

Which democracy for which differentiation?

From Tocqueville to the EU integration, and back

Abstract

This contribution investigates whether differentiated integration (DI) is democratic on the basis of a theoretical understanding of democratisation writ large. In EU, DI is democratically ambivalent because it includes and somehow promotes particularities; it impacts the equal freedom for all. The paper has the normative objective to put DI in the process-based of democracy and to clarify a constructive, although ambivalent, political role that DI could play to actually reinforce EU integration under the condition of being the reactive political empowerment. Also, the objective is explicative: the paper intends to draw some parallels on mechanism of democracy (equality and freedom) and how DI is subject to a similar logic. In order clarifying what lies behind DI in terms of democracy, the paper applies the “classical” view of Tocqueville’s democracy and presents a cross-reference at historical, conceptual and political dimensions. Tocqueville is useful since he designed democracy as a dialectical and ambiguous tension between equality and freedom. Such tension enlightens the debate between integration and differentiation but also allows to put EU’s DI paradoxes into the perspective of the democratic potential domination.

Keywords: Differentiated integration, European Union, democracy, Tocqueville, domination

Résumé

Cette contribution examine si l'intégration différenciée est démocratique sur la base d'une compréhension théorique large qui nous est donnée par Tocqueville. Dans l'UE, l'intégration différenciée est démocratiquement ambivalente vu qu'elle inclut et promeut les particularismes et qu'elle impacte l'égale liberté pour tous. Cette contribution a pour objectif normatif de placer l'intégration différenciée dans le processus de la démocratie et de clarifier le rôle politique constructif, bien qu'ambivalent, qu'elle pourrait jouer pour renforcer l'intégration de l'UE si toutefois elle se fait selon une réappropriation politique. L'objectif est également explicatif : cet article entend établir des parallèles entre les mécanismes de la démocratie (égalité et liberté) et la manière dont l'intégration différenciée est soumise à une logique similaire. Afin de clarifier ce qui se cache derrière l'intégration différenciée en termes de démocratie, l'article applique la vision « classique » de la démocratie de Tocqueville et présente une référence croisée aux dimensions historiques, conceptuelles et politiques. Tocqueville est utile car il a conçu la démocratie comme une tension dialectique et ambiguë entre l'égalité et la liberté. Cette tension éclaire le débat entre intégration et différenciation mais permet également de mettre les paradoxes de l'intégration différenciée de l'UE dans la perspective de la domination potentielle de la démocratie.

Mots-clés : Intégration différenciée, Union européenne, démocratie, Tocqueville, domination

Introduction

Is differentiated integration (DI) democratic? Does it promote or impair democracy? Does it push toward a more democratic equilibrium at European level? Or does it symbolize the withdrawal of States from European unity? In the case of the EU the question is twofold: “should DI be valued as a way of allowing each national democracy greater freedom of choice over integration? Or does it devalue ‘fair schemes of co-operation’ at the European level, whilst complicating the evolution of shared democratic politics, deliberations and institutions?” (Leruth & Lord, 2015, 6). In other words, DI is ambivalent because it includes and somehow promotes particularities. It is in tension with the pole of the common (White, 2010). DI puts pressure on an equal treatment for all and claims for distinct paths of (dis-)integration. It may have such deep effects due to the assessment of DI impacts on democracy that one should focus not only on institutional engineering or political strategy, but also on polity and core principles of democracy. Therefore, what is at stake here is the impact of DI on equal freedom for all (Eriksen, 2019).

This paper puts forward Tocqueville’s thought on democracy to better understand EU’s DI logic. This is mainly because Tocqueville characterised the dynamic of democracy in terms of tensions between equality and freedom (Tocqueville, 1835, 1840). Such a use of his thinking is by no means an authoritative argument though. This reference rather aims to put a contemporary issue in a wider and more informed background of the theory of democracy. Unlike other classical authors (e.g. Montesquieu, Rousseau, Kant), Tocqueville was absolutely certain that the political modernity would be shaped according to a democratic society. This historical and political conviction makes his thinking rather topical, while his scepticism about an

inherent democratic equilibrium warned his contemporaries about the natural democratic paradoxes, and this is still valid for us today. His “position” is particularly relevant in the context of the EU: if one takes the classical distinction of Marshall between civil, political and then social rights and duties (1950), it seems that the EU has mainly secured the civil aspect of equal rights but remains insufficient on political and social aspects. Tocqueville precisely analysed this transition from a civil to a political democracy. To do this, he shaped a democratic dynamic regarding an “egalitarian” society that needed to be caught up with the principle of “freedom”. However, according to him this position could also reverse into a natural domination either by the “equality at all cost” or by the individualistic withdrawal. As this article will make clear, this relation is in fact applicable not only to democracy in general, but more precisely to the tension between integration and differentiation. Indeed, the analysis from democratic ambiguity conveys valuable insights and reveals DI’s uncertainty. The idea is therefore to show how much DI is both consistent and problematic with the logic of democracy from a Tocquevillian point of view.

In line with Fossum (2015) and Lord (2015), the main question of this contribution is to investigate whether DI is democratic on the basis of a theoretical understanding of democratisation writ large. It has the normative objective to put DI in the process-based of democracy and to clarify a constructive, although ambivalent, political role which DI could play to actually reinforce EU integration under certain conditions. Also, the objective is explicative: this paper intends to draw some parallels on mechanism of democracy (equality and freedom) and explains how DI is subject to a similar logic. This second objective might be more limited than the first normative one since the difference between contexts requires applying cautiously the philosophical view on our reality. Nevertheless, the Tocqueville’s thought allows us to assess and

enlarge the mention of democratic principles sometimes underdetermined in European studies or just defined as a political view. His thinking could thus fruitfully contribute to make us understand what lies behind DI in terms of democracy.

In EU studies, differentiation in itself is subversive since it strikes the integrative “common sense” and makes the case for an unequal treatment between Member States. It has clear links with the debate between particularities and commonalities and how to integrate diversity of European people without replicating the uniformity of nation-state model. Such question is taking up in European studies by democracy literature (see e.g. Nicolaidis, 2012, Bellamy & Castiglione 2013, Cheneval & Schimmelfennig, 2013). In a more classical view, DI raises also a normative question for European democracy (Eriksen, 2019, 16) because it deals with the principle of equality. This is because DI signifies that the rule is not decided, nor applied or implemented uniformly and simultaneously to a bordered territory. It is a non-identical –an unequal– validity of EU legal rule (cf. Schimmelfennig, 2019). The negative formulation in this first definition is meaningful. “Differentiated integration” refers to an evolution against the background of an integration that has for a long time been based on the idea of an “ever closer union”. To explain this evolution, scholars consider that DI was present since the beginning of the integration (Hanf, 2001) but moves up in the research agenda as well as in the political discourse remarkably after the Maastricht Treaty. In concrete terms, DI is in line with a multi-level and multi-centric character that has progressively challenged any homogeneous management. DI would thus attempt to explain integration less in unitary terms, and more in diversity terms; whether it is a national, sectorial or political diversity.

Does it therefore mean that differentiation is an opposition against an equal treatment? As this contribution intends to present, differentiation could rather be read

as a reactive political empowerment. DI is not the heterogeneity but it is the potential inclusion of differences into the integration. It could definitely work in favour of democracy, but to do so it needs to stay in an integrative, bottom-up and aggregative logic.

This article does not strictly follow a two part –theoretical and then practical– plan, which usually intends to square the circle. Both democracy and EU differentiation will rather be cross-referenced in a back and forth movement. The following section presents Tocquevillian’s approach of democracy from the triple hermeneutical, conceptual and normative point of view. Each approach is directly used to engage with EU’s DI and to draw both understanding and consequences of it on a wider democratic debate. The third section completes this analogy with the democratic predicament, i.e. the reverse to a dominant, but legitimate, social power. And finally, the last section comes up with a conclusion.

A comprehensive and dynamic reading of Tocqueville’s democracy: The dialectic of Equality-liberty to understand differentiated integration

Tocquevillian’s topicality in the European context

Why referring to Tocqueville? With *Democracy in America*, Tocqueville remains one of the most important authors on democracy (Smith, 2012, 217) both to understand it as a comprehensive society (DA, I, A, 3) and to include the contradiction of democracy by itself. Despite the insightful thinking of Tocqueville, it might be this comprehensive and “societal” view that makes Tocqueville a forgotten author in European studies, except maybe on the federal issue (Siedentop, 2000, 2007, Swenden, 2007) and

sometime on the question of democracy (Nicolaïdis, 2005, Jaume, 2010), even though it is quite limited. It is nonetheless clear that the EU falls short of this complete democracy and is not a “society” but, at most, a “society of societies” (Montesquieu).

Regarding DI, in a nutshell, one could notice the analogy between democratic logic of an equal treatment completed and shaped by a free political expression of diversity on one side, and a European unitary integration followed by a differentiated and politically relevant integration on the other side. The main point to read DI in the European polity from a Tocquevillian perspective is to make differentiation the “political catching up moment”. This is possible because the interest of Tocquevillian’s thought is to insist on the normativity of participation in democracy. This article will come back to that later. But before that, it is important to formulate some methodological considerations.

Regarding contemporary Europe, Tocqueville might be less relevant in a direct topicality than in an indirect one, i.e. it would be absurd to postulate a “Tocquevillian Europe”, but it could be more beneficial to adopt his reflex that any reference to democratic principles involving a larger normative and social condition. But this implementation should rather follow a philosophical path that being inherently limited to a theoretical and indirect viewpoint on the current situation. Or, to put it differently, in the same way that Christopher Bickerton (2010) referred to Madison in order to explain and criticise EU institutional fragmentation and Multi-level governance, this article elaborates on Tocqueville to analyse differentiation from a democratic dynamic of equality and liberty.

It remains that the “indirect” topicality is not a “historical” distance. As Skinner underlines (1969, 2002), to bring a classical author up to our present exposes surely oneself to anachronism and to a so-called coherence. Nonetheless, if context matters,

they can always be compared, but also enlightened and criticized by one another. More precisely, the EU has the effect to modify the traditional political notions of democracy, legitimacy, community, etc. (Pélabay, 2018, Bellamy & Lacey, 2017). The reference to Tocquevillian's insights allows to deepen the notion of democracy and to present its internal dynamic that is inescapable in any mention to democratic principles. But this implementation remains prudent and formulates analogies and parallels in a context of political philosophy understood as a hermeneutical, conceptual and normative language (cf. also Boudou, 2016). This article describes these three elements and connects them in the European debate about differentiated integration.

Hermeneutically: DI in a large historical view

The main tocquevillian breakthrough is to understand democracy as an "entire society". But how can one explain it? The hermeneutical approach, centred on the interpretation of democracy, does not try to shape a clear and ultimate definition. On this subject Tocquevillian scholars have a recurrent debate on how many definitions of "democracy" one can find in Tocqueville's writing: it varies between one to eleven (Schleifer, 1970, Lamberti, 1983). This indicates that democracy as a whole is dynamic, elusive and reversible and that the author tries not to grasp it, but to unveil it and meet partially its movement (Lefort, 1982). Any definition of democracy is a conflict between different definitions.

This is not exactly a workable definition but what matters are the double meanings of it in the social reality: a "democracy" as institutions and rights which justifies the historical context in the political modernity according to Tocqueville. And a "democracy" as a process-based dynamic. When it comes to the latter, it is necessary, as

some would say, to keep in mind the process of the “democratisation of democracy”. This process should be connected with what Lourme calls “democratic transformationalism” (2014), meaning a transformation from a direct to a civic and representative, and then to a social meaning of democracy (Colliot-Thélène, 2011). Nowadays, the progression and mobility of democracy is extended to the European context (Schimmelfennig, 2010, Cheneval & Schimmelfennig, 2013, Eriksen, 2009, 2017) and to the global level (Lourme, *ibid.*, 159). The perspective is thus historical in two senses: it is progressive (or, always “transitional”) and referential. Also, Tocqueville provides a view on what is fixed and stays over time, i.e. the framework and the logic (equality-liberty, centralisation-decentralisation, efficiency-participation, cf. also Dahl, 1994), and what is malleable and changes over time, i.e. the extension, the balance, the distance.

In that context, the principle of equality that Tocqueville diagnoses at the core of democracy has both meanings: a main democratic value and a social progress. In some way the EU takes part in this democratic referential logic by establishing equality in the treaty as a core-value (article 2 TUE) and as one of its main functioning rules through the non-discrimination principle. On this matter, the equality principle is present in the institutional representation of Member States and peoples in EP, in the Council, in the college of the Commission, etc. and this is specifically consistent with tocquevillian equality since it means both a sameness of actors’ condition and at the same time a de-differentiation (or an uniformisation) of very different national situations.

The EU is also pushing forward the process of democracy since it is supposed to defend, protect and observe equality between European citizens, men and women, Member States, in its action on international scene, and ensure equal opportunities,

treatment, pay, etc.¹ This extension of equality beyond traditional national borders in the EU is intrinsically and historically innovative since it produces new transnational relations between Europeans and individuals and not only between members of a national society (Lacroix, 2009, 154). Surely, mentioning equality is not enough to make the EU a democratic body as such. But what matters here is that any references to democratic values or principles, although limited in its concrete realisation, will impact socially and normatively the structuration of a society.

Considering differentiation more closely, how does this historical view help to make sense of the DI in light of the European integration when democracy is at stake? Usually, differentiation in the EU relates to EU policies that have different legal validity and are differentially implemented on a horizontal, i.e. territorial dimension, or on vertical, i.e. power level dimension (Leuffen *et al.*, 2013), or on a sectorial dimension (Webber, 2018). But what is common to the majority of scholars studying differentiation is that historically speaking integration came first and differentiation was second and arose only at the time of Maastricht treaty. The EU was more “a single institutional order” before 1992 than after, “horizontal differentiation was, until the 1990s, by and large non-existent”, while differentiation as a whole was “mainly seen as (temporary or marginal) side effects of negotiations on bargaining about ‘more integration’” (Leruth & Lord, 2015, 1, Leuffen *et al.*, 2013, 16, 2015, 2, for an opposite view, see Bartolini, 2005).

The main point is not only a chronological aspect of DI. The point is also to make sense of this chronology by the idea that differentiation occurs against the background of integration. How can we explain that? We know that the first formal occurrence of DI

¹ Cf. respectively articles 9 TEU, 2-3 TEU & 8 TFEU, 4.2 TEU & 244a TFEU, 21.1 TEU, 157.3 TFEU, 153.1 TFEU, 157 TFEU.

appears in the Single European Act (SEA)² and was present before the treaty of Maastricht with the cases of e.g. the British rebate³, the European Monetary System or the Schengen Agreement. But the Maastricht treaty recognises first partial or complete “opt-out” of the United Kingdom and Denmark on Economic and Monetary Union and on defence policy for Denmark. Scholars started to acknowledge DI seriously when it became treaty-based or legally formalized from the core countries. Indeed, scholars connected DI with the disclosure of opt-outs, opt-ins, enhanced cooperation (in Amsterdam Treaty) and with the preparation of “big-bang enlargement” (Leruth *et al.*, 2017).

This view is fully consistent with the Tocquevillian historical perception. His idea of a society built in a democratic context makes equality, unity and centralisation come first, just like EU integration came first, before the differentiation “agenda” and before DI gained visibility. Actually, his historical point is that integration needs, in the context of political modernity, an equal treatment to be sustainable because integration means to settle an equal condition between different parts. It is only from this equal condition that a claim for differentiation (for liberty, according to Tocqueville) can occur. But both equality and liberty are not established at the same. This distinction differentiates him from e.g. Rousseauist view. Still, from a long-term perspective, Tocqueville was convinced of the priority of equalisation and (national) unity in modern democracy, even though he overstated his case.

Somewhat, the main theories of European integration (intergovernmentalism, supranationalism, constructivism) use the same line of historical thought: a priority to

² Article 8c of SEA (now 27 TFEU) states that the Commission could provide derogations that “must be of a temporary nature and must cause the least possible disturbance to the functioning of the internal market.” Cited in (Leruth & Lord, 2015, 2).

³ The British rebate is a complex financial mechanism that allows UK to reduce its net contribution to the EU budget. It was negotiated by Margaret Thatcher in 1984 and has been reconducted in every multiannual financial framework since then.

unity. They avoid the question of differentiation for a long time and debates about the final form that should guide EU project. In the EU context according to Vivien Schmidt “uniformity is assumed good for its own sake because it promotes integration whereas anything else could represent moves backward into fragmentation and ‘dis’-integration... [therefore] for the EU to advance, it would be best served by doing so together at the same pace in the same way” (Schmidt, 2006, 16). In the Tocquevillian idea, such a move toward “uniformity” as Schmidt calls it could be explained by the fact that the European context refers to the general principle of equality. The reasons for that are simply because the nation constituencies are democratic (Schmitter, 2007, 2) but also because democracy in the political modernity is the main model of polity association (cf. DA, I, introduction, see also Schimmelfennig, 2010).

It is obviously too soon to call the EU integration a kind of “democratisation” and, again, the current argument does not mean that any integrations (by far, the European one) aim to produce a democratic society as such. But the point with Tocqueville is to understand “democracy” as a large historical context that characterises European societies. With that in mind, the process of integration could be explained by an “equalisation” development, meaning to bring national economies and societies closer to each other on the basis of their similarities and to make interdependence and association between them viable. If the reference to democracy is the primary historical condition, therefore differentiation is in the European integration naturally secondary since differentiation is, as this article states below, a reaction toward integration. Of course, differentiation remains a “persistent feature” (i.e. not temporal) of integration (Leuffen *et al.*, 2013, 26). But, historically, it came visible and meaningful after a deep integration.

Conceptually: the dialectical tension between integration and differentiation

Then, as a second step, if the hermeneutical and historical reading is ensured and kept in mind, a more practical and dialectical reading could focus on the conceptual logic. From a Tocquevillian perspective, the main parts in which democratisation of a society should be evaluated are threefold. Democracy is simultaneously a political regime (sovereignty of the people), a specific society (structured by equality as a principle, a feeling and a value) and, as discussed before, a historical development (its process and reference). Conceptually, it means that *democracy is a society organized on a dialectical tension between equality and freedom* (Aron, 1967). This is the essence of democracy for Tocqueville and it is the key element of our democratic understanding of the DI in the EU.

In Tocqueville's idea the essential point is that equality and liberty are related in such a way that more equality is undermining liberty, and the other way around. This is because equality tends toward uniformity and conformity and consequently put pressure on diversity; while liberty is the ability to produce free and specific autonomy, which is in itself different and could destabilise homogeneity. The analogy between the EU integration and differentiation is possible since Tocqueville, in his conceptual tension, links together equality, centralisation and depolitisation (individualistic withdrawals from society) on one side, freedom, decentralisation and politicisation on the other side. The main point here is thus to draw a parallel between integration and homogenisation or centralisation, but also to match differentiation with (re)politicisation and decentralisation.

As a result, what are the consequences for understanding DI? The conceptual logic could be connected with the historical point of view. Not only the European project

heads mainly toward a uniform *acquis communautaire* during the three first decades before leaving space gradually to differentiation (Leruth & Lord, 2015, 2). But this is also clear from a conceptual point of view: integration is logically first and differentiation is second, simply because one has to differentiate itself from an integrated basis. It is clear that the European project occurs in a context of national heterogeneity, but as soon as the integration is on, it moves toward centralisation and equalisation, while differentiation will then decentralise power.

The conceptual understanding adds to the democratic dialectic between equality and freedom the tension between centralisation and decentralisation. To compare with Tocqueville's idea and to echo the social contract logic (which is closer to a kind of "prisoner's dilemma"), equality centralises the power because "each one believes that all the prerogatives that he concedes to the sovereign are taken away from his equals" (DA, II, D, 3, 1204). In the integrative logic, actors need a third party to avoid free riding since for Tocqueville the willing to equal treatment is more often a hatred of inequality and a reject of privileges left for others. In the case of the EU, centralisation does not produce a "sovereign" as such, but agencies, treaties and core members (Scharpf, 2009, 15, Leuffen *et al.*, 2013, 10). In the same logic, adhesion of new member states does not allow them to be exempted from a part of the *acquis communautaire*. The integration formalises a neutral and equal treatment and transforms the heterogeneity (Chopin & Lequesne, 2016, 538, 532).

Conceptually, integration is prior to differentiation and weakens diversity, just as equality is prior to liberty for Tocqueville and modifies heterogeneity. But what matter is the dialectical link between both principles: it is not only the fact that primer uniformity undermines the chance to claim for diversity, it is also important to focus on the systemic link between principles. This specific need appears clearly on DI issue:

differentiation is a valid, democratic, claim for diversity as long as it occurs in an integrative and institutional context. In the EU context thus, the dialectical link is the fact that differentiated integration (and not differentiation alone) takes place fundamentally between the norm of an “ever closer Union” and the demand for exception and specific treatment. This position is elaborate e.g. by Leuffen *et al.*: “the EU is not ‘many Europe’s’ with task-specific jurisdictions each having their own organization. It is one Europe with an organizational and member state core but with a level of centralization and territorial extension that vary by function” (2013, 10). In their view thus, DI makes a flexible link between the core and the variety.

A Tocquevillian view allows adding that the link has a dialectical aspect since core homogeneity and claim for differentiation undermine each other but need each other to be legitimate: integration logic needs differentiation as a lubricant for everyone to reach the same goal, although at a different pace, and the logic of differentiation needs a common basis against which it is possible for one to demand particular treatment and express variety while remaining a member of the group.

The dialectical connection in this context means a system of social transformation: equal integration transforms irremediably the expression of diversity. With Tocquevillian and contractualist insights, the free choice to join the EU with the accession of an equal treatment leads then to reconsider what signifies freedom from an inner perspective, i.e. a freedom that is not merely a self-sufficient independence, but a need to associate and commit (and not just consent) continuously, and to detach from an equal basis. In short, the accession to an equal treatment at European level engages another kind of (co-)sovereignty (cf. Ferry, 2005, 2010).

Therefore, DI is not the same as “heterogeneity” which refers rather to the historical background of nations-states that might demand different treatments when

they are members of the club. DI –unlike “differentiation”– is precisely the inclusion of diversity into the integrative logic of the European project. In a way, this idea normalises historically and conceptually DI under a wider democratic debate: in the same way that equality comes first in a heterogeneous context and modifies (and undermines) the free independence, stabilises integration, connects different interdependent national actors and creates new kind of decision-making. It is only from there that a relatively integrated body could handle a treatment of differentiation.

Normatively: DI as a political expression of opposition

If this vision presents a conceptual and historical mechanism, what are the consequences on a political and normative level? To put it simply in a Tocquevillian framework, the differentiation is a political claim against the background of a depoliticized centralisation. Why is that and which dynamic is at stake here?

In the Tocquevillian ideal-type of democracy, the dialectic between equality and freedom entails a logic of depoliticisation and repoliticisation. The main objective of democracy is thus to keep “political freedom” alive. According to the author indeed, democratic society has the tendency to weaken the political involvement and the sociability. Democracy is more likely to produce individualism than solidarity. Why? Because the principle of equality puts individuals on the same level but does not connect them (Manent, 1982). The prime nature of democracy does protect the (“liberal”) rights of individuals, while it does not necessarily ensure the (more “republican”) duties of citizens (Lamberti, 1983, Audier, 2008). Of course, the first association is a political initiative and is the genuine “equal freedom” moment. But, then, the expression of freedom is the continuous political commitment and is never fully

ensured. It is the normative dimension of democracy otherwise freedom would be contradictorily imposed.

On a new equal basis that harmonizes and depoliticises, the main democratic issue is to re-produce social links and re-politicise society with “unruliness” [*indocilité*] (DA, 2, 1193). The normative point is therefore an argument in favour of political freedom as the milestone that keeps the democratic society balanced. Freedom disrupts the first equal structuration and expresses political opposition. This is where Tocqueville is different from authors like e.g. Locke or Rousseau: it is not the “consent” of a unique social contract moment that is important, but a continual commitment in socio-political actions, i.e. a repetition of the contract. That is why, within a democratic society, freedom to express, to associate, to commit, is so important for the author.

Freedom is a repolitisation against the political disavowal that democracy is more likely to produce. Clearly, this normative dimension of politics refers to a political “catching up with” the social and economic development. Although this adjustment is always ambiguous for Tocqueville as developed in the next part of this article, he puts forward a moral call for a political involvement in the name of a healthy society. Normatively speaking, his take-home message is that democratic society has always a deficit of endorsement and should be politically completed.

Now, how can this normative framework clarify democratisation of the EU in light of DI dynamics? This paper assimilates differentiation with the expression of freedom and argues that DI is rather a intensification of democratisation than a crisis of integration. The next section focuses on the uncertainty of this path. But before that, one should elaborate on the normative reading in order to draw some analogies to the present DI question.

The politicisation and the logic of “catching up with” are common in theory of democracy and no doubt that they are particularly relevant for the EU (see e.g. Delmotte, 2005, Ferry, 2010, Eriksen & Fossum, 2011, Fossum, 2015, Tocqueville, ORR, 1856). From the tocquevillian point of view, it is clear that the European integration process has been conditioned to a “depoliticisation by law” and a “cooling down” of political passions in order to build a market and associate technically and efficiently on economical matters (van Middelaar, 2018, 19). Integration needs (but also produces) depoliticisation. Then, the political catching up (or the “politicisation”) with the economical integration has emerged in the 1990s, in the course of a progressive democratisation of the EU.

For EU scholars thus, differentiation takes place within this political moment of EU democratisation: it is the reaction concerning a uniform and common integration. Differentiation has occurred, e.g. in the 90s but not only, through “politicisation” understood as institutionalisation, polarization and agenda setting (de Wilde, 2011). In that context the EU evolves “from a permissive consensus to a constraining dissensus” (Hooghe & Marks, 2008, Down & Wilson, 2008, but see *infra* and Van Ingelgom, 2014). Of course, this politicisation was in itself differentiated in terms of matters, actors and timing (de Wilde *et al.*, 2016). But more importantly, the politicisation had the effect to produce further demands for differentiation (Leuffen *et al.*, 2013, 266, 2015). Indeed, for these scholars, politicisation in general slows down harmonized integration since it reduces the opportunity to cooperate deeply and represents a national or a sectorial sensitivity that claim for differentiation.

In Tocquevillian terms, the political democratisation of the EU completes the prime moment of “equal association” by a “free association”. At first, the interdependent member states face same challenges and threats. They shape a “community of fate” with

a feeling of similarity (Beck, 2006, Morgan, 2007, 36-37, 2018). Then, secondly, political commitment allows a reinvestment and tends toward a “chosen community” inevitably more polarized and differentiated.

But Tocquevillian reading adds something to the contemporary theory of integration and differentiation: democracy is not only the political side of the society. At the same time it is also the constitution of this equal basis. Thus, from a more comprehensive view of democracy, “politicisation” is not merely agenda setting or polarization. It means also to take heed to the power and social circumstances and, from this awareness, to involve itself. Politicisation signifies then a change in status that allows individuals and society to transform into citizens and association. How this transformation could occur? Tocqueville is less interesting for his solution than for his question. But one could still refer, albeit carefully, to his idea of decentralisation. He was particularly making the case for local liberties as a secondary starting point that in turn develops associations and engages a pedagogical civil commitment. This decentralisation is no drawback for the author when it remains in the context of a larger association; it is a guarantee to produce a deeper support.

At the EU level, in terms of “political catching up with” similar-only, depoliticized national actors, the Tocquevillian view considers that “political freedom” is not arguable without domestic endorsement. In other words, much as the reference to equality tends toward centralisation of power at the EU level, the expression of a political choice should root itself on decentralised actors (national constituent, citizen associations and initiative, etc.). When DI takes into account national singularities (horizontal differentiation) or policies particularities (vertical differentiation), it could well make the case for progress of democratisation of the European integration. It ideally balances a chosen integration and an acknowledged difference. From this perspective,

differentiated integration is not the symptom of an integration crisis; it is rather a sign of democratisation of the European project.

The previous developments lead us to several provisional conclusions. The Tocquevillian approach provides us with more than a simple conceptual analogy. It highlights the social and political consequences of the normative reference to a comprehensive democracy. The principles of equality and unity engage a centralisation of power at the expense of a political project. In this context DI takes place in the timing of the democratisation of European integration that demands more differentiation as a political catching up. By promoting politicisation, DI balances the European integration through a transformative path from an equal association to a free association, from a community of fate to a chosen community, from a depoliticised decisions to nationally and locally endorsed decisions respectful of particularities that has the effect to politicise the core. The (re-)politicisation occurs through social links, chosen association and expression of differentiation.

Reversibility and predicament: democratization as domination

Beyond the Tocquevillian diagnosis of what DI means for the EU democracy, it is relevant to understand the reversible process: the democratic domination, paradoxes and drawback, and the position of DI within such involution. No doubt that if the EU refers to the democratic logic, it will be subject to its dilemmas and predicament. Here Tocqueville is able to make sense of these dilemmas and see how to overcome them.

The despotism of democratisation

In Tocqueville's view, politicisation is one of the main milestones to complete democratic society. But this politicisation does not insure a certain development according to Tocqueville. Rather, it is a predicament, an ambiguity. The idea here is that differentiation in the EU occurs in the context of this democratic predicament, which is thus potentially able to turn into domination. It could lead either to a chosen community and a singular self-determination that acknowledge interdependence or to an unequal treatment, (self-)exclusion and absence of participation. First, how can we understand this predicament and then how can we face it within the EU?

For scholars like Fossum or Eriksen who studied "congruence, autonomy and accountability" as understanding of democracy (2000, 2011), it is clear that differentiation is a kind of democratic incongruence that varies by function and space. Democratic incongruence is "when citizens are affected by decisions that are beyond their control" (Fossum, 2015, 802) and this is linked to DI since, as Eriksen puts it, differentiation is basically the exercise of an unequal freedom. As DI "involves power asymmetries ... it can amount to a form of dominance" (2019, 11). Being unequally free, even in case of self-exclusion, disrespects democracy and opens the door to domination. Tocquevillian approach definitely agrees with such a view since it puts equality as the milestone of democracy. However, the input is elsewhere: equal freedom carries also dominance effect.

The Tocquevillian view characterises the democratic predicament in two ways: democracy may produce either a de-differentiation that ends up to alienation, or a desire to independence that provokes political withdrawal and self-exclusion. This is because the democratic principles are two-sided according to Tocqueville: equality "tends to elevate the small to the rank of the great [or] leads the weak to want to bring

the strong down to their level" (DA, I, A, 3b, 89). So, it signifies a broad emancipation or a de-differentiation. Liberty is also ambivalent. It means either political association in order to produce determination or political disavowal and national/individualistic withdrawal. Development of democracy for Tocqueville could be thus "upward or downward".

The specificity of the dialectical link between both principles sheds the light on the fact that it is the de-differentiation that favours political withdrawal. In the democratic context, domination is neither merely arbitrary interference (Pettit, 1997), nor simply legal issues. It is included within the democratic practice. In Tocquevillian terms, the "mild" and "peaceful" democratic servitude "does not tyrannize, it hinders, it represses, it enervates, it extinguishes, it stupifies" (DA, II, D, 6, 1252). The majority imposes its decision against the resistance of the minority. Equality, through uniformity, alienates or "estranges" ("*méconnaissance*") citizens and rulers in front of their own power: "democratic man bows down before an authority that he himself produces but that he does not recognize as coming from him" (Jaume, 2008, 80, cf. also Jaume, 2010 and DA, II, A, 2). In other words, while democracy needs a political commitment and an expression of differentiation, it undermines the access to these solutions.

The EU paradoxes as democratic dilemmas

The predicament means that the democratic basis and solutions could always turn into their contrary because of the very dynamic of democracy. But, additionally, the important point is that differentiation in the predicament context is not only a question of inclusion or exclusion. It is instead an in-between position where integration provides a basis of equal treatment, but where difference is either undermined by unity

or is a way to withdraw from the common and supposedly take-back national control. What does it mean in the EU context? The question is to elucidate what paradoxical consequences of domination are brought with both democratisation and differentiation. Democratic domination at EU level occurs in the context of the transitional democratisation and is marked either by de-differentiation, or by undermining political ability of actors due to (self-)exclusion. This paper considers the democratic predicament regarding DI firstly at the Member states and institutions level, and then at the citizen level.

One of the main vehicles to democratise and politicise the EU has been the extension of the qualified majority voting (QMV) at the Council of ministers. However, Member states vote but rarely, as it is widely known (Wallace, 2006). The main process follows a consensual rather than a majoritarian pattern (Lord, 2000). Stephanie Novák has shown that this consensus should not be associated with agreement, but rather with “conformism” and “blame-avoidance” in the context of accountability: silent minority, fear to make opposition visible or the possibility to be outvoted drive decision-makers to avoid opposition and differentiation expression (Novak, 2011, 2013). This “consensual conformism” is very consistent with the democratisation effect of a depoliticised context as Tocqueville described it. A depoliticisation that prevents political actors from expressing their dissent, or only in the case of highly politicised issue in the domestic context (Leuffen *et al.*, 2015).

In this classical case, more democratic power (through votes) does not provide more room for differentiation claims. Moreover, the absence of differentiation entails political disavowal and, concurrently, “estrangement” effect. De-differentiation has a kind of ‘alienation effect’ regarding a “credit-taking” and “blame shifting”, frequent in the EU context. “On policy issues, national leaders tend to blame Europeanization for

unpopular policies because ‘the EU made me do it’ and to take credit for the popular ones without ever mentioning the EU” (Schmidt, 2009, 23, 2013). The latter has been mostly true during recent financial crisis (Brack, 2015), whereas the former has been particularly used during Brexit campaigning. The specificity of “credit-claiming” and “blame-avoidance” in the case of the EU is that they are not merely electoral motivations as traditionally analysed (Weaver, 1986). In the council context, leaders are fully part of the decision and cannot just opt out without being a stranger to a part of them, which is a very deep non-commitment.

More systematically, it is possible to consider several phenomena that shows the difficulty to integrate inherent opposition and contradiction when democratisation progresses. Let’s engage first with vertical differentiation (i.e. according to policies), then with horizontal one. In line with the previous case of the QMV, treaties in order to ensure more democracy have strengthened the EP. Nevertheless, EP remains excluded from Eurozone decision (for some integrative propositions, cf. Piketty *et al.*, 2017) and the Eurogroupe meetings are still an informal and discursive-only body led by tacit rules completely unchecked (Bickerton, 2016, 219-222). Accordingly, the “ordinary legislative procedure” supposed to integrate EP more in-depth ends up in a growing of time with “trilogue” settlement, at the expense of accountability and participation of small party representatives (Dehousse, *et al.*, 2011). In this case too, what is paradoxical is that the expected politicisation produces in fact less visibility and less political endorsement by political actors.

In the same sense, democratization through transparency and access to documents overburden information (Schmidt, 2013, 16), while the accountability effort of the Commission is paradoxically ineffective and less readable since it remains internal and across institutions (Wille, 2010). Another path to democratise the EU has

been the inclusion of national parliaments. This was a clear opportunity to have an expression of differentiation. Yet, although promising, it has the main visible effect to de-differentiate and reproduce inequalities between national parliaments in an informal and hidden manner (Fossum, 2015). Indeed, the argument of subsidiarity seems to have the function to solve democratic deficit but has no real decentralized effect. Almost no European decision has been in fact corrected for subsidiarity reason so far (Barroche, 2012, 2014). These cases grasp the reverse effect when including differentiation into integration and show paradoxical auto-limitation of democratisation

Now, in terms of horizontal differentiation (i.e. along countries), same sorts of ambiguous effects of democratisation are analysable too. Formally, the question is less about strict equality and more about freedom of decision and association, i.e. it is more about the lack of possible commitment. The case of Eurozone countries versus EMU members without euro exemplifies this tension between (more) equal States that put pressure on self-determination capacity of the second-class others (Fabbrini, 2016). Although temporal or chosen, such differentiation freezes for a period of time the power in the hand of the core members or those in favour of the status quo (Schimmelfennig, 2019). A similar situation is problematic regarding the enlargement: there is a kind of democratic negative externalities when integrated countries produce decisions that impact non integrated or differentiated ones. In line with some scholars that have described the fuzzy legislative limits as an “imperial” situation (Zielonka, 2006, 2013, Gravier, 2015), one could propose the (Tocquevillian consistent) concept of “democratic empire” in order to refer to an asymmetrical “political domination” along blurred border and rooted on a democratic normativity.

The difficulty in the EU seems thus to consider DI countries as still politically capable. Instead, EU integration sticks with the idea that full membership equates full

democratic rights, while the concentric circles away from the centre are occupied by less (but still) equal “members” (Beck & Grande, 2007) with a weakened political leeway. This political treatment of differentiated members entails democratic domination and incongruence, while integration should be pushed forward through differentiation (Chopin & Lequesne, 2016, 535) and not only through sameness; just like for Tocqueville, community is not coming only from the equality of partners, but also from their free association. Indeed, in the case of the EU it has been pointed out in this contribution that differentiation could be supportive for integration if it is sensitive to the democratic development of opposition and politicisation.

The citizenship integration

The democratic predicament is the possibility that the repoliticisation turns into withdrawal, disavowal or populism, which is the “political catching up” by other means. Indeed, as this paper showed, the institutional politicisation is an ambiguous path to balance society. But, according to a Tocquevillian view, the predicament is unavoidable and there is no alternative to complete the “democratisation of democracy”. More than the institutional actor, this dynamic considers the ultimate political actor, which is in democracy, the citizen.

The politicisation of citizen in democracy requires the same question that this contribution has already discussed: how to transform an individual into a citizen? In modern philosophy this question is central. Authors from Hobbes and Montesquieu to Kant have discredited democracy (*Leviathan*, chap. 17 and 19, *The Spirit of laws*, XIX chap. 6, *Perpetual Peace*, article 1). The main argument is that it is impossible for people simultaneously to make laws and implement them. This impracticability of democracy

has driven authors, from Constant to Weber, and beyond, to consider representation for the former and political parties' leader as solutions for liberal or elitist democracy. The citizen is thus concretely excluded or only consulted from time to time.

Rousseau provides a different approach. Although he speaks, in the same line, about democracy as "government without a government" (*Social Contract*, III, 4), he considers the normativity of citizenship reachable through the general will: individuals become citizen when they speak the language of the common interest. It is this normative fundament that Kant took over and that current deliberative democracy uses: democracy is legitimate because simple citizen can refer to an ideal debate in which a decision has been made valid and rationally understandable.

Tocqueville engaged frontally with this question of the transformation of individuals to citizens and he added the consideration over the participation. He asks the same question as Rousseau but uses mainly solutions from Montesquieu: middle-range associations, social and political involvement, press freedom (Constant), rule of law, decentralisation, use of freedom. Democratic society always needs expression of diversity and claims for differentiation (understood as singularity). It is important to preserve the natural diversity. The best way to ensure citizenship and sense of belonging is to focus more on the engagement process rather than the legal insurance itself having more debates than elections, more duties than rights, more participations than representations; although both are very important. The main democratic milestone according to him is the dynamism of civil society.

From there, any political system that refers to democracy will face the issue of the politicisation of citizens. What about the EU? Scholars tackle this central point through the politicisation of European issues, which supports differentiation demands (Leuffen *et al.*, 2013). Over time, European issues became more visible for national audiences

and political leaders. But the inclusion of citizens remains limited: “while parliamentarians and actors present in mass media seem to have picked up European governance as a controversial issue, citizens do not appear to follow this development swiftly” (de Wilde *et al.*, 2016, 9, cf. also de Wilde, 2011).

What about the democratisation during the “Maastricht moment”? Van Ingelgom has convincingly argued from a statistic study that far from producing a politicisation as a polarization and the end of the “permissive consensus”, the democratisation has in fact attenuated the enthusiasm for European integration. For this author, political attitudes toward Europe have flattened rather than polarized, whether one considers students, workers, transnational exchange, mobility or marriage. Democratization conveys disinterest and apathy before commitment (Van Ingelgom, 2014 ; cf. also Delmotte, 2008, Delmotte *et al.*, 2017).

In other terms, the most and intrinsically differentiated political actor, i.e. the citizen, is also the most indifferent one, while being the most important actor in democracy. However, and counter intuitively, the progress of apathy does not mean a destruction of democracy. It is in fact consistent with democratisation according to Tocqueville, because the political integration provokes “individualism” in democracy and a “vague and indefinite sentiment” of belonging in presence of a “distant” federation (DA, II, B, 2 & I, A, 8, 269). That is why he emphasised so much participation.

Here again, the disavowal and political indecision for European citizens do not mean a lack of democracy, but are the sign of democratisation. The shift is, as this contribution argues, that democracy in itself is not a sure and balanced solution. Correlatively, the progress of differentiation might be the solution for more democracy at both national and European levels. In that case, the democratisation of Europeans

countries does not only mean having every single citizen committed to European initiatives, but it also means raising awareness.

In Tocquevillian idea, the empowerment of intermediate bodies might be a way out (Saurugger, 2009, 1285, cf. also Kohler-Koch, 2010, 2013); especially when it comes to civil society organisations, if they are socially representative, pedagogical and politically transparent (DA, I, B, 4). These organisations could be the key actors to support and aggregate popular claiming for differentiation in order to shortcut the natural threat in democracy: a centralised power supposed to be the voice of one people or to entail populism. What counts therefore is to be aware of and to acknowledge, from a national and local point of view, the interdependence, the association already settled and the opportunity of a common project that provide the EU. All that could be understood as prerequisite to any European solidarity or commonality.

Conclusion

This cross-referenced reading between Tocqueville and the current literature on DI within the EU should not hide the difference of both debates about democracy. The Tocqueville's reality is largely different from ours. The comparison should thus be mainly applied to conceptual logic and indirect parallel and remained at the level of "what the reading of Tocqueville could teach about the logic, the consequences and the problems of differentiation at the EU level": i.e. it sheds light on our unclear European reality and gives tools to interpret and address what is at stake in EU's DI democratically speaking. In the end, the reading of Tocqueville makes sense of the in-between and transitional situation of democracy in the EU context, which should be completed and democratised. DI could be the answer to that completion. But from this

Tocquevillian background, the main idea is that differentiation supports the process of democratisation if it takes into account a bottom-up and citizen-based logic and if it occurs along an integrative logic. Freewheeled differentiation, i.e. not balanced by an idea of some kind of unity and commonality, is likely to increase domination. According to Tocqueville equality comes conceptually and historically before liberty, like integration comes before differentiation, which could mean that everything is not differentiable, such as the rule of law or the fundamental rights (Schimmelfennig, 2019). Nevertheless, the “differentiated integration”, as a tension, might move toward more democracy at both national and European levels. But democracy triggers its own predicament and ambiguity that could disturb its very balance. Also, when DI is not merely a way to solve crisis, it is an inherent feature for any integration, especially if it claims to be democratic. There is ultimately no “one size fits all” solution, but only decisions that could act upon conditions and contexts for the best debate. Debate on uniformity and diversity should therefore be pushed as far as possible, which would mean that DI does not undermine the importance of institutions, but tries to accommodate the best equal expression of liberty within a institutional context.

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