

# PLURINATIONAL DEMOCRACY IN A POST-SOVEREIGN ORDER \*

*Michael Keating, European University Institute, Florence, Italy  
University of Aberdeen, Scotland*

## INTRODUCTION

It may seem paradoxical that in a globalising world with instant communication and a growing consensus on the values that should underlie a legitimate polity, we are seeing a resurgence of nationalism. For some, these trends stand in stark contradiction, the one pointing to the future, the other to the past. For some, nationalism is a threat to universal values, to liberal democracy and to the very project of modernity itself. For others, it offers new perspectives to liberation, democracy, the flourishing of cultures and a new relationship between the global and the local. Some see the proliferation of nationalisms as a harbinger of anarchy and strife, while others see nothing incompatible with nationalism and an ordered international society. It was ever thus. Nationalism since at least the nineteenth century has been Janus-faced, offering progressive or backward perspectives, depending on the context and its affinity with other ideologies. Yet the modern era does present a radically different context, in which we can not merely ride the tiger of nationalism but use it to good purpose – but only if we make an intellectual shift from the nineteenth century mode of thinking to one more in keeping both with our longer history and with the social and political realities of the present. In particular we need to recognize national identities as plural rather than singular, and to accept that we have moved forward (or back) into an era of post-sovereignty, in which old frameworks for political order are no longer relevant or desirable. The basic premises of this paper, which I developed at greater length elsewhere<sup>1</sup> are twofold: that trans-national integration and the transformation of the state do encourage new and revived nationalisms; but that they also provide new ways of accommodating them in a new form of democratic order. The paper looks first at the emergence of the new nationalisms. Then it argues that to appreciate them we need to look back again at history; examine the present more critically; and peer imaginatively into the future. Finally, it considers the prospects for plurinational democracy in a political order marked by shared and divided sovereignty.

---

\* This is a revised version of an earlier paper published as *Beyond Sovereignty. Plurinational Democracy in a Post-Sovereign World*, Proceedings of Grande Conférence Desjardins, Montréal, 8 March 2001 (a version also appeared in the *Queen's Papers on Europeanisation* series, No 1/2002).

<sup>1</sup> M Keating, *Plurinational Democracy. Stateless Nations in a Post-Sovereignty Era* (2001); and M Keating and J McGarry (eds), *Minority Nationalism and the Changing International Order* (2001).

### Globalisation and Neo-nationalism

Globalisation is a complex and much-contested concept, to which we cannot do justice here, so let us take it as short-hand for the transformation of the state consequent on trans-national economic integration and interdependence, the communications revolution and the rise of certain forms of world culture (whether these be truly global or merely North American is not to the point here). Together with the rise of individualism and other social changes, this has led to a certain demystification of the state and its claims to overall authority. The state has also been losing autonomy and functional capacity even as it has, in some ways, extended its scope. Above all it has lost its former ability to integrate diverse strands of economic and social policy in formulas such as the 'Keynesian welfare state' which represented a model of economic management, a complementary social welfare system and a state built on common identity which could legitimate the whole policy package. Above all, states have lost their old capacity for territorial management as economic restructuring assumes both global and local forms, pitching sub-state territories into competition in global and continental markets.<sup>2</sup> These challenges to the state have led to a search for new functional spaces, in the form of regional (meaning sub-state) government and administration and regional (meaning supra-state) trade areas or regimes. They have also provoked a search for new political spaces beyond the state, whether above or below it. Some of these political responses may take the form of ethnic politics, populism and a retreat from reality; others may involve the search for new forms of inclusive democracy and accountability. Now there is a certain tendency to link the resurgence of minority nationalism with the former as a form of 'tribalism' (if not of racism) while the latter is linked to the large state or the new trans-national order. Ralph Dahrendorf<sup>3</sup> is representative of this tendency, criticizing Catalan and Québec nationalism as an inappropriate response because of its ethnic associations, at a time when Quebec and Catalan nationalists were falling over themselves to prove their ethnic openness, while failing to mention the ethnic nationality law still retained by his native Germany. Of course, minority nationalism may be narrow minded and ethnically exclusive; my point is that it is no more intrinsically so than the forms of (of unstated) nationalism inhering in the consolidated state.

Instead of a retreat to ethnic exclusion, we may be seeing, at least in Quebec and the plurinational states of western Europe, a more interesting but no more tractable issue. Surveys have shown that public opinion in the minority nations of the United Kingdom, Spain, Belgium and Canada, is converging with that of the majority on all the major value questions. These are not societies trapped in pre-modernity or undergoing a reactionary phase. Nationalist movements in these societies are de-ethnicising and increasingly stressing territorial criteria for membership. In other words they are modernizing just like everyone else, but they are doing it in their own way and seeking their own niche in the global political and economic order. It is not so surprising that, as the overarching state loses authority, new political

---

<sup>2</sup> M Keating, *The New Regionalism in Western Europe. Territorial Restructuring and Political Change* (1998).

<sup>3</sup> 'Preserving Prosperity', *New Statesman and Society*, (1995) 13/29, p 36.

movements should emerge based on existing institutions, cultures and traditions. Yet the fact that the minorities are de-ethnicising and adopting the same values as the majority does not necessarily make accommodation easier. On the contrary, as long as national minorities were mere ethnic fragments making cultural demands, they could be accommodated by policy concessions. Now they are constituting themselves almost as global societies, claiming general powers of social regulation, and thus coming into conflict with the globalising prerogatives of the state. Moreover, by de-ethnicising and stressing their civic credentials, minority nationalist movements enhance their legitimacy in the contemporary liberal era. There are few things so bewildering to citizens of national majorities as this idea that the minorities seek self-government without wanting to be radically 'different'. It often arises from their failure to consider their own national particularism and to assume that it is somehow equivalent to cosmopolitan liberalism. This allows critics of minority nationalism to insist that for the minorities to have any right to exist as such they must be 'different' (from themselves); but then to insist that, if they are different, they can have no rights since they cannot respect the universal norms of liberalism.

### Nationalism and Democracy

Nationalism, as I have noted, has two faces and there is a long-standing debate on its relationship with liberal democracy. One account is that nationalism emerged from the French revolution as a logical consequence of the doctrine of popular sovereignty, which required that the 'people' be defined. It was used in the course of the nineteenth century against the forces of the *anciens régimes*, notably in the revolutions of 1848. Thereafter it turned to the bad as it was associated with aggression and xenophobia, culminating in two world wars. Another, albeit rather discredited idea has it that there is a 'good' western nationalism and a 'bad' eastern one. More relevant to our purpose, however, is the theoretical argument about nationalism and democracy. John Stuart Mill summed up one point of view in arguing that 'free institutions are next to impossible in a country made up of different nationalities.'<sup>4</sup> The reasoning is that social communication and trust are necessary to found the basis of a deliberative community and to engage in the alternation of power without reducing every question to an absolute. Majorities can be made and remade according to the issue, rather than consisting permanently of the same group. This logic could have two consequences: that states should assimilate their minorities in the French fashion; or that multinational states should break up into their national components. Neither solution seems totally acceptable today. While there are still no doubt powerful pressures for the assimilation of minorities, there is a strong norm in favour of protecting the rights of existing cultures. National separatism merely creates new minorities, unless accompanied by ethnic cleansing or forced assimilation in the seceding territories. On the other side of the argument was Lord Acton, who condemned the theory of nationality, by which he meant the theory that every ethnic group should have its own state, as a recipe for tyranny and what we might now call

---

<sup>4</sup> *Utilitarianism. On Liberty and Considerations on Representative Government* (1972) p 392.

totalitarianism, as well as for perpetual strife.<sup>5</sup> Instead he preferred the multinational and pluralist state as in the old empires. This in fact was not so much a denial of nationality as a denial of the political implications that it was given by nineteenth century nationalists. We can update Acton's ideas for the modern world and ask how the principle of nationality can be made compatible with democracy in a complex and plurinational order.

It is clear that, in practice, the nation-state in which the *demos*, the *ethnos* and the *polis* coincide, is a limiting case, the exception to the general run of politics. More common is the complex state in which multiple communities of identity and interest coexist. Deliberative communities or 'political spaces' exist at various levels, the state level, the sub-state level including minority nations, and perhaps even at the trans-national level.<sup>6</sup> To oblige citizens within one democratically-constituted political space to accept decisions made in another space in which they can never command a majority may thus constitute a violation of democracy. Arguments on the part of the majority community to the effect that everyone is an equal citizen under the constitution are thus disingenuous, a cloak for permanent majority domination. This was, for example, the case in the United Kingdom in relation to Scotland during most of the 1980s and 1990s – and note that we can sustain this argument without any reference to loaded concepts like ethnicity. It was also true of Ireland during the nineteenth century. In the present era, we are seeing the emergence or re-emergence of different deliberative communities at various levels, the minority nations, the cities, the regions and, rather than this being seen as a problem, we might see it as an opportunity to strengthen democracy. To try and engineer democratic spaces around functionally-defined tasks, as for example in many of the efforts to democratise the European Union by making it look more like a parliamentary state, is probably the wrong way to go. It would be equally mistaken, however, to try and reconfigure functional systems and policy making institutions to conform to the emerging deliberative communities, for example by breaking the world up into miniature nation states, as this would be a mere recipe for political impotence, technocracy and rule by the interests of capital. In some instances, the nation state may remain the most appropriate forum for political deliberation and formation of democratic will, as in Scandinavia, but in other cases we need to think of more plurinational forms of democracy able to span the state, sub-state and trans-national levels.

To explore these issues we first need to look back into history and question the state-centred teleology that has informed so many debates about sovereignty and authority.

### The Usable Past

It is no coincidence that the renewed debates about the state and the nation have sparked off a wave of historical revisionism and controversy across the world, but particularly within the multi-national states.<sup>7</sup> Firstly, there has

---

<sup>5</sup> 'Nationality' in G Himmelfarb (ed), *Essays on Freedom and Power* (1972) p 141.

<sup>6</sup> Keating, *op cit* n 2.

<sup>7</sup> Keating, 'How Historic are Historic Rights? Competing Histories and the Struggle for Political Legitimacy' *Conference on Etnicidade e Nacionalismo*, Consello da Cultura Galega, Santiago de Compostela, April 2000.

been a questioning of received social science accounts of national integration. These largely teleological accounts tended to identify state building and national integration with modernization itself. They saw market integration, industrialization, capitalism, cultural integration and the penetration of the modern state into all parts of its territory as linked processes, which would produce homogeneous nation-states without important cultural, ethnic or territorial cleavages.<sup>8</sup> Some modernists portray both European integration and globalisation more generally as a continuation of these diffusionist trends, leaving ever less space for particularisms. More commonly, however, European integration and globalisation have served further to question the sovereign nation-state as the sole form of political order and have provoked scholars into looking again at pre-modern forms of authority and their similarities to the modern post-sovereign order. The sovereign nation-state can, in this account, be seen as an exception or interlude rather than the end point of political development. Already in the 1970s, Rokkan was presenting the construction of European nation-states as a problematic and incomplete process, leaving behind important cleavages.<sup>9</sup> Tilly has shown how different forms of nation-state emerged according to circumstances and that alternative paths, based on city regions, were in principle possible.<sup>10</sup> Even in international relations, scholars have begun to question the 'Westphalian' paradigm as a historical account<sup>11</sup> or as an adequate way of understanding contemporary politics.<sup>12</sup> I have also sought to present the territorial state as historical contingent, and the process of integration as at least potentially reversible.<sup>13</sup>

Among historians there has been a parallel shift. To simplify, we can identify two competing historiographies, the state historiography and the peripheral one. State history echoes the conclusions of the sociological diffusionists, but with a rather different method. History is seen teleologically as a progress to national unity, with the sovereign state representing its final expression. As historians modernized and became more scientific, origin myths could be dismissed as romantic nonsense. Indeed, historians could celebrate the diverse origins of the nation as a source of its strength and its success moulding them into one as a sign of the national genius; but the teleology is only reinforced thereby as this unity is seen as the essence of progress. The pre-modern order of Europe, with its diffused

---

<sup>8</sup> K Deutsch, *Nationalism and Social Communication. An Inquiry into the Foundations of Nationality* (1966).

<sup>9</sup> See S Rokkan, 'Territories, Centres and Peripheries: Toward a Geoethnic-Geoeconomic-Geopolitical Model of Differentiation with Western Europe' in J Gottman (ed), *Centre and Periphery. Spatial Variations in Politics* (1980) p 163; and S Rokkan and D Urwin, *Economy, Territory, Identity. Politics of West European Peripheries* (1983).

<sup>10</sup> See *Coercion, Capital and European States, AD 990-1990* (1990); and C Tilly and W P Blockmans (eds), *Cities and the Rise of States in Europe, AD 1000 to 1800* (1994).

<sup>11</sup> A Osiander, *The States System of Europe, 1640-1990. Peacemaking and the Conditions of International Stability* (1994); and H Spruyt, *The Sovereign State and Its Competitors* (1994).

<sup>12</sup> J Agnew and S Corbridge, *Mastering Space* (1995).

<sup>13</sup> *Op cit* n 2; and *State and Regional Nationalism. Territorial Politics and the European State* (1988).

authority is presented as an obstacle to progress and enlightenment. The estates systems, fueros, special laws, historic rights and the whole patchwork of authority that characterized the pre-state order are dismissed as bastions of reaction and privilege, obstacles to the advance of capitalism, markets and middle class liberalism. Marxists have often shared this teleology – Engels' strictures on nations without history are well known and a modern Marxist historian like Hobsbawm can draw a distinction between large nation-states, which have a progressive potential, and minority nations, which tend to reaction.<sup>14</sup> This bias to the consolidated nation-state often accompanies a cultural disdain for the minority or non-state cultures and languages, which are also presented as signs of backwardness and obstacles to progress. An extreme form of this combination of statism and nationalism is the French 'jacobin' tradition, itself largely an invention of the Third Republic, pitched into conflict with monarchism and the Church.

Peripheral historiography presents a very different account. There is often a myth of primordial innocence and primitive democracy, before the alien intrusion of the modern state. Historians may present the incorporation of their territory into the state as an act of conquest, in which case it is illegitimate and was never accepted by the people. The resulting counter-history is the mirror-image of state history, postulating a united people living in primitive independence and enjoying a precious if anachronistic sovereignty. Such analyses often underpin a radical rejection of the state and an argument for secession. Alternatively, peripheral history may present incorporation as the fruit of a pact, in which historic rights were not surrendered, with the implication that the pact can be renegotiated. This underpins arguments for pactism in a plurinational order, on the lines of the union state<sup>15</sup> or fragment of state.<sup>16</sup> In Canada, this takes the form of the 'two nations' thesis, while in Scotland, Catalonia and the Basque Country there are deeply rooted traditions of pactism and negotiated authority as the basis for the state. Peripheral histories have also challenged the liberal and progressive pretensions of state history. State historians present historic institutions of the pre-state era as necessarily reactionary because they were not democratic or liberal. Peripheral historians point out that no institutions in the Middle Ages were democratic by modern standards and that there is no reason why estates, foral bodies or guilds could not have democratised in the same way that the English and then British Parliament did.<sup>17</sup> So there was more than one potential path to democratic modernization. As the state loses its mystique, these histories of diffused authority are refurbished as the basis for a post-sovereign political order and new forms of democracy. The new historiography does not present us with a clear set of historic rights or a counter model of the state. Historiographies are in competition and some minority nations have more of a 'usable past' than others. Counter-histories are as prone to fabrication and myth as are the statist variety. Historic rights frozen in time would be of little use, of questionable moral value, and

---

<sup>14</sup> See *Nations and Nationalism since 1780* (1990); and 'Nationalism. Whose fault-line is anyway?' (1992) *Anthropolgy Today*.

<sup>15</sup> Rokkan and Urwin *op cit* n 9.

<sup>16</sup> G Jellinek, *Fragmentos de Estado* (translation of *Über Staatsfragmente*) (1981); and M Herrero de Miñón, *Derechos Históricos y Constitución* (1998).

<sup>17</sup> M Sorauren, *Historia de Navarra, el Estado Vasco* (1998).

impossible to reconcile. Nothing would be more dangerous than to get into arguments about exactly who had what right when or to revert to the tired debates over historic injustices. Least of all I am suggesting a naïve neo-mediaevalism. The debate does, however, remind us of how many forms of authority, including that of the state itself, are in fact rooted in tradition rather than rational forms of order.<sup>18</sup> Most importantly, it shows how the consolidated nation state is merely one historically contingent form of order and points to another way of conducting politics, in a pluralist mode. Such a way of thinking about power has extraordinary resonance in a world in which authority is moving upwards and downwards and political communities are reconfiguring beyond the state.

### What Do the Nations Want?

There is a remarkably well-entrenched view in the social sciences that the principle of nationality and nationalism are inherently linked to the state. As Hobsbawm puts it, a nation “is a social entity only insofar as it is related to a certain kind of modern territorial state, the ‘nation-state’, and it is pointless to discuss nation and nationality except insofar as they relate to it.”<sup>19</sup> This leads to the view that nation self-determination is a dangerous principle, since there are far too few states available for all the nationality groups that could claim them.<sup>20</sup> In any case, it is argued, nations are only inventions and we can hardly found a right on such a contrived concept since this would merely encourage ‘vanity secessions’ by demagogic nationalist entrepreneurs.<sup>21</sup> Now to argue that nations are invented is really to state the obvious, since all human collectivities are inventions. To use this as an argument selectively against certain types of nations is disingenuous. It recalls the ‘invention of tradition’ school,<sup>22</sup> which is as much of an invention as the inventions it criticizes. Nations are, of course, created and recreated constantly. This is not, on the other hand, to say that they can be conjured up from nothing or that any cultural group constitutes a real or potential nation which might break away at any time. This, another common error, is to confuse ethnic group with fully-fledged nations committed to self-determination.

Nations are to be distinguished from ethnicities or mere cultural groups on the one hand or regions on the other partly by their self-consciousness of being a nation, partly by objective characteristics. Above all, however, they are distinguished by their claim to self-determination. This is not a claim that is usually made frivolously since it involves a great deal of effort, some cost and a lot of exposure to critics and enemies. What is remarkable is not the proliferation of such claims but their comparative rarity. It is usually possible to distinguish self-determination claims from other sorts of claims,

---

<sup>18</sup> N MacCormick, *Questioning Sovereignty. Law, State and Nation in the European Commonwealth* (1999).

<sup>19</sup> (1990) *op cit* n 14 at pp 9-10.

<sup>20</sup> E Gellner, *Nations and Nationalism* (1983); and A Buchanan, *Secession. The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (1991).

<sup>21</sup> R S Beiner, ‘National Self-Determination: Some Cautionary Remarks Concerning the Practice of Rights’ in M Moore (ed), *National Self-Determination and Secession* (1998) p 158.

<sup>22</sup> E Hobsbawm and T Ranger (eds) *The Invention of Tradition* (1983).

although there are always borderline cases. Theorists who worry about a world in which everyone made such claims are probably subjecting themselves to needless intellectual anguish. Self-determination, on the other hand, does not mean the right to create a state of one's own. The argument that there are not enough states to go round is only one argument, and a difficult one to defend coherently given the recent proliferation of states and the existence of micro-states. More problematic is just what we mean by a sovereign state in an era when state sovereignty has been so attenuated, especially for small states with large neighbours. If it is true that the sovereign state is an illusion, then self-determination should be redefined as the ability to negotiate one's position within the emerging international order. We might therefore expect a redefinition of nationalist goals and strategies to take account of the new global economy and the nascent trans-national regimes.

An examination of the demands of minority nationalist movements in Europe and in Quebec shows that, in most cases, they are indeed well aware of the limits of national independence for small nations and are arguing for something other than the traditional nation-state. Most minority national movements have embraced free trade and trans-national integration, but they have drawn different conclusions as to the implications. There are, broadly, three positions. Firstly, there are those who believe that their respective trans-national regimes permit sovereign independence at a lower cost than in the past. Market access is assured, there are guarantees against unilateral trade sanctions, thus protecting smaller states, and a series of costly and dangerous issues, including defence and security and even the currency, will be externalised. There is, within this group, a division of opinion on how far trans-national integration can go without fatally damaging their own prime objective of self-determination and autonomy. Some insist that trans-national regimes should remain strictly intergovernmental, while others are prepared to accept drastic limitations on sovereign authority. A second strand of opinion is less overtly separatist and holds that some continuing link with the original state will be necessary in order to manage interdependencies and minimise risks. This 'sovereignty-association' position is more likely where the trans-national regime does not provide the full range of external solutions to the problems posed by independence, hence its greater attraction to nationalists in Quebec than in the European cases. The third position is the radical 'post-sovereigntist' one adopted by those who have embraced globalisation and trans-national integration to the point of believing that sovereignty in the classic sense has little meaning any more. They are more concerned with maximizing autonomy and influence for the nation than with the trappings of sovereignty, and are usually very ambivalent as to their ultimate aims, preferring to see how the world evolves before they commit themselves.

Perhaps the most classically sovereigntist is the Scottish National Party which, since the 1980s, has been committed to independence- in-Europe. Scottish nationalism has not traditionally been radically separatist and from its origins sought an overarching framework for independence, notably within the British Empire; Europe now supplies this external support system. For some Scottish nationalists, Europe provides an opportunity to resume full statehood in an essentially intergovernmentalist European Union along Danish lines. Others, however, have taken on board the lesson that no-one in



Europe is sovereign in the old sense and are committed to a high degree of integration, with Scotland at the heart of inner core. Some leftist minority nationalists in Europe have embraced a radically post-statist and post-sovereigntist policy, looking to a future Europe of the Peoples in which states have disappeared altogether; this is the position of the Esquerra Republicana de Catalunya, Plaid Cymru-the Party of Wales, and the Bloque Nacionalista Galego. Others see independence as a long-term goal, dependent on further European integration but ultimately dream of some form of statehood. This would include most of the Partido Nacionalista Vasco and the (former) Flemish Volksunie. Then there is Convergència i Unió, which has adopted the traditional Catalan strategy of eschewing separatism but playing in multiple political arenas at the same time, the Catalan, the Spanish, the European, the Mediterranean, and the Latin American. The strategy of recent governments of Flanders bears a certain resemblance. The absence of a trans-national regime like the European one limits the options for Quebec nationalism but it is divided between those who want Quebec sovereignty together with an association with the rest of Canada, and those, like Jacques Parizeau, who believe that international agreements like NAFTA, NATO and the WTO will take care of the externalities.

These are all different strategies but none of them involves creating anything like a traditional nation-state in the nineteenth century sense and most of them are moving towards a post-sovereign conception of the nation and its rights. Self-determination in this vision does not mean secession but rather the ability to negotiate one's own position in the new state and trans-national order, subject to the rights of others and all the constraints that political realities impose. Small nations, especially those sandwiched between powerful ones, have long been aware of these limitations.<sup>23</sup>

Critics argue that the people are not ready for post-sovereignty, preferring the certainties of the nation-state, whether the one they are in or a new secessionist one. They also claim that only intellectuals can embrace multiple identities.<sup>24</sup> We can test this one with empirical data and it is found wanting. In those minority nations for which we have data, there is overwhelming evidence that people have assumed dual or multiple identities – in many cases this is nothing new. Nor are these identities stable or fixed; rather they are contextual and used for different purposes in various circumstances. There is a trend in Quebec for the Québécois identity to strengthen as Quebec becomes the prime point of reference for politics, but Canadian identity has shown itself resilient and capable of being mobilized. Scottish identity has been growing and politicising over time, but multiple identities still prevail, as they do in Catalonia. Both these nations have shown a high capacity to assimilate incomers into the national identity, precisely because it does not entail the surrendering of state-related identities or a high social or cultural cost. Basque identity has moved from the narrow, ethnicist, indeed racial, definition of Sabino Arana towards a more inclusive form that can be acquired by incomers, although terrorist violence poses a constant danger of social polarization. Northern Ireland is a highly polarized society but there is already evidence that the end of violence can reduce

---

<sup>23</sup> P Puig i Scotoni, *Pensar els camins a la sobirania* (1998).

<sup>24</sup> T Nairn, *After Britain. New Labour and the Return of Scotland* (2000).

polarization and longer term evidence that identities are more fluid and their implications less clear than the more ardent republicans and unionists would insist. Indeed in all of these cases we might turn Nairn's criticism on its head and say that it is the intellectuals and not the people who torment themselves with absolutist questions about their identity.

Public opinion has also shown itself very resistant to the idea that there is a sharp line to be drawn between advanced forms of devolution, including asymmetrical devolution, sovereignty, and independence. We might conclude that the public are ill-informed and unsophisticated (although I do not draw this conclusion). What we cannot say is that they are demanding clear-cut, classical statehood. Surveys showing that large numbers of Québécois want sovereignty and to remain in Canada at the same time are legion. A survey series in Catalonia going back to 1991 shows that, offered a series of choices, about one in six Catalans choose independence. Yet when asked about the concept of 'the independence of Catalonia' twice as many respond favourably.<sup>25</sup> Surveys of constitutional options in Scotland since the devolution referendum of 1998 show about a quarter in favour of independence, but when other surveys ask whether people would vote Yes in a referendum on Scottish independence the figure rises to around a half. Surveys have shown that a majority of Scots think that a devolved Scotland should conduct its own negotiations in the European Union, but that an independent Scotland should continue to be defended by the British army. About a third of Basques support independence, but half would like to have Basque passports. They overwhelmingly support the idea of self-determination but only a third consider this to be equivalent to independence, although most electors elsewhere in Spain think that the one entails the other.

The new nationalisms are not only less statist but, as noted above, link their project to trans-national integration and, in Europe, to European unity. Evidence that the electors have adopted the connection between minority national affirmation and trans-national integration made by the parties is mixed. Quebec has always shown stronger levels of support for free trade than most of English Canada<sup>26</sup> but the association at the individual level between free trade and nationalism is weak, probably because of the hostility by Quebec unions which means that the working class are cross-pressured. Since the late 1980s, Scotland has shown less hostility to Europe than has the rest of the United Kingdom, a contrast with the 1970s when peripherality, nationalism and the strength of traditional labour politics all served to increase suspicion of Europe. The biggest difference between Scotland and England, however, is in expectations, as Scots have proved much more open than English electors to the idea of a future in which Europe is united, there is a single currency and the various parts of the UK find their own place in Europe. Northern Ireland Catholics are the strongest supporters of European integration in the United Kingdom, seeing it as a way of transcending the division of Ireland, although Protestants are much more reticent. Catalan electors took a while to adopt the idea of Europe but have now become quite

---

<sup>25</sup> ICPS, *Sondeg d'Opinió*, Institut de Ciències Polítiques i Socials, Barcelona. (1991-98).

<sup>26</sup> P Martin, 'When Nationalism Meets Continentalism: The Politics of Free Trade in Quebec (1995) 5(1) *Regional and Federal Studies* 1.

enthusiastic, demonstrating much higher levels of European commitment than voters elsewhere in Spain; this is particularly true of supporters of the nationalist parties. Basque electors, on the other hand, are cool on both Spain and Europe, showing that the nationalist leadership, which has been less active on the European front than its Catalan counterparts, has not yet made the link effective. Supporters of moderate Flemish nationalist positions also come out a strongly pro-European, although voters for the extreme Vlaams Blok are more hostile.

There does then seem to be a political market for a form of post-sovereignist strategy, whose precise form will differ from case to case. Public opinion in the minority nations does not seem strongly attached to a specific state geometry and is open to new solutions. The common objection to national self-determination, that the nation is impossible to define, that nationality restricts communities and encloses them, and that self-determination means secession<sup>27</sup> thus fails.

### Plurinational Democracy

Two key ideas inform my proposed approach; plurinational democracy and post-sovereign order. Plurinationality is a little different from multinationality, which may just refer to the co-existence of two or more sealed national groups within a polity. In plurinationalism, the very concept of nationality is plural and takes on different meanings in different contexts. In some cases its manifestations may be cultural and only weakly politicised, as was arguably the case with Scotland in the mid twentieth century; at other times it may be mobilized as the dominant political issue. For some people, nationality may be singular, as in Canada outside Quebec, where most of the population adheres directly to a Canadian nation. Others might feel members of the state community through membership of a smaller national community, as with many Québécois and Scots, while others again may identify only with the smaller unit, treating state citizenship purely instrumentally. This all complicates matters enormously, but helps ensure that the various communities are interlinked and inter-communicating. From this perspective, the insistence of Catalan nationalists on playing a role in Spanish politics is not an anomaly or piece of hypocrisy but a contribution to stability. The tendency in Belgium to split off into separate national communities is a sign in the opposite direction, only mitigated by the common European framework.

The plurinational state is an extension of the concept of plurinationality itself, referring to the existence of multiple political communities rather than a single, unitary demos. Considering the state in this way is also consistent with historiographical approaches stressing the union rather than unitary principle. It also opens up the prospect of constitutional asymmetry. A critical aspect of this concerns symbolism and recognition and here the United Kingdom, despite its reluctance until recently to concede the substance of devolution, has led the way. The very name of the state indicates its complex nature, while the term 'national' is freely attached to the institutions of Scotland in Wales, both in the state and in civil society.

---

<sup>27</sup> See M Freeman, 'The priority of function over structure. A new approach to secession' in P Lehning (ed), *Theories of Secession* (1998) p 12.

To the bewilderment of foreigners, the United Kingdom has four separate soccer selections but only one Olympic team, while for rugby purposes there is an all-Ireland team spanning the territory of two states. Quebec and Catalonia also have 'national' institutions but there is less willingness to accept this in the rest of the state. Plurinationality also helps deal with the question of divided societies, like Northern Ireland, where identities are not nested and may link up with those of neighbouring states. The Good Friday Agreement in Northern Ireland explicitly recognizes this by providing for a multiplicities of identities and their recognition and allowing individuals to make their own choice.

Plurinational democracy involves the recognition that there are multiple *demos* in the polity, whether the polity be a state or the wider European order. A unitary conception of democracy focused uniquely on the state or its majority component thus violates democratic principles. Strengthening democratic spaces where they exist on the other hand, is a contribution to democratising the state, and as a contribution to addressing the broader European democratic deficit may be preferable to contrived federal solutions or the creation of an unlikely unitary European *demos*.

### **A Post-sovereign Order**

The post-sovereign order is also a complicated concept, since it refers to a world in which there is no longer a single principle of authority. The demystification of the state stemming from its loss of functional capacity and the rise of other forms of normative order have caused an intense debate on the idea of sovereignty and whether it is still a valid principle or order. On the one hand are those who say that the loss of functional autonomy of the state represents the end of sovereignty and that we had better stop using the concept. On the other are those who insist that sovereignty is a normative principle and is not about mere power. It cannot be attenuated and remains an absolute principle. A third group, with which I identify, recognizes that sovereignty still exists in many forms but that it is increasingly shared and divided and cannot be said to inhere purely in the state. This links closely to debates about legal pluralism and multiple legal orders which have become an important question in legal studies, especially of the European Union. Such is the dependence of political science (and much other social science besides) that we do not yet have a new paradigm to encompass the new dispensation. Social scientists are given to resolving this type of terminological conundrum by resorting to the prefixes 'neo' and 'post', not abandoning the old terms but incorporating them in the new. The term 'post-industrial', for example does not denote the abandonment of industry - all post-industrial societies are industrial - but refers to a stage in which industrialism no longer provides the sole or main social paradigm. So I have, with some trepidation, used the term 'post-sovereignty' to capture that which is both new and old.

It is no coincidence that the idea of legal pluralism should have come into vogue in Europe since the 1990s, at a time when European integration has called into question received ideas of sovereignty. Nor is it by chance that many of its exponents should be Scottish lawyers, brought up in a system of law that has survived for three hundred years without its own legislature, with a mixture of original elements and those derived from parliamentary statute. The principle of absolute parliamentary sovereignty has never been

recognized in Scots law, the argument being that since the old Scottish Parliament never claimed absolute sovereignty the new Parliament of 1707 could not have inherited it. In England, on the other hand, the Diceyan view has prevailed that the UK Parliament inherited all the prerogatives of the old English one, including absolute sovereignty.<sup>28</sup> This was for many years little more than an intellectual curiosity, but since the re-establishment of the Scottish Parliament, nationalists have been arguing that it is the heir of the old Scots Parliament and thus of an element of original sovereignty. The Labour Party has faced both ways, signing on to the Claim of Right of 1988 which claimed that sovereignty lay with the Scottish people, and then insisting in its Scotland Act (1998) that the sovereignty of the UK Parliament was and would continue to be absolute. A similar argument prevails in the Basque Country where the nationalists have insisted that their self-governing rights are a form of original law rooted in the ancient *fueros* and are not the gift of the Constitution of 1978. States have similarly insisted that the European Union is merely the recipient of delegated powers from states, against legal scholars who have argued that it is a distinct, if not self-standing, legal order in its own right.<sup>29</sup>

As I emphasized above, post-sovereignty does not mean the end of sovereignty, but rather the end of its traditional meaning as a state monopoly. Instead, it is shared and divided, and can have a number of sources, including the state, customary law and convention, and trans-national law. It is often objected<sup>30</sup> that all this is talk is premature, since a new order does not exist and the nations will not wait until it comes into being, so that statehood is still the only game in town. It is true that the new order is inchoate and its future uncertain, but the nations are in most cases waiting quite patiently to see how it develops, adapting their strategies to circumstances as they evolve. If a new order is not yet with us, there are plenty of signs of things to come and plenty of opportunities already to engage in nation-building in the trans-national order. In any case, to expect a new order to be fixed and ready before the nations took their place in it would be to violate a central part of my argument, since it would prevent the nations from contributing to the shape of the new order as it evolves, leaving the big states to set the rules.

It is in Europe that the post-sovereign idea has received its fullest expression. Europe is a densely organized political space, with the European Union at the centre but extending to bodies like the Council of Europe, the Organization for Security and Cooperation in Europe, the Western European Union, the European Economic Area and NATO (which of course includes Canada and the United States). Within this developing space the principle of state sovereignty is challenged in multiple ways, even while the states remain a key basis for authority.<sup>31</sup> Despite the resilience of the states, the spell of sovereignty is broken and this has provided an important cue for stateless

---

<sup>28</sup> A V Dicey and R Rait, *Thoughts on the Union between England and Scotland* (1920).

<sup>29</sup> McCormick *op cit* n 18; and Z Bankowski and E Christodoulidis, 'The European Union and as an Essentially Contested Project' in Z Bankowski and A Scott (eds), *The European Union and Its Order. The Legal Theory of European Integration* (2000) p 17.

<sup>30</sup> By Tom Nairn, for example, *op cit* n 24.

<sup>31</sup> G Jáuregui, *La democracia planetaria* (2000).

nationalist movements to reformulate their ideas. Important nationalizing functions of the state have also been lost. Individual human rights are increasingly independent of citizenship, allowing a rights discourse unencumbered by nationalizing ideology or implications. Again the United Kingdom provides the clearest illustration, since the devolved assemblies and parliament in Northern Ireland, Scotland and Wales are subject directly to the European Convention for the Protection of Human Rights, which is applicable without reference to UK law. This avoids the problem that has arisen in Quebec where the Canadian Charter of Rights and Freedoms is widely rejected, not so much for its content as for the nationalizing project of which it formed a part. Such a nationalizing Charter in the United Kingdom would encounter similar problems in Scotland and, above all, among the minority community in Northern Ireland. Europe's regime for the protection of national minorities and cultures is less developed and the states of the European Union have shown a regrettable tendency to revert to their old habits of imposing respect for rights in eastern and central Europe while exempting themselves. Yet it is a start and there is a clear norm of respect for national minorities as a condition for admission to the European order.

Europe also provides multiple opportunities for the projection of stateless nations, some rather symbolic, others more substantive, in the emerging political space. This is a rather open and pluralistic political structure, with many points of access and the Catalans in particular have shown themselves adept at operating in multiple political arenas at the same time—the local, the state, the European, the Mediterranean and even the global. Europe can serve this purpose because it is less than a state and more than a free trade area. A European state built on national lines (whether federal or unitary) would go against the trend to post-sovereign order and would incite opposition from both state and minority nationalist forces. A mere free trade area would fail to provide political opportunities for stateless nations and others, and would privilege market relationships and business interests and narrow the political agenda to tightly defined economic questions. A pluralistic but politicised European order, on the other hand, provides a space for interaction among a multiplicity of normative orders, on the basis of shared understandings and values. These understandings are not based on common 'ethnicity', or on opposition to a defined 'other' but rather on a form of 'constitutional patriotism'<sup>32</sup> and civic values. Some of these values are universal, such as democracy and human rights, while others are potentially universal but not realized in other liberal democracies like the United States – notably universal health care and the abolition of capital punishment. The post-sovereign order is thus not a return to universal anarchy but a form of 'metaconstitutionalism'<sup>33</sup> in which issues of power and authority can be debated and worked out under a system of common understandings. This evokes Tully's concept of linked communities able to communicate amongst themselves rather than being isolated and independent.<sup>34</sup> Constitutionalism thus becomes the stuff of regular politics,

---

<sup>32</sup> J Habermas, 'Die postnationale Konstellation und die Zukunft der Demokratie' in *Die Postnationale Konstellation. Politische Essays* (1998) p 91.

<sup>33</sup> N Walker, 'Beyond the Unitary Conception of the United Kingdom Constitution' (2000) *Public Law* 384.

<sup>34</sup> See J Tully, *Strange Multiplicity. Constitutionalism in an age of diversity* (1995).

rather than a one-off moment after which 'normal' politics can resume. It is a messy process and can descend into an undignified scramble for advantage, but the key point is that it keeps moving. Canada has, in a way, been going through a similar process for the last thirty years, as it seeks to redefine itself as a society and to negotiate the place of Quebec and the native peoples within this society and in North America more widely. It lacks, however, an overarching and denationalised framework such as exists in Europe, so that constitutional debate tends to come back to rather classical nineteenth century concepts of sovereignty. The Clarity Bill stipulating the conditions for responding to a Quebec referendum is a clear example of this. There is now abundant evidence that, in Quebec, as in the stateless nations of Europe, there is a constituency for a post-sovereign and plurinational politics but neither the framework nor the political leadership is there to take advantage of the opportunity to think about democratic order in a post-sovereign world.

In plurinational societies, modern democracy cannot be identified exclusively with state democracy and other democratic frames may be appropriate. Nationalist movements in stateless nations have been exploring new forms of post-sovereign self-determination, although there are important differences within and among them. There is as yet no post-sovereign political order to which they can accede, but the world is moving in that direction. Social scientists have never been very good at prediction, mainly because they assume that the world will behave in the future in the same way as it did in the immediate past. We may be in one of those eras in which detecting the signs of change may be vital to understanding our future.