

From dialectics to political theology: rethinking complexity in federalism

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Political theology

“All prolific concepts of modern theory of the State are secularised theological concepts.”¹

The federal polity is systematically described for the first time in the Bible in political and religious terms as a covenant between God and men for the joint preservation of the common good, in which the Former surrenders part of His omnipotent power in favour of the latter, as free partners. From this original compact, a number of subsidiary covenants, or “public law partnerships”², between equals can be deduced, based on mutual obligation and responsibility, integrity and equality of the parties, and consent, culminating in a world confederation.

The biblical idea that power comes from God to the people influenced both Protestant theologians of the 16th and 17th centuries, Huguenots, Scottish Covenanters, Puritans, and philosophers (Locke, Montesquieu, Kant, Buber, Proudhon) alike, who secularised and transformed it into a political concept. In a similar way, the Israelite (to which the Bible refers originally) and the American experiences, from the authors of *The Federalist* to Woodrow Wilson, are amply permeated by these views, the two being considered by Ivo Duchacek “ethno-ideological states”, that is, states which

“developed on unsettled, or more accurately, undersettled territories by emigrants who were, at least originally, from the same or similar ethnic stock in the ‘old world’ and who settled in the new in pursuit of the same or similar visions or goals. There they amalgamated into new peoples on the basis of those visions and goals”³.

The modern understanding of federalism was, in effect, born in the United States. Along with the tripartition of powers and the system of checks and balances, emerges the reconciliation of the above-mentioned biblical principles with nascent individualism, creating a union whose subject is the people, simultaneously member of the local and the national communities - *dual federalism* -, each of which possessing an exclusive jurisdiction, neither of which subordinate to or liable to be deprived of its authority by the other.

Therein lies precisely the essence of federalist thinking.

Federal theory as dialectics

Federalism rests on a number of paradoxes defined by Carl Schmitt as friend/enemy dialectics: “Everything which exists hides its opposite”⁴. The opposite poles reflect one and the same reality and do not destroy each other but rather coexist in an unstable balance, generating movement and progress; the elimination of one leads to the destruction of the whole. Identity, as Václav Havel writes, is not a prison, but an invitation to dialogue⁵.

Federal arrangements seek to link individuals, groups and polities in such a way as to allow them to retain their autonomy and integrity, combining shared-rule with self-rule⁶, authority with liberty and unity with diversity:

“... any given federal structure is always the institutional expression of the contradiction or tension between the particular reasons the member units have for remaining small and autonomous but not wholly, and large and consolidated but not quite.”⁷

The reasons that underlie such polyarchic arrangements are varied and usually dictate the survival of the federation: diplomatic and military defence (the most common feature); territorial expansion through peaceful means; ethnic ties; economic relations; geography; political, sociological or historical motives; beliefs and ideologies. In all levels of government, constant negotiation and power sharing devices help create what Daniel J. Elazar designates by a “non-centralisation system”⁸, or “matrix”, offering an alternative to the centre-periphery model. Power is distributed among many centres, whose existence is constitutionally guaranteed, neither enjoying primacy over the other, enabling the whole and the parts to become stronger through interdependence. At the same time, a number of formal and informal institutional mechanisms help create multiple channels of communication and redundancy, introducing flexibility/adaptability and stability into the system.

The end result is a self-regulating and self-restoring organisational structure capable of learning (i.e., of questioning its values and certainties and posing new problems⁹), which provides for limited scale experimenting, permits power to be democratised, or socialised¹⁰, increases the opportunities for political participation, and enhances consensus and the peaceful resolution of conflicts. In sum, the ‘central interest of true federalism in all its species is liberty’¹¹. The Proudhonian view, as well as his heirs’ (integral federalists), runs in the same direction.

Resolution of the dialectics: centralisation

Between theory and practice there is a long path, though. Systems are self-regulating and self-restoring only to a certain extent; a number of internal and external constraints interfere with the normal feedback process, breaking down their self-regulating ability, which relies, as Martin Landau explains, on error-detection mechanisms and reference signals pointing to error:

“In hard artificial systems, they are provided by an external source ... and they automatically activate corrective feedback loops. When, however, the command source is internal to the system, as is obviously the case in politics, the strict separation that permits the observation and detection of measurable discrepancies does not obtain. This means that the command (internal to the system) cannot provide clear and precise error signals – a situation that is further aggravated by the fact that much of our political programming is cross-purposed and cross-valued, as well as multi-purposed and multi-valued. Reaching for multiple goals simultaneously, even when not formulated in terms of necessarily vague charter-like values, makes it exceedingly difficult to detect measurable (i.e. observable) discrepancies between program and outcome. And even when goals are agreed to, when desired outcomes are generally accepted, praxeologies which are deemed to be correct by

one are rejected by others. Nor can we minimize the matter of our time constants. (...) what is taken to be a correct action often leads to unanticipated consequences which are disastrous.”¹²

Once self-correcting schemes fail, the very flaws which federalism was deemed to rectify follow. If, on the one hand, an extremely rigid division of powers can be counterproductive, on the other, overlapping and, often, uncoordinated jurisdictions lead to duplication, bureaucracy, large expenditures of time, money and effort, slower decision-making processes, or even stalemates, and unaccountability. The end result, in both cases, is inefficiency and a loss of coherence in the decision.

Another argument stems from the fact that federal polities may provide protection for backward elements or minorities, who seek to utilise one of the components of the union for their own purposes, altering the will and spirit of federal legislation to please local idiosyncrasies, thereby endangering the whole: “in pure theory ... what one ought to abrogate for federalism is a system of minority decision that imposes high external costs on everybody other than the minority”¹³. Classical examples can be found in the Secession War and the civil rights issue in the United States and in the Quebec case.

Reliance on local government also entails patronage, influence and personal fiefdom: “Local governments, like all governments, act as Leviathan, exploiting constituents to further enhance their own power and authority”¹⁴.

Institutions are the product of the specific political culture of the polity in which they operate and are, therefore, resistant to change and tend to perpetuate across time: “inertia is on their side. Whatever their imperfections, they are known models”¹⁵. They are, moreover, operated by a “professional-bureaucratic complex”¹⁶ and

“Because government service is a lifelong career for most, it places a premium on ‘going along’ within the large organizations that comprise government today in order for a person to successfully advance his own career. This has the tendency to stifle initiative because, in most organizations, nothing is to be gained and much lost by ‘rocking the boat’. Innovation to meet new situations or problems becomes increasingly difficult in the face of the large organizations with permanent staffs of career people who can protect themselves against what they perceive to be undue pressure from the ‘outside’.”¹⁷

In big, powerful, complex and impersonal organisations that are governments, this detachment from the body politic has perverse consequences. Those who have a stake in the system unite “in what become tightly knit oligarchies, subordinating pluralism to a new kind of structured control over policies and programs”¹⁸, something Robert Michels labeled as the *iron law of oligarchy*. A case in point is the obliteration of *dual federalism* by Roosevelt’s *cooperative federalism* and, later on, by Nixon’s *new federalism*, transforming the States in mere administrators of a federal-designed agenda: *hegemonic federalism* (K. Bilfinger) replaces *federalism of balance* (Constantin Frantz).

The problem is all the more worrying when governments are perceived as little more than companies, i.e., providers of goods and services, as unaccountable private interests take over public good, which thus becomes “little more than a national sum of private ambitions”¹⁹. Because the two spheres, the economic and the political one, have divergent goals, and, once politics is evicted by the market, democratic decisions lose credibility, given that money can be neither democratised nor held responsible, and

citizenship is converted into plain “ratification of decisions or consumption of services”²⁰. When citizen involvement is innocuous, representation fails and elections turn into “a simple appointment of agents and delegates of interest groups. Orientation is top-down, i.e., the elected representative is the *appointed agent* of the voters, dependant and subordinate”²¹.

In democracy, as de Tocqueville anticipated, power escapes the powerless individuals and concentrates in the central government, even in federal polities. Democratic homogeneity merges with homogeneity in the federation and eliminates the political boundaries among member states to make them coincide with the homogenous unity of the people, eradicating the previous dualism between central and local governments, so that, in the end, there is only one political entity: “The dialectic is uncomfortable with the contradictions immanent in a phenomenon and seeks to absorb or transcend them in their unity”²². Politics means organisation, which, in turn, stands for power:

“In the final analysis, federalism, as with all political systems, is fundamentally about power – who holds it, how it is divided and shared, and how responsibly and effectively it is administered”²³.

Centralisation is thus the indelible mark of the encroachment of both rationalism (i.e., of general and uniform solutions) and determinism upon politics: “In any age, under any regime, the best is the enemy of diversity”²⁴. After all, “isn’t the creation of a central government the beginning of a centralisation process?”²⁵.

The corollary of centralisation: sovereignty

“ ‘The essence of unity’ ”, in fact, “ ‘is to be one’ ”²⁶. All federations aim at durability and are, therefore, perpetual, which means that the presence of independent units within a federation is necessarily an unsustainable contradiction. Political existence implies the possibility a specific entity has to autonomously determine its own form, something that cannot happen in a federation for the simple fact that the central authority holds the right and the power to intervene in the internal affairs of the member States, thus altering their status. The accuracy of the statement can be attested by the primacy of federal law over State law; a closer look at the history of constitutionality verification shows that, in case of conflict, federal powers are almost invariably reinforced (a tendency also patent in the functioning of the European Union). When conflict calls for a decision, there can only be one authority, above the parties. Otherwise, if we

“adopt as a procedural norm the principle that every inclination, act or policy ought always or generally to be balanced or checked by the contrary inclination, act or policy, we are at once reduced to immobilism”²⁷.

And here resides the issue of *sovereignty* - “the issue over who has the last word, that is to say, who makes the final decision”²⁸ -, whose essential subject is “the link between supreme factual power and supreme legal power”²⁹. “Sovereign is he who

decides on the exception”³⁰; the exception “disturbs the unity and the order of the rationalist outline”³¹ and with it, “real life crushes the shell of a mechanism frozen by repetition”³². Such a definition is immediately applicable, regardless of ideologies or forms of government.

The criterion of indivisibility is therefore fulfilled and, with it, the validity of the classical definition of sovereignty in federal polities. Herein lies the distinction between confederations and federations:

“Either the local governments can generally be overruled within the system or they cannot be. If they can be, then they do not enjoy an autonomous power and their dependence demonstrates an imbalance. If they cannot be, this must mean that they can either take over the centre or simply secede from the federation. For within a federation, not only does the secession of a locality signify the cancellation of any federal authority over the territory; it equally signifies the cancellation of the central government’s authority over its own citizenry within that locality”³³.

In case of conflict, confederations dissolve, while federations don’t. Typical examples are the Sonderbund War in Switzerland, in 1848, and the Secession War in the United States (1861-65). Without a single political will, a confederation becomes an inter-state relation, whereas a federation develops into a sovereign state and drops its federal principles, as member States lose the right to independent decision-making regarding their political existence and only retain an administrative and legislative autonomy³⁴.

The question of sovereignty in federal states is not, then, merely “an incidental one”³⁵, “subordinated to issues of constitutionality, utility, and propriety”³⁶, nor are federal principles “an alternative to (and a radical attack upon)”³⁷ it, despite “subtle distinctions”³⁸. In the end, as the allusion to sovereignty “is merely a symbolic manifestation of a weak federal spirit”³⁹, one has to wonder if federalism isn’t but a simple “technique for political integration - occasionally useful, transitory in nature, and ultimately to evolve into a more simple form of decentralization within a strong unitary government”⁴⁰, “gradually discarded (in fact if not in form) as an unnecessary encumbrance”⁴¹.

Political theology revisited: enter ideology

Such an acknowledgement does not, however, come easily. Federalism has been deified to an extent such, that it is “accepted almost as a dogma”⁴², as “an end *in* and of itself”⁴³:

“because federalism possesses powerful persuasive (valuational) connotations in addition to its descriptive properties, only a very few of us are willing to make this claim. To say that ‘federalism is dead,’ that it is no longer applicable to the present circumstance, seems to be equivalent to saying that a cherished and enduring value is dead. Unwilling to do so, we invent new federalisms (...). The others,

however, remain vague, ambiguous and confusing terms which cannot provide any clear decision rules. What they do, apart from our propensity toward reification, is to symbolize our adherence to an evolutionary mode of analysis and our loyalty to the enduring values of the mechanical mode. It is as if ... scholars stand with one foot securely planted in mechanics as they salute evolution with the other. How else to understand the curiosity of a permissive federalism”⁴⁴.

Federalism has now come to embody a comprehensive world-view fully identified with progress, justice, peace, pluralism, liberty, rule of law and democracy. Based on these paradigms, it will immediately distinguish genuine from usurped forms; hence,

“There are forms of federalism to parallel virtually every form of rule, except authoritarian and totalitarian rule, which can be masked by federal systems and even influenced by their federal structures, but which are, in the last analysis, something else”⁴⁵.

One should recognise here a case of political theology, as mankind and the democratic idea of rational legitimacy take the place of God as the origin of all power, masked as *ideology*. All political ideas “in one way or the other take a stand on human nature and assume that man has a good or a bad nature”⁴⁶ and “promote a certain type of humanity”⁴⁷. Systematic denial or dismissal of the validity of certain characters and the affirmation of uniqueness with regard to other beliefs are two typical and inescapable attributes of any ideology. As are a methodical, systematic, rational theory and the absolute faith in its potential, firmly defended by the adherents, who seek to translate it into reality. When mutually exclusive and competing values recognise that history has reached a crossroads, old structures are to be destroyed and new ones created:

“The master of a world which has to be altered, that is, of a failed world (on whom one imposes the need to change because he opposes it), and the liberator, the agent of a new, transformed world, cannot be good friends. (...) ‘In times of revolution, everything which is old is the enemy’”⁴⁸.

All revolutions are, however, post-revolutionary. It would be a folly “to make a revolution without reform and to believe that ... an opposite constitution possesses within itself peace and harmony”⁴⁹. The full cultural and political affirmation of an ideology does not coincide with the complete fulfilment of its distinctive value⁵⁰. From federalism - the unfulfilled ideology - to federation - the institutional prosecution of the fact that manifests itself in politics in the shape of power - there is a substantial difference:

“Institutions are subtle and recalcitrant things. They are not neutral with respect to human purposes; rather each institution and process has its peculiar propensity to produce certain outcomes and not others. (...) human beings often do not do their political work well. They seek more than a given institution can supply, or they seek from it contradictory ends, or they blend processes which work at cross-purposes, etc. Thus deliberate purposes often give way to or become blended with

unintended purposes, which institutions generate from their natures. What men want and, as it were, what their institutions want, blend and blur in the practical unfolding of affairs. From this mixture of human intention and institutional nature arises much of the frustration of political life, its confusions, tensions, failures, and partial successes”⁵¹.

Politics, moreover, is the work of men, with all their imperfections, which means that “those Vices, which render social Institutions necessary, are the same which render the Abuse of such Institutions unavoidable”⁵². The essence of the State, as Engels would put it, is the fear of humankind faced with itself.

One is thus forced to conclude that “federalism designates a set of historical experiences and policies much older than its theory, but never fully fulfilled”⁵³.

Notes

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- ¹ Schmitt, Carl, *Théologie Politique. 1922, 1969* (Paris : Éditions Gallimard, 1988), 46
- ² Elazar, Daniel J., *Exploring Federalism* (Tuscaloosa: University of Alabama Press, 1991), 115
- ³ Elazar, Daniel J., *Constitutionalizing Globalization. The Postmodern Revival of Confederal Arrangements* (Lanham: Rowman & Littlefield, 1998), 21
- ⁴ Schmitt, 69
- ⁵ Havel, Václav, *Il est permis d'espérer* (Calmann-Lévy, 1997), 124
- ⁶ An expression by Daniel J. Elazar
- ⁷ Diamond, Martin. "The Ends of Federalism." In *The Federal Polity*, edited by Daniel J. Elazar, 130. New Brunswick: Transaction Books, 1974
- ⁸ Elazar, *Exploring Federalism*, 34
- ⁹ Haas, Ernst B., *When Knowledge is Power. Three Models of Change in International Organizations* (Berkeley: University of California Press, 1990), 3
- ¹⁰ Burdeau, Georges, *Traité de Science Politique*, tome II (Paris : Librairie Générale de Droit et de Jurisprudence, 1949), 396
- ¹¹ Elazar, *Exploring Federalism*, 91
- ¹² Landau, Martin. "Federalism, Redundancy and System Reliability." In *The Federal Polity*, 186
- ¹³ Riker, William H. *Federalism* (1964). Quoted in Carl Friedrich, *Trends of Federalism in Theory and Practice* (London: Pall Mall Press, 1968), 56
- ¹⁴ Graglia, Lino A. "Restoring the Federalist System: How to Return Control of Local Affairs to Local Authority", 1. Unpublished manuscript prepared for the Advisory Commission On Intergovernmental Relations. Quoted in Clint Bollick, *Grassroots Tyranny. The Limits of Federalism* (Washington D.C.: Cato Institute, 1993), 5
- ¹⁵ Cairns, Alan C. "States and Nations." In *Federalism and the New World Order*, edited by Stephen J. Randall and Roger Gibbins, 74. Calgary: University of Calgary Press, 1994
- ¹⁶ Beer, Samuel H., "The Modernization of American Federalism." In *The Federal Polity*, 77-78
- ¹⁷ Elazar, Daniel J., "Cursed by Bigness or Toward a Post-Technocratic Federalism." In *The Federal Polity*, 296
- ¹⁸ *Ibid.*, 266
- ¹⁹ Pranger, Robert J., "The Decline of the American National Government." In *The Federal Polity*, 98
- ²⁰ Hawkings, Jr., Robert B., "Power-Sharing and Municipal Governance." In *Constitutional Design and Power-Sharing in the Post-Modern Epoch*, edited by Daniel J. Elazar, 82. Lanham: University Press of America, 1991
- ²¹ Schmitt, Carl, *Théorie de la Constitution* (Paris: Presses Universitaires de France, 1993), 356
- ²² Eulau, Heinz, "Polarity in Representational Federalism: a Neglected Theme of Political Theory." In *The Federal Polity*, 167
- ²³ Randall, Stephen J. "Preface." In *Federalism and the New World Order*, xxi
- ²⁴ Beer, "The Modernization of American Federalism.", 79
- ²⁵ Croisat, Maurice, *Le fédéralisme dans les démocraties contemporaines* (Paris : Montchrestien, 1995), 28
- ²⁶ von Seydel, Max. *Abhandlungen*, 19. Quoted in Carl Schmitt, *Théorie de la Constitution*, 520
- ²⁷ King, Preston, *Federalism and Federation* (Baltimore: The Johns Hopkins University Press, 1982), 61
- ²⁸ Friedrich, 76
- ²⁹ Schmitt, *Théologie Politique*, 28
- ³⁰ *Ibid.*, 15
- ³¹ *Ibid.*, 25
- ³² *Ibid.*, 25
- ³³ King, 60
- ³⁴ Schmitt, *Théorie de la Constitution*, 519, 521
- ³⁵ Elazar, *Exploring Federalism*, 108
- ³⁶ *Ibid.*, 231
- ³⁷ *Ibid.*, 109
- ³⁸ Schmitt, *Théorie de la Constitution*, 520. Daniel J. Elazar, for example, speaks of the difference between sovereignty and its full exercise as independence, claiming that one does not necessarily imply the other. See *Constitutionalizing Globalization. The Postmodern Revival of Confederal Arrangements*, 63
- ³⁹ Friedrich, 160

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- ⁴⁰ Elazar, *Exploring Federalism*, 149
- ⁴¹ *Ibid.*, 155
- ⁴² Leach, Richard H., "Federalism: a Battery of Questions." In *The Federal Polity*, 43
- ⁴³ Landau, "Federalism, Redundancy and System Reliability.", 177
- ⁴⁴ *Ibid.*, 179
- ⁴⁵ Elazar, *Exploring Federalism*, 230
- ⁴⁶ Schmitt, *Théologie Politique*, 65
- ⁴⁷ Denis de Rougemont, "Textes sur le fédéralisme", *Cadmos*, hiver 1986, 14
- ⁴⁸ Mignet quoted in Schmitt, *Théologie Politique*, 177.
- ⁴⁹ Schmitt, *Théologie Politique*, 152-153
- ⁵⁰ Albertini, Mario, *Il federalismo* (Bologna: Il Mulino, 1993), 279
- ⁵¹ Diamond, "The Ends of Federalism.", 129
- ⁵² Rousseau, Jean-Jacques, *A Discourse Upon the Origin and Foundation of the Inequality Among Mankind* [book on line] (New York: Lenox Hill Pub. & Dist. Co. (Burt Franklin), 1971, accessed 1 February 2004); available from: <http://www.geocities.com/paris/chateau/6110/rousseau14.htm>; Internet
- ⁵³ Frigerio, Fabrizio et al. "Fédéralisme chez Rougemont." In *Dictionnaire International du Fédéralisme*, edited by François Saint-Ouen, 203. Bruxelles: Bruylant, 1994