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The Origins of Holding-Together Federalism: Nepal, Myanmar, and Sri Lanka

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Abstract: Theories on the origin of federalism generally only apply to coming together federalism. In Asia, some states introduced federalism following decolonization to hold together multiethnic communities, but others centralized and pursued a nation-building agenda. Federalism was not established in Asia again until Nepal's new constitution of 2015. Why has federalism been resisted and what causes its institutionalization? Using the cases of Nepal, Myanmar and Sri Lanka, I show that a moderate secession risk, together with a substantive peripheral infrastructural capacity, are necessary conditions for the establishment of holding together federalism. A high secession risk prevents the formation of an alliance between minority ethnic groups and regime change agents from the dominant ethnic group, which I argue is the key mechanism for federalization in these contexts. A bargain with the core results in quasi federalism for regime maintenance. Conversely, demands for federalism are too easily repressed when secession risk is low.

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Since William Riker's (1964) seminal work on the origins of federalism, more than ten new federations have come into existence. Federalism is increasingly seen as the most appropriate form of state structure for ethnically divided countries (e.g. Anderson 2014; Kymlicka 2007; Stepan 1999). The new federations are the 'holding together' variety, where power is devolved from the center to the periphery in order to prevent the break-up of a country, such as via secession. Riker's theory concerns older federations, which derive from the 'coming together' of previously independent units (Stepan 1999). Further, there has been no systematic study of the origins of Asian federalism, which has arisen over the course of three post World War II (WWII) generations.

The research question addressed by this article is why was federalism institutionalized in some of Asia's multiethnic states, but not in others? I argue that Riker's basic approach is applicable to cases of Asian federalism, and to holding together federalism more generally, when the external threat posited by Riker is reconceptualized as a secession risk and once the infrastructural capacity of the periphery is taken account, as argued by Ziblatt (2004; 2006). However, the secession risk must be at a moderate level – not too high or too low. I also show that the bargaining conceived of as the causal mechanism in Riker's account requires a broader understanding. In these cases, the bargain is borne of an alliance among excluded peoples, rather than a bargain between a prospective center and the periphery, as argued by Riker. Holding together alliances are based on value creation, rather than the zero-sum game that is generally seen as characterizing federalization.

I use the cases of Nepal, Myanmar¹ and Sri Lanka² to demonstrate these conditions as necessary for federalism in the modern Asian context. Nepal, Myanmar and Sri Lanka are ethnically diverse. Nepal and Myanmar officially have more than 100 ethnic groups, although these can be

categorized more broadly, such as into the eight ‘national races’ of Myanmar, or into Madheshis, Janajatis and Pahadis in Nepal. Sri Lanka has a smaller number of ethnic groups, usually understood as comprising the Sinhalese, Sri Lankan Tamils, Upcountry Tamils and Muslims. In each case, ethnic identity is defined by a combination of ethnicity, caste and religion with some features more salient than others.

In Sri Lanka, the Sinhalese are numerically and politically dominant, comprising around three quarters of the population. The Bamar ethnic group is dominant in Myanmar, at around two thirds of the population. In Nepal, although the dominant group is not a majority, the high-caste hill Hindus (Pahadis, together with the indigenous (Janajati) people of the Kathmandu Valley (Newaris)), almost entirely dominated the upper echelons of the state, society and the economy (Lawoti 2005; Ghai 2011; Malik et al. 2009, 379-380).

In each case, nation-building has been based on the dominant group’s identity, to the exclusion of smaller ethnic groups. This led to substantial minority resistance, instability, poor development and internal conflict. In Myanmar, numerous insurgent groups have taken up arms against the state, commencing at independence in 1948 and continuing today. In Sri Lanka, large-scale conflict erupted in 1983 and continued until the major insurgent group, the Liberation Tamil Tigers of Eelam (LTTE), were militarily defeated by the Sri Lankan state in 2009. In Nepal, a civil war launched by Maoist rebels in 1996 continued until a peace agreement in 2006.

Minority ethnic groups in each case have demanded federalism as their preferred means of accommodation and to overcome the legacies of historical discrimination and exclusion. This challenge is now being faced. In 2008, Nepal elected a constituent assembly, which as its first act declared the country to be a federal, democratic, secular republic. Its federation was consolidated

with a new constitution in 2015. In Myanmar, the 2008 constitution laid out a quasi-federal state structure that is actively being reconsidered by the new 2016 government, led by democracy icon Aung San Suu Kyi, along with the ethnic nationalities whom have all committed to establishing 'genuine federalism'. Sri Lanka has taken a different road. After vanquishing the LTTE in 2009, the government descended into further authoritarianism until a 2015 regime change alliance came to power committed to a solution to 'the national issue'.

Federalism is often used to refer to a specific type of federal system - a democratic federation, which is colloquially known in the region as a 'genuine federalism'. I make a distinction between federalism and federal systems, similar to that made by Watts (1999, 6-13) but with a qualitative distinction. I reserve the term federalism for federal systems that have broadly equal and secure levels of government, which includes federations, and refer to other federal systems as quasi-federalism. Federalism and quasi-federalism can be democratic or not although federalism tends to be most effective when democratic (Galligan 2007; Burgess 2013). I use the term federalization to refer to the introduction or enhancement of a federal system via institutional change.

I use a historical institutionalism methodology, which emphasizes the complex interests of powerful actors and the mediating role of institutions. According to historical institutionalism, the evolution of institutions is often path dependent, following a period of contingency, a 'critical juncture' (Hall and Taylor 1996). I adopt a definition whereby critical junctures are "relatively short periods of time during which there is a substantially heightened probability that agents' choices will affect the outcome of interest" (Capoccia and Kelemen 2007, 348). I focus on junctures related to federalism. Historical institutionalism does not assume historical efficiency, or the inevitability of 'equilibrium institutions', as once a path is established, self-reinforcing

mechanisms may perpetuate sub-optimal institutions, or lead to a path characterised by reactive sequences (Mahoney 2000).

This article contributes to federalism scholarship by revising Ziblatt's (2004, 2006) and Riker's (1964) theories on the origins of federalism to apply to holding together federalism and the Asian region. I develop the theory through analysis of federalism in Asia and test its application in the cases of Nepal, Myanmar and Sri Lanka, but contend that the revisions should be considered by scholars studying the origins of federalism in other regions.

PLACING FEDERALISM IN ASIA WITHIN EXISTING SCHOLARSHIP

This section provides an assessment of current theories on the origins of federalism. It outlines the historical circumstances that have challenged state-builders in Asia and explains why existing theories do not adequately explain the origins of, or resistance to, federalism in such contexts.

Federalism was initially introduced to Asia as a means of holding together states following the decolonization of large areas of the region. This first generation of Asian federalism occurred in India, Malaysia and Pakistan and has largely been sustained despite significant internal heterogeneity and some early secession events. Elsewhere, modern Asian states attempted to hold-together via nation-building in a unitary state. Between Malaysia's 1963 federation and Nepal's 2015 constitution, no new federations were established (although a variety of quasi-federal forms were instituted). It is commonly accepted that the diverse and multinational status of many Asian states resulted in considerable minority resistance to nation-building agendas (see Bertrand and Laliberte 2010; Kymlicka and He 2005). This leads to the question of why federalism has been resisted – or more pertinently, what caused it to be adopted in the situations that it was?

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 taken will be (Bertrand and Laliberte 2010). A variety of requisite or determinative causes or conditions have been considered including democratization (Bertrand and Laliberte 2010; Galligan 2007); the method of state formation and the colonial legacy (Reid 2007; 2010); minorities' commitment to human rights (Kymlicka 2007); religion (He 2007; Walton 2013; Raghavan 2013); and the role of international actors (Kymlicka 2007; Bertrand and Laliberte 2010). However, none of these factors can explain federalization, or lack thereof, other than in a few relatively isolated cases.

International actors have been important at times, particularly India and the British at the state formation stage. However, the presence and type of federal system, once demanded, has been dictated by internal decision-makers in light of their perspectives on secession. For example, India's preferred approach to federalism in Sri Lanka (in 1987) and Nepal (in 2015) was either amended or ignored so as to reduce the viability of, or potential for, secession³. The lack of democracy or democratic culture is rejected as a substantive cause of resistance to federalism, given that federalism was agreed to by key actors in Nepal absent a functioning democracy, while Sri Lanka's longstanding democracy has met only with resistance to federalism – that is, until it broke down. However, the absence of democracy, and peoples' aspirations for it, can help give rise to the conditions for an alliance for regime change. Factors like the concern for minorities' respect for human rights and religion are used instrumentally to uphold existing power bases and mitigate imperatives for federal accommodation, but are not causal.⁴

Daniel Ziblatt (2006, 3-6) outlines the three standard approaches to explaining the origins of federalism: ideational, where federalism is an outcome of the predominance of the 'federal spirit' (e.g. Burgess 2012); cultural-historical where the relative distinctiveness of cultural groups

drives federalization (e.g. Erk 2008); and social contract or power-centered theories. This latter approach, derived mostly from Riker (1964), sees federalism as being a bargain between elites deriving from a desire to mitigate an external threat and expand territory. Although the threat posited by Riker is arguably negligible in some cases (e.g. Australia), his theory remains the most prominent explanation. Other approaches have partial explanatory value.⁵

Ziblatt (2004; 2006) builds on Riker's idea and convincingly argues that federalism emerges in situations where regional or identity groups have an 'infrastructural capacity' already in place and upon which new federal arrangements can be built (providing a credible negotiating partner and the governance benefits sought through unification). Ziblatt shows that federal ideas and distinct cultures might be necessary conditions, but they are not sufficient. However, he does this only in respect of coming together federal systems and his theories do not necessarily apply to holding together federalism, nor to the Asian region.

Hueglin and Fenna (2015, 129-134) conceive of 'devolutionary federalism', applying to the cases of Spain, Belgium and South Africa, but do not look further or theorize commonalities. Kingsbury (2012) looks at Asia and argues that autonomy arises from conflict resolution via 'mediated compromise' to prevent state break-up and build legitimacy by better reflecting diversity in the structures of the state. However, those that were mediated (e.g. Sri Lanka in 1987) elicited a concession that maintained existing power relations. Broschek (2013, 101) uses the European cases to argue that holding together federalism "evolved from a rather incremental transformation of authority relationships." However, federalism was established in Asia following a fundamental transformation of authority relationships at central and unit levels. But under what conditions?

The period in which an Asian country federalized heavily influences its process of federalization, particularly its origin. Federalism in Asia can be understood to be occurring over three generations. The first generation of federalism in Asia grew out of processes of decolonization and modern state-building. The second generation occurred after the establishment of post war unitary states in China, Indonesia and the Philippines, and involved overlaying federal features. Remaining is the third generation - Nepal, Myanmar and Sri Lanka. Nepal has recently established federalism, although full implementation is pending, while Sri Lanka and Myanmar have quasi-federalism, which is being actively reconsidered.

Notwithstanding their variation, Asian approaches to federalism appear path dependent, following the critical junctures and upheavals in the post WWII and revolutionary period of modern nation-state building (Reid 2007; 2010; Bhattacharyya 2010). With some exceptions, the form of state that was put in place at the origin of the modern state in Asia has been maintained. Indonesia had a very short lived federal arrangement, which was never institutionalized, while Myanmar has fluctuated between unitary and federal systems, never reaching the 'genuine federalism' that is demanded by its minority ethnic groups. Otherwise, there have been no shifts from unitary to federalism, or vice versa, up until Nepal established federalism some sixty-five years after building its modern state.

THEORETICAL ARGUMENT AND DEFINITION OF TERMS

This section expands on the unique attributes of federalization in Asia to develop the theory in greater detail. It also provides a definition of the independent variables and causal mechanisms that are pertinent to the cases and to the origins of holding together federalism more generally.

Riker's theory (1964) implies that when a prospective or existing core can militarily overpower the periphery, it will, so the weaker the center the more likely federalism and vice versa. Michael Mann (1986), from whom Ziblatt 'borrows' his concept of infrastructural capacity, would also give a similar explanation, based on the extent of despotic and infrastructural power held by the center and the strength of the peripheral economic elite⁶. Indeed, if federalization progresses because the center is weak and the periphery strong, the difference between Sri Lanka and Nepal would be explained. However, federalization did not occur in Myanmar at times of near complete state collapse (for example, following the economic crisis and peoples' uprising of 1988) and in 1987, when the LTTE was strong and the Sri Lankan state was on the verge of collapse, it did not accept federalism, which appears more likely now than at any time before. So what has changed and what else is important?

The first generation of Asian federalism suggests that a state-building or decolonization process is formative, unless it is violent or involving a war of independence (e.g. Indonesia and Myanmar). In particular, the legacy of colonialism is reflected at that state formation critical juncture in critical antecedents that frame the potential options and the means by which a country can hold together following independence. The indirect rule components of the colonial institutions can be related with Ziblatt's infrastructural capacity. Direct and centralized governance in Sri Lanka carried through to a unitary state, but mixtures of direct and indirect rule in India, Pakistan, Malaysia, Myanmar and Indonesia all resulted in federalism, however short lived. Similarly, uncolonized countries (Nepal, Thailand, China) remained unitary.

However, all post state-building (second and third generation) federal systems of Asia have arisen out of conflict, irrespective of the colonial legacy. In these cases, a federal system was institutionalized to, at least in part, manage, minimize or eliminate a secession risk. But even

then, only in Nepal's case was a 'genuine federalism' agreed. Others moved to quasi-federalism only, sometimes providing substantive autonomy within a unitary state (e.g. Indonesia, Philippines), or creating a federal state structure but with centralized leadership (e.g. Myanmar, Sri Lanka). None of the countries adopted consociationalism and although some features are present, particularly during the transition stage, federalism has been, and continues to be, the main desire of minority ethnic groups.

Secession risk is equated with the external threat posited by Riker (1964). It is a definitional truism that there should be a secession risk for a holding together federal system, but it is not so simple. A moderate secession risk is a necessary condition for the establishment of holding together federalism. A high secession risk has inhibited a shift from unitary to federal state in Nepal, Myanmar and Sri Lanka, but when sufficiently lowered, federalization has followed. If too low, federalism is easily resisted. I operationalize secession risk by combining three factors – the relative homogeneity of the given area(s); the breadth of non-state military power (geographical extent of conflict); and the presence of a supportive international environment, especially sympathetic neighbors.

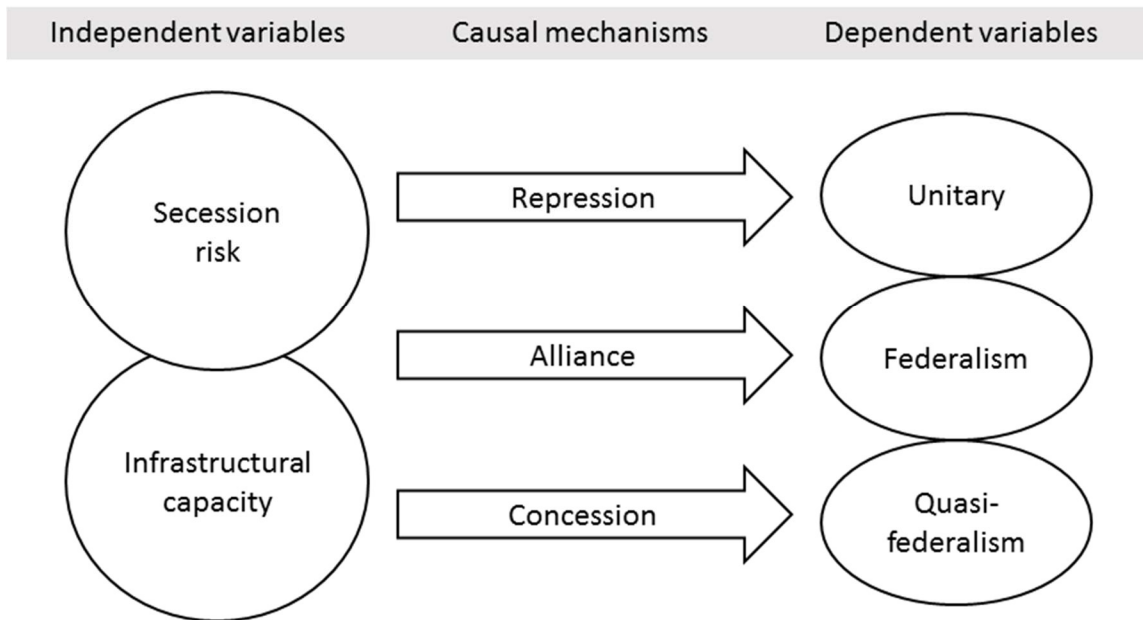
Infrastructural capacity is operationalized contextually, along administrative and negotiation dimensions. A prospective federal unit and associated ethnic group can gain and hold infrastructural capacity through decentralization, whether pre-existing colonial administrative architecture or under delegation from a central government; and through conflict, including parallel administrations and autonomy via ceasefire arrangements. Further, political parties and armed groups can be credible negotiating partners, even if a broadly non-partisan forum might be preferred⁷. I emphasize the negotiating dimension of Ziblatt's definition, rather than the ability to deliver administrative benefits, because it is a holding together context and a federal alliance

relies on credible negotiating parties and the benefits of regime change. Notwithstanding, there are clear administrative benefits available to the center when there is a parallel administrative capacity, even if only access related.

The ‘bargaining’ mechanism intrinsic to Riker’s (1964) theory about the origins of federalism was reformulated by Ziblatt (2004, 77) as a ‘concession’ - or in his words, when “the core concedes authority and periphery seeks autonomy when subunits have infrastructural capacity to deliver public goods of union”. I make a distinction between concessions, involving the core or the center, and alliances that maximize mutual benefit. I argue that in a holding together context, a concession leads only to quasi-federalism, and that an alliance for regime change, when including minority ethnic groups seeking federalism and excluded members of the dominant ethnic group seeking democratization, is the critical mechanism leading to federalism. In an alliance, the core is not necessarily part of the agreement, indeed its replacement is an impetus for alliance. As alluded to by Ziblatt (above), a concession is a one-sided bargain, offered by the core and at a cost. An alliance will still involve bargaining, but with increased emphasis on mutual benefit through value creation. The difference between holding together and coming together federalization is that while the centre is still interested in a unified state, the former from a perspective of what might be lost, and the latter from a perspective of what can be gained. The calculus for the excluded members of the dominant group is different. With little to lose and much to gain, an alliance with minorities can be mutually beneficial, at relatively little expense. I therefore distinguish between bargains that are concessions and bargains that are alliances.

Figure 1 provides an illustration of my conceptual model and the relationships between variables, as described above. Repression is a further mechanism available, besides concession or alliance.

Figure 1: Conceptual model for the origins of holding together federalism



FEDERALISM IN THE STATE FORMATION STAGE

This section outlines the status of the variables at the state formation stage and how they combined to effectively define whether or not federalism was incorporated into the initial modern state structures of Nepal, Myanmar and Sri Lanka.

Nepal

The Nepali state is said to have commenced around 250 years ago with the Gorkhali conquest of the Kathmandu Valley (1768-69). Since that time and up until 1951, it was under the authoritarian rule of a monarch or a hereditary oligarchy (the Ranas) and maintained a unitary feudalistic system. However, actual governance never had practical reach to the entire country, nor succeeded in gaining the loyalty of its indigenous people. Many minority ethnic groups continued to live a traditional lifestyle beyond the reach of the modern and pre-modern state and

maintained a distinct identity and sense of nationhood (Lawoti 2007; Bhattachan 2008). Others were able to formalize some level of local rule, for example the Limbu chieftains of eastern Nepal, though remained subordinate to the state (Whelpton 2005, 51).

An anti-Rana movement emerged after WWII and when in 1947 a democratic party – the Nepali National Congress – was formed, the movement gained pace. The Congress, with support from other minor parties launched an insurgency in 1950 that although mainly confined to border areas led to an Indian brokered Delhi Accord and a concession from the Rana oligarchs. Under the Accord, ultimate authority was restored to the King, with an appointed Cabinet comprising Ranas and members of the Nepali National Congress. Included in the Accord was a commitment to hold democratic elections, which eventually occurred in 1959 (Hachettu and Gellner 2010; Whelpton 2005, 35-85).

The Nepali National Congress was comprised of high caste Pahadis and still exists today as the Nepali Congress. Even though it succeeded in bringing-down the Rana regime, it replaced it with an establishment by and for high caste Pahadis (Smith 1967). The claims of the traditional leaders of minority ethnic groups were not adequately considered as they posed no substantive secession risk. The only ethnic party was the Nepal Tarai Congress (established 1951), which was mostly Madheshi and demanded an autonomous Terai region (Bhattachan 2003, 11). There was otherwise little infrastructural capacity to support the claims of minority ethnic groups, and with a low secession risk, the peripheral demands for federalism were easily disregarded or dampened down. Quasi-federalism was instead imposed.

Nepal's ethnic identity based social stratification had placed almost all negotiating power and resources in the hands of members of a single ethnic group, who were interested in power

production. The demographic elements of the ethnic identity social structure, in this case that a single ethnic identity group could not form a majority and there was considerable heterogeneity, was negated by this social stratification. Would some kind of group-based equality emerge via democracy? Unfortunately, there was little opportunity for this to be tested, however, the experiences of Myanmar and Sri Lanka would suggest otherwise.

Myanmar

In Myanmar, after three wars and the progressive gaining of territory, the British consolidated its rule in 1886. Myanmar did not gain independence until 1948 following a bloody and treacherous war of independence that pitted its ethnic groups against one another and involved Bamar collaboration with the invading Japanese army (Smith 1991, 60-87; Taylor 2009, 219-250). Prior to British colonization, the Bamar kings professed to rule much of the country, though were primarily restricted to the plains (Taylor 2009, 15-66). The hilly and mountainous regions of Myanmar were under the traditional leadership of a variety of minority ethnic groups, and the Bamar kings had only an indirect relationship with them. The British were able to subdue some, reach agreements with others, and avoid the remainder (Furnivall 1960, 8-12). They governed the country as two sectors – Burma Proper/ Ministerial Burma (incorporating four divisions); and, the Frontier Areas, comprising Shan, Chin and Kachin areas. The latter areas were excluded from legislative application, comparatively neglected with little built infrastructure and without any direct authority by the British (His Majesty's Government 1956 [1945]; Taylor 2009, 67-292; Smith 1991, 40-52).

When Britain was considering Myanmar's independence, it aimed to hold it together. With a number of viable permutations, from joining Myanmar and India to creating independent states

for Kachin, Karen and Shan peoples, the makeup of states in that region was relatively open. The British, through pragmatism and idealism, wished for the Bamar to reach agreement with the minority ethnic groups. Key actors were armed and ready to defend their claims, and there was a high degree of ethnic homogeneity in certain regions. Furthermore, the international environment was volatile and there were opportunities, which would be taken subsequently, for ethnic groups to align with cross-border forces and seek the active or passive support of a sympathetic neighbor. The secession risk at the time of Myanmar's independence and federal union was substantial and increasing, but not yet supported by international actors or the activities of local insurgent groups, and so not so high as to prevent federalization.

Some major groups were able to come together and reach agreement to work together for independence. In 1947, the Panglong Agreement between Bamar independence hero Aung San and representatives from Shan, Kachin and Chin groups agreed to what was in essence federalism. However, the agreement was vague and accompanied by a verbal commitment to incorporate a right to secession in the constitution, which later occurred (see Smith 1991, 79; Walton 2008, 896). Further, the Karen and other groups outside the Frontier Areas were not part of the agreement. The Karen had been advocating for an independent state and so conceding to an autonomy arrangement within a Bamar led state would be a retrograde step.

Aung San took the Panglong agreement to England, after initially being rejected on account of the lack of consent from the ethnic nationalities, and succeeded in securing their consent to an independent Burma. However, after preparing a draft federal constitution and convening a constituent assembly, he was assassinated along with allied members of Cabinet. His successor, U Nu, had a less accommodating approach to the ethnic nationalities. Significant revisions were

made to the then draft constitution, notably the establishment of an asymmetrical and majority rule based upper house weighted in favor of Bamar (Lian 2012, 11-14).

The groups that were not part of the Panglong Agreement were not satisfied. The Karen, who like the Chins were granted a 'special division' (semi-autonomous unit) with the prospect of further powers in the future, almost immediately took up arms against the government. Other groups followed in the coming years (Smith 1991, 62-92; Taylor 2009, 219-292; Walton 2008; Sakhong 2010; Silverstein 1977, 15-21; Maung 1956, 124-136). Arguments still rage about 'the spirit of Panglong' and what was envisaged, but it is clear that this Panglong alliance, and the compromises therein, were formative in terms of the decision to federalize.

The alliance was made possible and potentially beneficial because of the pre-existing state segmentation that gave form to a peripheral infrastructural capacity, and the mutual desire for regime change. The ethnic minorities and Bamar served together in the British army, but they were organized into ethnic brigades, so for example, when the Karen chose to battle with the state after independence, a coherent military unit could be withdrawn and stand alone. There were traditional hereditary structures with village headmen and Shan Sabhas (royals) commanding political allegiance and basic administrative functions (e.g. justice, land). These provided a barrier against Bamar domination and a basis for the new state structure. It was these traditional Shan royals who attended and concluded the Panglong Agreement and participated in the Constituent Assembly (Maung 1956, 124-36; Walton 2008).

The direct relationship between federalization and infrastructural capacity is demonstrated not just by the comparison with Nepal and Sri Lanka, but also within case at the subunit level by the preferable constitutional and negotiating treatment afforded to those groups that were in Frontier

Areas under the British administration, and those that were subsumed into Burma Proper. That the Karen, for example, did not receive a special unit in the initial constitution is attributable to the lesser, or less legitimate, infrastructural capacity, on account of being split between Ministerial Burma and the Frontier Areas. All of the groups that were not administratively separate (part of the Frontier Areas) from the Bamar received no special concessions at the time of initial federalization and were not a discreet part of the alliance, while all those that were, had an ethnic state demarcated for their benefit. This is regardless of whether or not those groups fought against the Bamar during WWII, or had particularly antagonistic relationships. Two of the three 'frontier' groups, the Kachin and Chin, were pitted against the Bamar and the Japanese forces with whom they collaborated, but were able to negotiate a dedicated federal unit as an outcome of independence.

Sri Lanka

Sri Lanka was also a British colony, and it had been prepared for independence through gradual democratization and self-rule measures instituted by the British since 1931. It became independent in 1948, following an election through which power passed to a multiethnic but Sinhala dominated elite. A coalition government was formed. The country remained initially under dominion status, and became a republic in 1972 (Wikramasinghe 2010, 308-366; DeVotta 2010; Malik et al. 2009).

The British governed the country as a unitary state and provided equal rights to all citizens from 1931, until then there had been some forms of communal representation (Wikramasinghe 2010). Prior to British unification, the island comprised separate warring kingdoms, but it was not divided along the present cleavages. One of the four main groups, Upcountry Tamils, were

brought to the country by the British in the 19th century and have not integrated with the Sri Lankan Tamils or others (Malik et al. 2009, 315).

Despite the absence of meaningful regional infrastructural capacity, Sri Lanka did have a political party system that included a separate organization for Tamils – the Tamil National Congress, which at that stage also purported to represent Muslims – but it did not seek any form of autonomy (Choudhry 2010, 107). There were no known or credible calls for separate states or units for Tamils and Sinhalese, despite federalism being a longstanding option⁸. Even if there were, there were no armed forces available to back it up, and the international actors at the time, Britain and India, supported an independent and unitary Sri Lanka. Without these centrifugal forces, it follows that the unitary form was essentially unchallenged and the need to manage a secession risk did not come on the agenda until later.

FROM INITIAL ADVANTAGE TO CONTEMPORARY CONSTITUTIONAL SETTLEMENT

Between their initial choices and the contemporary processes of federalization were further opportunities to establish federalism. However, in each case, only a centralized and authoritarian quasi-federalism arose. These failed to sustain and led firstly to a centralization response and ultimately a more fundamental federalization, after their initial structures broke down. This section outlines how the conditions changed overtime and led to the specific institutional responses.

Nepal

In Nepal, the initial intention to establish a quasi-federal ‘bottom-up democracy’ was based around the institutionalization of Panchayats (village assemblies). Panchayats evolved from their

1950s village-based focus into a multilevel system of representation, with direct elections at the village level and indirect elections for membership of higher level bodies including a national assembly, which after 1980 elected the prime minister and was itself directly elected. The Panchayat system incorporated constitutional protections and roles for the sub-state levels, but with ultimate authority in the center. It was said to be an indigenous solution, but did not allow the political parties and other forms of association that were actively sought by the people (Gellner 2005; Smith 1967; Kumar 1980). In other words, it restricted the development of regional or identity-based infrastructural capacity, even while the center itself remained weak. Meanwhile, the secession risk was increasing. By 1975, following India's incorporation of Sikkim, there were widespread rumors that India planned to annex Nepal's southern plains (the Terai, where most Madheshis reside), which is a fear that permeates today (see Subedi 2007).

The second important set of institutional arrangements was put in place in 1990. These were democratic, but fundamentally unitary. Although the new constitution mentioned local authorities and the multiethnic nature of the state, the identity-based nation-building agenda remained enshrined, with for example Nepali as the national language, Hinduism as the state religion and restrictive citizenship rules (see Lawoti 2008). Further, the push for democracy was largely confined to the urban middle class, which in effect meant the dominant high caste Pahadis. In fact, there was less representation of minority ethnic groups in this new democratic system, even if only because in the past the King had 'co-opted' ethnic elites (International Crisis Group 2007, 4). The state remained highly centralized and continued to rely on identity-based nation-building for legitimation, despite its lack of reach into the periphery (Lawoti 2005; Ghai 2011). That an uprising eventuated should come as no surprise.

A Maoist insurgency commenced in 1996, eventually fundamentally changing the conditions that had existed and persisted through the state formation stage and beyond. The Maoists gave voice and power to the excluded minority ethnic groups⁹, created regional and ethnically based infrastructural capacity, and made major inroads to removing the persisting hierarchy embedded in ethnic identity based system of social stratification (see Devkota 2012). With these changed conditions, some kind of federalization seemed inevitable. However, instead of pledging to accommodate the minority ethnic groups, the democratic parties bickered until the then King intervened, seized power, banned political parties and took up the fight with the Maoists.

There were now two alternate and temporally excluded power sources – the democratic forces, and the Maoist insurgents. In 2005, the Maoists and the seven main political parties signed an agreement to work together to overthrow the King, which set the stage for a peoples' uprising in 2006, which paralyzed the state until the King ceded power. Following the return of civilian government, the Maoists signed the comprehensive peace agreement with the seven major political parties. This agreement required the election of a constituent assembly to lead a participatory process for the development of a new and inclusive constitution. Democrats had agreed to a range of accommodating strategies (federalism, secularism), while the Maoists and minorities supported a multi-party democratic regime, which they had previously opposed. This alliance, encapsulated in the peace agreement, guided the constitution-making process.

To get to this point, the Maoists developed parallel state structures as a system of regional autonomy, including courts, administrative systems, taxation, representative bodies and public services like health, during the civil war, and sought international recognition of these state structures as additional form of legitimation. The Maoists eventually spread to sixty-eight of the seventy-five districts of Nepal (Thapa and Sijipati 2004, 56-59, 156; Devkota 2012, 48).

However, it was only when the secession risk increased to a moderate level that the final hurdle was crossed. The Madheshi uprising that occurred over 2006-07 was led by an alliance of Madheshi parties and armed groups that were in the main offshoots of the Maoists (International Crisis Group 2007). They demanded federalism and openly threatened secession. For example, the then leader of the Madheshi alliance stated that “we would like to govern ourselves now...[but] if the government does not respect our demands, we will be forced to divide the Terai region from Nepal.” (Upendra Yadav, cited in Miklian 2009, 6). Almost 50 percent of the country’s population live in the Terai, it has distinct cultures and geographical features, and the tacit support of India, which combined to lend credibility to the secessionist movement. It is in response to this risk that federalism became a reality.

Myanmar

In Myanmar, despite having a federal constitution, the Bamar had an initial institutional advantage, which meant that its culture and power could be progressively imposed via an identity-based nation-building. For example, the use of Burmese language across the units, the giving of Buddhism a ‘foremost’ place’ in the constitution and control by the center of the education system. However, the units did not come under central leadership, most particularly the Shan State, because of practical constraints and shortcomings in the ability of the center to properly implement the new institutional arrangements (Win, Han, and Hlaing 2011, 129; Taylor 2009, 229-230, 264-270). The ethnic minorities could continue to hold and build their infrastructural capacity, legitimately and illegitimately, increasing secession risk and imperiling the Bamar nation-building agenda, but not coalescing into a coherent force on its own.

By 1960, change was afoot in several respects. U Nu was persisting with his aim of making Myanmar a Buddhist state; Mons, Arakanese and Kayah were advocating for a federal unit (ethnic state); and the Shan had led an agreement with the other empowered minority ethnic groups to reform the existing federal system, lest they exercise their right to secession that was included in the constitution (Sakhong 2012, 12-23). The confluence of these events concerned almost all in one respect or another. While U Nu sought to use the situation to his advantage seeking to trade-off agreements regarding federalism with his Buddhist reforms, others saw the creation of new units at a time of possible federal reform as too risky and wished for them to be sequenced (Win, Han, and Hlaing 2011, 60-163). Ultimately, this mattered little, as in 1962, in direct response to the secessionist threat, the military took over, abolished the ethnic councils and ministries and banned political parties, proclaiming “federalism is impossible, it will destroy the union” (General Ne Win, cited in Smith 1991, 196).

A period of absolutist rule followed, as the military built a one-party system, encouraged but subordinated grassroots participation and removed the communal rights that had existed up until then. Eventually, as conflict continued and periodically erupted, the military regime introduced a new quasi-federal constitution (1974). Seven ethnic units were created, along with seven Bamar units. Little substantive institutional change occurred following the enactment of that constitution, despite the continuing conflicts. But, by 1984, all the armed groups had dropped demands for independence (Smith 1991, 386). This, combined with the end of the cold war, an economic crisis and 1988’s democratic uprising would have appeared to have cumulatively bridged a threshold for combined regime change and federalization. However, the Bamar elite, especially the military and its political party, continued to emphasize secession risks and instead quasi-federalism was reinstated (in 2008).

The 1988 peoples' uprising, its brutal repression, and the subsequently dishonored 1990 election do not need to be recounted. Needless to say, the quasi-federal constitution that followed was a one-sided concession, aimed at maintaining regime power and resolving conflict. It is a federal system, as acknowledged by the powerful Karen National Union no less, though its 'essence is weak' (Myanmar News Agency 2016). The units and minority ethnic groups remained subordinate to the center, indicated for example by the presidential control over the appointment of unit chief ministers (see Article 261).

Nevertheless, the infrastructural capacity that had existed formally and via the parallel administrations run by ethnic armed groups and their political wings continued in place. Indeed, many armed groups had agreed ceasefires with the state that gave them a more secure and expansive autonomy (Callahan 2007). The secession risk has also existed since the initial (and failed) federalization in 1948, and although armed groups had renounced secessionism for federalism since the early 1980s, it was a fear front and center in the minds of the military who had imposed 'non-disintegration' principles on the 2008 constitution. Today, this fear is subsiding as it becomes increasingly clear that the ethnic nationalities no longer seek secession, and there is little support available to ethnic insurgents from neighbors and the international community more generally. Further, the government is now led by the National League for Democracy (NLD), which is not military-aligned. The risk of secession remains, but it is now no longer high enough to prevent the introduction of federalism.

The ethnic groups have found it difficult to form and maintain alliances amongst themselves, but they are now mostly cooperating. Past alliances placed ethnic groups in one of two camps, either as part of a democratic or a communist alliance,¹⁰ whereas groups have now crossed that ideological divide and formed, for example, the neutral United Nationalities Federal Council (see

United Nationalities Federal Council 2011). However, it is the alliance between potential dominant and the minority ethnic groups that is critical to overturning the ethnic hegemony that has beset consolidation of the state of Myanmar. In the lead-up and following the 2015 election, each has expressed commitment to the priorities of both federalization and democratization,¹¹ underpinned by mutual regime change objectives. This alliance, as per Nepal, suggests that a genuinely federal outcome can be reached, should the secession risk remain moderate.

Sri Lanka

The initial advantage of the Sinhala elite and their apparent desire to assert their culture, religion and language was more pronounced, and so their initial actions were more decisive and effective. Its majoritarian democracy with no institutions for minority voice meant identity-based nation-building could be relatively unbridled. The demographics of Sri Lanka were such that parliamentary democracy served only to institutionalize Sinhalese dominance, and marginalize Tamils.¹² A cycle of reaction and counter-reaction ensued (DeVotta 2004). The crescendo came in 1983, and civil war commenced.

Between independence and the start of the civil war, the dominant Tamil perspective evolved. Initially most Tamil elites sought equal representation in the center, but shortly after independence, the Federal Party (Illankai Tamil Arasu Kachchi) was formed to advocate for autonomy. By 1976, almost all Tamil political parties sought an independent state, and were willing to use violence to achieve it (Welhengama and Pillay 2013, 274). The Sri Lankan state could have conceded some kind of federal system before then, and potentially averted the deterioration that followed¹³. But there was no imperative to act because of the low secession risk and the electoral gains found in populist responses to Sinhalese apprehensions outweighed

the potential benefits of ameliorating Tamil discontent. The commencement of full scale civil war had the dual effect of bolstering the peripheral infrastructural capacity of the Tamils, but increasing the secession risk to such an extent that it became preventative of reasonable consideration of federalism.

Despite the war and the near collapse of the state, it was not until India intervened and in 1987 brokered a settlement (the Indo-Lanka Accord) that there was any important concession by the Sinhala dominated government. This saw the introduction of quasi-federalism, with the 13th Amendment to the 1978 constitution. Despite enacting a strong set of powers for the units (provinces), there was wide-reaching potential for the center to intervene and override provincial law. The system was not satisfactory to the LTTE, and it was in any case undermined by the center and never properly implemented in the areas it was most needed (Edrisinha 2005; Choudhry 2010). Throughout, the fear of secession among many Sinhalese persisted. The Sinhala Commission reporting to Parliament in 1997 proclaimed federalism “to be the biggest threat faced by Sri Lanka in its entire history of more than 2500 years” (Sinhala Commission 2008, 594). The secession risk, although necessary for holding together federalism, was so high as to lead to mitigation strategies that would render its form virtually unworkable, and its purpose nullified.

The differences compared to Myanmar can be explained in part by relative lack of Tamil infrastructural capacity outside of the center and its institutions, until after the war, combined with the rapid rise in secession risk. There was little other than the historical claim to draw out or underpin claims for autonomy and base a negotiating position. More beneficial arrangements came after the Tamils had amassed both an armed force and a parallel administrative structure, and created and promoted a secession risk to be managed. However, that risk too quickly became

high and even once the secessionist goal was renounced in favor of federalism, the fear remained. With the state itself in little danger of collapse, as compared to 1987, no viable regime change alliances were available for the minorities, and federalization was seen as a zero-sum game by the participants, and a potential loss to those who would fear federalism.

The 2004 tsunami might be thought to be the event that bought about a new critical juncture, especially since it came at a time where there were externally mediated settlement negotiations underway, and a mutual commitment to explore federalism. But the tsunami had more impact on the insurgents than on the state system and the power balance was not substantively altered, other than through its consolidation at the center. Instead, it precipitated the breakdown of the 2002 ceasefire. By 2009 the Sri Lankan government was taking decisive action to end the insurgency by military means.

The military victory led to unprecedented popularity but increasingly dictatorial governance by the then president. Ultimately this undermined the legitimacy of the office, and minorities rallied against the excesses of the government during latter years of the civil war and afterwards, and an unexpected election result ensued in early 2015 (Stone 2014; Farook 2015). This was underpinned by an alliance seeking mutually supportive change. For the Sinhalese democratic reformists, led by the common candidate Maithripala Siresena and comprising the two major parties, the priority is the abolishment of the executive presidency, while for the Tamil activists and politicians, a ‘solution to the national issue’ is paramount. The drop in the secession risk made alliance possible and infrastructural capacity continues to exist in form of the provincial councils established by the 13th Amendment, as well as through the largely bipartisan Tamil National Alliance (TNA). Although the TNA is not part of the new regime (by its own choice), its mutual commitment has allowed for value-creation via the design of a system that meets both

actors' key aspirations rather than by trading off one against the other. To this end, a constitutional reform process has now been embarked on. Although many obstacles remain, the conditions and positions of the key actors indicate that the substance of federalism is increasingly likely to be the outcome, even though the term federalism will be avoided (see for example Public Representations Committee on Constitutional Reform 2016; Mudalige 2016; Jabbar 2016).

CONCLUSION

Conventional approaches to understanding the origins of federalism, often derived from the work of William Riker, are applicable to coming together federalism. However, they fail to explain holding together federalism or the unique experiences of multiethnic Asia. Using the cases of Nepal, Myanmar and Sri Lanka, I have shown holding together federalism is established in response to a moderate secession risk, when there is also a substantive peripheral infrastructural capacity (building on Daniel Ziblatt's work). A secession risk exists when one or more key actors advocate or canvass secession. It is moderate when two of three elements exist – secessionism is supported by armed groups that control territory, it relates to an area that is relatively ethnically homogenous, and there is a conducive international environment. If all three elements exist simultaneously, the secession risk is high and federalism will be resisted, whether by repression and authoritarianism, or by conceding quasi-federalism.

A high infrastructural capacity on its own may mean little (as it did in Sri Lanka for many years), while the absence of a peripheral infrastructural capacity will mean that federalism is avoided even when the secession risk is moderate (as occurred in Nepal in the 1970s). When these two conditions are simultaneously present, there is an incentive for alliance. To achieve a 'genuine

federalism', bargains that are based on an alliance of minority ethnic groups and excluded factions of the dominant ethnic group are necessary (whether or not the bargain preceded the excluded faction taking power, as it has in Sri Lanka). Some seek federalism, some democracy, some both, for these objectives may be reinforcing and create value. But holding together federalism is not likely to arise in a democracy, rather as part of democratic transition that enables mutual benefit for temporally excluded peoples.

The timing of federalization and alliance formation will relate to the strength and legitimacy of the center and the impact of contingent events, making an alliance more or less effective. A moderate to high secession risk (as operationalized) necessarily correlates with a relatively low infrastructural power in the center, because of the actual or potential exclusion of the central administration from the given areas. This also creates potential for administrative gains through federalization. However, if the secession risk is too high, such an alliance will not form. Instead change may be incremental, with bargains involving the center or the core more likely to lead to a concessionary quasi-federalism that maintains an existing regime but stops short of the kinds of equality usually associated with 'genuine federalism'.

A question for further research would be what effect secession risk has on the operation of federalism. In the case of Myanmar, its initial federalism was abolished on account of secession risk, but it is difficult to attribute implementation problems to the secession risk. Nevertheless, it may be hypothesized that a successful federalism reduces secession risk, while a poorly structured or implemented version increases it. By tracking secession risk, it may be possible to draw conclusions about the effectiveness of federalism, and to relate the level of risk to specific design features or implementation issues. There are ways to mitigate a secession risk through

institutional design (e.g. unit demarcation), and a decision to establish federalism or not sets the stage for a whole new range of issues to be debated and decided.

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¹ Myanmar was known as Burma until renamed in 1989. I refer to it as Myanmar throughout this article.

² Sri Lanka was known as Ceylon until renamed in 1972. I refer to it as Sri Lanka throughout this article.

³ Sri Lanka did not devolve law and order powers despite agreeing to do so and amending its constitution accordingly, and Nepal did not agree to demarcate one or two Madheshi majority provinces abutting the Indian border, with the effect of limiting the potential for federal structures to be used as a vehicle for secession.

⁴ For example, Muslim parties in Sri Lanka have remained concerned about their vulnerability as second order minorities should the Northern and Eastern Provinces be merged, as is demanded by Tamils. However, despite the use of their plight by ‘anti-federalists’ who fear a merger will give strength to a Tamil secessionist movement, they remain generally supportive of federalism and often seek autonomous areas of their own (see for example Sri Lanka Muslim Congress 2008 [2006]).

⁵ In particular, while a socio-cultural explanation is immediately attractive in my cases, ethnic diversity contributes to, but does not dictate, the form and effect of the explanatory variables. I incorporate it in my conceptualization of secession risk, and note that the extent to which a population is heterogenous has been reasonably stable, while the outcomes to which it relates are substantially different at different points in time.

⁶ In my cases, the growth or maintenance of a peripheral infrastructural capacity relates to the central state’s identity-based nation-building agenda that failed to engender social cohesion as minority ethnic groups remained loyal to their own distinct identity groups, and the lack of development afforded to regions, rather than being related to the center’s developmental successes.

⁷ This is a broader approach than that taken by Ziblatt (2004, 78), who confines it to ‘embedded parliamentary structures’ (via a constitution) and ‘well developed administrative structures.’

⁸ By the time of impending independence federalism was put by a relatively weak group of Kandy-based Sinhalese, who were perceived as seeking to protect hereditary rights, and small leftist parties. The Tamil Congress sought electoral concessions for all minorities to provide equal representation (Choudhry 2010, 107).

⁹ Although it can be argued that the Maoists were a class organization and were not formed to represent minority ethnic groups, there is very high alignment of ethnicity with exclusion (Lawoti 204, 131-132). Further, the Maoists explicitly incorporated minorities into their ranks and actively pursued their interests (Devkota 2012, 22; see also point 20 Bhattarai 2004 [1996]).

¹⁰ In 1988, out of 25 armed groups, about half were allied with communist forces, and half with (ethnic) democratic forces (Smith 1991, 10).

¹¹ For example, NLD leader Aung San Suu Kyi has stated that “the constitution needs to be one that will give birth to a genuine, federal democratic union” (cited in Win and Khine 2016) and the United Nationalities’ Federal Council seeks a federation “based on democratic rights and ethnic-based states” (cited in Nyein 2015).

¹² Tamil parliamentarians were only elected in a small number of districts where they were numerically concentrated and the Sinhalese parties did not need to enter into a coalition with them to secure a majority.

¹³ Most particularly by implementing either of the 1957 B-C Pact (between SWRD Bandaranaike and SJV Chelvanayakam) or 1965 D-C Pact (between Dudley Senanayake and Chelvanayakam).