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DEMOCRACY, MULTINATIONALISM AND FEDERALISM

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Democracy, Multinationalism and Federalism

I hope to explore the interrelationship among these three political realities of our time. In that context, I have to highlight that most of the literature on federalism pays very little attention to democracy. Indeed, many writings on federalism include in their systematic comparison federal systems in nondemocratic political systems, focussing on the formal structure and ignoring largely the political reality. Most of the theoreticians of democracy have not paid much attention to the implications of federalism for the realization of democratic values, particularly equality of all citizens. Likewise, the extensive literature on nationalism has not focussed much on the relationship with democracy and the distinctive political institutions of federal states. I want to stress from the outset that I will be talking about *democratic federal states* for the simple reason that until today only the governments of *states* are directly accountable to an electorate. Trans-state authorities derive their power, until today, from the democratically legitimated governments that support them and not directly from an electorate, the citizens of such a larger political unit, and, therefore, I will not refer to them except in passing. Today, the democratic process of participation of the citizens and the accountability of governments presupposes the legitimacy for a significant majority of the population of the state to be governed democratically. As we shall see later, that legitimacy of the state does not require necessarily the nation state.

It is also important to state clearly, before entering all the complexity I have noted, that federalism is a distinctive way of organizing a state that should not be confused with decentralization or deconcentration of authority and administration compatible with an unitary state. A unitary state does not need to be a highly centralized state. Its administration can be highly decentralized to regional, provincial or local governments.

"By federalism we intend to mean the system in which some matters are exclusively *within* the competence of certain local units - cantons, states and provinces - and are constitutionally *beyond* the scope of the authority of the national government, and where certain other matters are

constitutionally outside the scope of the authority of the smaller units." I quote here Robert Dahl,¹ and for the reasons we will see later, I substitute the expression "state government" for "national government" in order to avoid the confusion of identifying a state with a nation state. This distinction of two levels of government means, to quote Dahl, that "in federal systems a national state majority cannot prevail over a minority that happens to constitute a majority in one of the local units that is constitutionally privileged."

This definition implies that federal states have to have a constitution which regulates the federal organization of the state and the government, and the competences of the different units within the state. An immediate consequence is that in federal states constitutional conflicts, conflicts over the interpretation of the constitution will be a normal part of political life and this in turn means that the courts, and ultimately a constitutional court, would have to decide those conflicts. Let us note that this implies that sometimes a nondemocratically elected body, a body not directly accountable to the voters, will have to make important decisions which although formulated in legal terms are very often political.

It should be clear that there are both unitary and federal democracies. Indeed, probably the majority of the stable, long-term democracies have been and are unitary states -to mention just a few, Sweden, Norway, The Netherlands, France, and Japan. There are also stable federal democracies like Switzerland, which borders on being confederal, the United States, and the largest non-Western democracy, India. To choose either the unitary or federal state therefore is not a choice between democracy and nondemocracy. Although there are writers who suggest so, federal states are not necessarily more democratic (as the countries mentioned clearly show). To federalize might or

¹ Robert A. Dahl, "Federalism and the Democratic Process" in *Democracy, Liberty and Equality*, Bergen, Norwegian University Press, pp. 114-126.

might not be a step in the direction of democracy. In fact, for reasons I shall develop later, there are some serious tensions between the democratic ideal and federalism.

Once we have defined federalism, it is important to keep in mind that not all the states fitting the definition of federalism call themselves federal states or federations. The prime example is the Spanish *Estado de las autonomías*. We include these cases in our discussion. Most federal states, particularly larger ones, have extended the federal principle to the whole territory of the state and to all its citizens. However, the federalization, that is, the constitutional granting of power to make certain decisions to the citizens living in part of a state and their elected representatives and government, does not necessarily mean that the whole territory of the state or country has to be divided into such self-governing autonomous units. There are some arrangements which writers on federalism, like Daniel J. Elazar, call *federacies*, in which smaller units, generally an island or islands, are given a special constitutional status while most of the state is governed as a unitary state.² These cases fit into our definition of federalism. Such a solution might solve problems in multinational societies without transforming the whole state into a federal state. Such a partial federalization can be found in the Aaland Islands of Finland, the Faroe Islands and Greenland in Denmark.

Excursus: Federalism and Second Chambers

² Daniel J. Elazar, "Federalism" *The Encyclopedia of Democracy*, edited by S. M. Lipset, Washington, D.C., *Congressional Quarterly*, vol. II, pp. 474-482 and *Federal Systems of the World. A Handbook of Federal, Confederal and Autonomy Arrangements*, Harlow, Essex, Longman Group, 1991.

A third defining characteristic that most authors would add to define a federal state is a bicameral system in which the second chamber represents the federal sub-units as such units rather than their population. This normally means an unequal, even very unequal, representation of citizens of the state, in a chamber called Senate, *Bundesrat*, chamber of nationalities, etc. The second chambers can be directly elected by residents of the federal subunits, indirectly by their parliaments or represent - like the German *Bundesrat* - the governments of the subunits (in Germany the *Länder* governments). Presumably the second chamber gives a representation - directly or indirectly - to the different *demos* in the state rather than the *demos* of the state.

Recognizing that this is the rule, we do not consider it a necessary condition since the constitutionally reserved domain of the *demos* of the unit can be guaranteed without such a second chamber. To include this criterion would oblige us to exclude a number of states satisfying the Dahl definition, and which therefore cannot be considered unitary states. On the other hand, there are unitary states with second chambers, but which do not represent the *demos* of subunits but the *demos* of the state (sometimes with some inequality of representation).

When the inequality of representation of the federal subunits is low in the second chamber - a Gini Index of 0.2 - one could argue that the "federal" chamber is unlikely to protect the Federal character of the regime. This would be the case of Austria (Gini Index 0.048), South Africa (0.181), as well as Belgium (0.0146) and India (0.10) if it were not for other factors. If to that low inequality we add a state-wide party system, the second chamber would be even less important in characterizing the system as federal.

In fact, second chambers in federal systems vary considerably in their composition and powers. In some of them the representation is almost proportional to the population of the subunits (for example, Austria). The chambers range from having very limited powers to being almost equal to the first chamber - for example, in giving their vote of confidence to the government, to being a chamber of "opinion" or "advice" whose vote can be overridden by the first chamber.

Federative representation and government structures can exist in a state which, in most of its territory, functions as an unitary state which therefore would not have a second chamber of "territorial" representation.

Although the Spanish Senate has been called a chamber of territorial representation and the Autonomous Communities participate in the election of the senators and there are some inequalities of representation to assure representation independently of population, it is not fully comparable to other federal chambers.

The Limits of the Constitutional Protection of Federalism

Thinking about the Constitutional protection of institutions, the democratic decision-making by the *demos* of the subunits and the reserved domain of those units, the question can be raised: Can the *demos* of the state change the constitution and change the regime from federal to unitary? We would argue that if a simple majority could do so, the Federal institutions would be closer to a regional decentralization than federalism. The requirement of qualified majorities, cumbersome procedures, a rigid constitution would be a better protection. However, can the *demos* of the state making a decision democratically - through its representatives and by a referendum, overcoming those thresholds, be prevented from doing so? To the extent that it is and conceives itself as a *demos*, we would say "no". However, we would argue that if a large majority of the voters in a subunit do not approve the decision, it becomes politically impossible to implement such a constitutional change. Though constitutionally and democratically very difficult, it is conceivable that the *Estado de las autonomías* could become an unitary state. However, probably the voters of Catalonia, the Basque Country, Galicia and the Island Communities would prevent it with their votes in a constitutional referendum. Assuming such a decision by the Spanish *demos*, it is inconceivable without violent conflict, the threat of secession. In a multinational state, it is unlikely that a

democratic transition to an unitary state would be possible. We shall argue that even in a federal nation-state such a change would be difficult, although not impossible, by democratic means.

Democratic and Nondemocratic Federalism

In view of the fact that many of the writings on federalism have included and still include non-democratic states, it is very important to keep them distinct. In a nondemocratic state the constitutional division of powers between the larger unit and the subunits is not likely to be constitutionally protected. Totalitarian and authoritarian rulers at the center can ignore or modify, without consulting the people or freely elected representatives of the people, the rules granting those powers. Moreover, the absence of free competition for power both at the center and in the periphery makes it impossible to know the wishes of the people and to make those governing at the center and in the subunits accountable to the people. In such federal systems, power is vested in a political party or military organization that exercises it both at the center and in the periphery, generally responding to the party leadership or the military at the center. Obviously, the party organizations in the subunits might acquire considerable independence, pursue their own goals and reject their dependency on the center, and use the formal structures of federalism for their own purposes.

We cannot go into an analysis of the historical developments of ethno-federalism within the Soviet Union and the former Yugoslavia and the breakdown of that system with the crisis of communist hegemony.³ I will mention Communist Federalism when we turn to the problem of disintegration of communist federal states in the course of transition to democracy in the former Soviet Union, Yugoslavia and even after democratization in the case of Czechoslovakia. Military

³ For an analysis of state, nation and democratization see Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation. Southern Europe, South America and Post-Communist Europe*, Baltimore, The Johns Hopkins University Press, 1996.

authoritarianism, as we know from Argentina, Brazil and Nigeria, does not necessarily do away with federal constitutions. However the way power is exercised does not satisfy the criterion that some matters lie exclusively within the competence of certain local units and beyond the scope of authority of the government of the state. Certainly, the matters within the competence of the federal units were not beyond the power of the ruling Junta. Their governments were very often appointed and dismissed freely by that Junta and therefore for much of the time federalism was a sham like all the other provisions of the constitution which were *de jure* or *de facto* suspended.

Nondemocratic federalism, however, might become very important in the course of the liberalization of nondemocratic regimes, the transition to democracy and the consolidation of new democracies. Indeed, for a variety of reasons, it might facilitate the questioning of the legitimacy of the state and with it of federalism.

We shall therefore limit ourselves mostly to the discussion of democratic federal states fitting *our* definition, as I said before, irrespective of their name.

Why Federalism?

Federalism is a very complicated form of government. In addition, federal systems differ very much from each other. Therefore, we shall have to ask ourselves why would a country choose a federal system? I say country, but probably it would be more correct to say, why do politicians, who, after all, are the only ones that make constitutions, choose to make a federal constitution even if later they may submit it to the voters?

There are two main functions that federalism can play and lead to the enactment of federal constitutions (Figure 1). One is to *bring together*, to unite, in a single state originally separate

political entities which want to reserve themselves some powers as a condition for their joining in a larger state. The function is bringing together what was separate.

The other function has been *to hold together* within the boundaries of a state those who otherwise might question the legitimacy of that state, may feel oppressed by the state if their distinctive interests are not guaranteed by a constitutionally protected autonomy, and who might even threaten to secede from the state to better protect those interests. Federalism is, in that case, a response to threats of disintegration of the state, a reflection of separate identities as long as those identities are not exclusive since federalism implies some form of identification with the larger federal state. Federalism, to hold together, is closely related to the problems of multinational, multilingual, multicultural and multireligious states.

Federalism as an Answer in Divided Multinational Societies

After the velvet divorce of Slovakia from the Czechoslovak Republic, many scholars and politicians think that the conflict generated by multinational societies fits the principle of self-determination and independence. This was already the answer of the Allied powers in World War I to the latent crisis of the Austrian-Hungarian empire, with some of the disasters and consequences we know. However, the breaking up of states is not so easy as the Slovak and the Bangladesh cases would suggest.

There are at least two major considerations that democrats cannot ignore as nationalists tend to do: (1) that the desire for independence is rarely shared by a majority of the population in territories in which nationalists have considerable strength, and even more in those they claim should constitute the new state; (2) in most parts of the world the territories in which one ethnic, cultural, religious and linguistic minority is important or majoritarian, include large numbers of people of another identity living intermingled and often with close ties with the majority who do not consider themselves strangers but fear becoming a minority in the new state.

Federalism, rather than self-determination and independence, is a more constructive, less conflictual and democratic solution, although it will never eliminate fully the tensions in multinational societies. Federalism can provide both the recognition of the rights of the minority in the larger state, and of the minority or minorities in the areas in which the nationalists aspire to govern. It can, if constitutionally anchored and enforced by a respected constitutional court, provide protection to the rights of *all* minorities -a protection that newly independent states, built by nationalists, are considerably less likely to provide.

Let us examine more closely some of the arguments involved.

The nation is an imagined community⁴ and the idea and aspiration of independence for the nation, an additional sentiment, that has to be generated. It is wrong to assume that all those who share certain primordial characteristics - descent, a language, a religion, a culture - have the same sense of national identity and even more, the desire for independence. It is wrong to infer from objective data about language, religion, ethnic origin, the so-called primordial characteristics of the population that those markers lead to a sense of identity, as nationalists would claim, and furthermore that that sense of identity would lead to a desire for independence. Only the posing of the dichotomous choice in surveys and plebiscites forces people to forget the complexities of their ties and identities and to make choices they do not want to make. This is perhaps one of the reasons why decisions in favor of secession have not been made democratically in plebiscites (except in small border areas) but by political leaders sometimes under the pressure of violent or terrorist minorities.

⁴ Benedict Anderson, *Imagined Communities. Reflections on the Origin and Spread of Nationalism*, London, Verso, 1991.

There is ample evidence that people in multinational states and multinational areas within those states have multiple identities, that sometimes majorities or large pluralities have dual identities, perhaps identify more closely with one or another nationality but very often have an equal identity.⁵ This is not only due to the presence of minorities of the larger state "titular" nation but extends to those which, using primordial criteria, should, according to the nationalists, identify with the nation seeking presumably independence. A fact not surprising when we consider the web of group affiliations, to use Simmel's analysis, generated by long-time living together, intermarriage, friendship and interests. It is that web that the dichotomous choice that a decision by plebiscites implies necessarily ignores and destroys.

The presumably democratic notion "let the people decide" in such a context generates almost unsolvable problems. It requires, as Sir Ivor Jennings noted at the time of the Versailles treaties, that someone, before putting the issue to a vote, has to decide who the people are. That "someone" is not likely to have been democratically elected. Moreover, that decision is already highly conflictual. What territorial unit should be used in making the decision? Each municipality, the existing administrative divisions inherited from history, the whole area claimed by the nationalists, the presumed ethnic or linguistic map, etc.? Who is to make such a binding decision about the unit within which the people should decide? Even after making such a decision, how binding should the vote be for those living in areas in which a clear majority has decided against secession? Areas can go from municipalities to administrative districts and entire provinces, which would mean that the wishes of nationalists on both sides would have to be ignored. More or less arbitrary borders very often based on natural or historical borders would have to be agreed by politicians, forced to ignore the preferences of many people. Besides, should such a momentous decision as the breaking up of a state, the creation of a new state, be left to a majority of 50.1% of those voting or at least to such a majority among all eligible voters, this would mean turning the decision largely to those deciding to abstain. It has been and can be argued that for such a momentous decision, qualified majorities

⁵ Juan J. Linz, "De la crisis de un Estado unitario al Estado de las autonomías", in Fernando Fernández, ed. *La España de las Autonomías*, Madrid, Instituto de Estudios de Administración Local, 1985, and *Conflicto en Euskadi*, Madrid, Espasa Calpe, 1986.

would be required but, as we know from the referendum proposed by Gorbachev in the Baltic Republics, to define such a qualified majority might already predetermine the outcome of the referendum.

Incidentally, some of the same problems emerge when one is to decide the boundaries of autonomous territories within federal states, not only in multinational federal states but even mononational states. In recent times the referenda about Andalusian autonomy in Spain or the fusion of the *Länder* of Brandenburg and Berlin show the difficulties of letting the people decide the boundaries in mononational areas of federal states.

The main argument for secession and creation of a new nation- state rather than the search for federal solutions to the problems of multinational states is that only independence can guarantee the rights of what were or perceive themselves as oppressed minorities, in a larger state that claimed to be a nation-state when in fact it was multinational. This is a strong argument but after divorce, even a velvet divorce, the new state is conceived again as a nation-state or at least as a nation-state in the making, with presumably the same assimilationist policies of the former larger state with respect to its own minorities. It does not seem unreasonable to think that a new nation-state engaged in a nation-building process, trying to undo past wrongs to prevent the potential irredentism of minorities, facing the pressures and potential interference by a neighboring state in favor of its external fellow nationals, will try to reduce or, if possible, even eliminate the presence of such minorities. It seems doubtful that a new nation-state will recognize the rights to cultural, linguistic autonomy and full equality of those refusing to assimilate. Even without going as far as ethnic cleansing, from killing to forced emigration, a new state based on a commitment to nation-building policies is not too likely to be liberal and democratic in recognizing minority rights. This problem is not eliminated in multinational federal states but certainly a constitution and a constitutional court enforcing the rights of minorities will always prevent the worst excesses of nationalism.⁶

⁶ For the problem in the newly independent Baltic States, see Linz and Stepan, *Problems of Democratic Transition and Consolidation*, chapter 20.

Mononational and Multinational Federal States

This is probably the most important distinction between federal states and the one that is most likely to explain many differences between them even where the formal rules appear to be similar, if not identical. In my view, the literal introduction of the present German federal constitution, of its practices of cooperative federalism, its principle of *angemessene Ausgleich*, in practice would not work the same way in a multinational federal state.

The basic distinction we propose is not a watertight one since we might distinguish mononational nation-states and state-nations where the identification with the state has some of the same emotional meaning as the one normally associated with a national sentiment. Switzerland, in spite of its complex multilingual, multicultural and multireligious character, is for the Swiss citizens such a state-nation, even though it would be difficult to characterize it as a nation-state like Germany. Austria, after 1918, was a state in which many of its citizens felt part of a German nation and therefore questioned the legitimacy of the statehood that had been imposed on them. After the second World War, however, it became, for most Austrians, a state-nation which was not felt to be in many ways a separate nation, and only slowly has been moving toward a consciousness of what we could call a nation-state. On the other hand, we have multinational, multilingual, multicultural societies in which there is, for a majority of the population, a common national identification and for many others, at least consciousness of being a state-nation. It is therefore possible to talk about some kind of continuum in which the mononational federal state is at one extreme and a multinational federal state, based on weak, emotional ties to the state, at the other extreme.

The question can be raised and has been raised: why should a nation-state opt for the federal constitution? Let me stress once more that an unitary state would not exclude large-scale

decentralization of government activities. In fact, many of those who would like to see unitary states to become federal are really only interested in a more decentralized government and administration, and are unaware of the many other implications of federalism.

Federalism in mononational states has been generally the result of historical circumstances in the bringing together of what were separate units, like the monarchical states that united to constitute the German Reich under the hegemony of the kingdom of Prussia in 1870, or of formerly colonial territories with some self-government like the thirteen colonies or the Australian federation. In some cases, like that of New Zealand, the transition from federalism to an unitary state presented little difficulty. Farther in the past, this was the case of the United Netherlands, Colombia and Chile.

The federal states founded before 1900 are either nation-states or state-nations. Among them, four Latin American countries, Argentina, Brazil, Mexico and Venezuela, were the result of efforts to hold together or bring together vast territories in which local power structures, sometimes led by local Caudillos, had emerged, threatening the unity of states covering vast territories. The history of Argentine federalism from that point of view is paradigmatic.⁷ In a number of cases, as in the United States, Brazil and Australia, the geographic scale perpetuated the federal structure.

In none of the mononational or clearly state-nation countries has federalism led to serious threats to state unity, despite the great internal heterogeneity and inequality between the component units. In all of them the party system is a state-wide party system although there are occasionally State Rights parties, and different parties have their strongholds in certain states and the branches or affiliates of state-wide parties may have some distinctive characteristics.

⁷ Jorge Carpizo, *Federalismo en Latinoamérica*, México, D.F., UNAM, Instituto de Investigaciones Jurídicas, 1973.

Except for short periods after the defeat of the Confederacy, all American states have been governed by either Democrats or Republicans. The party system in Argentina, Mexico and Venezuela has been, and is, a state-wide one even though there are in Argentina some state parties with representation in the congress. Already in Imperial Germany, all the major parties competed in every Land. After 1918 the *Bayerische Volkspartei* was a dominant separate party, more often than not closely associated with the Germany-wide *Zentrum*; after 1945 regional parties were short lived and only the Bavarian CSU retained its personality within the CDU-CSU parliamentary group in the Bundestag.

In the Helvetic Confederation which we would characterize as a state-nation, the party system of radical democrats, Christian democrats, socialists and the peoples' party (which share power in the federal council according to the so-called magical formula of two representatives of each of the parties except the peoples' party that has only one) extends across the linguistic, religious and most of the cantonal borders. Switzerland has no German, French or Italian parties, but the confederacy-wide parties take into account both a linguistic and religious composition of the population in the elections for public office.

The largest federal democracy in the world, the Republic of India, is on the borderline of our distinction. The independence of India was achieved by a national independence movement spearheaded by the Congress Party, which accepted initially a federal solution in the hope of holding together the whole subcontinent including what would become Pakistan and Bangladesh. The Congress Party has been, and still is, a nation-wide party that has been, and is, competing for power in all the states of the federation and for a long time has been governing most of them. Its opponents, like the Janata Party or the communists, have also in principle aspired to and in fact have governed India and not questioned the unity of the state and the Indian nation. However, there are parties like the communists in Kerala, that are, and have been, dominant at the state level or, like the Hindu fundamentalists, have advanced a conception of the nation different from that of the founding fathers and the Congress Party at the time of independence. The immense majority of the population shares a sentiment of Indian nationhood although some would like to redefine that sentiment as a Hindu

nation. However, India is also a multinational federal state in which nationalist parties not competing in the whole federation but for power in particular states, like *Akali Dal* in the Punjab or the *All India Anna Dravida Munnetra Kazhagam* in Tamil Nadu and various nationalist movements (Nagaland, Mizram, Sikkim) on the eastern periphery, compete for power at the state level, demanded the creation of new states and even advocate secession. India therefore is, for most Indians, a nation-state, for others perhaps a state-nation, for significant minorities a multinational state and for minorities a state incompatible with their national independence aspirations, as in the case of Kashmir. In that context, federalism has become more and more important for holding the Republic of India together.⁸ More recently, with the crisis of the Congress party, the central government has been formed by a broad coalition of thirteen parties, most of which get their votes from one or two states of the federation. In this case, participation in the federal government has served to show the identification with the Indian nation - or state-nation - of the different linguistic-ethnic-religious communities.

Multinational Federal States

Let us return to our distinction between federalism, whose purpose is to bring together different political units originally separate into a new common state, and federalism, whose purpose is to hold together heterogenous parts of an existing state. Are there cases of federalism being used to bring together people who have conceived the previously existing political units as identical with nations, that is, nation-states?

⁸ Tatu Vanhanen, *Politics of Ethnic Nepotism, India as an Example*, New Delhi, Sterling Publishers Ltd., 1991; Paul R. Brass, *The Politics of India since Independence*, Cambridge, Cambridge University Press, 1994.

A number of states which approach the nation-state would probably be candidates to constitute some kind of federal state, if we turn to theories of "why federalism". In these theories, one of the main explanations for the emergence of federations since the time of the Greeks is searching for a better alliance against a threat from an outside power. The union of the original members of the Swiss *Eidgenossenschaft* was such a defensive alliance but this was long before the conception of the modern nation and nation-state had developed. If I had the time, I would explore why countries like the three Baltic Republics, exposed to the threat of neighboring Russia of which they had once been part under the Czars, and of Germany which had exercised domination and influence over those countries for centuries, never seriously considered federating. Less cogent would be arguments in favor of a Nordic federation including Norway, Sweden, Denmark and possibly Finland, given their geopolitical situation between the German Reich, the Czarist Empire and later the Soviet Union and Germany. Again, there is no evidence that such a federation was ever seriously considered. Their strong national identity and consciousness, their cultural and linguistic differences and the existence of nation-states that were more or less consolidated, seems to have excluded such a possibility in spite of many common interests and historical ties. In the Balkans, Yugoslavia was not born as a federation of southern Slavic nations uniting but as a result of the disintegration of the Austrian-Hungarian Empire and the fact that Serbia was on the side of the victors. In fact, in the interwar years, it was even difficult to develop the kingdom of the southern Slavs into a federal state to hold together the two main nationalities at the time, Croats and Serbians. Even Czechoslovakia, founded after 1918 after the Pittsburg agreements, between Czechs breaking away from the Austrian Crown and Slovaks gaining freedom from Hungarian domination, did not create a federal state.

Multinational federalism is not the result of different nation-states uniting to create a new and larger multinational federal state. Multinational federalism seems to be the result of an effort to hold together within the state territories within which an old or new national sentiment or identity exists or has emerged and which becomes incompatible with an unitary state. It is a response to potentially disaggregative tendencies. In many cases, it might be a reflection of the failure of a nation-building

attempt of the dominant nation, a failure to assimilate to a dominant language and culture. It is the result of the incapacity to carry through successfully a policy like that of France in the 19th century and particularly the nationalizing of peripheral linguistic communities under the Third Republic, a failure of the process that Eugene Weber has described in his book *Peasants into Frenchmen*.

Multinational federal states are therefore an effort to hold together within the state those who are thought to be separate nations and who therefore find an unitary state unacceptable.

In multinational societies the emergence of federalism, partial federalism or quasi-federal arrangements is therefore closely linked to the problem of why nationalism. This is not the place to review the extensive literature on nationalism, such as the works of Gellner, Benedict Anderson, Hroch, Greenfeld and those recently published by Guy Hermet and Hans-Jürgen Puhle, to say nothing of the many monographs on nationalist movements.⁹ Federalism will be an option and maybe a necessity when in a state there are significant population groups with a sense of national identity, political activists that articulate that sense of distinctiveness and a territorial basis for that group or groups. It implies the existence of a structural minority that, on account of its constitutive characteristics and the shared interests resulting therefrom, is bound to remain a minority even after its members have used their individual rights to maximum extent. Such a minority, as Claus Offe formulated very well, has to be able to make a plausible claim to special rights for having been unjustly oppressed.¹⁰ I would add "perceives itself as oppressed". The characteristics of such groups have to be fundamentally unchangeable at least for large numbers of their members, or when members of such groups are not willing to change them when they can do so. However, it is only a political decision that turns a group in itself into a group that claims legal recognition and, in the case of territorial concentration, demands territorial federalism.

⁹ Guy Hermet, *Histoire des nations et du nationalisme en Europe*, Paris, Éditions du Seuil, 1996, chapters 6, 7, 8; Hans-Jürgen Puhle, *Staaten, Nationen und Regionen in Europa*, Wien, Picus, 1995.

¹⁰ Claus Offe, "Homogeneity and Constitutional Democracy, Group Rights as an Answer to Identity Conflicts?" (1996, unpublished paper).

The existence of a group of those characteristics does not necessarily lead to federalism, unless the state allows the articulation of those demands or cannot repress them even if it wants to do so. Here we find a close link between multinational federalism and democracy because in the context of a democracy with its political freedoms, groups with the characteristics we have described and national minorities can articulate freely their demands and give support to a representative leadership that is difficult to ignore.

Nations do not have, unless the state allows them to do so, democratic representatives, representatives elected by the members of the national community. They can have leaders, activists, intellectual spokesmen, even leaders of terrorist organizations or national liberation guerrillas, but not elected representatives deriving their representation from a free competition for the support of the people unless democracy makes it possible. This fact is crucial because without democracy the dominant powers, the state and those controlling it, can deny representativeness to the nationalist leadership. It is also the source of the difficulty of articulating multinational states since, under democratic conditions, it will become apparent that those who claimed, under authoritarian conditions, to speak in the name of the nation, are sometimes a minority within their own constituency. When it comes to the alternatives of secession or federalism and different degrees of federal autonomy, there is not always consensus. The negotiation of the multinational federal state therefore is a complex and frustrating process. Federalism can only assure that nobody could be fully unhappy but certainly not that everybody will be happy with the solution.

The existence of a nationalist identity and its political articulation does not ensure that there will be a federal solution. For that it is also necessary that the majority of the citizens of the state and their representatives agree to the desirability of recognizing those aspirations. It requires a shift from the conception of the society as monocolored to a multicolored, checkboard society. To use terminology introduced by Giovanni Sartori, "To move from a plural society to a pluralistic society in which the value of that pluralism is recognized as deserving recognition and respect it needs a change in attitude on the part of the majority.". Here again disagreements are likely about how generous the concessions to national minorities should be or not be and how threatening the

recognition of those rights is to the majority or at least perceived as threatening by the majority. Clause Offe adds the further condition for a stable recognition of group rights which we can extend to federalism, a reasonable expectation that once those rights are granted, in this case, a federal constitution approved, a durable balance will be reached. The last condition creates an optimum for a stable, multinational, democratic federal state but unfortunately I doubt that such a stable equilibrium is likely to be reached in many multinational societies. Indeed, I believe that federalism might create a temporary stability, a framework in which further demands can be articulated and additional rights can be granted, but it is unlikely to be a once and for all stable, durable solution. The question is what are the ultimate limits of the dynamics of the devolution of power in the multinational federal state?

The trust between the majority and the minority in a multinational state is likely to be threatened from two groups of extremists (or possibly only one): (1) those who continue proclaiming that the ultimate goal is the destruction of the existing state by secession and independence of the so-called oppressed nation, whatever rights are granted to it and whatever devolution of power takes place within a federal framework; and (2) those claiming that such a solution is only the first step toward the disintegration of the state and are unwilling to consider such a possibility and set out to prevent it. The extreme nationalism of one or the other side is an obstacle to what the German constitutionalists, the German federal constitution and jurisprudence call *Bundestreue*. Without a loyalty to the federal constitution and to the state, multinational federalism might not be a stable solution.

Bundestreue implies three dimensions: (i) the institutions geared to that purpose and assuring a certain solidarity between the component units of the federal state, (ii) a basic set of attitudes of majorities of the population in the federal national units and the state population as a whole, and (iii) behavioral aspects that go from the specific policies of the government of the federal components and the central government, to, last but not least, the rhetoric of the political leaders, particularly in crisis situations.

Partial Federalization of Minor Units in the Context of Democratic Unitary States

There are a number of states which have become in the course of their history unitary states and for most, if not the overwhelming proportion, of their citizens, nation-states. Many of those countries are either relatively small or medium sized and feel no pressures in favor of adopting a federal type of constitution. There may be pressures toward some decentralization but not federalization. Moreover, a number of those countries have lively democratic local governments in their cities and even rural areas. However, some of those countries have in their border areas pockets of ethnic or linguistic minorities which might even be potential irredenta for neighboring powerful nation-states. This is the case of the Italian Tyrol (region of Trentino-Alto Adige), Valle d'Aosta and Friuli-Venezia Giulia. There are others which have the control, as a result of a long history, of islands far off from the mainland where the population has retained a distinctive culture and language while otherwise highly integrated into and loyal to the state.

In both cases there may be strong or significant pressures to recognize the distinctiveness of those territories and to grant them considerable self-government. In view of those pressures or even the desire to integrate those populations into the state and to govern them more efficiently, it seems reasonable to grant them constitutionally some form of self-government and to create thereby a federal type of relation. Such a policy can weaken irredentists in the neighboring country and potentially disloyal behavior of such minorities, or consolidate the international status of far away dependencies that might be the object of international interference or rivalries. When those politico-administrative units are small in population and of limited economic significance, the granting of

such a special status might not be polemical and might not generate pressures for federalization of the whole state. Nationalists, however, will see the constitutional recognition of borderline ethnic communities as a threat or an abdication of national unity.

It should be clear that such partially federalized countries fit our definition of federal states only if the citizens living in those subunits with constitutionally guaranteed self-government and competences have also a vote in the state-wide elections. The fact that the Faroe Islands, Greenland, to give some examples, are also represented in the state-wide parliament and contribute thereby to the making of decisions for all citizens, contrasts with other forms of political association, like the free associated state of Puerto Rico, the Commonwealth of Northern Marianes Islands, that should be kept distinct.

Party Systems in Multinational Federal Systems

The literature on federalism stresses the importance of a federation-wide party system in maintaining the unity of the country and, directly or indirectly, coordinating the subunits. We have already discussed how, in mononational federal states, the dominant pattern is a federation-wide party system, though with occasional regional differences like the CSU within the CDU, and occasional third state-wide parties in the United States or with the disproportionate electoral strength of one or another of the state-wide parties. We also discussed the paradoxical case of Switzerland where the party system does not reflect the linguistic and cantonal identities with the four major parties competing in the whole confederation. Even India initially had a federation-wide party system. However, it is now closer to the model of a party system of multinational states, and recently the parties with a strong state basis have formed a multiparty coalition government in Delhi.

Patterns are very different in truly multinational states. They are characterized by different party systems at the federation level and at the level of the subunits, and the parties representing the

nationalities have a significant representation in the national parliament or congress and are, in Sartori's terms, relevant parties either for the formation of governments or for their blackmail potential. The presence of such parties changes the pattern of politics decisively.

In multinational societies there are likely to emerge nationalist parties representing the distinct identities of significant segments of the population, parties that cannot be eliminated by playing with electoral laws, since both under proportional representation and majoritarian representation, they are likely to gain seats unless extremely high thresholds at the state-wide level would deprive them of representation. Such parties appear both in unitary states, the United Kingdom or Finland, and in federal states. There is, however, a fundamental difference. In federal states they can gain control, not only of local governments and seats in Westminster, but also control of or participation in the formation of governments in the federal subunits. That opportunity is an incentive to vote for such parties at the subunit level by those who in an unitary state or in state-wide elections would not vote for them. Access to government power changes decisively their role in the state. Many policies will reflect their aspirations in the reserve domains in the federal units, particularly language and education policies, recruitment of the civil service, etc., assuring a divergence from state-wide patterns. These policies might involve inequality for the minorities within the regional majority population. Equally important is the fact that such parties, through control of regional governments, have access to patronage and therefore can build up their party machinery.

The control of the government of the federal unit by a nationalist party almost inevitably changes the role of the parliamentary representatives of that party in the federal legislature. They will be as much representatives of their voters as of the leadership of their party in control of the unit government. In a sense, they are likely to become ambassadors of the subunit government at the center. In a sense, their mandate becomes an imperative rather than free mandate, since their future in politics depends on the more powerful leaders in control of the subunit government. There are clear cases in which highly respected parliamentary leaders of such parties in the central legislature have dissented from the leaders in control of the subunit government, have developed a greater level

of *Bundestreue*, concern for the well being and government of the country as a whole, and as a result, have been frustrated in their efforts. One prominent leader of the Catalan CiU, who had been a distinguished figure of the *Cortes* in Madrid, Miquel Roca, probably as a result of such tensions with Jordi Pujol, the head of the Catalan government, left politics altogether.

When the state-wide parties are able to gain absolute majorities or to form coalitions with other parties not identified with the particular nationalist or even regional party, the bargaining or blackmail potential of nationalist parties in a subunit is limited. However, when the party constellation is such that no state-wide party is able to gain an absolute majority or to form such a coalition, nationalist or regional subunit-based parties become relevant, in the sense of Sartori, to form coalitions or to make possible minority governments and when not, exercise a blackmail potential. One could argue that in a two and one-half party system, like that of the Federal Republic in Germany, the FDP, with its capacity to change sides between the CDU and SPD, occupies a similar position. Such an argument is fallacious because the FDP competes in the whole *Bund* and will be rewarded or punished by the voters for its role in whichever coalition it participates or it breaks up. A nationalist or regional party will not be rewarded or punished on the same basis but in its role as representative of the interests of the subunit in relationship to the center, on the basis of the extent to which it can obtain advantages for that subunit, of its capacity to obtain further devolution of powers to the subunit and to oppose actions by the government at the center (aimed at limiting the power of those governing the subunit) even in preventing initiatives of the central government to question the constitutionality of those decisions.

The position of nationalist parties in control in subunits of a federal system in the central legislature, is not the same as that of minor third parties in a state-wide party system as, for example, in the German Federal Republic. Such parties may have little or no interest in participating in the formations of governments at the center. To give conditional support without commitment has two advantages for them: (1) they do not have to betray the principled questioning of the unity of the state and the ultimate utopia of independence, whatever pragmatic policies they might pursue within the federal context; and (2) they retain their independence to pursue in the subunit policies that they

might otherwise have to give up as a result of sharing in the responsibilities of the central government.

The crisis of the Congress party in India has recently led to a quite unique pattern: the formation of the federal government in Delhi by a coalition of parties whose strength is derived from their success in different states of the union. In this case, those parties do not exercise a "blackmail" power over a federation-wide party, but had to join to govern the country, a process that might contribute to the "national" integration of India.

It could be argued that these patterns are not unique to multinational federal systems but are also developed in other federal systems when state-wide parties undergo a process of factionalization when factional cleavages emerge, supported by the center or the leadership in the federal units, undermining the cohesion of such parties. Some of the developments in India, as a result of the crisis of the Congress Party and the meddling in the Federal State Congress parties by Indhira Gandhi, have led to some similar patterns. A weak leadership of federation-wide parties or a leadership bent upon destroying powerful leaders of the party in the subunits by interfering with party and government in those subunits by the center can be quite destabilizing.

Generally nationalist movements are represented by a major party that tends to dominate the politics of a federal unit particularly if it is small. However, sometimes different cleavages within the ethnic community generate a more complex party system. They could be class cleavages, as was the case with *Lliga* and *Esquerra* in Catalonia in the Spanish Republic. Such left/right alignment very often leads to a variety of combinations, the left being in power both at the federal unit and at the center, the right being in power in both areas and the governance of one or the other at the center or in the periphery. The latter combinations can generate serious conflicts, since the conservatives in the federal unit finding themselves in the minority turn to the right at the center to defend their interests, for example before a constitutional court, against a left federal unit government.

Even more complicated is the fractionalization of the party system along the dimension from moderate nationalism to extreme nationalism which might even express sympathy for terrorist activities. This is the case of the PNV, EA and HB in the Basque country today or the splits of the *Akali Dal* in the Punjab during the crisis provoked by the policies of Indhira Gandhi. In the context of a federal state, such a fragmentation of the nationalist movements in the absence of a clear majority or a dominant party in the federal subunit, can lead to complex political games between the center, the party linked with the center (for example in India, the Congress Party) and local politicians that can be very destabilizing.

Democratic Federalism as an Answer to Nationality and Ethnic Conflicts

In light of what has happened in the former Soviet Union, Yugoslavia, even Czechoslovakia, and conflicts in other parts of the world, like India, the question can be raised: Does federalism answer the question of creating peaceful coexistence in the larger political unit of national groups?

To start answering this question we should make very clear that until now only non-democratic, formally federal, states have disintegrated, sometimes with violent conflicts. It can be argued, and I have done so in my work with Alfred Stepan, that the Soviet type of ethno-federalism, extremely federal constitutions of some communist countries, have contributed to the rise of nationalism in post-totalitarian societies and to the break up of those states. It would be a great mistake to think that we can extrapolate the experience of those states to democratic federal systems. The break up of Pakistan should be included in such an analysis, although the geography of Pakistan before the separation of Bangladesh and the linguistic difference between East and West Pakistan were probably the most important factors. In this case, the differentiation in the recruitment of elites also contributed to the crisis. The fact that the army officers were mainly West-Pakistanis was such a factor. When we talk about ethnic conflicts in many parts of the world, we are talking about states which were not only non-democratic but very often ruled in a Sultanistic way, where the state itself

had very limited or no legitimacy. We have to emphasize again that without a functional state, with a minimally efficient bureaucracy, judiciary, military and police, which deserve a minimum of respect by the citizens, federalism is not necessarily the answer to ethnic conflict. In some cases, particularly Africa, the reconstruction of the state may be a requisite both for democracy and federalism.

Our argument is that democratic federalism can contribute successfully to solve the conflict between national linguistic, religious groups within a state and prevent its disintegration. I say explicitly *can*, but does not necessarily and *always*, prevent secessions of territorially well defined large national communities when the bonds between the people within the state are very weak. We would never argue that democratic federalism eliminates the constant major or minor conflicts generated by conflicting national identities within a state nor prevent the existence or development of separatist tendencies. However, we will argue that for a number of reasons that we now analyze, democratic federalism can reduce those conflicts to manageable proportions, compatible with a free democratic state.

(1) Free democratic politics is likely to show the complexity of the society in which nationalist demands are formulated. It is likely to make explicit the division of the population, its heterogeneity and how nationalism is not shared by the entire population. The spokesperson for a national demand cannot speak in a democracy in the name of the whole nation because the electoral results will show that there is no such unanimity in the population. Even those who, in principle, identify with nationalism will be divided between: a minority that does not question the state, the moderates who accept the federal autonomy as a satisfactory solution and share a dual identity, and more extremist minorities who, within the law and using democratic methods, will try to convince others of their nationalist aspirations.

(2) The possibility of extreme nationalists speaking in the name of the people is weakened and sometimes impossible when the people can express their preferences in free democratic elections and assume a share of power through the federal institutions.

(3) Democratic federalism allows the minority nationalists within the state who have strong backing in one territorial unit to realize some of their aspirations and implement policies that will satisfy nation builders.

(4) Democratic federalism allows for the presence and influence in the politics of the state through representation in the legislatures at the center and even participation in government of the state of the nationalists in the periphery.

(5) A federal constitution allows the challenging, vetoing, questioning in the public arena and before constitutional courts those policies of the center which they perceive as detrimental. To the extent that there is a tradition of respect for constitutions and legality (something that was very weak in the former communist countries), this allows for a peaceful resolution of many of the conflicts in multinational federal states.

(6) Most importantly, democratic federalism allows for the expression of the national identities, the simultaneous display of the symbols of the nation and those of the state and the building of allegiance and respect for both.

As this enumeration shows and the use of the expressions "allows", "makes possible", indicate, such consequences are not necessary but possible and even probable, but much will depend on the leadership of the nationalists in the periphery and the government of the state.

However, not only positive consequences flow from democratic federalism for the integration and persistence of multinational states. Among the negative ones we might note the following:

(1) Democratic federalism will inevitably accelerate the process of nation-building of development of a national consciousness among the population which had a weak national identity, where those committed to nationalism were a minority. The official recognition of the different languages, their introduction into the education system and other spheres of life assuring their

diffusion, the subtle and not so subtle discrimination of those not accepting the nationalist cultural program or not ready to learn and use the local language, are all directed at nation-building and likely to be relatively successful. In this, the policies of nationalist sub-unit governments will not be at all different from those who attempted a nation-building policy to assimilate and integrate the minorities in a formerly unitary state. Some of the costs for the freedom of individuals to make their own choices will be very similar.

One of the consequences of democratic federalism not only in multinational states will be indirect limits to internal migrations. Preferences for those with a local identity will discourage the free movement, particularly of elites, professionals, academics, and a segmentation in the recruitment of civil servants, judges, the police, etc. This, obviously, is most likely when there is a linguistic difference between federal units. With this process of segmentation and sometimes segregation enforced or socially implemented, differentiation is likely to increase the homogeneity of the federal subunit and ultimately weaken the ties with a larger community of citizens of the state. In the long run, democratic federalism might be the basis for a successful secession in the future.

(2) Democratic multinational federalism will allow the expression of the hostility to the state, the interpretation of the state which was common to everyone, sometimes for centuries, as an artificial, if not oppressive, reality with which an emotional identification is difficult or impossible. In this sense, democratic federalism, unless the elites make a deliberate effort to use it integratively, has inherent disintegrative tendencies.

(3) While normally democratic federalism is likely to show the weakness of extreme nationalists, it will not (and should not) lead to the suppression of the expression of such demands. A unitary state like France can, in its constitution, outlaw those questioning the national unity while a Spanish federalism cannot outlaw *Herri Batasuna* even if it can prove the links between that party and a terrorist organization like ETA.

(4) In a democratic federalist state, the liberal democratic institutions are likely to make it easier for extremist groups, including terrorist groups, to engage in their activities, which in an authoritarian setting and perhaps even in a unitary state might be more easily repressed (although we know that such states have failed in suppressing them). This has, however, two positive consequences: (i) To show the weakness of the support for such groups; and (ii) To possibly divide the ethnic community and thereby force the subunit moderate nationalists to assume their responsibility for deligitimizing such movements for the maintenance of public order and the repression of violence. The failure of the federal sub-unit government to do so would endanger the whole federalist compact and, in many cases, lead to the intervention of the central power according to constitutional rules which ultimately would perhaps exacerbate the conflict.

From the listing of these positive and negative consequences of democratic federalism, it should be clear that it is not an universal panacea. However, the positive experience in many democratic federal states (including even such conflictual cases as India) shows that when the state has achieved, before the introduction of federalism, a certain degree of unity, when many citizens identify with that state and that state acts efficiently within the law, it can provide a positive response to one of the great problems of our time.

Let us not forget that until now the democratic federal multinational states, with the exception of Czechoslovakia due to unique circumstances, have not broken up. Even when coming close to independence (or whatever was voted in the last referendum) Quebec has not become an independent state and there is still a democratic Canada. Whatever dire predictions people make about the future of Belgium, I see no prospect of Belgium breaking up. The same can be said for India, except for the Kashmir crisis, but the integration of Kashmir into the Indian Republic was difficult from the very beginning. India, in spite of very severe ethnic conflicts, has used its federal institutions to manage those conflicts and the crisis of Indian democracy has its roots not so much in the demands of nationalists in the periphery but various problems at the center. The most recent multinational state, Spain, has been able for the last twenty years to develop new forms of democratic participation which, as distasteful as they may be to a Spanish nationalist and

questionable from the point of view of the Spanish-speaking minorities (large minorities, over 30% of the population in some of the federal units), has made possible a new successful democracy. We should keep this in mind when we think of nationalism and federalism in many other parts of the world.

The problem is different when the transition to, and the building of, democratic institutions coincides with the need to respond to nationalist demands in the periphery and to build federal institutions. It is even more complex when the state and its institutions -- the bureaucracy, the tax collectors, the police and the armed forces, the judiciary -- are delegitimized or have broken down.

This has to be stressed over and over again because otherwise we would question the possibility of democratic federalism and multinational states in many of the countries of the Third World. Where the sequence is the mobilization of nationalist sentiment, the construction of a new type of state or federation and then democratization, the outlook is far from positive. Multinational federalism presumes the existence of a working state, a *Rechtsstaat*, the introduction of democracy, and *then* the solution of the multinational conflicts by democratic federalism. If that sequence is reversed, the prospects are very different. It was this sequence which made possible a new democratic federal state in Spain: Firstly, the prior existence of a state which had *some* of the elements of the *Rechtsstaat*, tradition of legality and constitutionalism (even under Franco); secondly, in the course of transition, the introduction of democracy at the state level; and thirdly, the solution of the problems created by the periphery nationalisms in the constitution and the enactment of the autonomy statutes, and the creation of autonomous governments in Catalonia and the Basque Country.¹¹

¹¹ Juan J. Linz, "Spanish Democracy and the Estado de los Autonomías", with commentary by Francisco Tomás y Valiente (President of the Constitutional Court, later assassinated by ETA terrorists), in Robert A. Goldwin, et al. *Forging Unity Out of Diversity*, Washington, D.C., American Enterprise Institute, 1989, pp. 260-326; Peter A. Kraus, *Nationalismus und Demokratie, Politik im Spanischen Staat der Autonomen Gemeinschaften*, Wiesbaden, Deutscher Universität Verlag, 1996.

For those who see democratic multinational states as a way to overcome the many conflicts generated by ethnic, linguistic, cultural, religious nationalism in many of the states of the world, the question of the conditions that make such a solution viable should be on the top of our agenda. Unfortunately, our knowledge to provide an answer is very limited for the reasons we stated at the beginning: the separate development of democratic theory, the theory of nationalism and the theory of federalism. Besides, the number of multinational, federal, democratic states is small, and therefore to come up with valid generalizations rather than with the explanation of unique cases, is difficult. It is even more difficult to generalize the successful experiences to the future of democratic federalism in the many multinational states today under authoritarian rule. The theorists of consociational democracy, like Arend Lijphart, discovered how difficult it has been to institutionalize consociational practices outside the limited number of countries which served as cases to formulate a theory of consociational democracy.

Even with those caveats, we shall try to advance some ideas about the conditions for viable multinational democratic federal states. Some may sound familiar to the student of conditions for consociational democracy, and this is no accident since federalism is a response to some of the same problems and might be considered one device to achieve consociational policies.

Let us go back to our distinction between federalism to bring together and federalism to keep together. It seems that democratic federalism to bring together people identifying with different nations in a single new federal state is not a likely basis for new federal democracies. As we noted before, the bringing together were cases in which a common sense of nationhood or shared values that could serve as a basis for a state-nation existed before the creation of the federation. We shall therefore start with the cases in which democratic federalism has served, and serves, to hold together diverse nationalities within a state.

The federalization of a multinational state starts from the assumption that the state is an existing reality and that for a whole range of reasons it has a certain legitimacy for large numbers of people, even when not in the unitary form in which it had been ruled. It means that the state has a

history that the people living within its boundaries share, that it has institutions which will not crumble overnight, and that those institutions have served the people irrespective of their national sentiments or identity. The questioning of that state, except in very particular types of crisis like war and defeat, a regime change, is not likely to allow its disintegration, although there can be pressures for change that might crystallize into demands for federalism. A non-democratic state today, when it initiates the process of democratization, might confront nationalisms in the periphery with a weakened legitimacy. Therefore, we have argued that the first step toward a federal solution of nationality problems within a state is to create a democratically legitimated center, a legislature and a government that can initiate the federalization before a breakdown of the state. This requirement already points toward the difficulty of introducing democratic multinational federalism in many parts of the world where the state faces a total crisis of legitimacy, as in some African states, or some authoritarian regimes that make a peaceful process of democratization impossible. The disintegration of the state before democratization or a peripheral democratization without a democratically legitimated center means that the federal state would be the result of bringing together nations that have an expectation of independence to construct a new state.

We shall therefore center our attention on the federalization of democratic multinational states. This has been the process in Canada, in India, in Belgium and in Spain, and could have been the process in Sri Lanka. The democratization of the state has made possible, at a later stage, the transition to multinational federalism.

The assumption, and perhaps pre-condition, for multinational federalism is the existence of dissimilarities with a relatively concentrated territorial basis combined with some commonalities that provide support for and legitimacy to the state. Those commonalities are likely to be reflected in various degrees of dual identity of the population in the federal sub-units, a sense of being members of two nations, the one in which the federal sub-unit demands its distinctive status and self-government and the larger one which encompasses the whole state. That dual identity is probably unlikely when the dissimilarity is total and intensely felt, when there is no shared history, language, culture or common struggle against outside powers. This is probably the main reason why

multinational federalism becomes difficult when the national minority is the irredenta of a neighboring state which has as much, or more, claim to the loyalty of that national minority.

Although it is a source of potential conflict, the presence of a significant minority identifying with the nation, the language and the culture of the dominant nationality in the state but which, at the same time, is integrated into the community and the life of the emerging national federal sub-unit, is the basis for ties with the state. Cross-cutting cleavages, including class or religious cleavages, are likely to create bonds across boundaries in a federal state which support the state. Economic ties, the whole organization of the economic activities, enterprises, investment markets in a modern society create linkages which are state-wide and which oppose the break-up of the federal state. However, we should not expect economic self-interest to be the basis of loyalty to a federal state. Intense nationalist feelings are perfectly compatible with the sense that breaking up a federal state might have economic costs. Indeed, it could be argued that with the creation of wider protected markets than those of the state, even the globalization of the economy, the importance of economic interests in supporting the existence of a state will be weakened.

The viability of multinational federal states will also depend on the international support for the existence of a democratic multinational state rather than international support for secessionism. We know the decisive role played by international actors in destroying some of the multinational empires, particularly the fairly liberal Austro-Hungarian Empire in 1918.¹² Today we can see how neighboring countries would make impossible or difficult multinational democratic federalism in many parts of the world. In fact, well meaning outsiders may continue talking about oppressed

¹² Francesc Cambó, *Meditacions. Dietari* (1936-1940), Barcelona, Alpha, 1982. Cambó, the leader of the Catalanist *Lliga* before the Spanish Civil War, wrote: "Austria was the most admirable political creation of all times. It was complicated as life is: that is why a simplistic spirit like Hitler hated it . . . Under Austria no one was fully happy - but no one was exasperated" (pp. 574-575).

nations even after a multinational federal democratic state has granted rights to those people and they enjoy a significant share of power in a federal state.

The most important condition and the most elusive is what Lijphart in his analysis of consociational democracy calls "overarching loyalties" and what the German language constitutionalists call *Bundestreue*, the *Bundestreue* that some commentators call the soul of an intergovernmental partnership. It implies that the sub-unit government and the central government and the citizens in all parts of the country, including the nationalist sub-unit, should take each other's interests into account, assist and support each other.¹³ More broadly defined, it assumes some shared feelings, some sense of common identity, some shared symbols that make leaders and people feel they have more in common with all the other citizens of the state than with foreigners. It is such a sentiment that would allow us to speak of democratic multinational federal states as state-nations, if such a terminology would not be irritating to the nationalists in such a state. To put it more colloquially, there should be some sharing of joys and sorrows of the citizens and leaders across the boundaries of federal subunits.¹⁴

In countries in which there is a non-nationalist majority nationality, the nationalist sentiments of that formerly dominant nationality should be moderated and not demand an exclusive identification with that nationality by those with a different identification or a shared identification. A multinational state has to be based on pluralism, on the recognition of the value of the diversity rather than just in an acceptance of the plurality of the society as a fact. The Spanish constitution of 1978, in its preamble, formulates it very well:

Protect all Spaniards and peoples of Spain in the exercise of human rights, of their cultures and traditions and of their languages and institutions.

¹³ Bertus de Villiers, "Bundestreue: The Soul of an Intergovernmental Partnership", Johannesburg, R.S.A., Konrad Adenauer Stiftung, Occasional Papers, March 1995.

¹⁴ On this theme, see also Juan J. Linz, "Plurinazionalismo e Democrazia", *Rivista Italiana di Scienza Politica*, 25, 1, April 1995, pp. 21-50.

And in Article 33:

The wealth of the different language variations of Spain is a cultural heritage which shall be the object of special respect and protection.

In a multinational federal state, once it has been constitutionalized democratically, the advocacy of a return to the unitary state is as contrary to the spirit of the constitution as the advocacy of secession. That is why a precondition for a successful state of this type is that the minorities favoring either secession or the return to a unitary state should be just minorities.

Even more generally in such a state there is a need to develop common integrative values, symbols, cultures, and possibly language, simultaneously with the constitutional recognition of diversity and cultural segmentation. The history of formerly unitary states which, to hold together the state, have to recognize the diversity while providing memories of conflict and sometimes oppression, can also provide common memories of a shared history of the state. The great problem is that nationalists in the periphery might attempt to eradicate those shared positive memories, cultural legacies, shared language, common symbols of identity and stress only those negative memories. Multinational federal states are based on a certain equilibrium between centripetal and centrifugal tendencies. This is an equilibrium not always easy to achieve but which leaders can either craft or destroy. The political, cultural, religious leaders therefore play a major role in the consolidation of multinational federal states.

An important indicator of the attitudinal basis of consolidated multinational democratic federal states is the extent to which both people and leaders express respect for symbols of the state which sometimes have to be redefined when they might have been originally symbols of a nation. Among such symbols, the monarchy might occupy a special place. It would be interesting to pay more attention to the role of the monarchy in keeping Belgium united as a state, and the role of King

Juan Carlos in the new Spanish democracy. Although kings or presidents in parliamentary republics may play such a role, we should not forget that today celebrities in the arts, culture, even science and for the masses, sports heroes, can do so today. The response of citizens of a federal state to the success of any of its athletes, irrespective of their nationality in the Olympics, world soccer matches, etc. would be one opportunity to express and cultivate that weak sentiment uniting people. The same would be true in the response to disasters affecting one or another of the component units.

Any understanding of the functioning of federal states requires attention to not only the constitutional structural dimension but to the behavior of leaders and people and the underlying basic attitudes. Public opinion research can provide us with interesting data on these attitudes.

In societies in which the 19th century type of nation-building efforts failed and even backfired, a new federal state-building process has to be carried out, using for that purpose some of the same elements we know from the study of nation-building.

Democracy, Nationalism and Federalism

Although the main argument of this paper has been the compatibility between democracy, federalism and multinational states, indeed, the argument has been that to make possible democratic states and multinational states, federalism might be necessary. However, we should never forget that both democracy and nationalism in the 19th century have been associated with the idea of a unitary state.

The great nationalist leaders and thinkers of the 19th century were not federalists. The French Revolution identified the new conception of democratic society with national sovereignty, national unity and the building of the nation-state. I do not have to refer to the program of Mazzini's Young Italy nor to the practices of the 19th century nation-builders like Kossuth, who was unable to conceive of Hungary except as a unitary republic and had no sensitivity to the ethnic, linguistic and historical diversity of the lands of the Crown of St. Stephen. The liberal constitution makers of 1812 in Spain, while turning their sights to the Cortes of the Middle Ages and their legacy of

representative government, did not think of Spain as a union of crowns with their distinctive representative institutions, but as a unitary state.

It were those resisting the liberal democratic revolution who turned the defense of the historical peculiarities of the different territories that had instituted the modern monarchical states, invoking the traditional laws like the *Fueros* in Spain, the identity of the different crowns in the Habsburg Empire, local parliaments, like the Navarrese Cortes, and conceived of the state more as a confederation of crowns and territories than as a nation-state. Nineteenth century nationalism tended to be both unitary and democratic. However, people in many parts of those states felt attached to them through their own traditional institutions, like the Carlists, who added to the traditional trilogy -God, fatherland and king- the defense of the *Fueros*. In fact, in many countries there was an emerging aristocratic nationalism reacting against centralizing unitary liberal democrats and who, in the name of tradition, appealed to the monarchs to defend the distinctiveness of the territories. It would be interesting to trace the extent to which some of the modern nationalist movements have their historical origins in that resistance to the new liberal democratic tendencies at the center. On the side of the left of the democrats, only Proudhon and in Spain the Federalists, led by Pi y Margall, articulated a federalist ideology, an ideology that was in part received by anarchist thinkers and leaders. It should be noted that this strand of federalism did not see the state as a multinational state.

Moderate liberal democratic leaders in the stateless nations of Eastern Europe, particularly in the Austro-Hungarian Empire when it had already become the Dual Monarchy, linked with the confederal traditions of the Habsburg realm and advocated confederal or federal solutions to satisfy their ambitions of national autonomy and identity. The extreme nationalists, however, set their hopes in new nation-states which, after attaining independence in spite of their multinational, multilingual and multicultural character, were to be unitary democratic republics and nation-states.

In a few cases, after defeat, leaders like Kossuth in exile, realized that for the implementation of their nationalist agenda, they would have to seek the alliance with minorities within the area

claimed by the new state they wanted to found and that this would require some concessions to them and perhaps federalism. The Republicans of the late 19th century in the European periphery, like the reactionaries and counter-revolutionaries in the first half of the century, turned to seek allies in the marginal nationalities. The attitude of Marx towards the "peoples without history", however, was more in tune with the left democratic thinking of his time. Only the Austro-Marxists in the wake of the Dual Monarchy, attempted to combine democracy, socialism and multicultural, multinational institutionalization. One of their main contributions (which I cannot analyze here) was the idea of non-territorial federalism, to make possible the living together of highly intermingled populations.

Federalism and the Realization of Democratic Values

Democratic federalism allows the realization of the basic principle of democracy: to make government accountable to the *demos*, to allow the citizens to choose, under conditions of freedom and at regular intervals, those who shall govern them. However, federalism is based on the coexistence between an overarching *demos*, that of the state, and the *demos* of the subunits, between two governments, each of them with powers to make different decisions. In doing so, it breaks the unity and equality of all citizens in the larger *demos* since, constitutionally, the *demos* of the component units can pursue different goals and different policies, can enact different laws and deliver to their citizens different public services, and can exact from them different contributions to a greater or lesser extent. Only complementary principles like that of solidarity, *Ausgleich*, *Angemessenheit*, *Bundestreue*, compensate for that fundamental differentiation within the same *demos*.¹⁵ Those principles are generally vaguely defined, difficult to operationalize, subject to

¹⁵ Wolfgang Renzsch, "Einheitlichkeit der Lebensverhältnisse oder Wettbewerb der Regionen? Sechs Thesen

considerable negotiation between the center and the periphery and often left to the interpretation of constitutional courts. There are principles that escape largely the decision making of the electorate of the *demos* of the state and sometimes of the *demoi* of the sub-units and only complement the basic principles of federalism, although they are in a sense the soul of a working federalism. We have already stressed this aspect and pointed out how competing nationalisms in a multinational democratic federalism, even more than in any normal mononational federal state, make difficult the realization of this federal spirit supporting the state, which will have to have *some* of the characteristics of a state-nation.

We shall now leave the constitutional and legal aspects of federalism, the policies of government, and turn to a broader analysis of the relationship between federalism and the values underlying democratic politics. Let us invoke for a moment the three symbols of democracy of the French Revolution engraved on every public building of France, *Liberté, Egalité, Fraternité*. To what extent does multinational democratic federalism, or for that matter, federalism, contribute to the realization of these values?

Let us start with the central value of equality. Federalism is based on the assumption that the citizens of a state are not equal except in some basic principles like equality before the law, the principles of the *Rechtsstaat*, the basic liberal freedoms for individuals, but not in the many areas in which they have distinctive interests that are within the domain of the federal units. Federal states do not establish, except in the Soviet model, a distinctive legal nationality of their citizens (the identity card does not distinguish Catalans or residents of Catalonia from all other Spaniards or residents of other Autonomies) and therefore there can be no formal-legal distinction made between

zur Konkurrenz Grundlegender Prinzipien im Bundesstaat", contribution IWG - Gespräch, November 1996 to the theme: *Ursachen und Folgen Unterschiedlicher Entwicklungen in den Bundesländern. A discussion of the implications of arts*, 71, 106, 107.

citizens in a federation. All federal states establish the free movement of citizens within the state.

There are, however, in every federal state certain advantages or disadvantages linked with being a resident in one or another unit. These advantages or disadvantages are not simply the result of differences in the social structure, in the economic development, or in the local political culture, but the result of legal and constitutionally protected rules. Citizens within the same federal state will enjoy and experience, as a result of such rules, different benefits and burdens. These differences can be far reaching unless the federal state is a highly centralized one, where the federal center, its legislature and government can establish and enforce uniform rules although implemented by the units (like the *Länder*) which can be made responsible for that implementation. The differences within a federal state can extend from criminal law, punishing a crime with the death penalty in one state and not in another, to less dramatic but very significant ones in matters of education, social security, health services, welfare, and in levels of taxation of businesses and individuals. In all those dimensions, there will be inequalities between those residing in one or another unit, which can be compensated by the freedom to move to the unit where the residents are more privileged. Without the freedom to move and the absence of any legal distinction by nationality or regional citizenship, this freedom guarantees a basic equality which does not exist between citizens of sovereign states and for resident aliens. Incidentally, this is one equality that the European Union attempts to establish for all Europeans.

A multinational state introduces additional inequalities which are not likely to be compensated by the freedom of movement within the federation. In multinational, multilingual states, laws regulating language use in schools, universities, the courts, administration, private business, including names and signs, directly or indirectly privilege those who know the language. Only they will have access, due to their proficiency, to many of those spheres of public activity and employment. Those moving across jurisdictions will not enjoy full equality, even when there is a common language known by all, or almost all, of the citizens of the state, and when there is a large minority whose maternal language is not that of the federal subunit. Even while individuals are free

to use the language of their choice in their relations with the authorities and the courts, they are not likely to have that choice in some areas like education, and being monolingual and less competent in the local language will be disadvantaged in the whole sphere of public employment. This is not a necessary consequence since there might be provisions for all those situations, particularly in areas within the sub-unit where a language other than the local one is dominant and the residents could claim access to officials knowing their language. Another dimension of that inequality is that if the persons of the sub-unit are bilingual, they will have full access to every position in the central administration and all the sub-units without a distinctive language. The linguistic differentiation leads, perhaps legitimately in many cases, to inequality within a multinational democratic federal state, unless constitutional provisions protect the rights of individuals irrespective of language, against excessive nation-building policies by the federal sub-units. Inequality in multilingual states between those competent in different languages is no accident of life but the result of deliberate policies -in fact, in many cases, one of the *raison d'être* of federalism. Inequality is the price paid for the unity of the state.

What has just been noted leads directly to the problem of the realization of another value of liberal democracy: freedom of individuals to make their own choices (Figure 2). Federal systems can differ enormously in the extent to which they guarantee not only the freedom of groups to organize separately for the realization of their identity, when they are in the minority, but even the free choice of individuals. The goals of nationalism are not always compatible with free competition between identities, languages, cultures and styles of life so central to liberal democracy. They argue against such competition because individuals may make different choices on the basis of their own judgment about the costs and benefits of their preference which may not coincide with the role of creating a homogeneous national community in the sub-unit. Federalism, and especially multinational federalism, can and has created great differences in public policy and even more in the social climate, the social pressures for conformity in the sub-unit to the values of the majority. In a large state, those social pressures can be checked by a broader conception of the pluralism of individuals and the recognition of their rights, although we also know how larger states have limited

the rights of minorities. There can be little doubt that minorities within subunits in which there is a majority committed to certain values and empowered to translate them into legislation, generally look to the federal center for the protection of their rights. The history of the civil rights movement in the United States provides ample evidence of how the federal government and the Supreme Court has checked the oppressive policies of states of the union, legislating and intervening in favor of minorities.

Figure 2. *Legal and Political Responses to Cultural Heterogeneity, Diverse Identities and Constitutional Differentiation in Democratic States*

		Recognition of the rights of individuals derived from their diversity	
		Yes	No
Recognition of rights of groups, collectivities, religious communities and federal sub-units.	Yes	Corporate groups, sub-limits have rights, but individuals are free to choose their identity (or to opt out) Pluralistic liberal democracy	Individuals are constrained by their group membership or dominant nation in a federal sub-unit, with no option out Pluralistic corporatist rather than liberal democracy.
	No	Citizens as individuals have rights reflecting their heterogeneity, but not collective or corporate bodies or territorially as autonomous units. Liberal plural but not pluralistic democracy.	Citizens have rights as individuals of a presumably homogeneous <i>demos</i> with limits to the public expression of cultural diversity, "Jacobin" democracy. A state of and for the (dominant) nation.

Fraternity, brotherliness, is not a term of contemporary political discourse, having been replaced by solidarity that means "holding together mutual dependence, community of interests, feelings and actions". We have repeatedly referred to the difficulty of operationalizing, legislating and implementing solidarity in federal states. Here we want to emphasize how multinational federalism is based on the affirmation of those characteristics that are not common, that differentiate and separate people, differences which deserve recognition. It also may have a tendency toward the

affirmation of exclusiveness and insolidarity. To the extent that multinational federalism tolerates and sometimes encourages the affirmation of not having anything more in common with other citizens of the state than obedience to the constitution and the laws of the state, it denies a "we feeling" extending to all the citizens of the state. It generates feelings that lead toward not sharing the same joys and sorrows with fellow citizens. Insolidarity is not a necessary consequence of federalism but one cannot exclude the possibility that federalism would create a sense of "we" and "them", of exclusive rather than inclusive solidarities. Only the nurturing of dual identity, the emphasis on the shared destiny of *all* the citizens of the state, can nurture the sense of *fraternité*, of solidarity.

The words *Liberté, Egalité, Fraternité* might still be on the tympany of the public buildings but they may refer to different *demoi*. We all would like to see those values prevail in the entire world. We have some hope that they will prevail in our European community. They should be at the core in a federal state and the feelings of the whole *demos* of such a state. When they become identified with the partial *demoi* of a multinational federal state, they are on the way to be potentially as ineffective as when we proclaim them for all of mankind.

Excursus on the "Democratic" Representation of Nations Outside a State

A community, an aggregate of people who identify themselves as such, who consider themselves part of a nation, can have spokesmen, leaders, but is unlikely to have democratically elected representatives. Only when a state allows elections, defining those with a right to vote, and

recognizes those elected can there by a democratic representation of the "nation" (rather than citizens of the state or residents in a territorial unit).

The apparent exceptions are cases of such representation allowed and recognized by the authorities. The national Councils elected in Estonia and Latvia by those who were residents in the independent republics before their annexation and their descendants (excluding those residents and "citizens" of the Soviet Republics not satisfying those criteria) "represented" the nation. Those elections were made possible by the authorities in the event that the official legislatures were disbanded and in order to channel national aspirations. Something similar happened with the election by the Jewish community in Palestine under the British mandate of a Hebrew Assembly (*Asefat NaNivharim*) in 1920. The 1922 White Paper of Winston Churchill - then Colonial Secretary - said: "This community has its own political organs: an elected assembly for the direction of its domestic concerns . . .". to give representation to the Jews under colonial rule. Another case that might be considered is the Kuralti of the Krim Tartars in Crimea recognized by the Ukraine, coexisting with the Assembly elected by all the residents of Crimea. In fact, the Kuralti is elected not only by the Krim Tartars in Crimea but by those still in the diaspora, and that representation apparently started under Soviet rule in the exile Krim Tartar community. It should be noted that those elections are apparently competitive elections between nationalist movements. A somewhat different case is the election of the Gurdwaras to administer the Sikh religious, charitable, etc. institutions, which is officially organized and in which "church parties" compete. Given the identification of a "Sikh nation" with the Sikh religious community, one could argue that the *Shiromani Gurdwara Parbandhak Committee* (SGPC) is the representation of the nation. However, again, it was the British colonial authorities which created and regulated this process of representation, which otherwise would probably not have been possible.

Note on So-Called Territorial Representation

When the representation of federal subunits is discussed, the expression of "chamber of territorial representation" is used. It should be clear that territories cannot be democratically represented but only people living in territories. What really is meant is that representation is assigned not proportionally to the population in relation to the population of the state. This also happens in unitary states as the result of electoral districting and laws, sometimes even intentionally by creating districts with a minimal population (like the Orkney and Shetland Islands and Northern Scotland in the United Kingdom). Unequal representation in federal second chambers - analyzed by Alfred Stepan in detail - is, however, deliberate, based on an equal or at least not equal representation of the people living in the federal units. However, it still represents voters living in them irrespective of their identity since no democratic federal state abandons (in principle) the equal citizenship of all its citizens wherever they live and freedom of movement within its borders.

Figure 1. *Functions of federalism*

	"Bringing Together"		"Holding Together"		Unviable Multinational Federal States
Mono-national or "state-nation"	USA Germany 1821 Australia Austria 1918		Argentina Brazil Mexico India (1947-1959)		
	Switzerland				
Multi-national, ethnic, cultural (territorially defined)		Faroe Groenland	India (1950-) Canada Spain Belgium	Czechoslovakia in democratic transition	USSR non-democratic Yugoslavia non-democratic
