

The Federative Principle: and the Need to Reconstitute the Party of Revolution*

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Chapter VII: Isolation of the Idea of Federation

Since in theory and in history authority and liberty succeed one another in a polar movement; since the former declines imperceptibly and withdraws, while the latter expands and becomes prominent; since this dual movement leads to a subordination such that authority becomes progressively the instrument of liberty; since, in other words, the liberal or contractual system gains the upper hand day by day over the authoritarian system, it is the idea of contract that we must take to be the principal idea in politics.

What is meant, first of all, by *contract*?

A contract [Civil Code, article 1101] is an agreement by which one or more persons oblige themselves to one or more others to perform or to refrain from some action.

Article 1102: It is *synallagmatic* or *bilateral* when the contracting parties undertake reciprocal obligations.

Article 1103: It is *unilateral*, when one or more persons have an obligation to one or more others, without the latter having any obligation.

Article 1104: It is *commutative* when each of the parties undertakes to give something which is regarded as equal in value to what the other party gives or does in return. When the benefits consist in an opportunity for each party to gain, or to lose, the outcome being uncertain, the contract is *aleatory*.

Article 1105: A contract of *goodwill* is that in which one of the parties provides the other with a purely gratuitous benefit.

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Article 1106: An *onerous* contract is one which obliges both parties to give or to do something.

Article 1371: *Quasi-contracts* are those voluntary acts of men which give rise to an obligation to a third party, and sometimes to reciprocal obligations between two parties.

To these distinctions and definitions in the Code, which bear upon the forms and conditions of contracts, I shall add a further distinction regarding their objects: according to the nature of the things which are bargained for or to the object which one has in view, contracts are *domestic, civil, commercial, or political*. It is with the last of these, political contracts, that we shall be concerned.

The idea of contract is not entirely unknown in monarchies, or in families. But in terms of what we have said about the principles of authority and liberty and their role in the formation of governments, it will be clear that these principles relate in different ways to the political contract; the obligation uniting the monarch to his subjects, which is spontaneous and unwritten, arising from family feeling and personal qualities, is a unilateral obligation, for by virtue of the principle of obedience the subject is obliged to do more for his prince than the prince for him. The theory of divine right states expressly that the monarch is responsible only to God. It may even happen that the prince's contract with the subject degenerates into a contract of pure good will, when his subjects' incapacity or their idolatry leads the prince to treat his people, unable to govern or to defend themselves, as a shepherd treats his sheep. It is even worse when the hereditary principle is adopted. A conspirator like the Duke of Orleans, later Louis XII, a parricide like Louis XI, and an adulteress like Mary Stuart maintain their right to the throne despite their crimes. Birth renders them inviolable, and one may say that a quasi-contract exists between them and the loyal subjects of the prince whom they succeed. In a word, simply because authority is preponderant in the monarchical system, the contract is not equal.

The political contract does not attain its full dignity and morality except where (1) it is *synallagmatic* and *commutative*, (2) it is confined, in its object, within definite limits – two conditions which are held to exist in the democratic system, but which, even there, are generally only a fiction. Can one say that in a representative and centralized democracy, or in a constitutional monarchy with restricted franchise, or even more in a communist republic such as Plato's the political contract binding the citizen to the state can be equal and reciprocal? Can one say that these contracts, which remove from the citizens a half or two-thirds of their sovereignty and a quarter of their product, are confined within just limits? It would be closer to the truth to say that, as experience shows only too often, contracts in such systems are excessive, *onerous*, for they provide no compensation for a good many of those who are parties to them; and aleatory, for the promised advantage, inadequate as it is, is not even guaranteed.

In order for the political contract to become synallagmatic and commutative as the idea of democracy requires, in order for it to remain within reasonable limits and to become profitable and convenient for all, the citizen who enters the association must (1) have as much to gain

from the state as he sacrifices to it, (2) retain all his liberty, sovereignty, and initiative, except that which he must abandon in order to attain that special object for which the contract is made, and which the state must guarantee. So confined and understood, the political contract is what I shall call a *federation*.

Federation, from the Latin *foedus*, genitive *foederis*, which means pact, contract, treaty, agreement, alliance, and so on, is an agreement by which one or more heads of family, one or more towns, one or more groups of towns or states, assume reciprocal and equal commitments to perform one or more specific tasks, the responsibility for which rests exclusively with the officers of the federation.

Let us consider this definition more closely. What is essential to and characteristic of the federal contract, and what I most wish the reader to notice, is that in this system the contracting parties, whether heads of family, towns, cantons, provinces, or states, not only undertake bilateral and commutative obligations, but in making the pact reserve for themselves more rights, more liberty, more authority, more property than they abandon.

It is not so, for example, in the society of common property, or communism, authorized under the Civil Code, the replica in miniature of all absolute states. He who enters into such an association, especially if it is a permanent one, is loaded with chains and subjected to burdens which quite overwhelm his personal freedom. It is this that makes such contracts so rare, and monastic life always so intolerable. Any obligation, even a bilateral and commutative one, which requires those whom it binds to contribute all their efforts, to give up their independence, and to devote themselves totally to an association is an excessive obligation unworthy of man or citizen.

According to these principles the contract of federation has the purpose, in general terms, of guaranteeing to the federated states their sovereignty, their territory, the liberty of their subjects; of settling their disputes; of providing by common means for all matters of security and mutual prosperity; thus, despite the scale of the interests involved, it is essentially limited. The authority responsible for its execution can never overwhelm the constituent members; that is, the federal powers can never exceed in number and significance those of local or provincial authorities, just as the latter can never outweigh the rights and prerogatives of man and citizen. If it were otherwise, the community would become communistic; the federation would revert to centralized monarchy; the federal authority, instead of being a mere delegate and subordinate function as it should be, will be seen as dominant; instead of being confined to a specific task, it will tend to absorb all activity and all initiative; the confederated states will be reduced to administrative districts, branches, or local offices. Thus transformed, the body politic may be termed republican, democratic, or what you will; it will no longer be a state constituted by a plenitude of autonomies, it will no longer be a confederation. The same will hold, with even greater force, if for reasons of false economy, as a result of deference, or for any other reason the federated towns, cantons or states charge one among their number with the administration and government of the rest. The republic will become unitary, not federal, and will be on the road to despotism.

In summary, the federal system is the contrary of hierarchy or administrative and governmental centralization which characterizes, to an equal extent, democratic empires, constitutional monarchies, and unitary republics. Its basic and essential law is this: in a federation, the powers of central authority are specialized and limited and diminish in number, in directness, and in what I may call intensity as the confederation grows by the adhesion of new states. In centralized governments, on the contrary, the powers of the supreme authority multiply, extend, and become more direct, bringing the business of provinces, towns, corporations, and individuals under the jurisdiction of the prince, as a direct function of territorial scale and the size of the population. Hence arises that suppression of all liberties, communal and provincial, and even individual and national.

One result of this, to conclude this chapter, is that since the unitary system is the contrary of the federal system, a confederation of great monarchies, or even more of democratic empires, is impossible. States such as France, Austria, England, Russia, or Prussia may make treaties of alliance or trade among themselves; but they resist federalization because their principles are contrary to it and will set them against any federal compact, and because they would have to abandon some part of their sovereignty and recognize an arbiter set above them, at least for certain matters. Their nature is to command, not to compromise or to obey. The princes who in 1813, supported by mass uprisings, fought for the freedom of Europe against Napoleon and later formed the Holy Alliance did not form a federation; their absolutism prevented them from accepting such a title. They formed, as in 1792, a coalition; history gives them no other name.

It is otherwise with the German confederation, currently on the road to reform, and whose characteristics of freedom and nationality promise eventually to destroy the dynasties who impede it.