FEDERALISM & DEMOCRACY: TOCQUEVILLE INVERTED OR PERVERTED?

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Federalism seems to be creeping insidiously onto the democratization agenda. On the surface, this may seem ironic. Several self-proclaimedly "federalist" polities -- the Soviet Union, Yugoslavia and Czechoslovakia -- have collapsed in the course of their democratization. Others – Yemen and Nigeria -- seem to find it a serious impediment to successful regime change. And some of the world's best entrenched liberal democracies -- Canada and Belgium -- have been experiencing considerable difficulty with the federalist structure of their respective states. In short, the felicitous marriage between federalism and democracy that is presumed by virtually all North American theorists may be breaking up in favor of a trend toward more unitary (and more ethnoculturally homogeneous) forms of state authority.

Tocqueville would not have been surprised to see this. Although a lifelong advocate of decentralization, he always regarded federalism as a *rara avis* – suitable for the "exceptional" conditions of North America, but definitely not for the "normal" conditions that (then) prevailed in Europe. Only because the United States was so isolated from international threats and had such a low intensity of class conflict due to its post-feudal origins and its open frontier could it get away with such a dispersed system of public authority. As for Switzerland, the one country in Europe that came closest to the American model at that time,

Tocqueville was categorical and scornful in denying it either democratic or federalist credentials.[1]

This brings me to Tocqueville's generic message: the same rules do not produce the same results when inserted into different social structures and mores (*moeurs*). All political actors may be equally capable of taking rational decisions individually and even collectively, but they do so only in different historical contexts – with different memories of the past, dilemmas of the present and hopes for the future. Nowhere is this stricture more evident that in his treatment of federalism.

For what Tocqueville most admired about American federalism was precisely its more statist and centralized aspects, i.e. the fact that the central government had its own fiscal basis and capacity for direct intervention upon individual citizens (with force if necessary) independent of its member-states. He was especially appreciative of the role of the Supreme Court in its capability to declare state laws incompatible with federal ones. And he was not well-impressed by the fact that the ordinary policing of citizen behavior was so variable from one state to another, considering this as no better than a necessary evil. By contrast, he considered the more "confederal" systems of the early 1800s in Switzerland and Germany were so markedly inferior that he doubted they could survive.

Promoting Devolved Stateness

Despite Tocqueville's injunction against the facile transfer of institutions from one socio-cultural context to another, those external actors who seek to

promote the consolidation of neo-democracies in the contemporary world have tended to push, if not federalism, at least, various forms of decentralization and deconcentration of public authority, as if they were a universally desirable trait. Backed by powerful international institutions like the World Bank and the International Monetary Fund, they have (implicitly) promised to reward those countries that devolve the most authority to peripheral units and (explicitly) assured them that doing so will bring equity, growth, transparency, accountability and probity.[2] Admittedly, this enthusiasm is (sometimes) tempered by a reminder that these benefits may take a while in coming and that, in the short to medium term, unbridled "localism" can breed clientelism, corruption, illegality, oligarchy, violation of civil rights, intolerance, discriminatory treatment, duplication of efforts, confusion in administrative procedures, ruinous competition to attract outside investment, and fiscal irresponsibility – not to mention, weaken the capacity of central state institutions to cope with overarching problems of economic adjustment, political security and personal safety.[3] These advocates seem (to me) to be more preoccupied with "the freedom to invest and make a profit" than with "the freedom to participate and render rulers accountable." Moreover, they seem to think that the means for accomplishing the former is to disperse or even to dismantle as many of the institutions of government as possible.[4]

Of course, federalism and decentralization/deconcentration are not the same thing – but they are probably closely related. In any case, the domestic actors in neo-democracies seem to be listening attentively to the message of decentralization/deconcentration. By one tally, "out of the seventy-five

developing and transitional countries with populations greater than five million, all but twelve claim to be embarked on some form of transfer of political power to units of local government."[5] Needless to say, not all of these are engaged in democratization, but the general trend is impressive. It is much less impressive when one looks at the relation between the adoption of federal institutions and democratization.

Decentralization/deconcentration and federalism are "probably" related to each other, but how and to what degree is not easy to discern. For while students of federalism may all be agreed that it is good, especially for democracy, but they have been notoriously incapable of agreeing on its definition. At one end of the spectrum are those who consider that any polity based on a "covenant" must be, at least, partly federalist. At the other end are most American theorists who take the U.S. model for granted as "the" prototype and ask how close any other polity comes to resembling it.

For my purpose, I will assume that a state is "federal" if it has the following properties: (1) territorially defined political sub-units; (2) whose continued existence and decisional autonomy are constitutionally guaranteed; (3) whose participation in decisions taken by the central government is formally established, usually as constituencies in one assembly of a bicameral legislature; (4) whose domains of policy action (*compétences*) are established and protected by statute and cannot be altered without voluntary consent;[6] and (5) whose secession or expulsion from the above arrangement cannot be accomplished unilaterally. A federal state is considerably more than a polity that is decentralized in its

territorial structure or deconcentrated in its functional administration, but whose subordinate units can be ignored, combined or eliminated at the convenience of the central authorities. Moreover, federal sub-units have a distinct status in public law and capacity for exercising legitimate coercion within their respective domains; hence, they are not equivalent to the fluctuating multitude of private or semi-public units in civil society that may also perform important territorially or functionally based tasks within modern democracies. It should be noted, however, that this leaves room for a considerable range of variation within federal systems.

Despite their repeated injunctions in favor of decentralization and deconcentration, "democracy promoters" have usually shied away from advocating full-fledged federalism.[7] They did thrust it upon the postwar Federal Republic of Germany (where, admittedly, it had prior roots in the German *Bund* and *Reich*, and in some aspects of the Weimar Constitution), but they did not dare insist that Japan or Italy adopt it. More recently, in the post-1974 wave of democratization, only two countries (Yemen and Ethiopia) became federal that did not previously have such a structure, and neither has been particularly successful in consolidating democracy. One country (Brazil) very considerably extended the powers of its territorial sub-units and, by most accounts, this has made regime consolidation more, not less, difficult. Spain and, to a much lesser extent, Portugal did grant greater autonomy to sub-units on an asymmetric basis, but shied away from the full federalist package by not incorporating these units

within their system of national decision-making. South Africa took a similar, if more symmetric, course.[8] [9]

The Prospects in Europe

The one place on earth where the issue of democratization and federalism will be most clearly and unavoidably conjoined is in the future evolution of the Euro-Polity. For better or worse, the institutions of the European Union (EU) seem destined to determine whether this emerging polity will manage to combine the two elements – a democratic regime and a federal state structure -- that Tocqueville regarded as crucial for the success of large-scale governance in the United States. If they are to do this, however, they will have to invert Tocqueville's argument.

For, as we have seen, Tocqueville did not regard federalism as an appropriate solution to the problems of political order in Europe. He saw neither virtue nor survivability in the repeated efforts of European countries to establish "leagues," "confederacies" or "federations."[10] A much more precarious international environment, sharper class conflicts rooted in the tumultuous transition from aristocratic-feudal societies, stronger historical, religious and linguistic differences between its component states and a persistent political culture (those *moeurs* that he was so fond of invoking) of dependence upon central state authority -- all these things made it unlikely that the precarious American mixture that he called "incomplete national government" could be sustained, especially at the level of the continent as a whole. The idea would

never have occurred to him that a “United States of Europe” was either possible or desirable.

But could Tocqueville be wrong for the right reasons? What if Europe today is closer to the context that favors federal/democratic solutions than it was in the past – even closer than the United States itself? First and foremost, the countries of Western Europe (and, perhaps, their closest Eastern neighbors) enjoy for the first time in their history a “security community” in which it is inconceivable for one of its members even to threaten the use of force to impose its will on another. Military expenditures and the size of standing armies, navies and air forces is lower than ever before – much lower than in the United States. Even conscription, historically a very delicate task of central governments, has almost disappeared (or been largely converted into a civilian service). It is the United States, now, that has so many enemies and repeatedly demonstrated its willingness to use military might to achieve its national objectives. Second, class conflict has quite remarkably declined in Europe and inequalities in income and access to public goods are now (with the notable exception of Great Britain) much less than in America. Linguistic differentiation remains, but it has been attenuated by the burgeoning use of English. Cultural and life-style differences between the peoples of Europe, especially among youths, are a mere shadow of what they once were.[11] Religious schisms are almost politically irrelevant – unlike the United States, where fundamentalist Christian sects now provide some of the most intractable issues before the polity. Finally, thanks in part to the neo-liberal revolution in public policy, Europeans no longer have such exaggerated

expectations about what their government should do for them, especially at the level of Europe as a whole, where progress toward harmonizing the provisions of the welfare state has been very modest. Despite all the complaints about "social dumping" and "free-riding," the member states of the EU seem reconciled to tolerating substantial differences in their provision of social services and their extraction of taxes at the national level.

How, then, can this "synergy" between federalism and democracy be brought about? Resistance to the very word, *federalism*, is surprisingly strong, especially in Great Britain and Denmark, considering the high esteem it enjoys in America, and one suspects that its complexities are not well understood elsewhere.[12] Pro-integration politicians in Europe could never get away with the sort of *coup constitutionnel* that their forerunners pulled off in Philadelphia in 1787. The recent experience of the Inter-Governmental Conference that culminated in the Treaty of Amsterdam of June 1997 demonstrates that no committee of the whole will be given a mandate for minor reforms and come back with a wholesale re-founding of the institutional order. Its every move will be monitored closely and the agreements reached will be subject to the *liberum veto* of every member government -- long before the issue of parliamentary approval or popular ratification comes up.

Moreover, the timing is simply wrong. In the absence of revolution, coup d'etat, liberation from foreign occupation, defeat or victory in international war, armed conflict between domestic opponents, sustained mobilization of urban populations against the *ancien régime* and/or impending political collapse, no EU

member state has been able to find the “political opportunity space” for a major overhaul of their ruling institutions. Many drafts of a potential Euro-constitution, all impeccably federalist in form, have been produced, circulated and promoted over the past decades, but none of them have been taken seriously. I suspect that the reason for this may be due less to the quality of the politico-legal talent that went into assembling these impressive documents than to the way they were discussed and drafted.

Thanks, I suspect, to the awesome shadow cast by the Philadelphia Convention, the reigning assumption seems to have been that anything as important as federalizing and democratizing the European Union must be treated as a momentous and concentrated *event* -- not a gradual and fitful *process*. Above all, this task must be accomplished by experts (constitutional lawyers, for the most part) and protected from the pleading of special interests and the scrutiny of mass publics. Only specialists, it is presumed, can be trusted to produce a coherent and consistent draft that will not reflect the self-serving aims of politicians and their surrounding clienteles.[13] Although this strategy may have worked relatively well when some type of national emergency or founding moment provided the context for deliberation and choice, it will not work in the case of the EU where there is no foreseeable emergency and the founding moment occurred more than forty years ago. What is needed is an entirely new strategy that adopts a much longer timeframe and seeks to involve special interests and mass publics at various stages of the process. Only by deliberately politicizing the issues involved at the level of Europe as a whole and by gradually

building up expectations with regard to a more definitive set of rules of citizenship, representation and decision-making can one imagine a successful constitutionalization of the EU. Admittedly, this is not the way the member-states went about accomplishing this task, but one of my major assumptions is that the EU is not a mere repetition of previous nation, state and regime-building processes and it may well lead to an unprecedented outcome.

And here is where the potential perversion of Tocqueville comes in. He took it as axiomatic that federalism and its felicitous connection to democracy in large scale units required two things: *stateness* and *nationhood* – both of which are missing in the case of the Euro-polity and are not likely to emerge in the immediate future. The novelty of the EU lies in the growing dissociation between territorial constituencies, functional *compétences* and collective identities. The changes in scale that have occurred over the past four decades tend to overlap and do not reinforce each other within a congruent society/economy/polity as happened in the classic sovereign national state. The exercise of public authority in different functional domains is not coincident or congruent with a specific and unique territory; nor is it contained within a distinctive and unique identity.

In the emergent Euro-polity, these domains have become *less* rather than *more* congruent over time. What seems to be asserting, and even consolidating, itself is a plurality of polities at different levels of aggregation -- national, sub-national and supra-national -- that overlap in a multitude of domains. Moreover, the EU authorities have few exclusive *compétences*, and have yet to assert their hierarchical control over member states -- except through the limited

jurisprudence of the European Court of Justice and in such restricted functional domains as competition and agricultural policy. Instead, multiple levels of goivernment continuously negotiate with each other to perform common tasks and resolve common problems across an expanding range of issues. Without sovereignty -- without a definitive center for the resolution of conflicts or for the allocation of public goods -- there is only a process and, hence, no definite person or body that can be held accountable for its actions in the public realm. Moreover, the participants in this process are not just a fixed number of national states, but an enormous variety of sub-national units and networks, supra-national associations and transnational firms.

Tocqueville would have been horrified at the prospect of federalizing such a polity and would, no doubt, have predicted a bleak future for it -- unless he came to agree with me that the historical context has changed significantly and, therefore, what he regarded as a *prerequisite* for federal democratization could be converted into an eventual *product* of that same process. If so, and if its democratization cannot be indefinitely postponed, then it seems reasonable to me to presume that *the Euro-Polity will have to invent new forms of ruler accountability, new rights and obligations for citizens and new channels for territorial and functional representation for its federal system*. And *it will have to implement these reforms in a radically different fashion***.** When the moment comes, federalization and democratization can only be accomplished gradually by building upon existing institutions rather than in the classic American manner that Tocqueville so admired, i.e. by drafting an entirely new constitution.[14] The

gamble would be that, by so proceeding, Europeans could acquire through protracted experimentation what history has denied them in practice, namely, a viable continental state and a common political identity.[15]

* ENDNOTES *

[1] Tocqueville was, to put it mildly, not favorably impressed by the Swiss: "As *un american,* I have developed such an utter disdain for the federal constitution of Switzerland, that I would unequivocally term it a league and not a federation. A government of that nature is certainly the weakest, the most impotent, the clumsiest and the least capable of leading its people anywhere except to anarchy, that one could imagine. I am also struck by the lack of any *vie politique* in its population. The Kingdom of England is a hundred times more republican than this republic." (my translation from Oeuvres Completes, Vol. XV, 1, p. 70-71). This was written in 1836 after living several months there. Elsewhere, in a letter, he opined "(In Switzerland) power was exercised in the name of the people, but placed very far from it and handed over completely to executive authority. … The principle of the division of powers has been acknowledged by all *publicistes*, but it does not apply in Switzerland. Freedom of the press did not exist – neither in fact nor in law; the ability to form political associations was neither exercised nor recognized; and freedom of speech was restricted there within very strict limits. … Even if the Confederation had its own executive power, it would have been too impotent to make itself obeyed since it lacked the capacity to act directly and immediately upon the citizens." (Oeuvres Complètes, Vol. XVI, pp. 203-20). This was written in 1848 shortly before the new Swiss constitution was ratified.

[2] The "Bible" for this advocacy seems to be J. Litvack & J. Seddon (eds.), *Decentralization. Briefing Notes* (Washington: World Bank Institute, no date) where these benefits are promised if "democratic local governance initiatives" are implemented. Also, see "Decentralized Governance Programme," (New York: UNDP, September 1997).

[3] For a more balanced treatment of the pros-and-cons, see Larry Diamond's chapter on "Size and Democracy" in his Developing Democracy. Toward Consolidation (Baltimore: Johns Hopkins University Press, 1999), pp. 117-160.

[4] Tocqueville would not have approved this zeal for dismantling the coordinative and coercive capacity of the central state: "From my perspective, I cannot imagine a nation that could survive and especially prosper without strong government centralization." (Oeuvres Completes, Vol I, 1, p. 87).

[5] Thomas G. Kingsley, "Perspectives on Devolution," Journal of the American Planning Association, Vol. 62, No. 4 (1996), pp. 419-27 as cited in Larry Diamond, *p. 121*.

[6] Note that I have **not** included the proviso that at least some of these *compétences* must be exclusive. In the oft-cited definition of William Rikker, federalism is contingent upon a division of the activities of government "in such a way that each kind of government has some activities on which it makes final decisions." ("Federalism," in Handbook of Political Science, Vol. 5, Reading, Mass.: Addison-Wesley, 1975), pp. 101). This reflects a distinctively American view of the phenomenon. In European federations – whatever the formal provisions – the actual practice is more "cooperative" in which the different levels interact both horizontally and vertically to produce policies.

[7] Tocqueville would most certainly have been even more cautious in advocating federalism as a strategy for democratization in multi-ethnic societies. It was precisely the absence of such "deeply-rooted"

cleavages that made it appropriate for the United States. Unless some miraculous pattern of cross-cutting linguistic/cultural/religious cleavages permits the sub-units of the emerging regime **not** to represent distinctive *ethnies*, federalism is more likely to be an impediment rather than an inducement to democracy. The enthusiasm shown by Juan Linz for such a solution would not (I believe) have been shared by Tocqueville ("Democracy, Multinationalism and Federation," in W. Merkel and A. Busch, eds., Demokratie in Ost und West, Frankfurt: Surkamp, 1999, pp. 382-401). Spain's experiment with territorial dispersion of authority was successful because some of these cross-cutting elements were present within the *estados autonómicos* and because the full-scale federalist model was not adopted.

[8] Actually, no one seems to agree on whether the interrim constitution with its 34 detailed "principles" was federalist or not. Predictably, ardent federalists declared it "one of theirs," while more objective observers avoided such a simplistic characterization. See the chapters by Joh Van Tonder and Dirk Kotze in Murray Faure and Jan-Erik Lane (eds.), South Africa. Designing New Political Institutions (London: Sage Publications, 1996). The eventual constitution adopted by Parliament on 8 May 1996 avoids the language of federalism and speaks of itself as a "co-operative government."

[9] The parallel with parliamentarism is striking. In both cases, academics have made a strong case for the superiority of a single institution for the purpose of consolidating democracy – and the actors involved in making the actual choices have (largely) ignored the lessons and gone ahead with non-parliamentary and non-federal arrangements. Could it just be that they know something that we academics tend to overlook – namely, that politics is a very time-sensitive enterprise and, therefore, choices whose benefits only emerge gradually and unobtrusively are heavily discounted. Politicians, especially under the highly uncertain conditions of a regime transition, are not in the business of optimizing for the system as a whole over the long run. They are at best "satisficing" and that usually means avoiding the worst possible outcome for the groups or cause in which they are engaged during their political careers.

[10] Even the one case that had lasted the longest, Switzerland, he dismissed on the grounds that the survival of that country's institutions was more a result of its neighbors bungling than its citizens' virtues.

[11] Tocqueville made the brilliant observation that Maine and Georgia were 4,000 kms. apart and yet the social and cultural differences between their inhabitants were less than those that divided Normandy from Brittany, two French provinces that were only separated by a small brook. Leaving aside the fact that Tocqueville was not very well informed about the US Deep South and that Maine and Georgia did find themselves subsequently on different sides of a civil war, I wonder what he would say today about the differences between, say, Malmö and Madrid as compared to Minneapolis and Miami!

[12] Which is precisely what Tocqueville regarded as one of the key weaknesses of the entire federalist project: "As a rule, only simple propositions are capable of being grasped by popular imagination (*l'ésprit du peuple)* … and (in a federal system), everything is artificial and by convention." (Oeuvres Completes, Vol. I, 1, p. 168-9).

13. The fact that several of these constitutional drafts have come out of the European Parliament and that one of their most manifest objectives was to increase the powers of that very same institution suggests that "institutional" -- if not "personal" -- self-interest cannot be ruled out of the process.

[14] Strategic choice in this domain is limited by one overriding "peculiarity" of the EU, namely, its foundation in a series of international treaties. Any substantial change in rules would no doubt require not only the unanimous agreement of all members (although that might be finessed by leaving some out and moving ahead with a more compact "core" group), but would have to go through a lengthy and uncertain process of ratification, first by national parliaments and second by national referenda (at least, in several member states). This intrinsic cumbersome-ness places a considerable premium on coming up with reforms in the rules that, while democratic in nature, can still be implemented within the existing framework of treaties.

[15] For an exploration of specific reforms in citizenship, representation and decision-making that might conduce to such an outcome, see my Come democratizzare l'Unione Europea … e perché (Bologna: Il Mulino, forthcoming). An English version is in the works, but for a preview see my "The Future of Democracy: Could It Be A Matter of Scale?" Social Research, Vol. 66, No. 3 (Fall 1999).