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Teleological and reflexive nationalism in the new Europe

Teleological and Reflexive Nationalism in the New Europe

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This paper examines the growing influence of reflexive over teleological nationalism in sub-state movements. Teleological nationalism is the more conventional modern type, involving a menu of set goals, the ultimate being full sovereignty. Reflexive nationalism, by contrast, involves an adjustable relationship between a self-defining 'people' and a set of institutional platforms, where collective goals are cumulative rather than predetermined, relative rather than absolute. Reflexive nationalism claims a standing right to decide - 'sovereignty of choice' rather than 'sovereignty of outcome'. Particularly in the unsettled environment of contemporary multi-layered Europe, where the supranational EU challenges the sovereign authority of member states, national movements (in Scotland, Catalonia, Flanders etc.,) tend towards reflexive nationalism. Sometimes they become an established part of the governmental landscape, their long-term aspirations de-emphasized. Yet questions remain. First, is reflexive nationalism transferable between settings? Is the 'right to be taken seriously' as regards questions of self-determination an emerging European or even global norm, or, as the case of Catalonia has vividly demonstrated in very recent times, is its acceptance or rejection purely a matter of local constitutional law and politics? Secondly, is it legitimate? Is it 'fair dealing' in terms of the recognition also due the self-determination claims of existing national sovereigns? Thirdly, is it sustainable long term? Is the 'right to decide', regardless of what is decided, a meaningful proto-sovereignty, and, if so, can sovereignty's delivery be deferred indefinitely without losing that right to decide?

Introduction

The present volume is concerned with the multiple ways in which the "rescaling" (Keating, 2013 and 2018) of political capacity and community prompt us to rethink the idea of the nation state in Europe today. The nation state is challenged from above by new global and transnational economic forces, and also by the political response to these new forces in the form of new non-state polities. The European Union (EU) itself, with its expansive (and expansionary) territorial base and functional remit, is only the most prominent of these new polities. The nation state is also challenged from below, and from beyond, by the renewal of

forms of national identity politics that question the existing pattern, and in some cases the very category of sovereign statehood. The EU is again key to this challenge, though its influence is ambiguous. In some ways, it serves to conserve and reassert the old order of sovereign statehood, while in others, it offers stimulation and support to new forms of political nationalism. The aim of the present paper is to assess the double-edged relationship between the new nationalist politics and European supranationalism. In particular, it examines whether the new European context, in tandem with other global developments, is encouraging a shift in the very nature of the nationalist claim to collective self-determination away from one that can be readily accommodated within the sovereignty matrix.

What do nationalists want?

What do political nationalists want?[1] Superficially, this is an easy question. Political nationalists believe in national self-determination, and so want to secure the conditions under which national self-determination can take place. But when we begin to dig, matters become less clear. We find distinctions or fault-lines between different kinds of nationalist objectives, and, more fundamentally, between different ways of thinking about nationalist objectives. Some distinctions and some ways of making distinctions are familiar from the literature. A first way of thinking about nationalist objectives refers to the *type of underlying motivation*; here the key distinction – particularly relevant to modern developments within the category of liberal nationalism but also an important background distinction in our understanding of illiberal nationalism (Taras 2002) – lies between those who view nationalism either as an intrinsic good or as an instrumental good. A second way of thinking about nationalist objectives has to do with the *external measure of achievement*; here the key distinction is between an understanding of national self-determination as a graduated affair – as situated along a more-or-less spectrum of institutional realisation – and its understanding in binary yes—no terms, with the high point of sovereign independence the only true measure of success.

There is, however, a third way of thinking about nationalist wants and objectives that is little remarked upon but which has assumed a growing importance today. This is directly concerned neither with underlying philosophy nor with externally measurable achievement, though closely connected to the latter. It concerns, rather, the *political culture internal to nationalism*, focusing on the dominant orientation of the nationalist movement. Here the relevant distinction is between teleological and reflexive approaches to nationalism, or between

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[1] Clearly, there are many cultural nationalists who will not share the aspirations of political nationalists.

a claim of self-determination that is fixed and fully formed, and once that is continuously adjustable in the light of experience and circumstances and knows no settled final destination.

It is this third way of thinking about nationalism, and its internal tensions, that I am concerned with. The teleological/reflexive distinction, I argue, tracks a division of ever-increasing importance in modern nationalist movements, particularly in the EU context. Subsequent to the formation of the European supranational polity, there has been a gradual if uneven shift towards more reflexive forms of nationalism amongst sub-state national groups in the European Union, and these new nationalisms stand in a complex relationship with the "old" nationalisms that predominate at member state level. Yet these new reflexive orientations within nationalist movements, for all that they boast certain advantages over the teleological alternative, face problems of feasibility, legitimacy, and sustainability. And, as we shall see, the emergence of these reflexive nationalisms, the problems they face, and the manner in which these challenges may be addressed, tell us something important about the EU, and in particular about the relationship of the new supranational container to nations and to nationalist aspirations.

Before pursuing this line of inquiry, let me say something about the other two ways of thinking about nationalist wants and aspirations, as they both inform our understanding of the teleological/reflexive question.

Inherited questions

Instrumental versus intrinsic

As suggested above, the debate between instrumental and intrinsic forms of nationalism is tied up with the question of the relationship between liberalism and nationalism. Historically, this has been a difficult relationship, and, indeed, for the majority of their careers these two concepts were seen as incompatible ideals. Where liberalism was about individualism, reflection, and choice, nationalism, as it has developed since the eighteenth century as a cultural support to the emerging form of the modern state, was about collectivism, loyalty, and solidarity (Smith 2001). The history of ideas is not entirely bereft of attempts to reconcile nationalism and liberalism. There were some nineteenth century liberal nationalists, from Mazzini to John Stuart Mill, while Woodrow Wilson's League of Nations, launched in response to the ravages of the First World War, was an early template for liberal internationalism. Yet this ambitious project was a conspicuous failure, and given the notorious, and notoriously illiberal, excesses of nationalism that marked much of the twentieth century, the rehabilitation of liberal nationalism for long remained an unlikely prospect (Vincent 2002, ch. 4). Only since the 1980s,

and under the pressure of cumulative waves of new forms of post-imperial and post-communist nation-building, has there been a resurgence of serious thinking about liberal nationalism. In the Anglophone world, such diverse figures as Will Kymlicka (1991), Neil MacCormick (1999), David Millar (1995), Joseph Raz (1999), Yael Tamir (1993) and Charles Taylor (1999), supplied the intellectual wing of that revival.

Consideration of the relationship between liberalism and nationalism takes many forms and connects to various key debates in the literature.[2] However, where, as in many contemporary liberal democracies, a primary concern is with the reconciliation of the two concepts, the key distinction lies between nationalism as merely instrumental to liberalism and nationalism as embodying the intrinsic goods of liberalism (Vincent 2002, 90). The instrumental argument, which dominated nineteenth century liberal nationalist thought, is pragmatic and prudential. It recognises that nations are often the only political game in town – the sole vehicles at our disposal within which the values of liberal society and also, indeed, the solidaristic, welfare-guaranteeing, social democratic variant of liberal society[3] – may flourish. It maintains that nationalism, understood as a collective co-recognition and co-activation of common national identity, provides the vital cultural glue and generates the associated institutional wherewithal to facilitate our mutual engagement as co-members and collaborators in those relations of equal, autonomy-respecting concern central to liberal thinking.[4] Here the relationship between nationalism and liberalism is reduced to pure contingency. We need the communal energy and organizing frame that cultural nationalism provides to energise and embed our liberal values and institutions. But the link is one of means and ends, with no internal connection between the two concepts implied. Indeed, given its double-edged historical record and highly variable sociological implications, nationalism viewed from this instrumental perspective is apt to be treated with caution even by supporters, perhaps even be tolerated only as a necessary evil (Rosen 1997).

Even though they acknowledge the instrumentalist argument, many recent liberal nationalist writers reach beyond its limited and often reluctant endorsement of national identity.

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[2] For example, the debate between civic and ethnic forms of nationalism (Ignatieff 1993), or between autonomy and diversity liberalism (Galston 1995).

[3] Many liberal nationalist writers also emphasize the connection between nationalism and the generation of the culture of mutual concern necessary for social democratic forms of public policy, as well as stressing the dependence of fuller versions of liberal autonomy on the types of social and economic support associated with social democratic policies. See e.g., MacCormick (1999: 172), Miller (1995).

[4] Although liberals differ over whether the protection of individual life-plans should be defended on perfectionist grounds, because autonomy and individualism are supreme and self-standing virtues, as in John Stuart Mill's (1859) original formulation; or on anti-perfectionist grounds, the maintenance of an individual sphere of freedom and of a culture of pluralism necessary precisely because there is no compelling basis for adjudicating between our different conceptions of the good, as argued by John Rawls (1993).

In so doing, they track and reinforce a development in contemporary political culture amongst aspiring national movements. Arguing for the intrinsic value of the nationalist project, they stress that nationalism is evocative of the very values at the heart of the liberal enterprise – and all the more so its social democratic variant. For the liberal commitment to respect and promote individual autonomy implies more than safeguarding the familiar litany of negative rights – freedom from harmful interference by the state or by other individuals or collectivities in one's personal liberty and security, or in one's speech, association, conscience, privacy, etc., and even the basic positive rights we associate with social security. Liberalism, expansively conceived, also implies recognizing and securing the very ''social situation where self-aware individuality and self-fulfillment are possible for individuals,'' (MacCormick 1999, 176) including, crucially, the overarching ''social situation'' provided by national identity. That is to say, according to the intrinsic version of liberal nationalism, for the individual autonomy cherished by liberals to be authentically experienced and effectively realized *as* individual autonomy requires the kind of framework of *individuating* collective self-recognition that nationalism can best provide.

So nationalism is no longer just a causal *precondition* of the life lived autonomously, as in the instrumentalist argument, but a constitutive *co-condition* – supplying the very milieu in which autonomy is apprehended and activated. Our first-order liberal autonomy in our day-to-day exchanges presupposes a second-order liberal autonomy according to which we get to choose the broader associative environment of our first-order autonomy. Importantly, from this larger liberal perspective, nationalism, now conceived as a key location of our second-order liberal autonomy, necessarily has political consequences. It cannot, as some suggest, be relegated to a sphere of privatized culture (Yack 2003). Rather, it demands political expression as a mark of the importance of the associative environment supplied by the voluntary national collective –the civic nation – in providing a meaningful context for our autonomy. which in turn requires institutionalized recognition of and respect for the national collective by outsiders as well as insiders.

Of course, as liberal nationalists acknowledge, nationalism today retains its dark side, much of which may be characterized as its anti-liberal side. No amount of liberal injunction to the contrary will make this illiberal nationalism disappear (ibid., 157-9). And it should be acknowledged that this alternative also speaks, albeit in a more exclusionary and less tolerant register, to the intrinsic (rather than merely instrumental) value of the national project. Liberal nationalists, therefore, as they too come to insist upon the intrinsic worth of the nation, must display constant vigilance against this other narrative of nationhood's inherent value. In

particular, they must be robustly universalistic. In accepting the basic standard and discipline of generalizable, and so rule-bound, definitions of the circumstances of individual freedom, they should also be slow to specify these circumstances in ways which makes it easier to discriminate in the treatment of different groups. To do otherwise erodes the more general sense of the equal moral worth of the individual that underpins the commitment to autonomy. As Neil MacCormick (1999, 175) puts it, liberalism supplies ''a presumption in favour of more inclusive over less inclusive characterizations of relevant human circumstances'' (cf. Waldron 2007).

Several points follow from this stronger universalistic premise. To begin with, liberal nationalists must respect the freedom of all within the relevant political community; not just the national majority but also internal minorities, immigrant groups, denizens, and visitors. In addition, looking beyond the immediate political community, just because the close link between collective and individual self-determination must apply to "them" as well as to "us," liberals who are nationalists must respect the equivalent desire for national self-determination of other groups. A nationalism that is indifferent to, or discriminates against, those who share the same territorial space but are not considered or do not consider themselves members of that nation, or are otherwise at odds with the dominant form of self-identification or associated values of the nation, is not a nationalism that respects liberal values. Equally, a nationalism that rides roughshod over other nationalist claims in matters where such claims may contend with one another - whether as boundary disputes or other recognition questions between polities, or questions of multinational accommodation within a single political configuration - is not a nationalism that respects liberal values.

Graduated versus binary

Concerned with the external measure of institutional achievement of nationalism, this distinction is more easily specified. A graduated approach takes various forms of legal and institutional recognition of national identity seriously as measures of national self-determination. They are treated as independent markers of success, rather than as mere stepping-stones towards the holy grail of sovereign statehood, as they would be within a binary approach. These markers include language and other group-based cultural rights, (education, etc.) organized around "personal" rather than "territorial" jurisdiction (e.g., Belgium's Communities and Language Areas as distinct from its territorial regions) (De Schutter 2017), forms of symbolic recognition (e.g., recognition of Catalonia and other "nations" as distinct "nationalities" in the Spanish Constitution), institutions of self-government (e.g., devolution,

federalism, looser "Union state" arrangements) and forms of distinct representation within central institutions (e.g., weighted representation in federal second chambers, rights of representation and veto in consociational governing arrangements).

Two trends have converged to make the graduated approach increasingly salient. First, the sheer range and density of institutional mechanisms for graduated recognition reflects and encourages a new politics of accommodation in multinational states (Kymlicka 2008; Choudhry 2008). Secondly, the supposedly absolute standard of sovereign statehood has become fuzzier and less distinct. If sovereignty in the Westphalian system traditionally entailed exclusive title in external relations and non-interference in domestic governing mechanisms or jurisdictions,[5] then modern sovereigns, especially in the European arena, must increasingly be seen in more-or-less rather than either-or terms. Member states have pooled and transferred to the EU much internal competence in traditionally sovereignty-sensitive matters such as trade, security, monetary, and macro-economic policy, and they have also transferred full external legal authority in international law to the EU in matters (such as the common commercial policy) where the EU claims exclusive internal jurisdiction. Membership of other international organizations, from the Council of Europe and its European Convention of Human Rights to the UN and WTO, further compromises the sovereign autonomy of states. It does so through a combination of ceding legislative and executive competences upwards to institutions beyond the state, and the provision to citizens of internationally justiciable rights against the states of which they are members. Beyond the formal structures of international law, too, we see additional challenges to the authority of the state through the development of private or hybrid jurisdictions in areas as diverse as internet regulation, sports governance, and forestry management (Walker 2015a, ch. 3). In a nutshell, just as the "interdependence" experienced by aspiring political nationals seeking new forms of accommodation of their national identity short of secession from their host state is becoming more "independent" due to the proliferation of new intermediate mechanisms of recognition, so, conversely, the textbook "independence" of sovereign states is becoming more "interdependent" (Walker 2013). Sovereign and sub-sovereign manifestations of political nationalism begin to look like so many points on a continuum than marked by a categorical distinction.

The rise of reflexive nationalism
To the extent that there is a trend observable within the third way of distinguishing nationalist wants and aspirations – the shift from a teleological orientation towards a reflexive orientation

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[5] Features which Krasner (1999) labels as "international legal sovereignty" and "Westphalian sovereignty" respectively.

within the culture of the nationalist movement – this builds upon the trends revealed by our two more familiar distinctions. In the first place, the development of a strain of liberal nationalism which views nationalism as intrinsically desirable involves a commitment to national ends that is more than instrumental but, unlike non-liberal forms of nationalism, must respect and embrace the give and take of the broader domain of liberal democracy. In the second place, the trend towards a graduated prize-list of nationalist achievement speaks to the strong political-cultural endorsement of a departure from a binary logic of accomplishment towards a less settled sense of what ends are implied by nationalist claims.

As already noted, under out third distinction, it is teleological nationalism that provides the more conventional form in which the internal culture of political nationalism has manifested itself. Where nationalist movements were or remain teleological in outlook, this involves the specification of set and unchanging goals - the ultimate being precisely the kind of unqualified sovereignty over a polity of fixed boundaries favoured under the binary logic discussed above. All other institutional objectives – group cultural rights, devolution, federal recognition, autonomous community, consociational representation, etc., – are subsidiary to that ultimate objective, their value measured only as a means to the sovereigntist end. Under the teleological conception, therefore, a political nationalism that pursues its aspirations in an uncompromising manner may either be praised for its unwavering resolve or criticized for its obdurately or impatiently self-defeating refusal to play the 'long game'. Equally, as we have seen in reactions to the periodic shifts of emphasis in movements such as the Scottish National Party (SNP) in Scotland, the New Flemish Alliance (NV-A) in Flanders, or the Democratic Convergence of Catalonia (recently replaced by the Catalan European Democratic Party) away from a focus on classical forms of independence, political nationalism may be praised or criticized for its *compromising* quality. For example, when for the 2104 referendum the SNP developed a conception of independence-lite involving continuing monetary and other institutional ties with the UK as well as a significant pooling of competence with the EU (Scottish Government 2013), this was an approach which, through a teleological lens, could either be viewed favourably as providing a platform from which a fuller sovereigntist future remained in sight, or judged critically as the curtailment of earlier and higher ambition.[6]

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[6] As a variation on these two themes, contemporary political nationalism may invite scepticism for its "asymptotic" (Scott 2012) quality – depicting a line fated never to reach the destination towards which it tends. Here political nationalism is presented as an absolute discourse to prosecute a non-absolute strategy, but one whose impossibility or is exposed the closer it gets to its goal. This very idea of asymptotic nationalism, remains in negative thrall to teleological nationalism. For it only makes sense as a statement of regret or criticism for the failure of nationalism so understood, whether an aspirational nationalism that has lost the courage of its convictions, or a form of independence-lite or a lesser devolved creature. which in deferring its fuller realization to the indeterminate future seeks to deflect the modesty of its ambition.

A reflexive nationalism, by contrast, is by its nature self-referential, an iterative achievement in which consequences repeatedly feed back into developmental causes. It has a number of key attributes. First, and negatively, it does *not* possess a teleological character. It should not be judged as inauthentic, compromised, or strategically inept for its failure to specify or to pursue a utopian end state as its ultimate objective, nor dismissed as unsuccessful for not achieving such an objective. Instead, its goals are viewed as provisional rather than final, cumulative rather than predetermined. Secondly, reflexive nationalism focuses upon an internal duality–a subject as well as an object. The project of political nationalism is not about the specification and achievement of a predetermined state of affairs by a fixed collective subject, but about the shifting nexus between a fluid collective subject – a putative "people" whose very membership and territorial extension is revisable and contestable (Keating 2017) and an adjustable set of political institutions and goals. Moreover, the reflexive project is sensitive to shifts in the relationship of its national "people" to other intersubjective constructions of peoplehood (British and English as well as Scottish, Belgian and Wallonian as well as Flemish, Spanish and Castilian as well as Catalan) that attach themselves to overlapping territorial domains, and to the political institutions and goals associated with these constructions. Thirdly, reflexive nationalism, in consequence, emphasizes process over substance and output. Political nationalism does not, on this view, imply either a duty to pursue or a right to enjoy any particular outcome. Rather, it involves an entitlement to recognition and consideration of the nationalist claim as a resilient feature of the political landscape and, provided certain conditions of popular support and respect for others are met, as something to be given procedural form. In some cases, including the relatively stable democracies of Western Europe, these procedural claims to recognition and consideration will have – or at least be asserted by their proponents to have – an internal constitutional pedigree in the "host" state, however tenuous. Alternatively, in more deeply and resiliently divided societies like Cyprus or Kosovo such procedural claims and their institutional supports may depend entirely on international initiatives.[7] And just as outcomes favourable to the nationalist cause are not guaranteed, so, too, occasional failure or frustration of the nationalist project need not exhaust the underlying procedural claim.

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[7] In Cyprus, which joined the EU in 2004, there have been repeated rounds of (so far unsuccessful) talks organised through the offices of the United Nations between the Greek South and the Turkish North since the Turkish occupation in 1974. In Kosovo, the United Nations Interim Administration Mission in Kosovo (UNMIK) has been a key player in negotiating the internal and external relations of Kosovo before and after its unilateral declaration of independence from Serbia in 2008. The European Union Rule of Law Mission in Kosovo (EULEX) has also been actively involved since 2008 to ensure peace and continued external oversight and to prepare Kosovo for eventual accession to the EU.

Lacking the settled hierarchy of goals of teleological nationalism, in the unsettled multi-level environment of the new Europe in particular, national movements in Scotland, Ireland, Catalonia, the Basque Country, Flanders, Brittany, Northern Italy, and elsewhere are reasserting or moving towards this more flexible ground of reflexive nationalism (Keating 2015). In part, this is a strategic move. As the collective memory fades of European nationalism's twentieth century illiberal excesses it is a way of widening the appeal of national movements to those who may remain undecided about the ultimate goal of independence but want to keep their options open. In part, it is an assertive response to existing sovereign states that might continue to deny the basic "ontological" (Keating 2015, 56) claim of the sub-state nation to exist as a nation, or, more concretely, would either oppose the autonomous right to decide (as in Spain) through referendums or other means, or fail to offer constitutional guarantees of such a right (as in UK). In part also, and arguably most importantly, it reflects the structural trend towards "post-sovereign" outcomes in Europe's layered environment we have already discussed. The existence of a "3D" sovereign space (supranational EU, state and subnational) inevitably dilutes the material "prize" of state sovereignty while, by also providing new institutional platforms and material incentives for regional representation, creating a more fluid environment of outcomes capable of accommodating less categorical forms of political nationalism (Walker 2017).

This links to a fourth contributory factor. Nationalist parties are more likely to become relatively stabilized in this environment, even as the prospect of a sovereigntist end-game remains remote. As we have seen in the UK, Belgium, and Spain, they may become parties of regional government or even coalition national government in the new multi-level configuration. In so doing, they must "strike a balance between establishing themselves as an effective and competent party of government, whilst at the same time maintaining their commitment to radically overhauling the state" (Hepburn 2011). In brief, in this more crowded and complex environment of institutional means and possibilities, nationalist parties must negotiate more hurdles to achieve higher goals, yet are also able to find more comfortable footholds short of these goals. They tend, therefore, to become focused on achieving a steady platform for the representation of regional interests and enhancement of regional autonomy within a more "pragmatic" understanding of nationalist goals (Antunes 2010; Elias 2008).

Reflexive nationalism in supranational context

What are we to make of this development? Three sets of questions arise. First, is this kind of reflexive nationalist project politically feasible and transferable? Wherever it emerges does it stand in precarious isolation, or is its development in one context supported by and supportive of its development elsewhere? Secondly, is it legitimate? Should it be considered "fair dealing" in the politics of international relations? Is the case for its legitimacy stronger or weaker in the particular multi-level context of the EU, where it is most intensely developed, and where, as already noted, the prize of sovereignty is somewhat diluted? Thirdly, is it sustainable in the longer term? Is the "right to decide" or to "self-determine" a meaningful form of proto-sovereignty, and, if so, can the delivery of sovereignty be deferred indefinitely without losing the right to decide?

Feasibility and transferability

Here we are concerned with the traction and systemic effect of the new reflexive approach. How sympathetic is the ambient constitutional culture of existing states to this kind of approach, and how well does this sympathy "travel"? On the face of it, sympathy is limited, at least as regards any ultimate aspiration of independence. Most constitutional traditions are closed to the prospect of secession of any part of their territory, or to any sense of the ongoing contemplation of such an eventuality. Few contemporary constitutions make explicit provision for secession − only Ethiopia, St Kitts and Nevis, and Liechtenstein − or even indirectly countenance it − only Austria and Singapore. In all cases the procedural route to legitimate secession is formidable. A far greater number of state constitutions adopt the opposite posture, enshrining ideas, such as state "indivisibility," "national unity," and "territorial integrity," which are emphatically inconsistent with the idea of secession (Radan 2011).

Against this, open-ended constitutional amendment procedures and the creative interpretive work of constitutional courts[8] can mitigate the impact of prohibitive words, or allow secession to be contemplated in those cases where the constitutional text is silent, although the possibilities here tend to remain moot. In practice, with few exceptions, where full sovereign independence is sought and secession does take place, while constitutional arguments will often be deployed in earlier phases of debate, the end-game tends to follow an *extra-constitutional* route, consensual or otherwise.[9] Either it is a "voluntary disassociation," as in Eritrea or

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[8] See in particular *Reference re Secession of Quebec* [1998] 2 SCR 217

[9] For example, arguably, many of the secessions from the Soviet Union, beginning with the Baltic states, followed a constitutional path under the extant Soviet Constitution of 1977. However, as the process gathered pace it assumed more of the character of an extraconstitutional "voluntary disassociation." On matters of categorisation, see Mancini (2012).

Czechoslovakia, where the fact that all internal parties reach agreement on separation renders the constitutional settlement of the previously unseparated state redundant, or it involves an non-consensual "dissolution," as in the case of the former Yugoslavia, where the strength of disagreement, and its violent expression, reflects and reinforces the failed authority of the previous constitutional settlement.

In the Scottish case, however, the existing framework of constitutional authority has been neither redundant nor discredited. Rather, it retained a significant though loose structuring role. The explanation for this turns on peculiar features of British constitutional history. The prompt, little acknowledged at the time, was provided by the Northern Ireland Act 1998, which allows a referendum amongst the people of Northern Ireland on self-determination at intervals of not less than seven years. This legislation was passed in response to the Belfast Agreement of the same year, and was intended to encourage peaceful, iterative reflection on the choice between British and Irish sovereignty after the violence of earlier decades. The flexibility of the unwritten British constitution, combined with the new Northern Ireland precedent, fed an emerging convention that the various "national" parts of the British state should have a periodical right to (re)determine their national sovereignty in a referendum, and this provided the backdrop to the Edinburgh Agreement between UK and Scottish governments which enabled the 2014 independence referendum to proceed (Walker 2015b). Furthermore, while the commitment made by the SNP – the party of devolved government in Scotland – in 2017 to a second referendum in light of the changed constitutional circumstances occasioned by the Brexit vote had a mixed popular reception and has encountered political opposition from all the UK unionist parties, none have denied the in-principle right to ask the independence question again at the appropriate time and in the appropriate circumstances.

Overall, then, there is a mixed picture in terms of feasibility and transferability, and this is reinforced if we make comparisons *within* the EU. In the next section we will consider the ways in which EU membership *ought to* affect the claims of sub-state nations. For now, we simply note how, as matter of fact, the EU tends to adopt a low-profile strategy of "conservative neutrality" (Walker 2015b, 168-7) when confronted with the possibility of infra-state secession either in general, or as in the case of Scotland and Catalonia in recent years, as a direct and urgent question(Marti 2018). The EU's dependence on its state foundations leads it to defer to the constitutional and political preferences of the existing member states individually and collectively, a number of whom, in particular Spain, Cyprus, Greece, Romania and Bulgaria, are concerned about the support for secessionist or other

minority nationalist movements in their own backyard or about the infectious example of movements elsewhere in the EU (Kerr 2013).

Scotland, therefore, where the unusual permissiveness of the UK constitution has provided an opening, cannot be seen as a European prototype. In particular, it stands in marked contrast to the Catalan case, where supporters of the right to decide have sought to invoke the Scottish case as a relevant precedent, but where the EU has accepted the constitutional orthodoxy of the Spanish state. The present crisis began with the central government's implacable refusal to grant official status to a referendum scheduled by the Catalan regional government in 2014 just one month after the Scottish vote - a decision backed by the Spanish Constitutional Court relying on the "indissoluble unity" clause of the Spanish Constitution (Art. 2) set off a chain of events that is still unfolding (Ferreres Cornella 2014). The scenario was repeated in October 2017 when a second plebiscite, although again declared unconstitutional and boycotted by some of the electorate, produced a strong vote for independence. The vote, and the subsequent unilateral declaration of independence by the Catalan Parliament, provoked a combative response from the Spanish state. This included the suspension of regional government and the imposition of direct rule from Madrid, the calling of new regional elections for December 2017, and the pursuit of criminal legal action, including pre-trial imprisonment, against a number of the referendum's leading protagonists. These measures prompted the exile of the regional President Carles Puigdemont together with a number of members of his government. And although a narrow majority of pro-autonomy members was returned in the new elections, the office of President remained unfilled through the early months of 2018 (Marti, 2018). Notably, while the ongoing political crisis has not generated a clear majority for an end-state of Catalonian independence, it has reinforced support for the kind of procedural self-determination which is at the heart of reflexive nationalism.

The picture becomes even more uneven if we contemplate the Belgian situation – a third case where the secession of a sub-state nation is a live – though currently less volatile - issue in the politics of Western Europe today. Here the case for independence is led by the Flemish north, increasingly divided linguistically, culturally, economically, and (due to previous rounds of devolution) in terms of political institutions from the French-speaking Walloons in the south. Yet though the Belgian Constitution is no more hospitable to secession than the Spanish Constitution, there are several sub-constitutional differences which make it unlikely that the European fate of an internally enlarged Belgium would be the same as that of Catalonia. In particular, the combination of the possibility of a consensual "velvet divorce"

between the two estranged parts, the strength of Flanders as the "majority nation" within the Belgian polity and the strategic importance of Brussels to the EU, suggests that a mechanism would likely be found to accommodate this particular internal enlargement (Connolly 2013).

In many other national cases, too, the question remains moot, again dependent on local extra-constitutional circumstances and their interaction with local constitutional possibilities. Yet, encouraged by (and reflected in) the *Quebec Secession* judgment, there seems to be a modest secular trend towards the recognition of the constitutional standing of sub-state national groups and their continuing aspirations. This recognition works, first and foremost, as an *internal* feature of the increasingly reflexive character of national political movements and projects – a form of self-recognition - and as such it can develop momentum through emulation and mutual reinforcement *within* a state, as we see with regard to the UK's Celtic nations (Ireland, Scotland, and – with a recent increase in intensity –Wales) (Hunt, Minto, and Woolford 2016). And to the extent that the self-affirming and self-perpetuating legitimacy of sub-state national movements are still not constitutionally recognized, as in Spain, the broader international trend, through the medium of *external* recognition and persuasion, may gradually add weight to the claim of sub-state national petitioners.

Legitimacy

This question requires us to take close account of the peculiarities of the EU polity. On the one hand, the EU, inaugurating a new system of layered government, has helped, however unevenly, to stimulate the development of third-level regional or national political identity in its supranational context and indeed, if we are to take its broader remit as an exercise in post-statist federal thinking seriously, it should endorse and encourage this stimulating influence. On the other hand, that this encouragement should lead, by extension, to the approval of procedural pathways that would allow the pursuit of new claims in the old state sovereigntist register – an open-endedness that reflexive nationalism requires–would seem to challenge, and in one view, contradict, the basic premises of such post-statist federal thinking.

A forcible statement of the view that such an extension would be self-contradictory, and should be recognised as such by the EU in a clear policy of non-admission of new internal members, has been made by Joseph Weiler in his interventions on Catalonia and Scotland (Weiler 2012, 2014; Walker 2014). He notes that just as national minorities in existing member states who presently enjoy extensive forms of individual and collective freedom have no

automatic right to secede as a matter of general international law, so, too, the EU in its accession and membership policy should not be expected to indulge the independence claims of these un-oppressed sub-state nations. To the contrary, the very ethos of integration, reconciliation, and continental solidarity that has fed the European project from its post-War beginnings should cause the EU, and all those who endorse its broadly federalist foundations, to take a dim view of any separatist, and so necessarily sovereigntist, impulse that seems to betray these founding virtues.

On this understanding, Europe remains a composition of nation states, each of whose core national identity is to be respected.[10] But, as a condition of this respect, these nation states are also expected to abide by liberal and democratic norms internally[11] as well as demonstrating a measure of cosmopolitan equal treatment externally towards fellow EU citizens from other member states (Cloots 2015), and are required to subscribe to a supranational legal discipline that will guard against action motivated or justified on national grounds that would violate these twin (i.e., internal and external) standards. This delicate formula would arguably reject the sovereigntist aspirations of new movements of national self-determination for two reasons; both as *redundant*, given existing disciplines and safeguards against the excessive nationalist impulses of existing states, and as *ill-conceived*, given the tendency of new national movements to reprise precisely the kind of narrowly national self-interested sentiment that the EU was set up to oppose and transcend. From this perspective, therefore, far from having a stronger claim than those external candidates who have benefited from the EU's extensive post-Cold War Enlargement, as has often been assumed by supporters of internal enlargement of existing member states, those nations already comfortably nested inside the EU's Western European heartland should be refused a safe supranational haven if they insist on the path to independence.

Various counters may be suggested to the Weiler approach to the legitimacy of sub-state sovereigntist movements in the EU. In the first place, it risks not taking a people's own view of its preferred collective future seriously enough. Whether we are dealing with the Scottish or the Catalan case or that of any other sub-state group, should not more store than Weiler allows be set by an aspiring nation's own sense of what is the constitutionally adequate vindication of its desire for collective autonomy? If nothing short of independence is deemed sufficient from the perspective of the constituency in question as an affirmation of shared

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[10] Art. 4(2) Treaty on European Union (respect for national identity)
[11] Art. 7 TEU (suspension of membership); Art. 49 TEU (accession)

political identity, why should this subjective collective aspiration be dismissed in favour of a supposedly objective standard of adequate individual and collective freedom – one that, incidentally, always leaves in successful place another and prior but far from necessarily morally superior claim to nation-statehood. The EU, after all, already respects these already established sovereign claims within its broader federal vision, and arguably no compelling distinction in political morality can be made between these established claims and the claims of new nations.

This line of argument is reinforced when we consider the difficulties increasingly faced by the EU in holding certain "old states" to the criteria of liberal nationalism that would set them up as acceptable standard bearers and would assuage the concerns of their national or other minorities. The article 7 TEU risk-determination and suspension procedure has so far proven ineffective in halting the illiberal tendencies of populist governments in Hungary, and, more recently, in Poland. (Scheppele 2016). Moreover, many new illiberal nationalist tendencies within existing member states that presently stand outside the circles of national government but have been making significant electoral headway in recent years, most notably Marine Le Pen's French *Front National* and the Brexit-mobilizing United Kingdom Independence Party, have chosen to define themselves not in terms of their acceptability within an EU framework, but *against* the EU - at least as presently conceived (Muller 2016; Pearce 2016). It seems, then, that the original post-national project of the EU to tame the excesses of nationalism has rarely been under such sustained threat within existing states. Rather than beacons of liberal nationalism, the dominant forms of national ideology in some member states increasingly seem less in sympathy with the central values of the EU than many[12] of the new sub-state nationalisms.

To pose the question more broadly, how does general international law view the legitimacy of national self-determination? Tellingly, the answer is something of a mirror image of the unresolved competition of views we find in the EU. On the face of it, international law, with the high threshold of a "right" to self-determination that Weiler cites in support of his position, embodies the same kind of conservative sovereigntist orientation that we find in the EU. General international law's establishment-biased concern has always been with the minimum necessary disturbance of the existing international distribution of sovereign authority rather than the fairest and fullest accommodation of self-determination claims. Yet

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[12] But by no means all sub-state nationalisms; consider, for example, certain strains of Italian nationalism associated with the *Liga Nord* or some of the variants of English nationalism that helped deliver the Brexit vote.

international law today is becoming more fluid on this matter than first impressions suggest. Competing philosophies bubble under its doctrinal surface (Mancini 2012, 483-7; Patten 2002). The present position tends to reflect the remedial right or just cause theory. This holds that while self-determination is affirmed in the abstract as a universal right, the "nuclear option" of secession is only justified if some basic injustice stands uncorrected, such as a historically unconsented annexation, a continuing lack of protection of the basic rights and security or economic interests of a region, a pattern of systematic group discrimination, or a breach of an existing agreement of autonomous self-government or of the protection of distinct collective rights (Buchanan 2004; Norman 2006). Yet in a postcolonial age in which international law has gradually come to recognize the democratic tide in matters of state formation, this approach is challenged by a more generous primary right or choice theory. This holds that any community which views itself as a distinct national community and which has a special association with a particular territory possesses a claim to sovereign self-determination (Philpott 1995 and 1998; Wellman 1995; Beran 1998).

In practice, there is evidence of a creeping convergence of these positions in the relevant jurisprudence. Since the landmark *Quebec Secession* decision – which sounded in international law as well as in domestic constitutional law –some jurists have begun to proceduralise the right to self-determination into something like a right of a national group "to be taken seriously" (Klabbers 2006; Bell 2014) in its efforts to secede from an existing state. Even though there continues to be no automatic entitlement absent a standing injustice, they claim, the articulation of a desire for independence on the part of a sub-state group, ideally through referendum, should be sufficient to trigger a requirement on the part of the existing state to negotiate in good faith with the sub-state nation over their aspirations for independence.

Even if, notwithstanding these shifts in general international legal thought, a special case for the EU as an entity possessing and pursuing a unique historical mission to make internal secession unacceptable and unnecessary can be advanced along Weiler's lines, it seems dogmatic to use this interpretation of Europe's internal "civilizing mission" to justify a rigid policy against continued membership of new internal states. It appears even more dogmatic to extend this policy to a new or aspiring internal state such as Scotland, whose secession from the UK following a second referendum is likely to be argued at least in part on Europhile grounds – as the only way to remain on European shores against the tide of Brexit. There are, after all, other and rival views of the deeper purpose and distinct regional mission of the European Union, with the emergent 3D federal vision introduced above to the fore. The priority

given in the Preamble to the TEU to the principle of subsidiarity, the deepening significance of EU citizenship as a horizontal relationship amongst persons as multi-level Europeans rather than state nationals, and even the tentative institutional recognition of sub-state identity through the Committee of the Regions and various mechanisms of regionally sensitive distribution of supranational funds, reflect an alternative and more autonomy-friendly perspective.

In sum, the EU is some ways supportive and in other ways resistant to the new trend towards reflexive nationalism. Weiler's argument from redundancy and contradiction has some force. What is more, the EU, as its strategy of conservative neutrality reflects, simply lacks the legitimizing presence to play a robust directorial role in treating the internal secession question. Yet, as we have seen, there is an alternative view which holds that the EU *should* be supportive of new liberal nationalisms, especially those, in the reflexive mould, that do not involve uncompromising pre-commitment to independent statehood. And, in any case, the EU's background work of "stage redesign," so to speak – of introducing a three-level architecture of government – is reframing how we see and experience the goods of political community in ways highly relevant to the question - simultaneously making the prize of sovereign autonomy less definitive and its responsibilities less daunting. And if we recall other trends in international law, in particular the emergent procedural right to be "taken seriously," the question of the legitimacy of any particular sub-state movement's continuing efforts to negotiate the terms of its self-determination – a continuity at the heart of the reflexive approach – is increasingly one that cannot easily be unilaterally dismissed by any existing state within or beyond the EU.

Sustainability

Let us look, in conclusion, beyond the present conjuncture and ask whether current trends towards reflexive nationalism are sustainable in the longer term. There are both sociological and philosophical dimensions to this question.

Sociologically, the challenge is clear. Reflexive nationalism may become embedded as the "new normal," but that is far from guaranteed. Over time a reflexive nationalism risks alienating that part of its constituency whose commitment is more absolute – whose approach conforms to the teleological type. Also, in the absence of clear procedural constitutional guarantees – which are few and far between –I t may be difficult to continue to be taken

seriously in the constitutional conversation current in the existing sovereign state and in any neighbouring interested states. In other words, in the longer term, the self-fulfilling danger exists that reflexive nationalism may come to be viewed by internal and external audiences alike as a nationalism that has simply lost its momentum.

Philosophically, the matter is more complex. If we accept nationalism as a system of graduated authority, then it is perfectly consistent with an ethic of national self-determination to treat lesser forms of institutional achievement as credible marks of self-determination in their own right. For the liberal nationalist, moreover (MacCormick 1999, chs. 10-11), the reflexive approach meets two challenges facing the collective aspiration for political nationalism, one internal and the other external; first, to be sensitive to periodic changes in the internal mix of views as to the optimal form and level of self-determination and, second, to be respectful of, treat with, and accommodate the liberal national commitments and aspirations of other (dominant and otherwise) national groups within the polity.

Yet since reflexive nationalism seeks not just to affirm the graduated element of national self-determination already achieved, but in so doing to hold open the matter of future aspirations, the question of its compatibility with a genuine project of political nationalism arises. Teleological nationalism speaks to a people's mature and settled claim to self-government. Here the claim to popular sovereignty, or constituent power, is tied to its projected realisation – the self-determination is tied to its self-determined object. Compared to that *sovereignty of projection*, however, the reflexive nationalist claims a *sovereignty of choice*; a right *not* to a determinate form and object of self-government but, rather, a perpetual right to decide the form of self-government appropriate to the group. But should any group possess such an open-textured right to make up its collective mind? And in any case, given the ambivalence over institutional objectives implicit in this position, even if sustainable in the long run, can any such putative group right continue indefinitely to be called a right to *national* self-determination, with all that is traditionally implied by this descriptor in terms of the aspiration towards sovereign statehood?

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