

*Old World Roots of Federalism*  
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The mission given to this session is to describe the historical foundations of federalism. Our assignment was to begin with the political theorist normally considered the first to extol the principle, Johannes Althusius in his 1603 *Politica Methodice Digesta*, where he rejected rule by mere centralized power and defended a covenanted constitutional arrangement between his Calvinist city Emden, his Lutheran regional prince and the Catholic emperor, each of which held historically agreed upon mutual rights and responsibilities.

But was Althusius really the first? As the modern political scientist Daniel J. Elazar emphasized, the author himself disagreed.

As Althusius himself was careful to acknowledge, the first grand federalist design was that of the Bible, most particularly the Hebrew Scriptures or Old Testament. For him, it also was the best -- the ideal polity based on right principles. Biblical thought is federal from first to last -- from God's covenant with Noah establishing the biblical equivalent of what philosophers were later to term natural law (Genesis, Chapter 9) to the Jews' reaffirmation of the Sinai covenant under the leadership of Ezra and Nehemiah thereby adopting the Torah as the constitution of their second commonwealth (Ezra Chapter 10; Nehemiah Chapter 8). The covenant (Latin: *foedus* from whence federal) motif is central to the biblical world view, the basis of all relationships, the mechanism for defining and allocating authority, and the foundation of the biblical political teaching.

The biblical grand design for humankind is federal in three ways: It is based upon a network of covenants beginning with those between God and man, which weave the web of human, especially political, relationships in a federal way -- that is through pact, association and consent. In the 16th century, this world view was recreated by the Reformed wing of Protestantism as the federal theology from which Althusius, the Huguenots, the Scottish covenanters, and the English and American Puritans developed political theories and principles of constitutional design.

But it is too hurried to skip from Biblical to 16<sup>th</sup> Century incarnations. As Alain de Benoist summarized the details of Althusius' contribution:

For him, society is constituted of associations and successive collectives, fitted together from the simplest to the more complex, the unity constituting what Gierke calls "the existential unity of a people." The state is defined as a real organic community, formed by many symbiotic "consociations," public or private, with two sets of agencies on each level, one representing the lower levels, which must retain as much power as possible, the other representing the higher levels, whose jurisdiction is limited by the lower levels. Thus, freedom within society does not emanate from the sovereignty of the higher levels, but from the autonomy of the lower levels. The articulation of and equilibrium between different levels is guaranteed by the principle of subsidiarity.

Althusius' theory of sovereignty is interesting, because it is based on the extension of a medieval concept of sovereign authority, defined as a higher authority, but not yet as an absolute authority detached from all obligations. Medieval society was not familiar with the idea of unlimited sovereignty. This sovereignty was always dependent on the common good, and it was precisely this common good, rather than the state's power or grandeur, that constituted the goal of power. Up to the 13<sup>th</sup> century, the king, representing the common good of his subjects, was called *sub lege*: he shared legislative power with the major feudal lords, without whose consent he could not govern. Similarly, on all social levels a "chain of duties" (Augustin Thierry) was formed by interlocking hierarchies: one who was obliged to a suzerain had the respect of a vassal, and borders fluctuated according to multiple allegiances.

The medieval roots are essential. Althusius emphasizes that humans require "communities and associations that are both instrumentally and intrinsically important for supporting [*subsidia*] our needs." This uniquely Western development of subsidiary associations to address human needs was developed very early in the Middle Ages. As Mark Friesen put it, a "charitable system" was established from the beginning in the church community but then later more formally in hospices and formal hospitals "along the main roads and close to monasteries, bishops' palaces, rural locations, not necessarily inside the cities," the first such independent institutions aimed at nursing average people.

After Justinian's uniform rewriting of the Roman law, the legal status of the charitable service corresponds to the *opera pia* (charitable organization), a peculiar reality that, although acting in the secular world, keeps being quite autonomous and benefits from guarantees and tax reliefs that are typical of ecclesial institutions. According to Canon law, the charitable organizations are allowed to dispose of bequests and donations and of the gain thereof in order to accomplish their charity work, and can somewhat institutionalize the different forms of personal and family charity. If the charitable intent is associated with the religious goals, the assistance is not simply confined to the private sphere, but instead it becomes a decentralized and free system at the intersection between civil law and canon law.

This kind of charitable organization takes place within a relatively stable social situation, especially after the 8th – 9th century, characterized by a basic balance, by a sufficiently adequate alimentary situation, and by the absence of great epidemics: demographic growth finds a favorable ratio between population and resources. The following and, for many reasons, extraordinary growth of the cities is also sustained by a charitable network able to adapt itself to the new needs, by creating on one side several urban hospitals and on the other side various almoner confraternities supported by the middle class and the merchants who represent a fundamental element for the expansion of the medieval Communes.

Also very important in this context is the activity of the mendicant orders: the Dominicans start the “Misericordia” (lay confraternity for giving aid to sick people) and the Franciscans start the almoner societies in many towns and villages around Italy, above all in the center-northern regions, constantly maintaining a lively evangelic inspiration. Poverty in urban centers often finds an effective solution outside a general program of the Commune but still with its intervention, within the perspective of a spontaneously-born subsidiarity.

Althusius himself models his federalist political order on his experience in the already existing federal Holy Roman Empire – neither holy, Roman or empire – of emperor at the top with the responsibility for the general security of the whole realm, the princes with the general charge of the peace of the internal state, and the city and associations responsible for the community good. While the Italian port cities thrived with trade to Byzantium throughout the ages, the other European cities did not rise until later, in Althusius’ Emden perhaps by the 8<sup>th</sup> Century. Merchants associations, banks, guilds and innumerable other associations followed winning further rights from those above them in the feudal hierarchy. While centralized monarchy soon displaced the decentralized medieval system, Montesquieu argued that its defeat at Blenheim proved the superiority of freedom, decentralization, separation of powers, and the “confederate republic,” passing along these ideas to lurk subversively in its culture only to have later effect.

As Acton emphasized, England had most seriously developed and held on longest to its old feudal structure before it too fell to divine monarchical right and later parliamentary centralization. Fortunately for its American colonists, while Henry VIII and Elizabeth had adopted the continental model, dynastic, religious, and foreign entanglements kept the monarchs and legislators too busy to properly educate them on the new centralization. By the time, George III took his divine right doctrines to the colonies it was too late to dissuade them from their Magna Carta, Bills of Rights, Locke and Montesquieu.

While separation of powers was fundamental to the Founders, federalism was not. James Madison indeed thought all was lost when the resolution to make state laws subject to Congressional review was rejected. Federal ideas were not as deeply rooted in intellectual realms but had become deeply embedded into colonial institutions and prevailed among the majority of the more practical delegates. As de Tocqueville found later, the national government barely existed out in the country and the states did not reach down very far either. A true subsidiarity had grown through its local governments and voluntary associations.

The Calvinist Althusius might have been disappointed that his principle of subsidiarity as justification for federalism took deepest root in Catholic social thought, as most powerfully stated by Pope Pius XI in his 1931 encyclical *Quadragesimo Anno* and repeated by his successors since:

It is wrong to withdraw from the individual and commit to the community at large what private enterprise and industry can accomplish; so too, it is an injustice, a grave evil and a disturbance of right order for a larger and higher organization to arrogate to itself functions which can be performed efficiently by smaller and lower bodies. This is a fundamental principle of social philosophy, unshaken and unchangeable.

What is the importance of this concept today when centralization has displaced so many federal powers? When discussing this national arrogation of local powers in his major social encyclical *Centesimus Annus*, Pope John Paul II was blunt:

In recent years the range of such intervention has vastly expanded, to the point of creating a new type of State, the so-called "Welfare State". This has happened in some countries in order to respond better to many needs and demands, by remedying forms of poverty and deprivation unworthy of the human person. However, excesses and abuses, especially in recent years, have provoked very harsh criticisms of the Welfare State, dubbed the "Social Assistance State". Malfunctions and defects in the Social Assistance State are the result of an inadequate understanding of the tasks proper to the State. Here again *the principle of subsidiarity* must be respected: a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good.

By intervening directly and depriving society of its responsibility, the Social Assistance State leads to a loss of human energies and an inordinate increase of public agencies, which are dominated more by bureaucratic ways of thinking than by concern for serving their clients, and which are accompanied by an enormous increase in spending. In fact, it would appear that needs are best understood and satisfied by people who are closest to them and who act as neighbors to those in need. It should be added that certain kinds of demands often call for a response which is not simply material but which is capable of perceiving the deeper human need.

As sectarian passions have settled Althusius may well in fact have been proud his ideas have survived and received endorsements of such a nature. If - as we see in Europe and even in the United States - that the welfare state is nearing bankruptcy and seems unable to come to grips with its inherent problems, federalism may be the only humane and economic response. Regional and local governments unlike the national government cannot inflate the monetary supply and thus have an inherent limit on their fiscal irresponsibility. If we are to put the genie of bureaucratic, self-interested welfare back in the box and replace it with a responsible love for neighbor based in deeper human needs, what other than federal decentralization could replace it?

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