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# *Defensive Federalism. Protecting Territorial Minorities from the 'Tyranny of the Majority'*

Ferran Requejo and Marc Sanjaume-Calvet (eds.)

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There is increasing interest in federal studies among academic and government circles. Partly, this has to do with the fact that an increasing number of unitary states have adopted some characteristics of federalism, such as institutional autonomy through self-rule for substate regional communities. As a result, the field of federal studies has experienced renewed vigour by acknowledging that federal systems cannot be understood through a simplistic binary approach. This has led to the exploration of new research areas as scholars move away from strict analytical categories such as unitary versus federal states, and instead adopt a more dynamic approach to understanding political regimes and institutional dynamics. The present edited volume contributes to this trend in various ways.

*Defensive Federalism* aims at shedding new light on “how the increase of globalisation, as well as social, cultural and national pluralism are affecting federalism in current liberal democracies” (p. 1). Concretely, it offers an original conceptual and analytical perspective that is rooted in what the editors and collaborators coin as “defensive federalism”.

As a conceptual approach, defensive federalism entails the idea of protecting and ensuring the development of “self-government territorial entities from the ‘tyranny of the majority’” and to revisit how key liberal-democratic values such as liberty, equality, dignity and pluralism should materialise in present-day federal democracies (p. 2). In doing so, the contributions the volume brings together are mostly, but not exclusively, interested in the cases of federal systems that are home to a plurality of *national communities*: “[T]he empirical cases are chosen because of the institutions analyzed and include both uninational and plurinational polities. We aim to capture the defensive federal institutional and procedural techniques, including upper chambers, allocation of powers, power-sharing, autonomy agreements, out-out policies, power-sharing executives, federal courts and multilevel governments in the EU” (p. 12).

As an analytical framework, defensive federalism commands researchers to study federal systems not only “from above” (primacy on the view from the centre and its associated interests), but to embrace a view “from below” (p. 197), looking at how federal dynamics affect federated partners. As such, it refers to “an analytical view that focuses on a more just and workable *institutional design* to better implement the aforementioned liberal-democratic values in federations and decentralised regional countries” (p. 2).

Two broad lines of inquiry guided the contributions that are blended in this volume (see p. 194–196):

- (1) Beyond the constitutional and political rhetoric, is the self-government of territorial bodies in federations and regional states adequately protected in practice? What are the most suitable institutions for protecting and developing self-rule? How are they evolving?
- (2) Is federalism a sound institutional system for the constitutional recognition and political accommodation of minority nations in plurinational states? Is federalism really effective at protecting and developing the autonomy and self-rule of national minorities?

Overall, the various collaborators and the editors must be praised for having produced a volume that is coherent, intuitive, thought-provoking and, most of all, nuanced. All chapters are explicitly engaging with the key concept of defensive federalism and discuss how it applies to a variety of cases. The book covers issues related to regional autonomy and self-rule in Belgium (Patricia Popelier) and shared rule dynamics in Scotland and in the United Kingdom (Nicola McEwen), just as it considers how asymmetrical institutional designs work in a comparative setting (Maja Sahadžić) and in Canada specifically (Kenneth McRoberts). It investigates the effects of veto powers in federal systems by focusing on Switzerland (Sean Mueller) and offers insight into the role of constitutional judges in protecting autonomy for substate entities from a comparative perspective (Karl Kössler). Moreover, it enlarges the scope of federal studies by incorporating into the discussion the input of supranational organisations such as the European Union to better understand contemporary federal dynamics (Peter A. Kraus), while it also assesses the viability of defensive federalism vis-à-vis consociational power-sharing settings (Allison McCulloch).

While the conclusions reached by the authors point to some general trends, this edited volume is also a reminder of how much context matters. For instance, considering the case of Belgium and its typical centrifugal dynamics, Patricia Popelier focuses on finding “the proper balance between claims for subnational autonomy on the one hand, and cohesion and effectiveness of the entire system on the other” (p. 61). In doing so, she argues that the latter should not equate with the lack of the former and vice versa. Nicola McEwen, on her end, reflects upon the impacts of Brexit for Scotland in particular, and highlights how self-rule without shared rule might not be sufficient to enable effective forms of defensive federalism. Similarly, Karl Kössler shows that “judges in each of the four countries [Canada, India, Belgium, Spain] have strongly protected territorial self-government in some [respects] and less so in others, thus confirming the importance of a differentiated and in-depth approach” (p. 169).

Peter A. Kraus's chapter focusing on the European Union (EU) also reminds of the fundamental value of context and nuances. While he contends that the EU—as a proto-federal setting—does enable mechanisms of defensive federalism for its formal constitutive members, it does so by embracing a statist bias. Indeed, as he discusses at length, “the very equality states claim interacting with each other, they do often not concede to their territorial sub-units or to the minorities that remain under their unilateral control. [...] The puzzle of sovereignty in Europe is thus not only the puzzle of multilevel governance, or of segmented government, but a puzzle marked by the contradictions of a state system whose components tend to deny in their internal functioning what they claim for themselves when confronting each other” (p. 190).

Readers will also appreciate the analytical value of the general conclusion provided by the editors of the volume—something that is often missing in edited books. In their concluding remarks, Ferran Requiero and Marc Sanjaume-Calvet enter into a constructive dialogue with the arguments provided by the various collaborators they selected. In the end, they contend that “Our findings are more sceptical than optimistic when it comes to evaluating the practical defensive use of federal institutions” (p. 197). Specifically, they observe “a lack of sufficient procedural rules to guarantee” regional autonomy and self-rule and argue that upper chambers usually fail “to protect self-government in an effective way” (p. 195). Similarly, it is noted that “constitutional federal/regional courts generally tend to favour cooperative options over self-rule” (p. 195).

On the other hand, Requejo and Sanjaume-Calvet contend that “Constitutional and political asymmetries and opting-out procedures seem a better way to meet the objectives of protecting self-rule and accommodating national diversity” (p. 196). Hence, the volume concludes that “the protection of self-government, as well as the true recognition of national diversity and its political accommodation, requires specific procedures, such as symbolic, institutional, procedural and jurisdictional asymmetries—including the international sphere—legal or political opting-out rules, and a set of shared rule procedures once those objectives have been clearly established” (p. 197).

To put it in a nutshell, *Defensive Federalism* is an edited volume that is of great value for both academics and practitioners. For the former, it offers a state-of-the-art review of recent and ongoing research agendas in federal studies and highlights new horizons for future scientific inquiries. Regarding the latter, the variety of cases under study and topics addressed provide key insights of what one might expect to happen as a result of a specific institutional path, comparatively to an alternative one. Moreover, the concept of defensive federalism might just be one that academics and practitioners alike will embrace over the long-term, because it is as intuitive as it is empirically grounded.