Territorial and Non-Territorial Identities: Multinational Federalism in Multinational Federation

by

Michael Burgess

(Centre For Federal Studies, Rutherford College, University of Kent, Canterbury, England)

Paper prepared for the conference “Multinational Federalism in Perspective: A Viable Model?”, Universite du Quebec a Montreal (UQAM), Montreal, Quebec, Canada, 25-27 September 2009
Introduction: Asking For Trouble?

In a seminal paper titled ‘Federalism and the Making of Nations’ first published in an edited volume of essays in 1962, Kenneth Wheare reflected upon the limits and possibilities of using the federal idea as a device for ‘bringing nations together, for preserving them and at the same time developing over and above their feelings of distinct nationality, a sense of common nationality’. (Wheare: 1962, 29-30) In the same year, Pierre Trudeau, a future prime minister of Canada, also observed in a famous essay titled the ‘New Treason of the Intellectuals’ that by separating ‘once and for all the concepts of state and of nation’ it was possible to ‘make Canada a truly pluralistic and polyethnic society’. (Trudeau, 1968: 177) It was perfectly possible, in his view, for French Canadians to ‘lead the way toward making Canada a multi-national state’. (Trudeau, 1968: 164-65) Clearly both men believed that the relationship between federalism and nationalism was one that could be imaginative, constructive and innovative in the realms of practical government and politics, even if the likelihood was that such a project would require exceptional political wisdom and elite leadership skills together with a realistic acceptance that at the very outset instability would be immanent in the state.

Interestingly Wheare did not let the significance of the Canadian federal experiment pass him by in this essay: ‘We forget very often that the making and keeping of a Canadian nation is a continuous, delicate and intricate process going on unnoticed, not only by people outside Canada but inside it as well’ (Wheare, 1962: 36), while Trudeau, in another essay titled ‘Federalism, Nationalism and Reason’, underlined the paradox that ‘the principle of self-determination’, which ‘made federalism necessary in the first place’, also made it ‘rather unstable’. (Trudeau, 1968: 192) Trudeau’s observation remains a crucial one for those who seek to promote the idea of multinational federalism and its practice in the multinational federation. The paradox resides in the successful accommodation of difference and diversity that creates a novel state but which also creates the conditions for both a stable and an unstable state. It is surely a curious set of circumstances that leads to the formation of a federation deliberately founded upon strong cultural-ideological differences, such as distinct nations, which will always constitute one of the major fault-lines in its subsequent evolution.

Together these two eminent contributors to the early debate about multinational federalism had called attention to several important features and characteristics of complex federal state formation that would later take the form of stresses, strains and tensions built into the experiment from its inception. In short, they pointed up a variety of paradoxes, pitfalls and dangers that would threaten such a federation from the moment it was launched. It was asking for trouble. Why, then, would political elites champion such a hazardous enterprise? What peculiar circumstances would have to exist in order to create a set of conditions conducive to multinational federalism, that is, the desire and willingness of such distinct identities to live together in the same federal state?

Trudeau’s answer to this conundrum was simple. In cases where ‘a sense of national identity and singularity’ that demanded a ‘right to distinct statehood’ coincided with the ‘insuperable difficulties of living alone’ and the ‘practical necessity of sharing the
state with neighbouring groups’, national independence was either ‘unattractive or unattainable’. Taking ‘the first law of politics … to start from the facts’, Trudeau took difference and diversity for granted in the polity so that ‘the federal compromise became imperative’. And if such a state would always be subject to internal threats of secession, the only way out of this dilemma was ‘to render what is logically defensible actually undesirable’: ‘the advantages to the minority group of staying integrated in the whole must on balance be greater than the gain to be reaped from separating’. (Trudeau, 1968: 192) Reason, in other words, would triumph over emotion. In such circumstances, federation was the rational state.

In this light, the federal imperative was not only essentially a compromise, but it was also construed as a last resort. In other words, it was couched in terms of stark alternatives: ‘federate or separate’. Multinational federalism, then, conveyed a sense of ‘separateness’ within the state rather than separation from the state. It presumed the protection, preservation and promotion of distinct sub-state nations that would be able to determine themselves as nations within the larger federal state. This, in turn, meant that multinational federation would be ipso facto predicated upon the notion of a vibrant multinational federalism and that this would be its principal purpose as a state. These contributions of Wheare and Trudeau therefore confirm that a veritable labyrinth of conceptual, theoretical and empirical issues confront us when we consider the question of whether or not the idea of multinational federalism can be practically translated into the thing called multinational federation.

In this paper I want to explore the practical implications of multinational federalism in multinational federation. The recent intellectual debate about normative empirical theories of liberal nationalism has far-reaching consequences for the practice of federal constitutional government and politics. But without wishing to revisit this debate for our practical purposes here, it is nonetheless necessary to clarify at the beginning some of the key concepts and definitions that will be used in the paper. Mindful of this important need for conceptual clarity, then, I will begin with a short discussion of the terms being used followed by a brief survey of the distinction between territorial and non-territorial nations that will enable us to engage the main body of the paper, namely, how to translate multinational federalism into multinational federation. Let us start with the basic concepts and definitions.

**Multinational Federalism and Multinational Federation**

In this section of the paper I want to underline the conceptual distinction between federalism and federation in order to locate sub-state nationalism and multi-nationalism in the former category while situating the national and multinational state in the latter one. This means that for the purposes of this paper I will construe sub-state nationalism and multi-nationalism as the federalism – the cultural-ideological component – in federation. I take federalism to be the animating force of federation that can take many different forms: historical, intellectual, cultural-ideological, socio-economic, territorial and non-territorial, philosophical and legal. It is in essence a multidimensional concept. Federation, on the other hand is a federal state, that is, a particular kind of liberal democratic state, which is characterised both by the formal written constitutional entrenchment and legal recognition of difference and diversity.
enshrined in various forms and levels of autonomy. This basic conceptual distinction enables us to explore federalism as both sub-state nationalism and multi-nationalism and federation as the national and multinational state.

Having clarified the terms federalism and federation in this way, it also important for us to cement the link between federalism, federation and sub-state nationalism by introducing the term political nationality. This is a broad instrumental term used to describe what is essentially an overarching political rather than a specific cultural identity. Wheare put it thus:

Nationality in a federal state means something more complicated than it does in a unitary state. And one of the factors which produce in states the capacity to work a federal union is the growth of this sense of a new common nationality over and above but not instead of their sense of separate nationality. (Wheare, 1963: 50)

Consequently, in the words of the Canadian historian, W. L. Morton, we must refer to Canada as ‘a community of political allegiance alone’. (Morton, 1962) We are also reminded of Donald Smiley’s pithy essay titled ‘The Canadian Political Nationality’, first published in 1967, in which he made the following memorable declaration:

If Canada cannot become a political community - one community not two – it is not worth preserving. The requirements of the Canadian political nationality are that Canadians find and commit themselves to a group of common objectives which they pursue in equal partnership together. (Smiley, 1967: 128-29)

Federal states that comprise what are now frequently called ‘internal nations’ - and whose very raison d’etre is the protection, preservation and promotion of these nations as nations - are therefore essentially political communities compelled to ensure that claims of citizenship in the state are fundamentally compatible with other sub-state national loyalties and allegiances, and this would also apply to religious, linguistic and territorial identities if they were the primary basis of the union. In the specific terms of Wheare’s ‘common nationality’, then, we may simply regard this ‘political nationality’ as pertaining to the state itself.

If we take the meaning of these conceptual terms federalism, federation, sub-state nationalism and political nationality and translate them into the multinational federalism in multinational federation, we must tread very carefully to try to weave them into the very fabric of the state and society or, more accurately, state-society relations. In this way of thinking, multinational federation corresponds to the state and multinational federalism corresponds to society. But in this world of conceptual relationships how can we relocate the notion of each distinct internal nation or nationality in the specific context of multi-nationalism? We cannot take what is often just a descriptive label at face value. It is not a simple conceptual leap. This is because the translation of each internal nation and political nationality into multi-nationalism involves a qualitative as well as a quantitative change in the nature of the concept and this has important empirical implications. In other words, it will have an
obvious impact upon multinational federation. We have to take into account a wide range of factors some of which may be imponderable. These would include historical specificities, majority-minority relations that take account of demographic size and composition, the territorial distribution of each nation, language policy and complex socio-economic features that interact with national identities. These factors affect how internal nations relate to each other in a single state as well as the relationship of each of them to the government of the state. In short, moving from the conceptual to the empirical world is a complicated transition.

Having called attention to the familiar conceptual world of the internal nation and its relationship to the political nationality of the state, it is now time to turn and look much closer at this transition to multinational federalism and multinational federation. Here we must focus on the relatively unfamiliar world of multiple nations that live together side by side in the multinational federal state or political system. Correspondingly the centre of our attention shifts to investigate state-society relations mentioned above or, to put it another way, to define the meaning and to specify the nature of the relationship between multinational federation and multinational society.

Kenneth McRoberts has already traversed this road in his thought-provoking article published in 2001 and titled ‘Canada and the Multinational State’. (McRoberts, 2001) And it is interesting to note his preliminary observation about the word ‘multinational’, which he immediately questioned and acknowledged was ‘not the most fortuitous of terms’ because it had ‘far too many other meanings’. (McRoberts, 2001: 683) The term that he preferred was ‘plurinational’, which derived from the Catalan word plurinacional and was also formally adopted in the same year by Michael Keating, who suggested that it captured ‘the complexity of nationality’ better than multi-nationalism. Keating claimed that ‘plurinationalism’ was ‘more than multinationalism’ largely because it opened up ‘the possibility of multiple nationalities’ that could accommodate different meanings in different contexts. (Keating, 2001: 26-27) Nonetheless, the term remains both awkward and inelegant in the English language and this is doubtless the answer to McRoberts’ evident perplexity in failing to understand precisely why the word ‘multinationalism’ has endured. (McRoberts, 2001: 683)

One important observation made by McRoberts in his article is pivotal to the continuing intellectual debate about multi-nationalism (or plurinationalism) and the viability of a new model of multinational federation: ‘while many states are multinational in their composition very few of them actually function as multinational states’. (McRoberts, 2001: 711) Presumably to refer to a multinational state ‘in its underlying composition’, as McRoberts does, is actually to infer the sociological reality of a multinational society. (McRoberts, 2001: 712) This suggests that it is one thing to speak about a multinational society but it is quite another to base ‘the multinational state itself wholly or in part on the multiple nations it contains’. (McRoberts, 2001: 686) The conceptual distinction is of course an important one. If there are ‘sociological nations’, that is, a multinational society within the state, should the state itself be correspondingly multinational? Should the political institutions of the federal state be organised to incorporate multi-nationality? If the distinction between federalism and federation utilised here is conceptually valid it does point us in the direction of state-society relations and raises the question whether or not so-called ‘internal nations’, if politically mobilised, should be represented constitutionally
and politically in their collective capacity as distinct nations in the state.

The gist of our conceptual survey in this section of the paper, based upon federalism and federation, suggests that there are some problems with how we reason from the socio-political reality of internal nations to multinational federalism. If internal nations are construed as unitary actors with specific policy preferences connected to sub-state national self-determination that are distinct from the larger national state agenda, how far do these discrete pressures add up to multinational federalism? Is there, in other words, a real collective desire for these identities to be organised constitutionally and politically in the fabric of the state? And if such nations constitute a multinational society, does this always lead logically to multinational federation? It may be that there is an appropriate structural response to this problem that falls short of full federation.

The answer to this question is not straightforward even if the constituent nations enjoy some form of recognition in the federal state or political system. One conclusion to be drawn from this section therefore is that multinational federalism is much more complex as a conceptual construction than it might at first glance appear to be. Indeed, it might even be worth questioning whether or not multinational federalism can exist as a viable conceptual category let alone an empirical reality. It is, however, helpful at this point to return to Wheare’s essay introduced above because he referred to one particular type of multinational federalism that he considered might be conceptually more manageable when ‘making a nation out of differing nationalities’. This was where such ‘differing nationalities’ were ‘territorially segregated’ so that ‘each area contained its own single nationality exclusively’. (Wheare, 1962: 32) Realistically he acknowledged that people did not organise themselves in practice so that a federation could be composed of states in which there were no minorities at all, but he did recognise nonetheless that ‘there should be areas or an area in which each nationality’ was ‘at least in a majority’ so that there could be ‘a state or states in the federation’ to which each nationality could look ‘as to a motherland or national home’. And his interim conclusion led him to claim that if such a territorial homeland did not exist, it was difficult to see how federation ‘in the ordinary sense of a union of territories, with territorial autonomy’, could have ‘much relevance to the problem of reconciling differing nationalities’. (Wheare, 1962: 32)

Clearly this was a perfectly understandable position for Wheare to adopt. Indeed, it was quite prescient for its time because he also did not hesitate to add that territorial autonomy by itself was insufficient to protect ‘minority nationalities’. This alone, he argued, was no guarantee for the protection and preservation of minority national interests in the federal sphere. Several devices were necessary to do this and, at least in the specific contexts of Canada and Switzerland, they included constitutional recognition and protection of languages and religious rights, equal territorial representation in second chambers and minimum elected representation in lower chambers for minority nations. Taken together, he regarded these safeguards as ‘practically essential adjuncts to a federal structure where differing nationalities are associated together’ and, indeed, they were ‘just as important as the division of powers itself in a federation’. (Wheare, 1962: 33)

But the territorial dimension of multinational federalism and multinational federation was not the only conceptual consideration in this normative quest to accommodate
multiple nations in a single state. There was another conceptual category that did not occur to Wheare, namely, the notion of non-territorial multinational federalism in a single state. What would happen, for example, in conditions of multi-nationalism where the territorial principle remained important but where there were no national majorities because the distribution of national identities cut across recognised territorial boundaries? This, as we shall shortly see in the next section, was precisely what characterised the Habsburg Empire during the nineteenth and early twentieth century. Robert Kann, in his magisterial historical survey of the nationalities problem in Austria-Hungary, put it this way:

As far as the history of the nationality census in Austria proved, none of the nationalities, not even the Germans, ever held an absolute majority. ... Consequently, the national groups within the borders of the empire were not minorities in their interrelations; none of them was numerically equal, let alone superior, in size and in numbers to the other groups combined. (Kann, 1983: I, 32)

Kann’s argument is that in conditions of such complexity, where there is no familiar majority-minority relationship allowing for the customary implementation of principles of national minority protection, the dynamics of conflict management are different. Consequently the appropriate solution to this problem must lie not simply in dealing with the national discrimination typical of the minority question in general but instead in a sharp focus upon ‘the far more comprehensive problem of the equal coordination of all the national groups in the organization of the whole state according to the national principle’. (Kann, 1983: I, 33) Let us turn now to the notion of non-territorial multinational federalism and the multinational federation.

**National Cultural Autonomy and Multinational Federation**

When we contemplate breaking away from the liberal democratic orthodoxy of the territorial principle and the national state in order to consider both the idea and the viability of non-territorial national autonomy in the multinational state, we are about to enter a very different world from the one with which we are familiar. This is a world that emerges from the attempt to adapt the structure of the federal state to the particular requirements of the multinational state. Given this basic objective, it has at the very least the conceptual potential to challenge some of the fundamental assumptions of mainstream liberal nationalist theories in order to resolve once and for all the thorny problems of collective rights, cultural recognition and claims for secession.

The origins of non-territorial federalism, based upon the ‘personality principle’, as a solution to persistent sub-state national and ethnic conflicts within a single democratic state framework can be traced back to late nineteenth and early twentieth century Austro-Marxist theories of federalism and national cultural autonomy. The
term ‘Austro-Marxism’, according to Tom Bottomore and Patrick Goode, was evidently first coined by an American socialist, Louis Boudin, shortly before the First World War to refer to a small group of young Marxist thinkers in Vienna – Max Adler, Otto Bauer, Karl Renner and Rudolf Hilferding – who were active in the Austrian socialist movement. (Bottomore and Goode, 1978: 1) These ideas, which emerged in the new multinational Austrian Social Democratic Party (SDP) formed in 1888-89, were first given serious consideration at the party convention held in the Moravian capital of Brunn in September 1899 and were most closely associated with two of its leading socialist theoreticians, namely, Karl Renner and Otto Bauer. (Kann, 1983: vols. I and II) Together Renner and Bauer developed a novel critique of the state and the nation in their quest to resolve the nationalities problem in the multinational Austrian empire. (Nimni, 1999: 289-314) Their basic purpose was to develop ‘an aspect of Marxist theory that had received little attention hitherto; namely, the analysis of the phenomenon of nations and nationalism, and their relation to the development of the economy and social classes’. (Bottomore and Goode, 1978: 11) For our purposes, Renner’s two key works were titled ‘Staat und Nation. Zur osterreichischen Nationalitatenfrage’ (in English) ‘State and Nation’ and sub-titled ‘On the Austrian Nationalities Question. An Investigation in Constitutional Law of Possible Legal Principles for a Solution and Conditions of a Nationality Law’ (1899), and his later ‘Das Selbsbestimmungsrecht der Nationen’ (in English) ‘The Right of Nations to Self-determination’ (1918) in which he tried to provide legal substance to the broad concept of the nation. Bauer’s principal intellectual contribution to this particular subject was his ‘The Question of Nationalities and Social Democracy’ (1907) in which, in contrast, he attempted to situate a historical and theoretical analysis of the national problem in the specific context of a Marxist sociology. (Bottomore and Goode, 1978: 31)

In hindsight, it is possible to construe their combined contribution to this pressing problem in terms of a significant dimension of the broad Continental European tradition of federalism, but it is also true that in their single-minded determination to convert a multinational empire into a ‘federation of national member states along ethnic lines’, their efforts signified ‘a penetrating new chapter in the theory – though not in the practice – of multinational state organization’. (Kann, 1983: I, 105) In other words, the full panoply of constitutional ideas and proposals of Renner, the jurist, and Bauer, the Marxist theorist of the nation as a ‘community of fate’, were never fully adopted by the SDP. We are left, then, with a fascinating intellectual legacy and the familiar task for academics of seeking to assess both the historical significance and the contemporary relevance of these ideas.

In the introduction to the impressive volume of essays titled ‘National Cultural Autonomy and its Contemporary Critics’, edited by Ephraim Nimni, the editor observed that the model for national cultural autonomy (‘NCA’) was ‘rarely mentioned in the West nowadays’ despite the fact that it had ‘something important to say to many contemporary multinational and multi-ethnic societies governed in accordance with the canons of the nation state model but which show a glaring discrepancy between this model and their multinational and multi-ethnic composition’. (Nimni, 2005: 1) Indeed, he reminded us that in our dogged adherence to the conventional model of the territorial nation state, we have made ‘little progress over the last 100 years towards conceptualizing a multinational state that offers collective rights and collective forms of representation to its constituent national and ethnic groups’.
Today it is clear that Renner and Bauer’s NCA model was in practical terms a direct response to the turn-of-the-century problem of the nationalities that confronted the multinational empire of the Dual Monarchy of Austria-Hungary as well as a strategic response to rival nationalist parties of the period. But we can also see in the emergence of the NCA an essentially intellectual response to the perceived inadequacies of the dominant model of the national state, then having reached its apogee. The theoretical bases to the NCA model, carefully fashioned by the socialist thinking of Renner and Bauer, produced two particular mainstream features that together gave their new model enduring singular characteristics, namely, a combination of traditional territorial and non-territorial federalism and the idea of individual and local autonomy founded upon the personality principle. Let us look a little closer at precisely what these two innovations meant in theory and practice.

What is the personality principle? Nimni has confirmed that Renner’s original conceptualisation of it derived from the work of Friedrich Meinecke, a leading German historian, whose Weltburgertum und Nationalstaat (Cosmopolitanism and the National State) was ‘influential in shaping Renner’s ideas’. (Nimni, 1999: 296) Accordingly, Renner chose to call the system he envisaged the ‘personality principle’ because ‘it referred to the widest personal choice of its members to partake in a particular national association’. (Nimni, 1999: 296-97) The two basic concepts of empire reform plans for Austria in the late nineteenth and early twentieth century were therefore the principles of territorial and personal autonomy. (Kann, 1983: I, 194-96) But the concept of ‘autonomy’ itself was disputed from different legal and political standpoints, and it was especially controversial with specific reference to the national problem, usually referred to as ‘national autonomy’. This national autonomy could refer in practice to a complete form of internal territorial self-administration or it could be confined to particular policy areas deemed vital to national identity, such as education, language regulations, taxation matters in these fields and general cultural activities. In either form, national cultural autonomy could be organised as territorial autonomy or non-territorial personal autonomy.

Clearly territorial autonomy promised to work effectively in areas where national homogeneity predominated since potentially the vast majority of the population could benefit from it. However, its application in those territorial units where significant minorities existed without some form of protection would safeguard only the rights of the majority. According to Renner, territorial autonomy, if imposed upon a nationally heterogeneous area, meant: ‘if you live in my territory, you are subject to my domination, my law, and my language! It is the expression of domination, not of equal rights; the domination by the established inhabitants of the newcomers, by the propertied, who is held fast by his property, of the propertyless, who must follow demand where it leads, at least by the majority of the minority’. In short, it was the expression of force not of right. (Renner, ‘State and Nation’ in Nimni, 2005: 27-28)

In contrast, personal autonomy was a principle that had the inherent capacity ‘to determine more accurately the status of the individual and was ‘sometimes also called genuine or real autonomy’. (Kann, 1983: I, 195) Robert Kann summarised it lucidly in the following way:
It is that form of autonomy in which, according to the personal or personality principle, the autonomous status applies to the individual as such, not to the territory. Thus, it does not refer indiscriminately to persons residing in a certain area, but in matters of specific national concern to those individuals whose national status makes them members of a recognized national corporate body. Such status is accorded to individuals in various ways. Yet in all of them the determination of national status is based, not on the alleged or actual national character of an area, but on that of a person, hence the terms “personal” principle and “personal” autonomy. (Kann, 1983: I, 195)

The practical implications of the personality principle for the organisation of the multinational state suggested that there would be two distinct forms of political authority, one dealing principally with socio-economic matters and the other processing exclusively cultural-national affairs. The corresponding institutional structures would therefore be twofold. Renner’s blueprint meant putting what he called ‘a double network on the map, an economic and an ethnic one’ designed to ‘cut across the functions of the state’ so that the population would be organised twice, ‘once nationally and once according to administrative requirements (staatlich)’. (Kann, 1983: II, 159)

The distinction between the personality principle and the territorial principle had the consequence, as Nimni observed, that ‘different national communities could coexist with their own distinct institutions and national organisations, provided they did not claim territorial exclusivity’. (Nimni, 2005: 10) The concept of autonomous national-cultural corporate institutions would serve to restrict the legitimate interests of its adherents to just such matters:

I understand by national autonomy the statelike constitution of the nation, its organisation as member states, and the organisation of the whole as a nationality federation. Autonomy is based on incorporation into a higher unit and self-determination within that unit’s frame. Autonomy comprises two functions, internal self-administration secondly, codetermination in the affairs of the whole [state], co-rule in the council of nationalities as the price of co-submission. (Kann, 1983: II, 161)

It is important to remember here that Renner’s overriding purpose was the unity and preservation of the state and that his plan was always intended to recognise its final sovereign supremacy. This was not a scheme to replace the state by another state or to transform it into a confederation. On the contrary, it was a constitutional proposal to reconfigure the existing state in order the better to accommodate its many nationalities and give it a new legitimacy during an extremely turbulent period of change both in the imperial polity and in European history.
Before we leave this intriguing subject of non-territorial federalism based upon the personality principle, it is instructive to revisit Renner’s conception of federalism itself. We must not, after all, confuse his overall federal concept with his novel concept of autonomous national cultural corporate institutions that constituted such an integral part of it. What we find when we investigate what Kann refers to as Renner’s ‘programmatic analysis of federalism’ can best be appreciated by reference to the following lengthy extract from his writings:

What does it mean [he asks] to be a federalist? .... Is it dependent on definite territorial boundaries, great or small? I answer: it is not. ... The one who separates what is separated by nature, and gives the separate part the necessary autonomy, yet at the same time takes care of the organic relations and the harmonious incorporation of the single parts into the whole, that one is a federalist; nobody else. Since the nationalities are such naturally separated elements ... since they mix in community, district, Kreis, land, and state, true federalism commences at the bottom in the municipality and ends at the top with the state. It is at home everywhere with equal right. Just that is the peculiarity of the problem of federalism in Austria, that it is not confined to the provinces and their relations to the state. For that reason it is so completely new and without precedent in theory and practice.

Even the municipality inhabited by people of mixed language ... has to be a federation of two municipalities. (Kann, 1983: II, 161)

There could scarcely be a more revealing statement of what multinational federalism meant in turn-of-the-century imperial Austria-Hungary. It was of course a social democratic conception, given Renner’s concern to link it indissolubly to the plight of the industrialised working class, but in its existential political values, beliefs and assumptions about collective rights and sub-state national identities that sprang from the bottom of society, it corresponded closely to the Althusian model of federalism. This meant that it therefore resonated strongly with the mainstream Continental European tradition of federalism. (Burgess, 2006: 163-77)

If we take stock of the NCA model, it is worth a moment’s reflection to consider the reasons why it was never adopted in imperial Austria. For all of its attractive and innovative ideas, Renner’s federal plan came up against many obstacles to its implementation, not least the entrenched interests of the Crown which considered it far too high a price to pay for the resolution of the nationalities problem. Paradoxically its precarious survival rested on the very existence of this problem. Another obstacle to its adoption was what Kann claimed to be the ‘extraordinarily complicated machinery of its setup’. (Kann, 1983: II, 164) The federal model implied several radical measures: the abolition of existing provinces; the division of Austria into new territorial units of local self-government, based on nationality as far as practicable; every citizen would be free to register allegiance to the nationality of his choice; the several territorial units would send elected representatives to a federal parliament to deal with matters of concern to the whole state; and a supreme court of arbitration
would resolve jurisdictional disputes between the “national associations”. Moreover, apart from the Crown, the plan had few supporters among the territorial aristocracy and the German liberal bourgeoisie in Austria and none at all from the Magyar ruling class in Hungary. In terms of domestic politics, then, it had very little chance of adoption. Finally, Renner was recommending not a new confederation of territorial and non-territorial units but a *staatenstaat* (a state of states). This was really a reconfiguration of the existing imperial state with a division of powers and competences between territorial and non-territorial units such that the Monarchy became a “supranational” authority standing as the sovereign authority above them. It was, in short, a novel imperial federation.

It remains for us now to assess the contemporary relevance of the NCA model as a viable multinational federation. Clearly it was never Renner’s purpose to replace the Dual Monarchy so that the creation of his non-territorial “national associations” were meant only to supplement and not replace the territorial organisation of the state. Nonetheless, Kann is right to emphasise that Renner’s federal model was ‘merely a skeleton for the wealth of constructive ideas interwoven and developed in his writings’. (Kann, 1983: II, 161) Nimni has also acknowledged that the protocols of several congresses of the Socialist Party during this period prove ‘how little we have advanced in the last 100 years on the question of ethnic and national minority representation’. (Nimni, 2005: 4) His plea for a reconsideration of these ideas is also a worthy one. The strength of Renner’s NCA model, he has argued, lies not in its detailed programmatic proposals for imperial Austria but in the general proposal to ‘institutionalize constitutionally defined collective rights for national communities as an alternative to territorial national sovereignty’. Put simply, ‘what is important to consider are the conceptual and organizational principles of the NCA model, and not the details as to how Renner thought the model should be implemented’ in Austria. (Nimni, 2005: 238)

To conclude this section, it is would appear that we have returned to the important general task of conceptualising multinational federalism before we can proceed to the specifics of multinational federation. However, since the intellectual process of conceptualisation develops necessarily in tandem with concrete empirical analysis, let us assist it by turning to look briefly at two contemporary multinational federal models, namely, Ethiopia and Bosnia and Herzegovina (BiH).

**Two New Federal Models**

In this section I want to present a short analytical survey of Ethiopia and BiH as two new multinational federations in order principally to highlight the ‘conceptual and organizational principles’ mentioned above by Nimni and to draw some conclusions about their viability. If they are multinational federations, how are they organised and what is the conceptual basis of each state? We will start by sketching out the broad constitutional contours of these two multinational federations that were both created in 1995 and then point up the normative assumptions upon which the conceptual and organisational principles are founded. I shall begin with Ethiopia and then turn to look at BiH.
A) Ethiopia

The Preamble to the Constitution of the Federal Democratic Republic of Ethiopia (1995) loudly trumpets its mission statement in the name of ‘the Nations, Nationalities and Peoples of Ethiopia’ that continue to live with ‘rich and proud cultural legacies’, having ‘built up common interests’ and a ‘common outlook’ that has promoted ‘shared interests’ and their ‘collective promotion’. (Federal Constitution, 1995) In its reference to the Ethiopian flag, Article 3(2) reiterates the previous reference to ‘the Nations, Nationalities and Peoples’ but also introduces for the first time ‘the religious communities of Ethiopia’ with the aspiration that they should ‘live together in equality and unity’. It also acknowledges in Article 3(3) that the various constituent units of the federation ‘may have their respective flags and emblems’ although no mention is made of their own sub-state constitutions. (Federal Constitution, 1995) The sovereignty of the people of Ethiopia (Article 8) is confirmed as being in the name of ‘the nations, nationalities and peoples of Ethiopia’ and its full expression is reflected in their elected representatives and in their own direct democratic participation in the political system.

Chapter Three, Articles 13-44, of the Federal Constitution refers specifically to what is effectively an entrenched Bill of Rights as ‘Fundamental Rights and Freedoms’ and Article 39 in this Chapter brings into full view once again the ‘Rights of Nationalities and Peoples’. It is worth more than moment’s reflection here and I have included a full reference to it as follows:

1. Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession

2. Every Nation, Nationality and People in Ethiopia has the right to speak, to write and to develop its own language, express, to develop and to promote its culture; and to preserve its history

3. Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government that includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in State and Federal governments

4. The right to self-determination, including the secession of every Nation, Nationality and People shall come into effect:

5. When a demand for secession has been approved by a two-thirds majority of the Members of the Legislative Council of the Nation, Nationality or People concerned;

6. When the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council’s decision for secession;

7. When the demand for secession is supported by majority vote in the referendum;
8 When the Federal Government will have transferred its powers to the council of the Nation, Nationality or People who has voted to secede; and

9 When the division of assets is effected in a manner prescribed by law

10 A "Nation, Nationality or People" for the purpose of this Constitution, is a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory

These ten sections of Article 39 contain the conceptual and organisational principles of the multinational federation to which we have referred above. Taken at face value, they clearly suggest that culture, custom, language, identity, psychology or mindset, and territoriarity are the key concepts that comprise multinational federalism in the multinational federation. Logically we might expect therefore that there would be an institutional architecture coincident and congruent with McRoberts’s multinational society.

What sort of multinational federal model is this and how does it work in practice? If we turn to investigate Chapter 4, Articles 45-49, of the Federal Constitution that refers to the ‘State Structure’, we establish the following features: it is a parliamentary federation whose principal component elements are constituent states defined on the basis of ‘settlement patterns, language, identity and consent of the peoples concerned’. (Federal Constitution, 1995) Article 47 establishes nine such constituent units with special arrangements made for the Capital City, Addis Ababa, in the state of Oromia:

1 The state of Tigray
2 The state of Afar
3 The state of Amhara
4 The state of Oromia
5 The state of Somalia
6 The state of Benshangul/Gumuz
7 The state of the Southern Nations, Nationalities and Peoples
8 The state of the Gambela Peoples
9 The state of the Harari People

According to this Article, it is possible for any of the ‘Nations, Nationalities and Peoples’ within the existing state structure to establish their own constituent state units provided that they follow the set procedure of achieving a two-thirds majority of the particular Council of the Nations, Nationality or Peoples concerned and a majority in a referendum in that specific Nation, Nationality or People. Any state border disputes must be settled by agreement between the states themselves but failure to reach agreement brings into play the House of the Federation, which alone can decide on such disputes, and to which we now turn our attention.
If the House of Peoples’ Representatives as the lower chamber is a familiar feature of the typical bicameral federal legislature, the House of the Federation is unique both in its role and composition. Article 61 declares that the House of the Federation is composed of representatives of Nations, Nationalities and Peoples so that each constituent ‘Nation, Nationality and People shall be represented’ in the House ‘by at least one member’. And each Nation or Nationality will be represented by ‘one additional representative for each one million of its population’. But since it is the case with all second chambers, whether federal or non-federal, that their role, functions and composition are intimately intertwined, it matters precisely how their composition is decided. The key to the role of the House of the Federation lies in Article 61(3) which stipulates that its membership will be ‘elected by the State Councils’, but it also concedes that while the state councils can elect their own representatives, they may also ‘hold elections to have the representatives elected by the people directly’. (Federal Constitution, 1995)

The question of the composition of the House of the Federation in the Federal Democratic Republic of Ethiopia is vitally important when we consider its main powers and functions, which are outlined in Article 62:

1. The power to interpret the Constitution
2. The power to organise the Council of Constitutional Inquiry
3. The power to decide on issues relating to the rights of Nations, Nationalities and Peoples to self-determination, including the right of secession
4. The power to promote the equality of the Peoples of Ethiopia and to consolidate their unity based on their mutual consent
5. The power to find solutions to disputes or misunderstandings that may arise between states
6. The power to determine the division of revenues derived from joint Federal and State tax sources and the subsidies that may be provided by the Federal Government

For our purposes in this paper it is important briefly to summarise the ‘National Policy Principles and Objectives,’ outlined in Chapter 10, Articles 85-92, of the Federal Constitution. Of special interest is Article 88(2) that confirms respect for the multinational character of the federation: ‘Government shall respect the identity of Nations, Nationalities and Peoples’ and shall ‘have the duty to strengthen ties of equality, unity and fraternity among them’. (Federal Constitution, 1995) Article 89(4) stipulates that ‘Government shall provide special assistance to Nations, Nationalities and Peoples least advantaged in economic and social development’, while Article 91(1) confirms that ‘Government shall have the duty to support, on the basis of equality, the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideals, and the provisions of the Constitution’. (Federal Constitution, 1995)

Clearly the Constitution of the Federal Democratic Republic of Ethiopia includes and expresses all of the liberal democratic characteristics of what today we would expect to find in a new federal model of state organisation. It also has incorporated within it the conceptual and organisational principles typical of what we might anticipate in a
new multinational federation. However, the structure of the federation, its institutional powers, functions and relationships, and the inclusion of such liberal democratic norms, processes and procedures do not automatically guarantee that constitutional practice follows in this way. Does the Ethiopian Federation operate in the way that its Constitution suggests and, if not, what are its deficiencies and malpractices?

We must remember that the federation has been in existence for only 14 years and that the specific context and circumstances of its emergence have played a key role in its performance and survival. One of the most interesting, if confusing, tendencies in the mainstream literature on Ethiopia is the insistence of scholars in using the terms ‘ethnicity’ and ‘ethnic groups’ generically as shorthand for the official terms ‘Nations, Nationalities and Peoples’. (Habtu, 2005: fn. 30, 318) Apart from the question of conceptual clarity, it affects the perception that we form of the nature of Ethiopia’s diversity. Do we for example look through the lens of ‘ethnic diversity’ and see 79 distinct ethnic groups as the guideline or do we construe the nine constituent units as encompassing separate nations and nationalities? And what is the basic distinction between ‘Nations, Nationalities and Peoples’? The Constitution is formally silent about this. Let us probe the relationship between constitutional theory and practice a little further.

**Theory and Practice**

Does the rhetoric of liberal democracy in a federal Ethiopia have any substance? Opinion seems still to be divided, although it is generally recognised that the political system is dominated by the minority Tigray People’s Liberation Front (TPLF) that constitutes about six per cent of the total population of 53 million. Indeed, such is the strength of its military hegemony that many critics see it as a one-party state. (Habtu, 2005: 314) However, in a thought-provoking essay, published in 2000, James Paul indicated that there was a recognised yardstick of measurement by which to judge the success or failure of Ethiopia as an emergent multi-ethnic federation. He identified the official report by the United Nations (UN) Secretary-General, Kofi Annan, to the Security Council in 1998 that discussed ‘strategies to arrest the widespread conditions of repression, ethnic conflict, civil war, and other failures of states in Africa’. (Paul, 2000: 192) The report, which has been repeatedly endorsed since then by the international community, distilled the primary goals of state building to the following: human development and poverty alleviation; respect for all human rights; encouragement of civil society organisations; democratisation of governance at all levels; and a rule of law geared to these indivisible, interdependent ends and means of governance’. (Paul, 2000: 192-93)

Accordingly, adherence to these interrelated goals that reflect a strong body of norms for creating a new legal environment already exist in the republican constitution, in Articles 43, 44 and 89. But it is with the specific question of multinational federalism in multinational federation that we are principally concerned, although it is clearly related to the larger issue of rethinking ‘the fundamental tasks of states in the African context’. (Paul, 2000: 192) If we confine ourselves to the theory and practice of multinational federalism, what the new federal model displays are the following doubts, anxieties and shortcomings:
1  *Formal Institutional Problems and Failures*

a  The House of the Federation is composed of ‘nations, nationalities and peoples’ but in practice they are delegated to it by the regional councils. This means that the House members are actually representative of the constituent governments and the political parties rather than the nations, nationalities and peoples, placing a large question mark over their independence in addressing their constitutional obligations.

b  The Constitution has provided only for formal conflict management procedures that occur between constituent state governments (inter-state) and not for those conflicts that are essentially within constituent states (intra-state). No provisions were made formally to accommodate the autonomy and self-administration of minority ethnic groups that were located in multiethnic constituent units.

c  The dominance of the executive power in the federation, principally via the ruling party coalition and the structure of the administrative agencies, has meant in practice that most of the processes and procedures used for ethnic conflict management have been monopolised by the hegemonic forces of the central government.

d  The promise of self-administrative structures and institutions for all ethnic groups and communities has effectively been sacrificed in favour of the competing constitutional economic and administrative imperatives so that another policy of the amalgamation of diverse groups has been practised in parallel to the official line.

e  The institutional capacity of the politico-administrative procedures of conflict management have been repeatedly called into question as largely reactive rather than preventive, with force sometimes taking the place of traditional procedures for conflict management.

2  *Informal Institutional Problems and Failures*

a  The nature of party government: the TPLF is the dominant partner in the Ethiopian People’s Democratic Revolutionary Front (EPDRF), a countrywide coalition of ethnic-based political parties controlled by the TPLF leadership that is widely perceived as tantamount to a one-party state.

b  The problem of minority domination of both the ruling party and the government creates difficulties regarding the nebulous boundaries between them and the rest of the governing parties in terms of public trust, responsibility, corruption and a lack of transparency in what is a heavily centralised federal state.
c Since most ethnic communities have their own distinct languages and are by and large territorially concentrated (Tigray, Afar, Amhara, Oromia and Somalia constitute five states inhabited by dominant ethnic communities in whose name the state was designated), the management of ethnic conflict is much less complicated than in those constituent units like the State of the Southern Nations, Nationalities and Peoples and the State of the Gambella Peoples which are multiethnic.

Summary

The creation of an ethnic based federal state in Ethiopia in 1995 can be partly explained by what we might call the Marxist-Leninist-Stalinist ideological legacy and the peculiar nature of the circumstances in 1991 of an EPDRF victory in the civil war against the Derg Communist regime. Influenced by the ideas of Marxism-Leninism first introduced by the Ethiopian Student Movement (ESM) in the 1960s, the Communist regime, led by Colonel Mengistu's military junta, during the period 1974-91 gradually adopted the model of the Soviet nationalities policy that prompted Ethiopians to classify ethnic communities and groups as nations and peoples. Consequently the constitutional silence identified above is now fully explained. These ideological antecedents filtered through into the circumstances of constitutional design during 1991-95 so that the organising concepts and principles remain somewhat misleading if taken literally at face value.

The constitutional theory and rhetoric does not stand up to close scrutiny largely because Ethiopia, with its strong authoritarian legacies of imperial centralisation and Marxist-Leninist practices of democratic centralism, together with the military prowess of its current TPLF minority-led coalition of ethnic parties, still lacks a liberal democratic political culture. This will take time to evolve and it will depend largely upon the promotion of an overarching countrywide citizenship and the political nationality of 'being Ethiopian' as a countervailing force to narrow ethnic identity. Ethiopia in many respects therefore still conforms to the typical model of other African states in the extent to which it is regime security, political stability and (multi)national state unity that continue to take priority over civil society, political trust, power sharing, genuine participation in a multiparty democracy and the rule of law.

On the positive side, the Federal Democratic Republic of Ethiopia has endured for 14 years and it has managed to put in place a series of procedures and mechanisms of conflict management that, while flawed, have nonetheless sustained political stability without international intervention, and without the serious challenge of secession. Given its turbulent history in the twentieth century of imperial expansion, civil war, ethnic violence, foreign occupation and revolution, it is quite remarkable how far and how fast this new federal model has progressed.
B) Bosnia-Herzegovina (1)

Bosnia and Herzegovina (BiH) is a dyadic, multinational federation: one state, two entities and three ethno-national communities. According to the Constitution of Bosnia and Herzegovina, an integral part of the General Framework Agreement for Peace agreed in December 1995 in Dayton, Ohio, USA, (known as the Dayton Accords) BiH is ‘a democratic state’ that operates under ‘the rule of law and with free and democratic elections’ and is composed of ‘the two Entities, the Federation of Bosnia and Herzegovina (FBH) and the Republika Srpska’ (the Serb Republic). (Annex I, Constitution of BiH, 1995) The three major ethno-national communities – identified as (Moslem) ‘Bosniacs, Croats and Serbs’ - are defined as ‘constituent peoples’. The term ‘federal’ is restricted to only one of the Entities, namely, the Federation of Bosnia and Herzegovina but it nonetheless remains the case that in practice the foundations have been laid for a federal constitution and a federal state in BiH in all but the name.

In a nutshell, then, BiH is dyadic in the sense that it has just two constituent units, known as Entities, of which one is itself a federation (FBH) composed of ten cantons and 80 municipalities and the other (Serb Republic) a unitary centralised republic comprising 62 municipalities. The institutional design of BiH is also therefore highly asymmetrical. The political, fiscal and administrative structures are distinct in both Entities which also have their own written constitutions. (1) Since it would clearly be misleading to suggest that the country was created as a result of a voluntary agreement between the former warring parties, its construction and the gradual process of federalisation in BiH since 1995 is a direct consequence of the imposition of a new federal model by the international community involving in various ways the United Nations (UN), the North Atlantic Treaty Organisation, (NATO), the European Union (EU) and the Organisation for Security and Cooperation in Europe (OSCE). To this extent, it fits the recent classification of a ‘forced together’ federation. (Bermeo, 2002: )

One of the most striking features of BiH as a still emergent multinational federation is its weak central authority and the comparative strength of its two constituent units. In most cases of federal-state relations it is the reverse, with concerns usually expressed about the powers of an overweening central government and its encroachment upon the competences of the constituent state governments. In BiH the ‘responsibilities of the institutions of Bosnia and Herzegovina’ appear to confirm substantial powers:

a) Foreign policy
b) Foreign trade policy
c) Customs policy
d) Monetary policy
e) Finances of the Institutions and for the international obligations of BiH
f) Immigration, refugee and asylum policy and regulation
g) International and inter-Entity criminal law enforcement
h) Establishment and operation of common and international communications
i) Regulation of inter-Entity transportation
j) Air traffic control (Constitution, 1995: Art. III, 1)
On the face of it only defence and some security competences are absent from this list of powers but in reality the state of BiH relies almost totally upon its Entities. While the Constitution acknowledges some relatively unusual competences for the two constituent Entities, including ‘the right to establish special parallel relationships with neighbouring states’ and the right to ‘enter into agreements with states and international organisations’, it also charges them with the more conventional competence of providing ‘a safe and secure environment for all persons in their respective jurisdictions’. (Constitution, 1995: Art. III, 2) But it is Article III, 3(a) that, as in the tenth amendment to the US Constitution, allocates the residual powers to the constituent units, the two Entities in BiH. In these unique circumstances this has had the effect of formally reinforcing their strong role in the decentralised federation. This for example leaves them in effective control of their own police forces, cultural policy, education policy, social welfare policy and housing policy.

One result of this peculiar structure of government has been that the burden of responsibility for upholding and guaranteeing constitutional practices and for both strengthening the federal government and reining in the more ambitious claims and activities of the Entities has fallen upon the Office of the High Representative (OHR) of the UN and the Constitutional Court set up by the international community. The role of these two bodies should be construed as part of the unending process of construction and reconstruction in this new federal model as it gropes to find its own way toward the goal of a self-sustaining federal democracy.

One step toward this goal has been the character of the institutional architecture of the new state. Article IV established the Parliamentary Assembly (PA) with a bicameral legislature: the House of Representatives and the House of Peoples. The former is the lower house with 42 elected representatives, two-thirds from the ‘territory’ of the FBH and one-third from the ‘territory’ of the Serb Republic, while the House of Peoples comprises 15 delegates, two-thirds from the FBH (including five Croats and five Bosniacs) and one-third from the Serb Republic (five Serbs). It is important to note that the House of Representatives is assembled according to Entity proportionality while the House of Peoples incorporates an ethnic federalism based upon ethnic parity from the two Entity parliaments. The formal powers of the PA include enacting legislation, deciding upon the sources and amounts of revenues for the operations of the institutions of BiH, approving a budget for these institutions and deciding whether or not to consent to the ratification of treaties.

The Constitution also guarantees the representation of all three major ethno-national groups directly in the tripartite Presidency, with each of its three members directly elected from the FBH and the Serb Republic and indirectly in the Council of Ministers. In addition to the question of representation in both the PA and the Presidency, the quest to achieve political consensus is reflected in the consociational practice of striving to ensure that decisions are reached by a special majority, namely, that a majority includes at least one-third of the votes of delegates or members from the territory of each Entity. Built into these procedures is the attempt to safeguard what are deemed to be the vital interests of each Entity, preferably by a negotiated approval via a joint commission in the PA (providing in the PA that the dissenting votes do not include two-thirds or more of the delegates or members elected from either Entity) or at least two members of the Presidency, unless a decision is declared ‘destructive of a vital interest’ in one of the constituent
assemblies. (Constitution, 1995: Art. IV (3) and Art. V (2d) The overall effect of these arrangements is that the collective Presidency, based upon a rotating chair and *ethnic parity*, has perpetuated the logic of the veto in terms of ‘vital interests’. In practice, then, all decisions have to be taken unanimously.

Two important developments must be mentioned in relation to the character of this multinational federation in the making. First there is the question of the subnational constitutions of the two Entities. BiH is already characterised by a highly complex institutional system with a total of 13 governments and Constitutions, Parliaments and Constitutional Courts if we include the multi-levels of State, Entity and Canton in a country with a population of only four million people. Regarding the subnational constitutions of the two Entities, the Constitutional Court ruled in 2000 that they both violated the Constitution of BiH because they did not formally recognise Bosniacs, Croats and Serbs as constituent peoples of the larger state. Their respective constitutions identified only Bosniacs and Croats in the FBH and only Serbs in the Republika Srpska. In direct response to this, an agreement was reached between the major political parties to introduce the necessary reforms to conform to the Court’s judgement but when it failed to secure support in the parliaments of the Entities the decision was formally imposed in 2002 by the intervention of the High Representative so that quotas have been established to guarantee the representation of all three ‘constituent peoples’ in the parliaments and governments of the Entities. The subterranean world of the internal structure of the Entities has in this way been pulled along on the coat-tails of the larger state in a concerted effort to build up a new federal political culture that both recognises and respects difference and diversity.

The second development concerns the future of the city of Brcko that connects BiH’s northern border with Croatia as well as with the western and eastern parts of the Republika Srpska. With regard to the contested status of Brcko, it is important to note that the arbitration process created to decide its future culminated in 1999 in the decision to declare it as a special district, comprising the territories of both Entities, with a multinational government under international supervision. It now has a status similar to the District of Columbia (DC) in the USA but with the addition of an international administrator. Since then an aura of uncertainty has surrounded its future, one possible scenario being its elevation to the status of a third Entity in the evolving federal state. Its strategic territorial location had originally become something of a symbol for those Serbs in Republika Srpska who had separatist aspirations but today these existential goals seem to have faded.

Before we proceed to summarise multinational federalism in multinational federation in BiH, it is appropriate at this point to address the socio-economic dimension to the brief case study. BiH was formerly described as a “Yugoslavia in Miniature” because of its demographic composition in the last official census taken in 1991: 44% (Bosniac); 31% (Serbs); and 17% (Croats). When we consider that it has a total population of only 4.4 million people we can immediately understand why one of the main criticisms of the so-called “Dayton Project” was that it was heavily over-governed and over-bureaucratised. Since both territoriality and ethno-national identity have been the dominant conceptual and organising principles in the state, it should come as little surprise to learn that post-1995 BiH has become much more territorially homogenous, notwithstanding the goal of the international community actively to encourage the return of some 1.2 million refugees and displaced persons as a direct result of the civil war.
Armed with their own constitutions and a formidable array of powers and competences, the two Entities in BiH are politically, administratively and fiscally autonomous. Indeed, as we have seen, they have retained sovereignty even in policy fields that are typically assigned to the federal government in most federations, such as foreign relations, defence and social security. But it is in the realm of fiscal power that the key to their firm anchorage is based. It is their fiscal and financial autonomy that fuels their capacity for independent action. As one commentator has put it:

The State is fiscally dependent on the Entities and neither possesses fiscal autonomy nor a proper revenue source of its own, except for some administrative fees. Therefore the share of subnational governments in total public expenditure is extremely high by international standards (98.7%), which reflects idiosyncratic fiscal arrangements that attribute all public revenue sources (including customs duties) to subnational levels of government. (Spahn, 2002: 20)

Clearly this is an example of ‘bottom-up’ federalism that cannot sustain a multinational federation. The capacity of the federal government is perpetually enfeebled if it has no fiscal resources. It has no possibility to grow and expand its countrywide functions as an ‘energetic’ government must do if it is to succeed in the mission it has been given in the Constitution, namely, a viable, self-sustaining democratic state based upon respect for human rights and the rule of law rooted in a market economy and a pluralist society. These circumstances changed in 2006 when for the first time the federal government acquired its own financial resources with the introduction of the Value Added Tax (VAT). Nonetheless, if the main purpose of political elites in BiH is a continuous state-building process to achieve a multinational federation, there must be a much stronger emphasis upon common institutions that can reflect and represent the overarching unity and welfare of BiH as a whole – as a state in its own right.

Theory and Practice

What does the theory and practice of multinational federalism in the new federal model of BiH reveal about its doubts, anxieties and shortcomings? We will apply the same formal and informal institutional problems and failures that we have just utilised for Ethiopia above.

1 Formal Institutional Problems and Failures

a The common institutions of the federation are inherently weak and do not have sufficient competences to fulfil the basic requirements of shared rule

b There is, as yet, very little basis to develop an independent fiscal federalism
c For a country with a small population of four million people there is clearly evidence of an over-institutionalisation and an over-bureaucratisation (some might call it 'over-government') of the state.

d The institutional design and decision-making procedures of the state have allowed the ethnic groups to abuse their mutual veto rights so that the process of rule making is often brought to a standstill.

e Elections by proportional representation in the institutions of the Presidency, the two Houses of the Parliamentary Assembly and the Constitutional Court are based in the Entities and are not countrywide, thus further entrenching the 'ethnic territoriality' of the federation.

f The full implementation of human rights is still to be achieved and it remains the case that substantial minorities and those people who refuse to identify with a particular group of recognised 'constituent peoples' are effectively excluded.

g The current dependence upon the OHR means that in practice the most important and powerful institution in the state is the only one that is not subject to any form of democratic accountability.

Informal institutional problems and failures

a The focus on ‘ethnicity’ and ‘territoriality’ as the multinational federalism in the multinational federation promotes and reinforces both ethnic separateness and separatism with little incentive to build institutional bridges between the three dominant distinct identities.

b There is little evidence of a desire or willingness by the political parties to work together to create a genuine multi-ethnic party system that could be a real integrating force in the polity. Quite the reverse: recent trends in the party system suggest the radicalisation of what are in reality mono-national parties.

c The slow rate of return of refugees and internally displaced persons (especially minorities) to their former homelands has been a disappointing process.

d BiH lacks a federal political culture. The main focus of attention in the polity is not on human rights and citizenship but on ethnic identity.

Summary

BiH was brought into existence in 1995 in what were then unique circumstances by the force of external pressure, with the most powerful unitary actor being the USA. The basis for creating a new federal model occurred in the most unpromising conditions of post-conflict state-building and the last 14 years have witnessed the ‘managed evolution’ of a federal state without a federal political culture. In the extent to which BiH has been first ‘forced together’ and is now being ‘held together’, by the
so-called ‘international community’, IC (now including *inter alia* the USA, UN, EU and NATO), it is a new federal model but it is also representative of an important new classification of federations of which Iraq is the latest example in 2005. (Stepan, 1999)

Given its perilous origins and formation, it has remained up until today a very fragile federal experiment with its constituent units stubbornly resistant to the conversion of the ‘democratic state’ into a multinational federation. The centripetal forces for unity and integration are weaker than the centrifugal interests represented by the existing Entities that see very few incentives to support the state. Consequently BiH is for the purposes of our survey a remarkable case study of a potential multinational federation without multinational federalism. In short, it exhibits federation without federalism.

Today there is some evidence that this federal model has much better prospects of survival than at any time in the last decade. This can be seen in the official handover in 2005 of responsibility for defence policy from the Entities to the federal government and similarly the albeit reluctant transfer since 2006 of further important competences to the federal government, such as customs issues, police matters, the secret security service, the judiciary, human rights protection and the prosecution of war crimes. It remains the case for the time being that such progress in state-building and (multi)national integration can be achieved only through external sanctions, pressures and intervention by the OHR and the Constitutional Court (with three international judges), but this must be construed positively as part of the long term process of creating a federal political culture where previously none existed.

In addition to the centralising trends noted above, it is important to acknowledge the powerful influence exerted by the prospect of future membership in the EU. Formal membership of the EU is not a panacea for all of the ills of BiH but in its insistence that the new federal model would be able to join *only* as the state of Bosnia and Herzegovina, it firmly closed the door on aspirations of secession from some parts of the state and it confirmed, via the Copenhagen criteria (1993), the normative principles of conditionality. The EU – with the OHR now merged with the EU Special Representative (EUSR) - is therefore yet another external centripetal force working for the unity and integration of BiH.

**Comparative Perspectives**

Both Ethiopia and Bosnia and Herzegovina were formed in 1995 as a direct response to what are usually called post-conflict civil wars but it was to the federal idea as an organising principle in the federal state that the principal political elites turned to resolve the thorny question of ethno-national discord. Federalism was not merely an instrument or tool in the process of conflict management in a state. Political elites went beyond the conception of a bundle of consociational techniques used in a state to the creation of two new *federal* states. In other words they chose a much higher level of conceptual and empirical response.

Let us briefly look at a number of comparative perspectives selected in order to underline some interesting features of this new classification of federal states. They are identified in the following short list:
Comparative Perspectives

This brief comparative survey of multinational federalisms in the multinational federations of Ethiopia and Bosnia and Herzegovina must be viewed in the context of contemporary trends and circumstances. These trends and circumstances suggest that the appeal of the federal idea in many parts of the world, and especially on the continent of Africa, might foreshadow a resurgence of federation in the form of new multinational federal models of state reorganisation. The latest example of Iraq (2005) and contemporary developments in Nepal (2007) and Pakistan (2008) point up the attraction of the conceptual and organising principles of federalism in other countries: Somalia; Sudan; Eritrea; Afghanistan; and Cyprus. Both the fact of federation and the promise of federalism lead us to reflect upon the following considerations:

a  Contemporary events and circumstances suggest that the federal idea and its conceptual and organising principles are likely to be used much more often in terms of new multinational federal models to resolve questions of ethnic identity conflicts

b  The origins and formation of federations matters: current research must revisit and reappraise the existing mainstream theoretical literature in terms of the point of departure for contemporary federal models.

c  The key role that international actors play in the formation and subsequent operation of “forced together” federations, like Bosnia and Herzegovina and Iraq, indicates that there now exists a new classification of federal states

d  The emergence of these new federal models strongly suggests that the federal idea must be construed in terms of its close relationship with the processes of democratisation and legitimisation of the state

e  The creation of new federal models suggests that the conventional concepts of state-building and national integration must now afford space to the concept of federalisation as a long term process of building a federal political culture where there was none before

f  The contemporary trends and circumstances indicate that conceptually federalism is more than just power sharing in terms of post-conflict reconstruction. It is federation that has been utilised rather than mere consociationalism as a bundle of procedures and techniques in a formally non-federal state

g  Today we must acknowledge that the complexity of each multinational federal model has its practical limitations: none can include every form of identity, let alone every constitutional and/or legal claim to a sub-state national identity so that these new models will have to work with the grain but cannot be expected to resolve all minoritarian claims by ascribing to them special formal rights of constitutional recognition.

h  No mention has been made of non-territorial federalism but it remains as an available resource – a viable supplementary option – for those states that have a particular problem with territorially dispersed minorities
Conclusion: In Search of the Holy Grail

The concept of multinational federalism is highly problematic. We know what some of its properties are but it remains unclear and uncertain just how far we can take this concept in order to translate it into practical reality. Logically we would need to fine tune the concept much better than we have in order to be able to arrive at the point where federalism becomes federation but the intellectual journey is bedevilled by far too many imponderables to be sure of any concrete empirical destination.

This conceptual *problematique* is the result of trying to define some socio-political categories that are themselves inherently problematic. It would appear therefore that we are left with a frustrating proposition: some ideas and concepts can exist only as abstractions so that the very process of translating them into practice inevitably destroys them. Social scientists must beware of assuming that every problem, if examined in sufficient depth and with sufficient earnestness, will yield itself to a practical solution. One danger, then, is that we are looking for the Holy Grail. We are searching for something that simply does not exist. Conceptual analysis can reach high levels of sophistication but it has a utility only to the extent that it can actually be used in the real world of state building. Multinational *federalism* is just such a case.

This rather gloomy conclusion does not however imply that we should give up completely or abandon our attempts to find a relative or partial conceptual validity. There is, after all, no ideal type of multinational *federation*. Context and circumstances vary so widely that it would be foolish or impossible or both to claim that there exists one particular federal model of the multinational state that could serve as a benchmark for others to follow. There will be many conceptual and empirical variations on the basic theme of formally recognising and reconciling several nations in a single state. It is obvious for example that neither Ethiopia nor Bosnia and Herzegovina have resorted to non-territorial federalism along the lines of the national cultural autonomy model outlined above but it has been introduced in both Belgium (Brussels Capital Territory) and in the Russian Federation. (Jacobs & Swyngedouw, 2003, Bowring, 2002) If utilised in Canada it might be more of a supplementary device for the francophone minorities outside Quebec and for the Aboriginal Peoples living in the urban parts of the country but it should not be forgotten that territoriality itself, while remaining the dominant mode of constitutional and political organisation in the state, is not the only organising mode of state structures.

The implications for multinational federation, then, are not pessimistic. They merely indicate that both scholars and practitioners of the federal idea must lower their normative expectations, but not their energies, in seeking new federal models in the future. Normative claims for justice can be addressed but cannot always be satisfied simply because they are almost always contested by different communities. The question that confronts us therefore is not whether multinational federation is a viable model but rather whether multinational federalism is a viable concept.
Notes and References

1 The following short survey has been put together by reference to a series of conference papers, discussions and references involving the following people: Jens Woelk, Joseph Marko, Florian Bieber, Sören Keil and Tomislav Marsic


Constitution of the Federal Democratic Republic of Ethiopia,

Constitution of Bosnia and Herzegovina, Annex I of the General Framework Agreement of Peace (GFAP), known as the Dayton Agreement, 1995. The overall constitutional framework comprises 13 constitutions, namely the BiH Constitution at the state level, two Entity constitutions and the constitutions of the 10 cantons of the Federation of Bosnia and Herzegovina (FBiH).


Smiley, Donald V., *The Canadian Political Nationality*, (Toronto and London: Methuen, 1967)

Spahn, Paul Bernd, ‘A federal Bosnia and Herzegovina: can a weak centre lead the way?’ *Federations*, Special Triple Issue: Themes of the International Conference on Federalism’ (2002), 19-20


