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TOWARD A NORMATIVE THEORY OF FEDERALISM

Daniel Weinstock

Department of Philosophy
University of Montreal

It is surprising that federalism has not generated a more substantial body of normative philosophical literature. In contrast to liberal constitutionalism which, particularly since the publication in 1971 of *A Theory of Justice* by John Rawls, has had pride of place in political philosophy, and to democracy, which has been the subject of important philosophical treatises in recent years (Gutmann and Thompson 1996, for example), federalism has not generated much interest among philosophers, apart from such rare exceptions as Norman 1994. It is perceived most of the time as relating more to political technique than to the normative foundations of social ethics. In other words, philosophers have tended to proceed as if their work ended at the threshold of strictly institutional issues. Normative endeavours, to this way of thinking, concern only the selection of key values and major social orientations: will the emphasis be on a combination of constitutionally entrenched individual rights and judicial review, or will more attention be paid to decisions taken democratically by elected representatives? What importance will be given to social and economic rights? These weighty questions having been resolved, philosophers have too often judged that their work was done, and that the question of whether the values and orientations selected would be incorporated into one set of institutions or another related merely to the machinery of government. Will a given country choose a federal model? If so, it will be largely for reasons of administrative efficiency. Will independent countries decide to put a federal structure in place? If so, it will be because of economic, military or other considerations. In any case, there is supposedly nothing interesting left to be said from a normative point of view in connection with such institutional choices. The very dismissive treatment of federalism in a recent dictionary of political philosophy is revealing. Discussing the emergence of federal systems, the author writes: "there must be a compelling reason to aggregate resources and this compulsion is invariably military [...] There must be a reason to aggregate resources, some external (or internal) enemy or object of aggression, or else no one would be willing to give up independence for aggregation" (Riker 1993, 511, 513).

Yet the political circumstances in which many modern societies now find themselves demand some basic normative thinking about federalism. For one thing, economic, political and legal globalization means, more and more, that we must develop new ways of managing and regulating supranational political spaces. For another, the increasingly numerous and insistent demands of infranational groups (ethnic, religious, linguistic, cultural and so on) for some degree of autonomy in decisions affecting the interests of their members create pressure for devolution of responsibilities hitherto reserved to central governments. Furthermore, many federal structures in societies that enjoy privileged cultural and material status, like Canada and Belgium, seem to be in crisis or on the brink of dissolution, so that there are no real models on which to base any new attempts at federal integration or restructuring. Thus, between globalization, the "politics of identity" and the crises of existing federations, the time seems ripe for reflection on the potential that federalism offers to reconcile apparently incompatible imperatives. This paper offers a modest contribution to that reflection. (See also Bauböck (forthcoming), and Karmis and McClure (unpublished ms).

Some preliminaries are in order: first, we will use the term "federal political system" to

mean one in which there is a division of powers, constitutionally defined and protected, between a central government whose decisions apply to all the members of a state, and a number of infranational governments whose decisions apply only to segments of the population of that state, these segments being defined in our paradigm according to divisions of territory. We will use "normative justification of federalism" to mean any argument that seeks to base the desirability of a federal system of government on the values that such a system makes achievable, and on its contribution to promotion of the common good, as opposed to a justification on purely instrumental grounds, which sees the choice of a federal system merely as the result of a calculation of the respective advantages of the groups concerned, and their relative strength.

A federal system can be the result of either of two diametrically opposed processes. First, it may result from the "federalization" of a unitary state. Recent constitutional reforms in Spain are an example of this path toward federalism. We will call such a process a federal restructuring. Second, a federation may emerge from an agreement by two or more independent political entities to acquire common political structures. Europe is now on this path. The US and Canadian federations are both products of the latter process. We shall designate such a creation a federal integration. Sometimes, the federalization of a unitary state will be based on territorial, cultural, linguistic or other divisions that the unitary state had been intended to eliminate, but one may also conceive of federal systems of which the components are not based on any previous political or cultural division.

It would be tempting to suppose at first glance that the justifications for integration and restructuring would be largely the same. In other words, one might think that if it is now desirable for, say, Spain to reshape its political structure so as to divide decision-making powers between the central government and the regional governments, then it would also have been desirable, and for the same reasons, for the regions that presently constitute Spain to have pursued federal integration if they had been politically independent. If the finishing-point of a process is desirable, is it not so regardless of the starting-point? This assumption would be consistent, moreover, with the spirit of liberal contractualism, which asserts in essence that the legitimacy of a political structure depends on our being able to visualize it as the result of a rational choice by individuals coming together to choose what principles will underpin their political union. A contractualist rationale has moreover been suggested as a basic justification for federalism by at least two philosophers who recently considered this question (Norman 1994; Lehning 1997).

It would be a mistake, however, to think that in the context of structural changes like those we are considering, the starting-point will not affect the desirability of the finishing-point. A closer examination will reveal that the social and political issues raised on the one hand by the partial relinquishing of sovereignty by independent states in the case of integration, and on the other by the disassembly of sovereignty in the case of restructuring, are very different. In taking opposite paths in order to develop a federal system, governments contemplating integration and restructuring, respectively, will have to raise sometimes diametrically opposed considerations in the minds of their citizens.

What are the values that restructuring will make achievable? Why should a unitary state have to be restructured on a federal base? Three arguments have traditionally been invoked, relating respectively to liberty, citizenship and democracy.

The liberty argument: this is central to the Madisonian defence of US federalism, which holds that every government is a threat to individual liberty, and thus sees the proliferation of levels of government and the counterweights so created as favouring liberty.

The citizenship argument: the proliferation of levels of government also increases the number of political levers available to citizens, and thus increases the likelihood of the development of active citizenship, especially as the political levers created by federal restructuring will be closer to the people than those offered by a central government.

The democracy argument: the creation of levels of government exercising sovereignty

over certain matters but reaching fewer citizens than the central government provides more opportunities for the people to express themselves democratically through the ballot-box, increases the weight of each vote, and fosters enlightened and informed democratic participation by situating certain political decisions at a level that is cognitively more accessible to the average citizen.

This brief reminder of some of the arguments most commonly raised to justify federalism reveals the illusory character of the contractualist hypothesis mentioned above. While the liberty argument can be as valid in support of integration as in support of restructuring (the addition of new levels of government being the decisive factor here, whether they are "higher" or "lower" levels), the related democracy and citizenship arguments are another matter altogether. It is precisely their undemocratic character, and their exclusion of genuine opportunities for citizen participation, that are being held against the nascent European federal institutions. Although some thinkers have tried to meet this objection head-on (Weale 1995 and Pogge 1997, for example), federal integration is more often defended by invoking other considerations, related to practical consequences in many cases, particularly gains in efficiency and economic performance resulting from a common economic and political framework.

In seeking to justify federal institutions, therefore, it is important not to lose sight of the sometimes very different starting-points of particular federal systems. What should be justified is not so much federalism considered as a political system in the abstract, but rather the creation of this or that federal system from different starting-points.

In what follows, we shall look more closely at restructuring. What reasons might a unitary state have to undertake a federal restructuring? We have seen that in general, federalism favours individual liberty, reinforces citizenship, and promotes truly effective citizen participation. If this is so, why not assume that all unitary states should undertake such restructuring?

Because federalism also makes it more difficult to achieve other values that are apparently just as desirable from the point of view of social ethics. We shall look at three arguments that seem to militate against federalism, relating respectively to efficiency, identity and solidarity.

The efficiency argument: the same proliferation of levels of government which Madison felt should create counterweights for power and checks on potential abusers of power is also a source of inefficiencies and obstacles to collective action. The creation of tariff and other barriers between political units can carry a heavy economic cost. The counterweights that make the tyrannical use of power more difficult can also impede measures that would make a significant contribution to the common good.

The identity argument: the creation of new administrative and political units and the definition of corresponding new territorial entities may obscure the political identity defined by the identifying force that the central government represents. Political identities are not, of course, part of the natural order. Rather, they reflect political circumstances and, in many cases, institutional arrangements. "Padania" was born of conflict over the distribution of wealth between northern and southern Italy. The Quebec identity (as opposed to the French-Canadian identity) is at least in part a reflection of the emergence of Quebec as a state. The carving up of political space required by federal restructuring may create new identities distinct from those that formed around the central government. Since group allegiance inevitably has a negative dimension ("We are X's in part because we are not Y's or Z's - Hardin 1995), the emergence of these identities may very well generate new tensions and new conflicts, both among the members of the new federated entities and between these entities and the central government. Federal restructuring thus implies danger in terms of identity, which may even lead to secessionist tremors.

The solidarity argument: The creation of new political subspaces, and thus of new feelings of identity and solidarity, may make it more difficult to achieve desirable objectives at the national level. In particular, it may reduce the solidarity that exists among the members of

a society united under a unitary government. According to a number of authors who have sought in recent years to demonstrate the profound interdependence of nationalism and liberalism, if contemporary liberal states are to be able to redistribute resources between poorer and richer regions and individuals, the citizens who are net contributors must feel strong solidarity with the beneficiaries, and solidarity of this kind is supposedly difficult to generate transnationally (Miller 1995, Tamir 1885). By creating new identities that are potentially rivals, federalism may thus impede the achievement of such desirable social objectives as the equitable distribution of material resources.

Federal restructuring is thus a two-edged sword. While it may yield progress in democracy, citizenship and individual liberty, it also tends to create new divisions, weaken the emotional bases for the equitable redistribution of resources, and create political and economic inefficiencies.

There is no formula to determine definitively what choice a society should make among these competing values. The advisability of pursuing one or other of these sets of values will depend on the circumstances of individual cases. Numbers and geographical dispersion, for example, will tend to favour federal restructuring. Various economic models will be more or less compatible with the decentralized decision-making characteristic of federalism. A highly diversified economy evenly distributed over a given territory will be better suited to a federal system, while an economy centred on an activity concentrated in one geographical area will require, *ceteris paribus*, a strong central government capable of the redistribution of wealth among regions that equity will require. A familiar example is the great difficulty experienced by civilian governments in Niger in reconciling a federal structure with an economy heavily dependent on oil (Suberu 1994).

One of the strongest arguments for federal restructuring is the presence of national and cultural divisions, particularly when they are based on relatively natural territorial delineations. In a country made up of many different national groups of diverse ethnic origin, it is most unlikely that a unitary state respecting liberal democratic principles will be able to impose a national identity capable of offsetting the tensions that seem to arise when ethnically and nationally distinct groups must coexist in the same political space. If it is true that redistribution of resources on an equitable basis requires the emotional base that a common national allegiance provides (and we expressed doubt on this point in Weinstock 1999b), then a multinational and multiethnic state will have to invoke considerations other than nationality in order to motivate its people to succour their less fortunate fellow citizens. Recent history seems to offer general confirmation that in such societies, attempts by the central government to set a common national identity in opposition to the various national and ethnic minorities inevitably prompt virulent reactions on the latter's part, if only because the central government is perceived - rightly or wrongly - as the instrument of the majority.

The values that unitary states make achievable are thus beyond the reach of multinational and multiethnic states. In such societies, moreover, justice seems to demand federal restructuring, for at least two types of reason:

The argument based on peoples' right to self-determination: although this right does not necessarily imply a right to secession, as some claim (for varying opinions on this point, see Beran 1987 and Buchanan 1997), it certainly does imply that groups occupying broader political spaces and whose members see themselves as forming a distinct political community may constitute majorities within defined borders and make democratic decisions on issues that affect the interests of their members.

The equity argument: even if we set aside the highly contested doctrine of the right to self-determination, it is nonetheless true that simple justice requires that the members of national or ethnic minorities concentrated in one region be able to exercise some measure of control over their political destiny. The fundamental fairness that is central to the normative justification of democracy has often been tied to the fact that within a democratically organized political space, there is no permanent minority. A person who

finds himself or herself in the minority in a given political debate today will sooner or later be in the majority in the debate over another political issue. However, the members of cultural minorities who connect their interests very closely with the viability of their community and their membership in it constitute - potentially, at least - permanent minorities. To the extent that the fairness that underpins democracy does not tolerate the existence of such minorities, they too should be able - without the need for special measures - to achieve what the members of the majority can achieve, that is, constitute a majority at least on certain issues that affect their interests very directly. (It might be thought that such an argument ignores the interests and political needs of territorially dispersed minorities, like American blacks, but federalism is not a practical option for such groups. Their political interests are better served by other institutional arrangements, such as the introduction of proportionality in the electoral process, which would give them political clout reflecting their numbers, rather than their lack of a readily identifiable territorial base.)

Thus, for reasons of pragmatism as much as morality, countries that have significant ethnic or national minorities must embrace federal restructuring. In some countries, the new administrative and political units will be easy to define if the number of different ethnic and national groups is relatively small and they are concentrated in clearly delineated areas, so that the carving up of territory will be uncontroversial. Examples are Belgium, Switzerland and Canada. Other countries, however, provide illustrations of Ernest Gellner's celebrated observation that the number of nations, and thus of potential political units, exceeds the capacity of the international system to accept them as states (Gellner 1983). Niger, for example, has more than 200 ethnic minorities in addition to the three numerically dominant groups: Yoruba, Ibo, and Hausa and Fulani.

Another comment should be made here regarding the difficulties that certain countries have to confront in their process of federal integration. In some countries, federal integration is necessary for reasons related not only to the presence of different national groups within the same territory but also to the size of the population or the country. This is notably the case in Canada. The vast expanse of its territory warrants the creation of smaller political units that can give citizens a feeling of inclusion, for they would be in danger of dissolving into anomy if the central government were their only point of reference, both politically and for their sense of identity. The presence within Canada of two identifiable national groups which are the products of distinct phases of the European colonization of North America also calls for a federal restructuring that allows the Francophones, mainly concentrated in Quebec, to exercise their right to self-determination. The existence within the same nation of two distinct federal logics -- the first arguing for equal treatment for all the administrative units taken individually and the second for equality between the land bases of the two main national groups -- is central to the crisis that Canadian federalism is currently undergoing. This crisis was further heightened by the Constitution of 1982 which did not sufficiently recognize the complexity of this brand of federalism.

Countries which, on account of their multinational or multi-ethnic composition, have good reason to undertake federal restructuring (because it is difficult to appeal to the values that a strong common identity makes achievable, or because they have reasons associated with social justice for granting decision-making powers to certain national or ethnic minorities) must nonetheless consider measures that can compensate for the losses that may be occasioned by the lack of a strong, shared political identity. We believe that, failing the capacity to promote the type of cohesion that such an identity makes possible, the central government of a federal state can nonetheless endeavour to encourage trust among the members and representatives of groups assembled within the same society (Weinstock, 1999a). As opposed to cohesion and the high level of co-operation that cohesion makes possible, trust simply presupposes that the members of the various groups do not perceive citizens who are members of different groups as posing threats to the interests that distinguish them as members of specific groups. The minimum social trust we have just defined can of course be the source of closer ties between the members

of different groups. It can serve as the basis for increased trust, whereby the members of the different groups come to see their fellow citizens as favourably disposed toward the realization of their specific interests as members of a given group. Ultimately, one can even conceive of a situation where minimum social trust between groups that do not share the same national or ethnic identity can generate a common political identity that will foster the achievement of social values and goals traditionally identified with societies that have a strong common national identity. For the limited purposes of this outline, the point to keep in mind is that social trust does not assume a pre-established political identity: initially, it assumes only the perception on the part of the members of the various groups that the others are not hostile to the achievement of their interests as a group, or at the very least, the calculation that it is rational to act as if such a perception were justified.

What types of measure can a central government take to promote this kind of trust? Below is a brief review of a general typology which we have attempted to sketch elsewhere (Weinstock 1999a):

The government can try to encourage this trust by increasing the probability that interests shared by the members of a minority group can be realized within the federal state. It can do so by granting the corresponding powers to the representatives of the group's members and by making the achievement of these interests a priority of the central government itself. It can also encourage common initiatives on points of public policy corresponding to an interest shared by the members of the various groups, in the hope that the trust generated by such initiatives in non-controversial areas will spread to areas that harbour more potential for conflicting interests between the members of different groups.

It can try to promote this trust by affecting how the members of a minority group will calculate their capacity to realize their principal interests within and outside the federal state. There are various measures that can be considered here. We would like to focus on one of them, one which might at first glance seem paradoxical. We have defended elsewhere (Weinstock, 1999c) the idea that the constitution of a multinational federal state should contain a clause permitting secession under certain well-defined conditions (relating, for example, to the frequency of consultative referendums and to the majorities required in order to secede; these conditions are necessary to ensure that the right to secede is not used frivolously by potential separatists). The reason for this is basically as follows: particularly in the case of federations that largely satisfy the fundamental standards of justice and fairness, such as Spain, Belgium and Canada, the members of minority groups will in fact be in a position to realize their specific principal interests. If there is no constitutional clause permitting secession, however, they will not be able to decide upon their continued support for the federation based on a calculation of the relative advantages of federation and secession. This in itself may act as a motive for secession. A clause in the constitution will have the effect of removing this motive from the decision-making field of potential secessionists, and of allowing them to act directly on the basis of their calculations of the advantages and disadvantages of federalism. In countries which already give due respect to the norms of justice and equity among individuals and groups, it is highly likely that this calculation will result in a decision to remain within the federation.

A constitutional clause permitting secession may well promote trust for another reason, this time relating to the motivations of the members and representatives of the majority group. The latter will probably be less inclined to refuse to do justice to the legitimate claims of minority groups, or to try for short-term political gain by adopting harsh positions on those claims, if they know that the minority groups in question have a right to secede.

What we have offered here is no more than a sketch of the avenues of recourse open to federal states in order to promote trust between partners within a federation. We believe that, even if they cannot avail themselves of a very strong shared identity and the advantages it can afford, such states can still, at a minimum, take certain measures

designed to encourage the perception that the interests of individuals as members of distinct groups will in all probability be better served within the federation than outside it. Naturally, the hope is that relations among national and ethnic groups will not remain at this point, but that the foundation of minimum trust will perhaps give rise to a shared political identity which, while not entirely replacing individuals' national and ethnic identities, will nonetheless succeed in offering a counterweight to them.

It is for this reason that we do not share Will Kymlicka's pessimism regarding the capacity of federalism to neutralize secessionism (Kymlicka 1997). As we have seen, there are certain dangers to the federal option, in that it makes it more difficult to achieve values partaking of the social solidarity that unitary states may be in a better position to ensure. Federalism is also a risky political strategy because, as Kymlicka points out, it makes available to national and ethnic minorities the political instruments they need to render their pretensions to forming an independent state plausible. Seen from this angle, one might almost think federalism nothing more than an intermediate stage between the multinational and multiethnic unitary state and the actual dissolution of that state.

We think that the situation is much more complex than Kymlicka claims. First of all, federal states do not lack means of attempting, within the norms of a democratic and liberal social ethic, to promote social trust, and thereby a degree of solidarity between members of different groups. We believe that some of these measures, particularly entrenchment within the federal constitution of a clause permitting secession under certain well-defined conditions, will have a major impact on the calculations that members of minority groups will make as to the usefulness of staying within the federation. There is no determinism to the process of federal restructuring: the players decide on their political course not on the basis of some ineluctable destiny that treats them as little more than passive pawns, but on the basis of what they see as the probable usefulness of secession as opposed to remaining within the federation. We believe that such calculations will continue to favour the federations that are fair and equitable, and that give national minorities the institutional place that is rightfully theirs.

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Bauböck, Rainer (forthcoming), "Why Stay Together? A Pluralist Approach to Secession and Federation", in W. Kymlicka and W. Norman (eds.), *Citizenship in Diverse Societies*, Oxford: Oxford University Press.

Beran, Harry (1987), *The Consent Theory of Political Obligation*, London: Croom Helm.

Buchanan, Allen (1997), "Theories of Secession", in *Philosophy and Public Affairs*, vol. 26, no. 1.

Gellner, Ernest (1983), *Nations and Nationalism*, Ithaca, NY: Cornell University Press.

Gutmann, Amy et Dennis Thompson (1996), *Democracy and Disagreement*, Cambridge, MA.: Harvard University Press.

Hardin, Russell (1995), *One for All: The Logic of Group Conflict*, Princeton: Princeton University Press.

Karmis, Dimitrios and Jocelyn Maclure (1999), "Two Escape Routes from the Paradigm of Monistic Authenticity: Post-Imperialist and Federal Perspectives on Plural and Complex Identities", unpublished manuscript.

Kymlicka, Will (1998), "Is Federalism a Viable Alternative to Secession?", in P. Lehning (ed.), *Theories of Secession*, London: Routledge.

Lehning, Percy (1997), "Pluralism, Contractarianism and European Union", in P. Lehning and A. Weale (eds.), *Citizenship, Democracy and Justice in the New Europe*, London: Routledge.

Miller, David (1995), *On Nationality*, Oxford: Oxford University Press.

Norman, Wayne (1994), "Towards a Philosophy of Federalism", in Judith Baker (ed.),

Group Rights, Toronto, University of Toronto Press.

Pogge, Thomas (1997), "Creating Supra-National Institutions Democratically": Reflections on the European Union's 'Democratic Deficit'", in *Journal of Political Philosophy*, vol. 5, no. 2.

Rawls, John (1971), *A Theory of Justice*, Cambridge, MA.: Harvard University Press.

Riker, William (1983), "Federalism", in R.E. Goodin and P. Pettit (eds.), *A Companion to Contemporary Political Philosophy*, Oxford: Basil Blackwell.

Suberu, Rotimi T. (1994), "The Travails of Federalism in Nigeria", in L. Diamond and M.F. Plattner, *Nationalism, Ethnic Conflict, and Democracy*, Baltimore: The Johns Hopkins Press.

Tamir, Yael (1995), *Liberal Nationalism*, Princeton: Princeton University Press.

Weale, Albert (1995), "Democratic Legitimacy and the Constitution of Europe" in R. Bellamy, V. Buffacchi and D. Castiglione, *Democracy and Constitutional Culture in the Union of Europe*, London: Lothian Foundation).

Weinstock, Daniel M. (1999a), "Building Trust in Divided Societies", in *Journal of Political Philosophy*, vol. 7, no. 3.

Weinstock, Daniel M. (1999b), "National Partiality: Confronting the Intuitions", in *The Monist*, vol. 82, no. 3.

Weinstock, Daniel M. (1999c), "On Some Advantages of Constitutionalizing a Right to Secede", unpublished manuscript.

Forum of Federations / Forum des fédérations
forum@forumfed.org
