Liberal democracy's *timber* is still too straight.[1]
The case of political models for coexistence in composite states.

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This paper analyses the difficulties that traditional liberal democracy experiences when it attempts to achieve an adequate political accommodation of the diverse values, interests and identities that exist in contexts of national pluralism (plurinational states). Firstly, I analyse two theoretical distortions associated with the Western tradition which are present in the majority of the legitimising concepts of the liberal tradition: the fallacy of abstraction and the difficulties that it encounters when attempting to find a suitable way to deal with pluralism in the political theories that stem from the Enlightenment (section 1). Secondly, after mentioning the three classic solutions for accommodating plurinational societies – federalism, consotionalism and secession – I analyse the suitability of the first to achieve the recognition and political accommodation of national pluralism by means of a number of conclusions drawn from analyses of comparative politics in federations and in a number of regional states. The conclusion is that these two basic objectives can only be achieved, in federal terms, through the *plurinational federalism* model or the *partnership* model (in combination, or not, with institutions

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[1] 'Alus 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). Isaiah Berlin uses in *The Crooked Timber of Humanity* this classic quotation of Kant's (*Idee su einer allgemeinen Geschichte in weltbürgerlicher Absicht*, 1784) as a starting point for his critique of the Platonic and positivist foundations of Western thought and of the utopian propositions sometimes associated with them.

and consotional processes that regulate the possible secession of minority nations) (section 2).

1. The conceptual and normative *timbers* of political liberalism in relation to the pluralism of present-day societies.

Every political tradition creates its own legitimising language, its own concepts, its own objectives and its own values. The history of political liberalism – from its beginnings in the 17th century to now – can be presented as a history of the increasing recognition and institutionalisation of a number of specific demands for impartiality by different (social, economic, cultural, national, etc) sectors of modern and contemporary societies. It is often pointed out that the abstract and supposedly universalist language that underlies the presentation of the values of liberty, equality and pluralism of political liberalism has, in practice, contrasted with the exclusion of many 'voices' with regard to the institutional regulation of the specific liberties, equalities and pluralisms of contemporary states. This was the case – and in some contexts continues to be so – of those who do not own property; of women; of indigenous peoples; of racial, national, ethnic and linguistic minorities, etc. Despite everything that political liberalism represented as an emancipative political movement in comparison with the traditional institutions of the *Ancien Régime* (rights charters, principle of representation, principle of legality, competitive elections, constitutionalism and procedures of the rule of law, separation of powers, parliamentarianism, etc), we know that most liberals of the 18th and 19th centuries were opposed to the regulation of rights of democratic participation such as universal suffrage or the right of association. These rights, whose presence in modern-day democracies is now totally taken for granted, had to be wrested from early liberalism and constitutionalism after decades of social conflict, above all with the political organisations of the working classes. Later, following the constitutionally

recognised 'liberal and democratic waves of democracy' of the second half of the 20th century, social notions of equality and equity would be transformed, especially after the constitutional inclusion of a 'third wave' of social rights, which formed the base of the welfare states created at the end of the Second World War.

Nowadays, we could say that liberal democracies and international society are faced with a new emancipative element, but this time the legal contrasts are not of a social but of a cultural and national nature. In recent years, the idea has slowly been growing that, if we wish to proceed towards liberal democracies of greater moral and institutional quality, the values of liberty, equality and political pluralism must also be taken into account from the perspective of national and cultural differences. Today we know that the rights of the first three waves – liberal, democratic and social – do not by themselves guarantee the implementation of these values in the cultural and national sphere. In other words, the idea has gradually been gaining ground that state uniformism – implicit in the traditional liberal-democratic (and social) conceptions of equality of citizenship or popular sovereignty – is an enemy of liberty, equality and pluralism in the cultural and national spheres. Moreover, the idea that it is advisable to foster more morally refined and institutionally complex versions of liberal democracies in order to accommodate their diverse types of internal pluralism has also received increased support.

Thus, a value such as equality is no longer exclusively contrasted, in conceptual terms, with political and social *inequality*, but also with cultural and national *difference*. This is linked with a whole collective dimension that cannot be reduced to the individualist, universalist and stateist approach of traditional democratic liberalism and constitutionalism. This latter approach still predominates in the values and legitimising discourse of a great many of the political actors of contemporary

democracies (governments, parliaments, parties, etc) – both in the sphere of the classic right and the left – as well as in the majority of the variations of liberal and republican theories of democracy. The repercussions of the *cultural and national turn* of the foundations of democratic legitimacy are not limited to the sphere of Western democracies, but also influence the normativity that should rule in an international society. The most significant empirical cases are those related to minority nations, to national minorities, to indigenous peoples and to transnational immigrations.[2] All these cases pose specific questions regarding recognition and political accommodation in contemporary democracies (group rights, self-government, the defence of particular cultural values, presence in the international sphere, etc). It could be said that we are currently facing a new aspect of political equity which is fundamental in order to progress towards democracies of greater 'ethical' quality, but for which the traditional theories of democracy, liberalism and constitutionalism lack a suitable response. In other words, the idea is gaining ground that uniformism and limited traditional liberal individualism are the enemies of key dimensions of equality, liberty and pluralism. Thus, the quest for suitable forms of cosmopolitanism and universalism involves establishing a broad recognition and political accommodation, in terms of equity, of the national and cultural voices that are excluded, marginalised or downgraded in liberal democracies.

In recent years there has been much debate about the cultural 'limits' of a liberal and democratic society. This debate is making it easier to understand liberal and democratic traditions themselves – their limits and possibilities – in terms of theory and institutional practice. It is also facilitating a better understanding and practical

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[2] 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 (eg, 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.

expression of the values of these traditions – the regulation of different types of pluralism in civic and political liberties and in different types of equalities. There are many possible forms of democracy and it seems obvious that it is advisable to modulate universalism according to the specific characteristics of empirical contexts. If not, the pompous, ostensibly discourse about 'individual rights' and "universalism" will obscure democracies that are heavily biased in favour of the particularisms of the majority. These are likely to be democracies that are poorly established in normative terms, and even more poorly implemented institutionally. In Kant and Berlin's terms, they will be democracies that are too 'straight' to adequately regulate the human complexity of the different kinds of pluralism which coexist within them.

1. Do we interpret political and social reality correctly? Two analytical distortions.

The classical Greeks condensed the different characteristics of human beings in the myth of Prometheus and Zeus – depicted in Plato's *Protagoras* dialogue.[3] The gods gave the brothers Prometheus and Epimetheus the task of distributing abilities among the animals and human beings so that they could improve their lives. Epimetheus asked to be allowed to carry out this distribution. To some he gave strength, to others speed or wings with which to flee, in such a way that no species ran the risk of being wiped out. When he had distributed all the abilities, human beings had yet to receive theirs and this was the day that the gods' assignment expired. Prometheus, in his haste to find some form of protection for the human species, stole fire and professional wisdom from Hephaestus and Athena (for which he was subsequently punished). Humans thus possessed these abilities, but still

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[3] Plato, *Protagoras* 320d-322d.

lacked the 'political science' of coexistence, as this belonged to Zeus. Humans perfected their technologies, but fought amongst themselves whenever they met. Fearing that the human species would die out, Zeus sent Hermes to 'take morality and justice to humans, so that there would be order in the towns'.

Judging from the development of humanity, it would appear that, regarding the amounts of each type of knowledge distributed, Prometheus was significantly more generous than Zeus. We are better at technology than politics and justice. This myth illustrates very well that we humans are prone to act hastily and to improvise. Nowadays, we know this to be true thanks to studies into the evolution of life on the planet. Evolution is not based on a plan; it is the selection of a set of chance improvisations which have turned out to be adaptive. But what in Western culture appears to have been difficult to assimilate since Plato's time is that the thing that most *distinguishes* us from other species – language and technology – does not coincide with that which most *characterises* us as a species in evolution.

On the other hand, we know that political ideologies, when they are adopted unilaterally, distort reality. But together with these ideological distortions are others of which we are less aware: those associated with how we think, how we use language when we attempt to analyse and intervene in the world. Let us look at two of them.

A) The tendency to use extremely abstract categories in order to include the maximum number of cases of reality. In some way this is inevitable. Naming something involves creating an abstraction. But at times we lean towards what we might call the *fallacy of abstraction*: believing that we understand a phenomenon better the more abstract is the language we use to describe it, explain it or transform it. And what often occurs is exactly the opposite: the more abstract the

language, the poorer and further away it is from the empirical cases to which it is attempting to refer.[4]

B) The tendency of Western thought to deal inadequately with pluralism. Today we recognise that (social, cultural, national, linguistic, religious, ideological, etc) pluralism is not only an insurmountable fact, but also an essential value. We know that when faced with any given situation there is not only *one* way to act correctly in moral terms; and it is also commonly agreed that there is not a single appropriate political decision in a specific moment or context. There are almost always several options which are equally reasonable. But in the history of Western philosophy a different approach has been taken. We have thought more in 'monist' than in 'pluralist' terms. Hannah Arendt and Isaiah Berlin pointed out that a lack of pluralism has run through Western thought since Plato. And despite the fact that we recognise the existence and/or advisability of comparable value pluralism and lifestyles in contemporary societies, we often persist in believing that there is only one correct practical answer and that all the others are wrong.

Abstract and monist distortions are present in the majority of classic political conceptions. These distortions contribute to the fact that the world of theories of justice and democracy continues to be too 'straight', when the *timber* of humanity and societies is not. This question has caused and still causes both ethical injustices and institutional dysfunctions in liberal democracies. This is somewhat surprising with regard to a large part of the liberal-democratic tradition since one of its strong points is the defence of pluralism, now understood as a value worth defending,

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[4] Hegel knew a lot about this. See *Philosophy of Right*, ss 142, 182. Some Marxists, for example, are prone to this kind of distortion by abstraction when, by means of a small number of categories – 'class struggle', 'economic base', etc – they attempt to 'explain' everything from the empire of the Sumerians to the anti-colonial revolutions of the 20th century. This type of theoretical tendency has also been very common in the legitimising language of political liberalism since its beginnings.

rather than a mere fact with which it is necessary to coexist in the least harmful way possible.

However much it is repeated, it will never be possible to stress sufficiently the historic change which this tradition has meant for the ethical and functional improvement of the political organisation of a large part of humanity. Nevertheless, we know that this is a process that also displays a number of its own theoretical shadows and practical totalitarian versions. One of the keys to better thought and action lies in achieving a critical control over that pair of distortions – abstraction and monism – that dwell in our discourses. Doing so is not always easy; it requires intellectual effort and empirical sensitivity, but is necessary in order to refine both our analytical capabilities and our moral and political actions. Let us now look at some conceptual elements in which these theoretical distortions are realised and which have an influence on the revision of democratic liberalism in societies characterised by a significant degree of national pluralism.

1.2 Twelve elements for a political and moral refinement of plurinational liberal democracies

1. In general terms, two intellectual attitudes are necessary in order to approach the subject of national pluralism (and multiculturalism): 1) to approach it as a practical problem, the aim of which is to avoid conflicts in the least traumatic and costly way possible (pragmatic approach), or 2) to approach it as a question of 'justice' in the relations between permanent majorities and minorities in democracies which require correct solutions (moral approach). A mixture of both approaches is commonly in use in practical politics. While the former is part of the

political negotiation between actors, the second is present in the discourse of these actors' legitimising processes. In plurinational societies, differences are apparent between national collectives regarding the parameters of national and cultural justice (unlike the intra-communitarian parameters with regard to socio-economic distributive justice – which are also plural, albeit more uniform, between national collectives).[5]

2. We know that the vast majority of human beings are culturally rooted, and it could be said that all cultures have value and that, in principle, all deserve to be respected. This does not imply that they cannot be compared in specific areas, that they are all equivalent and equally successful in these areas, that everything is morally acceptable, that there are no mutual influences, or that elements of several cultures cannot be shared. Or that one is unable to disengage oneself from one's original culture.

3. Today, *cultural and national liberty* is an essential value for the *democratic quality* of a society. It is a kind of liberty – one of the human rights – that is crucial for an individual's development and self-esteem and that, like all the other normative objectives of democracies, is limited by other values and other democratic liberties (*Human Development Report*, United Nations 2004).[6] One of the

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[5] For typologies of different phenomena associated with 'multiculturality' and its conceptual, normative and institutional differences, see Kymlicka W-Norman W, *Citizenship in Diverse Societies*, OUP 2000; Requejo, F *Multinational Federalism and Value Pluralism*, Routledge, London-New York, 2005, ch 3. See also B. Parekh, *Rethinking Multiculturalism*, MacMillan, London 2000.

[6] This report suggests five elements that contribute to better quality democracies: 1) multiculturalism: assuring the participation of marginalised cultural groups (electoral reforms; federalism with asymmetric features); 2) policies that ensure religious freedom (including festivals, food and dress customs, etc); 3) policies of legal pluralism (a more controversial issue that would in any case imply respect for the limits mentioned above); 4) linguistic policies (some democratic states are still monolingual with regard to their institutions and symbols despite their internal multilingualism); and 5) socio-economic policies (minimum salaries, education, health).

conclusions of the debate of recent years is, as mentioned above, that cultural and national liberty is not ensured through the mere application of the civil, participatory and social rights usually included in liberal-democratic constitutions at the beginning of the 21st century.

4. In the academic world it seems to be generally accepted that cultural and national issues are not simply 'social causes'. The sphere of 'cultural and national justice' is different from the sphere of 'socio-economic justice'. It is true that there are sometimes interrelationships between these two spheres of justice, but the phenomena associated with each one of them are different. These phenomena include different values, objectives, actors, institutions, practices and also different policies. Some institutions and policies may improve the latter while hardly having any effect on the former. And vice versa. This shows the impossibility of equating the *paradigm of equality* (or of *redistribution* in socio-economic terms) with the *paradigm of difference* (or of *recognition* in national and cultural terms).[7] Both kinds of consideration are part of a more inclusive vision of 'justice' in contexts of national pluralism.

5. Traditional theories of democracy – both in their more liberal and more republican versions – usually refer implicitly to concepts, values and experiences in societies which were originally much simpler than their modern-day counterparts. Nowadays there is a 'new agenda' of issues that can no longer be reduced to the central concepts and legitimising language of traditional liberal and republican approaches – individual rights, absence of discrimination before the law, citizenship and popular sovereignty, the public virtues of the republican tradition, etc. Demands for recognition and political and constitutional accommodation of minority nations have

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[7] A contrast which is at the heart of current theories of liberal democracy is manifested in the approaches which have come to be called Liberalism 1 and Liberalism 2.

found a place on the political agenda and liberal democracies must find a response to them. Despite their differences, what these distinct cases have in common is the desire to maintain and reinforce a set of specific national characteristics in an increasingly globalised world. This is something that the habitual institutions, processes and policies of current liberal democracies fail to adequately guarantee.

6. Traditional political conceptions have tended to treat the internal national and cultural differences of democracies which did not coincide with those of the majority society as 'particularist deviations'. Too often the practical response of many liberal democracies has been to promote the cultural and national assimilation of minorities in order to achieve their 'political integration'. The practical consequence has been the subsumption and marginalisation of the internal national and cultural minorities of the state in the name of universalist versions of 'freedom of citizenship', 'popular sovereignty' (of the state) or even of 'non-discrimination' (of majorities with regard to the claims of minorities). Practically speaking, these versions have behaved in a highly unegalitarian, discriminatory and biased way in favour of the *particular* characteristics of the culturally and nationally hegemonic or majority groups of the state (which do not always coincide with the groups or sectors which are hegemonic in the socio-economic sphere). It is possible to detect the presence of a uniformising form of stateism, in national and cultural terms, which is the practical 'hidden element' of traditional democratic liberalism in the regulation of the rights and duties of the 'citizenry'. In reality, all states, including liberal-democratic ones, have been and continue to be agents of nationalism and nationalisation.

7. Traditional theories of democracy lack a theory of the *demos*. They offer no normative responses to questions like: who should constitute the demos of a democracy?, is there, or should there be, a single *demos* for each democracy?, which collectivity represents solidarity?, etc. Moreover, these theories have not

developed a theory of legitimate borders. Furthermore, there are conceptual limits to the interpretation of legitimising values even on the part of current liberal-democratic theories which are highly elaborate in other aspects (Rawls, Habermas) when they attempt to deal with the demands for recognition and political accommodation of movements for national and cultural pluralism of a territorial nature.[8]

8. The idea that the democratic state is a culturally 'neutral' entity is a liberal myth that few defend today, not even the majority of liberal authors situated within traditional liberalism – whose theoretical approach could be described as individualist, universalist and stateist. All states impose cultural and linguistic features on their citizens. Liberal-democratic states are no exception. In clear contrast with the versions that still defend a kind of laissez-faire approach to cultural matters, or the alleged moral superiority or modernity of values of the majority, experience shows that the state has not been, nor is, nor can ever be, 'neutral' in cultural terms, and that there is no moral superiority whatever in having a greater amount of collective decision-making power.

9. Processes of state-building and nation-building do not coincide. Nowadays, national identities have shown themselves to be long-lasting and increasingly

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[8] Theories of socio-economic justice (Rawls) take for granted that equality of citizenship in a just society is not problematical, when constitutional issues in plurinational societies question that very premise. It is not very reasonable to presuppose that 'justice', understood in the restricted sense which it has in the socio-economic sphere, is the first and only virtue of democratic institutions. Normative pluralism does not only include a, sometimes radical, plurality of conflicting values, virtues and interests, but also of identities (consider, for example, the normative and institutional issues involved in the normative debate on the right of secession in plurinational contexts). No theory of justice is capable of including – let alone synthesing – all the components of this agonistic pluralism of values/virtues, interests and identities. Even I. Berlin failed to go far enough in this area. I have dealt with the unsuitability of the approaches of socio-economic justice and traditional theories of democracy with regard to this type of issues, in Requejo 2005, op cit, ch 1.

important – in contrast to some liberal and socialist approaches which, since the 19th century, have treated these identities as a passing, decadent phenomenon. Both state-building and nation-building processes have conditioned the evolution of federalism.[9]

10. In plurinational societies there will always be values, interests and identities of a, at least partially, competitive nature. It would appear to be counterproductive, from a practical perspective, as well as useless, from a theoretical one, to attempt to adopt a different approach to the issue through concepts like the existence of an allegedly 'post-nationalist' political stage or of a kind of 'constitutional patriotism' linked only with liberal-democratic values which ignore individuals' national and cultural characteristics. These attempts are poorly equipped in empirical terms and, in practice, usually act as legitimising elements for the status quo.[10]

11. It is obvious that individual and collective 'identities' are not a fixed reality, but construct themselves and change over time. However, most of the collective elements that constitute the basic features of individual identity are given to us. In other words, we do not choose them. The belief that we are 'autonomous individuals' who choose our (national, ethnic, linguistic, religious, etc) identities is, to a great extent, another of the myths of traditional liberalism. These elements are not normally chosen; any choices we make are based on them.[11]

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[9] For an analysis of 'the two concealments" that both processes have represented for the evolution of contemporary federalism, see Requejo 2005, op cit, ch 3.

[10] See F Requejo, 'Multinational (not 'postnational') Federalism', in R. Maiz-F.Requejo (eds) *Democracy, Nationalism and Multiculturalism*, Routledge, London - New York, 2005: 96-107.

[11] M. Walzer has correctly stressed three 'exaggerations' associated with political liberalism: the elective subject, deliberation, and the use of reason in politics. See Walzer, M, *Vernunft, Politik und Leidenschaft* (Reason, Politics and Passion), Fischer Taschenbuch Verlag, Franfurt am Main, 1999.

12. The political contexts in which individuals are socialised are often the result of historical processes that include both peaceful and 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 (and of some national minorities). In the majority of these analytical elements it is possible to verify the presence of the two theoretical distortions mentioned above – the fallacy of abstraction and the inability to deal adequately with pluralism. These distortions have a direct repercussion on the quality of our democracies, above all in the current conditions of increasing pluralism and globalisation.

As a result, the construction of increasingly refined liberal democracies in terms of *cultural and national pluralism* is one of the biggest challenges of the normative and institutional revision of contemporary democratic systems. Some of the questions to be answered would be: what implications does the regulation of national pluralism have in the sphere of symbols, institutions and self-government?; how should classic notions like representation, participation, citizenship and popular sovereignty be understood and defined in plurinational and increasingly globalised contexts?; what does accepting national pluralism mean in international society?

2. Classic liberal-democratic solutions for addressing 'social' diversity.

It would appear that the first condition for solving a problem is to try to define or describe it correctly; and defining and describing a problem correctly involves establishing at least three aspects. Firstly, knowing how to identify what the basic issue is, identifying the decisive question that needs to be considered. Secondly, defining a problem also involves knowing how to describe it with the maximum precision possible. This implies both a careful conceptual treatment and the

inclusion of elements of a historical nature and the most important empirical data related to the problem. Thirdly, defining a problem is knowing where one has to look to find possible solutions, in both the sphere of political theory and that of comparative politics. In other words, 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.

One of the most important questions with regard to the case of plurinational democracies is the recognition and political accommodation of the national pluralism of these democracies. Obviously, in addition to this question there are probably a whole series of aspects which are interrelated with it: economic development; inequalities of income; multiculturality; integration in supra-state organizations, such as the European Union; etc. But it is methodologically improper to mix all these elements from the outset. In this case, the key point is to establish, not how the *demos* becomes *cratos* – this would be the traditional vision of democracy – but how the different national *demoi* which coexist within the same democracy are politically and constitutionally recognised and accommodated in terms of equality (between the national majorities and minorities) in the *cratos* of the polity. This involves dealing with and introducing aspects of both a 'democratic' nature – participation between majorities and minorities in the 'shared governments of the democracy' – and, above all, of a 'liberal' nature – the protection and development of minority nations confronting the 'tyranny of the (national) majority', both in the internal sphere of this democracy and in the international sphere. It is, therefore, a matter of establishing the 'checks and balances' in a collective dimension which has received little or no attention from traditional political conceptions, but which constitute specific dimensions of core questions of liberal political theory, such as 'negative theory' of 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). But 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 to clearly identify its basic legitimising values. Moreover, it demands, above all, practical, institutional and procedural solutions that are much more suitable for the type of pluralism that one wishes to accommodate. At the beginning of the 21st century, the recognition and political accommodation of plurinational democracies continue to be two aspects of the liberal-democratic agenda that have yet to be satisfactorily resolved.

2. Liberal-democratic solutions to "social" diversity.

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

1) federalism (in a wide sense, including federations, associated states, federacies, confederations and regional states).

2) the institutions and processes of a 'consotional' nature (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.

Having pointed out some elements of political theory in the first section, let us now look at some elements offered by comparative politics with regard to federalism. The generic question is whether federalism offers a suitable framework for establishing the recognition and accommodation of plurinational democracies and, in this case, which federal models are most suitable and which are not.

Broadly speaking, in studies of federalism – without referring strictly to cases of national diversity – comparative political analyses commonly point out the existence of several *federal models*.[12] To synthesise:

(TABLE HERE)

Furthermore, among the conclusions of an exhaustive comparative empirical study into federal democracies – using variables situated on four analytical axes and a variety of indicators applied to 19 cases (federations and a number of regional states)[13] it is worth pointing out:

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[12] In the discussion that follows we will distinguish, as is usual in the specialised literature on the subject, between *federalism*, as a normative notion that can be applied to different federal institutional models, of *federations* (one of those institutional models which in turn contains a series of variants). See R. Watts, *Comparing Federal Systems*, Montreal and Kingston, McGill-Queen's University Press, 1999.

[13] The four analytical axes 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. See F. Requejo, 'Federalism and Democracy. The Case of Minority Nations: a Federalist Deficit', M. Burgess-A. Gagnon, *Federal Democracies*, Routledge, London, 2010 (forthcoming).

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. The figure below summarises this question:

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.

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.[14] It is an open question whether the unwillingness of some

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[14] 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 (except in the case of the United Kingdom), due to the fact that the true political level of the asymmetries is not very high, and most of the powers are concurrent. For a general overview of constitutional *de jure* asymmetries, see R. Watts, 'A Comparative Perspective on Asymmetry in Federations', *Asymmetry Series*

federations and plurinational regional states to introduce more asymmetrical regulations will or will not reinforce territorial tensions and secessionist movements in the future.

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 this case, achieving this trust seems to require two institutional factors: 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 consotional state institutions, etc.; and 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.[15]

2005 (4), IIGR, Queen's University.

[15] 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.

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. 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 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 the 'right to decide' by citizens of minority nations. That is, 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.[16]

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 recognition of national pluralism, and a wide territorial division of powers (political decentralization) 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

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[16] Federal practice and theory would be advised to pay more attention to these movements than they have done in the past.

the different collective actors, federal theory based on Madison's approach is further away from the solution than that which is based on Althussius' approach.[17] Here, the solutions, although it cannot be said that they should be of a strictly pragmatic nature or that they should necessarily reflect normative *modus vivendi* approaches, should include strong components of contextual pragmatism when establishing specific rules for the recognition, the self-government of minorities and their participation in any model of 'shared government'.

Thus, in addition to the classic solutions mentioned above, of a *consotional* nature and *secession*, in order to proceed towards a recognition and political accommodation of plurinational societies, within the third type of classic solutions – that of the generic group of *federalism* – there appear to be only two models able to satisfactorily regulate national pluralism: the *plurinational federalism* model and the *partnership* model – which includes the cases of associated states, *federacies* and confederations. Both models can be combined with elements from the other two solutions – consotionalism (Belgium) and the constitutional regulation of secession (Canada), but apart from them its does not seem possible to regulate the two fundamental questions posed by national pluralism – the recognition and political accommodation of this form of pluralism.

Broadly speaking, the model that I have described 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.[18] The

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[17] See Karmis D-Norman W, *Theories of Federalism. A Reader*, Palgrave Macmillan, New York – Houndsmills 2005. See also T. Hueglin, 'Federalism at the Crossroads: Old Meanings, New Significance', *Canadian Journal of Political Science*, 36, 2, 2003.

[18] I deal with this point in more detail in F. Requejo, *Multinational Federalism... op cit*, 2005, ch 4.

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. Empirically speaking, however, there is evidence of the existence of territorial tensions in all cases which are close to the plurinational federalism model. There is clear resistance on the part of different actors to the implementation of a plurinational form of institutional federalism, associated with the nation-building and state-building processes of democratic states (although there is a whole range of responses in comparative politics both with regard to recognition and self-governments). On the other hand, the *partnership* models make it possible to achieve a number of confederal agreements with the state in specific areas (defence, passports, a number of issues relating to foreign policy and the tax system, etc), maintaining, in other areas, a form of self-government that is not limited by the juridical rules of the state. The empirical regulation of this kind of agreements follows the guidelines established in some associated states or in the *federacies* of comparative politics. Taking into account, however, that the latter type of agreements is usually preferred for the case of islands and their relations with a much larger geographic and demographic unit, its practical effectiveness for continental plurinational states appears to be limited – where the units to be federated are similar to the two criteria mentioned above, despite the fact that from a logical perspective nothing prevents the establishment of agreements of this type for the latter type of cases as well.

It is an open empirical question whether the 21st century will or will not be a period which sees the consolidation of political movements of the minority nations of plurinational democracies in pursuit of recognition and political accommodation, whether this is through their accommodation in plurinational federal states, through

processes of *partnership*, or secession when the latter is not possible. In other words, through the stable regulation of *self-determination in interdependence*.[19]

Traditional federalism and democratic liberalism display, together with emancipative and functional 'lights', a series of 'shadows' that make them excessively 'straight' traditions for them to be adapted to the more pluralist and complex *timber* of plurinational democracies. The ethical and functional improvement of both traditions would permit a development of the values of the political Enlightenment that is much more suitable for the pluralism of plurinational democracies. At the beginning of this century, neither liberal democracy nor federalism have reached the end of the story. On the contrary, they are immersed in a new phase of improvement based on their modulation with respect to contemporary empirical societies.

3. Summary

In this paper we have analysed some of the normative and institutional elements which make it difficult for the liberal and federal traditions to achieve an effective realization of the values of liberty, equality and pluralism in plurinational democracies. After pointing out two theoretical distortions, the fallacy of abstraction and a flawed approach to pluralism, of the political theories that have their starting point in the Enlightenment, we have described a set of twelve conceptual and normative elements which exemplify these two distortions in the context of plurinational democracies. Following Kant and Berlin, we have said that traditional liberalism and federalism are too 'straight' to adapt to the more pluralist and complex nature of plurinational societies. Subsequently, after mentioning the classic solutions for articulating social diversity – federalism, consotionalism and secession –

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[19] 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 A. Gagnon-J. Tully (eds), *Multinational Democracies*, Cambridge University Press, Cambridge 2001; U. Amoretti– N. Bermeo, (eds), *Federalism and Territorial Cleavages*, Johns Hopkins University Press, 2004; Gagnon-Guibernau-Rocher (eds) 2003, *The conditions of diversity in multinational democracies*, IRPP, Montreal 2003.

we have pointed out that only two 'federal models', plurinational federalism and partnership (in combination, or not, with consotional institutions and processes which regulate the possible secession of minority nations), seem capable of providing an adequate framework for establishing a satisfactory recognition and political accommodation of national pluralism for this kind of democracies. Empirically, however, these models are difficult to implement, even in purely pragmatic terms. In the plurinational societies of the beginning of the 21st century, federal scepticism, one might say, begins at home.