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Revealing the dark side of traditional democracies in plurinational societies. The case of Catalonia and the Spanish “Estado de las Autonomías”

Ferran Requejo Coll
ferran.requejo@upf.edu

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GRUP DE RECERCA EN TEORIA POLÍTICA

Departament de Ciències Polítiques i Socials

Universitat Pompeu Fabra

Barcelona

Abstract

In this article, I firstly offer a synthesis of a brief set of analytical elements of the theory of democracy and federalism established in the recent debate which identify a number of flaws in the normative and institutional bases of plurinational democracies. It is necessary to overcome these flaws in order to achieve a true political and constitutional recognition and accommodation of the national pluralism of this kind of liberal democracies (section 1). Secondly, we will focus on the Spanish case of the “Estado de las Autonomías” taking into account the recent reform of the Catalan constitutional law (Estatut d'autonomia 2006) (section 2). A final section makes a number of concluding remarks relating the previously highlighted elements of the theory of democracy and federalism with the analysis of the Catalan case (section 3).

Revealing the Dark Side of Traditional Democracies in Plurinational Societies. The Case of Catalonia and the Spanish “Estado de las Autonomías”.

Ferran Requejo

Universitat Pompeu Fabra (Barcelona)

After the irruption of recent phenomena such as globalization and national pluralism movements, the democratic debate of recent years has revealed the need for more plural responses than those provided by traditional forms of political liberalism and federalism in plurinational societies. Political ideas associated with some liberal revolutions spoke the legitimising language of a ‘nation of citizens’, usually understood in nationally homogeneous terms, and that of constitutional rights, institutions and decision-making processes. This national homogeneity is something that the empirical evidence of liberal democracies constantly denies in many cases. Phenomena such as the treatment that liberal democracies dispense to indigenous peoples (America, Australia), minority nations (Quebec, Scotland, the Basque Country, Catalonia, etc), transnational immigrant peoples have introduced a ‘new agenda’ of issues -basically, the rights, recognition and political accommodation of permanent national minorities- which have been barely or poorly addressed (or not addressed at all) by classic theories of democracy and federalism. These phenomena have revealed a dark side to these theories in terms of the way that they have usually interpreted and implemented values such as individual dignity, liberty, equality or pluralism when they attempt to tackle political diversity. We will focus here on the case of national pluralism in liberal democracies. In general terms, this dark side refers to the interrelationship between *monism* and *stateism* which runs through traditional concepts such as individualism, universalism and through institutional forms of constitutionalism. Monism, said Berlin, is at the root of all extremism (even, we might add, in liberal democracies).¹ At the beginning of 21st Century, liberal democracies require a more plural and nuanced approach to contexts of national pluralism.

In this article, I firstly offer a synthesis of a brief set of analytical elements of the theory of democracy and federalism established in the recent debate which identify a number

of flaws in the normative and institutional bases of plurinational democracies. It is necessary to overcome these flaws in order to achieve a true *political and constitutional recognition* and *accommodation* of the national pluralism of this kind of liberal democracies (section 1). Secondly, we will focus on the Spanish case of the “Estado de las Autonomías” taking into account the recent reform of the Catalan constitutional law (*Estatut d'autonomia* 2006) (section 2). A final section makes a number of concluding remarks relating the previously highlighted elements of the theory of democracy and federalism with the analysis of the Catalan case (section 3).

1. Liberal democracies and federalism in plurinational societies: 14 analytical and normative elements.

Following the intense scholarly analysis and subsequent discussion on liberal democracy and cultural and national pluralism that has taken place over the last fifteen years, at the very least it could be said that traditional democratic liberalism is not very well equipped to deal fairly with national diversity at the beginning of the 21st century. Democratic liberalism has been the most emancipating current of political thought in modern times. Its main values and organizational principles represent today a sort of meta-value set of legitimated political references for many societies in the world. At the same time, however, we know that its intellectual foundations were established for much simpler societies in national and cultural terms than present-day Western societies. On the other hand, traditional democratic liberalism has usually encouraged cultural and national homogenization through nation-building and state-building processes that in many empirical cases have treated minority nations unjustly, a practice which is far removed from its own legitimising values. Broadly speaking, the inability of traditional democratic liberalism to manage and accommodate national pluralism is related to its biased notions of individualism, universalism and “stateism”. This lack of normative accuracy is present in the hard core concepts and values of traditional liberalism, such as, the “monist” (not pluralist) concept of *demos* adopted in its conception of democracy, an inherent “stateist” perspective which is reluctant to recognise national minorities that do not fit in with the national and cultural characteristics of the national majority, a biased notion of the “universal values” defended that in practice has assumed the national “particularities” of majorities marginalising or even refused to allow other particular national and cultural values

equal status, etc. These biased conceptual and normative perspectives have also influenced the institutions and rules of decision-making of liberal democracies, such as the dominant perspective adopted in liberal-democratic federal systems.

What follows is a summary of fourteen analytical and normative critical elements of traditional democratic liberalism and federalism based on my previous work, as well as on the analysis of scholars who have dealt with this subject in the last fifteen years (Taylor, Walzer, Parekh, Tully, Kymlicka, Norman, Gagnon, McGarry, etc). The basic theoretical perspective adopted is that of liberal “value pluralism”, understood as a more suitable approach to the moral ontology of national and cultural values in plurinational democracies. As I have said elsewhere, value pluralism is the theoretical background that integrates the following analytical and normative elements which relate liberal democracy and federalism with the recognition and accommodation of national pluralism. The basic institutional conclusions related to federalism are also linked to recent analysis of comparative federal systems in plurinational societies (Watts, Burgess, Requejo). These analyses focus on some of the shortcomings displayed by traditional liberal federalism when recognizing and accommodating national pluralism regarding individual and collective rights, the use of national symbols, representative institutions, decision-making processes, and division of powers in the domestic and international arenas.

- 1) Currently, no political theory has the capacity to synthesize the normative complexity involved in the legitimacy of liberal democracies and even less so if institutional and procedural issues such as federalism are added to the equation. We have rather *partial* theories for *particular* issues. In the analysis of legitimacy in plurinational contexts, there is a juxtaposition of perspectives between the so-called *paradigm of equality* (equality vs. inequality) and the *paradigm of difference* (equality vs. difference). The main legitimizing liberal-democratic values (dignity, liberty, equality, pluralism): 1) are internally complex (e.g. negative and positive liberties; equality, of what? between who?; pluralism, of what?; and 2) cover both individual and collective dimensions².

- 2) Nowadays it also seems to be generally accepted that the sphere of “national and cultural” justice is different from the sphere of “social justice”. The concepts, questions and values of “socio-economic justice” do not coincide with those of “national and cultural justice” (redistribution *versus* recognition). Some institutions and policies are able to improve the former, but have hardly any effect on the latter and vice versa. Occasionally there are interrelations between these two spheres of justice, but these two spheres refer to distinct values, objectives, actors, institutions, practices and policies. There have been historical experiences in which groups that are socio-economically dominant in a territory can at the same time be dominated themselves in the cultural and linguistic sphere of the state (Catalonia). Political cleavages that are present in empirical cases may reinforce or diminish national tensions³.
- 3) The politics of recognition of different national and cultural differences is part of the struggle for human dignity (*Human Development Report*, United Nations 2004). Cultural and national liberties, which include both individual and collective dimensions, are an essential value of the *democratic quality* of a society and people’s individual development and self-esteem. These liberties are not protected by the mere application of civil, participatory and social rights which are usually included in the liberal-democratic constitutions of the 20th century⁴. Empirical information usually includes elements that are important from a normative perspective in specific contexts that abstract analyses usually fail to take into account. In order to obtain more refined and realistic results, it would be better to combine the theoretical analyses with those of an empirical nature (comparative analyses or case studies)⁵.
- 4) In general terms, both the recent debate regarding the relations between liberal democracies and national pluralism and empirical analyses have revealed the obsolescence of approaching the normative and institutional discussion in terms of a contrast between “democratic liberalism” on the one hand and “nationalism” on the other. At the normative level, discussion about national
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pluralism in democracies is currently located between two conceptions of democratic liberalism, known as liberalism 1 and liberalism 2. The latter is more sensitive to the demands for the recognition and accommodation of national and cultural minorities. At an empirical level, it is clear that the citizens of most minority nations in plurinational democracies usually defend values and conceptions which are as liberal (or as illiberal) as the citizens of majority nations. Currently, the notion that minority nationalisms promote policies which are contrary to liberal-democratic values is inappropriate (in fact it is really the Jacobinism implemented by the majorities of specific democracies which emits non-liberal signals with regard to the way they treat minorities)⁶.

- 5) Plurinational democracies are political collectivities containing two or more internal nations that aspire to be recognized and accommodated politically as such within political and constitutional rules. They, therefore, are not uninational realities with “regional” subunits that belong to a single national *demos*. They are “different societies” (in the sense that they display distinctive features and express a desire to be distinguished from other societies). It is more correct here to speak of a plurality of *demoi* than of a single *demos* (although the latter may describe itself internally as “plural”). The general challenge of plurinational democracies is *one polity, several demoi*. However, while theories of democracy have usually failed to address or respond to the question of who should constitute the *demos* of a democracy, theories of justice do not usually address or respond regarding which collectivity “basic justice” should apply to. In both cases, the two concepts are usually uncritically defined in advance in relation to the state (regardless, moreover, of the historical process through which this has been formed). In the majority of theories of liberal justice (Rawls) it is understood that the citizens are united through a common acceptance of a series of “principles of justice”, and not through issues of national, cultural or historical identity. This is somewhat naïve in the theoretical sphere of democracies and biased in their practical sphere⁷.

- 6) All liberal democracies have carried out and continue to be involved in processes of state nation-building (specific collective values, institutions, decision-making processes, specific policies). The idea that the democratic state is a culturally “neutral” entity is a liberal myth that is no longer defended by the majority of authors who espouse traditional liberalism. It is an idea that cannot be approached in terms of a form of separation like that which (theoretically) governs the relations between the state and the different religions in the majority of liberal democracies. All states impose particular national, linguistic and cultural features on their citizens. Minority nations also do this when they have their own institutions of self-government⁸. Some of the nation-building processes used by democracies in the past are unacceptable nowadays in normative terms (assimilation, deportation, repression, stigmatization of minorities, etc). Majority and minority national realities are both internally plural. Empirical citizens, moreover, sometimes hold several national identities. This conveniently avoids the need to address, analytically and normatively, the contraposition between the national collectivities of plurinational democracies in terms of a contrast between internally homogeneous blocks. Individual and collective “identities”, furthermore, do not constitute a fixed reality either. They construct themselves and change over time⁹. Those democracies which display internal national pluralism usually display distinct simultaneous processes of nation-building. These processes will, at least partly, be of an agonistic nature. This does not appear to be surmountable by referring to a form of political liberalism based on the “aggregation of interests” or on attempted processes of “rational consensus”. Moreover, the fact that two societies share the same values is not particularly informative regarding their willingness to live together (examples: the secessions of Norway and Sweden at the beginning of the 20th century and Slovakia and the Czech Republic in the 1990s)¹⁰.
- 7) Two general objectives to be achieved with regard to a “just and workable” regulation of national pluralism in plurinational democracies are the explicit constitutional *recognition* of that pluralism and an *equitable political*
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accommodation of the majority and of national minorities in relation to the rights, institutions and decision-making processes of these democracies (a fair accommodation of the different processes of nation-building of the majority and of the minorities). All liberal-democratic majority and minority nationalisms introduce cultural factors into public life (symbols, languages, historical references, etc). The different kinds of legitimising *values*, *identities* and *interests* present in plurinational democracies are also difficult to synthesize. The classic debate on the “incommensurability of values” is joined by the achievable compatibility (only partial and pragmatic?) between different national identities. The importance of reaching *modus vivendi* agreements (practical agreements which seek to achieve peaceful coexistence) which depend on historical and specific political conditions¹¹.

- 8) Broadly speaking, traditional theories of democracy display a *stateist* bias, which is favourable to majorities, in relation to: 1) the conceptions of the kinds of individualism, pluralism and universalism that they defend; and 2) the use of legitimizing notions usually of a monist (not pluralist) nature, such as “equality of citizenship”, “national sovereignty” or “popular sovereignty”. The advisability of considering *national pluralism* not only as a political fact which has to be managed but as a specific type of normative pluralism that democratic systems must recognize, protect and facilitate¹².
- 9) The criticism of individualistic “atomism” and the “subject who chooses” of traditional political liberalism underlines the often flawed approach of traditional liberal-democratic theories to issues of a national and cultural nature. The idea that human beings are autonomous individuals that choose their (national, ethnic, linguistic, religious, etc) identities is to a large extent another myth of traditional liberalism. In other words, these identities are usually not chosen. In reality, they are the foundations on which one’s choices are based (political, social and cultural contexts in which individuals socialize, and are usually the result of processes that include historical events of both a peaceful and violent nature -wars of annexation, territorial conquests, etc). These processes are often

at the root of present-day struggles for the recognition and accommodation of minority nations¹³.

- 10) The establishment of constitutional rules in liberal democracies is preceded by a self-awarded collective right: the right to self-government for the state collective, regardless, once again, of the (sometimes coercive) historical process which has created the state itself. This is a right that democracies usually deny internal national collectives of the state polity. The issue of borders has rarely been considered by theories of democracy and federalism. A number of minorities currently question the legitimacy of the state's monopoly of the right to collective self-government and defend their own "right to decide"¹⁴.
- 11) The classic liberal-democratic institutional "solutions" to achieve recognition and political accommodation in nationally diverse democracies are federalism, devolution processes, consociationalism and secession. Questions regarding institutional issues in plurinational contexts appear to require solutions that are "open" to evolution over time. Regarding federalism, it is important to establish the motives and objectives on which a federalization process is based. These motives and objectives are unlikely to coincide in the case of uninational and plurinational polities. Federated units of a national nature often coexist in a plurinational federation with others of a regional (of the majority nation) nature. This represents a challenge for the institutional process of federalization in both the potentially asymmetrical level of self-government and the "shared government" of the federation¹⁵.
- 12) In theories of federalism, moreover, there is a clear contrast between those that situate the normative centre of gravity in the "union" that emerges from the federal agreement, and those that situate it with the parties that obtain the agreement. Broadly speaking, this is the contrast between the approaches of J. Madison and J. Althusius, respectively) which are more closely linked with what

we might call the spirit of confederations and consotional federalism¹⁶. One of the aims of the “federal agreement” would, in this case, be the preservation of the identities of the subjects of the agreement¹⁷. On the other hand, American federalist tradition associated with the creation of the first contemporary federal state, has interpreted the agreement from a much more unitary-federal than confederal perspective. The centre of gravity is located in the governance of a “nation-state” (new processes of state-building and nation-building), and in the subsequent supremacy of the central power over the federated units. Here, the Union is more important than the units. It is obvious that different normative and institutional conclusions will be obtained depending on which of these two traditions of federalism is adopted (questions about liberty: individual and collective, positive and negative; about equality: the equality of national entities? the equality of federated units?, etc., and how these responses interrelate)¹⁸.

13) The political accommodation of minority nations through rules and federal procedures will, in general terms, require both the institutional concretion of the *self-government* of these minorities and a kind of specific protection and participation in the *shared government* of the federation. When there is a clear de facto asymmetry in the national pluralism of the state and/or when the number of federated entities is high constitutional asymmetric solutions or practices of *opting in* and *opting out* may offer a suitable framework for the political accommodation of this form of pluralism¹⁹.

14) Federalism is directly affected by supra-state processes of political and economic integration (e.g. the European Union). The dissolution of the state monopoly on the principle of territoriality and the exclusive dualism between state and non-state processes of nation-building are two elements that have an

influence on the institutional recognition and accommodation of national pluralism in a globalized political, economic and technological context²⁰.

The creation of liberal democracies that are increasingly refined from a moral and institutional point of view in terms of their *national* and *cultural pluralism* is one of the challenges of present-day democratic and federal systems. This requires a more in-depth review of the theoretical revision and practical reformulations carried out over recent years in some plurinational democracies (Belgium, Canada, Spain, the United Kingdom, etc). This would tackle questions such as: what implications does the regulation of national pluralism have for the symbolic, institutional and self-government spheres?. How should one interpret and give practical expression to classical notions such as representation, participation, citizenship or popular sovereignty in plurinational contexts? What does accepting plurinationality in an international society mean? We will focus here on the Spanish case taking into account the recent reform of the Catalan constitutional law (*Estatut d'autonomia* 2006)

2. The case of national pluralism in the Spanish “Estado de las Autonomías”.

The Spanish Constitution established two routes to achieve self-government – a quicker route (Art. 151) and a slower route (Art. 143) – depending on whether the “communities” had already possessed some form of political autonomy in earlier historical periods (the Second Republic: 1931-1939). In this way a kind of *transitory asymmetry* was established before the autonomous communities (hereafter referred to as AC) could achieve the highest level of self-government. However, the final division of powers was of a potentially symmetrical design provided that the AC which would achieve political autonomy by the slower route expressed a wish (as was expected and did in fact become a reality from the 1990s onwards) to have a greater degree of self-government. The exception are the so-called “differentiating factors”: a heterogeneous set of issues not necessarily related to the plurinational nature of the state, each one of which requires specific treatment (languages, insularity, special civil laws, etc). On the other hand, the most *asymmetrical* legal characteristic of the system is the economic

agreement between the Basque Country and Navarre and the central government and which is regulated by the so-called “historical rights of the ‘fuero’ communities” (1st additional clause of the Constitution).

2.1) The phases of constitutional development

It is possible to identify five different phases in the practical development of Spain’s “Estado de las Autonomías” which have occurred between 1978 and 2008:

- 1) *Constituent phase (1978-1981)*. This phase was characterized by the negotiation of the text of the constitution and the “statutes of the autonomous communities” and was led by minority governments of the UCD²¹. These statutes were passed in a relatively short period of time: four years. The first to be passed were the Basque and Catalan statutes (both were passed by a large majority in 1979). In this phase, neither the political decentralization model nor the articulation of the plurinationality of the state were expressed through a “constitutional solution”. This was because neither of these issues had been resolved during the period of political transition (it should be borne in mind that one of the features of this period was the latent threat of coups d’état by the armed forces, which still had strong links with the Spanish Civil War and Franco’s regime, a threat that finally became reality in the attempted coup d’état of February 1981). The result of this phase can be described as a procedural framework for the political decentralization that would take place in later legislative periods and would undergo a number of developments based on the principles of unity, autonomy and solidarity. These developments were conditioned by the large number of political autonomies that are neither named nor specifically defined in the Constitution and which differ significantly in national, demographic, cultural, economic and geographical terms.
- 2) *Phase of the autonomous agreements of 1981 and 1992*. This phase was led by the minority UCD governments of 1981-1982 and a Socialist government with an absolute majority. During this phase a series of autonomous agreements were

signed by the two largest parties at the state level (UCD-PSOE in 1981 and PSOE-PP in 1992). In the 1981 agreement, in addition to ratifying the general application of the autonomous process based on the premises of the “pre-autonomies” that had existed before the Constitution, a centralizing interpretation of constitutional development was set in motion through the approval of the notorious LOAPA (Law for the harmonization of the autonomous process), which was later declared largely unconstitutional by the Constitutional Court in 1983. Another important event was the passing of a series of “base laws”. These were rules established by the central government whose content is not constitutionally defined and which affect a number of different matters (universities, civil service, local government, etc). In contrast with the first interpretation of the “base laws” as mere legislative principles, during the 1980s they are interpreted as full legislative agreements that established detailed regulations. One of the consequences of this was the growing conflict due to the judicialization of autonomous development during this decade. This required the intense and determined intervention of the Constitutional Court. Furthermore, during the 1980s, two separate types of AC were created: 1) those which would eventually achieve a higher level of autonomy (in addition to Catalonia and the Basque Country, these AC include Galicia, Andalusia, Navarre, the Canary Islands and the Community of Valencia); 2) the other ten AC, which for the time being would have a lower level of self-government. The 1992 agreement between the PSOE and the PP extended the level of self-government already enjoyed by the seven AC with a higher level of self-government to all the other AC. This was achieved through “transfer laws” and the reform of their respective statutes of autonomy (tendency towards a greater symmetry of the system). The perspective of plurinationality continued to be absent from the constitutional developments of this period. The final outcome of this phase was the establishment of a model of limited political decentralization, which was partly inspired by the German model, with the introduction of the logic of the asymmetries of “differentiating factors” within a potentially symmetrical logic for all the AC.

3) *Phase of parliamentary agreements with the parties of the national minorities (PNV, CiU) (1993-2000)*²². This period is characterized by the devolution of powers to the ten AC which had had a lower level of self-government in the previous period. Politically speaking, it is a period characterized by the fact that the main state-level party did not have an absolute majority (PSOE between 1993 and 1996; PP between 1996 and 2000) which meant that it was forced to seek parliamentary support in the lower chamber of the central parliament (Congress of Deputies) in order to guarantee stable government. In 1998, the armed Basque organization ETA declared a truce which coincided with the so-called “Lizarra Agreement”, which was signed by the nationalist parties of the Basque Country. The possibility that this agreement would put an end to the violence disappeared when attacks resumed a year later. This phase showed that the practical operation of the “Estado de las Autonomías” depended on the temporary nature of the results of the elections to the central parliament and not on stable institutional mechanisms. Furthermore, the precarious defence of the self-government of the AC in relation to the Constitutional Court also became clear due to the fact that the distribution of material powers is to a large extent “deconstitutionalized”²³.

4) *Phase of the absolute majority of the PP (2000-2004)*. During this period, in addition to completing the transfer of the healthcare services to all the AC (2001), the PP government established a series of agreements with the main opposition party (PSOE) regarding a number of state-held powers. Among these issues was the reform of the finance system of the “common policy” AC (all those except the Basque Country and Navarre) and the anti-terrorist policy. Regarding territorial policy, this phase was characterized by attempts by the PP to recentralize a number of powers (education, language, universities, etc) and was expressed through a neo-nationalist Spanish discourse designed to promote uniformity. This caused serious tensions between the central government and the self-governing institutions of the minority nations. In the Basque Country, moreover, the political and social divisions within the country widened and this polarized the 2001 elections to the Basque Parliament. The reform of the “Ley

de Partidos” (Political Party Law) carried out by the central government with the support of the PSOE facilitated the illegalization of Batasuna, a political party which was considered to be the political arm of ETA and had a number of representatives in the Basque Parliament. This illegalization has prevented Batasuna from standing in the 2003 and 2007 municipal elections, in the general election of 2004 and 2008 and in the 2005 elections to the Basque parliament ²⁴. The political proposal known as the “Ibarretxe Plan”, promoted by the Basque government, to initiate a process of “free association” with Spain based on the existing legal framework, was a key factor in the consolidation of the two opposing blocks representing the parties and social organizations of the Basque Country. After this proposal was passed with an absolute majority by the Basque Parliament (December 2004), it was subsequently rejected as unconstitutional by the Spanish Congress, in a single session (March 2005). In Catalonia this period was characterized by a climate of growing political confrontation between the central power and the Catalan institutions. At the end of 2003, the elections to the Catalan Parliament produced a new coalition government between the Socialist Party of Catalonia (PSC), Initiative for Catalonia-Green Party (IC-V) and Republican Left of Catalonia (ERC), after 23 years of CiU governments led by Jordi Pujol.

- 5) *Phase of the relative majority of the PSOE (from 2004 onwards)*. This phase began with the political upheaval caused by the bomb attacks carried out by an Islamic organization (11 March, 2004) and which had an affect on the final result of the general election held three days later. This was won by the Socialist party by a wide margin. This phase is currently developing and is characterized by a policy of parliamentary agreements between the Socialist party and other minority groups (ERC; IU-ICV; CiU, PNV), by the reform of the statutes of a number of AC, and by the announcement of the reform of the finance model of the AC. In March 2008 the Socialist party has confirmed its electoral hegemony but also without obtaining an MP’s outright majority. Regarding the Basque Country, following the Spanish Parliament’s rejection of the Ibarretxe Plan and the elections to the Basque Parliament (April 2005), which resulted in a tie

between the main pro-Basque and pro-Spanish parties, ETA declared a ceasefire (March 2006) which fuelled hopes for the creation of a “peace process” along the lines of the Northern Ireland model. This situation continued until the bomb attack at Madrid Airport (December 2006), which ETA justified by citing the Spanish government’s reluctance to lay the foundations for an effective peace process. Batasuna continues to be an illegal organization in this period. The Supreme Court, by applying the Political Party Law, prevented this organization from presenting candidates through other organizations or parallel coalitions. However, it allowed Acción Nacionalista Vasca (Basque Nationalist Action) (ANV) to partially present its candidature for the 2007 elections. The Supreme Court suspended about half of its candidate lists on the grounds that it is an illegal continuation of Batasuna. This organization recommended its supporters to vote for ANV in those municipalities in which the lists were not suspended, obtaining more than 200 local councillors. In 2008, the Basque government has proposed a new process in the Basque parliament in favour of the “right to decide” of the Basque society which will be probably rejected again by the Spanish institutions (central government and constitutional court).

2.2) The reform of the Statute of Catalonia (2004-2006).

The Catalan statute of autonomy dated from 1979. In February 2004, a commission of the Catalan Parliament resolved to reform it in line with agreements established during the previous legislature with the aim of achieving three basic objectives:

- 1) increase the symbolic and political recognition of Catalonia as a distinct national reality within the Spanish state.
- 2) increase the level of self-government of the Catalan institutions and establish a higher degree of protection in the Constitutional Court in order to counter the regular invasions of powers carried out by the central government.
- 3) improve the deficient and onerous finance system through which Catalonia bore a fiscal deficit following inter-territorial transfers of between 7%-10%, according to several studies.

The Socialist victory in the elections to the central parliament of March 2004 opened what at the time appeared to be a “window of opportunity” to put to the test Zapatero’s promise that he would maintain the text passed by the Catalan Parliament if this proposal had obtained an indisputable majority in this institution. It seemed possible that the imprecisely named “plural Spain” governed by the Socialist Party would explicitly include the recognition of the plurinationality of the state and would proceed to an effective and stable political accommodation of Catalonia with regard to its self-government and financing.

It took 19 months for the political groups of the Catalan Parliament to reach a definitive proposal. It was necessary to achieve a parliamentary majority of two-thirds, which required the affirmative vote of the three parties that comprised the Catalan government (PSC, ERC and ICV-EUiA) and of the deputies of *Convergència i Unió* (CiU), the governing coalition between 1980 and 2003 which was at that time in opposition despite having maintained its status as the principal parliamentary party for having won the most seats. The Catalan Parliament eventually passed the statute reform bill with a wide majority (120 deputies out of 135) in September 2005. It was supported by four of the five parliamentary groups (all except the PP).

According to data from a study carried out by the *Opina* Institute in autumn 2005, 71.4% of Catalans believed that Catalonia needed a new statute; 60.4% thought that Catalonia should be referred to as a nation within the Spanish state; 79.7% demanded that the Catalan language receive the same treatment as the Spanish language; and 83.3% considered that Catalonia showed “a relatively high degree or a very high degree of solidarity” with the rest of Spain. A large majority (75.8%) believed that the new statute would signify an improvement in the life of the Catalans (16.6% were of the opposite opinion). Moreover, according to data from the Centre of Sociological Research (CIS, 2005), 64.7% of respondents thought that it was quite or very necessary to reform the Statute; 75.2% supported the right and duty to know the Catalan language; and 79.7% to know it as well as Spanish. Regarding the state model, 4.5% preferred a state without autonomies, 23.5% with autonomies “like now”, 48% preferred a state in which the autonomies had a greater level of self-government, while 20.7% were in favour of a state that recognized the possibility of independence.

On November 2005 the Spanish Parliament accepted the Catalan proposal for consideration. Representatives of what at the time appeared to be a “quadripartite” alliance (the three parties in the Catalan government plus CiU) jointly defended the Catalan Parliament’s proposal before the Spanish Congress.

The acceptance of the proposal resulted in a series of campaigns against the Statute. These took place during the first half of 2006. The leaders of the PP threatened to organize protests if the term “nation” was used in the Statute, even if it only appeared in the preamble – as was finally the case. In short, all manner of catastrophes were invoked, none of them very original it must be said, as they had already been used while the Catalan Statute was being processed during the Republican period (1932). Zapatero announced that the Statute would be amended so that “the PSOE could accept the text”, thus breaking the promise that he had made during the Catalan electoral campaign of 2003.

Meanwhile, the negotiations with the central government stalled, above all in relation to financial matters. The supposed “quadripartite” alliance increasingly displayed its lack of unity, as much because of the rivalry between CiU and ERC as the dual role of the representatives of the PSC as a Catalan party federated to the PSOE. A number of high-profile members of the Spanish Socialist government and presidents of AC controlled by the Socialist party also rejected the recognition of Catalonia as a nation as expressed in the proposal. Therefore, the two issues that were most forcefully rejected by the Spanish right and part of the left were the question of the recognition of Catalonia as a nation and the proposed finance model.

The second phase of the negotiations was dominated by the agreement between Zapatero and Artur Mas (leader of CiU) in January 2006. These two leaders reached an agreement on the definition of Catalonia and a number of financial questions, above all the policy for short-term state investment in Catalonia and the general nature of Catalan solidarity with the other common regime AC (all except the Basque Country and Navarre).

This agreement resulted in an increase in Catalonia’s income, but without changing the previous model. In other words, it neither removed Catalonia from the common regime

nor brought it closer to the “asymmetrical” regime of Navarre and the Basque Country. Bilaterality was not accepted. In order to further reduce Catalonia’s financial deficit (the official figures of which are unknown because the state has always refused to make them public, but which according to figures supplied by the Catalan administration and several studies is between 7% and 10% of Catalonia’s GDP, a very high figure in comparative political terms), over the next seven years the state promises to invest a similar amount of money to that which Catalonia contributes to the Spanish GDP (18.5%). However, it fails to establish a system by which this figure will be calculated (Catalonia only received between 11% and 12% of state investment up until 2006). In the future, it is anticipated that inter-territorial “solidarity” should not change the income ranking of the AC. This is an issue which politicizes any potential technical calculation formulas, although some of the indicators used will be changed. For example, territorial criteria such as the cost of living and immigration will be taken into account, but these will be compensated by other criteria that will have the opposite effect. It would therefore appear that the new Statute fails to represent any sort of progress towards a proper system of fiscal federalism.

With regard to national recognition, the definition of Catalonia as a nation was removed from the articles of the Statute. In the preamble, which has no strict juridical value, it is stated that the Catalan Parliament “has defined Catalonia as a nation by a wide majority”, but goes on to say that the Constitution recognizes the national reality of Catalonia as a “nationality”. Finally, the Catalan flag, day and anthem are described as “national” in the new text while, on the other hand, the PSOE and the PP removed all reference to the “national” sports teams of Catalonia from the text.

Furthermore, a number of cuts were made in the powers of self-government with respect to those proposed in the Catalan Parliament’s bill (e.g. with regard to immigration), although the perspective of a detailed breakdown of each power with a view to obtaining in principle, although this must be proven in practice, a greater degree of juridical protection in relation to conflicts that are referred to the Constitutional Court. This will hinder the expansive policies carried out in past decades by the central government through a variety of legislative techniques (base laws, organic laws, etc). Judicial power in Catalonia is regulated through a policy of decentralization of state institutions, thus reinforcing the position of the Catalan High Court. However, it will

continue to be unnecessary for judges in Catalonia to know the Catalan language in order to obtain their posts: credit will be given for knowing the Catalan language, but it will not be a requirement. The chapter concerning European and foreign policy was also watered down. Somewhat unclearly, it is stated that Catalonia will be represented in the UNESCO.

In short, of the three basic aspects which motivated the reform of the Statute (national recognition, increase and protection of self-government and the finance system), the first is included in the preamble (without direct normative power). The powers of self-government are expressed in far more detail than in the 1979 Statute, although it does not appear that the practical effects of the Statute will result in a modification of the ambiguous constitutional logic which has given the central government hegemony with regard to the practical division of powers during the previous three decades. As regards financing, Catalonia slightly increases a number of incomes and investments, although the former undergo no changes regarding the basic finance model – which remains at the mercy of decisions taken in the Council for Economic and Political Policy, and calculation formulas are not specified for the latter.

In March 2006 the Statute bill was passed in a plenary session of the constitutional commission of the Spanish Parliament, with the Socialists, CiU and IU-ICV voting in favour and the PP, ERC and EA voting against, although the latter two did so for opposite reasons to the PP. The text was subsequently passed in a plenary session of the Spanish Parliament and by the Senate without modifications and, finally, in referendum by the Catalan electorate in June 2006 (73% voted affirmatively, although the turnout was low at less than 49%). The PP and ERC encouraged voters to vote negatively in the referendum, again for opposite reasons. The Popular Party, as well as the governments of some AC (Aragon, the Balearic Islands, and the Community of Valencia) and the Spanish Ombudsman have appealed to the Constitutional Court against parts of the Catalan Statute. This has resulted in the complete politicization of the magistrates of the Constitutional Court manifested through recusations of some of its members by the political parties. This has delegitimized a judicial institution which had enjoyed considerable prestige since the 1980s and which has seen this prestige wiped out at a stroke. The Court is not expected to rule on the Catalan Statute until the beginning of 2009.

3. Concluding remarks

In this article, I have focused on some key concepts and values displayed by traditional liberal-democratic theories in plurinational contexts. Actually, these concepts and values were developed for societies that were much simpler than those that exist today. Some of those theories include the emancipating “light”, but also the uniformizing “shadows”, associated with the modern process of the Enlightenment and an (at least implicit) acceptance of the processes of state nation-building in democratic liberalism. Ideas such as *plurinationality* (or national pluralism), the *politics of recognition*, or a *policy of liberal and democratic accommodation* of national and cultural minorities are largely absent or underdeveloped in normative traditional theories, in the constitutionalism and the political practices of democracies. At the beginning of the 21st century, the descriptive and normative elements of the national and cultural pluralism of plurinational democracies are questioning the legitimacy of the attempts at homogenization carried out by liberal-democratic states over the past two centuries. The empirical cases contain important normative elements that are usually ignored by the more abstract theories of democracy. In the specific case of Catalonia and the Spanish *Estado de las Autonomías* it is possible to draw the following conclusions following the analytical elements highlighted in the first section and the reform of the Catalan Statute of Autonomy in 2006 analysed in the second section (we will refer in brackets to the number of the previously mentioned analytical elements related with these concluding remarks in the following paragraphs)²⁵:

1) Recognition of national pluralism

- 1) There is still no explicit recognition of the state’s internal pluralism (i.e. its plurinational nature) in its juridical framework. Despite the fact that the Preamble of the 1978 Constitution refers to the “peoples of Spain”, the articles confirm the conception of a single “national” *demos*: the reference to the “Spanish people” in whom “national sovereignty” is deposited (Art. 1); and to

the “indissoluble unity of the Spanish nation” (Art. 2) within which there are a number of “nationalities and regions” which the text neither describes nor mentions explicitly, and which are subsequently subsumed in the homogenizing concept of “autonomous communities”. There is only a monist *demos* included in the constitutional framework in contrast with the plurality of *demoi* present in Spanish society (this lack of political recognition of minority nations in the current Spanish Constitution is related to the analytical elements 1, 3 and 5 presented in the first section).

- 2) The explicit recognition of Catalonia as a distinct national entity is established only in the Preamble of the 2006 Statute of Autonomy (which lacks strict normative power) and is further watered down in the articles by the word “nationality”, a term which has been imitated by other regional autonomous communities in their own statutes (regardless their national characteristics) (2, 3 and 11).
- 3) The Spanish state has failed to embrace its internal linguistic plurality. Languages other than Spanish are used only in the territories in which they are co-official. They are absent from the symbols and institutions of the state (monarchy, central parliament, constitutional court, etc) in contrast with the multilingual practices of other plurinational and multicultural democracies such as Canada, Belgium, Switzerland, New Zealand, Finland, Bolivia, South Africa, etc). Here there is a lack of recognition and accommodation of an important cultural element of the *permanent* national minorities of the state (3, 4, and 6).

II) The political accommodation of national minorities: federalism, decentralization and “shared government” (the case of Catalonia)

- 4) *Degree of federalism.* In contrast to the institutional practices of federations, the political practices of the territorial system depend on the results of the elections to the lower chamber of the central parliament (Congress of Deputies). In other words, the practical operation of the territorial model varies according to whether or not the majority party in the central government wins an absolute majority of seats (establishment or not of parliamentary agreements with the minority territories, primarily Catalonia and the Basque Country). Catalonia’s self-government enjoys little protection in its dealings with the Constitutional

Court due to the vagueness and ambiguities of the text of the Spanish Constitution. The reform of the Catalan Statute of Autonomy (2006) has attempted to reduce this lack of protection by means of a detailed subdivision of the powers of self-government in a detailed list of sub-powers. Whether this change will be effective is an empirical question which only the future can reveal. The autonomous communities (and the national minorities) do not participate in the process of constitutional reform. There is no chamber to represent the territories. There is a lack of “shared government” institutions in the *Estado de las Autonomías*. Intergovernmental relations are few and far between. There is little institutionalization of the aggregation of territorial interests. An attempt has been made to correct this with the creation of the new “bilateral commissions” between the central government and the Catalan government in the new Statute of 2006. There are no clear mechanisms to re-balance the system when it is affected by European rules and policies. European affairs are almost totally in the hands of the central government. European policies In general terms, there is no federal logic (nor Althusian nor Madisonian) in the rules of the institutional game of Spanish democracy regarding self-rule and shared rule. What prevails is a regionalist logic which has evolved towards a symmetrical territorial model in institutional terms (7, 8, 9, 10, and 12).

- 5) *Degree of decentralization.* The ambiguities of the Spanish Constitution permit the central government to encroach on the powers of the AC (base laws, organic laws, “horizontal economic titles”, conditions of “equality”, etc), especially when the central government controls most of the economic resources (as is the case for Catalonia). There is a kind of “perforated self-government” in practically all matters relating to powers of government. Lack of influence of plurinationality and accommodation of the AC in the European political arena. Few opportunities for Catalonia to implement a foreign policy that would allow it to progress towards its recognition and accommodation at the international level (in contrast to the foreign policies of Quebec, the Swiss cantons or the Belgian regions-communities). Broadly speaking, there is a lack of accommodation of the different nation-building processes in this plurinational democracy (11, 13 and 14).

- 6) *The finance system of the AC.* It is the central government that controls the economic resources (with the exception of the almost confederal cases of the Basque Country and Navarre). In Catalonia's case, the fiscal deficit appears to be between 7% and 10% of GDP (we use the word "appears" because successive central governments have refused to publish the official figures of the territorial balance sheets). This is highly unfavourable in the comparative political terms of composite states and attempts have been made to correct it in the new Catalan Statute, although the concepts involved and the method of calculation have not been established. This is likely to be a source of conflict in the future regarding financing and state investment in Catalonia (10 and 11).
- 7) The lack of recognition and political accommodation of the minority nations within the Spanish state display an *stateist* bias and make it likely that the "agonistic" confrontation between the different national groups will continue in the coming years (1 to 14).

Notes

1. Berlin's criticisms of the theoretical and moral prejudices of Western philosophy can be summarized in his well-known statement that from the time of Classical Greece and Christianity until the rationalism of the Enlightenment, this tradition takes the following three assertions for granted: a) that there is a unique rational response to all true questions; b) that there is a way to discover these truths, and c) that all these true responses are compatible among them. Each one of these assertions is questionable. See Berlin 1998.

2. Normative complexity entails both a 'pluralism of values' and a 'plurality of perspectives' (Hobbesian, liberal, democratic, social, multicultural, national, federal, post-materialist, etc). An approach to normative pluralism in liberal democracies through 'nine normative poles', in Requejo 2005, chap.1

3 See Máiz-Requejo 2005, Gagnon-Guibernau-Rocher 2003

4 . See Taylor, 1992. Moments of contrast between theories related to "justice" and "truth" (Plato, Kant, Rawls) and reactive theories associated with "virtue" and the "community" (Aristotle, Hegel, Taylor) are common in the history of political thought. See also Tierney 2004, Gagnon-Tully 2001, Requejo 2001b, Taylor 1992.

⁵ See McGarry 2005, 2003; Guibernau-Hutchinson 2001

⁶ The so-called Liberalism 2 criticizes the notions of individualism, universalism, citizenship or nationalism associated with traditional political liberalism for being normatively biased in favour of majority national groups. Traditional political liberalism displays a "stateist" bias. For arguments of a normative nature, see Norman 2006, Requejo 2005, Máiz-Requejo 2005, Kymlicka 2001b, Parekh 2000, Taylor 1992; for arguments of an empirical nature, see McGarry 2005, 2003, Nagel 2004.

⁷ For a description of minority nations from a normative and empirical perspective, see Requejo 2009.

8 See Kymlicka 2001a, 2001b

9 See Máiz-Requejo 2005, Tully 1994

¹⁰ See Norman 2006, 1996

¹¹ See Berlin 1998, 1976. See also Taylor 2001.

¹² See Berlin 1976. See also Taylor 2001, Requejo 2001a; Parekh 2000

¹³ M. Walzer identifies three "exaggerations" associated with political liberalism: the subject who chooses, confidence in deliberation, and the use of reason in politics. See Walzer 2004.

¹⁴ The federations of Ethiopia, St. Kitts & Nevis and the federation of Serbia and Montenegro (defunct since the referendum in Montenegro in 2006) have been exceptions to this rule. Canada occupies an intermediate position due to the *Opinion* issued by the Supreme Court in the *Secession Reference* (1998).

¹⁵ See Burgess 2006, Watts 2005, Requejo 2005 chap 3 and 4, Amoretti-Bermeo 2004, McGarry 2003, Gagnon-Tully 2001

¹⁶ See *Federalist Papers*, 10, 37, 51 (Madison); 9, 35 (Hamilton); Althusius, *Politica Methodice Digesta* (1614), VIII. See also the "Introduction" in Karmis-Norman 2005 and Hueglin 2003.

¹⁷ The classic juridical formula of Roman law known as "quod omnes tangit" (that which affects everyone should be decided by everyone) establishes, in federal terms, the introduction of a right of veto by the federated collectivities. This is a conception which presents a similar approach to the recently revalued Republican theory of collective negative liberty, which Q. Skinner refers to as a "neo-Roman" conception. See Skinner 1998.

18 A third type of federal theory is rooted in Kant. Probably, the *transcendental dialectics* of the first *Critique* – which prefigures the theorems of the limitations of contemporary logic (Tarski, Gödel, etc) – and Kant’s “historical writings” – which prefigure the ambivalences of human sociability – provide a more suitable theoretical framework for a moral refinement of liberal democracies than that of their “aggregative” or “consensual-deliberative” approaches. This framework is better at incorporating the double normative dimension of equal *respect* and equal *recognition* in the practical political expressions of human dignity. An approach to “cosmopolitan justice”, “patriotism” and the unavoidable *unsocial sociability* of human beings, in Requejo 2008.

19 For a general overview of *de jure* constitutional asymmetries, see Watts 2005. For the Canadian case, see *Asymmetry Series* (IIIGR, Queen’s University, since 2005), especially Laforest 2005.

²⁰ See Nagel 2004

²¹ UCD (Union of the Democratic Centre). This organization played the leading role in the transition towards democracy in Spain. Its president was Adolfo Suárez, a leader who had held office under Franco’s regime.

²² Both the PNV (Basque Nationalist Party) and CiU (Convergència and Unió) have been in power in their respective AC; between 1980 and 2003 in the case of CiU, and uninterruptedly since 1980 until the present, in the case of the PNV, through a variety of different coalitions.

²³ In Catalonia, the concept of “shared sovereignty” is sometimes based historically on the Spanish territories that existed prior to the centralization process carried out by the Bourbon kings from the 18th century onwards, following the international War of the Spanish Succession in which Catalonia was defeated (1714) by Franco-Castilian troops, once England had retired from the war.

²⁴ In the 2005 elections to the Basque parliament, Batasuna recommended its supporters to vote for the previously marginal “Partido Comunista de las Tierras Vascas” (Communist Party of the Basque Lands), which obtained around 150,000 votes and 9 deputies.

²⁵ I have developed the link between the theoretical review of political liberalism from a value pluralist perspective and the plurinational Spanish empirical case in Requejo 2005, chaps 5 and 6.

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