Concurrence of Powers in Deeply Divided Countries: The Case of Yemen’s Draft Constitution of 2015

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1 Introduction

Federalism is often proffered to deeply divided (or fragile) states as a solution to keep them together or to prevent and quell civil war. The most recent examples of fragile states to have opted for a federal-type constitution are Sudan, Kenya, Somalia, Yemen, Nepal and South Sudan. A decentralised state form is also being considered for Libya and Sri Lanka,1 and a federal option is even mooted for Syria.2

Federal solutions attempt to address underlying fragility by responding to two important political imperatives. The first focuses on subnational autonomy: regional groups disaffected by the abuse of centralised rule want a large degree of self-rule. The second imperative seeks to grapple with the very causes of the conflict – discrimination and unequal development, matters that made the unitary state unpalatable for territorially-based marginalised groups. The task is thus to unite the population as ‘one nation’ through the promise of ‘equal citizenship’: that is, equal access to state resources and services, with the federal government as the guarantor of such equality across the nation.

The two imperatives may come into conflict because they pull in different directions when it comes to the division of powers, the central question in any federation. Autonomy calls for exclusive powers over a substantial list of important functional areas, while the ‘one nation’ imperative, in seeking to guarantee equality of resources and services, requires collective action from both the federal government and subnational units, which then results in an integrative system of concurrent powers. While the first imperative sets the two orders of government apart, the second joins them at the hip.

1 See E. Rutnam, ‘Road to new constitution begins this week’, The Sunday Leader, 3 January 2016.
The concern is how these two imperatives can be brought into some kind of balance. The quest to find and implement such a balance becomes a Herculean task, because with concurrency as an ingredient in the exercise of power, the focus shifts to effective mechanisms for, and a political culture of, cooperation – the very institutions and processes which are absent as a result of the underlying conflict. How the balance is struck and whether it will work are perforce determined by the very nature of the conflict in a particular country, given its historical, political, social, economic, and regional contexts.

The question this chapter examines, then, is how the balance was sought to be struck in the deeply divided and fragile country of Yemen, one which emerged from conflict in 2013 and relapsed into a full-scale civil war in 2015–16. In the short window period of 2014 a draft constitution was produced but never implemented. What were the ways and means employed in the draft Constitution to find a balance between the competing imperatives of autonomy and unity?

The next (and obvious) question is: How effective was the balance struck to achieve peace and stability? Seeing as the draft Constitution, produced in January 2015, was overtaken by the civil war, the prospects of its implementation are slim, and the answer to the larger question of whether federalism remains the preferred solution to the conflict is unclear. The southern separatist movement sees no future in a united Yemen, while northerners’ actions speak of a unitary state. The question about the workability of the draft Constitution can therefore not be answered at present. However, it is still important to ask whether the Yemeni constitution-making process and its end product, the draft Constitution, can provide insight into how similar quests in fragile countries to balance the two competing imperatives could be approached.

Yemen: A Very Brief History of Protracted Conflicts

Yemen as a single country is of very recent origin, having been unified only in 1990. The southern part was a British territory from 1839, with the port of Aden becoming of major importance for the sea route to India after the opening of the Suez Canal in 1867. The south achieved independence from Britain in 1967 as the People’s Democratic Republic of Yemen, with a self-declared Marxist regime. The northern part of Yemen was a Zaydi imanate until the 1962 revolution by the military, naming itself the Yemen Arab Republic. In 1978 Ali Abdallah Saleh staged a coup and ruled as president for the next 33 years in a one-party state, the General People’s Congress (GPC).