

Public Security in Federal Systems

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NOTES

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- 7 Andy Coghlan and Debora MacKenzie, 2011, 'Revealed – The Capitalist Network That Run the World', *New Scientist*, 2835, pp. 1-4; <http://www.newscientist.com/article/mg21228354.500-revealed--the-capitalist-networ...> 10/24/2011, accessed on 19 October 2011.
- 8 Smita Narula, 2010, 'International Financial Institutions, Transnational Corporations and Duties of States', *New York University Public Law and Legal Theory Working Papers*, Paper 298; http://lsr.nellco.org/nyu_plltwp/298, accessed on 30 October 2011.
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Urban and Metropolitan Security

THE NORTH AMERICAN EXPERIENCE

Christian Leuprecht

I would like to start the discussion with a painting by Breugel called the Massacre of the Innocents. The painting depicts 'high' policing in a medieval town: elite interests imposing themselves on the periphery by force. In contrast, as one enters the senior officers' mess at the Royal Military College of Canada, on the walls hang pictures of generals Wolfe and Montcalm who, in 1759, contested the Battle of the Plains of Abraham between the French and British forces, though the British won. As a national institution, who won or lost that battle is immaterial to the Canadian Armed Forces. Displaying the pictures of both generals is a way of recognizing and honouring Canada's bi-national heritage. This is but one manifestation of how Canadian federalism balances competing interests and perspectives, even in the domain of security. Why is security so difficult to operationalize in divided societies? Urban and municipal policing in North America is a critical case study to this effect.

First, what is meant by security? In general terms, it refers to a public good, consumed by all and, when not provided or under-provided, society tends to be worse off. Security is important as a public good

because order is integral to society. Without order, we cannot attain justice, equality and freedom, the basic premises on which a democracy is founded. Security allows some predictability with regard to social interactions because it allows us to sanction at least of some those who deviate from the basic norms, values and behavioural patterns a society has endorsed. Of course, all societies have some sort of norms with regard to what is and what is not permissible. Security ensures some predictability of the types of interactions that we are likely to encounter. As demand for security is inelastic, the argument is usually made from the perspective of public economics: by and large, it is more cost-efficient and more effective to provide it publicly than to privatise and outsource it. Finally, if we think of the principle of subsidiarity, security is very much a local phenomenon. It is difficult to provide security at the macro-level, with the exception of a specific dimension. There is a reason why in all federations defence is always a national jurisdiction. When a country is attacked, we do not want all the entities to deliberate for a long time on whether we are going to defend ourselves, instead we need to assert national sovereignty. Although federations have tended to choose to scale up on security, federalism allows us to preserve some sense of that localness, beyond municipalities. In this essay, we will discuss two different models of federalism with regard to the provision of security.

We can visualize the role of institutions in perpetuating violence on a graph. Along the x-axis we have the scale of the institution: the organizations that provide for law and order. Police tend to show up in ones or twos and are lightly armed whereas the military tends to show up at a minimum in platoons of a couple of dozen soldiers with heavy armour that has the potential to inflict considerable damage. In-between, paramilitary forces do not fit neatly into either of the two former categories; they fall neither under a federal national command structure nor under a local command structure. Paramilitary forces

often operate semi-autonomously. They fit in-between the military and police with respect to the amount of violence they can inflict and how heavily they are armed. What we have also seen and listed here are the circumstances under which we call upon these institutions and where they are active. The police tend to be active primarily in matters of civil and criminal law. But criminal law is also an area where paramilitary forces tend to be active. The military tends to be active primarily at the international level. Paramilitaries, then, are a national-defence force of sorts that can be called in to subdue activity that is politically motivated, such as rioting. This sketches the institutions of the security sector.

Public safety, however, goes beyond the police, paramilitary or military. There are also the penitentiary and judicial systems as well as democratic oversight and direction from different levels of government and different elements of the community. Conceived of as a matrix, security is now contextualized in a broader understanding of how we govern ourselves and the elements required to complement a functional society. In one quadrant we have security with the concomitant federal, state, provincial and municipal dimensions; in the next we have the governance dimensions, including the executive and legislature branches. These are complemented by the administrative functions of government that are directed by, but separate from, the political executive. The third quadrant consists of economic development. And the fourth consists of psycho-social dimensions such as a sense of trust and justice. To provide public safety effectively, these four dimensions – security, governance, economic development and psycho-social well-being – need to function harmoniously. A federal system inherently involves all levels of government. For instance, we see the outcome of what happens when security institutions develop a predatory rent-seeking interest in the economy, which tends to happen in countries where politicians sometimes have trouble either providing

for or paying the security forces. To ensure their financial viability under conditions of unpredictable revenue from government, security forces have an incentive to develop their own revenue streams, such as running a bicycle factory as is the case in Bolivia. The best-known example is probably Pakistan Inc.

So, why is security in federations especially wrought with difficulty? Federalism raises coordination problems but, by giving communities control over security, it also posits solutions to these problems. In the most recent wave of countries adopting federal systems, security has turned out to be the key reason informing their choice. The institutional architecture needs to be premised on a national consensus – which is difficult to reach when security is centralized. The solution, then, has effectively been to decentralize some security decision-making using the federal process, since security decision-making is often tied to differing cultural, linguistic and religious pluralism. A classic question here is: who controls the people with the guns? There are two different federal answers to this question. Developing countries tend to be essentially unitary countries but they are federated for administrative purposes, to provide some checks and balances on the system. The Canadian solution, by contrast, is that adopted by many multinational federations. It deliberately allows communities a degree of autonomy over their security affairs and how they want to govern themselves, combining dimensions of self-rule and shared-rule. When this is not done right, it leads to stalemate. Perhaps the classic example is Bosnia-Herzegovina where almost twenty years after the Dayton Accord, they are still trying to sort out how exactly they are going to govern security within the federation. Of course, it took ten years to sort out the Good Friday Agreement in Northern Ireland. The deal-breaker was how to solve the security issue, that is, how to structure the Northern Island Police Service. If the security problem is not resolved, a functioning, governable society is difficult to obtain.

When we talk of policing, we talk of security. We need to talk of high policing and low policing. High policing is a policing tradition in the interest of either the colonial power or of the political and economic elite within that particular country; low policing is an understanding of policing that is in the interest of the community. It is bottom up as opposed to top down. North America consists of three federations and presents a critical case study from the perspective of comparative federalism. The three federations have opted for different models of policing: in Mexico we have a rather centralized model whereas in Canada we have a decentralized model of policing. Eight of the ten provinces contract the national police force, but the two most populous provinces – Ontario and Quebec have exercised the option of administering their own provincial police forces. We also have traditions of high and low policing in all three countries. As a former dominion, in Canada, the Royal Canadian Mounted Police (RCMP) represents the tradition of high policing in the paramilitary tradition. Where we have high policing traditions, we tend to find paramilitary institutions. There are continued problems with organized violence in all three federations. Canada, for instance, continues to face serious security challenges, especially with some elements of its aboriginal populations which to some extent have differing interpretations of sovereignty. The United States faces challenges from so-called sovereigns and freemen who do not accept the legitimacy of the rule of law in the United States. And Mexico faces violence perpetrated by cartels. Each federation has addressed and solved some of its security problems while struggling to operationalize others. To this end, we have different scales across these three federations: the New York Police Department (NYPD) has more uniformed members than the RCMP. There are more police personnel in New York State than in all of Canada. Of course, on a per capita basis the United States is the most heavily policed mature democracy in the world. By contrast,

Canada is among the least policed democracies in the world. So, we have different models that impose different degrees of coercion. If the rate of police to citizens is high, so is the level of coercion.

Canada probably has the most decentralized model of funding for police among the three federations; Mexico has the most centralized one. This raises the issue of unfunded mandates. When we think of municipal policing in an urban context, cities in Canada or Mexico face the same problem: they are part of a federation but their relationship with their governing entity, that is, their state or province is essentially a unitary one because they do not enjoy constitutional protections the way cities do in South Africa or Brazil. This raises the problem of high levels of government downloading tasks to lower levels of government, especially municipalities, without providing adequate funding for them to perform those particular tasks. Municipal police forces are among the most stressed because they are the local first responders to which higher levels of government defer. In Canada there is a check built into the federal system because criminal law is a shared jurisdiction in the tradition of administrative federalism; the federal Government makes the law while the provinces administer it. When Canada's federal government decided to have a gun registry, attorneys general of some of the provinces balked at enforcing it. So, the federal government can make all the laws it wants provided it can actually get the provinces to enforce the law.

The other big challenge is a structural one. The police operate within a constitution that was written long before the current demographic, economic and sociological circumstances. When Canada was founded, 80 per cent of the people lived on the land and 20 per cent in the cities. Presently, over 85 per cent of the Canadians live in cities and only about 15 per cent in rural areas. Of course, this is a problem in federations the world over: security and police provisions in constitutions do not

match present security realities demographically, economically and politically.

Some case studies exemplify how this actually plays out in practice. In 2010, the G8 was hosted north of Toronto near the town of Huntsville where the Ontario Provincial Police was the lead agency. However, the Toronto Police Service was the police force of jurisdiction when the G20 met in Toronto proper. Although the federal government organized the meeting, the municipal force or jurisdiction was the lead police agency with support from the RCMP and other police forces. This is critical because the understanding is that the reason we have municipal forces is precisely because they know their cities and their communities better than a national representative from Ottawa. In practice, some people did not appreciate the behaviour of certain police officers yet they had difficulty understanding why they should be raising their complaints with the municipal level rather than with the national government which was hosting the G20.

Hurricane Katrina shows that central governments have an important role to play in security situations that transcend the ability of local governments to cope. Katrina epitomized the consequences of a federal government failing to step up in time. The federal government can surge resources in coordination when local resources are overwhelmed. The Calderon administration in Mexico decided to solve the problem of cartel violence by sending in soldiers and federal police officers. But federal forces are ill equipped to address the underlying social issues. This challenge is commonplace in developing federations. Faced with a real security challenge, They call upon federal forces or the national force to fix the problem. While the federal force, because of its overwhelming powers, can put a lid on the security problem, it cannot actually fix the underlying dimensions of what ails the situation to begin with. Those are ultimately issues for municipal

and provincial governments to fix under whose jurisdiction social programmes and education tends to fall.

Federalism is a means of safeguarding local security with the assistance of national governments. It requires adequate training and funding, and a significant supporting coordination role by federal governments. Federal governments are a security guarantor in times of crisis, but need to remember that security is ultimately a local matter. In India the armed forces are recognized as an institution that is impartial and unbiased when it comes to communal disputes. Security works best when provisioned locally: communities need to police themselves in accordance with local politics and values, and police forces should be accountable to their local communities.

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Urban and Metropolitan Security

INDIAN EXPERIENCE

V. Balachandran

My seventeen years of service in Maharashtra Police and nineteen years in foreign intelligence were useful when I was chosen by the Government of Maharashtra as the second member of the two-member 'High Level' panel to investigate into the police response to the 26/11 attack in Mumbai. The features of this attack were so challenging to the rest of the world that I was asked by the Singapore Home Ministry in April 2009 to address their senior police officers to give inputs on 26/11 since they were preparing for their annual security exercise North Star VII which was to be witnessed by their prime minister. Similarly, in November 2009, I was invited by the Governor of Hawaii to be the keynote speaker during their Asia Pacific Homeland Security Summit. In May 2010, a leading US defence supply firm invited me to brief their global staff on the new homeland security challenges. I was also asked to present a paper and speak at a seminar conducted by St. Antony's College, Oxford University, in October 2010 on the new challenges posed by the 26/11 type of attacks. I shall bring in experiences from discussions during these opportunities to dwell upon the issue of urban and metropolitan security.