

## PLURINATIONAL DEMOCRACIES, FEDERALISM AND SECESSION. A POLITICAL THEORY APPROACH

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### Abstract

This article deals with the suitability of the main normative political theories related to political liberalism, federalism and secession when they attempt to recognise and accommodate the national pluralism of plurinational democracies. Firstly, after considering the partial normative character of political theories, I analyse the relationship between liberal democratic theories (pragmatic, neutralists, perfectionists and value pluralists) and federal theories (monists, pluralists), pointing out a number of possibilities and shortcomings they display in contexts of national pluralism. The reasons for stressing the need for a 'Hegelian turn' in these theories is also highlighted (section 1). Secondly, after mentioning the classical institutional solutions for accommodating plurinational societies, I analyse the suitability of federalism and secession for achieving the political recognition and constitutional accommodation of national pluralism by means of a number of conclusions drawn from analyses of comparative politics in federations and secession processes (sections 2 and 3).

**Keywords:** Plurinational democracies; federal theories; liberal democratic theories; secession; Hegel; Catalan sovereignty process.

### DEMOCRÀCIES PLURINACIONALS, FEDERALISME I SECESSIÓ. UN ENFOCAMENT DES DE LA TEORIA POLÍTICA

#### Resum

*Aquest article tracta sobre la idoneïtat de les principals teories polítiques normatives relacionades amb el liberalisme polític, el federalisme i la secessió quan intenten reconèixer i donar cabuda al pluralisme nacional en el marc de democràcies plurinacionals. En primer lloc, després de constatar el caràcter normatiu parcial d'aquestes teories polítiques, analitzo la relació entre les teories democràtiques liberals (pragmàtiques, neutralistes, perfeccionistes i teories que defensen el pluralisme de valors) i les teories federals (monistes, pluralistes), cosa que indica un seguit de possibilitats i limitacions en contextos de pluralisme nacional. També es posen de relleu les raons per subratllar la necessitat d'un "gir Hegelià" en aquestes teories (secció 1). En segon lloc, després d'esmentar les solucions institucionals clàssiques per trobar un encaix a les societats plurinacionals, s'analitza la idoneïtat del federalisme i la secessió com a vies per aconseguir el reconeixement polític i l'assumpció del pluralisme nacional, per mitjà d'una sèrie de conclusions que són fruit de l'anàlisi de polítiques comparades en federacions i processos secessionistes (seccions 2 i 3).*

*Paraules clau:* Democràcies plurinacionals; teories federals; teories democràtiques liberals; secessió; Hegel; procés sobiranista.

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## 1 Liberal democracies and pluralism

### 1.1 Epistemological and moral pluralism

I would like to start by briefly emphasising two basic facets of pluralism related to liberal-democratic legitimacy. On the one hand, the conviction that there is no political theory, or even political tradition that may attribute such legitimacy exclusively to itself. That is, the existence of an unavoidable normative pluralism in present-day diverse democracies. On the other hand, the existence of an agonistic set of conceptions of politics. This fact is especially relevant in those democracies endowed with a plurinational character, which lies behind the analytical deficits and flaws of traditional liberalism and constitutionalism when they address the political recognition and accommodation of national diversity.

Faced with this normative pluralism, the main political theories and their internal variants have tended to choose particular elements and dimensions or a combination of them by means of a plurality of philosophical approaches. In this way, each one of these theories tends to:

- 1) Give priority to a number of specific questions on political legitimacy.
- 2) Use a particular conceptual framework.
- 3) Concentrate on specific goods, values, interest and identities.
- 4) Propose specific solutions for questions that have been selected as most relevant in the political sphere.
- 5) Interpret in a different way, marginalise, or fail completely to take into account the questions, concepts, values and institutional references defended by rival theories.<sup>1</sup>

The absence of one single theory of democratic legitimacy situates us within normative pluralism. This is a question that has been analysed, among other fields, in history and linguistics studies by Q. Skinner and J. Pocock, among other authors. Language always structures that which we wish to emphasise on the basis of certain rules situated beyond the simple wishes of the interlocutors.<sup>2</sup> Understanding a political theory implies understanding the key outstanding questions, and the speech acts that are used in any given context.<sup>3</sup> Each political tradition draws a veil of silence over a significant part of the areas emphasised by other political traditions. We find ourselves faced with what are, in effect, partial theories that on the one hand underline, and simultaneously foster, specific aspects of democratic legitimacy; but on the other hand, detract from or even hide from view other aspects of this legitimacy when such aspects turn out to be alien to the 'rules' (Wittgenstein) of their particular narrative. One condition for making progress in knowledge of social factors is knowing how to ask the right questions, and learning about the limits of what we know and the theories we use to try to gain knowledge. This is where philosophy, somewhat paradoxically, can be very useful. This is especially relevant, as we will see later, in the case of plurinational democracies.

### 1.2 Theories of democratic liberalism

The history of political liberalism has produced a number of competing theories. Liberal political theories of a strictly individualistic nature are inclined to approach and resolve the normative questions selected by

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1 In addition to this *omission strategy*, Charles Taylor has rightly pointed out Berlin's stance against what we can call the *redefinition strategy*: '(to) try to finesse the clash between liberty and some other goals -solidarity, justice, social harmony, equality - by telling ourselves that these other goals are internal to the definition of freedom, properly understood ..... This kind of fudging goes back to Plato, at least... Conflict is finessed by redefinition' (Taylor, 2001).

2 Specific contexts introduce normative, historical and institutional elements which are important in terms of legitimisation. Walzer's perceptive critique of the periodic need which liberal approaches have for communitarian critique could be extended to the relationship of different liberal democratic theories in the sphere of political legitimacy. There is a kind of liberal 'two-stroke engine' in this sphere which goes from emphases which are aimed more at 'procedural justice' (neutralist theories) to others closer to liberal values and virtues (perfectionist theories). See Walzer 1990. I have developed this point in; see especially the normative pyramid with nine legitimising poles in present-day liberal democracies, in Requejo, 2005, chap. 1.

3 Skinner 1998; Pocock 1985, Searle 1995, chap. 1-5; Pitkin 1972, XII-XIV.

means of the practical regulation of specific rights, institutions and processes in a different way from liberal theories which combine the individual perspective with others of a collective nature. For example, the former will tend to approach the issue of national and cultural minorities through a notion of homogeneous citizenship, while the latter will be more inclined to introduce different principles of legitimisation and to pluralise the institutional regulation of citizenship through national and cultural pluralism.

It is advisable to keep in mind this internal pluralism of liberal political theories both when one is dealing with questions of a strictly normative nature and when one is analysing institutional and procedural questions. This theoretical pluralism is largely unavoidable and makes any overall synthesis unlikely.<sup>4</sup>

Liberal theories can be classified according to the patterns displayed by different typologies. One may take into account the type of agreement that the theories defend (pragmatic agreements versus moral agreements). In the case of moral agreements, these may be distinguished according to the role that the theories establish for institutions in relation to the promotion or not of moral values and conceptions regarding the good life (neutralist theories versus perfectionist theories). A third pattern is whether liberal theories advocate a monist perspective (those theories that focus on a fundamental value), a pluralist perspective that focuses on a variety of values, but which are based on a permanent ranking of these same values (e.g. the lexicographical priority of the principle of equal liberties in the work of J. Rawls), or a pluralist perspective without the possibility of establishing such a permanent ranking (e.g. Berlin's agonistic value pluralism).

By a similar token, liberal theories have maintained different strategies for legitimising the state: keeping the peace (Hobbes), establishing institutions and 'neutral' practices with regard to the different ways of life of its citizens (Rawls), or encouraging a set of values, virtues and political objectives, either through weaker normative versions (Galston), strong normative versions (Raz) or pluralist versions (Berlin). These different types of agreements and strategies constitute two basic types of liberal political theories: (the second subdivided in four groups):

- 1) Liberal democratic theories based on pragmatic agreements.
- 2) Liberal democratic theories based on moral agreements:
  - 2.1) Neutralist theories.
  - 2.2) Theories of public purposes or weak perfectionist theories.
  - 2.3) Strong perfectionist theories.
  - 2.4) Value pluralist theories.

**A) Pragmatic theories** (Rorty, Gray).<sup>5</sup> No normative agreement is possible because there is no objective criterion to establish it rationally. The basic objective of a liberal society is to prevent internal violence (Hobbes), to regulate conflicts through institutions and procedures that respect individual freedom and prevent despotic power. Specific agreements, of a pragmatic nature, should be forged by the actors who are involved in each context.

**B) Neutralist theories** (Rawls).<sup>6</sup> They aim to be a minimal moral and procedural form of liberalism which permits the maximum inclusion and compatibility between different ideals of the good life. Based on a strict separation between the spheres of justice and morality, they oppose any 'perfectionist' attempt to identify 'superior' moral values or specific features of individuals' character that must be promoted by public institutions. Political liberalism is desirable precisely because it does not promote any specific way of life,

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4 This is related to at least four aspects: 1) the emphasis on different features of individuality – life, freedom, development of abilities, rationality, subjective satisfaction, etc.; 2) contextual situations of a national and cultural nature; 3) different interests according to characteristics of class, territory or social group; 4) ambiguities and vagueness of the abstract language which give different meanings to the main legitimising values.

5 Rorty, 1989; Gray, 2000.

6 Rawls, 1971, 1993.

permitting a plurality of individual conceptions and developments of life projects. The justification for this normative neutrality is based on: 1) a sceptical position with regard to the existence of a rational decision between different ways of life, or 2) the acceptance of the fact that pluralism exists in contemporary societies, or 3) a normative priority (e.g. of lexicographical nature) of the value of liberty which prevents the state from imposing or promoting a specific way of life on its citizens. In general terms, there is a rejection of moral coercion by public institutions. This implies the adoption of a more sceptical attitude with regard to interventionist proposals by these institutions, for example, in the educational sphere. This is despite the fact that neutralist theories sometimes claim to defend the neutrality of public institutions with regard to different conceptions of good and with regard to the different ways of life that occur in society. However, the latter appears to be truer than the former.<sup>7</sup>

**C) Weak perfectionist theories** (or of public purposes) (Galston).<sup>8</sup> These theories defend the position that all states, including liberal ones, possess a number of values and objectives that it is a priority to promote, as well as several anti-values and objectives to be avoided. In other words, these theories maintain that no institutional organisation is fully universal or normatively 'neutral'. They all, it is said, promote specific ways of life and discourage others. In fact, they state that a liberal state needs to establish the conditions for its own stability and permanence. The 'principles of justice' are not sufficient (whatever they may be). To this effect, these theories maintain that neutralist liberal authors also accept normative rules that go beyond the instrumental and formal criteria they defend.

Political liberalism is characterised, on the one hand, by the defence of a series of (normatively non-neutral) public purposes and, on the other hand, by a refusal to defend a fixed set of specific styles and ways of life. Its attractiveness does not lie in the absence of coercion, but in its minimisation with respect to other political regimes. Insisting on 'neutrality' is only advantageous to the detriment of other liberal values.

Regarding values, these theories, together with equality and liberty, also defend excellence and virtue as characteristics of political liberalism. Individual freedom, equality and rational dialogue are not sufficient for the stability of a liberal society. Liberalism is not at odds with a weak sense of virtue or public virtues, although it is at odds with a strong or 'perfectionist' version such as that of classical republicanism. In other words, for this type of theory, liberal practices and institutions require a certain kind of citizen endowed with some virtues and a specific character, which require the implementation of a weak form of perfectionism by liberal public institutions. An implementation which is deemed to be advisable, as well as inevitable, for any liberal project, and which is justified above all in instrumental terms: as a means for the preservation of liberal societies and their institutions. Rather than putting limits on diversity, it establishes what is considered unacceptable in social pluralism. Its aim, therefore, is to establish a weak form of substantive liberalism (e.g. in the sphere of civic education), but of a purposive nature rather than a formal and procedural form of liberalism.<sup>9</sup>

**D) Strong perfectionist theories** (J. Raz).<sup>10</sup> Linked to the very beginnings of the republican tradition (Aristotle), they defend an explicit connection with objectives and values regarding the good life (autonomy, knowledge, virtue, responsibility, etc.). Liberalism is seen as a partisan political conception which defends specific values and virtues and which establishes duties towards the community itself. It is a theory of being good, rather than well-being. The liberal polity is based on a shared moral vision which promotes certain

<sup>7</sup> A. Wolfe summarises it thus: 'In theory, liberal proceduralism, because it is inclusive of different political world views, ought to be less controversial than substantive liberalism, which defends one set of political goals against others. But in reality, liberal proceduralism finds itself under attack from left, right and centre, as if the one thing that people who disagree over substantive ends can all agree upon is that no set of rules can rise above the fray and look down disinterestedly upon those rules' (Wolfe, 2009)

<sup>8</sup> Galston, 1991.

<sup>9</sup> Some of the 'republican' criticisms of political liberalism have focused on the vulnerability of the notion of 'liberty as non-interference' and the 'neutrality' of public institutions. However, regardless of the plausibility of such criticisms of these notions, they are more characteristic of some liberal versions than of liberalism itself. At times these criticisms still reflect a 'monist' confidence with regard to rationality and morality: the idea that there is only one way to be rational and moral in any given situation, which can be discovered, for example, through 'deliberation'. I believe that this epistemological attitude and morality continue to reflect either an 'ancient', Greek or Roman, mentality, from which modern liberalism breaks, or a Kantian moral perspective which normally only prescribes the existence of a correct form of conduct in a given situation. Neither attitude seems to be intellectually equipped to confront the different types of pluralism of present-day societies.

<sup>10</sup> Raz, 1986.

ways of life that are considered good. It is unrealistic to try to combine an ethics of positive freedoms on an individual scale with a policy of strict negative freedoms. It involves the establishment of a normative and institutional framework in opposition to the centrifugal and corrosive forces of diversity. Here stricter limits are imposed on what degree of diversity is considered acceptable, to the extent that its critics accuse it of no longer being within the liberal paradigm due to the fact that it takes sides on controversial issues. These theories could be ambivalent regarding the separation of the state and churches and the treatment of minorities. Its differences with weak perfectionist theories are more a question of degree in relation to specific spheres (education, religious freedom, political pluralism, etc.).

**E) Value pluralist theories (I. Berlin).**<sup>11</sup> These theories focus on the fact that there is a multiplicity of values in plural societies which cannot be reduced to a single principle, or a universal permanent combination of values applicable to all individuals and all practical cases. In other words, to establish a universal and context free hierarchy of values is impossible. This value pluralist approach asserts three things:

a) *The irreducibility of goods and values.* The goods and values of human life are radically diverse. It is impossible to reduce some values to others or to derive some values from others, or to combine them all into a single higher value or a permanent combination of values.

b) *Agonism.* Goods and values are often mutually incompatible. It is impossible to harmonise them into a coherent whole. The moral struggle does not occur between good and evil but between good and good.

c) *The incommensurability of goods and values.* Conflicts between different goods and values cannot be decided in terms of interpersonal reasonability. There is no set of principles shared by all humans that is capable of resolving this kind of conflict. There is no universal hierarchy of values.

The most radical feature of value pluralism is the third one: incommensurability. This feature is formulated in relation to values between cultures as well as within cultures themselves. However, this does not entail adopting a sceptical or relativistic position in the moral sphere. Berlin maintains that values are objective and that reason plays a role in moral conflicts. However, 'reasonable' discrimination between values is much more context-dependent, even on an individual scale, than moral, political or religious 'rationalist' conceptions assume. Faced with a specific situation of conflicting values, there is no single 'truth', nor is there one 'correct' moral position. Reason plays a role when prioritising and interpreting values in a given situation, but this will often become an unavoidably controversial issue given the three aforementioned characteristics of morality, especially the incommensurability of goods and values.

### 1.3 Liberal democratic theories and national pluralism

Regarding practical issues, pragmatic theories are usually sceptical with regard to the possibility of establishing moral agreements between individuals with different normative conceptions. This is an approach that maintains the perspective of actors that reach general agreements in the state polity. In the case of plurinational polities, specific agreements will depend on the relative empirical power of these actors. The criticisms that they have received from theories favourable to some kind of moral agreement are based on the fact that: 1) there is no guarantee that simply appealing to the prudence of the actors will propitiate cooperative positions between them, and 2) pragmatic conceptions encourage a permanent instability in liberal institutions and practices because the latter depend on the specific power of the actors that reach real agreements in specific contexts.

In contrast, the majority of the last four liberal theories maintain a basic approach that is predominantly moral and rationalist with regard to political legitimacy. Most of these theories refer to an intellectual framework of an individualistic, universalist and statist nature mostly inspired by some sort of Kantian moral individualism. The last two kinds of theories (Raz, Berlin) have even accepted cultural pluralism not only as a reality that needs to be managed in the least traumatic way possible, but as a key value of liberal-democratic legitimacy of present-day societies.

<sup>11</sup> Berlin, 1998a, 1998b, 1996. A brief analysis of Berlin's value pluralist approach in Requejo, 2014.

However, only recently has the national pluralism been included in some liberal theories. National pluralism, when it is taken into account, tends to break with the usual interpretation of uniformising concepts of liberal polities, such as the ‘equality of citizenship’ or ‘popular sovereignty’ maintained by traditional political liberalism. It is a kind of pluralism, moreover, that leads one to approach political relations in ways that pay greater attention to specific contexts. ‘Reflective equilibrium’ (Rawls) is methodologically necessary, but its scope is wider and includes more perspectives than the simple Rawlsian version which contrasts moral intuitions and ethical principles. The normative and institutional challenges posed by plurinational democracies ask questions that are normatively and institutionally more complex than those put forward by uninational democracies. Here pluralism becomes more plural and contextual.

In recent years, a number of analyses have shown the biased and impoverished nature of traditional liberal theories when they are applied to contexts with strong components of national pluralism; in other words, when they are applied to plurinational democracies such as Belgium, Canada, the United Kingdom or Spain. One might enquire into the theoretical roots of that partiality or bias – which is present in the interpretation of the individualistic, universalist and procedural components of those roots. The generic question is what the basic conceptual framework is to which the notion of pluralism present in the liberal theories described above is linked. I believe that at least part of the intellectual difficulties of liberal theories in plurinational contexts is related to their philosophical foundations, which in many cases refer basically to Kantian approaches. In the next section we ask whether a specific ‘Hegelian turn’ provides a number of philosophical foundations that are more suitable to approach and regulate, in liberal terms, the kind of pluralism present in plurinational contexts.<sup>12</sup>

#### 1.4 The need for a Hegelian turn regarding national minorities and liberal democracies

In the sphere of knowledge, the medieval philosophers had already distinguished between cognitive capacities: *intellectus* (understanding) and *ratio* (reason). The former was superior. It was regarded as being of an intuitive nature and made it possible to attain the principles that ruled knowledge and moral action. In a flash it brought us closer to God. The second capacity, reason, was more human. It was of a discursive nature and brought us closer to more ephemeral and temporary knowledge. Later, the Enlightenment inverted the hierarchy of these two capacities.

From this starting point, Kant grasped two things: that we think using categories that are unique to us, and that we are condemned to think about things that we do not know and cannot know. Among the latter are liberty and moral action. They, and not knowledge, constitute the highest point of human dignity for Kant. Scientific knowledge is circumscribed to phenomena; beyond them there is no knowledge. But whether we like it or not, we are compelled to think beyond them, to think without knowing. This is the sphere of individual morality and regulatory ideas that never allows us to attain the ideal that we are pursuing, but which allows us to orient ourselves and civilise to some extent the jungle of interests, values and identities in which we live. This is the true conquest that liberal democracies have made.

However, practices appear to tell us that morality and politics always include social dimensions. Individuals usually act in social networks in which they fight for achieving personal and political recognition. And nobody has established more clearly than Hegel the human need for recognition. Thus, from the politics of recognition inherent in Hegelian ethicicity comes the need to introduce the perspective of moral collectivism besides that of moral individualism in plurinational democracies.

From the perspective of moral collectivism, 1) national groups are seen as legitimate sources of rights and moral claims; that is, they become legitimate actors through the normative links of their members to certain

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<sup>12</sup> It is well known that contemporary liberal philosophers have usually made few references to Hegelian philosophy. A search through the works of Rawls, Galston and Raz reveals that, either there is simply no reference whatsoever (Raz), or that Hegel is mentioned in very general terms, with no reference to any specific works (Galston), or that there are a number of references, very few, mainly in relation to Hegel’s *Philosophy of Right* (PhR) (Rawls). So, Hegel is only cited twice in *A Theory of Justice* (TJ), a general citation and another referring to the PhR (private property, sections 182-187). In *Political Liberalism* (PL) there are also references to the PhR (religious pluralism, section 270) and four fragments related to the theory of contract in Locke/Kant; while in *Law of Peoples* there is a general reference to Hegel and others to the rejection of democracy in the PhR and in Hegelian ‘political writings’. Finally, in *Justice as Fairness* there is a reference to the notion of reconciliation, another to the historical role of Christian Reform as a phenomenon that precedes liberal rupture, and a final reference to the civil society (sections 182-256), all referring to the PhR.

values, institutions and collective projects; and 2) it emphasises that moral autonomy of individuals is not necessarily the supreme or only liberal value; other values can take its place in specific contexts, such as collective freedom and tolerance, along with individual autonomy. These would be two requirements for establishing a successful constitutional and political accommodation of national pluralism in a liberal state (in addition to the individualistic perspective).

The ‘liberal’ key of the recognition between majorities and minorities will be one that is reciprocal and established on an equal footing. This makes it possible, from a perspective situated beyond moral individualism, to tackle the relations between different national groups within the state. And this is possible despite the statist emphasis inherent in Hegelian thought.<sup>13</sup> This is, in a manner of speaking, the establishment of an *a posteriori* social contract, whose legitimacy is no longer purely and simply ‘moral’, but includes a *modus vivendi* type component based on the mutual recognition of partially disjointed *ethnicities*, but which the latter recognise as an agreement that is normatively superior to those mere political agreements of a moral nature.

In a plurinational liberal democracy, the perspective of moral collectivism is pluralistic by definition. This is a point which takes us away from Hegel’s monist view of the state. Moral collectivism in plurinational polities refers to a set of values, interests and identities of an agonistic character (conflict understood as something unavoidable in political relations), which encourages agreements of a pragmatic nature (*modus vivendi* agreements). Berlin (value pluralism) and Taylor (political recognition)<sup>14</sup> meet within a more diverse and complex ethics than that stipulated by Hegel. But both are needed, the more individual perspective of Berlin’s liberalism and the more collective perspective of Taylor’s recognition. To follow the path of the ‘atomised’ individualism and the monist moral perspective that accompanies traditional state-liberalism means legitimising *de facto* relations of domination that exist between national groups within plurinational democracies. In other words, to stay exclusively within the perspective of moral individualism implies to legitimise the status quo of factual relations of domination present in the institutions, rules and decision-making processes of traditional liberal democracies.

Clearly, to highlight the ethical importance of national groups for individuals does not involve accepting that these groups are of a static, eternal, or non-plural character. As with almost everything that is human, they are internally dynamic, historical and pluralistic entities. Over time, they change their values, their priorities and their internal composition. But they will probably be replaced by other forms of collective ethnicity that will also be a legitimate source of rights, moral claims, constitutional recognition and political accommodation.

Hegel provides a theoretical perspective that, despite and beyond his statism, is a shift towards a more interactive (dialectal) approach which is normatively and institutionally relevant for the relationship between majorities and minorities in nationally diverse democracies. It provides a normative and institutional democratic refinement required to break the monopoly of state nationalism and a notion of citizenship based purely on moral individualism which are still very present in most approaches of political liberalism, federalism and constitutionalism.

In the language of the liberal tradition, this requires establishing collective rights for national minorities alongside individual rights, and alternative institutional models. Potential conflicts between individual rights and collective rights should be regulated in a similar way to that in which conflicts between individual rights are regulated (courts, *modus vivendi* agreements, etc.). But to do so from the premises of pluralist and egalitarian recognition, composition and procedures of the high courts and intergovernmental relations in plurinational polities should take into account their national pluralism. However, as we will see in the next section, the analysis of comparative federalism shows that the two general objectives of plurinational democracies – constitutional recognition and political accommodation of national pluralism – are done in a very incomplete and biased way through uninational and symmetrical traditional federal formulae. Actually, all federal plurinational states show problems of internal legitimacy.<sup>15</sup>

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13 In his ‘technical’ language, Hegel defines the state as ‘the actual reality [*Wirklichkeit*] of the ethical idea’. See *Philosophy of Right*, section 257. See also Seymour, 2008; Singer, 2001; Taylor, 1998.

14 Berlin, 1998a; Taylor, 1992.

15 Some theoretical and comparative analysis of plurinational federalism, in Burgess & Gagnon, 2010; Requejo, 2005; Amoretti & Bermeo, 2004; Filippov, Ordeshook & Shvetsova, 2004; Tierney, 2004; Baldi, 2003.



In this way, I think that the Hegelian legacy of political recognition and moral collectivism, as an enlargement of the Kantian perspective, facilitates a better implementation of national pluralism through institutions and procedural rules in current liberal democracies.

## 2 Federalism. Political theory and institutional practices

The three ‘classic’ institutional responses for societies with a strong component of national diversity have been:

- 1) *Federalism*: (in a wide sense, including federations (mainly asymmetrical), associated states, federacies, confederations and regional states).
- 2) *Consociationalism*: institutions and processes based on consensus between the majorities and permanent national minorities. One can find examples of these institutions and processes in the democracies of Switzerland and Belgium, in both cases in conjunction with federal solutions.
- 3) *Secession*.

We will focus here on the first and third of these institutional solutions. Regarding federalism, the generic question is whether it offers a suitable framework for establishing the recognition and accommodation of plurinational democracies.<sup>16</sup>

### 2.1 Federal theories

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. And this is an empirical case that is not related to national pluralism. If we remain in the orbit of the federalism of the United States (J. Madison, *Federalist Papers*, 10, 51), the response to the question concerning the possibilities of the political accommodation of plurinational societies by means of federal formulae is basically negative. The fundamental reasons for this are both historical and organisational. This is essentially a uninational model that avoids, but implicitly responds to, a fundamental question that, paradoxically, democratic theories have failed to 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 to be practically impossible to politically empower the different *demos* of a plurinational society within the uninational rules of the federal model of the United States.

From the philosophical discussion of the previous sections we can infer how the perspective of moral individualism and the concept of citizenship associated with individual autonomy make it easier to approach political relations: a) from the perspective of an abstract, empirically impoverished form of individualism that is inclined to legitimise the position of hegemonic groups; b) from the perspective of a kind of ‘state universalism’ – often associated with state nationalism – which pays little attention to the internal pluralism of plurinational societies. These approaches make it easier to conceive politics in ‘monist’ national terms – with regard to a single, state *demos*, or in ‘pluralist’ terms but with a hegemony of the *demos* of the federation over the *demos* that make up the minority nations of the polity (who are sometimes denied recognition as *demos* and are relegated to being ‘regional’ entities of a single state unit). Relations between national majorities and minorities are either removed from the (normative and institutional) political agenda, or are included in terms of the hierarchical subordination mentioned above.<sup>17</sup> We can therefore establish a simple typology of federal theories according to the national perspective they adopt:

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16 We have focused here only on federations and regional states, excluding other federal models such as associated states, federacies, confederations, or supra-state organisations such as the European Union. See also Watts, 1999.

17 It is worth recalling here the words of E. Burke in his famous speech to the voters of Bristol (1774) in which he describes Parliament as ‘a *deliberative* assembly of *one* nation, with *one* interest, that of the whole; where, not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole’ (emphasis added).

- a) Federal theories that are monist in national terms.
- b) Federal theories that are pluralist in national terms with hegemony of the federation.
- c) Federal theories that are pluralist in national terms without hegemony of the federation.

This typology can be combined with that of the liberal democratic theories established in the previous section. In order to simplify this combination we will group the liberal theories according to their basic philosophical framework described in the previous section (Kantian versus Kantian plus Hegelian):

- 1) Theories based on pragmatic agreements.
- 2) Theories based on moral agreements from the perspective of Kantian moral individualism (neutralist theories, weak perfectionist theories, and strong perfectionist theories).
- 3) Theories based on Kantian moral agreements and on the Hegelian ethic of empirical societies: moral individualism + recognition and moral collectivism (value pluralist theories).

The combination of theories of democratic liberalism and federalism makes it possible to visualise what kind of federal liberal democratic theories are most suitable for the regulation of pluralism in plurinational democracies.

I) Federal liberal theories that are in favour of reaching pragmatic agreements in the public sphere of democracies. Although from the perspective of liberal democratic theories that are in favour of reaching moral agreements they are not regarded as sound in terms of their 'foundations', in some cases federal theories based on pragmatic agreements appear to be more open to incorporating regulations, institutions and practices (*modus vivendi* agreements) based on the recognition and accommodation of national pluralism, than theories of a moral nature based on mere moral individualism.

Obviously, this will not be the case if the main political actors and institutions involved in the process adopt a monist national perspective with regard to the federation (a1). By leaving agreements to political practice once there are guarantees of i) individual rights; ii) liberal techniques for controlling power (separation of powers, principle of legality, representative democracy, competitive elections, etc.); and iii) a federal division of territorial powers, etc., these pragmatic agreements will follow from the relative strength of the actors who must establish the federal agreement. However, when the political actors of minority nations start out from a weaker situation than their opponents, they are unlikely to achieve institutions, rules and processes that will favour them in equal-footing procedural rules. This will make it difficult to achieve the recognition and a stable political and constitutional accommodation of the state's national pluralism.

If the actors adopt a national pluralist perspective but with hegemony of the federation, recognition and accommodation agreements will probably be possible, albeit partially (b1). This situation makes it likely that there will be instability and a permanent unresolved conflict in the federation.

A stable political accommodation of the state's national pluralism only seems to be possible if all the most important actors adopt the perspective of a kind of federalism without the hegemony of the federation in national terms (c1). This perspective involves understanding the fact that in liberal-democratic polity there is not a single public sphere but as many spheres as there are national *demos*. There is no doubt that this is an empirically difficult situation in historical and political terms, but one that is conceptually congruent with the logic of reaching agreements of a pragmatic nature.

II) Federal liberal theories that are in favour of reaching moral agreements in the public sphere of democracies based only on Kantian philosophical approaches. In general terms, liberal theories of this type have not been inclined to conduct the analysis of plurinational federal agreements. This is not a strong point of normative analyses of this kind. The implicit perspective adopted is usually that of monist state nationalism. This makes it difficult for them to adequately understand national pluralism, as the recognition of this kind of pluralism is absent from this federal-liberal intersection. This is the usual perspective adopted by federal institutions and actors in uninational federations (USA, Germany, Austria), presented in terms of traditional 'Liberalism

1', as well as by some institutions (governments, parliaments, courts) and some Canadian, British or Spanish political parties (a2).

On the other hand, to adopt the federal perspective with national hegemony of the federation would probably result in a partial recognition of national pluralism and its inherent problems of permanent instability as in the pragmatic agreements (b2).

However, if the perspective of federalism without national hegemony of the federation was adopted, things would be different. The neutralist and perfectionist perspectives could permit different kinds of agreement in different territorial spheres – taking into account, for example, a variety of conditions in the different 'original positions', as well as more pluralism in the perfectionist ways implemented by different *demos* (c2).<sup>18</sup>

The adopted notions of individualism (which makes them blind to national collective identities that are different from those of state nationalism) and rationalism (the belief that it is possible to achieve a consensus based solely on rational criteria), are two notions that situate Kantian-based liberalism before what could be called the 'mirage of linguistic consensus'. Perhaps most of the flaws of liberal theories that are based exclusively on moral individualism (which sometimes coincide with the so-called 'Liberalism 1') are due to their conception of politics. Despite being a key aspect of his work, Rawls, for example, does not appear to take pluralism seriously in the political field. He considers private pluralism (interests and moralities) to be compatible with consensual principles of justice. But there is something missing in this approach.

III) Federal liberal theories that are in favour of reaching moral agreements that include a Hegelian ethic in the public sphere of democracies related to the features of empirical societies. In this case, the intersection of value pluralist theories with the federal perspective which is monist in national terms does not exist by definition (a3), because in this case only the ethic of the state would be included (as in Hegel's conception itself).

The adoption of a federal perspective with national hegemony of the federation may lead to the adoption of asymmetric federations (b3). In this case, both the recognition and the constitutional accommodation of the national pluralism of the state are likely to occur, but again only partially. In this case, only a high level of self-government including symbols and international politics, as well as similarly asymmetric participation in the 'shared government' of the polity (rights of veto, opting-in/opting-out policies, etc.) and even a regulation of the secession of minority nations through clear rules would be likely to ensure the stability of the polity in national terms.

If the value pluralist perspective were adopted, the ethics of minorities would be established both in terms of their aspects of recognition and their aspects of institutional accommodation (c3). The philosophical approach here is, so to speak, to put Berlin inside Hegel. Here the adoption of partnership and confederal institutional formulae is congruent with the normative foundations adopted in terms of the legitimacy of liberal-democratic polity. In this case, the secession clauses will probably be less dramatic than in the case of federations.

Although Berlin's writings do not address the issue of federalism, even though they do discuss nationalism, which he saw as a reaction to previous collective grievances, I believe that the adoption of value pluralism as a theoretical perspective of plurinational federations has at least two advantages over other theoretical perspectives:

a) Regarding democratic liberalism, value pluralism allows individual and collective rights and freedoms to be constitutionally investigated and established more openly. Moreover, it allows for mutual recognition between the different national collectives or *demos* within a democracy. As a result, fewer issues are excluded a priori from the political agenda, and the dialogue between the different parties is no longer based on monist theories – be they more 'liberal' or more 'republican' (both of which display conceptual and institutional biases when applied to plurinational realities). Value pluralism also makes it easier for pragmatic agreements

<sup>18</sup> It is, however, worth noting that according to comparative studies, the highest levels of self-government of federal entities do not correlate with the uninational or plurinational character of federations. There are as many uninational federations (USA, Switzerland) as plurinational ones (Belgium, Canada) with relatively high levels of self-government. In fact, the correlation occurs more between plurinationality and a greater degree of asymmetry and, surprisingly, between plurinationality and a certain 'federal deficit' of an institutional nature. (Requejo, 2015, 2010).

to be reached among political actors who are generally sceptical of the potential of theories, but who also wish to maintain a minimum consensus which is more open to cultural interpretation and more resistant to the passage of time than that which characterises traditional liberalism and constitutionalism.

b) Regarding plurinational federalism, value pluralism allows the liberal and federal logics related to the protection of rights and freedoms to be more easily recovered. It also facilitates regulation of the mutual recognition of internal national pluralism in a democracy and the content of self-government, as well as the regulation of reform processes by national collectives that lack any kind of normative hierarchy. It is, therefore, a theoretical perspective that facilitates the legitimacy of changes in federal rules over time, when neither the majorities nor the minorities have exclusive claim to their interpretation.

These two advantages are related to the predominance of freedom in Berlin's work (individual and collective freedom; and negative and positive freedom). Obviously, there are other values and other basic legitimising principles (the different meanings of political equality, respect for minorities, constitutionalism and the rule of law, efficiency and stability, etc.). However, it is possible to say that negative collective freedom plays a key role in guaranteeing that external coercion between the different national collectives within a plurinational democracy is avoided.

The increased complexity of an increasingly plural and globalised world also requires greater complexity in federal agreements inside democracies. One of the historical advantages displayed by different kinds of federal agreements, even federations, is their potential flexibility and their adaptability to different specific realities. In fact, since World War II, comparative politics has shown that adaptability is an essential requirement for the stability and success of any federal agreement that is established. This adaptability also extends to plurinational federations, which, while sharing certain common features with other federations, also display major historical, cultural and constitutional differences and also differences within the party system compared to uninational federations.

To sum up, liberal democracies, by means of rights and techniques for limiting power have offered humanity the best way to avoid the 'great evils' which have occurred throughout history (genocide, slavery, torture, deportations, etc.) and the best way for individuals to achieve their life plans. This is a path that can always be improved and on which the journey to Ithaca consists of a 'long and winding road' to higher levels of liberty. The commitment of liberal-democratic theory is to facilitate that improvement, by warning of the 'shadows' that are present in earlier theories. Let us focus now on the sphere of federal institutional practices.

## 2.2 Federal institutional practices

Among the conclusions of a previous exhaustive comparative study into federal and para-federal democracies<sup>19</sup> – using variables situated on four analytical axes and a variety of indicators applied to 19 cases with data based on two different periods (2008 and 2014), it is worth pointing out:

- 1) The existence of a 'federal deficit' of an institutional nature in plurinational federations. In other words, somewhat paradoxically, uninational federations display, as a whole, greater institutional federal logic – albeit in extremely varying degrees – than plurinational federations do. This characteristic is independent of the greater or lesser degree of political decentralisation in both types of federation.
- 2) Only a few plurinational federations (Russia, Ethiopia) establish an explicit constitutional recognition of their internal national pluralism and, also rather paradoxically, this is not true for those which possess a greater degree of stability and democratic quality. In the other cases, however, this recognition is non-existent or much less explicit in their constitutional regulations, even when the degree of decentralisation of some federations is high in comparative terms.

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<sup>19</sup> These empirical analyses include federations and a number of regional states which accomplish specific conditions. The four analytical axes included are: 1) uninational-plurinational federations; 2) the degree of institutional federalism; 3) the degree of political decentralisation; and 4) the presence or absence of constitutional asymmetries. Each of these axes is broken down into several indicators which are described in these analyses. See Requejo, 2015, 2010.

3) In more predictable terms, there is a greater presence of elements of *de jure* asymmetry in plurinational federations than in uninational federations. In some of the former there are also pressures working in favour of the symmetry of the system. This occurs, above all, when the number of subunits is not small (empirically, at least nine subunits in the sample, whereas such pressures are not present when the number of subunits is less than four). This is the case of Canada, India, Russia, Ethiopia and Spain, in contrast with Belgium, the United Kingdom and Bosnia-Herzegovina. It is an open question whether the unwillingness of some federations and plurinational regional states to introduce more asymmetrical regulations will or will not reinforce territorial tensions and secessionist movements in the future.<sup>20</sup>

4) The coexistence in plurinational federations of several processes of nation-building which are partially competitive situates the issue of the construction of a ‘federal trust’ in different terms to the simpler case of uninational federations. In the first case, achieving this trust seems to require two institutional factors:

4.1) The existence of procedures and rules that allow minority nations to participate in the ‘shared government’ of the federation (or the regional state) maintaining their singular character (specific presence in the lower chamber, bilateral intergovernmental relations, participation in consociational state institutions, etc.).

4.2) The existence of procedures and rules which protect the recognition and self-government of minority nations from the actions of the majorities (powers of veto in the lower chamber, ‘alarm bell’ procedures, opting in and opting out procedures which do not require constitutional reforms, appointment of magistrates to the supreme or constitutional courts, specific participation in processes of constitutional reform, etc.).<sup>21</sup>

5) The predominant conception in federations is that the ‘right to self-determination’ is reserved for the federation. However, this is a conception that some federations have questioned recently. This is the case of the famous *Opinion* of the Canadian Supreme Court in the *Secession Reference* (1998); of the regulations introduced into the constitution of Ethiopia – which include the right of self-determination in the preamble and the right of secession in the article for the constituent nations and peoples. Other, more specific cases are the federation of St. Kitts & Nevis – or the case, with the right of secession already exercised and approved (2006) of the old federation of Serbia-Montenegro.

Broadly speaking, the model that I have described elsewhere as ‘plurinational federalism’ involves the inclusion of three normative conditions applied to a group of five spheres – the symbolic/linguistic sphere, the institutional sphere, the sphere relating to powers, the economic/fiscal sphere, and the international sphere.<sup>22</sup> The aim is to achieve a ‘friendly federal state’, that is, a federal state that is friendly to the minority nations (and vice versa) and which permits a satisfactory and stable regulation of national pluralism for this type of polities.

To sum up, in previous works I have analysed the practical impossibility of establishing a ‘just and stable’ regulation of plurinational democracies through federations or regional states that regulate: 1) a uniform and symmetrical territorial division of powers; and 2) composite states which do not establish an explicit

20 When the number of territorial entities of a plurinational state is high, it seems inevitable that simultaneous, albeit contradictory, pressures will emerge, in favour of a more symmetrical or more asymmetrical system. For the Canadian case, see *Asymmetry Series* (IIGR, Queen’s University, since 2005), especially G. Laforest ‘The Historical and Legal Origins of Asymmetrical Federalism in Canada’s Founding Debates: A Brief Interpretative Note’ *Asymmetry Series* (8), IIGR, Queen’s University 2005. The well-known West-Lothian Question (participation/inhibition of the representatives of territories endowed with asymmetrical regulations in their central institutions depending on the nature of the decision to be taken) does not appear to provoke too many problems in the majority of countries. For a general overview of constitutional *de jure* asymmetries, see R. Watts, ‘A Comparative Perspective on Asymmetry in Federations’, *Asymmetry Series* 2005 (4), IIGR, Queen’s University.

21 It could be said that an additional factor for the construction of federal trust in plurinational democracies is the existence of a ‘federal political culture’ and of a ‘plurinational political culture’ in the polity as a whole. The former appears to arise in those democracies with a lengthy history of federal institutional links. The latter, which is more difficult to achieve as it clashes with the inherent nation-building process present in almost all states (whether they are federal or not), appears to arise in those states which were established more as a ‘union’ – a more pluralist concept – of different entities than as a ‘unit’ – which is a more monist concept. The acceptance of a process of secession, for example, of one of the substate entities appears to be more accepted in the United Kingdom and Canada, which are plurinational states with a common past in the British Empire, than in other contexts. Here we are dealing with a kind of political culture which does not seem to be linked to the federal character of the state. These two questions will, however, require a detailed analysis of specific indicators.

22 I deal with this point in more detail in F. Requejo, 2005, ch. 4.

recognition of national pluralism, and a wide territorial division of powers (political decentralisation) in the internal and international spheres. When different processes of nation-building converge, together with a diversity of values, interests and identities on the part of the different collective actors, federal theory based on Madison's approach is further away from the solution than that which is based on Althusius' approach.<sup>23</sup>

In the normative debate of recent years regarding the advisability or the legitimacy of such regulations, moral, strategic and functional reasons have been put forward to oppose the introduction of a right of secession. Some of these reasons have a certain amount of plausibility, above all in some contexts. However, there seems to be no definitive argument against the introduction of such a right in plurinational democracies when the rules that regulate it prevent its strategic use by elites of the minorities. The 21st century may be witness to political movements in favour of regarding minority national *demoi* as polities that wish to preserve as much collective negative liberty as possible in an increasingly globalised world. Federal theory and practice would be advised to pay more attention to these movements than they have done in the past.

### 3 Secession. Political theory and institutional practices

#### 3.1 Secession theories in liberal democracies

While federalism and consociationalism have been studied for a number of decades through both theoretical and normative models and the analysis of different empirical cases and comparative analyses, secession has received renewed analytical attention in recent years, especially in plurinational contexts. One consequence of this has been the analytical refinement of the literature on normative theories of secession.

We are aware that the existing borders between states were not established through consensual processes, but by means of violent actions such as wars, territorial annexations, deportations and the forced separation of populations, etc. Thus, when one talks about 'popular sovereignty' a number of questions immediately emerge: What 'people' does it refer to? Are there or should there be democracies of more than one 'people'? Who has the right to decide who the 'people' is? etc. Obviously, the response cannot be that 'the people is that which the constitution identifies as such', because that leads to a conceptual vicious circle.

This is an issue that, somewhat surprisingly, the theories of modern democracy have never satisfactorily resolved, whether they have 'liberal' or 'republican' roots. National pluralism is a specific kind of pluralism faced with which the classic ideologies often reveal themselves to be hostile, perplexed or disorientated. But, in reality, all states, including democracies, continue to be nationalist and nationalising agencies. The overall challenge of plurinational democracies can be summed up in the phrase 'one polity, several *demoi*'.<sup>24</sup>

In contrast with the traditional liberal and constitutional approaches that usually deny the possibility of secession, a current established typology divides current theories of secession into three basic groups:<sup>25</sup>

- 1) *Remedial theories*, which link secession with a 'just cause', in other words, they regard secession as a remedy for specific 'injustices' or those relating to a 'just cause'. They give priority to a number of reasons or specific cases that justify political secession, which is not regarded as a primary right of specific collectives, but as a legitimate remedy for a series of circumstances, such as territorial annexation by force (for example, the case of the Baltic states and the USSR), the violation of the basic rights of a group of citizens by the state, genocidal practices, permanent negative discrimination

23 See Karmis & Norman, 2005. See also Hueglin, 2003.

24 Normative definitions of *minority nations* (nations without their own state) tend to be controversial. One way to determine whether a specific case may or may not be regarded as a minority nation is by incorporating empirical criteria to the more classic normative definitions found in studies on nationalism. In earlier papers I have put forward two empirical criteria which could be added to the more traditional ones. As I have done in previous works, I prefer for descriptive and prescriptive reasons to use the term 'plurinational' instead of the more common 'multinational'. See Requejo, 2010.

25 The second and third theories are sometimes grouped as *Primary Right Theories*. An analysis of the possibilities and limits of theories of secession in plurinational democracies in Requejo & Sanjaume, 2014.

regarding redistribution or socio-economic development, non-compliance with previous agreements of self-government or collective rights by the state, etc.<sup>26</sup>

- 2) *Ascriptive or nationalist theories*, which take as their central element that the nation is a legitimate political subject endowed with this right. Thus, the legitimacy of secession would be based on a previous political unit that possesses this right, which would basically be understood nowadays in inclusive and universal liberal-democratic terms. The collective rights of minority nations are seen as complementary to individual rights, not antagonistic to them.<sup>27</sup>
  
- 3) *Associative or plebiscitary theories*, both of which regard secession as a right belonging to certain collectives that fulfil a number of conditions. These theories give priority to democratic procedure in order to legitimate secession, whether this is through a referendum or based on the decisions of representative institutions. The key values here are individual moral autonomy and the right to choose voluntary political associations. They represent the pillars of the consensual legitimacy of a democratic political authority. If this consensual base regarding the state's authority is not shared by the majority of individuals of a collective, secession is a legitimate act and constitutes a right that must be legally regulated. Thus, in theories of this kind secession is not regarded as a possible solution to the infringement of the rights or interests of a collective, nor is it linked to any kind of specific national or ethnic group. Rather it is a primary right of a political and territorialised nature based on the individual preferences of the members of a group of citizens.<sup>28</sup>

The following table summarises the main features of current theories of secession in liberal democracies:

| Theories                                  | Legitimacy of secession          | Rights at stake  | Right to self-determination  |
|---|----------------------------------|--|--|
| Constitutional and traditional liberalism | No                               | Individual rights; hegemonic collective rights for the state | Only for the state   |
| Just cause                                | Yes, in some cases               | Violation of basic individual or collective rights           | In case of violation of human rights; violation of federal agreements; failure to safeguard economic interests; permanent negative redistribution. |
| Nationalist                               | Yes                              | Individual and collective rights of minority nations         | In order to protect culture; to achieve better social justice; political recognition and constitutional accommodation.                             |
| Plebiscitary                              | Yes, with territorial conditions | Individual rights  | To improve individual autonomy and freedom of voluntary association.   |

Kantian/Hegelian approaches applied to secession (individual and collective rights; different practical and institutional consequences regarding recognition and accommodation of national pluralism).

Source: the author

<sup>26</sup> Birch, 1984; Buchanan, 1991, 2003, 2007.

<sup>27</sup> Walzer, 1994; Tamir, 1993; Margalit & Raz, 1990.

<sup>28</sup> Beran, 1984; Wellman, 2005.

### 3.2 More secessionist processes in the near future?

The creation of new states is something well known in Europe. Besides secessions as a consequence of the breakdown of empires, we also find peaceful secessions through referendums, like those of Norway from Sweden (1905), Iceland from Denmark (1944) or Montenegro from the federation of Serbia-Montenegro (2006). However, the constitutional regulation of secession in plurinational democracies is rather scarce. Some few empirical cases, mainly of a plurinational character, present legal rules related to this subject:

| Right of Secession in Plurinational Democracies   |                               |                        |
|---|-------------------------------|------------------------|
| Plurinational Federations   | Bosnia-Herzegovina            | No                     |
|   | Belgium                       | No                     |
|   | Canada                        | Yes <sup>1</sup>       |
|   | Ethiopia                      | Yes                    |
|   | India                         | No                     |
|   | Russia<br>(Serbia-Montenegro) | No<br>Yes <sup>2</sup> |
| Plurinational Regional States   | Spain <sup>3</sup>            | No                     |
|   | United Kingdom                | Yes <sup>4</sup>       |
| <p>1 Right of Secession according federal (non unilateral) rules.<br/>           2 Federation broken by unilateral referendum in Montenegro (2006).<br/>           3 State with some federal trends.<br/>           4 According to negotiated rules (2014).</p> |                               |                        |

Source: the author

All democracies experience tensions between their main legitimising factors. A classic example of these tensions is the relationship between the principles of constitutionalism, popular sovereignty and nation-building processes that are present in all contemporary democracies. In practical terms, political and social actors that advocate for secession usually combine the two kinds of primary right theories (ascriptive and plebiscitary) as legitimating ways of independence, with predominance of ascriptive patterns at the moment of justifying the group of citizens involved in referendums, and predominance of plebiscitary lines of reasoning at the moment of justifying the intrinsic democratic pattern of the referendum itself. These legitimating avenues are complementary to the reasons based on just cause theories, which are based on the mistreatment in specific policies regarding national recognition and self-government. As happened in relation with federalism, liberal democratic theories based on a value pluralist perspective and on a recognised plurality of national *demoi* are in principle the best intellectually placed to establish a stable and rational regulation of a constitutional right of secession in plurinational democracies.

In a 21st century democracy it does not seem legitimate to force the citizens of a national collective to remain within a state against the will of the majority of that collective. Divorce is almost always better than an unhappy marriage. However, traditional constitutionalism has often treated internal national differences as ‘particularist deviations’.

Moving ahead of the development of secession theories, the Catalan and Scottish cases have already become empirical references within the sphere of comparative politics on secessionist processes. These are two pro-European countries which diverge in relation to their relation to the European Union in a rather paradoxical way: Scotland clearly voted in favour of remaining in the EU in the Brexit referendum but it may be forced to leave the EU as a member of the UK, while Catalonia is usually threatened by the main political actors of its host state with being excluded from the EU if it becomes independent, despite the clear pro-European will showed by Catalan institutions and citizens over the course of decades.



The ethical and functional improvement of federalism and secession would permit a development of the values of the political Enlightenment that is much more suitable for plurinational democracies. At the beginning of this century, neither liberal democracy nor federalism and secession have reached the end of the story. On the contrary, they are immersed in a new phase of improvement based on their variation with respect to the features of contemporary empirical societies in an increasingly globalised world.

It is an open empirical question whether the 21st century will or will not be a period which sees the consolidation of minority nations of plurinational democracies in pursuit of their recognition and political accommodation, whether this is through their accommodation in plurinational federal states, through processes of new forms of partnership, or secession (or even taking the form of internal secession in federations).<sup>29</sup> In other words, through forms of a stable consensual regulation of self-determination in interdependence.<sup>30</sup>

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<sup>29</sup> See Requejo and Nagel, 2018.

<sup>30</sup> In fact, what the *Opinion* of the Canadian Supreme Court establishes is that, first of all, there is a right to self-determination which should in principle be resolved in 'federal' terms and, secondly, that in plurinational democracies, secession is a question of majorities that is not limited to or at the expense of certain constitutional rules when specific rules of 'clarity' are complied with in the construction process of these majorities. See Burgess & Gagnon, 2010; Amoretti & Bermeo, 2004; Gagnon & Tully, 2001.

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