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Efficiency in the Multinational Federal Republic

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Abstract: In this paper, I address the division of competences and the self-determination of stateless political communities in a less parochial and more holistic way than they have been addressed within political philosophy. To do so, I will attempt to clarify the meaning of Pareto efficiency principle, which stipulates roughly that the well-being of one individual cannot be improved at the expense of another. As I go along, I will try to show how the approach adopted here is distinct from the redistributive and libertarian views. I will argue that liberal philosophers who have discussed redistribution and fiscal federalism have been guilty of approaching these issues through statist and redistributive paradigms inherited from Rawls and his theory of justice (1971). As the capacity of regions to effectively pursue justice depends not only on the 'basic structure' of federations, but also on *external* factors of which many are encompassed by the term 'globalization', sub-units need federalism to divide competences in a way that gives them the means to be efficient in delivering public goods and services to their constituencies. I then show the link between this plea for a division of competences that improves peoples' democratic capabilities to have efficient institutions and the republican ideal of non-domination. I conclude by suggesting that this combination will likely result in asymmetrical federal arrangements which are more likely to increase the size of governments, contrarily to what 'competitive federalism' theories predict.

Keywords: efficiency; federalism; justice; national pluralism; Pareto; republicanism

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“The basic picture of the federal government you should have in mind is that it’s essentially a huge insurance company with an army.”

Paul Krugman

INTRODUCTION

Although it is common ground in other disciplines, such as economics or political science, very few philosophers (if any) who have written about federalism have considered efficiency-based arguments for federalism and the allocation of competences. The usual stories, typically taken from global justice debates, revolve around the moral reasons to expand justice beyond the borders of national communities, mainly because of the ‘moral individualism’ endorsed by liberal philosophers, or around the need to cope with expanding relational interdependence (Sangiovanni 2007). Within the federalism literature, which I focus on in this paper, we are often presented with different considerations to find a balance between federal-wide equality, or solidarity, and the political autonomy of sub-units (Føllesdal 2001).

An often-neglected approach to justice in federalism¹, especially in multinational federalism, is one that focuses on the inherent benefits of inter-group social cooperation and potential efficiency gains. This state of affairs is largely due to a widespread misconception of efficiency and of the policy prescriptions that we can draw from it – a misconception that exists across nearly the entire political spectrum and across disciplines. On the one hand, left-wing – mainly liberal – philosophers have often appealed much more to recognition than traditional efficiency gains when trying to justify federalism’s appeal (Kymlicka 1995, 2001). On the other hand, right-wing theorists – mainly economists – have provided arguments in favour of federalism on efficiency grounds, seeing federalism as a means of introducing competition between political units (Tiebout 1956), ideally decreasing statist intervention in the economy (Hayek 1948, Buchanan 1996). These ‘competitive federalism’ theories are based on the assumption that governments would have to reduce their size and role in people’s lives as individuals and firms could shop around public-goods packages, or ‘vote with their feet’, as they would seek to settle where the level of governments’ interferences, essentially through taxation, would be the lowest.² Thus, following competitive federalism theories, federalism is a political means to promote economic efficiency through decreasing the role of governments until a minimal-governments equilibrium is reached.

¹ In this paper I will use the term ‘federalism’ rather than ‘federations’ to emphasize the normative nature of the claims that I make. In this way, I want to stress that the claims I advance concern ‘federalism’ as an ideal type, and I do not wish to make particular recommendations for particular federal states.

² These models are not neutral as they are ideologically biased towards the right end of the political spectrum. They picture taxation as ‘political exploitation’ (Buchanan 1995) and commit themselves to the fallacy of the ‘government as a consumer’ (Heath 2009: chap. 4). What they do not admit, is that sometimes a public provision of goods and services is more efficient than a private distribution through the market. They overestimate the choices that people would have on a free market to purchase certain goods and services, underestimating the options available through public provision (a democratic exercise of ‘voice’ might just as well induce changes in public policies which would promote efficiency).

Even a charitable interpretation of Tiebout's theory, which would not reject the idea that states can promote efficiency through their own public activities, would still be vulnerable to a string of objections. One that deserves attention in the context of multinational federalism (hereafter MNF) is the 'constraints on mobility' problem (Ribstein & Kobayashi 2006). For the Tiebout sorting to have traction in reality, not only must there be no externalities, but there must be no constraints on mobility for firms *and* individuals. There must be perfect freedom of movement; not only political freedom, but absolute freedom (not only formal opportunities, but realistically achievable opportunities). This objection is especially strong in the case of multinational polities where language and cultural barriers tend to strengthen individuals' – and even firms' – attachment to their communities and/or narrow the range of opportunities that are effectively available to them. The decision of a monolingual French speaker in Quebec or a monolingual Dutch speaker in Flanders to 'vote with his feet' would involve very serious costs. Although they are legally entitled to do so, such a person would not be able to achieve much in her new community until she acquires professional skills in a second language – which requires of course considerable investments.³ It is thus highly plausible that people, especially the less mobile and more vulnerable citizens, will chose voice over exit to induce policy changes when they are not satisfied with actual public goods and services. This tendency will generally be reinforced in citizens, or even in firms, especially if they identify with the MNF's dominant political and cultural community. Competitive federalism theories neglect these complexities, particularly acute in multinational contexts, rendering them of limited use when one assesses the principles that should guide the distribution of competences, or of the burdens and benefits of cooperation, in MNFs.

If one finds the objection plausible, then one might think that the value of efficiency and its correlated 'public-economic' model of governance should be rejected altogether. After all, efficiency is not the only principle that political communities value and other principles, such as justice, have already received a good deal of attention in political philosophy and have proven to be resilient in the literature. However, rejecting the principle of efficiency because it has been taking centre stage in libertarian theories would be tantamount to throwing the baby out with the bathwater. Many academics have too often underestimated the normative strength of the principle of efficiency and overplayed the dichotomy between the market, as the locus of efficiency, and the state, as the agent of justice. As a result, people are often led into a misguided picture of federalism as a means to tackle inter-individual injustices that are the outcome of the market (often neglecting market and government failures along the way) and not so much collective disparities that stem from globalization and unequal development across regions. In short, what the philosophical literature on federalism has neglected is that the capacity of regions to be responsive to their constituencies, especially their most vulnerable members, is often due to external factors and not only to policy choices and spillover effects across regions.

In this paper, I address the division of competences and the self-determination of stateless political communities in a less parochial and more holistic way than they have so far been treated within political philosophy. To do so, I will attempt to clarify the meaning of the Pareto efficiency principle, which stipulates roughly that the well-being of one individual cannot be improved at the expense of another. That definition of efficiency opens a wide range of possibilities exempt from ideological connotations. As I go along, I will try to show how the

³ The fact that many migrants are willing to invest a lot in language learning when moving to a new country is mainly due to the fact that they can reasonably expect a much bigger benefit from their investment. In contrast, in places like Quebec or Belgium, where social security is somewhat generous, people may consider that the investment is not worth it. The income difference between a low-grade job and unemployment benefits may create perverse incentives not to join the active population.

approach adopted here is distinct from the redistributive and libertarian views. I will argue that liberal philosophers who have discussed redistribution and fiscal federalism have been guilty of approaching these issues through the statist and redistributive paradigms inherited from Rawls and his theory of justice (1971). The capacity of regions to effectively pursue justice depends not only on the 'basic structure' of federations, but also on *external* factors of which many are encompassed by the term 'globalization'. Although I acknowledge the value of solidarity and the existence of pure redistributive mechanisms in political institutions, I question why many philosophers' moral discourses have downplayed the value of efficiency and the interdependence between internal and external factors which affect sub-units' capacities to be responsive to their constituencies and to effectively pursue 'efficient justice' within their own jurisdictions. Sub-units need federalism to divide competences in a way that gives them means to be efficient in delivering public goods and services to their constituencies – not generous transfers that are likely to create redistributive traps. Then I make the connection between this plea for a division of competences that improves peoples' democratic capabilities to have efficient institutions and the republican ideal of non-domination. I conclude by suggesting that this combination will likely result in asymmetrical federal arrangements that are more likely to increase the size of governments, contrarily to what 'competitive federalism' theories predict.

The paper is divided in three sections. In the first section, I question the use of the statist redistributive paradigm in federalism. In the second section, I will argue that efficiency is a moral principle and that it has strong normative appeal, especially in contexts of diversity. I will show that adopting efficiency as a guiding principle to think of the role of the state, especially in contexts of pluralism, as in federalism, allows us to consider the division of competences in a way that is yet unexplored in political philosophy. Furthermore, I will argue that embracing efficiency allows us to avoid the moral problems that other moral approaches encounter, especially as I defend a non-utilitarian conception of efficiency. Building on this normative argument, I will show that if one opts for the view that pictures federalism as an efficiency maximizing enterprise, it does not lead to a libertarian conception of federalism. In the last section, I will try to briefly sketch a connection between the principle of efficiency and the republican ideal of 'non-domination' (Pettit 2012). More specifically I will suggest that the pursuit of 'non-domination' is fully compatible with the pursuit of efficiency in MNFs. The combination of efficiency and non-domination ends with a defense of asymmetrical federal arrangements, without sacrificing the equality that states ought to preserve.

1. The inadequacy of the statist redistributive paradigm

For most liberal philosophers, especially those who do not see a conflict between liberal values and nationalistic forms of identity, the difficulties associated with implementing cross-national redistributive schemes, as in MNFs, are exacerbated by a lack of a common nationality, or so-called 'common sympathies' according to John Stuart Mill's famous phrase. Of course, we can intuitively understand why it is reasonable to assume that large segments of any populations will place more confidence in fellow co-nationals, and will thus cooperate with them more readily – as is also shown by a battery of experimental studies in the fields of psychology and economics. However, an often-neglected hypothesis is that these sympathies are rather the effect of nation building and efficient management of social policies; they are the effect and not the cause of effective policies. It is also important to note that contemporary societies are not as homogeneous as traditional nationalism would like us to believe (De Schutter 2011). Diverse countries, such as Canada, continue to uphold what is considered to be generous redistributive institutions by international standards (Banting et al. 2010). All of this provides good reasons to resist the temptation to frame the problem in

terms of a tension between recognition, in the form of self-determination, and redistribution in multinational contexts (Woons 2014).

Liberal and nationalist theories alike are symptomatic of the widespread acceptance of the redistributive view of the state, as they see identity issues as central to motivating people to cooperate within egalitarian ventures either through a common ‘societal culture’ or a ‘common public culture’. This view has been very popular amongst philosophers who endorse Rawls’ ‘difference principle’, which stipulates that socio-economic inequalities are acceptable only if they are to the benefits of the worse-offs. The principle is designed to preserve the incentive structure provided by the market, which is to say not to restrain the maximization of efficiency, while attributing the state the task of equalizing the distribution of ‘social primary goods’ like civil and political liberties, the social basis for self-esteem, *and* income and wealth. Thus, the market and the state follow two different logics. The former pursues what is of common interest: that society produces a maximum of goods. The latter pursues what is the object of a conflict of interest: a fair distribution of the cooperative surplus that is produced. Common culture or national identity provides incentives for the ‘losers’ in the redistributive scheme (e.g. those successful in market economy) to cooperate in redistributive schemes that are to the advantage of the worse-offs.

Yet what this view obscures is that the state does not only redistribute, through a progressive tax system, but that it is also a major economical agent as it produces goods and offers services. Despite that it is true that states spend on social security and assistance for those who would otherwise be condemned to live in conditions below what we find acceptable, this is still a very small part of government spending compared to travel and communication infrastructures or public goods such like health and education. The state *is* an economic agent – perhaps even the biggest of them all. The fact that the goods and services it delivers are bought and consumed collectively does not change its nature as such. Of course the state can use coercive force to bind agents to ‘play by the rules’, but that does not mean that the rules are grounded in a purely progressive paradigm. The progressive-redistributive view has proven to be resilient in leftist circles and within political philosophy as well, but despite its intuitive and morally appealing character we should realize that the principles of equality and solidarity do not ground much of our institutions.

What states do, including federal ones, is mainly remedy market failures, often by supplying goods and services which would be undersupplied by the market. Health insurance – as in Canada – and institutions that fall under the heading of the ‘social safety net’ exemplify this major role of the state very well. By saying this, I am suggesting that the ‘public-goods’ model of the state is more accurate than the ‘redistributive’ one. I will defend in the next section the principle of efficiency that underlies this claim. As for now, I want to stress that the supply of many public goods can better be understood as institutions complementing those that support the market, such as a system of private property protection (e.g. police), a legal system regulating contractual transactions, free-trade agreements, and so on. In short, one can say that: “the social safety net is, from this perspective, just a special instance of state provision in the face of missing or inefficient private markets... it is often misclassified as a redistributive transfer scheme, rather than a risk-pooling arrangement.” (Heath 2011: 27)⁴

Before I move on to discuss the concept of efficiency, there is still a point that has to be made about the redistributive paradigm in relation to MNFs. The redistributive paradigm is

⁴ Risk-pooling, despite having been neglected in the literature, is a way to realize efficiency gains, just like gains from trade or economies of scale. For more on the different forms of benefits that can be achieved through social cooperation, see Heath (2006).

based upon the assumption that it applies within a single state, where there is a single *demos* of which members share a 'common public culture'. In most MFNs, we are facing situations where there is a plurality of (at least 2) *demos*, each nation having its own socio-historical narrative and challenges. Moreover, as we now live in the age of 'the wealth of regions', and no longer the 'wealth of nations', it is more than ever incorrect to reduce national pluralism to mere issues of recognition and to assess social justice only on an inter-individual basis, as the redistributive paradigm does. All these factors combined with income differences across regions will exacerbate conflict over transfer schemes in MNFs. The tendency of philosophers to go along with the redistributive-individualistic paradigm of justice will not eliminate these problems as transfers within federal regimes are easily traceable. Our philosophical discourse on fiscal federalism cannot avoid these problems and should therefore not be contained within the redistributive-statist paradigm.

Many MNFs, such as Belgium, Canada, Spain, or the United Kingdom, have or have had at some point to deal with secessionist threats, which were largely justified by a desire to have the *means* of self-determination and not for the sake of cultural-identity recognition. As Alesina and Spolaore have pointed out in their referential study, with relation to the credibility issue regarding these secessionist threats: "Whether or not this credibility problem can be overcome depends on the specifics of institutional arrangements" (2003: 56). These arrangements cannot erase income disparities across regions unless problems are tackled within regional investment strategies, which require departing from the statist (Rawlsian) paradigm; nor can they avoid giving recognition through effective self-determination. Regional disparities, historical feuds, and constraints on mobility will generally make secession a more likely equilibrium than what competitive federalism would predict (Bolton & Roland 1997). Given these problems and their acuteness in contexts of diversity, such as in MNFs, philosopher should turn their attention to a principle that they have neglected for too long: efficiency.

2. Efficiency as a normative concept

Amongst the very few philosophers who have positively discussed efficiency, Joseph Heath is perhaps the one who has done the most to clarify the concept and to defend its normative appeal (2001, 2006, 2011). According to him, two main factors explain why philosophers have misconstrued efficiency and left it out their normative toolbox. The first is that efficiency is so embedded in our institutions that we no longer notice it. The second is that – even if we acknowledge its omnipresence in our societies – it is not considered to be moral enough. In what follows I will focus on the second point, though I begin with a few words on the first point.⁵

Our commitment to efficiency is deeply rooted within our societies and government practices; and while this is a fact that often seems to go unnoticed or that is forgotten by philosophers, it is certainly not something that is obviously regrettable. As Joseph Heath has maintained, "Our increased commitment to efficiency is a sign of progress", owing to the fact that: Efficiency is not necessarily a cold, calculating virtue nor is it merely a mask for self-interest. Efficiency is a noble, humanistic value intimately related to a number of other values that we hold dear, such as cultural diversity, respect for individual rights, and the alleviation of suffering" (Heath 2001: xviii).

Theorists who have tried to argue in favour of federalism on efficiency grounds have done so from a predominantly libertarian standpoint (Hayek 1948, Buchanan 1996). According to

⁵ For a more detailed discussion of these elements and of the concept of efficiency, see Grégoire and Jewkes 2015.

'competitive federalism' arguments, the internal divisions introduced by federalism between different political subunits makes it more difficult to organize federal-wide collective action of the type required by extensive government interventions. Furthermore, assuming costless internal mobility as typical of federations means that citizens and firms are free to 'vote with their feet', choosing to base themselves within the regional unit which best matches their preferences. As it is typically the wealthier citizens and firms who are most mobile and as they are typically less reliant than others upon the provision of extensive public services (e.g. they are better able to purchase services such as health insurance and health care on the market, at higher prices), the model predicts that sub-state governments will be forced to compete to offer ever-lower levels of taxation, thus reducing their capacity to 'interfere in peoples lives', in order to attract mobile individuals and capital. What this view misses is that governments actually *can, do* and *should* continue to play a major role in the economy to organize the collective purchase and provision of certain goods and services at lower prices. Now although our societies are committed to the promotion of efficiency, for instance by rewarding successful entrepreneurs, the state's decreasing role as predicted by libertarian models very seldomly occurs. What we observe is rather that the promotion of efficiency really is embedded in our public institutions. It is just that most people do not realize that it is exactly for this reason that the percentage of GDP spent by governments is as important as it is in most social democracies, including federal ones such as Canada and Belgium. Both the redistributive model that egalitarians hold dear and the model of competitive federalism cherished by libertarians fail to explain this fact. Both cannot cope with what is known in economics as 'Wagner's law'. According to this law, the more an economy develops, the more the demand for public goods will increase, thus resulting in an increase in government spending.⁶ On the one hand, the redistributive model's logic would predict that government spending should remain stable over time in fairly well-ordered societies, including in federal regimes (see Miller 2004, Heath 2011). For example, an aging population will not increase government spending as such, as what will happen is only that those who saved for their future will use those savings. That does not represent an increase in spending that corresponds to what Wagner's law designates. The point here is that in a well-ordered society, the category comprised of the 'worse-offs' should not increase substantially, thus should not create pressure on government spending. It would be surprising if a liberal theory of justice would allow that wealth be gradually concentrated in fewer hands, only requiring the lucky few to redistribute to the increasingly large number of the needy. The burden of proof here seems to be on those who endorse the redistributive view. On the other hand, the libertarian minimalist-government model would predict that government spending should decrease over time. Yet, it is a brute fact that both are wrong.

It should start to become clearer by now that we have to break the habit of equating efficiency with libertarian discourses. These theories fail on at least two grounds. First, they assume perfect mobility of firms and individuals, when in reality – and in particular within MNFs – there are significant 'constraints on mobility'. Language and cultural barriers, for instance, will tend to strengthen individuals' and even firms' attachment to a particular community, thereby calling into question their readiness to change location in pursuit of a less burdensome tax regime. Second, they commit to the ideologically inspired fallacy of the 'government as a consumer' (Heath 2009: ch. 4), thereby failing to admit the possibility that a public provision of goods and services can be more efficient than a distribution that occurs through private transactions on the open market. In other words, they overestimate the

⁶ For more on this law, see Heath (2011), although he does not criticize libertarians use of the 'public-good' model of the state: "Over the course of the 20th century, welfare state spending did not just grow along with everything else, but steadily increased its relative share of GDP. This tends to be taken for granted, but is actually hard to explain on either the communitarian or the egalitarian model." (Heath 2011: 37)

choices that people would have on a free market to purchase certain goods and services and underestimate the options available through public provision.

Now before addressing why efficiency is almost always considered ‘not moral enough’ to be included in our normative toolbox, it is imperative to clearly define the concept. The understanding of efficiency that should earn normative credit is that of ‘Pareto-efficiency’, by reference to the economist Vilfredo Pareto (1848-1923). To define the concept and its variants, it is worth quoting Russell Hardin at length:

If you and I have some distribution of commodities, it may be possible for us to trade with each other to make both of us better off. Eventually we may reach a state from which it is no longer possible to enter trades without making at least one of us worse off. Each of our trades is a *Pareto improvement*; the result of one of our trades is to produce a state of *Pareto superiority* over the state before the trade; and the end result of a sequence of trades from which no further trade can produce a Pareto improvement is *Pareto efficient* (Hardin 1993: 464).

As one can see from this definition, reaching a Pareto efficient state of affairs is possible when a given set of goods is available for trade. Interestingly, competences in a federal regime are well defined as they are legally entrenched and delimited – cooperation between political communities creates benefits but not competences. I will come back to the implications of this in the next section of the paper. As for now, I want to show that the Pareto conception of efficiency is ‘moral enough’ that it should be included in our normative toolbox. Pursuing efficiency means that we are aiming at ‘win-win’ situations, or at least outcomes in which there are no losers. In other words, we are aiming to reach a state in which it is impossible to improve the satisfaction of one agent without making another worse off. Understanding efficiency in this ‘Paretian’ sense, offers up a number of normative advantages. First, by disallowing making even one person worse off in order to improve the satisfaction of another – even if the latter would gain more than the former would lose – we reaffirm our commitment to fundamental moral principles about the intrinsic dignity and moral equality of all individuals. Simply put, efficiency is incompatible with the utilitarian ideal of maximizing the total sum of utility by any means possible; according to ‘Paretian’ efficiency, nobody can be used as a means to improve the wellbeing of others. That is why Pareto himself “talked about optimality for his principle”, whereas “economists have tended to prefer efficiency over optimality because the latter has stronger normative connotations” (Hardin 1993: 465). Accordingly, we can say that efficiency is compatible with other normative principles such as equality, dignity, diversity, and so on.

Second, efficiency in this sense eliminates the possibility of ‘gratuitous suffering’. ‘Paretian’ efficiency does not permit discrimination between winners and losers when we allocate resources. It is worth quoting Heath at some length on this point:

From this perspective inefficiency seems much worse than ‘mere inequality’. With redistributive transfers, even regressive ones, the loss to one individual is at least offset by the gain to some other. It is a win-lose transformation. Inefficient outcomes, on the other hand, are lose-lose. Thus inequality has a silver lining; inefficiency has none (Heath 2011: 24).

This way of presenting the concept of efficiency is all the more interesting because one can say that it shifts the burden of the proof on egalitarians professing the redistributive view. This egalitarian view is widely accepted within political philosophy, although it comes in many varieties. What all its variants have in common, despite disagreeing on what is the right *equalisandum* (i.e., ‘equality of what?’), is that the state ought to redistribute something in order to make the inequalities generated by the market more palatable. If that was the right view, the government could just as well do what economists would like it to: tax and send

cheques around to reduce the inequalities that are the outcome of the market's functioning. However, as said above and as the Wagner's law shows, the state does much more as our governments are major economic agents, which the redistributive model can hardly account for. This all adds up to the criticisms that I have addressed to the redistributive view in the first section. Again, the burden of the proof is now on the shoulders of those egalitarians who believe that the state is simply or primarily a redistributive agent.

The concept of efficiency also has a number of advantages that are highly relevant to our ethical reasoning. Unlike perfectionist ethics, efficiency is neutral in the way it tells us how social institutions ought to be organized without relying upon any conception of the good. Moreover, the fact that it pushes us to strive towards 'win-win' arrangements is likely to motivate cooperation in contexts of even deep pluralism – including the many kinds of it we find in multinational states: national, geographical, ideological, and so forth. As pointed out by Heath: "We like efficient social institutions because they do not tell us how to lead our lives. They provide a neutral framework within which we can go out and decide for ourselves how we want to live" (2001: 36).

To this claim however, it might be objected that what appears to be the principle's strength is in fact its weakness: the principle of efficiency may not carry a strong enough prescriptive force. This objection can be called the 'indeterminacy objection', and is well summarized by Russell Hardin: "A strong commitment to paretianism, either for epistemological or for conceptual reasons, is a commitment to indeterminacy of social welfare values" (1993: 465). In other words, too many patterns of redistribution can satisfy the criterion of Pareto efficiency and the principle does not provide ways to discriminate between them. However, the well understood conception of efficiency, which entails that the state is there to correct market failures, such as externalities, can reduce the indeterminacy about how to distribute the burdens and benefits of cooperation, leaving democracy to take care of the choice between different possible arrangements.

As said above, the distribution will not be a libertarian one. That is because those who benefit more from social cooperation, such as big and greatly profitable firms, will have to contribute more. A business will have to pay high taxes on its profits to internalize the costs of its use of many public goods and institutions such as police and security, a public road system, enforcement of legal contracts regulations, the health care system that restore its workforce to full health, free trade agreements, and research for such things as the internet. That means that those who are successful will be rewarded with higher salaries, but that the part of it that they do not owe to themselves will have to be reintroduced into the cooperative scheme that helped to succeed via taxation. This will not annihilate incentives for firms to keep producing more even if it asks them to give up resources to help the poor. Taxation will just represent the fair price to pay for the benefits that come from public goods and services generated by cooperation. Hence, the principle of Pareto efficiency is not leading to such indeterminacy as might appear at first glance. It does not support libertarian-minimalist conceptions of the state, but rather defends a fair distribution of the burdens of cooperation that is proportionate to the benefits that agents get from it. The principle of efficiency is incompatible with the libertarian myth of the 'self-made man' who does not owe anything to the state and society in general and carries a realistic and pragmatic prescriptive force. Another advantage of the principle of efficiency is that it avoids the potential for paternalism that is inherent in philosophical discourses about solidarity, including identity-based discourses. Instead of discriminating between different political identities that people may or may not adopt to decide which jurisdiction is the appropriate locus of justice, or more accurately how competences should be divided between levels of government, the principle of efficiency allows us to think of the division of public-good responsibilities. This idea has been around for a long time in the fiscal federalism literature: "For a public good (...) it will

always be more efficient (or at least as efficient) for local government to provide the Pareto-efficient levels of output for their respective jurisdictions than for central governments to provide any specified and uniform level of output across a jurisdiction” (Oates, 1972: 35). The idea is not to deny that the central government should have responsibilities, especially that of correcting government failures and neutralize spillover effects across jurisdictions. Rather, the point is that we do not need paternalistic and costly nation-building to realize justice in federalism.

From this perspective, the principle of efficiency leads us to adopt a ‘public-goods’ conception of the state – here the *federal* state – instead of a redistributive one. In other words, the pursuit of efficiency will determine strongly which competence will be allocated at which level of government. In multilevel settings, as in federalism, the principle of subsidiarity will often be of great help to divide competences between governments. In short, that principle stipulates that a power shared between levels of government (as in the European Union) is exercised at the lowest appropriate level of governance (Portuese 2011). Although I leave aside considerations on the formation of federations, such as security issues and trading zones (Riker 1964), the framework that I develop is in perfect continuity with the instrumental origins of many federations. I now turn to its compatibility with federalism as a normative idea, and more specifically with the idea of the federal republic, to further develop my alternative to liberal theories of federalism, which are often drawn from the redistributive-statist paradigm criticized in the first section.

3. Pareto-efficiency and the division of competences in the federal republic

I now turn to what I consider to be the implications of adopting the principle of efficiency in MNFs. More specifically, I will try to establish a connection between republican political theory, a prominent alternative to the liberal approach criticized above, and the public-economic model of the federal state entailed by the principle of efficiency.

Although I cannot defend here the connection between federalism and republican theory, I work with the assumption that federalism is the republican regime *par excellence*.⁷ This idea is not new and was championed by the authors of *The Federalist* in post-revolutionary America.⁸ Here, I work with the assumption that federalism, referring to an ideology and not federations as such, *should* be a mutual venture, between political communities (e.g. as federated entities), to reduce vulnerability towards external domination⁹ – as is the case in *The Federalist*. Such external agents can be other states, multinational corporations, or global agencies of credit such as the International Monetary Fund or the Club of Paris.

At the core of republican theory is the ideal of freedom or self-determination as non-domination, which has been developed in contemporary philosophical language by Philip Pettit (2012, 2014), who has built on the work of historians of ideas such as John Pocock (1975) and Quentin Skinner (1998).¹⁰ Pettit has developed the republican theory as an

⁷ In his referential study, Elazar also makes this claim: “Federalism by its very nature must be republican in the original sense of *res publica*” (1987: 107).

⁸ In famous *The Federalist* No. 10, Madison says: “And according to the degree of pleasure and pride in being Republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.”

⁹ Philip Pettit (2010) defends a similar idea on the global level: states should be committed to reducing the vulnerability of one other.

¹⁰ All these authors recognize that post-revolutionary America represents a ‘Machiavellian moment’ in the history of political thought and that the authors of *The Federalist* are classical figures of what is now referred to as the ‘Italian-Atlantic’ or ‘neo-Roman’ tradition of republicanism, the core of which is the ideal of non-domination.

alternative to Rawls' theory of justice. One of the main difference between Pettit and Rawls is that the latter has neglected the question of political legitimacy, assuming that a government imposing a just order was *de facto* legitimate. But as Pettit (2012) has shown, the imposition of a given order is a separate issue, as a benevolent tyrant or enlightened colonialism do not qualify as legitimate for proponents of the republican approach. In both cases, the hurdle comes from the fact that even if those who are in a position to interfere at will refrain to do so, the freedom enjoyed by the subjects remains dependent on the good will of their political masters. Yet, republicans defend a fairly robust conception of freedom that take its roots in the conception of the free citizen in republican Rome (hence 'republicanism'), the *liber*, in opposition to the slave, the *servus*.

Put bluntly, the ideal of non-domination is more demanding than its liberal counterpart, freedom as non-interference. Non-domination requires that agents, individual or collective, be empowered in ways that make arbitrary interferences by others extremely costly, if not outright impossible. In the latest formulation to date, Pettit (2014: 103) tells us that:

the freedom promoted in republican theory requires protections to guard against any power of interference on the part of others, not just to make interference by others unlikely. Rawls thinks that there is a need to guard against interference only insofar as it is a probable prospect, and so he weakens the case for robust insurance and insulation. Hence, political legitimacy requires robust protection against interference by others, likely or unlikely.

Applying this framework to federal states and sub-units entails that the federal principle of equality between the federated and the federal government should be understood as giving the former robust protection against arbitrary interferences, both in its horizontal and vertical relations with fellow governments, in addition to a common protection towards external agents. Each government has to be willing to stand on an equal footing with others and promote non-domination internally as well as externally. In the republican view that I defend, this commitment nourishes a federal culture or spirit that is based on the ideal of non-domination, which in turn requires that the shared-rules (as well as the self-rules) within federalism be designed accordingly to that normative understanding.

However, this understanding of federalism only remains a normative discourse that philosophers can provide to nourish debates about how federal institutions should be designed. In reality, especially in MNFs, normative conflicts as well as conflicts of interests will emerge. Even if we see the federation as a mutual vulnerability-reducing enterprise, there will be competition between political actors and governments to have the means to effectively reduce the vulnerability of their members and to be responsive to their claims and preferences. Hence, there will often be conflicts over the division of competences and fiscal capabilities. That is why many federations develop intergovernmental cooperative strategies to protect the sub-units against potential domination from the central government, such as the Council of the Federation in Canada. Furthermore, there will often be conflicts over the division of competences as governments will want to have as much capabilities as possible, especially in MNFs where national groups will generally try to make their federated government as close as possible to a standard nation-state.

The challenges of competences allocation in MNFs are numerous and, despite the difficulty or the undesirability of finding a one-size-fits-all formula, we need to have normative principles to offer political actors. The diversity of particular circumstances calls for different arrangements, though we nonetheless can follow some normative patterns to divide competences, e.g. public-goods responsibilities, between levels of government. If we

endorse the republican principle of non-domination, the patterns of the division of responsibilities will fall under the category of ‘concordant interests’ or considerations. To define those, it is interesting to quote Pettit (2012: 257) at length:

Concordant... considerations point the participants in an acceptability game to benefits that accrue only to this or that individual or subgroup. Despite the partiality of their relevance to people’s fortunes, these considerations will command a following on all sides to the extent that everyone accepts that it is a matter of convergent interest that the group as a whole should confer that benefit on the sort of individual or subgroup favored... For example, that a benefit would help some while not doing any harm to others – the fact that it would represent a Paretian improvement – may argue on all sides for a policy that promises that benefit. In federalism, the agents are the federated entities and the commitment to reducing the vulnerability of each to domination (to give them the external conditions to be internally responsive to their citizens) suggest that the pursuit of Pareto-efficiency might be an effective way to do so. That is especially true in our non-ideal world where globalization (and phenomena like the ‘Dutch disease effect’¹¹) bring about very uneven development across regions; one could say that we now live in the age of ‘the wealth of regions’, not the ‘wealth of nations’ anymore. Accordingly, if a sub-unit claims competences that are located at the central level because they would help reduce its vulnerability to exogenous forces, we should assess the demand under the light of paretianism. Members of a sub-unit may experience difficulties due to circumstances that are outside of their control and the constraints on mobility that exists in MNFs may seriously limit their ability to choose exit over voice. In such situations, a sub-unit may well borrow money to try to undertake new development strategies to reduce its dependence on solidarity transfers. However, there might be a need for more political power, or competences, to be able to undertake such needed projects. Paretianism will be of great help to assess the proposals that politicians, both at the federal and at the regional level, make to reduce the vulnerability of a given sub-unit. In these cases, a healthy democratic competition between levels of government may be welcome.

However, for that competition to be fair we must pay attention to another issue that is often neglected, which is that governments cannot just decide at will what levels of taxation they will adopt and which public goods and services they will offer because their capacity to do so is often dependent on exogenous factors. Under the republican theory of federalism that I defend, entities are committed to pool their forces to reduce the external vulnerabilities of each region and of the whole. In our non-ideal globalized world and within large federal entities, this requires moving beyond the traditional liberal inter-individual system of ‘redistributive justice’, and to think of fiscal arrangements that take conjectural and inter-regional disparities or vulnerability into account. There is a limit to how much responsibility a government can take regarding the ups and downs that every economically open jurisdiction goes through – although politicians usually take much more credit than they should when things go well and much less when things get messy. Opting for a efficiency-based view, we can assess the policy choices of political actors not through a dichotomy between rightist- and leftist-oriented choices, but rather in pragmatic terms so as to see if political actors have done the best they could give the limitations that they had to deal with.

¹¹ The phrase ‘Dutch disease effect’ was coined in the 1970’s, after the discovery and the exploitation of natural gas in the Netherlands. It describes negative consequences that arise from the exploitation of natural resources on other economic sectors, usually manufacturing. The rise in exportation of natural resources is – all other things being equal – generally accompanied by an increase in the demand of a country’s currency. As a result, regions of the country which depend on investments in the manufacturing sector face difficulties in attracting investors to create new jobs, or just to sustain existing jobs that can be relocated elsewhere if a company cannot cope with rising wages. For example, in Canada, some people in Ontario and Quebec, claim that they are victims of the Dutch disease effect due to the exploitation of oil in Alberta and Newfoundland.

An advantage of adopting this framework within MNFs is that despite a lower capacity for the effective mobility of citizens, at least the most vulnerable ones like monolingual individuals who have much less opportunities, we can thus foster vertical competition between governments. The appeal of combining republican theory with the public-goods approach is that it will introduce incentives for politicians to pursue innovation and to actualize the 'experimental potential' that many people identify with federalism (Oates 1999). To do so, a dose of competition will be a good thing and will not necessarily lead to a decrease in political intervention in the economy. As Portuese (2011: 237) tells us: "fiscal and regulatory competition may bring about either a 'race to the bottom' or a 'race to the top', but they always lead to optimization and thus 'a race to efficiency'." In places like Quebec or Flanders, for instance, the presence of strong nationalist groups often leads governments to compete for more power, so as to increasingly resemble a traditional nation-state. Moreover, this tendency will be reinforced by constraints on mobility and attachment of people to their federated community. As a result, governments are competing to get bigger, not smaller. The political competition of the sort typical of MNFs can actually increase the size of governments (Zax 1989). Thus, competition in MNFs will not lead to a decrease of government's size and the competition may well turn out to be to the benefit of citizens, especially the most vulnerable ones who will be able to count on the ambition of their federated governments to provide them with a generous bundle of public-goods and services. In this framework, the federal government can interfere to resolve government failures at the sub-unit level (e.g., externalities) without being or becoming a dominating agent. The ideal of non-domination supports the sort of strong government interventions defended by egalitarians without having to compromise on the autonomy of federated entities.

This republican framework is in continuity with the Madisonian concept of a "double security... to the rights of the people", which suggests that "the different governments will control each other; at the same time that each will be controlled by itself" (The Federalist No. 51). Madison's argument is that the institutional checks and balances provided by federalism reinforce the self-binding mechanisms to which local governments are subjected. First, by being accountable to their constituencies, government have to bind themselves to track the interests of their constituencies – mostly, to win elections and remain in power. Second, if one government tries to usurp its powers and behave irresponsibly, the federal government can constrain it, or should be able to constrain it, to track the interests of its constituency and to govern with great care to use efficiently its tax revenues.

Before I conclude, I want to stress that the argument I have developed in this paper suggests that republican and pragmatic federalists should embrace asymmetrical federalism. Pareto efficiency is a normative principle just like equality, dignity, or non-domination and its inclusion in our normative toolbox leads us to endorse the public-goods model of the state. Federalism is a common venture of vulnerability-reducing between federated entities. From this perspective, the federal government will have, amongst others, the responsibility to remedy government failures and neutralize spillovers across jurisdictions to ensure that each will not be subjected to external sources of vulnerability. However, that framework does not say which competences should be allocated at what level, which should be left to discussions between federated entities and the federal government whereby each should bring considerations that will be relevant to all. Belgium offers a good example of regular competence bargaining, which adapts to the situation of the regions and communities; as well as an example of how difficult it can be to reach agreement within such arrangements.

In federal deliberative forums, political actors should be allowed to formulate claims to given competences if it helps to reduce the vulnerability of their federated entities, in a world of the 'wealth of regions', under the condition that detaining the desired competence would

not make other jurisdictions or the whole of the federation worse off. Such a limitation derived from paretianism will allow for asymmetrical arrangements if and only if these arrangements reduce the vulnerability of federated entities towards external domination and if it does not make others worse off and thus more vulnerable. In this way, each federated entity will stand on an equal footing with others within the federation without having to subject them all to a uniform division of competences, which might bring uneven consequences across jurisdictions. The division of competences in a well-ordered MNF republic will thus be sensitive to the differences between federated entities and provide principles to regulate the design of the asymmetrical arrangements needed to accommodate these differences.

CONCLUSION

We have seen that the prevailing redistributive view of the state is misleading and that its statist form does not fit federalism. Although it might seem morally appealing, it neglects that *raison-d'être* of states is to remedy market failures, often by thoroughly engaging in the economy themselves. Hence, we do not need as much solidarity and common identities as is often thought to sustain public institutions. Following that of J. Heath, my examination reveals that the principle of Pareto efficiency and its correlated public-goods model of the state represent a morally appealing alternative, allowing us to justify the role that political institutions play and to better grasp how they actually allow us to find a balance between the different values that we hold dear such as equality, dignity, and diversity. The well-understood principle of Pareto-efficiency does not justify libertarian claims nor is it tied to utilitarian ethics. The pursuit of efficiency *should* be the affair of states, especially if we hold egalitarian preferences regarding the distribution of the burdens and benefits of cooperation. In the last section, we have seen that republicanism and its ideal of non-domination, as a rival theory to the liberal theories criticized in the first section, are well equipped to cope with the requirements of the Pareto-efficiency principle, especially when it comes to dividing competences in a way that is sensitive to regional disparities. If we look at the classical example of *The Federalist*, one can see that we can supplement the horizontal competition championed by competitive federalism and libertarian theories by a vertical competition between levels of government to better protect the rights of citizens and satisfy their preferences. Although I have used examples of multinational federations, the same reasoning holds for more 'territorial' federations, as they are also likely to be subjected to unequal development across regions.

By embracing the principle of efficiency and combining it with the republican ideal of non-domination, we can develop a framework that copes well with the instrumental origins of federalism, with our contemporary age of the wealth of regions, and that allows federalism to be sensitive to the multiplicity of regional pluralism. In short, the well-ordered federal republic will be characterized by asymmetrical arrangements and use its inner pluralism as the basis on which to divide competences in ways that are both efficient and democratic.

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