

Democracy and national pluralism: Ethical and institutional features

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1. Factual and normative elements in the analyses of plurinational democracies

The debate that began in the 1980s between the liberal and communitarian perspectives and, subsequently from the early 1990s onwards between what have been called Liberalism 1 and Liberalism 2,¹ has highlighted the importance that empirical cultural and national collectivities have in individuals' self-understanding and self-esteem. Some of these entities are groups that do not always coincide with the group that comprises the polity which defines citizenship. This debate has also revealed the inability of the liberal, democratic and social rights included in constitutions to regulate an egalitarian and equitable treatment of individuals belonging to national minorities. Moreover, it has revealed the fact that it is impossible for states to play a culturally and nationally neutral role, the way they can regarding other phenomena, such as religion. Consequently, in many cases, national groups have an important moral role to play in not exhausting the individual components and dimensions of the basic values of liberty, pluralism and political equality.

The construction of increasingly refined liberal democracies in terms of *cultural and national pluralism* is one of the biggest challenges in the normative and institutional revision of contemporary democratic systems. In the last two decades, analyses in political science, political theory and constitutionalism have revealed several factors that come into play in a political and moral refinement in plurinational federal democracies. The following is a list of factual and normative elements that, I think, they must be taking into account in the analyses of these kind of democracies.

¹ Taylor 1992.

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1.1. *Factual-analytical elements*

1. In practical terms, most human beings are culturally and nationally rooted.
2. Classical liberal and federal political theories were created in much simpler contexts than present-day societies.
3. Nation-building processes exist in all states, including liberal-democratic ones. All states are agents of nationalism and nationalisation. There are at least partially competitive values, interests and identities within plurinational democracies. There are different narrations and reconstructions of history and collective memories.
4. States usually treat the internal national differences within democracies as “particularist deviations”. A practical response has been to promote the cultural and national assimilation of minorities in order to achieve their “political integration”. The practical consequence has been marginalisation of the internal national minorities in the name of “citizenship” and “popular sovereignty” (of the state).
5. The abstract and universalist language that underlies the liberal values of liberty, equality and pluralism has contrasted, in practical terms, with the exclusion of a number of *voices* with regard to the regulation of specific liberties, equalities and pluralisms in contemporary societies (those who do not own property, women, indigenous people, ethnic, linguistic and national minorities).
6. Each of these movements gives rise to specific questions regarding *recognition* and *political accommodation* (group rights, self-government, defence of particular cultural values, presence in the international arena, etc.). There are insufficient liberal, democratic and social rights to protect and develop the cultural and national features of minorities.
7. Nation-building and state-building processes have conditioned the conception (theory) and evolution (practices) of federalism.

1.2. *Normative-analytical elements*

8. Cultural and national liberties are elements in the quality of a democracy. Individuals’ self-understanding and self-esteem is important (United Nations, *Human Development Report 2004*).
9. Normative importance of historical events. The political contexts in which individuals are socialised are often the result of historical processes that usually include violent features – wars of annexation, exterminations, mass deportations, etc. – which are sometimes at the root of minority nations’ modern-day struggles for recognition and self-governance.
10. There are two general theoretical attitudes in policy-making when dealing with national pluralism: *pragmatic* (to avoid conflicts in the least costly way possible) and *moral* (to approach it as a question of “justice” – fair relations between *permanent majorities and minorities*).
11. There are two general theoretical paradigms in relation to questions of socioeconomic or cultural/national justice in pluralist societies: the paradigm of

equality (distribution) versus the paradigm of difference (recognition and political accommodation)

12. The theory of *demos* or *demosi* is missing in traditional theories of democracy (whether they be of a more liberal or a more republican nature), as is a liberal theory of legitimised borders

13. The state as a “culturally neutral” entity is a myth of traditional liberalism.

14. Individual and collective identities are not fixed, but we make choices based on them. The belief that we are “autonomous individuals” who choose our national, ethnic, linguistic, religious, etc, identities is, to a great extent, another myth of traditional liberalism.

15. There are flaws in traditional liberalism based on its individualist, universalist and statist elements when they are applied to plurinational societies (“deviations”, “conceptions of citizenship” and “popular sovereignty”, etc)

2. “Classical” Institutional Responses

It would appear that the first condition for solving a problem is to try to define or describe it correctly, and defining and describing a problem correctly involves establishing at least three aspects. The first is knowing how to identify what the basic issue is, that is, identifying the decisive question that needs to be considered. Secondly, defining a problem also involves knowing how to describe it with the maximum precision possible. This implies both a careful conceptualisation and the inclusion of historical elements, along with the most important empirical data related to the problem. Thirdly, defining a problem means knowing where to look for possible solutions, in the spheres of both political theory and comparative politics. When we have a question and do not know where to go to find the answers, this usually means that from an epistemological perspective we are not on the right track.

One of the most important questions with regard to the case of plurinational democracies is the *recognition* and *political accommodation* of the national pluralism of these democracies. Obviously, in addition to this question there are probably a whole series of interrelated aspects: economic development, income inequalities, multiculturalism and membership in supra-state organisations, such as the European Union, etc. But it is methodologically improper to mix all these elements from the outset. In this case, the key point is not to establish how the *demos* becomes *kratos* – this would be the traditional vision of democracy – but how the different national *demosi* which coexist within the same democracy are politically and constitutionally recognised and accommodated in terms of equality (between the national majorities and minorities) in the *kratos* of the polity. This involves dealing with and introducing aspects of both a “democratic” nature – participation by majorities and minorities in “shared governance” – and, above all, of a “liberal” nature – the protection and development of minority nations confronting the “tyranny of the (national) majority”, both in the internal sphere of this democracy and in the international arena. It is, therefore, a matter of determining the “checks and balances” in a collective dimension which have received little or no attention from traditional political conceptions but which constitute specific dimensions

of core questions of liberal political theory, such as the “negative theory” of the “tyranny of the majority”.

Whatever the most suitable liberal-democratic solution or solutions may be will obviously depend on matters like the context of each specific case (its history, international situation, types of actors, political culture, etc.). But it seems clear that in contexts of national pluralism it is essential to establish a much more refined interpretation than what is offered by the basic values of traditional liberal-democratic constitutionalism: liberty, equality, individual dignity and pluralism. This complexity demands theories that are more sensitive and attuned to the variations in empirical realities when attempting to clearly identify its basic legitimising values. Moreover, it demands above all practical, institutional and procedural solutions that are much more suitable for the type of pluralism to be accommodated. These are two aspects of the liberal-democratic agenda that have yet to be satisfactorily resolved.

The three “classic” institutional responses for societies with a strong component of national diversity² have been:

1. *Federalism* (in a broad sense, including federations, associated states, federacies, confederations and regional states)

2. *Consociationalism*: institutions and processes of a “consociational” nature (based on consensus between the majorities and permanent national minorities). Examples of these institutions and processes can be found in the democracies of Switzerland and Belgium, in both cases in conjunction with federal solutions

3. *Secession*.

Let us now look at some elements offered by political theory and comparative politics with regard to federalism. The generic question is whether federalism offers a suitable framework for establishing the recognition and accommodation of plurinational democracies and, if so, which federal models are most suitable and which are not.

3. Federalism and plurinational federations. Some theoretical and historical remarks

The fundamental challenge facing plurinational federations nowadays can be synthesised as a liberal, democratic and national challenge of polity-building. The main question, in essence, is whether it is possible to combine within the same federation the political perspective of the construction of a *federal unit* that usually predominates among the majority national groups in the state and the perspective of a *confederal union* that usually predominates among the minority national entities in the federation. Both kinds of realities are usually based on different legitimising concepts and values, although the same terms are often used. This difference is expressed in the diverse conceptions regarding which rights, duties, institutions and political collective decision-making processes are legitimate in liberal-democratic terms when applied to realities

² See Norman 2006, Amoretti-Bermeo 2004; McGarry 2002, Gagnon-Tully 2001; Watts 1999; Lijphart 1999.

characterised by strong components of national pluralism. The question regarding the probability of combining these two perspectives, that is, the probability of establishing a political and constitutional accommodation of *de facto* national pluralism, cannot be answered in abstract terms but must involve the institutional practices of comparative politics and case analysis.

Broadly speaking, federalism is a notion that has been neither historically nor normatively related to national pluralism until quite recently. In fact, it is evident that both classic institutional analyses and those of a normative nature regarding federalism have been heavily influenced by the historical example of the United States, the first contemporary federation.³ And this is an empirical case that is not related to national pluralism. If we remain in the orbit of the United States' federalism, the response to the question concerning the possibilities of political accommodation of plurinational societies by means of federal formulas is basically negative. The fundamental reasons for this are both historical and organisational. This is essentially a uninational model that avoids, yet implicitly responds to, a fundamental question that democratic theories have paradoxically failed answer: what is "the people", the *demos*, and who decides what "the people" refers to. If we take empirical data into account, it would appear practically impossible to politically empower the different *demos* in a plurinational society within the uninational rules of the game in the United States' federal model.

Similarly, the fact that the first contemporary federation was the influential case of the United States – which was built using strong uninational and symmetric components, and a strong Supreme Court that acted as a polity-maker during its practical development – has not been unrelated to the evolution of federations and federal thought that was dominant until recently (J. Madison, *Federalist Papers*, 10, 51). This is an evolution that is very different from the more "confederal" logic that characterises the political systems and the political thought of the classic form of federalism prior to the American federation (Althusius, *Politica Methodice Digesta* VIII) – a conception that survived into the modern era in Switzerland and the Netherlands, albeit not for long in the latter.

On the other hand, the American federalist tradition associated with the creation of the first federal state in the contemporary era based its approach to federalism on much more federal than confederal foundations. Here, the centre of gravity is located in the governance of a modern nation-state and the subsequent supremacy of the central power over the federated powers. One of the explicit objectives is to avoid the instability that confederations have repeatedly shown at an empirical level. In contrast to the school of thought represented by Althusius and Montesquieu, the establishment of the federation should not involve existing social and territorial divisions but should attempt to construct a new polity that subsumes the old divisions by establishing new processes of state-building and nation-building. Here, the union is more important than the units. Depending on the federal conception we locate

³ See Requejo 2011, Burgess 2006, Karmis-Norman 2005, Hueglin 2003, Neremberg-Griffiths 2002.

ourselves within, we will reach different conclusions in all the spheres of territorial accommodation.

In contemporary federations and regional states, the tension between liberal, democratic, national and functional logics has been resolved in “national” terms, usually in the federation’s favour. However, the interpretation of the values of liberty, equality and pluralism will be different depending on whether one is dealing with uninational or plurinational liberal democracies, especially with regard to collective or group liberties and rights, the subjects of equality or the type of pluralism to be protected or guaranteed. Let us look at the present, for example. The classical questions “equality, of what?” or “who are the equals?” will receive different “federal” responses depending on whether we situate ourselves in the Althusian or Madisonian tradition of federalism, and depending on whether we situate ourselves in a conception that is linked to Liberalism 1 or Liberalism 2 from the analytical and normative debate on liberal democracies.

On the other hand, the history of federalism, or to be more precise, the history of federations, has mainly been characterised by the development of models that are basically symmetric. Comparative politics shows in what way symmetric models have not been a particularly propitious option when there are coexistent or juxtaposed nation-building processes within the same political system. Symmetry stimulates uniformity in the political system’s “entrance requirements”. And that makes achieving real political accommodation difficult, when the pluralism of national minorities constitutes a form of *de facto asymmetry* which requires that the plurinationality be recognised using the same “entrance requirements” of the constitutional system.

To sum up, the symbolic and institutional challenges, as well as the challenges related to the rules of decision-making, which plurinational societies pose for federalism are usually more complex than those posed by uninational societies. And it seems clear that the Madisonian and Liberalism 1 approaches show difficulties and flaws in plurinational democracies. Both miss the aforementioned real target in this kind of politics. In addition to the search for “common ground” in the federation, the issue which most concerns minority nations is the establishment of institutions and *protection* mechanisms of a “liberal” nature in the constitutional sphere that protects them from the decisions taken by the majorities. This political accommodation involves the establishment of broad forms of self-government and participation in the shared government of the federation that is based on their own national characteristics. Let us take a comparative look at the empirical world of federal democracies.

4. Plurinational federalism. A comparative approach

Broadly speaking, current analyses of states that display a clear territorial division of federal or regional powers can be situated along five basic axes, depending on the research questions that one is attempting to answer:

- a) the uninational-plurinational axis
- b) the unitarianism-federalism axis
- c) the centralisation-decentralisation axis

- d) the symmetry-asymmetry axis
- e) the competitiveness-cooperation axis

These analytical axes require a diverse battery of variables and indicators which can be used to carry out a comparative approach. The universe of the analysis below is comprised of democratic federations –excluding cases based on archipelagic federations such as Micronesia, the Comoros and St Kitts and Nevis, as well as federations which are far from the liberal-democratic logic (the United Arab Emirates, Nigeria, Pakistan, etc.).⁴ Associated states/federacies and supra-state entities such as the European Union have been also excluded. On the other hand, we include three Western European democratic regional states which display a clear territorial division of powers: the United Kingdom, Spain and Italy. Altogether, there are 20 federations or regional states in the following analysis.

1. The uninational-plurinational axis is applied according to the theoretical and double empirical criterion – party systems/effective number of parties, and secessionist parties within them – which I have developed elsewhere.⁵

2. The unitarianism-federalism axis focuses on how federal a federation (or a regional state) is. It is established using constitutional regulations which are more or less favourable to a federal institutional logic from the perspective of the federated units.⁶

3. The centralisation-decentralisation axis refers to the degree of constitutional self-governance of the units with political autonomy.⁷

⁴ Here, I follow the same methodology that I used in previous comparative works, this time introducing updated empirical data and some changes in the cases considered. See Requejo 2010, sec 2-4.

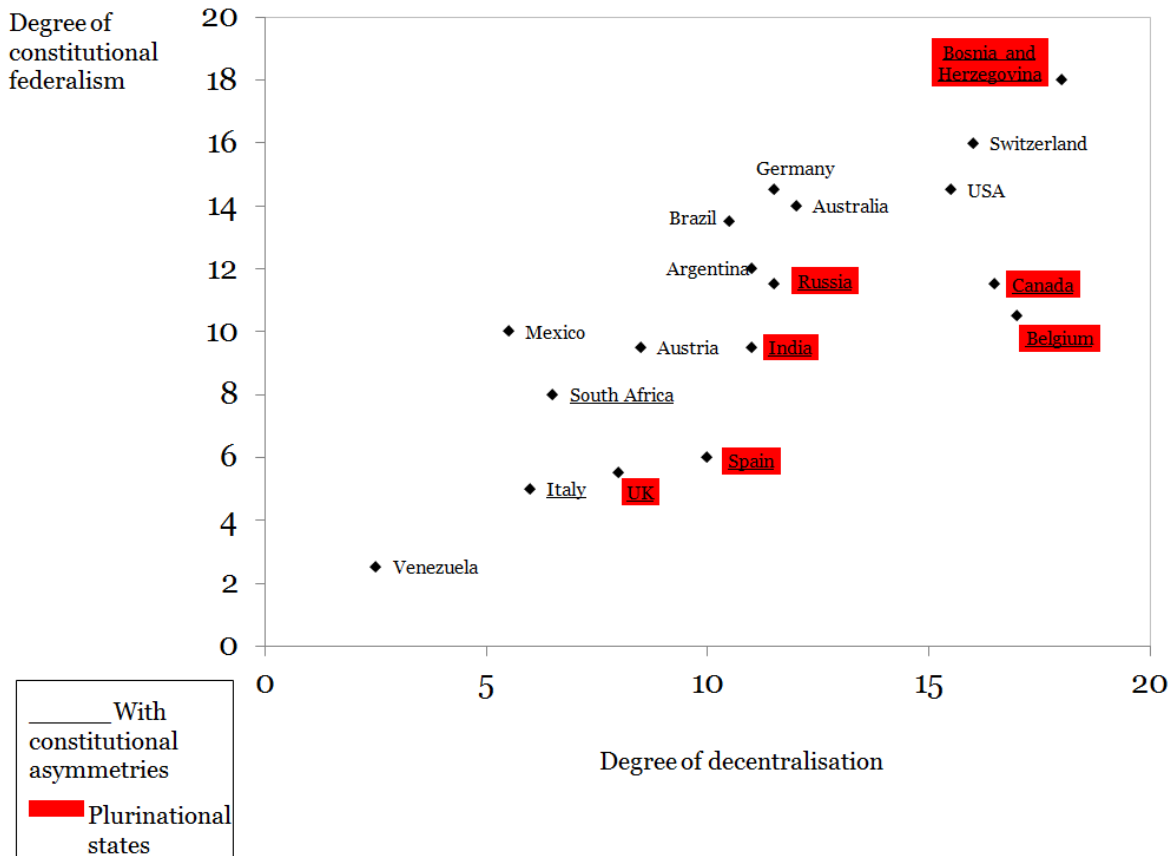
⁵ See Requejo 2010, sec 2

⁶ The indicators will include the existence or not of: federated polities as constituent units (1); constitutional guarantee of their self-governance (1); agreement for constitutional reform (1); an institutional dualism in relation to the three classic powers: the executive and legislative (2) and the judicial (1); a model of fiscal federalism (2); an upper chamber with representatives appointed by the institutions of the federated entities (1), and with seats distributed along territorial lines (not proportional to the population) (1); powers of the upper chamber within the institutional system (2); the allocation of unallocated powers to the federated units (2); a court to arbitrate in disputes (2), with the sub-state entities having a say on who is appointed to it (2); and the regulation or not of a right of secession of (some) the federated units (2). The numbers in brackets refer to the score given to each indicator. Altogether, the global scale of each case is situated between 0 (absence of a federal logic) and 20 (maximum degree of constitutional federalism). See Annexe 1. We do not consider in this axis “para-institutional” indicators, those which have an effect on federalism as a process (e.g., political-party systems; intergovernmental relations). An analysis applied to a group of 11 federal and regional countries using a number of slightly different indicators, in Baldi 2003 (2nd ed. 2005).

⁷ Here, the degree of decentralisation (or lack of centralisation) is also measured on a global scale which ranges from a score of 0 (maximum centralisation) to 20 (maximum decentralisation). It is also measured using different indicators: a) the kind of legislative powers held by these sub-units (8) -subdivided in specific areas of government as follows: economy/infrastructures/communication (2), education and culture (2), welfare (2), internal affairs/penal/civil codes and others (2); b) the executive/administrative powers (2); c) whether or not the federated entities have the right to conduct their own foreign policy, taking into account both the scope of the matters and agreements with federal support (2); and d) their

4. The symmetry-asymmetry axis includes the cases with *de jure* institutional regulations or competencies for specific territorial sub-units.⁸

Figure 1. Degree of constitutional federalism and degree of decentralisation in the cases studied⁹



The following are general comparative remarks regarding the feasibility of federations accommodating plurinational societies. We will consider five different aspects: the constitutional recognition of the national pluralism of these kinds of polities, the degree of decentralization, the degree of constitutional federalism, the inclusion of *de jure* asymmetries in plurinational polities and, finally, whether or not a right of secession for national minorities is included in the constitutional rules.

economic decentralization (8), calculated according to a single average index obtained taking into account the distribution of the public revenues and the public expenditures (GFS/IMF indexes) in each country. See Annexe 2. Data from <http://www.worldbank.org/publicsector/decentralization/fiscalindicators.htm>. See also Rodden 2004

⁸ See Watts 2005, Requejo 2011, Agranoff 1999. We exclude federal capitals from asymmetry criteria; in the following calculations, Quebec, Catalonia, Scotland and Flanders are the reference for the cases of Canada, Spain, the UK and Belgium.

⁹ The cases of Ethiopia and Malaysia are not included in the degree of decentralisation due to the lack of reliable economic data.

1. *Political recognition of national pluralism in plurinational federations.* Ethiopia and Russia formally recognise their plurinational nature. However, all other federations and regional states are reluctant to permit explicit recognition of national pluralism in their constitutional agreements.

2. *Degree of federalism, decentralisation and asymmetries.* Broadly speaking, the group of plurinational federations paradoxically show a degree of federalism which is more uniform and lower than the group of uninational federations (except for the special case of Bosnia-Herzegovina, which shows some confederal characteristics). That is, there is a *federalist deficit* in plurinational federations. However, these polities are more constitutionally asymmetrical than uninational federations. In fact, there are no cases of clearly symmetrical plurinational federations. Not surprisingly, the two regional plurinational cases – Spain and the United Kingdom – receive the lowest scores on their degree of federalism within the plurinational states. These trends prompt questions on whether federations/regional states are suitable for properly managing plurinational polities when accommodating politically minority nations is not only a question of decentralization but also of political recognition of their national status, and of regulation of their collective constitutional negative and positive liberties.

3. The elements of asymmetry in plurinational federations is sometimes regulated within general symmetrical guidelines in the territorial division of powers (with the presence of pressure in favour of the symmetry of the system). This mainly occurs when the number of federated units is not small (at least nine: Canada, India, Russia, Ethiopia and Spain, in contrast to Belgium, the United Kingdom and Bosnia-Herzegovina).¹⁰

4. The construction of “federal trust” in plurinational federations/regional states requires the existence of at least two factors: a) clear mechanisms that allow the minority nations to participate in the shared governance of the federation based on their uniqueness, instead of diluting them to become just another entity within the federation (presence in the upper chamber, bilateral inter-governmental relations between these entities and the federation, consociational institutions, etc.); and b) rules which protect national minorities from the actions of the majorities. This is an issue that is more “liberal” than “democratic” in nature (related to the collective “tyranny of the majority”).¹¹ If specific participation and protection mechanisms are absent (Spain), or if they are insufficiently regulated (Russia), the perception of a *federalism of distrust* by the minorities (and the majorities in reaction) will

¹⁰ An analysis of the evolution of ten European multilevel cases which started their process of decentralization asymmetrically, in Requejo-Nagel 2011. It is currently an open question whether the federations’ reluctance to introduce more asymmetric regulations, especially when the number of subunits is not small, will or will not reinforce territorial tensions and secessionist positions.

¹¹ It favours the inclusion of institutional procedures such as veto powers, “alarm bell” and opting-in/opting-out policies (which do not require constitutional reforms), the appointment of some of the judges on the Supreme or Constitutional Courts, distinct participation in constitutional reform processes, asymmetrical intergovernmental relations, etc. Most of these procedures, which point to models of *plurinational federalism* or *partnership*, are absent or have a low profile in the constitutions of most plurinational democracies. See Watts 1999, Requejo 2005, ch. 4-5.

increase. From a normative perspective, this misrepresents the interpretation of collective liberal negative freedom in plurinational federal democracies. Moreover, it would seem advisable to develop a kind of political culture for the entire federation in order to develop a stable *federal trust*: a “plurinational culture” which makes the plurality of the internal *demos* a feature of the “political union”.

5. *Right of secession*. In conceptual terms, there is nothing to prevent the issue of where borders should be established from being part of the democratic debate. But on an empirical level, it is clear that states are jealous of their own territories. The introduction of a right of secession for the minority nations represents a clear break with the dominant logic of federations, although not with the tradition of federalism. This logic only accepts the right to self-determination for the federation. But it is an interpretation which a number of federations have begun to question. Recent examples include Canada (through the “federal pattern” of the 1998 Secession Reference by the Supreme Court) and Ethiopia (or the more specific cases of the former Serbia-Montenegro and St Kitts and Nevis) (see Table 1).¹² This table summarises the right of secession in current plurinational countries.

Table 1. Right of secession in plurinational democracies

Plurinational Federations	Bosnia and Herzegovina	No
	Belgium	No
	Canada	Yes ^A
	Ethiopia	Yes
	India	No
	Russia	No
	(Serbia and Montenegro)	Yes ^B
Plurinational Regional States	Spain ^C	No
	United Kingdom	Yes ^D

^A Right of Secession according federal (non unilateral) rules

^B Federation broken by unilateral referendum in Montenegro (2006)

^C State with some federal trends

^D According to negotiated rules (2014)

¹² In contrast to what the anti-symmetric argument of the stepping-stone towards secession suggests, the states which went through secession processes in the 20th century were not asymmetrical federations but unitarian states (United Kingdom, Ethiopia, Indonesia) or socialist pseudo-federations (USSR, Yugoslavia, Czechoslovakia). See McGarry 2002; Norman 2006.

It is probable that the 21st century will witness political movements in favour of the “right to decide” by the citizens of minority nations¹³ who wish to preserve as much collective negative liberty as possible in an increasingly globalised world. These are movements which democratic federal theory and practice, and they deserve more attention than they have gotten in the contemporary era.

¹³ In recent years, there have been examples of such movements in Quebec, Flanders, Scotland, the Basque Country and Catalonia.

