Federalism, the concept, and Federations, the practice

The Greek public debt, culminating into a manipulative referendum (July 2015), and the present migration influx, culminating in the breakdown of the Schengen Treaty, point at the failure of the European Union. These crises are the strongest incentives to write this paper.

Last year, Marco Marazzi, president of the European Federalist Party in Italy, commented my message in the Facebook group ‘Greeks in Belgium pro Yes’, as follows: ‘Yes, Mr. Tombeur, we all want a federation but we have to decide what model we adopt. If it is the US model which you and Klinkers suggest and I totally support, well the US States have balanced budgets in their constitutions.’ I thank him for his reply, giving me the opportunity to reflect on the notions federalism and federations. Regarding the issue about the federal model to adopt in Europe, raised by mr. Marazzi, I like to share with you my following observations.

The question ‘what kind of federal model’ refers to a workable and working federation. It is the second issue to be addressed. The first issue to tackle is whether federalism as such is an acceptable organization model for the European citizens. Both issues, adopting federalism and building a federation, should be handled separately and in that order.

First of all, I point at a precondition of federalization: the citizens should be convinced of the fact – to meet their need to internalize – that they have layered identities. A number of flexible identities lives inside of us, in a layered way and activated according to time and place: being an individual, a family member, a local citizen, a regional (sub-state) one, a national (state) citizen and... a European citizen. The last identity holds at least these features: civil freedoms and civil rights (the citizens are the share holders of state sovereignty), the rule of law made by mankind, legal equality, government’s monopoly over violence, etc.

1. Now, I describe the first stage of the federalization process: adopting the basic rules of federalism. This is quite simple, as federalism entails only two rules linked at each other: 1° clearly separating the public powers between (at least) two layers of government, namely the layer of the federated units and the layer of the federal whole, no matter what kind of federalist model, called federation, putting federalism into practice, 2° drafting a common basic act, often called a constitution, which describes the federal powers, guarantees them and organizes the federal working.

Powers distributed in this federalist way cannot be withdrawn, diminished nor extended, in any way, without the consent of all governments involved in the federation. This means that those powers are all sovereign: there is no higher power and this shared sovereignty is inalienable against the will of each power holder. The federalism kernel holds ‘sovereignty sharing’ by the federal whole and its federated units. All are equal in this respect. These rules should be permanently observed. If not: no federalism, no federation.

In other words: the federalism concept constitutes a vertical division of policy domains. Combined with the horizontal division between the three government branches (the ‘trias politica’), first described by Charles-Louis de Montesquieu (in: ‘De l’ esprit des lois’, 1748), federalism provides an extra dimension to democracy.

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This means for a European Federation that the federal whole and the Member States would be sovereign within their respective competences. The federal Government and the State Governments involved would work independently from each other under their constitutions.

2. If this federalist concept is accepted by a majority of the citizens, the stage of the practical shaping of a federation follows. Each federation shows its particularities, yet all federations exist under the terms of the federalism concept, described above.

Whether more power portions are situated on the federal level or on the federated level, is not the only subject in this respect. For the rest, may I confine myself here referring to the European Federalist Papers (EFP) nos. 2-8, about federalism and federations, written by Leo Klinkers and me. In particular, EFP no. 5 mentions four criteria to distinct types of federations: structure (‘institutional’ or ‘functional federations’), resources setting (degree of solidarity), power distribution type (‘exclusive’ or ‘competitive’) and internal cooperation mode.

3. How to reach a federalization objective? My first reflection is the following.

The federalism concept should be the single subject of the opening debate among citizens and their representatives in the states considering the creation of a federation. This debate would produce its basic outlining: the precise listing of the federal competences, while other competences remain at the command of the federated entities. Therefore, national conferences of legitimate representatives, followed by national binding referenda, are required.

The second stage of federalization should be the decision making about the specific features of the desired federation, see 2. A European convention of elected representatives, would design a constitutional act. Its draft would be submitted to the approval of the state citizens.

I end with the Europe case. What kind of European Federation is appropriate? The specific situation of Europe should be examined to support the choice. Its history, its different political systems, its development, its resources and its size should be considered, but also its situation and its ambition in this multipolar world. The EFP (nos. 21-25) offer a first draft of a European Constitution, partly inspired by the US Constitution and the Swiss one. Its features are: representative and direct democracy mixed (compulsory and optional referenda), federal competences accurately allocated, federal institutions for legislation, executive and justice, a presidential system (i.e. the executive branch is directly elected and legislation exclusively made by parliament) and federal resources including taxes. The Federal organization would be stipulated in a constitutional act, drafted by a legitimate convention of Europeans' representatives and approved by the citizens of the European States involved.

Is a federalization of Europe utopic? No. Remember German, North American and Swiss history and observe the dying EU. Mario Draghi, chairman of the European Central Bank, puts it this way – my translation: “Many Governments are still not aware of the fact that they lost their national sovereignty long ago. (...) It sounds paradoxically, but it is true: only when the euro-countries are ready to share their sovereignty with the European level, they will gain sovereignty.” (ex ‘Knack’, © Der Spiegel, 2012). Indeed, this world makes it obvious that only through a European Federation its Member States would be able to participate indirectly in global policies, to the benefit of the citizens in Europe.

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