

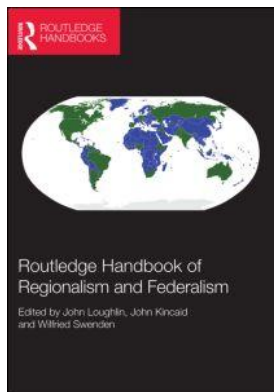
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# Plurinational federalism and political theory

Ferran Requejo

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## Plurinational democracies and federalism in the 21st century

In the last two decades there have been a number of political, social and cultural changes that have clearly influenced the sphere of political legitimacy in liberal democracies and federalism. Among these changes are a rapid process of technological and economic globalization, and what we might call a *cultural and national turn* associated with the claims of different groups so that they can be constitutionally recognized and politically accommodated within the rules of current liberal democracies. The most significant empirical cases of this *turn* are those related to minority nations, national minorities, indigenous peoples and transnational migrations.<sup>1</sup>

In this chapter I will focus on the case of *minority nations* in plurinational polities, such as Quebec in Canada, Scotland in the United Kingdom, and Catalonia and the Basque Country in Spain, dealing with the possibility that these collectives may achieve a stable recognition and accommodation through federal rules. The question of *national pluralism* has usually been absent in the theoretical and practical approaches of classical federalism. Minority nations are territorially concentrated collectives with a basic national identity that does not coincide, at least for a significant number of their members, with the national identity of the majority group of the polity. These collectives display distinguishing features, such as a different history from the rest of the state, a specific language, a different religious culture, etc. Some of them may even have been independent powers sometime in the past. They also express a will to be recognized as a different collective and a clear desire for self-government. Polities that include one or more collectives of this kind are known as *plurinational* polities.

In the field of political theory, the importance that cultural and national collectives have for the self-understanding and self-esteem of individuals has been highlighted, first by the debate between the liberal and communitarian perspectives in the 1980s, and subsequently, from the beginning of the 1990s onwards, between two general approaches within political liberalism (so-called Liberalism 1 and Liberalism 2). Broadly speaking, Liberalism 2 criticizes the notions of individualism, universalism, 'stateism' and nationalism associated with traditional political liberalism (Liberalism 1) for being normatively biased in favour of majority national groups. In many cases, national groups play an important moral role in the interpretation of the basic values of liberty, pluralism and political equality in plurinational contexts. In other words, the basic criticism is that

traditional political liberalism displays a 'stateist' bias that results in unfair practical consequences for minorities.

This debate between both approaches of liberalism has revealed the inability of mere individualistic liberal, democratic and social constitutional rights to guarantee an egalitarian and equitable treatment of individuals belonging to national minorities. Moreover, this debate has revealed a number of misleading features of institutional federalism, as well as the inability of democratic states to play a culturally and nationally neutral role similar to that which they can adopt – at least in principle – in relation to other phenomena, such as religion. This theoretical and empirical turn opens a new normative and institutional perspective in the revision of federalism in plurinational democracies (Gagnon and Tully, 2001; McGarry, 2002; Nagel, 2004; Máiz and Requejo, 2005; Burgess and Gagnon, 2010).

In general terms, the normative and institutional challenges posed by some minority nations create the need to improve present-day federal democracies. The traditional conceptions of democracy, federalism and constitutionalism have traditionally been unable to implement this improvement, which is fundamental in order to progress towards polities of greater 'ethical' quality.

The following is a list of analytical elements (factual, conceptual and normative) which have been highlighted in recent years in the fields of political theory, political science and constitutionalism that, I think, must be taken into account in the analyses of plurinational federal democracies.

### *Factual analytical elements*

- In practical terms, most human beings are culturally and nationally rooted. Individuals are born and socialized in specific national, cultural, historical and linguistic contexts.
- Classical liberal and federal political theories as well as traditional constitutionalism were created in much more simple and homogeneous social contexts than present-day societies.
- The abstract and 'universalist' language that underlies the liberal values of liberty, equality and pluralism has contrasted, in practical terms, with the exclusion of a number of *voices* with regard to the regulation of specific liberties, equalities and pluralisms of contemporary societies (those who did not own property, women, indigenous people, ethnic, linguistic and national minorities).
- Each of these movements gives rise to specific questions regarding the *recognition* and *political accommodation* (group rights, self-government, defence of particular cultural values, presence in the international arena, etc.). Insufficiency of liberal, democratic and social rights for protecting and developing the cultural and national features of minorities.
- The existence of *nation-building* processes in all states, including the liberal-democratic ones: all states act as nationalist agencies. At the same time, the existence of at least partially competitive *values, interests and identities* in plurinational democracies. Existence of different narration and reconstruction of history and collective memories.
- States usually treat the internal national differences of liberal democracies as 'particularist deviations'. A practical response has been to promote the cultural and national assimilation of minorities in order to achieve their 'political integration'. The practical consequence in plurinational democracies is the marginalization of the internal national minorities in the name of notions of 'citizenship' and 'popular sovereignty' (of the state), which are usually culturally and nationally biased notions interpreted in favour of majorities.
- Nation-building and state-building processes have conditioned the conception (theories) and evolution (practices) of democratic federalism.

### *Conceptual/normative analytical elements*

- Cultural and national liberties are very important components for the quality of a democracy and for the self-understanding and self-esteem of individuals (as recognized by the United Nations in its *Human Development Report 2004*).
- Historical events usually play an important normative role. The political contexts in which individuals are socialized are often the result of historical processes that usually include violent elements – wars of annexation, exterminations, mass deportations, etc. – which are sometimes at the root of modern-day struggles for the recognition and self-government of minority nations.
- Existence of two general theoretical attitudes in political theory and in policy making when dealing with national pluralism: 1 *pragmatic* (to avoid conflicts in the least costly way possible); and 2 *moral* (to approach it as a question of ‘justice’ – fair relations between *permanent* majorities and minorities). While the conflict between national majorities and minorities is based on the latter attitude, potential solutions may be achieved through the former.
- Within the moral theoretical attitude, we find two general paradigms in relation to questions of socio-economic or cultural/national justice in pluralist societies: a *paradigm of equality* (distribution) versus a *paradigm of difference* (recognition and political accommodation). Existence of flaws in traditional liberalism and constitutionalism based on their individualist, universalist and ‘statist’ elements when they are applied to plurinational societies.
- In a plurinational polity different national groups (*demoi*) which believe they constitute legitimate self-ruling collectives always coexist. At the same time ‘the people’ of the state are usually constitutionally presented as the only self-ruling *demos* of the polity. However, there is a surprising absence of a theory of the *demos* or *demoi* in traditional theories of democracy (whether they be of a more liberal or a more republican nature). There is also a lack of a theory of legitimate political borders in liberal approaches.
- Liberal-democratic states as ‘culturally neutral’ entities is a myth of traditional liberalism.
- Individual and collective identities are not fixed, but we make choices from them. The belief that we are ‘autonomous individuals’ who choose our national, ethnic, linguistic, religious, etc., identities is, to a great extent, another myth of traditional liberalism.

### *‘Classical’ institutional responses*

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

As has been mentioned already, one of the most important questions with regard to the case of plurinational democracies is the *recognition* and *political accommodation* of the national pluralism of these democracies. Obviously, in addition to this question there is probably a whole series of aspects that are interrelated with it: economic development; inequalities of income; the multi-cultural character of society; integration in supranational organizations such as the European

Union. However, it is methodologically improper to mix all these elements from the outset. In this case, the key point is not to establish how the *demos* becomes *kratos* (self-ruling power) – this would be the traditional vision of democracy – but how the different national *demoi* that coexist within the same democracy are politically and constitutionally recognized and accommodated in terms of equality (between the national majorities and minorities) in the *kratos* of the polity.

This involves dealing with and introducing aspects of both a ‘democratic’ nature – participation between majorities and minorities in the ‘shared government’ – and, above all, of a ‘liberal’ nature – the protection and development of minority nations confronting the ‘tyranny of the majority’, both in the internal sphere of this democracy and in the international sphere. It is, therefore, a matter of establishing the ‘checks and balances’ also in a collective dimension which have received little or no attention from traditional political conceptions, but which constitute specific dimensions of core questions of liberal political theory, such as the ‘negative liberties’ and the ‘tyranny of the majority’.

Whatever the most suitable liberal-democratic solution or solutions may be will obviously depend, among other things, on the context of each specific case (its history, international situation, types of actors, political culture, etc.). However, it seems to be clear that in contexts of national pluralism it is necessary to establish a much more refined interpretation than that offered by the basic values of traditional liberal-democratic constitutionalism: liberty, equality, individual dignity and pluralism. This complexity demands theories that are more sensitive and modulated to the variations of empirical reality when one attempts clearly to identify its basic legitimizing values. Moreover, it demands, above all, practical, institutional and procedural solutions that are much more suitable for the type of pluralism that one wishes to accommodate. Both qualifications of the liberal-democratic agenda have yet to be satisfactorily addressed and resolved.

The three ‘classic’ institutional responses for societies with a strong component of national diversity (Norman, 2006; Amoretti and Bermeo, 2004; Watts, 1999; Lijphart, 1999) have been:

- *Federalism*: (in a wide sense, including all kind of federations, associated states, *federacies*, confederations and regional states).
- *Consociationalism*: institutions and processes of a ‘consociational’ nature (based on consensus between the majorities and permanent national minorities). One can find examples of these institutions and processes in the democracies of Switzerland, Belgium or Northern Ireland, together with clear federal solutions in the first two cases.
- *Secession*.

Let us now look at some elements offered by political theory with regard to federalism. The generic question is whether federalism offers a suitable framework for establishing the recognition and accommodation of plurinational democracies. If this is so, what are the most suitable concepts and values on which to base this framework?

## Federalism and political theory

### *Theoretical approaches to federalism in plurinational contexts*

The fundamental challenge facing plurinational federations nowadays can be summarized as a liberal, democratic and national challenge of polity building. The main question, in essence, is whether it is possible to combine, in the same federation, the political perspective of the construction of a *federal union* that normally predominates among the majority national group of the state and the perspective of a *confederal union* that usually predominates in the minority national

entities of the federation. Both kinds of realities are usually based on different legitimizing concepts and values, although the same terms are often used to refer to them. This difference is expressed in the diverse conceptions regarding which rights, duties, institutions and political collective decision-making processes are legitimate in liberal-democratic terms when they are applied to realities characterized by strong components of national pluralism. The question regarding the probability of combining these two perspectives or, in other words, the probability of establishing a political and constitutional accommodation of *de facto* national pluralism cannot be answered in abstract terms, but must involve the institutional practices of comparative politics and case analysis.

Broadly speaking, federalism is a notion that has been neither historically nor normatively related to national pluralism until quite recently. In fact, it is evident that both classic institutional analyses and those of a normative nature regarding federalism have been heavily influenced by the historical example of the United States, the first contemporary federation (Requejo and Caminal, 2011, 2012; Requejo and Nagel, 2011; Karmis and Norman, 2005; Hueglin, 2003). This is an empirical case that is not related to national pluralism. If we remain within the realm of US federalism (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 formulas is basically negative. The fundamental reasons for this are both historical and organizational. 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 *demoi*, and who decides to what ‘the people’ refers? If we take empirical data into account, it would appear to be practically impossible to politically empower the different *demoi* of a plurinational society within the uninational rules of the game of the federal model of the United States.

Similarly, the fact that the first modern federation was the influential case of the United States – which was built using strong uninational and symmetrical components, and a strong Supreme Court that acted as a polity maker during its practical development – has not been unrelated to the evolution of federations and federal thought that was dominant until recently. Here the centre of gravity is located in the governance of a modern nation-state and the subsequent supremacy of the central power over the federated powers. One of the explicit objectives is to avoid the instability that confederations have repeatedly displayed at an empirical level. In contrast with the school of thought represented by Althusius and Montesquieu, the establishment of the federation should not involve existing social and territorial divisions but should attempt to construct a new polity that subsumes the old divisions by establishing new processes of state-building and nation-building. Here the union is more important than the units.

This is an evolution that is very different from the more ‘confederal’ logic that characterizes the political systems and the political thought of the classic form of federalism before the American federation (Althusius, *Politica Methodice Digesta* VIII) – a conception that survived into the modern era in Switzerland and, albeit not for long, in the Netherlands.

Depending on the federal conception within which we locate ourselves, we will obtain different conclusions in all the areas of territorial accommodation. The interpretation of the values of liberty, equality and pluralism will be different depending on whether one is dealing with uninational or plurinational liberal democracies, above all with regard to collective or group liberties and rights, the subjects of equality or the type of pluralism which is to be protected or guaranteed.

Let us look at the present, for example. The classical questions ‘equality, of what?’ or ‘who are the equals?’ will receive different ‘federal’ responses depending on where we situate ourselves in the Madisonian or Althusian tradition of federalism, and depending on where we situate ourselves in a conception that is linked to Liberalism 1 or Liberalism 2 of the analytical and

normative debate on liberal democracies. Therefore, for example, if we approach the subject from a Madisonian and Liberalism 1 approach, we will be more prone to base the answer to these questions on the concept of ‘equality of citizenship and individual rights’ – regardless of the cultural or national characteristics of the empirical citizens. In contrast, if we take the Althusian and Liberalism 2 approach, the answers will be more likely to consider the ‘equality of the *demoi*’ and a combination of individual and collective rights in the constitutional rules of the polity.

In contemporary federations and regionalized states, the tension between liberal, democratic, national and functional logics has been resolved in ‘national’ terms, usually in the federal governments’ favour. Moreover, the history of federalism or, to be precise, the history of federations, has mainly been characterized by the development of models that are basically symmetrical. Comparative politics shows in what way symmetrical models have not been a particularly propitious option when they are coexistent or juxtaposed with nation-building processes within the same political system. These models are encouraged under the perspective of the welfare state policies and equal social rights across the entire territory of the state. However, they also lead to uniformity in the ‘entrance requirements’ of the political system and that makes achieving real political accommodation difficult. In fact, the pluralism of national minorities constitutes a form of *de facto asymmetry* which requires that the recognition of plurinationality be established using the same ‘entrance requirements’ of the constitutional system. This normative and institutional tension seems unavoidable in present-day plurinational federal democracies.

To sum up, the symbolic and institutional challenges, as well as those relating to the rules of decision making, which plurinational societies pose for federalism are usually more complex than those posed by uninational societies. It seems clear, too, that Madisonian and Liberalism 1 approaches display difficulties and flaws in plurinational democracies. Both fail to ensure the political recognition and accommodation of the internal national pluralism of these kind of polities. In addition to the search for ‘common ground’ in the federation, the issue which most concerns minority nations is the establishment of institutions and *protection* mechanisms of a ‘liberal’ nature in the constitutional sphere that protects them from the decisions taken by the majorities. This political accommodation involves the establishment of broad forms of self-government and participation in the shared government of the federation that is based on one’s own national characteristics.

A final theoretical feature to be considered is the individualistic Kantian philosophical framework usually established by Madisonian and Liberalism 1 approaches. Let us turn to this more abstract aspect of political legitimacy in plurinational federal democracies.

### *Political recognition and moral collectivism: a Hegelian turn*

Somewhat paradoxically, it could be said that some central aspects of Kantian philosophy are ‘too straight’ for the ‘crooked timber’ which, to quote Kant himself, characterizes humanity.<sup>2</sup> Kant maintains the perspective of moral individualism, which I summarize here by means of two assertions: 1 the autonomy of the self as a subject – conceived as ‘prior to its ends’ – is the liberal value par excellence; and 2 the individual is the last source of any legitimate moral claim. Despite the fertility of Kantian philosophy in the field of political legitimacy in traditional liberal theories, I believe that Kant fails in his attempt to link the notions of moral individualism, state nationalism and cosmopolitanism.<sup>3</sup> This is a particularly important failure in the case of plurinational liberal democracies. Despite Isaiah Berlin’s double warning about Hegelian philosophy,<sup>4</sup> let us see if some elements of Hegel’s critique of Kant are better able to frame pluralism in plurinational democracies at the beginning of the 21st century.

In general terms, Hegel’s more social vision opens the door to two important elements for analysis: the *politics of recognition* and the role of *moral collectivism*. Both connect with the Hegelian

concept of *ethicity* (in contrast to *morality*). This perspective makes it possible to approach individualism and universalism in a different way. Let us look at this more closely.

### *Ethicity and the politics of recognition*

As is well known, Hegel sets out a number of criticisms of Kantian philosophy, introducing a more social perspective (social interaction) into his philosophy. Hegel does not deny that the natural roots of conflict are to be found in the passions and desires of individuals, just as Kant establishes when, following on from Hobbes, he deals with the ‘unsocial’ component of human beings. Nevertheless, unlike Kant and the earlier liberals, at the collective level, Hegel dispenses with the issue of state formation (contract) in his analytical agenda. Through his philosophy, Hegel does not intend to say how things should be, but how they really are. He considers that the analysis should spring from the reality of the existence of states, as they are the political contexts in which individuals are politically born. Hegel identified antagonism towards civil society as a typically modern phenomenon, and it is in civil society where the particularities that create conflicts reside, as well as the most important socializing and paradoxically disintegrative features. Along this path we pass from the sphere of Kantian morality to the sphere of Hegelian ethicity.

Moreover, Hegelian philosophy accentuates its well-known struggle against moralism, displaying a sceptical attitude towards the Kantian ideals of the ‘cosmopolitan society’ and ‘perpetual peace’. Both are no more than a moral sermon, as beautiful as they are ineffective. Deontology (morality based just on principles and rights) appears to be an incomplete approach to understand individual dignity. In fact, it is never possible to know *a priori* the consequences of actions based on the exercise of rights. It is also essential to add a consequentialist approach, as individual dignity is a notion that always refers to particular social contexts; that is, to societies with specific historical, linguistic, cultural and national characteristics. To abstract these characteristics from normative analyses by means of deontological concepts based on an abstract form of individualism impoverishes these analyses.

Hegel stresses that the antagonism of civil society is the source of conflict, but also a factor in socialization (*Philosophy of Right*, sec. 142, 182). Moral imperatives do not have enough force to end conflicts. From this perspective, we can deduce that the main political task is to establish a set of political institutions that help to prevent and resolve conflicts (today: federalism? consociationalism? secession?). The real constitution of a state lies in the interactive framework of its institutions.

In this way, Hegel introduces a new analytical approach to the study of modern political societies. The basic idea is that the underlying, strictly individual, perspective of classical liberalism leaves too many normatively relevant elements out of focus. In addition to the dignity and identity of the individual considered in isolation, it is important also to consider the relationships between individuals in order to understand their dignity and identity.

*Recognition* is the aim of this interaction. Our identities are formed through our relationships; individual freedom is neither solipsistic nor fragmented, it is not an atomized notion comprehensible by self-introspection. The recognition of other individuals is part of the self. Identities are partly shaped by the social relations that make up our ethical outlook. In contrast with the principles of some versions of liberalism, the individual does not come before his/her aims. We seek a kind of recognition that satisfies the desire to be admitted *in a specific way* into the polity. Here there is a human need: that others recognize our status as independent entities with our own characteristics. This implies a social relationship that is not necessarily peaceful, but based on the confrontation between different ‘subjectivities’.

In Hegel’s *Phenomenology of the Mind*, we are faced with a process that is a new stage in the progress of the consciousness of freedom, that is, of the development of the mind.<sup>5</sup> Self-consciousness



does not exist on its own, but is transformed through practical contrast with other self-consciousnesses. The mind is the collective subject, the knowledge that ‘gradually appears’ and its phenomena are intersubjectivity – an ‘I’ that is a ‘we’ – although consciousness does not realize this at times. Demand for recognition is thus always mutual and reciprocal. Therefore, the initial relationship of mutual recognition is conflictive. Violent human relations are not anecdotal; rather they characterize the immediacy of social relations through the demand for recognition. This is the Hobbesian element of Hegel’s conception.

The first movement produces the master-slave relationship through action. An action that is based on the desire for recognition by others and which ends in non-egalitarian situations. Consciousnesses oppose each other in a fight to the death which ends when one of the adversaries prefers liberty to death and recognizes the other without being recognized by him. The slave will later free himself through work, which only he carries out in contact with nature, not the master. In fact, the action is unique, indivisible and belongs to the two self-consciousnesses, but for the process to be satisfactory for both parties, the action and the universal language that accompanies it must be also mutual. However, the process does not end here, in a state of negativity, split and war, but continues through struggle and must reach positivity, reconciliation and peace. Reconciliation represents a new unity of the self-consciousnesses.

These are the three moments of Hegelian ‘dialectics’: simplicity or abstraction; split or negativity; and reconciliation or specific accommodation of differences. This is a fundamental element of the progress of consciousness and freedom in history.

Thus, it is possible to understand some of the central concepts of liberal-democratic legitimacy and federalism in different ways, depending on whether we adopt a Kantian or a Hegelian perspective. For example, the former establishes the notion of ‘citizenship’ as an abstraction, faced with which subjects are subsequently divided by their ethnic, linguistic, or national differences. The Kantian perspective would tend to maintain this contrast, asserting the greater legitimacy of the notion of ‘citizenship’ over the private differences displayed by individual identities, because that notion preaches a notion of equality ‘above’ these differences, even in symmetrical federal models. In an extreme case, a Jacobin model of rule of law and democracy will be defended. From a Hegelian perspective, in contrast, what will be asserted when faced with this contrast is a third moment, a revised notion of citizenship that is able to accommodate those differences so that the practical freedom achieved situates the ‘we’ at a higher level of liberal-democratic legitimacy. Reciprocal understanding is guaranteed only by instituted recognition, for example, through plurinational asymmetrical models.

Thus, recognition is one dimension of the value of political liberty. Individual autonomy outlines in part our subjectivity, but the struggle for recognition is what frames our political relations. Recognition is also an aspect of political equality, and this fact involves the cultural and national spheres of individuals. The search for recognition occurs both among individuals and between collectives, as individual autonomy only occurs within a specific community (characterized by its history, language, etc.). Individuals are simultaneously independent of, but also dependent on the collectives to which they belong, irrespective of their voluntary (profession) or involuntary (language, history) nature. Thus, recognition, which presides over the transition from morality to ethicity, makes it necessary to go beyond the Kantian morality and the individualistic perspective of classical liberalism and federalism. This approach requires recognition by collectives of each other.

### *From the politics of recognition to moral collectivism*

Nobody has established more clearly than Hegel the human need for recognition. Thus, from the politics of recognition inherent in Hegelian ethicity comes the need to introduce the perspective of *moral collectivism* besides that of moral individualism.

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 values, institutions and collective projects; and 2 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 to establish 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 (Seymour, 2008; Taylor, 1998). 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 *stateist* emphasis inherent in Hegelian thought.<sup>6</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 ethicities, but which the latter recognize as a normatively superior agreement 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) meet within a more diverse and complex ethics than that stipulated by Hegel (Berlin, 1998; Taylor, 1992), 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 ‘atomized’ individualism and the monist moral perspective that accompanies traditional state liberalism means legitimizing *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 legitimize 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 ethicicity 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 stateism, 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 conflicts between individual rights (courts, *modus vivendi* agreements, etc.), but to do so from the premises of pluralist and egalitarian recognition, the composition and procedures of the high courts (supreme courts or constitutional courts) and intergovernmental relations in plurinational polities should take

into account national pluralism. However, the analysis of comparative federalism shows that the two general objectives of plurinational democracies – constitutional recognition and political accommodation of national pluralism – are often 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 (Requejo, 2010, 2005; Tierney, 2004; Baldi, 2003).

In this way, 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 based on *plurinational federalism*, *partnership* and *consociational models*. Both the ethical refinement of liberal-democratic theory in relation to the relationship between national majorities and minorities, and the institutional practice that permits a fair recognition and political accommodation of national pluralism, continue to be two challenges to democratic constitutionalism in the 21st century.

## Notes

- 1 The notion of ‘minority nations’ is used here as the equivalent to that of ‘stateless nations’ commonly used in the analytical literature on nationalism. However, in this chapter I do not include the case of ‘national minorities’, which are collectives that live in a different state from that in which the majority of people of the same national group reside (e.g., the case of the Hungarian minority in Romania, the Russian minority in Lithuania, etc.). Minority nations and national minorities differ both from a descriptive analytical perspective and from a normative perspective.
- 2 ‘Aus so krummen Holze, als woraus des Mensch gemacht ist, kann nichts ganz Gerades gezimmert werden’ [Out of the crooked timber of humanity, no straight thing was ever made], *Idea for a Universal History from a Cosmopolitan Point of View*, 1784. Berlin cites this classic quotation of Kant’s in order to establish his critique of the Platonic and positivist background of Western thought and of the utopian positions sometimes associated with it (see Berlin 1998).
- 3 However, the same Kantian work offers elements with which to rethink the articulation of these concepts when we move away from the individualistic approach of human *unsocial sociability*. An analysis of this Kantian concept and its continuity in Hegel’s philosophy, in Requejo and Valls 2007.
- 4 ‘... the Hegelian system had the greatest influence on contemporary thought. It is a vast mythology which, like many other mythologies, has great powers of obscuring whatever it touches. It has poured forth both light and darkness – more darkness perhaps than light, but about that there will be no agreement’, ‘In Hegel we do see history through the eyes of the victors, certainly not through the eyes of the victims’ (Berlin 2002: 74, 90).
- 5 I follow P. Singer’s suggestion to use the word ‘mind’ rather than ‘spirit’ as a translation of the German term ‘Geist’ (see Singer 2001). In fact, this is the concept that acts as the ‘principle’ of a kind of philosophy that would like to be ‘scientific’, in the sense of a rigorous and well-founded form of knowledge that is not mere ‘opinion’. However, it is a principle that one deduces from the most immediate consciousness or the sensitive consciousness (ch. 1 of *Phenomenology*). When the deductive process ends, the work reaches the ‘absolute knowledge’ or epistemological knowledge (ch. 8), which goes beyond subjective opinions and allows the consciousness to be, at last, fused once again within the logic of the whole epistemological process. That is, finally Heraclitus is inside Parmenides. The end of the process means that we understand all the logic that has been present since the beginning. The soloist (consciousness) joins the choral finale (mind). See the last paragraph of Hegel’s ‘Introduction’.
- 6 In his ‘technical’ language, Hegel defines the state as ‘the actual reality [*Wirklichkeit*] of the ethical idea’. See *Philosophy of Right*, section 257.

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