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Bottom-up Federalism:

The Early Modern Contribution to Local Governance in a Globalizing World

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Preface:

Johannes Althusius was a political theorist, Calvinist church elder, and active local politician at the beginning of the 17th century. In his political theory, the famous *Politica Methodice Digesta* of 1603, widely read at the time and with several expanded editions to follow, he tried to defend the autonomy of smaller communities, cities and religious minorities, against the rising tide of state absolutism. Although he remained at the margins of the classical canon of political thought during the age of the modern state, he is generally given credit as the first modern theorist of federalism (Hueglin 1999).

Almost exactly one year ago, I attended a conference on the principle of subsidiarity in Emden, Germany. In fact, the conference was held in the very church where Althusius had been active some 400 years ago. I had been asked to talk about the conceptual origins of subsidiarity, and I mentioned in passing that its insertion in article 3b of the Maastricht Treaty of the European Union was at least in part owed to the fact that the research team of then Commission President Jacques Delors had identified it as a truly European concept with roots not just in 19th century Catholic social doctrine but in fact much earlier in the Protestant tradition that Althusius came from and contributed to further.

I knew this because my friend and colleague Ken Endo had written about it (1994), but I was immediately and aggressively attacked by Herr Professor Doktor Hans Isensee, one of Germany's leading professors of public law, one of the close advisers of the former Chancellor of Germany, Helmut Kohl, and himself one monumentally pompous pain in the neck. Basically, the professor held forth that the principle of subsidiarity as enshrined in the European Union was a decisive victory of European Catholicism alone, no doubt spearheaded by his mentor Kohl, and that it was ludicrous to even suggest that the European tradition of Protestantism had anything to do with it.

Who is right, Ken Endo who spent some time at the Commission in Brussels as a humble PhD student, or the famous German professor? Well, let me say this: If Ken has been wrong, then probably so because he had no knowledge of the money that Kohl used from his secret black accounts in order to assure a Catholic victory in Brussels.

More on the serious side, I would submit to you that making this an issue of either/or amounts to a complete misunderstanding not only of the case in point

anecdotally reported, here, but also of the idea and practice of federalism in particular.

For this presentation, I have been asked to report on the concept of bottom-up federalism in Althusius' theory and its relevance to local governance in a globalizing world. In order to comply with this assignment, I will have to address the following three questions: **1.** What is it about the early modern period that makes it interesting for our own time? **2.** What exactly does Althusius contribute to the theory and practice of federalism? **3.** What are indications that this should be relevant in our own time?

1. The Early Modern Setting

*Context*s

I begin with some contextual descriptions. We generally recognize the early modern period as period of transition, from the older medieval order to the modern era. The medieval world had been characterized by a plurality of overlapping rule. Kings ruled their kingdoms, princes their principalities, and free cities ruled themselves. From the Holy Roman Empire down to the last fiefdom, all ruled on the basis of their own rights and privileges. Territorial boundaries were obviously overlapping, and juridical boundaries often contested. Differences had to be settled bilaterally, or at the Imperial Diets.

To a considerable extent, these autonomies had to do with space, distance and the lack of rapid communication. They also had to with feudal bonds as well as pride and loyalty for places. Excessive particularism in turn was contained in a sense of Christian universality. The old order was something like a community of communities governed by a mix of unity and diversity. By employing these modern metaphors, we already get a sense of where the relevance of that order may lie for our own times.

The modern epoch, of course, came to be characterized as one of sovereign territorial nation-states. Sovereignty meant that regions, localities and all other intermediate powers lost their autonomous rights of self-governance. This did not happen over night, and neither did it happen everywhere to the same extent. But in the end, some of the large states such as France, England and Prussia succeeded in centralizing military, fiscal and administrative power, and the smaller territories either had to follow suit or become absorbed into the larger ones (Tilly 1992, 190). Again, we already get a sense, here, that the modern state-centred system of politics may no longer provide the most appropriate model of governance for the 21st century.

Generations of historians have pondered the question what brought about this transformation which roughly took place between 1500 and 1700. There are some

important clues, though. The Renaissance with its rediscovery and emphasis of a secularized humanism weakened traditional loyalties by placing more emphasis on individualism. The so-called discovery of the New World placed an unprecedented wealth of resources into the hands of some but not others. Commercialization and capital accumulation began to transcend the capacities of regional and local market places. The Reformation destroyed the bonds of Christian unity.

The 16th and 17th centuries were centuries of religious and territorial wars. The worst of these, the Thirty Years' War, 1618-48, did much to weaken what we are now accustomed to call the resolve of the smaller territories. France emerged as the major continental power. The 1648 Peace Treaty of Westphalia upheld the plurality of some 160 "states" as well as numerous other territories within the German Empire, and it left untouched the limited self-governing rights of some 4,000 "hometowns ." But the Empire was now a "confederation of sovereign territories," and at least the more powerful rulers could begin to transform internal plurality into absolutist statehood (Bendix 1978, 378-80).

Concepts

The transformation brought on its way by the Westphalian Peace Treaty not only let to a new territorial state order, it also changed profoundly the leading images of legitimate governance. The issue was who should represent the Empire during the negotiations with the other European powers, and recourse was taken to the two preeminent political theories of the epoch, Jean Bodin's *Les Six Livres de la République* (1576), and the *Politica Methodice Digesta* of Johannes Althusius.

Bodin had given to the world the first definition of sovereignty as "puissance absolue & perpetuelle" (1.8). Althusius had held against him that the right of sovereignty is "neither supreme and perpetual, nor above the law" (IX.21). The imperial camp would routinely invoke Bodin in order to lay claim to the Emperor's exclusive right of representation, while the anti-imperial camp took recourse to Althusius in its successful quest of having the estates included as territorial representatives in their own right (Hoke 1998, 141-52). Ironically, Althusius won but Bodin prevailed: The estates were included but Bodin's doctrine of sovereignty lived on as supreme law within the absolutist territorial states that emerged from the renunciation of imperial supremacy. It is worth exploring the conceptual differences of the two positions further:

Bodin and Althusius both defined as the subject matter of politics the rights of sovereignty in a commonwealth composed of households and other intermediate social organizations. They both began their discussion of politics with family and household as

the natural and timeless beginning of social life. By declaring the establishment of sovereign rule as the ultimate end of social organization, however, Bodin subordinated these households and other intermediate social organizations to a status that was functionally dependent on that end. Here is where Althusius begged to differ.

Precisely because families constitute the natural beginning of social life, he insisted, they are governed by special sets of rules specific to them, and not by a general rule of sovereignty. This principle of specificity applies to all communities or, as he called them, consociations, e.g. villages, cities and provinces which all precede realms or states and are prior to them "just as the simple or primary precedes in order what has been composed or derived from it" (*Politica* XXXIX.84). This then led him to reject "Bodin's clamours" (1603 *Praefatio*) that the rights of sovereignty as the ultimate end must be exclusively located in the highest order of governance. Instead it follows logically that their ownership belongs to “none other than the entire people consociated from several smaller consociations in one symbiotic body” (1614 *Praefatio*).

Althusius also explained why Bodin and others had reached different conclusions. They try to determine the nature of sovereignty before examining social life in cities and provinces, he held, and thus deduce, erroneously, the specific nature of the latter with the help of principles that are not on the same level of generality. This "conflicts with the law of method" (XXXIX.84).

Put differently, the difference in method is that Bodin first determined the most general principle of politics, sovereignty, and then deduced from it the nature of organized social life, whereas Althusius first examined the nature of organized social life and *then* determined sovereignty as its most general principle—by means of induction rather than deduction. In the first case, the quality and organization of social life become dependent variables of sovereign rule. In the second case, sovereignty appears as a dependent variable of the nature and organization of social life.

The implications for political theory are considerable. Bodin falls into a tradition that defines politics predominantly, if not exclusively, as a hierarchical system of organized public power. All social rights and obligations stem from one universal source of legal authority. Althusius, by contrast, represents a tradition that defines politics in a much wider sense. For him it is primarily a horizontal process of communication among a plurality of groups or communities which all possess their own rights and obligations. Sovereignty as the communication of universal right is the end product of that process, not the starting point.

The implications for federalism are equally significant. From the Bodinian perspective of the sovereign state, federalism inevitably must take on the form of the

modern federal state: the law of the federation ultimately breaks the laws of its member units. Primacy is given to the efficiency requirements of nation-state governance. From the Althusian perspective, on the other hand, federalism is a balancing act among equals, confederal rather than federal because "every constituting body is prior and superior to what is constituted by it" (XVIII.8). Sovereignty therefore is not a constitutional certitude which determines who gets to do what in a federation. In fact, it only exists when the process of shared governance works and all agree. Federal sovereignty in the Althusian sense is a process of negotiated and shared sovereignty.

Again, it seems quite obvious that these methodological and conceptual distinctions can be helpful in the current search for solutions to the problems of legitimate multilevel governance. The firm grip of state governance has become loosened, by the electronic flexibility of international production and finance as well as by the regulatory powers of international government organizations (IGOs). Regions, localities and other social organizations are directly affected by these developments. They appear no longer firmly "nested" within the state. Instead their relationship with the state can be described as a new form of "interconnectedness" (Caporaso 1996). Even the American model of federalism with its assumptions of federal supremacy may no longer provide the most adequate construction of multilevel governance for the 21st century (Elazar 1999). It is time to take a closer look at how exactly Althusius constructs his federal polity as a system of bottom-up multilevel governance.

2. The Construction of Bottom-Up Federalism in the Political Theory of Althusius

Consociation

All social communities are part of the political and they are all called consociations. Politics is the art of constructing such communities for different social purposes at different societal levels, from the family, guilds and professional colleges to cities, provinces and the universal commonwealth. It is important to understand what Althusius means by saying, in one breath, that the social purposes pursued by each consociation are specific and different, but that they are at the same time all political communities constructed upon the same principles.

Althusius distinguishes private and public consociations, and among the latter, particular and universal consociations (see **Appendix**). Families, guilds and colleges are private because these natural as well as civil consociations promote the limited and specific interests of household, craft and profession. Cities and provinces in turn provide public space for the accomodation of these diverse interests within the

particular boundaries of locality and region. The universal commonwealth unites and protects a plurality of particular places under a bond of common standards of respect and mutuality. A the same time, however, all these consociations are political because politics is a multilevel process of community building that includes all forms of human interaction or, as Althusius calls it, the communication of goods, services and rights (*Politica* I. 7). The organization of such communication is the purpose of the political process within consociations and among them.

Althusius distinguishes between public and private but not between political and private. This is an essential difference to the construction of modern liberal societies. *Polis* and *oikos* are not separated. Economic activities in the market place may serve private ends but they are nevertheless part of the communication of goods and services and therefore part of the political. As a Calvinist, Althusius fully endorsed what Max Weber would later call the "protestant ethic and the spirit of capitalism." Yet he still was far away from the post-Lockean view of private accumulation as a limitless individual right. The very idea of economic activities as a from of mutual communication indicates that such activities would remain under political supervision. And the purpose of such supervision, as we already know, is the protection of all communities or consociations, small and large, in their specific rights and freedoms.

Herein lies the difference. Unitary states are constructed to serve national purposes. In federal states, national priorities typically supersede regional and local needs. IGOs such as the World Bank, the IMF or the WTO provide regulatory frameworks for credit flows and the exchange of goods and services, but these are negotiated among nation-state governments. Regions and localities have to live with the consequences. Of course, nation-state governments represent citizens and these can influence policy making through the democratic electoral process. That process only provides very indirect control over international treaties and agreements. They also can hardly be undone, and, even in federal systems, regions and localities are not part of the negotiations. Moreover, decision making in IGOs is tied to the financial power of its members. Smaller states, usually more directly affected by the decisions than larger ones, possess limited powers of persuasion at best. Subnational units of governance possess none. To call this a top-down process of decision making does not require further elaboration.

Before the world came to be governed by a dichotomous power scheme, reason of state on the one hand, and corporate laissez-faire on the other, Althusius was able to design a different process of legitimate governance. Borrowing from an old and venerable formula of Roman Law, he established as the most general rule for the

process of decision making that "what touches upon all, must be agreed by all" (IV.20). This means that any particular community should retain veto power (operationalised by a consent requirement) and self-regulatory autonomy in matters affecting it in a particular or unequal way, whereas common decisions (allowing majority voting) are possible in matters pertaining to all communities equally or in the same way. This does not necessarily amount to a "decision trap" (Scharpf 1988). It is a safeguard for smaller communities to be heard. It compels the larger communities to listen. And it fosters communication, or, as we would say today, deliberation, about what exactly should be left to majority voting in the general interest of all. The Althusian state is a negotiating state.

Compact

The constitutional foundation holding this state or commonwealth together is a compact among its members. Contrary to the later Hobbesian social contract, this compact or covenant is not a fictitious construction whereby it is assumed that all individuals defer to public authority in the name of general safety. Based on his Aristotelian and therefore rather more optimistic view of human nature, Althusius saw natural socialibilty as the primary bond among human beings. To this end, the idea of a social compact was meant to organize such sociability.

Hobbes deduced his view of human nature from the state of "warre" (*Leviathan* VIII / 62) in 17th century England. Accordingly, he constructed a dichotomous political system in which state order had to contain civil society. Still two centuries later, Hegel would speak of the interests of civil society as "outside the absolutely universal interest of the state proper, and he would define it as a "battlefield" of private interest against common concern (1821, 288 / 289).

At the beginning of the 17th century, Althusius did not yet know this modern distinction of state and society. But just as he refuted Bodin's doctrine of absolute state sovereignty, he would have rejected visions of a society of radically autonomous individuals. He would have held against Hobbes that the war, "as is of every man, against every man" (*Leviathan,* ibid.), was not at all expression of a politically unmitigated state of nature. He would have insisted that it was the result of inadequate political organization violating principles of natural sociability.

Civil society for Althusius means politically organized society. As we already know, this means the establishment, maintenance and protection of a plurality of smaller and larger communities or consociations serving differentiated sets of needs and interests. Appropriate structures for political action, immediate, intermediate and

universal, foster solidarity and civil behaviour. The compact holding this plurality of communities together is in reality a compact of compacts. The fundamental or constitutional law of establishing sovereignty and governance in a universal commonwealth is "nothing but certain pacts by which many cities and provinces come together and agree to establish and defend one and the same commonwealth" (*Politica* XIX. 49). These cities and provinces come together as pre-existing political entities, and they are themselves lawfully constituted by agreement among their members, households, and organized interests.

Althusius carefully separates the social compact from the mandate to govern. All governance is part of the communication of right among lawfully constituted communities. These determine, by mutual agreement, the extent to which they want to be governed at the next higher level of consociation. This means that the governing bodies at that next higher level are not part of the original compact. In all instances, therefore, the combined will of the members of a consociation prevails over its government: "For greater is the authority and power in the many than in the one who has been constituted by the many and is less than they are" (XXXIII. 20).

As the modern world would demonstrate so dramatically, such a radicalized bottom-up perspective could quickly degenerate into extreme particularism and disunity. The outcome of the Westphalian Peace was not what Althusius had envisaged as a universal commonwealth. While the idea of absolute sovereignty had become territorially internalized into the new state system, anarchy and conflict became externalized into the new regime of international relations. There would be leagues and alliances, to be sure, but no overarching compact among states.

Federalism, however, in the Althusian or any other sense, means balance, between the particular and the universal, autonomy and solidarity. The purpose of politics is to construct such a balance. Precisely because there is no presumption of supreme universality, the members of the Althusian commonwealth are compelled to engage in perpetual negotiations about their mutual commitment to general norms and behavioural standards. Such a commitment needs agency. Throughout most of the modern age, neither reason of state nor liberal individualism provided much of such agency. As Althusius suggested, it must come from interest communities realizing that they can achieve their goals only through negotiated cooperation. In an age of globalized relations, states may become such communities of interest. But they will in turn need support and guidance from an organized citizenry.

Consecutive Federalization

In the modern state, the transmission belt for such support and guidance is parliamentary representation. Individual citizens elect representatives, and parties compete for the support from citizens. In federal states, they do this at two levels of government, regional and federal. At the federal level, two legislative chambers provide dual representation, from national and regional populations. At the regional level there may be second chambers as well. Their representatives, however, are typically elected from subregional constituencies determined by demographic boundaries. They do not necessarily represent particular local communities.

Such representation, on the basis of territory and population, and the majoritarian mode of decision making that goes with it, requires a high level of social homogeneity, of shared history, communication and experience (Kielmannsegg 1996). It has to rely on a common ideology, common language, and culture. In a globalizing age of intensified transnational production, trade, and migration, their uneven socioeconomic effects on regions and localities, and the resurgence of identity politics more generally, such homogeneity may no longer be a given. At the time of Althusius, it only existed in small communities. For the sake of peace and stability, it had to be reorganized for larger ones.

As we already know, there were two solutions. Remember Bodin? His solution had been the establishment of sovereign rule as the ultimate end of social organization. As long as there was supreme and unchallengeable authority over everyone, social diversity did not matter. The sovereign state could even tolerate different religious groups as long as these did not possess any autonomous powers of their own. The modern liberal state has been constructed upon this very idea. It successfully integrated moderate levels of diversity. It failed to deal with radical, or, shall we say, fundamentalist expressions of identity, whether these were religious, ethnic or regionalist.

The Althusian solution was to recognize diverse communities as building blocs for the construction of an inclusive body politic, *populus in corpus unum*, the organized body of the people (*Politica* IX. 3). The representatives of guilds and colleges would sit in city councils, those of cities and rural communities would make up provincial councils, and all parts of the land would be represented alike in the universal councils of the commonwealth. This has been called a system of consecutive federalization. In modern terms, one could describe it as a system of second chamber governance. It can also be called a system of corporate federalism because the representatives at each level are elected by the lower level councils and not by the people directly.

For those of us coming from federal countries where intergovernmental conflict often obscures, delays or outright paralyses what common sense would identify as a logical course of action and decision making process, these Althusian constructions may well-nigh appear as a nightmare. Yet the same voices that have been most concerned about these procedural shortcomings of federalism, also tended to lay the blame at the doorsteps of governments promoting their own interests instead of those of the societies they are supposed to serve (Cairns 1977). Typically, given the two-storeyed construction of federal systems, the conflicts of federalism are bipolar in nature. The multi-storeyed or "cybernetic" construction of federalism in the political theory of Althusius (Riklin 1994) may not only be a more adequate response to the multi-layered complexities of a late modern world, it may also be more responsive to societal interests and needs.

Subsidiarity

Decision making in the two-storeyed federal state is anchored in a rather simple division of powers. Historically, federation came about in most cases as a compromise between economic modernizers and cultural traditionalists. Consequently, trade and commerce were designated as federal powers, and states, provinces or cantons retained control over language, education and social welfare. Soon this became a problem for modernizing and democratizing societies. Federal trade and commerce policies created or reinforced patterns of uneven regional development. Overburdened with social policy problems, regional governments became dependent on federal transfers. Fiscal revenue was increasingly spent by governments which did not have the capacity to raise it. Fiscal distribution and transfer schemes became the main preoccupation of federal systems. Under the juridical umbrella of ultimate federal supremacy, both levels of government are today active in most policy fields. This in turn has been recognized as both an efficiency and an accountability problem.

It would seem that a further pluralization of levels of governance must muddy the waters even more. Yet it is here that Althusius plays his last trump: subsidiarity. Remember Ken Endo? He suggested an intellectual line from Althusius to Jacques Delors, the master mind behind the European Union's Maastricht Treaty and its famous reformulation of the principle of subsidiarity. Since I do not want to preempt Ken's paper, here, I will simply try to point out how the Althusian - and European - concept of subsidiarity differs from conventional divisions of power in federal systems.

The essence of subsidiarity is that decisions ought to be taken at the lowest possible level of governance. It is a principle of political intent and guidance, therefore,

and not of juridical certitude. The central question then is not who has the right to do what, but instead, who *should* do what in the best interest of all. This has both a negative and positive connotation. Negatively, the universal commonwealth must not interfere with regional and local self-government when this is not necessary or desirable by mutual agreement. Positively, however, the smaller communities are held to establish joint governance because, as Althusius writes, "what requires the faculties, strength, aid and enthusiasm of all *ought* also be done with their common consent: (*Politica* XVII. 60).

Can such a vague appeal to solidarity be operationalised in any kind of practical way? Althusius makes two suggestions. First, in what we have already recognized as a negotiating state, there is an obligation to ongoing deliberation. In what was a complex world already at the beginning of the 17th century, there is an obvious need for joint regulation and action. Provided with reasonable institutions and structures, citizens will make reasonable choices and decisions. To borrow from contemporary citizenship and identity discourse, the construction of the Althusian federation is not binary but relational. Guided by structural patterns of inclusion, its citizens understand that autonomy of the smaller communities is only possible through constructive relationships with others.

Secondly, Althusius does not follow the later pattern of separating entire policy fields. In fact, he provides nearly identical lists of public tasks for cities, provinces, and the universal commonwealth. No constitutionally fixed answer is required as to whether welfare or trade should be regional or national tasks, respectively. Instead, and with few exceptions such as defence and money printing, each level of community is free to become active in any policy field. The principle of subsidiarity obliges all participants to come to an agreement about who should do what and to what extent. This means that the commonwealth will provide general standards by means of framework legislation, whereas the smaller communities will adopt and implement flexible policy programs according to their preferences and needs.

3. Signs of Relevance

For those who still think that all this is rather outlandish or outright clumsy in comparison with the classical model of federalism, I will end with some observations about relevance.

Multilevel governance no longer is a disputed concept and reality. We can discern at least five levels of governance, limited local governance in cities and

municipalities, subnational governance in provinces, cantons or states, national governance, transnationally integrated governance in the European Union, under the rules of Nafta, Asean and Mercosur, and global governance in the form of regulatory regimes provided by the World Bank, IMF and WTO.

At the same time we notice a politicization of regional and identity politics that defies the conventional distinction of political and private spheres. Cultural communities in Belgium have been recognized as autonomous political actors in the 1993 constitution, for instance. Party systems accentuate regional rather than national priorities such as the PDS in Germany or the Bloc Quebeçois in Canada. Business elites align themselves with regional governments as in Catalonia. And a plethora of civic movements, from Greenpeace to Aboriginal peoples and the anti-globalization camp have learned to use electronic interconnectedness for their purposes.

In the wake of this consociationalization of politics and civil society, we also note a trend from federalism to compacted confederalism. In the most obvious example, the European Union, the member states remain masters of the treaties even though an impressive level of supranational governance has been achieved. The obvious need for some sort of coordinated global governance will eventually have to follow that lead, or it will not be. Federalization or devolution in some of the most notorious unitary states, Spain, Britain, and even France, remains tied to negotiation and arbitration. The German *Länder* have augmented their powers with regard to European policy making, and even in the United States there is talk about a devolution revolution.

The Althusian concept of consecutive federalization and council representation has lived on in the German *Bundesrat*, and it has found its way into the construction of the European Council as well. In both instances, council members represent lower level governments and not the people.

The European Union also provides the most obvious example of decision making on the basis of subsidiarity. The clause in Article 3b of the Maastricht Treaty whereby “the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States,” provides an important qualifier for Community action. It guides European governance towards the provision of a common understanding of ends, not means, and it does so by following the German model of framework legislation by which the federal level of government provides the general rules of the game but leaves the implementation and administration to the *Länder* (Hueglin 2000).

If we take these few illustrations and examples seriously as an indication of how

governance can and must respond flexibly to the complexities of a late modern world, it seems that a new kind of bottom-up federalism will indeed have to replace the model of the sovereign territorial nation-*state*, and of the modern federal *state* as its only significant variation. Althusius, who lost the battle at the beginning of the modern era, might still win the war in the end.

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