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IN PRAISE OF FEDERACY

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Prime Minister Begin's proposals to give the Palestinian Arabs of the West Bank and Gaza home rule have not yet been fully revealed, but they have already aroused considerable interest, and they are expected to be the basis of discussions with President Sadat.

What are the possibilities inherent in these proposals? Do they have any precedent on the world scene? Do they offer what Mr. Begin suggests, namely an honorable way for Palestinian Jews and Arabs to share the same land within their own respective frameworks?

In the last two years, we at the Jerusalem Institute for Federal Studies have examined what now seems to be emerging as the Begin plan. It is one of several possible options for an equitable solution to the problem of Judea, Samaria and Gaza based on federal principles. (Another such option is considered in my article "The West Bank: A Case for a Condominium," herein.) Our conclusion is that it does indeed offer a real possibility for both peoples to "have their cake and eat it too," in the time-honored manner of solutions based on such principles.

What the Prime Minister is proposing, according to all accounts, has been called in other situations political association, associated statehood, or federacy - the latter term being applied by our sister institution, the Center for the Study of Federalism in Philadelphia, which several years ago sponsored a major study of the current examples of this form of political arrangement.

Federacy has become increasingly popular in the post-war period because it offers options for self-government to political entities that would otherwise have to forgo that possibility, along with democratic political linkage to another entity where conditions require the maintenance of ties.

There are presently over 20 functioning federacies in existence. Some, like the Netherlands and Curacao, are the results of decolonization in circumstances that made it beneficial for the former colony to retain ties with what was once the mother country, but on a new basis. Others, such as the one between India and Bhutan, reflect the association of two political entities that came together for the mutual advantages such a link offered (in this case, greater security vis-a-vis China, while giving Bhutan the power to preserve its own ethno-cultural

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integrity). Some are relatively new, like the relationship between New Zealand and the Cook Islands; others, such as the link between Switzerland and Lichtenstein, are centuries old. In Finland and the Aaland Islands, regional security considerations have made federacy the only reasonable option serving the basic interests of both parties. Similarly, Berlin and the German Federal Republic are associated in this form because of conditions imposed by the great powers.

Federacies, then, come in all shapes and sizes and are established for a variety of reasons. What is common to all is a mutual agreement that both parties shall remain far more separated in their institutions than in conventional federal arrangements while retaining links to one another for certain common purposes. Beyond that, federacy has proved to be extremely flexible.

Thus there is no one common form of federacy. In each case a special institutional framework and set of relationships has developed to meet the specific needs of the parties involved. Prime Minister Begin's proposals are likely to be tailor-made to the situation in the land of Israel/Palestine. That is fully consistent with the federacy option.

One of the best examples of associated state federalism is the arrangement between the United States and Puerto Rico, whose 3,435 square miles comprise an area approximately 50 percent larger than Judea, Samaria and the Gaza Strip combined.

Puerto Rico became an American colony in 1898 as a result of unanticipated military conquest. In the course of time, the Puerto Ricans (now numbering 2.7 million on the island) were given institutions for internal self-government whose range, scope, and powers were periodically expanded.

By the 1940s it was clear that the island would not have colonial status much longer and the question was what kind of new status it would acquire. The U.S. had an interest in maintaining the island as a strategic position in the Caribbean, but at the same time had no desire to limit the freedom of the island's residents.

Since the islanders represent a different cultural tradition and speak a different language (Spanish), there was also little desire on either side for incorporating the island into the U.S. as a constituent state equal to all the others.

The Puerto Ricans, on the other hand, while wanting independence to a very substantial degree, recognized the advantages of economic and security links with the U.S. Puerto Rico needed the benefits of sharing in the American "common market" in order to improve its economic position and better the lot of its people; moreover, it did not need the burden of maintaining its own military defense.

The arrangement that was worked out provided for complete internal self-government on the island, subject only to minimal U.S. standards, exemption from most federal taxation, and an advantageous position with regard to the attraction of American industry. On the other hand, Puerto Rico was excluded from the governing institutions of the U.S. as a whole, and was given only nominal access to Congress.

After a decade of testing, the arrangement was formulated in detail in a compact ratified by both Congress and the people of Puerto Rico. Subsequently tested in a Puerto Rican plebiscite, it has become the basis for a continuing productive relationship between the two polities. The arrangement has been so successful that it has essentially obliterated the drive for independence on the island. In a series of elections and referenda that were models of freedom of the ballot in an area not always noted for such freedom, over three-fifths of the population has consistently voted for maintaining the association with the U.S., nearly two-fifths have opted for constituent statehood (that is, to become the 51st state in the American Union), and perhaps three per cent have voted for independence.

Puerto Rico has its terrorists for independence, too, who often make the headlines when bombs explode in New York City; but, as in the case of situations closer to home, they are not at all representative despite their ability to get the attention of the media. It is notable that most of their bombs go off outside Puerto Rico itself, and are set by Puerto Ricans who have moved to the U.S. mainland and who have virtually no support at home.

Federacy is a constitutionalized extension of the principle of home rule that provides adequate guarantees to the weaker entity while obviating the necessity to deal with the sovereignty issue. Under such an agreement, sovereignty is just not a central issue and need not be. Like all applications of the federal principle, it decisively turns away from the preoccupation with the sovereignty question that is characteristic of the modern European nation-state and has been exported from Europe to various corners of the world for the last century. It focuses on people, not states, as the real repositories of legitimacy.

The major benefit of the federacy arrangement is that both political entities involved can preserve their undiluted form while maintaining a common framework in areas of mutual agreement. The major drawback is that the arrangement may be a fragile one.

While currently operational federacies may be about equally divided into long-established ones and recent vintages, in some cases, at any rate, federacy seems to have been a holding action rather than a final constitutional arrangement. It has led either to the incorporation of the smaller associated polity fully within the larger ones or the separation of the two into completely separate and independent units. (An example of the first is India and Sikkim, and of the second, the Netherlands and Surinam.)

On the other hand, even this ostensible drawback may offer real advantages to both Israel and the Palestinian Arabs if their desire is to create a short-term framework that will provide the latter with the viable option of self-government while allowing the former to maintain necessary security controls, and leaving the long-range future of the relationship between the parties open to alteration. In essence, it provides for immediate institutionalization of a mutually beneficial arrangement without closing the door to future developments in several possible directions.

But despite all the benefits of this form of political association, some real concessions are required from Israel. First and foremost, once a Palestinian Arab entity is created in any or all of the territories involved, it will be a new and permanent fact of life. Then there are the special problems of size and proximity. Even though Israel would be the dominant partner in the association, it would be closer in terms of population and even size to the other entity than is the case in any existing example of federacy.

When one considers the likelihood of an irridentist movement, which may arise from a combination of groups within the territories and from neighboring countries, this option may become a vehicle for the expression of more radical demands.

Finally, any such arrangement is dependent upon a proper allocation of functions among the two entities. Federacy was not a viable option before the Sadat visit and the change of climate it brought about. With the new reality, it may indeed be a reasonable risk for peace.