

**REGIONAL DEMARCATION,  
TERRITORIAL ALTERATION, AND  
ACCOMMODATION OF DIVIDED  
SOCIETIES**

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## SUMARIO

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# REGIONAL DEMARCATION, TERRITORIAL ALTERATION, AND ACCOMMODATION OF DIVIDED SOCIETIES

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## 1. THE “FEDERAL DICHOTOMY” AND GEOGRAPHICAL ACCOMMODATION OF DIVIDED SOCIETIES

How divided societies co-exist is usually studied within the context of federalism, which provides arrangements establishing multi- or bi-ethnic constitutional frameworks<sup>2</sup>. To this extent, the creation of ethnic-based units has always been crucial in comparative federal studies: these units aim at fulfilling the rationale of multinational federations, preserve territorial and political integrity, and maintain diversity by including different ethnic groups in a single federal structure. Their creation is thus related to the rationale of multinational federations, which govern divided societies for the purpose of “holding diversity together”.

Federal and regional constitutions exhibit a high degree of resilience in dealing with the topic at stake. Furthermore, they confirm the essential feature of

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<sup>2</sup> See DUCHACEK I. D. (1971), *Comparative Federalism: The Territorial Dimension of Politics*, New York, Holt, Rinehart and Winston, Inc., 1971; LIJPHART A. (1979), “Consociation and Federation: Conceptual and Empirical Links”, *Canadian Journal of Political Science*, 12, pp. 499-515; R. Agranoff (ed.), *Accommodating Diversity: Asymmetry in Federal States*, Baden-Baden, Nomos, 1999; M. Burgess, J. Pinder (eds.), *Multinational Federations*, Abingdon, Routledge, 2007.

federalism as a very adaptable tool of organization: federalism through constituent units indeed takes several forms and serves distinct functions in different multinational federations, and therefore has proved to be a source of empowerment for regional groups, as well as a means for the protection of minorities from the tyranny of majority groups. Furthermore, it has provided a real alternative to secession, nation-statehood, and territorial conflicts<sup>3</sup>.

Questions arise, however, when we try to examine how the relations between federal and regional states, on the one hand, and the creation of constituent units, on the other, actually work. In this respect, geographical accommodation of divided societies is traditionally linked to the dichotomy between symmetric and asymmetric federalism.

We will first consider symmetric federalism, and the role it plays in the governance of divided societies. Symmetric federalism regards equality as the rule governing intergovernmental relations. The details of the assumption need not detain us here: suffice it to say that it is typical in U. S. related approaches to federal studies<sup>4</sup>. Equality and symmetry reflect the compact between former sovereign states, thus preserving constituent units' sovereign character within the federation. As a consequence, member states are put on equal footing: there is a symmetric distribution of powers, and constituent units are granted equal participatory mechanisms in both federal institutions and decision-making processes<sup>5</sup>.

The equality and symmetry rule corresponds not only to aggregative federations that are built around "homogeneous" societies, such as the United States of America, Australia and Germany. Several aggregative federations whose societies are divided on the grounds of cultural, linguistic and religious cleavages have also adopted this rule. The Constitutions of Switzerland and Canada apply equality and symmetry to the distribution of powers; the Constitution of India does the same, with the exception of Jammu and Kashmir<sup>6</sup>.

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<sup>3</sup> See KEMPTON D. (2001), "Russian Federalism: Continuing Myth or Political Salvation?", *Democratizatsiya*, 9, p. 229. In divided societies, however, "federalism [may be] the problem rather than the solution", since the "ethno-linguistic issue that might otherwise be secondary" gain momentum in the political agenda: see KEMPTON D. (2002), "Three Challenges to Assessing Russian Federation", en D. Kempton, T. D. Clarks (eds.), *Unity or separation: Centre-Periphery Relations in the Former Soviet Union*, Westport (CT), Praeger, p. 17.

<sup>4</sup> See BURGESS M. (2006), *Comparative Federalism. Theory and Practice*, Abingdon, Routledge.

<sup>5</sup> See ARONEY N. (2006), "Representation and Amendment in Federal Constitutions", *The American Journal of Comparative Law*, 54, p. 282.

<sup>6</sup> See section 370 of the Indian Constitution. See H. Bhattacharyya, "Federalism and competing nations in India," en M. Burgess and J. Pinder (eds.), *Multinational Federations*, cit., p. 54.

Several constitutional provisions, however, reflect the multinational nature of the above-mentioned federations<sup>7</sup>. This is particularly apparent in Switzerland: there are two dominant religious denominations (Protestant and Catholic) and four linguistic groups accommodated by the federal Constitution. State-church relations fall under the responsibility of Cantons (but the federal level adopts measures to preserve peace between the different religious communities: art. 72 of the Constitution). There are four national languages (German, French, Italian, and Romansh: art. 4) and three official ones (German, French and Italian; Romansh is an official language when communicating with persons who speak Romansh: art. 70). Cantons decide on their official languages — but they must respect the traditional territorial distribution of languages and take into account of indigenous linguistic minorities. In Canada, such provisions are the constitutional outcome of its economic, social, linguistic and ethnic differences<sup>8</sup>. In this regard, several provisions of the *Constitution Act, 1867*, and of the *Constitution Act, 1982*, reflect the multinational nature of the Canadian federation. First, sections 94 and 129 of the *Constitution Act, 1867*, entrench Québec's civil law tradition and its civil code<sup>9</sup>. Second, section 43 of the *Constitution Act, 1982*, sets a “some-but-not-all-provinces procedure” for constitutional amendments, which allows bilateral amendments and accentuates the asymmetrical features of Canadian federalism<sup>10</sup>.

However, these “asymmetrical provisions” play a limited role in the governance of divided societies: indeed, they do not infringe symmetry in the distribution of powers. This is evident in Switzerland, where linguistic and religious cleavages do not alter equality among cantons<sup>11</sup>. As for India, “The most impor-

<sup>7</sup> See sections 247 and 345 of the Constitution of India; Article 4 of the Swiss Federal Constitution; sections 93 and 133 of the *Constitution Act 1867*, and sections 16, 20, and 22 of the *Constitution Act 1982* of Canada.

<sup>8</sup> See KÖSSLER K. (2009), “Changing Faces of Asymmetry — The Canadian Example”, en F. Palermo, C. Zwillig and K. Kössler (eds.) *Asymmetries in Constitutional Law. Recent Developments in Federal and Regional System*, Eurac, Bolzano/Bozen, p. 135: “[W]ith its foundation in 1867, Canada became the first federation in history that featured substantial asymmetrical elements ... real differences between constituent units, in this case linguistic, cultural and other differences between Québec and the other provinces, should be reflected in legal terms”.

<sup>9</sup> *Ibid.*, p. 142.

<sup>10</sup> See HOGG P. W. (2011), *Constitutional Law of Canada*, Toronto, Carswell, p. 4-28; Cameron D. R., Krikorian Jacqueline D. (2008), “Recognizing Québec in the Constitution of Canada: Using the Bilateral Constitutional Amendment Process”, *University of Toronto Law Journal*, p. 414 et seq.

<sup>11</sup> Moreover, Cantons are equally represented in the Council of the State: see ARONEY N., “Representation”, cit., p. 287.

tant aspects of [its] federal design with regard to the management of regional, linguistic or cultural diversity have been constitutionally symmetrical”<sup>12</sup>. To this extent, section 370 of the Indian Constitution does not refer to ethnic or linguistic cleavages: it was construed as a temporary solution, before the definitive incorporation of Jammu and Kashmir into the Union. As for Canada, one may find a certain degree of asymmetry in the provisions regarding Quebec’s legislative powers over immigration. Nonetheless, Quebec’s differentiated legislation is not based on asymmetry. On the contrary, it has its roots in section 95 of the *Constitution Act 1867*, which establishes federal-provincial concurrent jurisdiction thereover<sup>13</sup>.

## 2. FROM SYMMETRIC TO ASYMMETRIC FEDERALISM: THE GOVERNANCE OF DIVIDED SOCIETIES

Hence, multinational federations can distribute powers on symmetric grounds. From this, however, it does not follow that symmetric federalism represents a suitable rule for the governance of multi-ethnic federations.

First, equality is a legal fiction (*fictio juris*). In both homogeneous and “divided” federations, constituent units are equal before federal constitutions regardless of their size, population, wealth, or economic growth. Hence, *legal* equality ignores *de facto* asymmetric features<sup>14</sup>. This has occurred in India, where geographical demarcation did not grant privileged protection to linguistic communities, but facilitated the creation of new states.

Second, we have noticed that equality is concerned with the position assigned to constituent units within federations, and that symmetry is only related to the distribution of powers. Hence, legal equality and symmetry do not grant constituent units differentiated powers in order to meet the specific needs of the ethnic groups living within their boundaries. Furthermore, equality and symmetry express a formalistic approach toward the governance of divided societies. By focusing on the “law in the books”, they disregard the “law in action”, and do not take into account

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<sup>12</sup> See TILLIN L. (2007), “United in Diversity? Asymmetry in Indian Federalism,” *Publius*, 37, p. 46.

<sup>13</sup> See NICOLINI M. (2012), “Multiculturalism, Secession and Constitutional Amendments: Québec’s *Statut Particulier*,” en F. Palermo, G. Poggeschi, G. Rautz, J. Woelk (eds.), *Globalization, Technologies and Legal Evolution. The Impact of Global Changes on Territorial and Cultural Diversities, on Supranational Integration and Constitutional Theory. Liber Amicorum in Memory of Sergio Ortino*, Baden-Baden, Nomos, p. 395 et seq.

<sup>14</sup> On *de facto* asymmetry, see WATTS R. L. (1999), “The theoretical and practical implications of asymmetric federalism,” en R. Agranoff (ed.), *Accommodating diversity*, pp. 24-42.

“the tension between black-letter law and rules ‘in action’” of the living constitution<sup>15</sup>. This is evident in India, where there is a flaw between the black-letter constitution and the living constitution, as in the case of Jammu and Kashmir. While the framers did not intend for the state to become a symbol of asymmetry, the practice of constitutional law has demonstrated that section 370 of the Constitution can be a precedent for adopting asymmetric features. This assumption holds true if we consider the creation of the north-eastern states in the 1960s, which led to a geographical reorganization along linguistic, ethnic and religious lines that does not match the symmetric distribution of powers enshrined in the constitution<sup>16</sup>.

Then, a formalistic approach based on the black-letter constitution underestimates those provisions — albeit embedded in symmetric constitutions — that reflect the multinational nature of the federation. Furthermore, provisions reflecting the “divided” nature of the federation are now enshrined in numerous federal and regional constitutions. Linguistic diversity is, for example, entrenched in the constitutions of Italy, Spain, Belgium, South Africa, and Malaysia, which guarantee the identity of the ethnic groups living within their boundaries.

In addition, these asymmetrical provisions often intertwine with the distribution of legislative powers. Thus, ss. 211-212 of the South African Constitution recognize tribal institutions, chieftaincy, and customary law, and assign the jurisdiction thereover to national and provincial legislation — and the South African Constitutional Court has delivered numerous rulings with respect to customary law and chieftaincy<sup>17</sup>. The Constitution of Ethiopia does the same with tribal institutions and ethnic identities<sup>18</sup>. Article 116.1 of the Italian Con-

<sup>15</sup> HALPÉRIN J.-L. (2011), “Law in Books and Law in Action: the Problem of Legal Change,” *Maine Law Review* 64, p. 47. The expression “law in the books” was coined by the U. S. jurist Roscoe Pound in 1910 and applied by successive generations of scholars. See POUND R. (1910), “Law in the Books and Law in Action,” *America Law Review*, 44, pp. 12-36. On the recourse to Pound’s categories by subsequent scholars see MACAULAY S. (1963), “Non-Contractual Relations in Business: A Preliminary Study,” *American Sociological Review*, 28, p. 55 et seq.; BYBEE K. J. (2006), “Law in Action,” *Political Review Quarterly*, 59 (2006), p. 415. For a critique of Pound’s categories, see LEWELLYN K. N. (1930), “A Realistic Jurisprudence: The Next Step,” *Columbia Law Review*, 30, p. 431 et seq.

<sup>16</sup> See BHATTACHARYYA H., “Federalism,” cit., p. 54 et seq.

<sup>17</sup> See KLUG H. (2010), *The Constitution of South Africa. A Contextual Analysis*, Oxford and Portland (OR), Hart Publishing, p. 246. See Constitutional Court’s rulings *Mayelane v. Ngwenyama and Another* CCT 57/12 (on the absence of a wife’s consent to her husband’s subsequent polygynous marriages) and *Sigcau v. President of the Republic of South Africa* CCT 93/12 (on the rightful king of the AmaMpondo aseQawukeni).

<sup>18</sup> See TESFAI BARAKI G. (2013), “The making of states and local governments in the multi-ethnic federation of Ethiopia,” en S. Mangiameli (ed.), *Federalism, Regionalism and Territory*, Milan, Giuffrè, p. 233 et seq.

stitution entrenches the bilingual denomination of the autonomous regions of Trentino-Alto Adige/*Südtirol* and Valle d'Aosta/*Vallée d'Aoste*<sup>19</sup>. The same occurs in Spain, where the Constitution and sub-national legislation safeguard the so-called *hechos diferenciales*<sup>20</sup>. Articles 8, 153 and 160 of the Constitution of Malaysia grant a differentiated position to the *bumiputera* and *orang asli*, i.e., aboriginal peoples, to be subsequently implemented by federal and state legislation.<sup>21</sup> In Russia, asymmetry, which can be traced back to the Soviet Union's "ethno-territorial form of federalism"<sup>22</sup>, characterizes both regional demarcation and the responsibilities that the constitution confers upon the subjects of the federation.

Hence, constitutional provisions enshrining religious, linguistic and cultural diversity entail recourse to asymmetric, federal features. To this extent, it is quite evident that asymmetric federalism is a powerful and strategic mechanism for the governance of divided societies.

### 3. INSTITUTIONAL ASYMMETRIC FEDERALISM AND BEYOND: TOWARD LEGAL GEOGRAPHY

We will not concentrate on asymmetric federalism in this essay. On the one hand, scholars have dedicated in-depth analyses to the topic, and the relationship between asymmetry and divided societies has been accurately examined already<sup>23</sup>. On the other hand, scholars usually take recourse to a "narrowed" notion of asymmetry. When addressing asymmetric federalism as the rule for the governance of divided societies, they liken it to the distribution of powers.

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<sup>19</sup> See PALERMO F. (2004), "Asymmetric, 'Quasi-Federal' Regionalism and the Protection of Minorities: the case of Italy," en A. Tarr, R. F. Williams, J. Marko (eds.) *Federalism, Subnational Constitutions, and Minority Rights*, Westport (CT), Praeger, p. 107 et seq.

<sup>20</sup> See AJA E. (2007), *El Estado autonómico, Federalismo y hechos diferenciales*, Madrid, Alianza Editorial, p. 173 et seq.

<sup>21</sup> See HARDING A. (2012), *The Constitution of Malaysia. A Contextual Analysis*, Oxford and Portland (OR), Hart Publishing, pp. 71-73 and p. 185; BAKAR I., "Multinational federation: the case of Malaysia," en M. Burgess, J. Pinder (Eds.), *Multinational Federations*, cit., p. 71 et seq.

<sup>22</sup> ROSS C., "Russia's multinational federation. From constitutional to contract federalism and the 'war of laws and sovereignties'", en M. Burgess, J. Pinder (eds.), *Multinational Federations*, cit., p. 111.

<sup>23</sup> Among others, see TARLTON C. D. (1965), "Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation", *The Journal of Politics*, 27, p. 861 et seq.; PERNTHALER P. (1992), *Der differenzierte Bundesstaat: theoretische Grundlagen, praktische Konsequenzen und Anwendungsbereiche in der Reform des österreichischen Bundesstaates*, Wien, Braumüller; R. Agranoff (ed.), *Accommodating diversity: Asymmetry in federal states*, Baden-Baden, Nomos, 1999.



Constituent units have differentiated responsibilities because they must meet the ethnic, linguistic, and religious needs of the groups they represent.

On the contrary, there are several reasons for endorsing a broader notion of asymmetry that goes beyond the distribution of powers, and governs the governance of multinational federations.

First, we have already noted that India and Canada — to which we can add South Africa<sup>24</sup> — have adopted the symmetry rule for distributing legislative powers. However, symmetry does not disclose how accommodation of diversity is attained. Second, asymmetry goes beyond responsibilities, and comprises the overall institutional design, as in Malaysia and Belgium. In Malaysia, the 1963 Constitution adopted a two-tier federal system: “Malaysia is [...] a Federation of three subjects (Malaya, Sabah and Sarawak), one of which (Malaya) is itself a Federation”<sup>25</sup>. In Belgium, there are two different kinds of constituent units — communities and regions — whose territories partly overlap<sup>26</sup>.

Further, the multi-ethnic character of federal constitutional designs can itself influence participation of ethnic-oriented units at the national level of government. Thus, *de jure* asymmetry “may also rise from the nature of the representation or veto rights of subunits in central institutions”<sup>27</sup>. Second chambers ensure consociational and institutional participation, such as in Bosnia-Herzegovina. The second chamber (*House of Peoples*) comprises fifteen delegates: five Croats and five Bosniacs elected by the legislative assembly of the Federation of Bosnia and Herzegovina; and five Serbian delegates nominated by the National Assembly of the *Republika Srpska*. In Ethiopia, the House of the Federation is elected by State Councils, which may “hold elections to have the representatives elected by the people directly” (Article 61.3 of the Constitution). In Malaysia, states are equally represented in the *Dewan Negara* (Senate). The federal government can appoint up to 11 members representing racial minorities and aboriginal people<sup>28</sup>.

<sup>24</sup> See KLUG H., *The Constitution of South Africa*, cit., p. 259 et seq.

<sup>25</sup> HARDING A., *The Constitution of Malaysia*, cit., p. 134. See, also, Articles 78-80 and the Ninth Schedule to the Constitution.

<sup>26</sup> See PEETERS P., “Multinational federations: reflections on the Belgian federal state,” en M. Burgess, J. Pinder (eds.), *Multinational Federations*, cit., p. 31; LEJEUNE Y. (2010), *Droit constitutionnel belge. Fondements et institutions*, Bruxelles, Larcier, p. 227.

<sup>27</sup> TILLIN, L. “United in Diversity?”, cit., p. 48.

<sup>28</sup> On Bosnia and Herzegovina see MANSFIELD A. M. (2003), “Ethnic but Equal: The Quest for a New democratic Order in Bosnia and Herzegovina”, *Columbia Law Review*, 103, p. 2052 et seq. On Ethiopia see HABTU A. (2005), “Multi-ethnic Federalism in Ethiopia: A Study of the Secession Clause in the Constitution”, *Publius* 35, p. 330. For Malaysia see HARDING A., *The Constitution of Malaysia*, cit., pp. 34-35.

Several constitutions have mechanisms to enable the accommodation of deeply divided societies in governmental, legislative, and judicial structures. This is the case in Belgium, where the Constitution establishes several mechanisms that enable the Flemish and French communities to stay together: the Constitution requires the appointment of both Dutch- and French-speaking members in the cabinet (Article 99.2); any law altering the geographic border between the four linguistic requires the consent of each of linguistic groups in Parliament (Article 4.3); three-quarters of the members of a linguistic group represented in the Federal Parliament can stop a bill that would seriously affect the relations between the linguistic groups (the “alarm bell procedure” of Article 54 of the Constitution). The Constitutional Court comprises twelve judges, six of them from the French-speaking group, and six from the Dutch-speaking group<sup>29</sup>.

Finally, accommodation of a divided society requires mechanisms that lie beyond constitutional provisions. In Spain, the basic laws of the autonomous communities outline the effective distribution of legislative competences<sup>30</sup>. The same occurs in Russia, where the distribution of powers rests on a treaty-based mechanism that often disregards the constitutional text<sup>31</sup>.

To this extent, this essay will rather focus on another constitutive element of asymmetric federalism: ascertaining whether “legal geography” — which designates the way boundaries are drawn and constituent units are created — can be considered as a part of the “governance rule for divided societies”, as well as a principle of organization in multi- or bi-ethnic federal states. In this context, legal geography is a complex “building out” mechanism, which “involves creating or empowering regionally defined constituent units to respond to the demands of a territorially concentrated population, and it is the heart of federal arrangements”<sup>32</sup>.

#### 4. LEGAL GEOGRAPHY AND ITS CONSTITUTIVE PARTS

Relations between “Geography and Law”<sup>33</sup> and spatial connections between territory and community are relevant when it comes to draw new legal geo-

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<sup>29</sup> See LEJEUNE Y., *Droit constitutionnel belge*, p. 437; PEETERS P., “Multinational Federations”, cit., p. 36.

<sup>30</sup> See AJA E., *El Estado autonómico*, cit., p. 55 et seq.

<sup>31</sup> See ROSS C., “Russia’s multinational federation”, cit., p. 115 et seq.

<sup>32</sup> ANDERSON G. (2008), *Federalism: An Introduction*, Oxford, Oxford University Press, p. 72 et seq.

<sup>33</sup> GROSSFELD B. (1984), “Geography and Law”, *Michigan Law Review*, 82, p. 1510 et seq.; ECONOMIDES K. et al. (1986), “The Spatial Analysis of Legal Systems: Towards a Geography of Law?”, *Journal of Law and Society*, 13, p. 162.

graphical maps in contexts where manifold frontiers cross both territory and communities. Before examining how legal geography accommodates divided societies, however, we will consider the key concepts related thereto.

It is evident that legal geography considers all physical, anthropic, economic, and social features — among them, the way boundaries are drawn and territorial identity is established.

For instance, “territorial identity” can be numbered among the constitutive parts of legal geography — and territorial identity is a concept that rests on economic, linguistic, religious, and ethnic factors<sup>34</sup>. Whatever the legal significance of these features may be, territorial identity presupposes a close geographical interrelation between community and territory.

It follows that the creation of a territorial identity rests on several materials — and the politics of territorial denomination and boundaries outline this identity. At the same time, “territorial identity” asserts the legitimacy and validity of place names, for they are the linguistic evidence of the spatial relations between territory and community<sup>35</sup>. Hence, territory and community are not separable, as the narrative of a constitutional identity resting on a place name upholds. In legal terms, territorial identity confers legal significance to the physical geography of a state as *the* central aspect of its identity — and physical geography turns into *legal geography*.

Place names and boundaries may also be numbered among the constitutive parts of *legal geography*. F. W. Maitland first used this concept in his book *Township and Borough*, where he defined it as the relationship between community and *its* territory<sup>36</sup>. These communities — families, clans, villages, ethnicities, etc. — are claimants asserting an exclusive and close relation with a specific territory: it is a spatial relation, legally relevant, that Maitland terms as “belongs of public law”<sup>37</sup>. The drawing of boundaries entails an even closer connection between land, community, and law, and highlights legal, economic, and social interactions between territory and institutionalized communities<sup>38</sup>.

<sup>34</sup> See below, section 6.

<sup>35</sup> See COATES R. (2006), “Names”, in R. Hogg, D. Denison (eds.), *A History of English Language*, Cambridge, Cambridge University Press, p. 335 et seq.

<sup>36</sup> MAITLAND F. W. (1964), *Township and Borough: The Ford Lectures 1897*, Cambridge, Cambridge University Press, pp. 6-7.

<sup>37</sup> MAITLAND F. W., *Township and Borough*, cit., p. 11 and p. 29.

<sup>38</sup> Such connection has a historical lineage that stretches back through the centuries up to the middle ages. The assumption is held as far as place-name politics is concerned. As the word geography of England discloses, denomination may reveal a historical association between the village and its lord — i.e., the lord from whom the village was named. This matches Maitland’s “belongs of public law”, as in the *Domesday Book*, which is the first socio-economic “map” of Eng-

The most recent researches share the rationale of Maitland's legal geography: the relationship between organized communities and territorial space. In this regard, scholars have also expanded its scope. Now "legal geography is not a subdiscipline of human geography, nor does it name an area of specialized legal scholarship. Rather, it refers to a truly interdisciplinary intellectual project"<sup>39</sup>.

In this regard, legal geography also examines how the "spatiality of law"<sup>40</sup> operates, and upholds the "importance of geographical factors in explaining differences between legal families, i.e., groups of legal systems which share a number of characteristics"<sup>41</sup>. It then considers what can be labelled as the "law of spatiality" — i.e., the legal consideration of all geographic features (physical, anthropic, economic, and social). This is apparent in the works both of Manfred Langhans-Ratzeburg on the cartographic representation of law, and of Walther Merk, who expressly referred to legal geography (*Rechtsgeographie*)<sup>42</sup>.

Furthermore, legal geography considers "territorial segmental autonomy", i.e., federal arrangements<sup>43</sup>. Among its constitutive features we indeed number mechanisms according to which constituent units' are created and boundaries are drawn or altered. Legal geography complements the rules of federalism, and encompasses several institutes (regional demarcation, place-name policies, territorial alteration, and power sharing), and represents a legal approach complementing the comparative method<sup>44</sup>.

Legal geographic studies share fields of research with linguistics — both diachronic and synchronic. This is manifest in the linguistic studies of place names — intriguing research into both the remnants of former communities

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land and the "forefather" of legal geography. MAITLAND F. W. (1987), *Domesday Book and beyond: Three Essays in the Early History of England*, Cambridge, Cambridge University Press; DARBY H. C. *et al.* (1954-1967), *The Domesday Geography of England*, 5 vols., Cambridge, Cambridge University Press; FLEMING R. (2003), *Domesday Book and the Law*, Cambridge, Cambridge University Press.

<sup>39</sup> BRAVERMAN I. *et al.* (2014), "Expanding the Spaces of Law", en I. Braverman *et al.* (eds.), *The Expanding Spaces of Law: A Timely Legal Geography*, Stanford, Stanford University Press, p. 1.

<sup>40</sup> BLOMLEY N. *et al.* (2001), "Preface: Where is Law", en N. Blomley *et al.* (eds.), *The Legal Geographies Reader: Law, Powers, and Space*, Oxford, Blackwell Publishers, p. XV.

<sup>41</sup> ECONOMIDES K. *et al.*, "The Spatial Analysis of Legal Systems", *cit.*, p. 164.

<sup>42</sup> See LANGHANS-RATZEBURG M. (1928), *Begriff und Aufgaben der geographischen Rechtswissenschaft (Geojurisprudenz)*, Berlin-Grunewald, K. Vowickel; MERK W. (1926), *Wege und Ziele der geschichtlichen Rechtsgeographie*, Berlin, G. Stille.

<sup>43</sup> LIJPHART A., "Consociation and Federation", *cit.*, p. 505.

<sup>44</sup> GROSSFELD B., "Geography and Law", *cit.*, p. 1511. The author, however, confines legal geography to the presupposition affecting the application of, or imposing modifications on, legal institutes.

and the merging of different identities<sup>45</sup>. Geographical linguistics draws boundaries in dialectology: these are the so-called *isoglosses*, which “will not commonly coincide or bundle together with one another in such a way as to define a single firm and satisfactory dialect boundary”<sup>46</sup>.

Despite this variety, scholars with a background in geographical linguistics have succeeded in completing a number of linguistic atlases such as the *Linguistic Atlas of Late Mediaeval English*<sup>47</sup>. Linguistic variation<sup>48</sup> also draws boundaries in England and in the United States: there is a *Linguistic Atlas of England* and several atlases related to the U. S. Word Geography, which “delimit the main speech areas [...] by finding the boundaries of particular words and expressions” and therefore by detecting clear isoglosses<sup>49</sup>. The same holds true for the Basque language, in relation to which geographic linguistics have tried to diachroni-

<sup>45</sup> Remnants characterize the Celtic substrate in the geography of Anglo-Saxon England: see TOWNEND M. O. (2012), “Contacts and Conflicts: Latin, Norse and French”, en L. Muggleston (ed.), *The Oxford History of English*, Oxford, Oxford University Press, p. 80.

<sup>46</sup> See BURROW J. A, TURVILLE-PETRE T. (2005), *A Book of Middle English*, Oxford, Blackwell Publishing, p. 6. This is the case with Scottish identity, whose linguistic and geographic features frequently overlap. The boundary drawn between England and devolved Scotland — which “once stretched from the Humber to the Forth, but not further North” — severs Scots (a variety derived from Old English) from English. See DAVIES R. R. (1995), “Presidential Address: The Peoples of Britain and Ireland 1100-1400. II. Names, Boundaries and Regnal Solidarities”, *Transactions of the Royal Historical Society*, 5, pp. 3, 8, 13, note 48. See also SMITH J. (2005), *Essentials of Early English: An Introduction to Old, Middle and Early Modern English*, 2nd edn., London, Routledge, pp. 9-10. Second, the geo-linguistic frontier is related to the formation of the Scottish nation, which had been shaped over time: ‘the freeholders and whole community of the realm’ of Scotland were [thus] associated [...] with the struggle of independence” fostered by the Scots folklore and literary works. See DAVIES R. R. (1994), ‘Presidential Address: The Peoples of Britain and Ireland 1100-1400. I. Identities’, *Transactions of the Royal Historical Society*, 4, p 5. Third, there are linguistic markers and types of variation that draw geolinguistic boundaries in the British Isles: see UPTON C., “Modern Regional English in the British Isles”, en L. Muggleston (ed.), *The Oxford History*, cit., p. 386.

<sup>47</sup> MCINTOSH A. et al. (1986), *A Linguistic Atlas of Late Mediaeval English*, 4 Vols., Aberdeen, Aberdeen University Press.

<sup>48</sup> See BEAL J. C. (2011), *An Introduction to Regional Englishes: Dialect Variation in England*, Edinburgh, Edinburgh University Press; UPTON C., “Modern Regional English”, cit., p. 379.

<sup>49</sup> See ORTON H. et al. (1978), *The Linguistic Atlas of England*, London, Routledge; KURATH H. et al. (1973), *Handbook of the Linguistic Geography of New England*, 2nd edn., Providence, Brown University for the American Council of Learned Societies; KURATH H. (1941), *A Word Geography of the Eastern United States*, Ann Arbor, University of Michigan Press; KURATH H. Kurath et al. (1939-1943), *Linguistic Atlas of New England*, 6 vols., Providence: Brown University for the American Council of Learned Societies; KURATH H, McDAVID JR. (1961), *The Pronunciation of English in the Atlantic States*, Ann Arbor, University of Michigan Press.

cally demarcate the area where it was originally spoken — and a clear boarder was detected between Asturias and the northeastern part of León in Spain<sup>50</sup>.

In some cases, legal geography and linguistic geography overlap. The 878 Treaty of Wedmore between Guthrum, the Danish King, and Alfred, King of Wessex, asserted their respective “belongs of public laws” on a specific territory, and established a closer connection between land, community, and law. It is the so-called Danelaw, i.e., the territory subject to Danish law<sup>51</sup> and demarcated through a boundary running roughly from Chester to London. The Danish “belongs of public law” defined the legal relationship between the territory and the community, and comprised the single constitutive parts of the legal-linguistic geography of Danish rule: place-names politics, linguistic borrowings, a legal system and boundaries delimiting the area of the same Danelaw.

There are noticeable remnants of such “belongs of public law”. These reveal the performativity of the border, which not only demarcated the Danelaw, but was also a boundary<sup>52</sup> — the visible expression of a territorial divide on ethnic grounds. This assumption is held by the use of the noun *by* instead of *thorp*: the names of villages that contain that word “show clearer sign of antiquity. The large groups in which they tend to be concentrated suggest the conditions of an age when the Danish settlers in England still felt themselves strangers in a hostile land”<sup>53</sup>.

As for the synchronic perspective, there are noticeable overlaps between linguistics and legal geography, including, among others, place-related words defining the United States and the EU. Both *America* and *Europe* refer to a continent, i.e., designate specific “belongs of public law” in linguistic terms. On the other hand, *America* “serves as [a] potent label for one nation that occupies

<sup>50</sup> The pioneer of linguistic geography was Matteo Bartoli: see BARTOLI M. (1926), *Introduzione alla neolinguistica*, Florence, L. S. Olschki, 1925. On linguistic geography in Spain see, among others CARO BAROJA J. (1947), “La geografía lingüística de la España antigua a la luz de la lectura de las inscripciones monteles,” *Boletín de la Real Academia Española* xxvi, p. 197 et seq. On the demarcation of the Basque linguistic area see LAPESA R. (2008), *Historia de la lengua española*, Mardi, Gredos, p. 45; CID ABASOLO C. (2002), “Las fronteras de la lengua vasca a lo largo de la historia”, *Revista de Filología Románica*, 19, p. 15 et seq.

<sup>51</sup> BAUGH A. C., CABLE T. (2013) *A History of the English Language*, 6<sup>th</sup> edn., London and New York, Routledge, p. 89. The Danelaw as a legal-geographic relation between territory and community corresponds to the “area to the north and east of the old Roman road known as Watling Street”: see TOWNEND M. “Contacts and Conflicts”, cit., p. 81.

<sup>52</sup> See UPTON C., “Modern Regional English”, p. 386.

<sup>53</sup> STENTON F. M. (1942), “Presidential Address: The Historical Bearing of Place-Name Studies. The Danish Settlement of Eastern England”, *Transactions of the Royal Historical Society*, 24, p. 12.

only the middle reaches of the northern part of the Americas”, while in the late twentieth century, “*Europe* acquired an additional sense that brought it into line with *America*: it now meant not only the whole continent, but served as shorthand for the *European Union* (EU), a politico-economic federation, which occupies only part of that continent”<sup>54</sup>.

Linguistics adds relevant arguments to legal geography — place-related words are indeed part of the constitutional identity of the EU and of the USA. It also sets an additional layer of complexity, since the politics of place names determines to what extent denominational issues match the demarcation of both types of federalisms, i.e. their territorial constitutional identity.

## 5. FUNCTIONS AND FORMS OF LEGAL GEOGRAPHY: TERRITORIAL DEMARCATION AND TERRITORIAL ALTERATION

We come now to territorial (or regional) demarcation which is traditionally linked to state-building processes, and governs the division of a country’s internal territory into two or more territorial constituent units<sup>55</sup>.

In aggregative federations, the outcome of demarcation usually coincides with the boundaries of pre-existing units, which have come together and created a new federation. In some cases, the process of demarcation can be an effective “work in progress”. This is evident when a federation accrues its territory by virtue of the admission of new states, which can be carved out of former federal territories (as in the United States of America, Australia, and Canada) or are progressively admitted as independent polities within a colonial empire into a new federation (as in Malaysia and India). The admission of new states can alter the equilibrium that bi — and multiethnic federations are based on — and the divided nature of the federal society can intensify at a steady rate.

In younger federal and regional states, constituent assemblies have usually been responsible for both the creation of sub-national units and the drawing of their boundaries. Indeed, legal studies on regional demarcation are very much indebted to the debates that took place in the Italian, Indian, and South African

<sup>54</sup> MCARTHUR T., “English World-Wide in the Twentieth Century”, en L. Mugglestone (ed.), *The Oxford History*, cit., p. 471. On EU and U. S. Legal Geography see NICOLINI M. (2015), “Boundaries and Identity: The Legal Geography of the European Union and the United States of America”, in *Sant’Anna Legal Studies — STALS RESEARCH PAPER 2/2015*, p. 1 et seq.

<sup>55</sup> For further references, see RAMUTSINDELA M. F., SIMON D. (1999), “The Politics of territory and Place in Post-Apartheid South Africa: the Disputed Area of Bushbuckridge”, *Journal of Southern Africa Studies*, 25, pp. 479-481.

constituent assemblies<sup>56</sup>. The proceedings of these debates encompass all the most relevant issues in regional demarcation: the choice of federal-regional design; the role played by demarcation in governing diversity; the recourse to economic, ethnic, linguistic, and religious factors in order to draw sub-national boundaries.

Alteration presupposes the division of national territory into a number of constituent units, and entails either the total or partial reconfiguration of a country's internal legal geography. It may seem odd that federal and regional constitutions consider constituent units as "indestructible states"<sup>57</sup>, but they provide them with mechanisms for altering their boundaries. The topic in question is even more contentious in multinational federations: ethnic-based states secure a perpetual compact between the different groups, and yet, federal and regional constitutions are arranged so as to establish an enduring union of "destructible" units.

Territorial alteration gives rise to relevant questions. The first one can be called the "coherence test": should the criteria enabling territorial alteration be consistent with those applied to the original demarcation? The answer to the question depends on whether federal and regional constitutions exhibit a neutral attitude toward the "territorial identity" of constituent units. To put it another way: constitutions may allow only those territorial alterations that are consistent with the ethnic, religious, linguistic criteria that were used for the original demarcation. They can also allow alteration without imposing any criteria.

If this is the case, "territorial neutrality"<sup>58</sup> will only prescribe that territorial readjustments be achieved in accordance with the procedures enshrined in the constitution. This does mean that diversity lacks: there are regional variations, but they are practically confined to political culture. The United States "is in fact a heavily homogenized culture with high levels of normative consensus"<sup>59</sup>; Australia is "a homogeneous federation, in the sense that the con-

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<sup>56</sup> For Italy, see PEDRAZZA GORLERO M. (1979), *Le variazioni territoriali delle Regioni, Contributo allo studio dell'art. 132 della Costituzione*, I, *Regioni storiche e regionalismo politico nelle scelte dell'Assemblea Costituente*, Padua, CEDAM. For India, see BHATTACHARYYA H., "Federalism", cit., p. 54 et seq.. For South Africa, see MUTHIEN Y. G., KHOSA M. M. (1995), "The Kingdom, the *Volksstaat* and the New South Africa: Drawing South Africa's New Regional Boundaries", *Journal of Southern African Studies*, 21, p. 304 et seq.

<sup>57</sup> HUBER H. (1967), "Die Gleichheit der Gliedstaaten im Bundesstaat", *Österreichische Zeitschrift für öffentliches Recht*, p. 256.

<sup>58</sup> See KINCAID J., "Territorial Neutrality and Coercive Federalism in the United States", en S. Mangiameli (Ed.), *Federalism*, cit., p. 133 et seq.

<sup>59</sup> FEELEY M. M., RUBIN E. (2008), *Federalism: Political Identity and Tragic Compromise*, Ann Arbor (MI), Chicago University Press, p. 118.



figuration of its constituent units, or states, is not coincident with marked cultural diversity”<sup>60</sup>. Germany and Austria are linguistically homogeneous — but in Germany the main cleavage is that opposing the former West Germany to Socialist Eastern Germany.

However, homogeneous federations have a different approach towards territory. As far as the United States of America are concerned, territory “(except for the Indian country) is essentially neutral, that is, a blank slate to be filled in by whomever lives on the territory”.<sup>61</sup> Territorial neutrality thus standardizes member states’ identity: “settlers give life and meaning to a territory”, but “subsequent residents [...] [may adapt] the jurisdiction’s institutions to changing times and their preferences”<sup>62</sup>.

The homogeneous nature of U. S. federalism can be traced back to the fact that constituent units were carved out of the federal territories and then admitted into the federation. The federal government thus shaped member states’ territorial identity, boundaries and denomination prior to their accession to the federation<sup>63</sup>. The federal government supervised the processes of territorial delimitation. First, “[t]he Congress [had] Power to dispose of and make all needful Rules and Regulations respecting the Territory [...] belonging to the United States”, and states were carved out from those territories (*territorial clause*: Article IV, s. 3, cl. 2, of the U. S. Constitution). Second, “[n]ew States [might] be admitted by the Congress into [the] Union” (Article IV, s. 3, cl. 1, of the Constitution). Third, admission implied the application of the criteria set forth in the *Northwestern Ordinance 1787* and the demarcation of states’ borders, which followed “straight lines laid down by surveyors”<sup>64</sup>. Fourth, admission led to the conferral of statehood to the new states, and statehood implied the certification

<sup>60</sup> SAUNDERS C. (2015), “The Interdependence of Federalism and Democracy in Australia”, en F. Palermo, E. Alber (eds.) *Federalism as Decision-Making. Changes in Structures, Procedures and Policies*, Leiden-Boston, Brill-Nijhoff, p. 22.

<sup>61</sup> KINCAID J., “Territorial Neutrality and Coercive Federalism in the United States”, cit., p. 133.

<sup>62</sup> Ibid., pp. 133-134.

<sup>63</sup> On state admission, see U. S. Supreme Court, *The American Insurance Company and The Ocean Insurance Company (New York) v. David Canter*, 26 U. S. (1 Pet.) 511 (1828). On the territorial clause, see LEIBOWITZ A. H. (1989), *Defining Status. A Comprehensive Analysis of United States Territorial Relations*, Dordrecht, Martinus Nijhoff Publishers, p. 6 et seq.

<sup>64</sup> KINCAID J., “Territorial Neutrality and Coercive Federalism in the United States”, cit., p. 134.

of state constitutions under the *Republican Form of Government* clause (or Guarantee clause: Article IV, s. 4, of the U. S. Constitution).<sup>65</sup>

When admitting new constituent units, the U. S. federal government not only acknowledged their statehood but also their “belongs of public law”, which are, however, feebler and looser than those of the EU member states.<sup>66</sup> Hence, units’ territorial identity is the outcome of a restless process through which U. S. territory and community have become inseparable, upholding the narrative of a strong constitutional identity and forging U. S. legal geography.<sup>67</sup>

## 6. THE RATIONALE OF LEGAL GEOGRAPHY: TERRITORIAL IDENTITY

The second question territorial alteration gives rise is related to the first one, and adds additional elements of complexity in the governance of divided societies. Should the readjustment of the territorial complexity be consistent with the rationale of multinational federalism? On the one hand, the coherence test should ascertain whether territorial reassessment respects alteration processes. On the other hand, alteration should be able to protect both the identity of groups through the creation of new ethnic-based units and the federation as a whole.

The accommodation of divided societies through constituent units necessarily has to do with the identity of the different groups that are involved. In multinational federations, identity counts as “territorial identity”. We have already referred to this concept and pointed out that it rests on economic, linguistic, religious, and ethnic factors<sup>68</sup>. But it also rests on territory — in relation to which identity is construed — and boundaries, which outline the territorial identity to the exclusion of the others; on the denomination of territorial units.

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<sup>65</sup> LERCHE C. O. JR. (1949), “The Guarantee Clause in Constitutional Law,” *The Western Political Quarterly*, 2, pp. 358-374.

<sup>66</sup> With the exception of the South, which “has long been the country’s most distinctive region, so much so that the United States was, in important respects, a bicomunal federation from 1789 to about 1968”: KINCAID J., “Territorial Neutrality and Coercive Federalism in the United States”, cit., p. 138.

<sup>67</sup> See DUFFEY D. P. (1995), “The Northwest Ordinance as a Constitutional Document,” *Columbia Law Review*, 95, p. 942: “Through the Ordinance, the states attempted to reproduce — to create entities like themselves [...] the political reproduction [...] was provided to preserve and perpetuated the distinctive political life that the states had won in the War for Independence”.

<sup>68</sup> See above, section 3.

Nobody can deny the relevance of these features. As for denomination, it supplements the “ethnic” criterion according to which boundaries are drawn. In Italy, the denomination of the Trentino-Alto Adige/*Südtirol* and Valle d’Aosta/*Vallée d’Aoste* regions has recourse to the linguistic criterion — a constitutive part of the territorial identity. In Spain, regional languages are official in the respective communities in accordance with their basic laws. Basic laws establish the name of the community, which corresponds to the respective historical identity<sup>69</sup>.

However, territorial identity is common to all federal and regional states. As a principle of organization, federalism prescribes that both homogeneous federations and divided ones set an equation between territory, constituent units and regional identity. Territorial identity does not draw a cleavage between multinational federations and homogeneous ones; the dichotomy rests on how the legal geography applies the identity rule to constituent units.

Unlike homogenous federations, however, multinational one have recourse to “territorial neutrality” in order to preserve the territorial identity of their different states and groups. This is apparent in Canada. Quebec’s distinctiveness was secured by the *Quebec Act 1791*, which demarcated the French-speaking provincial territory, and then by section 146 of the *British North America Act 1867*, which established different mechanisms for the admission of new provinces<sup>70</sup>. The act maintained the Imperial Parliament’s responsibility for admitting new English-speaking provinces, thus allowing Canada’s English and French founding nations to live together in a multinational federation. Furthermore, the *Constitution Act 1982* introduced additional provisions in order to protect Quebec’s identity: an amending formula for changing the extension of the existing provinces (section 42(e)); the recognition of French minorities and aboriginal rights (sections 16-25); an amending formula by unanimous consent in relation to the use of the English or French language (subsection 41(c)). Quebec now has an effective veto on constitutional amendments, and can protect

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<sup>69</sup> For Italy, see *supra* section 2. For Spain, see Articles 3 and 147 of the Constitution.

<sup>70</sup> Provinces carved out of Rupert’s Land and the North-Western Territory required the prior admission of these territories to Canada, and the creation of the provinces out of part of Rupert’s Land and the North-Western Territory. Prince Edward Island and British Columbia were admitted by an imperial Order in Council on addresses from the Houses of the Parliament of Canada and from the Houses of the respective legislatures. Newfoundland was admitted in 1949 by an imperial statute, which followed two referenda. Section 146 could not be used because “it required the admission be requested by the Legislature of the province seeking admission, and in 1949 Newfoundland lacked a Legislature”: HOGG P. W., *Constitutional Law of Canada*, cit., p. 2-16.

French linguistic minorities who reside outside its boundaries.<sup>71</sup> In addition, the House of Commons stipulated that the “House recognize[d] that the Québécois form a nation within a united Canada”<sup>72</sup>. Finally, the ethnic criterion was applied in order to carve the territory of Nunavut out of the Northwest Territories in 1999, and confer self-government on the Inuit people. Hence, legal geography supports the idea of Canada as a multinational federation.

## 7. THE VISIBLE ELEMENTS OF LEGAL GEOGRAPHY: BOUNDARIES AND IDENTITY

Boundaries add another layer of complexity to the governance of divided societies. This occurs when multi-national societies are “dispersed” throughout the country. “Dispersed” federations favour regional demarcation processes based on crosscutting constituent units where several factors (ethnic, economic, social) and numerous communities are intertwined on the same territory, and cannot be disentangled, as in South Africa<sup>73</sup>. Although some societies are divided on ethnic and linguistic lines within provincial boundaries, this crosscutting demarcation process tends to create compact socio-economic units. Malaysia provides an example: whereas particular ethnic groups are more concentrated in some states than in others, minorities are generally spread fairly evenly across the country, and the federal government accommodates diversity by promoting integration programmes<sup>74</sup>.

By contrast, ethnic groups that are concentrated in a specific territory that two or more groups consider as part of their own identity, such as in Nigeria, give rise to another relevant question: how is it possible to attain an ethnic-based territorial demarcation when two opposing and conflicting territorial identities partially or totally overlap?

The interweaving of different ethnic identities is one of the issues related to territorial demarcation. Hence, demarcation processes require the determination of criteria that rest on several factors — social, linguistic, economic, etc. — in order to split national territory into constituent units. It follows that the govern-

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<sup>71</sup> Hence, Quebec is the “guardian of the French language in Canada”: OLIVER P. C. (2007), “Quebec and The Amending Formula: Protection, Promotion and Federalism,” en S. Tierney (ed.) *Accommodating Cultural Diversity*, Aldershot, Ashgate Publishing, p. 172.

<sup>72</sup> House of Commons of Canada, 39th Parliament, 1st Session, Journals, No. 87, Monday, 27 November 2006, p. 811.

<sup>73</sup> See MURRAY C., SIMEON R. (2009), “Reforming Multi-level government in South Africa,” *Canadian Journal of African Studies*, 43, pp. 536-571.

<sup>74</sup> HARDING A., *The Constitution of Malaysia*, cit., p. 135 et seq.

ance of divided societies through constituent units does not imply the mere reassessment of internal political entities in order to fit the claims for nationality-based units. It also requires the detection of appropriate criteria in order to avoid a divided “ethnic identity” of the same territory.

In this respect, several variables influence regional demarcation. The first variable draws a distinction between those states in which “previously independent political communities have been integrated into a federal system and those in which a formerly unitary-state has devolved governmental powers upon a number of regions within that state”<sup>75</sup>. The second variable depends on whether new federal and regional states have experienced a dramatic change of regime. The third variable concerns regional and ethnic conflicts: regional delimitation may have profound long-term consequences (as well as an impact on territorial disputes), and attempts to resolve the most contentious of these.

As for the first variable, demarcation in aggregative multi-ethnic federations is linked to the accession to self-government of former colonies. The delimitation of regions, states or provinces coincided with a new constitution. In Canada, the confederative scheme settled at the Quebec Conference (1864) was subsequently passed as the *British North America Act 1867* by the Imperial Parliament. The Act united the colonies of Canada, New Brunswick and Nova Scotia into a single dominion. Furthermore, it divided Canada into two provinces, Ontario and Quebec, thus restoring the territorial identity of the French-speaking province that had been suppressed by the *Union Act 1840*.

The same occurred in Malaysia, which has one of the most diverse societies in the world. The *Federation of Malaya Independence Act 1957* demarcated the national territory by taking into account the historical territorial identity of the previously existing Malay States. The admission of Sabah and Sarawak under the *Malaysia Agreement* and the *Malaysia Act 1963* reflected the same aggregative, historical criterion. The boundaries of the states coincided with those of the former colonies and protectorates, which had not been drawn along linguistic and religious lines.<sup>76</sup>

India and Nigeria also provide us with interesting cases. After gaining its independence from the United Kingdom in 1947, the Indian Constituent Assembly adopted a federal constitution, which entered into force in 1950. The constitution, however, did not use the term “federation:” due to the ethnic

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<sup>75</sup> ARONEY N., “Representation”, cit., p. 281. The distinction is drawn in LENAERTS K. (1990), “Constitutionalism and the Many Faces of Federalism”, *American Journal of Comparative Law*, 38, pp. 206-207.

<sup>76</sup> However, boundaries of the preexisting entities were historically created on the basis of predominant ethnic groups. See HARDING A., *The Constitution of Malaysia*, cit., p. 20 ff.

fragmentation of the former British *Raj* the term was considered a “recipe for disintegration”<sup>77</sup>. Despite this, ethnic diversity was accommodated through territorial demarcation. Indeed the Constituent Assembly admitted into the new country the former directly-ruled *Raj* provinces and territories, as well as the nominally independent princely states. As a result, three categories of constituent units were enumerated in the First Schedule to the Constitution: provinces, princely states, and Union territories (such as Delhi and the Andaman and Nicobar Islands). As for Nigeria, the Federation was created in 1946 — that is, before it gained independence — by creating three regions out of the former British colony. This arrangement favoured the three predominant ethnic groups<sup>78</sup>, and ethnic minorities living in the regions dominated by the three predominant groups harshly contested this accommodation: indeed, the “colonial-inherited three-regional federation was formally blind to ethnicity but paid attention to the country’s three main groups”<sup>79</sup>.

Another area to focus on is the interactions between changes of regime and processes of demarcation. In Russia, the collapse of the Soviet Union led to the 1993 federal constitution, which retained the ethnic basis of the federal system. Owing to the fragmented nature of Russian society, demarcation is based on the principles of ethnicity and territory: 21 units have been created on the basis of ethnicity, but the titular ethnic groups form a majority in only seven of these ethnically-named constituent units<sup>80</sup>. In Ethiopia, at the end of military rule (1991), “ethnic pluralism [was used] as an organizing principle to establish a federal state, creating primarily ethnic-based territorial units”<sup>81</sup>. The 1994 Constitution entrenched ethnic pluralism (Article 39), and organized the constituent units’ boundaries along ethnic lines (Article 46.2). In this respect, the nine Ethiopian states are ethnically oriented. Ethnicity is the demarcating criterion in Tigray, Afar, Amhara, Oromia and Somali, with the overwhelming majority of their inhabitants belonging to a sole predominant ethnic group. Several ethnic groups coexist in the southern regional state of Benshagul-Gumz,

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<sup>77</sup> See BHATTACHARYYA H., “Federalism”, cit., p. 58.

<sup>78</sup> See ELAIGWU I. J. (2002), “Federalism in Nigeria’s New Democratic Polity”, *Publius*, 32, pp. 73-95.

<sup>79</sup> EJOBOWAH J. B. (2010), “Territorial Pluralism: Assessing the Ethnofederal Variant in Nigeria”, *Regional and Federal Studies*, 20, p. 255. See also ALAPIKI H. E. (2005), “State Creation in Nigeria: Failed Approaches to National Integration and Local Autonomy”, *African Studies Review*, 48, p. 53.

<sup>80</sup> ROSS C., “Russia’s multinational federation”, cit., p. 109.

<sup>81</sup> HABTU A., “Ethnic Pluralism as an Organizing Principle of the Ethiopian Federation”, cit., p. 92.

and in Gambela, where a “mix of factors like political, economic, settlement pattern, similarity of culture and language have been taken into consideration” for territorial demarcation<sup>82</sup>.

South Africa was also affected by constitutional (and geopolitical) transitions. After the dismantlement of the apartheid regime, the Transkei, Bophuthatswana, Ciskei and Venda *Bantustans* were reincorporated into the country. However, the creation of a federal-regional state led to a fierce disagreement between political parties within the Constituent Assembly. The African National Congress (ANC) advocated a strong unitary state, whereas the National Party (NP) and the Inkatha Freedom Party (IFP) supported the establishment of a strictly federal system, as well as the devolution of substantial powers to sub-national units. The ANC initially rejected the federal solution, since it feared that a federal structure “would emasculate the central government”<sup>83</sup>. The compromise reached by the political parties led to the establishment of a feeble form of regionalism. As for territorial demarcation, a *Commission on the Demarcation-Delimitation of States, Provinces and Regions* was appointed on May 28, 1993. The outcome of the demarcation process was eventually represented by the creation of nine provinces that were then embedded in the 1996 Constitution (section 103(2) and Schedule 1A).

The Demarcation Commission was entrusted with a difficult — albeit crucial — task: it had to redraw the geographical configuration of South Africa by taking into account the delimitation criteria proposed by the political parties. The Commission was able to reduce the criteria into four categories: economic features; geographic coherence (the boundaries of the *development regions* and the *magisterial and district boundaries* created under apartheid rule); sociocultural issues; and institutional capacity<sup>84</sup>. On the basis of such mixed criteria, it demarcated provincial boundaries. It also detected 14 *affected areas*, whose incorporation within a province was supposed to be extremely contentious. Hence, South Africa demarcated provincial boundaries in accordance with non-ethnic-oriented criteria: provincial boundaries were drawn in order to promote integrated development without taking into account the fragmentation of the population.

<sup>82</sup> TESFAI BARAKI G., “The making of states”, cit., p. 235.

<sup>83</sup> See KLUG H., *The Constitution of South Africa*, cit., pp. 24-27 and 30.

<sup>84</sup> See DE VISSER J., STEYTLER N., FESSA Y., “The role of ethnicity in the demarcation of internal boundaries in South Africa and Ethiopia,” en S. Mangiameli (ed.), *Federalism*, cit., pp. 277-279.

## 8. TERRITORIAL ALTERATION AND THE RESOLUTION OF ETHNIC CONFLICTS

The third variable is related to the detection of demarcation criteria that are capable of avoiding ethnic conflicts. If the original demarcation is not necessarily drawn along ethnically oriented lines, then divided societies can disregard the territorial delimitation. This undermines legal geography, territorial boundaries, and the existence of the federation.

This occurred in Malaysia. In 1965, Singapore left the federation because of disagreements between the Singaporean and Kuala Lumpur governments<sup>85</sup>. However, the lesson that can be drawn from Malaysia is the necessity of avoiding the ossification of ethnic divisions, and to seek a way to sidestep the lack of a common vision during future negotiations. In Russia, demands for secession have come from those subnational units where the titular ethnic population represents the majority (Chechnya, Chuvashiya, Dagestan, Ingushetiya, Kalmykiya, North-Osetiya-Alaniya, and Tuva)<sup>86</sup>. Demands for secession also characterize Quebec and Catalonia<sup>87</sup>. In these cases, there is no dispute over demarcation, since it is perceived as an insufficient means of protecting territorial identity.

In order to sidestep “geographical” ethnic conflicts, constitutions establish mechanisms for subsequent accommodation of disputed demarcations. As a consequence, territorial alteration is the outcome of procedures embedded in the constitution requiring the consent of the units affected.

The practice of territorial alteration has proven to be consistent with the ethnic, linguistic and religious criteria governing the original demarcation. Legal methods of territorial adjustment tend to sidestep “geographical” ethnic conflicts. Federal-regional constitutions stipulate mechanisms for accommodation of disputed demarcations, and any change in borders territorial adjustment is the outcome of constitutionally specified procedures, which generally require the consent of the units affected, and sometimes of all the other units in the country in order to alter subnational boundaries.

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<sup>85</sup> See HARDING A., *The Constitution of Malaysia*, cit., p. 43, note 58; BAKAR I., “Multinational federation”, cit., p. 78.

<sup>86</sup> See ROSS C., “Russia’s multinational federation”, cit., p. 117.

<sup>87</sup> See OLIVER P. (1999), “Canada, Québec and Constitutional Amendments”, *University of Toronto Law Journal*, 49, p. 546 et seq.; CASTELLÀ ANDREU J. M. (2013), “Democracia, reforma constitucional y referéndum de autodeterminación en Cataluña,” en E. Álvarez Conde, C. Souto Galván (eds.), *El Estado autonómico en la perspectiva del 2020*, Madrid, Universidad Rey Juan Carlos, p. 171 et seq.



In multi-national federations, the practice of territorial adjustment has proven to be consistent with the ethnic, linguistic and religious criteria governing the original demarcation. In Switzerland, the Canton of Jura was carved out of the Canton of Berne along linguistic and religious lines. The Catholic, French-speaking inhabitants of Jura never identified with the Protestant, German-dominated Canton of Berne. In 1979 a popular vote led to a territorial alteration and to the creation of a new Canton<sup>88</sup>. However, a small French-speaking community remained within the boundaries of the Canton of Berne after the 1979 popular vote. Since 1979 Jura had been trying to assert its “belongs of public law” on both the French minority and the communities where they live. In 2013 a new referendum was held in order to allow this minority to join the French-dominated Canton of Jura, and therefore to assert a new legal geography for Switzerland. The referendum failed: the French minority in Berne did not accept the process of territorial readjustment proposed by Jura<sup>89</sup>.

In India, 11 ethnically heterogeneous provinces, and 561 princely states represented the “geographical” legacies of the British Raj. After independence, the reorganization of Indian legal geography required a comprehensive alteration of state boundaries. In *The Berubari Union and Exchange of Exclaves*, for example<sup>90</sup>, the Supreme Court held that “the basic structure of the Constitution is the same as that of the *Government of India Act, 1935*, which had for the first time introduced a federal polity in India”. As a consequence, “[t]he constituent units of the federation were deliberately created [...]”. Furthermore, “The makers of the Constitution were aware of the peculiar conditions under which, and the reasons for which, the States (originally Provinces) were formed and their boundaries were defined, and so they deliberately adopted [...] the possibility of the redistribution of the said territories after the integration of the Indian States”<sup>91</sup>.

To this extent, the Union government appointed the *States’ Reorganization Commission* in 1953, and then passed the *State Reorganisation Act 1956*. This led to a continuous process of state creation and territorial alteration<sup>92</sup>. Indeed, the lists of states enshrined in the First Schedule to the Constitution have been augmented

<sup>88</sup> BELSER E. M., SETZ R., “The territorial structure of federal Switzerland revised. About the difficulty of being small,” en S. Mangiameli (Ed.), *Federalism*, cit., p. 12.

<sup>89</sup> See RUIZ VIEYTEZ E. J. (2013), “¿Derecho a decidir en clave interna? El conflicto del Jura y el referéndum de 2013”, *Revista d’Estudis Autonòmics i Federals*, 20, pp. 101-121.

<sup>90</sup> 3 SCR (1960) 285.

<sup>91</sup> See KUMAR SINGH A., “Constitutional Semantics and Autonomy within Indian Federalism”, en F. Palermo, E. Alber (eds.), *Federalism as Decision-Making*, cit., pp. 120-147.

<sup>92</sup> KUMAR SINGH A., “Region and state formation in India,” en S. Mangiameli (Ed.), *Federalism*, cit., p. 291 ff.

continuously from the 1950s onward. The Constitution sets down a process for territorial alteration that is flexible and capable of serving different purposes. Pursuant to sections 3 and 4, the national parliament may create new states by separating a territory to form a new state, by merging two or more states or parts thereof, by increasing the area of a state, or by diminishing or otherwise altering boundaries by passing a federal law. Such a bill is referred to the legislatures of the affected states, and the parliament is not bound by the view of the state concerned. The alteration criteria are coherent with those approved by the Constituent Assembly, since there is congruence between the proposed territorial readjustments and geographical, ethno-linguistic lines. Moreover, Indian scholars detect two layers of nationhood: socioeconomic and ethnic, with the latter being non-negotiable. This was particularly evident both in the case of the accession to the Union of the princely state of Jammu (1947), and in the creation of the “Christian-dominated states” (Nagaland, Meghalaya and Mizoram), where the “legitimacy basis of their creation [...] was [...] tribal ethnicity”<sup>93</sup>.

Belgium experienced a progressive transformation into a federal state. In this respect, regional demarcation and territorial alteration overlap. In order to accommodate the Flemish- and French-speaking communities, the linguistic border set in 1962 was subsequently entrenched in the constitution (1970). The linguistic border had already led to the creation of three unilingual regions (French, Flemish and German), and one bilingual territory (Brussels-Capital). Two kinds of constituent units were created: communities (1970) and regions (1980). Communities meet “the demands of the Flemish movement for linguistic, cultural and educational autonomy”, whereas regions were introduced at the request of the Walloon people “in order to attain autonomy at the social and economic level”<sup>94</sup>.

In South Africa, claims for territorial alteration proceeded from the above-mentioned affected areas. The Demarcation Commission had suggested that such areas were entitled to a petition for a *referendum*. Indeed, section 124 of the 1993 Interim Constitution endorsed recourse to a referendum as a “mechanism for subsequent appeal and the resolution of disputed new boundaries”<sup>95</sup>. Political parties preferred a political solution rather than a legal one. As a consequence, the territorial alteration process was not activated. Several geographical disputes arose, and the *affected area* of Bushbuckridge — aiming to separate from Limpopo and to join Mpumalanga — filed a case before the High Court in Pre-

<sup>93</sup> BHATTACHARYYA H., “Federalism”, cit., pp. 54-55. See, also, SINGH M. P. (2005), “Reorganisation of States in India”, *Economic and Political Weekly*, 43, pp. 70-75.

<sup>94</sup> PEETERS P., “Multinational federations”, pp. 33 and 35, respectively.

<sup>95</sup> RAMUTSINDELA M. F., SIMON, D., “The Politics of Territory”, cit., p. 482. The *affected areas* were listed in the second part of Schedule 1 to the 1993 Interim Constitution.

toria<sup>96</sup>. In order to resolve such disputes, the national parliament passed the *Constitution Twelfth Amendment Act of 2005*, which disregarded both territorial identity and affected areas' requests. As a result, local communities challenged the validity of the *Amendment Act* before the Constitutional Court, which held that the amendment was unconstitutional. Although alterations were consistent with the procedure set forth in section 74(8) of the 1996 Constitution, the National Parliament did not meet the levels of public participation required by the constitution while altering provincial boundaries<sup>97</sup>. Nonetheless, such alterations match the coherence test. In the absence of ethnic criteria, the sole criterion governing alteration is the territorial identity of the people concerned. Furthermore, the Interim Constitution provided mechanisms for resolving territorial disputes through the alteration of provincial boundaries.

The federation of Nigeria, which has been relatively unstable since independence, provides an example of a continuous process of territorial demarcation and alteration in order to accommodate the many and often conflicting ethnic groups living within its boundaries. The need for this process is due to the presence of several crosscutting cleavages. From 1946 to 1960 "many groups of people were arbitrarily sandwiched into a territorial unit that formed a geopolitical entity called the state"<sup>98</sup>. As a result, minority groups were forced to identify themselves with one of the three states, which were dominated by the three largest ethnic groups. Ethnic conflicts were accompanied by threats of secession, one of which led to war when the southeastern state, dominated by the Igbos, declared independence (as Biafra) in 1967. The rest of Nigeria fought to stop the secession. In the run-up to the war, and while it lasted, minorities established themselves as holding the key to the survival and stability of the federation, as leaders of the majority groups stuck to narrow ethnic and regional interests for which they were prepared to secede. The role of minorities was strengthened by the fact that the head of state at the time, General Yakubu Gowon, was from a minority group (Angas), as were the top wartime and post-war federal bureaucrats and political advisers<sup>99</sup>.

<sup>96</sup> High Court of South Africa, *Judgment in the High Court of South Africa, in the matter between Busbuckridge border committee, Michael Mangisi Mnisi and the Government of Northern Province, the Government of Mpumalanga, the Government of the Republic of South Africa, the African National Congress*, Case No. 15607/97. See RAMUTSINDELA M. F., SIMON, D., "The Politics of Territory", cit., p. 479 et seq.

<sup>97</sup> See Constitutional Court of South Africa, *Matatiele Municipality and Others v. President of the Republic of South Africa and Others* CCT 477/07 [2006] ZACC 12 (or "Matatiele 2").

<sup>98</sup> ALAPIKI H. E., "State Creation in Nigeria", cit., p. 50.

<sup>99</sup> OSAGHAE E. E. (1998), "Managing Multiple Minority Problems in a Divided Society: The Nigerian Experience", *The Journal of Modern African Studies*, 36, pp. 1-24.

The war ended in 1970, with the defeat of Biafra, and its reincorporation into Nigeria. But there was a price to pay, as the Nigerian federation became more complex. Ethnic conflict and fears of secession led to the creation of new states, and “the [...] segmentation of Nigeria’s political structure [increased] from three regions at independence in 1960 to four regions in 1963, twelve states in 1967, nineteen states in 1976, twenty-one states in 1987, thirty states in 1991, and thirty-six states in 1996”<sup>100</sup>. Territorial alteration also achieved the following additional targets: a) no states could dominate or control the central government; and b) each state should form a compact, geographical area. Moreover, territorial alteration processes were then enshrined in the 1979 and the 1999 federal constitutions<sup>101</sup>.

The result of these territorial adjustments also meant that no one state could dominate the central government, and that each state comprised a compact geographical area. As this approach seemed to be working, principles for territorial adjustment were enshrined in the 1979 and the 1999 federal constitutions. Territorial regrouping favoured ethnic-based self-government at the local level, and power sharing at the federal level. The result is that there are now national rather than regional minorities, and rather than minority-majority areas within states, there are now states for the minorities. The fight for new states in Nigeria ended up promoting common nationhood and encouraging the process of nation building.

Thus, territorial regrouping favoured ethnic-based self-determination and self-government, as well as *power sharing* at the federal level: “following the creation of states, there are now ‘national’ not regional minorities, and rather than *minority areas*, we now have *minorities’ states*”<sup>102</sup>. In this respect, “the struggle for new states in Nigeria”<sup>103</sup> both promoted a sense of common nationhood and encouraged the process of nation building.

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<sup>100</sup> ALAPIKI, H.E., “State Creation in Nigeria”, cit., p. 50. Furthermore, the military regimes supported the progressive creation of states: on the topic see EJOBOWAH, J.B., “Territorial Pluralism”, cit., p. 259.

<sup>101</sup> See sections 3 of the 1979 Constitution and 8 of the 1999 Constitution. Pursuant to section 8(1)(b), “a proposal for the creation of the State is thereafter approved in a referendum by at least [a] two-thirds majority of the people of the area where the demand for creation of the State originated”. See SUBERU R. T. (1991), “The Struggle for New States in Nigeria, 1976-1990”, *African Affairs*, 90, p. 508 et seq.

<sup>102</sup> OSAGHAE E. E. (1991), “Ethnic Minorities and Federalism in Nigeria”, *African Affairs*, 90, p. 244.

<sup>103</sup> SUBERU R. T., “The Struggle”, cit., p. 499 ff.

## 9. DO ECONOMIC CRITERIA CHALLENGE ETHNICALLY ORIENTED LEGAL GEOGRAPHY? CONCLUDING REMARKS

The application of the comparative method in legal geographic studies has demonstrated that regional demarcation and power sharing are capable of accommodating divided societies through carefully-designed structures and constituent units. Regional demarcation permits the different ethnic groups to live together within a multi-national federation. The recognition of difference and diversity in divided societies serves to hold a federation together, rather than pulling it apart, allowing power sharing to work and establishing consociational federations that aim at the maintenance of territorial integrity.

Permitting territorial adjustments also coheres with the same goals: its practice has proven to be consistent with the ethnic, linguistic and religious criteria governing the original territorial demarcation. Both regional demarcation and territorial adjustment are, therefore, consistent with the rationale of multi-national federalism.

Similarly, territorial alteration exhibits a relatively high degree of “coherence” with the same goals. In Switzerland, India, Belgium, South Africa, and Nigeria, the practice of territorial alteration has proven to be consistent with the ethnic, linguistic and religious criteria governing the original territorial demarcation. In this regard, the purpose of holding together divided and conflicting groups seems to set a substantive limitation to territorial alteration. The readjustment of the territorial complexity should, therefore, be consistent with the rationale of multinational federalism.

However, the ethnic-based criteria governing territorial demarcation and alteration are under strain. On the one hand, they play an even less relevant role in shaping territorial identity. This is evident in South Africa, where the original demarcation favoured the creation of crosscutting communities. Within provincial boundaries, “ethnic” societies are still divided on ethnic and linguistic lines, but they tend to become compact in a socioeconomic perspective. The same thing has occurred in Malaysia. Although some groups are more concentrated in some states than others, ethnicities are spread across the country<sup>104</sup>, and the federal government accommodates diversity by promoting integration programs<sup>105</sup>. In India, the geographical reorganization along linguistic lines did not grant any privileged protection to a linguistic

<sup>104</sup> See HARDING A., *The Constitution of Malaysia*, cit., p. 135.

<sup>105</sup> See BAKAR, I., “Multinational federation”, cit., p. 74 ff.

community, and facilitated the creation of states based on crosscutting cleavages and identity.

On the other hand, economic factors affect the way territorial identity is conceived. In Switzerland, for example, the homogenization of society as a result of economic globalization increased mobility within the country, and migration towards metropolitan areas induced the federal government to deliver strategies for sustainable spatial planning that are based on non ethnically-oriented units<sup>106</sup>.

In Switzerland, at least, it is clear that economic factors have tended to reduce the significance of ethnicity, language and religion. As a consequence, the concept of territorial identity has been reshaped to include functional criteria, such as access to services and fiscal equalization.

It is obvious that economic factors tend to reduce the relevance of those factors that are based on ethnicity, language and religion. As a consequence, these changing patterns are reshaping the same concept of territorial identity, which is even more determined on the basis of functional criteria (access to services, facilitation, allocation of natural resources and distribution of financial proceeds, etc.).

Thus, the intersection of traditional and socioeconomic factors represents the most noticeable challenge to an ethnically construed territorial identity. Such an intersection adds additional layers of complexity to the governance of divided societies, which, through constituent units, implies a reassessment of the criteria governing internal political demarcation and new coherence tests in territorial alteration. Hence, it may be possible that economic factors could totally undermine the traditional demarcation based on ethnic and territorial identity.

This is evident when natural resources or economic and financial areas lie in a territory that is deemed to be a constitutive element of two or more conflicting ethnic groups. When several territorial identities and a single economic (and territorial) interest overlap, demarcation and delimitation are perceived as insufficient means for governing a crosscutting, divided society. Indeed, societies would not be divided on the grounds of ethnic and linguistic cleavages, but on the basis of economic interests. To this extent, multinational federations must cope with new cleavages, as well as with new criteria for the creation of sub-national units that are not only ethnically oriented. This is an inescapable challenge. Indeed, it would be very bizarre if the governance of divided societies were attained on ethnic grounds while, at the same time, federations were divided on the basis of economic factors, which are neutral with respect to ethnicity and language.

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<sup>106</sup> This is the so-called *Raumkonzept Schweiz* (Switzerland Space Concept) delivered by the federal government in 2012: see BELSER E. M., SETZ R., "The territorial structure of federal Switzerland revised", cit., pp. 6-8.

**Título:**

DEMARCACIÓN REGIONAL, MODIFICACIÓN TERRITORIAL Y ACOMODACIÓN DE LAS *DIVIDED SOCIETIES*

**Sumario:**

1. La “dicotomía federal” y la composición geográfica de las *divided societies*. 2. Del federalismo asimétrico al federalismo asimétrico: el gobierno de las *divided societies*. 3. Más allá del federalismo asimétrico-institucional: hacia la geografía jurídica. 4. El concepto de geografía jurídica. 5. Funciones y formas de la geografía jurídica: demarcación del territorio regional y su modificación. 6. La ratio de la geografía jurídica: la identidad territorial. 7. Los elementos “visibles” de la geografía jurídica: confines e identidad. 8. Modificaciones del territorio y conflictos étnicos. 9. ¿Los criterios económicos desafían demarcaciones de tipo étnico? Reflexiones conclusivas.

**Abstract:**

This article examines the accommodation of divided societies through constituent units, and concentrates on “legal geography” as a principle of organization in multi- or bi-ethnic federal states. It then considers the key concepts related thereto: regional demarcation and territorial alteration. Comparative legal studies show that divided societies can be governed through territorial demarcation and alteration. However, ethnic-based demarcation is currently under strain. Indeed, economic factors reduce the relevance of ethnic, linguistic and religious factors. The intersection of traditional and socioeconomic factors represents a challenge to ethnic-construed territorial identity, and implies a reassessment of the criteria presiding over political demarcation.

**Resumen:**

El artículo examina los medios mediante que se consigue la cohabitación de comunidades altamente diferenciadas por lengua, confesión religiosa, cultura en sistema federales. La cohabitación — que se realiza, entre otras formas, a través de entes territoriales — corresponde al concepto de geografía jurídica (*legal geography*), verdadero principio de organización de estados federales multi- o bi-nacionales. Pues, el artículo explora los conceptos de mayor transcendencia y que se encuentran conectados al de geografía jurídica: la delimitación de las circunscripciones territoriales de los entes sub-estatales (*regional demarcation*) y los mecanismos para su modificación (*territorial alteration*).

La comparación en ámbitos jurídicos revalida la idea de que el gobierno y la gestión de sociedades altamente diferenciadas pueda ser conseguido con ambos instrumentos (*territorial demarcation* y *alteration*). Sin embargo, la delimitación del territorio sub-estatal fundamentada bajo la adopción de criterios étnicos se encuentra afectada por parte de elementos y factores económicos, que reducen cada día más el relieve de aquellos étnicos, lingüísticos y religiosos. La encrucijada de varios criterios y factores — sean los tradicionales, sean los de índole socio-económica — representa el desafío de las *ethnic-construed territorial identity*, y implica una renovada valoración y evaluación de los mismos criterios que rigen las formas de demarcación territorial.

**Key words:**

Asymmetric federalism, legal geography, regional demarcation, territorial alteration, territorial identity.

**Palabras clave:**

Federalismo asimétrico, geografía jurídica, demarcación del territorio regional, modificaciones territoriales, identidad territorial.