



# Routledge Handbook of Regionalism and Federalism

Edited by John Loughlin, John Kincaid  
and Wilfried Swenden

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Almost all states are either federal or regionalized in some sense. It is difficult to find a state that is entirely unitary and the *Routledge Handbook of Regionalism and Federalism* necessarily takes in almost the entire world. Both federalism and regionalism have been subjects of a vast academic literature mainly from political science but sometimes also from history, economics and geography. This cutting-edge examination seeks to evaluate the two types of state organization from the perspective of political science, producing a work that is analytical rather than simply descriptive.

The *Handbook* presents some of the latest theoretical reflections on regionalism and federalism and then moves on to discuss cases of both regionalism and federalism in key countries chosen from the world's macro-regions. Assembling this wide range of case studies allows the book to present a general picture of current trends in territorial governance. The final chapters then examine failed federations such as Czechoslovakia and examples of transnational regionalism – the European Union, North American Free Trade Agreement (NAFTA) and the African Union.

Covering evolving forms of federalism and regionalism in all parts of the world and featuring a comprehensive range of case studies by leading international scholars, this work will be an essential reference source for all students and scholars of international politics, comparative politics and international relations.

**John Loughlin** is a Professor and Fellow of St Edmund's College, Cambridge, and a Senior Fellow and Affiliated Lecturer in the Department of Politics and International Studies in the University of Cambridge.

**John Kincaid** is the Robert B. and Helen S. Meyner Professor of Government and Public Service and Director of the Meyner Center for the Study of State and Local Government at Lafayette College, Easton, Pennsylvania, USA.

**Wilfried Swenden** is a Senior Lecturer in Politics at the School of Social and Political Science, University of Edinburgh, Scotland, UK.

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*Edited by  
John Loughlin, John Kincaid and  
Wilfried Swenden*

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# Contributors

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**John Agnew** is Professor in the Department of Geography, University of California at Los Angeles, USA.

**Arthur Benz** is Professor of German and Comparative Politics at the Technische Universität of Darmstadt, Germany.

**James Bickerton** is Professor of Political Science at St Francis Xavier University, Canada.

**Florian Bieber** is Professor of South-East European Studies and director of the Centre for South-East European Studies at the University of Graz.

**Jörg Broschek** is Lecturer in Political Science in the Institute of Political Science at the Technische Universität Darmstadt, Germany.

**Douglas M. Brown** is Associate Professor, Department of Political Science, St Francis Xavier University, Antigonish, NS, Canada.

**Michael Burgess** is Professor of Federal Studies and Director of the Centre for Federal Studies at the University of Kent, UK.

**Beniamino Caravita** is Full Professor of Constitutional Law at Sapienza University of Rome, Italy.

**Paolo Dardanelli** is Lecturer in European and Comparative Politics in the School of Politics and International Relations of the University of Kent, UK.

**Kris Deschouwer** is Research Professor and Head of the Department of Political Science, Free University of Brussels (Vrije Universiteit Brussel), Belgium.

**Klaus Detterbeck** is Lecturer in Politics at the University of Magdeburg, Germany.

**Niklas Eklund** is Lecturer in Politics in the Department of Political Science at the University of Umeå, Sweden.

**Franz Fallend** is Senior Scientist in the Department of Political Science, University of Salzburg, Austria.

## Contributors

**Alain-G. Gagnon** is Professor of Political Science at the Université de Québec à Montréal, Quebec, Canada.

**Lucas González** is Professor in Political Science at CONICET/Universidad Catolica Argentina and Universidad Nacional de San Martin.

**Amal Hamdan** is graduate student at King's College, London, UK.

**Susan J. Henders** is Associate Professor in the Department of Political Science and Director of the York Centre for Asian Research, University of York, Canada.

**Eve Hepburn** is Senior Lecturer in Politics and Deputy Director of the Academy of Government, Politics and International Relations, School of Social and Political Science, University of Edinburgh, Scotland.

**Michal Illner** is Senior Researcher, Department of Local and Regional Studies, Institute of Sociology of the Academy of Sciences of the Czech Republic, Prague.

**Charlie Jeffery** is Professor of Politics and Vice-Principal Public Policy at the School of Social and Political Science, University of Edinburgh, Scotland.

**Michael Kerr** is Professor of Conflict Studies at King's College, London, UK.

**John Kincaid** is the Robert B. and Helen S. Meyner Professor of Government and Public Service and Director of the Meyner Center for the Study of State and Local Government at Lafayette College, Easton, Pennsylvania, USA.

**Damien Kingsbury** holds a Personal Chair in the School of Humanities and Social Sciences and is Director of the Centre for Citizenship, Development and Human Rights in the Faculty of Arts and Education at Deakin University, Melbourne.

**John Loughlin** is Professor and Fellow of St Edmund's College, Cambridge, and a Senior Fellow and Affiliated Lecturer in the Department of Politics and International Studies in the University of Cambridge, UK.

**Francesc Morata** is Professor in the Political Science and Administration Department at the Autonomous University of Barcelona, Spain.

**Simona Piattoni** is Professor of Political Science at the University of Trento, Italy.

**Christi Rangel Guerrero** is Professor of Political Science at the University of Los Andes, Venezuela.

**Ferran Requejo** is Professor of Political Science in the Department of Political and Social Sciences, Pompeu Fabra University, Barcelona, Spain.

**Richard Sakwa** is Professor of Russian and European Politics and Head of the School of Politics and International Relations of the University of Kent, UK.

**Cheryl Saunders** is Laureate Professor in the School of Law, University of Melbourne, Australia.

**Rekha Saxena** is Associate Professor in the Department of Political Science, University of Delhi and Hon. Vice-Chairman, Centre for Multilevel Federalism, New Delhi, India.

**Anwar Shah** is Lead Economist and Program Leader, Governance Program at the World Bank Institute, Washington, DC, USA.

**Celina Souza** is Professor of Political Science at the Institute of Social and Political Studies, State University of Rio de Janeiro, Brazil.

**Nico Steytler** is Professor and Director of the Community Law Centre, University of the Western Cape, South Africa.

**Rotimi T. Suberu** was Professor of Politics at the University of Ibadan, Nigeria, and currently teaches at Bennington College, Vermont, USA.

**Wilfried Swenden** is Senior Lecturer in the School of Social and Political Science at the University of Edinburgh and from 2007–2013 was co-convenor of the ECPR Standing Group of Federalism and Regionalism.

**Paweł Swianiewicz** is Professor in the Department of Local Development and Policy in the Faculty of Geography and Regional Studies, University of Warsaw, Poland.

**Thomas Kwasi Tieku** is Assistant Professor, Lead Researcher at the Centre for International Governance Innovation, Director of African Studies at the University of Toronto, Canada.

**Pieter van Houten** is Fellow of Churchill College and Lecturer in Politics in the Department of Politics and International Studies in the University of Cambridge, UK.

**Sarah Vaughan** is Research Consultant, and Honorary Fellow in Politics in the School of Social and Political Science, University of Edinburgh, Scotland, UK.

**Sonja Wälti** is Assistant Professor in the Department of Public Administration and Policy, School of Public Affairs, American University, Washington, DC, USA.

**Ronald L. Watts** is Principal Emeritus and Professor Emeritus of Political Studies and Fellow of the Institute of Intergovernmental Relations at Queen's University, Kingston, Ontario, Canada.

**Steven T. Wuhs** is Associate Professor in the Department of Government, University of Redlands, California, USA.

# Preface and acknowledgements

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Almost all states are either federal or regionalized in some sense. It is difficult to find a state that is entirely unitary, except perhaps for micro-states such as the Vatican, Monaco, San Marino, or Andorra. This means that a *Handbook of Regionalism and Federalism* necessarily takes in almost the entire world. It would be possible to compile a handbook that simply lists the characteristics of all the states in the world somewhat like the CIA's World Factbook. This, however, being little more than a compilation of 'facts' and statistics would tell us little about the nature of regionalism and federalism. Both federalism and regionalism have been subjects of a vast academic literature mainly from political science but sometimes also from history, economics and geography. We decided, therefore, in this *Handbook* to examine the two types of state organization from the perspective of political science and to produce a work that is analytical rather than simply descriptive. We wished also to present some of the latest theoretical reflections on regionalism and federalism, which are treated in [Part I](#) of the book. [Part II](#) presents a number of case studies with examples of both regionalism and federalism in key countries chosen from the world's macro-regions. It was not possible to include all the interesting cases, but we have assembled enough case studies to form a general picture of current trends in territorial governance. It is also interesting to explore why some federations fail and we look at a number of cases in [Part III](#). [Part IV](#) of the book deals with what we have called 'transnational regionalism', which refers to regionalism as generally understood in international relations – that is, regions as comprising groups of countries rather than subnational entities, which is how they are understood in comparative politics. This is quite a vast field, and the book ended up with 40 chapters.

In order to provide an overall organizing theme, the editors decided to explore the notion of 'hybridity', which was developed in a 2009 article by John Loughlin and seemed to relate to other analyses of territorial governance such as the breakdown of the federal-unitary state distinction and the sophisticated conceptualization of new forms of federalism by Daniel J. Elazar and Ronald L. Watts (see [Chapter 2](#)). We did not impose particular research questions on the authors apart from a rudimentary chapter structure and a suggestion that they might respond to the notion of the 'hybrid state'. Most authors did follow this suggestion, but others felt that it was not really relevant to their analyses. In any case, the large number of theoretical chapters and country case study chapters show that territorial governance remains a rich research seam that can be mined continually. It also is evident that such territorial governance structures are in continual evolution, and older conceptual frameworks, such as the federal-unitary distinction, need to be revised in order to capture these changes. We believe that this volume will be a very useful resource to pursue this research agenda.

The book has been too long in the making, and we would like to thank first of all the authors of the chapters who have been very patient and have responded positively to suggestions for improvement made by the editors. We would also like to thank Craig Fowlie, Senior

Politics Editor at Routledge, who first commissioned John Loughlin to edit this volume in what seems like an embarrassingly long time ago. Nicola Parkin, Associate Editor at Routledge, has shown great patience and kindness as the book plodded its way through the editorial process.

John Loughlin, Cambridge, UK  
John Kincaid, Easton, Pennsylvania, USA  
Wilfried Swenden, Edinburgh, UK



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## **Part I**

# Theoretical and comparative approaches to federalism and regionalism

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# Reconfiguring the nation-state

## Hybridity vs. uniformity

*John Loughlin*

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### Introduction

This chapter argues that the nation-state became the primary form of political organization from about the end of the 18th century and that it reached its culmination in the form of the welfare states constructed in Western Europe and, to a limited extent in the United States, after the Second World War. Furthermore, the nation-state model, based on the premise that nations should have states and that states should be co-terminus with nations, while originating in Europe spread across the world through imperialism and colonialism. The ‘Westphalian’ system of international relations exemplified by the United Nations (UN) is really a collection of nation-states rather than simply ‘nations’. The success of the nation-state model can be seen from the growth of the UN from its founding in San Francisco in 1945 by 50 states to its current membership of 193. In fact, so widespread is the nation-state model that we tend to take it for granted as being the ‘natural’ form of political governance.

However, the nation-state is the product of an historical development that lasted several centuries and some authors have argued that we are today witnessing its demise (Ohmae, 1996). Both nations and states existed before they became twinned at the time of the French Revolution and they co-existed with other forms of political organization which they came to dominate but which never quite disappeared. The emergence of the nation-state as the dominant political form was largely co-extensive with the arrival of ‘modernity’, however difficult it is to define that concept (Chernilo, 2007). This chapter will begin by examining some of these pre-modern and early modern forms of political organization which, as will become clear, were marked by diversity, asymmetry and hybridity. The modern nation-state swept away much of this complexity and created standardized, uniform and symmetrical political and administrative systems in the name of the modern nation. This process was true of both ‘unitary’ and ‘federal’ states. The archetypical example is France after the Revolution (see the chapter by Loughlin in this volume) but it may also be seen in federations such as the United States (see the chapter by Kincaid in this volume where he describes how ‘coercive’ federalism finally defeats ‘bi-communal’ federalism by the late 1950s).

We cannot really speak of the ‘end’ of the nation-state as if this is being replaced either by ‘regions’ as Ohmae thought or by some cosmopolitan and globalized system as is sometimes suggested by

authors such as David Held and his colleagues (Held *et al.*, 1999). However, it does seem clear that, from the 1980s onwards, the central position of the nation-state or at least of national governments has, under the impact of the processes of globalization and neo-liberalism, given way to a more complex system of multi-level governance both at the level of international relations and within nation-states themselves. National governments today operate alongside international organizations such as the UN, the International Monetary Fund (IMF) and the World Bank among many others and, internally, regions and cities have become more prominent in recent years as political actors. Furthermore, the old Westphalian system has given way to a more complex, interpenetrative system in which regions and cities of different kinds have taken on new international roles and activities which is sometimes called ‘paradiplomacy’ (Duchacek, 1986). While it is exaggerated to speak of the ‘demise’ of the nation-state or of ‘new medievalism’ (Bull, 1995), it can be argued that some of the older forms of territorial organization such as regions and cities have re-emerged and the result has been a situation of territorial governance that is more diverse, non-standardized and ‘hybrid’.

The term ‘hybrid’ is used here, not in the biological sense of the creation of a new entity from two separate species, but rather in a looser way to designate the co-existence of several competing models of institutional organization and policy approach within the same political system. This will be elaborated further with examples later in the chapter.

## **Pre-modern and early modern forms of political organization**

The nation-state was preceded by a variety of pre-modern forms of political organization. Hendrik Spruyt distinguishes six categories of these: older forms such as the papacy, the Holy Roman Empire and feudal arrangements which emerged after the fall of the Roman Empire; and later forms which began to appear from about the 10th century: cities, city leagues and what he calls territorial states, which were, in effect, centralizing monarchies such as France, Sweden and Tudor England (Spruyt, 1994). Spruyt interprets the rise of the modern state as a ‘victory’ of the territorial state over the others although, in practice, some of them, such as the Holy Roman Empire or independent city-states lasted right into the modern period and we can even recognize vestiges of them today.

### *Pre-modern and early modern Europe*

The Barbarian invasions (AD 400–800) had brought about the end of the Roman Empire and Roman cities and roads fell into ruin. With the collapse of the old Roman civil service, the Church was almost the only form of organization through its system of monasteries, dioceses and parishes, many of which were based on the old Roman administrative boundaries. The Barbarian tribes later formed kingdoms, of which the most important was that of Clovis (481–511) who founded the Merovingian dynasty. Co-existing with these monarchies was a system of feudalism (from the Latin *foedus* which is also the root of ‘federalism’), which took several forms across Europe but they shared in common the basic idea of a personal relationship between ‘fiefs’ (lords) and ‘vassals’ (subjects), where the latter provided services of various kinds in return for protection by the former (Brown, 2012). Feudalism was dominant up until about the 12th century but survived in attenuated forms right up to the 19th century. The Merovingian dynasty of Clovis was replaced by the Carolingian dynasty of Charlemagne (AD 742?–814), who was crowned Emperor by the Pope in AD 800, thus founding the Holy Roman Empire which would take many shapes and cover many territories within Europe until it was finally wound up by Napoleon I in 1806 (Bryce, 1864). From about the 11th century there was a revival of city

life as cities became centres of commerce and trade with new burghers and guilds becoming wealthy and politically powerful. Some of these cities evolved into veritable city-states as in Florence, Milan and Venice. Others grouped together into 'leagues' of which the most famous is the Hanseatic (*ca.* 13th–17th centuries), which was a group of cities engaged in trade from the North Sea to the Baltic.

Underlying this great variety of political forms was a Christian religious culture which was shared by all of the protagonists of mediaeval Europe. All of Western and most of Central Europe were united under the religious system of Catholic Christianity. The East (the Russian lands and most of what we now call the Balkans) was also Christian but following the Byzantine Orthodox traditions and the division between the two was consolidated by the Great Schism of 1054. Despite the common religious heritage of Catholic Christianity, however, political life in the West was dominated by struggles between the different groupings which we can describe here only in a very summary fashion (see Burns, 1988). First, there was the struggle for spiritual and political hegemony between the Holy Roman Emperor and the Pope which dominated much of the late mediaeval and early modern period. Second, there were conflicts between the monarchs who were consolidating their 'territorial states' and the feudal barons who were determined to retain their autonomy in the provinces. Third, the cities also struggled against the neighbouring noble or episcopal overlord and often became allies of the monarch or the Emperor. In northern Italy, they were also divided by the famous conflict between Guelphs and Ghibellines which began in the 12th century as a division between city-states that supported either the Emperor (Guelphs) or the Pope (Ghibellines).

What is striking about this history is that there was no single, uniform model of political organization but a great variety of forms (Burns, 1988). It was also a system of overlapping orders of law, sovereignty and jurisdiction. Individuals and groups living on the same territory might be subject to ecclesiastic law, feudal arrangements, imperial law, etc. The system was also marked by a great deal of asymmetry in power relationships ranging from the powerful positions of Pope, Emperor, King or Prince-Bishop to small city-states, abbeys or provincial barons. However, even the most powerful entities were constrained by each other and by ecclesiastical or legal bonds, which meant that their sovereignty was never absolute – even during the period of the 'absolute' monarchies.

### *The Reformation and the modern state*

A key turning point in the evolution and, ultimately, radical reconfiguration of this system leading to the emergence of the modern nation-state was the Protestant Reformation initiated by Luther in 1512 (Burns and Goldie, 1991). It would take us too far outside the scope of this chapter to describe the vast, complex and contradictory movements of change that occurred in 16th-century Europe (Ozment, 1980). What we can say is that by the end of the 16th century, the political and religious landscape of Western and Central Europe had been almost completely transformed. The previously existing religious unity which underpinned the political, social and economic structures was now shattered and replaced by competing versions of Christianity with quite distinctive understandings of church, politics and theology. Wars of Religion between Protestant and Catholic rulers had broken out all over Europe but principally within the Holy Roman Empire. They finally ended there with no clear victory by either side in 1648 with the Treaty of Westphalia. This adopted the principle (already promulgated at the Peace of Augsburg in 1555) of *cuius regio, eius religio* – the religion of the ruler shall be the religion of the state. This applied only to Catholic and Lutheran states and excluded Calvinists, although the latter did later achieve statehood in Scotland and the Netherlands and in the imperial city of Geneva.

The significance of this is that there appeared, for the first time in Europe, confessional states each with a distinctive way of understanding the relationship between church, state and civil society. This is the origin of the different state traditions in Europe (Dyson, 1980; Loughlin and Peters, 1997), as well as of modern notions of internal and external sovereignty. Among the Protestant states of northern Europe outside the Empire such as Sweden, Scotland or England, it is henceforth the ruler of the state who exercises sovereignty over the territory within the boundaries of that state and not an external power, whether Emperor, Pope or any other state. Within the Empire, the position of the Emperor was greatly diminished vis-à-vis the Protestant states. With regard to external sovereignty, there developed henceforth what became (and is still) known as the ‘Westphalian’ state system of international relations based on the principle that no state can interfere in the internal affairs of another. Originally this meant that Catholic princes could not interfere in the affairs of Protestant states and vice versa but eventually it meant a prohibition on any kind of interference. The form of political organization that could most successfully adapt to these new circumstances was what Spruyt had termed the ‘territorial states’ and these eventually dominated and absorbed the other forms.

The other important development that followed the Reformation was the link, explored by historians such as Greenfeld (1992) and Colley (2005), between a particular variety of the Christian religion and the nation. Previously, the term ‘nation’ referred simply to individuals born (*natus* in Latin) in a particular place and speaking a particular language, but it had little *political* significance. With the arrival of the Westphalian state, characterized by a particular form of Christianity and newly emerging from the Wars of Religion, nationhood became political in a new way. This was particularly true of the Protestant nations of northern Europe but the Catholic nations also made the link as in Gallican France or Bourbon Spain. Eventually, this religious identification would become secularized as the period of the Reformation gave way to the Enlightenment and anti-religious and anti-clerical movements developed throughout the 18th and 19th centuries.

## The distinctive forms of the modern state<sup>1</sup>

A further development in the configuration of modern territorial governance came in the 17th and 18th centuries. In this period, there were three distinctive historical ‘moments’:

- The first was the English ‘Glorious Revolution’ of 1688, which led to the installation of a constitutional monarchy and the hegemony of the Westminster Parliament, followed by the Industrial Revolution which laid the basis of modern industrial capitalism and society.
- The second was the American Revolution, when the 13 British colonies in North America overthrew English rule and established first a confederation and then the federation of the United States of America.
- The third important historical moment was the French Revolution.

Each of these three sets of historical events resulted in distinctive understandings of the state, its administrative structure and its relations with society. From the British constitutional and industrial revolutions emerged the United Kingdom of Great Britain and Ireland, built on a series of Acts of Union between England and the other three nations. This became a multi-national ‘Union’ State. The United States of America was the first modern federal state (see the chapter by Kincaid in this volume). France produced the unitary state par excellence characterized by ‘unity and indivisibility’ (Hayward, 1983; Loughlin, 2007). Each of these state forms – union, federal and unitary – would be imitated by almost all other modern nation-states. As already mentioned above,

it was the French state that invented the idea of the 'nation-state', from which developed modern nationalism and, in turn, affected both the British state form and modern federations. It is appropriate, then, to begin with France, even if it came chronologically last (Alter, 1994; Guibernau, 1996; Smith, 2010).

The French Revolution, beginning in 1789, was a vast, long-drawn out series of events, the protagonists of which held several contradictory positions regarding the kind of state that should be adopted. Their ideological battles were fought out against the background of a state which was already, in some respects, highly centralized. This was a result of the efforts of the French monarchy which, in previous centuries, and especially during the reign of Louis XIV, had sought to bring under control the nobles who dominated the provinces. The revolutionaries were divided into two main groups with radically differing positions with regard to the territorial organization of the new France: 1 the Jacobins, led by Robespierre, who wished to continue and complete the centralizing tendency of the monarchy; and 2 the Girondins, whose chief spokesman was Jacques Pierre Brissot, who wished to maintain some level of decentralization and diversity (Schmidt, 1990; Ohnet, 1996; Loughlin 2007).

In the end, although each group was eliminated in turn by the Terror, including the Jacobins who had initiated it, and who fell with the execution of Robespierre in 1794, it was the Jacobin conception that won the intellectual and political argument and gave rise to the celebrated description of France as the 'one and indivisible Republic' (Hayward, 1983). The Republic succumbed to the Napoleonic Empire, which, in turn, gave way to the restored monarchy, thus beginning a chain of regime changes in France which finally settled into the present-day Fifth Republic. Whatever the regime, though, the basic ideas of 'unity and indivisibility' and the necessity of expressing this through a centralized state were retained. Furthermore, the Revolution and the Empire created the two basic institutions of the modern French state: the *départements* set up at the Revolution as a way of abolishing the old system of provinces; and the *prefectoral system* established by Napoleon as a way of exercising central control over these territorial entities. The extreme Jacobins regarded the Girondins as counter-revolutionaries and described them as 'federalists' which henceforth became a disreputable word in the French political lexicon. Later in the 19th century 'regionalism' was also regarded in the same way, although the Girondin tradition never totally disappeared (Wright, 2003). The old, pre-Revolution ecclesiastical parishes became the communes, which still, today, number around 36,000 (Loughlin, 2007).

### *Unitary states and nationalism*

Nationalism became a powerful force throughout the 19th and 20th centuries and was the driving force behind the unification of politically fragmented territories such as Germany and Italy as well as the break-up of empires such as the Austro-Hungarian, Ottoman, British and French. In the 19th century, the French model of the unitary state was a powerful example and influenced the territorial organization of many of the new states that broke free from imperial rule. In several countries, especially those of Catholic Europe, liberalism was associated with both nationalism and with a strong centralized state capable of wresting control over education and social welfare from the Church.

Some countries, such as the Netherlands, Spain and Portugal, had already adopted the French model as a result of the Napoleonic conquests at the beginning of the 19th century. Greece adopted it when it achieved independence from the Ottoman Empire between 1821 and 1829. Despite, or rather because of, its highly fragmented character with thousands of islands, it has been strongly centralist ever since. Belgium broke away from the Netherlands in 1830 to become a monarchy but, despite the presence of a large Flemish-speaking population, opted for



the model of a French unilingual and centralized state and Brussels became transformed by the end of the 19th century from a predominantly Flemish-speaking to a predominantly French-speaking city, situated entirely within Flanders (see the chapter by Deschouwer in this volume).

The much diversified states of the Italian peninsula were unified between 1860 and 1870 in a movement known as the *Risorgimento*, under the leadership of the Piedmontese Camillo Cavour, who became the first Prime Minister of unified Italy. Although there were voices (including that of Cavour) in favour of a decentralized federalist model, in the end the new unified monarchy chose the French model precisely in order to overcome this diversity.

Germany, for its part, was no less fragmented than Italy but German nationalists were divided between those who followed Herder in defining nationhood in linguistic and cultural terms, and therefore wished to see a *Großdeutschland* (Greater Germany), and those liberals who were influenced by the French concept of civic nationalism, who were more in favour of a *Klein-deutschland* (Smaller Germany). The German-speaking lands, made up of many political entities from kingdoms to bishoprics (the remnants of the pre-modern system described above), were also religiously divided between a Protestant north dominated by Prussia and a Catholic south dominated by Austria. This complexity led to ambiguities about what a German nation-state might look like and whether it should be federalist or unitary. The federalist tradition is probably the older one but during the democratic Weimar Republic and the Nazi Third Reich the model of the unitary nation-state was adopted, which, under the Nazis, evolved into a totalitarian state under the control of the *Führer* and the Party. This eventually led to the catastrophe of the Second World War.

Other states that opted for the French model were Albania, which became independent from the Ottomans in 1912 (Bogdani and Loughlin, 2007), Finland (1918), and many of the states of Eastern and Central Europe (for example, Moldova, Romania and Bulgaria). Turkey, too, became, and remains, a French-style unitary state with Atatürk's establishment of a secularist state replacing the Ottoman Empire in 1921. The list could continue.

### *Federal states and nationalism*

This does not mean that all modern nation-states adopted the unitary and indivisible French model. A minority chose the federal model. As noted above, already in the 18th century, the United States of America passed from being a confederation of colonies to a federal state (see Kincaid in this volume). After the defeat of Germany and Austria in the Second World War, these countries reverted to their federal roots with the encouragement of the victorious allies, especially the United States, for which federalism was synonymous with democracy. Switzerland provides a much older model dating from the 'Old Confederacy', which existed between 1291 and 1523 and later confederal models, before it became, in 1848, the Helvetic Confederation, which, despite its name, is a federation rather than a confederation. The United Kingdom was neither a unitary state like France nor a federal state like the United States, but what is sometimes called a 'Union' state – that is, a state that has been formed by a series of Acts of Union (Rokkan and Urwin, 1982). Indeed, this was a common way of forming states through dynastic marriages or treaties before the arrival of the modern unitary state according to the French model. Examples are the Union between the Duchy of Brittany and the French crown in pre-revolutionary France and the Austro-Hungarian Empire.

What is striking about all these cases of modern federations and union states, nevertheless, is that the nation-state model is retained with the 'national' dimension being represented at the federal or union level, where the representative assembly and government are responsible for those affairs that concern the nation as a whole – war, diplomacy, internal security and national

economic development – while the component entities of the state are responsible for those affairs dealt with most appropriately at that level – mainly education, health, social welfare, local government, etc. The important point here is that with regard to the unity of the nation, both unitary and federal states agree that this should not be compromised. The ‘nationalization’ of a federation might occur only over a long period of time, as happened in the United States which had begun, in Kincaid’s terms, as a ‘bi-communal’ federation (i.e. divided between the slave-owning southern states and the northern states opposed to slavery), and ended with ‘coercive’ federalism in which the federal government dominates the states (see the chapter by Kincaid in this volume).

Not all unitary, federal or union states have succeeded in maintaining this unity and there are numerous examples of failure or at least of incomplete unification. The ‘first’ United Kingdom of Great Britain and Ireland, which dates from the Act of Union between Great Britain and Ireland in 1801, gave way to the current United Kingdom of Great Britain and Northern Ireland with the partial independence (in the southern counties) of Ireland in 1921. Several federations established by colonial powers after the Second World War also failed: the Malayan Union (1946–48); the Federation of Malaya (1948–63); the Federation of Rhodesia and Nyasaland (1953–63); the West Indies Federation (1958–62); the Mali Federation (1959–60); and the Federal Republic of Cameroon (1961–72).

More recently, two former communist federations collapsed: one peacefully in the ‘Velvet Revolution’ – Czechoslovakia; the other with great bloodshed in the Balkan Wars of the 1990s – Yugoslavia. One of the principal reasons for the collapse of these federations, which aimed to unite a number of disparate states and nations, was their failure to construct an overarching and common *national* identity. Instead, the constituent units adopted individual nation-state building projects, with some of the constituents, for example the Czechs or the Serbs, dominating the federation, which led to a great deal of resentment among the others and undermined the unity of the whole. The Union of Soviet Socialist Republics (USSR) changed its federal structures (which in any case existed largely on paper as it was a system under the strict control of the Communist Party of the Soviet Union) to form a looser Commonwealth of Independent States (CIS).

Belgium is an example of a former unitary state, which includes two linguistic communities hostile to each other – the Dutch-speaking Flemish and the French-speaking Walloons – which has become a highly decentralized federation in an attempt to hold the state together. There is uncertainty as to whether this attempt will succeed in the long run mainly because the Flemish seem to have their own nation-building project, while the Walloons are divided and unsure of their political future. Other unitary states have experienced difficulties because of internal nationalisms which challenge the legitimacy of the dominant nation-state, as is the case in Spain where there are powerful Catalan and Basque nationalist movements, and even in France, where there have been challenges especially from Breton and Corsican nationalist movements. The lesson that may be drawn from the latter two cases is that even in countries with a strong unitary and consciously unifying tradition, unification may still be incomplete. Spain, too, despite the Jacobin features of the Francoist state (at least with regard to the notions of unity and indivisibility of the Spanish nation) has been characterized as a ‘multinational’ society because of the continued resistance of Catalonia and the Basque Country to assimilation (Moreno, 2001; Requejo, 2005). On the other hand, the majority of nation-states, whether they be federal, unitary or union, have succeeded in constructing a form of political organization in which the majority of the population do feel an attachment to the ‘nation’, however this is defined, and that this ‘nation’ is identifiable with a ‘state’, whether federal or unitary, with clearly differentiated borders and where the principal source of political legitimacy lies with the core central institutions.

## **Transformations: from the *Trente Glorieuses* (1945–75) to globalization**

The period after the Second World War, called by the French the *Trente Glorieuses*, was one of economic growth underpinned by Keynesian approaches, and of state expansion through the establishment of welfare states. The latter had already begun before the Second World War, but expanded greatly after the war as part of what Crouch has termed the ‘mid-century consensus’ between the main political families of left and right (Crouch, 1999). From the perspective of this chapter, this period can be seen as the final stage of democratic nation-state building with the introduction of social citizenship. In T.H. Marshall’s formulation, welfare states added the final touch to national citizenship by adding *social rights* to the already existing *political rights* of representative democracy, and *civil rights* (Marshall, 1950). There are various forms of welfare state (Esping-Anderson, 1990), but all have in common a number of basic features: the values of equality and equity for individuals, groups and territories and the duty of the state to intervene in the economy and society in order to achieve these values. The United States adopted increasingly interventionist approaches from the New Deal to the Great Society in the United States (see chapter by Kincaid in this volume). Similar processes of centralization took place outside of the democratic West: in communist states of the USSR and its satellites, and in China, Vietnam, North Korea and Cuba. Finally, the many newly liberated colonies of the developing world adopted the centralized state model, even if some became federations, as with Nigeria. In this section we will concentrate on the experiences of Western states and, in a later section, say something about non-Western states.

### ***Territorial governance in welfare states***

These developments had implications both for the organization of the central state and administration as well as for territorial governance (Loughlin, 2004). In order better to collect resources from the wealthier sections of society and stronger economic regions and to redistribute them to the weaker sections and to underdeveloped regions, the welfare state found it necessary to centralize. The implication for territorial political organization was that central-local relations took the form of a ‘principal-agent’ relationship: sub-national authorities, whether regions or local governments, increasingly became the ‘agents’ of their ‘principal’, the central state, in the delivery of these services. Furthermore, fiscal policy was controlled by the central government, thus decreasing local fiscal autonomy.

More specifically territorial policies, such as regional policy, were conceived mainly in ‘national’ terms – that is, in terms of how policies towards particular weaker regions might help the building up of the overall national economy and society – the nation – rather than in terms specific to those regions themselves. During this period, the European Community was largely ‘residual’: it existed, but more in the background as a support for, and the ‘rescue’ of, the nation-states that were rebuilding themselves after the devastation of the war (Milward, 2000). Other features of state organization and central-local relations during the heyday of the welfare state were territorial symmetry and standardization, and central regulation of sub-national authority activities to minimize variation in service delivery across the territory. The most extreme forms of this approach were in the unitary states of the Nordic countries and in the Napoleonic states of southern Europe, but these general trends could also be found in other states such as the Austrian and German federations and in the United Kingdom. In the United States, similar processes were occurring with the transition from the bi-communal federalism to coercive federalism described by Kincaid (see his chapter in this volume).

### *The transition from the welfare state to neo-liberalism*

The period of the *Trente Glorieuses* came to an end as a result of a series of economic, policy and social crises which began in the late 1960s: the failure of Keynesian economic policies to redress the problems of stagnation and simultaneous inflation; the 'fiscal crisis of the state' which found it increasingly difficult to fund the expanding policy programmes associated with the welfare state; the collapse of the Bretton Woods agreement; the oil crises of 1973 and 1979; the social upheavals of the student movements in the 1960s; etc. There were various but related responses to these crises in which the capitalist system successfully 'reinvented' itself. First, with the weakening of exchange rate controls brought about by the collapse of Bretton Woods, this was the beginning of a new phase of 'globalization' in which truly global financial and commodity markets began to develop (Scholte, 2005; Held *et al.*, 1999). Second, Keynesian macro-economic policy approaches began to be replaced by what subsequently became known as 'neo-liberalism' (Harvey, 2004). This was a movement based on the ideas of anti-statist economists, political scientists and philosophers mainly based in the United States, such as Milton Friedman and Friedrich Von Hayek. Their ideas, which had been quite marginal in the 1950s and 1960s, were adopted by Ronald Reagan and Margaret Thatcher in the 1970s and 1980s and became the basis of significant administrative and economic policy reforms. They also were influential in the 'new globalization' of this period and formed the background to what became known as the 'Washington Consensus', which changed the role and activities of the IMF and the World Bank from Keynesian-type organizations to instruments of neo-liberalism (Stiglitz, 2002). In Europe, the crises and the threat of globalization (meaning the domination of international economic relations by the United States and Japan) sparked off a new round of accelerated European Union integration, beginning with the Single Market project and ending with the Lisbon Treaty.

Neo-liberalism, understood in a narrow sense of an approach to economic policy, was part of a wider trend that involved not just the economy but administrative reforms (New Public Management), policy approaches (privatization, deregulation, introduction of market-type processes), which may be summed up as the attempt to reverse the high levels of state intervention and control that had characterized the *Trente Glorieuses*. It would take us too far outside the scope of this chapter to examine in detail all of these changes (see Harvey 2004 for a survey). What concerns us here is the impact of neo-liberalism on the nation-state and its system of territorial governance.

### *Trends in territorial governance*

With regard to territorial governance, these macro-developments led to a number of significant changes which may be summarized as follows (for a fuller account see Loughlin, 2009):

#### **(i) From centralization to decentralization**

The emphasis during the 1950s and 1960s was on the consolidation of national unity through a process of centralization. The dominant economic paradigm in Western states during this period was Keynesianism which necessitated central government intervention in the economy to manipulate the factors of economic production to produce desirable outcomes such as full employment and the avoidance of market failures. Decentralization did occur during this period (see, for example, Sharpe, 1979). There are, however, different forms of decentralization: political, administrative (sometimes called 'deconcentration'), industrial or economic. The kind of decentralization that occurred during the *Trente Glorieuses* tended to be administrative deconcentration

rather than political decentralization in which political decision-making power rather than simply administrative functions were devolved to lower levels. This was basically related to the need to 'decongest' highly centralized bureaucratic systems which were becoming increasingly dysfunctional (sometimes called 'apoplexy at the centre and paralysis at the extremes'). This changed from the mid-1970s when there was a general tendency towards political decentralization as well. A striking example of this tendency is France, which launched a programme of decentralization reforms in 1982 which have significantly reformed the French politico-administrative landscape (Ohnet, 1996; Loughlin, 2009). Today, political decentralization is seen as an element of 'good governance' by bodies such as the European Union (EU), the Council of Europe, the UN Human Settlements Programme (UN-HABITAT), the World Bank and the IMF. The imperative for political centralization has left Western Europe and is now seen to apply in all of these organizations to the new democracies of Eastern and Central Europe, to Russia and its former satellites, and to the emergent economies of the developing world.

## (ii) From territorial symmetry to asymmetry and the recognition of diversity

Part of the ideal of the unified national state was to avoid large disparities across the national territory. In unitary states such as France and Sweden, this meant that systems of territorial governance were basically similar. This ideal of standardized and uniform institutions and policies across the national territory has given way to a greater acceptance of variations in both these regards, sometimes also known as 'asymmetry'. France, for example, while maintaining the ideal of national unity, accepted some variation in the cases of Corsica and the DOM-TOM<sup>2</sup> (*Départements d'Outre-Mer/Territoires d'Outre-Mer*) and, later, gave to local authorities the right to experiment. Sweden, and then the other Nordic states, experimented with what became known as the 'self-regulating municipality', which allowed selected local authorities to free themselves from central regulation and to adopt distinctive approaches in agreed policy areas such as education and health. Italy already had its five 'special' regions while Spain in its 1978 Constitution recognized differences between the three 'nationalities' (the Basque Country, Catalonia and Galicia) and the 'ordinary' Autonomous Communities. Furthermore, the Basque Country was allowed to adopt its own fiscal system, different from the remainder of the country, in which the Basque provinces and not the central state collects taxes and then pays the state for the services it delivers in the region.

The question of diversity is even more pertinent (and difficult to achieve) outside of Europe. The former communist states were, in fact, often extremely diverse within and held together by the overarching rule of the Party or the dictator such as Stalin, Mao or Tito. Similarly, the former colonies of Asia and Africa were often artificially constructed states that contained a great diversity of tribes and cultures. With independence, the state held this conglomeration together but often this disintegrated into civil war. The same thing occurred in Yugoslavia when the different republics declared independence. All of these trends have led to a new emphasis on 'regionalism'.

## (iii) From 'regionalization' to 'regionalism'

A useful distinction may be made between 'regionalization' and 'regionalism', in which the former is understood as a top-down approach to regional issues, controlled by the central state. Regionalization was the typical approach to regional governance and planning from the 1950s until the late 1970s. In contrast to this, 'regionalism' is a bottom-up approach in which key political and other actors from within the regions take greater control over their region's political, social, cultural and economic affairs. This may be done in collaboration with the central state and does not necessarily risk the break-up of the state itself. During the early post-war period,

*regionalization* was the dominant approach to regional development. From the 1980s, without this being abandoned, there was a much greater element of *regionalism*. This can be seen in the new approach towards regional policy adopted by the EU with the reform of the Structural Funds in the mid-1980s and the introduction of the principles of *subsidiarity* and *partnership* as their operating principles. However, it also occurred in the large nation-states such as France, Spain, the UK and Italy, all of which either introduced or, in the case of Italy, strengthened elected regional governments. The smaller states such as Ireland, Greece, Portugal and the Nordic states such as Denmark and Finland introduced administrative regions, while Sweden set up both administrative regions and elected regional governments. There was a perception in European states that this regional dimension was a prerequisite for accession and, consequently, the new candidate countries of Eastern and Central Europe also began to set up either elected regional governments, as in Poland, or regional administrations as in the other countries.

This trend has led to the establishment of *political* as well as *administrative* regions. It was also, however, linked to a new regionalist economics approach, with concepts such as the 'innovative' and 'learning' region (Cooke and Morgan, 1998). The *political economy* of regionalism meant, therefore, a shift from the top-down 'regionalization' approach of the post-war period to a more mobilizing, bottom-up approach carried out by regional actors themselves and primarily concerned with regional economic development. Political regionalism, however, has been much more difficult to achieve outside of Western countries. We have already above adverted to the sometimes volatile mixes of tribal, ethnic, or linguistic groups with the former communist or colonial states. Nevertheless, international organizations such as the Council of Europe and the UN (through its UN-HABITAT branch) are now aware of the necessity of finding acceptable solutions to accommodate this diversity, either through federalism or through other 'consociational'-type arrangements.

#### (iv) Multi-level governance

These developments may be summarized by the concept of 'multilevel governance' (MLG) developed by Marks and Hooghe to describe and explain relations among different levels of government in the EU following the passing of the Single European Act in 1986 (Marks and Hooghe, 2001). Of course, there has always been a system of multi-level governance in states if we mean by this simple relations among states, but the term 'governance' refers to a new way of conceptualizing such relationships which now involves a range of actors besides governments themselves (Rhodes, 1997). In the formulation of Marks and Hooghe, MLG means that central governments are no longer the exclusive powers in European policy making, as suggested by 'realist' and 'liberal intergovernmentalist' international relations theories, but now operate alongside a number of other political actors – the EU institutions, regions, local authorities – and even private-sector actors such as business groups. This does not mean that national governments have disappeared or are unimportant. On the contrary, they are undoubtedly still the most powerful and important actors in a system of government. It simply means that they now are much more constrained and have to act in a more collaborative fashion than was the case in the period of the *Trente Glorieuses*, when European institutions were still largely residual and regional and local authorities were seen as their 'agents' acting on their behalf to bring about positive policy outcomes.

#### (v) From the 'principal-agent' model to the 'choice' model and non-hierarchical relations among governments

Indeed, an important feature of the post-war period of economic expansion and burgeoning welfare state systems was that social and economic policies were decided at the level of central

government (the 'principal') while regional and local authorities were often engaged in implementing these policies (as 'agents'). Since the 1980s, the trend, for example in Sweden and France, has been to have non-hierarchical relations between levels of government. This means a tendency towards a 'choice' model in which regional and local authorities may choose distinctive policy approaches and even institutional forms. Of course, all this is within the parameters laid down by central government.

In a principal-agent model, it is important that relations among the levels are marked by hierarchy with 'higher' and 'lower' levels of government. This is obviously the case with regard to relations between the central state and other levels such as the regional and the local. In some cases, there is still a hierarchical relationship between regions (e.g. the Spanish Autonomous Communities or the Belgian *régions*) and the provinces and local authorities. The tendency today is to adopt a pattern of non-hierarchical relations beneath the national level. Thus, in France, the regions, departments and communes are constitutionally 'equal' as is the case in Sweden. In federal systems, of course, there is a division of competences between the federal level and the federated entities, with the latter traditionally being responsible for local governments. However, the complexity of intergovernmental relations in federal systems has led to a more direct relationship between the federation and the other levels, including those 'below' the federated entity.

#### (vi) From fiscal centralization to fiscal decentralization

Political decentralization to the regional and local levels implies also fiscal autonomy on the part of these levels (Loughlin and Martin, 2003). However, the post-war period was characterized by fiscal centralization and control by central authorities over spending by regional and local authorities. Since the latter were acting as 'agents' of the 'principal' (the central government), to carry out public services on its behalf, there was a tendency towards ear-marked grants rather than block grants over which the sub-national authorities could exercise discretion, even in federal states such as Germany.

From the 1980s, in line with the above-outlined trends towards greater political decentralization and regionalism, there has, however, been an overall trend in Western democracies towards increased decentralization of spending functions. In effect, political regionalism and local autonomy are not effective unless there is corresponding devolution of financial resources. There has also been a renewed interest in fiscal federalism. In the 1990s there were major reforms of the financing of local authorities in several countries with a trend towards granting greater local fiscal autonomy. There has been a move to give increased spending responsibilities to regional and local authorities, although services tend to be provided through co-operative mechanisms between different tiers of government rather than exclusively through one level of government.

That said, it is not always clear that the increased fiscal decentralization, as measured by the proportion of local expenditure as a percentage of overall public expenditure, really reflects increased local decision making. For example, sub-national expenditure figures sometimes include expenditure functions where local government is simply delivering a service effectively controlled by higher levels of government. Examples of where direction is often quite detailed and not simple overall guidance are health and education. Although these functions have been decentralized in many countries, central governments are often still held accountable for them and will tend to use measures (for example specific-purpose grants, or directives) to ensure that local governments meet central goals and targets.

Table 1.1<sup>3</sup> outlines the key features of the shift that has occurred, although it should be kept in mind that these two models are ideal-types and, in practice, in many cases elements of both models may be present. In other words, in reality they are marked by hybridity.

**Table 1.1** The changing paradigm in regional policy and territorial governance

	<i>Classical model</i>	<i>Contemporary model</i>
Lead organization	Central government	Regional level
Central and regional government relationship	Hierarchy	Equality of levels of government
Policy development	Top down/centralized	Collective/negotiated/contractual
Type and nature of decentralization	Administrative deconcentration but political, fiscal, policy and functional centralization	Political, functional and fiscal decentralization alongside administrative deconcentration
Style of planning	Hierarchical	National strategic direction, local variation and implementation
Type of regional plan	Comprehensive and multi-sector plans	Strategic with spatial focus
Territorial approach	Territorial symmetry	Territorial asymmetry
Objectives	Promoting growth, employment creation, increased investment	Sustainable development and increased competitiveness
Mode of operation	Reactive, project-based	Pro-active, planned, strategic
Special focus	Problem areas	Balanced and harmonious development of all regions
Key instruments	Bureaucratic regulation, public-sector provision	Reduced financial support, mixed public/private/voluntary provision
Government aids	Incentive schemes, business aid and hard infrastructure	Business environment, and soft infrastructure
Time scale	Open ended	Multi-annual planning periods

Source: Adapted from Roberts and Lloyd, 1999; Bachtler and Yuill, 2001; and Loughlin, 2009

## The concept of hybridity

During the period of the *Trente Glorieuses*, state-driven Keynesian and social welfare policy was hegemonic. Other models from the traditional Marxist (the old-style Stalinist communist parties), or the neo-Marxist New Left (e.g. the Frankfurt School or the parties of the extreme Left), or the New Right (Von Hayek, Friedman, etc.) were quite marginal in public discourse. As mentioned above, the mainstream parties of the Right and Left – Social Democrats, Christian Democrats, UK Conservatives and Labour – entered into what Colin Crouch (1999) terms the ‘mid-century consensus’ to support and develop the welfare state/Keynesian model. As mentioned above, this led to a standardized model of territorial governance for the whole of the national territory which emphasized symmetry and uniformity.

Today, these states are characterized by ‘hybridity’. What we mean by this concept is that there may exist within the same national state a variety of institutional and policy models, which are sometimes in competition with each other but where none of them is hegemonic. To some extent this was previously true of federal states which may have been constructed precisely to accommodate such diversity. In Germany, for example, the different *Länder* retained quite different political and cultural traditions, from Social Democracy in the northern parts to Christian Democracy mainly in the south. In the United States, as we have seen, the political cultures of the south differed from those of the north and north-east. In the United Kingdom, Scotland, Wales and Northern Ireland had distinctive administrative traditions. However, as we saw above, the tendency in both unitary and federal states has been to reduce this diversity and impose a common approach and institutional set-up. At least, there developed a hegemonic approach



which dominated other models to such an extent that the latter became marginal, as we saw with the ideas of the New Right mentioned above. This hegemony has now given way in both unitary and federal states to the re-emergence of these other models alongside the previously dominant ones. A good example is the United Kingdom, where the south-east of England is much more wedded to Thatcherite and New Labour 'neo-liberal' approaches, while Scotland, Wales and Northern Ireland have retained a more Old Labour or social-democratic approach to public policy.

There has also been a 'loosening up' of what had previously been rigid institutional relationships between the different parts of the political system. Again, the UK may be taken as an exemplar. Following devolution, it now has a UK parliament and government, a Scottish Parliament (SP), a National Assembly for Wales (NAW), and a Northern Ireland Assembly (NIA). Relations between the SP and the UK government resemble those of a federation while those between the UK government and the NAW and NIA resemble much more those of a regionalized unitary state. Similarly both Spain and Italy have 'special' regions along their 'ordinary' regions. Even France, the paragon of the unitary and uniform state, now recognizes several different territorial arrangements and even has three different systems of public administration.<sup>4</sup> In fact, France in 2003 modified its Constitution to give expression to this diversity (Loughlin, 2007). The shift that we have described above has led to either the creation of such diversity or its intensification where it already existed. As a result the old clear dichotomy between federal and unitary states has given way to more complex patterns of both types of state. Both Daniel Elazar and Ronald Watts have developed new typologies of federal states, while others such as Bullmann (1996) and Loughlin (1996) have attempted to refine in a more exact way the complex patterns of unitary states.

## Conclusions

This shift should be related to the broader changes such as globalization, Europeanization, and the political, economic and social transformations that have accompanied them. The nation-state has not disappeared but now exists in new internal and external configurations. It is tempting to return to the early part of this chapter and to see contemporary developments as the re-emergence of those older patterns characteristic of European societies before the emergence of the nation-state as the hegemonic model of territorial governance. There are indeed some similarities. The centrality and absolute sovereignty of the post-Westphalian state has been largely relativized even if national governments do remain the most important political actors in both international and domestic politics. Although a Europe of the Regions has not materialized in the sense of a federal Europe in which regions replace nation-states as the units of the federation, nevertheless regions of various kinds have emerged as key political actors alongside national governments and, indeed, a variety of arrangements of sub-regional or local authorities, captured by the term 'multi-level governance'.

Is this a purely Western or even just European set of developments? I would argue that while many of the changes have originated in the West (more in the United States than in Europe in many instances), what we have described above is relevant to all parts of the world today. Furthermore, the European experience in many respects provides a template for changes in other parts of the world which are dealt with in this *Handbook*. First, Europe is the birthplace of both modernity and the nation-state and it was the experiences of imperialism and colonization that exported this model to the rest of the world. Most independent states since the 19th century, but especially following the Second World War and, later, the collapse of the communist systems have adopted the nation-state model. Second, it is in Europe that political and economic

regionalism have been most strongly developed in all their varieties. This is true both of Europe's unitary regionalized states and its federal states. Even the example of the EU has been a model for similar regional organizations such as the Mercado Común del Sur (Mercosur) in South America and, to some extent, the North American Free Trade Association (NAFTA). It is also true, however, that there exist models of political organization that owe relatively little to Europe. The most striking example of this is China, which has developed a unique political and economic system that combines both one-party communist rule with capitalism and engagement in the globalized world economic system. However, even in China there are issues of territorial governance, centralization vs. decentralization, and regional diversity. Already, there are distinct regional regimes in Hong Kong, Macao and Tibet. One might expect to see further pressures towards diversification and hybridity even in countries such as this.

## Notes

- 1 The following draws largely on Loughlin, 2011.
- 2 The French overseas territories, which were former colonies and dependencies.
- 3 The table was compiled by Dr Mohamed Nada, with whom the author is working at UN-HABITAT to devise a new system of regional governance in Egypt.
- 4 The national administration, the territorial administration serving the regions and departments, and the hospital administration.

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# Typologies of federalism

*Ronald L. Watts*

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## Introduction

The major hypothesis of this book is that the traditional distinction between federal and unitary states has to some degree given way to a complex typology of 'hybrid' states. Although in many cases states may have a predominant form that is primarily federal or unitary, increasingly there are examples of political entities combining some elements of both forms in widely varying combinations. These hybrids have occurred because statesmen, faced with a variety of factors relating to economic and strategic issues and the need to recognize and accommodate internal territorial diversity, have often been more interested in pragmatic political solutions than in theoretical purity.

Today, few federations meet the criteria of pure federalism. Many predominantly federal systems, especially more recent ones, have incorporated constitutional provisions or developed practices involving some unitary elements in their intergovernmental relations or financial arrangements. Even the United States, usually regarded as the classic model of federalism, has evolved into what has been described by John Kincaid as 'coercive federalism' (Kincaid, 1990).

At the same time, many undoubtedly unitary systems have incorporated some territorial decentralization including federal elements. France, Japan and Sweden provide examples. Then there are those political systems such as Spain, Italy and the United Kingdom that have evolved such a mixture of federal and unitary elements that their classification as unitary or federal has become a matter of debate (re: Spain, Watts, 2010; re: Italy, Caravita, 2002; re: United Kingdom, Watts, 2007).

As John Loughlin has emphasized, the pressures of changing economic conditions, financial interdependence, conflicting demands of the welfare state, and neo-liberalism have led to a preponderance of hybrid types of state in which federal and unitary internal relations have come to exist in widely varying combinations influenced by their particular economic and political conditions and orientations (Loughlin, 2009: 17). Notable features of these developments are that no single new model has emerged and that there has developed an enormous variety of forms and hybrids. Indeed, looking first just at those political systems that are federal or claim to be federal, the number of these has expanded enormously over the past half century, but there have been many variations (Watts, 2008: 18–19).

The latter half of the 20th century saw a proliferation of federations as well as other federal forms to unite or accommodate multi-ethnic communities in former colonial areas in Asia, Africa, South America and Europe. Between 1945 and the early 1960s, new federations, quasi-federations or hybrids were founded in Asia, for example in Indo-china (1948), Burma (1948), Indonesia (1949), India (1950), Pakistan (1956), Malaya (1948 and 1957) and Malaysia (1963); in the Middle East, for example in the United Arab Emirates (UAE, 1971); in Africa, for example in Libya (1951), Ethiopia (1952), Rhodesia and Nyasaland (1953), Nigeria (1954), Mali (1959), the Congo (1960), and Cameroon (1961); and in the Caribbean, for example the West Indies Federation (1958). Among federations founded or restored in Europe were also those of Austria (1945), Yugoslavia (1946), Germany (1949), and Czechoslovakia (1969). Between 1960 and the late 1980s, a number of these federations were temporarily suspended or abandoned as it became clear that federal systems were not a panacea and that there were limits to the appropriateness of federal solutions in particular circumstances.

Nevertheless, the two decades since the early 1990s have seen a further burst of federal solutions of varying types. Belgium transformed its constitution into a fully fledged federal one in 1993. South Africa in 1996 confirmed a constitutional hybrid of federal and unitary features. Spain, as a result of the operation of its 1978 constitution, has become, in practice, increasingly a federation in all but name. In South America, following earlier failures, Brazil (1988), Argentina (1994), and Venezuela (1999) adopted new federal constitutions, and Mexico from 2000 onward has been bringing greater reality to its federalism. After the break-up of the Union of Soviet Socialist Republics (USSR) in 1993, Russia adopted a new federal constitution. Ethiopia in 1995 and Nigeria in 1999, after the restoration of civilian rule, established new federal constitutions. Also, in the effort to resolve severe previous conflicts, federal experiments, not always successful, have been attempted in Bosnia-Herzegovina (1995), Iraq (2005), Sudan (2005), and the Democratic Republic of the Congo (2006). Federal systems have also recently been under consideration in Nepal and the Philippines. In Italy, too, there has been an evolution towards a federal system. The United Kingdom, while not a federal system, has adopted a significant measure of devolution for Scotland, Wales and Northern Ireland.

Thus, as Daniel J. Elazar noted, in the early years of the 21st century, the world appears to be in the midst of a paradigm shift from a world of sovereign unitary nation-states to a world of states with interstate and internal linkages of a constitutionally federal character. Many of these, though in varying forms and degrees, involve hybrid characteristics with both federal and unitary elements.

## The federal-unitary distinction

The fundamental distinction between federal and unitary systems lies in the location of ultimate political authority or sovereignty. In unitary political systems, the ultimate authority, constitutionally or in practice, lies with the central government. There may be administrative, legislative, or financial decentralization to constituent units, but that occurs at the discretion or will of the central government, which may, if it so determines, overrule constituent units on any matter. Thus, in unitary political systems, there is a single central source of ultimate political and legal authority.

Federal political systems are, by contrast, polities in which there are two (or more) orders of government combining elements of *shared rule* (collaborative partnership) through common institutions with territorial *self-rule* (constituent-unit autonomy) for the governments of the constituent units in an intergovernmental constitutional relationship that is not determined by the central government alone. The key here is not the degree of decentralization, but the degree of constitutionally guaranteed autonomy that the constituent units may exercise (Kincaid and Tarr,

2005). The broad *genus* of federal systems exhibiting shared rule and regional shared rule encompasses a whole spectrum of more specific non-unitary species ranging from constitutional unions, quasi-federations and federations, to confederations, federacies and beyond. As in a spectrum, the categories are not exclusively delineated, but shade into each other at the margins.

## Types of federal political systems

Elazar identified as specific categories within the range of federal systems: unions, constitutionally decentralized unions, federations, confederations, federacies, associated statehoods, condominiums, leagues and joint functional authorities (Elazar, 1987: 38–64). To these we may add hybrids that combine the characteristics of different kinds of systems. Those that are predominantly federations in their constitution and operation, but have some overriding federal government powers more typical of a unitary system, may, following K.C. Wheare's example, be described as 'quasi-federations' (Wheare, 1963: 19).

In any attempt at classification of types of federal systems, there are two important points to note. First, we must take account of the difference between constitutional form and operational reality. In many political systems, political practice has transformed the way the constitution operates. In Canada and India, for example, the initial constitution was clearly quasi-federal, containing some central overriding powers more typical of unitary systems. However, in both cases, the use of these powers has been moderated (virtually completely in the Canadian case) such that the operational reality today comes closer to that of a full-fledged federation. Other particularly notable examples of the impact of operational practice in a more unitary direction have occurred in Malaysia, Pakistan, Russia, South Africa and Venezuela. To characterize federal systems, therefore, it is necessary to study both their constitutional law and their politics and how these have interacted.

Second, while knowledge about the structural character of a federal political system is important to gain an understanding of its character, equally important is the nature of its political processes. Significant characteristics of federal processes include the degree of predisposition to democracy, non-centralization as a principle expressed through multiple centres of decision making, open political bargaining as a major feature of the way political decisions are arrived at, the operation of checks and balances to avoid the concentration of political power, and a respect for constitutionalism, since each order of government derives its authority from an agreed constitution.

Within the genus of federal political systems, we may identify the following distinct species:

### *Unions*

These are polities compounded in such a way that the constituent units preserve their respective integrities primarily or exclusively through the common organs of the general government rather than through dual government structures. New Zealand and Lebanon have been such examples. So also was Belgium, where central legislators served also with a dual mandate as regional or community councillors, prior to Belgium becoming a federation in 1993. Another example was the United Kingdom prior to the substantial devolution in 1999.

### *Constitutionally decentralized unions*

These are basically unitary in form, in the sense that ultimate authority rests with the central government, but incorporate constitutionally protected sub-national units of government or constitutionally entrenched rights for certain minorities. There are numerous examples, including

(constitution dates in parentheses) Antigua and Barbuda (1981), Republic of Cameroon (1972, amended 1996), Republic of Colombia (1991), Republic of Fiji Islands (1997), French Republic (1958), Republic of Ghana (1992), Georgia (1995), Republic of Indonesia (1959), Italian Republic (1947), Japan (1947), Republic of Namibia (1990), Kingdom of the Netherlands (1815, amended 2002), Papua New Guinea (1975), Portuguese Republic (1976), Solomon Islands (1978), Democratic Socialist Republic of Sri Lanka (1978), Kingdom of Sweden (1975), Republic of Tanzania (1977, amended 1984), United Kingdom of Great Britain and Northern Ireland (1999), Ukraine (1996), and Republic of Vanuatu (1980) (Watts, 2008: 16, table 6).

### *Federations*

These are compound polities combining strong constituent units and a strong general government, each possessing powers delegated to it by the people through a supreme constitution, each empowered to deal directly with the citizens in the exercise of its legislative, administrative and taxing powers, and each with its major institutions directly elected by the citizens. Federations represent a particular species of federal system in which neither the federal nor the constituent units are constitutionally subordinate to the other (i.e., each has sovereign powers derived from the constitution that is not unilaterally amendable rather than power derived from another level of government). Currently, some two dozen countries meet or claim to meet the basic criteria of an established functioning federation. These (including quasi-federations, and with dates of original foundation and current constitution in parentheses) include the Argentine Republic (1853, 1994), Commonwealth of Australia (1901, 1901), Federal Republic of Austria (1920, 1945), Republic of Belau (1981, 1981), Kingdom of Belgium (1993, 1993), Federative Republic of Brazil (1891, 1988), Canada (1867, 1867 and 1982), Union of the Comoros (1978, 2001), Federal Democratic Republic of Ethiopia (1995, 1995), Federal Republic of Germany (1949, 1949), Republic of India (1950, 1950), Malaysia (1963, 1963), United Mexican States (1824, 1917), Federated States of Micronesia (1979, 1986), Federal Republic of Nigeria (1954, 1999), Islamic Republic of Pakistan (1973, 1973), Russian Federation (1993, 1993), Federation of St Kitts and Nevis (1983, 1983), Republic of South Africa (1996, 1996), Kingdom of Spain (1978, 1978), Swiss Confederation (1848, 2000), UAE (1971, 1996), the United States of America (1789, 1789), and Bolivarian Republic of Venezuela (1811, 1999). In the cases of South Africa and Spain, their constitutions have avoided the label 'federation', but their structures are those of a quasi-federation (Watts, 2008: 41–42, 49–50). Although less clear, some Italians claim that Italy is already a federation. On the other hand, while the UAE explicitly describes itself as a federation, its structure and process are more akin to those of a confederation (Watts, 2008: 55–56). In addition to the examples of established federations listed above, post-conflict federal experiments have been attempted in the Republic of Bosnia and Herzegovina (1995), Iraq (2005), and the Democratic Republic of the Congo (2006). A similar post-conflict experiment in Sudan (2005) failed with the country being split in 2011.

### *Confederations*

These occur where pre-existing polities join together to form a common government for certain limited purposes (usually for foreign affairs, defence or economic purposes), but the common government is dependent upon the will of the constituent governments, being composed of delegates from the constituent governments, and therefore has only an indirect electoral and fiscal base. Historical examples include Switzerland (1291–1798 and 1815–47) and the United States of America (1781–89). In the contemporary world, the European Union (EU) is primarily a

confederation, although it has increasingly incorporated some features of a federation (see below). Other examples have been Benelux (1944), the Caribbean Community (CARICOM, 1973), and the Commonwealth of Independent States (CIS, 1991). As mentioned above, while the constitution of the UAE refers to it as a ‘federal state’, in structure it is fundamentally confederal.

### *Federacies*

This term, coined by Elazar (1987: 7, 54–57) refers to political arrangements where a smaller unit or units, usually islands, are linked to a larger polity, but the smaller unit or units retain substantial autonomy, have a minimum role in the government of the larger one, and the relationship can be dissolved only by mutual agreement. Examples are the relationships of the Åland Islands to Finland, the Azores Islands to Portugal, the Faroe Islands to Denmark, Greenland to Denmark, Guernsey to the United Kingdom, the Isle of Man to the United Kingdom, Jammu and Kashmir to India, the Madeira Islands to Portugal, the Northern Mariana Islands to the United States, and Puerto Rico to the United States.

### *Associated states*

These relationships are similar to federacies, but differ in that they can be dissolved by either of the units acting alone on pre-arranged terms established in the constituting document or treaty. Examples include the relationships of Bhutan to India, the Cook Islands to New Zealand, Lichtenstein to Switzerland, Monaco to France, the Netherlands Antilles to the Netherlands, Niue to New Zealand, and San Marino to Italy.

### *Condominiums*

These occur where political units function under the joint rule of two or more external states in such a way that the inhabitants have substantial internal self-rule. Examples have been Andorra, which functioned under the joint rule of France and Spain (1278–1993), Vanuatu, which operated under a British–French condominium (1906–80), and Nauru, which was under a joint Australia–New Zealand–United Kingdom condominium (1947–68).

### *Leagues*

These are linkages of politically independent polities for specific purposes that function through a common secretariat, rather than a government, and from which members may withdraw unilaterally. Examples have been the Arab League, the Association of Southeast Asian Nations (ASEAN), the Baltic Assembly, the Commonwealth of Nations, the North Atlantic Treaty Organization (NATO), the Nordic Council, and the South Asian Association for Regional Cooperation (SAARC).

### *Joint functional authorities*

These are agencies established by two or more polities for joint implementation of a particular task or tasks. Three examples from many such agencies are the North Atlantic Fisheries Organization (NAFO), the International Atomic Energy Agency (IAEA), and the International Labour Organization (ILO). Such joint functional authorities may also take the form of trans-international border organizations established by adjoining sub-national units, as in the case of



the interstate grouping for economic development involving four regions in Italy, four Austrian *Länder*, two then-Yugoslav republics and one West German *Land* established in 1978, and the case of the interstate Regio-Baseliensis involving Swiss, German and French cooperation in the Basel region.

## Federal-unitary and federal-confederal hybrids

Some political entities combine characteristics of different political systems. Hybrids occur because statesmen need pragmatic solutions to particular political and economic circumstances.

Broadly speaking, two types of hybrids are notable. One type consists of federal-unitary hybrids. Many political systems, which in their constitutional form and political operation predominantly have the character of federations, have incorporated some provisions or practices more typical of a unitary system, enabling the general government to override the autonomy of the constituent units in certain circumstances. Wheare (1963: 19) labelled such systems 'quasi-federal'. While such hybrids have proliferated in recent decades, they are by no means new. The original British North America Act founding the Canadian federation in 1867 included a number of provisions (Canada Constitution Act, 1867, ss.56 and 57, as extended by s.90 and s.92(10)(c)), enabling the federal government to override provincial legislation by disallowing provincial legislation or legislating in certain fields that would normally fall under provincial jurisdiction. In the early decades of the Canadian federation, these federal overriding powers were used frequently. These powers remain in the Canadian Constitution, although, by convention, they have not been employed for half a century. Consequently, in practice, Canada has evolved from a quasi-federation into a more completely federal one.

A number of federations established during the 20th century fall into the category of 'quasi-federations'. Notable examples are India, Pakistan and Malaysia, the constitutions of which were predominantly federal but have included significant overriding central emergency powers that have been exercised quite frequently, although in the case of India there has now been some attenuation in their use. Among the countries listed above in the category of federations, others that may be classified as predominantly federations but with some significant unitary elements in their constitutions or practice, and therefore described as quasi-federations are Russia, Argentina, Venezuela and Comoros (Watts, 2008: 14). Both South Africa and Spain have most of the features of a full-fledged federation, but avoid the label and incorporate some unitary features.

One area in which constituent-unit autonomy in nominal federations has often in practice been undermined is financial dependence upon federal transfers. In most federations, constituent units have become heavily dependent on federal transfers. Indeed, in South Africa, Nigeria, Mexico, Spain and Belgium, transfers from the federal government constitute between 68% and 96% of the revenue of the constituent governments – a very high degree of dependence (Watts, 2008: 105). By contrast, in some decentralized unitary systems, such as Sweden and Japan, the proportion of own-source revenue in the total of constituent revenues is high; hence, their financial dependence on the central government is significantly lower (Watts, 2005).

A second notable type of hybrid involves the combination of features typical of a federation and a confederation. Germany, while predominantly a federation, has a confederal element in the *Bundesrat*, its federal second chamber, which is composed of instructed delegates of the *Land* governments who have a veto over a significant portion of federal legislation.

A unique hybrid combining much more fully the characteristics of a confederation and a federation is the EU following the Maastricht Treaty of 1993. The EU is basically an economic confederation but with some of the features of a federation. Derived from its confederal roots

are the prominence of the intergovernmental Council of Ministers, the Commission composed of one commissioner from each member state, the fiscal minimalism and reliance largely on financial transfers from the member states, and the retention by member states of most traditional powers over domestic and foreign policy. On the other hand, there are a number of features not normally found in a confederation and more akin to those found in federations. These include the roles of the European Commission, which in many respects is similar to that of an executive body, of the directly elected European Parliament with its co-decision powers, and of the Court of Justice of the EU as a judicial body enforcing the supremacy of EU law. In addition, voting in the Council of Ministers on a wide range of issues has been increasingly based on the qualified majority principle rather than unanimity. In terms of functions, there has been a distribution of responsibilities, with trade and commerce heavily in the hands of the EU and social policy in the hands of the member states.

Yet another federal-confederal hybrid is the UAE. The 1971 provisional constitution, which was made permanent in 1996, proclaimed the UAE to be a 'federal state', but in form it is largely confederal (Watts, 2008: 55–56). The Supreme Council of Rulers consisting of the seven non-elected traditional emirate rulers is the highest federal authority, having both legislative and executive authority. Because the emirs derive their status from their position within the emirates, this gives the Supreme Council a confederal character. There is a unicameral federal legislature, but it is a consultative body only. It has been oil wealth that has largely contributed to the UAE's stability.

## Variations in federations

Focusing more on the specific category of federations (including quasi-federations), one can identify certain structural features and political processes common to them. These are:

- The existence of at least two orders of government – one for the whole federation and the other for the constituent regional units, each acting directly on its citizens;
- A formal constitutional distribution of legislative and executive authority and allocation of revenue sources between the two (or more) orders of government ensuring some areas of genuine autonomy for each government;
- Provision for the designated representation of distinct regional views within the federal policy-making institutions, usually provided by the particular form of the federal second chamber;
- A supreme written constitution not unilaterally amendable and requiring for amendments the consent of a significant portion of the legislatures, governments, or voters of the constituent units;
- An umpire (in the form of courts, provision for referendums, or an upper house with special powers for resolving intergovernmental conflicts); and
- Processes and institutions to facilitate intergovernmental collaboration for those areas where governmental responsibilities are shared or inevitably overlap.

While these features generally characterize federations, federations and quasi-federations have exhibited many variations in the application of the federal idea. There is no simple 'ideal' or 'pure' form of federation. Ultimately, federalism represents a pragmatic prudential technique, the effectiveness of which depends on the relation of the particular form in which it is adopted or adapted to its particular political and economic circumstances. No single typology can account adequately for the rich range of variations found in federations. Consequently, in comparative terms, we may identify 10 types of significant difference among federations:

## *1 Maturity of federations*

Broadly speaking, we may classify federations into four groups depending on their degree of maturity. In one category are the 'mature' federations that have operated effectively for at least half a century or more. In this category are the United States (1789), Switzerland (1848), Canada (1867), Australia (1901), Austria (1945), Germany (1949), and India (1950). Each of these exhibits virtually all of the characteristics of a federation described above and has displayed a prolonged period of federal stability. Unlike some of the more recent, 'emergent' federations referred to below, these mature federations have, in their evolution, developed both federal and state governments which have not only formally autonomous powers, but which have exercised them fully in practice. Interestingly, the two examples that began with clearly quasi-federal characteristics have, in their evolution, virtually eliminated (Canada) or reduced (India) the operation of these quasi-federal elements.

A second category may be described as 'emergent' federations. These are federations created during the past 50 years and are still in the process of establishing their equilibrium. European examples are Spain and Belgium, but there are many others in Latin America, Asia and Africa. As a group, they tend to be more centralized than the mature federations, examples being Mexico, Nigeria and Ethiopia. Seven others are highly centralized quasi-federations, as exemplified by South Africa, Russia, Argentina, Malaysia, Venezuela, Comoros and Pakistan. Many of them have been prone to instability as illustrated by the Latin American examples of Argentina, Brazil, Mexico and Venezuela, or have even experienced frequent periods of military rule as in Nigeria and Pakistan.

A third category consists of four recent efforts in post-conflict situations to establish federal experiments in order to resolve those conflicts. One in Sudan has already failed with the splitting of Sudan in 2011. The other three, Bosnia and Herzegovina, Iraq and the Democratic Republic of the Congo have yet to operate functionally.

The fourth category is that of 'failed federations'. These are important because much can be learned from the pathology of federations (Watts, 2008: 179–88; Franck, 1966; Hicks, 1978; Young, 1995: chs 10, 11). In this category are two groups of federations. One is the group of communist federations, for instance the USSR, Czechoslovakia and Yugoslavia, which all eventually disintegrated. The other is a significant number of overly ambitious post-colonial federations such as Indochina (1945), Burma (1948), Indonesia (1949), Libya (1951), Ethiopia (1952), Rhodesia and Nyasaland (1953), Mali (1959), the Congo (1960), Cameroon (1961), and the West Indies (1958), which did not last long.

## *2 Bases of internal diversity*

Since William Livingston (1956), scholars have been conscious of the fundamental importance of the social forces underlying the pressures for diversity within federations. The causal interaction of these forces with political institutions and processes has affected both the creation and subsequent operation of federations (Watts, 2008: 21; Moreno and Colino, 2010). Since the basis of internal diversity has varied among federations, analysis of these differences provides important insight into understanding their creation and operation.

In general terms, one may distinguish between those federations where regional diversity is largely territorial or historical and those where regional diversity is deeply rooted in internal cultural, linguistic, ethnic, religious and even national differences (Burgess, 2007). Among the former would be Argentina, Australia, Austria, Brazil, Germany, Mexico and the United States, where there may be subtle but not profound cultural, regional differences, but geography and history provide the fundamental basis for institutionalizing their diversity.

By contrast, in such federations as Belgium, Bosnia and Herzegovina, Canada, Ethiopia, India, Malaysia, Nigeria, Pakistan, Spain and Switzerland, internal linguistic, religious, ethnic and even national, regional differences have provided insistent pressures both for maintaining regional distinctiveness and autonomy and for inclusiveness in the operation of their federative institutions.

### *3 Creation by aggregation or devolution*

Federations have been created in three different ways, and this has affected their design and subsequent operation. One way is the aggregation of formerly independent separate states. The United States, Switzerland and Australia provide classic examples. In these federations, the process led, in the early stages, to an emphasis on retaining a substantial element of autonomy for the federating units. A second pattern has been through devolution from a previous unitary regime. Examples of this pattern are Austria, Belgium, Germany (after the Third Reich), Nigeria, Ethiopia, South Africa and Spain. This pattern has, at least initially, usually resulted in an emphasis on retention of substantial central powers, although Belgium provides a notable exception. A third pattern has been the combination of these two processes – Canada, India and Malaysia providing examples. The creation of the Canadian federation involved a devolution to two new provinces (Ontario and Quebec) from what had previously been a single unitary Province of Canada, and also the addition of two previously separate colonies (New Brunswick and Nova Scotia) as provinces of the new federation. The independent federation of India established by the 1950 constitution constituted both a devolution to states that had previously been provinces and an incorporation of previously separate princely states. The Malaysian Federation of 1963 combined the previous Federation of Malaya established in 1957 (a centralized federation that had grown by devolution in 1948 from the unitary Malayan Union of 1945), with three additional states, Sabah and Sarawak in Borneo and Singapore (the last of which was expelled from the federation two years later). As a result of this process, some special concessions for the two Borneo states were incorporated in the asymmetrical Malaysian federation.

### *4 Size of federation and number and relative size of constituent units*

There is an enormous variation in the size of federations and in the number and relative size of their constituent units. Those variations have affected the functions assigned to the different orders of government and the internal political dynamics of their operation.

Some federations are massive in terms of continental territorial size or population, such as Australia, Brazil, Canada, India, Russia and the United States. In these, size itself has been one of the inducements to federalization. At the other extreme are four micro-federations. Largely the product of decolonization, these ‘Lilliput federations’ as Dag Anckar (2003) has referred to them, are federations of small islands. Comoros (1978), Micronesia (1979), Belau (1981), and St Kitts and Nevis (1983), with total federal populations ranging from 17,000 in Belau (with 16 states), to 630,000 in Comoros (with three constituent units) represent a very different scale of operations that affects the capacities of their governments and the dynamics of inter-island relations.

The number of constituent units also plays an important role in shaping the dynamics of political relationships within federations. In nine federations, there are 20 or more basic constituent units, the largest number being 83 (currently) in Russia and 50 states in the United States. The others are Argentina with 23, Brazil with 26, India with 28, Mexico with 31, Nigeria with 36, Switzerland with 26 and Venezuela with 23. Where there are such a large number of constituent units, usually none has been in a position to dominate politics within the federation or to counterbalance the federal government. At the other extreme have been federations with only two to four constituent

units. Examples include three of the micro-federations (Comoros with three, Micronesia with four, and St Kitts and Nevis with two), Pakistan since 1973 with four, Bosnia and Herzegovina with two entities, and Nigeria in its early years as a federation until 1963 with three regions. These examples taken together with the experience of Pakistan 1956–71, Czechoslovakia prior to separation in 1992, and Serbia and Montenegro 1992–2006 provide strong evidence that where the number of constituent units is so few, often with one dominant region, it is possible for individual units to challenge or dominate the federal government, typically producing markedly unstable political relationships. The remainder of the federations fall between these two extremes with 6–17 constituent units. In these cases, the individual constituent units have been able to exert more political influence than in federations with a larger number of constituent units, but have not experienced the degree of instability displayed by federations with only two to four constituent units.

The relative size and wealth of constituent units in relation to each other within a federation has also been significant. The ratio of the population in the largest constituent unit to that in the smallest ranges from the extreme of 307.2 in India to 1.2 in Belau (Watts, 2008: 73). The variations in population and wealth among constituent units within a federation may cause wide discrepancies in their ability to perform their functions. Furthermore, where a single unit or pair of units contains a majority of the federal population, their predominance in federal politics has tended to be a source of resentment in the smaller constituent units. Examples are the Flemish Region in Belgium, Punjab in Pakistan, Ontario and Quebec in Canada, New South Wales and Victoria in Australia, Oromia and Anhara in Ethiopia, and Abu Dhabi and Dubai in the UAE. Interestingly, despite the large absolute size of Uttar Pradesh in India and California in the United States, they represent only 16% and 12% of their respective total federal populations, thus moderating their influence in federal politics.

### *5 Symmetrical and asymmetrical federations*

In most federations, the formal constitutional distribution of legislative and executive jurisdiction and of own-source financial resources applies symmetrically to all the full-fledged member constituent units. This constitutional symmetry exists in Argentina, Australia, Austria, Brazil, Ethiopia, Germany, Mexico, Micronesia, Nigeria, Pakistan, South Africa, Switzerland, the UAE, the United States and Venezuela. However, there is a group of federations where the constitution explicitly provides for asymmetry in the jurisdiction constitutionally assigned to full-fledged member states. Where this has occurred the reason has been to recognize significant variations among the full-fledged constituent units relating to geographic size and population, their particular social and cultural composition and distinctiveness, or their particular economic situation. While the forms and degree of asymmetry vary, federations with asymmetric, full-fledged constituent units include Belgium, Bosnia and Herzegovina, Canada, Comoros, India, Malaysia, Russia, St Kitts and Nevis, and Spain (Watts, 2008: 128). Internal asymmetry among the regional units within a federation clearly adds to complexity. Moreover, the tension between pressures for distinctiveness of particular constituent units and for equality of states, as exhibited in Canada and Spain, can be a source of continuing dissension. Nevertheless, some federations have found that the only way to accommodate strongly varied pressures for regional autonomy has been to incorporate some degree of asymmetry in the constitutional distribution of powers to constituent units.

### *6 Variations in the form of the distribution of legislative and executive authority*

While a basic common feature of all federations (as noted above) is a constitutional distribution of legislative and executive authority among the orders of government, the form taken by that

distribution has varied (Majeed *et al.*, 2006). In many federations, particularly in the United States and former British colonies, each order of government has been generally assigned executive responsibilities in the same field for which it has legislative powers.<sup>1</sup> Arguments favouring such an arrangement are that it reinforces the autonomy of each legislative body, assures each government of the effective administration of its own legislation. Furthermore, in cases where there is a parliamentary executive (as in Canada, Australia and most of the former British colonies), the legislature can exercise control over the body executing its laws only if legislative and executive jurisdiction coincides.

In the European federations with a civil-law tradition, such as Switzerland, Austria and Germany, however, jurisdiction of legislation and of administration has often been assigned to different orders of government. This has enabled federal legislatures to lay down considerable uniform legislation while leaving the application of that legislation to constituent unit governments taking account of varying regional circumstances. Such federations tend to be more centralized in legislative terms and more decentralized in administrative terms. Such an arrangement does, in practice, require more extensive collaboration and coordination between orders of government, however. In its extreme form, exhibited by Germany and Austria, it has created a virtually interlocking relationship of governments at different levels.

The contrast between the two approaches is somewhat moderated by the fact that, in the former group of federations, federal governments have, in practice, delegated considerable responsibilities for federal programmes to constituent governments, often by providing financial assistance through grant-in-aid programmes, but the contrast in the linkage between legislative and administrative jurisdiction remains significant.

## 7 Major sources of regional revenues and reliance on transfers

The allocation of finances to each order of government in a federation is important for two main reasons: first, these resources enable or constrain governments in the exercise of their legislative and executive responsibilities; second, taxing powers and expenditure are themselves important instruments for affecting and regulating the economy. Balancing considerations of administrative efficiency, avoiding tax competition, achieving equity, enabling accountability, and supporting regional autonomy has led in most federations to arrangements whereby most of the major tax sources have been assigned to the federal government with substantial transfers to the constituent unit governments being provided to match their expenditure needs (Shah, 2007). To mitigate the financial dependency of constituent unit governments, these transfers often take the form of constitutionally specified, unconditional grants or shares of specific federal tax revenues and, in a number of cases, with allocations assigned by an independent finance commission. Among federations, however, there are wide variations in the actual 'own source' tax revenues of the constituent units, the proportion of constituent unit revenues consisting of federal transfers, the conditionality of these transfers, and the proportion and nature of equalization transfers to mitigate disparities of wealth among constituent units. Generally speaking, the predominance of federal taxing powers (federal government revenues as a percentage of total federal-state-local revenues) has been higher in the emergent federations (70%–98%) than in the mature federations (40%–65%), with Australia being an exception (Watts, 2008: 102). Generally, as a consequence, intergovernmental transfers as a percentage of provincial and state revenues have been significantly higher in the emergent federations, indeed 68%–96% in Belgium, Spain, Mexico, Nigeria and South Africa compared to the mature federations, where, for instance, the comparable figures in Canada, Switzerland and the United States range between 13% and 26% (Watts, 2008: 105). It is these contrasts that have led many emergent federations to follow the Australian example of

constitutionally requiring that a high proportion of federal transfers be unconditional and dispensed by finance commissions (Watts, 2008: 106–16).

### *8 Federal institutions based on the separation of powers or parliamentary principles*

Generally, the legislative and executive institutions within federations have fallen into two basic categories: those involving the separation of legislative and executive powers and those involving a fusion of legislative and executive powers in a parliamentary executive responsible to the popularly elected house of the legislature (LeRoy and Saunders, 2006). The former is based on extending the federal principle of dispersion of power between orders of government to dispersion of power within each order of government. One example is the presidential-congressional institutions of the United States, a model copied by all four Latin American federations and by Nigeria in its 1999 Constitution. Another is the collegial, fixed-term executive in Switzerland. By contrast, parliamentary institutions are based instead on the principle that while authority in the federation is divided between orders of government, within each government executive and legislative power is concentrated so that the executive can be democratically controlled by the legislature. There are two sub-types of parliamentary executives: those modelled closely on the majoritarian British institutions at Westminster, as often found in federations that were previously British colonies (e.g. Canada, Australia, India and Malaysia), and those following European traditions of responsible cabinet governments, usually with coalitions, as found in Austria, Germany, Belgium and Spain. A third category might be called the hybrid presidential-parliamentary form of government, with Russia and Pakistan providing different variants of this form.

These forms of executive and legislative institutions have affected the operation of federations in several fundamental ways (Watts, 2008: 137–44). First, they have had an impact on the representativeness and effectiveness of their federal governments. For instance, parliamentary executives provide opportunities for coalition arrangements, but this is counter-balanced by the weakened veto powers of second chambers because they are not confidence houses. Second, the different forms of executive have also affected the capacity of the federal executive to generate federal consensus (Watts, 2008: 142). Third, the form of executive within both federal and regional orders of government has also had a significant impact on the character and processes of inter-governmental relations. Where there has been a separation of legislative and executive powers, intergovernmental relations have tended to involve multiple channels of federal-state relations involving executives, officials, legislators and agencies interacting not only with their opposite numbers but also in a web of criss-crossing relationships that one American scholar characterized as ‘marblecake federalism’ (Grodzins, 1967: 257). In parliamentary federations where cabinets supported by majorities in their legislatures have tended to dominate, a common prevailing characteristic has been what has come to be called ‘executive federalism’, the dominance of executives in intergovernmental relations. ‘Executive federalism’ has been most marked in Germany, Australia and Canada, but has also been a distinctive characteristic of intergovernmental relations in India, Malaysia, Austria, Belgium and Spain.

### *9 Common law and civil law federations*

The presence of a common law tradition (as in the United States, Australia, India, Malaysia and Nigeria), a civil law tradition (as in the European and Latin American federations such as Switzerland, Germany, Austria, Belgium, Spain, Brazil and Mexico), or a mixed common law and civil law legal system (as in Canada and South Africa) has had a strong bearing on how the

constitutional law of a federation is applied and interpreted (Poirier and Saunders, 2013). In federations where the civil law tradition has prevailed, the result has usually been a much more explicit delineation of jurisdiction and a more limited scope for judicial review (Majeed *et al.*, 2006: 325; LeRoy and Saunders, 2006: 348).

Two types of courts for ultimate constitutional interpretation may be found among federations. Broadly speaking, those federations either in the common law tradition or those closely following the US model have established a supreme court as the final adjudicator in relation to *all* laws, including the constitution. Examples are the United States, Canada, Australia, India, the four Latin American federations, Malaysia, Nigeria, Pakistan, Comoros, Micronesia, Belau, and the High Court of St Kitts and Nevis. The alternative, a constitutional court specializing just in constitutional interpretation, has been the pattern followed in Germany, Austria, Russia, Bosnia and Herzegovina, the UAE, Belgium and Spain. A unique third approach is that found in Switzerland, where the Federal Tribunal may rule on the validity of cantonal laws but not of federal laws. The validity of the latter is determined instead by the federal electorate through legislative referendums.

### 10 Degrees of decentralization and non-centralization

In assessing comparatively the degree of decentralization in different federations and unitary states, distinction of two aspects is crucial. One is *scope of jurisdiction* exercised by each order of government. The other is the *degree of autonomy* or freedom from control by the other orders of government with which a particular government performs the tasks assigned to it. ‘Non-centralization’ refers to the latter aspect in which a central government is not able to control or revoke the jurisdiction of the constituent units and is what distinguishes decentralization in federal systems from that in unitary systems. Thus, it can be said that some federations may allocate fewer responsibilities to their constituent states or provinces than some decentralized unitary systems, but leave those states or provinces with greater freedom or autonomy over the exercise of those responsibilities (Watts, 2005, 2008: 111–12).

A major problem in any comparative assessment of the degree of autonomous decentralization in different federations is that no single quantifiable index can adequately measure the scope of effective jurisdictional decentralization and the degree of autonomy of decentralized decision making within a political system. Among the multiple indices, although not of equal weight, that must be considered in any such assessment are legislative jurisdiction, administrative jurisdiction, own-source revenues, expenditures, impacts of unfunded mandates, decentralization to non-governmental agencies and constitutional limitations applying to all governments.

While taken alone, it is a crude measure; nevertheless, a comparison of federations in terms of the proportions of federal and constituent unit expenditures after intergovernmental transfers indicates an enormous range in the percentage of combined total expenditures carried out by federal governments and giving different federations a distinctively different character. Malaysia (84%), Brazil (60%), Nigeria (60%), Australia (60%), and Mexico (59%) are among the more centralized, while Switzerland (32%), Canada (37%), Germany (37%), and Belgium (38%) are the most decentralized in terms of scope of jurisdiction. Austria (55%), Spain (51%), South Africa (50%), Russia (46%), the United States (48%), and India (45%) represent a middle group (Watts, 2008: 103). However, this does not take into account the degree of autonomy with which this jurisdiction is exercised. Taking account of this qualitatively, suggests that among the most highly centralized federations and quasi-federations are Venezuela, Pakistan, Malaysia, Nigeria, Argentina, Mexico, Ethiopia, Russia and the four micro-federations. Distinctly contrasted in their measure of autonomous non-centralization are Switzerland, Canada and Belgium. Between these two



extremes would come the relatively centralized federations of Brazil, Austria and Australia, and the more moderately centralized federations of Germany, Spain, the United States and India.

## Conclusion

This review of the broad category of federal political systems and within that of the more specific category of federations makes it clear that there is a considerable variety in the patterns of social conditions accommodated and an enormous range in the institutional arrangements and political processes they have encompassed. All these systems have attempted, many with considerable success, to combine elements of autonomous self-rule for the constituent units in certain matters and an over-arching shared rule in other matters in order to reconcile the simultaneous desires for distinctive diversity and united action. The variations among them make it clear that there is no single, pure, ideal form of federal system applicable everywhere. Even within the single category of federations, these have varied greatly in their institutional design and in their operation to meet their particular conditions and context. In the effort to meet these particular circumstances, statesmen have often resorted to hybrids combining elements of federal and unitary, and federal and confederal combinations. There is, consequently, no single, simple typology, but rather a range of typologies required for understanding the differences within the general category of federal political systems and the more specific category of federations.

## Note

- 1 The United States, Canada and Australia are classic examples, but note that in the Canadian constitution an exception is made in the field of criminal law, where legislative jurisdiction is assigned to the federal government (s.91(27)) but administration to the provinces (s.92(14)).

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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 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 *demos*, 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 *demos* 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 ethnicity, 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 ethnicity 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 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 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 gezimmet 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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# The penumbra of federalism

## A conceptual reappraisal of federalism, federation, confederation and federal political system

Michael Burgess

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### Introduction: old concepts and new developments

During the last 30 years there has been a relative stability in the intellectual process of concept formation and reformation in federal studies. Since the publication of Preston King's *Federalism and Federation* in 1982 most established scholars of federalism have adopted this conceptual distinction or are at least fully aware of it (King, 1982). Subsequently some useful small refinements and clarifications have appeared in respect of terminology and definitions but in general the broad contours of the subject would seem to be quite settled.

In this chapter I want to look again at the conventional concepts of federalism, federation, confederation and federal political system with a view to their re-appraisal. The principal reason for this revisionist objective springs from the realities of contemporary international change. The collapse of the Berlin Wall in November 1989 signalled the end of the Cold War in Europe and sent shockwaves around the world. The implications of such a critical juncture in world politics have yet to be fully understood. Over 20 years later, the direct and indirect consequences remain largely unknown; the whole story has yet to be told but we are still too close to these tumultuous events to acquire the clear historical perspective that comes only with distance from the object. However, one consequence of this historical watershed in the post-Cold War era has been the sudden appearance in the 1990s of a stream of new federal models. The cluster of federal models has not been restricted only to formal federations but has also included formally non-federal models that are either federal in practice or have evolved in that direction by incorporating conspicuous federal elements in their constitutions or political systems. The scope of the list is worldwide and includes the following countries: Belgium (1993); the Russian Federation (1993); the European Union (EU) following the ratification of the Treaty on European Union, known as the Maastricht Treaty (1993); Argentina (1994); Ethiopia (1995); Bosnia-Herzegovina (1995); South Africa (1996); Nigeria (1999); and Venezuela (1999). Moreover, the trend toward territorial decentralization in the United Kingdom (UK), Spain and Italy by the turn of the century had gathered so much pace that it seemed as if the federal idea had acquired the status of a *zeitgeist*; it was the spirit of the age. Since then, the early years

of the 21st century have witnessed Iraq (2005) as another new federal model and Nepal (2007) as moving closer toward a federal republic. Scholars of comparative federalism could therefore be forgiven for seeing in these contemporary developments a process of federalization. There appeared to be good reasons to believe that at last the 20th century had delivered an 'Age of Federalism', as predicted in the 1960s by William Riker in his now classic *Federalism: Origin, Operation, Significance* (Riker, 1964).

We can now appreciate why the post-Cold War era has witnessed what some scholars have claimed was 'the revival of federalism' (Karmis and Norman, 2005: 1–30). The appearance of these new federal models in the 1990s and early 2000s confirmed the 'new awakening' of identity politics and ushered in a new age of post-conflict management and resolution in comparative federalism.

Intellectually it exposed and emphasized the different approaches to the study of federalism between comparative politics and conflict studies. The former approach saw in the federal idea a structural response and reaction to the dawn of a new era in world politics while the latter school of thought regarded it largely as a useful instrument of power sharing for post-conflict management in deeply divided societies. However, both approaches accepted that the federal idea was worth adopting and adapting to the new conditions of state building and (multi)national integration presented by these fresh challenges. Both approaches also recognized the formidable complexity of these challenges, the common characteristic of which lay in the hugely heterogeneous nature of their societies. It is important to underline this point: the federal idea has been utilized in the post-Cold War era in countries that are recognized as multinational, multiethnic, multilingual and increasingly multi-religious. This is what we mean when we refer to such countries as having prominent cultural-ideological social cleavages with political salience.

The chapter will begin by taking stock of the conventional definitions and terminology used to understand and explain federalism. This will also involve a modest revisionist critique of the conceptual landscape in the light of contemporary international change, leading to a new classification of federal models and some concluding remarks about its implications for federal theory. The concluding remarks will briefly discuss the meaning implicit in the title 'the penumbra of federalism'. We will begin with our conceptual stock-taking exercise and highlight the important distinctions between the different terms.

## **Federalism, federation, confederation and federal political system**

### *Federalism and federation*

Since the early 1980s more and more studies of federalism have been based upon the conceptual distinction between 'federalism' and 'federation'. The distinction was first made by King in 1973 but it was only formally adopted in 1982 and most scholars of federalism since then have recognized that these two terms are no longer synonymous (King, 1973). In political science analysis, they are discrete concepts that mean different things. Broadly speaking, federalism is widely acknowledged to be a normative principle that recommends a particular set of values and principles which, when translated in practice, create a level of institutionalization that produces federation as one among other federal forms.

A federation is a state but it is a particular kind of state. King's original definition of federation was put this way:

An institutional arrangement, taking the form of a sovereign state, and distinguished from other such states solely by the fact that its central government incorporates regional units in its decision procedure on some constitutionally entrenched basis.

(King, 1982: 77)

The impact of this novel distinction, while not accepted by every scholar of the subject, had an immediate practical consequence. It was formally acknowledged by the International Political Science Association (IPSA) in 1985 when it confirmed the creation of the Comparative Federalism and Federation Research Committee (RC28) and my own edited book *Federalism and Federation in Western Europe* appeared in 1986 (Burgess, 1986). Since then the conceptual distinction has been modestly revised so that a federal state can be defined in the following way:

A distinctive organizational form or institutional fact the main purpose of which is to accommodate the constituent units of a state or a union of states in the decision making procedure of the central government by means of constitutional entrenchment.

(Burgess, 2006: 2)

This current modification does not at first glance seem to constitute much of a revision but as we will observe later in the chapter it has an important contemporary significance that reflects the sort of empirical realities identified above. At this juncture all we need to note is that the term 'federal' qualifies the word 'state' so that it incorporates certain values, beliefs and interests which give it distinctive institutional features and an innate moral character directly related to political community building. After all, as King observed, 'for all of its institutional character, a federation is still governed by purpose, and thus reflects values and commitments' (King 1982: 146). Its character is also 'moral' in the sense that it is specifically designed for the organization of human relations in ways that are designed to preserve, protect and promote difference and diversity having political salience. Since there are different differences and diverse diversities, there is a basic presumption of the value and worth inherent in the variety of human characteristics and identities that symbolize human dignity.

However, it was in the conceptual relationship *between* federalism and federation that new insights, understandings and interpretations of federalism first emerged. The approach had important comparative empirical and theoretical implications for the subject because it opened up new possibilities for engaging contemporary change. This can be best illustrated by King's observation that 'although there may be federalism without federation, there can be no federation without some matching variety of federalism' (King 1982: 76). His claim proved to be empirically valid but it was also interesting, innovative and useful in a heuristic sense for the political scientist who could now contemplate comparing *federalisms* as well as *federations*. The latter subject had long been established and was commonplace in political science but the former comparative analysis of federalisms had been relatively neglected. Here there was a fascinating opportunity to analyze precisely what different kinds of federalisms animated different kinds of federations. In order to do this, however, federalism had to be placed firmly in its context because meaning derives from context. Consequently it logically followed that the concept had to be located in its own distinct setting: historical, cultural, intellectual, philosophical, social, economic and ideological. This consideration in turn revealed its enormous multidimensional complexities. However, as we have already noted above, federalism and federation are both a response to and a formal recognition of the complexity of human relations.

King's conceptual distinction, then, made explicit what had actually been implicit in the mainstream literature on federalism for many years but it actively encouraged scholars to investigate and monitor the federalism in federation. He summarized the relationship succinctly and in so doing drew attention to the subtle and complex interactions between them when he observed: 'Federation might best be understood in terms of the problems to which it has constituted a set of historically varying answers. If we understand the problems, the understanding of structure more clearly follows' (King, 1973: 151–76). Clearly this statement prompted scholars and students