

JERUSALEM LETTER / VIEWPOINTS

Jerusalem Center for Public Affairs

VP:108 13 Heshvan 5751 / 1 November 1990

FEDERAL DEMOCRACY IN A WORLD BEYOND AUTHORITARIANISM AND TOTALITARIANISM

Daniel J. Elazar

Federalist Responses to Current Democratic Revolutions / Federalism and Democracy / What About Efficiency? / The European Community: Europe Returns to Itself Through Confederation / The Contemporary Federalist Revolution / Shifting to a Federalist Direction

On October 3, 1990, Germany became a unified state once again while the world held its breath. Within less than a year after the people of East Germany rose up against the repressive Communist regime ruling them, the Berlin Wall is history, and German reunification within the framework of a treaty ending World War II is an accomplished fact. NATO has been extended to the Polish border, and Soviet troops are withdrawing eastward.

Little noticed in all of this was how Germany was reunified. As soon as the people of the German Democratic Republic (East Germany) had liberated themselves, they demanded reunification with the German Federal Republic (West Germany), and their demands were received with full sympathy by their West German brethren. The actual reunification of Germany was based on the refederalization of the

GDR, the first step toward a single German Federal Republic. Since the establishment of the GFR, federalism has been one of the bulwarks of democracy there. The new GDR government acted to restore the existence and plenary powers of the five lander (states) which its Communist predecessor had abolished decades ago. Reunification then involved the linking of those five lander with the eleven lander of the GFR. A federal solution for German reunification has been shown to be both necessary and desirable to satisfy the demands of the European power situation and to assure the continued existence of democracy in a united Germany.

Federalist Responses to Current Democratic Revolutions

The vast changes that have occurred in Eastern Europe and the USSR over

Daniel J. Elazar, Editor and Publisher; Zvi R. Marom, Associate Editor; Mark Ami-El, Managing Editor
21 Arlozorov St. Jerusalem, 92181, Israel; Tel. 02-639281. © Copyright. All rights reserved. ISSN:0334-4096

The opinions expressed by the authors of Viewpoints do not necessarily reflect those of the Jerusalem Center for Public Affairs

the past year bring us face-to-face with the opening of a new era in contemporary history, one in which the people themselves have rejected totalitarian communism and are seeking to restore civil society through the introduction of more liberal political regimes. In that, they are following in the footsteps of a similar movement that took place in Latin America earlier in the 1980s against the authoritarian regimes that had taken power there. Those, in turn, were stimulated by the ending of the authoritarian regimes in the European countries of the Mediterranean region -- Spain, Portugal, and Greece -- in the later 1970s. Suddenly, democracy, which only a decade ago had seemed to be in retreat in the face of growing repression throughout the world, has emerged as the real wave of the future.

Once the euphoria of the first days passed, however, it became apparent that the making of a successful revolution against tyranny still represents -- as James Madison, Alexis de Tocqueville and others have long pointed out -- the easiest part of the work. Establishing durable successor regimes that will make democracy possible and also successfully confront the problems faced in each of the countries involved is a much more daunting task.

One of the critical problems faced in several of those countries is that of accommodating internal diversity, often ethnic in character, and fostering appropriate links with their neighbors. In both of these cases, the only solutions that seem to be feasible are federal solutions. This is certainly true in the case of the biggest of the polities involved, the Union of Soviet Socialist Republics. As soon as glasnost and perestroika began to take effect, the different non-Russian nationality groups raised their heads and set their sights on greater independence. Shortly thereafter, the Great Russians themselves began to assert their Russianness and to seek greater expression of it.

At the present time, the USSR hangs in the balance between greater independence

for its nationalities or restoration of repressive centralized government. Its present nominal federalism, which despite the paper guarantees of its constitution, does not function in a federalistic way in practice, is incapable of responding satisfactorily to these demands. Those who believe that it is best or at least necessary to preserve all or most of the USSR under one general government are looking to federal solutions to solve its problems of balancing nationality demands with the desire or need for a common Soviet-wide framework.

But the USSR is not the only country involved. In Eastern Europe, totalitarian Communism imposed its own murderous strait-jacket after each of the World Wars. It finally collapsed under the weight of its own sins (one is tempted to say "internal contradictions"), opening the door to democracy and demonstrating the need for federal democracy at that. Czechoslovakia became nominally federal in 1968 -- the only major result of the Prague spring to survive. It is now on its way to becoming meaningfully federal. The German case has already been noted. Indeed, part of the maintenance of democracy in a reunified Germany undoubtedly will be tied to the continued linkage of Germany to the European Community, itself an evolving confederation that has restored the possibility of confederation as a viable form of federalism.

Within the European Community, Spain, Portugal, and Greece have returned to democracy. In 1978 Spain adopted the regime of the autonomies, a form of federal solution designed to solve its own internal nationality problem. Ten years after the adoption of the democratic constitution for Spain and the introduction of the regime of the autonomies, it is generally agreed that the introduction of those federal principles and arrangements has had extraordinary success in restoring democracy and diffusing internal conflict in that country. The possibilities for the continuation of a democratic regime in Greece are strongly influenced by that

country's membership in the European Community. Portuguese democracy has also been influenced for the good by Community membership.

With a still-powerful USSR to their east and a newly-powerful Germany to their west, the former Soviet bloc countries of Eastern Europe are faced with their own problems of survival and renewal. There is every reason to expect that down the line they either will be absorbed in the EC or older ideas of a middle European confederation may be revived, albeit more along lines of a confederation like that of the European Community to the west.

Turning to Latin America, the strengthening of federalism has been a significant item on the agendas of Argentina and Brazil in their turn from authoritarianism to liberal democracy. Brazil's new constitution increases the formal powers of the states vis-a-vis the federal government in the name of democracy. The formal and rather weak federal system of Mexico is becoming a vehicle for the emergence of an effective and competitive political opposition there through the Mexican states. Venezuela has elected to strengthen its existing federal system by providing for the popular election of state and local chief executives to strengthen its democratic regime. Recently, there has been some promise that regional confederal arrangements in Central America will be playing a role in the restoration of democracy in Nicaragua and Panama and other countries of that region.

Federalism and Democracy

Federalism is a rich and complex thing, a matter of formal constitutional divisions, appropriate institutions, patterns of political behavior, and, ultimately, of political culture. Moreover, federal democracy offers a complete and comprehensive theory of democracy which stands in sharp contrast to the theories of democracy regnant in Europe until now -- Jacobin democracy and parliamentary democracy on the Westminster model -- not to speak of that

monstrous development sometimes referred to as totalitarian democracy, where outside of the privileged elites, there is the "democracy" of the equality of repression.

Federal democracy addresses the great questions of politics and the relationships between power and law or right, and the great issues of centralization and decentralization. It does so by vesting political sovereignty in the people who constitute the body politic and requiring them to constitutionally allocate competences or powers among the governments of their creation. They must do so in a way that encourages multiple centers of power and in a manner which provides for both centralization and decentralization as needed, but always within a framework whereby all exercise of powers is governed by law and related to the rights of the constituents.

In sum, the intimate and vital connection between federalism and democracy, which is so often overlooked in the democracies of the West, even those organized federally, because it is taken for granted, is being demonstrated in new, highly visible, and convincing ways in those countries now in the process of turning toward democracy. Today we can no longer ignore the reality of that connection, particularly in a world where primordial groups are reasserting themselves everywhere and where the inefficiencies of overcentralization and hierarchical structures are being demonstrated daily.

What About Efficiency?

While federalism may be nice accommodating pluralism and while it even may be helpful in promoting democracy, liberty will survive only if democracy can efficiently cope with the serious problems most of these countries face. The issue has been raised as to whether federalism is not by definition inefficient, and, even if justifiable for normative reasons, cannot be at all justified when it comes to efficiency, namely the minimum application of resources for the maximum results. The argument is that federalism, with its duplications, complexities, and redundancies,

is a machine designed for waste.

This view is based on a very specific definition of efficiency, one that is widely accepted, just as the hierarchical thinking from whence it comes is widely accepted. Today, after the research that has been done on cybernetics, the utility of redundancies as fail-safe mechanisms in the problems of efficiently achieving complex goals, the conventional wisdom is subject to question. Indeed, it is beginning to be possible to talk about a federalist definition of efficiency.

The first step toward joining the issue is with a clarification of normative positions. If one begins as a monist, assuming the desirability and feasibility of achieving one pattern of thought and behavior for everyone, then federalism is indeed inefficient and even wrong because it enables the perpetuation and even the entrenchment of differences. If one begins as a pluralist, seeing the world as a heterogeneous place and properly so, then one must make a different evaluation of federalism as a means to protect and entrench liberty. Thus, monistic Jacobin and Marxian views have constantly rejected federalism as wrong in principle, even if they have had to compromise with reality and accept the temporary existence of pluralism. Federalist views, by contrast, embrace pluralism and seek means to protect it -- one might say efficient means to do so -- of which the constitutional division and sharing of power through a combination of self-rule and shared rule is primary.

Going beyond that, one can take as one's starting point the human condition, both psychologically and sociologically, namely that individuals and individual institutions have their own goals, although to some extent will share goals with other individuals and institutions. Recognizing that, the best way to move from A to B is to identify common goals and find a way for those same individuals and institutions to express those shared goals while allowing them to maintain and pursue their individual goals. That, indeed, is what federalism does.

A few years ago, as part of the effort to break the paralysis of budgets so fixed by prior commitments as to be over 90 percent inflexible, the idea of zero-based budgeting -- building the budget from scratch every year -- was introduced. To implement this new approach, proponents of managerialism in public administration came up with the idea of PPBS. The premise of PPBS was that it was first necessary to identify agreed-upon goals, then it would be possible to evaluate all budget items in light of their efficiency in the pursuit of those goals. PPBS failed precisely because in most public frameworks there is insufficient agreement on goals to do that. People come together to pursue different goals -- open and hidden -- which at best can be harmonized so that they can be pursued through common effort and enterprise. That, indeed, is the federalist way. When forced to try to define a single comprehensive set of common goals, people could not do so and PPBS could not be implemented except marginally.

Thus, in relatively complex public arenas, efforts to bulldoze directly, which would be termed efficient in other systems, might be the least efficient and might create great static and friction that will greatly waste resources, while the existence of multiple channels penetrating through multiple cracks may be a far more efficient way to achieve even the common goals.

The European Community: Europe Returns to Itself Through Confederation

1992 is both the anniversary of a momentous date in world history and is likely to be a momentous date in its own right. In 1492, the Jews were expelled from Spain and Columbus effectively discovered America for the Europeans and opened the Age of Exploration which led to the settlement of new worlds in the western and southern hemispheres. Five hundred years after those acts which transformed the globe, the countries of Western and Southern Europe are about to take a major step forward toward federal unification.

The European Community is a centrifugal force in European history which has emerged after 500 years of centripetal pulls that developed as a result of Europe's great frontier and most particularly its colonialist expression. For 500 years, Europe pursued the twin courses of colonization overseas and centralized state-building at home. The two went hand-in-hand. The rejection of medieval or any other form of pluralism or power-sharing on behalf of the centralized state, hierarchical or parliamentary, was paralleled by the acquisition of colonies overseas by those new states as part of their muscle-flexing.

The end result for Europe itself was the reification of the state, the elevation of its sovereignty above all else, and the distortions of authoritarian statism and totalitarianism. World War II wrote finis to both of those drives, initiating an era of decolonization abroad and democratization and federal integration at home for the states of first Western and then Southern Europe. Today as the twelve community members draw closer together, they are separating themselves further from their ex-colonies and further decentralizing within their own territories. Even the reunification of Germany required the prior transformation of East Germany into a federal system, which it did this summer. Thus the demetropolitanization of Europe is accompanied by a rethinking of the European state system. Together they are part of the formation of a new worldwide matrix of regional communities and politics which will be increasingly federal in character.

For Europe, the modern epoch, from the mid-seventeenth to the mid-twentieth centuries, featured, among other things, a struggle between two approaches to nation-building; one, resting on a combination of medieval corporatism and American revolutionary ideas, sought national integration on a federal basis. Opposing that approach was the French ideal of the centralized state which gloried in the location of sovereignty in one, central point,

whether monarchic or republican. All the European states except Switzerland, and to a lesser extent Germany, followed the French lead, either consolidating into a single, centralized state or dividing into a number of smaller centralized states. The history of Europe has been written as if state-building of the latter kind was inevitable. In fact there was a struggle, philosophically, ideologically, and practically, in almost every case.

The rise of fascism and Nazism brought about the collapse of the modern epoch in World War II, Europe's *Gottterdammerung*, which affected the whole world. The postwar world brought with it the opening of the postmodern epoch which in Western Europe featured a turn in the direction of federal solutions. The European Community, whose first tentative steps took the form of treaties between sovereign states, slowly began to evolve into a confederation, in the process reviving the possibilities of confederal solutions as realistic ones.

Confederation -- a federal arrangement linking separate nations in which the principal power rests with the constituent units and the general government remains dependent upon them -- was the only form of federalism found in premodern Europe. Many of the early modern efforts at federal solutions in Europe rested on the attempt to modernize earlier confederal arrangements. None succeeded. Confederal principles could not be made compatible with the drive for a centralized nation-state. Federation, a modern invention, is designed to link the constituent units more closely within a common general government serving a single nation whose constitution is the supreme law of the land. The American invention of modern federation, which created a noncentralized framework for national statehood, became the only successful modern vehicle for expressing federal principles.

The founders of the European Community developed a new-style confederation, avoiding the problematics of establishing a single, overarching general government in

favor of a number of overlapping single and multi-purpose authorities serving its members. These are gradually being linked together through common institutions, emphasizing administrative and judicial institutions with clearly limited spheres of competence over more comprehensive legislative ones. The more grandiose and comprehensive idea of a United States of Europe was set aside -- as the Americans would say, placed on the back burner -- in favor of a more original invention designed to fit European realities.

The Contemporary Federalist Revolution

What is happening in the European Community is part and parcel of the federalist revolution sweeping the world. Today over 70 percent of the world's population lives in one way or another under federal arrangements. A third live in formally federal systems and approximately 40 percent in systems that have not proclaimed themselves federal but which must use federal arrangements to accommodate internal divisions.

Look at the world's greatest powers. Federalism is vital in the United States political system. There could be no United States of America without federalism. For much of this century this truth has been ignored by those who sought to foster class warfare and a remaking of American civil society as a welfare state, but today it has become widely recognized again as the states have taken the governmental initiative within the U.S.A. Moreover, for the first time American federalism is no longer tainted with America's original sin of racism, manifested progressively in slavery, racial segregation, and discrimination, which, while not a product of federalism, used the mechanisms of federalism for protection for nearly two centuries.

The Union of Soviet Socialist Republics is now being forced to discover the meaning and possibilities of federalism. For many years even those who counted it among the formally federal systems understood full well that Soviet federalism was

almost without meaning -- that it was a Leninist device to maintain a multinational empire under Communist rule. Its meaning was confined to allowing the non-Russian nationalities of the USSR to preserve something of their identity and heritage. The situation is now changing day by day with the new Communist leadership hoping that they can introduce real federalism fast enough to outpace the secessionist tendencies of the non-Russian nationalities. It is not unfair to say that the only possibility for the survival of the USSR as a unit lies in the introduction of authentic federalism, either federation or confederation.

India, the largest democracy in terms of population, is a soundly established federal system in which strong centrifugal and centripetal forces compete with each other constantly. China, on the other hand, has tried to use federal arrangements as window dressing to hold its peripheral regions in place in the Communist mode. Several years ago it began to seriously consider decentralization of administration throughout the country. Today, of course, all of that is in doubt.

Federalism has survived the crises of the 1960s and 1970s in both Australia and Canada. In Australia, once again it has come to be valued and in Canada the Quebec crisis has been more or less held in check for nearly a generation by federalist means and a common commitment to federal solutions. In both cases a new respect for the federal principle as a practical means of governing has developed.

At the other end of the spectrum, the microstates of the Caribbean, while rejecting federation -- islands, after all, are insular by definition -- are in the process of developing a confederal framework of overlapping joint authorities that will provide them with the common institutions they require to serve their needs. These range from a common currency and banking system to a common university to a common supreme court.

In Asia, Japan, which adopted a system of constitutional decentralization under

postwar American occupation, is now considering extending that system further, while ASEAN, presently a league, may be on its way to becoming more of a confederation in the future.

Only in Africa is the future of federalism unclear. Nigeria remains faithful to the federal principle in words but seems to be unable to avoid military government in practice. Senegambia is the only confederation on the continent and there is some question as to whether it is working. All other attempts at federalism in black Africa or North Africa failed early on. On the other hand, federal solutions for South Africa are widely discussed and federalism will probably be part of any resolution of the conflict there.

As the colonial system has disintegrated, the small territories that remained linked to former colonial powers have been transformed into self-governing polities through asymmetrical federal arrangements. These take two forms: federacies, in which the constitutional arrangement between the federate power and the federate state can only be altered by mutual agreement as in the case of the United States and Puerto Rico, or associated state arrangements where the constitutional arrangement can be changed by one or the other unilaterally under specified conditions, as in the case of the United States and the republics of the Marshall Islands.

Shifting to a Federalist Direction

Significantly, once a polity has embarked on a federal course it can extend the operation of federal principles in different directions with relative ease. The United States, for example, began as a two-arena federation involving the federal government and the states. Even at the time of union, some states understood themselves to be unions or federations of towns and the idea of constitutionalized local home rule spread throughout the United States in the nineteenth century. In the twentieth century, faced with the problem of decolonization of its island territories, the United States developed what

it calls commonwealth status for Puerto Rico and the Northern Marianas, what we refer to as federacy, and adopted associated state arrangements for the Marshall Island republics. After the revival of native American demands for greater governmental powers for their tribes, the United States began to treat the surviving tribes as "domestic dependent nations," a felicitous phrase coined by Chief Justice John Marshall in 1835 but honored in the breach for 100 years thereafter.

As I indicated at the outset, the same process is occurring in Western Europe with federalization going on simultaneously in several directions in the European Community and with regard to overseas territories attached to the Community's member states. Belgium and Spain, for example, are moving toward complete internal federation even as they confederate with the other ten states of the EC. Jacobin France has been sufficiently "softened" by its EC membership to grant home rule to Corsica and its overseas territories. So, too, with Portugal. The United Kingdom is in a continuing debate over the status of Scotland, Wales, and Northern Ireland.

Capping all this is the growing merger of the world's two state systems: the international system of over 160 politically sovereign states and the world system of over 320 federated or constituent states. This interaction has progressed most fully in the economic realm where the constituent states of federal systems including those of the older federations -- the United States, Canada, and Australia -- now are actively engaged in economic development activities in the international market. This interaction is slowly being extended in other spheres as well, diminishing the differences between the two kinds of states. As the international system further limits the sovereignty of even the nominally sovereign states and requires the involvement of the federated states to achieve any semblance of international order, the differences between the two are being progressively diminished.

The great year now coming to a close has been climaxed by the worldwide response to the Iraqi invasion of Kuwait. Who would have foreseen a year ago the U.S.A. and the USSR standing shoulder to shoulder in the Persian Gulf crisis, acting through a reinvigorated United Nations and a multi-national force on the ground. In truth, the last region in the world to be hospitable to "crazy states" is the Middle East where at least two Arab states fill that bill. Will the world response to these crazy states be the beginning of a new world order for peace? Will a unified

Germany be a peaceful and democratic one? Will the states and peoples of the former Communist bloc find their way to democracy? How will Israel and the Jewish people fare in this rapidly changing world with all of its surprises? The Jewish year 5750 just ended was surprising enough. What are we to expect from 5751?

* * *

Daniel J. Elazar is President of the Jerusalem Center for Public Affairs.