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DECENTRALISATION AS A TOOL FOR GROUPS' ACCOMMODATION - SOME REFLECTIONS

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1. Introduction

In the Western legal tradition, the link between accommodation of ethnic groups and political decentralization[1] is often taken for granted. Such a link has inspired almost all federal/regional/devolved constitutional designs in the last decades, from India to South Africa, from Nigeria to Nepal, from Belgium to Spain to the United Kingdom. In the literature, some have even advocated that ethnic homogeneity at sub-state level is the precondition for peaceful coexistence of different ethno-national groups within a broader state framework.

To the contrary, and even more uncritically, this link is considered anathema in the post-communist world. Despite the very different cultural, historical and political backgrounds among these countries, they seem to share the fear of any form of political decentralization, as this is irrationally seen as a threat to territorial integrity of the state.

This leads to a dangerous paradox. In some parts of the world, and sometimes quite superficially, territorial autonomy is considered, if not a panacea, at least the natural and most immediate response to the accommodation of minority groups within a state. In other, not less significant contexts, any link between groups' accommodation and sub-state autonomy is firmly rejected based on an irrational but yet deeply rooted association between autonomy and secession. In between these two approaches, international organizations usually shy away from the debate and this often leads to their self-marginalization in this key aspect of democracy.

This paper tries to briefly respond to two questions. The first regards the (real or perceived) link between a multi-ethnic state and decentralization, i.e. to what extent can decentralization be used to accommodate ethnic diversity. The second concerns the role that the international community can and should play in this regard.

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[1] In this paper, political decentralization and [territorial] autonomy will be used as overarching concepts encompassing all different forms of political decentralised decision-making at sub-state level, being it federal, regional, devolved, autonómico, etc. The local level of government is thus not included in the working definition. While very different in political and historical terms, both federalism and political decentralization/autonomy imply that legally the sub-national entities are subordinated to the federal/central constitution. Thus, aware of the differences between these concepts, they can be considered, from a legal point of view, to be manifestations of the same phenomenon.

2. To what extent can decentralization be used to accommodate ethnic claims?

a) The "egg of Columbus" approach

There is generally an uncritical perception of the fact that decentralization can be a tool for accommodation of differences. This is of course supported by the presence of some very successful examples of this[2].

The problem, however, is that this link is too often simplistically made and decentralization/territorial autonomy is seen – by both its advocates and opponents – as a replica of the nation-state paradigm. Following this approach, decentralization in an ethnically sensitive area equals control of the territory by a group (or two groups in some cases that are as exceptional as the multiethnic nation-states). The ultimate rationale of territorial solutions to ethnic claims, in this dominant view, is to transform minority issues into deliberative processes based on the majority rule. By doing so, minority issues are addressed through the classical logic of majority-based democracy, as it turns (national) minorities into (sub-national, territorial) majorities, or at least into much more consistent minorities. Which is what can be called the "egg of Columbus approach".

Overall, such an approach proved to work very well. Its immense strength lays not only in its being a viable alternative to external self-determination, but also, and even more so, in its ability to not derogate from the cornerstone of Western constitutionalism (majority rule) even when addressing minority issues. By doing so, minority issues do not jeopardize the democratic (majority-based) foundations of the legal systems and can be pragmatically accommodated (although with some difficulties and compromises) within the classical deliberative procedures. Like a wizard, decentralization transforms minorities into majorities and incorporates them into a majority-based decision-making-process. It could provocatively be said that, when conceived as a tool for minority groups accommodation, decentralization changes (or at least aims to change) the nature of minority groups since it turns them into (potential) majorities.

Such an approach – the efficient it can be – might reverse majority-minority relations, but it cannot completely resolve them, for the simple reason that it is still based on a principle that is ultimately at odds with minority rights: majority rule. In fact, decentralization is not in the first place a minority-rights instrument.

Moreover, the small-scale nation-state logic has three additional drawbacks. First, beside some exceptional and comparatively less relevant case of ethnic still rather homogeneous, small and/or less inhabited territories, territories are (and will less and less be) all but homogeneous in ethnic terms. If ethnic homogeneity was a fiction at

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[2] Although it is not at all a recipe for success as there are several comparative examples of both successful and failed territorial power-sharing arrangements.

the time of the establishment of the nation states, nowadays it is outright wrong to presuppose a coincidence between a territory and one group.

Second, whatever the degree of autonomy enjoyed by the territorial entity, this can never amount to sovereignty. Some, usually very relevant powers are either retained by the central level or at least shared between the levels of government. Thus the already blurred fiction of a sovereign control by a people over a territory in the nation-state narrative cannot be transposed to decentralization/autonomy, because this would always be a very partial sovereignty. Decentralization is in the first place about sharing powers rather than about dividing them.

Third, in the context of fragile democracies and weak (thus potentially overly assertive) identities, like in the case of many post-communist societies, decentralization linked to ethnic claims (which is what happens "by default" due to this wrong point of departure) immediately creates an automatic association with the threat to the territorial integrity of the state. This link is taken for granted and represents, in some way, a self-realising prophecy[3].

b) Direct and indirect link between decentralization and ethnicity

Therefore, it seems necessary to abandon the temptation to find easy solutions to complex issues. In particular, the (mis-)use of territorial autonomy as an instrument to make majorities out of minorities (the egg-of-Columbus-approach) seems to be no longer a satisfactory response to today's demands of sophisticated law of complexity, because it leaves several other problems unresolved, such as e.g. the claims of minoritized titular groups within the concerned territory.

In other words, decentralization is one of the most effective instrument for accommodating groups claims, but, alone, it cannot be expected to resolve them because it can give just partial responses. If both majorities and minorities see decentralization as a replica of the nation-state paradigm on a smaller scale, its potential is eventually castrated.

Unfortunately, both in international practice and in literature, much of the autonomy debate is still trapped within the nation-State discourse, trying to mitigate in small-scaled territorial dimension the deficits of minority participation. It is read thus in terms of who accommodates whom, and not sufficiently in terms of good governance. But political decentralization/autonomy can be an instrument of minority participation in different ways.

In its direct dimension, it makes it possible for territorially compact minorities to decide on their own matters by simply controlling (or having a greater influence on)

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[3] The fear of autonomy on the side of the states and its frequent overestimation on the side of some minority groups are inversely proportional to the stability of democracies: a strong democracy is not afraid of autonomy, and a democratic minority usually does not see it as the first step towards independence. But the more autonomy is presented as an instrument for ethnic self-governance, the more its threatening face is visible.

the decentralized institutions. But such a view of autonomy is too narrow and, above all, it is the main reason why fragile and identity-assertive democracies reject it, and why vocal or even secessionist minorities invoke it.

Political decentralization has, however, also an indirect and perhaps even more important meaning for minorities. Decentralization is in fact first and foremost an instrument of good governance, targeting a territory as a whole and not only one group within it. It was actually created for this purpose and this function becomes even more relevant the more complex the society and thus the more complex the administration.

In other words, decentralization is an instrument for complexity management. And as all countries are increasingly diverse as to the population and increasingly complex as to the functions to be performed, autonomy usually helps address complexity, provoked including but not solely by minorities or ethno-cultural differences. If a territory, irrespective of its ethnic composition, can autonomously decide on a number of issues (alone or in cooperation with other territories, belonging to the same or to a different country, sharing the same problems), it is likely that the decisions are qualitatively better, the territory develops more harmoniously and benefits extend to all communities settled there.

Furthermore, decentralization is a tool for democracy, as it is about shared and thus de-concentrated powers. Therefore, it could prove particularly helpful in contexts in democratic transition and this is likely to be one of the reasons why it is not always liked by elites in those countries. While there is no internationally recognized right to autonomy (yet?), there is a right to democratic governance, which decentralization might contribute to establish.

Minority issues are embedded in a larger context and cannot be disconnected from them. Thus, the more efficient the overall governance, the less likely it is that minority rights are neglected and even less that minority issues can develop into conflicts. In fact, the bigger the problems in terms of territorial, democratic and economic development, the more likely the ethnic conflicts.

In turn, efficiency of the State structure – to which decentralization can effectively contribute if properly used and understood – is as such a powerful tool for providing the appropriate conditions for minority rights to be respected and for accommodating ethnic differences. Thus, a territorial approach to autonomy is more likely to benefit (all) ethnic groups than an ethnic approach can benefit a territory as a whole.

3. Practical consequences for the international community

In all international organisations' work, political decentralization has usually been considered in a status-quo perspective: where existing, it has been (usually moderately) endorsed; where not granted, it has been (not less moderately) discouraged. In most cases, it has been simply ignored or taken as a fact. For sure,

little efforts have been put by the international community on territorial autonomy issues especially if compared to other elements of minority participation (electoral legislation, reserved seats, etc.).

Decentralization as a small substitute for statehood is illusory. But as long as it is seen in this perspective both by the States and by the minority groups, it will be inevitably regarded as related to issues of territorial integrity. Therefore, it will carry a conflict potential which induces the international organisations to neglect the very instrument and to focus on other aspects.

The international organizations should look at autonomy as an instrument for integration of a territory as a whole rather than of segregation for one minority group. Such a message is not alien to the international organisations and it is rather at the heart of the message they have consistently sent over the last decades: peaceful coexistence respecting human rights for all. A more courageous and nuanced approach by the international organizations towards decentralization is required. Such an approach does not require a major change in practice, but yet a more open attitude towards decentralization by the international actors, stressing, if and where appropriate, how territorial autonomy can help integration instead of fostering segregation.

At the same time, scholars can also contribute to developing and promoting a more critical, sophisticated and nuanced reading of the link between autonomy and minority issues. The more the indirect influence of the former on the latter is analyzed, as opposed to the over-emphasized and simplistic direct link between them, thus the more the territorial instead of the ethnic dimension of autonomy comes to the fore, the more autonomy can develop its potential, including (but not exclusively) as a tool for accommodating ethnic claims.

Decentralization as a tool for groups' accommodation: Some reflections

Francesco Palermo

„Democracy and Decentralization. Strengthening democratic institutions through participation "

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Outline

1) Link between decentralization and groups accommodation: the East-West divide

2) To what extent can decentralization be used to accommodate ethnic diversity?

3) Role for the international community?

Decentralization and accommodation of ethnic claims

The "egg of Columbus" approach

- Replication of nation-state paradigm
- Effectiveness
- Is decentralization a minority rights instrument?
- Shortcomings

Link between decentralization and ethnicity:

- Direct link – partial responses
- Indirect link: good governance (complexity management / democracy)

What role for the international community?

- ## Status-quo syndrome
  - Mandated (no right to autonomy, conflict prevention)
  - Marginalization

- ## More open attitude
  - Potential of autonomy beyond minority issues: democracy and good governance perspective
  - Neutral, case-by-case approach
  - Scholars: Attention to *good governance*, not only to *self-governance* dimension
  - Taking decentralization seriously