

A PLURI-NATIONAL STATE? POSSIBILITIES AND LIMITS OF THE NATION STATE MODEL TO SUSTAIN A POLITICAL COMMUNITY IN A GLOBALIZED WORLD OF NATIONS

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Abstract

Although it is founded on the universal rights of its citizens, the concept of the liberal state still resembles the monist nation state when focusing on its application in a political community. Consequently, pluri-nationalism questions the feasibility of liberal theory for the reasoned justification of a political community with free and equal citizens. Further, it addresses a central normative dilemma in liberal theory. On the one hand, liberalism emphasizes citizens' active role in shaping their conditions for freedom. At the same time, it defends their protection from the public sphere as passive subjects of human rights. As a consequence, liberal theory divides up into a more contextualized view on social actions and an atomistic consideration of society based on positive recognition of abstract rights. In the face of this apparent dichotomy, this paper employs a "third way" between traditional liberal-democratic theory and more "communitarianist" approaches by stressing the significance of the state as the guarantor of a common legal community, which has to address its subjects of law in their individual *and* collective nature. The insights gained from the discussion on pluri-nationalism will contribute to reconcile these apparently oppositional approaches. It is demonstrated that both – instead of being competing conceptions – are rather two sides of the same coin.

Key words: Nation state; liberalism; federalism; pluri-nationalism; Hegel.

UN ESTAT PLURINACIONAL? POSSIBILITATS I LÍMITS DEL MODEL D'ESTAT NACIÓ PER SOSTENIR UNA COMUNITAT POLÍTICA EN UN MÓN DE NACIONS GLOBALITZAT

Resum

Tot i estar fundat en els drets universals dels seus ciutadans, el concepte de l'estat liberal encara s'assembla a l'estat nació monista quan s'intenta aplicar a una comunitat política. Conseqüentment, el plurinacionalisme posa en qüestió la viabilitat de la teoria liberal a l'hora de justificar raonadament una comunitat política amb ciutadans lliures i iguals. Més enllà d'això, sorgeix un dilema normatiu central en la teoria liberal. D'una banda, el liberalisme emfatitza el paper actiu de la ciutadania en la formulació de les seves condicions de llibertat. Al mateix temps, defensa la seva protecció de l'esfera pública com a subjecte passiu de drets humans. En conseqüència, la teoria liberal es divideix en una visió més contextualitzada en accions socials i una consideració atomística de la societat basada en un reconeixement positiu de drets abstractes. Davant d'aquesta aparent dicotomia, aquest treball utilitza una "tercera via" entre la teoria tradicional liberal-democràtica i aproximacions més "comunitaristes" subratllant la importància de l'estat com a garant de la comunitat legal comuna, el qual ha de tractar els seus afers legislatius en la seva condició individual i col·lectiva. Els coneixements obtinguts arran del debat sobre el plurinacionalisme contribuiran a reconciliar aquests enfocaments aparentment oposats. Està demostrat que ambdues visions - enlloc de ser concepcions enfrontades - són més aviat dues cares de la mateixa moneda.

Paraules clau: Estat nació; liberalisme; federalisme; plurinacionalisme; Hegel.

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Article received: 17.05.18. Blind review: 26.06.18 and 20.06.2018. Final version accepted: 04.07.18.

Recommended citation: Ehret, Peter (2018). A pluri-national state? Possibilities and limits of the nation state model to sustain a political community in a globalized world of nations. *Revista Catalana de Dret Públic*, (57), 141-153. DOI: [10.2436/rcdp.i57.2018.3162](https://doi.org/10.2436/rcdp.i57.2018.3162).

Summary

- 1 Liberty and Nation – a “mirage of linguistic consensus”
 - 2 The contradictions of the nation state model
 - 3 The pluri-national state – a solution of the national state dilemma?
 - 4 Federalism beyond the nation state
 - 5 Concluding remarks
- References

1 Liberty and Nation – a “mirage of linguistic consensus”

“To say that the modern world is a ‘world of nations’ is both a reality and an aspiration” (Smith, 1988: 129) – this judgment by Anthony Smith points out the ambiguous role of the nation in legitimizing political power. On the one hand, the nation has monopolized the legitimacy of political institutions and their recognition by international law (Smith, 1988: 1). On the other hand, there is never and will never be a full congruence between a nation and the state regarding the people that inhabit it (Renner, 2015a: 27), according to a pessimistic résumé made by Karl Renner in the context of the national upheavals in the Austria-Hungarian Empire in the run-up to the First World War. Today, where the world of nations has become a reality, things have not improved, but have in fact become more complicated. As the nation has become the central subject of independent political entities, the claim of constituting a proper nation along with its right to have a proper state, has evolved to be the central argument of collective identities in search of political recognition (Fishman, 1999: 32) – and this is often in open conflict with the institutional structures of their territory.

This type of conflict does not restrict itself to contexts where the relation between political power and collective identity has not been settled yet by political institutions.

We can also find this phenomenon in established constitutional democracies (Fishman, 1999: 38). As Ferran Requejo demonstrates, the underlying problem goes far beyond a supposed incomplete integration of national entities in constitutional states. Its roots lie in our current understanding of the liberal constitutional order itself. Neither political theory nor institutional practices have been emancipated from the concept of monist state nationalism as the source of legitimizing political power. Thus, we cannot deduce the problem to the normative premises of liberal democracy, but to the exclusivity of understanding liberal principles only within a national context (Requejo, 2017: 72–80).

There is not only *one* liberal democratic theory. Indeed, there is some kind of “normative pluralism” (Requejo, 2017: 64) in academic literature on the issue of liberal democratic order. Consequently, every approach sheds light on the different dimensions of citizen’s rights in a democratic state. So far, as is to be expected, theorists have come to different conclusions regarding the realization of people’s freedom in the state. The most visible dichotomy is between pragmatic and normative approaches. While the first defends a more “neutralist” state regarding concrete values of society, the “moralist” theories put more emphasis on the values existent in society, as well as on the normative foundation of the legal institutions. As each political theory rises out of a specific context, we are likely to find a particular narrative, where some factors are implicitly considered as taken for granted (Requejo, 2017: 64).

This “mirage of linguistic consensus” (Requejo, 2017: 72) is especially true for democratic theories inspired by Kantian liberalism. In particular, the “individualistic” emphasis of citizen’s rational virtues implicitly resembles premises of a monist state nationalism, because reason is bound to a statist conception of truth and good, while the particular context of reasoning is not sufficiently taken into account (Requejo, 2017: 72, 74). This favors a monolithic understanding of the political community as the consensus on one single conception of legal justice, public good, and virtues. In that way, liberal freedoms become dependent on particular *cultural* visions of justice. Thus, we should not wonder why national pluralism is such a conflicting issue for liberal democratic theory.

In order to settle this conflict, we have to deepen the recent investigation of the normative relation between liberal rights and national identity. It is important to point out that the individualistic liberalism of Kant is not the only way to reason a state founded on the recognition and protection of liberal rights. Hegel’s state model anchored the political institutions in universal individual rights, too. By recognizing the inter-subjective dimension of morality, however, the universal content of people’s rights is contrasted with the particular *ethicities* (“Sittlichkeiten”) found in their immediate social environment. This opens the door for a more contextualized vision of the social realities existent in a territory, making the protection of citizen’s rights less dependent on pre-liberal cultural values and thus, facilitates a liberal reasoning of a pluri-national state.

The basic objective of this paper is a re-examination of classic pluri-national as well as value-pluralist theories from this Hegelian perspective. This requires us not only to go beyond the traditional liberal approach, but also to introduce insights gained from theoretical approaches, which do not usually find themselves related to the liberal paradigm. The problem of pluri-nationalism has also been addressed by thinkers within the Marxist tradition. Their main reference is “Austro-Marxist” Otto Bauer, who concentrated on a Marxist theorizing of the nation (Arzoz Santisteban, 2015: XIII) in his search for a balance between social democracy and bolshevism (Ottmann, 2010: 329). Indeed, the Austrian social democrats had been the first in integrating the nation into social models of Marxism (Arzoz Santisteban, 2015: XXXVIII). By addressing the imminent nationality question, their most prominent advocate widely referred to the thoughts of his less known fellow campaigner Karl Renner. But in contrast to Bauer, Renner’s basic aim consisted in the juridical articulation of his theory of national autonomy (Arzoz Santisteban, 2015: XIII). By focusing on the juridical idea of the nation, however, his ideas transcended their Marxist tradition and influenced in juridical-political projects settled beyond the socialist models. This is why we have to understand the ideas of Karl Renner within their proper historical context, i.e. the evolution of the constitutional state in Austria and the intentions of its continuous reformulation from 1848 onwards. In the face of these reform proposals Renner’s political compromise with Marxism becomes secondary. In effect, the essence of Karl Renner’s ideas is found in their federalist solutions and the juridical equality of nationalities (Arzoz Santisteban, 2015: XIV–XV). For Renner and other social-democratic authors federalism meant liberty – for individuals as well as for nations, and for humankind in general (Arzoz Santisteban, 2015: XLII).

This enables us to address more than just the contemporary conflicts of national identity with federalist ideas. The partial emancipation of Karl Renner from his Marxist tradition allows us to also combine his thoughts of pluri-national federalism with more liberal approaches on pluri-national society, especially the value-pluralist theory of Isaiah Berlin. Berlin’s value-pluralist liberalism has already been used to address the problem of pluri-nationalism by federalist theory. Ferran Requejo referred to Isaiah Berlin as a liberal alternative to the monist national determination of liberal state theory. Nevertheless, as Karl Renner pointed out, juridical recognition might have an effect on how national identity understands itself. Thus, Requejo’s emphasis on value-pluralist premises for federal theory must be completed by Karl Renner’s approach, which stressed the primary juridical nature of the state and its possible effect on national identity. This is in line with the abstract legitimation of the Hegelian state and its democratic reinterpretation by Jürgen Habermas in his theory of rational discourse.

The paper starts from the contradiction inherent in the nation state model. The nation state is defined as a public institution defending constitutional rights, while at the same time it is founded on a common identity from which its institutions emanate. Thus, the nation state turns out to be an ambiguous concept, if we take into account the premise of the liberal state: a free community of equal subjects of law, which is based on the principle of individual self-determination. This contradiction requires us to examine further the relation between national independence and individual self-determination, as it is defined in liberal terms.¹ In his accentuation of the sentimental component of nationalism, Isaiah Berlin has worked out the normative relation between self-determination understood in terms of liberal theory and the proclaimed right of national self-determination. As “nationhood psychologically transcends individual morality” (Fishman, 1999: 66), the nation is seen as an expression of individual liberty on a collective level. Turning back to the liberal state as defined above, the crucial question lies in the relation between the abstract rights of citizens and their particular identity. As demonstrated by Isaiah Berlin and Karl Renner, when founding its institution on the freedom and rights of its citizens, a state has to rely on both.

However, this relation is far from being unproblematic. Nationality, when considered as an identity, has to be envisaged into a wider focus on human beings’ search for social identity. Here, insights from the empirical field will help to critically evaluate the most important premise of the national identity – the

¹ In this context, it is worth remembering that the principle of national self-determination also finds itself defended by Marxist doctrines and was officially acknowledged by the Second Communist International at its Congress in London in 1896. Nevertheless, its defender Lenin considered national self-determination as a mere strategical tool to gain support for his further political goals. At the same time, other prominent Marxists like Rosa Luxemburg clearly rejected the secession of nations in homogeneous territories. For obvious reasons, this paper does not discuss these radical Marxist positions on national self-determination. See Arzoz Santisteban (2015: XLIV, XLVIII–XLIX).

cultural community. The contrasting of this normative foundation of the nation state with empirical insights on culture allows us to reflect critically on the concrete adscriptions coming from particular collective identities, among them national identities. This enables us to evaluate the proposals of communitarianist corrections of liberal theory, which also address the liberty of citizens in its collective dimensions.

That leads us back to federalism and to concrete proposals for the institutionalization of the pluri-national state in federal theory. As normative premises for pluri-national states interfere with existing theories and practices of federalism, the third part will discuss, if and to what extent, the current nation states ought to be reformed into institutions, which are more open to a pluri-national society. In order to get a more complete vision on the problematic of current federations, the Hegelian thoughts on the juridical foundation of the modern state are completed by the insights of Habermas on the relation between morality and law through discursive action.

2 The contradictions of the nation state model

The reason why we have to rethink the relation between liberal principles and nation state lies in the contradictory nature of the second of the two. If we understand the liberal foundation of the state as the positive constitutional rights of citizens, there can be no collective value existing prior to the constitutional values. Nevertheless, the imposition of the latter continues to be seen as a dependent variable of the former. In other words, as long as there is no collective identity backing the institutional order, there will be no respect for the constitutional norms by the population. There is some truth in this argument. As Hegel has pointed out, the nature of political institutions has to reflect the cultural conditioning of the people when we want them to consider its norms as theirs (Hegel, 2009: 428). Nevertheless, the problem lies in what to understand under the term “the people” (Requejo, 2017: 70). As long as we take the national identity as a social resource of political power and the political institutions as mere outcomes of the nation, there can be no constitutional appeasement due to the fact that we never find only one national identity in a state’s territory. So, when there is a national state, we usually find an “ethnic minority” or “sub-state nationalities”.

Furthermore, the existence of the state in itself illustrates the necessity for institutional mediation of the social reality. For this reason, Hegel saw the state as a proper subject, which has to go, in its legitimation through law, beyond the social realities found in its territory. For Hegel, governance by law induced a rationalization of the social reality. Recognition in the legal sphere requires an abstraction from the particular context in a way that a person is *in prima facie* considered in their human nature, and not because of belonging to this or that nationality, religion, etc. (Hegel, 2009: 349).

The proposals of Karl Renner to solve the dilemma of the coexistence of the nationalities in the Austro-Hungarian Empire confirm the thoughts of Hegel. For Renner, the state constituted the sovereignty of the will of the total population (Renner, 2015a: 24). As an expression of the general will, it could only define its territorial domination in juridical terms. If destabilization and war were to be avoided, the coexistence of various national entities had to be organized in some way. From there comes the need to recover the idea of the sovereign state as a juridical entity (Renner, 2015b: 100–108).

If it were the other way round, sovereignty would be defined in total terms of political domination (Renner, 2015b: 100–108). Instead of governing in the general interest of all communities of the territory (Renner, 2015a: 27), the state would be abused to pursue the particular goals of the dominant national identity. Due to the existence of various nations in the state territory, this would have meant subordination of the other nations to one nation ending up in arbitrary abuse of power, conflict, and war (Renner, 2015b: 100–102). In order to avoid this scenario, the factual power of the nation had to be converted into juridical power. For Renner the conversion of the factual power of the nations into juridical power was the condition *sine qua non* for social peace (Renner, 2015a: 43). The nations had to be integrated into the state by defining the latter exclusively in juridical dimensions.

What then, in contrast, is the nation state? As mentioned before, Renner considered the nation state as a degeneration of legal nature by the pure use of social coercion (Renner, 2015a: 100–101). The force behind this power is the nation – a “people” with an active political character in search of self-determination

(Renner, 2015a: 81–88). For Renner, the nation had two origins. One is cultural and can be found in a similarity of feeling and thinking within a determined group of people. This does not automatically imply a political will (Renner, 2015a: 25). However, the second pillar of the nation is political and strongly related to the upheavals of modernity. National movements could often be found in opposition to the universal ecclesiastical order and the class-oriented fragmentation of feudal society. It was identified with the right of acting on behalf of its own initiative (Renner, 2015a: 81–88). This political dimension of the nation requires further examination. The right of acting on one's own initiative constitutes a crucial element of the liberal paradigm, which has surged in the context of modern rationalization.

Isaiah Berlin worked out the contradiction, which lies in this liberal principle when interpreted in terms of national self-determination. For Berlin, a central element of modern national movements was individual self-expression (Berlin, 2009a: 339–341). This self-expression, however, did not have its roots in a concrete political interest, but in the romantic perception of self-realization. As every visionary has its own targets, there is no mediation of the proper vision by reality, but a creation of reality by the proper vision (Berlin, 2009a: 372). Following Berlin in this approach, it is little wonder that – when adapted to the context of politics – the realization of self-determination resulted in the emergence of a multitude of national movements with everyone defining their own role and their own mission in human destiny (Berlin, 2009b: 283, 311).

The interesting point here is the connection of the national movement to sentiments and ideas situated outside the political level. The covering of this sentimental sphere and its undetermined “mythical roots” of the identity was the reason why the impact, success, and endurance of nationalism were not foreseen by the rationalist theories of the 19th century. The failure of rationalist theories to capture the importance of nationalist sentiments lies in the partial irrationality of the latter (Berlin, 2009c: 404–409).²

This means that national self-determination has little to do with the rationalist assumption of liberal self-determination. In fact, the contrary is true. Nationalist feelings are often guided against a rational organization, because the latter is considered as a closed orthodox system of dehumanized values (Berlin, 2009c: 404–405). Nevertheless, as the thoughts of Hegel illustrate, this is definitely not the case. The state requires neutral formula of law in order to safeguard individuals from the exclusive consideration of their particular physical nature or cultural background. By contrast, the nationalist ideology gives absolute priority to those elements that are seen as representative of its national identity. Furthermore, as is the case with all ideologies, these elements are defended against all other sources of authority and loyalty on the basis of their suggested superior nature (Berlin, 1990: 57).

This, however, does not mean that there should be no reconciliation between national identity and individual freedom at all, but in order to pursue this goal, we have to first determine, which is the sphere of the state, and which one belongs to the nation. Renner did not negate that the total will of the state should be imposed by the particular will of the cultural entities. These entities were the nations on sub-state level. The state, by contrast, as legitimated in its territorial sovereignty by the general will of the whole population, could not rely exclusively on a sole national identity, but on mechanisms seeking for the reconciliation of the social identities existent in its territory through rational mediation by law. This was, according to Renner, the reason, why the law of the modern states had originally emerged after the confessional wars of Europe (Berlin, 1990: 9–25).

The nation state that followed as a historical reality, however, was far from being the natural outcome of a rational order, where the liberal principles of modernity are realized through the self-determination of the nation. Neither the national sentiment as such nor the exclusive reduction of the juridical sphere of the state to the political will of self-determining nations have anything to do with a liberal understanding of self-determining individuals in a rational state. According to Renner, the liberty of nations *and* individual citizens can only be guaranteed by a juridical sphere situated beyond the particular will of the nation, because the former is legitimized through the general will of the population, while the latter is not (Renner, 2015a: 25).

Renner distinguished between the general will of the population and the particular interest of the nation. This distinction was based on the particularity of the latter. As is assumed by its own proponents, a political nation,

² Berlin addresses the same issue with a different approach in *Der Nationalismus* (Berlin, 1990).

when derived from a cultural community, cannot find its expression in the sovereignty of the state. For a nation, the political legitimacy of the institutions is derived from territorial dominance. For a community, political legitimacy comes from common ways of thinking (Renner, 2015a: 24–25). When they came together in the modern nation state, aspirations of liberty segued into a paradoxical union of modern rational organization and an anti-rational mythological [self-righteousness](#) of romantic feelings (Berlin, 2009d: 277–78). Based on these observations, we might not expect the nation state alone to be able to define citizen's rights beyond a particular identity of the population. Thus, the reliance on a sole national identity definitely does not resemble a remedy for integrating the population into a political community founded on the liberal principle of freedom.

3 The pluri-national state – a solution of the national state dilemma?

The nation state apparently solved the central dilemma of legitimation of political power in modernity. The crucial question was how to integrate the factual power of the modern state into a normative foundation, where the moral concepts of population are reflected by institutional practice after the break-up of traditional value-systems in modernity. By defining the state as a nation, institutional structures seemed to regain the legitimacy they had lost in the upheavals of modernity, beginning with the confessional wars and ending with national conflict. However, as shown by Renner, this solution of the dilemma just led to another: which nation should be the driving integrating force in a state? For this reason, Renner tried to reconcile the modern vision of political legitimacy, expressed by the nation, with the older concept of juridical mediation and so he dismissed the nation state as an inadequate concept for organizing social reality. But even if we are able to reason – as Karl Renner did – the state as a juridical entity legitimized through the coexistence of various national identities, this does not automatically mean that people are willing to accept this kind of institutional structure. And there, the question of political legitimacy rises again. For this reason, we need to gain a deeper understanding as to why national identity has become so important to people in modernity.

Isaiah Berlin had certainly identified quite astutely the sentimental, non-rationalist elements of national identity. Nevertheless, this does not mean that there are absolutely no useful rational elements found in the national identity on which a state's legitimacy can rely on. Further, it is even less clear if apparently conflicting loyalties, like class, are not also driven by a sentimental sense of belonging or romantic self-expression. For this reason, Berlin's analysis of nationalism is necessary, but not sufficient. Modern ideologies have, as religions did before, successfully captured people's attention, because they were able to address desires central to human nature. Thus, nationalism cannot be deconstructed as a solely irrational outcome of disoriented subjects in modern life.³

Hegel was the first to acknowledge a social dimension to rational liberal state order. To him, an individual never operated independently from their social environment. This is why there can be no concept of freedom without taking into account the social dimension of human existence. For Hegel, behind human action we find always the desire for social recognition. In his philosophical terms, recognition meant the reconciliation of subjective nature and objective reality in the sense of being perceived from outside in the way individuals perceive themselves, in their conscious awareness, as humans. Nevertheless, by pursuing their own goals in the outside world, the pure subjective visions of individuals “rationalize” their world views, because they have to adapt partially to the circumstances found in their social environment – and this is where social recognition comes into play (Hegel, 2009: 289–302).

The factor of social recognition leads us to important renovations of the model of liberal democracy. Due to the existence of particular social contexts, liberal rights do not only have an individual dimension, but also a collective one. Consequently, the right to human dignity might go far beyond the recognition of a human in its individual nature, and into an acknowledgement of collective identity by the institutions. This acknowledgement has to be more than a simple recognition by law. Following Hegelian understanding, a

³ Regarding the global and premodern elements in the nationalist discourse, much investigation has been done by Anthony Smith. Smith demonstrated that nationalism adopted a discourse on social integration that can be found long before the occidental incidence in the modern age. This explains why the phenomenon of nationalism is global and able to combine with other forms of loyalties even of pre-modern nature, for example religious identities (Smith, 1988). Regarding the combination of nationalist sentiments with nationalist identities, see (Smith, 1996: 453).

particular collective profile rises up automatically when humans are pursuing their personal goals in the outside world (Requejo, 2017: 68). So, there are, as is to be expected, various systems of values rising out of human action. Notwithstanding, as a modern thinker, Hegel still sought to identify one common particular spirit in every community (“*Volkgeist*”) holding these value systems together and guiding them onto a universal essence of being. By contrast, as Isaiah Berlin demonstrated, the existing value systems of a community can be conflicting and contradictory to one another. Depending on its context, there may quite often be “reasonable” discrimination between values within cultures or even within individual convictions. This does not mean, however, that reason does not play any role in the prioritization process and its interpretation of values during social interaction (Requejo, 2017: 67). This is why Berlin also favored some sought of accommodation between the different value systems (Berlin, 2009e: 96), even if the hierarchic ordering of the social structure of a community disappears. This makes liberal state theory more feasible for a society seen as a melting pot of different cultural communities.

As Requejo points out, reasoning a pluri-national state requires us “to put Berlin inside Hegel” (Requejo, 2017: 72) and to find an “adoption of partnership with the normative foundations adopted in terms of legitimacy of liberal-democratic polity” (Requejo, 2017: 72). If we wish to safeguard the recognition of collective identity in the long term, collective rights alongside individual rights, regulated in a similar way as those on an individual level, are the only way to pursue this goal (Requejo, 2017: 72–80).

When we now come back to our initial question regarding the relation between constitutional rights and collective identity, we cannot rely anymore on the premise that an institutional order built on liberal principles needs to evolve from a single collective identity capable of pursuing the imposition of law. To be able to deal peacefully with the social reality found in the state, it should be rather the other way round – a constitution based on the recognition *between* collectives (Requejo, 2017: 72–73). In that same sense, Renner defined a “people” as a public right expressing the belonging to a state with a guarantee to receive equal legal treatment (Renner, 2015a: 16).

Renner deduced this right from a suggested existence of a cultural community; held together by common ways of thinking and feeling. Thus, Renner’s nation constituted free association of persons and in its essence, relied on elements facilitating this association, like language, cultural expression, conviction, etc. In this respect, he acknowledged that nations are not a closed cultural community. Indeed, as its members are mixing with one another, as is the case in all natural societies, the decision of belonging to a nation had to rely on a voluntary base (Renner, 2015a: 15). Nevertheless, when discussing their role in the state, Renner did not turn away from demanding a national identity from every citizen of the state (Renner, 2015a: 25–26).

This constitutes a problematic move considering liberal premises. First: every citizen – even if considered first as a citizen and then as a national, – finds himself subsequently classified by his determined national identity.⁴ Second: culture in itself as a prerequisite for collective identity of any kind is a vague and ambiguous concept.

As sociological investigation has shown, the reality of cultural and class issues is much more complex than that. An individual does not simply act in a determined manner because of coming from this or that cultural background. Indeed, cultural preconditioning or ethnic value systems are – like class – one factor among many others in explaining the behavior of people in their social environment. It seems that *intragroup* differences are even larger than *intergroup* differences. Thus, a shared culture is simply not a legitimate source of defining a collective’s particularity if we wish to explain social reality. Wishing to build a pluri-national state based on the determination of a shared cultural or class identity of a group may even be a dangerous assumption. The crucial question rather seems to be how individuals give sense to their lives (Lamond & Small, 2008: 79–81).

This requires political institutions to leave the field of action open. This problem is addressed by the premise of negative liberty by Isaiah Berlin. In that sense, negative liberty is the absence of obstacles and chains

4 In this context, it is worth remembering the governance practiced by the authoritarian socialist rule in Eastern Europe and the Soviet Union, and their treatment of the “nationality question”. Instead of creating a cosmopolitan legal community of equals, the recognition of the national identity as secondary to the identity of state citizen led in fact to an “ethnicization” of social life. See also: (Harris, 2012: 342).

limiting personal self-realization of individuals (Berlin, 2004: 73). If we now “put Berlin inside Hegel” (Requejo, 2017: 72) taking into account the importance of social recognition, we have to address this negative liberty in its collective dimensions. In other words, institutions have to allow a continuous reformulation of collective identity by the subjects of law. This is why the state’s primary target as a guarantor for social self-definition has to be the maintenance of the public space where *different* social entities are enabled to participate (Walzer, 1997: 9).

In this sense, the liberal lecture of the concept of equality has evolved into a more complex and contextualized understanding of social good and its relation to individuals (Walzer, 1997: 30). This requires a stronger emphasis on the specific context where values are produced and its interpretation takes place (Requejo, 2017: 68). As Michael Walzer pointed out, there is no way of separating the abstract sphere of law from the immediate environment, where cultural life is produced and reproduced (Sánchez Matito, 2017: 12). Following this communitarianist paradigm of complex equality, political institutions should rather connect to the values appreciated in every social context of society.

However, this means by implication, that a rational ordering of the social reality by predefined cultural entities recognized as “nations” in a “pluri-national” state does not fit into the concept of a pluralist liberal constitutional order. Belonging to a nation in a pluri-national state is a voluntary decision taken by citizens in liberty (Renner, 2015a: 15). This liberty has to be guaranteed in a negative and a positive way, i.e. the access of public rights must not depend on this or that nationality, but on the constitutional acknowledgement of individual decision. In line with the communitarianist correction of liberal theory, we have to admit that the relation between political institutions and social environment is continuously changing. This requires public institutions to leave the field of public action open for the continuous reformulation of social entities by the subjects of its law.

This is indeed in line with the case studies regarding the liberal political communities challenged by polyethnicity. According to Alain Gagnon and Raffaele Iacovino:

“a balance must be struck between the *equal empowerment of group identities* as active constituents of the larger political community and the need for a *common ground for dialogue*, for the purposes of unity – a center that also serves as a marker of identity in the larger society and denotes a pole of allegiance for all citizens.” (Gagnon & Iacovino, 2005: 28).

To sum up: In principle, pluri-nationalism means relativizing the power of one national group in relation to the others within shared political institutions. But even if we might expect various nations to be acknowledged by constitutional order, the foundation of the political legitimacy onto the pluri-national identity may only have sense if pluri-nationalism is interpreted within the premise of an individual decision to belong. By accepting this individual decision, however, it becomes obvious that political legitimacy finds itself anchored to a value going beyond the particular identity of any nation found in the state.

4 Federalism beyond the nation state

The idea of the pluri-national state also has fundamental implications on the organization of the state. This is where federalism comes into play. However, neither federal theory nor practice, have been able to provide an alternative to the monist nation state model. The contrary seems to be the case: we do not find a constitutional recognition of national pluralism in federations with a greater degree of stability and democratic quality (Requejo, 2017: 70–75). Nevertheless, as:

“the 21st century may be witness to political movements in favor of regarding national minority *demoi* as polities that wish to preserve as much collective negative liberty as possible in an increasing globalized world [...] federal theory and practice would be advised to pay more attention to these movements than they have done in the past” (Requejo, 2017: 75).

In other words, the contemporary challenges to democracy require the opening up of federal structures to separate varied nation-building processes coexistent in the territory. This requires not only the opening of the existing institutions to the social realities of the territory, but a move to a more confederate structure relying

on pragmatic agreement. In some cases, even the right of secession should be legally guaranteed (Requejo, 2017: 72–74).

However, there are problems too, if we might understand these events within the liberal paradigm. Remember that proponents of pluri-nationalism call for collective rights organized alongside individual rights regulated in a similar mode to those on an individual level (Requejo, 2017: 72–80). It is not clear which of these two categories of rights should be given priority in a particular case. Though recognizing collective rights as complementary to individual rights, Requejo says little about the problem of repressive communitarianism based on identity (Schmalz-Bruns & Hitzel-Cassagnes, 2009: 21), i.e. when collective rights produce negative effects on individual freedom and values. In this respect, his approach has not really been emancipated from the premise of fixed national identities, either. Instead we find only a “quantitative” replacement of one nation by various nations. Thus, the conceptual problem of the nation as such is only partially addressed. The fact that a reduction of individuals belonging to a particular culture is simply not possible seems to be ignored. Individuals require legal protection against cultural categorization, while at the same time they might need positive recognition of their cultural identity by law. How could a federal structure reconcile this apparent contradiction between individual rights and the positive recognition of cultural pluralism?

This leads us to Habermas’s analysis of the relation between moral principles and law. According to Habermas, only the prior recognition of abstract individual human nature allows us to formulate contextualized collective rights for determined groups. Habermas acknowledges that there may be a difference between existing law and moralist conceptions in certain contexts. However, these moral conceptions do not evolve independently from the juridical framework that surrounds them. Along the same lines, remember that Requejo, too, assumes the morality of law by criticizing the monist national paradigm of the existing federations and constitutional democracies. What is different in Habermas’s approach, however, is that it can also be the other way round. Moral principles (re-)define themselves in relation to existent law. Thus, we have a reciprocal dependency between legal codes and moral concepts (Habermas, 1998: 661–662).

As Habermas illustrates in his reference to human rights, the universalist content of law influenced the nature of the discourse on human rights. Albeit having been formulated in the interest of a particular group, its universalist content made possible its repeated adaptation to specified contexts (Habermas, 2012: 18–20). In this process, law was not only opened up to a complex understanding of equality and liberty, but the contextual discourse in itself lead to the recognition of people in their abstract nature as humans, independent from their particular existence. According to Luigi Ferrajoli, the universality of fundamental rights consists of the universal quantification of their entitled subjects, and thus, in the equality contained in the possession of this law (Ferrajoli, 2008: 1138). So, there is no incompatibility between cultural diversity and universality of human rights, but in fact a strong interdependent relation.

It is important to note that the abstract character of human rights safeguards its subjects in two ways. First, it acknowledges the right of *peoples* to identify themselves with a collective value. At the same time, its subjects are protected from the negative effects coming from cultural categorization. In this way, people are primarily considered as individuals. At the same time, the diversity of their personal identities is recognized in this abstract value. This leads us back to Hegel and his emphasis on abstract legitimation of the state founded on constitutional protection of individual rights.

For Hegel, the state constituted an entity being purpose in itself, independently from the social force behind its historical institution (Hegel, 2009: 387–388). This means that the state goes beyond the particular manifestation of social movements due to the fact that the persistence of its institutions rely on *the legal codification* of the moral values existent in the community. The process of legal codification, however, constitutes a process of reflection on the particular nature of these values, which is realized through an abstract point of view of human nature. This is why legal recognition leads to a consideration of the people in their abstract nature as individuals. Therefore, the institutional order of a state is legitimated through values settled beyond the values and convictions found in society (Hegel, 2009: 349). When it is the other way round, governance is not possible and soon ends up in arbitrary rule, conflict, and abuse of power (Hegel, 2009: 389).

Understood in Hegelian terms, contemporary nation states cannot be considered exclusively as institutionalized socio-historical entities. As legal entities, states are to be considered also in their constitutional character. Thus, their legal codification does express terms of recognition that is settled beyond the supposed national identities found in their territory. This leads us back to liberal constitutional values, which – being a purpose in itself – constitute the legal point of reference for social movements to reclaim their collective rights.

What does this mean for the pluri-national state? By recognizing the citizen primarily in its individual nature as a human being, the constitution of a nation state is already going beyond any national identity. Constitutionalism represents – in its legal institution – a value in itself. This enables national minorities to seek recognition and legal guarantees within a wider understanding of a *constitutional demos*. Thus, the opening of national institutions is a consequence of their constitutional codification. This means by implication that recognition of a *demoicratic* community can only be achieved through – and within – the constitutional order of the existing state.

5 Concluding remarks

Pluri-nationalism has not been established in constitutional democracies yet. Nevertheless, the tension between national majorities and national minorities will constitute one of the major challenges for established constitutional democracies in the 21st century.

In this respect, this paper discussed the few approaches that have been made so far to overcome the dilemma of the national response to the social changes induced by modern life.

The first part analyzed the paradoxical nature of the nation state. In its conceptual compound we can find both emancipatory elements and sentimental driving forces. Contrary to its proper ideological concept, modernization is reflected by its legal codification through law while the subordination of that law to the right of national self-determination rather expresses anti-rational mythological self-righteousness.

Nevertheless, national aspirations also have to be qualified as expressions of basic human needs, i.e. social recognition. This required us to critically question the dominance of one national identity in a state territory when national identities do not coincide. In this context, cultural categorization turns out to be a dangerous concept to legitimize political institutions. Thus, pluri-nationalism cannot constitute the normative fundament if we accept Berlin's premise of negative liberty. That means that citizens have to be able to articulate their political goals without confronting obstacles in a shared public sphere. This stands in contradiction to a pluri-national state based on clear categorizations along cultural lines.

This leads us to individual citizenship as the keystone of collective articulation of its universalist content within particular social contexts. Following Habermas's model of discursive theory, legal recognition of collective identities can only result from the existence of positive law that affirms in some way abstract human nature. Only legal guarantees of individual citizenship can provide the discursive point of reference for national identities seeking recognition by the state. This position is in line with Hegel, who saw the state legitimized in its institutions beyond the particular identity of the population. Thus constitutionalism and pluri-nationalism are dependent rather than contradictory to each other.

As a consequence, the only way for a pluri-national federation to become reality is through and within the constitutional order of the already existing nation states. This means at the same time, that the constitutional legitimation of the nation state requires citizenship to be emancipated from its exclusive determination by one national identity.

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