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Europe as a multilevel federation

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ABSTRACT

European federalism must be conceived at multiple levels, not just that of the state and the EU. A regional level has emerged below and across the states, as a result of spatial rescaling: the migration of functional systems, political change and the institutionalization of the regional level. The sub-state region remains a contested space, both as to its territorial boundary and its control. The EU itself has used the regional level for the framing and implementation of its own policies. Regional politics are characterized by inter-regional competition. Demands for recognition and autonomy from below have added another dimension. There is not a uniform regional level of politics or policy but a variety of constructions of the region. Federalism helps us understand this changing dynamic, if it is seen not as a specific form of government but as a general principle of order, combining unity with diversity.

KEYWORDS Competition; federalism; regions; rescaling

Introduction

As the editors of this collection note, EU studies have been dominated by a division between intergovernmental and neo-functionalist perspectives. For the intergovernmentalist, the unit of analysis is the nation-state, often seen as a more-or-less unitary actor, but this risks reifying the state and seeing it as the sole interface between Europe and sectoral or territorial actors within states. Neo-functionalism overcomes this methodological statism but is criticized for its teleology and failure to explain what has actually happened. Both approaches eschew normative questions. The federalist perspective opens the European level as a political arena, examining policy-making and interest mediation and the complex relationships between national and European levels. It reintroduces normative issues like balancing power, subsidiarity, sovereignty, representation and solidarity.

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This is a useful move but incomplete. If we are to apply federal perspective at the European level, then logically we must open up to other spatial levels, including the sub-state level. Yet the sub-state level is not a fixed and knowable set of units that might be captured by a federal-type constitution, but a highly heterogeneous and shifting field. Spatial rescaling is altering the relationships between function, political mobilization and institutions. European integration and regional government can be seen as twin efforts to recapture policy fields that have escaped the purview of nation-states but, as Livingston (1952) noted, there is often a disjunction between federal institutions and underlying sociological patterns. Rescaling upwards and downwards are contested projects, which cannot be resolved by reference to purely functional arguments.

The importance of the sub-state level has been emphasized in a series of debates around the Europe of the Regions; the territorial perspective on EU policy and delivery; the impact of Europe on intra-state federalism; the potential for accommodating self-determination claims within the overarching European framework; and the representation of territorial interests in the EU policy process. There is a search for mechanisms to institutionalize this 'third level', but they have reached no resolution. The multilevel governance approach opens up the black box of the state and emphasizes complexity, but it has weak ontological and normative foundations. The federal perspective has the analytical advantage of focusing on relationships among territory, function and institutions while also addressing normative issues including representation, sovereignty and solidarity. It must, however, take account of recent developments in federal theory, which historicize it and point away from the US model. That is the point of departure for this paper, which sees federalism as a set of analytical principles, rather than a fixed form of government. Europe is not a federation in most recognizable senses but federalism can help us to understand its territorial dimension. In the following I develop this by means of the notion of rescaling.

Rescaling Europe

Modernist social science long predicted the eclipse of territory as a principle of social organization (Durkheim [1964]). Accounts of state-building saw it as a process of territorial integration and functional differentiation in which politics followed behind social change. For Deutsch (1972), this would reach its limits when one nation-building project met another or when cleavages were so deep as to force the establishment of another state. As Rokkan (1999) showed, however, some of the major social fault-lines continued to run through states. A conceptual map of Europe could be drawn that was not confined to the boundaries between states but recognized the underlying complexities. The idea that territory would disappear as a principle of social

organization resurfaced in the aftermath of the Cold War, with a spate of publications around the theme of the end of territory or the borderless world (Badie [1995]; Ohmae [1995]). Most of these in fact referred to the end of the state as the dominant marker of territory as seen in realist accounts of international relations, and belong in the broad category of globalization studies. If we detach territory conceptually from the nation-state, however, we get a more complex picture. There was less a de-territorialization of economic and social systems than a *re-territorialization* as functions and political articulation were moving to new scales above across, and below the state. This is the process of rescaling, in which territory not only survives as a legacy of the past but is continually reproduced (Brenner [2009]; Jessop *et al.* [2008]; Keating [2013]).

The best documented forms of rescaling are functional, in which economic and social systems are escaping the purview of the state and migrating to new levels. There is a substantial literature on economic rescaling at the global level, focused on the internationalization of markets, free flows of capital, a new international division of labour and the rise of global corporations. Transnational free trade regimes and global trading rules are both cause of, and reaction to, these processes. There is a literature on the rise of sub-state regions as economic spaces and frames for understanding economic change. Some of this is rooted in spatial location theory, economies of proximity and transport costs (Krugman [2011]). Institutional versions focus on the provision of public goods and the balance between competition and cooperation in fostering growth. These fade into sociological explanations, based on social capital and behaviour, and into cultural explanations rooted in historically conditioned social norms. Regions and localities are presented as not merely locations of production but as production systems (Crouch *et al.* [2001]). A further move is to see these regional systems as being in competition with each other in global markets. The argument is that Ricardian comparative advantage, in which each region has its place in the global division of labour, has given way to absolute or competitive advantage (Scott [1998]). While this idea has been challenged intellectually (on the grounds that it reifies the region and that only firms compete), the theme of territorial competitiveness has been taken up by states, the European Commission and international organizations.

Welfare has been linked to the nation-state since this is the focus both of affective solidarity and of social compromise and provides the institutional infrastructure for welfare programmes. Yet as the field of welfare itself reconfigures to adapt to changing demographic structures and new social risks, there is a rescaling, to sub-state and transnational levels (Ferrera [2005]; Kazepov and Barberis [2008]). Other examples of functional rescaling include the simultaneous localization and internationalization of higher education, or the way in which urban dynamics challenge old conceptions of the functions of government or social stratification (Keating [2013]).

There is a corresponding rescaling of systems of regulation and policy-making. It is tempting to see the rescaling of government as a response to functional imperatives, as in the neo-functional approach. Alesina and Spoloare (2003) explain the 'size of nations' by reference to functional imperatives, arguing that the benefits of scale that existed in an earlier age have disappeared because of open markets and transnational order, so that smaller units are viable and desirable. Ohmae (1995) similarly describes a (rather imaginary) world of small competing 'regional states' as the inexorable consequence of functional change and globalization. Hooghe and Marks (2009) invoke functional arguments to explain (at least partially) decentralization and the division of competences within states. Yet there is a danger here of a functionalist trap. Purely functional arguments risk becoming teleological in that the beneficial outcome is seen as the cause of the change that it followed. What is needed is a mechanism by which the functional requirements can impose change. So a variant of the functionalist argument is that changes in the level at which activities are regulated are a response by policy makers to considerations of efficiency. This moves the argument away from causes to reasons but reasons are never simply given by neutral consideration of efficiency; they always have some underlying normative principle. So public choice exponents have preferred smaller units of government so that they will compete and align preferences with territory (Tiebout [1956]); others have preferred larger units to constrain competition and allow redistribution. Interests are also at stake, since some may be better connected to particular scales than others and boundaries of territorial jurisdictions may be drawn to favour specific social groups.

Both European integration and decentralization are better appreciated not as a functional imperative but as a design on the part of state actors to recapture and regulate functions that have escaped their purview as a result of rescaling and to impose a specific logic on to them. If this is presented as a matter of technical imperatives, that may be a rationalization for more normative objectives or in an effort to depoliticize difficult policy spheres, especially when they can be taken both out of contested politics and to a spatial scale that itself is insulated from direct political contestation. So in the Eurozone monetary policy has been taken up to the supranational level and also, in conformity with contemporary professional wisdom, placed in the hands of an independent institution. At the sub-state regional level, development policy has often been depoliticized, entrusted to agencies and ad hoc bodies with the single goal of competitive growth. An example is the repeated efforts to establish a regional level of planning and intervention in England, stopping short of devolving political power.¹ In France, the state has consistently sought to reinforce its own territorial administration to match any political decentralization.

De-politicization is rarely effective in the long term, given patterns of social stratification and conflict and the distributive effects of any given policy or

strategy. So we see a re-politicization of the new spaces emerging at various territorial levels and a contestation over their boundaries, their social significance and their institutionalization. Opposition movements may mobilize at the sub-state level where they are weak at the centre. Autonomist and identitarian movements map onto territory, creating a bottom-up regionalism. Faced with the need for functional capacity on the one hand, and bottom-up pressures for more popular input, contestation of priorities and legitimation on the other, many states have instituted an intermediate, regional or 'meso' level of government (Keating [1998, 2013]; Swenden [2006]). There also is a rescaling of the representation of social and economic interests and their reconfiguration at new levels, in response both to functional rescaling and the establishment of regional government (Keating and Wilson [2014]). So the new spaces are 'filled in' socially and politically and the political agenda is structured in different ways. In the 1980s and 1990s it was argued that Europe had regions without regionalism as the formal structures of administration did not correspond with any sociological reality (Le Galès [1997]; Pastori [1980]; Trigilia [1991]); now the regionalism is there (Keating and Wilson [2014]). As emerging spaces are politicized and excluded groups seek entry into the governing arrangements, the political agenda is broadened. State regional policies focused on economic development in a narrow economic sense are challenged in respect of their social and environmental impact.

In this way, regions are constituted as political communities. This does not mean, *pace* Alesina and Spoloare (2003), homogeneous spaces in which people share the same policy preferences or ethnic identity. A political community, rather, is a frame of reference for deliberation and social compromise. There is a parallel here with the European project, operating at a new supranational level, which has also been progressively politicized. Just as we get different visions of Europe – market driven, social, technocratic, instrumental, cultural and so on, so regions are constructed and imagined differently. Their construction and meaning is thus contested and highly political. Their territorial boundaries are similarly not pre-given but reflect political preferences and power relations.

Rescaling has also been induced by the EU's own spatial policies, which were introduced (as regional, then structural and then cohesion policy) in order to correct the tendency of the single market to concentrate development and exacerbate territorial disparities. In the early days, it was assumed that the single market would eliminate territorial disparities as goods, services, capital and labour could move freely, so that each territory would specialize on the basis of comparative advantage. From the 1970s it was apparent that this was not happening and support grew for an explicit policy of territorial equalization across the Community. This coincided with the increasing difficulty that states experienced in using regional policies to integrate their

national territory economically. Diversionary policies are expensive and difficult when firms can relocate elsewhere in Europe or outside Europe, one of the factors encouraging competitive regionalism. European competition policy itself bars state aid, including regional subsidies, except under strict conditions. The resulting disparities created pressure for the EU itself to enter the field with its own spatial policies.

From its beginnings in the 1970s, the instrument was contested among the European Commission, member states and regional governments, with a Europeanization and then a partial renationalization (Hooghe and Keating [1994]). It was torn between a social rationale, as a territorial compensation measure, and an economic one, as efficiency-enhancing. In recent years, the Commission has emphasized territorial competitiveness, in line with current thinking. It has also sought a territorial perspective on other policy instruments, including planning, research and environment, but this has not progressed far, given the reluctance of sectorally based directorates to accept a spatial approach. Regional policy is frequently in conflict with competition policy, which is more strongly embedded in the institutions and enforced by the Court of Justice.

In elaborating and especially in implementing its spatial policies, the Commission has sought territorial collaborators and partnerships including regional governments, economic actors and civil society. This has the effect of increasing the salience of the regional and local level and creating links between it and the EU itself. During the 1990s, it was sometimes imagined that the Commission's aim was to restructure territorial government, bring regions into being or even by-pass the nation-state, but this was misleading (Keating *et al.* [2015]). The Commission was concerned above all to strengthen the capacity for delivering policy and, if this meant strengthening the centre, then they pressed for that, as in the new accession countries in 2004 (Hughes *et al.* [2004]; Keating and Hughes [2003]). In much of Western Europe, however, structural policy was represented by local politicians as the fruit of their own efforts in Brussels, creating a vision of regions operating in European space. It was also true that in many cases the Commission and the regions shared a common interest in denationalizing the policy and ensuring that the moneys flowed as directly as possible from Brussels to the regions.

So neither the nation-state nor the European Union has experienced a straightforward functional imperative to territorial integration and homogenization. On the contrary, they have promoted territorial differentiation in new forms. The conjuncture of rescaling towards Europe and down towards the regions has created multiple levels of politics and of authoritative decision-making, which escape the logic of EU-state relationships. It has posed a challenge to traditional efforts to understand the European Union based on either intergovernmentalism or a federalism based on the member states. These issues fed into a set of movements around a Europe of the Regions, or the

politics of three-levels (Bullman [1994]). This was a very diverse project, whose common aim was to find a place for sub-state regions in the emerging transnational order, with a strong orientation towards European federalism as an alternative to intergovernmentalism. The movement culminated in the 1990s. Regions gained little from the Convention on the Future of Europe, where the Committee of the Regions was present with observer status, or from the subsequent Lisbon treaty, and the movement declined after that.

Multilevel governance or multilevel federalism

One conceptualization of the emerging spatial order, and alternative to both intergovernmental and neo-functionalist accounts, has been that of multilevel governance (Bache and Flinders [2004]; Hooghe and Marks [2001]; Piattoni [2010]). The idea is that power has been pulled out of the state, both laterally, by the implication of non-governmental actors in policy-making, and vertically by the emergence of new territorial levels so that networks span both the public-private and the territorial divides. This has the virtue of addressing the complexity of modern policy-making and regulation, taking us back to the ideas, rooted in classical sociology and theories of local government (Maas [1959]), that social systems are differentiated functionally and territorially, but without the teleological assumption of much modernization theory, that function would overcome territory.

It is not clear, however, that multilevel governance provides the analytical, ontological or normative tools to address these issues. The concept of governance itself is notoriously loose. Sometimes it is a broader than government, referring to social order in general, with government as a sub-category (Pierre and Peters [2000]). Sometimes it is narrower, a form of regulation based on networks rather than hierarchy (Bellamy and Palumbo [2010]). This, however, poses an ontological problem. Network governance, derived as it is from organization theory, takes as its unit of analysis organizations or actors within them, but these remain socially disembodied, rather than corresponding to broader patterns of social stratification. Second, governance lacks a theory of power, focusing on interaction and cooperation in networks but without providing tools to explore who wins and loses and how. It seems better designed for consensus management than social conflict, which is no doubt why the concept has been appropriated by international agencies set on depoliticization. Third, governance theories lack a normative dimension, which would allow us to pose questions about democracy, participation, accountability and distribution. There is sometimes an implicit normativity, but this cuts both ways. On the one hand, it is suggested that network or corporatist governance are somehow more participative, although this remains empirically unproven (Smismans [2006]). On the other hand, there is an argument that it undermines representative elected government. Fourth, if

governance is seen as the interlinking of public and private power, then it is not clear that it adds to studies of interest group politics, neo-corporatism and social concertation. Multilevel governance approaches, moreover, lack of a theory of territory; indeed, the concept of level seems to be used in a very imprecise way. Multilevel governance works tend to confine the vertical level to relations among institutions of different territorial reach, without embracing the deeper implications of territory and scale.

Of course, it may just be that the very lack of conceptual precision around multilevel governance makes it attractive in the absence of a clear way of thinking about the organization of space. In this sense, it describes a negative, the escape of functional systems from existing forms of regulation and politics and from existing territorial boundaries, rather than to a particular mode of governing or regulation.

If intergovernmentalism, neo-functionalism and multilevel governance cannot capture the emerging complex, multiscalar order in Europe, federalism may serve better as a way both of analyzing and appraising it. Yet we must note the editors' warnings on how federalism is to be interpreted. It is not to be seen as confined to states or, especially, to the experience of the United States of America. Federalism is a broad principle not to be confused with federation as a specific constitutional design (King [1982]). It is an analytical device but also has a normative underpinning, based on values including shared rule, self-rule and solidarity. It does address some of the ontological weaknesses of multilevel governance in that the focus is on government as authoritative decision making. Federalism is about dividing and sharing power at a territorial level and the relationship between those levels. There is an emphasis on territory, enriched if federalism is combined with the insights of rescaling theory. Federalism does address normative issues including legitimacy and sovereignty and electoral consent. It incorporates arguments about citizenship and representation.

Federalism comes in different forms, as recognized in the literature (Burgess [2006, 2012]). There is a distinction between coordinate and cooperative federalism, with a newer variant, competitive federalism. There is also a debate about whether federalism requires a unitary national identity or whether it can usefully be applied in plurinational polities. These debates are highly pertinent to the debate about rescaling.

Coordinate, cooperative and competitive federalism

There is a classic distinction between coordinate federalism, in which competences are clearly divided between the levels, and cooperative federalism, in which they are shared. In some respects, Europe challenges both varieties by undermining existing federal or quasi-federal arrangements within member states with a significant meso level. This includes Germany, Austria,

Belgium, Spain, the United Kingdom and to a lesser extent Italy and other states. Competences belonging to the regional level have been Europeanized, which results in a double loss of power for the regions. The European Union may encroach on regional competences, so taking away what the state has conceded. At the same time states can re-enter these policy fields since it is they who are represented in the Council of the EU. In the 2000s, Europeanization has also penetrated down to the local and regional level through its requirement for debt and deficit limits, which apply to all levels, while it is the state that is responsible for ensuring compliance internally.

Regional responses have alternated between seeking to protect their own competences (in coordinate mode) and seeking entry into European policy-making (in cooperative mode) – between ‘leave us out and ‘let us in’ (Jeffery [2005]). Some regions, including the German Länder, have been at pains to curtail European interventions in their reserved spheres, coinciding with a push to simplify German federalism itself and reduce its coordinate elements. It was pursued by seeking application of the principles of subsidiarity and proportionality embodied in the treaties at the regional level rather than stopping at the states. Provisions were incorporated into the Lisbon Treaty but the mechanisms to enforce this are weak. The main thrust, however has been for regions to seek to get into the EU policy process (‘let us in’).

To the functional and institutional arguments for involvement, regional advocates added some normative ones, claiming that regional governments were democratically elected and thus had a higher legitimacy than other organizations lobbying in Brussels and even than the Economic and Social Committee; stronger regions could also make a contribution to realizing the aim of subsidiarity. Enhancing their influence would address the democratic deficit, bringing government closer to the citizen.

Provisions for the participation of regions in EU policy were made in the (Maastricht) Treaty on European Union through two channels: directly into the EU and via member states. The Committee of the Regions was established as a consultative body with the same status as the Economic and Social Committee. Some enthusiasts saw it as an embryonic territorial third legislative chamber. Its scope was subsequently expanded to cover a wider range of policy areas and to include the European Parliament as well as the Commission but it remains purely consultative. Its other principal weakness lies in the variation of what constitutes a region across the different EU states. There are federal units, such as the German Länder, which have a defined role in national policy making. There are devolved regions such as those in Spain and Italy, with their own power but not formally part of a federal system. The alliance of Regions with Legislative Powers was an effort to stake out a distinct position but the meaning of ‘legislative powers’ differs from one state to another and the distinction was more political than legal.

There are cities, which have insisted on parity of status with regions, although their competences are different. Then there are stateless nations, which sought to play the Europe of the Regions card while also insisting on their own specificity (see below). Cities insisted that they were as important as regions and should have the same status.

The main channel for participating via the member states is a provision that, where regional governments exist with a ministerial structure² they can, where national law permits, represent their state in the Council of the European Union. They do not, however, represent themselves and representation is confined to matters of regional competence. Provisions for determining the line to take in negotiation vary from Belgium, where each federal unit has a veto, through Germany, where the Länder agree a position among themselves, to the United Kingdom, where the central government has the final say.

The European Commission has, for its part, sought to incorporate regions into the policy process, both to increase policy effectiveness and to enhance its visibility and legitimacy at the sub-state level. It insists that its collaborators should not merely be regional governments but the social partners as well.

In recent years, coordinate and cooperative federalism have been joined by a third variety, competitive federalism (Dente [1997]). Federated units compete in two senses: they seek to innovate in policy; and they compete economically, notably for inward investment and technological advantage. The latter draws upon ideas of competitive regionalism, in which regions are conceived of not merely as spaces of production but as production systems in a world that is moving from traditional ideas of comparative advantage towards absolute advantage (Scott [1998]). Whether regions (as opposed to firms) actually do compete is a matter on which economists disagree so that territorial competition is a political construction, postulating a common territorial interest, alongside or displacing sectoral and class conflicts. The idea is attractive to regional politicians, who can extend their appeal to the entire population using a type of neo-mercantilist rhetoric. The idea of territorial competition is also used by states and the European Commission as a way of disengaging from difficult distributive issues and exploiting the positive connotations of competition in the modern era. European spatial policy is increasingly justified by a rhetoric of competitiveness (Begg [2010]), even to the paradoxical recommendation, inspired by the work of Porter (2001) that all regions should become more competitive although logically this is impossible.

Competitive federalism is thus a normatively charged notion. If not controlled, it may provoke a 'race to the bottom', as governments cut taxes and attract firms and wealthy taxpayers, so undermining solidarity and welfare systems (Volden [2002]). In the traditional European welfare state,

this was restrained by the centralization of key tax powers and systems of territorial redistribution. These relied on conceptions of national solidarity as well as more instrumental considerations. So within a national market, transfers from wealthy to poor regions could be accepted to the degree that the money came back to the wealthy regions in the form of orders for their goods. Spatial balance could enhance national efficiency by addressing market imperfections that resulted in congestion in some regions and under-used capacity in others. If regions are competing within European space rather than cooperating in national space, these factors are weakened.

More broadly, the European project may be separating previously linked policy spheres and undermining national welfare bargains. Bartolini (2005) has drawn attention to the tensions that the new European division of competences provokes. Market regulation is taken up to the European level, while market compensation in the form of welfare states remains national. National social compromises unravel as selected actors (notably mobile business) can exercise 'partial exit' by upscaling to the European level or moving out altogether. We can extend this analysis to the sub-state level, where there is a further disarticulation of policy spheres by territory. Regions, even more than states, are borderless spaces, from which wealthy taxpayers and investors may rather easily relocate.

Theories of fiscal federalism address this issue by advocating that redistributive policies should be located at the highest level. Non-redistributive policies, about the allocation of local public goods on the basis of local preferences, on the other hand, could be decentralized, so meeting the criterion of allocative efficiency (Oates [1999]). The EU, however, has a weak redistributive capacity. Cohesion policy is the main instrument, but the Commission has to justify even this in the name of competitiveness. Wasteful competition is regulated in Europe by the competition policy, whose state aid rules powerfully constrain the ability of both states and non-state governments to subsidize investment; but there are frequent complaints that this restrains their ability to sustain vital public services. State aid rules have been invoked to strike down subsidies for the proliferation of regional airports and low-cost airlines, but have also, for example, affected the ability of governments to cross-subsidize vital ferry services to fragile communities.

Moreover, the old distinctions among production-enhancing, redistributive and allocative policies are breaking down with the recognition that all public policies have a distributive impact (Keating [2013]). So it is not sufficient to argue that the redistributive capacity should be concentrated at the level of the nation state. If solidarity is important, it needs to be built in to all levels as well as into the system of relationships among the levels. The trick for European federalism would thus be to provide incentives for the 'race to the top' in social provision that has also been seen in some member states (Gallego and Subirats [2011]). Arguments about rescaling and regions in Europe thus

intersect with arguments about the social dimension. Federalism, as the editors note, is about differentiation but it is also about solidarity. This is recognized in the incorporation into the Lisbon Treaty of the objective of territorial, alongside social and economic cohesion, but the redistributive capacity of the EU is weak compared with national federal systems.

Plurinational federalism

One vision of federalism insists that there must be a unitary *demos* and *telos* so that there is no disagreement about the foundations of sovereignty and the federation can be symmetrical. This monist approach (Karmis and Norman [2005]) has been associated with writers from varied perspectives, including Carl Schmitt (Cyr [2010]) and later Tarlton (1965). John Stuart Mill is often quoted in favour of the monist view but, while arguing for homogeneity as a favourable condition for federalism, he did concede that plural federations might be necessary in some circumstances (Mill [1972]). It is argued that asymmetrical federations are unstable and that units based on national distinctiveness will arrogate sovereignty to themselves and generate centrifugal and even separatist tendencies. This underlies objections in Canada, Spain and the United Kingdom (before the end of the twentieth century) to asymmetrical territorial government and a preference for either centralization or symmetrical devolution. The paradox is that federalism is ruled out as a way of addressing diversity.

In recent years, however, there is a literature questioning this and advocating the idea of multinational federalism and asymmetrical solutions (Burgess [2006, 2012]; Burgess and Gagnon [2010]; Requejo [1999]; Noël [2013]) and stressing the pluralist basis of federalism (Hueglin [2013]). In these cases, federalism is possible in the absence of shared *demos* and *telos*, by mutual accommodation and effective institutions. Multinational federations may leave critical foundational issues (such as the locus of sovereignty) in abeyance and leave the future open-ended in a rescaling world where the ontological basis of self-government is itself shifting as new territorial scales are constructed and given meaning. It is consistent with a view of Europe that sees it as a work in permanent construction without a clear end state. It also implies relaxing assumptions about the automatic legitimacy of existing states as the only basis for Europe. Now that states themselves are challenged from above and below, they increasingly have to justify their own legitimacy. There have been debates about national identity in France, Spain, the Netherlands, Germany and the United Kingdom, while state-wide parties have insisted on the primacy of the state for security, control of migration or social solidarity. The fact that they have to make these arguments explicitly illustrates the point that there is no *a priori* reason to give normative supremacy to one level of another.

Europe has seen a recurrence of autonomist, nationalist and secessionist movements challenging state claims, notably in Spain, Belgium and the United Kingdom but also in Italy. In central and eastern Europe, irredentist pressures challenge state boundaries, for example in the name of ethnic Hungarians in Romania and Slovakia. Many of these movements are based on historic territories, which have been repoliticized and draw on themes of the new regionalism and the European context to present themselves as viable economic units. In wealthier territories, there are complaints about the cost of subsidizing their poorer compatriots when they need to compete in Europe; such is the case in Catalonia, Flanders and northern Italy. There is no objective way of distinguishing nationalist from regionalist movements, but there is an important difference in their self-representation and demands. Movements adopt the language of nationalism to claim sovereignty, that is, original authority not derived from the state. They argue that they constitute a people or demos, which has a right to its own polity and to share in the construction of the European project. For some of these (like the Scottish National Party) Europe lowers the threshold for independence by externalizing costly policies, guaranteeing market access and increasing the viability of small states. They argue that if Malta or Cyprus can be full members of the European Union, there is no reason to exclude them merely because they do not presently have their own state.

Other movements (including at various times moderate Flemish nationalists, Plaid Cymru, the Basque Nationalist Party, and until recently the Catalan *Convergència i Unió*) have seen in Europe an opportunity to move beyond the old nation-state model altogether and embrace a 'post-sovereignist' vision of self-determination (Keating [2001]; MacCormick [1999]). This does not mean that sovereignty has disappeared but that it is transformed and is divided and shared, with multiple sources of original authority. The post-sovereignist argument often looks back historically (Herrero de Miñón [1998]), especially in places where the monistic view of state sovereignty has never been universally accepted (Scotland and the Basque Country are examples). It also looks forward, as its exponents explicitly link the idea to a view of Europe as a political order in its own right, enjoying elements of original authority, not merely derivative of state sovereignty (MacCormick [1999]). It is more difficult to translate this into practice. Some have dreamed of a Europe of the Peoples without the existing states but this assumes that the peoples who would underpin this are easily identifiable. Challenged on what their final ambition is, Basque, Catalan and Flemish nationalist politicians will often throw the question back by asking where Europe is going, since that is the essential context

Europe has had limited success in addressing the nationalities question. It has no common doctrine on the recognition of secessionist states in the wider European neighbourhood, as the confused response to the break-up of Yugoslavia showed. Some member states recognize the independence of Kosovo

while others, struggling with internal tensions, do not. Within the EU, there is a similar reticence. There is no clear doctrine about secession within member states or what the European Free Alliance (representing minority nationalist parties) has called 'internal enlargement'. Spokespersons for the European Commission and Council have argued that, were Catalonia to become independent, it would put itself outside the European Union.³ Rather incongruously, this seems to accept that Catalonia could become independent in the first place and thus be outside both Spain and the EU. It would be more consistent to say that Catalonia cannot be outside the EU because it can never leave Spain. Commission President José Manuel Barroso declared that Scotland would put itself outside the EU and would find it difficult if not impossible to get back in (Andrew Marr Show, BBC Television, 16-02-2014); this despite the fact that the UK government itself had pledged to respect the result of the referendum. Weiler (2014) insists on a linear progression through the state to Europe so that Catalonia and Scotland must forfeit the right to be part of the European order should they democratically assume the sovereign status of Spain and the United Kingdom. In fact, there is a legal vacuum over the question of whether a seceding region could convert itself into a member state.

While EU leaders have rejected the right of stateless nations to independence and membership of the Union, the EU has also failed to provide many opportunities for the expression of the post-sovereign perspective or plurinational and multilevel federalism as alternatives. There are opportunities for stateless nations acting as regions but the EU does not recognize a distinction between regional demands and self-determination claims. States wishing to accede to the EU have to respect the rights of national minorities but this ceases once they become members; the existing states have never wanted the principle applied to themselves.

Europe has provided a new discursive space for the articulation of nationalist demands, linked to ideas of multinational federalism (Keating [2004]). Yet the promise that Europe could provide a plurinational federalism in which demands for recognition and autonomy could be accommodated without a proliferation of new states has been disappointed. States are more willing to agree to autonomy for internal nationalities but are insistent that accommodation must occur within their boundaries. The failure of Europe to provide new opportunities to express national diversity, as the post-sovereigntists have demanded, is one factor that has led nationalist movements back into support for classic independence, as the case of Catalonia.

Concluding reflections: Europe as multilevel federation

The idea that Europe could or should be a federation in the American tradition is based, as the editors make clear, on a category error. Federalism is a

principle that takes multiple institutional forms in different contexts. Similarly, a conception of Europe of the Regions in which the third level has a clearly articulated federal status, and constitutes one of the building blocks of the Union, is misplaced. Yet the federal principle can provide both analytical and normative leverage over the emerging multilevel politics. It draws attention away from a strictly statist ontology and towards the multiple levels of interest articulation, social compromise and policy resolution. It looks away from functionalism towards a more political explanation for institutional change. The new levels are not conceptualized merely as organizations in interaction but as political communities of greater or lesser cohesion and as governments resting on popular consent. Such communities are constructed in multiple ways in the process of rescaling and should not be reified or endowed with unitary interests but represent both political arenas and actors within a larger system. They have received some institutional recognition and are incorporated into cooperative policy processes, but are not strongly entrenched. They have succeeded in incorporating the federal principles of subsidiarity into the treaties, albeit in a weak form. The idea of competitive federalism is relevant for examining the politics of regions within the European market and the Commission's spatial strategy. It coexists uneasily with the commitment to cohesion, as is the case in modern federations. The protagonism of regions, however, has been curtailed by the 'new intergovernmentalism' (Bickerton *et al.* [2015]) in the EU, which has closed off opportunities for regions, which have always preferred the community method.

The principle of plurinational federalism has analytical value in examining the rise of autonomist movements that saw in the EU both a set of legitimating principles (shared sovereignty) and political and institutional opportunities to steer a third way between independence and union. States, however, have guarded their own sovereignty even as it has eroded in practice. EU policy-makers have avoided the issue, lacking the mandate or interest to intervene in matters of national sovereignty.

Notes

1. In the 1960s there were regional planning boards and councils: in the 1970s metropolitan counties (abolished in the 1980s); in the 1980s Urban Development Corporations; in the 1990s Regional Offices; in the 2000s regional development agencies and unelected councils; now there are city regions looking like the metropolitan counties but with only one elected official, the mayor.
2. This is subtly different from a legislative region although it may amount to the same thing in pointing to a differentiation of executive from legislature.
3. José Manuel Barroso, as Commission President, declared "La UE se basa en los tratados, aplicables únicamente a los Estados miembros que los han aprobado y ratificado. Si una parte del territorio de un Estado miembro dejase de ser parte de ese Estado para convertirse en un nuevo Estado independiente, los

Tratados ya no serían aplicables en dicho territorio. En otras palabras, un nuevo Estado independiente, por el hecho de alcanzar la independencia, pasaría a convertirse en un tercer país con respecto a la UE y los Tratados dejarían de ser aplicables en su territorio.' <http://www.publico.es/politica/barroso-responde-mas-catalunya-quedaria.html>

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