

SİYASİ İLİMLER ve HUKUK

SOME CONSIDERATIONS ON FEDERALISM (*)

by

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Different Aspects of Federalism

1. General Connotations:

It is well-known that federalism has different connotations varying between the widest and the narrowest senses. In the widest sense it means adherence to a system of graduation of different autonomous units in social life, beginning with the family, passing by local and regional communities and ending in the State. But here we are not going to deal with this social-philosophical aspect. The most usual connotation of federalism indicates a trend towards a kind of state organization on the basis of autonomous units. Here again it is used as to comprise cases, such as confederation, where there is a looser organisation of units. In this sense, federalism is advanced for a totally comprehensive political unit like the world state aiming to ensure world peace and the general well-being of the humanity. Along the same line it has also been suggested for more limited aims like European unification.

In a narrower sense, federalism refers to a compound state structure called «federation» as practiced in different countries, beginning with the United States in America and Switzerland in Europe.

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2. Variation of Meaning according to Tendencies:

In its concrete frame, federalism may have «centrifugal» and «centripetal» connotations. When federalism concerns the unification of independent states it has a centripetal meaning, whereas in established federal states it indicates mostly a centrifugal tendency stressing particularism.

In this paper we are mainly concerned with federalism as a tendency towards a federal state system.

Federal State system

1. Characteristics:

The characteristic of the federal system is that the state is composed of subordinate political units each enjoying legislative, executive and judiciary powers and therefore considered, if not unanimously, in any case mostly, as states by themselves. It is well-known that the very structure of the federal system has always caused great difficulties of explanation, for jurists and political scientists, as to the characteristic element of the state, like the question whether sovereignty is or is not a necessary element.

It must be said that it is required, if not expressly, in any case implicitly, that the autonomous units have their share in the central or national state. Therefore the Ottoman Empire has never been considered as a federal state though it comprised, during its many century long life, many autonomous units at different levels and with different structures, but without participation in the central ruling of the Empire.

Another characteristic of the federal state system is that the united autonomous units are organized on a regional basis like the Swiss cantons, the German Laender or the States in the U. S. A. An autonomous organisation based on ethnical or personal groups, as was suggested in the Austro-Hungarian double monarchy by a group of Austrian scholars and politicians, did scarcely have any valuable impact on practical politics as to lead to a possible change in the notion of the federal state structure.

2. Cases:

The oldest federal states of America and Europe are the products of historical developments, traditions or geographic situa-

tions, particularly the size and ethnical composition of a country. The latter aspect has been applied, as known, in the Soviet system which is based on nationalities. Indeed, if nationalism is taken, on the one hand, as a basis for the state organisation and, on the other hand, as a device to keep the political unity of a whole country like Russia, it is necessary to find a compromise solution which makes a kind of federal system necessary. In this respect, federalism seems to be not only a useful, but also a necessary pattern of state structure.

3. Structural Pattern:

As known, the federal state system is generally carried out, besides local autonomy, on a dual basis, the regional affairs being left to the state organs and the national ones being entrusted to the federal authorities. Here arises many difficult problems as follows:

A. Repartition of Powers: Generally speaking it would be admitted that only affairs of regional character and particularity should be left to subordinate units, while questions surpassing regional needs, and those having national importance should be reserved to the federal authorities. But the implementation of this principle is not easy. The difficulties concern not only its actual definition by the framing of the federal constitution, but particularly its adaptation to the changing needs and the new problems of the society as shown by the American and recent German experiences. In the last analysis, a spirit of cooperation and solidarity that takes into account the need of unity and thus avoids excessive particularism can only be helpful. Yet where the unitary spirit is feeble, the federal system may encounter great difficulties in functioning. That this lack of unitary spirit may not be limited to the case of ethnically mixed societies is shown by the difficulties encountered in the ethnically unitary federal states like Germany. In other words, here is seen the trend of particularism which is usually called «federalism» in its centrifugal connotation. It is interesting to note that the latter tendency goes as far as to claim sometimes the competence of subordinate units even in affairs of a national range and character by advocating the organisation of a cooperation between subordinate units for their conduct. In such cases it certainly is more logical and practical to recognize the competence of the federal state and thus to avoid an intermediate and superfluous organism together with its inherent difficulties.

B. Uniformity of Conduct: Despite its plural structure, the federal state too needs a general unity of conduct as a whole. Certainly here also the best way is a genuine cooperation between the subordinate units and the federal authorities. But where this cannot be achieved, federal organs must be equipped with adequate means. On this point the systems are not very well developed due to federalistic influences. We think that the federal state should not be denied such necessary devices with adequate safeguards against their abuses in order to ensure a smooth running of the whole system.

Practical Value of Federalism

1. Principle of Self-Determination and Federalism

Nationalism and its corollary principle, self-determination, require that every nation should have the right to determine its political life. But, on the other hand, geographical or economical or historico-traditional facts necessitate in most cases that a region inhabited by different nationalities constitute a statal unit. These two factors can satisfactorily be met only by a federal structure. This point needs some explanation.

A. The Meaning of Self-Determination: If a region comprises, like Cyprus, more than one national community, the question arises as how to apply self-determination. Circles of the majority groups have continuously ascertained that the majority should have its word. But this amounts to interpret the principle of self-determination as a «majority determination» and leads to the practical elimination of minority groups thus contradicting the very basis of the self-determination principle the essence of which is the respect of human beings in their individual and groupal capacities. The adherents of the majority group's view simply ignore this aspect and refer as justification to the democratic principle, giving it at the same time a peculiar interpretation by ascertaining that it means «principle of majority decision». Yet this argument seems to be fallacious, as democracy, in its proper sense, is essentially government by common consent. The majority decision can only be justifiable where no other solution is available, i.e. in an ultimate expediency where it is necessary to choose between limited definite possibilities. But this is not the case in the application of the self-determination principle. This principle can be reasonably and justifiably applied only by giving to all national groups a possibi-

lity of having their word in their own destiny; this makes it necessary to reach a compromise solution, similar, for example, to that adopted in the Zürich and London agreements of 1959 in the case of Cyprus, establishing, by common consent of all the interested parties, a two-community state system which combined a communal autonomy for each community with a share in the government of the country.

The expediency of the majority decision cannot be justified in such cases for the following reasons: In domestic affairs the majority rule leaves room for possible changes by an evolution of the public opinion, whereas in the case of self-determination by majority decision, the fate of the minority national groups is definitively determined by the majority national groups, leading to the submission of the former to the latter, which seems to be bound to undermine the very existence of the minority groups particularly where exclusive nationalism dominates the scene. It is quite obvious that all this contradicts the above-mentioned basis of self-determination. This is why the United Nations Charter rightly refers to the self-determination of the people without any restriction.

Here the problem arises as how to reach a compromise solution in cases where the majority national group does not admit any share to the minority national group, like in the Cyprus case. The simplest answer to this is that the majority group should be denied any claim to self-determination according to the forfeiture principle which underlines the Article 18 of the West German Basic Law. Similar is the situation if the minority national group does not cooperate or exaggerate its claims in the share of political ruling.

The following point should be stressed: in a mixed region it is not always necessary to recur to a compromise solution as to form a federalistic system. It can be perfectly possible, as in Switzerland, that different ethnical groups recognize each other's equal share in the political fate of the country and honestly respects it in practice. But where there is not such a mutual toleration, there seems to be no other way to recur to a compromise formula, should the integrity of the region to be preserved.

B. The Means of a Compromise Solution: In regions inhabited by different national groups and where a compromise solution becomes necessary, the question still remains as to which are the satisfactory devices for its achievement. First of all, one solution put forth mainly by the majority national groups should be exclu-

ded. These groups sustain that it should be enough for the minority groups to have national or international guarantees for the protection of the principal human rights. That such guarantees are not effective has been sufficiently proved by the experience made since the treaties ending the First World War by the practice of international minority guarantees in regions, where as in Cyprus, the majority groups are stimulated by an extreme nationalism. Indeed, minority guarantees, in their actual connotation, aim first of all to provide protection only in the field of human rights, leaving the participation of the minority group in the government of the country quite open. This failure of the existing minority guarantee system constitutes a real contradiction of the democratic principle.

Besides, no legal guarantee of human rights can be effective unless the minority group has its share in the political fate and the government of the country.

Furthermore, to deny one part of the population, whatever their number, the same right and possibility recognized to the majority is contrary to the equality principle which underlies all the basic principles generally adhered to such as democracy, social state and the right of the people to self-determination.

Therefore it is necessary to recognize to the minority national groups a proportional possibility of having their word in the destiny of the country, which seems to lead to the admission of a kind of federal structure. Consequently, such a structure has its logical place among the types of states to be created in order to comply with the self determination principle in mixed regions.

2. Rule of Law and Federalism:

Since the early days of federalism in the United States, certain circles such as the Federalists in America and more recently the German federalists, have considered that federalism constitutes, next to the separation of powers principle, one of the means of moderate government and rule of law by avoiding a vertical concentration of powers through a kind of vertical separation of authorities. That the federal system by itself cannot ensure such a result was proved in Germany by the failure of the federal system to hinder the establishment of the Nazi dictatorship. The same proof has consistently been given by the Soviet system where the party mac-

hinery has been able to establish a very centralized rule of the country, widely surpassing, in its practical effect, the most unitary systems. Therefore one should conclude that moderate government is mainly due to the democratic structure of a pluralistic society, abiding with political liberties and permitting a smooth functioning of the political control by an organized and competitive opposition. Only in this respect can a separate legislative body like Parliament serve as a means of expressing opposite views while reflecting and guiding the public opinion. Similarly it can be ascertained that a federal system may provide, as in the United States, a useful platform for ensuring a moderate government due to the very nature of the body politic. But here again the same federal structure may become a hindrance to the overall implementation of the rule of law, as shown by the problem of civil rights in the United States. Therefore, one must be careful in stressing the impact of such formal structural patterns on the achievement of the rule of law or the guarantee of human rights.