

Multinational Federalism: How To Measure A 'Federal Deficit'?

Abstract

Multinational (quasi)federations are polities that hold together at least two constituent national partners. Unlike sovereign or majoritarian nations, minority nations that evolve in such federations usually cannot fully empower their societal cultures exclusively with their own autonomous will and institutions. We argue that such inability can lead to a more or less prominent multinational federalism deficit. Indeed, the less a multinational (quasi)federation enables its minority nation(s) to develop and consolidate their respective societal culture, the more likely it is to display such deficit, and vice-versa. But how can we measure such a deficit? We identify six legally oriented pillars that are central for a minority nation to sustain its societal culture. Those pillars, which we operationalise through twelve indicators, form the building blocks of the Societal Culture Index. The Index allows measuring and comparing minority nations by combining normative studies and empirical research.

Introduction

Multinational (quasi)federations^[1] are polities that hold together at least two constituent national partners. In such context, minority nations usually cannot fully empower their societal cultures exclusively with their own autonomous institutions, and the state in which they evolve may thus suffer from a more or less prominent multinational federalism deficit. In this contribution, we first define multinational federalism and consider what are the key normative principles driving it. In a nutshell, we argue that a multinational conception of federalism aims at providing every constituent national partner of the political association with the necessary constitutional powers to develop and consolidate their respective societal culture. Second, we identify six legally oriented pillars that are central for a minority nation to sustain its societal culture. Those pillars, and the twelve indicators that operationalise them, form the building blocks of the *Societal Culture Index*, which allows measuring and comparing minority nations with regards to their capacity to develop and strengthen their respective societal culture. Third, we briefly introduce the multiple cases that may fit this analytical framework, and discuss of the relevance of the Index.

Multinational Federalism and Minority Nations' Societal Culture

Just like majoritarian nations, minority nations possess their own "societal culture" (Kymlicka 1995: 53), i.e. they usually have access to legal, political, cultural, and economic institutions making it possible for a given political community to emancipate itself both politically and culturally. A societal culture is usually bound by a specific language and confined within a delimited territory. As Kymlicka (1995) articulates it, a societal culture offers citizens a "context of choice" in order for them to enjoy individual autonomy and liberty. However, contrary to majoritarian nations governing sovereign states, minority nations living within multinational (quasi)federations usually cannot fully empower their societal cultures exclusively by their own will because they are evolving within a larger political state and a more comprehensive legal order. Majoritarian nations evolving within a sovereign state, if and when they feel threatened or concerned by a given political force – whether it is related to immigration, language or cultural issues, self-determination, etc. – may strengthen and consolidate their societal culture so they can (try to) manage and overcome the identified threat. However, minority nations may only have limited, or even no real legal authority to develop and consolidate their societal culture when confronted with similar struggles. Minority nations living within a multinational state thus tend to express a greater sense of "fragility" or "insecurity" (Gagnon 2014). In turn, if the (minority) partners in such a political association are not considered as equals and cannot develop their respective societal culture, this may lead to a serious deficit in matters of multinational federalism.

To be clear, a federation refers to a political organisation where at least two orders of government "combine elements of *shared-rule* through common institutions and *regional self-rule* for the governments of the constituent units" (Watts, 1996: 7). As for federalism, it refers expressly to the normative and theoretical account that justifies the desirability of federations over unitary political systems. As a complex set of ideas underpinning a network of specific institutions and principles, federalism is about finding a balance between centripetal and centrifugal political forces to ensure the fair coexistence of multiple and sometimes conflicting loyalties and (national) identities. Therefore, it is important to bear in mind that federalism is not the same as (political) decentralisation, nor the same as devolution. Indeed, decentralisation and devolution are ways to *distribute* power in a given state, whereas federalism is a universal and normative principle justifying *how* such distribution should be done.

Consequently, federalism suggests that a polity must be understood as a form of political association made of multiple partners, in which none shall rule them all. When applied to multinational federalism, we suggest this specifically means that every national partner must enjoy the necessary constitutional abilities to develop and strengthen its societal culture. Otherwise, the federation develops a more or less prominent deficit with regards to the core principles that drive

multinational federalism. But how can we measure and compare such a deficit?

A *Societal Culture Index* for the Study of Multinational Federations

We propose a standardised composite Index for the study and comparison of minority nations' legal capacity to institutionalise their societal culture within multinational (quasi)federations. In particular, we identify six legally oriented pillars and twelve indicators that are central for a minority nation to exercise a significant degree of autonomy through self-governance by sustaining a dynamic societal culture. Thus, the higher a minority nation scores on the *Societal Culture Index*, the less the (quasi)federation within which it evolves expresses a multinational federalism deficit, and vice-versa.

On a methodological scale, every institutional pillar – which are of absolute equal value – is combined with two specific indicators to empirically observe its value within the constitutional order (Mathieu and Guénette 2017). Those twelve indicators represent conditions that, if adopted, would greatly contribute to the deepening of the democratic life and the federal ideal in multinational states (Gagnon, 2010: 6), where tensions between the majority and the minorities – as equal partners – would be managed in a constructive manner. Below, we briefly present those six pillars and twelve *indicators*:

a. National recognition

Following Taylor (1992: 33), we argue that the expression of national identity critically depends on dialogical relations, and that the absence of formal recognition by a “significant other” constitutes a serious moral and political wrong. Within the constitutional order, we focus on:

1. *Mention of recognition*
2. *Presence of constitutional asymmetries*

b. Linguistic rights

In a neo-Herderian fashion, we argue that language must be understood as a formal “mind-set” that reflects and empowers specific cultural identities. If every partner within the (quasi)federation is to be equal, then the polity should make it possible for multiple cultural identities to flourish. Within the constitutional order, we focus on:

3. *Capacity to declare an official language*
4. *Capacity to select the predominant language of its educational system*

c. Immigration and integration powers

It is of primary importance for a minority nation to exercise a certain control over immigration rates within its territory, so the national community can provide fair integration for all (Kymlicka, 1995: 285). Within the constitutional order, we focus on:

5. *Capacity to establish its own immigration policy*
6. *Capacity to enforce its own selection and integration criteria*

d. Fiscal autonomy

For a minority nation “to be autonomous, it is not sufficient to enjoy self-government. The federated state must be fiscally and politically autonomous” (Seymour and Gagnon 2012: 4). Within the constitutional order, we focus on:

7. *Power to raise taxes*
8. *Presence of an internal wealth redistribution system within the encompassing state*

e. Internal self-determination

If the minority nation is to be considered an equal partner within a multinational (quasi)federation, it must be empowered with the capacity to initiate negotiations and discussions regarding the current constitutional order. The minority nation must also be empowered with the capacity to block a revision that would be against its interests. Within the constitutional order, we focus on:

9. *Capacity to initiate a constitutional revision*

10. Possession of a veto right

f. External self-determination

Within the logic of the right to self-determination (Gagnon 2014, 6), we argue that a minority nation should have the right to initiate a democratic process that may lead to secession, when it lacks formal recognition and if it legally cannot empower nor consolidate its societal culture. Within the constitutional order, we focus on:

11. Capacity to organise a referendum on its territory

12. Right to secede

Conclusion: The *Societal Culture Index* and its Application

The scope of the analytical framework presented here is limited to democratic multinational (quasi)federations in the Western world. Nonetheless, one of its benefits for further research is that comparing the legal capacity of various minority nations to develop their societal culture within the context of a multinational (quasi)federation “may help to identify options that might otherwise be overlooked [and] allow us to foresee more clearly the consequences of particular arrangements advocated” (Watts, 1996: 2).

Consequently, many (quasi)federations and minority nations can be analysed using the *Societal Culture Index*, such as Québec in Canada, Scotland or Wales in the United Kingdom, Catalonia, Basque Country, Galicia or Navarra in Spain, Alsace, Brittany or Corsica in France, Flanders in Belgium, Jura in Switzerland, Puerto Rico in the United States, South Tyrol or Sardinia in Italy, etc. Indeed, we have already used the Index to study the cases of Catalonia, Québec and South Tyrol. The results we obtained – i.e. Catalonia 4/12, Québec 9.5/12 and South Tyrol 6/12 (see Mathieu and Guénette 2017) – then enabled us to formulate some normative conclusions.

Thus, considering and comparing how minority nations can legally develop their societal culture – so they get to stress less their relative feeling of fragility or insecurity – may precisely help to find and promote better cohabitation frameworks for the prosperity of hospitable multinational (quasi)federations. Therefore, one clear benefit of putting forward a constitutional order that helps minority nations to score as high as possible on the Index, is that governance and democracy would be globally improved in multinational (quasi)federations (Mathieu and Guénette 2017).

Given the fact that a multinational (quasi)federation is made of multiple national partners, pursuing the *federal ideal* is a wise choice “for achieving the principle of equality in a highly diverse state” (Burgess and Gagnon, 2010: 17). Indeed, for such political associations, being comfortable with the expression of diversity must mean that “the equality of the constituent member states does not necessarily imply sameness of treatment, because this could conceivably contribute to the maintenance of an unjust predicament for a given community in a federal setting” (Ibid: 18). Hence, we argue that a multinational (quasi)federation’s commitment to democracy and federalism is strengthened to the extent that its internal minority nation(s) maximise their score on the *Societal Culture Index*. As a result, the democratic expression of the political association would emerge both from the central state and the constituent member states.

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[1] By quasi-federations, we refer broadly to states that, although they might not formally be federations in their political and legal order, have introduced in their constitutional architecture some significant elements of regional self-rule, and sometimes shared-rule (cf. Watts, 1996: 8). The U.K., Spain, Italy, Japan, Netherlands, Indonesia, etc., are few examples of such quasi-federations.