Chapter 1

Introduction

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Prologue

Seventy years ago, a new world order was emerging from the aftermath of World War II (WWII) and the decolonisation of large parts of the developing world. Nepal, Myanmar and Sri Lanka, ethnically diverse and highly religious countries, made formative decisions about whether and how the majority ethnic, caste and religious groups would relate institutionally to the smaller groups located within their borders. In the following years, the consequences of those choices and the institutional advantage that they embedded played out in patterns of power production and reproduction and reaction and counter-reaction, culminating in new opportunities for transformative change.

The conditions are now in place for minority ethnic groups in Nepal, Myanmar and Sri Lanka to take their legitimate space in the state and determine their own futures. 2015-16 were watershed years. Nepal enacted its new federal democratic constitution, Myanmar commenced a process towards changing its constitution to a democratic federal union, and Sri Lanka turned its parliament into a constitutional assembly tasked with finding a solution to ‘the national issue’.

When problems, like conflict and poor development, are based in the political suppression of ethnic diversity, federalism would seem an obvious solution. It can accommodate ethnic diversity by enabling self-rule by ethnic minorities and inclusion in central institutions. However, as in other countries in Asia, federalism has been strongly resisted, and minorities have suffered. Many fear that federalism will lead to secession and national disintegration, and that new minorities will be created and marginalised.

With accommodation, should come moderation, lest the worst effects of intra-ethnic competition come to play. Nepal, Myanmar and Sri Lanka are finding a middle ground, where the rights of minority ethnic groups are affirmed and given institutional substance, and the risks of federalisation are mitigated by creating deliberative conditions across multiple levels to establish a new path towards peace, development and democracy.

It is not known why these countries, among others in Asia, have been resistant to federalism, even in the face of protracted conflict, and why it is that they are each now arriving at federalism. It is a necessity that they address the challenges associated with nation-building in

ethnically diverse societies, and the conditions that have led to exclusion and discrimination. Is there a middle way which can avoid the oscillation between extremes, or the emphasis on assimilation or integration which has beset the evolution of their modern states? Unless Nepal, Myanmar and Sri Lanka adequately accommodate their minority ethnic groups, and moderate their extremes, they may continue to suffer the consequential impacts and their governments may continue to be unable to deliver on their peoples' aspirations for peace, development and democracy.

This book finds answers to these questions, by tracing the evolution of federalism and other institutions for the accommodation, integration and assimilation of ethnic diversity. It shows how the exclusionary basis of nation-building encapsulated a simultaneously reproductive and reactionary sequence that foreshadowed many of the problems that would be experienced in Nepal, Myanmar and Sri Lanka, but at the same time, precipitated a shift towards an accommodating federalism that would become an end in itself. In exploring the debates, the institutions and the interaction of prevailing conditions, I also extract lessons for federal design and new innovations to be explored and applied over the coming years.

Nepal, Myanmar and Sri Lanka

This book focuses on the road to federalism in Nepal, Myanmar¹ and Sri Lanka.² There are many good reasons to study federalism and ethnic accommodation by comparing the cases of Nepal, Myanmar and Sri Lanka. Each country's political history as a modern state has been punctuated by the politics of identity, eventually arriving at federalism as an outcome of civil war, as part of a 'third-generation' of federalism in Asia (see Chapter 3.7) and, after a long period of internal debate about whether and how to accommodate minorities. Ethnic identity and the management of the associated political cleavages are a challenge in common to Nepal, Myanmar and Sri Lanka.

Prior to and following the establishment of their post-WWII modern nation-state, each sought to nation-build on the basis of the dominant group's identity, to the exclusion smaller ethnic groups. After a tumultuous political trajectory including reversions to authoritarianism, elites and civil society have recognised the necessity of managing, rather than suppressing, ethnic identity and cultural diversity. Minority ethnic groups in each case have demanded federalism

to overcome the legacies of historical discrimination and exclusion, which have been perpetuated by unitary and quasi-federal systems, and authoritarian and democratic regimes.

The contextual situations are also similar - regionally, socially and economically - allowing particular variables to be controlled, while important differences in matters like regime type and the mode of state formation allow rival theories to be assessed. Ethnic identity varies within and across cases and each country has been at a critical juncture over recent years enabling real time observation of the decision-making processes and debates determining the types and features of their federal systems, and the relationships between them. Most particularly, it is these institutional differences and their evolutionary paths that are compared. These similarities and differences are elaborated in Chapter 2.4.

I do not focus on the first-generation federal countries, India, Pakistan and Malaysia, all of which have been well researched and whose federal systems are more clearly associated with the decolonisation processes. Other countries in Asia are facing the federal challenge, such as the Philippines, but without the array of past institutional responses nor the widespread conflict that has precipitated the contemporary settlement processes. Further, I do not assess my theories with respect to other regions or other holding-together federal systems, nor consider the impact of my cases' developments and emerging models on the international environment more generally.

The origins and evolution of federalism

Federalism is regularly promoted as a potential solution to 'minority problems' (e.g. Anderson 2013; Kymlicka 2007a; Ghai 2000; Lawoti 2010; Stepan 1999; Stepan, Linz & Yadav 2011) and is the preferred means of accommodation by minority ethnic groups in Nepal, Myanmar and Sri Lanka. However, it has been the major issue preventing a modern constitutional settlement in those countries.

Federalism as a term is itself contested, with dubious connotation in the region, due in large part to the experience of Pakistan and Bangladesh, which split after a bloody war and external intervention. Federalism is most often used to refer to a specific type of state structure, being two or more levels of government, each with constitutionally-based powers and a direct

relationship to the people,³ but it has also been given an ideological connotation, focusing on systems for ‘unity in diversity’ and ‘shared and self-rule’ (see discussion in Chapter 3.4).

There are many types of federalism, some overlapping. Minority ethnic groups often seek ethnic federalism, where unit boundaries are drawn to account for and empower ethnic groups (Kymlicka 1995; Kymlicka 2007a), as compared to territorial federalism, where boundaries and laws are blind to ethnicity and cultural difference (Ghai & Cottrell 2007; Brown 2007). In Nepal, Myanmar and Sri Lanka, they also distinguish between genuine federalism, meaning a democratic federation with equality between units and the centre, and quasi-federalism, as encompassing other forms of government that incorporate federal features but where the units remain subordinate to the centre.

Despite federalism’s apparent popularity as a tool to manage diversity and resolve conflict, there has been relatively little analysis in the literature of Asia and its varied and still evolving hybrid approaches, which have not been well conceptualised or evaluated. The emergence of federalism in particular is under-theorised, especially in the Asian region and with respect to ‘holding-together federalism’ (where federalism was introduced to prevent the break-up of a country, rather than via the ‘coming-together’ of previously independent units) (Stepan 1999). This is a gap which my research addresses. I develop a concept of an Asian federal system to guide my research and develop a coherent theory on their origins and evolution.

There are no known overarching causes or necessary and sufficient conditions that explain why a state in Asia chooses to accommodate, nor how genuine or effective measures will be (Bertrand & Laliberte 2010). A variety of requisite or determinative causes or conditions have been considered including democratisation (Bertrand & Laliberte 2010; Galligan 2007); the method or mode of state formation, especially violence (Reid 2007); minority’ commitment to human rights (Kymlicka 2007b); religion (He 2007; Walton 2013; Raghavan 2013); and the role of international actors (Kymlicka 2007b; Bertrand & Laliberte 2010).

I use these elements as control variables and rival theories and instead build upon the theories of William Riker (1964) and Daniel Ziblatt (2006; 2004) regarding the origins of federalism, which I find are still most pertinent. I expand their focus from the conditions and mechanisms of coming-together federalism, to the holding-together systems of Asia. I distinguish between

those processes that are essentially unilateral and concessionary, which bought only quasi-federalism often in an authoritarian or presidential context, and those under which a democratic federalism is the most viable option. I undertake a historical comparative analysis using a historical institutionalism based methodology, mapping path dependencies and the interaction of self-reinforcing and reactive sequences, and analysing critical junctures, federalism debates and incentive structures.

My key proposition is that holding-together federalism in Asia is established following an alliance of excluded minorities and regime change forces from the dominant group. I argue that necessary and sufficient conditions for the establishment of federalism are ethnic diversity, an associated infrastructural capacity and a moderate secession risk. If the secession risk is too high or too low, federalism will be strongly resisted. This applies whether the alliance seeks to overturn a colonial administration, such as occurred in India and Myanmar, or an indigenous ruler, such as occurred in Nepal. I demonstrate that Nepal, Myanmar and Sri Lanka are on a road to federalism, triggered by the identity-based nation-building that gave rise to a simultaneously self-reinforcing and reactive sequence. I also show why federalism does not arise under democratic conditions, unless as part of a transition involving regime change.

Blending accommodation and moderation

Further, by tracing the evolution of institutions of accommodation and integration, and their impacts, I draw important lessons for the balancing of centrifugal and centripetal forces, which often compete to the detriment of stability and the development and inclusion of minorities. I argue that accommodation needs to be accompanied by moderation to mitigate the risks of secession and minority oppression, which are the most common concerns accompanying federalisation. Deliberative settings, incorporating inclusive representation and accountability, embedded in a competitive multilayered system with a degree of semi-detachment, provide the incentives for accommodating institutions to contribute to achieving just outcomes.

I argue that the experiences of Nepal, Myanmar and Sri Lanka show that a federalism designed to embed deliberative conditions and encourage multiethnic institutions, particularly political parties, at the centre while leaving space for ethnic parties and lower-level group autonomy at the unit levels, is able to balance the centrifugal forces associated with ethnic federalism and

the moderating centripetal forces associated with integration and electoral incentivisation. That is, it contributes to justice as a political equality that combines accommodation and moderation and provides space for all groups and individuals to have access to and participate in political deliberation and decision-making. The cases of Nepal, Myanmar and Sri Lanka entail a rejection of the consociational paradigm, as a consensus government has only appeared at times of transition, and even then, with an oppositional element. The minority ethnic groups in these countries are seeking accommodation via autonomy and inclusion, with little regard for the role of the group in the centre.

Hybrid systems have been developed to find a middle ground. State-wide multiethnic, and unit based ethnic political parties are more likely to emerge under hybrid federal systems and multiethnic political parties pursue more moderate policies than those that are based on ethnicity. Mixed, sovereign, inclusive and multilevel institutions incentivise reciprocity and accountability. Such hybridisations are evident in these cases and suggest the beginnings of a new paradigm for federalism in ethnically diverse countries. Further, the cases show an empirical relationship between the extent that ethnicity is used as a basis of federal delineation with accommodation via proportionality and inclusion, and the security for, and powers of, the units (i.e. ethnic federalism tends to be more centralised than territorial federalism, on account of the potential for secession and marginalisation of new minorities).

Chapters summary

The book is structured as follows. Firstly, I explain my methodology and conceptual framework. Chapter 2 outlines the reasons for applying historical institutionalism to my research and defines my use of key concepts like path dependency and critical junctures. I apply that framework to the federalisation process, developing a conceptual model for the interaction of self-reinforcing and reactive paths along the road to federalism. I then develop my second conceptual model, which links antecedent conditions to federal outcomes, and detail my variables and their application in each of my cases.

Chapter 3 expands on the theoretical underpinning and logic of my theory and main proposition. I outline the importance of ethnic identity and the justice inherent in its recognition and accommodation. I argue that the persistence of ethnic identity renders mute

arguments about whether identities are constructed or primordial, and define the context and key terms used throughout the book. In particular, when the modern states of Asia attempted to consolidate their colonial boundaries via an identity-based nation-building agenda, conflict and instability resulted. With few exceptions, these modern borders masked substantial internal diversity which governments would come to accept as needing to be accommodated for peace and development. I then turn to federalism and federal systems, and their emergence in Asia. I distinguish between different types of federalism and define my use of terms.

Using this basic framework, I develop a concept of an Asian federal system for analytical purposes, incorporating the key institutions for achieving the federal purpose of ‘unity in diversity’, and outline a measurement approach along a continuum of assimilation, integration and accommodation. At the accommodation end of the spectrum are two rather distinct approaches, one which encourages centripetal forces and the other which empowers ethnic groups and is centrifugal. Expanding on the logic of my theory, Chapter 3 explores the causes of federalism in the literature and in the Asian experience, concluding that the theories of William Riker and Daniel Ziblatt can be modified to apply to the holding-together federal systems of Asia, which have emerged over three generations.

In Chapter 4, I turn specifically to the cases of Nepal, Myanmar and Sri Lanka and their formation as modern states. I first consolidate and overview the antecedent conditions and status of the key variables at this post WWII juncture and then undertake a specific analysis of how those conditions and variables influenced the key actors and the decisions that they took. In Nepal, federalism was of little interest to the key actors despite some ethnic groups advocating for such autonomy. With the battle for power amongst only the elite of the dominant group, a unitary state based on individual rights would become the preferred option of each key actor, irrespective of their other disagreements. In Myanmar, a volatile and finely balanced set of key actors allied to establish a federal system in order to secure independence from the British and prevent the breakdown of the colonial boundaries. But, with Bamar dominance entrenched, a highly centralised and hybridised version would be imposed by the major party at the time. In Sri Lanka, despite unique cultures, the absence of a secession risk and regional or ethnic infrastructural capacity meant federalism was not taken seriously and a liberal democracy based on individual rights was meant to provide for political equality, despite the concerns put to the constitutional architects at the time.

Chapter 5 focuses on the evolution of federal institutions and those which serve an assimilating, integrating or accommodating purpose more generally. In each case, the initial advantage of the dominant ethnic group was consolidated via further institutional change. However, these changes, taking the form of identity-based nation-building, triggered counter-reactions that clashed with the self-reinforcing path of ethnic domination encapsulated by nation-building and other related activities, resulting in a simultaneous reactive sequence. The chapter explains the major institutional changes over the course of each case's modern history, maps them along an assimilation, integration and accommodation continuum and shows how those changes heightened the intensity of reactions and the strength of the minorities leading ultimately to instability and the necessity of federal reforms to better manage ethnic diversity. Finally, for each case, I discuss the interaction of this federalisation process with democracy and the key variables and show how when those variables display certain characteristics, alliance formation and a fuller federalisation follows. This takes us to the contemporary constitutional settlement.

Chapter 6 details the contemporary critical junctures, which are still evolving in some cases, using the federal debate to draw out the underpinnings of change and its parameters. It confirms the continued salience of secession risk and infrastructural capacity and expands in some detail on the alliances formed and necessary for achieving a genuine federalism, as compared to the quasi-federalism that each has institutionalised, without success, in the past. First, the chapter reformulates the key actors, as updated from the state formation stage and briefly details the relevant constitutional change processes around which that alliance operates. Although there is a modern-day emphasis on participatory processes, the processes of these countries are primarily elitist though involving ethnic elites and an important deliberative dimension in contrast to previous unsuccessful attempts at federal constitutional reform. Chapter 6 considers in more detail the way that secession risks and other fears around ethnic federalism are mitigated through institutional design and federal compromises, such as the trade-offs between autonomy and inclusion, and the role of democracy and other control variables in framing the possible and prospective positions taken in each case. This leads into an exploration of the lessons that the federalisation of Nepal, Myanmar and Sri Lanka provide.

Chapter 7 looks specifically at federal design issues and how they interact with electoral system design. Firstly, I outline my approach to considering success. The effectiveness of federalism

is most often considered in terms of stability. However, if the purpose of federalism concerns the management of ethnic diversity, then success should be related to this. Justice should aim towards political equality for groups and individuals, which requires a blending of both accommodation (incorporating autonomy and inclusion) and moderation. I then consolidate the lessons from the contemporary federal debates in Nepal, Myanmar and Sri Lanka, including how issues of power-sharing are addressed via electoral systems and proportionality requirements, rather than consociationalism's executive power-sharing institutions (e.g. a grand coalition), or federalism, especially bicameralism.

I also recount how electoral systems have operated in the countries and how recent changes are linked to increasingly moderate policies and electoral outcomes, while at the same time providing for accommodation through federalism. In particular, the moves of major political parties towards greater inclusivity has provided a semi-detached forum for cross-ethnic deliberation at the centre, while reserving space for ethnic political parties at the unit and subunit level. Other institutional arrangements that encourage moderation together with accommodation include the emphasis on local government and multilevel autonomy and the use of a parliamentary system to increase accountability on the executive.

Finally, I delve deeper into the potential of deliberative democracy and associated conditions to incentivise moderation and contribute to the blending of accommodation and moderation. I survey evidence that deliberation and specific tools, such as deliberative polling, do change people's minds, even in the case of deeply entrenched identity-based concerns, and outline more specifically how Nepal's constitutional settlement processes was both deliberative and moderating. I bring together the lessons of Chapter 7 to develop a hypothesis, and potential evaluative criteria, for future testing.

The concluding chapter summarises the book and its key findings outlining the unique but path dependent nature of Asian federal systems and the lessons for blending accommodation and moderation in ethnically divided societies. I argue that a multilevel federalism, hybridised in terms of multiethnic institutions at the centre, and ethnic institutions at the unit and sub-unit levels, and supplemented by substantial proportionality requirements offers a better alternative to ethnic federalism, consociationalism or state neutrality as a means of promoting political equality and the development and democratisation that should follow.

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¹ Known as Burma at independence until 1989 when it was renamed the Union of Myanmar by the then military junta. Although not yet recognised by the US, this name is now commonly accepted and so I exclusively use the name Myanmar.

² Sri Lanka was formerly known as Ceylon. Its name was changed to Sri Lanka in 1972, which was identified with the majority Sinhalese. It is referred to throughout this book as Sri Lanka.

³ Each is selected and acting directly on its constituents; possessing legislative and executive powers derived from a constitution; and, able raise revenue and allocate resources (Watts 1999; Riker 1964; Elazar 1987). Conversely, a unitary system, where sovereignty is held or vested (by the people) in a central level of government, may have administrative units, bicameral parliaments and even local government elections, but those units are not constitutionally protected and the centre may alter, revoke or create units and powers.