Federalism and the Quality of Democracy in Plurinational Contexts: Present Shortcomings and Possible Improvements

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In the field of political theory, there can be few who doubt that the main emancipatory watersheds in the contemporary political sphere have been associated with liberal-democratic revolutions. Questions regarding the regulation and guarantee of certain rights and freedoms, the rule of law and political pluralism, the separation of powers and other limiting mechanisms such as constitutionalism, federalism, as well as the legitimacy of governmental institutions established by means of periodical and competitive elections, are clear attempts to make the modern concepts of liberty, equality and dignity concrete within the public sphere. This concretization of these concepts has been usually far from easy to establish. At the same time, however, it has been the very ‘success’ of these historical products, brought about by diverse and not always harmonious liberal, democratic, functional and national perspectives known as liberal democracies, that has underlined the distance between the universal values included within their principles and legitimising language, and the practical consequences that these have had on specific and culturally complex political realities. We could say, ironically, that “progress” in some liberal-democracies means illuminating and transforming the darker side of humanity’s emancipatory revolutions. The study of plurinational democracies and their relation with federalism illustrates the point.

In certain liberal-democratic federations (or regionally decentralised polities) there is a coexistence between various national groups. Among the national characteristics of these groups living together in a given polity, we can mention the fact that their members recognise themselves as such because they share some cultural patterns. They also share some sense of historical distinctiveness in relation to other groups. They are situated in a more or less clear territory, and display a will to maintain their distinctiveness in the political sphere. When there are different national groups living together within the same federation or regional state, we call it a plurinational federation.
(or a plurinational regional state). This, for example, is the case in Belgium, Canada, India, or Spain. These are plurinational federations or regional decentralised polities with institutional and regulatory challenges distinct from those faced by mononational federations such as the Germany, Austria, or Australia.  

In this chapter, on the one hand, I will briefly outline certain analytical and moral elements pertaining to the current revision of liberal-democratic legitimacy within plurinational contexts which are relevant to democratic federalism (section 1). On the other hand, I will present the bases of a proposal for a liberal-democratic federal organisation that is more suitable to the needs of plurinational societies, which I call plural federalism (section 2). If it seems convenient to revise some of the theoretical bases of democratic liberalism in plurinational societies, it will also probably be convenient to revise the kind of federalism linked to this democratic liberalism. The key question addressed in this chapter is how liberal federalism affects the quality of democracy in plurinational contexts.

1. Political liberalism and national pluralism.

A) Analytical aspects

1.1 The disconnection between differing types of theoretical analyses. We could say, in general terms, that there has been little connection between the analyses of federalism, democracy and the various types of nationalism. On the one hand, in comparative federal studies, the distinction is not always made between federal systems that are democratic and non-democratic, or between those which are mononational or plurinational. And on the other hand, analyses of nationalism do not usually assess relations with democracy in any great depth, whilst theories of

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1 To this basic distinction between uninational and plurinational federations (or regional states), there is sometimes juxtaposed another distinction that turns out to be highly relevant to the significance of the regulatory and institutional quality of liberal democracies within the context of cultural pluralism: that related to the existence of indigenous minorities, sometimes referred to as "national" groups (First Nations). This is the case for Brazil, the USA or, once again, Canada. In this chapter, we shall only be considering federalism in relation to the first distinction made.
democracy - particularly those of a more philosophical character - have not paid significant attention to the analysis of federal systems or empirical plurinational realities.

1.2 National pluralism and democracy. Although we may say that cultural pluralism is a general trend of current liberal democracies, national pluralism is certainly not. It is a reality that is not shared by all democracies. However, despite the fact that national pluralism is a question related with the quality of some democracies, only in recent times has it received sufficient attention in democratic theory. At least three normative and institutional questions must be addressed in these democracies: the constitutional recognition and regulation of national minority rights; the institutional framework of the polity; and the self-government of minority national entities.

1.3 National pluralism and federalism. In comparing the political make-up of federal democracies, we do not find a great many of plurinational democratic federations. Basically there is Canada, Belgium, India, and - to a lesser extent - Spain (which is not, technically speaking, a federation). Faced therefore with these cases, we need to be particularly careful in making judgements, avoiding inferences that are based on limited information, and refraining from generalised conclusions. The basic issue here is that of how to accommodate in the public sphere diverse national realities within the same federal democracy. Distinct national groups are habitually characterised by real and perceptible differences (demographic, linguistic, income-related, cultural, in civil law, etc.) which have consequences for their self-perception, and the ways in which this does not correspond to that of other groups. We also need to bear in mind other factors such as whether or not populations with distinct national identities are territorially inter-mixed, and the importance of ‘dual national identity’ in relation to the ‘federated entity’ and the ‘federation’.

1.4 Normative and national pluralism. In all liberal democracies and federations, decision-makers often find themselves faced with a plurality of competing legitimising goals and criteria based on different functional or moral perspectives (liberal, democratic, national, technical, etc). Efficiency, stability, political participation or liberal protection of individual and collective rights and liberties are
classical competing goals in all federal democracies that present more complex and intermixed relations in plurinational federations.

1.5 National pluralism, globalisation and supra-state polities (e.g. the EU). Stateless nations like Quebec, Catalonia, Flanders, the Basque Country or Scotland, illustrate the overlap between globalisation and national pluralism in Western democracies. In the European context, there are some difficulties in the empirical and theoretical analysis when we are dealing with concepts like democratic accountability in the supra-state decision-making networks or the recent notion of European Citizenship (Maastricht 1992). Federalism is directly influenced by these supra-state processes. In fact, in liberal-democratic theories, citizenship has been developed and approached from the perspective of the state. Diluting the state monopoly of the principle of territoriality and the competitive dualism between state and non-state nation-building processes are likely two pre-requisites for implementing i) a new institutional and democratic accommodation of national pluralism in a more globalised economic and political context, and ii) a revision of the unitarian-secessionist duality in nation-building processes.

B) Political liberalism and legitimacy in plurinational polities. Some moral shortcomings

Globalisation and cultural pluralism constitute the two main challenges for present-day liberal democracies and federalism. In some of the theoretical liberal democratic conceptions of greater influence, the relationship between liberalism and nationalism has been presented as a relationship between irreconcilable positions. This is based on comprehending the two as representing general political positions that are founded on values, concepts and internal logic that are simply in contrast: any attempt to reconcile the two perspectives would be condemned to failure. Yet this is an approach that is becoming increasingly obsolete, particularly in contemporary circumstances presided over as they are by globalisation and liberal national pluralism. In today’s context, the debate is no longer between democratic liberalism on the one hand, and nationalism on the other, but rather it is between two basic and essential ways of understanding
democratic liberalism itself or, if we prefer, between different variants of it when it comes up against globalisation and national pluralism².

If one of the traditional criticisms levelled at political liberalism - and made both from conservative and socialist positions – was that of the contrast between the ideas described in liberal theory, and what was actually carried out by those polities calling themselves “liberal”, then today such criticism broadens from purely social or socio-economic components to include the cultural components that are to be found in democracies³. Variations in the formulation of possible federal solutions and the constitutional accommodation within plurinational contexts will be brought about by the choice of which of the two versions of political liberalism is adopted⁴.

In general terms, it seems that the question of interculturality, and more directly the question of plurinationality, has posed a new agenda of issues for democratic debate that are no longer limited to the language of individual rights and notions of liberty, equality and pluralism in the same way as traditional political liberalism has developed these notions. In fact, we can say that this new agenda has implied the discussion of key

² The first variant defends a concept based, essentially, on individual rights of a ‘universal’ kind, on a ‘non-discriminatory’ idea of equality for all citizens, and on a series of procedural mechanisms that regulate institutional principles and the collective processes of decision-making. It is a form of political liberalism that distrusts the very notion of collective rights, suspecting such a concept of bringing authoritarian risks in its wake (liberalism 1). The second variant adds to these elements those of the protection and development, in the public and constitutional spheres, of specific cultural and political differences for distinct national groups living within the same democracy. It holds that the absence of such recognition, and of broad-ranging self-government, results in a discriminatory bias against national minorities and in favour of national majorities, and that this thereby violates the principle of equality. According to this position, the first variant of political liberalism provides incentives to restricting minority national differences to the private sphere, all the while accepting the national cultural characteristics of the majority (language, history, traditions, etc) as an implicit “common” reality within the public sphere of the polity (liberalism 2). I develop this point in Requejo 2001, where I maintain the terms liberalism 1 and 2, following the well-known expression formulated by Ch Taylor and M. Walzer. It is certainly not without significance that, in plurinational polities, the supporters of liberalism 1 are the majority in Ottawa, Toronto, London or Madrid; whereas the supporters of liberalism 2 are more likely to be found in cities such as Montréal, Edinburgh or Barcelona.


⁴ This accommodation includes two basic dimensions of the national plurality of a liberal-democratic polity: explicit recognition of its internal national plurality at a constitutional level, and the rules that regulate the democratic self-government of those groups. See Tully 1994. For a broader discussion of multiculturalism and liberal democracy, see also Kymlicka-Norman 2000, Williams 1995, Kymlicka
elements for a special theory of democratic legitimacy and federalism in plurinational contexts that overcomes the traditional approach of seeing national minority rights as unjust, discriminatory and morally arbitrary.

Among the cultural and moral biases that the traditional approach usually displays, and which condition both the implementation of democratic values and the practical constitutional federal regulations of democracies in plurinational societies, that is, the quality of these democracies, the following stand out:

1.6 Inequality vs difference. Traditional liberal-democratic theories have usually considered public sphere justice from the perspective of the paradigm of equality (equality versus inequality), in detriment to the paradigm of difference (equality versus difference). In plurinational societies it is the concept of equality itself which becomes more plural than in mononational societies. If cultural differences are ignored or marginalised, cultural minorities will lose self-esteem and self-respect. Cultural minorities will lose these qualities even when their civil, political and social rights of citizenship are guaranteed. We can even talk of a potential fourth wave of rights in liberal democracies, after the civil, political and social stages: the cultural wave. The juxtaposition of these two paradigms is fundamental in the context of historical and territorial cultural pluralism, as in the case of plurinational societies. It implies a new approach to the notions of dignity and individual self-esteem, as well as to the notion of pluralism itself in liberal democracies. The political accommodation of national minorities - regulation of minority rights, constitutional arrangements and self-government - is currently an increasingly recognised claim that must be taken into account in the criteria of “justice” in present theories of plurinational democracies.

1.7 The “monist” conception of the demos. One of the questions that has never been resolved by the different liberal theories of democracy is that of the demos to which they refer. In the majority of liberal-democratic conceptions it is something that is defined beforehand. We know that in the empirical world, the demos of the

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5 A brief criticism of Rawls’ and Habermas’ positions in relation to plurinational democracies in Requejo 1998b.
democratic systems, including that of federations, have not been usually established from the procedural rules of liberal democracies, but from a historical process full of wars, conquests, annexations, exterminations or marginalizations of whole peoples, etc, which are a long way from being sound bases for liberal-democratic legitimation. Moreover, these bases usually justify the constitutional rules in universal and impartial terms, despite the implicit and unavoidable assumption of particular cultural values linked to a specific democracy and to the pretended “national” interest of its demos. Under this perspective, the challenge of plurinational democracies is “one polity, several demoi”. In fact, theories of democracy have traditionally been theories of the democratic state, and they have usually been conceived as based on an uniform demos. Plurinational democracies show the need to revise, for moral as well as for functional reasons, some of the traditional “statist” assumptions that the hegemonic national groups have often imposed under some homogenising versions of the notions of “democratic citizenship” and “popular sovereignty”.

1.8 The marginalisation of the “ethical” dimension. Within the theories of democratic legitimacy, the existence of at least three dimensions of practical rationality has tended to stand out: the pragmatic (or instrumental), the “ethical” and the “moral”. The first is directed towards the satisfaction of goals and objectives. In the political sphere it is characterised by negotiation and compromise, and its main values or guiding principles are effectiveness, efficiency and stability. From this perspective, a federal agreement that satisfied all the parties involved according to the ethical and moral perspective, but which was unstable, could not be described as a good agreement. “Ethical” rationality is linked to the interpretation of specific cultural values and identities that provide a framework for an unavoidable particularist normativity, whether it be a special normative set of values or a specific interpretation of a more general (or “universal”) normativity. This is a rationality which is prescriptively characterised by contextual interpretation. This ethical accommodation must be taken into account when regulating the symbols, institutions, self-government or the mechanisms of representation in a plurinational federation. If this regulation is mainly based on the cultural components of only one of the national collectivities and excludes or marginalises the others, it would also be difficult to call it a good federal accommodation. This implies that almost all
citizens of the federation feel “comfortable” in terms of identity (and self-esteem) regardless of the national collectivity they feel they mainly belong to: the federation or one of the member states. Finally, “moral” rationality is aimed at the “impartial” and equitable resolution of conflicts by means of a number of principles that aspire to “universal” recognition regardless of the context in which they are applied. A good federal agreement needs to incorporate a clearly liberal-democratic *moral* dimension. In other words, a dimension that respects and guarantees transcultural human rights, as well as the other principles of the rule of law (the principles of legality, constitutionality, the separation of powers, frequent and competitive elections, civil liberties, etc).

Liberal-democratic theories have tended to consider normative regulations from the perspective of pragmatic and moral rationalities. The ethical considerations of a historical and linguistic nature, among others, that influence national identities have tended either to be marginalised or relegated to the private sphere (territorial minority national identities), or have simply been accepted implicitly as a kind of hermeneutic horizon of the public sphere (majority or hegemonic national identities). The political institutions have not been culturally neutral, but leaned towards the identities and cultural patterns of the national majority or hegemonic groups. A minimal conclusion is that from liberal premises there has been a tendency to accept and defend from the public sphere, an implicit form of state communitarianism of a “national” nature.

1.9 *The defence of the nation-building process in all liberal democracies.* In plurinational democracies, there is a coexistence of different nation-building processes which are at least partially competitive amongst themselves. All liberal democracies have, in practice, defended and continue to defend cultural particularisms of a linguistic, historical, etc, nature. From the perspective of minority nations, two general objectives should be achieved at the constitutional level: 1) to have formal *political recognition* of the plurinationality of the state in its constitutional rules, and 2) to have a level of political *self-government* and *legal protections* coherent and proportional to that recognition. There will probably be cultural consequences to a notion of nation-building based on the application of a

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6 I have developed this idea in Requejo 1998a
“universalist” legitimising language to a particular state group that itself possesses a plurality of national groups.\(^7\)

1.10 Universalism and particularism as legitimising criteria

The consideration of the previous points involves a revision of the role of normative universality in democratic legitimation and of its relation with values of a more particular nature in plurinational federations. A normative and institutional refinement of liberal democracies in plurinational societies means seeing national pluralism as a value worth protecting and not just as an inconvenient fact that must be borne as stoically as possible. This means that it is not longer pertinent to consider as mutually exclusive the contrast between a form of universalism based on egalitarian components of human “dignity” and a form of pluralism based on the cultural dimensions that individuals acquire through processes of socialisation. In a pluralist society, while universalist values are part of the identities of particular individuals, particular cultural values influence the concept of dignity itself. Therefore, the often accurate criticisms that liberal universalism has regularly directed at particularist positions, insofar as they lean towards conservatism and a lack of clear decision-making references, should be complemented with the no less accurate criticisms of culturally-rooted particularism aimed at traditional universalism: lack of realism in relation to the normative links that individuals maintain with the groups and collectivities that they belong to and, above all, in relation to the practical inevitably of defending a set of specific cultural particularities in the name of this alleged universalism.\(^8\)

In reality, we always argue from the position of cultural inheritances that have facets of both a universal and particular kind, and which fashion the individual identities that, in large part, come to us pre-formed. Understood from this point of view, the majority of claims made by stateless democratic nationalisms (i.e. Catalan, Scottish, Scottish, Scottish, Scottish, Scottish, Scottish.

\(^7\) See Linz 1993. In the field of political thought, for a criticism of colonial and imperialist “liberal” legitimation in the writings of thinkers like Locke and Mill, see Parekh 1995.

\(^8\) See Taylor 1992, 1989. See also the debate between what we may refer to as “liberal interculturalism” (B. Parekh) and “intercultural liberalism” (W. Kymlicka), in Constellations, 4, 1 April 1997. I have developed the relation between universalism and particularism as legitimising criteria, as well as the contrast between the impartial and partial ways of application of these two kinds of normativity, in Requejo 2001 (see table)
or quebequois) represent a deepening of the universal suppositions of political liberalism, and particularly of the values of equality, liberty and pluralism. The key task is to understand that, in a plurinational democracy, a plural set of public spheres coexist, as well as different processes of nation-building. This is an idea that affects current discussions of whether federalism, or some of its variants, offers an adequate framework from which to proceed to a practical and constitutional accommodation for plurinational polities in which diverse processes of nation-building share the same arena. In this way, the political and constitutional regulation of this specific kind of pluralism thus becomes a demand of liberal and federal normativity themselves at the beginning of 21st century.

2. Democratic Federalism: Present Shortcomings and Possible Improvements

2.1 Federalism and national pluralism.

Referring to the elements that have been outlined above, we can now ask ourselves the following question: is the federal system an effective model for the accommodation of plurinational societies according to (revised) liberal-democratic patterns?

Federalism has traditionally been viewed as one of the most ideal institutional devices by which to territorially organise those political groups characterised by a high degree of social complexity. Daniel Elazar, one of the most renowed scholars of federalism, observed that more than a third of all countries make use of some kind of federal agreement for their territorial organisation, even going so far as to talk of a worldwide "federal revolution". However, this does not mean that all these countries are federal states or federations in a strict sense. In a far more recent study, Ronald Watts has argued that only 13% of current states are, in fact, federal.

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9 Requejo 1999b, 1998b, Gibbins-Laforest 1998, McRoberts 1997. For a broader view of the debate surrounding asymmetrical federalism and its political and constitutional possibilities within plurinational states, like Canada, Belgium and Spain, see Fossas-Requejo 1999

Anlysing the most widespread typologies within the current study of federalism we can distinguish - in very general terms - four main classes of federal agreement: Regional States, Symmetrical Federations, Asymmetrical Federal Agreements and Confederations\textsuperscript{11}. The table below summarises current examples of these classes of "federal agreements":

\textbf{(TABLE 1 ABOUT HERE)}

However, broadly speaking, federalism is a notion that is unrelated, historically or morally, to any regulation of national pluralism. Both institutional and normative analyses of federalism have been dominated, moreover, by the historical example of the United States. This is an empirical case that is not historically linked to national pluralism. If we remain within the orbit of American federalism, the answer to the question about the possibilities of accommodating plurinational societies seems to be basically a negative one. The reasons are both historical and organisational. It is fundamentally a mononational model that avoids the basic question, unanswered in democratic theory, about who the people are, and who decides who they are. In my view, it is practically impossible from these presuppositions to accommodate the different \textit{demoi} of a plurinational society within the constitutional rules of the game\textsuperscript{12}.

The history of federalism, or more accurately, the history of federations, has been characterised chiefly by the development of symmetrical models. Fundamentally, these models have been linked to mononational entities and to their processes of nation-building, and they have encountered problems when attempting to accommodate distinct national realities within the liberal-democratic scheme of things. Such models have not shown themselves to be a particularly promising path to follow when there are

\textsuperscript{11} Here I basically follow Daniel Elazar and Ronald Watts’ comparative analysis of Federalism, only introducing certain changes to the examples summarised in the table, such as the consideration of Spain as a regional state and not as a strict federation (Watts 1999, Elazar 1991, 1987). As this point has been developed in other chapters of this volume, I do not develop it here.

\textsuperscript{12} It is worth noting that neither from a theoretical perspective nor from a institutional one, federalism necessarily fit with other concepts like decentralization or subsidiarity. I have developed this point elsewhere, Requejo 1999a, 1998. See Noël 1998, Lemieux 1996, Bermann 1994, Rubin-Feeley 1994, Teasdale 1993
co-existing or juxtaposed processes of nation-building within the same polity. Symmetry stimulates uniformity in the ‘rules of entry’ to a given political system. This is a fact which makes it particularly difficult to achieve real accommodation, when what the pluralism of national minorities wishes to achieve is that recognition of plurinationality be established by these very ‘rules of entry’; and that the rules should also regulate minority national self-government. The symbolic, institutional and policy-making challenges that plurinational societies represent to the notion of federalism are, by and large, significantly different from the challenges represented by mononational societies. In addition to the search for common positions within the federation, what plurinational societies are mainly preoccupied with is establishing ‘liberal’ institutions and mechanisms of protection, on a constitutional scale, that safeguard the minority national demos from the decisions taken by the majorities.

The increasing complexity of an ever more plural and globalised world demands greater complexity from federal agreements in democratic polities. One of the historical advantages that the majority of different types of federal agreement display, including federations, is their potential flexibility and adaptability to different specific realities. In fact, comparative politics since the end of the Second World War shows that adaptability is an essential requirement for the stability and success of established federal agreements. This adaptability also extends to the group of plurinational federations that, despite sharing certain common traits, also display important differences of a historical, cultural, constitutional, and party-political nature. The following remarks do not therefore refer to any specific case. My intention is simply to argue a kind of federalism in order to improve the quality of democratic plurinational federations that includes the final five aspects related to liberalism mentioned in the first section: 1) a more complex notion of equality that takes national differences into account; 2) a pluralist conception in national terms of the demos of the federation; 3) the incorporation of the “ethical” dimension of practical rationality; 4) the accommodation of a variety of nation-building processes which are partially competitive; and 5) the combination of universal and particular legitimising normativities.

2.2 Plural federalism
The most standardising frameworks of mononational federations do not seem the most suitable principles for a political accommodation of plurinational realities, especially when the number of federated units is high in relation to the number of national collectivities living in the same federation. Culturally speaking, the “tyranny of the majority” has also shown its perverse effects in its lack of recognition of the internal national pluralism of some polities. The inter-group regulations of a plurinational state require constitutional guarantees of negative liberal liberty at the collective level or, in Kymlicka’s terms, the regulation of a number of institutional external protections - constitutional rights, veto powers in upper chambers, composition and powers of Supreme or Constitutional Courts, a clear and decentralised distribution of powers, etc- that accompany the lack of internal restrictions in intra-group relations. The collective rights and values of national minorities must be recognised at the same level as the collective rights and values of the majorities, which have usually been recognised in traditional constitutionalism 14.

It is for these reasons that I propose a model of plural federalism - in which certain asymmetrical or confederal regulations are also included - as a better model for plurinational realities. This would be, in effect, a symbolic, institutional and decision-making model based the kind of liberal-democratic revision mentioned above.

Essentially, plural federalism includes three basic types of federal agreement:

1. An explicit and satisfactory constitutional recognition acceptable to the main political actors of the national pluralism of the ‘federation’.
2. The establishment of a series of agreements, of an asymmetrical or confederate nature, for the regulation of those aspects decisive to the recognition and self-government of minority national groups. The aim of these agreements is the defence

14 In Rawlsian terms: there are many sizes and shades of “veils of ignorance”, but there is no a single “meta-veil” to decide from the outside which one is more suitable. The “primary goods” do not seem to be independent of the context. Moreover, the “reflective equilibrium” always takes us back to contexts which produce veils of ignorance and negotiations about which primary goods should be taken into account. In a plurinational state, culture and history are partially shared. But sharing them does not automatically mean that national collectivities reconstruct their position in this culture and history in the same way. In these reconstructions, different rational and sentimental elements are present in the transition from the “I” to the different “we” in which identities are constructed. Identities that contextualize our “moral autonomy”. In other words, Hegel within Kant. See Rorty 1997.
and development of such groups, both in relation to the federation and in relation to the international arena.

3. The regulation of more symmetrical agreements in other areas of self-government.

The first type of agreement is based more on the perspective of the constitutional recognition of plurinationality, whilst the other two are more concerned with the national self-government of federated units. The basic aim of plural federalism is to regulate different types of federal agreement in accordance both with the functional sphere to be regulated, and the characteristics of the federated units \(^{15}\). The basic nucleus of plural federalism is constituted by the first two types of agreement outlined above.

The application of the three types of federal agreement covers five basic areas: the symbolic-linguistic; the institutional; the area of responsibilities and powers; the fiscal-economic and the international. In this way, the inter-relationship of the three agreement types with the five areas of application gives rise to fifteen possible intersections. In the symbolic-linguistic area, for example, the first two types of agreement (regulation of plurinationality at a federal level, and asymmetrical or confederal agreements) include questions such as the regulation of pluri-lingualism in the name of the federation, in the currency, in personal identity documents (passports, etc.), the question of international representation for national sports teams, the use of flags, anthems, etc., within the various national territories, linguistic regulation pertaining to civil and property registers and so on. Other intersections between types of plural federal agreement and areas of regulation would be asymmetrical regulations in institutional and responsibility spheres. This could require specific regulations such as the electoral and political-party system, second chambers that regulate national minority parliamentarians’ right of veto on given issues, and a specialised and symmetrical bi-cameralism, as well as the potential role of plurinationality in the process of constitutional reform. Regulation of the composition of

\(^{15}\) This is not, therefore, a question of comparing a global federal model of an essentially ‘asymmetrical’ character with another (also global) model of a symmetrical kind. Rather, it is an issue of combining both types, and - in the case of nationally plural societies - assessing the territories in which they are to be applied. See Requejo 1998b, ch 2; McRoberts 1997.
Supreme or Constitutional Courts and the federalisation of the judicial power would also have to be addressed. Table 2 summarises some examples of these intersections.16

(TABLE 2 ABOUT HERE)

The specific regulations in these fifteen intersections will vary from one plurinational federation to another. However, as the basic aim of plural federalism is the political accommodation of diverse national collectivities in a single and high quality democracy, it will require in all cases, the articulation of rules and procedures based on political guarantees for the recognition and national self-government of the minority national groups. It is aimed more at maintaining the unity of plurinational societies already in existence than at paving the way for new ones to develop. In this sense, it is important to keep in mind the importance of theoretical revision and experimentation in the institutional design of the federation, as well as the analytic aspects outlined in the first section.17 This flexibility is one of the advantages of classic federalism.

Two additional remarks must be added here concerning the concept of federal asymmetry included in this plural model. First, in all federations there are de facto differences between the sub-units. It is for this reason that it is normal to introduce the distinction between political asymmetry and constitutional asymmetry. In each federation, the federated parts differ, for example, in population, territory, economic and natural resources, etc. These differences may be of political importance, as they may

16 For simplicity, the third column of the table includes the last three last basic areas mentioned above. I have also presented federal applied examples of potential agreements in these intersections for the Spanish case (Requejo 2000)

17 In this institutional design is important to experiment the degree of political recognition and practical national self-government finally achieved by the national federated units according to different institutional patterns: the party system in the federation and in the federated entity, the presidential-parliamentarian system of government, the congruence or not of the majorities in the lower and upper chambers, the system of appointment of the members of the supreme or constitutional courts, etc. An important question for the discussion in the years to come is secession: should there be constitutional regulation of procedural mechanisms that would allow for national groups to secede from a plurinational federation? This includes questions such as the majority required in such cases, rules of procedure, the time-scale involves, possible economic compensations, etc. In principle, it would seem that there is no moral superiority implicit in maintaining the unity of a federation. The fact of sharing liberal-democratic values does not, in itself, indicate anything about the wish of national groups to live together within the same polity. In relation to national secession, see Moore 1998, Lehning 1998, Buchanan 1997, McKim-McMahan 1997, MacCormick 1996, Philpott 1995, Margalit-Raz 1994
affect the weight of a given federated part within the federation. In this sense, the comparative studies have shown that great disparities with respect to the political asymmetries within a federation tend to produce yet greater instability. This is the case, for example, of a federation in which one of the federated parts contains more than half the overall population. Constitutional asymmetries, on the other hand, are not present in all federations, and refer to the difference of status or self-government for each federated part. It involves carrying out the principle of division of powers in a way that is not uniform for all the sub-units. A specific example of constitutional asymmetry can be found in the case of the Canadian federation, in which the province of Quebec has political competence in the area of immigration policy. Another far more general example, and one that allows for a characterisation of the state as that of an asymmetrical federation, is that constituted by the Belgian federation subsequent to the 1993 reform.

The second aspect to bear in mind when we speak of asymmetry is the distinction between constitutional asymmetry and asymmetry produced by the exercise of self-government. The federal guarantee of having a certain level of self-government is, in itself, a potential generator of diversity amongst the federated sub-units. Nevertheless, this should not be confused with constitutional asymmetry, which is a diversity established within the "gateway mechanisms", that is, the federation's rules of play, and not only within the "outlet mechanisms", that is, in the different results produced by the exercise of self-government. Differences based on the exercise of self-government are common to all federations, whether these be asymmetrical or not, and even to regional decentralised states. In this way, if the federated sub-units have political competence, for example, in the question of environmental policy, it is obvious that their policies could well differ greatly, one from another. In the case, for instance, of reducing levels of urban traffic, certain federated sub-units might give priority to the construction of cycle lanes, others might promote the use of public transport, whilst others still might decide to do nothing at all. This kind of diversity is intrinsic to the liberal working of the federal system, and is the result of the practical exercise of the political self-government by the different sub-units of the federation\(^\text{18}\).

\(^{18}\) See Webber1994, Peeters 1994 and Fossas 1999 for the cases of Canada, Belgium and Spain, respectively
As far as plurinational federations are concerned, in addition to the advantages associated with the competition between federated units, it is necessary to consider the advantages associated with the accommodation of different nation-building processes. Both these advantages, however, may not always be compatible in practice. The flexibility of a federal system depends on its ability to adapt the balance between the self-government of the federated units and the level of co-operation and presence of the federation in these units according to the evolution of political life. In fact, all federations include mechanisms of co-operation between the two levels of government, for reasons related to the unity of the federation and for reasons based on shared responsibilities. In plurinational federations it seems convenient, however, to establish a division of powers that will ensure a high degree of self-government for those units which display specific national characteristics\(^{19}\).

Obviously, a good democratic accommodation for plurinationality cannot simply consist of a mere adaptation of a ‘formal model’, but also requires political content and constitutional regulation stemming from the notion of *plurinationalism*. When the national reality of a federation is asymmetrical, the regulation of federal asymmetries does not in itself constitute a guarantee of accommodation for the factual national asymmetries. Such regulation represents a necessary precondition to constitutional accommodation, but in itself cannot guarantee conditions of sufficiency for such accommodation. Notwithstanding this fact, however, we could say that, based on the social and historical conditions in plurinational societies, in the absence of constitutional regulations on the recognition of *plurinationality*, and without asymmetrical or confederate regulations in the field of self-government, it is particularly difficult to obtain a satisfactory federal resolution of the ‘national question’ - or the different "national questions" - in terms of liberal-democratic demands for a reality that is both plural and complex.

The rigidity of the procedures of constitutional reform often hinders the operation of institutions and the creation of new political decision-making procedures within federations, especially those which can only be applied to some of the federated entities.

\(^{19}\) F. Scharpf, in an analysis of the relation between federal policy-making and multi-party systems, has insisted that “the joint-decision structure resembles a trap which, under its own decision rules, cannot be changed by the actors who are caught in it” (Scharpf 1995:28)
In this case, instead of using formal reform procedures it may be better to establish general mechanisms such as “opting in” and “opting out”,20 which do not need constitutional reforms and which can be established without damaging the economic and fiscal equilibrium of the federated units, whether the latter display specific national characteristics or not. In this way, the relationship between the federal power and the different federated entities will probably end up including more asymmetrical mechanisms than those which are formally recognised in the legal framework of the federation 21.

In general terms we might say that liberal, democratic, functional and national logics and values are, on the whole, desirable for the quality of a plurinational democratic federation; but they are not always univocal, nor do they always attempt to achieve the same aims22. Liberal protections of individual rights and liberties, democratic participation, efficiency or stability are competing goals in classical federal polities. In plurinational federations we face additional challenges whose final objective is to form a “better democratic union”, avoiding the sometimes unintended culturally biased or perverse consequences linked to traditional liberalism 1 approaches. In plurinational

20 Opting in procedural mechanisms consists on the establishment by the federal government of especific programmes and is a decision of the federated entities to take part or not in them. In Opting out procedures, some federated entities might decide not to take part in a federal programme, receiving the payments that the central government would have spent in the federated unity if it took part in that programme. Canada has implemented these procedures in several areas in recent times. As R. Watts points out “in recent decades far-reaching changes in the structure and operation of the Canadian federation have come through the impact of fiscal circumstances and the normal interactions of the policies of federal and provincial governments rather than through formal constitutional amendment (...) What is more, such incremental nonconstitutional adaptation may be much easier to achieve when the higher stake deliberation of mega-constitutional politics are avoided” (Watts 1999:122-3)

21 This seems to be more likely, however, in the areas related with self-government than with the areas related with the recognition of plurinationality. In any case, the practical rationality of these more informal procedures is an empirical question in which it is important to distinguish between those procedures that are designed to carry out the decentralisation of the federation and those designed to accommodate the plurinationality of the federation. In some cases, these two objectives can not be achieved by means of the same federal techniques. These duality of objectives has been confused in some practical processes of devolutionary plurinational federations. For an analysis of the Spanish case, see Requejo 1999b.

22 The proposed model fits the general reasoning of the recent important advisory opinion established by the Canadian Supreme Court on the constitutionality of the potential secession of Quebec (25506, 1998). This advisory opinion establishes that both the constitutional text and the procedure for its reform should be interpreted using the four general principles built into the Canadian constitution: federalism, democracy, constitutionalism and the respect for minorities.
contexts, the basic demand is that values of liberty, equality and individual dignity be allowed to be developed in a more careful manner, and that these values should be implemented through the effective accommodation of the different national realities co-existing within one and the same democracy (Gibbins-Laforest 1998; Gagnon-Tully 2000). Certainly, we are nowhere near the “end of history” as far as federalism in plurinational polities is concerned.
References


Canovan M 1996, Nationhood and Political Theory, Elgar, Chetelham

Carens J (ed) 1995, Is Quebec Nationalism Just?. Perspectives from Anglophone Canada, Montreal & Kingston


Elazar D 1987, Exploring Federalism, Tuscaloosa, University of Alabama Press


Gibbins R-Laforest G (ed) 1998, Beyond the Impasse, IRPP, Montreal


Requejo F, 1998b, Federalisme, per a què?, Tres i Quatre, València

Requejo F-Wynants S, 2000, "Democracia, federalisme i plurinacionalitat: una perspectiva des de Catalunya", Goma R-Subirats J (eds), Govern i Politiques Públiques a Catalunya, Ariel, Barcelona


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