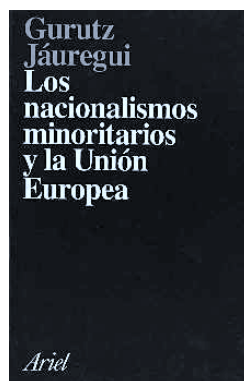
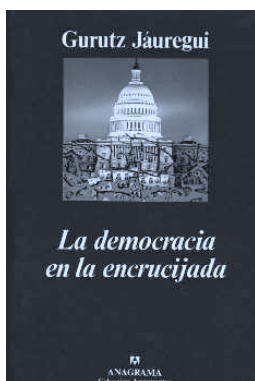


## NATIONALISM AND DEMOCRACY IN THE EUROPEAN UNION AND ITS REGIONS: THE RECENT WORK OF G. JAUREGUI.



- La democracia en la encrucijada. Barcelona: Anagrama, 1994.– ISBN: 84-339-1386-7
- Entre la tragedia y la esperanza. Vasconia ante el nuevo milenio. Barcelona: Ariel. 1996.– ISBN: 84-344-1161-X
- Los Nacionalismos minoritarios y la Unión Europea. Barcelona: Ariel, 1997.– ISBN: 84-344-1162-8

On a practical Philosophy scale, nationalism is said to be ill-conceived, yet international affairs show that it is live and kicking<sup>1</sup>. By contrast, democracy which, on the practical Philosophy scale is solid, seems however to be at risk; it finds itself at a crossroads. The problem is largely that the maps we have inherited, the maps of a geopolitics dominated by states and upon which we have so far relied, are now inaccurate and out of date because technological society is changing so rapidly. The process of European Integration for instance does not appear in our maps yet, and it is therefore very easy to get lost and to be tempted to find a way back to our initial position, the golden past we enjoyed before we embarked on the journey. Perhaps nationalism is still alive in its different versions and even flourishing precisely because it gives the (wrong) impression of knowing where one is, of having a safe reference. As MacCormick has eloquently said, “the siren voices urge us to go back to the good old world in which we did not face the loss of sovereignty through its being granted somewhere else. The quest is to go back to a European order of fully sovereign states, with no links stronger than those of treaties which bind only *rebus sic stantibus*”<sup>2</sup>.

This allegory of Nationalism, Democracy and Europe could perhaps give us an impression of the issues that are addressed in the three books reviewed and analysed in the present essay. Indeed, it is important to study why it is that, on the one hand, nationalism is still

1. As R. McCorquodale says in “Self-Determination: a Human Rights Approach”, 43 ICLQ, 1994 pp. 857-885, it has been estimated that there are about 5000 discrete ethnic or national groupings in the world and that most of the armed conflicts at the moment are between groups in a State or between a group and the State.

2. N. MacCormick, “Beyond the Sovereign State”, 56 The Modern Law Review, 1993, p. 1-18, at p. 17.

fashionable and powerful as an ideology among so many sectors of the population in so many different societies while, on the other hand, it has lost so much credibility among intellectuals, who see it as a threat to democracy and to liberalism. Curiously enough, in the European context, many nationalist movements (of nations which form part of larger States) have generally welcome the process of European integration as a possible solution to their claims. Gurutz Jauregui has attempted to address all these currents, in the three recent books mentioned above.

Gurutz Jauregui is professor of Constitutional Law at the University of the Basque Country. He belongs to a generation of enthusiastic Basque law professors now in their fifties (J.M. Castells in Administrative Law, G. Monreal in Legal History and J. Igartua in Jurisprudence), who have contributed to the consolidation of the Law Faculty in Donostia-San Sebastian and have given it a decent research reputation. It is not possible to call it a school in the usual sense of the word, but one could talk about a particular academic style common to all of them. The present review essay presents Jauregui's recent thought, given that his most important work of the eighties, *Decline of the Nation-State*<sup>3</sup> is now to a large extent developed and reworked.

Jauregui, who holds a chair in Constitutional Law, is not a classical black-letter constitutional lawyer, but rather a scholar in political theory, an original scholar in an academic community where positive constitutional law is the trend. His books are well documented not only in the field of political theory, but also of political science, public international law and international relations. The leading theoretical currents in the fields of democratic theory, nationalism and self-determination are generally explained with amazing clarity and interrelated in a system of thought the main components of which are the critical review of the Nation-State and of nationalist theory in the light of; first, the challenges posed by modern pluralistic and technological society and the developments of democratic theory; second, the general transformations of the State both internally and externally which point to a crisis of the Nation-State as the model of political organisation; and third, the development of European integration as the laboratory where the first two dynamics may be synthesised. This system of thought is now focusing more on a theory of democracy and diminishing the emphasis on nationalism. Indeed, the development of powerful multinationals, of new forms of communication, of new forms of "paradiplomacy" (at the global, interregional, transfrontier, intercity levels), the possibility to separate or de-couple citizenship and nationality, the opportunity for regions to participate in supranational arrangements are all phenomena which point to a crisis of the State, or at least of the Nation-State model, a theme that recurs throughout the three books.

The present review essay will try to introduce the main arguments developed in the books and then elaborate a critique based on the combination of the three books.

### **La Democracia en la encrucijada**

"Democracy at the crossroads" is an analysis of democratic theories and an attempt to describe modern society. Jauregui's frame of reference is western democratic states but the theory which is suggested, the participatory model of democracy, is applicable in theory, to political compounds other than the state. This would however require some adjustment of the theory, and Jauregui does not indicate precisely how it can work.

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3. first published in Madrid in 1986 and then in English at Reno in 1994

1. Rather than attempting to define democracy, Jauregui deals with the question of the minimum democratic threshold below which a society cannot properly be called democratic. This threshold is made up of three sets of values: 1) material freedoms (assembly, political competition, expression, information) 2) free choice of political power (frequent and free elections, universal active and passive voting right, equality of representation) 3) the political system is organised according to the majority principle, the vertical and horizontal division of power, and the rule of law and it functions free of non-democratic hindrances either external (occupation by a foreign power) or internal (threat of military coups). Beyond this threshold, one can speak of a higher or a lower degree of democracy. (p. 30-31)

2. The Welfare State has assumed new functions, partly because of its own dynamism and bureaucratic logic, partly because of social demands. The result is an overload of the State which poses a problem from the point of view of legitimacy whenever social demands are not met or are unsuccessfully met. The solution to that legitimization deficit is all too often to accumulate new functions thus leading to an overwhelming concentration of power, an overload. The citizen is left facing a complex powerful organisation which is not only difficult to control but also difficult to apprehend as a whole. (61-63) The end result is a failure of the democratic models we have inherited. Jauregui does not believe, however, that democracy itself is in crisis, because that would involve a persistent questioning and criticism towards the political system as a whole, towards its fundamental values on the part of some socio-economic or cultural group which is systematically disfavoured by the system. Instead there is an awareness of the legitimization deficit of the modern democratic State and of the need to look for alternatives. These range from the elimination of social demands to the improvement of the services, i.e. from neo-liberalism to social democracy, which are briefly analysed (64-86). There is no discussion, however, of the communitarian theories which have been suggested since the 80s by prominent political philosophers such as M. Sandel<sup>4</sup>, A. MacIntyre<sup>5</sup>, M. Walzer<sup>6</sup> or even C. Taylor<sup>7</sup>.

3. Three different democratic models or differing conceptions of democracy are discussed in chapter III; these are the competitive, the pluralistic and the participatory models.

3.1. The competitive model (p. 89-105) springs from Max Weber's work. To the extent that politics is about exerting influence on the distribution of power in a modern bureaucratic society, a democratic system will be one where there is free political competition: all are equally qualified, in theory, to take part in the running of the society and power is not excessively concentrated on one person or on one position. Modern society displays elitist tendencies within existing organisations and a lack of political interest on the greater part of the citizenry. Democracy thus becomes technocratic. Jauregui considers this competitive model as a plausible socio-political picture of modern society but criticises Weber and Schumpeter for committing the naturalist fallacy and deriving prescriptive theories from such description.

3.2. The pluralistic model (p.105-112), which also has its roots in Weber, sees democratic society from the point of view of constitutional theory, i.e. as the result of a process whereby different groups representing differing and competing interests and political

4. Liberalism and the limits of Justice, Cambridge 1982.

5. Whose Justice, Which Rationality?, London 1988.

6. Spheres of Justice, New York 1983.

7. Philosophical Papers, Cambridge 1985.

claims strive for power creating different centers of power. The system is democratic because citizens are free to state their preferences and act in the pursuit thereof so that they be considered by government. The problem with this model is that it is normative or ideal and is not based on a plausible description of society.

3.3. The participatory model (p.112-140) is a project for widening and deepening democracy into all sorts of domains and organisations where it was previously lacking –corporations, multinationals, international organisations, monetary and financial institutions –or where it was only apparent– political parties (the subject of Chapter IV), trade unions (analysed in Chapter V as corporatism), professional bodies, public administration, the mass media groups, religious groups –and for establishing checks and controls in those domains where it is generally agreed that electoral or direct participatory mechanisms are not called for– the army, the judiciary. All citizens should enjoy equality of opportunities for exerting power through participation and control. The rest of the work can be seen as a development of this model.

4. Industrial society was based on three social orders: community, market and state. The overlap of these three orders has given rise to important challenges to democratic systems: the rights of individuals as citizens as opposed to their rights as members of certain (regional, ethnic, linguistic, cultural) communities, social and economic inequality of citizens and formal rights of equality. Political activity was responsible for addressing the challenges posed by these problems and it did so by channelling them through the parliamentary process and through a system of checks and balances. Until recently, political parties have practically held a monopoly of political activity by means of five categories of functions: (1) integration-mobilisation-participation of public opinion, (2) structuring votes, (3) recruiting politicians, (4) channelling interests and claims and (5) influencing public policies. That monopoly nowadays seems reduced to the ballot (structuring the votes) given that the other functions are being performed by other agencies and institutions side-by-side. But modern technological society has added a fourth social order which Jauregui calls associative-incorporative and which is imposing its own network of relations between the State, the market and the community, and changing the nature of political activity.

5. Chapter V makes it clear that theoretical and normative models of democracy must deal with this new situation. Parliaments must be reformed in order to increase the autonomy of their members in relation to their group and the autonomy of the group in relation to the party. On the other hand, the executive is gaining increasing weight, at the cost of Parliament. Trade Unions, employers' organisations and the government negotiate very important economic terms of employment relationships which are then imposed on the political process. Parliament should adjust itself in order to control the process, but on top of that, corporations and multinationals themselves should undergo a democratic transformation in order to allow for active participation of all their members and for control of their decision-making processes. Political parties also have a responsibility in checking that corporations do not unrestrictively impose their terms on the whole of the citizenry. Citizen participation thus becomes essential for the defence of interests threatened by new powerful actors for which the traditional political process has not yet developed a system of checks and balances.

6. The participation of the citizens is channelled through new social movements analysed in chapter VI (environmental groups, civic rights groups, gender rights groups, consumer associations, peace movements, the movements of the unemployed, groups that express their solidarity with the dispossessed, with the third world, etc). Trade unions and political parties have to a large degree leant towards greater corporatism and have even clashed with social movements. These movements aim to transform political culture and political values altogether, but the political process is still dominated by political parties. The

book thus presents a picture where there is great scope for the development of the participatory model of democracy, but where little is articulated from a constitutional point of view, and there are few normative proposals in that sense.

### **Entre la tragedia y la esperanza. Vasconia ante el nuevo milenio**

“Between Tragedy and Hope. The Basque Country at the turn of the milenium” is an essay or a tract which discusses Basque nationalism. The work will be summarised only in relation to the general themes of nationalism or regionalism, democracy and European integration, leaving aside the fine details of the first two chapters which deal with the development of Basque nationalist theory.

7. The tragedy of the Basque Country in the modern era is the absence of a structured society with a sufficient self-awareness or identity and which could transcend the many cleavages which are usual in any democracy: political, social, economic and cultural cleavages. Even the territory of such a reference or its name is a problem (the three provinces grouped in the Basque Autonomous Community of Spain, the Navarrese Autonomous Community and the Pays Basque in the French *département des pyrenées atlantiques*, the three territories make up what Jauregui, and others, call Vasconia a term that has not yet gained wide acceptance but which has obvious historical value).

The lack of a common “societal” project or reference becomes even more dramatic when extra cleavages are added to the ones common to most societies: linguistic, territorial (the Navarrese Community and the Pays Basque), political (Basque nationalists v. Spanish nationalists; independentists v. Autonomists), and ethical (the denunciation of violence v. complacency towards violence). Many nationalist ideologists beginning with the founding father Sabino Arana and continuing with some ETA members have built their discourse on the presupposition that the Basque Country and Spain are two logical opposites, two enemies. But this is not a very constructive approach. Its result has been, all too often, the identification of Basqueness with nationalism not only on the part of Basque nationalists but also of non-nationalists who, for too long, have failed to show any interest in Basque culture. The culture of violence, for which ETA is primarily, but not solely responsible, is conditioning the present political situation and is adding to the tragedy. Democratic nationalism must avoid any ambiguity towards violence and the citizen must be courageous in combatting violence, since apathy is a form of support. In this sense, Jauregui considers it essential to establish a priority amongst the different cleavages and welcomes instruments such as the *Ajuria-Enea* table which has imposed a barrier between parties that condemn violence and terrorism and those that support violent organisations or, at best, do not condemn them.

8. The hope is precisely that the majority of the population and all the political parties and social and cultural organisations come to share and value Basqueness as such, independently of its political projection and come to accept the Basque country as a reference, as an identity, as a project, as a focus of civic loyalty. Jauregui calls this *vasquismo*, which would be a pre-political concept operating at the level of civil society, different from nationalism and it would be compatible with different political projects, nationalist or otherwise. This form of civic loyalty would be projected on Vasconia. The regeneration of this Basque reference is not likely to originate in political parties but rather in other organisations and movements. This project must assume the underlying social, territorial, cultural, linguistic pluralism of Basque society.

9. The last chapter of “Between Tragedy and Hope” is closely related to the book on “Minority Nationalisms and the European Union”. Jauregui considers that current nationalisms existing in the European Union face two options: either creating a new Nation-State as

traditional nationalism postulates or overcoming the present system of Nation-States and the very notion of sovereignty. Jauregui clearly favours the second option, and much of his work consists in describing the changes that are taking place at the international level in order to show that the aspiration to establish an independent state is really quite futile. But the second reason for favouring this option is that it could perhaps help to define the necessary reference point of a common Basque project acceptable to all political actors and which clearly cannot be achieved under the tension of the nation-State. At this point, the author recognises that civil society cannot achieve that option on its own and, on the one hand, careful institutional action is necessary on the part of Basque and Spanish institutions and political groups, while on the other, the institutions and major actors of the European Union, the Member States, must be sensitive to regionalism.

10. Yet, regionalism and nationalism do not necessarily conflate. It is true that both phenomena involve a given dialectic tension with a central power to whom certain economic, cultural and political claims are made to redistribute resources and assets into an organised territory. Regionalism can be reduced to the logic of efficiency and decentralisation as a response to the dynamics of centralisation and unification which accompanied the formation of States in Europe. Nationalism, instead, involves an added ethnic dimension and cannot be reduced to a mere question of efficiency because it involves an idea of claiming a difference and a particular identity in relation to a negation of such identity or specificity by a dominant uniformising power, a State which is really pluri-national but which is modelled as a Nation-State.

### **Los nacionalismos minoritarios y la Unión Europea ¿Utopía o ucronía?**

11. Indeed, Jauregui agrees with Habermas that "it is the very Nation-State which provokes the claims to autonomy made by oppressed national minorities struggling for their rights". Chapter 1 of "Minority Nationalisms and the European Union" is on theories of nationalism. Jauregui agrees that nationalism relies heavily on myth, but, he criticises the interpretation of nationalism as pure invention by an elite in order to pursue its interests. Instead, nationalism can be seen as a political response to a perceived challenge or threat. Nations are a socio-political reality built on two complementary factors: the will of its members to live together and certain common cultural features. The existence of a nation necessarily implies a political dimension. From a sociological point of view, the Nation-State implies a capacity to establish and maintain authority within a territory together with a sufficiently uniform feeling of national identity and solidarity. From a constitutional point of view, it implies unitary political power which can be compatible with administrative decentralisation but not with a federal arrangement. The model of the Nation-State or national State is in decline as a model of State. But, the State itself, and not simply the Nation-State, is undergoing important transformations. This leads to a questioning of the very concept of sovereignty and points to the need to examine which are the possible alternatives to the creation of a State.

12. Chapters 2 and 3 are on self-determination. Jauregui comments on the major theories on this principle and deals with its positivisation in Public International Law instruments. Until 1990 the beneficiaries of the right to self-determination were former colonies but since 1990, countries which were not colonies like Croatia, Slovenia, Bosnia-Herzegovina, Slovakia, Estonia, Latvia and Lithuania and other former Soviet Republics have achieved the status of independent States. In this context, International Law will need to account for this new development and adjust the traditional theory. Self-determination is seen from an internal point of view as the right of a people to decide on its own Constitution in the framework of a larger State and the right to govern or rule itself. It is important to distinguish this right from the creation of a new State or from the right to secede from one State. From an

external point of view it would comprise the right to establish an independent State. Of course, at an international level this right will normally have to be weighed and balanced as against another essential principle of international law i.e. the territorial integrity of the State (a principle that does not apply in colonial situations). The result of the balancing process is normally the respect for the principle of integrity but with a concession by the State, negotiated at an international forum, on the recognition of a special status for the people that holds the right to self-determination.

13. One of the traditional problems of the international community (expressed most clearly at the Society of Nations) was the failure to account for the collective right of minority groups. Even if the ultimate addressees of such rights are individuals, it is nonetheless true that such rights cannot be exercised outwith the groups, which operate as the necessary reference. Still, the practical problem is not so much to recognise that the rights of minority groups imply a necessary relationship between the individual and the group, rather, the practical problem, from the point of view of the exercise of the right of self-determination, is to decide who is to count as a group, as a people; in other words, who is the subject of such right. It is all very well to let the people decide but, don't you first have to decide who are the people? Jauregui leaves this question unanswered. Of the three classical approaches to the issue –the territorial, the ethnic (cultural) and the historical– it would have been interesting to know Jauregui's solution, since it is possible to extend this tripartite approach to develop a conception based on an international human rights law framework which allows to conflate individual rights discourse with the necessary reference of a community<sup>8</sup>. This approach recognises that self-determination is a human right but is not an absolute human right since there are limitations, applicable in certain circumstances, both to protect the rights of others and to protect the general interest of society (need to maintain international peace and security). Self-determination has to be interpreted in the context of state practice and current international standards and has to take account of its broad range of possible exercises, acknowledging the geopolitical context of the right being claimed and the present constitutional order of the State and of international society, in contrast to the restrictive territorial, ethnic or historical approaches.

14. At any rate, the crucial challenge is to determine which are the possible alternatives to the creation of a state and how self-determination can take new shape in the new world order where it is difficult to stick to the idea that international law is exclusively a law between States, a law which is not so far removed from the state of nature. This reductionism is particularly at pains with developments such that of the European Union where the transformation of the State is particularly acute. The relationships between Community law // Member State law // regional law // transnational law produce a result where power and sovereignty are shared in the different levels and institutions according to the competences that each of those levels is attributed. The rule of law and the monopoly of law is no longer in the sole hands of the States. Euro-regions are popping up (the Atlantic axis, the Mediterranean flank, the Alps, the transfrontier cooperation between different regions), frontiers are being dismantled, citizenship of the Union is a new, not so void, institution, neuralgic competences such as justice, home affairs and even defence are being europeanised (at least at an intergovernmental level), the EU is a new form of political organisation, by far the most important one at the European scale, but not the only one: the Council of Europe, the Western European Union, Schengen (which is now Europeanised), the Organisation for Security and Cooperation in Europe, NATO, and one could include on Jauregui's list the European Economic Area. In this context, the distinction between the principles of self-determination and secession becomes particularly telling.

8. Mc Corquodale, art. cit., passim.

15. The rest of the book is devoted precisely to the challenge that this important transformation is imposing on minority nationalism and self-determination. Jauregui is critical of the scarce development of regionalism in the European Union and of the little interest which this question has provoked. The issue has received greater attention at other fora like the Assembly of European Regions (which has produced an interesting declaration of Regionalism in Europe with concrete proposals) or the Council of Europe (through its conference of local and regional bodies), which are described in great detail in the book. Jauregui provides a very useful map of the different institutions dealing with regionalism in one way or another and of their major activities and claims, their successes and their failures. Still, at the European Union, the Committee of Regions was established and Jauregui reviews its present competences and makes proposals for its transformation on the lines of the report which this organ elaborated with a view to the Intergovernmental Conference for the review of the Treaty on European Union (IGC96): extending the principle of subsidiarity to infra-state bodies, giving the Committee legal standing to bring actions for the judicial review of Community legislation in defence on the principle of subsidiarity, extending this standing to those regions with legislative competences, turning this organ into a decision-making institution with real powers or at least imposing on the institutions a duty to give reasons when its opinion is not followed and extending its advisory powers to all areas where there is regional competence. The regional dimension of the European Parliament is also analysed and discussed. As we now know, Amsterdam has extended the range of topics where consultation is required, but no real powers nor legal standing or judicial legitimation have been granted.

16. Jauregui admits that the scope for action of the regions in the European Union does not only depend on the European institutions (towards which he is rather critical because strictly economic criteria are being used and because the question of regionalism and minority nationalisms is not really addressed at all by the Union) but also on the Constitutional arrangements in the different Member States. The book then analyses in some detail the situation in some of the Member States: Germany, Austria and Belgium (160-175, see also pp 147-155 of "Between Tragedy and Hope") which allow for participation of the regions at different levels of participation in the formation of the will of the Member State in the Community policy-making process. As regards the regional policy of the EU, Jauregui suggests a working definition of region which could be adopted by the relevant institutions. Regions are territorial entities which are immediately below the State; they have a certain degree of geographical, territorial, socio-economic or cultural identity, and they enjoy a certain political representation and normally have competences in areas such as the primary economic sector, health and welfare, education and culture, transport, urban planning, environment, etc and in some cases even public security. Some are merely administrative regions and others are also political and in this case they have legislative competences and legislative institutions.

17. The regional issue therefore needs to be tackled at the European Union level. The solutions should be novel and innovative and they should be specific for each specific case of regionalism or nationalism. But, "Minority nationalisms" does not provide with a clue to the possible solution for a region like Vasconia. This is to be found in "Between Tragedy and Hope" (146-147) and includes the following proposals:

- instituting in the European Union, a two-tier federal structure where not only Member States but also regions (Länder, Autonomous Communities, etc) would be represented through a Council or Senate of the regions with its own legislative competences and with decision-making power in the matters falling within their competences,
- participation of the regions in those matters which affect their competences, either directly at the European Community institutions and/or indirectly through the Member State representation in the Communities,



- implementation by the regions of Community decisions and policies on matters falling within regional competence,
- assuming a greater role in transnational relations, i.e. external (paradiplomatic or even some form of treaty-making power) action in order to increase and accelerate economic (commercial) social and cultural development and flourishing,
- increasing trans-frontier cooperation and favouring the creation of cross-state regional bodies.

18. But the present Europe is far from having achieved decentralisation or regionalisation. The fact that the only Community notion of region be determined by purely macroeconomic criteria and that it confuses administrative entities indicates that it has not really thought out the problem with any degree of seriousness. It would be worth inquiring into the reasons that explain such reluctance, and in "Minority Nationalisms" Jauregui does not attempt such an inquiry. He simply regrets the fact that the Commission has not moved any further. This is not, of course, the major shortcoming of the present integration process, but it is perhaps a criticism which directly, but not exclusively, involves the responsibility of the Community institutions.

19. There is another, more important criticism which is directed at those responsible for steering the Union and carrying out its constitutional reforms, i.e. the constituent Member States, and which, only indirectly, concerns the institutions of the Union as well, and that is the democratic deficit of the European Communities and even more so, of the European Union as a whole. This democratic deficit can be described as a twofold shortcoming: 1) the inability of the Community and Union to develop structures and processes which would adequately replicate the habits of governmental control, parliamentary accountability and administrative responsibility which are practiced with different modalities in the various Member States and 2) the fact that more and more functions have been transferred to the Community and the democratic balances within the Member States have been disrupted by a strengthening of the ministerial and executive branches of government. The result of this deficit is the depreciation of the value of the individual in the political process<sup>9</sup>. This criticism appears, if only briefly, in "Democracy at the Crossroads" (esp. at p. 134) which is not a work on Europe, but rather on Western Democracies. Jauregui affirms that the institutions of the European Union are less democratic than those of any of the Member States that constitute it. A large percentage of the decisions affecting the citizens of those states, decisions adopted by the executive or the administration (i.e. the Commission, and to some extent the Council), are immune to the control by the institution which represents those citizens, and it is precisely this control which is the essence of the democratic liberal State: 65% of Community law-making is done with no Parliamentary involvement. It is therefore extremely worrying that the European Parliament should not be allowed to take a leading role in the process of European integration. The reader is left wanting to know more.

## CRITICAL APPRAISAL

### On nationalism

Nationalism has a poor reputation in intellectual circles. At best, it is associated with irrationalism, divisiveness, ethnic strife, social exclusion and selfish behaviour. At its worst, it is guilty of ethnic cleansing, genocide, violations of human rights and totalitarianism. Any

9. See J.H.H. Weiler, "The European Union belongs to its Citizens: Three Immodest Proposals", 22 *ELRev* 1997, p. 150-156.

attempt to conflate nationalism with liberalism, respect for human rights and democracy will be considered as suspect of having a hidden agenda. The term “nationalism” has a negative connotation indeed. Yet, for want of a better term, there are thinkers who have argued for a moderate version of nationalism or patriotism. Names like A. MacIntyre<sup>10</sup>, W. Kymlicka<sup>11</sup>, Y. Tamir<sup>12</sup> or A. Ingram<sup>13</sup> spring to mind, philosophers who have explored nationalism from practical philosophy and who can hardly be suspect of any connection with any of the excesses of nationalist ideology. And yet, those are precisely the authors who are systematically ignored by the fiercest critics of nationalism. One would have liked to see Jauregui engage in a debate with such authors. In a nutshell, such moderate nationalism grants a positive value to the nation, a *prima facie* moral value worthy of respect but which can be overridden in the presence of absolute values such as life or liberty.

The very term “minority nationalism” which Jauregui uses is problematic not only because nationalism itself is, as we have seen, irremediably contentious, but also because the term “minority” is, conceptually, relative: a minority located in a larger territory becomes the majority within narrower confines: Albanian Kosovars are a minority in the new Yugoslavia but a majority in Kosovo. The nationalism of the minority may then simply be an aspiration to become a majority, i.e. to redefine the territory or to give it a new autonomous status, but it need not encompass any further nationalist agenda. One could then say that a minority nationalist could very easily cease being a nationalist from the moment the group which had the status of a “minority” and was treated as such, became a “majority”. Indeed, a common thread in Jauregui’s recent work is the internally critical attitude towards nationalism within Basque society combined with a new, but still rather imprecise defense of the principle of self-determination. Jauregui should have spelt out the features of minority nationalism. I understand this term as referring to the nationalism of stateless nations, with a stress on “nationalism” but the term could be used in other contexts with the stress on “minority”.

### Vasquismo as an alternative

An recurrent theme in Jauregui’s most recent work is the vindication of civil society and the proposal of vasquismo as the glue that would keep such civil society compact. Jauregui rightly assumes that civil society in the Basque Country is extremely weak whereas the weight of public or official institutions is overwhelming. But these institutions are largely sterilised by the political debate between Basque nationalists and Spanish nationalists. In order to transcend that debate Jauregui calls for the assumption by the citizenry of an inherent value in Basqueness which he calls vasquismo. This proposal may be precisely the attempt to avoid the nationalist agenda, but the civil society which is being suggested as the focus for “vasquismo” contains communitarian undertones: vasquismo implies a deep appreciation of the Basque language, Basque culture in all its pluralism and diversity, in other words, a particular feeling for the land, its peoples and their culture. If pushed far enough, many citizens who consider themselves to be Basque nationalists, I for one, construct their nationalism on precisely the same arguments which vasquismo vindicates, with the result that those very

10. Is Patriotism a Virtue?, The Lindsay Lecture, University of Kansas 1984.

11. Liberalism, Community and Culture, Oxford 1989.

12. Liberal Nationalism, Princeton 1993.

13. “The Empire Strikes Back” in *Rechtstheorie, Beiheft* 1993.

citizens who embrace Basqueness would have to deploy additional reasons in order to support the nationalist creed or simply abandon the creed altogether.

Arguably, if a solid civil society existed in the Basque Country and if this civil society assumed the defence and promotion of the Basque language and culture as self-evident ends, then nationalism would either be reduced to the political choice of the best institutional mechanisms for defending the interests of such civil society –in which case it would be better called “regionalism”– or else it would revert back to essentialist positions with scant philosophical credibility. In the first scenario, everybody would have become a little more nationalist at the cultural level but considerably less at the political level given that the defence of Basqueness would no longer be a cleavage. In the second nightmare scenario, nationalism would be a suffocating ethos claiming superiority of one Volk or one nation over others, examples of which we have seen too many, even in the founding father of Euzkadi<sup>14</sup>.

A difficulty in Jauregui’s analysis is that the degree of commitment to vasquismo which would be necessary in order to consider that civil society is self-standing is not spelled out. If we try to tease it out of the author’s suggestions we might find ourselves back into the original cleavage: only a few people would openly confess a dislike of Basqueness; even some of the Spanish nationalists who reside in the Basque Country can live with some Basque lore, and a larger percentage would probably be uninterested. But if one translates this into actual policy decisions the problems come to the fore: the citizen who tolerates Basqueness in folklore may find it objectionable that public funds be generously deployed to promote the use of Basque in the commercial milieu, or may vigorously oppose the requirement of fluency in Basque in order to apply to an official post. Vasquismo, as the software of Basque civil society which would handle with such contentious issues seems to be wishful thinking, it would solve the problem at one level –the political symbolism of those who claim to support Basqueness versus the rhetorics of those who see Basqueness as a discriminating device – only to replace it at another– the policies advocated by those who wish the Basque language to achieve normality at all levels versus the policies and reactions of those who see Basqueness as positive, but after all, as no more than a local flavour. This may amount to some progress but the question would then be whether a general assumption of vasquismo would at least render any more informed the political debate between those who want more and those who think there is plenty already<sup>15</sup>.

## On Self-determination

The question of self-determination is dealt with in Chapter IV of “Between Tragedy and Hope” and in “Minority Nationalisms”. This is perhaps the key issue in the Basque predicament. There is a trend of thought in some circles<sup>16</sup> according to which self-determination is the wrong debate and instead, one should discuss the present amount of freedom and welfare and realise that the present institutional setup is actually not that bad. The fight against

14. The Basque patrie (in Basque Sabino Arana coined the term *aberria*, i.e. the land of the father, the Vaterland, on a very dubious etymology).

15. Thus, to give only one example, one of the partners of the Basque Autonomous government coalition, the PSE has made a future alliance conditional upon the abandonment of the plan of the others two former members (PNV and EA) to extend the Basque language to different non-official sectors of civil society.

16. e.g. the Foro de Ermua, or the published work of its most distinguished signatories such as F. Savater (in numerous press articles in *El País*) and esp. J. Juaristi, *El bucle melancólico*, Madrid 1997.

terrorism being the main priority, discussing self-determination would simply send the wrong message to those who invoke that principle in order to justify violence. The two extreme positions regarding self-determination are thus defined: on the one hand there are those who think it is dangerous to discuss it because it disrupts the present constitutional status. On the other hand there are those who see it as a convenient route to independence or as an excuse to carry on with the strategy of terror. The former tend to forget that the constitutional status was not the result of a democratic choice of the Basque citizens and that the fact that the majority of the Basques are playing by the constitutional rules does not mean that those are the rules they would prefer for the political game; the latter have, so far, shown no intention whatsoever to respect whatever comes out of a democratic election and one should not therefore be seduced into thinking that they would respect the outcome of an exercise of self-determination.

Jauregui is in neither camp. He presents the debate in the following terms: rather than claiming self-determination, understood as secession and as the establishment of an independent State, it is more rational to start by recognising the mutual autonomy and respect of the Basque Autonomous Community, the Navarrese Autonomous Community and the Aquitaine region and to establish ever closer institutional links between them especially considering that frontiers are disappearing and that, from an economic and social perspective, relationships between frontier regions must be enhanced. But this is perhaps a misrepresentation since self-determination and independence, or secession, are different things. Independence may but need not be the result of self-determination. Basque citizens could very well exercise self-determination and opt for the same status as the one the Basque Country currently enjoys: autonomy within Spain.

Jauregui welcomes the fact that influential sectors of moderate Basque and Catalan nationalism have changed their orientation as regards self-determination: maintaining the principle at a theoretical level but, in practice, relinquishing the creation of an independent state in favour of a greater protagonism in the European Union where sovereignty is essentially transformed. In this regard, it would have been interesting to delve into the question of sovereignty and into the idea of shared or divisible sovereignty; but at any rate Jauregui's strategy seems to dilute the question of self-determination—he principle of choosing or deciding—into the logically posterior question regarding the different possible options. This is, to my mind, misleading. The fact that the status which is finally obtained via negotiation and political allegiances is tolerable or even acceptable, does not make it the status which was desired by the population.

The issue is not at all trivial since ETA is invoking the principle of self-determination in order to justify its destruction of lives and its attack on democracy. While having no sympathy for ETA whatsoever, one can perfectly defend self-determination. Indeed I would go so far as saying that supporting self-determination is not only being faithful to democracy but it is also the best way of combating ETA's terror or at least short-circuiting its normative discourse: killing and terrorising is ETA's business and once self-determination was exercised it would need to look for other excuses to go on killing, but those excuses would lose their normative appeal in the eyes of many ETA sympathisers who would thus be deprived of the major reason they allege to justify what they see as a war against the Spanish oppressor. Jauregui is probably right when holding that nationalist problems will not be solved by means of solemn declarations (on the self-determination of the Basque country and its sovereign rights) but rather by a State covenant on the reform of the Basque Autonomy Statute and on the federal transformation of the State. But the key issue remains whether the suggested political status will be the result of the will of the majority as expressed in a referendum.

The limitation of the work to the context of the European Union is understandable, but it would have been interesting to draw some conclusions from the new developments involving the principle of self-determination in the 90s: its practice in Central and Eastern Europe where a particular idea of the nation as a natural cultural community has implied a particular approach to the self-determination of peoples, a process which has led the international community to recognize, at most and under the powerful influence of the principle of territorial stability, the right of nations (of peoples) to form their own states when the actual states in which they are located are unrepresentative<sup>17</sup>.

### On Regionalism and European integration

Regionalism is often presented as the solution to the challenges posed by nationalists all over Europe. But the solution of a greater role recognised to regions does not depend on these regions themselves. If the States, which ultimately run the Union, and the very supranational institutions it embraces do not advance in that direction, the prospect for minority nationalisms to abandon classical nationalist aspirations with the hope of obtaining greater power in the Union could be self-deceptive.

A very important contribution of Jauregui's work, if not fully original, is the distinction between nationalism and regionalism, but in the context of the European Union, talk of nationalism inevitably suggests the attitudes of many Member States who are reluctant to invest any more sovereignty (competences) in supranational institutions, and that is probably why Jauregui ends up talking about regionalism in order to refer to regionalism and to "minority nationalism", an expression which has already been reviewed.

Jauregui's implicit criticism of the Union institutions on the issue of regionalism is, in my opinion, very much to the point and fair, but one is left with a rather superficial approach to the question of alternatives. It is easy to imagine that the official response from European institutions such as the Commission would be to say that it all depends on the will of the Member States to pursue a regionalist agenda. As Hessel and Mortelmans have explained<sup>18</sup>, the Commission does not intend introducing a Community definition of what constitutes a region because the historical development of the organizational and political structures in the Member States is very different and because this is a matter which falls within the exclusive competence of the Member States. Putting the blame on the Member States might on the other hand be an easy way to avoid having to grab a hot potato, but the question should still be whether we want to eat the potato at all. Other matters have historically fallen and still fall under the competence of the Member States and this has not stopped the Commission from taking important initiatives (e.g. direct taxation of natural persons, measures to promote employment or even monetary policy). Who should then be interested in a true regional policy?

It is clear that decentralised authorities are affected by the European legislative process; they therefore have an interest in having a say or some sort of influence in that process which in some instances has meant an invasion of their competences: they must apply Community law and the policies elaborated at Community level directly affect them. Take two obvious

17. See Anthony Whelan, "The Self-Determination of Peoples in European Legal Practice" in 3 Maastricht Journal of European and Comparative Law, 1996

18. Bart Hessel and Kamiel Mortelmans, "Decentralized government and Community Law: conflicting institutional developments?", in 30 Common Market Law Review, 1993: (905-937, at p.906)

examples, the trans-European communications networks and agriculture, not to mention the more obvious issue of the structural funds. From the point of view of the central governments of the Member States themselves, it cannot be assumed, without further inquiry, that they will block any regionalist move: indeed in decentralized states, complying with Community law is not in the exclusive hands of the central government and yet it is the State as a whole which will be found in breach of its Treaty obligations regardless of which is the particular authority which is ultimately responsible for the breach. As for the Community, it is clear that it must be interested in making sure that their policies are effective, and in order to achieve that aim, they must take into account the underlying administrative and institutional reality which operates in the Member States. If a specific competence, say fisheries or mountain agriculture, befalls to a region of a larger Member State and that is the only region of that State with such a competence (because there are no fishing fleets in the rest of the regions of that State or no other mountainous zones with agricultural activity), it would seem logical for the representative of that competent region, who knows the problems well, to participate directly in the negotiations and policy making aspects regarding such competence that may be coordinated at the Community level.

The regional issue must therefore be related to the efficiency issue. When political questions (of power and influence) interfere, the climate is not appropriate for making progress. Some central governments may see their own regions as possible competitors in the Community policy-making and decision making processes, and some regions may wish to gain additional representation at the cost of their Member States position. The Community institutions would be left with a strange scenario where the interests of the region or those of the State are finally neutralised precisely because they conflict, and another interest may override them with the result that both the region and the Member State end up worse off than they were before. Such tendencies are to be avoided. In my view it is essential to see the relationship between region-central government-Community in terms of coordination and efficiency and not in terms of confrontation and alliances of any two of the three against the other. Where local administration is added to the picture, the need for coordination becomes even more pressing.

### **Jauregui's vision of Europe**

Few would deny that criticising the European Union for its democratic deficit is a fair criticism that requires serious democratic investment by all agents implied, including the citizens of the Union. But this criticism all too often leads those who make it to imply that there is no such deficit at the level of the Member State. Many politicians fall into this trap, or rather, use it to pursue nationalist agendas. As McCormick points out, from the point of view of popular sovereignty, there is a residual unease about the European Union. At least in a sovereign state, the target for democratic activism is clear; provided there is real popular control of sovereign government, with fair conditions for full and equal participation by all citizens who wish to involve themselves, democracy can be realised, without relapse into rule by a virtuous few, whether a bench of supreme court judges, or a council of ministers deliberating in private, or a bureaucracy of highly trained experts. Yet, the highly centralised version of sovereign state presented by, for example, the United Kingdom, with a proclaimed sovereign Parliament dominated by a system of political parties with strong internal party discipline, and with an absence of proportional representation in the electoral system, certainly did not foster anything approximating to an ideal system of popular government with fair and equal participation for all citizens and all points of view. Nor has it prevented the growth of bureaucracy, nor the enhancement of power of the executive branch of government. And there is

the added problem that if all legal or political power is concentrated on the level, say, of a single assembly with complete power over all matters in a large territory, then decisions affecting localities within the whole are as much subject to majority decisions by the totality as decisions which have a broader, or even a holistic scope, and the majority of the totality may be at odds with the majority in any particular locality<sup>19</sup>. The analysis is very similar to that carried out in greater detail by Jauregui in "Democracy at the Crossroads".

The democratic deficit is thus added to the regional deficit. It is to some extent to be regretted that the principle of Community loyalty (*Bundestreue*) is not really explored. Democratic participation, respect for minorities and federal arrangements may be the cure, but they should go along with some principle of loyalty to the whole project. Of course loyalty does not mean unconditional acceptance. Most peoples would rather see Europe organised along more democratic, transparent and federalist principles but that does not mean they will reject what has been achieved so far. The fear from some European circles that opening up too quickly will paralyse the whole project smacks of paternalism and bad faith. There are already many counterbalancing principles such as intergovernmental safeguards, institutions that escape democratic control and the principle of subsidiarity. Jauregui does not really expand on these crucial issues. All he has to say about subsidiarity for instance is that it can be understood as a principle for the distribution of competences and as a political principle which requires that competences be exerted as closely as possible to the citizen, and this only when informing of the report of the Committee of Regions on the intergovernmental Conference IGC96. The shortcoming in Maastricht was that the principle was reserved to the relations between the Union and the Member States. The doctrine of sovereignty requires decision making to be distributed to the most appropriate level and, in that context, the best interpretation of popular sovereignty is one that insists on levels of participatory democracy appropriate to all levels of decision-making. As MacCormick suggests, the demise of sovereignty in its classical sense truly opens opportunities for subsidiarity and democracy as essentially mutual complements.

There is another issue the reader may want to have learnt about, and that is the position of the citizen in the plethora of institutions and organisations which are being developed to accommodate for all levels of the administration: local councils, regions, states, European institutions (institutions and organs) and transfrontier arrangements. The transparency of the institutions concerned is wanting, and important decisions are being negotiated by technocrats specialised in particular fields and representing different levels of the administrations concerned but with no accountability. The citizen does not know what is going to be decided nor where nor by who. As Weiler has pointed out, even if there were a principle of access to documents, if you don't know what is going on which documents will you ask to see?<sup>20</sup> The citizenship issue opens up into two new dimensions: the Human Rights situation at the European Union and the status of aliens. But the reader is left wanting to know more on these issues.

### Which way forward for the Basque Country?

The merit of Jauregui's analysis is to show the weakness of civil society, an aspect of Basque politics which is too often neglected perhaps because of the importance of anthropological studies which portrayed rural society in the opposite direction, or perhaps because a

19. Neil MacCormick, "Sovereignty, Democracy, Subsidiarity", Lecture presented in the Faculty of Law of the University of the Saarland, given in acceptance of the degree of Doctor Juris honoris causa, May 1995.

20. Weiler, art.cit. p. 151.

greater emphasis placed by commentators on institutions. The way forward would then be to knit a little closer the fabrics of Basque society but the obstacles put by organised public administration should not be ignored, and Jauregui is perhaps too cautious in his criticism. Basque political culture is rather traditional and conservative; the existence of violence itself imposes a ranking of priorities which gives little room for experiment. On an institutional level the complexity reached stands in the way of adaptability and flexibility. When institutional life is so fragmented –local councils, provincial executive and parliament, regional government and parliament, state powers and European institutions all have competences on the same territory and society– one wonders how can civil society hold together.

One often hears the comment that the Basque Country would be a fantastic place if violence ceased. There is of course much complacency in such comments and there is indeed very much to be done in order to shape a fair society but at least, if violence ceased, both civil society and the institutions could concentrate their efforts at identifying many of the serious problems and challenges which Basque society has to face on the cultural, economic, political and social spheres: unemployment, quality of life and the environment, equal opportunities and fair redistributive policies, bilingualism and the development of a modern scientific and technological society which does not eliminate essential aspects of Basque culture, etc.. The question is of course how to make sure violence will stop. The merit of Jauregui's recent work is not merely that it has unmasked many of the inherent failures of Basque nationalism; the greater merit of his work is to have suggested ways of transcending nationalism and building upon it in order to face the future but without thereby having to regret that nationalist past which is now the heritage of most Basque citizens. For these reasons, and others mentioned along this article we await with interest the next contribution of Gurutz Jauregui's.

Joxerramon Bengoetxea