HUMAN RIGHTS, DEMOCRACY AND FEDERALISM - PART OF THE PROBLEM OR PART OF THE SOLUTION?
SECURING STABILITY IN THE EUROPEAN UNION AND THE PEOPLE’S REPUBLIC OF CHINA

Andreas Folloesdal
Norwegian Centre for Human Rights, University of Oslo

ABSTRACT

Federations and human rights have a long, ambivalent and contested relationship. The paper addresses one of these concerns: whether human rights-respecting federal arrangements are sufficiently robust against claims to secession. Some fear that federal elements and human rights combine to fuel destabilizing forces. Comparative research suggests that some of these risks are real, though difficult to estimate. I argue that several elements of democratic and human rights can limit these dangers, and rather enhance the long-terms stability of federal arrangements. In particular, the contributions of human rights and political parties to the governance of sub-units and the centre merit close attention. The article has seven parts. It first presents some features of federalism and the challenge of stability. Sections 3 and 4 sketch conceptions of democracy and human rights. Sections 5 and 6 discuss how human rights may both fuel and defuse calls for secession. The concluding section brings these results to bear on attempts at alleviating the ‘democratic deficit’ of the European Union, and to the People’s Republic of China.
INTRODUCTION

Two global trends come together in Europe and in the People's Republic of China (PRC): the experimentation with quasi-federal, multi-level forms of governance, and increased concern for democracy and other human rights.¹ Why do these movements gain momentum and what is their relationship?

Regional cooperation takes place under well known acronyms – the North American Free Trade Agreement (NAFTA) and Association of Southeast Asian Nations (ASEAN), as well as Mercosur in South America, the African Union, and the European Union (EU). Some of these have lofty aspirations toward broader cooperation with federal elements, as exemplified by the European Union, whose Reform Treaty is currently being drafted.² Such ‘coming-together’ federalism of formerly independent states may also be the model for unitary states that seek to devolve powers constitutionally. Thus, in 1998 the UK decided to grant various forms of autonomy to Scotland, Wales and Northern Ireland. The Constitution of the PRC likewise grants some autonomy to certain minorities and regions, with organs of self-government (Art. 95, 113) that enjoy independence of finance and economic planning (Art. 117).

Human rights have also been gaining ground world wide. Few countries now outright reject international declarations and conventions, and violations are seldom admitted, but typically denied or excused.³ The combination of federal forms of ‘multi-level governance’ and human rights raises important questions and challenges for traditions and ideals of sovereignty, democracy and human rights – all of which were largely developed for unitary states with centralized sites of political power. I shall suggest that in general, there is neither a happy coincidence nor a tragic conflict between federations and human rights. Some conflicts can be resolved, while some tensions should receive more attention by politicians and political philosophers alike. Democratic theorists must continue to reflect on the grounds for – and alternatives to – ‘one-person-one-vote’ and

¹ These reflections draw on research funded by the Norwegian Research Council’s ‘Accommodating Difference’ Project at the Norwegian Centre for Human Rights at the University of Oslo; by the Fulbright ‘New Century Scholar’ Program 2003, and the EUS initiatives CONNEX and NEWGOV. I am especially grateful for comments and suggestions by Maria Lundberg and Amy Verdun. The Mossavar-Rahmani Center for Business and Government, and Currier House, both at Harvard University, and the Centre for the Study of Mind in Nature (CSMN) of the University of Oslo kindly offered optimal conditions to conclude these reflections.


³ The 1993 ‘Bangkok Declaration’ being an important exception, where representatives of Asian states dismissed civil and political rights as contrary to ‘Asian values’; cf. Follesdal (2005) for references.
majority rule among a deeply divided citizenry (Dahl 1983; Barry 1991; Follesdal 1998; Lijphart 1999). Federal arrangements require us to reconsider the universality of human rights, especially the obligations to intervene to protect human rights within a federation. We also need a better understanding of the grounds and mechanisms for maintaining dual political loyalty among the citizenry in a multi-level political order.

The following comments address one of these concerns in particular, namely whether human rights-respecting federal arrangements are sufficiently robust against claims to secession. This is a particularly worrisome concern for those who favour devolution in order to quell calls for secession - what some scholars call ‘holding-together’ federalism (Stepan 1999).

Federations and human rights have a long, ambivalent and contested relationship that harks back at least to disagreements between ‘Federalists’ and ‘Anti-federalists’ about the 1789 Constitution of the United States of America. Some have argued that federal features and human rights are mutually supportive and serve to stabilize popular support for the system of governance. Federal structures are thought to safeguard human rights at both sub-unit and central levels, and human rights constraints render federations more legitimate and trustworthy.

Others fear that federal elements and human rights combine to fuel destabilizing forces. What are the grounds for such worries? Human rights norms might put a federation at risk by fuelling secessionist movements and the complex web of centre and sub-unit authority in federations is thought to more likely violate human rights. Central authorities might more easily ignore citizens’ human rights with impunity, and sub-units may enjoy immunity for mistreatment of their citizens, contrary to human rights requirements. So the forces that seek secession might be further fuelled by both human rights and federal arrangements that grant some powers to the sub-unit but not full political autonomy – contrary to the objective of keeping the political order together in the first place. Comparative research suggests that some of these risks are real, though difficult to estimate. I shall argue that several elements of democratic and human rights can limit these dangers, to enhance the long-terms stability of federal arrangements. In particular, the contributions of human rights and political parties to the governance of sub-units and the centre merit close attention.

The article has seven parts. First I present some features of federalism and the challenge of stability. Sections 3 and 4 sketch conceptions of democracy and human rights. Sections 5 and 6 discuss how human rights may both fuel and defuse calls for secession. The concluding section brings these results to bear on attempts at alleviating the ‘democratic deficit’ of the EU, and to the PRC.
1. ON FEDERALISM

For our purposes, federal political orders may be characterized as lacking a unique sovereign, since the centre and the territorial sub-units split or share political authority (Follesdal 2006a).

Federations have a constitutional, well-entrenched division of powers or ‘competences’ between central bodies and sub-units. Each level enjoys final authority with regards to some functions, and this constitutional allocation cannot be changed unilaterally. The sub-units thus enjoy immunity from central intervention in certain fields.

In what is called ‘interlocking federalism’ sub-units participate in central bodies of authority and influence common decisions. Indeed, sub-units can have a veto, and coalitions of small sub-units can often block decisions since they are often overrepresented. Arrangements where sub-units can veto decisions, or leave the federation are often referred to as confederations. In comparison, in other forms of decentralized government the central authorities may maintain, modify or abandon the legal powers of lower level authorities at their discretion.

Federal and Confederal Elements in the EU

Since the 1952 European Coal and Steel Community (ECSC), what is now known as the European Union has developed both federal and confederal elements. The member states have transferred sovereignty to common institutions, and have signed away their right to veto such common decisions in an increasing number of areas. The constitutional division of authority will be made clearer in the Reform Treaty based on the ‘Constitutional Treaty of Europe’ (CTE) (Council of the European Union 2004). It lays out areas of exclusive competence of the Union institutions, and other exclusive competences for the member states. The shift from unanimity as the default procedure in the inter-governmental Council of Ministers and the increased power of the directly elected European Parliament (EP) further underscore that central decisions are explicitly placed beyond the control of any single sub-unit. Majority rule also increased the perception that Union decisions were beyond democratic scrutiny and control, giving fuel to the accusations that the EU suffers from a ‘Democratic Deficit’ (Wallace 1993; Beetham and Lord 1998; Follesdal 2006a; Follesdal and Hix 2006). Member states remain influential and exercise control, especially since they participate in central decision-making bodies in ways typical of ‘interlocking’ federal arrangements. As federal political orders go, Europe remains a very decentralized
federal political order: for instance, it still lacks a common defence policy that is
typical of federations (McKay 2001; Moravcsik 2001 and 2002). The fact that
many competences remain shared between sub-units and central authorities does
not make it less of a federation. Nor does the federal nature of the EU implicitly
require more centralization as an objective. On the contrary, it may arguably be a
bad idea to increase the powers of Union institutions, as the Reform Treaty seems
to require (Schmitter 2004). The Union also has important confederal elements
(Meehan 2001) - confirmed in the Reform Treaty by sub-units’ right to withdraw
from the Union, laid out in Article I-60 of the Constitutional Treaty. Yet some
features render the ‘confederation’ label less appropriate: the Union’s subjects are
not only the member states but also citizens (Weiler 1996), and common decisions
need not be unanimous.

Such ‘coming together’ federations typically arise when governments seek to
obtain objectives beyond the reach of any single state, and that cannot be secured
by treaty agreements alone. Examples include external defence, or common
regulations in response to a globalizing economy that require more credible self-
binding commitments than treaty agreements alone.

A dominant concern for the joining states is to prevent undesired
centralization and other abuse of central authorities, thus much care goes into
constraining the centre through checks by the sub-units and human rights
regulations.

**Decentralising Elements in the People’s Republic of China**

If we use this definition of federalism strictly, the PRC is not a federation.
Even so, there are some lessons to be drawn from federal experiences that might
illuminate some of the issues the PRC faces, especially concerning whether to
continue to grant some autonomy to certain regions and minorities, at the alleged
risk of instability. The Preamble of the PRC Constitution states that ‘The People's
Republic of China is a unitary, multi-national state.’ This could appear to be at
variance with the grants to ethnic minorities of certain forms of self-government.
The Constitution also recognizes regional autonomy, with organs of self-
government with some independent authority for finance and economic planning
(Art 95, 113, 117).

These clauses do not make the PRC a political order with federal elements in
the sense defined above. The constitutionally entrenched decentralization remains
– *de jure* and/or *de facto* - at the discretion of central authorities, regardless of the
opinion of sub-unit authorities or an independent umpire (Ghai 2000b). As long as
the constitution can be easily changed by the central authorities, they do not have the power to create a federal arrangement. They cannot credibly commit to respect the autonomy of sub-units, since they can reverse their decision to decentralize at will. To create a federal arrangement that grants autonomy to sub-units in a trustworthy way, the central authorities would have to be able to perform a constitutional act of self-binding. They would have to constrain their own power of constitutional amendment.

Why OPT for Federal Solutions?

Such opportunities foregone may seem minor and even slightly mysterious: why would a unitary sovereign create arrangements of self-binding in general? In particular, why would a state want to split authority as in a federation especially if such arrangements are likely to fuel secessionist movements? Why would a state pursue federalism in the first place? In response, I submit that the worries about instability often appear misconstrued: federal elements are often introduced as a response to perceived worries of instability and calls for secession. In these cases, to devolve some powers is the effect of popular unrest, rather than its original cause. If sub-units distrust the centre, central authorities may seek to create a federal political order. Thus, ‘staying together’ federations have often been created in order to order to manage multinational pressures, devolving powers to allow local variation and autonomy for separate nations who refuse a unitary structure. A federal arrangement might also give the sub-units’ leaders enough political autonomy to quell upheavals, civil wars or calls for secession (Linz 1999). Thus Alfred Stepan notes that India’s federal structure could accommodate minority demands for some linguistic and cultural autonomy, and thus deflate further political unrest (Stepan 1999).

Critics may still worry that even though there are some ‘happy cases’ such as India and Spain, there are inherent destabilizing mechanisms in federal devolution that increase the risk of secession. Is federalism as a response to instability part of the problem rather than part of the solution? Such worries may also give grounds for pause to those governments that grant local autonomy for quite other reasons than to quell secessionist movements. Thus it is surely of interest to consider whether PRC’s current constitutionalized grants of regional autonomy is likely to fuel secessionists, especially when combined with human rights guarantees. The upshot of my arguments is that several of the reasons for such fears seem overdrawn. They should not dampen the PRC’s endorsement of federal elements and human rights protections.
2. CHALLENGES OF INSTABILITY

To maintain an effective federation over time poses special challenges when compared to a unitary political order. The main concern of this article is the issue of fragmentation, but there are other challenges that must also be met simultaneously. They therefore merit brief mention.

A stable federation must prevent secession, but also centralization – and stagnation. Yet all federations experience such long term trends toward centralizing and decentralizing decision-making that can hardly be avoided (Dehousse 1994; Tushnet 1996; Weller 1999: 318). So there is a need for safeguards to prevent secession by one or more sub-units, and to reduce the risk of undesired, creeping centralization of all political authority. But such measures tend to reduce effectiveness and efficiency, yet those safeguards must not constrain the scope of political decision making completely.

Preventing Centralization

To illustrate, to prevent undue centralization, the powers of the central unit are typically restricted by various checks such as specific ‘lists of competences,’ rules of unanimity or qualified majority voting, weighted votes, and principles of subsidiarity. Thus the Reform Treaty of the EU will provide a clearer allotment of different kinds of competences (exclusive, shared, complementary, economic policy co-ordination) and to transparency. These measures may help reduce such unintended drifts, and thus enhance trustworthiness. The proper allocation of such competences remains, however, a crucial normative issue. And some fear that a clear demarcation of competences between the sub-units and the centre will lead precisely to such stagnation (Swenden 2004).

One arrangement that offers some protection against undue centralization without causing stagnation is to include sub-unit officials in the central decision making bodies, for instance in the form of a second legislative chamber. Their institutional interests may provide some ‘centrifugal’ pull, while allowing decisions in response to present challenges.

Subsidiarity

Another interesting arrangement to prevent centralization is based on the EU’s ‘principle of subsidiarity.’ Various competing versions of the principle of
subsidarity address the contested issue of allocation of powers (Follesdal 2000). It places the burden of argument with those who seek to centralize authority. Article I-11 of the Constitutional Treaty requires that:

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

A new arrangement to be included in the Reform Treaty involves the national parliaments, who have an institutional interest in preventing centralization. They may voice reasoned objections against draft legislative acts that they think violate subsidiarity. If enough parliaments agree, the draft must be reviewed (CTE Protocol 2). This may prove very useful against undue centralization.

Increased Trust in the Overarching Loyalty of Others

Another mechanism to reduce the risk of undue centralization is to build trust and trustworthiness among the citizenry at large, so that they will not seek centralization. The need for such trust has increased in the EU, where majority rule among the member states has replaced unanimity in several fields. Unanimity ensured that they would not be forced to take part in arrangements contrary to their own interests, or when they feared that others would not do their share in cooperative ventures. But the unanimity rule often prevented common action even when obviously required: this safeguard against centralization came at the cost of stagnation.

To allow for more effective common decisions, the new Reform Treaty establishes a default standard legislative procedure which requires only Qualified Majority in the Council and involves co-decision by the European Parliament and the Council together. This change increases efficient decision making, but also increases the risk of oppression of minorities and undue centralization. I return to the risk of majority tyranny below.

Stable popular support for such procedures requires a well-developed trust in other Europeans and officials (Nicolaidis 2001). Citizens and representatives must now be trusted to adjust or sacrifice their own interests and those of their voters for the sake of other Europeans in more cases. Institutions can contribute to such trust in several ways. One is by means of human rights, another one is to socialize
citizens to the requisite normative sense of justice to consider the impact on others and to foster an ‘overarching loyalty’ to citizens within the whole Union (Rawls 1971; Rothstein 1998; Bellamy and Warleigh 1999; Simeon and Conway 2001: 362). One important way that institutions can facilitate such socialization is through political parties, to which I turn below.

Leaving the issues of centralization and stagnation aside, let me now turn to the main concern of this article: the risks of fragmentation. One crucial issue is how to halt and reverse such a drift and thus maintain the federal character of the political order.

Preventing Secession

‘Holding together’ federations often face the opposite threat of centralization, namely creeping decentralization leading to secession. Whether federal solutions help stave off such consequences is difficult to determine, especially since many of the states that explore such options already are challenged by civil unrest, non-compliance and secessionist struggles. Comparative studies of federalism warn of a higher level of ongoing constitutional contestation concerning the constitution, its values and interpretation than in unitary political orders (Linz 1999). Stabilizing mechanisms that prevent the disintegration of the political order and citizen disenchantment are thus more important. Yet the grounds for such stability may be especially weak in federations, given their frequent genesis as solutions to intractable problems otherwise resolved by a unitary political order. Again, the maintenance of dual loyalties seems crucial (Simeon and Conway 2001).

I now hone in on a subset of these issues, i.e. whether democratic rule and human rights fosters or reduces the risk of secession in federal political orders.

3. DEMOCRACY

Democratic theorists disagree on many details concerning the institutional details, justification, and the proper weight of various elements of liberal representative democracy.

Some arguments for democratic governance are ultimately be based on a – possibly ‘Western’ – interest in self-determination and individual autonomy (Held 1995: 147). However, other arguments may defend democracy as the most reliable form of institutional arrangement to prevent risks to individuals' vital
needs. Thus, Amartya Sen has argued that freedom of the press and democratic competition among political parties protect against famines (Sen 1988).

Within the Confucian tradition, Confucius' disciple Mencius' views (Mencius 1999) might be cited to provide some fragments of grounds for democratic rule:

- that it is right to replace a king who does not govern his kingdom well (51);
- that good and bad, competent and incompetent officials are best distinguished not on the basis of what aides or senior officials say, but when all the people in the kingdom say so (53);
- that the king acts as the delegate of the people when they so say (54);
- the value of scrutiny and transparency of rulers' mistakes, to permit correction and hence sustain popular support (132).

Features of Democratic Rule

The different premises notwithstanding, I submit that there is broad agreement among Western democratic theorists on three central features of democratic rule: a) Citizens have formal input in decision-making in the form of voting among competing candidate rulers on the basis of informed discussion of their merits – discussions that affect their preferences. Citizens' input is what makes representative democracy 'government by the people' even when it is best described as an aristocratic oligarchy. The distinctly democratic feature of such democratic 'rule by the few' is that potential oligarchs compete for citizens' votes (Schumpeter 1976); b) This input is causally linked to outputs in the form of legislation and policy decisions that are held to secure and reflect the best interest of the public, however defined and determined. The substantive output is what makes representative democracy 'government for the people.' The policies are held to be in the 'best interest of the public' however that may be defined. There is an extensive theoretical debate as to this should be understood as voters' interests; their preferences over political candidates, and whether it should include preferences regarding the decision process itself (Manin, Przeworski, and Stokes 1999). The democratic quality may thus hinge on whether the outcomes are reliably close to the preferences of the median voter, whether they avoid majority dictatorship through courts and human rights protections, etc; c) Input and output are linked by means of institutional procedures that provide reliable causal mechanisms which give citizens reasons to comply with the outcomes. These mechanisms distinguish democracy from other ways that a population might get
its voiced interests secured, for instance by a benevolent authoritarian ruler. To rule with the ‘approval’ of the people is insufficient to label it democratic, since non-autocratic monarchs, aristocratic or plutocratic oligarchies can do as much (Schumpeter 1976: 246). The degree of match between median voter and policy output may be an important test for evaluating constitutional arrangements (Powell 2000). But such correlation between input and output is insufficient for declaring a system democratic. The literature offers several arguments, of various empirical plausibility, for various arrangements of constrained cooperation and competition among contending parties. Even though voters may perhaps not be ‘represented’ by the elite, the elites are accountable to citizens (Schmitter and Karl 1991; Dahl 1998), through mechanisms of prospective and retrospective voting for candidates or incumbents.

These mechanisms entail a range of conditions or ideals for democratic institutions (Dahl 1998): Equal effective opportunities for participation, an assumption of equal voting weight, Equal opportunities for enlightened understanding about alternative policies and their likely consequences, and agenda control.

The Roles of Party Competition

A broad range of democratic theories insist on the important contributions provided by competition among political parties against a backdrop of free media (Key Jr. 1964: 456; Lipset and Rokkan 1967; Hall 1993). Party competition is not only a mechanism for citizens of selecting among given policy platforms on the basis of given self-interested preference maximization, parties competing for votes also question and challenge ill-directed policies. They provide a mechanism (imperfect, to be sure) for keeping politicians responsive to the interests of citizens by making threats of replacement credible (Manin, Przeworski, and Stokes 1999). They create competing, somewhat consistent platforms giving citizens a better sense of realistic alternatives and the scope of the practically feasible. They contribute to identify more sound and well-directed policies. Furthermore, parties seem especially important for maintaining stable federations: many theorists note the contributions of parties in citizens’ character and political preference formation. Parties competing for votes affect voters’ preferences and ultimate values. The competition crystallizes interests and perceived cleavages by giving some conflicts priority (Schattschneider 1960: 67; Lipset and Rokkan 1967). Party competition makes a limited set of policy platforms salient to voters, who shape their preferences by discussion (Schattschneider 1960: 37).
Addressing the Risk of Majority Tyranny

One of the central weaknesses of democratic majoritarian rule is that minorities are vulnerable to majority decision making. In societies whose populations are divided in majorities and minorities along cultural, ethnic or other cleavages, individuals face a significant risk of ending in a permanent minority position on a range of important issues, without hope that they will ever get to be in the majority (Barry 1991; Follesdal 1998; Lijphart 1999; McKay 2001: 146-47). To trust a majoritarian system, the minority must be assured that the majority will not threaten the most important interests of the minority (Papadopoulos 2005). This may be done in at least three distinct ways. One is to devolve the issue to sub-units. In order to be trustworthy and function adequately as a democratic political order, a federation might thus take some policy issues away from the common policy agenda – typically language or other cultural elements – and allocate them with sub-units that have greater homogeneity regarding such issues. In this way majorities in the political order at large are prevented from harming territorially based minorities. Considerations of subsidiarity might thus hold that certain issue areas should not be regulated by central authorities, but instead be left to local units.

A second strategy is to seek to socialize individuals – majorities and minorities alike – toward commitments of solidarity. This socialization may be done instance through party platforms and education, as well as by media that informs the population in general about alternative policy options and their likely effects on vulnerable groups.

A third strategy is to limit the domain of decisions a majority may legitimately decide, so that vital interests of minorities are not left vulnerable to the misjudgements or ill will of the majority. One important set of such limits on democratic rule is human rights. We now turn to that topic.

4. Human Rights

A long-standing and broadly shared view on the responsible use of state power is that it must be used for the common good, understood as securing the basic needs of individual members of society. A government that fails in this does not have a moral claim to be obeyed or respected. Such views are found in several (but not all) Western philosophical traditions, as well as in Confucian and other traditions.
Theories of legitimacy may lay out at least two different sets of normative conditions, for a government's internal and external sovereignty respectively. The legal authority a government enjoys over individuals, and the legal immunity it enjoys vis-à-vis international bodies and other governments. Note in passing that the requirements for internal and external sovereignty may well differ. The conditions for when individuals have a moral duty to obey the government may be quite different from the conditions for when other governments and international bodies have a moral duty to not intervene by economic, diplomatic or military means in the domestic affairs of other states (Martin and Reidy 2006).

A theory of human rights typically does not deny that individuals have a duty to obey the commands of government, nor that state sovereignty should be respected. Rather, it seeks to identify the limits of such obligations. A normative theory of human rights specifies in part how governments should pursue the common good to maintain legitimate internal and external sovereignty. Such requirements may be in the form of various legal or constitutional rights and directives that regulate legislative and executive authority and discretion.

Human rights theories typically differ about which interests are significant and about what legal rights are required. Some philosophers have concentrated on the interest in being free from coercion by others, particularly from the government, to exploit one's resources according to one's own ability and interests (Hart 1955; Berlin 1969). Such premises alone would only support individuals' immunity from government interference in the form of 'negative' rights.

Other theorists recognize further interests, such as the ability to actually select certain options that they have reason to value (Gewirth 1982; Sen 1985; O'Neill 1986). Such accounts may require intervention by the state to provide the individual with the appropriate opportunities, and/or to protect them against the arbitrary will of others. The latter family of theories require a broad range of 'positive' government intervention and various social and economic rights to secure the satisfaction of basic human needs, projects and relationships (Follesdal 2005).

A Note on Confucianism and Human Rights

I submit that Confucius and his disciple Mencius may be read as laying out some standards for legitimate internal sovereignty – though not expressed in terms of human rights. This claim might be surprising, and even contradicted by more common views often expressed: that Confucianism puts more emphasis on respecting hierarchical social structure, maintaining peace and harmonious
relations, than the rights of individuals. If that is the sole acceptable interpretation of Confucianism, it would seem that human rights considerations are fundamentally inconsistent with widely held philosophical views in China. Any introduction of human rights would therefore appear as an uphill battle, fundamentally alien and incompatible with central Chinese standards of legitimate governance.

Space does not allow a detailed response to this worry and its implications. Here it must suffice to indicate that there are competing interpretive strands in Confucianism, more compatible with human rights constraints on government (Chan 1995 and 1998; Gangjian and Gang 1995; de Bary and Weiming 1998; Angle 2002). Such strands counsel against a wholesale dismissal of human rights as inconsistent with ‘Asian values’.

Confucius held that for a governor to be fit to govern, he must avoid ‘Terror, which rests on ignorance and murder. Tyranny, which demands results without proper warning’ (Confucius 1997: 20.3). Mencius went even further, permitting tyrannicide (Mencius 1999: 55). He:

- required the king to take good care of the people, including limited taxation so as to secure that they had food and clothes, education (154-155),
- laid out the responsibility of the king to govern well in famines (121);
- held that to run a state well the king must take care of the people (154); and
- addressed the need to assess and weigh rites against human needs (381).

Mencius also provides some standards for what we would regard as legitimate external sovereignty: Unjust states may be attacked, but only by heaven (128); and humanitarian intervention is sometimes justified (190).

5. DEMOCRACY AND HUMAN RIGHTS FUELLING CALLS FOR SECESSION?

Human rights standards may be thought to foster unrest and trigger secession for several reasons. Firstly, systematic violation of the human rights of citizens of a sub-unit would be sufficient 'good cause' for secession, and legal acknowledgment of such rights would strengthen such calls (Baubock 2000). An express right to secede may itself be destabilizing (Sunstein 1994). Similarly, a
focus on human rights may make the option of exit more salient for political entrepreneurs eager to allege mistreatment – regardless of whether such allegations are correct. What are we to make of such concerns?

To clarify what is at stake, I submit that we must distinguish the destabilizing role of human rights institutions from such effects of human rights violations. The concern here is primarily with the first, especially when conjoined with the second. Whether violations of vital interests of individuals themselves prompt secessionist movements is an important issue, but beyond the scope of our concern here. I submit that the crucial question is whether authorities’ responsiveness to the best interests of citizens can be trusted and remain trustworthy in the eyes of citizens. One central mechanism in this regard is precisely arrangements that monitor and prevent human rights violations. Such human rights institutions can help provide trust and prevent calls for secession, both when there are no violations – because the institutions provide credible assurance thereof – and when there are violations. In these latter cases, human rights institutions may provide less drastic measures than secession to correct and prevent the violations. What are we to make of the fears?

First, note that the worry of unrest would seem to be even greater if citizens have no opportunities to scrutinize allegations of pervasive and long standing human rights violations, and if there is an unconditional link made between such violations and the right to secede. The former risk could be reduced by fact-finding and monitoring institutions. Both risks could be limited by arrangements that are known to replace authorities found guilty of such violations. Then secession would be only a safety valve when ordinary judicial and democratic remedies were exhausted. In such cases secession as a last resort might indeed not appear such an unacceptable option – when human rights violations actually occur.

Second, and in response, critics may worry that rights talk and democratic contestation promote self-interest rather than the proper other-regarding ‘highest common concerns’ of the federation as a whole. Such talk and contestation may fuel conflicts regardless of whether citizens’ human rights are actually assaulted. If protesters are allowed to use democratic arenas and public media in furtherance of such objectives – regardless of their merit – debates may further fuel rather than quell unrest. However, I submit that legal human rights need not transform the public political culture into a conception of society as one of contestation among self-interest maximizers, who ignore duties and non-legal relations (Sandel 1982; Glendon 1991). Instead, human rights typically serve as aspects of the background structure securing somewhat fairer terms of day-to-day cooperation (Waldron 1988). They are safeguards that express, rather than threaten, the equal
standing of all citizens (Chan 1995). Whether such legal protections are perceived as expressing a conflict view of society against the individual is not automatic, but largely a matter of the local political culture. Finally, one might worry that calls for secession in the name of democratic self-government and human rights may have a snowball effect, in that they mobilize new groups with less grounds for independence. I consider that concern below.

A preliminary conclusion is that several of these worries seem overdrawn: many fears that democracy and human rights protections will destabilize a holding-together federation seem unfounded. In particular, democratic parties, monitoring by independent media, and judiciary institutions may provide much assurance to reduce misplaced worries of human rights violations.

6. DEMOCRACY AND HUMAN RIGHTS QUELLING CALLS FOR SECESSION

Democratic and human rights may reduce the risk of secession in several ways, especially in a federal political order. They can safeguard the situation for minorities and political leaders within the existing state; they can limit the opportunities for ungrounded secessionist movements; and they reduce the temptations for a minority to create an independent nation state.

Democratic Control over Constitutional Change

Recall that a federal arrangement can serve as a stable half way house with regard to sovereignty. They provide some measures of political immunity and local influence over common policies. Such credible commitment from the centre to respect sub-unit decisions in certain fields may reduce the demand for further independence. As observed in the case of the PRC, the ability to set up a credible federation that sub-unit leaders will trust requires that the central authorities cannot unilaterally revise the constitution. A federal arrangement thus requires an independent judiciary and some elements of the rule of law, including constitutional supremacy and some arrangement for the population of a sub-unit to democratically influence the content of the constitution (Ghai 2000a: 21-22).
Human Rights-Respecting Centre Enhances Loyalty

Human rights, credibly enforced, may reduce sentiments for secession in several ways. If any human rights violations by the centre are visibly addressed once they are voiced, secession-prone minorities are less likely to be and feel oppressed within the federation. Their need to exit is less pressing. In a human rights compliant federation, minorities within a secession-seeking minority will also have their human rights protected (Simeon 1998; Zuckert 1996). They may, correctly, feel more secure within such a federal system than in a separate state where human rights mechanisms have yet to be established by what has become the majority of the new nation-state. Such internal minorities will thus not likely opt for secession.

In a society with democratic rights it may be easier for potential secessionists to voice their claims and gather supporters, as this might be thought to foster unrest. However, freedom of the press and opposition parties able to scrutinize competing claims may also serve to diffuse *unwarranted* claims by such ‘ethnic entrepreneurs’, for instance to check whether they indeed ‘speak for the whole people’ or only a vocal part of a majority; or to test whether indeed the centre has singled out a particular region for intentional mistreatment (Linz 1999: 29).

Interlocking Democratic Federal Arrangements

In interlocking democratic federal arrangements, the sub-unit authorities participate in centre decision-making. Such arrangements have two beneficial effects. First, secession-seeking nationalists may prefer to exercise sub-unit power and such a share in central authority, realizing that they may be better off with such influence than by seceding (Baubock 2000: 379).

Second, many scholars point to the important character formation toward overarching loyalty that may occur within such mechanisms that bring central and sub-unit officials together (Kymlicka 1995; Linz 1999; Simeon and Conway 2001). Such arrangements are often recommended owing to the socialization effects when sub-unit representatives meet face-to-face to negotiate or deliberate about common concerns. Interlocking federal arrangements may thus lead officials to adjust their preferences, and include consideration of other members of the federation (McKay 2000 and 2004; Simeon and Conway 2001: 342). It also seems that federation-wide parties that are active at both sub-unit and centre levels are particularly conducive to the development of overarching loyalty (Linz 1999: 24).
Human Rights Requirements Imposed on Any Future Independent State

Democratic and other human rights requirements imposed by the international community may also reduce the attractiveness of obtaining a separate state. Secessionist groups will know that they will be subject to human rights requirements on any future separate state that seeks external recognition. That will restrict the scope of sovereignty in ways that may diminish the perceived benefits of secession. The future political elite will for instance have to accommodate minorities and abide by democratic rule – reducing the opportunities for political gain.

The combined effect of human rights protections for citizens in interlocking federations, and on future secessionist scenarios, suggest that such rights in a federation will tend to reduce the risk of secession, rather than increase the risk. Thus, human rights may well serve a stabilizing function for federations.

7. CONCLUSION: SOME LESSONS

The present reflections have considered whether federal arrangements are sufficiently robust against claims to secession. Some fear that such constitutionally entrenched decentralization of authority will fuel further calls for sovereignty by some sub-units. Several elements of democratic and human rights can limit such risks, and thus enhance the long-terms stability of federal arrangements. Several features seem jointly necessary. A credibly independent judiciary and mechanisms for constitutional self-binding by the centre authorities are necessary to establish a federation at all. Certain interlocking arrangements, and possibly constitutional requirements securing federation-wide parties, are conducive to stability. Moreover, important democratic and human rights may facilitate long term stability – especially freedom of the press and opposition parties. Recall also the crucial roles of political parties, beyond allowing citizens to ‘kick rascals out.’ Competing parties with alternative policy platforms are necessary for voters to have an informed and real prospective choice; they may stimulate creativity regarding agenda and policy options; provide scrutiny; and may enhance and constrain the option set available to the electorate. They can also

---

4 The list presented is not exhaustive. For instance, several authors note that timing is crucial: stability can be maintained if democracy comes first, then federal elements – while the reverse is more uncertain (Linz 1999: 35).
maintain and foster citizens’ commitment to broader societal interests. And in federations, parties can enhance the ‘overarching loyalty’ necessary among citizens of different sub-units who seek to live together – and apart – as political equals.

**Implications for the EU and for the People’s Republic of China**

In closing, consider some implications for the EU and the PRC. With regards to the recent developments of the EU as evidenced in the Reformed Treaty and the CTE, the increased visibility of human rights is thought to foster stability in the form of popular support. The CTE would also affirm or bolster at least three institutional mechanisms for preference formation through political parties, toward an ‘overarching loyalty’:

- the political order is an interlocking federal arrangement, leading politicians to consider the impact both on individual sub-units and on other citizens of the federation;
- national parliaments get increased opportunities for addressing issues of European integration. Publicity requirements regarding the Council’s legislative work and access to documents of legislative sessions of the Council boosts national parliaments. They receive copies of suggested Treaty reforms and may – if sufficiently many agree – seek to prevent creeping centralization by claiming that proposals violate subsidiarity. Such opportunities would require discussion across sub-units, concerning precisely such central issues as the legitimate objectives of the sub-units and of the EU as a whole, and the best policies for achieving such objectives. Such discussions may foster the requisite overarching loyalty,
- party competition is also crucial at the level of the European Union, to develop the desired ‘overarching loyalty.’ The Reformed Treaty will not only acknowledge some role for political parties (CTE Article I-46); it also would ensure increased transparency of the legislative process (Article I-50) and increased powers to the European Parliament (Article I-20), possibly influencing the choice of Commission President. The upshot may well be that European-level policies become contested - among European-level parties (Hix and Lord 1997; Magnette 2001; McKay 2001). Optimists may hope that these changes would make it more likely that parties will contribute to shaping Europeans’ political preferences toward the requisite overarching loyalty over time. Such
contestation may challenge a received view of the proper ‘apolitical’ role of the Commission as the guardian of ‘the’ European interest. But I submit that that view is flawed, and the benefits seem worth such costs. Indeed, it seems impossible to reduce the ‘democratic deficit’ without allowing such political contestation (Follesdal and Hix 2006). That would help citizens discover that Union decisions could be made otherwise – that ‘the European interest’ is indeed contestable, and that some of these decisions are indeed a matter of deliberate choice.

The Reformed Treaty will also provide additional measures that promote such negotiations in public, both by requiring publicity regarding Union institution proceedings (CTE Article 50) and by ensuring that national parliaments get copies of legislative proposals and Commission consultation documents.

These developments should not lead to exuberance. As of yet, parties are not developed and functioning at the Union level – and it remains to be seen whether they will so develop. Elections to the European Parliament are largely ‘second order’ elections, a venue voters use to express their views about national government performance rather than focused on Union level political issues (Hix and Lord 1997; Hix 1999). It is difficult to guess whether such a trend will continue. Further pessimism may be fuelled by younger generations’ ‘postmaterialist’ declining interest in party politics (Inglehart 1999).

Also, there is of course no reason to believe that the current set of political parties is optimal. They do not provide fluid platforms, but largely reflect old cleavages (Goodin 1996), and existing parties seem to force the new issues of European integration onto a traditional left-right axis. The established parties may even act as a cartel, blocking newcomers and new agenda points. Note, however, that these weaknesses are not flaws of the social functions performed by parties, but of the present crop of parties, and the difficulties of establishing and sustaining them in their multiple democratic functions. Thus these criticisms do not point to the need to abolish parties, but rather to the challenge of how to rejuvenate their agendas and stimulate new parties.

Regarding the PRC, it too needs institutions that will foster willing support for the long term stability of the political order. Yet many of the challenges are different. The present reflections suggest that insofar as some nationalities and areas seek greater political autonomy and even secession, several recommendations may be relevant.

Federal experiments could well curb more extreme secessionist movements. A federation in the sense defined, with constitutionally entrenched division of authority, cannot be created with sufficient credibility unless the centre authorities
renounce their monopoly on constitutional change, allowing sub-units some
decisive role. The details of such influence must be explored elsewhere – for
instance, it would seem unwise to allow each sub-unit a veto, since this easily
stifles even necessary changes as long as they are detrimental to any one sub-
unit. Another required change is to enhance the perceived independence of the
judiciary in charge of maintaining the division of powers.

Were a federation to be established, the lack of opposition parties in the PRC
does not completely rule out the possibility of obtaining sufficient stability,
though we may question the normative legitimacy of such an order. It might seem
an open question whether the various functions secured by parties in multi-party
democracies can be secured by other means. In particular, some bodies should be
authorized to question and criticize government action with impunity, in order to
promote good governance. Other bodies than parties and free media may do so,
recall Mencius’ criticisms of officials who failed in their duties and his argument
that freedom of information is needed for vital feedback about government
failures (Mencius 1999: 63, 121). There may also be other bodies in a one-party
state that secure the various other functions outlined above, including the
identification of fair policies; creative, realistic and consistent policy formulation;
sustaining the right motives among the leadership; and the proper character
formation of citizens.

To conclude, democratic, human rights respecting federations may not
provide complete guarantees against secession by territorially clustered ethnic,
linguistic, cultural or religious minorities. Federal solutions may not be obtainable
for all unitary states that struggle with internal conflicts along territorial lines,
given their rules for constitutional change. But the alternatives modes of
accommodating differences may be even less stable.

REFERENCES

Inquiry, Cambridge: Cambridge University Press.

Oxford University Press, pp. 24-60.

and Federation’, in Will Kymlicka and Wayne Norman (eds) Citizenship in


