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# THEORIES OF FEDERALISM

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## THE REVIVAL OF FEDERALISM IN NORMATIVE POLITICAL THEORY

*Dimitrios Karmis and Wayne Norman*

In its most general sense, federalism is an arrangement in which two or more self-governing communities share the same political space. Citizens of federal states (or superstates, as in the case of the European Union) are members of both their subunit (sometimes called a province, canton, land or, confusingly, a state) and the larger federation as a whole. For a number of largely unrelated reasons, interest in both the theory and practice of federalism has exploded in the years following the collapse of Communism in Europe.

Of course, the implosion of Communist rule in the technically federalist Soviet Union and Yugoslavia led to the creation of new, more democratic federal states in Russia, Bosnia, Serbia-Montenegro, as well as federal-like arrangements in other successor states like Macedonia and the Ukraine, not to mention the short-lived post-Communist federation in Czechoslovakia. The 1990s also saw federalization in Belgium and Spain; attempts to radically reform the federal constitutions in Canada, Switzerland, and Australia; and more recently discussions have begun in earnest about the potential of federalism for the United Kingdom and Italy, and even (somewhat imprudently) for Afghanistan and Iraq. Throughout this period there have also been significant steps toward European integration—both in terms of “deepening” the nature of union, and in “broadening” the membership by admitting new member states—and this has led to open debates about the possibility of a European federation.<sup>1</sup>

These have also been very exciting times for the *theory* of federalism. For one thing, all of the political developments just mentioned have gone hand-in-hand with debates about why and how these federal reforms should (or should not) take place. Other motivations for political theorists to explore federalism, often for the first time, derive from the tremendous amount of attention they have paid in recent years to what we might call the challenges of citizenship in diverse societies.<sup>2</sup> Many political leaders and political theorists have seen federal arrangements as one of the best options available to reconcile such apparently paradoxical trends as the expansion of regional trading blocks, globalization, the reemergence of minority-nationalist

movements, and the multiplication of identity-based demands. At the very least, federalism is seen as an attractive alternative to secession in multinational states, not to mention to the interethnic violence that sometimes accompanies secessionist movements. In political theory, the federal idea has been increasingly visible in the major debates about cultural diversity, nationalism, liberalism, citizenship, justice, and stability. More specifically, theoretical discussions have focused on overlapping themes such as federalism and nationalism, federal citizenship, federalism and identities, federalism and democracy, asymmetrical federalism and justice, and federalism and secession.

All of this interest in the theory and practice of federalism contrasts strikingly with the much more muted concern for these issues from the mid-1960s to the late 1980s. During that period European integration proceeded at a glacial pace, federal constitutions in newly liberated former colonies in the developing world disappeared almost as soon as they had been ratified, and political theorists generally wrote as if the frontiers of their discipline coincided with those of the centralized nation-state.

Despite the revival of interest recently, there has still been surprisingly little published about the theory of federalism from a primarily *normative* perspective; that is, from the perspective of evaluating and recommending institutions, and not merely explaining or comparing them. There are, of course, a tremendous number of recent volumes—especially collections of readings—on federalism; but these tend to focus on historical and comparative issues, or on normative concerns specific to a particular federal state.<sup>3</sup> Apart from the book you are currently reading, there exists no anthology of the classics of federal theory. There have been literally hundreds of texts collecting classic readings in the history of thought about the unitary nation-state; but not one that follows the parallel history of thought about the diverse, federal state (and this despite the fact that several A-list philosophers, such as Rousseau, Kant, and J.S. Mill, contributed to both traditions). There are some excellent recent books showing a serious preoccupation with the history of federal ideas. But as secondary sources, these studies necessarily present the history of federalist theory through their authors' particular intellectual prisms. And they tend to concentrate either on one type of federal theory or on the theories specific to a few authors or to a geographical area.<sup>4</sup>

This volume is, to the best of our knowledge, the first-ever anthology of theories of federalism with readings from the Renaissance to the present day. The emphasis throughout is on normative arguments: on the advantages or disadvantages of federal and confederal arrangements compared to those of unitary states; and on the relative merits of various proposals to improve particular federations or confederations. Because of the pragmatic or consequentialist<sup>5</sup> structure of many of these arguments, most of the readings also develop empirical arguments drawing on the full range of political science subfields: from political sociology, political economy, and constitutional studies, to comparative politics and international relations. There are also readings, both contemporary and historical, that attempt to clarify conceptual issues.

This general introduction is divided into four parts. In part I, we provide a brief overview of the conceptual history of the key components of the language of federalism. In part II, we argue in favor of a cautious approach concerning the potential of federalism in divided societies. As noted already, federalism has increasingly been presented as an institutional panacea in states characterized by the plurality of identities. The rationale behind this claim is obvious: federalism is a pluralist political solution that aims to reconcile divergent but overlapping identities; so it may offer hope for societies characterized by such pluralism.<sup>6</sup> While we agree that federalism is *potentially* a pluralist political theory, historically speaking, it has also easily supported antipluralist or “monistic” political projects. An awareness of these monistic tendencies of the federal tradition therefore is a prerequisite to any successful attempt at building a pluralist theory of federalism. In part III of this introduction we propose some basic principles of multinational federalism. Finally, in part IV, we briefly introduce the structure of the volume.

## 1. THE LANGUAGE OF FEDERALISM IN THE EIGHTEENTH AND NINETEENTH CENTURIES

Historical texts can never be accurately understood without some knowledge of the contexts in which they were written. In the case of pre-twentieth-century writings on federalism, two contextual and closely interrelated terminological points seem particularly germane. First, the passage from the American Articles of Confederation of 1781 to the innovative Constitution of 1787 is the critical event that led to the now conventional distinction between confederation and federation.<sup>7</sup> Second, eighteenth- and nineteenth-century writings interchangeably used the terms federation and confederation.<sup>8</sup> This latter clarification needs to be addressed first.

We now typically think of confederations as much “looser” unions than federations. The defining nature of this “looseness” has been characterized in various ways. Some theorists will be inclined to call an arrangement a “confederation” instead of a “federation” if, for example, the subunits (or member states) have a right to veto all changes to the constitution or basic treaty, if they can exit unilaterally, or if they are clearly the primary locus of their citizens' identity and political loyalty. However, as Ronald Watts suggests, the key characteristic of confederations is that their “common government is dependent upon the constituent governments, being composed of delegates from the constituent governments.”<sup>9</sup> By most contemporary definitions, the European Union is mostly a confederation, while Argentina, Canada, India, Nigeria, and the United States of America are clear examples of federations. The distinction has not always been seen this way, and it is important to take note of the evolution of these terms when we are reading texts from different historical periods.

“Confederation,” “federation,” and most of the other key components of the contemporary version of the language of federalism are derived from the Latin *foedus*, which means an alliance among individuals or collectivities

aiming at the promotion of both specific and common interests.<sup>10</sup> English, French, and American dictionaries of the eighteenth and nineteenth century provide evidence that confederation and federation were initially used as synonyms. According to Martin Diamond, in eighteenth- and early nineteenth-century English dictionaries, “federalism meant [. . .] exactly what we mean now by confederalism: ‘a sort of association or league of sovereign states’ ”.<sup>11</sup> The main French dictionaries of the time give similar results. In the *Dictionnaire de l’Académie française*, though the word *fédération* appeared later than *confédération*, both terms were defined in exactly the same way. For example, the 1798 edition defines *fédération* in the following way: “Alliance, union. See confederation”<sup>12</sup> (our translation). In the *Dictionnaire de Trévoux*, both terms refer to loose alliances of independent states whose main purpose was military and whose common endeavors rested upon the good faith of their members.<sup>13</sup> Definitions were not significantly different in nineteenth-century French dictionaries. The only major difference is with the inclusion of a reference to the Jacobin critique of federalism.<sup>14</sup> Even the first American dictionary defines both confederation and federation as a “compact” or “league” between “states or nations.” Moreover, in both cases, the United States of America is given as an example.<sup>15</sup>

The passage from the American Articles of Confederation of 1781 to the innovative Constitution of 1787 is the key event that led to the now conventional distinction between confederation and federation. In fact, the *conceptual* distinction between these two types of political systems was established much earlier than the *terminological* distinction. As early as 1787–1788, Alexander Hamilton, John Jay, and James Madison were able to clearly identify the distinctive characteristics of the new proposed constitution. In their newspaper commentaries to bring about the ratification of the constitution in the state of New York, they contrasted that constitution with both the Articles of Confederation and what they called a “national Constitution.”<sup>16</sup> In *Federalist* XXXIX, the authors argue that the proposed constitution is neither a “confederacy of sovereign States,” like the Articles, nor a pure “consolidation of the States.” According to them, it “is, in strictness, neither a national nor a federal Constitution, but a composition of both” (here we see them using “federal” and “confederal” interchangeably to mean what we now mean by “confederal”).<sup>17</sup> For example, they argue that the constitution is federal in its foundation, but that it creates a national government as it relates to the operation of its powers. On the one hand, the constitution is federal in its foundation because its ratification “is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. [. . .] Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act.”<sup>18</sup> On the other hand, the constitution creates a national government in the sense that the powers of that government operate “on the individual citizens composing the nation” rather than “the political bodies composing the confederacy.”<sup>19</sup>

Hamilton, Jay, and Madison devoted much effort to emphasizing the defects of previous confederations. In their opinion, creating a government of the Union of citizens—rather than a federal government designed merely to represent the interests of the states—was essential to better protect order, security, and property. The American Articles of Confederation of 1781 had not created such a government. Such words as “federal government” or “central government” did not appear in the Articles, which made clear that the confederation had no existence when the states were not formally meeting together through what was called the “united states in Congress assembled” (note that “united states” is in lower case letters).<sup>20</sup> According to John Adams, that Congress was “not a legislative assembly, nor a representative assembly but only a diplomatic assembly,” each of the states exercising the sort of powers associated with an independent government.<sup>21</sup> As Tocqueville noted a few decades later, the Constitution of 1787 made a major innovation by creating a government “served by its own civil and military officers, by its own army, and its own courts of justice.”<sup>22</sup> What is important to note here is that the framers of the Constitution of 1787 decided to continue to use the older federal vocabulary even though they knew that they had radically reformed the political system of the United States. Most significantly, they decided to use the term “federal government” rather than “national government” or “central government.”<sup>23</sup> Whether or not they kept using the language of federalism for political reasons (i.e., to avoid alienating those happier with the previous arrangement), the framers had introduced a conceptual distinction between two different types of federal arrangements<sup>24</sup> that would later develop into the current distinction between federation and confederation.

These two clarifications on the evolution of the language of federalism are important for several reasons. First, they help us to avoid basic mistakes while reading pre-twentieth-century writings on federalism. Second, they partially explain why the American model of federalism has so often been used as an example by other countries and by scholars: it is the original version of a radically new type of federal system. And third, they inform us about a major change in the federal tradition. From the late 1780s on, the federal tradition evolved into two very different—and often opposed—schools or traditions of political thought: one dominated by the evolving American model; and the other continuing the older, and increasingly neglected, confederalist tradition. In fact, for Thomas Hueglin, it would be more accurate to talk about two traditions. According to him, *The Federalist* “was a deliberate and radical break with that tradition [the federal tradition constituted by previous confederations].”<sup>25</sup> While it is not obvious that Hamilton, Jay, and Madison broke so radically with the federal tradition of the time,<sup>26</sup> Hueglin rightly points out that *The Federalist* misinterpreted Montesquieu.<sup>27</sup> More generally, he rightly implies that the gradual evolution and domination of the American model of federalism has led to the neglect of important ideas of the (original) federal tradition.<sup>28</sup>

## 2. A CAUTIOUS APPROACH TO THE PLURALISM OF THE FEDERAL TRADITION

What reasons are there for political communities to federate? Why might the citizens in an independent state want to join with other states in a confederation or a federation? Why might those in a unitary state (say France or Japan) want to loosen the reigns of the central government and create provincial governments with sovereign rights to govern in certain policy jurisdictions? Why should the members of self-governing political communities within federations (such as Quebec within Canada) wish to remain in the federation rather than secede and form their own unitary state? The answers to questions like these form the core of a normative theory of federalism.

Throughout much of the history of federalist thought—sometimes explicitly, sometimes implicitly—the answer to the basic question “Why federate?” has been because it gives a self-governing political community the best of both worlds: the advantages of being a relatively small, homogeneous polity, along with the advantages of being part of a stronger, more secure larger state or alliance; while at the same time avoiding some of the worst disadvantages of being either too small or too large. For much of modern history, the advantages of being part of a larger state or empire were primarily military, although economic arguments have always been important. The advantages of small communities have generally been seen in terms of more effective democratic or republican self-government. As we shall see, this “best of big, best of small” argument was an important one for theorists as different as Montesquieu and the authors of *The Federalist* in the eighteenth century, to Tocqueville and Mill in the nineteenth century, and even to the founders of what would be called the European Union in the twentieth century.

More recently, as we hinted at the outset, a new twist on this old argument pattern has become one of the principal rationales for creating, reforming, or reinforcing federations. The new argument concerns the way in which federal arrangements can facilitate multiple and overlapping cultural identities. In these terms, a small, relatively homogeneous cultural or religious community can preserve and promote much of its unique identity within a federal sub-unit, while nevertheless enjoying the advantages of being part of a larger, more economically powerful state or superstate. And given the fact that ethno-cultural and ethno-religious groups tend to overlap in any given territory, federalism holds out the possibility that these different communities can share states in which members have multiple identities and affiliations and look to different orders of government to assure the flourishing of their identities and to facilitate peaceful relations between groups. This, at any rate, is the theoretical promise. One can look to a few examples where this works fairly well in practice (Switzerland is everyone’s favorite example), as well as more contested examples that may show the dangers of either (a) attempting to reconcile different cultural communities within a federal arrangement, or (b) of not doing it correctly. Different interpretations of what might have happened in a democratic Yugoslavia, as well as what did happen when the

Yugoslav federation dissolved, are used by both supporters and critics of the new federalist solution to the challenges of cultural pluralism.

We would now like to raise a certain “scholarly caution” about the most enthusiastic theories of federal pluralism. This caution is based on our reading of the history of federalist thought, which, as it turns out, has been less receptive to pluralism than is often supposed. To put it bluntly, there have been a lot more “monistic” than “pluralistic” theories of federalism in the history of thought. Such a monistic tendency characterizes not only Hamilton, Jay, Madison, and their followers. It also characterizes authors that better fit Hueglin’s “countertradition” of federalism,<sup>29</sup> namely John Calhoun and Pierre-Joseph Proudhon. At least part of the explanation for this tendency, of course, is that problems of identity and cultural pluralism have never been as prominent in any aspect of political theory as they have been in recent years. So in adapting older traditions of federalist theory to deal with the fact of identity pluralism in contemporary societies, we must recognize that we are often trying to get these political arrangements to do things they were not, in some sense, originally designed to do.

Pluralism is a highly contested concept in need of clarification. In its descriptive meaning, pluralism refers to the fact that contemporary states are characterized by a growing plurality and diversity of collective identities (identities based on culture, ethnicity, language, class, gender, religion, sexual orientation, disabilities, profession, hobbies, and so on) and by a growing political expression of that plurality and diversity (new human rights, group rights, advocacy groups, political parties, NGOs, media and communication strategies, etc.). A pluralist political theory is based on a view of citizenship that advocates sensitivity not only to a plurality of monistic identities, but also to identities that are inherently plural, that is to say, shared identities. To take a tragic example, a pluralist political theorist recommending new arrangements for Yugoslavia when the Communist regime fell would have advocated something that took seriously not only the identities of citizens who identified themselves primarily as Serbs or Croats, say, but also for the many who identified themselves as simultaneously part Serb, part Croat, and part Yugoslav (and so on for all of the other overlapping identities in that former state).

One might argue that the issue of the plurality and diversity of political identities is inherent to the language of federalism. The very fact of an alliance among collectivities has two basic implications. First, citizens come to belong formally to two collectivities: they continue to be part of one of the constitutive entities, while becoming members of the alliance itself. Second, they *might* come to supplement their primary sense of belonging by an allegiance to the alliance. In other words, they might develop a dual sense of belonging. In the case of an alliance of alliances—what Proudhon called a “confederation of confederations”<sup>30</sup>—citizens might develop an even more plural or shared sense of belonging. So what we call a federal identity may be defined as a dual or plural identity that both generates and reflects the duality or plurality of political levels characteristic of federal systems.<sup>31</sup>

Most political theories in the modern era have been monistic, not pluralistic in this sense. The modern domination of monistic conceptions of identity is deeply rooted in the Enlightenment's rigid opposition between patriotism and nationalism, on the one hand,<sup>32</sup> and cosmopolitanism, on the other. For example, although they do not stand on the same side of the barricade, writers like Rousseau and Voltaire both implied that men could not love their *patrie* (roughly, their nation) and humankind at the same time. Rousseau could not accept the possibility of a genuine pluralistic, cosmopolitan engagement. For him, "it seems that the feeling for humanity is dissipated and weakened by being extended over the whole Earth [. . .]. Interest and commiseration must be limited and compressed in some way to make them active."<sup>33</sup> Those who pretend to be cosmopolitan, Rousseau speculated, simply "feign to love everybody so that they have the right to love no one."<sup>34</sup> Voltaire sarcastically agreed with Rousseau on the exclusive nature of patriotism: "it is sad that in order to be a good patriot, one has often to be the enemy of mankind."<sup>35</sup> But he "was certain that the idea of *nation*, as well as that of *patrie*, would be erased from the repertoire of the 'men of reason,' who believed in cosmopolitanism."<sup>36</sup> For various reasons, many classical theorists of federalism did not break with this monistic language of identity: you had to identify either with your own group, or with all of humankind. There was no room in this picture for diverse, shifting, overlapping affiliations and identities.

The issue of identity in federal systems gained importance with the advent of the American model of 1787. With the establishment of a real central government, the new constitution institutionalized two potentially strong political poles of allegiance.<sup>37</sup> Despite interpretive disagreements, early leading theorists of this form of federal system, like the authors of *The Federalist* and Tocqueville, generally agreed on its main innovative features: it created both a federal government with an unmediated executive capacity to intervene in its own spheres of jurisdiction and distinct citizenship rights and obligations attached to that level of government. However, these theorists did not support the idea of a dual identity. Two reasons may explain their monism. First of all, they often depicted the United States as the repository of "one nation" or "one united people"—from which were excluded Blacks and Aboriginal peoples—because of its low level of linguistic, ethnic, and cultural diversity.<sup>38</sup> In other words, we may think that they did not seriously consider the idea of a dual identity because they did not conceive the United States as a multinational or multiethnic federation. Second, the authors of *The Federalist* and, later, Tocqueville shared common assumptions about the greater strength of allegiances to states, and this led them to focus almost exclusively on the reinforcement of the federal government as a pole of allegiance. According to Publius (the collective pseudonym of Madison, Hamilton, and Jay), "it is a known fact in human nature that its affections are commonly weak in proportion to the distance or diffusiveness of the object"<sup>39</sup> and "many considerations [. . .] seem to place it beyond doubt that the first and most natural attachment of the people will be to the governments of their respective

States."<sup>40</sup> For Tocqueville, "the Union is a vast body, which presents no definite object to patriotic feeling."<sup>41</sup> To be sure, Publius and Tocqueville did not go as far as Rousseau and Voltaire in dismissing the possibility of a dual allegiance.<sup>42</sup> But the important fact is that strong assumptions about the "natural" attraction to one pole of allegiance led them to consider the two poles as naturally and continuously conflicting with each other—one's gain is always at the expense of the other—and prevented them from a serious exploration of the features and possibilities of a dual identity. Such a "competitive" conception of dual identity may easily amount to negating the viability of duality.<sup>43</sup>

Monistic conceptions of very different sorts are even more apparent in the great nineteenth-century theorists of federalism, John Calhoun, John Stuart Mill, and Pierre-Joseph Proudhon. All of them recognized the problems that arise from diversity, but in different ways they were more interested in controlling diversity than in enabling it to flourish, so to speak. According to the antebellum Southern statesman, Calhoun, "the great diversity of language, pursuits, situation and complexion" are the source of the formation of "great many communities." "Between these there is the same tendency to conflict [. . .] as between men individually; and even stronger—because the sympathetic or social feelings are not so strong between different communities, as between individuals of the same community. [. . .] Self-preservation is the supreme law, as well with communities as with individuals."<sup>44</sup> Calhoun's interpretation of constitutionalism, and of the American Constitution in particular, aimed at giving to the major collective interests of each country (excluding noncitizens such as Blacks) the "right of self-protection."<sup>45</sup> Being a Southerner supporting slavery, he focused most of his attention on the protection of the economic interests of the South and left little room for shared allegiances in his interpretation of the American Constitution.

Mill famously believed that "[f]ree institutions are next to impossible in a country made up of different nationalities." He argued that "[a]mong a people without fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the working of representative government, cannot exist. The influences which form opinions and decide political acts are different in different sections of the country."<sup>46</sup> Accordingly, he recommended either mono-national states, with the assimilation of national minorities like the Breton, the French Basques, and the Welsh,<sup>47</sup> or federations between culturally similar populations that are likely to behave as one nation.<sup>48</sup>

The French utopian thinker, Proudhon, is often thought of as one of the pioneers of a more pluralistic approach to federalism and to political theory more generally (sometimes referred to as "integral federalism"). After all, his federalism was largely a response to the Jacobin homogenizing principles of "nationality" and "unity" conceived of as the source of an absolute, indivisible and immutable power over large and artificial political entities like the nation-state.<sup>49</sup> So, while in some passages Proudhon may speak of the federal principle as the way to a world in which "nationalities will cease to be



exclusive” and individuals will be allowed “to become citizens of several *patries*” on the sole conditions of residence and will,<sup>50</sup> his obsessive fear of Jacobinism led him to argue that geographical, ethnographic, and historical criteria make *cities* the “true” nations<sup>51</sup> and that the federal government must be a “subordinate function” without executive capacity.<sup>52</sup> In sum, Proudhon ends up supporting something very close to the pre-1787 model of (con)federalism and this prevents him from thinking about the federation itself as an additional pole of allegiance.

Much of the twentieth century was equally unkind to the idea of pluralistic federalism. Two developments in the aftermath of the First World War tarnished it. On the one hand, the League of Nations was founded on both pluralistic and cosmopolitan ideals; but it came to be seen as weak and ineffectual, and thus carried its founding values down with it. On the other hand, the dominant ideal of the interwar period was Wilson’s call for national self-determination and the breaking up of the multinational European empires—an antipluralist vision if ever there was one. But nationalism for both majorities and minorities in states would become intellectually disresponsible for decades after its association with Nazism and Fascism. This led some in Europe over to Voltaire’s side, if you will, with the dream of constructing a postnational European cosmopolitan patriotism that would leave particularistic identities (and hatreds) behind. At the same time, in the first postwar decades, most Western social scientists and technocrats became convinced that ethnocultural identities would soon disappear in the institutionally complete nation-state; so they saw little future in designing federative arrangements to keep them on life support.

By the last decade of the twentieth century, however, it was clear that particularistic, minority-cultural identities were not going to disappear. Quite the reverse. Long-standing national minorities like the Scots, the Quebecois, the Kosovars, Aboriginal peoples, and so on, seemed more prepared than ever to assert their rights to some form of national self-determination, even if within the bounds of more pluralistic states. Most Western states also found themselves hosts to new and increasingly prominent communities of immigrant minority groups seeking both equal citizenship rights and special accommodations. Meeting these demands would require innovations in both pluralistic theories and institutions. Also noteworthy is that the last two decades or so have seen the near-realization of the dream of the postwar founders of the European Union, the most significant confederation of our time. But this realization came not because of the more monistic cosmopolitan vision of some of the founders, but by political actors, commentators, theorists, and citizens coming to grips with the enormous complexities of overlapping plural identities.

In sum, although recent work on federalism has been marked by a growing tendency to recognize the plurality of allegiances that must be accommodated in a viable multinational federation,<sup>53</sup> students of federalism should keep in mind that both political thought, in general, and much of the federal tradition of political thought in particular are still dominated by monistic

conceptions of identity.<sup>54</sup> In the next section, we attempt to elaborate some basic principles for a pluralist theory of multinational federalism.

### 3. NATIONAL SELF-DETERMINATION WITHIN A MULTINATIONAL FEDERATION

In the world today there are some 5,000–8,000 ethnocultural groups. The vast majority of these groups are minorities within their states, and distinguish themselves from the majority or other minorities by language, dialect, religion, ethnicity, or race. Perhaps one-tenth of these groups can be said to have developed a *national* or *quasi-national* identity, which means they do not think of themselves merely as ethnically distinct, they feel that they constitute a nation or a people with a right to self-determination. Even taking this relatively conservative estimate, there are about three or four “nations” for every state in the world. Some states, like Russia or India, have dozens of these so-called stateless nations. It is almost inconceivable that all of these national communities could be given a state of their own, not least because most of these peoples are intertwined geographically, and even within families, the way the peoples of the former Yugoslavia were; and nobody wants to envisage a world in which that tragedy is played out on a global scale. The most reasonable alternative for groups of this sort—that is, groups with national or quasi-national identities, who are typically living in a historic homeland that has been incorporated into a larger state—is some sort of self-determination and autonomy within a federal system.

In this section we survey some of the ways in which federal arrangements can serve as part of the solution to the very special kind of pluralism that arises in states with territorially based national minorities. Federalism should not be conceived of as the *entire* solution to the problems of these groups (e.g., in addition to the rights to autonomy that federal subunits might enjoy, it is still important to protect the individual citizenship rights of the members of vulnerable groups). Nor is federalism likely to provide much hope at all for minority groups that are not territorially concentrated and are therefore unable to control a federal subunit.

The big question for a normative theory of multinational federalism is, how do we determine the just, or otherwise “appropriate,” type and degree of self-determination for national minorities within a federal state? This very general question gives rise to numerous more specific queries. We can ask about whether multinational federations (like Canada or India) need different principles and arrangements than uninational federations (like Australia or Argentina). For example, do subunits controlled by national minority groups (like Quebec), have rights to special arrangements that subunits controlled by a national majority group (like Ontario) do not have? And in cases where a national minority group does enjoy special rights and arrangements within a particular federal system, does it follow that it would be unreasonable or illegitimate for it to demand complete self-determination in the form of secession?

Before considering what *special* arrangements for national minorities might be justified in a federal system, we must clarify what types of arrangements must be made in *any* federal constitution. First of all, federal constitutions have to take stands on all of the issues treated by the constitutions of unitary states: from the division of “branches” of government (legislative, executive, and judiciary) and the design of the electoral system, to the possible entrenchment of a bill of rights. But in addition every federal system will be largely defined by its stand on the following basic issues:

- (a) *The “Division of Powers”*: How are legislative and administrative powers and jurisdictions divided between the central and subunit governments? Some powers will be handled exclusively by the central government (defence and immigration are typical); some are exclusively handled by the subunit governments (often social services); and many are shared between the two orders of government (often transportation and education).
- (b) *Representation in Central Institutions*: How are the citizens, minority groups, and subunits represented in important institutions of the federal state such as the parliament, the executive, the supreme or constitutional court, the central bank, the civil service, the military, and so on? Often one chamber of a bicameral parliament will represent equal citizens of the state, and the other will represent the subunits or their governments.<sup>55</sup> In some cases, minorities have a constitutional guarantee of a certain minimum representation in certain institutions. In other cases there are long-standing conventions, or recent “affirmative action” programs, to assure the adequate representation of certain groups. (And of course, in many multinational federations national minorities are actually underrepresented in federal institutions.)
- (c) *The Integration of Markets and Legal Systems*: A number of federations include subunits with distinct legal systems and traditions (e.g., Louisiana and Quebec both have French-based civil law, and some Indian states use Muslim family law), and these must be integrated into the larger system of courts and appeals. Subunit governments will typically have numerous powers to regulate commerce and trade, so federal governments are generally given powers to maintain a relatively free market across the country.
- (d) *The Amending Formula and Provisions for Secession*: The question of the subunits’ role in amending (or vetoing amendments to) the constitution goes to the heart of the very idea of federalism. Many would say that an arrangement is not truly federal if it can be legally altered without the consent of the subunits. Similarly, if the subunits (or member states) are able to alter the constitution without the consent of the central government, then this is probably a confederation and not a federation. Most federal constitutions are difficult to amend, because their amending formulas require all or most of the subunits to ratify any significant constitutional change, along with a majority or a supermajority of the federal

parliament. Very few federations have an explicit secession procedure. The former Soviet Union had one, at least on paper. And more recently, the Supreme Court of Canada has issued an *Opinion* that derives some vague rules for a legal secession from other long-standing constitutional principles, including its interpretation of the principle of federalism.<sup>56</sup>

Federal principles, and normative theories of federation more generally, guide arguments for and against specific arrangements of these four types. Of course, we should expect every federation to have different arrangements to suit its particular situation and traditions, just as all states have differing parliamentary or presidential systems, health-care or education systems, and so on. A theory of pluralistic or multinational federation will attempt to justify principles that citizens from both minority and majority groups should use in debates for constitutional reform. So even if we expect each federation to have somewhat different arrangements, it is possible that we can identify some general principles that could be used by citizens engaged in political debates in a wide variety of countries.

Now whether a federation is uninationally or multinationally, debates about the original design or the reform of any one of these federal arrangements tend to be highly contentious. In multinational federations each of these four types of arrangements takes on special significance, since collectively they demarcate the realm of self-determination for the minority-national community or communities.

Consider, for example, the question of the division of powers, which might look at first glance like a technocratic issue about which level of government can most effectively handle which jurisdictions. For minority nationalists, however, the division of powers determines much of the level of autonomy for their group: over which aspects of their collective life they will have exclusive control, and over which aspects they will be subject to the control of “outsiders” in the central government. Roughly speaking, the greater the list of important powers that are left to the subunits, the more autonomy or “self-determination” for the subunits.

National minority groups who dominate one or more of the subunits in a federation will also have special concerns when it comes to the representation of subunits in the central or federal institutions. In order to assure that their voices are heard and respected at the federal level, minorities are often given enhanced representation in federal institutions. They may also, in certain circumstances, be granted rights to veto some kinds of majority decisions in the federal parliament. For a clear illustration of this kind of special representation, one could imagine a group that makes up 15 percent of the population of a federation but is guaranteed 25 percent of the seats in the second chamber of parliament (this would be the enhanced representation, and it is similar in some ways to the enhanced representation that small states get in the U.S. Senate). In addition, imagine that there is a requirement that all successful legislation receives not merely a majority vote in the parliament, but also a majority of the votes from the members of parliament of this minority or its subunit

(this would be the veto). Part of the principled rationale for arrangements like this comes straight from democratic theory. Many democratic theorists have worried about problems of permanent minorities who might be “tyrannized” by permanent majorities. Such mechanisms help prevent this kind of abuse of democratic procedures. But, at least from the minorities’ point of view, this is not the only normative justification for special representation in central decision-making. A strong role for the minority group in the centre is also part and parcel of the basic desire for self-determination: it diminishes the likelihood that the federal government will use its constitutionally sovereign powers to oppress or subjugate the national minority.

Similar motivations underpin the importance minorities place on the procedures for amending the constitution. If subunits controlled by minorities are given a veto over constitutional changes, or if all amendments must be ratified by a supermajority of the subunits, then it will be less likely that fundamental aspects of the constitution, such as the division of powers, can be changed against the will of the minorities or the subunits more generally. This enhances their sense of self-determination.

In the preceding examples we have illustrated the normative rationale for adopting special federal arrangements to accommodate national minorities in terms of either (a) the legitimate desire of these groups for self-determination, or (b) traditional democratic responses to the “tyranny of the majority.” Other values and principles also come into play within the political cultures and constitutional traditions of different federations. In recent years, much emphasis has been placed on the importance of clear constitutional *recognition* of minority groups’ status and equality within the federation. The form of recognition demanded by a group varies considerably across federations and across time, and may include any of the following: explicit recognition as a “founding people,” “constituent nation,” or “distinct society” in the constitution; inclusion of the minority nation’s symbols within the symbols of the federal state (e.g., its flag, coat of arms, or name); a special status, or a status equal to that of the majority group, for the minority’s language, alphabet, or religion; an official presence within certain international organizations to which the federation belongs (e.g., the United Nations, the Commonwealth, la Francophonie, NAFTA, the EU, FIFA, the IOC); a special arrangement for the division of powers, representation, the legal system, the constitutional amending formula, a secession clause, and so on, that is, an arrangement not shared by subunits controlled by the national majority. The term “asymmetrical federalism” is used to describe federal systems that incorporate some of these forms of recognition—particularly the last one, where a subunit controlled by a minority group is given a different division of powers, and so on. The theoretical defense or critique of asymmetrical federalism has been one of the major preoccupations of political theorists of federalism over the past two decades (see, e.g., the readings by Watts, Stepan, Kymlicka, and Requejo in this volume).

Finally, it is important to mention that a comprehensive theory of multinational federalism must do more than justify (or criticize) special

accommodations for the self-determination of national minorities within a federal system. It must also justify (or criticize) the aspects of federal design or practice that aim to bind all of the federal partners (minorities, majorities, subunits, the central government, etc.) to the particular federal state. Again, basic decisions about the division of powers, representation, integrated legal systems and markets, and the constitutional amending formula and secession procedure (or lack thereof) come into play here. If a particular federal arrangement is not just to be a long and bitter waiting station for minority groups hoping eventually to achieve full independence, then it will be important for the system to nurture a healthy sense of identity and loyalty of all citizens to both their subunit and the federal state.

\* \* \*

This book is divided into five parts. Although the readings are grouped chronologically, history has also determined that each of the periods presented different challenges to theorists, so each of the parts also has a basic theme with a certain amount of debate taking place between the authors. Each part starts with an introduction that provides the historical context, summarizes the main issues of debates, and briefly presents each selection.

*Part I* is devoted to the birth of federal theory. It offers selections from two pioneering theorists of federalism, Althusius and Pufendorf, who came to challenge the rise of centralized modern states in the seventeenth century. The Enlightenment debate over the normative potential of international federalism is covered in *Part II*, with extracts from Montesquieu, Rousseau, and Kant. *Part III* introduces the “American invention” of a new form of federal system in 1787–1789 as well as the nineteenth-century debates over rival types of federalism. It includes selections from the *Federalist*, Calhoun, Tocqueville, Mill, and Proudhon. *Part IV* goes through the mid-twentieth century debate between theorists who were either highly critical of, or highly enthusiastic about, federalism (with Harold Laski and Franz Neumann, in the former camp, and Altiero Spinelli, Robert Schuman, and Pierre Elliott Trudeau in the latter). Finally, in *Part V*, selections from Ronald Watts, Alfred Stepan, Ferran Requejo, Will Kymlicka, and Richard Bellamy and Dario Castiglione provide an overview of contemporary debates over federalism in the context of globalization and culturally diverse democracies.

## NOTES

1. German Foreign Minister Joschka Fischer contributed significantly to such debates with his famous speech of May 12, 2000. See Joschka Fischer, “De la confédération à la fédération, réflexion sur la finalité de l’intégration européenne,” in *Le nouveau débat sur l’Europe*, ed., Hartmut Marhold (Nice: Presses d’Europe, 2002), pp. 176–189. For a French response to Fischer, see Hubert Védrine, “Réponse à Joschka Fischer,” in *ibid.*, pp. 190–194. More generally, the opposition between a federal union and a union of nation states has been a recurrent

- theme in the recent talks about the enlargement of Europe and the drafting of a European constitution.
2. See Will Kymlicka and Wayne Norman, eds., *Citizenship in Diverse Societies* (Oxford: Oxford University Press, 2000).
  3. Examples include Murray Forsyth, ed., *Federalism and Nationalism* (London: Leicester University Press, 1989); Bertus de Villiers, ed., *Evaluating Federal Systems* (Cape Town/Dordrecht: Juta/Martinus Nijhoff, 1994); Stephen J. Randall and Roger Gibbins, eds., *Federalism and the New World Order* (Calgary: University of Calgary Press, 1994); Graham Smith, ed., *Federalism: The Multiethnic Challenge* (London: Longman, 1995); Karen Knop, Sylvia Ostry, Richard Simeon, and Katherine Swinton, eds., *Rethinking Federalism: Citizens, Markets, and Governments in a Changing World* (Vancouver: UBC Press, 1995); Daniel Elazar, *Constitutionalizing Globalization: The Postmodern Revival of Confederal Arrangements* (Lanham, Md.: Rowan & Littlefield, 1998); Kalypso Nicolaidis and Robert Howse, eds., *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union* (Oxford: Oxford University Press, 2001); and David McKay, *Designing Europe: Comparative Lessons from the Federal Experience* (Oxford: Oxford University Press, 2001).
  4. Examples include Murray Forsyth, *Union of States: The Theory and Practice of Confederation* (London: Leicester University Press, 1981); Daniel J. Elazar, ed., *Federalism as Grand Design: Political Philosophers and the Federal Principle* (Lanham, Md.: University Press of America and Center for the Study of Federalism, 1987); Michael Burgess and Alain-G. Gagnon, eds., *Comparative Federalism and Federation: Competing Traditions and Future Directions* (Toronto: University of Toronto Press, 1993); Daniel J. Elazar, *Federalism and the Way to Peace* (Kingston, Ont.: Institute of Intergovernmental Relations, Queen's University, 1994); Michael Burgess, *The British Federal Tradition* (London: Leicester University Press, 1995); S. Rufus Davis, *Theory and Reality: Federal Ideas in Australia, England and Europe* (University of Queensland Press, 1995); Joachim Jens Hesse and Vincent Wright, eds., *Federalizing Europe? The Costs, Benefits, and Preconditions of Federal Political Systems* (Oxford: Oxford University Press, 1996); Samuel LaSelva, *The Moral Foundations of Canadian Federalism: Paradoxes, Achievements, and Tragedies of Nationhood* (Montreal & Kingston: McGill-Queen's University Press, 1996); Thomas Hueglin, *Early Modern Concepts for a Late Modern World: Althusius on Community and Federalism* (Waterloo, Ont.: Wilfrid Laurier University Press, 1999); Frederick K. Lister, *The Early Security Confederations: From the Ancient Greeks to the United Colonies of New England* (Westport, Conn.: Greenwood Press, 1999); and Anthony Pagden, ed., *The Idea of Europe: From Antiquity to the European Union* (Cambridge: Cambridge University Press, 2002).
  5. A consequentialist argument is one that recommends a particular institutional arrangement not because of its intrinsic features (such as its fairness or its conformity to the demands of political equality) but because of the sorts of results or consequences it is likely to produce over the long run. For more on the structure of normative arguments for federal arrangements, see Wayne Norman, "Federalism and Confederalism," in *Routledge Encyclopedia of Philosophy*, ed., Edward Craig (London: Routledge, 1998), volume 3, pp. 572–574; and "Towards a Philosophy of Federalism," in *Group Rights*, ed., J. Baker (Toronto: University of Toronto Press, 1994), pp. 79–100.
  6. Among the first and most well-known versions of this thesis is Daniel J. Elazar's in his *Exploring Federalism* (Tuscaloosa, AL: University of Alabama Press, 1987).

7. K.C. Wheare, *Federal Government* (Oxford: Oxford University Press, 1964 [1946]), p. 1; Bernard Voyenne, *Histoire de l'idée fédéraliste*, volume I: *Les sources* (Paris: Presses d'Europe, 1976), p. 42; and Elazar, *Exploring Federalism*, p. 147.
8. Wheare, *Federal Government*, pp. 10–11; Stephen Schechter, "Federalism and Community in Historical Perspective," *Publius* (Spring 1975), p. 4, note 3; and Bernard Voyenne, *Histoire de l'idée fédéraliste*, volume I, p. 62.
9. Ronald Watts, "Models of Federal Power Sharing," *International Social Science Journal* No: 167 (March 2001), p. 25.
10. On the meaning of *foedus*, see Bernard Voyenne, *Histoire de l'idée fédéraliste*, volume I, p. 27 and Solomon Rufus Davis, *The Federal Principle: A Journey Through Time in Quest of a Meaning* (Berkeley: University of California Press, 1978), pp. 215–216.
11. Martin Diamond, "What the Framers Meant by Federalism," in *A Nation of States: Essays on the American Federal System*, ed., Robert A. Goldwin (Chicago: Rand McNally, 1961), p. 27.
12. *Dictionnaire de l'Académie française*, 5th edition (Paris: Brunet, 1798), volume I, p. 573.
13. *Dictionnaire de Trévoux* (Paris: Libraires associés, 1771), volume II, p. 787, and volume IV, p. 80. It is with such a conception in mind that the Jacobins equated federalism with the disintegration of France and went as far as executing people suspected of federalist ideas during the Terror.
14. See *Complément du dictionnaire de l'Académie française* (Paris: Firmin Didot Frères, 1844), pp. 470–471.
15. Noah Webster, *An American Dictionary of the English Language* (Springfield, Mass.: George and Charles Merriam, 1856), pp. 245 and 444.
16. By this expression, they basically meant what we mean by a unitary constitution.
17. Alexander Hamilton, John Jay, and James Madison, *The Federalist* (New York: The Colonial Press, 1901), paper XXXIX, p. 211.
18. *Ibid.*, paper XXXIX, pp. 208–209.
19. *Ibid.*, paper XXXIX, p. 209. In the same paper, the authors point out another area in which the proposed constitution is federal, and two areas in which it is partly federal and partly national.
20. Diamond, "What the Framers Meant by Federalism," pp. 28–29.
21. Adams cited in Daniel J. Boorstin, *The Americans: The National Experience* (New York: Random House, 1965), p. 413.
22. Alexis de Tocqueville, *Democracy in America* (London and New York: Longmans, Green, and Co., 1889), volume I, p. 156.
23. According to Diamond, in the case of Hamilton, Jay, and Madison, it is very likely that they did that "to allay the fears of the 'true federalists'" (Martin Diamond, "The Federalist's View of Federalism," in *Essays in Federalism*, ed., Georges C. S. Benson [Claremont: Claremont Men's College, 1961], p. 24).
24. In 1835, Tocqueville talked about the creation of a "new species of confederation" (Alexis de Tocqueville, *Democracy in America*, volume I, p. 157). According to him, "the human understanding more easily invents new things than new words, and we are thence constrained to employ a multitude of improper and inadequate expressions" (*ibid.*, p. 156).
25. Thomas Hueglin, "Federalism at the Crossroads: Old Meanings, New Significance," *Canadian Journal of Political Science/Revue canadienne de science politique* 36:2 (June 2003), p. 276.

26. After all, as paper XXXIX of *The Federalist* clearly indicates, Hamilton, Jay, and Madison did not advocate a unitary state. It is obvious that the book had centralist sympathies, but it advocated a compound political system that could have evolved in a much less centralist way than it actually did.
27. Hueglin, "Federalism at the Crossroads: Old Meanings, New Significance," pp. 280–284.
28. See *ibid.* and Thomas Hueglin, *Early Modern Concepts for a Late Modern World*.
29. See *ibid.*, chap. 12.
30. Pierre-Joseph Proudhon, *Oeuvres complètes de P.-J. Proudhon*, volume 14: *Du principe fédératif et œuvres diverses sur les problèmes politiques européens* (Paris: Marcel Rivière, 1959), p. 335.
31. It is important to emphasize that the components of a federal identity are engaged in relations of *coordination* rather than in "competitive" relations of *domination/subordination*. In other words, they are coherently organized to reflect the *shared* and *coexistent* political allegiances of the self. They do not reflect abnormality, incoherence, or ambiguity, as it is often implied by proponents of monistic authenticity. They are the result of a complex history of intercommunal relations and political federalization that have led certain individuals to shared allegiances. The federal citizen makes sense—often unconsciously—of the duality or plurality of conversational communities that constitutes her identity. The federal citizen may feel more attached to one community of identification than another, but she does not wish to make a choice among her allegiances. She cares for all of them; they all have a categorical importance. Only particular circumstances may force a choice.
32. The eighteenth century was marked by the beginning of the fusion of the old language of republican patriotism with the new language of nationalism. For a critical overview of this process and a plea for "patriotism without nationalism," see Maurizio Viroli, *For Love of Country: An Essay on Patriotism and Nationalism* (Oxford: Oxford University Press, 1995).
33. Jean-Jacques Rousseau, "Discourse on Political Economy," in *Rousseau's Political Writings* (New York: W. W. Norton, 1988), p. 69.
34. Rousseau cited in Josep R. Llobera, *The God of Modernity: The Development of Nationalism in Western Europe* (Oxford: Berg, 1994), pp. 153–154.
35. Voltaire, *Dictionnaire philosophique* (Paris: Flammarion, 1964), p. 308 (our translation).
36. Llobera, *The God of Modernity*, p. 154.
37. We do not mean that plural political identities were impossible in early modern confederations. We mean that it became much more of an issue with the advent of the new federal model introduced by the United States. More generally, the growing secularization and democratization of late eighteenth century contributed to make the whole question of identity a more pressing one.
38. See Hamilton, Jay, and Madison, *The Federalist*, paper II, pp. 5–7; and Tocqueville, *Democracy in America*, volume I, p. 169.
39. Hamilton, Jay, and Madison, *The Federalist*, paper XVII, p. 86.
40. *Ibid.*, paper XLVI, p. 258.
41. Tocqueville, *Democracy in America*, volume I, p. 392.
42. Some evidence suggests that Tocqueville did not believe in the possibility of viable multinational federations. For example, although he knew the Canadian case, Tocqueville did not prescribe, or even really consider, a federal solution in any other case than the United States and Switzerland. And even in these two

- cases, he did not consider a federal system with Aboriginal peoples as an option in America, while he presented Switzerland as historical exception very unlikely to be reproduced (see Dimitrios Karmis, "Fédéralisme et relations intercommunautaires chez Tocqueville: entre prudence et négation des possibles," *Politique et sociétés* 17:3 [1998], pp. 59–91).
43. Of course, given the deeply political nature of *The Federalist*, it remains open for debate whether Publius's competitive conception of identity is the result of strategic calculations with the purpose of making the central government—and consequently the United States—the hegemonic pole of allegiance of the federation.
44. John C. Calhoun, "A Disquisition on Government," in *Union and Liberty: The Political Philosophy of John C. Calhoun* (Indianapolis: Liberty Fund, 1992), p. 11.
45. John C. Calhoun, "On the relation which the States and General Government bear to each other [The Fort Hill Address]," in *The Works of John Calhoun*, volume VI: *Reports and Public Letters of John Calhoun* (New York: D. Appleton and Company, 1855), pp. 63–64.
46. John Stuart Mill, *Utilitarianism, On Liberty, Considerations on Representative Government* (London: J. M. Dent, 1993), p. 392.
47. *Ibid.*, p. 395.
48. *Ibid.*, pp. 398–400.
49. Pierre-Joseph Proudhon, *Oeuvres complètes de P.-J. Proudhon*, volume 14, pp. 263 and 366.
50. Pierre-Joseph Proudhon, *La fédération et l'unité en Italie* (Paris: E. Dentu, 1863), p. 118 (our translation).
51. Pierre-Joseph Proudhon, *Oeuvres complètes de P.-J. Proudhon*, volume 14, pp. 211, 219–237, 507, 546; and Pierre-Joseph Proudhon, *La fédération et l'unité en Italie*, pp. 56–57.
52. Pierre-Joseph Proudhon, *Oeuvres complètes de P.-J. Proudhon*, volume 14, pp. 319–321.
53. See notably Samuel LaSelva, *The Moral Foundations of Canadian Federalism*, chap. 1; and Will Kymlicka, *Finding Our Way: Rethinking Ethnocultural Relations in Canada* (Toronto: Oxford University Press, 1998), chap. 13.
54. As part of the explanation for this domination, we might say that both nationalists and federalists have been prompt to offer oversimplified antagonistic accounts of the relationship between nationalism and federalism. Among the most influential of those accounts, the cosmopolitan antinationalist type and the Jacobin monistic nationalist type have been particularly recurrent. The former states that federalism is an integrative framework of transition that will gradually lead to the triumph of universalism—and to the disappearance of nationalism—through regional and world institutions. The latter states that federalism is rather a disintegrative framework that will be conducive to the triumph of particularism through the gradual dissolution of federations into parochial states.
55. This was roughly the original idea behind the division between the House of Representatives and the Senate in the U.S. Congress. The second chamber of the German Parliament is composed of members appointed by each of the subunit (*Länder*) governments.
56. See Supreme Court of Canada, *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, as well as commentary in Wayne Norman, "Domesticating Secession," in *Secession and Self-Determination*, eds., Stephen Macedo and Allen Buchanan, NOMOS XLV (New York: New York University Press, 2003), pp. 193–237.