

European Integration and the Nationalities Question

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European integration questions the relationship between nation and state. It undermines traditional sovereignty and weakens the need for statehood. Minority nationalist movements have in many cases adopted the European theme, adjusting their ideology and strategy accordingly. Some have used “new regionalist” themes to construct new systems of action below and beyond the state. Europe provides opportunities for territorial movements and grants some minority protections. There are differences between Western Europe and Central and Eastern Europe because of the evolution of state structures. The prospective European constitution risks formalizing the European Union as a two-level game of states and the Union, with little room for regional and minority claims.

Keywords: PROVIDE 4-5 KEYWORDS

THE NATIONALITIES QUESTION

The “nationalities question,” or the lack of fit 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

The research on which this paper is based is supported by a grant from the Carnegie Corporation. An earlier version was presented at the International Political Science Congress, Durban, July 2003. I am grateful to John McGarry, Adrian Guelke, and other participants for comments.

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 substate 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 competences are shifted upwards and downwards, and substate 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.

STATE TRANSFORMATION

European integration is part of a wider process of state transformation⁴ as well as the unique process of polity building. It undermines the traditional identity among sovereignty, territory, nationality, and function that is 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 competences 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 claim⁷ 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

Fifth, European transnational regimes, notably but not exclusively the European Union (EU), 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.

POST-SOVEREIGNTY

For some, like the Scottish National Party (SNP), European integration provides an external support system for an 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 “post-sovereigntist” position based on shared sovereignty and authority. Post-sovereignty⁹ 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* favors independ-

ence 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 nonseparatist strands but in 2003, the *lehendakari* (Basque first minister) produced a plan providing for a “freely associated state” 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 many who favor 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 center-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

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 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 SNP, *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 postwar 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 favor of ethnic exclusiveness, favoring 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 the 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 even more peripheralized in Europe 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*.

A 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, national-

ist 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 prestate traditions of shared sovereignty and pactism, which lend themselves to the new European dispensation.²⁵ Such historical revisionism has been favored by the rediscovery of regional history²⁶ 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 philosophy²⁸ and stress Scotland's early European 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 which clashes with the powerful image of the Revolution itself and its democratizing 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 interethnic harmony.³⁵ There is even a broader reassessment of the Habsburg experience, which twentieth-century historiography assumed had to break up as an inevitable consequence of democratization, since the nationalities would only be fulfilled in their own state. Yet as early as 1848 there were thinkers advocating a 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 Eötvös favored 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 favored 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 a 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 neighbors, should not have developed doctrines of absolute state sovereignty, preferring to put their faith in overarching and transnational security and market regimes. This was the view of Masaryk⁴¹ 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, premodern and postmodern conceptions 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.

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 nonspatial cultural communities and endowed with various forms of nonterritorial 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 conceptualizing 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 cooperation and change.⁴⁸ The key powers are no longer those held by the classic state, such as 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 substate 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 that are supposedly replacing the nation-state.⁵⁰ The term is taken up by Thomas Courchene⁵¹ and, in the context of the nationalities debate, by Alain-G. Gagnon⁵² 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 it as an incomplete 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 Kymlicka⁵⁵ and others, where the nationalities have not undergone the same process of territorial consolidation.

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 nonterritorial 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. 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 states⁵⁷ passed or proposed laws giving special status to co-nationals in neighboring 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 par-

ticularly 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.

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 EU, the Council of Europe, the Organization for Security and Co-operation in Europe, and a range of interstate and interregional bodies. Although the European theme first entered the discourse of minority nationalists 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 competences 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 SNP, 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 EU 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 competences corresponding exactly to their internal competences, 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 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 policy making 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 a 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 identifying both with their respective states and with a transborder nationality or ethnic group, defying a simple geographical definition of identity.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 cooperation 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 program 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 abandoning their state identities to find a common ethnic or national one. Cooperation has, however, helped redefine borders as complex zones in which multiple identities can be expressed and negotiated.

These regional opportunities are closed to nonterritorialized 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 emphasizes access to services and cultural guarantees rather than political autonomy, especially territorial autonomy; and it works through 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 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 its 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 (OSCE) 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 EU 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 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 in the existing Member States as well.

STATE ADAPTATION

Europe thus allows a loosening of state control and the externalization 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 externalize 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 premodern to a postmodern state form directly. Europe has helped here in various ways, despite the prevailing Euro-scepticism. 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 emphasize the French model of unitary citizenship as the basis for democracy. Hungary, mindful of the large number of Hungarians in neighboring 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 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.

THE CONSTITUTION OF EUROPE

Much has been written about multilevel governance in Europe, about pluralism 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 sovereignty. 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 no alternative to compromise among them. Politics thus comes in where constitutional 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 legitimate.⁷⁸ This does not stop them working within it. There is an unresolved intellectual 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 that 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 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 externalizing difficult problems would not sustain the common values and consti-

tutional 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 provide 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 favor 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 the 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 legitimize 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 federalism⁸⁰ than of classical uniform federalism on the U.S. model.

The clarification and demarcation of roles and responsibilities, however, threaten 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 that Member States could use at their discretion (discussed above). In the present 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 nonstarter, 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 proposal⁸¹ 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.

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 externalizing common functions, permits a greater asymmetry within states. The European institutional structure furnishes a set of opportunities for nonstate 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 substate level of authority and identity.⁸² An intergovernmental EU, with the states taking a restrictive line on what their substate governments can do, will place a premium on becoming a state even if this should be the second choice of the nationalities themselves.

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 competences of Europe, Member States, and nationalities and regions would risk re-creating the type of misfit that has caused such problems in the past.

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