

Towards a federal Europe

By Richard Laming

Federalism is widely misunderstood as a concept and so needs to be explained. It is sometimes complicated and it also has opponents who seem to have an interest in muddying the waters. It is therefore important to be clear on what it means if an intelligent debate is to be had about its role and its future.

The simplest way to describe federalism is as a system of multilevel government where each level of government has a direct relationship with the citizen. It is therefore distinct both from systems of government where all executive authority rests with a single institution (unitary government) and also from those systems where the decisions of one level of government are binding only on other levels and not on the citizen directly (confederal government). The importance of this latter distinction will become apparent.

Federal systems of government are characterised by two principles, and discussion of the success or otherwise of any individual federal system can be usefully based on these two principles. They are the idea of subsidiarity, which relates to the distribution of powers between the different levels of government, and democracy, which relates to the way in which decisions are taken at any given level.

Subsidiarity

Subsidiarity has a long and honourable tradition in the moral debate about personal autonomy: stealing other people's decisions is wrong. In the context of federalism, subsidiarity is invoked as the reason for allocating decisions to one level of government rather than another. It is usually defined as insisting that political power should be as decentralised as possible, and only centralised if necessary.

Decentralisation is held as a desirable aim because it allows citizens the maximum control over the decisions that affect their lives. It permits the different treatment of different political issues in different territories according to the diverse interests of the people who live there.

An example often cited is the municipal control of street lighting: no national government would need to take much of an interest in such a thing. More importantly, issues of significance in the debate about cultural diversity, such as education and media, can be decentralised so that distinctive linguistic communities, for example, can shape policies that suit their own needs. In the federal state of Belgium, such cultural issues are handled at the level of the linguistic community (French, Flemish and German) rather than at the national level.

Centralisation is accepted reluctantly by federalism because it necessarily implies that decisions will be taken at a greater distance from the citizen. Nevertheless, it will be accepted when the alternative—a decentralised decision—would be ineffective.

For example, it is not possible for an individual European country to protect itself against cross-border environmental pollution. The political response to such a threat must take place at the European level. Similarly, the regulation of trading and commercial practices within a single market must take place at the level of that market rather than at the level of a member state within it if protectionist pressures and tendencies are to be resisted.

It is clear that merely invoking the idea of subsidiarity does not in itself solve any particular dispute about the correct level at which a particular decision should be taken. Whether or not a policy should be more centralised or more decentralised is a continuing theme of political debate within a federal system of government. But nevertheless subsidiarity—a balance between local control and central effectiveness—is the ground on which that debate takes place.

Democracy

The second characteristic of a federal system of government is democracy, and particularly the practice of democracy at all levels. Each level of government derives its own legitimacy from the citizen: it is not mediated by or through another level of government.

There are two main practical consequences of this. First, it means that the decisions of any particular level of government will affect the citizen and not the other levels of government. A federal system of taxation, for example, would fund each level of government through taxes levied directly on the citizen rather than paying for some levels of government via cash transfers from other levels. Legislative acts will similarly apply to citizens directly rather than to other levels of government.

The second consequence is that each level of government will have its own political relationship with the citizen. Its politicians will hold office because they have won elections specifically for that purpose, rather than because they have been nominated by a different level of government instead. A federal legislature will be composed of directly elected MPs rather than MPs nominated by the parliaments of its member states.

A federal system therefore has to have a constitution to set out the distribution of powers between the different levels of government and to guarantee their practical and political independence in exercising them. It is a feature of confederal systems that, while they have different levels of government to deal with different kinds of political issues (reflecting the principle of subsidiarity), they lack the direct connection between each level of government and the citizen. One level of government is more important than and dominates the others, controlling the way in which they relate to their voters and taxpayers (if they even have them at all).

It will be apparent that the categories of federal and confederal are not completely distinct: almost no political system in real life will be a perfect example of either one or the other. However, the broad difference between federal and confederal institutions of government is

nevertheless a useful way of characterising the debate about the future of the European Union and will be explored further in this essay. But first, it is worth looking at an example of an occasion when this distinction was at its most significant—in the abortive attempt to create a European Defence Community.

European Defence

A landmark in the immediate post-Second World War period was the launch of the North Atlantic Treaty Organisation (Nato) in 1949. It marked the first stage in the organisation of western Europe for military purposes, under the auspices of the United States. There was a substantial fear of the military power of the Soviet Union and its increasing assertiveness, demonstrated for example by the blockade of Berlin in 1948–9. The European countries, although shattered by their experiences of the Second World War, rallied to their mutual defence. The one exception to this, however, was West Germany.

The sensitivity of recent history was too great to allow the creation of a new German national army, but West Germany, as a large and potentially rich country, could play a valuable defensive role. It was necessary to find a way to bring West Germany into a military alliance and harness its capacity to contribute to the defence of western Europe.

The French reaction to this was to propose the creation of a European Defence Community. The EDC would be endowed with the classical features of a federal government: it would have an executive independent of the member states, a parliamentary assembly, and the exclusive competence to raise and deploy armed forces. It would be the foundation of a European army. This way, taxpayers and conscripts from Germany could be brought into the defence of western Europe but without creating a German army. That idea was, in 1950, just too sensitive.

The EDC proposal attracted support from the other countries that, with France, had already formed the European Coal and Steel Community—Italy, Germany and the three Benelux states. But in 1954, following the death of Stalin and the end of the Korean War, the EDC was rejected after the French government changed its mind. The elimination of the German army was attractive, but giving up the French army as well was too high a price to pay.

Nato was a confederal alternative to the EDC. Its decision-making institutions were based on the national governments of the member states. The military formations at its disposal were drawn from national armies rather than from a dedicated European force. It did not spell the end of the idea of national defence (including French national defence). West Germany joined it in 1955.

Article 5 of the North Atlantic Treaty commits its signatories to regard an attack on one as an attack on them all, but it also requires each one to take actions only “as it deems necessary” in response. The essential right of each member state to take its own decisions on defence is protected. This is the hallmark of a confederal system.

But while the method of federalism was not accepted for defence, it was adopted for commercial matters among the members of the mooted EDC. The European Union has, since

then, become a leading commercial and trading power in the world. The contribution that federalism has made to this needs to be examined.

The EU's Federal Development

The origins of the European Union as we know it today can be traced to the European Coal and Steel Community (ECSC) that was launched in 1950. A high authority was proposed that would manage the coal and steel industries of the member states, along with a council of ministers to represent the national governments, a parliamentary assembly that would give its advice, and a court of justice that would rule on any disputes.

Interest in the ECSC normally focuses on the choice of coal and steel as the basis for the community. These were the two major elements of European industry at the time, particularly as regards the manufacture of armaments, so treating them as a matter of common interest was a step towards ruling out the possibility of a further war. Our concern here, however, is the federal nature of the institutions that guarded that common interest.

Had the Nato model been followed, the final decision on the main issues would have stayed with the member states. The ECSC instead followed a different model, providing for an independent European executive to have the final word. Furthermore, the decisions of the ECSC applied to the individual companies and workers in the coal and steel industries and not merely to the relevant national ministries in the member states. These are the two key features that make the ECSC an essentially federal system, and these are the features on which its future development has been based.

Those who argue that the debate about federalism is no longer relevant to the future of the European Union are in one sense correct: that debate was settled in federalism's favour in the early 1950s.

The ECSC was followed in 1957 by the Treaty of Rome, which set out on a much broader scale a series of proposals for the economic, social and political integration of western Europe on a federal basis. Its participating member states remained the original six of the ECSC: the United Kingdom was invited to attend the preparatory talks but did not believe that the proposals under discussion were either intended seriously or would work. This was not the last time it made such a mistake.

Over time, more and more policies have become exercised at the European level. The Common Agricultural Policy was established in 1962; the original customs union was superseded by a single market; the European Union has acquired powers in social and environmental fields; and most importantly of all, it now has its own currency in place of those of the member states. (That some member states have yet to adopt the single European currency does not lessen its significance.)

A feature of all of these policies is that they are applied on a federal model. The example of the single market will make this clear.

The traditional model of international trade co-operation is the customs union. Two or more states agree to reduce the tariffs they levy on imports from each other. As a result,

competition between companies in the different countries is increased, quality rises and prices fall to the benefit of consumers all round. That is the theory.

A drawback of this system is that there are many ways other than tariffs to keep out imports. Customs checks, notification requirements and differential product standards may all be applied to foreign goods entering the national market to put them at a disadvantage as compared with domestic production. The effect of this is to reduce the gains arising from the customs union.

The reaction of the European Union to this situation was to launch a programme to create a single market. The regulation of business and commercial activity that had previously been organised nationally would be transferred to the European level in order to ensure the free movement of goods, capital, services and labour. This did not necessarily mean deregulation—the abolition of these national rules—but rather re-regulation—their replacement with common rules at the European level. The European institutions would acquire the power to lay down the law in areas such as food labelling, health and safety, telemarketing, and many others. Any company operating in the European marketplace would have to pay regard not only to national legislative provisions but also to European law, which would define directly many aspects of how a company or an employee must act. This is the essence of federalism.

The single market does not apply to the member states but to the companies and individuals within those member states. It is this essentially federal nature of the single market that has enabled businesses to expand across borders and overcome some of the previous obstacles to growth. Without the federal approach to market regulation, national protectionism could return, restricting trade and so cutting incomes and costing jobs. The application of the principles of federalism to the European economy is the key to European economic success.

The same is true of European social and environmental policy. The creation of the single market meant that much national regulation of social and environmental issues ceased to be effective: only a European approach at the same level as the regulation of business would be able to work. Otherwise, companies might simply transfer from one member state with a great deal of regulation in these areas to another member state with less. If what economists call “externalities” were not to go unaddressed altogether, European social and environmental policies became necessary.

EU Political Institutions

In tandem with the development of the powers of the European institutions, their democratic character improved too. At the outset, the ECSC was based on a high authority independent of the member states, a council of ministers representing the national governments, a parliamentary assembly representing citizens, and a court of justice to hold the ring. Although they have changed and grown over time, those institutions still figure in the European Union today.

The ECSC’s high authority has become the European Commission. It remains the guardian of the common European interest and retains the exclusive right to propose European law. The extension of the powers of the European Union into more areas of economic and social life

has accordingly increased the powers of those who run the European Commission. They in turn are no longer career civil servants: former cabinet ministers and prime ministers from the member states are now appointed to serve in Brussels.

The council of ministers still exists, too, and continues to play an important role as a legislative body at the European level. The development of the European institutions has not deprived member-state governments of their role in making policy: it has instead given them a new means of making that policy at a level where it can be genuinely effective.

A crucial innovation in decision-making by member-state governments has been the introduction of majority voting in place of unanimity. This was envisaged as far back as the Treaty of Rome in 1957 that set up the European Economic Community, but it ran into serious opposition from Charles de Gaulle in the mid-1960s. The so-called Luxembourg compromise of 1966 overcame this objection by enshrining the right of member states to veto decisions of serious national importance while affirming a more sympathetic approach to majority voting on minor issues. Since then, the scope of application of majority voting has grown and grown, most notably in the Single European Act of 1986 that paved the way for the single market. Today, it is inconceivable that any kind of legislative programme could be delivered if every member state had a veto; the position regarding institutional reform, though, remains unchanged with the requirement of unanimous assent.

An additional point to note is the gradual trend towards openness in the decision-making procedures of the Council of Ministers. When it was first established, the council met in private as befits a meeting of foreign ministry representatives. However, as a legislature, it was the only body in the world to do so. Over time, the pressure to behave less like a committee and more like an assembly has led to greater openness and public access to documents and decisions. This openness of the Council of Ministers is a good example of how European decision-making now looks less like diplomacy and more like democracy. This is federalism in action.

Another significant development has been the change in the nature of the European parliamentary assembly. In the original model of the ECSC, the assembly was composed of delegates nominated by the parliaments of the member states and had an advisory function. Since then, it has acquired powers over the European budget (1970) and European legislation (first in the Single European Act of 1986 and then with every subsequent treaty amendment). It has also acquired the right to approve the president of the European Commission (from 1992 onwards). This last power was used most notably in March 1999 when the entire commission was forced to resign when it lost the confidence of the European Parliament.

Not only has the European Parliament become more powerful, it has also become more legitimate. Since 1979, it has been directly elected by European citizens. It is the only international directly elected parliament in the world. Turnouts in these elections may be lower than the equivalent elections at national level, but this is not surprising given that the issues to be decided at European level are on the whole of lower salience than those still controlled at national level. The questions of taxation and public expenditure remain firmly in the hands of the member states. (It is interesting to note, though, that European election turnouts are higher than those in the elections for the US Congress.)

Lastly, one should not forget the citizens themselves. A political system is based not only on its institutions but also on its individuals. The Maastricht Treaty of 1992 introduced the concept of European citizenship, granting citizens of the EU member states rights, including certain political rights, if they are resident in another member state. We see the first fruits of this now with Members of the European Parliament (MEPs) from one country being elected in another. National origin is ceasing to be the most important characteristic of an individual.

Add to this the way that life has changed in the European single market and we have the makings of a social revolution on our hands. Equal rights for men and women is a principle in the Treaty of Rome that has been applied to spheres such as employment and pensions. Low-cost airlines connect parts of the continent that previously shared only the same page on an atlas. The range of food and drink on the shelves of our supermarkets has grown out of all recognition now that product standards and labelling rules have been harmonised. The free movement of labour has led to the transformation of European professional football.

Overall, we now have something resembling parliamentary democracy at the European level. EU political institutions now look more like those of a member state than they do those of an international organisation. The challenge facing the European Union in the future is to fill the gap between itself and the citizen, providing a political connection equal to the social, cultural and sporting connections that the single market has already provided.

The Future of Federalism

If the European Union has developed in a federal direction, filling out the hopes and expectations of Jean Monnet and Robert Schuman who founded it, it still has some distance to go. The debate over the nature of European federalism is not yet concluded, even if the debate about its existence surely must be.

There are two principal challenges that need to be addressed, both arising from the very success of the European Union as a political force in Europe.

The first is the fact that the European Union has acquired powers over many aspects of life that were formerly handled at national level. The single market is an example that has been discussed already—only a single market organised on a federal basis can deliver jobs and prosperity—but there are others. What they all have in common is that decisions are taken at the European level without, yet, the corresponding quality of democracy. This is what federalists have called the “democratic deficit”.

Secondly, the European Union has acquired new member states. It started with six and now has fifteen with a further ten due to join on 1 May 2004. (This is the first mention of enlargement in this essay: the case for federalism is strengthened by the increase in the number of member states but is not dependent on it.) Decision-making among the member states in the Council of Ministers will grind to a halt if it continues to be based on unanimity—the Single European Act picked this point up particularly—and allocating the chair of the council by rotation among the member states will become less and less satisfactory.

The Council of Ministers itself was founded as a committee of the representatives of the member states, meeting in private, rarely taking votes, keeping sometimes rather scanty records of what was decided. A committee of twenty-five or more members cannot work on this basis—this is not a constitutional point, but rather one based on the observation of human beings in action—and so the council must become more formalised and less ad hoc. In short, it must become less like a committee and more like a parliamentary assembly. The federalist point is that, as the upper chamber in the European Union legislature, it should have been working like this all along.

Overhauling the EU

The European Union continues to innovate, not only in bringing law to the relations among its member states, but also in the means by which it writes its own rules. The latest example of this was the Convention on the Future of Europe, which brought together representatives of the European and national parliaments, from both governing and opposition parties, along with representatives from the national governments themselves and the European Commission. The convention met in public over a period of sixteen months to debate reforms to the EU system.

As with everything else about the European Union, the convention was not perfect, but nevertheless it represents a considerable advance in the development of European democracy. A recurrent theme of this essay is to compare the methods of the European Union as a broadly federal institution—multilevel government with a direct relationship to the citizen—with the alternative confederal approach. A confederal equivalent of the convention would have been a meeting among the member-state governments alone, perhaps with the European Commission as an observer. The European institutions were present in the actual convention in their own right because they have a political legitimacy in their own right, separate from that of the member states.

The proposals arising from the convention contain some interesting developments from the point of view of federalism.

In this context, the most exciting proposal relates to the way in which the president of the European Commission will be chosen. In the past, the post has been filled by the European Council taking a unanimous decision subsequently ratified by the European Parliament. Sometimes the choice of commission president has been a good one; sometimes it has been not so good.

In future, this will be different in two respects. First, the decision by the European Council will be taken by a majority vote rather than a unanimous one, and second, it will take into account the elections to the European Parliament. This second change is possible because the terms of office of the commission and the European Parliament have been synchronised: up until 1992, the commission served a four-year term and the parliament five years. (This synchronisation was proposed by federalists precisely so that this connection with the elections could be established at a later stage.)

Both of these changes lead to the same conclusion: that it will be possible for the commission president to become a more autonomous figure on the European political scene (more

autonomous, that is, from the member state governments, less autonomous from the citizens' representatives in the European Parliament). This is exactly the recipe for a more nearly federal government at the European level.

There is no guarantee that the proposed new system will produce this result. It depends on the willingness of the European political parties to use their new powers and turn the European elections into a public choice of commission president as well as a choice of hundreds of MEPs. It also requires the heads of state and government to be willing to face down opposition to a particular nomination from one or a small number of member states.

A further strengthening of the federal elements in EU institutions lies in the attribution of more powers to the European Commission over justice and home affairs on the one hand, and foreign policy on the other. In neither of these fields is this transfer as complete as it has been in the case of the single market—some critics even deny that it has really happened at all—but nevertheless the potential for more coherent European policies has been established. The immediate future of these European policies now rests more on political will rather than on the institutional set-up, a point to which the conclusion of this essay will return.

However, the trend in the draft European constitution is not solely in the direction of federalism. For example, the statement in Article I-9(2) about the conferral of powers is pure confederalism: “the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution.”

Of course, as remarked at the outset of this essay, no political system can be expected to be purely federal or purely confederal, so the inclusion of this phrase should not be taken too seriously. It is a statement more of political theology than of relevant constitutional practice, and if it keeps some of the opponents of European federalism happy, it is perhaps even to be welcomed.

The Federal Imperative

This essay has set out to show that the essential institutional features of the European Union are based on federalism. Perhaps that is a rather indirect subject for a political discussion, but there is nevertheless a good reason for it.

Federalism is not the bureaucratic centralisation of popular myth, nor is it the blueprint for a superstate. What it is, in fact, is a means of dividing political decision-making between different levels of government, each with a specific set of tasks to fulfil, without compromising democratic control by the citizen. Confederalism leads at best to an indirect form of democracy, but more usually to no sort of democracy at all. Civil servants find themselves acting as the representatives of their countries—national government ministers do not have the time—and the expression of the popular will through the ballot box becomes dulled and diffuse. Federalism places the voices of citizens firmly at the centre of decision-making at each level of government, always to be heard whenever their interests are affected.

In today's European Union, the consequence of federalism has been the creation of a new level of government, increasingly separate from the member states. Those member states still have a role, often the most important role; but they do not have the only role. The interests of

citizens themselves find expression at European level independently of the national governments of the member states. Perhaps this weakens the role of the national governments; it certainly strengthens the role of the voters.

The failure of the summit in Brussels in December 2003 to agree the text of the new constitution illustrates the point. It is no accident that the stumbling blocks in the proposal were those elements that would strengthen the federal and democratic powers of the European Union at the expense of the national and bureaucratic ones. The draft proposed by the European convention may well have to be amended somewhat before it can finally be adopted. It is to be hoped that the extent of the democracy is not scaled back too far.

Also under debate is the future of European foreign policy. It has already been noted that the draft constitution does not strengthen this significantly. For this reason, there is still a debate to be had. It centres on two main questions: an institutional one; and a political one. The solution to the institutional question will be obvious by now – democratic federal institutions are needed if Europe is to have an effective voice in the world.

The political question is different. It is about whether the different countries of Europe wish to have an effective voice in the world, or whether they are content to follow the lead of the United States (or to protest vainly against it). Should they play a more effective part in bringing order to the world's trouble spots, or would they prefer to pass by on the other side? Are the ideals and experience of the European Union possible solely in Europe, or can the principles of federalism be offered to other international organisations at continental and even global level?

These are the questions on the European agenda today, just as the effective organisation of the coal and steel industries was in 1950 and the single market was in 1986. If the answer to these questions is “yes, Europe does want a distinctive voice, should play a bigger role, has experience to offer”, then a federal method of organising these powers is surely essential.

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