

Станислав Ерлих,
 председник Комитета за друштвено-политички плурализам,
 Међународно удружење за политичке науке Варишава, Пољска

Stanislaw Ehrlich,
 Chairman, Committee on Socio-political Pluralism,
 International Political Science Association, Warsaw, Poland

SOME THEORETICAL REFLECTIONS ON FEDERATIONS AND FEDERALISM*

Introduction: a terminological clarification

The prejudice of uniformism evaporated after World War II and nowadays nobody discusses the *feasibility* of federations. The Laski quotation which is the opening sentence of Mc Whinney's: *Comparative Federalism* (1962) provokes only an indulgent smile. It reads: „The epoch of federalism is over”. And obsolete sounds Lord Bryce's view according to which federations are doomed being a transient form of government to be superseded by a unitary one. In this respect the classic Dicey has to be objected too, when he claims that a federation „will always be at a disadvantage in a contest with unitarian states of equal resources”, or that the „rigidity of federal institutions is almost certain to impress on the minds of citizens the idea that any provision included in the constitution is immutable and, so to speak, sacred.” (1939, 171 ff.).

However the U.S. constitution comes right away into mind not once amended in spite of its „sacredness”.

Similar exaggerated views were expressed in the East. They were based on illusions of the overwhelming superiority and might of central — and bureaucratic — planning. However, it turned out that we have a chance of avoiding Hayek's road to serfdom, we in the non-capitalist East, on the condition of dropping undue, overcentralized planning, the very source of inner tensions and inefficiency. Now, in search of more flexible solutions it is clearly seen that federations and all other forms of decentralization have a future, have unexhausted prospects of development.

We have to take into consideration too that in the last few decades new federations were mushrooming and we were faced with hitherto unknown problems. All this proves the vitality of problems of federations and federalism.

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If we could agree that pluralism must not necessarily be conceived of as an attribute of Western democracy — as some staunchly believe(1) — if we could agree that many pluralisms function *versus* many brands of monolithism, that there are serious reasons to approach the problem of *pluralism* in an interdisciplinary way we could try to treat this notion as a common denominator opposing all kinds of uniformism, all unjustified centralism in the course of socio-political process, and opposing too all views which serve so structured interests. Federal states and federalism are a pluralistic case in point.

I dare say that my point of view has perhaps something in common with Me Whinney's ideas, especially when he discusses the problems of monistic versus pluralistic federalism (p. 16 ff.). Exactly each brand of pluralism — let me repeat this — is naturally directed versus a specific, uniformist, monistic pole. Or when he deals in ch. 6 with social policy: states rights, minority rights, and the limits of unity and diversity; or when he draws the conclusion on federalism as a sociological as well as strictly juridical condition (pp. 99—100). Indeed, we should keep in mind, that at least since Proudhon's times federalism has also a socio-economic content.

1. The federal system and decentralization

Federal institutions whatever their shape are *ex definitione* devices to limit the center, the range of its decisions. The answer to the question what should be decided, where and by whom is the crux of the matter. To put it in more traditional terms: how much sovereignty for whom? This means that I disagree with authors who consider the problem of sovereignty as a relic of the past (e.g. C. J. Friedrich, 1950, 56). On the contrary the right approach should be the analysis how to share the decisions between the federal center and the federal subsystems. If we choose to proceed this way we may be inclined to conceive of the federal system as a special case of territorial decentralization.

But agreeing to this we can't avoid difficulties in precisizing the differences between the „federal decentralization” and other forms of high level territorial decentralization. And what about the delimitation of notions decentralization and autonomy? Also other doubts are looming ahead: one has to keep in mind that below the level of federal subsystems we are faced with differently structured entities of local government. In mega-federations, like the USA, Canada, Brazil, Australia and the Soviet Union one is confronted with hierarchical, representative, local bodies, whereas this is not the case of small federations like Switzerland.

This is not the whole list of obstacles to reach a firm ground to understand the differences between a federation and a decentralized unitary state. After World War II we witnessed a trend towards far reaching decentralization in unitarian states. Italy would be a case in point and later

(1) H. G. Thorburn in his article *Ethnic pluralism in Canada* (1980, pp. 151 ff.) rightly draws the attention to the fact, that „it has become common since the Second World War to call western democracies pluralist, whereas the earlier designation was liberal or conservative. This change is more than one of fashion or custom but corresponds at least superficially to a change of condition.” Let me add that this change of condition was also a matter of ideology.

we were faced with the constitutional evolution in Belgium, United Kingdom, France and last but not least in Spain. In all these countries the evolution was labelled: autonomy.

So, where does decentralization end and where federations begin?

I should venture to say that there does not exist between them a difference in substance — in the light shed by the science of organizations and their decisions. My suggestion would be to treat federations as examples of mega-decentralization within the framework of a global organization, called the state.

2. *An essay in taxonomy*

The taxonomy I am going to propose should not be understood as an exercise in finding unbridgeable antinomies between Western and Eastern federations. On the contrary they should be regarded as instruments to attain definite goals. They are in many respects ideologically neutral; from which follows that adopted in one country they may be an object of reception in another, where similar problems are waiting for settlement.

Putting aside ideologies, value-judgements we could try to put forward a taxonomy of federations, building it around answers to simple questions: a federal structure is a means to serve what ends?

1. From the general class of federal structures we have to single out those which serve the end of mega-decentralization. The classic examples of the United States and the Federal Republic of Germany come into mind. The set of their federal institutions are not devoted to solve problems of race, nationality or religion. These problems are to be solved by other means. Neither the Navaho-Indians, nor the Blacks in the USA, and also not the newly born Turkish minority in the FRG can realistically hope to be upgraded as subjects of territorial units which could be considered as federal subsystems. Other institutions are due to serve their particular interests.

2. Another category of federal structures was generated to safeguard national or ethnic identity. The first attempt in this direction was the foundation of the Russian Soviet Federal Republic later transformed in the Union of Soviet Republics (1922).

This step was preceded by a serious turn in Marxist thought.

The evolution began first with a postulate in the motions of the International Workers and Trade Union Congress in 1896 (London). Later Lenin brought this idea forward in a paper *The right of nations to self-determination*, where he mainly focused on the right to secession from a multinational state. Doubtless he drew conclusions from the experience of Norway which peacefully separated from Sweden in 1905. But this idea of self-determination was shortly afterwards coupled to the aims of a bourgeois-democratic revolution as they were formulated at the Prague bolshevik-conference in 1912. The pre-war period witnessed also the famous quarrel between austromarxists and bolsheviks in which the first were the protagonists of national-cultural autonomy, whereas the latter ones defended the

„territorial solution”(2). However the verdict of history was not in favour of austromarxists.

The outbreak of World War I and later of the October Revolution brought a further shift in Lenin's views. From now the national and the colonial problems were conceived of as integral parts of a Socialist revolution. They merged in it.

The second trend was federalism. It lead from centralism (in the field of political structure) and suspiciousness towards federalism tainted with dangerous particularism — a possible stumbling block to a revolutionary movement. But before internalizing federal ideas the view of the bolsheviks had to undergo a deep transformation. Lenin's respectfull allegiance to the ideas of the founding fathers of Marxism had its impact.

Did not Marx commenting on prospects of separating Ireland from the British Empire write in a letter to Engels (2 Nov. 1867) that he now considers as an unavoidable step *even if* (my emph.) a federation had to be admitted. Did not Engels in his *Criticism of the Erfurt Programm* protest against the „swiss-like” federalization of Germany? Why did they take this position? They were afraid of the evil of particularism, which crept from the Proudhonian and Bakuninist brand of federalism.

Lenin — in spite of the above mentioned allegiance — having lived many years in Switzerland could not avoid some impact of its constitutional institutions. But he had to transform them. Historically, the Swiss design has to be regarded foremost as successful but local protest against Habsburg absolutist rule. Only later the cantons expressed ethnic and linguistic interests. Nevertheless they never integrated into distinct entities. The parallel ethnic and linguistic cantons maintained themselves, the evidence of strong localism.

The pro-federalist trend among the bolsheviks grew very slowly. The revolutionary movement of professional conspirators was due to be centralist. On the eve of the October Revolution Lenin, analyzing the federal form in *State and Revolution*, treated it as an exception, a temporary device, as one of the many means to solve the national problem. Stalin took a more extremist stance and wrote an article *Against federalism* (28 March 1917). Only confronted with the huge postrevolutionary, centrifugal wave of nations and nationalities the communist leaders concluded to reintegrate them on the basis of the Soviet system within a diversified, federal state. In this shape it survived World War II, and we witness today a uniquely complicated net of federal and autonomous republics, autonomous districts (oblasts) and national regions.

It later turned out that the soviet federal system might be useful for heeding religious differences too.

To put a long evolution in a nutshell we have to be aware that in this system three trends merged: the political structure of the soviets, national, ethnic and recetly religious interests, and all this within the framework of federal institutions.

(2) In this connection comp. the views of Max Adler, Otto Bauer and K. Renner presented by T. Bottomore and F. Goode (ed.) in *Austromarxism*, Oxford 1978, ch. III. See too, Schiesinger: *Federalism in Central and Eastern Europe*, London 1945, pp. 212 ff. The austromarxists were opposed by J. Stalin: *Marxism and the national question*, v. 2, „Coll. Works” (Russain), Moscow.

Yugoslavia took over the Soviet federal principles in its first constitution. But this model was abandoned in the last constitution enacted in 1974. So, two principles were amalgamated into one whole: selfgovernment (l'autogestion) and federalism; both form the real and original bedrock of the Yugoslav system.

But let us have a brief look on the experience of another country, the giant organization of federal India. On the surface its federal institutions remind of the Soviet model. But a closer analysis leads to the conclusion that federalism was in this country used as an organizational device, free from the revolutionary, ideological bias — indispensable in the formation of the first socialist federation. The push towards national-ethnic and religious integrity in India was disconnected from a revolutionary movement.

3. *Mixed cases*

a. In some European countries, the institutions of autonomy or devolution like Italy, the U.K., France, Spain and Belgium were used to lower ethnic tensions. But reducing the problem to this approach would mean oversimplification; we should not overlook considerable differences among these countries.

The autonomy of regions in Italy certainly serves the ethnic interests and the consciousness of historical identity in the North, in the Mezzogiorno and on the both isles, but in the rest of the country it serves simply a far fetched decentralization. One would be inclined to characterize the Spanish and French constitutional structure as similar to the Italian one. But the range of decisions of the local subsystems in Italy and Spain is broader than in France (notwithstanding the special status of Corsica). On the other side the centrifugal tensions in Spain (the Basques) and France (Corsica) do not exist in Italy.

The U.K. presents with its devolution specific problems. In Scotland the impact of history seems evident, but in Wales the ethnic and linguistic tradition is felt weaker. On the other side there is the problem of Northern Ireland, where ethnic hostility merged with the religious one. And this calls for a new organizational settlement, perhaps on an international level. Marx' famous dictum of four nations on two isles comes into mind.

Belgium on this list with its territorialization of ethnic autonomy in this respect is very close to the *organizational model* established in the Soviet Union, in Yugoslavia and India. This is the result of a successful interplay of social fragmentation and political stability — an enigma explained by P. H. Claeys (1973, 1980), who terms the latest constitutional changes: quasi-federalism.

From this organizational mosaic the question arises: does it make sense to try to draw a demarcation line between autonomy and federation? Legal dogmatists are always in search of juridical differences and in their overemphasising. But an interdisciplinary approach would suggest to stress what different phenomena have in common and what dynamics are behind them. So why not reflect on this problem as a social-political process?

Perhaps we are faced in some of these countries with a brand of *creeping federalism*?

b. The special case of Canada.

In the eyes of a foreign observer the crux of the matter consists in the feasibility of transforming the country's federal institutions in such a way that they could genuinely serve the interests of the two nations considered as the founders of the federation of Canada. An agreement on basic values would make it easier to find the proper legal solution. But is this possible? This question puts forward H. G. Thourburn in his above quoted contribution (1980). In this respect the Belgian experience offers an occasion to some reflections.

But even if a satisfactory solution — satisfactory both to Quebec and the rest of the English-speaking provinces — could be reached it would not bring nearer the Canadian federation to the Soviet, Yugoslav and Indian model, because neither the existing federal regulation nor a reformed one would affect the conscience and the territorial interests of the Indians and the Eskimo's, interests which obviously transgress the range of the great federal debate.

Canada divisa est in partes tres.

4. *A hypothesis on secession*

The right to secede is guaranteed by no one federal constitution. But this right was never implemented as we know from the lessons on civil war in the USA and in Nigeria (Biafra). In both cases the attempts of secession were crushed by military power. So, what are the obstacles to secession and the prospects for one in the foreseeable future?

A successful secession would necessarily mean either the end of the federation or its most serious transformation, if not a mutilation, both economic and political. It can hardly be expected that the federation's political decision center would voluntarily agree to be stripped of the vast amount of decision possibilities, i.e. agree to a loss of power and prestige.

All preparatory efforts to secession would be considered as a political crime. The federal decision center would look at these efforts as an attempt to change a hitherto useful and fruitful non-zero-sum game, i.e. a game of cooperation for the benefit of the existing union, into a new game. This time into a zero-sum-game, in which the predetermined loser would bound to be the federal decision center and the remaining federal units.

These considerations would doubtless reflect on the interpretation of the respective federal rules.

It seems to a foreign observer that the question of Quebec's secession (promoted by Le Parti Québécois — now in power) arouses so high emotions, because it is not only an economic and national challenge but also a challenge to Canadian sovereignty, to Canadian national conscience, to the existing system as such, to the status quo (H. G. Thorburn, 1980, 156 ff. and Conclusion). This is something more than a clash between national and local values.

The international panorama presents us a third dimension for objecting secession. To secede, but where?

The so-called Third-World is differentiated into groups of states, which in the majority of cases are leaning (overtly or covertly) to one or another

of the two opposing military, political and economic blocks, lead by the two superpowers. If this is the case, secession — whenever and wherever it might happen — must automatically be considered as a meaningful strengthening of the adverse block. This consideration would be more acute in the case of secession from a state — member of one of the two blocks.

Each time we enter a period of cold war the question arises what solution of this local conflict suits whom? Will it mean a shift in the balance — to benefit whom?

A secession would provoke similar questions.

I can't see other prospects of secession as the following: as long, as international relations are under the impact of cleavage between two defying power-blocks, there is no chance to secede. No doubt, this gulf will be bridged one day, but this means rather a long way to Tipperary...

Conclusion

The tug-of-war between unitarian, centralist and centrifugal tendencies within federations will continue in the foreseeable future. Stalin's forecast of the irreversible trend of erosion of Western federations, repeated not by one scholar(3), was not confirmed by the course of evolution. On the contrary in this tug-of-war different factors have their impact: economic, socio-political, military, demographic, national-ethnic (W. Suchecki, 1968, 332).

We are not bound to discard or to oppose for ideological reasons all constitutional ideas and institutions coming from the West sticking to Rudyard Kipling's famous dictum: *East is East...* The Anglosaxon ideas of federal comity and cooperative, horizontal federalism (e.g. E. S. Corwin, 1947, 80 ff., J. F. Ferguson, D. E. Mc Henry, 1965, 64 ff. 110 ff.) might be useful in the development of socialist federations, an object of legal reception. Cooperation among republics in the federation of Yugoslavia could have prevented considerable waisting of costly investment and unnecessary doubling of means and organizational effort — put to an end only after the implementation of the last federal constitution (1974)(4). By the way, art. 375 of this constitution can serve as an example of the reception of a Western legal institution: the Constitutional Court of Yugoslavia decides issues between the Federation and different subfederal bodies and also between them (p. 5).

And this is not the whole story of the prospects of federalism. Mc Whinney was right (p. 95), I suppose, when he wrote, that „federalism, at the legal-institutional level, can assist and extend movements for association and integration over conventional nation-state boundaries”.

Although these words were written over 20 years ago, I am convinced too, that the times of federalism are not over. It still has a future.

(3) J. Stalin wrote in his article *The Organization of the Russian Federal Republic* („Coll. Works”, V. 4, Russian, Moscow) that the contemporary bourgeois federations transformed themselves into unitarian states maintaining only the federal form.

(4) Constitution de la République Socialiste Fédérative de Yougoslavie, Beograd 1974.

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РЕЗИМЕ

НЕКА ТЕОРЕТСКА РАЗМИШЉАЊА О ФЕДЕРАЦИЈАМА И ФЕДЕРАЛИЗМУ

Писац је мишљења да је проблем одређења појма федерализма пре свега терминолошки и залаже се за интердисциплинарно истраживање те појаве која има друштвено-економску садржину.

Федералное ситему је блиска децентрализација, која се у последње време све више јавља у Европи, где се обично назива аутономијом. То показују примери Белгије, Уједињеног краљевства, Француске и Шпаније, као и најстарији пример Италије.

Писац дели федералне ситему у два скупа. Док једни представљају оруђе мега-децентрализације, други су створени зарад очувања националних или етничких интереса. По писцу, примери првога скупа су САД и СР Немачка, а другога СССР, где је стварању федералнога ситема претходило преображај марксистичке мисли. Маркс и Енгелс нису били присталице федерализма, у чему су видели утицај прудонизма и бакуњинизма. Енгелс је чак протествовао против федерализације Немачке по швајцарском узору. Лењин је, напротив, био присталица федерализма, а писац је мишљења да је на Лењинов став утицала и чињеница да је живео у Швајцарској.

Југославија је у уставу из 1946. г. прихватила начела совјетскога федерализма, али их је напустила у уставу из 1974. г. у коме су се сто-пила два начела: самоуправљање и федерализам.

Сецесија у федералној држави никад није била могућа, а није то ни данас, у условима постојеће светске равнотеже снага.

Пишчево је мишљење да социјалистичке федерације могу користити западне узоре и као пример такве рецепције, писац наводи овлашћење Уставног суда Југославије да расправи спор између федерације и ре-публике.

RÉSUMÉ

RÉFLEXIONS THÉORIQUES SUR LES FÉDÉRATIONS ET LE FÉDÉRALISME

L'auteur est d'avis que le problème de la définition de la notion du fédéralisme est un problème terminologique avant tout et se prononce en faveur d'une recherche interdisciplinaire de ce phénomène dont la nature manifeste un contenu socio-économique.

Avec le système fédéral voisine la régionalisation qui, ce dernier temps, a lieu de plus en plus souvent en Europe où elle prend habituellement le nom de l'autonomie. Ce que nous démontrent les exemples de la Belgique, du Royaume Uni, de la France et de l'Espagne, de même que l'exemple le plus ancien de l'Italie.

L'auteur fait une classification bipartite des systèmes fédéraux. Tandis que les uns ne sont que les instruments de la méga-régionalisation, les autres sont créés en vue de préserver les intérêts nationaux ou ethniques. Selon l'auteur, les exemples de la première catégorie nous sont offerts par les Etats Unis et la République Fédérale de l'Allemagne, tandis que la seconde est représentée par l'Union Soviétique où la création du système fédéral a été précédée par une modification de la pensée marxiste. Marx et Engels n'étaient pas partisans du fédéralisme, dans lequel ils voyaient l'influence du proudhonisme et du bakouninisme. Engles a même protesté contre la fédéralisation de l'Allemagne d'après le modèle suisse. Lenin, au contraire, était partisan du fédéralisme et, selon l'auteur, l'attitude de Lenin a été influencée par le fait qu'il a vécu en Suisse.

La Yougoslavie a adopté, par sa constitution de 1946, les principes du fédéralisme soviétique, mais elle les a abandonné dans la constitution de 1974, dans laquelle deux principes se sont combinés: l'autogestion et la fédéralisme.

La sécession n'a jamais été possible dans un état fédéral, et elle ne l'est pas même aujourd'hui, dans les conditions actuelles découlant de l'équilibre mondial des forces.

L'auteur est d'avis que les fédérations socialistes peuvent suivre les modèles occidentaux et comme exemple d'une telle réception il cite la disposition de la constitution actuelle yougoslave, autorisant la Cour constitutionnelle de la Yougoslavie à statuer sur un litige entre la fédération et la république.