European Integration and the Nationalities Question*

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Europako integrazioak estatuaren eta nazioaren arteko harremanak bideratzeko eremu berria ekarri du. Burujabetzaren esanahi berriak, eskumenen berresleipenak eta sare berrien sorrerak estatutasunera iristen ez diren naziotasunaren adierazpen berriak ahalbidetu dituzte. Nazio-mugi-menduak egokitu egin dira, tradizio erabilgarriak, lurralde-oinarria eta europar arauetatik gertuko errotze ideologikoa dituzten kasuetan. Hala ere, Europako Batasunak aukera gutxi eskaintzen dizkie estaturik gabeko nazioei.

Giltza-Hitzak: Nazionalismoa. Europa. Gutxiengo Nazionalak. Burujabetza.

La integración europea presenta un Nuevo contexto para la relación entre Estado y nación. Nuevos significados de soberanía, una reasignación de competencias y el surgimiento de nuevas redes posibilitan expresiones de nacionalidad que no llegan a la estatalidad. Los movimientos de nacionalidad se han adaptado en aquellos casos en los que cuentan con tradiciones utilizables, una base territorial y una alineación ideológica cercana a la norma europea. La UE, sin embargo, propor-ciona pocas posibilidades institucionales para las naciones sin estado.

Palabras Clave: Nacionalismo. Europa. Minorías Nacionales. Soberanía.

L'intégration européenne présente un nouveau contexte de rapports entre l'État et la nation. De nouvelles notions de souveraineté, une réassignation des compétences et l'apparition de nouveaux réseaux, permettant des expressions de la nationalité qui n'assurent cependant pas la stabilité. Les mouvements de nationalité s'y sont adaptés lorsqu'ils comptent des traditions utilisables, une base territoriale et un alignement idéologique proche des normatives européennes. L'UE offre, cependant, peu de possibilités institutionnelles pour les nations sans État.

Mots Clé : Nationalise. Europe. Minorités Nationales. Souveraineté.

THE NATIONALITIES QUESTION

The 'nationalities question', or the lack of it between state borders and national groups, has been a recurrent feature of European politics since the consolidation of states in the nineteenth century. Such a misfit can arise because of unification nationalism in fragmented territories, irredentism where a national minority is detached from its external homeland,[1] the existence of a minority straddling borders of two states neither of which is its homeland, or the presence of a nation contained within a wider state. This apposition and opposition between state and nation has been transformed by the creation of an overarching but multifaceted European polity above both. Some see this transnational integration as a way of ending the nationalities issue, itself the product of a phase of modernity that is now being transcended.[2] Others see it disappearing in a post-nationalism, a Europe of the Regions, or a new medievalism.[3] Increasingly, however, transnational integration and the rise of new or revival of old nationality demands are seen as complementary processes, a reshaping of the connections among territory, function and identity and a consequent restructuring of political authority.

This article explores the links between sub-state nationality claims and European integration and the ways in which Europe can help by providing a 'third way' between national separatism and regional devolution. There are three levels here. The first concerns the transformation of the state, in both functional and normative dimensions. The second is the transformation of nationality movements towards doctrines of shared sovereignty, and the diffusion of liberal, democratic and inclusive norms within European political space. Functional change encouraged a 'new regionalism' as state competencies are shifted upwards and downwards, and sub-state and transnational territories emerge as a significant framework for economic, social and political change. Third, Europe opens up opportunity structures for nationality movements. The impact of these changes on national movements and their ability to exploit them varies. The European project provides incentives to de-ethnicize, to forge a civic, territorial project, to play down separatism and to enter into the game of multilevel politics; but not all nationalist movements have been able or willing to adapt.

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1. Rogers Brubaker, *Nationalism Reframed. Nationhood and the national question in the New Europe* (Cambridge: Cambridge University Press, 1996).

2. Eric Hobsbawm, *Nations and Nationalism since 1780* (Cambridge: Cambridge University Press, 1990).

3. Yael Tamir, *Liberal Nationalism* (Princeton: Princeton University Press, 1993).
Alexander B. Murphy, "Rethinking the Concept of European Identity" in H. Herb Guntram and David H. Kaplan (eds.), *Nested Identities. Nationalism, Territory, and Scale* (Lanhmam, MD: Rowman and Littlefield, 1999). Richard Kearney, *Postnationalist Ireland. Politics, Culture, Philosophy* (London: Routledge, 1997).

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1. STATE TRANSFORMATION

European integration is part of a wider process of state transformation[4] as well as unique process of polity building. It undermines the traditional identity among sovereignty, territory, nationality and function that are the essence of the traditional nation-state and opens the way to other conceptions of political authority and of public action.

First, European integration undermines state competencies in matters such as market unity and regulation, the currency and external security.[5] This reduces the need for the traditional state apparatus and encourages a move towards new forms of public policy instruments, and of territorial autonomy. To the degree that functions requiring a common regime are taken up to the European level, it also weakens arguments against constitutional asymmetry within states

Second, Europe challenges the doctrine of unitary and exclusive state sovereignty, by constituting a legal order, encouraging a legal and constitutional pluralism, in which distinct normative orders coexist.[6] The demystification of state sovereignty at the European level has led to a more general loss of ideological hegemony and opened up a discursive space for doctrines of shared sovereignty and constitutional pluralism within and across states.

Third, European integration has undermined the old claim[7] that democracy can only function in nationally homogeneous territories, which provide a common identity and trust. If Europe must manage with multiple *demoi* or without one at all, then the same argument can be applied to multinational states within it.

Fourth, Europe, in the form of the European Convention for the Protection of Human Rights, separates human rights from nationality and citizenship, undermining state claims to be the bearers of universal rights or the only means to secure them. This also undermines some powerful normative arguments against asymmetrical government within the state.[8]

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4. Martin Creveld, *The Rise and Decline of the State* (Cambridge: Cambridge University Press, 1999).

5. External security has been collectivized at the supranational level. The only question is whether this is to be within a predominantly European or a broader transatlantic framework.

6. Neil MacCormick, *Questioning Sovereignty. Law, State and Nation in the European Commonwealth* (Oxford: Oxford University Press, 1999). Neil Walker, 'European Constitutionalism and European Integration', *Public Law* (Summer, 1996): 266-90.
Neil Walker, "Sovereignty and Differentiated Integration in the European Union", *European Law Journal*, 4.4 (1998): 355-88.

7. John Stuart Mill, *On Liberty, Utilitarianism, and Considerations on Representative Government* (London: Dent, 1972). David Miller, *On Nationality* (Oxford: Oxford University Press, 1995).

8. In the United Kingdom the only statutory charter of rights is the European one, incorporated differently into the legal systems of the four nations.

Fifth, European transnational regimes, notably but not exclusively the European Union, have provided new opportunity structures beyond the state for nationality movements, often in alliance with regions.

All this has provided incentives to national minority parties to rethink their ideology and policy stance, to adapt to functional change and to seek a place in the new European architecture. Yet not all parties are able to make the necessary shifts.

2. POST-SOVEREIGNTY

For some, like the Scottish National Party (SNP), European integration provides an external support system for independence. Yet there is no provision in European law for secession and the prevailing international norms strongly discourage it. Independence within Europe may represent an attenuated and less risky form of independence, since many of the externalities are catered for, but it does require secession.

More interestingly and subtly, in other cases it provides a new discursive space within which to project nationality claims. It has allowed some movements to abandon traditional claims for sovereign statehood and adopt a 'postsovereigntist' position based on shared sovereignty and authority. Post-sovereignty[9] does not mean the end of sovereignty, but rather its transformation so that it is no longer monopolized by the state but becomes a claim to original authority, which can be advanced by various actors and institutions, and is intrinsically divisible. This is a common theme of discourse among Europeanists and national minorities and these two levels are increasingly linked so that the European discourse becomes part of the constitutive fabric of nationalist movements themselves.[10] Apart from providing doctrines of limited and shared sovereignty, this allows them to build or rebuild the nation internally by projecting it externally as part of a European family.

By the 1990s, most nationalist parties had abandoned independence and substituted other formulations, emphasizing self-determination, insertion into Europe or asymmetrical federalism. Some parties have long been ambivalent. *Convergència i Unió* in Catalonia has never supported independence, although some of its militants do. *Esquerra Republicana de Catalunya* favours independence only in the long term, as part of Europe of the Peoples transcending the old model of statehood. The Basque Nationalist Party (*Partido Nacionalista Vasco*, PNV) has independentist and non-separatist strands but in 2003 the *lehendakari* (Basque first minister) produced a plan providing for a 'freely associated state'

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9. The concept is discussed at greater length in Michael Keating, *Plurinational Democracy. Stateless Nations in a Post-Soverereignty Era* (Oxford: Oxford University Press, 2001).

10. Montserrat Guibernau, *Nations without States. Political Communities in a Global Age* (Cambridge: Polity, 1999). David McCrone, *The Sociology of Nationalism* (London: Routledge, 1998). Stéphane Paquin, *La revanche des petites nations. Le Québec, l'Écosse et la Catalogne face à la mondialisation* (Montreal: vlb, 2001).

linked to Spain and, directly, to Europe.[11] In Flanders, *Volksunie* contained both federalist and independentist elements until 2002 when it split into a separatist and a post-sovereigntist party (*Spirit*). *Plaid Cymru- Party of Wales* has long been ambivalent about the meaning of self-government but in 2001 explicitly stated that in the European context national independence was no longer needed. Even within the SNP, there are may who favour the Catalan approach. The moderate nationalist Social Democratic and Labour Party of Northern Ireland is strongly pro-European and broader currents within both parts of Ireland have embraced Europeanism as a means for transcending the division of Ireland.[12]

Across Eastern and Central Europe, the European theme has been taken up by minorities as a substitute for irredentism and as a counter to the old *revanchiste* attitudes found during the 1950s, 1960s and 1970s. Silesian autonomists, long torn between Polish and German identities, and with a history of irredentism and expulsions, now stress the Europe of the Regions theme and autonomy within a reconfigured Polish state.[13] Hungarians in the Banat region of Romania emphasize their essentially European character.[14] The Democratic Alliance of Hungarians in Romania, a centre-right party linked to the Christian Democratic movement and European People's Party (EPP), also emphasizes its European mission, which allows it to claim that Hungarians are both a constituent element of the Romanian state and part of a wider Hungarian nation.[15] The Party of Hungarian Coalition in Slovakia, also linked to the EPP, dreams of a Europe of the 'natural' Regions, reflecting culture and identity. Regionalists and minorities in eastern Europe have also drawn on the examples of mobilization in the west.[16]

3. CIVIC NATIONALISM

The normative dimension of Europe extends to a broader value framework, founded on rejection of Fascism in the aftermath of the Second World War and emphasizing democracy and tolerance. Nationalism was widely discredited and

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11. Juan José Ibarretxe, *Nuevo pacto político para la convivencia* (www.euskadi.net/konponbideak/nuevopacto (Basque Government, 2002).

12. John McGarry, "Globalization, European Integration and the Northern Ireland Conflict", in Michael Keating and John McGarry (eds), *Minority Nationalism and the Changing International Order* (Oxford: Oxford University Press (2001).

13. Wanda Dressler Holohan and Maria Ciechocinska, "The recomposition of identity and political space in Euorpe: The case of Upper Silesia", in Liam O'Dowd and Thomas M. Wilson (eds), *Borders, Nations and States* (Aldershot: Averbury, 1996).

14. Judy Batt, (2002), "Reinventing Banat", *Regional and Federal Studies*, 12.2 (2002):178-202. Judy Batt, "'Fuzzy Statehood' versus Hard Borders: The Impact of EU Enlargement on Romania and Yugoslavia", in Michael Keating and James Hughes (eds), *The Regional Challenge in Central and Eastern Europe, Territorial Restructuring and European Integration* (Brussels: Presses interuniversitaires européennes/Peter Lang, 2003).

15. DAHR (1998), Democratic Alliance of Hungarians of Romania, *Programme* (www.hhrf.org/rmdsz/).

16. Karoly Gruber, (2002), *Constitutional regions, stateless nations and the Future of Europe debate*, (Brussels: The European Policy Centre, 2002).

minority nationalisms in Flanders and in Brittany, were tainted by the collaboration of some of their members with Nazism. Since then, the European political arena has been open to nationalist and regionalist movements that have emphasized territorial and inclusive nationalism and democracy, and not to those that cleave to ethnic exclusiveness or racism. It has thus encouraged the growth of a self-consciously 'civic' nationalism.[17] Such movements would include the Scottish National Party, *Plaid Cymru*, *Convergència i Unió*, *Esquerra Republicana de Catalunya* or *Volksunie/ Spirit*. The Basque PNV moved away quite early from the ethnic exclusivism of Sabino Arana (though this element has never quite disappeared) and was an early convert to Europeanism, encouraged by its links with the international Christian Democratic movement.[18]

Efforts by extreme right wing or ethnically exclusive or racist parties to adapt to Europe have been less successful, since they violate the founding norms of the post-war European order. The Italian *Lega Nord* has gone through a series of policy realignments but for much of its history has emphasized the ability of Lombardy and then Padania to operate in Europe, if only it were freed of the incubus of the Mezzogiorno and the Italian state.[19] By the mid-1990s, it had adopted a policy of independence in Europe in which northern Italy could join the Euro, leaving the south with the Lira. They failed to gain any allies among other regions and nationalities, largely because of their racism and extremism, and found that the Europe they sought to join was antagonistic to their values. In 1994 they were forced out of the European Free Alliance.[20] By 2001 they had changed their rhetoric to become strong defenders of the (albeit federalized) Italian state against Europe. The *Lega dei Ticinesi* in Italian-speaking Switzerland takes much the same line. In Flanders, the *Vlaams Blok* rejects civic nationalism in favour of ethnic exclusiveness, favouring a European confederation of peoples, or ethnic states, including central and eastern Europe. Yet despite its references to movements like those in Scotland and Catalonia it has failed to gain any allies and, like the other extreme right parties, it has fallen back on an anti-European rhetoric.[21]

Radical left nationalists also tend to hostility to Europe, seeing it as a capitalist club dominated by large states. So *Herri Batasuna* and its successors in the Basque Country have no time for EU, nor has *Sinn Féin* in Northern Ireland. The *Bloque Nacionalista Galego* (of Galicia in Spain) for long purveyed a populist anti-European rhetoric, portraying Galicia as a even more peripheralized in Europe

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17. Keating, Michael, *Nations against the State. The New Politics of Nationalism in Quebec, Catalonia and Scotland*, 2nd edition, (London: Palgrave, 2001)

18. Alexander Ugalde, "Las relaciones internacionales del nacionalismo vasco", in Francisco Aldecoa and Michael Keating (ed), *Paradiplomacia: las relaciones internacionales de las regiones* (Madrid: Marcial Pons, 2001).

19. Roberto Biorcio, *La Padania Promessa* (Milan: Il Saggiatore, 1997).

20. Peter Lynch, *Minority Nationalism and European Integration* (Cardiff: University of Wales Press, 1996).

21. Cesáreo Aguilera de Prat, *Partidos y estrategias nacionalistas en Cataluña, Escocia y Flandes* (Valencia: Tirant lo Blanc, 2002).

than in Spain.[22] Radical leftist groups in Brittany and in Occitania (France) similarly excoriated the EC/EU. Until at least the 1970s, an ideological underpinning for these radical leftist parties was provided by internal colonialism, an extrapolation of the Third World struggles for liberation back to the imperial countries of Europe. Gradually this theme lost its attraction or relevance and a certain ideological shift took place, aided by the emphasis on social solidarity and cultural pluralism in the European discourse of the 1980s. In some cases, including the Galician and Breton movements, this led to a discovery of Europe and the deployment of the theme of a Europe of the Peoples as an alternative to the states[23] bringing them closer to *Plaid Cymru* and *Esquerra Republicana de Catalunya*.

4. AN USABLE PAST

Nationality movements usually look back as well as forward, rooting their claims and seeking legitimacy in a historic past that is itself continually reinvented. Yet the scope for invention is limited by the available materials, and by their present resonance. In the nineteenth and early twentieth centuries, nationalist movements often evoked a myth of ancient independence and precocious statehood, crushed by external repression. Sabino Arana anachronistically tried to present the Basque provinces (initially just Vizcaya) as nation-states with full sovereignty until broken by the Spanish state.[24] Many contemporary nationality movements, by contrast, have chosen to present themselves as the most European of the Europeans and have rediscovered pre-state traditions of shared sovereignty and pactism, which lend themselves to the new European dispensation.[25] Such historical revisionism has been favoured by the rediscovery of regional history[26] and efforts to construct a history of Europe as opposed to its states.[27] So Scottish intellectuals have emphasized the lack of a tradition of unitary state sovereignty in Scots law and philosophy[28] and stress Scotland's early European

22. Michael Keating, "Les nationalités minoritaires d'Espagne face à l'Europe", *Etudes internationales*, XXX.4 (1999): 729-43. Michael Keating, "Rethinking the Region. Culture, Institutions and Economic Development in Catalonia and Galicia", *European Urban and Regional Studies,* 8.3 (1999): 217-34. Michael Keating, "The minority nations of Spain and European integration: a new framework for autonomy?", *Journal of Spanish Cultural Studies*, 1.1 (2000); 29-42.

23. Michael Keating, *Nations against the State*. Michel Nicolas, *Bretagne, un destin européen* (Rennes: Presses universitaires de Rennes, 2001).

24. Sabino Arana, *Bizkaya por su independencia*, extract in Santiago de Pablo, José Luis de la Granja and Ludger Mees (eds), *Documentos para la historia del nacionalismo vasco* (Barcelona: Ariel, 1998).

25. Michael Keating, *Plurinational Democracy*.

26. Celia Applegate, "A Europe of Regions: Reflections on the Historiography of Sub-National Places in Modern Times", *The American Historial Review* 104.4 (1999): 1157-82.

27. Norman Davies, *Europe. A History* (London: Pimlico, 1997).

28. Neil MacCormick, "Is There a Scottish Path to Constitutional Independence?", *Parliamentary Affairs*, 53 (2000): 721-36. William Ferguson, *The Identity of the Scottish Nation. An Historic Quest* (Edinburgh: Edinburgh University Press, 1998). Paul H. Scott, *Andrew Fletcher and the Treaty of Union* (Edinburgh: John Donald, 1992).

connections. Catalans have taken as a reference point Catalonia's status before 1714, as a self-governing nation within a complex confederal arrangement standing between 'Spain' and Europe[29] Welsh nationalists emphasize community as an almost mythical alternative to the classic form of nation. Basque nationalism has reinterpreted the - ancient rights or *fueros* of the historic territories as a form of pactism based on shared sovereignty. Intellectuals in turn have used such old doctrines to back claims for divided sovereignty within Spain and Europe.[30]

In other cases, such argumentation carries less weight. Breton claims that the Revolution illegitimately broke the terms of the treaty of 1532 by which the province was annexed to France[31] clash with the powerful image of the Revolution itself and its democratising myths. The Belgian lands have a usable past in the form of the Burgundian and later imperial order, with its complex patterns of rights and usages and nationalists have long engaged in historiographical wars.[32] Yet modern Flanders and Wallonia, do not correspond to the historic units but are a product of social and political modernization since the nineteenth century; and the constitutional legacy is slight. Padania, the imagined nation of the Lega Nord has had to do with a concocted vision of itself as 'the oldest community in Europe'[33], which convinces nobody.

In central and eastern Europe, a powerful theme after the fall of Communism was the 'return to Europe'. This is rather ambivalent, as it can refer to several different visions of Europe, past, present and future. The availability of a usable past also varies. Silesians are pressing into use their history as a borderland and quintessentially European people as a way of resolving their confused national identity question.[34] Hungarians of Banat have drawn on the Habsburg cultural heritage and their history of inter-ethnic harmony.[35] There is even a broader re-

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29. Eduardo Moreno and Francisco Martí, *Catalunya para españoles* (Barcelona: DORESA, 1977). Salvador Giner, Lluís Flaquer, Jordi Busquet and Núria Bultà, *La cultura catalana: el sagrat i el profà* (Barcelona: Edicions 62, 1996). Ricard Lobo, "La devolución de la soberanía", in Xavier Bru de Sala, Gemma Garcia, Anna Grau, Ricard Lobo, Magda Oranich, Martí Parellada, Augustí Pons and Josep-Maria Puigjaner, *El modelo catalán. Un talante político* (Barcelona: Flor del Viento1997). Joaquim Albareda i Salvadò, and Pere Gifre i Ribes, *Historia de la Catalunya moderna* (Barcelona: Edicions de la Universitat Oberta de Catalunya, 1999). Jaime Vicens Vives, *Approaches to the History of Spain*, 2nd edition (Berkeley and Los Angeles: University of California Press, 1970).

30. Miguel Herrero de Miñon, *Derechos Históricos y Constitución* (Madrid: Taurus, 1998). Miguel Herrero de Miñon, and Ernest Lluch, *Derechos Históricos y Constitucionalismo Util* (Barcelona: Crítica, 2001).

31. Michel Nicola, *Bretagne*.

32. Lode Wils, *Histoire des national belges* (Ottignies: Quorum, 1996). Louis Vos, "Reconstructions of the Past in Belgum and Flanders", in Bruno Coppieters and Michel Huysseune (eds*), Secession, History and the Social Sciences* (Brussels: Brussels University Press, 2002).

33. G. Oneto, *L'invenzione della Padania. La rinascita della communità più antica d'Europa* (Bergamo: Foedus, 1997).

34. Luiza Bialasiewicz, "Upper Silesia: Rebirth of a Regional Identity in Poland", *Regional and Federal Studies*, 12.2 (2002): 111-132.

35. Judy Batt, "Reinventing Banat", *Regional and Federal Studies*, 12.2 (2002): 178-202.

assessment of the Habsburg experience, which twentieth century historiography assumed had to break-up as an inevitable consequence of democratisation, since the nationalities would only be fulfilled in their own state. Yet as early as 1848 there were thinkers advocating new form of multinational order; the Czech national leader Palacky went so far as to claim that if the Austrian empire did not exist it would be necessary to invent it.[36] The Hungarian Eötvos favoured more complex solutions still, retaining the historic Crownlands, which were not drawn along strictly ethnic lines, but providing for local self-government within these.[37] The Austro-Marxists Renner and Bauer advocated separating personal from territorial nationality altogether, but with both coming under an overarching transnational order.[38] The Czech national leaders Masaryk and Benes favoured self-government within the empire until the First World War and fear of German domination rendered such schemes impossible.[39] On the other hand, the Habsburg legacy has negative connotations across much of the region, and the discourse of 'recovered' national statehood is powerful theme; this is often combined with a profound suspicion of federalism or any territorial recognition of minority claims.[40]

It is hardly surprising that small nations and nationalities, with big and powerful neighbours, should not have developed doctrines of absolute state sovereignty, preferring to put their faith in over-arching and transnational security and market regimes. This was the view of Masaryk[41] and it finds an echo in other small nations.[42] The ideological expression of this sentiment and its associated traditions in parts of Europe provide an important doctrinal instrument in the emerging complex European order. Self-determination in this context is less about establishing a separate state, than about constituting the nation as the subject of political claims, with certain inherent rights, which then need to be negotiated in a wider order. In this way, pre-modern and post-modern concep-

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36. Batt, "Fuzzy Statehood".

37. Ibid.

38. Otto Bauer, *The question of nationalities and social democracy*, translated by Joseph O'Donnell; edited by Ephraim Nimni; foreword by Heinz Fisher (Minneapolis : University of Minnesota Press, 2000). Ephraim Nimni, "Nationalist multiculturalism in late imperial Austria as a critique of contemporary liberalism: the case of Bauer and Renner", *Journal of Political Ideologies*, 4.3 (1999): 289-314.

39. C.A.Macartney, *The Habsburg Empire, 1790-1918* (New York: Russell and Russell, 1969). Frederick Hertz, *Nationality in History and Politics* (London: Kegan Paul, Trench and Turner, 1944). Robert A. Kann, *The Multinational Empire. Nationalism and National Reform in the Habsburg Monarchy, 1848-1919* (Cambridge: Cambridge University Press, 1950 and New York: Octagon, 1977). Aviel Roshwald, *Ethnic Nationalism and the Fall of Empires. Central Europe, Russia and the Middle East, 1914-1923* (London: Routledge, 2001).

40. André Liebich, *Ethnic Minorities and Long-Term Implications of EU Enlargement,* RSC Working Paper 98/49, Florence: European University Institute, 1998).

41. Alan Sked, *The Decline and Fall of the Habsburg Empire,* 1815-1918 (London: Longman, 1989).

42. Pau Puig i Scotoni, *Pensar els camins a la sobirania* (Barcelona: Mediterrània, 1998).

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tions of order meet. The resulting doctrines, however, are often vague. Some, like the Catalan CiU, make a virtue of this, arguing that their constitutional doctrines must evolve along with Europe, while others postulate a utopian vision of a Europe of the Peoples in which the state has withered away. In the meantime, nationality movements seek to exploit existing opportunities in the form of regionalism, minority rights regimes, and European constitutional reform.

5. THE NEW REGIONALISM

The impossibility of fitting the nation into the procrustean bed of the state or of breaking states into territorially coherent national units is one of the most powerful criticisms of nationalist doctrine, Brubaker's 'architectonic illusion'.[43] One trend in analyses of late modernity detects an 'end of territory'[44] as the bonds of identity, function and space are severed. In this context, nationalities could be reconceptualized as non-spatial cultural communities and endowed with various forms of non-territorial rights.[45] The debate about nationalities and nationalism then flows into the more general debate about multiculturalism and group rights. Nationality claims, with their assertion of self-governing rights, however, are more than mere claims for cultural recognition – indeed in some places their cultural content is rather small. They do still entail territorial autonomy and, indeed, territory is in many ways becoming more important. Yet the significance of territory is changing as a result of functional transformations in the state and transnational systems. This has allowed nationalist movements in Western Europe to embrace the 'new regionalism', which promises a territorial basis for self-rule but without the exclusive connotations of territorial control implied in classical nationalist doctrine.

The new regionalist paradigm embraces functional change, institution-building and new ways of conceptualising territorial politics.[46] The most important strand concerns the importance of local and regional levels for economic development and change, within global and European markets.[47] Much of this literature stresses also the social construction of the region and the role of norms, collective identities and shared memories in facilitating social co-operation and change.[48] The key powers are no longer those held by the classic state, such as

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43. Brubaker, *Nationalism Reframed.*

44. Bertrand Badie, *La fin des territoires. Essai sur le désordre international et sur l'utilité sociale du respect* (Paris: Fayard, 1995).

45. Yael Tamir, *Liberal Nationalism* (Princeton: Princeton University Press, 1993).

46. Michael Keating, *The New Regionalism in Western Europe. Territorial Restructuring and Political Change* (Aldershot: Edward Elgar,1998).

47. Allen Scott, *Regions and the World Economy* (Oxford: Oxford University Press, 1998). Michael Storper, *The Regional World. Territorial Development in a Global Economy* (New York; Guildford, 1997).

48. Michael Keating, John Loughlin and Kris Deschouwer, *Culture, Institutions and Economic Development. A Study of Eight European Regions* (Aldershot: Edward Elgar, 2003).

tariff policy or even macro economic powers, but rather supply-side factors that stimulate entrepreneurship and adaptation. Many of these powers, including education, training, infrastructure and planning, are held by sub-state governments. Reterritorialization is also occurring in other functional systems, including language and culture, despite the availability of new forms of communication technology in which distance is not a factor. This is because instruments like education and other public services essential to maintaining a cultural community, are usually territorial, and because face to face communication remains important.

This territorialization of nationality and cultural claims is visible in Flanders, where a linguistic group has become strongly territorialized, uniting previously rather disparate provinces and localities. The autonomous community of the Basque Country has emerged as an important unit, although based on three separate historic territories, themselves part of a wider but territorially ill-defined Basque cultural region. Wales, previously so divided between north and south as to make any project of national self-government impossible, has found a new unity as a European region.

This process has also involved institution-building in state and civil society. States have devolved to their constituent territories to varying degrees, both to accommodate autonomist demands and for reasons of functional efficacy. Interest groups and other elements of civil society have in turn adapted, to consolidate the territory as a social, economic and political system. Given the decline of states' abilities to manage their spatial economies, such regions are increasingly competing with each other for investment, technology and markets, within European and global space. It is not surprising then, that stateless nations have often emerged as sites of such region-building, with nation-building elites committed to new regionalist theories about the ability of small units to compete in European space autonomously. There is no consensus on what to call these new territorial systems of action or on what the political implications are. Allen Scott writes of 'regional directorates'.[49] The term 'regional state' was coined by Kenichi Ohmae in a rather breathless but acultural and ahistorical account of the emergence of regional systems which are supposedly replacing the nation-state.[50] The term is taken up by Thomas Courchene[51] and, in the context of the nationalities debate, by Alain-G. Gagnon[52] who sees the regional state as a way out of the Quebec dilemma between federalism and independence. Catalan authors, in recalling Catalonia before 1714, have written of its as an incomplete

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49. Scott, *Regions and the World Economy*.

50. Kenichi Ohmae, *The End of the Nation State. The Rise of Regional Economies* (New York: Free Press, 1995).

51. Thomas J. Courchene, *A State of Minds. Toward a Human Capital Future for Canadians* (Montreal: Institute for Research in Public Policy, 2001).

52. Alain-G Gagnon, "Le Québec, une nation inscrite au sein d'une démocratie étriquée", in Jocelyn McCure and Alain-G. Gagnon (eds), *Repères en mutation. Identité et citoyenneté dans le Québec contemporain (*Montreal: Québec-Amérique, 2001).

state, but a state nonetheless.[53] Georg Jellinek in the nineteenth century wrote of fragments of state, entities that have some but not all of the characteristics of statehood.[54]

The possibility thus exists of territorially integrated nations and nationalities gaining a substantial degree of functional autonomy within the new regional political economy. Identity and culture, previously seen as an obstacle to modernization, may be assets in the new development paradigm. This is not because territories like Scotland, Catalonia or Flanders have any natural coincidence between territory, identity and functional systems, but because the evolution of the western European state and transnational order has encouraged stateless nation and region builders to construct new systems of action. The new regionalism, with its territorial focus, also encourages nationalists to adopt an inclusive or territorial conception of the nation. So territorial devolution within the state and a role for regions within the EU (see below) might be useful mechanisms for accommodating nationalities. Yet it may be difficult to apply the territorial solution in central and Eastern Europe, as recommended by Will Kymlicka[55] and others, where the nationalities have not undergone the same process of territorial consolidation.

6. FRAGMENTED TERRITORIES

Territory and nationality do not coincide where more than one group shares the same territory; where one group straddles two territories; and in combinations of these. One solution is deterritorialized forms of autonomy such as the Austro-Marxist proposals for personal autonomy. Yet these, like consociational arrangements, can be criticized for reifying an exclusive ethnicity, and for undermining territorial self-government and there are few opportunities for non-territorial autonomy in Europe. A more promising idea is that of partially territorialized solutions, in which territories are open rather than closed and their citizens can profess different degrees of identity with it. A nationality can thus have a territorial base without either monopolizing this territory or being confined to it. This concords with modern understandings of space in political geography, allowing a more open conception of the region, with less rigidly defined boundaries and complex identities.[56]

Under the Habsburg Empire territorial autonomy through the Crownland system corresponded rather imperfectly to the self-identifying nationality groups.

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53. Nùria Sales, *Els sigles de la decadència, Vol. IV of Història de Catalunya* (Barcelona: Edicions 62, 1989).

54. Georg Jellinek, *Fragmentos de Estado*, translation of *Uber Staatsfragmente* (Madrid: Civitas, 1981).

55. Will Kymlicka, "Reply and Conclusion", in Will Kymlicka and Magda Opalski (eds), *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (Oxford: Oxford University Press, 2001).

56. Anssi Paasi, "Place and region: regional world and words", *Progress in Human Geography*, 26.6 (2002): 802-11.

The Good Friday Agreement in Northern Ireland, while providing for territorial autonomy, allows people to identify variously with Ulster, Northern Ireland, all Ireland, or the United Kingdom. In central and eastern Europe in the 1990s, a number of states[57] passed or proposed laws giving special status to co-nationals in neighbouring countries. These could be read in two ways: as a provocative gesture of extraterritorial jurisdiction and covert irredentism; or as a way of securing nationality rights without moving borders. The Hungarian law of 2001 was particularly controversial, since it came in a context in which some nationalist politicians had talked of 'reversing Trianon' and restoring the old Hungary. Romania and Slovakia saw it as a vestige of old fashioned ethnic nationalism, while the Hungarian government defended it as an example of the multiple identity politics possible in the new Europe of cultural diversity.[58] Eventually the issue required mediation through the Council of Europe. Ironically, Hungarian accession to the EU means that the law will have to be abandoned since it will no longer be possible to discriminate among European citizens, or indeed among third party nationals.

Europe provides powerful incentives for external homelands of minorities to work together, where they are current or prospective members of European institutions. This has been a factor in central Europe and in Cyprus where the prospect of Turkish EU membership has provided an incentive for compromise. The Council of Europe, has also helped by abandoning its old doctrine that dual citizenship is a source of conflict and, in the 1997 Convention on Nationality, actively encouraging it in certain circumstances.[59] We may thus see a more open-ended or 'fuzzy' regionalism, in which a territory may be a homeland for a nationality group, providing symbolic recognition and some public goods, while containing pressures to move state borders. Such homelands may be states or, as in Catalonia and the Basque Country, autonomous regions.

7. OPPORTUNITY STRUCTURES

The emerging European order is complex and multilayered, with a range of continental bodies, not all of which have the same territorial coverage. There is the European Union, the Council of Europe, the Organization for Security and Co-operation in Europe and a range of interstate and inter-regional bodies. Although the European theme first entered the discourse of minority national-

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57. Slovenia, Romania, Hungary and Slovakia passed such laws and Poland considered it. Only the Hungarian Law specified the neighbouring countries to which it would apply, Romania, Ukraine, Slovakia, Yugoslavia, Croatia and Slovenia.

58. Brigid Fowler, *Fuzzing citizenship, nationalising political space: A framework for intepreting the Hungarian 'status law' as a new form of kin-state policy in Central and Eastern Europe*, One Europe or Several Programme Working Paper, 40/02 (Brighton: Sussex European Institute, 2002). European Commission for Democracy through Law (Venice Commission), *Paper Containing the Position of the Hungarian Government in Relation to the Act on Hungarians Living in Neighbouring Countries* (Strasbourg: Council of Europe, 2001).

59. The law on Hungarians abroad, however, was promoted as a substitute for dual citizenship.

ists between the two world wars with visions of a European federation of nations, the European Economic Community attracted little enthusiasm among the minorities, who tended to see it as remote, bureaucratic and unsympathetic to nationality claims. Some vague expressions of support for Europeanism remained, but without a clear institutional expression. During the 1980s and 1990s, however, institutional incentives emerged for minority parties to enter the European political game.[60] Direct elections to the European Parliament from 1979 encouraged minorities to organize and in 1981 the European Free Alliance was created linking minority and nationalist parties and creating a forum for dialogue and debate about building a new Europe. The 1980s also saw a deepening of European integration and extension of Community competencies into new areas, together with a strengthening of its supranational aspects and an institutionalization of the regional level. Notable switchers from an anti-European to a pro-European position have been the Scottish National Party, the *Volksunie*, *Plaid Cymru*, *Union démocratique breton* and, to some degree, the *Bloque Nacionalista Galego*.[61]

In the late 1980s and early 1990s there was a flurry of interest in the concept of a Europe of the Regions. Never clearly specified, this seemed to refer to an order in which regions were recognized as a third level of government alongside states and the European Union itself.[62] Regions and stateless nations were too heterogeneous ever to fit into such a scheme and in practice it evolved into a series of opportunities to intervene in EU policy making, either by direct links to Brussels or via the Member States. Nationalities may be able to adapt themselves to these regional opportunity structures, and to ally themselves to 'non-national' and powerful regions; at the same time it gives further incentives to territorialize nationality claims. A clause in the 1992 Treaty on European Union allows regional ministers to represent Member States in the Council of Ministers where domestic law permits and regional matters are at stake. This is applied in Germany, Austria, Belgium and the United Kingdom in various ways. In the United Kingdom, participation by Scottish and Welsh ministers is at the discretion of the central government. In Germany, the role of the Länder is entrenched and they participate by right. In Belgium, the regions and communities have external competencies corresponding exactly to their internal competencies, and the right to represent the state in the Council of Ministers where these are concerned. While in Germany, the Länder must come to a common position, in Belgium all the relevant governments must

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60. Lieven De Winter and Margarita Gomez-Reino Cachafeiro, "European Integration and Ethnoregionalist Parties", *Party Politics*, 8.4 (2002): 483-503.

Lieven De Winter, *The Impact of European Integration on Ethnoregionalist Parties*, Working Papers, 195 (Barcelona: Institut de Ciències Politiques i Socials, 2001).

61. Lieven De Winter, "The Volksunie and the dilemma between policy success and electoral survival in Flanders", in Lieven de Winter and Huri Tursan (eds), *Regionalist Parties in Western Europe* (London: Routlege, 1998). Peter Lynch, *Minority Nationalism and European Integration* (Cardiff: University of Wales Press, 1996). Nicolas. *Bretagne*. Keating, "The Minority Nations of Spain".

62. Udo Bullman, *Die Politik der dritten Ebene. Regionen im Europa der Union* (Baden-Baden: Nomos, 1994).

agree, giving each a veto in matters falling within its jurisdiction. Spanish autonomous communities have not yet succeeded in gaining such rights. So, while European high policymaking remains largely intergovernmental, there are mechanisms for regions to act, provided they first achieve victory in domestic constitutional arenas.

A lot of attention has been given to the Structural Funds as a means of giving regions access to Brussels, a partnership with the Commission, and a source of funding independent of Member States. In practice, this field is intergovernmental and regions have no means of getting money directly from Brussels. The Funds are, rather, an arena for symbolic politics, in which regional politicians can claim to have established a funding link to Brussels, while the EU can claim credit for looking after vulnerable regions. In this way, they have helped bring Europeanism and regionalist and minority claims further together.

A more direct form of access is the Committee of the Regions. This has proved a disappointment to regionalists and minority nationalists because of its weak powers and lack of resources and because it represents all levels of sub-Member State government equally. Frustrated at having to share a place with municipal governments, the strong regions, stateless nations and federated units launched an initiative for the Regions with Legislative Powers, or Constitutional Regions,[63] seeking recognition of their place in the European constitution. Although these do not always correspond to cultural or national regions or minorities, there is enough of an overlap to make common cause among German Länder and Italian regions, Scotland, Wales, Flanders and Catalonia in asserting the need for a recognized third level within the European architecture. While they have as yet achieved few concrete results, they have created another discursive space in which dialogue and exchange takes place about the building of Europe. Such dialogue is also pursued by the many regional offices in Brussels, which have become part of the policy community and an important link in the exchange of ideas and policy initiatives. Another arena is the Council of Europe, whose Committee of Regional and Local Authorities has been divided into two chambers, for the regions and the municipalities. This has produced a European Charter of Local Self Government and a draft European Charter of Regional Self Government.

An important opportunity lies in the transformation of borders. Borders remain important as expressions of state sovereignty and are for the first time generally uncontested; but they are losing their functional significance. These twin changes have encouraged new forms of cross-border penetration and cooperation, which are no longer automatically seen as threats to the state. As empirical studies have shown, identities in border regions are typically complex, with individuals both identifying with their respective states and with a transborder nationality or ethnic group, defying a simple geographical definition of identi-

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63. Technically these are separate initiatives, but only for institutional reasons, as one is based on the EU and the other on the Council of Europe.

ty.[64] Permeable borders allow a renegotiation of these and the emergence of new forms of layered identity. Others have talked of porous or 'fuzzy borders'.[65] On a more concrete level, there is scope for cross-border functional co-operation on economic, environmental and cultural matters, allowing more expression for the new regionalism. The Council of Europe produced the Madrid Convention which provides a legal instrument for cross-border partnership. The EU has a substantial programme of cross-border partnerships under the INTER-REG initiative, which by the end of the 1990s was active across every border within the EU and with the candidate countries as well. Experience of cross-border partnership has been mixed, since difference in legal systems and political incentives, together with the tendency of regions and localities to be in competition for investment, have often stymied genuine partnership.[66] The effects on identity are also subtle. There are few instances of border communities on abandoning their state identities to find a common ethnic or national one. Co-opereation has, however, helped redefine borders as complex zones in which multiple identities can be expressed and negotiated.

These regional opportunities are closed to non-territorialized minorities, which instead look to rights protection. Until the end of the Cold War, Europe lacked a common minority rights regime and efforts to apply the European Convention for the Protection of Human Rights to the collective rights of minorities were rebuffed.[67] Since the 1990s, European institutions have gradually and hesitantly been building a minority rights regime but this has three key features. It tends to focus on the rights of individuals belonging to minorities rather than the minorities themselves; it emphasises access to services and cultural guarantees rather than political autonomy, especially territorial autonomy; and it works though states, allowing them to define the problem and control access to European means of redress. A Charter of Regional and Minority Languages was adopted by the Council of Europe in 1992, with reservations by several states, including the United Kingdom and France; eventually France failed to ratify it. The enforcement mechanism is a three-yearly report to the Council of Ministers.[68] More ambitious is the 1995 Framework Convention on National Minorities, designed to be adopted in appropriate form by signatory states but without direct application. It does

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64. Zoe Bray, *Boundaries and identities in Bidasoa-Txingudi on the Franco-Spanish frontier*, doctoral thesis, European University Institute, Florence, 2002. David Kaplan, "Conflict and Compromise among Borderland Identities in Northern Italy", *Tijdschrift voor Economische en Sociale Geografie,* 91.1 (2000): 44-60. Peter Sahlins, *Boundaries : the making of France and Spain in the Pyrenees* (Berkeley : University of California Press, 1989). Jorunn Sem Fure, *The German-Polish Border Region. A Case of Regional Integration?,* ARENA Working Papers, 97/19, Oslo: ARENA Project, 1997.

65. Batt, "Fuzzy Statehood".

66. John W. Scott, "European and North American Contexts for Cross-Border Regionalism", *Regional Studies*, 33.13 (1999): 605-17.

67. Christian Hillgruber and Matthias Jestaedt, *The European Convention on Human Rights and the Protection of National Minorities* (Cologne: Verlag Wissenschaft und Politik, 1994). Alain Fenet, "L'Europe et les minorités", in Alain Fenet (ed.), *Le Droit et les Minorités* (Brussels: Bruylant, 1995).

68. Of the Council of Europe, not the European Union.

not define or recognize minorities, but rather addresses the rights of individual members of minorities, 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. 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. On the other hand, signatory states themselves were allowed to designate their own minorities before ratification. So Estonia included only its own citizens in its scope, refusing to recognize Russians who had not met it strict citizenship requirements; Russia's own reservation specifically aimed to deny 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 Organization for Security and Co-operation in Europe has a High Commissioner for National Minorities. Originally intended as a trouble-shooting operation in actual or potential conflicts, the role has extended to the realm of minority rather than purely individual rights. It has so far been confined entirely to the countries of central and Eastern Europe. The OSCE also enters into the field for minority protection through the Stability Pact for South-Eastern Europe.[69]

The European Union has been reluctant to be drawn into questions of minority rights but it has proved impossible to remain entirely aloof. An article in the Treaty on European Union (Maastricht) pledged support for cultural diversity and the European Parliament used this to establish a Bureau of Lesser Used Languages in Dublin. Negotiations for the admission of the countries of central and Eastern Europe brought the issue to the fore and the Copenhagen criteria of 1993 included respect for minorities. Regular accession reports note progress on the issue and call for change where necessary. There has been some movement towards the acceptance of group rights, perhaps motivated by security and immigration considerations, notably the position of Russians in the former Soviet republics. Discrimination against Roma also featured quite prominently as an issue.

The EU's approach has often relied on principles and processes from the Council of Europe and the OSCE, with their prior experience.[70] So it has pressed candidate countries to adopt the Framework Convention on National Minorities, widely accepted within the existing Member States, rather than the more controversial European Convention on Regional and Minority Languages.[71] The 1995

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69. Florence Benoît-Rohmer, *The minority question in Europe* (Strasbourg: Council of Europe, 1996).

70. Martin Brusis, "The European Union and Interethnic Power-sharing Arrangements in Accession Countries", *Journal of Ethnopolitics and Minority Issues in Europe* 1/2003 (2003); 1-20.

71. James Hughes and Gwendolyn Sasse, "Monitoring the Montors: EU Enlargement Conditionality and Minority Protection in the CEECs", *Journal of Ethnopolitics and Minority Issues in Europe*, 1/2003 (2003): 21-36.

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Stability Pact (Plan Balladur), in which the EU encouraged candidate countries to settle minorities and border issues among themselves, was formally sponsored by the OSCE.[72] This is a patchwork approach but, by individual initiatives linked across the various institutions, a minority rights regime of sorts has come into being.[73] Accession will be a key test of this regime, since the Amsterdam Treaty of 1997 incorporating the Copenhagen criteria into the *acquis de l'Union*, left out the minority rights clauses.[74] This implies that, after accession, either the EU will cease to monitor minority rights in the new Member States, or it will have to adopt a new instrument to monitor them also in the existing Member States as well.

8. STATE ADAPTATION

Europe thus allows a loosening of state control and the externalisation of previously centralized functions, but the response depends on adaptation of states themselves, which remain gatekeepers between nationalities and Europe. Belgium has generally bent to the process of integration by handing powers down to the communities and regions and upwards to Europe. At times it looks as though the state itself will disappear, although it is precisely the ability to externalise problems that allows it to stay together in some form. The United Kingdom has turned itself into an asymmetrical multinational state. It is as though, never having gone through the national revolution and retaining many features of an *ancien régime*, it has been able to jump from a pre-modern to a post-modern state form directly. Europe has helped here in various ways, despite the prevailing Euroscepticism. The European framework is one factor that made possible the Good Friday agreement in which both the United Kingdom and the Republic of Ireland put their claims over Northern Ireland into abeyance.[75] It allowed a settlement for Scotland in 1998 that was much less set about with safeguards and restrictions than that proposed in 1978. States based upon Napoleonic principles of unity and uniformity have found it more difficult to adapt, despite being in general pro-European. These include the obvious example of France as well as Italy and even Spain, where the present government has tended to react to the challenge to its sovereignty by more aggressive assertion of its remaining prerogatives and a resistance to further devolution. In central and eastern Europe, there is a widespread fear of separatism and distrust of federal solutions as states, having just recovered their independence, are reluctant to lose it. Yet here too there are differences. Romania has tended to emphasis the French model of unitary citizenship as the basis for democracy. Hungary, mindful of the large number of Hungarians in neighbouring states, has argued for a looser and more complex idea of nationality and citizenship. Poland, living with the memory of partition, has stressed national unity and sought to restrict regionalism to a

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72. Liebich, *Ethnic Minorities*.

73. Jennifer Jackson Preece, *National Minorities and the European Nation-States System* (Oxford: Oxford University Press, 1998).

74. Hughes and Sasse, "Monitoring the Monitors".

75. McGarry, "Globalization, European Integration and the Northern Ireland Conflict".

limited functional type, not based on historic regions and framed within the Polish state rather than at a European level. States have differed in the extent to which they have allowed their regions to operate within Europe.

9. THE CONSTITUTION OF EUROPE

Much has been written about multilevel governance in Europe, about plural- ism and the complexity of policy-making structures.[76] Yet without a constitution, it is feared, Europe lacks a clear normative basis and becomes merely an arena for group competition. This applies equally to the nationalities question, where we are witnessing a plethora of claims to self-determination, historic and present rights and original sovereignty. Such a complex normative order requires a new form of constitutional thinking, adapted to a world in which the old triad of nation, territory and sovereignty can no longer be taken for granted.

Constitutionalism has increasingly been detached conceptually from the state, with an appreciation that constitutions may exist at multiple levels and that constitutionalism itself may be as much a process as a final and definitive set of rules. The expression 'metaconstitutionalism' has been coined for the realm in which the various constitutional visions meet and are negotiated.[77] Within such a framework, a constitutional pluralism is possible, in which various forms of order and sovereignty claims can coexist, including those of shared and divided sovereignty. There are two versions of arguments about divided sover- eignty. One is to the effect that sovereignty is still in principle indivisible, but that, since a number of actors at different levels are making claims to it, we have not alternative to compromise among them. Politics thus comes in where constitu- tional theory falls down. So the Basque Nationalists claim that, since the 1978 Spanish constitution did not recognize their original rights and did not gain the support of an absolute majority of Basques in the referendum, it is not legiti- mate.[78] This does not stop them working within it. There is an unresolved intel- lectual and legal question about the source and nature of sovereignty in Scotland, but it does not stop politics proceeding. In an open constitutional order, we can live with many of these anomalies, and it is often preferable not to resolve them. The other version is to see sovereignty not as a claim to the monopoly of authority, but rather as a claim to an element of original authority (that is not derived from a higher authority), but which recognizes the existence of other sources of original authority which necessarily and inherently limit each other. This is more consistent with the historic doctrines being refurbished in the stateless nations of Europe. A European constitutionalism is thus possible in which there is a shared European level, marked by common values and equal

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76. Liesbet Hooghe and Gary Marks, *Multi-level governance and European integration* (Lanham, MD : Rowman and Littlefield, 2001).

77. Neil Walker, "The Idea of Constitutional Pluralism", *Modern Law Review*, 65.3 (2002): 317-59.

78. The Basque Nationalist Party recommended abstention in the referendum on the Spanish constitution but a vote in favour of the Basque Statute of Autonomy.

rights, within which highly asymmetrical arrangements are possible reflecting the status of different nationalities, states and regions.

This would require a European constitution that was strong enough to provide an overarching framework, but flexible enough to allow diversity within it. A European Union built on the lines of the traditional nation-state would fail to meet the need for the same reasons as the states have. At the other extreme, a Europe functioning merely as a holding company, a market order, or a convenience for externalising difficult problems, would not sustain the common values and constitutional order in which pluralism is possible. There may be an emerging constitutional practice, as we have seen in reviewing the various institutions and strategies in Europe, but there is no overall framework for managing the new national complexity.

The debates around the Convention on the Future of Europe and its draft constitution provides some evidence for this. The national/regional question was not a priority in the Convention, which was not tasked with proposing a new statute for nations and national minorities. Nor could it challenge the sovereignty of states and their authority head-on. On the contrary, the debates followed a logic in which authority is divided in complex ways between European and state-level institutions. So nationalities and regions must find their niche in a Europe of the states rather than dreaming of their disappearance in favour of a utopian Europe of the Peoples.[79] Yet the various visions of Europe on offer provide more, or less, space for the accommodation of nationalities. An intergovernmental Europe based on the existing states clearly offers least scope for stateless nationalities. An integrated but centralized and uniform Europe would offer little more. So regions and nationalities have pressed for an integrated Europe but one that is decentralized and pluralist. In this way, the pro-Europeanism of the national minorities and stateless nations can serve as a means to legitimise the European project itself by linking it to local mobilization and identity. Rather than Europe seeking its own separate *demos*, therefore, it can be the framework for multiple *demoi*, themselves constitutive, along with the state, of a larger political community. Such a dispensation is closer to the idea of pluralistic federalism[80] than of classical uniform federalism on the US model.

The clarification and demarcation of roles and responsibilities, however, threatens to reduce the space available for regions and nationalities to those specified in the new constitution. Indeed, the very process of constitution-making may reduce those areas of uncertainty in which new forms of authority might be negotiated, and Europe could end up as an obstacle to new forms of accommodation. In the last major treaty revision, at Maastricht, opportunities were created which Member States could use at their discretion (discussed above). In the pre-

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79. Gurutz Jauregui, *Los nacionalismos minoritarios y la Unión Europea* (Barcelona: Ariel, 1997).

80. Miquel Caminal, *El federalismo pluralista. Del federalismo nacional al federalismo plurinacional* (Barcelona: Paidós, 2002).

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sent constitutional round, there seems less willingness to allow such differentiation. The majority in the Convention and in the Committee of the Regions even refused to distinguish between federated units and devolved national parliaments on the one hand, and municipal government on the other. The Flemish government and the Catalan Convention on Europe proposed that it be possible to divide a Member State's vote in the Council of Ministers, but this was a non-starter, as was the European Free Alliance for 'internal enlargement' in which stateless nations could become full members of the EU. The Basque government proposed expanding on the Lamassoure proposal[81] whereby regions could become partners of the Union, to provide for the Basque Country to become an 'associated state'. Yet the original Lamassoure idea, which was already a long way from this, was further diluted to a form of administrative decentralization. Nor has the EU agreed to allow states to differentiate internally in their application of EU directives the way they are allowed in many cases to differentiate between themselves. The numerous exceptions in the existing treaties to accommodate regions including the Canaries, the Azores and the Åland islands, are not to be generalized. Even the proposal to recognize a category of regions with legislative powers fell victim to a combination of those who considered that all regions were the same and those who thought that they were so different that they were impossible to categorize.

10. CONCLUSION

European integration has thus affected the nationalities question at three levels, that of the state, that of the nationalities, and in the European arena itself. Yet its impact is two-sided. On the one hand, the increasing language of pluralism and divided sovereignty provides a discursive space for new authority claims. There is a trend among the nationalities movements to adopt a post-sovereign stance; to express a civic, inclusive form of nationalism; and to emphasize their territorial basis. This has tamed and restrained nationalism, although some ethnically exclusive and separatist movements still exist. States remain the obstacle to utopian visions of a Europe of the Peoples, but some have adapted to the new pluralism more than others. Europe, by externalising common functions, permits a greater asymmetry within states. The European institutional structure furnishes a set of opportunities for non-state actors to intervene, gain recognition, build systems of action and secure protection. On the other hand, the concrete opportunities available within Europe are limited and rather disparate. Europe creates spaces for more diversity, but many of its institutional and policy initiatives assume a homogeneous sub-State level of authority and identity.[82] An intergovernmental European Union, with the states taking a restrictive line on what their sub-state governments can do, will a premium on becoming a state even if this should be the second choice of the nationalities themselves.

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81. Alain Lamassoure, a French MEP, has proposed that regions could become 'partners of the Union' with broad responsibilities for applying EU policy directly. The Commission has pursued the idea in the form of tripartite contracts among the Commission, the Member State and the region.

82. Carlos Closa, "La Pluralidad Nacional en un mismo Estado y en la UE", in Ferran Requejo (ed.), *Democracia y pluralismo nacional* (Barcelona: Ariel, 2002).

So far, a gradual evolution has allowed Europe and the nationalities to adapt in tandem, exploring new forms of political order. Formulas such as the 'regional state', 'fragment of state' or 'incomplete state' have been criticized for their implication that they are somehow unfinished, but this very characteristic marks the evolution of Europe itself. An open and loose form of constitutionalism would allow this process to continue, making adjustments where necessary. An effort to close the process or to fix the status, categories and competencies of Europe, Member States and nationalities and regions, would risk recreating the type of misfit that has caused such problems in the past.