

BEYOND SOVEREIGNTY. ACCOMMODATING NATIONS IN THE EUROPEAN COMMONWEALTH

Transformations in the state are weakening its former powers of social regulation and identity-formation but that, far from presaging the end of nationalism, this has encouraged new and reborn minority nationalist demands. Yet, at the same time, it has provided new means for accommodating them. These possibilities are most apparent in Europe, where the transnational order is best developed. The emerging European order dilutes and divides sovereignty, reducing claims to singular state sovereignty and encouraging the emergence of multiple normative orders; provides a framework for rights, divorcing these from state citizenship; and allows stateless nations to act with a certain degree of autonomy in transnational institutions, satisfying symbolic and substantive demands without the need to assume full statehood.

Keywords: nationalism, sovereignty, Europe, self-determination

ONKRAJ SUVERENOSTI. "ZADOVOLJITEV" NARODOV V EVROPSKI ZVEZI DRŽAV

Preoblikovanja (znotraj) države slabijo njeno nekdanjo moč upravljanja družbe in oblikovanja identitete, a to še zdaleč ne napoveduje konca nacionalizma, ampak je pospešilo narodnostne zahteve novih in ponovno rojenih manjšin. Vendar pa je hkrati ustvarilo nova sredstva za njihovo zadovoljitev. Te možnosti so najbolj očitne v Evropi, kjer je trans-nacionalna ureditev najbolj razvita. Nastajajoča evropska ureditev slabi in deli suverenost, zmanjšuje zahteve po suverenosti ene države in vzpodbuja nastajanje mnogovrstnih normativnih ureditev; prinaša okvir za pravice in jih ločuje od državljanstva neke države; in dovoljuje narodom brez države, da z določeno mero avtonomije delujejo v nad-nacionalnih ustanovah, s čimer zadovoljuje njihove simbolične in dejanske zahteve brez potrebe po vzpostavitvi polne državne suverenosti.

Ključne besede: nacionalizem, nacionalno vprašanje, suverenost, Evropa, samoodločba narodov

INTRODUCTION

This paper is part of a project on stateless nations in the transnational order, published as a book in 2001 (Keating 2001b). The larger work is about political theory and, above all, political practice, focusing on the cases of the United Kingdom, Spain, Belgium and Canada. It has the following elements:

- a rethinking of the doctrine of sovereignty; an argument that state and nation need to be distinguished both theoretically and empirically; and an exploration of other ways of thinking about the plurinational state;
- an analysis of the new historiography, which challenges teleological state history; disputes the identification of the consolidated state with progress and democracy; and traces competing traditions of political order grounded in shared and overlapping sovereignty and which allow historic claims to political order;
- an analysis of political demands and public opinion in the minority nations of the four states, showing the emergence of a post-sovereign nationalism, which embraces the new transnational order and does not seek its own sovereign state;
- a discussion of the asymmetrical state in theory and practice, as a way of accommodating national diversity;
- the present paper, which explores the scope for accommodating post-sovereign nationality claims in the emerging European order.

STATE TRANSFORMATIONS

To equate the nation with the state is both a conceptual and a historical error, the product of a partial and teleological view of history, strongly influenced by dominant state traditions. Indeed we might argue that it is specifically the French and German state traditions that, in their very different ways, have insisted on this confluence of state and nation. For the French, the logical conclusion is the unitary, jacobin state without any room for intermediate authority; Germans have a more federalist tradition, but one that also finds it difficult to cope with differentiation and plurinationality. In recent decades the state has come under increasing pressure even as it has assumed new responsibilities. Challenges have appeared to its functional capacity, its ability to mould and sustain identity, and to its institutional structures. These have served to demystify the state and undermine its old monopolies and are one of the key factors in the new historiographies, which have traced other, competing state traditions lost since the rise of the monolithic nations-state (Keating 2000a).

A powerful agent in the changing relationship between function and territory is economic restructuring. National economies are challenged by globalization and, nearer home, the construction of a single European market. At the same time, there is a growing acceptance that economic change responds to very local factors and many scholars have seen the emergence of local systems of production as a key factor in the new economy. Changes in the sphere of social policy have been less dramatic. Welfare states tend still to be national in scope, but there are some trends to decentralization and a search for new forms of local solidarity. It may be in the future that the minority nations, regions or cities, may come to embody the social solidarity hitherto carried by the nation-state.

Culture has also increasingly escaped the framework of the nation-state. Global culture may be little more than an extension of United States influence but, like the English language, is must nonetheless be seen as a universal product. Migration, in response to economic globalization, has created new multicultural societies. The state remains the main framework for citizenship and for the rights that stem from it but here too there are signs of change. A start has been made on detaching human rights from states and citizenship and placing them on a genuinely global basis, although enforcement is highly problematic.

Finally, the state is experiencing institutional change, challenged from above by European integration, from below by regional affirmation, and laterally by the advance of the market and of civil society. There is still no consensus on the political import of these changes. Some see them as eroding the state, while others insist that they merely represent a strategy on the part of states to consolidate their authority by pooling certain tasks and offloading other tasks to subordinate bodies.

What is clear is that these changes together serve to break up the old model of the nation-state, which contained the following elements within a defined space:

- a set of functional systems, such as a 'national economy' and 'national welfare state';
- a national culture and identity;
- a corresponding national population or *demos*, defined by common identity, a range of shared values, mutual trust and interaction;
- a set of governing institutions;
- a claim to internal and external sovereignty.

For many scholars, this disaggregation heralds the 'end of territory' (Badie 1995) as social and political life dissolves into networks based on functional

logic or on shared cultural identities. Some even have even announced the 'end of democracy' (Géhenno 1993). Certainly, it was the coincidence in space of these elements that provided for the possibility of national democracy, and their fragmentation is one factor causing the democratic deficit. Functional systems are fragmenting, with decision making disappearing into networks. Cultures are becoming complex and multiple. The *demos*, if it can be identified, no longer corresponds to the functional systems which democracy is there to control; and power seems to have escaped the control of democratic and accountable institutions. Yet the 'end of territory' and 'end of democracy' theses are as premature as the 'end of history' announced with such fanfares in the 1990s (Fukuyama 1992).

Countering the tendencies to fragmentation are powerful forces for re-territorialization both of functional systems and of the political order. Economic change may respond to a global logic, but there is a large literature now to the effect that the response be less a matter of deterritorialization than of reterritorialization in the form of new, spatially specific systems of production (Keating 1998, Scott 1998, Storper 1997). Similarly, the weakening of the territorial nation-state as a framework for representative and deliberative democracy is one factor in the rise of new nationalist movements below and beyond the state, some with a profound democratizing potential, others more populist or xenophobic in orientation. A combination of functional restructuring and political change has fostered new nationalisms whose whole essence is based on the need to maintain internal social and cultural cohesion while projecting themselves in the new global economy (Keating 1996, 2001a, b). Globalization and the new transnational order in general have thus favoured the rise of new nationalisms, but at the same time they provide new means for accommodating them (Keating and McGarry 2001).

For some minority nationalists, the new dispensation allows them to proceed to statehood without the economic or security risks which this might have posed in past epochs. Global and regional free trade regimes guarantee market access and take care of many of the externalities of independence, while the *Pax Americana* allows them to free ride on a hegemonic security regime. This is the position of a section of Quebec nationalism. Yet in so far as the emerging transnational order is market-driven, it has a strong neo-liberal bias; indeed most of the objections to globalization hinge on the argument that it serves the interest of capital at the expense of social and cultural considerations. Nationalism, on the other hand, is about confronting the market with political and cultural priorities and about establishing public spaces beyond the market-place. Just as regionalism and minority nationalism cannot, *pace* Ohmae (1995) be reduced to a functional logic of market competition, but must be understood also as a response to cultural and political factors, so transnationalism has a cultural and political dimension. This implies a new form of territorial order above as well as below the state.

There are signs here and there of such an order emerging, in the United Nations, or in the increased attention to social issues and matters of 'governance' in the work of bodies like the World Bank and the International Monetary Fund. Environmental and labour matters were incorporated into the North American Free Trade Agreement, albeit in the form of rather weak side agreements. There is an inter-American Convention on Human Rights. It is only in Europe, however, that an effort is being made to establish a comprehensive transnational regime explicitly committed to political as well as economic integration. There is a huge literature on the political implications of European integration although much of it has yet to move beyond the debate between intergovernmentalists and neo-functionalists that has been proceeding for over forty years. In politics, there is a continuing debate between those who want to restrict Europe to a common market, and those who dream of creating a federal state. Since this debate has largely exhausted itself, I propose to pass it by and to postulate a Europe that is a *sui generis* political order, neither a state nor a mere alliance of states, but not without some antecedents in history. To capture this emerging order Neil McCormick's (1999) expression 'European Commonwealth' seems particularly felicitous.

THE USES OF EUROPE

Europe has become a densely organized economic, social and political space, encompassing a variety of transnational regimes which overlap in many places but are not quite co-terminous. At the centre is the European Union, based on economic integration but with officially declared, if contested, political aims. The Western European Union is a defence organization linked both to the European Union and to NATO; it does not, however, include all members of either. Ireland, Austria and Sweden are in the EU but not NATO or WEU. Norway is in NATO but neither the EU nor WEU, while Denmark is in NATO and the EU but not the WEU. The Organization for Security and Cooperation in Europe includes the countries of Europe, the United States and Canada, and the former Soviet republics and is charged with security issues, including minority questions, in the former Soviet and satellite states. The Council of Europe includes all European countries and many former Soviet republics and has an interest in democratization, minorities issues and human rights. Its European Convention on the Protection of Human Rights and Fundamental Freedoms is upheld by the European Court of Human Rights whose decisions have direct force in many member states; and it has generated a series of initiatives on human rights, cultures and democratization.

This emerging European space provides a new context for the articulation and pursuit of nationalist demands. One dimension of this is symbolic but nonetheless of critical importance. In Europe, all nations are minorities, allowing those who are minorities within their own states to project their concerns as part of a

wider issue. As European institutions expand to take in more small nations and cultures, it will look more pluralistic and diverse, and the recognition of the smaller nations, whether these be states or not, will come onto the agenda. As noted earlier, the European theme is increasingly used to frame nationalist demands in the United Kingdom, Spain and Belgium and, in the process, nationalism is itself tamed and modernized. The Europe of the Peoples may be no more than a slogan, but it represents an important discursive turn for nationalists, showing that other ways of realizing nationhood can at least be imagined. It also allows minority nationalists to turn the tables on their own state elites, by demonstrating their greater international commitment and, as nationalists are prepared to wait for the evolution of Europe, it converts the absolute issue of self-determination into a series of arguments about steps within a broader process. Symbols like the common practice of flying minority national flags alongside the state and European flags indicate the linkage of nationality into the wider European order, as do the rapidly developing alliances among minorities across the continent.

There is a debate on whether or not Europe constitutes a cultural space (Puntscher Riekmann 1997) or should do so. This is often a question of definition and how restrictive a culture needs to be in order to exist as a discrete entity. Nor is it reasonable to say that Europe does not exist culturally because the boundaries are ill defined. It shares this characteristic with every social system or aggregate. There is certainly a European culture but it is not monolithic and one feature of Europe is its very cultural diversity. As I shall be arguing repeatedly in various spheres, Europe should not be judged on the template of the nation state and attempts to promote a European culture could be positively harmful. Yet the existence of a European cultural space does allow minority cultures to project themselves as part of this and of a European tradition, rather than being seen as minor branches of state cultures. In many cases, these minority cultures have affinities with other European cultures which they do not share with their state counterparts and can gain fuller expression within a European framework.

LEGAL PLURALISM

A crucial effect of the new European order is the way in which it throws into question the whole state-centred doctrine of sovereignty and opens up the possibility of new and pluralistic normative orders. This too is rejected by statists and intergovernmentalists who argue that the EU is an inter-state alliance built precisely on the principles of state sovereignty. States, in this view, cannot by definition alienate their own sovereignty, just as British Parliaments do everything except bind their successors. The argument is really tautological since the conclusion is embodied in the premise. It is empirically weak, since new states are created constantly through decolonization and secession, while federations are created

through consolidation, with sovereignty reconfigured accordingly. Although the Canadian constitution was repatriated by act of the British Parliament as recently as 1982, nobody seriously claims that the United Kingdom could even theoretically reassert its authority in Canada. The rigorously intergovernmental view of Europe is also historically ill-informed, ignoring the experience of overlapping territorial and functional legal orders in history, and taking the ideological claims of the state at face value - this is particularly ironic for a group of scholars who like to call themselves 'realists'. Of course the radical alternative, that Europe is a new, independent legal order is equally unfounded (Walker 1998) since that too would substitute an ideal for the reality.

Yet between these two extremes there is the view that there exists a corpus of European law with its own foundations and principles, and its own path of development (Shaw, 2000). It is not self-contained, but penetrates and shapes state law, being in turn penetrated and influenced by it. There is certainly a conflict of principle as yet unresolved. The European Court of Justice has held that European law is independent of, and superior to, state laws in its area of application, while national courts have clung to the doctrine that European law is merely the product of delegated authority (McCormick, 1999a). There is an old argument between those who hold that Scots law, the Basque *fueros*, or Catalan and Quebec civil law are founded in their respective state constitutions and those who claim that they represent original law. Again, a more plausible solution is to see them as founded in original law but having to accommodate to state constitutions. So whether we are looking from the supra-state or the sub-state level, it does seem that there are other sources of law than the constitution of the state. With at least three levels for these sources, we have the possibility of pluralistic legal orders. This gives a new meaning to the idea of constitutionalism. Instead of the unitary constitution (whether written or, as in the United Kingdom, embodied in parliamentary sovereignty), being the source of all norms, there are multiple sites of constitutional authority. The relaxation of the condition that the state be the source of all legal authority has opened up myriad new possibilities for plurinational politics.

It is no surprise that among the scholars most open to this possibility have been Scottish lawyers, accustomed to the co-existence of Scots and British law, coexisting with a certain ambivalence over the ultimate source of authority. In a famous case in 1953, Lord Justice Cooper in the Court of Session ruled that the principle of parliamentary sovereignty did not apply in Scotland (Mitchell 1996, McCormick 2000).¹ It has long been clear that there are distinct Scottish



1 The case was brought by John McCormick, father of Neil McCormick, law professor and MEP who is one of leading figures in the debate on legal pluralism. It concerned the question of whether the Queen should be known as Elizabeth II in Scotland, when neither Scotland nor the United Kingdom had had an Elizabeth I.

and English interpretations of parliamentary sovereignty and ultimate authority. A similar ambiguity exists over Catalan civil law, which lacked its own legislative body from 1714 until 1980, apart from the brief period of the Second Republic. Although the Franco regime had abolished the reforms of the Second Republic, it was prepared to update the Catalan civil code on the curious grounds that this had been made in 'Spain' whereas the Spanish civil code was an import from France. Since the 1980s the Catalan Parliament has assumed the task of modernizing the civil code, despite a central government challenge to the effect that it only has the power to alter the code of 1961, not the corpus of indigenous Catalan law itself (Oranich 1997). There is even more confusion over the status of the historic rights of the Basque provinces. As we have seen, these were not recognized in the 1978 Spanish Constitution, which was itself considered to be the fount of Basque autonomy but, under pressure, it was agreed to include them in an annex, the First Additional Disposition. Two interpretations have resulted. Some believe that the historic rights are thus subject to the Constitution; others believe that if this were the case the clause would be redundant and that the rights are original. The Spanish Constitutional Court at first tended to the first reading, but later admitted that the second was possible (Lasagabaster and Lazcano 1999). Basque and Navarrese foral law has been taken over the updated by the new or (in Navarre) newly democratized institutions, which have, like Catalonia, sought to preserve the integrity of their own systems of law, rather than merely filling in gaps left by the Spanish legislature and civil code. This type of legal ambiguity takes us beyond sovereignty altogether, at least in its usual formulations (McCormick 1999a). If purists still insist that sovereignty cannot by definition be shared or divided, then McCormick's formulation of 'normative orders' will do as well. So far, it must be said, courts have not interpreted these forms of original law as trumping state law or constitutions but, with the development of autonomous governments in the United Kingdom and Spain, we may see a new jurisprudence gradually emerging in which autonomous legislatures, entrenched by referendum and drawing on distinct legal traditions and precedents, are conceded original rights. Just as European law developed, contrary to expectations, as an autonomous system, so might the law on devolution.

This might seem like a recipe for anarchy or constitutional deadlock but this need not necessarily be so if the various normative orders developed within a shared community of values. For some, this implies the need for an over-arching European sovereign, in the form of a state, whether federal or unitary. There is a sociological basis for this argument, that any legal order must be underpinned by a unitary political community, and a normative one, that only such which, in accordance with democratic theory, would require a European nation or *demos*. This was, in essence, the view of the German Constitutional Court in the Brenner case, when it refused to allow that the EU was an independent source of law. We

will return to the democratic aspect of this shortly. The sociological argument is to the effect that Europe cannot function as a political order because, unlike the nation-state, it does not rest on the nationality principle and shared identity. Some think that Europe must develop as a federation on American lines, with a founding moment, a constitution and a people (Weale 1995). Anthony Smith (1995, 1999) takes this even further, arguing that Europe cannot forge a common political community since it lacks a core *ethnie*, or common ethnosymbolic base; or at least that such historical myths as it possesses are politically unacceptable or unsuitable. So European integration and other such projects must represent either 'heroic, if doomed, attempts to supersede the nation (or) new, emergent types of national community' (Smith 1995:143). Both, in Smith's view, are futile. Yet this is surely to misunderstand the nature of the European project, which is and must remain rooted both in states and in the nations and regions that compose them (Jáuruegui 1997). It also rests on a contentious view of the European states themselves as the expression of ethnic cores, and a reliance on state-nationalist historiography which ignores the plurinational trajectories of so many states (Keating 2001b).

Europe is not a state, federal or otherwise. The legal pluralism on which it rests implies neither the existence of a single fount of authority (in a constitution, a parliament or a unitary *demos*), within which authority can be devolved, nor a series of independent, sealed legal orders. Rather it implies a series of linked normative orders, intercommunicating with each other (Bankowski and Christodoulidis 2000). This concept bears obvious affinities to the idea of plurinationality, in which national identities are shared and overlap in complex ways, as well as to cultural pluralism and communicative democracy in which cultures are neither assimilated to a single norm, nor exist in isolation (Tully 1995). The result has sometimes been described as post-national constitutionalism (Shaw 2000) but this is an unfortunate term since it conflates the nation with the state; post-statist or postsovereign constitutionalism would be better terms. There is no uniform overall design, nor fixed end point, but rather a deliberative order in which constitutionalism is a part of 'normal' politics (Bellamy 2001). There do need to be common values here and the limits to Europe may be defined by these values; the question as to whether Islamic states could be admitted to the EU has been carefully avoided in principle if not in practice. Yet these certainly do not need to be rooted ethno-cultural homogeneity (Carter and Scott 2000) and may well be universal in application. The countries of the EU, for example, have agreed on the abolition of capital punishment and have not only written this into their fundamental charter in the Amsterdam Treaty, but have also undertaken to promote this globally. Capital punishment is also outlawed under the Council of Europe conventions, although this is an altogether thinner normative order and the ban has not always been accepted outside the EU and its candidate states. Universal health

care and welfare provision are also a shared European value which, like capital punishment, demarcates it sharply from the USA, although there is no single European health or welfare regime but a variety of systems. A common European identity will not be based on cultural and political homogeneity. Indeed, given its very origins in the effort to overcome nationalist particularism, that would be a perverse outcome (Weiler 1999). It will be founded, rather, on a form of 'constitutional patriotism' (Habermas 1998) of shared interests and institutional cooperation. Some people have criticized this as too thin a basis for political order (Weiler 1999)² yet it is precisely such 'weak ties' (Grannoveter 1973) that allow common purpose to be combined with flexibility and innovation.

Similarly, although there is no European *demos* on national lines, there is a form of European identity, invoked and used by those who need it. There is a class of Europeans, whose pilgrimages through European space evoke those of Anderson's (1983) nation-builders who he sees as constructing communities of communication. Again, this is not for most people a strong identity, does not monopolize identity and may not even be the most important of an individual's multiple identities but then neither, for most of history, were state identities. If European identity is not something for which people die (Smith 1995), this is surely to be welcomed rather than seen as a problem; being prepared to make sacrifices to maintain human values is another matter. To argue, as do so many, that Europe is divided by religion or values, or to point to its history of wars (Smith 1995, 1999) is beside the point unless we also take into account common values or the political commitment to overcome this history.³ The whole point of the exercise is to achieve unity in diversity. Communities of identity, like legal systems, can coexist and interpenetrate without domination, as we have seen in the case of those minority nationalist movements who are so keen to work within the broader European space. Democratizing the European order, from this perspective, requires not the construction of a homogeneous community, but a form of democratic dialogue in which parties must invoke arguments that would be valid for the other side, so leading to integrative compromises (Bellamy 2000).

There is a legal European citizenship, founded in the Maastricht Treaty but, appropriately, it is not like a state citizenship with its general rights. Rather it consists of a bundle of entitlements, including free movement around the EU and the right to vote in European and municipal elections in any of the states where one



2 Weiler's argument is unclear since he criticizes the idea of a European nationalism and at one point he seems to imply that a constitutional identity is what Europe needs, but then agrees with Anthony Smith that this is not enough (Weiler 1999), p. 44-46.

3 Critical moments in which nation states decided to set aside a past of civil conflict and forge a new union are not so uncommon in history as to make the European project implausible. One could cite, for example, the Swiss federation of 1848 (Steinberg 1976).

is resident. When linked to civil and social entitlements arising from state citizenship and residence in a region or stateless nation, this gives rise to a complex and multiple regime of citizenship, again challenging the old monolithic state regime. It would perhaps be redundant to note once again that criticisms of European citizenship for not being state-like are beside the point.

EUROPE AS A RIGHTS REGIME

Common European values have been articulated through human rights regimes, notably the European Convention for the Protection of Human Rights working through the European Court of Human Rights in Strasbourg. The Convention detaches individual rights from citizenship and nationality and provides a mechanism for their realization. It does not aspire to universal jurisdiction but is confined to Europe. This regime which, like other European institutions, is less than a state but more than an intergovernmental compact, enables rights discourse to be freed from nationalist or nationalizing rhetoric. Thus Europe has largely escaped the problems experienced in Canada where the Charter of Rights was promoted in the early 1980s as a measure of Canadian nation-building and has consequently been widely rejected in Quebec. It is not that the Québécois reject the specific rights in the Charter; indeed their own charter looks remarkably similar. It is that the Canadian Charter comes as a nationalizing measure rather than a universal one and links rights to a specifically Canadian brand of national citizenship. Human rights are not explicitly protected in the treaties of the European Union but under pressure from states who have wanted to place their rights guarantees above EU law, the EU's European Court of Justice has recognized the need to incorporate both national and the European charters of rights in its jurisprudence (Moravcsik 1995). The EU itself has not become a signatory to the European Convention, but in 2000 began to develop its own charter of rights.

The incorporation of the European Convention directly into the law of Scotland and Northern Ireland as a result of the devolution settlements of the late 1990s is a further illustration of this point. Any purely British charter would have been unacceptable, especially to the minority community in Northern Ireland, as an expression of nation-building. The European Convention is more neutral in this sense, without being completely unfounded in a value community. Of course, the British government maintains the pretext that it is merely delegating power to the Northern Ireland Assembly and Scottish Parliament on the one hand, and to the European Court of Human Rights on the other. Yet there is now a direct interaction of the European jurisprudence with the legal systems in the devolved territories. Parliament, anxious to maintain its theoretical supremacy, has allowed laws in devolved areas to be struck down by the courts where they violate the Convention but not its own laws, which include all the laws of England and, for

primary legislation, Wales. Here the courts can only ask Parliament to intervene. There is thus the possibility of the same law being open to legal challenge in some parts of the UK and not in others.

Europe as a community of rights is, once again, not to be confused with a state. Indeed it is precisely the separation of rights from statehood and nationhood, but not from shared values, that permits the regime to operate. It is easy to dismiss the European rights regime as of no account because it does not displace states or operate like the United States Supreme Court in imposing a European legal order against national law. Again, this betrays a misunderstanding both of Europe and of the way in which legal regimes operate. European human rights law works not by overturning national legal regimes, but by a process of mutual penetration and learning, through jurisprudence. There will always be gaps and even contradictions between the regimes, and European norms will enter national systems in different ways; as we have seen they can even enter the United Kingdom in different ways in England and Wales, in Scotland and in Northern Ireland. Some have criticized the idea of a European rights regime on the ground that there are no common understandings of rights among Europe's various cultures (Bellamy 1995). It is true that, at the margins, there are differences and it is easy to cite examples and, as in the United States, rights issues can easily dissolve into pure politics. Yet this is not a reason to abandon the idea of rights altogether, any more than it is a reason to despair of the possibility of common European policies on other matters. Europe does have a rather broad understanding of common rights, some of which it shares with the United States and others, such as opposition to capital punishment, which it does not (Weiler 1999).

Of course, an individual rights regime does not address the issue of collective identity and the need to protect and develop people's own cultures and traditions. It is mistake to believe, with Siedentop (2000) that the cause of minority nationalism is simply the failure to integrate individuals into the state culture, and that this can be 'remedied' by guaranteeing individual rights. It may be that the proximate cause of the Northern Ireland troubles in the late 1960s was the failure to accord Irish Catholics the full rights of British citizens but it is stretching matters to suggest that extending such rights would have made the Catholic community into loyal British subjects as Siedentop (2000) suggests.⁴ Transnational rights regimes are important for our purpose in divorcing individual rights from state citizenship and the state-nationalist implications of this. Guarantees of collective rights are another matter.



⁴ It is also difficult to see how they could have become unhyphenated British citizens when each part of the United Kingdom perceives its Britishness differently.

Legal protection for the collective rights of minorities in Europe is less well developed, but there is a broad consensus that this matter can only properly be tackled at a pan-European level. After the First World War the minorities question in central and eastern Europe was addressed through a series of bilateral and multilateral treaties, mostly on the same template but without creating any pan-European system of minority rights (Capotorti 1991). Britain and France, struggling with rebellion in Ireland and the re-incorporation of Alsace-Lorraine, were completely unwilling to allow the system of minority guarantees in the territories of the former central empires to be extended to their own minorities. This attitude has reappeared since the 1990s, hampering moves towards a genuine European regime of minority rights. Following the Second World War, the emphasis moved to individual rights, as enshrined in the European Convention for the Protection of Human Rights (ECHR), with some bilateral treaty arrangements, for example in the Tirol or Trieste and Istria. Some cases concerning language rights in Belgian were brought under the ECHR but the Court generally upheld the right of the state to impose territorial unilingualism (Hillgruber and Jestaedt 1994). During the 1960s Germany and Austria sought broader protection for ethnic minorities but this made little headway (Fenet 1995). The issue came back on the agenda with the end of the Cold War and since then there has developed a complex net of charters, institutions and guarantees, under the auspices of the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE) and the European Union. While these are separate organizations and the resulting provisions vary greatly in their legal scope and enforcement, they do form an interlinked system, with mutual penetration and influence and a growing tendency for judgements under one to cross-reference the others (Fenet 1995).

The OSCE has been drawn into the question since the Helsinki Accords of 1975 as an inescapable part of its concern with human rights, and because of its intimate connection with matters of security. Gradually it has incorporated the idea of minority rights as opposed to mere individual rights but has been reluctant to be drawn too deeply into broader issues of self-determination. In 1992, following its failure to prevent the conflict in Yugoslavia, OSCE appointed a High Commissioner for National Minorities whose task is to intervene in situations of potential conflict and seek negotiated solutions. His brief limits him to situations where security is threatened and, in practice but not officially, he has been confined to the countries of central and eastern Europe and the former Soviet Union.

The Council of Europe's first real foray into the issue was the Charter on Regional and Minority Languages, adopted at the inspiration of its Conference of Local and Regional Authorities. First suggested in 1981 this was finally adopted in 1992 with reservations from several states including France and the United Kingdom, who would have preferred a very general declaration. There is no mechanism for enforcement except a three-yearly report to the Council of Ministers; otherwise

the Charter depends on changing norms and ways of thinking. This did not prevent the Charter from becoming embroiled in a controversy in France where Jacobin elements of the left and right conspired to prevent the constitutional amendment which, according to the Constitutional Courts, its ratification would have required. The end of the Cold War and incorporation of central and eastern European countries forced the Council of Europe to return to the minorities question in the 1990s with the Framework Convention for the Protection of National Minorities adopted in 1995. This was specifically designed as a 'framework' to be adopted in appropriate form by signatory states but without direct application. It does not define minorities or recognize them as collectivities, but rather addresses itself to the rights of individuals belonging to them. Membership of a minority is determined by a mixture of self-designation and objective criteria. Matters covered include the use of language, education, the media, public administration, commercial signs and cross-border contacts. Despite its focus on individual rights, the Convention stands out among the European instruments for its intention to protect and preserve the minority communities themselves, so going beyond the mere prohibition of discrimination. Signatory states themselves were allowed to designate their own minorities before ratification, so further weakening the Convention's application. So Estonia included only its own citizens in its scope, allowing it to refuse to recognize Russians who had not met its strict citizenship requirements; Russia's own reservation was aimed specifically at denying this. Luxembourg, worried about the rights of immigrants and their descendants, confined its protection to minorities who had been present for 'several generations' and then declared that, on this criterion, there were no minorities in Luxembourg. Other states, however, took the matter more seriously and many national minorities were expressly singled out for protection.

The European Union has also moved slowly to recognize national minorities. Indeed many of the internal market policies can be seen as a threat to minority cultures and languages. Restrictions on outsiders buying property in fragile traditional communities have been disallowed, except in Denmark where a treaty opt-out was negotiated. Requirements to label products in a minority language are illegal under provisions confining regulation to an official community language comprehensible to the customers; since Spanish is comprehensible to Catalans and Basques, any additional requirement is considered an obstacle to the free movement of goods. Ethnic quotas in employment for Germans and Italians in South Tyrol have also come under threat. Gradually, however, the EU has incorporated some measures for minority protection. The Maastricht Treaty had a clause in favour of cultural and regional diversity and this was used by the European Parliament and Commission to fund various measures, including the Bureau of Less Widely Spoken Languages in Dublin (Fenet 1995). The Parliament and the Committee of the Regions have also pressed for wider recognition of culture and

language in the operation of regional policies. Catalan was the subject of a special resolution of the Parliament in 1990, and the Catalan government has made a great deal of political mileage out of this since. The EU has intervened more effectively in candidate countries, as has the Council of Europe, making treatment of minorities a condition for membership.

So there is a great deal of European activity on minority rights, but no single regime. Priority is given to individual rights, although there is more attention on the collective means by which these rights are exercised in matters like educational provision or public services. Broader political issues are avoided. No European regime recognizes a right of self-determination for minorities⁵, although the Council of Europe insists on the need for local self-government, and there is always explicit recognition of the integrity of states and their borders. There is a persistent bias towards seeing central and eastern Europe as the seat of the problem, rather than taking a broader pan-European perspective and west European states including France, Spain and the United Kingdom have jealously guarded their own rights to deal with their minorities in their own way. Enforcement mechanisms are still weak and dependent on political negotiation rather than legal application. Much of this is no doubt inevitable. Defining a national minority or ethnic group is scientifically impossible, politically fraught and ethically dubious, since it reifies the group and prevents evolution and change. Giving legal rights to groups as opposed to individuals would create an immediate conflict with European norms of individual liberty and free choice, and would also tend to freeze groups in time. Challenging state borders in the name of group rights would be profoundly destabilizing and counter-productive, as states would then see group rights as a threat to their very existence. So it may be more fruitful to construct a series of pan-European regimes incorporating political principles and norms and encouraging their mutual penetration. The bias to central and eastern Europe is less easy to justify since it perpetuates an old stereotype, and works against the construction of a common European space of values.

DEMOCRATIZING EUROPE

Europe is thus emerging as a complex system of regulation and norms but definitely not as a state. This is precisely the point of the exercise, to transcend statehood, despite the repeated attempts to convert it into some sort of state by giving it a constitution or defined catalogue of competences. Were it to become a state, or even to aspire to being one, then it would provoke a reaction from both



5 The European Court of Human Rights refused to entertain a complaint from the Sudeten Germans against the German-Czech treaty of 1973 (Hillgruber and Jestaedt 1994).

state and minority nationalists, who would resent it as a new form of domination. It would also rigidify its institutions and ways of working, depriving it of the flexibility that has proved its strength. A European state or federation would have to follow a specific model, as we see from the different visions of what it might look like coming from French and German enthusiasts. Constitutionalization would also impose a rigid framework on an evolving political order and encourage the juridification of politics and the constitutionalization of political and social cleavages, as has happened in Canada.

This is not to say that we must just muddle on. Complexity and the proliferation of levels of decision making do reduce democracy as power seeps from elected institutions into networks. If multilevel governance means anything, it is surely a highly undemocratic order in which organizational elites and those with the skills, time and resources to operate in complex sectoral and territorial networks have immense advantages over their fellow citizens. When combined with the New Public Management and its tendency to reduce citizens to market consumers, this raises serious problems for deliberative democracy. For some people, the answer to the democratic deficit is to build systems analogous to parliamentary democracy at the European level, merging the various European regimes, strengthening the European Parliament, and having a European government accountable to it. There is no doubt a great deal that could be done at the European level to strengthen democracy, but the analogy to the nation state again lets us down. The assumption is usually made that in Europe, as in the classic nation state, functional systems, political representation, democratic mobilization and accountability can all be contained within the same territorial framework. This is a highly dubious proposition, relying on a particular model of the state. If Europe is to be democratized, it must be done in new ways, corresponding to the new forms of political authority.

Democratic and accountable government is a complex matter but there would seem to be two basic requirements. The first is the existence of deliberative spaces for the formation of a democratic will. I am assuming here, against the Public Choice school, that citizens' democratic preferences are not the mere sum of individual desires, which could be left to the market or to referendums, but result from deliberation and exchange.⁶ It is these deliberative spaces that need to correspond to a sense of common or shared identity, or to a *demos*, if not an exclusive one. The second requirement is a system of accountability corresponding to the areas of decision making in the emerging functional systems. In a complex



6 Bellamy and Castiglione (2000) draw a distinction between liberalism, which takes choices as given, and republicanism, which is predicated on dialogue and debate.

system with functional and territorial divisions, these can no longer always be done by the same institutions.

For example the European Parliament is probably as good as most national parliaments (admittedly not a difficult test) in scrutinizing executive institutions and holding them to account (the fall of the Santer Commission is exemplary). It does not, on the other hand, sustain a pan-European deliberative community or help form a pan-European democratic will. It probably never will, and possibly never should. We may therefore need to delink these activities. Accountability and scrutiny may take a variety of forms – audit, legal control, parliamentary investigation, adversary politics – and work at various levels. Deliberative democracy and will formation can similarly occur at various levels. In some cases, the state remains the main focus. This is clearly so in Denmark, Portugal and Ireland, and is still largely true in the larger states of France and Germany. In Belgium, on the other hand, deliberation is increasingly confined to the two main linguistic communities. In the multinational states of Spain and the United Kingdom there are deliberative communities within the nations of Catalonia, the Basque Country, Scotland and Wales, as well as at the state level. Northern Ireland presents further complexity, caught as it is between a UK community with which its links are weakening an all-Irish community and an Ulster or Northern Irish community. This last has hitherto been divided into two segments but might find some common interests, especially in economic matters and Europe, as a result of the peace process and the new institutional framework. There is still a residual prejudice against recognizing national communities other than states as deliberative communities or as the building blocks of democracy. Siedentop (2000: 175) for example, referring to the historic regions of Europe insists that ‘few such regions have any civic tradition, any tradition of democracy or citizenship in working order.’⁷

Elsewhere, the pressures for participation and democratization have favoured deliberative communities at the city level. This is notably the case in France, where decentralization has strengthened the local level as a political arena, and in Italy, where the crisis of the central state has coincided with a revalorization of the local level. In other cases again, the deliberative community might be a large region, beyond a city but without the characteristics of a stateless nation. In the limiting cases, democratic will and identity may be located at a very small scale, as in the small communes of many countries, which are too small to correspond to any functional system. Reforms of local and regional government in the past have often fallen into the technocratic fallacy of trying to align all systems of decision making and representation with functionally defined units (the British were par-



7 Even more contentiously, Siedentop compares European regions unfavourably with the original American colonies, without mentioning slavery or the disenfranchisement of women.

ticularly prone to this in their frequent reorganizations). This theme has re-emerged now in the debate about the need for large regions to compete in Europe, or the insistence on the need for a regional level of government across the entire European Union, whatever the local conditions.

Deliberative democracy may therefore be located at various levels and minority nations, far from being a problem for Europe, may serve as exemplars of such communities. Yet to create a democratic commonwealth, these communities must be linked and not isolated. This inter-communicative aspect of democracy is essential (Tully 1995), with ideas and practices flowing from one to another and a continuing debate on the common good articulated at various levels. Pillarized societies are ill-equipped to do this, which poses one of the main normative objections to consociational democracy. The relationship between English and French Canada has often been described as one of two solitudes, a tendency that may increase with the reassertion of nationalism on both sides. Belgium is in the process of falling into the same problem, as inter-communication between the two communities declines; it is fortunate in this case that both communities are part of a broader European communicative order. Northern Ireland is a deeply divided society, but there is now a conscious policy of building links across the communities, to the Republic, to the United Kingdom and to Europe. There is a historic fear in Scotland of parochialism, and this has placed a barrier in the path of home rule; it is greatly lessened in the European context. Similarly, the traditional isolation of much of Basque society is being overcome by linking it to other European communities.⁸ In this vision, the democratization of Europe would come not through strengthening summit-level institutions on the assumption that they correspond to a unitary demos, but through a whole system of parliamentarism, linking Europe, states and sub-state levels (Ferry 1997).

STATELESS NATIONS IN THE EUROPEAN COMMONWEALTH

Europe not only sustains a new context for the symbolic recognition of stateless nations and for legal pluralism. It also provides new opportunities for their institutional differentiation and for their projection as actors in the new political order. One way in which it does this is by permitting greater asymmetry within states. Its unified market regime, allows a loosening of single market rules within states themselves, and a greater diversity of development policies and institutions. EU competition rules are often stricter than those of the states themselves



⁸ This argument must not be confused with the old liberal hope that, as individuals get to know each other, differences will disappear. I am arguing that differences can be valuable, as can the existence of distinct deliberative communities. What is important is that they not be closed and that there exist strong and, if necessary, formalized mechanisms for inter-communication.

and have created trouble for the German Länder with their state banks, stakes in firms and subsidies to investment. Basque rules discriminating in favour of local investors have been challenged by the European Commission, with the curious conclusion that the Basque government can discriminate against citizens from the rest of Spain but not other Europeans. In a similar case, it appeared that Scotland could impose differential university fees on students from other parts of the United Kingdom but not from elsewhere within the EU. Such European rules have often caused resentment within the regions and accusations of EU-level centralization but they show how the unifying regulation of the nation-state is giving way to a European system of regulation in which regions and stateless nations are operating in European markets. An analogous situation exists with regard to the human rights regime which is increasingly detached from states, so allowing institutional and legislative asymmetry within states, notably in the United Kingdom.

European market integration also provides new opportunities for autonomy and self-government, although one constrained by the needs of economic competition. In modern conditions, territorial self-government is more than a matter of constitutional, legal autonomy. It requires a policy capacity, and the ability to operate through complex networks, at local, state and European level, and crossing the boundaries between the public and the private sector. Economic competitiveness is a critical, although not the only, element of this. Minority nationalists have generally abandoned dreams of self-sufficiency or economic autarky, and embraced global and regional free trade as an integral part of their policy prospectus. They have bought into the new models of economic development, which put the emphasis on the region as a production unit in competition with others, on endogenous growth, and on the mobilization of productive capacities through partnerships, associations and research and development. These new models of economic development are still rather controversial, especially in their neo-mercantilist versions which present regions as engaged in a competition for absolute advantage in European and global markets (Lovering 1999, Keating, 2000b). Politically, however, they have obvious advantages for stateless nation-builders since they replace the old paradigm in which the region was engaged in a relationship of mutual dependency with the state, with one in which the region becomes a more or less autonomous agent within the broader market. It is not surprising then, to find Catalonia, Flanders or the Basque Country presenting economic competitiveness in Europe as a centre piece of the national project. In Scotland, where the nationalists' main focus is still on statehood within an intergovernmental Europe, this emphasis has so far been much less marked.

Self-government in modern conditions also requires social cohesion, both as a contribution to economic competitiveness and sustaining the necessary synergies, and for its own sake as part of the national project. A third part of this project is sustaining a living and vibrant culture in the face of market and social pressures

from outside. These objectives can and do often clash. Market integration may be socially disintegrative, as disparities open up between those groups, localities and sectors that can compete and those that cannot. Local cultures may fall victim to larger ones, or to the global domination of English language and especially American products. While it is possible to use minority languages in the school system, as has been done successfully in Catalonia, the Basque Country and Wales, it is much more difficult to get them accepted as working languages in the economy, where the state languages, or English, prevail (Keating 2000c). On the other hand, nationalists see the local culture as a means of sustaining cohesion and the capacity for collective action necessary to face market competition, transcending the conflict of objectives through a conscious nation-building strategy.

Stateless nations also have opportunities to become more direct protagonists in Europe since, while the EU is fundamentally an organization of states, it is also a complex multi-level system of decision-making with multiple points of access. Territorial actors of various types have become active in this process, giving rise to a substantial literature on the Europe of the Regions (Jones and Keating 1995, Hooghe 1996, Keating and Hooghe 1999b, Bullman 1994, Jeffery 2000, Petschen 1993). Stateless nationalists have entered into this game enthusiastically, while insisting on their special status as more than mere regions and without renouncing longer term ambitions. The EU itself took significant steps to incorporate the regions as a third level of the European polity in the 1990s, but these soon reached their limits as states reasserted their powers, and as the very heterogeneity of territorial interests prevented a uniform solution. Since then, individual regions or alliances of regions have sought to exercise influence wherever available giving rise to a wide variety of strategies.

Institutional recognition was first given to the regional level in the Treaty on European Union (Maastricht Treaty) which established a Committee of the Regions representing sub-state entities of all types. This has kept the issue of regionalism alive and provided some input into the deliberations of the Commission and the Council but has proved a disappointment to many stateless nationalists because of its weak status and the variety of its membership. By including representatives of municipalities alongside the leaders of Catalonia, Flanders or the large German Länder, it has diluted the regionalist dynamic and undermined the status of the large players. These have consequently demanded a separate institution, representing regions only, or even just regions with legislative powers. This would bring in the Spanish stateless nations, along with Flanders and Scotland. While this would still not create a category of nations as opposed to regions, it would have the advantage of giving them powerful allies. The European Commission has also recognized regional associations for consultative purposes, giving them another channel of access.

A second mechanism for institutional representation is the provision in the Treaty on European Union whereby in systems where regions have governments with a ministerial structure, these can represent the state in the Council of Ministers. The exercise of this power is at the discretion of states and the regions must represent a state position and not their own particular interests. So far this provision has been regularized in Germany and Belgium, with legal provisions for dividing European business between matters of state, regional and shared competence, and for representing the state accordingly. In Germany, regional issues are handled through the Bundesrat, which agrees, by majority vote if necessary, on a common line for the Länder and assigns one of the Länder to speak for them all. Belgium, in consequence of the more conflictual nature of intergovernmental relations, requires unanimity among the affected governments, which may include the federal government, the regions and the language communities, depending on the issue. If no agreement is reached, the Belgian delegation in the Council must abstain. UK devolution legislation provides for the participation of Scottish, Welsh and Northern Ireland ministers in the Council, alongside those of the state. There are non-statutory concordats to regulate relations and the procedure for agreeing the line to pursue, but the UK government has the last word. In fact, the UK system is really a carry-over from the pre-devolution practice whereby ministers of the Scottish and Welsh offices could participate in European business as part of a unified UK delegation. In the event of the devolved Scottish and Welsh governments being controlled by parties other than that ruling at Westminster, the system would come under extreme tension and there might have to be more formalized rules. Northern Ireland raises different questions again, with the possibility of cooperation between its government and that of the Republic of Ireland on European matters of common interest. There have been strong demands from the minority nationalities of Spain for the application of this rule but so far the Spanish state has resisted, preferring to negotiate with the devolved governments within the framework of Spanish politics. There was a bilateral committee with the Basque Country to discuss European matters but it fell victim to the polarization of Basque politics.

The EU has also incorporated regional interests through the Structural Funds which, since 1988 have been dispersed on the basis of partnership programmes in which regional interests must be present. The quality of these partnerships has varied greatly (Hooghe 1996) and the substantive impact of the funds has been questionable, given the complicated national rules whereby states manage to keep the moneys for themselves or subordinate them to national priorities. Politically, however, the Funds have played a vital role in raising the profile of regional policies and linking regional assertion with European integration. Regional leaders, including those from minority nations, have made much of their ability to extract funds from the EU, often giving a misleading impression that they have been able

to bypass the state and deal directly with Brussels. By the late 1990s, however, this movement had peaked. The Commission was increasingly concerned with the administrative and political burden of administering funds, and aware of its limited ability to engage in detailed spatial planning. States were asserting more control over the designation of eligible areas and the terms of partnership while everyone was aware that the EU could not afford to extend to the candidate countries of central and eastern Europe the same generous aid that had been given to Spain, Portugal and Greece.

One might be sceptical about each of these institutional devices and policy programmes; they have certainly not created a coherent 'third level' of government within the EU. Yet they have created a new political space, or a multiplicity of spaces, for sub-state actors. Indeed the fact that there is not a single institutional framework for them all might be seen as the essence of the movement, allowing multiple strategies of working in Europe for the very varied interests involved. Within these new spaces, stateless nations have mounted lobbies and opened offices in Brussels and have forged a multitude of trans-state alliances. These can serve to pursue issues in multiple fora, within different states, through the Commission and via the European Parliament. Cross-border collaboration has developed to cover all the borders within the EU and with the candidate countries. A key factor in the success of these initiatives has been the institutional structures and resources provided by Europe. The EU's LEADER programme does not transfer a lot of money, but unlike most other Structural Fund programmes, it comes directly under the Commission and its funding can, at the margin, give an incentive to work in partnership. It also provides political incentives, allowing politicians to present themselves as good Europeans or as outward-looking and progressive. The absence of any such mechanism in North America goes a long way to explaining the difficulties in sustaining cross-border cooperation there. The Council of Europe also sustains cross-border cooperation, through its Madrid Convention of 1980, which provides a legal framework, and its Convention on Minorities, which deals with the issue of minorities straddling state borders.

Experience here, too, is mixed. Many cross-border operations remain at the level of intentions or symbolism and the willingness to co-operate is often frustrated by the pressures of inter-regional competition. In others, however, they have served to bring together cultural regions or stateless nations divided by state borders. A critical element in the success of these ventures is precisely that they should not challenge state borders and they only really work where border issues are settled. In this way, it is possible to work around the border, to penetrate it peacefully; where borders are contested then almost any proposal for collaboration can be seen by state elites as a threat to the border itself. More generally, stateless nations have been active in 'paradiplomacy' (Aldecoa and Keating, 1998),

projecting themselves in transnational networks without trying to rival the high diplomacy of the nation-state.

EURO-STRATEGIES

Stateless nations have availed themselves of these opportunities in diverse ways.⁹ Catalonia has been extremely active in external relations, revalorizing its history as a medieval trading nation embedded in Spanish, European and Mediterranean networks. Its nation-building project places a strong emphasis on language and culture and the projection of the Catalan language abroad. There is an active paradiplomatic effort, based in civil society as much as the autonomous government, and relying on public-private partnerships of various sorts to maintain a presence across Europe and the world more widely. Representation in Brussels is assured by the *Patronat Catal  Pro Europa*, a public-private partnership founded in advance of Spain's accession to the European Community. Catalonia has preferred to work with the Spanish government rather than against it, seeking to influence the Spanish position within the EU as well as playing in its own pan-European networks. It long hesitated to call for representation of the autonomous communities in the Council of Ministers, ostensibly on the ground that this would require a constitutional amendment, although an important factor appears to have been a concern that Catalonia would be reduced to one of 17 communities rather than an interlocutor of the state. Since the late 1990s, however, the Catalan government has supported the incorporation of the autonomous communities into the European process on the same lines as in Germany or perhaps Belgium. Catalonia has also been very active in the Europe of the Regions movement, in the Committee of the Regions and in the Assembly of European Regions, pressing constantly for a recognition of the regional level and for the particular place of strong and cultural regions within it.

The Basque nationalists have a long history of Europeanism (Ugalde 1998) going back to the Civil War era, but since the transition to democracy in Spain have been less active than the Catalans. The Basque government under the leadership of the PNV has over time placed more emphasis on Europe, but with a more particularist strategy than the Catalans. Their presence in Brussels is a government office, not a partnership as in the Catalan case, and had to be delayed some years while the Constitutional Court considered the such a political overtly representation. Proposals in the early 1990s envisaged a direct Basque presence in European institutions, although it was not quite clear how this would work



9 The following discussion is brief, as I have discussed paradiplomacy and regional strategies in Europe at length elsewhere (Jones and Keating 1995, Keating and Hooghe 1996, Keating 1998).

according to the Spanish constitution or the European treaties. They were even more reluctant than the Catalans to share a regional representation with the other autonomous communities. With the declaration of Barcelona and subsequent declarations of Vittoria and Santiago de Compostela, however, they have come round to the idea of using the Maastricht provisions for regional representation, but with special consideration for the historic nationalities. The Basques have also been active in the Committee of the Regions, the Assembly of European Regions and other pan-European bodies and have made efforts to mobilize the Basque diaspora, especially in North and South America. From the 1990s they have sought to influence opinion makers in other European countries, combatting the unfavourable image given to the Basque Country by political violence.

Flanders was particularly active in paradiplomacy under the former Christian Democrat-led government, with its nation-building programme. Like Catalonia, it used the theme of regional development and its trading history as a motif for external projection, while taking steps to protect its language and culture. Belgian regions and communities have full external competences corresponding to their internal competences, and this has led to a large presence abroad, promoting the image of Flanders in general and its merits as an investment location in particular. Regions and communities regularly speak for Belgium in the Council of Ministers and, while they must promote a Belgian line, they do use the opportunity to press their own concerns. The unanimity rule means that they cannot take a purely selfish line, but it also encourages bargains and trade-offs whereby the communities and the regions can get their own particular concerns onto the agenda. At one time Flanders' protagonism in Europe was so pronounced as to provoke the suggestion that it was trying to promote itself from a 'third (regional) level' actor to the 'second (state-like) level' (Kerremans and Beyers 1996). Another initiative of the government was the Europe of the Cultures Foundation, an alliance among politicians, social actors and others in 'cultural regions'. These were essentially historic nations, but the list was chosen to include both states and stateless territories, carefully blurring the distinction. The theme of the Foundation is the importance of culture and identity for economic development in the modern era, and the need for an institutional recognition of cultural regions in the European institutional design.

Scotland and Wales until 2007 never been controlled by nationalist or quasi-nationalist parties and so the question of carving out their own space in Europe has not arisen. The Scottish National Party is in any case committed to statehood within the EU as its minimum demand, and has given little thought to solutions short of this. The Labour Party's strategy has been to tie Scotland tightly into the UK line in Europe. Yet the Scottish presence abroad and especially in Europe has gradually expanded as the Foreign Office has become more relaxed about paradiplomacy, in fields such as culture, inward investment and tourist promoti-

on. It is likely that future Scottish governments whether led by Labour or the SNP will have to explore further the scope for a Scottish presence and influence in Europe. In Wales, where the nationalists have explicitly renounced separatism, there is similarly a search for opportunities within the new European order. The very complexity and asymmetry of the UK system allows for various patterns of alliance while the Northern Ireland peace process, with its involvement of the Irish Republic in cross-border institutions and the British-Irish Council creates a potential for still more.

There is thus not one single place for stateless nations in the European Commonwealth and no single strategy for projecting nationality and self-government. Rather there is a multiplicity of opportunities and strategies, involving not only different actors but different types of actor in each case. Stateless nations can work with their states, they can play the Europe of the Regions game or they can lobby on their own. They can ally on some issues with the German *Länder*, as in the emerging alliance of regions with legislative powers. They can make common cause with small states as in the Europe of the Cultures concept. They can argue for special recognition within their own states, or join with other regions in pressing for regional joint representation in the Council of Ministers. While Europe remains so fluid, without a clear end point in sight, it makes obvious sense to keep all options open. As Europe develops, these opportunities are likely to expand and regions and stateless nations to seek influence in new policy fields. States may be forced to accommodate this, developing a more 'plurinational diplomacy' (Aldecoa 1998) in which different instruments are used and different interests are represented depending on the issue at stake. Traditional diplomacy is predicated on the existence of a single 'national interest', defined by the state and underpinned by the idea that in matters of external relations the integrity and very existence of the state is constantly at stake. With the state itself demystified and sovereignty unpacked in the ways suggested so far, this doctrine is increasingly untenable. The principle may be expanded beyond the European Union. There seems to be no reason in principle why for example the UK government should monopolize British representation at UNESCO when there is no UK department for education nor for culture. A similar case can be made for Quebec. Of course, it is always possible that some cataclysmic crisis will destroy the current regime of global and European integration just as the Concert of Europe and the first era of globalization at the end of nineteenth century collapsed; but if current trends continue, there is an ever expanding array of opportunities for nations to express themselves other than as states.

THE LIMITS TO EUROPEANIZATION

Europe thus provides multiple opportunities for accommodating national minority demands. These do not, however, constitute a single or consistent regime and many of them were designed with other purposes in mind. Europe does not resolve the issue of self-determination and indeed it is difficult to envisage what a general European norm on the right of self-determination would look like. We would be back with the old questions of who has the right, what the boundaries of self-determining units should be and under what circumstances the right could be exercised. These are fundamentally political issues and what matters is to establish the right political frameworks in which they can be addressed. Europe helps here in lowering the stakes in independent statehood and introducing the idea of shared sovereignty and pluralism, so helping forms of accommodation short of secession. It also makes it likely that secessions, should they occur, will be peaceful and preserve common market structures and systems of rights.

There are, of course, disadvantages in placing too much stress on rights in the political realm. As Canadian experience shows, political issues rapidly become converted into rights issues which then become absolutes and can be obstacles to flexibility in public policy and the allocation of resources. Individuals who can make rights-based claims on public resources will win out over those who cannot make such claims. Politics will increasingly be taken into the courts and lawyers will proliferate. Yet it seems that the juridicization of politics is the inevitable consequence of the increasing complexity of government, the existence of multiple levels of authority, and the decline in citizen deference. The answer is not to exclude law from the regulation of social conflicts, but to make the law and the legal profession itself more sensitive to cultural differences and to the political context in which it operates.

Another problem in systems of normative pluralism and multiple-level government is the threat to the territorial equity and the redistributive capacity of government. The nation state has been a powerful agent for inter-territorial resource transfers, partly through explicit programmes of redistribution, but mainly through the automatic fiscal stabilizers provided by state-level taxation and spending programmes. The European Union has sought to compensate for the adverse affects of market integration through the Structural Funds, aimed at helping declining or underdeveloped regions to reinsert themselves into the single market. These, however, are small in scale compared with the effects of state programmes and there is no political will to introduce into the EU a system of full fiscal federalism along United States or Canadian lines. As the state framework weakens, there are signs of increasing competition among regions for inward investment, markets and technology (Keating 1998), with the risk of a 'race to the bottom' or 'social dumping' as regions subordinate social, cultural and environmental concerns

to growth, although this is limited in Europe, as compared to the United States, by EU norms and a shared commitment to welfare. Territorial redistribution through the Structural Funds has been justified as a trade-off among states (Hooghe and Keating 1994) in which the advanced regions get access to wider markets and the poorer ones get help. It has not been underpinned, at least to the same extent, by a wider ethic of pan-European solidarity. Without such an ethic, the policy might become more difficult to sustain and will certainly be impossible to expand. Since the minority nations of Europe include both poorer regions (like Wales) and wealthier ones (like Flanders) as well as many which are in between, there is no automatic relationship between accommodating minorities and redistributing resources progressively. This remains one of Europe's weakest points.

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