

Chapter Nine

Federalism : One of Democracy's Best Friends

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John Stone and I have been friends ever since we first arrived at Perth Modern School, when the Australian Constitution was much less than half as old as it is now. Towards the end of last year, when we were both back in our former home town for a gathering of our old class mates, I happened to mention to him my affection for the federal system, particularly as a guardian of democracy, and my belief that our Constitution, although like all human institutions imperfect, was at least as good a Constitution as any in the world.

It seemed to surprise him that I, as a lapsed Labor politician and one of the few surviving unreconstructed socialists, should hold these views, He was so astonished that he invited me to speak to you tonight on this topic.

After I had gladly accepted his invitation, he told me that I would be expected to give you no less than 5,000 words on the subject.

I do not think that I shall be able to reach that target, primarily because I believe it is so obvious as to be self-evident that even the strongest democracy with a unitary system of government would be stronger with a federal system, that very little needs to be said in order to make the point without offending against the largely unenforced parliamentary proscription of tedious repetition.

When, in an orderly society, governmental power is divided, it stands to reason that the citizen is less likely to be at the mercy of arbitrary rule than when that power is concentrated in one institution. It is in recognition of this principle that, in democracies, it has long been regarded as essential that the judiciary should be independent of executive government and the legislature, and it is why the United States Constitution and the Constitutions of the individual States go so far (too far, according to our tradition) as to separate rigidly the executive from the legislature.

The geographical division of powers in a federal system, according to which some legislative and executive functions are the responsibility of the national government and legislature, and others belong to the States, Provinces or Cantons of the federation, self-evidently limits and decreases the ability of office holders to oppress the citizens. In Australia the existence of State Premiers diminishes the authority of the Prime Minister, while the existence of the federal government similarly places limits on what even the most reckless State Premier might try to do. In principle there seems to be little more that can be said.

Some years ago an Israeli Ambassador to Australia told me how a visit to Adelaide had converted him to an enthusiast for our federal system, which he had thitherto regarded as an expensive and time wasting encumbrance.

He had offered this opinion to Don Dunstan, the then Labor Premier of South Australia, who had retorted that Adelaide was a long way from Canberra; that a lot of decisions of importance to South Australians would necessarily be made in Adelaide; and that it was clearly to the advantage of the South Australians that these decisions should be made by locally elected politicians, who depended for their survival on the good will of the local people, rather than by civil service functionaries acting at the behest of their superiors in the Australian Capital Territory.

Those who believe that the citizenry should not be remote from the making of decisions about the way in which their society is being run should find Don Dunstan's argument near enough to irrefutable.

The Ambassador, a sensible person, found it to be convincing, although it has to be recognised that, if the government in Adelaide were subject to the control of, and liable to be dismissed by, the government in Canberra, this would not be a federal system and would offer protection to the people of Adelaide only if tolerated by the government in Canberra.

This anecdote might seem to have at most a parochial Australian appeal, but the virtues of federalism are intrinsic. It is not only to countries like Australia with a large territory and a scattered population that federalism brings rewards.

There is plenty of evidence that democratic countries, whatever their size, with a federal system tend not only to have particularly strong democratic institutions but also, notwithstanding the division of powers characteristic of a federal system, to be particularly able to maintain their national unity and national security under conditions which could well have brought undone a country also governed democratically, but in which executive and legislative power is concentrated in one national government and one national Parliament.

Although it is sometimes forgotten in our happy isolation, the survival of a democratic nation's democracy is not dependent solely on its domestic institutions, but also on its ability to resist successfully any assault on its own security.

If a country, however enlightened its domestic policies, is endangered by the ambitions of foreign powers, or by internal tensions resulting from ethnic, linguistic, cultural or religious differences dividing its population, its ability to remain intact and to defend itself is obviously lessened. The massive movements of population over the past few decades have meant that many previously homogeneous countries could face difficulties of this kind. Multiculturalism is not always an undiluted blessing.

It might seem that two of the qualities essential to the safeguarding of democracy - national cohesion, which is not the same as national unanimity, and national independence from undesirable foreign interference - can best be promoted by a "strong" central government, unhindered by cantankerous States or Provinces with autonomous powers of their own. The evidence does not bear this out.

Switzerland and the United States of America, two of the world's longest continuously existing democracies, have shown that a federal system of democratic government is a reliable guardian of democratic institutions in very small, as well as very big, countries.

According to Graham Greene's *Harry Lime*, all that Switzerland had managed to produce after centuries of democracy was the cuckoo clock. Even if this were true, which it is not, cuckoo clocks have more to commend them than Auschwitzes, Gulags, mass executions of political and religious heretics, and *coups d'état*.

Despite its long-lasting reluctance to give its women citizens the vote, Switzerland is generally, and correctly, recognised as one of the world's most firmly established democracies. This feat is all the more remarkable when its geographical situation is taken into account. While the opposing sides in this Century's two World Wars both undoubtably derived some benefit from Switzerland's neutral independence, there is also little doubt that Switzerland would not have been an easy country to invade. But Switzerland's security is not solely the result of its formidable alpine terrain. Without the ability of Switzerland's democratically elected governments to rely on the patriotism and unity of Switzerland's citizens, it is highly unlikely that Switzerland's independence would have survived the two World Wars.

This unity has not been achieved through the linguistic, religious or political unanimity of those citizens. On the contrary, Switzerland has four official languages, French, German, Italian and Romansch; it is almost evenly divided, at least nominally, between Protestants and Roman Catholics; its political parties cover a wide spectrum from right to left.

But, most significantly, although Switzerland's relatively tiny area contains a population considerably less than half that of Australia, this confederation, as it describes itself, is divided into 26 Cantons having, among other powers, the right to impose income tax, and even the responsibility for the naturalisation of those aliens aspiring to become Swiss citizens. This latter power is, in other countries, regarded as an essential function of the national government. And, sadly, in Australia it seems that only a politician with suicidal tendencies would publicly suggest that the Australian States should reclaim their rights to income tax.

Although the American Civil War of 1861 to 1865 was to some extent the result of a genuine dispute about States' rights as well as a struggle about the abolition or survival of slavery, for well over a century since that war the United States, with a population coming from a multiplicity of backgrounds, including many citizens who remain conscious of their descent from slaves, has become, and has remained, the most powerful nation in the world.

Its rigorous division of powers between the executive, the legislature and the judiciary, on the one hand, and, on the other, the coexistence of a national government with 50 sovereign States, all able to raise income tax, not only provides a convincing rebuttal to those who tell us that politicians and lawyers have not done much for human happiness, but also offers a pretty strong suggestion that the United States' strength has been enhanced by its federal system.

As the examples of Switzerland and the United States of America have shown, the least that can be claimed on behalf of the federal system is that it has been able to maintain for centuries unity amid diversity in two countries with far from homogeneous populations, and that in neither nation have the limitations on the central government imposed by a strong federal system weakened them in their relations with other countries.

It would be overstating the case for federalism to claim on its behalf that it is either a necessary condition or a sufficient condition for the maintenance of a democratic system of government. The United Kingdom, the Scandinavian nations, the Netherlands and New Zealand are not the only countries with long democratic histories which maintain a unitary form of government, whereas neither Germany nor Austria, which instituted democratic, federal constitutions after World War I, was unable to resist the rise of fascism for little more than a decade. But opponents of federalism cannot derive much encouragement from the fact that Italy's post-1918 non-federal parliamentary democracy succumbed to Mussolini even more quickly.

It is, however, worth noting that after World War II the German Federal Republic (but not the former East Germany) and Austria were re-established with federal Constitutions, and both have lasted for nearly half a century as peaceful and relatively very prosperous democracies.

It might perhaps be useful to consider the ways in which democratic countries with rather similar problems but with different constitutional principles deal with these difficulties.

Canada, with a federal Constitution, has at both the national level and the provincial level a Westminster form of parliamentary government. It is possible, if not highly probable, that, had it not been for its federal Constitution, Canada's unity would not have stood the strain of the tension between its large French minority and its English-speaking majority. However, the fact that most of the French Canadians are concentrated in the province of Quebec, which has similar but somewhat greater political autonomy to that of the Australian States, has made much easier

the task of the present French Canadian Prime Minister, Mr Chrétien, of holding the country together.

If Canada had not had a federal system which enabled the present secessionist-inclined Quebec government to enact provincial laws in accord with the aspirations of most French Canadians, particularly in regard to the encouragement of use of the French language, a unitary Canada may well have become ungovernable.

For the past several decades, the once peaceful (except when invaded by the Germans) Belgium has been unpleasantly divided by the hostility between Dutch-speaking Flemings and French-speaking Walloons, two peoples with few, if any, distinguishing differences other than in their respective languages, even though most of them are bilingual.

After several decades of fruitless efforts to reconcile the representatives of the two language groups, including the establishment of regional authorities with delegated powers, in 1993 the Constitution was radically amended in order to create a federal system containing three Provinces, one for the Brussels area, one for Flanders and one for the Walloons.

Possibly, this has happened too late to prevent Belgium from disintegrating, but no other prescription could have had a better chance of holding the country together.

Even in these multicultural times, when Australians are being told to look to our north for our spiritual, as well as our material, sustenance, there are some of us who still look to the United Kingdom for a model of (albeit unwritten) constitutional government.

During more than a century and a half, without any formal Constitution, Great Britain gradually, but radically, widened the franchise for the House of Commons until there was a universal adult franchise, reduced the powers of the monarchy and the House of Lords, and was one of the pioneers of the development of the modern democratic party system.

Since the Glorious Revolution of 1688 the political structures of England, Wales and Scotland have evolved peacefully and within the broad framework of long established institutions.

However, it may not be entirely idle speculation to wonder whether, if Grattan's Parliament had been constituted within a federal relationship with the other parts of the United Kingdom, or, if Gladstone had been able to achieve Irish home rule within (something which he does not appear to have contemplated) a federated United Kingdom, most of the unpleasantness related to Ireland's status might have been avoided, at the price of only a little inconvenience.

It now seems that at least some further measure of Scottish and Welsh devolution is unavoidable, and the British Labour Party has undertaken that, if it wins this year's general election, it will create a "Scottish Parliament" and a "Welsh Assembly." These promises will probably have electoral appeal in Scotland and Wales, although apparently neither of the proposed entities will have either the autonomy, or the constitutionally guaranteed legislative and administrative powers, of the States or Provinces of a country with a federal Constitution.

The Scottish Parliament and the Welsh Assembly, apparently, would be, if Labour wins the election, creatures of the United Kingdom Parliament in Westminster, which will retain the power to abolish what it has created.

As India's experience has shown, for example during the period of semi-dictatorship under Mrs Indira Gandhi, State governments and Parliaments which are denied sovereignty, even in the fields of activity for which they are purported to be responsible, have neither the stability nor the independence to be found in a properly constituted federal democracy.

If Mr Blair's Scottish Parliament and Welsh Assembly do come into being, their members should bear in mind what happened in 1972 to the Parliament of Northern Ireland, which was also

created, without any constitutional guarantees, in Westminster, and was dismissed by the government in Westminster.

Notwithstanding its many virtues, the British Constitution was unable to save a democratically elected government in Stormont when the British cabinet decided it was time for it to go.

Devolution of administrative and legislative powers, albeit in a democracy, but a democracy without a federal Constitution, can survive only if the national government agrees to let it survive.

Under a federal Constitution, as exemplified by our Constitution, the prescribed powers of the constituent States or Provinces cannot be abrogated or diminished by the central government or Parliament, however displeased it may be with those local politicians.

One of the disadvantages of Australia's contemporary obsession with multiculturalism is that it has created a climate in which it is regarded as offensive to suggest that some cultures are superior to others, and even more ill-mannered to wonder out loud whether Australia might have a fairer and more enlightened social and political structure than some of our neighbours.

We used to be told that we were victims of a cultural cringe towards the United Kingdom, but our relationship with Britain was positively insubordinate when compared with our efforts to ingratiate ourselves, to take but one example, with Indonesia, where, apparently, some thousands of its citizens have recently died in race riots, but to whom we feel obliged to apologise for our racism because of some silly remarks by a newly elected independent member of the federal Parliament.

This lack of confidence in our institutions has had the complementary effect that few Australians seem to take an interest in the changes -- and some change is unavoidable -- in the way our political system works.

Specific events, such as recent High Court decisions on Aboriginal land rights, can arouse some excitement, but generally produce nothing more helpful than the sort of response that one has come to expect from Premiers of Queensland. But there are at least two developments which have occurred since 1901 which are seriously damaging to the federal system.

The more recent arises from those decisions of the High Court which seem to have interpreted the external affairs power of the Commonwealth in such a way as to enable the federal government to extend its powers over other matters, by relying on the provisions of international conventions to which it is a party and on treaties with foreign governments.

Some years ago my former parliamentary colleague, Dr Dick Klugman, asked whether this meant that, if the Australian Government entered into a treaty with the Government of Libya to encourage the proliferation of one-party states, this would allow our Prime Minister to follow the example of Colonel Kadhafi and make Australia a one-party state. I do not believe that he has yet received an answer.

It is likely that, had our Constitution's founding fathers been warned of this prevailing interpretation of the external affairs power, the six Australian colonies would still be unfederated.

This is one issue about which it seems that only a change in the membership of the High Court would bring redress.

The other principle in force which damages, and could be ultimately destructive of, our federal system is the uniform taxation agreement. Although the States still exist more than half a century after this anti-federalist fiscal agreement was entered into, their dependence on Commonwealth funding, and their incapacity to raise substantial revenue on their own, has made them increasingly redundant or, rather, into elected branch offices of the government in Canberra, a

situation which could well lead to a public belief that the States should be put out of their misery and got rid of altogether.

If the Swiss demicanton of Appenzell Inner-Rhoden, with a population of 15,000, can raise its own income tax, one must wonder why New South Wales cannot do the same.

The answer is that the Swiss are serious about their federal Constitution while Australians have dangerously little regard for theirs.

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