingualism, monolingualism is the emerging trend. This shows that the South African approach will result, more often than not, in a situation where a particular language becomes the ‘unofficial official language’ of the state. In that case, a mere recognition of all the languages spoken in the country as official languages will only have a symbolic value. In addition, the policy is bound to create discontent among some ethnic groups unless the ‘unofficially official language’ is a culturally neutral language, as English is for most South Africans and decolonized states. This is also the only situation where a state can adopt a particular language as official language without provoking a hostile reaction from other ethnic groups.

Unless in a bi-ethnic state where the personal model, which allows citizens to use their language in every part of the country, can serve the same purpose, the territorial approach to language, whereby each region adopts its language(s), is the language-planning model that seems to provide effective institutional reality to the act of recognition. Under this model, the sub-national units are allowed to adopt regional language(s). This does not necessarily mean promoting unilingualism. As is the case in South Africa, sub-national states that are inhabited by more than one ethnic group can, to the extent possible, recognize intra-substate linguistic diversities by recognizing more than one language as working languages of the sub-national government. This would not only represent recognition of intra-substate diversities, but also portrays a state that promotes social cohesion and national unity by avoiding

---

12This, of course, is not true for Afrikaners for whom issues relating to language historically constitute a central place in their resistance against the British cultural hegemony. This partly explains why the Afrikaners, unlike the other ethnic groups in South Africa, feel so strongly about the dominance of English in today’s South Africa.
the association of a particular territory with a single language. This option may not, however, be appropriate in a situation where a sub-national state is composed of, for example, not less than five ethnic groups. In such cases, adopting a language that is culturally neutral in the context of the relevant sub-national state is often the only way out. Yet, the system can be used to allow each sub-national state to use its institutional and territorial structure to reflect its linguistic diversity.

Related to this is whether sub-national units should adopt the national official/working language as co-official at the sub-national level. Of course, adopting the national language as co-official promotes social cohesion, especially in countries where there is extensive movement of citizens across internal borders. The co-official language policy is not, however, without a problem. The problem with this policy is that it has the tendency to promote the hegemonic status that a historically privileged language group enjoys. This is supported by the experience of Quebec in Canada where the co-official policy perpetuated the dominant position of English necessitating the province to embark on what is called ‘the language normalization process’. In a country where the designated federal language is not culturally neutral and where the nationally designated language is a historically dominant language, the co-official policy at the regional level is thus likely to perpetuate the dominant position that the latter enjoys in the state. Without state intervention, the historically dominant language will continue to remain as the majority language status relegating the regional language, albeit numerically dominant, to a secondary level.

In a sub-national state where there are large numbers of ethnic migrants, however, the adoption of the co-official policy seems unavoidable if the system is it to accommodate ethnic diversity. The dangers that the co-official policy might pose on the status of the regional language can be mitigated by allowing the sub-national state to adopt what is called ‘the language normalization processes’. As the experience of Quebec in Canada shows, the basic aim of these processes is to restore and maintain the majority status that local languages should assume in their localities. The absence of a co-official policy easily causes strain on inter-ethnic relationships and run the risk of alienating particular ethnic groups.

**Self-Rule**
As indicated earlier, it is not sufficient that a state recognizes its ethnic diversity. The acknowledgement of ethnic diversity must be supplemented by institutional principles that give practical effect to this act of recognition. One such institutional principle that federalism provides is the principle of self-rule, also known as autonomy or self-government.

There seems to be a general agreement with regard to the locus and meaning of the concept of autonomy. The concept of autonomy falls short of granting fully fledged independence, but enables the inhabitants of a territory to control their economic, social and cultural affairs. In this paper, autonomy therefore refers to the constitutionally entrenched powers of constituent governments to exercise control over some or all of their own economic, political, social and cultural affairs. Self-rule finds practical expression through the different territorial and institutional structures of a federation. It finds practical expression in the geographical configuration of a federation, in the division of powers – which powers are allocated to which level of government – and financial autonomy.

**Territorial autonomy**

The level of autonomy that an ethnic group enjoys is largely affected by the territorial structure of the state. There are two basic approaches in so far as the geographical configuration of multi-ethnic federations is concerned. The first approach, which is often described as territorial or administrative federalism, advocates the drawing of boundary lines according to geographical or administrative convenience. The territorial units are fixed with ‘ruler and compasses. The state declines to reflect its ethnic diversity in the territorial division of the federation. The state functions on the premise that the various communities form a common society (Kriek 1992: 20). In some cases, the state seeks to ensure that each constituent unit is composed of a fairly equal number of diverse ethnic groups in a manner that ‘each constituent unit becomes … a demographic microcosm of the state as a whole’ (Anderson and Stansfield, 2005: 365). This, it is assumed, forces the different communities to cooperate with each other in the pursuance of power at the constituent unit level. In other cases, this approach may be underlined by the divide-and-conquer policy that seeks to avoid territorially based ethnic claims.
The major criticism of this type of internal unit demarcation is that it denies territorial autonomy to ethnic groups. By failing to provide geographically concentrated ethnic groups with a homeland, it denies them territorial space which is essential to promote their identity. It also makes cultural groups continuously vulnerable to the dominant position of the majority group or, as the case may be, to the historically dominant group. More often than not, such territorial structures of federations are underlined by strong integrationist and assimilationist dispositions of the state. Hence the reason why these federations are often referred to as mono-national federations.

The other major approach takes ethnicity as the basis for the organization of the state and draws the internal boundary of a state along ethnic lines. This approach is famously referred to as multi-national federalism or the ethnic model of federalism. In this form of territorial division, ‘ethno-regional communities are considered as most appropriately represented through their spatial compartmentalization (states, cantons, provinces, communes), predicated on the belief that ethno-regional or national communities should receive due territorial recognition’ (G. Smith 1995: 6). Each territorial area accommodates a separate ethnic or linguistic group. Boundaries drawn to coincide with ethnic divisions are the basic feature of this approach. This is what commentators mean when they talk of a federal society, a situation where the boundaries of the territorial units of a federation are coterminous with the boundaries of its ethnic, religious or linguistic communities (G. Smith 1995: 6).

This type of territorial structure, it is argued, provides extensive self-rule for an ethnic group by allowing the latter to form a majority in one of the constituent units, thereby, ‘guaranteeing its ability to make decisions in certain areas without being outvoted by the larger society’ (Kymlicka 1995: 27–8). A good example of such geographical configuration is India, where the federal system has been designed in a manner that reflects the linguistic collectivities (Friedrich 1968: 232; Rajagopalan 2000). A territorial structure based on linguistic provinces is, in fact, an important characteristic of the Indian federation. The process of provincial re-demarcation that took place in India has resulted in the reorganization of all non-Hindi-speaking multilingual provinces of the country ‘into states in which a single regional language [is] dominant and [is] generally adopted also as the sole official language of each state’ (Brass 1991: 315). The process of state reorganization along ethnic lines, which started in
1956 with 15 states, has resulted in a federation that currently has 28, by and large, linguistically defined states (Dhavan and Saxena 2006).

Although some may agree with the decision to provide territorial autonomy to geographically concentrated ethnic groups, they may not be comfortable with large communities having their own constituent units. There is a fear that large ethnic groups carved into a single constituent unit pose a threat to the territorial integrity of the state (Hale 2002: 4). ‘When the territories in question are spatial surrogates of large-scale, potentially self-conscious cultural communities, most territorial conflicts become community conflicts as well’ (Murphy 1995: 93). This is often illustrated by the Belgian experience. It is argued that the territorial structure of Belgium, which is mainly structured along three linguistic lines, has facilitated identity fragmentation along ethno-regional lines. As noted by Murphy (1995: 89), it has done so in at least two ways. First, it has led to a restructuring of key social and economic arrangements to reflect the underlying ethno-regional divisions. It entailed the division of a host of social and economic institutions along language lines. This has manifested, first, in the division of the Belgian broadcasting services into Flemish- and French-language wings, which eventually were completely separated. As a result, they are run by distinct entities that have ‘no explicit mandate … to promote integrative values, or even mutual understanding across linguistic lines’ (Murphy 1995: 89). The other manifestation of institutional division and which is more significant is the division of major statewide political parties along linguistic lines. This has, with the emergence of regionalist parties that, in the first place, induced the split of the traditional statewide parties, reinforced regional structures and identities. It has done so by reducing opportunities for intercommunity interaction and communication and by waning cross-cutting cleavages. Second, issues that are hardly related to language and culture have taken on an ethnic dimension. This is evidently so in matters that has economic and financial implications.

From the foregoing, it seems that the same approach of constitutional design that provided ethnic groups with self-management has created a stress on inter-ethnic relations by reifying the political dimension of ethnic identity. The important question is, thus, how a multi-ethnic state can provide territorial autonomy to ethnic groups and still avoid the counterproductive effects mentioned above. The response of Nigeria to
the threat of the federation is instructive in this regard. As indicated earlier, the Nigerian federation was initially structured along the fault lines of the three major ethnic groups. Confronted with the problem of providing a mother state to each large ethnic group, Nigeria has continuously adjusted its internal boundaries. Initially, the original geographical configuration of the federation was abandoned and replaced with twelve state structures in 1967. Since then the number of states has increased continuously. Currently, the number of states in Nigeria stands at 36. The repeated readjustment of the federation from three provinces to the present 36 states involved the use of “the federal structure to fragment, cross-cut and sublimate the identities of each of the major ethnic formations of Hausa-Fulani, Yoruba and Igbo”.

One of the major effects of the continuous adjustment of internal boundaries in Nigeria is that it brought about and buttressed historic intra-ethnic divides within each large ethnic group. As a result, “there have been conflicts between otherwise ethnically homogenous major sub-ethnic states over the sharing of the assets of subdivided regional or state units, over revenue allocation and over the employment in state-level bureaucracies of so-called ‘non-indigenes’- that is Nigerian resident in states other than their own”.

Switzerland, a country composed of four major language groups, is composed of 26 cantons. From a linguistic point of view, each canton is homogenous. However, each language group is not identified with only one canton. Instead, each of the four major language groups is divided into multiple cantons. As major powers reside with the cantons, the geographical configuration of Swiss federalism discourages the development of ethnonationalism across language community lines (McGarry and O’Leary 1993: 31). The Swiss political parties, unlike their Belgian counterparts, have not experienced fragmentation along linguistic lines. Moreover, crosscutting cleavages are expressed in the cantonal system (McGarry and O’Leary 1993: 31).

The abovementioned experience of multi-ethnic federations suggests a particular option that may help to circumvent the dilemma of ethnically defined regional units. The option is to divide numerically large ethnic group into a number of constituent units without, however, denying ethnic groups territorial autonomy. According to this formula, the division would not affect the self-management of the concerned communities. Despite the fact that it is split between different units, the group
achieves autonomy in a homogenous unit. This would also provide an opportunity to take into account, in addition to ethnic identity, other identities, like regionalism, that might be historically and politically relevant in the geographical configuration of a federation.

Two important points underlie the option outlined in the above paragraph. First, the territorial division of multi-ethnic states should not simply rely on the diversity of the country but should also take into account the political and historical relevance of those diversities. The consideration of ethnicity in the geographical configuration of the state should not exclude other historically and politically relevant identities from the equation that determines the territorial structure of the state. The different criteria that can be used to design the territorial structure of a state are not mutually exclusive. Second, the recognition of ethnic diversity and giving practical effect to this act of recognition does not necessarily require demarcating each large ethnic group into one and only one subnational unit. Doing so can radicalise ethnic allegiance, contribute to the ethnicisation of the system, cause continuous tension and puts a strain on inter-ethnic relations.

**Division of powers and competencies**

Division of powers between the federal government and the constituent units is one important area where the state can provide practical expressions of self-rule. As noted by Watts (1996: 103), ‘where particular distribution of powers has failed to reflect accurately the aspirations for unity and regional autonomy in a given society, there have been pressures for a shift in the balance of powers, or, in more extreme cases, even for abandoning the federal system’. Notwithstanding this, there is no clear agreement on the type of matters, as well as on the scope of the powers and functions, that must be entrusted to the federation and the constituent units. An important issue in relation to the distribution of powers and competencies in multi-ethnic federations relate to the area of competencies reserved to the constituent units. Which competencies are relevant to sub-national units in a federation that is constructed to respond to the challenges of ethnic diversity? Often discussed in a multi-ethnic federation is also the issue of whether the system should provide equal powers to all sub-national units or allow those with ethnic claims to enjoy more powers than others. Should the federalism be symmetrical or asymmetrical?
Competencies allocated

As in many other types of federations, the debate about who does what is pertinent in federations that are constructed to accommodate ethnic diversity. An important question is, however, whether the specific purpose of multi-ethnic federations informs the distribution of power and responsibilities between the federal state and the constituent units. The experience of a few multi-ethnic federations might shed light on the matter. In Belgium, the legislative body of each linguistically defined cultural community is empowered with competences over cultural and educational affairs. Thus, the Flemish community has competence over matters like education (including post-secondary education), culture (language, radio and television, public libraries, cultural agencies) and the so-called personalized matters in which the use of language is important (i.e., health care, family policy, social welfare, the integration of immigrants) (Rocher et al. 2001: 18.; Karmis and Gagnon 2001: 163). Furthermore, the Belgian federation provides to constituent units the power to negotiate international treaties in areas of their own competence. In Canada, the Constitution Act of 1982 allows provinces to guard their autonomy in areas that are of particular significance to them. This is in terms of the ‘opt-out procedure’, according to which, provinces can avoid the effect of constitutional amendment proposed by the central government on matters relating to education or other cultural matters (Tierney 2004: 194). This has allowed Quebec and other provinces to develop some measure of autonomy in cultural matters. An important principle underlying the distribution of powers in Switzerland is that the cantons must have the power to make and execute decisions ‘that are relevant to their cultural development based on their cultural heritage’ (Fleiner 2000: 274). Areas like language, culture and education fall under the jurisdictions of cantonal governments.

The experience of multi-ethnic federations suggest that most politically mobilized ethnic groups often demand control over matters that are relevant to them, which are usually identity-related matters. This implies that an institutional response to ethnic claims cannot avoid involving a division of power that entrusts the constituent units with competence on matters that are of particular relevance to their community. This suggests the provision of exclusive powers over identity-related matters to the constituent units. Such an entitlement allows each constituent government to preserve
and promote its identity, as well as freely pursue its own cultural development. As indicated in Chapter 3, distinguishing these identity-related matters is not an easy task.

It is submitted that the degree of autonomy of constituent governments cannot be determined by the long list of heads of competencies, but by the relevance of the competencies in achieving the basic objective of the federation, namely to accommodate ethnic diversity. In Ethiopia, the states’ areas of competencies in the areas of identity-related matters include education, media services, museums, libraries and the like. The provinces in South Africa enjoy autonomy in areas of provincial cultural matters, archives, provincial sport, museum and provincial recreation. The provinces also enjoy a long list of concurrent national and provincial legislative competences which includes identity-related matters like education, indigenous law, language policy and media services. When considered in light of the experiences of other multi-ethnic federations, the apparent identity-related competences are, broadly speaking, language, culture and education. This usually extends to institutions and structures through which these areas find further practical expressions. This, for example, refers to schools, museums, libraries, theatres, higher educations, broadcasting agencies and the like.

However, the increasing interrelation of economic and cultural policy suggests that the demands of ethnic groups in a multi-ethnic federation cannot be met by simply providing them with the power to exercise control over culturally related matters. As Watts (2006: 331) notes:

\[\text{[t]he original simple Canadian solution of 1867, which consisted of centralizing control of economic policy but assigning responsibility for cultural distinctiveness and related social programs to the provinces, has been complicated by two developments. One is the greatly increased cost of social policies requiring federal financial assistance and the other is the realization by regionally concentrated ethnic groups that their distinctiveness depends not just upon cultural policy but also upon being able to shape economic policies regarding their own welfare.}\]

The increasing interrelation of economic and cultural policy suggests that the demands of ethnic groups in a multi-ethnic federation cannot be met by simply
providing them with the power to exercise control over culturally related matters. This suggests that the distribution of power and responsibilities should go beyond providing the constituent units control over identity-related matters and extend to economic policies that affect their welfare.

Finally, providing autonomy to the constituent units should include not only entrusting the constituent units with the legislative powers over identity-related matters, but also powers that cannot be excessively and frequently tampered with by the national government. This suggests that the autonomy of a sub-national unit is also linked to the scope of the legislative powers left to the constituent unit. The legislative autonomy of sub-national units is affected by the extent to which their legislative powers are full and exclusive. As the experience of multi-ethnic federations shows, interferences with the legislative powers of constituent units come in different forms. In some cases, the federal government is empowered by the constitution with specific override or emergency powers to invade or curtail what is otherwise the jurisdiction of constituent units. In other cases, provision is made in some constitutions for the centre to issue directives to constituent governments in specified areas. This sometimes goes to the extent of allowing the central government to suspend constituent governments for prescribed reasons. The scheme of power distribution adopted by the South African Constitution provides the national government with overriding power over almost all legislative areas of provincial government, in areas of both concurrent and exclusive provincial competences. Although this power of the national government has never been used in practice, the experiences of other multi-ethnic federations suggest that these overriding powers can potentially limit the autonomy of the provinces.

Although providing the constituent governments final decision-making powers over matters that are relevant to them reinforces their autonomy, few constitutions provide full and mutually exclusive power to each level of government. The concern in this case is the extent and the conditions under which central governments can circumscribe constituent units in areas that normally come under the jurisdiction of the latter. There are a number of mechanisms that can be used to safeguard the autonomy of the constituent units from the interferences of the national government. First, to the extent that the central government is allowed to interfere in the legislative
authorities of the constituent governments, the imperatives of effective autonomy require that the interference be kept at its minimum. This can be done either by clearly specifying the circumstances under which national governments can legislate in the fields of constituent governments and subjecting the interference to certain conditions that are clearly outlined in the Constitution. This can be further complemented by an impartial institution that judges when such an act from the national government is appropriate. Furthermore, to the extent that the central government interferes with the legislative powers of constituent governments, the legislative scheme can ensure that it does not impede the autonomy of constituent governments to preserve and promote their ethnic identity by providing, among others, an exclusive power over identity-related matters.

*Symmetry and asymmetry*

In any multi-ethnic state, not all constituent units demand some level of self-government. In most cases, a state would be composed of units that, due to historical reasons, demand a certain level of autonomy and others that merely represent regional divisions and do not have any aspiration for self-government (Kymlicka 2005: 277). Countries like Canada and Spain illustrate this very well. In the case of Canada, Quebec represents the Francophone community, which considers itself as a national community entitled to a certain measure of self-government, while the other nine provinces do not harbour nationalist aspirations and are simply dubbed Anglophone Canada or rather infamously, the Rest of Canada, merely representing regional divisions. The same is true in Spain. In that country, Catalonia, the Basque country and Navarre are national communities while the other 14 provinces reflect regional divisions of a single nation, Spanish.

As noted by Kymlicka, ethnic-based units usually demand more powers than region-based units (Kymlicka 2005: 277). They aspire for more self-government. The extent to which nationality-based units jealously guard their powers in the face of attempts of greater centralization by federal governments is a major indication of this fact. Centralization of powers by the Spanish national government would invoke little or no anger from the 14 autonomous communities, as it would among the Catalonians, the Basque country or Galicia and, most importantly, not for the same reason. If any of the 14 Spanish communities objected to the centralization policy proposed by the
central government, it would most probably be on the grounds of efficiency or democracy. Ethnic-based units would, however, resist such centralization policy on the basis that these policies pose a threat to the very survival of their respective communities. They might, of course, also disapprove of such policies based on the same reason that region-based units do. The converse, however, is not usually true.

One of the issues that is often raised within the context of such states is whether the state should adopt symmetrical or asymmetrical federalism. In asymmetrical federalism, all regions are treated equally. No special power, be it based on historical claim or the peculiar culture and needs of a particular community, is provided to a constituent unit within the federation. In asymmetrical federalism, by contrast, one or more of the constituent units are vested with special or greater self-governing powers than others. An example of asymmetrical federalism, albeit in a limited manner, is the Indian federalism, which provides special provision for Kashmir, Nagaland and Meghalaya (Majeed 2005).

Proponents of asymmetrical federalism argue that this model of federalism is important to ‘take account of the fact that within a state there are significant cultural or societal differences among the constituent units’ (Tierney 2004: 188). It enables the constitutional system to accommodate the distinctive political agenda that may well adhere within these constituent units. According to this view, providing equal autonomy to all constituent units would belie the political reality of the constitute units that compose the federation. This asymmetrical system of federalism does not, however, sit easily with politicians, scholars and especially among members of other ethnic groups that do not demand or enjoy such differential treatment. The differential treatment offered to Kashmir is, for example, resented in India (Kashyap 1990). The same is true about how the rest of Canada feels towards Quebec (Kymlicka 1998). Generally, the idea of asymmetrical federalism is strongly resisted by most members of the dominant group.

Many states thus prefer to extend the same level of autonomy to all the constituent units without engaging in any kind of differential treatment. Rather than responding to

---

13The notion of asymmetry in the federal context is regarded to have been introduced by Charles Tarlton (Tierney 2004: 188). Two types of asymmetrical federalism are identified: ‘one dictated by the different size and demography of the units, the other determined by the different privileges and rights enjoyed by each unit – whether they are territorially or ethnically based’ (Conversi 2001: 133). In this section, we are concerned with the latter type of asymmetrical federalism.
a particular nationalist group and limiting the extension of a measure of autonomy to that same group, many states have, in ‘a coffee to all’ fashion, opted to extend the same treatment to all constituent units of the state. In Spain, for example, the system of autonomous communities was originally created in order to accommodate the nationalist demands of the historic territories, namely the Basque country, Catalonia and Galicia. Spain now has 17 autonomous communities and treats its constituent units more or less symmetrically.

The symmetrical versus asymmetrical debate is also often central to multi-ethnic federations. Taking into account the ethnic discord that asymmetrical federalism often entails, some may argue that a state would generally be better off by extending the same treatment to all constituent units. This is especially the case in a situation where there are more than two ethnic groups within the state under consideration. In a bi-ethnic state, with one ethnic group representing the majority of the population, adopting an asymmetrical arrangement, whereby the numerically smaller group would be able to enjoy a greater level of autonomy, might work fairly well. The political entanglement of adopting asymmetrical federalism in a multi-ethnic state, however, points towards the adoption of symmetrical federalism. Adopting such a system might reduce the tension and resentment that ensues as a result of the differential treatment that asymmetrical federalism entails.

Furthermore, as noted by Ghai (2001: 13), the adoption of a symmetrical system of government or the ‘conversion of asymmetry into symmetry would not necessarily be against the interests of the original claimants of autonomy’. The only objection of original claimants of autonomy to such true devolution of power to all the constituent units could only be based on the issue of status. For these groups of constituent units, extending special autonomy to them is a matter of acknowledging their distinctiveness. They regard the decision of the national governments to extend the same treatment to all the other constituent units of the states as a deliberate attempt to dilute their nationalist agenda (Agranoff 1994: 61–89). The issue is thus whether a state should adopt asymmetrical federalism with the view of asserting the special status of a particular group or according the same power to all constituent units and avoiding intra-federal tensions. Whichever option a state follows, however, it is
inevitable that it faces resistance from each community depending on the choice it chooses to make.

**Shared Rule**

Entrusting ethnic groups with self-rule goes a long way in terms of responding to the challenges of ethnic diversity. That, however, addresses only part of the enigma. Representation of the constituent units in the institutions of national government is equally important. In the absence of such representation, ‘central power continues to be exercised in accordance with the majority principle, and the decisions as to what minority should have how much governmental power continues to depend on the majority’ (Fleiner et al. 2003: 206). If ethnic groups are to fully manage their own affairs and ensure that decisions taken at the central level do not unduly interfere with their autonomy, they must be able to participate in and influence central legislative and policy formations. However, safeguarding the autonomy of the constituent units is not the only, and not even the main, reason why federal constitutions should provide for institutions of shared rule. In addition to serving as a vehicle for dealing with shared objectives and functions, such institutions provide the glue to hold the federation together. Power sharing arrangements at the central level generally has the effect of promoting the ‘we feeling’ (Linz, Stephan and Yadav 2004: 9).

Shared rule thus has the dual aspect of providing ethnic groups with the political means to ensure their autonomy while bringing them within the political processes of the state. Experience has shown that excessive concentration on self-rule and the absence of adequate representation and influence in the federal institutions for particular ethnic groups may lead to disintegration (Watts 1996: 103; 2001). The success of shared-rule processes and institutions is thus determined not only by their effectiveness in guaranteeing the autonomy of constituent units, but more importantly in the role they play in promoting national unity and providing joint spaces through which the various communities can communicate (Rocher, Rouillard and Lecours 2001: 196).

Shared rule can be concretized in different institutions of federal government. This often includes the federal legislature and the executive as well as the judiciary. In the following pages, we shall discuss, in a comparative context, how this principle of
shared rule has been given institutional and practical expression in the institutions of national government.

**Second chamber**
The principle of shared rule gets institutional expression through second chambers, usually associated with regional representations. In multi-ethnic federations, the primary role of second chambers is representing regional interests. They are regarded as a forum for introducing the interests of the constituent units into the national political process. The effectiveness of second chambers in representing the interest of the constituent units depends on the appointment system and the specific powers allocated to it by the constitution.

**Composition of second chamber**
The capacity of second chambers to effectively represent regional interests is closely related to the appointment system and particularly to the manner in which members are appointed or elected to the senate. A basic question with regard to the composition of the second chamber pertains to the debate about who should be represented in second chamber. An equally important issue in the composition of second chambers pertains to the appointment system and especially how it relates to the question of who appoints the members of the second chamber.

The effect of the appointment system to second chambers becomes more apparent when one looks at federations that provide for different compositions of second chambers. In Canada, for example, the Senate was originally intended to represent the interests of the provinces. As a result of the process by which members are appointed, however, the Senate has conspicuously failed to achieve this role (Simeon 1998: 54). Members of the Senate are nominated by the prime minister, providing the federal government exclusive power over the appointment of senators. With senators that, once appointed, are entitled to hold offices until the age of 75, the federal government is in a position to pack the chamber with its sympathisers. The regional composition of the Senate is thus nominal. The process of nomination by the federal government

---

14 As a matter of convenience, this section and the section hereafter use the phrase ‘regional representation’ to refer to the representation of constituent units.
precludes the Senate from being an ‘effective voice of regional or provincial interests’ (Hogg 1997: 251; see also Keating 2001; Tierney 2004).

In some cases, India being a good example, members of the second chamber are composed of representatives chosen by state legislatures or by special procedures established by them. There are also systems where members of second chambers, or at least half of the members, are directly elected (Sharman 1987: 84). In Switzerland, members of the second chamber are directly elected. In South Africa, the representation system which entrusts the provinces with the power to appoint representatives to the second chamber seems to put members in a better position to voice provincial preferences and protect provincial interests. Such representation systems generally provide an opportunity for voicing regional preferences and protecting regional interests. There is, of course, no guarantee that members of such senates will usually vote along constituent government lines. The fact that the power to appoint representatives to second chambers resides with the constituent units themselves does, nevertheless, put members in a better position to defend and advance regional interests. More directly, however, in some cases, second chambers are composed of the delegates of the executives of the state government who vote as a bloc on the instruction of each state cabinet. A good example in this regard is the Bundesrat of Germany whose members are delegates of the Land governments that are instructed by the latter.

The foregoing suggests that any examination of the effectiveness of second chambers in representing regional interests should go beyond what is represented and look into the system of appointment. The appointment system goes to the heart of determining whether the second chamber exercises power for, or against, the constituent units. In cases where the decision to appoint members is left to the national government, the representation of the constituent units have been nominal. In a federation like Canada, where members of the second chamber are appointed by the national executive, on the other hand, the capacity of the latter to protect sub-national interests is greatly limited. This suggests that a second chamber that is largely composed of central government representatives will typically vote along political and national interest lines. Voting along political-party lines is usually common. The appointment process by itself, of course, does not guarantee effective representation of regional interests in the second chambers. It is a common practice in some federations that members of the senate more often vote along political-party and interest-group lines than along constituent government lines. See Kincaid 2005: 430.
appointees cannot be expected to exercise its powers for the constituent units. In this regard, the South African option where the appointment of representatives is left to the constituent units is worth considering. This can take either the form of direct election by the constituent units or, as is the case of South Africa, a representation by the deliberative body of the constituent units.

An important issue related to the composition of second chambers is whether the constituent units should be represented equally; whether the sub-national units should be represented in equal numbers irrespective of their unequal population size. In the United States and Australia, the constituent units are represented equally. Other federations have rejected the equality principle and adopted a weighted representation that nevertheless favours smaller sub-national units. The degree of weighting varies from one federation to another (Watts 2005: 12). At one end is Switzerland where the second chamber – the Council of the States, as it is known in Switzerland – is composed of two members from each full canton and one member each from the so-called half-cantons. At the other extreme is India where the weighting is determined by a formula that is largely based on the respective populations of states. The largest state has 31 members while the smallest states have one member each. Belgium and Canada similarly follow a weighted representation that fall between these two extremes.

In most federations where there is great variation among ethnic groups and their corresponding constituent units in terms of population size, adopting a simple majoritarian system in which representation is largely based on population size ends up creating a scenario whereby small constituent units are easily outvoted by larger constituent units. This limits the role of the second chamber to a forum where the constituent units merely voice their preferences without having a meaningful power to affect the decision of the second chamber. Such a representation system also defeats the very purpose of establishing a second chamber in a state that seeks to accommodate ethnic diversity. This suggests that some level of overrepresentation of constituent units is essential if a second chamber in a multi-ethnic state is to protect the interest of ethnic groups, especially small ethnic groups.

*Powers of second chamber*
In addition to the appointment system, the effectiveness of second chamber in representing sub-national interests depends on the effectiveness of the institution in protecting sub-national interests and promoting national unity. This relates to the specific powers allocated to this institution by the constitution. This especially relates to their effectiveness in protecting the jurisdictions of the constituent units. The Belgian second chamber seems to be in a better position to protect regional interests. A special majority provision regarding laws pertaining to cultural and regional matters is specified in the Constitution and requires that such laws get a two-thirds overall majority of the Senate before they become a law (Peeters 1994: 204–5). Moreover, if three-quarters of the members of one of the Senate’s linguistic groups consider that a decision in a legislative matter, not covered by the special majority provision, could be harmful to their community, an additional mechanism – the so-called Alarm Bell Procedure – providing parliamentary exceptional procedure comes into effect. In addition, the Senate in Belgium enjoys powers over constitutional matters, international relations, the organization of the courts and relations among the federal government and the regions and communities. This shows that the Senate in Belgium, by and large, is in a position to effectively represent the interests of the federated units. Similarly, the Senate in Canada has almost co-equal powers with the lower house (Knopff and Sayers 2005: 121). The lower house may not override the Senate’s vote except in the case of constitutional amendment, where it exercises only a suspensive veto. The capacity of the Senate to vigorously protect regional interests is, however, greatly constrained by the fact that the regional composition of the Senate is nominal.

In this regard, the organization of the South African second chamber, the National Council of Provinces (NCOP) represents a good example. In the NCOP, the provinces play an important role in approving or rejecting bills that affect provinces, while they also play a delaying function in the passing of bills that do not necessarily affect the provinces. These powers of the NCOP put the latter in better position to ensure the effective and meaningful participation of the provinces in the national law-making process. The contrasting position of the second chambers in the federations suggest that second chambers in multi-ethnic federations should be allowed to deal with matters directly affecting constituent units, especially in areas that are relevant to them.
In sum, second chambers form a critical component of an institutional response to the challenges of ethnic diversity as they represent the major institutional translation of the principle of shared rule. A major point that emerges from the foregoing is that the effectiveness of the second chamber in protecting the interests of the constituent units is the function of its composition and the power entrusted to it by the constitution.

**Lower house and the electoral system**

Traditionally, representation of the constituent units in a federation is discussed in relation to second chambers. There is, however, an emerging consensus that the representative character of the central government can be enhanced by ensuring representation in the lower house, too. The argument has been that by establishing a lower house that is generally seen as representative of the entire population and not simply the majority, a state can do a better job of accommodating ethnic diversity. The representativeness of the lower house depends on the electoral system.

The main choice of electoral system is between plurality-majority systems and proportional representation systems. In the former, which is also usually referred to as the first-past-the-post system, the winner is the candidate with the most votes in a constituency. The proportional representation system, on the other hand, allocates seats to all candidates based on the votes they received. Accordingly, a party that wins 40 per cent of the votes gets approximately 40 per cent of the seats. A small party that fails to secure a significant vote would not go empty handed. Unlike the majority system that exaggerates the share of seats for the leading party, proportional representation equates a party’s share of the national votes with its share of the parliamentary seats (Reynolds 1999: 90).

It is generally submitted that supplementing federalism with a proportional electoral system enhances the representativeness of the lower house and fosters inclusivity. A general point made by many is that proportional electoral systems are most likely to facilitate accommodation between diverse ethnic groups. Multi-ethnic societies which are often threatened by centrifugal politics need institutions like proportional representation (PR) electoral system that pave the way for moderation and compromise (Reynolds 1999: 93). It can also serve as a confidence-building mechanism as it enables numerically weak ethnic groups to gain parliamentary
representation. The PR system, it is argued, facilitates a more representative legislature. The practice in multi-ethnic federations seems to endorse the views of the proponents of the proportional representation system. In Canada, which has adopted the majority electoral system, there is an inherent overrepresentation of pluralities with minority parties tending to be underrepresented. Switzerland, on the other hand, employs a proportional representation system, which has accurately reflected the distribution of votes and hence the views of the constituent units. Belgium has also complemented federalism with a proportional representation voting system. Proportional representation in both federations ‘has tended to encourage multi-party systems, making party coalitions more common in their federal government’ (Watts 2005: 18; see also Hale 2002: 5).

This observation is also supported by the South African experience. Owing to the adoption of the PR system, small parties representing numerically weak ethnic communities have been able to secure seats in the National Assembly irrespective of the fact that they have only an insignificant percentage of the national vote. Parties that claim to represent ethnic groups that are not geographically concentrated have also benefited from the proportional electoral system. If the first-past-the-post system, which puts geographic concentration of support as a precondition for electoral victory, is adopted, the likelihood of parties that represent the interest of a geographically scattered ethnic community like the Afrikaners securing a seat in the lower house would have reduced significantly. This suggests that the proportional system generally ensures that both numerically small and geographically dispersed ethnic communities are represented in this important national institution.

The effect of an electoral system on the representation of ethnic groups should, however, not be evaluated in abstract. In countries, where the ethnic groups are generally geographically concentrated, the plurality system has not led to disproportionate results along ethnic lines. This suggests that the effect of an electoral system is greatly affected by the settlement pattern of ethnic communities. A plurality system is more likely to deny representation to ethnic groups that are not territorially concentrated. In federations where the internal territorial structures are undertaken in a manner whereby that each constituent unit represents a geographically concentrated ethnic group, the adoption of the majority system is less likely to have a marginalizing
effect on the representation of the different ethnic groups in the lower house. This is especially true in federations where there is, by and large, no large ethnic group that is widely scattered throughout the country without having a ‘homeland’ where it is geographically concentrated.

Of course, as the case of some federations illustrates, there will usually be ethnic groups that are either too small in number to have an electoral constituency of their own or are too geographically dispersed. Such groups are more likely to be marginalized in terms of representation in a system that applies the plurality electoral system. This problem is addressed by providing a quota system that provides for special representation of minority ethnic groups. The effectiveness of this system depends, however, on how those ethnic groups that deserve special representation are determined. One suggestion is to ensure that the scheme includes ethnic groups that are numerically too weak to gain parliamentary representation. The focus should not be on the size of the ethnic groups only, but also on their capacity to have their own constituency which depends on the settlement pattern of the concerned ethnic groups. That way the system can ensure the representation of ethnic groups that cannot otherwise secure representation because of their settlement patterns although their population size is far beyond the minimum threshold required to form a constituency.

An important benefit that accrues from adopting the PR system as opposed to the plurality system is that the latter gives little room for developing inter-ethnic solidarity. As the experience of some federations shows, political parties operating within the plurality electoral system are likely to concentrate on electoral constituencies where the likelihood of them winning an election is strong. The plurality system provides political parties with little incentive to cast their net wide. On the other hand, the PR system, as the experience of South Africa shows, encourages political parties to create regionally and ethnically diverse lists, with the view to maximizing their overall national votes. In South Africa, the leadership structure of the ANC usually reviews the ANC national list to ensure that the diverse groups that inhabit South Africa are represented. Such practice obviously contributes to the promotion of inter-ethnic solidarity.

It is further argued that in a proportional electoral system both large and small parties, with the view of maximizing their overall national votes, create regionally and
ethnically diverse lists (Reynolds 1999: 97). The presence of political parties with statewide objectives in a multi-ethnic state is important as it creates the opportunities for a dialogue between communities and increases the level of mutual understanding (Rocher, Rouillard and Lecours 2001: 180; see also Covell 1987: 57-82). It assists in the promotion of one of the main objectives of shared rule, namely inter-ethnic solidarity. A corollary effect of adopting the proportional representation system is that the focus on enhancing the representative character of the lower house through this particular electoral system enables political actors to develop a federation-wide consensus. By providing parties with the opportunity to communicate and cooperate with each other, it promotes mutual understanding and the co-management of society. It also encourages the settlement of autonomy-related questions through negotiation and compromise which are the hallmarks of federalism. This is very important in the context of multi-ethnic states. As noted by Watts (2001: 45), ‘in the process of shared rule, it is not just the institutional structures but the ways in which political parties operate and the interrelationships between federal and state (or provincial) branches of political parties that affect the extent to which a federation-wide consensus may be developed’. 

Another associated consequence of the proportional electoral system is that it allows smaller nationalist parties the opportunity to hold the balance of power (Rocher, Rouillard and Lecours 2001: 187). This is in a situation where a statewide party falls short of an overall majority seats. In such scenarios, regional parties can enter into a bargain with the statewide party whereby they can lend their support and in return gain increased autonomy and more concessions from the state. This is illustrated by the Spanish experience where regionally based nationalist parties advance their claims for enhanced autonomy and recognition using the national political process (Rocher, Rouillard and Lecours 2001: 187). This is important for multi-ethnic federations for the same reasons mentioned above. The involvement of nationalist parties in the national political terrain, though likely to create pressure on the system, could also be a blessing in disguise as it allows the nationalist parties to communicate and cooperate with the statewide parties and with nationalist parties of other regions. This interaction between the party systems contributes a lot to the effective management of the tensions between the recognition and autonomy of communities, on the one hand, and the integrity of the state, on the other.
The review of the experience of multi-ethnic federations suggests that the PR system is a more pertinent system of election in a multi-ethnic state that seeks to accommodate ethnic diversity. This choice of electoral system is not, however, motivated by the capacity of the PR system to ensure a broader representation of the different ethnic groups. This can be achieved by the plurality system as well provided that the different ethnic groups are generally territorially concentrated. The reason for the choice of the PR system lies in its other role, namely its capacity to contribute to inter-ethnic solidarity and social cohesion by encouraging parties to develop a state-wide objective. Yet it should be noted that the two electoral systems are not mutually exclusive. It is possible to apply both electoral systems within a single federation.

To sum up, in considering an electoral system for multi-ethnic societies, emphasis is often put on inclusivity and an electoral system that facilitates representative legislature. Notwithstanding the centrality of the design of the electoral system, it is important to note that there are a variety of factors that affect the impact of an electoral system on the accommodation of ethnic diversity (Reilly and Reynolds 1999). The nature of the conflict and the society in question, especially the settlement pattern of ethnic groups, are important variables that determine the impact of an electoral system as an institution that responds to the challenges of ethnic diversity. Multi-ethnic states should thus take all these factors into account when determining their choice of an electoral system.

**Representation in the national executive**

Shared rule can also have practical expression through the representation of the constituent units in the central executive, which is what political scientists call consociational or power-sharing practices in the executive. Most multi-ethnic federations, including the oldest federations, have incorporated consociational tradition in their constitutional or political practices. Issues of representation are often raised in relation to the composition of the cabinet, but they are also equally applicable to ambassadorial and other important appointments to the institutions of the national executive. In federations where there are ethnically plural constituent units, the requirements of representation are also pertinent in the composition of the sub-national executive.
In Canada, conventionally, it has always been considered important that the Cabinet reflect some degree of balance with ‘credible team of ministers’ coming from Quebec (Peeters 1994: 204). Switzerland’s executive is, on the other hand, constitutionally structured as a seven-member Federal Council. The Constitution mandates the Federal Council to represent the country’s geographic and linguistic diversity (Schmitt 2005: 360–1). In Belgium, the Cabinet is constitutionally mandated to be composed of equal numbers of Flemish and Francophone ministers (Keating 2001: 121). Representation of regional interests in the central executive is less significant in Spain. However, there has usually been prominent Catalans and Basques in the central Cabinet (Keating 2001: 121). It is also argued that ‘India has been at its most stable when its executive has been descriptively inclusive of the state’s diverse religions and linguistic communities’ (Adeney 2002: 8–33).

A more extensive and constitutionally mandated regional representation in the central executive comes from Nigeria, which has adopted what it calls ‘the federal character’ (Suberu 2006). This constitutional principle requires the composition and conduct of public institutions to reflect the country’s ethnic, religious, regional and related diversities. The president must win regionally dispersed support, not just a simple national majority. This means that the president can be elected only on obtaining a plurality of voters plus at least a quarter of the votes in two-thirds of the states. The principle also requires the appointment of at least one minister from each state and stresses that the minister should be an ‘indigene’ of such state (Suberu 2006). The federal character must also be reflected in the other federal executive bodies. Thus, an ‘indigene’ of each state of the federation must also be represented in several other important federal bodies, including the National Economic Council, the Revenue Allocation Commission and the Federal Character Commission.

Broadly speaking, a multi-ethnic state can go about ensuring representation in the national executive in two ways. The first option is to make the representation of the different ethnic groups in the national executive a constitutional requirement. This, as indicated earlier, is also the case in Switzerland, Nigeria and Belgium. The other option is make the representation of ethnic groups at the centre an important part of the political practice of a state. Informal representation of ethnic groups in the most important national institutions has been the case, to a certain extent, in South
Africa, but more importantly in Canada. Although it might be preferable to make the requirement of representation part of the political practice and not a constitutional mandate lest it introduces the institutionalization of ethnicity, the choice depends on the particular context of each state. This is something that can be determined on case-by-case basis taking into account the saliency of ethnicity in the state under consideration.

An important lesson that emerges from the experiences of multi-ethnic federations is that the mere fact that national government is ethnically diverse does not necessarily amount to an actual representation of the different ethnic communities. The experiences of these federations have revealed that the formal representation system can sometimes be deceiving as it does not necessarily guarantee true representation. Appointing individuals that do not enjoy support among the community they are supposed to represent creates ‘a dangerous illusion of representation’ instead of reflecting an actual representation of the different ethnic groups. This suggests that the representation of ethnic groups, whether as a matter of constitutional imperative or political accommodation, cannot be successful by simply diversifying the faces of national institutions.

**Conclusion**

If multi-ethnic states are to avoid instability and, in a worst case scenario, civil war, they have to address the challenges of ethnicity. This is largely owing to the fact that the root cause for the problem that plagues these communities lies, to a certain extent, in the genesis of multi-ethnic states, which is often predicated on suppressing ethnic diversity. This paper has argued that it is only when a state readily acknowledges the ethnic plurality that characterizes the society it seeks to regulate and provide practical expression thereto that it can manage the tension among ethnic groups and assist in the achievement of social cohesion and promotion of national unity.

The paper has argued that federalism, an institutional design that is underlined by the principles of self-rule and shared rule, is an appropriate institutional response (though not the only one) that can help states to address the multi-ethnic challenge in cases where ethnic groups are generally territorially concentrated. The success of federalism depends, among other things, on the particular nature of the federal design and the capacity of that design to successfully respond to the ethnic-related exigencies of the
society in question. An important consequence of this position is that federalism cannot be regarded as the one-size-fits-all institutional prescription. It is instead presented in a form of a purpose continuum the institutional purpose and expression of which vary from prevention to remediation. A preventive-oriented federal response seeks to prevent the elevation of ethnic differences to a primary political divide while a remedial federal response struggles to contain the heavily deteriorating inter-ethnic relationships. The choice of the appropriate institutional response depends on the successful diagnosis of the political conflict of each society and specifically on the dose of ethnic politics that pervades the body politic.

The paper has also argued that federalism is not a panacea. An effective institutional response to the challenges of ethnic diversity requires a state to go beyond the traditional elements of federalism and incorporate other non-federal institutional arrangements that can help to complete the accommodation of ethnic diversity. In this regard, the paper has underlined the importance of complementing federalism with a representative lower house and a national executive that reflect the diverse faces of the country. Without undermining the relevance of universal individual right for persons belonging to dispersed ethnic groups, the paper has also emphasized the importance of extending the principles of self-rule and shared rule to the sub-national level with the view to accommodate intra-substate minorities.

An important lesson that emerges from this paper is also that states should be cautious not to confuse recognition of ethnic diversity with encouraging ethnicity. As argued above, politicized ethnicity is a contingent process. The likelihood of ethnic differences translating into political divide depends on the historical and political circumstances of the society in question. This means, among other things, that the political relevance of ethnicity is not always guaranteed. This, in turn, implies that a state, to the extent possible, should not institutionalize ethnicity. The institutionalization of ethnicity not only encourages the political mobilization of ethnicity, but also elevates ethnic identity to a primary political identity. Such institutional response does not merely put a country in the league of states that recognize ethnic diversity; it instead places it in the league of states that encourage ethnicity to permeate their political, social and economic systems and risk, in all likelihood, the imminent danger of disintegration.
Selected Bibliography


• Feesha, Y. T (2009) Ethnic identity and institutional design: Choosing electoral system for divided societies *CILSA* 49(4) (323-338).


