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*Sovereignty and Plurinational  
Democracy. Problems in political  
science*

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## 1. THE ELUSIVE CONCEPT OF SOVEREIGNTY

**T**HIS CHAPTER HAS two aims. The first is to discuss the concept of sovereignty within the discipline of political science, and how political scientists have sought to come to terms with 'late sovereignty'. The second is a discussion of one aspect of this, the rise of new claims on the part of stateless nations, challenging not only the state in which they are located but the very idea of the sovereign nation-state itself. My argument is these may provide examples of new forms of politics with a democratising potential and an ability to contribute to thinking about the restructuring of political authority in late modernity.

It is a great paradox that the discipline of political science, so concerned with the distribution of power and legitimate authority, has given rather little attention to the concept of sovereignty. Political scientists have thus found themselves ill equipped to address issues of sovereignty in transition. They talk rather more about the state but here too there is a great deal of semantic confusion and a lot of unquestioned assumptions by political scientists brought up within a national tradition and unable to escape from its assumptions. Two of these are particularly problematic. The first is the connections between concepts of the state and sovereignty. For some, sovereignty is a predicate, whose addition to the noun 'state' amplifies or qualifies its meaning. For others, sovereignty seems to be a defining characteristic of the state. If we follow the logic of the former we should be able to talk of sovereign non-state entities and of non-sovereign states. If we follow the latter, we have a terminological redundancy. A similar redundancy arises in the expression nation-state, often used to refer simply to the state itself rather than as a way adding something or of distinguishing nations and states. Reduced to tautological or purely formal conceptions of

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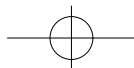
sovereignty, political science has proved unable to come to terms with its subtleties, its variations and its transformations in late modernity.

Some of the reasons for this are to be found in the mundane matter of the division of labour within the social sciences; others within the national traditions in which political science has emerged; and others in the historical epoch in which political science came to maturity coinciding with a specific phase in the evolution of the sovereign state. There is a long-standing division of roles among scholars of international relations; of political theory (or as it used, more accurately, to be called, political philosophy); and of comparative politics (the heart of 'political science'). For international relations specialists, the sovereign state is the central object of analysis, so much so that any suggestion that it may be transcended is sometimes seen as a threat to the discipline itself. While this gives sovereignty a central place in IR analysis, it does not always encourage an analysis of the concept itself. Political theorists have given a great deal of attention to the idea of sovereignty as a normative concept and have been able in recent years to engage in a fruitful dialogue with legal scholars. Yet they have struggled to reconcile their universalist normative principles with a world in which authority is divided into separate jurisdictions which, according to the principle of sovereignty, are ultimately self-validating. Comparative political scientists have tended to give such normative matters a wide berth, leaving them to the theorists. This in turn is explicable by the positivistic bias of political science since its emergence in the late nineteenth century and particularly since the 'behavioural revolution' of the 1960s, with its search for universal rules and forms of explanation.

Political science grew up along with and within the modern state and, when it has not simply taken it for granted, has tended to celebrate it. The political development school of the 1960s and 1970s rather explicitly saw the western state as representing a higher stage of political evolution and a norm to which other polities should aspire. Modernisation (itself a rather loaded concept), economic progress, liberalism and democracy were all presented not merely as coinciding with the consolidated territorial state but as the product of it. Counter-tendencies could be dismissed as part of the 'revolt against modernity'<sup>1</sup> in much the way that opposition to market economics is treated in the early twenty first century. This tendency also allowed political scientists to handle the problem of legitimacy, distinguishing it from mere legality, which could be the product of a backward regime, as well as from mere power. Legitimacy remained a difficult issue but could be brought within the positivistic and behaviourist fold by treating it as a function of the consent of the governed and the satisfaction of the criteria

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<sup>1</sup> Seymour Martin Lipset, 'The Revolt against Modernity', in *Consensus and Conflict. Essays in Political Sociology* (New Brunswick, NK, Transaction, 1975).



of political modernisation. This in turn reinforced the statist assumptions since the state came, *faute de mieux*, to be the sole fount of legitimate authority.

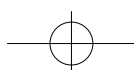
Within this broad consensus, there were certainly national variations, although political science has been dominated to probably a greater degree than any other discipline except economics, by the United States and so has absorbed American national traditions into the comparative mainstream. In the United States, the issue of sovereignty was definitively resolved by 1865 and no-one has been willing to question it since. This has allowed the issue to fade into the background so that domestic politics is treated as a pluralistic game in which groups trade off gains and losses in a form of mutual accommodation. It is as though the state was not there, although the 1980s saw a rather extraordinary (to European eyes) debate about 'bringing the state back in' to analysis.<sup>2</sup> American international relations specialists tend to the other extreme, reifying the state, treating it as a unitary actor, and endowing it with an interest and a strategy. The yawning gulf between these two perspectives has been perpetuated by the existence of separate disciplines, with all the infrastructure of university departments, journals and conferences and the general process of socialising emerging generations. The division has in recent years been brought over to Europe by US scholars studying European integration, and has revived the old debate between neo-functionalists and intergovernmentalists. Among European scholars there is a division between the British, who have tended, like the Americans, to assume the state away in analysis of domestic politics, and continentals who have elevated it to a mystic status, largely beyond question. None of these approaches has equipped political scientists for a world in which the sovereign state is challenged from above and below, in relation both to its functional capacity and to its normative claims. These problems can be illustrated through an examination of three issues: the Westphalian paradigm; the concept of the nation-state; and the debate on the transformation of the state.

## 2. THE WESTPHALIAN PARADIGM

It is a staple of international relations and of most political science that the system of sovereign states was established by the Peace of Westphalia (often

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<sup>2</sup> Thinking in the heyday of behaviouralism is summed up in Nettl's critical comments, 'The concept of the state is not much in vogue' (p.559) and 'nowadays the problem of sovereignty is, for social scientists, a dead duck' (p.560). Nettl did add that the state nevertheless 'retains a skeletal, ghostly existence largely because, for all the changes in emphasis and interest of research, the thing exists and no amount of conceptual restructuring can dissolve it' (p.559). JP Nettl, 'The State as a Conceptual Variable, (1968) 20 *World Politics*, pp. 559-92.



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referred to erroneously as the Treaty of Westphalia) which ended the Thirty Years War in 1648. Unfortunately, neither the Treaty of Munster or that of Osnabrück contains any reference to sovereignty or to anything like the sovereign state.<sup>3</sup> It did provide for the 'nationalisation' of religion as a way of coping with a problem that had threatened public order over the previous hundred years but this can scarcely be its main legacy since European countries have long abandoned the idea that religious uniformity is a defining task of the state. It did not establish the present system of European states, and indeed the only state which still has its 1648 borders is Portugal. On the contrary, its main achievement was the prolongation of the Holy Roman Empire for another 150 years. The Westphalian fallacy seems to arise from a teleological interpretation of what happened in the subsequent three hundred years and an assumption that the seeds must have lain in this event. This is unfortunate since it appears to close off other possible historical trajectories and obscure other traditions which may be of relevance in our present day circumstances of 'late sovereignty'.

Leaving these issues aside for the moment, Westphalian scholars generally hold that state sovereignty is absolute and indivisible, and has an external dimension and an internal one.<sup>4</sup> The external dimension is summarised by Held<sup>5</sup> in seven propositions:

The world consists of, and is divided by, sovereign states which recognise no superior authority.

The process of law-making, the settlement of disputes and law enforcement are largely in the hands of individual states.

International law is orientated to the establishment of minimal rules of co-existence; the creation of enduring relationships among states and peoples is an aim, but only to the extent that it allows national political objectives to be met.

Responsibility for wrongful cross-border acts is a 'private matter' concerning only those affected.

All states are regarded as equal before the law; legal rules do not take account of asymmetries of power.

Differences among states are ultimately settled by force; the principle of effective power holds sway. Virtually no legal fetters exist to curb the resort to force; international legal standards afford minimal protection.

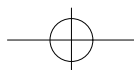
The minimisation of impediments to state freedom is the 'collective' priority.

Internal sovereignty means that the state has complete control over its territory and ultimate authority within it. The external sovereignty argument is an important foundation for the 'realist' school in international relations and their assumption that the state has an interest in maintaining

<sup>3</sup> A Osiander, *The States System of Europe, 1640–1990. Peacemaking and the Conditions of International Stability* (Oxford, Clarendon, 1994).

<sup>4</sup> Robert Jackson, 'Sovereignty at the Millenium', (1999) 47 *Political Studies*, pp. 423–30.

<sup>5</sup> David Held, *Democracy and the Global Order* (Cambridge, Polity, 1995), p.78.



its own sovereignty and autonomy and expanding its influence. The internal sovereignty argument is the basis for most political science, which sees states as self-contained self-regulating systems.

Yet there are serious problems with both dimensions of the state sovereignty paradigm. A common one is that some states lack the power and resources for any kind of autonomous action, while other non-state entities may have a great deal of power. Westphalians will dismiss this objection easily by pointing out that sovereignty is a legal principle which has nothing whatever to do with power, which is another matter altogether. A slightly different way out is to distinguish between *de facto* and *de jure* sovereignty<sup>6</sup> where *de facto* sovereignty appears to mean *de jure* sovereignty plus the ability to exercise it in practice. In one sense, they are of course right since power and legitimacy are two different things, but in an other the response is too facile. If sovereignty is a legal principle, it must surely be rooted in a system of law and, according to the Westphalian paradigm, there is no system of international law to sanction it. Indeed, if there were such a system one might argue that it and not the individual states, was the repository of sovereignty. Resorts to recognition by the United Nations or by other states merely beg the question. Once we bring in a distinction between factual power and legitimate power or sovereignty, we are on the slippery ground of normative concepts, a terrain in which political scientists are all too prone to fall down. As for international relations, there is surely something anomalous in scholars subscribing to a 'realist' perspective on world politics appealing to essentially normative principles to distinguish the state from other forms of organised power.

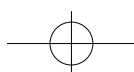
On the internal dimension of sovereignty, an objection is often lodged by federalists who note that certain states divide sovereign power among two levels of government, neither of which is competent to trespass in the reserved fields of the other. The answer of the Westphalians is that this is merely an internal matter, which leaves the external dimension of sovereignty and thus the sovereignty of the state in its entirety unchanged. Yet this is to evade the question. It does not address the issue of internal sovereignty directly and, in so far as there are implications for the 'internal' doctrine it implies that violations of federal order have no remedy. In particular, federated units whose powers are curtailed by federal governments cannot seek redress in secession or in appeals to outside powers.

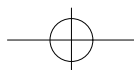
### 3. THE NATION-STATE

Further confusion is introduced into the debate by the term 'nation-state'. For many political scientists and IR scholars, this is synonymous with the

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<sup>6</sup> *Ibid* p.82.



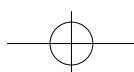
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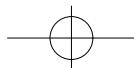
sovereign state, and the term itself is often used as an inseparable compound. This is confusing indeed since if states are by definition sovereign, then no prefix at all is needed. If we want to emphasize sovereignty, on the other hand, why resort to the prefix 'nation' which introduces another whole set of ideas and associations altogether? Where it does not stem from simple confusion or sloppy thinking, the term nation-state may refer to two quite separate ideas; that states are in practice made of nations; or the basis for endowing the state with sovereign authority lies in the nationality principle. One is an empirical argument and the other a normative one. The normative argument is that political authority must rest upon consent and that the national community is the best basis for this. Self-determination, the principle that states should reflect communities of consent, is thus a foundation for democracy. Shared national identity is also, for some liberals like J.S. Mill, a condition for a liberal democracy, since it provides the shared values and trust that are needed to underpin a liberal order. Closing the circle, it is then possible to argue that the sovereign nation state in which the boundaries of the demos correspond to those of political authority is a necessary if not sufficient condition for democratic life. Unfortunately, as Jáuregui<sup>7</sup> notes, this ensures democracy within the nation state only at the cost of a complete absence of democracy in the international order.

The most common objection to the principle of basing sovereign statehood on nationality, however, is that nationality is itself impossible to define or agree on. Gellner, Connor<sup>8</sup> and many others have recounted that there are thousands of 'nations' in the world and not enough states to go around. For the most part these objections can be dismissed as resting on another conceptual confusion, between ethnic groups or even language groups, and nations, and on the assumption that every group will wish to constitute itself into a sovereign state. In fact, many nations are ethnically heterogeneous, including some with extremely strong national identities (like the United States). As for language this is just one possible criterion which national identity might rest; there are nations without their own language and language groups without their own nationality. Nationality cannot be defined as a descriptive category or reduced to some other, measurable attribute like language. It is rather a normative concept, combining elements of objective criteria with a subjective sense of common identity, and the demand to be treated as a distinct entity with its own collective rights. Groups defining themselves as nations are thus advancing a claim to

<sup>7</sup> Gurutz Jáuregui, *La democracia planetaria* (Oviedo, Nobel, 2000).

<sup>8</sup> Ernest Gellner, *Nations and Nationalism* (Oxford, Blackwell, 1983); Walker Connor, 'A Nation is a Nation is a State, is an Ethnic Group, is a . . . ' (1978) 1 *Ethnic and Racial Studies*, pp. 379–400.



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self-determination and to be constituted as a subject in the political order. To put it slightly differently, then, they are making claims to sovereignty.

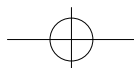
Political science and international relations have had considerable difficulty in coming to terms with this issue, since they once again identify sovereignty with the state and assume that the only means for its exercise lies in secession and the creation of a new state. For the IR mainstream new states may be created by secessions or decolonisation but this merely confirms the validity and ubiquity of the principle of sovereign statehood itself. Indeed for James<sup>9</sup> it appears that recognition by the original state is the key criterion for the transfer of sovereignty. Comparative politics specialists have written a great deal on nationalism and secession as a problem of political stability and management but have also tended to take their units of analysis for granted. Political theorists are tied to a universalist form of reasoning in which no principle is valid unless it can be applied everywhere in a consistent manner. Since there is no agreement on what constitutes a nation, what the boundaries of nations are, or how many nations exist, we cannot construct a general right of self determination on such a flimsy basis.<sup>10</sup> Consequently political scientists, including IR specialists, theorists and comparativists have been almost unanimously opposed to the idea of secession, since they have been unable to find a political principle to justify it. Yet they have been almost equally unanimous in not feeling any need to justify the existing state system or pattern of sovereign authority.

The result is to reinforce the conservative status and role of political science. The existing state system is taken as not only a constellation of power but as embodying powerful normative principles such as sovereignty and nationality. Yet these are the very principles whose incoherence and lack of operational application are used to knock down arguments for other forms of political order including secessionist states or the relocation of sovereignty. Now it may be that a Hobbesian argument can be made to the effect that present states and boundaries at least guarantee order and that to change them risks destabilising the whole social system. Secession might be imprudent, or bad policy, but this is not a fundamentally ethical matter. It would not justify the whole ideological apparatus constructed by political science to defend the nation state unless we assume that political scientists are the organic intellectuals whose role is to legitimate the power structure.

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<sup>9</sup> Alan James, 'The Practice of Sovereign Statehood in Contemporary International Society', (1996) 47 *Political Studies*, pp. 457–73.

<sup>10</sup> Wayne Norman, 'The Ethics of Secession as the Regulation of Secessionist Politics' in Margaret Moore, (ed.), *National Self-Determination and Secession* (Oxford, Oxford University Press, 1998).



## 4. CHALLENGES TO SOVEREIGNTY

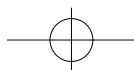
None of this mattered a great deal in the heyday of state-centred political science in the twentieth century, especially during the Cold War. It has, however, left political science ill-prepared for a new order in which the relationship between state and nation is called into question and in which new normative orders are emerging, above, below and beyond the state.

Scholars have given a lot of attention to the functional restructuring of the state, its supposed loss of decisional autonomy and the fragmentation of public power. The panoply of effects caught by the term globalisation includes economic, cultural and political changes. Rapid capital mobility and the rise of transnational corporations are said to constrain the power of states to manage their national economies and undermining the very notion of national economies. The ability of capital to opt out of social responsibilities by relocating is said to undermine national welfare states and force governments into similar programmes of restructuring. Cultural globalisation, or perhaps just the extension of American cultural norms, are seen to threaten national cultures, ways of life and even identity. Consequently, the whole social and political balance underpinning the mixed economy welfare state is disintegrating. This has spawned a huge literature pitching globalisation theorists against those who insist that nothing much has changed; and economic determinists for whom states must bow to global markets, against those who still believe that states can act to promote their own distinctive goals. This is not the place to resolve these arguments, although I believe that while globalisation does matter, its use by economic and political elites to construct a world vision in which other policy options are closed is even more important. Globalisation has coincided with an ideological assault on the state by neo-liberals. Either way, globalisation and its interpretation have helped break the mystique of the state and forced a reconsideration of the structures in which politics is conducted. Whether they represent the end of sovereignty<sup>11</sup> is another matter.

A second set of factors is represented by institutional change. States have conceded powers and authority to transnational bodies in a range of areas, including economic regulation, human rights and security and, in Europe, are in the process of constructing a whole new polity. At the same time, many states have been devolving power to lower levels so that all the large European states now have an intermediate or 'meso' level of government. These devolved or federated governments have in turn started to engage in politics at the European level and to conduct a variety of 'paradiplomatic'

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<sup>11</sup> J Camilleri, and J Falk, *The End of Sovereignty? The Politics of a Shrinking and Fragmenting World* (Aldershot, Edward Elgar, 1992).



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activities beyond the state borders. As the old model of state economic management breaks down, regions are increasingly seen as productive systems in their own right and pitched directly into global markets in competition with each other for capital, markets, technology and labour.

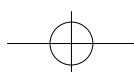
These changes pose serious challenges to traditional thinking about states, nations and sovereignty, but there has been a variety of responses. For some, functional restructuring and institutional change do not fundamentally alter the nature of the state or its sovereignty, since sovereignty is about something else. So there is nothing to stop states using their sovereign authority to reject globalisation, although there may be a heavy cost. Membership of the European Union, still less of other transnational organisations, does not curtail sovereignty since states can always withdraw and in any case these organisations are based precisely on the existence of state sovereignty and draw their authority from it. Devolution to sub-state governments can be reversed either by a simple state law (in the United Kingdom) or by constitutional amendment elsewhere. There is more difficulty in the case of federal states like Germany or Canada, where the central government owes its existence to the same constitutional document as the federated units but, as noted above, the supporters of the state sovereignty principle manage to evade this issue by insisting that 'external' sovereignty is still absolute.

Another group appears to identify the loss of functional authority as a loss of sovereignty itself. There is a whole raft of books on the demise of the nation-state including Kenichi Ohmae's piece of functional reductionism, which equates the rise of regional economies with the end of the nation-state itself, without need even of a question mark.<sup>12</sup> In his vision, the end of the state and its sovereignty is a thoroughly good thing, allowing the market to remain as the sole principle of legitimacy. This chimes with public choice analysis which has become very influential in political science in recent years, and which holds that the sole principle of legitimation is individual self-gratification. States are mere mechanisms for facilitating this and have no special status above other forms of social organisation. Indeed, public choice advocates tend to be very suspicious of states and conceptions of sovereignty as obstacles to the expression of individual preferences and interests. Others are more concerned about the loss of sovereignty. Guéhenno writes of the end of the nation-state, a phenomenon which in the French version had been described as the end of democracy itself.<sup>13</sup> David Held moves from a discussion of sovereignty through the question of state autonomy to argue that at some point the principle of state sovereignty

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<sup>12</sup> Kenichi Ohmae, *The End of the Nation State. The Rise of Regional Economies* (New York: Free Press, 1995).

<sup>13</sup> Jean-Marie Guéhenno, *Fin de la démocratie* (Paris, Flammarion, 1993); *The end of the nation-state* (Minneapolis, University of Minnesota Press, 1995).



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itself is undermined.<sup>14</sup> Others have questioned the usefulness of the doctrine of sovereignty if it is progressively emptied of substantive content.

A third group have opted for a form of neo-pluralist analysis in which the sovereign state, seen as based on principles of hierarchy, gives way not to unbounded markets but to self-regulating networks. The term 'multilevel governance' has been applied to a way of thinking about the European Union that rejects both the intergovernmentalist and the neo-functionalalist visions, as well as to the rise of regionalism and the increasing interpenetration of the public and private sectors.<sup>15</sup> This has its origins in organisational theory, which refuses to accord the state a privileged place in the analysis and sees sovereign authority as no more than one power resource among others, to be used in a process of mutual accommodation and bargaining.

All of these approaches raise serious problems at two levels, the analytical and the normative. The analytical need is for principles and concepts allowing us to explore issues of power and legitimacy. Normatively, the problem is how to find the bases of democratic community and control over government.

Simply denying that shifting constellations of power and functional capacity have anything to do with sovereignty is unhelpful. We can cope with some disjuncture between the formal claim of sovereignty and the real functional autonomy of the state, but if these become totally disconnected then the analytical value of the concept of sovereignty must come into question. It would also render discussion about the use of sovereign authority as the basis of democratic political control almost meaningless. The normative claims of sovereignty have always rested on a certain mystification of the state and both functional restructuring and ideological challenges have begun to break this too. The magic gone, people just stop believing in the absolute claims of the state.

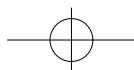
As for the neo-liberal prophets of the end of sovereignty, they too are trapped in a contradiction. They may celebrate the end of state control of economic management and welfare but their followers in the political world tend to be well aware that maintaining a neo-liberal order requires a large repressive apparatus, combining the 'free economy and the strong state'.<sup>16</sup> Indeed the British Conservative Party in recent years have sought to combine a programme of rigorous anti-statism in economic matters with an increase in the repressive capacity of the state and an obsession about

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<sup>14</sup> David Held, above, n 5.

<sup>15</sup> Gary Marks, Liesbet Hooghe and Kermit Blank, 'European Integration since the 1980s: State-centric Versus Multi-Level Governance', (1996) 36 *Journal of Common Market Studies*, pp. 343–78.

<sup>16</sup> Andrew Gamble, *The Free Economy and the Strong State. The Politics of Thatcherism* (London, Macmillan, 1988).

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maintaining sovereignty in Europe. Sovereignty does seem to matter after all. Public choice advocates, who tend to be of a more libertarian disposition than the average British Tory, prefer to assume away the question of who will be making the rules, how they will be enforced and within what units they will operate.

Neo-pluralists in the multilevel governance school similarly tend to avoid questions about order and the maintenance of the rules of the game. By reducing the state to just one actor among many, they sidestep the question of legitimacy. Instead, the legitimacy of the process seems to be determined purely by its outcomes, or by the presence of multiple 'stakeholders' or, as they would have been called in the old days, interests. This violates a fundamental principle of liberal democratic order, that the process by which decisions are taken also matters a great deal too. As with other forms of pluralist analysis and organisation theory, the methods and choice of units of analysis preclude them from looking at these issues.<sup>17</sup>

## 5. STATELESS NATIONS AND SHARED SOVEREIGNTY

For some observers, the decline of the sovereign state represents a setback for democracy so that there is an urgent need to re-establish it or save it in something like its traditional form.<sup>18</sup> Others like Held<sup>19</sup> have called for new forms of global democracy. The problem is that most efforts to create this have involved somewhat improbable mechanisms at the global level, although one might think that the problems facing the old state would resurface again at this level, notably those of lack of power and the basis of legitimacy. Jáuregui is on firmer ground, arguing for a 'planetary democracy' based in emerging realities.<sup>20</sup> These include states but also the European Union and the claims of stateless nations.

Minority nationalism within democratic states has generally had a bad time from political scientists, regarded at one time as a pathology of the body politic, evidence of 'failed' state-building or retarded modernity or at best a 'problem' to be dealt with. Faced with the prestige and power of the sovereign state, minorities were required to demonstrate good reason for existing as collectivities, let alone making demands for self-government. They were caught in a conceptual trap in which, to gain any recognition they had to demonstrate that they were 'different'; but their very difference

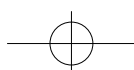
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<sup>17</sup> It is not adequate, as some have now proposed, to bolt on a normative dimension to organisationally based analysis, since the very framework rules out the big questions about sovereignty and authority that we are trying to address here.

<sup>18</sup> Ralph Dahrendorf, 'La sconfitta della vecchia democrazia', *La Repubblica*, 12 January 2000.

<sup>19</sup> David Held, above n 5.

<sup>20</sup> Gurutz Jáuregui, above n 7.



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was then used to suggest that they failed to meet the universal liberal democratic criteria. In recent years, however, minorities in western European states (as well as other places like Canada) have been able to turn the tables on the states, themselves suffering from increasing problems of democratic performance and legitimacy. Minority nationalisms have tended to de-ethnicise, adopting the same inclusive and civic discourse that was previously the property of state-nationalism. They have, with some notable exceptions, tended to move towards the progressive side of politics and make common cause with new social movements. They have accepted globalisation less as a threat than an opportunity, and they have wholeheartedly embraced European integration.<sup>21</sup> Nor are the minorities marked by pronounced social and political ‘difference’. Minority nationalism has increased in importance, although values have continued to converge between state majorities and minorities and, more generally, across Europe as a whole, an affect recalling de Tocqueville’s paradox.<sup>22</sup> Nationalist movements have to a greater or lesser degree moved from demanding their own sovereign state to seeking a place in a the new order of diffused authority and shared sovereignty.

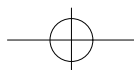
In some ways, this makes the nationality issue more tractable, especially within the European political space. Yet on the other hand, it raises new and difficult issues. If stateless nations are no longer making particularist demands for special treatment, they are making broad claims to constitute the primary framework for social regulation. They are, as Langlois puts it, becoming ‘global societies’ rather than ethnic fragments.<sup>23</sup> They are also making claims to sovereign authority, not necessarily in the old exclusive manner of the nation-state, but to a sufficient degree to constitute themselves a subjects and not objects of constitutional debate. Usually this is expressed as a demand for self-determination, meaning not necessarily the right to establish their own state, but the demand to negotiate their own position within the emerging state and transnational order. So in the United Kingdom, Spain, Belgium and France, we see strong nationalist movements with substantial public support, none of which is seeking a state on traditional lines. Quebec nationalists have consistently linked their demand for ‘sovereignty’ with support for continued links to the rest of Canada. Flemish nationalists tend to support secession only in so far as they can be

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<sup>21</sup> Michael Keating, *Nations against the State. The New Politics of Nationalism in Quebec, Catalonia and Scotland*, 2<sup>nd</sup> edition (London, Palgrave, 2001); *Plurinational Democracy. Stateless Nations in a Post-Sovereignty Era* (Oxford, Oxford University Press, 2001).

<sup>22</sup> Stéphane Dion, ‘Le nationalisme dans la convergence culturelle. Le Québec contemporain et le paradoxe de Tocqueville’, in R Hudon and R Pelletier (eds), *L’engagement intellectuel. Mélanges en l’honneur de Léon Dion* (Sainte-Foy, Presses de l’Université de Laval, 1991).

<sup>23</sup> Simon Langlois, ‘Le choc des deux sociétés globales’, in Louis Balthazar, Guy Laforest and Vincent Lemieux, *Le Québec et la restructuration du Canada, 1980–92* (Saint-Laurent, Septentrion, 1991).

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absorbed into a tighter European union. Catalonia's dominant coalition, *Convergència i Unió* is quite forthright in rejecting independence and ties this to a historic vision of Catalonia before 1714 as a self-governing trading nation within the Crown of Aragon, linked to Spain and operating in the wider Mediterranean and European arenas. Even the more independence-minded *Esquerra Republicana de Catalunya* wants separation from Spain only when a European federation is available to take its place. Basque nationalists tend to be more separatist but are still mostly in favour of a post-sovereign order similar to the Catalan vision. The most classically statist is the Scottish National Party, which seeks independence within the European Union, but even it is divided between those who want full statehood and a post-sovereignist wing. The Welsh nationalist party, *Plaid Cymru*, has eschewed independence in favour of Welsh self-government within the emerging European order. Public opinion in these places generally follows a similar line, refusing to make a hard and fast distinction between home rule and independence, favouring more self-government but not interested in taking on all the classical functions of statehood, such as defence and security or monetary autonomy.<sup>24</sup>

Their justifications for their demands are based on two grounds, which are not always deployed together or, where they are, not always in a consistent manner. These are that they are historically constituted nations with original rights which were never surrendered to the state; and that they are a self-conscious community expressing a democratic demand. So one leg of the argument rests in the past and the other in the present. Now it is easy to mock the idea of historic rights and to point to the degree of invention in nationalist historiography. It is also easy to say that if we were to concede self-determination to any group that expressed a desire for it, the world would be unmanageable. These are indeed the standard answers in the political science literature. Yet these two grounds are, if we are to be candid, the very bases upon which political science upholds the sovereignty of the existing states (or fails to question it). Now that the states are losing their mystique and are challenged from above and from below, they are being forced to justify their own sovereign claims, and do so in rather different ways.

Stateless nations with their own governments have now consolidated the argument as modern institutions have claimed to custodianship of these historic rights. The Scottish Parliament, according to the continuing Westminster doctrine, is the creature of British statute and could be abolished tomorrow with a one-line bill. Yet almost nobody in Scotland believes this.<sup>25</sup> Quebec politicians are almost unanimous that the Canadian federa-

<sup>24</sup> A fuller analysis is given in Michael Keating, *Plurinational Democracy*, above n 21.

<sup>25</sup> The Labour Party has faced both ways, signing the Declaration of Right of the Scottish Constitutional Convention, that sovereignty rests with the Scottish people, and then insisting in the Scotland Act 1998(s.27) that Westminster sovereignty is as absolute as ever.

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tion is based upon a bargain between the French Canadian (now Quebec) nation and English Canada so that repatriation of the constitution in 1982 without the assent of the Quebec National Assembly was illegitimate. Basque politicians claim that their historic rights, or *fueros*, are original rights prior to the 1978 Spanish constitution, while their counterparts in Madrid insist that they are the gift of the Spanish state. Catalan politicians have less by way of legal continuity on which to base their claims, but will insist that Catalonia never surrendered its sovereign rights and can therefore negotiate its own place in Spain and Europe. It is not just the nationalists in these cases who are making these claims; they are shared also by those who would use their self-determination to remain within the host state.

We thus have a paradox, that sovereignty is said to be ebbing away, but new sovereignty claims are being made all the time. Yet these, by and large, are not the expansive claims of the classic 'nation-state' but claims rather to recognition as legitimate actors in complex systems of authority. If historic rights have gained new currency in the argument over power and authority, it is not because people are looking to the past as a model for the future, but because these are ways of establishing their credentials. As Herrero de Miñón puts it, they are claims not to do but to be.<sup>26</sup>

Political science has not yet developed the conceptual tools to address this constellation of authority but there are some elements that might be pressed into service. Rokkan and Unwin identify the 'union state' as a category distinct from both federal and unitary states. In the union state, the various parts or some of them, came into the union on special terms and retain elements of their old rights and institutions.<sup>27</sup> The concept, never developed further by its authors, has been taken up in recent years in relation to the United Kingdom and particularly the case of Scotland.<sup>28</sup> Elazar's concept of unions as a distinct form of state picks up the same idea.<sup>29</sup> An earlier formulation was Jellinek's idea of 'fragments of state' recently brought into the Spanish debate by Herrero de Miñón.<sup>30</sup> A fragment of state is an entity with some of the attributes of a state (territory, subjects and government in Jellinek's formulation) and the idea was clearly inspired by the crownlands and other territories of the Habsburg empire in the nineteenth century. It could equally apply, however, to Scotland, Catalonia, Quebec or the Basque Country.

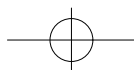
<sup>26</sup> Miguel Herrero de Miñón, 'Estructura y Función de los Derechos Históricos: un problema y siete conclusiones', in Miguel Herrero de Miñón and Ernest Lluch (eds), *Foralismo, Derechos Históricos y Democracia* (Bilbao, Fundación BBV1998).

<sup>27</sup> Stein Rokkan, and Derek Urwin, *Economy, Territory, Identity. Politics of West European Peripheries* (London, Sage, 1983).

<sup>28</sup> James Mitchell, *Strategies for Self-government. The Campaigns for a Scottish Parliament* (Edinburgh, Polygon, 1996).

<sup>29</sup> Daniel J Elazar, *Exploring Federalism* (Tuscaloosa University of Alabama Press, 1987).

<sup>30</sup> Miguel Herrero de Miñón, *Derechos Históricos y Constitución* (Madrid, Tecnos, 1998).

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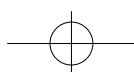
So we have new ways of thinking about sovereignty, but these are also rooted in historic doctrines and practice, notably the notion of constitutions as a form of pact. Modernists have tended to dismiss these notions as part of the ancien régime, or as feudal, mediaeval hangover having no place in mature constitutionalism. There is a certain metropolitan or statist bias here too, as when scholars dismiss the Scottish Declaration of Arbroath (1320) with its doctrines of Scottish sovereignty and limited kingship, as nothing more than a fabrication of monks at the behest of mediaeval barons, but laud Magna Carta as the foundation of English and, by extension, British democratic liberties. There is a similar tendency in Spain.<sup>31</sup> Centralists have taken the constitution of Cadiz (1820) as the foundation of the democratic Spanish nation, claiming that this over-rides pre-existing forms of sovereignty just as the French Revolution swept away the ancien régime and its privileges to focus sovereignty in the people. The demystification of the state stemming from its loss of functional capacity and the rise of other forms of normative order have made it less easy to make this sort of case, but such is the dependence of political science (and much other social science besides) that we do not yet have a new paradigm to encompass the new dispensation. I have, with some trepidation, used the term ‘post-sovereignty’ to capture that which is both new and old. Social scientists are given to resolving this type of terminological conundrum by resorting to the prefixes ‘neo’ and ‘post’, not abandoning the old terms but incorporating them in the new. The term ‘post-industrial’, for example does not denote the abandonment of industry—all post-industrial societies are industrial—but refers to a stage in which industrialism no longer provides the sole or main social paradigm. Post-modern, according to the Cambridge English Dictionary, ‘includes features from different periods in the past or in the present and past.’ So, unable to find a better alternative, I have been using the term ‘post-sovereignty’ not to denote an era in which sovereignty has disappeared but rather to denote its transmutation into other forms.

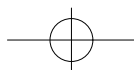
## 6. PLURINATIONAL DEMOCRACY AND THE FUTURE OF EUROPE

Political science has been very concerned with the question of democratic order, but has tended to see the sovereign nation-state as the sole possible container for it. It has therefore struggled with the normative aspects both of plurinationalism and of European integration. Proposals for democratising Europe have tended to take the form either of constituting it as a new form of state, albeit a federal one, or of strengthening the role of member states within it. Neither adequately responds to the needs of democratic development in contemporary conditions. It is well known that Europe does not possess a single demos such as might underpin a democratic order

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<sup>31</sup> Mikel Sorauren, *Historia de Navarra, el Estado Vasco* (Pamplona, Pamiela. 1998).

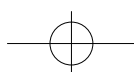
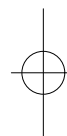
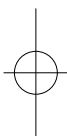


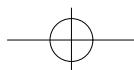
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modeled on the nation-state and, indeed, one of the main objects of the European project was to transcend this type of nationalism whose other side is aggression and xenophobia. Were it to become a state, or even to aspire to being one, then it would provoke a reaction from both state and stateless nationalists, who would resent it as a new form of domination. It would also rigidify its institutions and ways of working, depriving it of the flexibility that has proved its strength. A European state or federation would have to follow a specific model, as we see from the different visions of what it might look like coming from French and German enthusiasts.

Going back to the old sovereign-nation-state model is also ruled out, since I have been arguing that the three elements in this compound are separable in principle and increasingly separated in practice. Yet there is a democratic deficit. Complexity and the proliferation of levels of decision making do reduce democracy as power seeps from elected institutions into networks. If multilevel governance means anything, it is surely a highly undemocratic order in which organisational elites and those with the skills, time and resources to operate in complex sectoral and territorial networks have immense advantages over their fellow citizens. Democratic and accountable government is a complex matter but there would seem to be two basic requirements. The first is the existence of deliberative spaces for the formation of a democratic will. I am assuming here, against the Public Choice school, that citizens' democratic preferences are not the mere sum of individual desires, which could be left to the market or to referendums, but result from deliberation and exchange. It is these deliberative spaces that need to correspond to a sense of common or shared identity, or to a demos, if not an exclusive one. The second requirement is a system of accountability corresponding to the areas of decision making in the emerging functional systems. In a complex system with functional and territorial divisions, these can no longer always be done by the same institutions.

For example the European Parliament is probably as good as most national parliaments (admittedly not a difficult test) in scrutinising executive institutions and holding them to account (the fall of the Santer Commission is exemplary). It does not, on the other hand, sustain a pan-European deliberative community or help form a pan-European democratic will. It probably never will, and possibly never should. We may therefore need to delink these activities. Accountability and scrutiny may take a variety of forms—audit, legal control, parliamentary investigation, adversary politics—and work at various levels. Deliberative democracy and will formation can similarly occur at various levels. In some cases, the state remains the main focus. This is clearly so in Denmark, Portugal and Ireland, and is still largely true in the larger states of France and Germany. In Belgium, on the other hand, deliberation is increasingly confined to the two main linguistic communities. In the multinational states of Spain and the United Kingdom there are deliberative communities within the nations of



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Catalonia, the Basque Country, Scotland and Wales, as well as at the state level. Northern Ireland presents further complexity, caught as it is between a UK community with which its links are weakening, an all-Irish community, and an Ulster or Northern Irish community.

There is in parts of the social science community a residual prejudice against recognising national communities other than states as deliberative communities or as the building blocks of democracy. Siedentop for example, referring to the historic regions of Europe insists that 'few such regions have any civic tradition, any tradition of democracy or citizenship in working order.'<sup>32</sup> Dahrendorf calling for a renewal of democratic citizenship in the face of transnationalism, insists that this should not rest on communities like Wales, Quebec or Catalonia on the grounds that these are divisive and produce rigidities.<sup>33</sup> Like Habermas<sup>34</sup> these writers seem to favour a kind of deracinated democracy, ignoring the specific cultural bases of their own societies or confusing them with a kind of cosmopolitan virtue. This amounts to a form of evasion, shirking the need to democratise communities of will where they exist and to embrace new forms of citizen involvement. Similarly, the frequent description of the emerging order as 'postnational' repeats the old conceptual confusion of nation and state. We may, I have argued be in a post-sovereign era if sovereignty is identified with the old absolutely sovereign state. Nationality, on the other hand, is very much with us and remains one of the structuring principles of modern societies. What we need are new ways of connecting it to political order and reformulated conception of sovereignty.

Stateless nations are not, of course, the only possible deliberative communities. Elsewhere, the pressures for participation and democratisation have favoured deliberative communities at the city level. This is notably the case in France, where decentralisation has strengthened the local level as a political arena, and in Italy, where the crisis of the central state has coincided with a revalorisation of the local level. In other cases again, the deliberative community might be a large region, beyond a city but without the characteristics of a stateless nation. In the limiting cases, democratic will and identity may be located at a very small scale, as in the small communes of many countries, which are too small to correspond to any functional system.

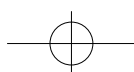
Deliberative democracy may therefore be located at various levels and stateless nations, far from being a problem for Europe, may serve as exem-

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<sup>32</sup> Larry Siedentop, *Democracy in Europe* (London, Allen Lane, 2000), p. 175 Even more contentiously, Siedentop compares European regions unfavourably with the original American colonies, without mentioning slavery or the disenfranchisement of women.

<sup>33</sup> Ralph Dahrendorf, 'Preserving Prosperity', *New Statesmen and Society*, 13/29 December, 1995, pp. 36–40.

<sup>34</sup> Jürgen Habermas, 'Die postnationale Konstellation und die Zukunft der Demokratie', in *Die postnationale Konstellation. Politische Essays* (Frankfurt, Suhrkamp, 1998, pp. 91–167).



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plars of such communities. Yet to create a democratic commonwealth, these communities must be linked and not isolated. This inter-communicative aspect of democracy is essential, with ideas and practices flowing from one to another and a continuing debate on the common good articulated at various levels.<sup>35</sup> Pillarised societies are ill-equipped to do this, as critics of consociational democracy have often pointed out. The relationship between English and French Canada has often been described as one of two solitudes, a tendency that may increase with the reassertion of nationalism on both sides. Belgium is in the process of falling into the same problem, as inter-communication between the two communities declines; it is fortunate in this case that both communities are part of a broader European communicative order. Northern Ireland is a deeply divided society, but there is now a conscious policy of building links across the communities, to the Republic, to the United Kingdom and to Europe. There is a historic fear in Scotland of parochialism, and this has placed a barrier in the path of home rule; it is greatly lessened in the European context. Similarly, the traditional isolation of much of Basque society is being overcome by linking it to other European communities. In this vision, the democratisation of Europe would come not through strengthening summit-level institutions on the assumption that they correspond to a unitary demos, but through a whole system of parliamentarism, linking Europe, states and sub-state levels.<sup>36</sup> Here again, Europe has a role to play, not as a hierarchically superior level of government or proto-state, but as an open and plural system underpinned by some shared values. European integration may not involve a direct assault on state sovereignty since, as has often been noted, it is the creation of states themselves. Yet it may permit a loosening of state monopolies and facilitate asymmetrical constitutional arrangements to allow the expression of multiple identities since it ensures that matters like market regulation and human rights will not diverge excessively.

Plurinational democracy is thus more than multilevel governance or anarchic pluralism. It rests on some structuring principles at both analytical and normative levels, locating democracy in communities of will, incorporating historic rights and current demands and recognising the needs of mutual accommodation. It assumes a body of shared democratic principles and human rights. It is not a blueprint for a new world, but a way of doing politics in a complex world where not only functional capacity but also normative claims to authority are dispersed.<sup>37</sup>

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<sup>35</sup> James Tully, *Strange multiplicity. Constitutionalism in an age of diversity* (Cambridge, Cambridge University Press, 1995).

<sup>36</sup> Jean-Marc Ferry, 'Quel patriotisme au-delà des nationalismes? Réflexion sur les fondements motivationnels d'une citoyenneté européenne', in Pierre Birnbaum (ed.), *Sociologie des nationalismes* (Paris, Presses Universitaires de France, 1997).

<sup>37</sup> These arguments are developed at greater length in Michael Keating, *Plurinational Democracy*, above n 21.