

Beyond Sovereignty
*Plurinational Democracy
in a Post-Sovereign World*

The Desjardins Lecture
McGill University
March 8, 2001

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NOTE ON THE AUTHOR

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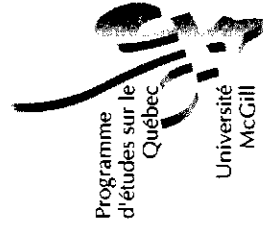
Beyond Sovereignty

Plurinational Democracy in a Post-Sovereign World

THE NEW NATIONALISM¹

It is a widely observed paradox that, in late modernity, in a globalizing world characterized by 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 liberalization, democracy and the flourishing of cultures. 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

1. This paper summarizes arguments developed at greater length in Michael Keating, *Plurinational Democracy: The United Kingdom, Spain, Belgium and Canada in a Post-Sovereign Era*, Oxford University Press (forthcoming).



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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.

Most of the discussions about the nationalism of the minorities have started from false premises, thus creating intractable problems and radical contradictions in place of the normal politics of debate and compromise. These are, in brief:

- 1 Non-state or minority nationalisms are in contradiction to transnational integration and globalization and represent a rejection of it;
- 2 Non-state or minority nationalisms represent ethnic exclusivity, in contrast to the large consolidated nation-states, which are founded on inclusion, tolerance and universal values;
- 3 The consolidated nation-state is the only possible framework for liberal democracy and for social solidarity;
- 4 The consolidated nation-state represents modernity, and is both inevitable and desirable as the culmination of progress;
- 5 Nationalist movements always seek a sovereign state of their own;
- 6 The consolidated nation-state is the only viable political form in the modern world.

These propositions are closely linked to each other and to dominant paradigms in the social sciences during the nineteenth and twentieth centuries. To criticize them is therefore to take issue with much of modern social and political theory. I shall organize this paper around these themes.

NATIONALISM AND GLOBALIZATION

Globalization 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 transnational 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 (Keating, 1998a). 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 transnational order. Ralph Dahrendorf (1995) 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-ethnicizing 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 movements should emerge based on existing institutions, cultures and traditions. Yet the fact that the minorities are de-ethnicizing 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 globalizing prerogatives of the state. Moreover, by de-ethnicizing 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'. The assumption is that the state order is natural and everything else a deviation. Americans often express the same bewilderment about the fierce attachment of Canada to its national independence, as though their society was the norm, from which everyone else has to justify their distance.

NATIONALISM AND DEMOCRACY

Nationalism, as I have noted, has two faces and there is a longstanding debate on the relationship of nationalism to 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 (1972, p.392) summed up one point of view in arguing that 'free institutions are next to impossible in a country made up of different nationalities.' The reasoning is that social communication and trust are necessary to found the basis of a deliberative community and to engage in the alternative 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, if not necessarily of immigrants. 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 (1972), 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 totalitarianism, as well as for perpetual strife. 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 multinational 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' (Keating, 1998a) exist at various levels, the state level, the sub-state level including minority nations, and perhaps even at the transnational level. 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 democratize 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 transnational levels.

THE LESSONS OF HISTORY

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 (Keating, 2000). Firstly, there has 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 (Deutsch, 1966). Some modernists portray both European integration and globalization more generally as a continuation of these diffusionist trends, leaving ever less space for particularisms. More commonly, however, European integration and globalization 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 (Rokkan, 1980; Rokkan and Urwin, 1982, 1983; Flora, 1999). 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 (Tilly, 1990; Tilly and Blockmans, 1994). Even in international relations, scholars have begun to question the 'Westphalian' paradigm as a historical account (Osander, 1994; Spruyt, 1994) or as an adequate way of understanding contemporary politics (Agnew and Corbridge, 1995). I have also sought to present the territorial state as historical contingent, and the process of integration as at least potentially reversible (Keating, 1988; 1998).

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 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 (1990; 1992) can draw a distinction between large nation-states, which have a progressive potential, and minority nations, which tend to reaction. 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 (Rokkan and Urwin, 1983) or fragment of state (Jellinek, 1981; Herrero de Miñón, 1998). 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 democratized in the same way that the English and then British Parliament did (Sorauren, 1998). 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 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 (McCormick, 1999). Most importantly, it shows how the consolidated nation state is merely one historically contingent form of order and points to another way of con-

ducting 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.

NATIONALIST DEMANDS AND PUBLIC RESPONSE

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 (1990, pp.9-10) 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.' This leads to the view that nation self-determination is a dangerous principle, since there are far too few states available for all the nationalistic groups that could claim them (Gellner, 1983; Buchanan, 1991). 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' (Norman, 1998; Beiner, 1998) by demagogic nationalist entrepreneurs. 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 (Hobsbawm and Ranger, 1983), which is as much of an invention as the inventions it criticizes.² 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 groups

2. The Hobsbawm and Ranger book contains both Marxists (Hobsbawm) and Conservatives (Trevor-Roper) agreeing to denigrate the 'invented' traditions of the periphery, presumably because the Marxists think that the only valid cultural forms are those created *ex novo*, while the Conservatives accept only those lost in primordial antiquity. Both critiques seem profoundly ahistorical.

with fully-fledged nations committed to self-determination. We know from history that building and mobilizing a nation to demand self-determination is a difficult and costly business. It happens as a result of a long period of political activism and social mobilization, under certain social conditions (Hroch, 1985) or, sometimes, in response to catastrophic circumstances in which a group is directly threatened. As the example of the *Legga Nord* in Italy shows, it is difficult to achieve merely in response to political opportunities or economic calculation (Biorcio, 1997).³ To take the issue of nationality out of the debate on self-determination, as so many political theorists do (Beran, 1998; Freeman, 1998), is therefore to lose one of the basic elements in the whole issue.⁴ On the other hand, to reduce nationality to ethnicity is a conceptual confusion which both inflates the number of cases and ignores the de-ethnicization of so many contemporary stateless nationalisms. Nationality is, of course, not a mere set of objective characteristics, but also a set of claims and demands. We cannot capture it in mere descriptive language but must recognize that the claim to self-determination is precisely one of the things that defines a nationality as opposed to other forms of collectivity.

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.⁵ 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

3. The North of England is another region which looks with some envy across the border to Scotland but has not been able to achieve the same political mobilization to demand self-government.

4. It would be a bit like trying to discuss international relations without a concept of the state or discussing business without the concept of capitalism, an interesting intellectual exercise but hardly a useful frame of analysis.

5. So it has become quite impossible to argue that Scotland could not be a viable independent state in the European Union, while Slovenia can.

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 transnational 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 transnational 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 transnational 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 externalized. There is, within this group, a division of opinion on how far transnational integration can go without fatally damaging their own prime objective of self-determination and autonomy. Some insist that transnational 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 transnational 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-sovereignist' one adopted by those who have embraced globalization and transnational 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

ains, preferring to see how the world evolves before they commit themselves.

Perhaps the most classically sovereignist 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-sovereignist 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 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 transnational 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-sov-

ereign 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 transnational 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 (Puig, 1998).⁶

It is argued against this that post-sovereignty is unrealistic, to which I can only reply that 'realist' scholars are themselves tied to an intellectual abstraction ever more divorced from reality. More serious is the charge that the idea is premature, since the transnational order that could permit it is not yet in place. This may be true but, as it emerges, so nationalist parties are reshaping their ideology and perspectives. Finally, it is argued 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. We can test this one with empirical data and it is found wanting.⁷ 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 politicizing 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

6. Puig (1998) writes at length about Finland, which might be an allegory of his native Catalonia.

7. These data are discussed at greater length in Michael Keating, 'Post-Sovereignty and Minority Nationalists', European Consortium for Political Research, Grenoble, April 2001.

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 polarization. An interesting recent finding is that the proportion of Catholics calling themselves nationalists has increased, seemingly in response to less polarizing meaning of nationalism in the wake of the Good Friday Agreement with its post-sovereignist basis (Northern Ireland Life and Times Survey, 1999).

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.⁸ 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 (ICP, 1991-98). 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, whereas

8. It should be noted that we only have these surveys because the federalists commission them in order to try and expose what they see as contradictions in the sovereignist case. More sophisticated surveys might yield other sorts of results.

most electors elsewhere in Spain think that the one entails the other.

Evidence that the electors have adopted the connection between minority national affirmation and transnational integration made by the parties is mixed. Quebec has always shown stronger levels of support for free trade than most of English Canada (Martin, 1995) 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 peripheralism, 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 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.

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-determi-

nation means secession (see Freeman, 1998) thus fails.⁹ It is by no means clear what these new solutions will be, but we can suggest various elements, which challenge the fifth of my initial propositions.

A POST-SOVEREIGN ORDER

Two key ideas inform my proposed approach: plurinationalism, and post-sovereign order. Plurinationalism is a little different from multinationalism, 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 politicized, 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 intercommunicating. 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.

9. Freeman (1998, p.22) writes, 'Nations are therefore not suitable subjects for the right to self-determination, because it is not clear what nations are, and attempts to make this clear usually involve serious violations of human rights.' Again, we seem to have a confusion of nationality and ethnic homogeneity.

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,¹⁰ while the term 'national' is freely attached to the institutions of Scotland in Wales, both in the state and in civil society. 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.

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. Some people object to this concept, arguing that sovereignty is indivisible and inheres in the state. If this is merely a way of defining the state, the argument is tautological; if it merely refers to some sort of formal sovereignty, it may be trivial. If it means that the state retains its full panoply of powers in defining identities, managing territory and integrating policies then, as I have suggested earlier, it is just wrong. Scholars in the field of public policy have long recognized that power and authority are dispersed in complex networks, which increasingly escape the boundaries of the nation-state. Historians have recovered traditions of pluralism and overlapping orders of authority. Legal scholars are now pursuing ideas of legal pluralism, in which there may be multiple sites of authority, rooted in legitimate normative orders and that these are not necessarily organized hierarchically (McCormick, 1999; Walker, 1998; Shaw, 2000). This

10. I have two passports. One carries the legend *European Community. United Kingdom of Great Britain and Northern Ireland*, while the other says simply *Canada*.

takes us into a world beyond the sovereign nation-state altogether. 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.¹¹ 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 (Dicey and Rait, 1920). 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

11. In a famous case in 1953, *McCormick vs. Lord Advocate*, Lord Justice Cooper confirmed in the Court of Session that the principle of parliamentary sovereignty was unknown in Scots law. The case at issue was whether the Queen could be called Elizabeth II in Scotland when neither Scotland nor the United Kingdom had had an Elizabeth I. McCormick did not win his case, since the matter was deemed to be one of royal prerogative, not parliamentary statute. McCormick's son, Neil McCormick, Professor of Law at the University of Edinburgh and Member of the European Parliament (SNP) has been one of the leading scholars in the field of legal pluralism and changing ideas of sovereignty (McCormick, 1999).

ancient *fieros* and are not the gift of the Constitution of 1978. States have simultaneously 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 (McCormick, 1999; Bankowski and Christodoulidis, 2000).

In view of these controversies, it would be a great exaggeration to claim that legal pluralism and post-sovereignty were the dominant characteristics of the normative order of the contemporary world; it would be quite wrong to suggest that nation-states were quietly fading away. Yet they represent a developing trend in legal and political thinking that both helps us understand better the reconfiguration of authority, and provides new ways of resolving the nationality problem and the question of self-determination. If authority is dispersed then there are no fully sovereign nation-states, nor could secession from multinational states create them. Both sides in the Quebec debate might therefore be asking the wrong question. On the other hand, as authority is dispersed and there is no ultimate site of authority but several, then self-determination takes on a new meaning. It is the right to negotiate one's position within the emerging complex order, as the subject rather than the object of constitutional debate. A second implication is that there will be no 'end' to the process of constitutional negotiation and no solution to the 'problem' of the nationalities. This, rather, will be the stuff of normal politics. A third implication is that political order will become increasingly asymmetrical as the varied claims to self-determination and the various normative orders cannot be arranged hierarchically or assimilated to a common model. The United Kingdom is exemplary here, having transformed itself from a state in which a rigid principle of unitary authority sought to integrate a diverse and multinational reality to one in which political authority has been divided and devolved in radically different ways for each of the four constituent nations. Perhaps the most remarkable feature of the UK experience is the way in which, after 120 years in which asymmetry was presented as the principal objection to schemes of home rule for the nations, Scottish and Welsh devolution went

so smoothly.¹² There has been an intellectual paradigm shift among the British parties and the London elites such that the plurinational state has become the agreed starting point for discussion. Such a shift of perspective has yet to occur in Madrid or Ottawa.

Objections to asymmetry are often based on an idealized model of the nationally uniform state in which plurinationalism is an anomaly. If we start from a different point, that of the plurinational state, we can identify democratic spaces at various levels. If the majority community does not recognize itself as a distinct entity within the state, it is as anomalous to force it to do so as to prevent the minorities from so defining themselves. There are, of course, many problems with asymmetrical government in practice (Keating, 1998b), the most important of which are connected with political equality and representation in the common institutions of the state. I will confine myself to one, the infamous West Lothian Question. This asks whether MPs from territories with their own devolved competences should continue to vote on those matters for the state as a whole. This certainly raises questions of democratic participation and accountability but is based on a curious premise, namely that we can have constitutional change but on no account must this affect the workings of the national parliament. Both Canada and the United Kingdom have massive disparities of representation in their popularly elected chambers, as a result of the first-past-the-post electoral system. As territorial parties have become more important and territorial voting patterns have diverged, these are reflected in a degree of differential territorial influence over central government that dwarfs anything that asymmetrical devolution might entail. Both have unreformed second chambers,¹³ despite the many proposals to convert them into chambers of territorial rep-

12. It has been anything but smooth in Northern Ireland but this has nothing to do with objections to asymmetry. Hardly anyone argues against distinctive treatment for Northern Ireland.

13. Recent reforms of the House of Lords, removing most of the hereditary members, merely make it look more like the Canadian Senate.

representation as is generally advocated for federal states. It is a curiously conservative attitude to constitutional reform that refuses to question these anomalies while focusing on the representation of minority nations. One could apply the same charge of conservatism to the objections to differential voting rights for MPs in the central parliament where minority nations have assumed certain competences which elsewhere remain within the purview of the central state. These objections are based on the idea that governments should also have regiments of disciplined MPs to allow the executive to win every vote. In the United Kingdom, the removal of Scottish MP's voting rights on purely English matters might occasionally deprive governments of a stable English majority; but this would merely force the government to seek a broader coalition in the same way that the Scottish Executive, working in a proportional system, has to do.¹⁴ Plurinational politics has implications for the organization of the state as a whole and both majorities and minorities need to recognize this. So far they are only beginning to do so.

In Europe, however, the post-sovereign idea has received a fuller 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 (Jaureguí, 2000). Despite the resilience of the states, the spell of sovereignty is broken and this has provided an important cue for stateless nationalist movements to reformulate their ideas. Important nationalizing functions of the state have also been lost. Individual

14. Both Labour and the Scottish National Party have objected to the proposals of the British Conservatives to restrict the voting rights of Scottish MPs on matters of concern only to England. Labour sees this not only as a threat to its own power base but as a challenge to the unitary state, while the nationalists seem to feel that it is a snub to Scotland, although their own MPs scrupulously abstain from voting on English matters.

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.¹⁵ 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 politicized European order, on the

15. This recalls the practice after the First World War.

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' (Habermas, 1998) 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 'metainstitutionalism' (Walker, 2000) in which issues of power and authority can be debated and worked out under a system of common understandings. This evokes Tully's (1995) concept of linked communities able to communicate amongst themselves rather than being isolated and independent. Constitutionalism thus becomes the stuff of regular politics, rather than a one-off moment after which 'normal' politics can resume. It is a messy process and can descend (as in the Nice conference of December 2000) 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 denationalized 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.

I have by now criticized all six of my original propositions. There is a close connection between the restructuring of state authority from above and from below, which has encouraged the re-emergence of stateless nations. These take many forms but

there is no reason to hang the pejorative label of ethnic particularism on them, especially if this is used to contrast them with civic and de-ethnicized state identities. 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.

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