RETHINKING SOVEREIGNTY. INDEPENDENCE-LITE, DEVOLUTION-MAX AND NATIONAL ACCOMMODATION

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1. Beyond Sovereignty

Demands for national self-government have been among the most difficult issues to resolve in the practice of modern constitutionalism. They are not merely about the accommodation of different cultures, which might be managed in a variety of ways. Nor are they limited to territorial differentiated demands in public policy, to which the classical response is decentralization or federalism. National demands, rather, concern the nature and bounds of the political community and the locus of ultimate authority. It is not that nations, defined in some objective sense, have an inherent right to self-government: we know that nations are made and remade, that they are based on subjective and inter-subjective sentiment, they are sociological constructions, and they are often contested. Yet the very process of construction and the self-definition of the group as a nation in themselves entail they aspiration to be self-determination; this is the essential difference between nationalist and regionalist demands. For much of the twentieth century, political scientists assumed that the difference was

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rather that the national demand or claim to self-determination involved for a separate state. It is now recognized that statehood is only one possible outcome of the national claim and that there are many other constitutional formulas that can accommodate it (Keating, 2001a). The observation that national movements in the present are making claims for something other than statehood has also provoked a round of historical revisionism and a recognition that many nationality movements before the First World War were actually seeking forms of autonomy within imperial and international structures rather than statehood. This was the case with many of the nationalities of the Habsburg Empire, and even Sinn Féin was founded in 1906 pledged to a British dual monarchy on the lines of the Austro-Hungarian *Ausgleich* of 1867. Statehood is particularly difficult in plurinational states where nationality sentiments and claims overlap, so that it is impossible to agree on clear lines on the map.

In fact a review of the demands made by nationalist movements in developed countries in recent years shows that a claim to immediate statehood is the exception rather than the rule. Some parties, such as successive Breton regionalist movements, have always been more confederalist than separatist. *Convergència i Unió* in Catalonia has never come out for secession, although it has been careful not to rule it out as a future possibility. Flemish nationalists have been successively federalist and confederalist, with separatism only emerging rather recently as a minority option. Even parties supporting independence tend to present it in a rather attenuated form. *Esquerra Republicana de Catalunya* is for independence, in the long term within a new Europe; in the meantime its proposals look more confederal. The Basque Nationalist Party is for self-determination but divided between those who really believe in independence and more moderate element and has never officially been separatist. *Plaid Cymru*-Party of Wales has traditionally been closer to Home Rule than independence and, on those occasions when it has come out for independence, it has surrounded it with qualifications. The same is true in Quebec, where the *Parti Québécois* adopted the formula of sovereignty-assocation in the 1980s then, having officially abandoned it after the referendum of 1985, effectively returned to it with its 1995 proposals of sovereignty-partnership. The Scottish National Party has usually been the exception, pledged, at least since the 1940s, to independence but in the late 1980s has put this in a European context and, in recent proposals, has embraced what some have called 'independence-lite', which involves keeping the pound sterling and various

regulatory agencies, and reaching common policies on a wide range of issues.

While nationalist parties have backed away from classic independence, the parties of the state or their local branches have in some cases moved towards the idea of self-determination. Sections of the Spanish left have incorporated the idea, while in 1988 almost the entire Scottish Parliamentary Labour Party signed the Claim of Right asserting that sovereignty belonged to the Scottish people. Tensions within Belgian parties become so strong in the 1970s that they split into separate language wings, often adopting almost nationalist positions.

The result of all this is the emergence of a plethora of proposals for constitutional change that reject both the idea of separate statehood and that of a unitary sovereign state. Some of these are what has come to be known in Scotland as 'devolution-max', stretching devolutionary or federal principles to the limit, while others represent 'independence-lite', secession while keeping much of the constitutional infrastructure of the existing state. At the limit, these merge into a constitutional middle ground, which defies conventional constitutional categories.

The philosophical underpinning for all this is the idea of 'post-sovereignty' (McCormick, 1999; Keating, 2001a). Like other post- concepts, this does not suggest that sovereignty has disappeared, rather that it has been transformed and is no longer the dominant mode of political organization. There are several strands to the argument. The first concerns the idea of sovereignty as a normative legal principle. Traditional conceptions, originating in Bodin and later fortified by English constitutionalists like Blackstone and Dicey, see sovereignty as absolute and indivisible. States can therefore divide power through federal arrangements or decentralization, but cannot divide sovereignty. Post-sovereignty thinking holds that sovereignty refers, rather, to original authority not derived from a higher source, and that there can be multiple sources of it. So Basque nationalists hold that their historic rights, the *fueros*, are original law and not derivative of the Spanish constitution of 1978. Scottish nationalists (and many non-nationalists as well) hold that Scotland did not surrender its entire sovereignty to a unitary and ominicompetent British parliament in 1707. Quebeckers (both nationalists and federalists) will argue that Canada is properly seen as a compact of founding nations which did not abandon their claims to be the subjects of self-determination. Indeed it can be argued that in none of these cases has the

question of sovereignty been definitively and convincingly resolved. In each of them there are rival versions of rights, usually rooted in competing historiographies (Keating, 2001a). It is also argued, in the case of the European Union, that it itself constitutes a distinct sphere and source of law, no longer a mere delegatee of nation states (McCormick, 1999).

The second element is to see sovereignty not as a 'thing' that a people has, but a relationship, which means that it always has to be negotiated with other sovereignty-holders and is usually embedded in wider transnational structures. This is not a new idea, but harks back to understandings of historic rights common in Europe before the rise of the integrated nation-state in the nineteenth century, and surviving in empires down to the First World War. It is also visible it traditions of covenants or pactism as constitutional practice in many places and in modern understandings of autonomy (Gagnon and Keating, 2012).

The third element is functional. Legal scholars will often insist that sovereignty is a normative legal concept and that it is not made redundant by the fact the sovereign entities may not actually have any power. Political scientists, on the other hand, would argue that, if sovereignty and power are completely dissociated, then the former becomes an empty concept of little use in constitution-making. The transformation of the state as a result of global economic change and interdependency, does therefore result in a reduction of sovereignty, albeit in a selective way, since some states retain more power than others. Small states can, paradoxically, best protect their remaining sovereignty and exercise real power through integration into larger transnational structures.

The fourth element is institutional. Transnational structures, including international trading regimes, international law, international human rights regimes and, most obviously, the European Union, have eroded national sovereignty. While state elites will often claim that these are arrangements into which states enter of their own free will and from which they are free to withdraw, the argument becomes less convincing as the costs of withdrawal become clear. Such costs may be economic. They may also be political as the costs of defying international norms may be a loss of legitimacy or influence, a bigger problem for small democratic nations than for hegemonic or non-democratic states.

The idea of post-sovereignty does not in itself resolve any of the issues of national accommodation but it does shift the focus of argu-

ment. Nationality arguments in the United Kingdom, Spain and even Canada or Belgium, are not, as is sometimes assumed (Kymlicka, 2007), fundamentally about culture or different ways of life. Language issues are being managed, in a more, or less, conflictual way through public policy and variants of bilingualism. Social values in the component nations of these states are not diverging, but converging. Religious issues are not the source of conflict which they were during the nineteenth and much of the twentieth century; even in Northern Ireland religion is an ethnic identifier rather than a case of doctrinal conflict. The question, rather, is that of the boundaries of political community. In what has been described as de Tocqueville's paradox (Dion, 1991), these conflicts can become stronger rather than weaker as cultural cleavages diminish. The reason, I have argued elsewhere (Keating, 2001a, 2009) is that both sides are now claiming the same normative terrain, based on shared liberal democratic and (usually) welfare values; the argument is about the framework in which these values will be realized.

This argument is not just about the object of self-determination (statehood or autonomy) but the subject (Herrero de Miñon, 1998), the definition of the nation and the boundaries and nature of the political community. They cannot be resolved within monist structures based on the idea that there can be only one nation. On the contrary, political communities are never entirely self-contained and citizens legitimately can, and in practice do, often have multiple identities. These in turn are often asymmetrical, as in Spain and Canada, where the majority has single national identity, which includes the minorities, while most of the latter have two identities, with their smaller nation and with the state as a whole.

These competing conceptions of sovereignty, of political community and identity can never be resolved once and for all. Spanish nationalists who insist that the political nation was created in the Constitution of Cadiz in 1812 will never see eye to eye with Basque nationalists or even non-nationalist supporters of the foral tradition. English Diceyians will not agree with Scottish lawyers who see the 1707 Union as fundamental law or compact. Quebec supporters of the two-nations theory will not accept the idea of a single nation created by confederation in 1867. Years have been wasted in Spain and Canada on the illusion that a single narrative can be agreed or imposed. In some ways the United Kingdom has been better off, since the genius or traditional British unionism is that it permitted and even celebrated different narratives in the constituent nations

but the efforts of the last Labour Government to create a unifying Britishness, of which the national variations would be subordinate themes, suggested that they had forgotten what unionism was all about. Pierre Trudeau had made a similar mistake in Canada in seeking to create single Canadian identity and reduce the national claims to a set of linguistic rights and a variety of multiculturalism to go along with the others.

The way out of these difficulties is through a constitutional pluralism which allows us to arrive at shared institutions in different ways and is tolerant of asymmetry. Constitutions in uninational societies are often expressions of shared identity, which are then linked to values (which can be universal values), and to rights and duties of citizenship. Constitutions in plurinational states, on the other hand, are about living with diversity. This, to repeat, is not just a matter of cultural diversity (which is broader phenomenon) but about the basis for nation, legitimacy and political community. Constitutional pluralism does not require us to dig down to the ontological and legal foundations before we can agree on procedures. Nor does it require that we agree on the telos, or end point of constitutional agreement. What does matter is that we agree on procedures, and can reach regular agreements on the division of powers. It also requires a shared commitment to constitutionalism, that is to working within institutions, proceeding according to democratic principles and not unilaterally changing the rules.

2. Self-Determination

International law and political theory have tended to identify the right of self-determination with that of secession and, consequently, to hedge it with conditions. Typically, it is conceded only as a remedial right in the face of repression or, in the 'salt water' doctrine, a right of colonized people (Buchanan, 1991). This has several unfortunate consequences. It invites nationalists to stage confrontation or even provoke repressive reaction. It has also led to some unconvincing attempts by European nationalist movements to depict themselves as colonized. Where there is repression or denial of rights, the only remedy available seems to be statehood. So in the case of Kosovo, after Milosovic had violated the existing autonomy arrangements and the western powers had intervened, the remedy might have been to restore autonomy under international guarantees; instead the majority

of the international community supported the more drastic and destabilizing alternative of stated; and this despite the evidence that Kosovo was hardly viable as a state.

It might be altogether more helpful to develop a doctrine of self-determination as the right to negotiate one's position within the state and international order rather than as limited to secession. This is also in line with the emerging principle of addressing these matters not as questions of nationality (with all its subjective elements) or ethnicity (undefinable and ethically dubious) but as matters of democracy, when democracy concerns not just politics within a given polity but the shape of the polity itself. Where citizens have clear preferences, the assumption must be that these should prevail unless there are over-riding ethical objections. Where preferences are divided, there needs to be compromise.

3. Independence-Lite and Devolution-Max

There is a now a substantial literature exploring notions of plurinationality and national accommodation at a philosophical and theoretical level (Requejo, 1998, 1999; Gagnon and Tully, 2001). There is also abundant evidence that both nationalist parties and public opinion are open to this type of thinking (Keating, 2001a,b). In repeated surveys over many years in Spain, Canada and the United Kingdom, voters fail to make a sharp distinction between independence and devolution, seeing it more as a spectrum of options and bundles of powers (Keating, 2001a). There is less academic work on the details of what a 'third way' might look like but there have been some political proposals. These include rival independence-lite and federalism-max proposals from the *Parti Québécois* and the Liberal Party of Quebec (Allaire, 1991); autonomy-max proposal from *Convergència i Unió* (2003) and independence-lite proposals from the Basque First Minister Juan-José Ibarrexte (2002) and *Esquerra Republicana de Catalunya* (2003); and independence lite proposals from the Scottish National Party (Scottish Government 2009) and devolution-plus proposals from Reform Scotland (2011).

The Parti Québécois proposed that Quebec should become sovereign, in association with Canada (1980) or having made an offer of extensive partnership with Canada (1995). Sovereign in this case seems a rather softer word for independent, although the meaning of the term is elusive and the 1995 proposals were negotiated with the *Bloc*

Québécois[1] and the *Action Démocratique de Québec* (ADQ). The Allaire proposals, part of Quebec Liberal Premier Robert Bourrassa's strategic game, suggested that Quebec should gain extensive powers, leaving Canada with only foreign affairs and defence and some residual competences. After Bourrassa had abandoned them, a section of his party split off to form the ADQ. The Ibarretxe and Esquerra proposals have a lot in common, both using the formula of 'free associated state', which resembles the sovereignty-association idea and recalls the term used for Puerto Rico. CiU opted for a 'new national statute', without invoking any particular constitutional concept but focusing rather on powers and relationships. In 2012 the congress of its Convergència component called for an *Estat propi* (own state), a highly ambiguous term that avoids the language of independence. Reform Scotland has focused on fiscal powers and placed its proposal within the devolution family, calling them 'devolution family plus'. When it comes to characterizing them in constitutional law, perhaps the only thing that these various proposals have in common is that they defy the usual categories of independence, confederalism, federalism and devolution.

None of them, it should be said, has prospered. The Parti Québécois proposal was defeated decisively in the referendum of 1980 and very narrowly in 1995. The Quebec Liberal proposals enshrined in the Allaire Report were adopted in the aftermath of the failure of the Meech Lake Accord in the early 1990s and used mostly as a bargaining chip. *Convergència i Unió's* ideas have been first part of a negotiated process which produced the 2006 reform of the Catalan statute of autonomy, and later a reaction to the Supreme Court's decision to reinterpret key elements of the statute. Esquerra Republicana formed part of the tripartite Catalan government that negotiated the new statute although, after it had been amended in the Spanish Parliament, they turned against it. The Ibarretxe Plan was rejected by the Spanish Parliament as unconstitutional, while the Constitutional Court rejected a subsquent attempt to hold a referendum on its principles. The Scottish proposals are currently under discussion.

Although some of these proposals might be characterized as independence-lite and others as devolution or federalism-max, that has more to do with their origins and with procedure than with their

1. The Quebec nationalist party in the federal Parliament then led by the moderate Lucien Bouchard.

end point. The rival Quebec proposals of the 1990s differed less in the powers that would go to Quebec than in the fact that the Liberal Party proposed to negotiate half way out of Canada, while the Quebec three-party agreement proposed to leave Canada and negotiate half way back in. The Ibarretxe Plan and the Esquerra proposals involved more of rupture with the existing constitutional order than the CiU plans, which were presented as something that could be achieved within the existing constitution but that, too, is a matter of procedure rather than substance. It is often said that one clear distinction between devolution, however extended, and independence is the continued presence or otherwise of members of the territory in the central parliament, but even this is not clear. The Quebec proposals of 1995 envisaged proposed a joint ministerial council, in which each side would have a veto, with extensive powers; and a parliamentary assembly in which Quebec would provide 25% of the members (Entente, 1995). The Esquerra proposals explicitly say that Catalonia would send members to the Spanish Senate but is silent on participation in the lower house, as is the Ibarretxe Plan, although it seems to suggest a continued Basque presence. To divide the proposals *a priori* into secessionist and non-secessionist would therefore prejudice the analysis and condemn us, through a semantic sleight of hand, to reproduce the old nationalist schema. In what follows, I look at a series of issues which arise in all of them, only then returning to the overall characterization.

The various proposals address the issue of sovereignty and self-determination more or less explicitly. All the Québécois, Basque and Catalan proposals start from the premise that the nation is self-determining and that the next stage of constitutional change will represent an act of self-determination, negotiated with the state. All are based on the idea of a community of self-governing nations and deny that it is legitimate for the state to change the relevant constitutional provisions without their consent, even though this is possible in Spain[2] and happened in Canada in 1982. Like the Scottish Constitutional Convention of the 1990s they rest on the idea that self-determination is not limited to the right to secede. They all also include provision for the settlement to be ratified by referendum or, in the case of non-

2. Individual statutes of autonomy are organic laws and cannot be changed unilaterally but the Constitutional itself can be reformed by the centre alone, as long as the dominant parties are in agreement.

agreement (for Quebec and the Basque Country), to be put to referendum anyway.

As to the division of powers, the tendency is to keep almost all domestic policy at the lower level, while leaving defence and foreign affairs to the higher level. A crucial issue is taxation and a lot of interest has been expressed in the Basque system, or *concierto económico* under which the Basque territories[3] set and collect most taxes and pass on a share to the centre for common functions. The *concierto* exists for historic reasons in the Basque Country and Navarre, where it was introduced in the nineteenth century after the abolition of the old foral system, conditions which do not exist elsewhere, but the principle has been carried over to the Catalan proposal for a 'fiscal pact' and Scottish proposals for 'full fiscal autonomy'. In practice, the Basque system is constrained in a number of ways. Social security contributions are not included. Value Added Tax is harmonized with Spain as variation is not allowed within a single state according to EU rules. The overall tax burden has to be similar to that elsewhere in Spain; and there are agreements about debts and deficits required to meet European monetary rules. This leaves the Basque provinces with leeway over the marginal corporation and income tax rates, excise duties and, crucially, allowances. The Ibarretxe Plan proposed to include the social security contributions and the CiU and Esquerra proposals essentially follow this. Reform Scotland's proposals are less radical, leaving VAT and social security contributions to Westminster. The Parti Québécois would take all taxation power to Quebec, while the Allaire Plan appears to leave each level to raise the taxes required for its own purposes, although the details are not clear.

Devolution-max proposals involve the transfer of a range of domestic competences but the most important by far concern the social security system. At present, unemployment insurance is handled by the upper level in all cases as are pensions in Spain and the UK, although not in Quebec which, uniquely among Canadian provinces, has its own public pension scheme. Welfare benefits are provincial in Canada but state-wide in the European cases. The Ibarretxe Plan provides for devolution of social security but, at the insistence

3. Not the Basque Government or Parliament but the three historic territories. They pass on a share to finance the Basque Government and a further share in turn is passed to Madrid. Navarre, which is a single territory, has a similar system.

of Ibarretxe's coalition partners, the Basque post-Communists, there are provisions for harmonization of rates and coverage and transferability with the rest of Spain. Esquerra proposes to repatriate social security, while CiU would devolve the management of it but leave the basic scheme with the state and allow Catalonia to participate in decisions on rates and coverage through bilateral commission. Reform Scotland divides social security benefits between the two levels, with pensions and unemployment benefits reserved to Westminster.

None of the proposals involves dividing the currency. The Parti Québécois proposed keeping the Canadian dollar (and even used the Canadian dollar coin as the O in the *Oui* to independence). The SNP would keep the Pound sterling, with the option to adopt the Euro later on, following a referendum; devo-max proposals make the same assumption. Catalan and Basque proposals would simply keep the Euro.

Foreign affairs and defence are traditionally at the heart of state sovereignty, but the distinction between foreign and domestic policy is increasingly hard to make, as international regimes penetrate almost all policy spheres. The issue is particularly difficult within the European Union, where large areas of domestic policy are subject to co-decision. Even the SNP's independence proposals refer to co-ordination in foreign policies and the possibility of shared diplomatic representations. The Esquerra lists diplomatic representation, international treaties and defence as areas for co-decision. There would be a Catalan repesentative in delegations to the EU, with the Catalan decision being determinate in matters within its exclusive responsibility.[4] CiU proposes something similar. Ibarretxe promises 'direct' representation in the EU but this in practice seems to mean something similar to the Catalan proposals. There was also a reference to the Lamassoure initiative to recognize regions as 'partners of the Union' but Lamassoure's idea was no more than an arrangement for administrative delegation in the implementation of EU programmes and petered out rather soon.[5] Basque and Catalan proposals also demand representation in international bodies, notably UNESCO, the latter on the ground that education and culture

4. This actually forms part of the revised (2006) Catalan Statute of Autonomy, although the interpretation is rather narrow.

5. One of the few jurisdictions to show an interest was Scotland.

are devolved and that they have their own distinct concerns, including language. The Parti Québécois provided for the joint ministerial council to have a major role in defence and foreign affairs.

Defence and security also now cross the boundaries of foreign and domestic policy, given the 'new security agenda', which includes terrorism, drug and people trafficking, and financial crime. CiU does not deal with this matter, but Esquerra proposes shared responsibility, with the Generalitat of Catalonia having command of Spanish armed forces based there with 'territorial defence' a shared responsibility. The SNP wants a separate Scottish armed forces, but accepts joint actions and the possibility of British bases. On the other hand, it refuses to countenance the presence of nuclear weapons[6] and is officially opposed to NATO membership (although there are constant suggestions that it might change its position on NATO). The Parti Québécois proposals provide for joint defence and joint action within NATO.

Another issue that straddles the foreign-domestic divide is immigration. Quebec already has a provision for selecting its own immigrants within the overall Canadian quota and the CiU and Ibarretxe ask for something similar, while Esquerra sees this as a Catalan competence.

Culture and language are crucial in Quebec, Catalonia and the Basque Country and in all cases these are exclusively to be vested in the lower level. So is responsibility for broadcasting and, generally speaking, communications regulation. There have been frequent suggestions in Scotland that broadcasting regulation should be devolved, but also that an independent Scotland could continue to share the BBC.

There is a broad recognition across these various proposals of interdependence and the impossibility, in modern government, of making a clear division of competences, whether between external and domestic policy or between tiers of government. There is a consequent tendency to resort to joint mechanisms for policy-making. These differ from the familiar mechanisms of intergovernmental policy-making in that they are almost always bilateral, recognizing the distinct character of the jurisdiction in question and its status as a self-determining entity. The Allaire proposals suggest that other provinces might adopt the same status, leaving Canada as a rather loose

6. This is a very important issue, as the British Trident nuclear force is based on Scotland.

holding arrangement for the provinces but the Catalan and Scottish proposals do not make reference to other parts of the state.

4. The Scope of Devolution-Max

There are many differences in the details offered by the various devolution-max and independence-lite options and we would learn little by focusing on the minutiae, which are often rather vague. What is more important is to assess the overall scope of the proposals in relation to the broad compass of government. All would entail the domestication of most taxation and spending and of the balance between public and private consumption. This question, of the overall size and scope of the state, is one of the central issues of modern politics. In spite of pressures to globalization and international competition, states vary greatly in the size of their public sectors and their spending priorities. There is no one recipe for success, since both the high-spending social democratic states and the low-taxing neo-liberal ones seem to be viable.

Devolution-max jurisdictions could thus follow the high taxation-high spending route of the Nordic countries; or a neo-liberal route of competing through reduction in taxes and costs of production. This has caused a lot of confusion, especially in Scotland, where fiscal autonomy has become closely associated with the case for cutting business taxes in order to attract mobile capital. It is even suggested that tax-cuts would pay for themselves by attracting more investment, a variation on the Laffer curve theory. This is little more than wishful thinking. Aggressive tax-cutting, even if it did work, would be imitated by other jurisdictions, leading to a race to the bottom as governments deprived themselves of revenue without gaining additional investment. It would provide a gift to existing businesses including, in Scotland, the oil companies and the banks, and would provide incentives for transfer pricing or 'brass plate' relocations so as to declare profits in the low-tax jurisdiction. European-wide pressures for corporate taxation harmonization, already aimed at Ireland and the Basque Country, would grow.

It would therefore be necessary to face up to the choices and decide whether to follow a social democratic or a neo-liberal line. Given the balance in Scottish politics and the fact that one of the mainsprings of the push to devolution was to defence the welfare settlement in Scotland, it is difficult to see a neo-liberal strategy being

politically viable there. Despite is promises of tax cuts, the SNP still defines itself as social democratic. In Quebec, the Alliance Démocratique did at one stage push a strongly neo-liberal form of autonomism but this eventually failed and the market there seems limited. Convergència i Unió has had a social welfare tradition but recently seems more committed to neo-liberalism; whether this will be politically marketable in the long run remains to be seen. Esquerra Republicana is certainly on the social democratic side. There is also a strong social welfare tradition in the Basque Country. Neo-liberal regionalism of the sort advocated by Ohmae (1995) seems an unlikely prospect.

In that case, the route to competitiveness will have to lie in social investment so as to raise standards of education, training and health and in investment in innovation and technology. Small independent states can do very well in global and European markets, as the Nordic social democracies have shown. Large internal markets are no longer necessary and smallness can even carry advantages in the form of short-lines of communication, integrated networks of policy-makers and flexibility. Small jurisdictions with control over the main taxing and spending programmes could follow the same route. These advantages do not, however, flow automatically but are embedded in historical practice or have to be created. This implies that changes in internal institutions and practice would have to accompany constitutional change.

The SNP have claimed that the difference between devolution-max and their version of independence-lite is that in the latter case Scotland would control the macro-economic 'levers necessary to promote growth (Scottish Government, 2009). This is very dubious. Independence-lite leaves the currency and therefore control over monetary policy with the UK government; the same applies to the tripartite proposals for Quebec sovereignty with partnership, although that envisaged some joint responsibility for monetary policy. This would, in turn, have implications for fiscal policy, which would have to adapt to the externally-imposed monetary constraints. Indeed it has been suggested that there would have to be some kind of fiscal pact akin to that existing within the Euro zone. Esquerra and CiU both suggest that Catalonia would have representation within the Bank of Spain; but the crucial issue is representation at the European Central Bank, which is operationally independent and whose board is composed of state nominees. Self-governing nations under both devolution-max and independence-lite would be macro-economic policy takers rather than policy makers, although this is also true of many EU states including Spain.

5. Problems

One of the most difficult questions in territorial relations within modern states concerns the distribution of resources, whether through the uneven impact of central state spending or through explicit fiscal equalization. As states lose their ability to manage their spatial economies, there has been a move from cooperative to competitive regionalism, with territories seeking their own place in the global market place. Political elites in wealthy regions seek to desolidarize from their poorer compatriots, since transfers no longer necessarily come back to them in the form of purchases of their products. Sub-state nationalists shift the focus of solidarity from the state to the smaller territorial scale. On the other hand, all the evidence we have suggests that there is still widespread support for territorial redistribution in principle, even in the wealthy regions. With independence, of course, there would no longer be a question of sharing wealth with other territories but in any scenario short of this there might be. The Allaire proposals provide for a continued scheme of equalization, on the assumption that Quebec will be a net recipient. Ibarretxe continues the existing *concierto económico*, which leaves the Basque Country outside the revenue-sharing scheme although providing for a small amount of equalization since payments into Spain are partly geared to income. This leaves the Basque Country, which is a wealthy territory, contributing much less than Catalonia. Neither CiU nor Esquerra questions the principle of territorial solidarity but want transfers to be reduced, an opinion generally shared in Catalonia. There are disputes about the present fiscal balance between Scotland and the rest of the United Kingdom, some of the difference hinging in the treatment of oil revenues but, whichever side is right, the flows are much smaller than in the case of Catalonia, so the issue is less fraught. Nationalists claim that Scotland is subsidizing the rest of the UK, which makes it difficult to claim that full fiscal autonomy should be accompanied by an equalization scheme and proposals have generally avoided the issue. Reform Scotland does not provide for any equalization. Nor have the unionist parties been any more forthcoming. The Calman Commission (Commission on Scottish Devolution, 2009) and the subsequent Scotland Bill providing for sharing income tax simply leave in place the Barnett Formula for allocating the rest of the revenues; it is based on a combination of historic spending and population, with no adjustment for either needs or resources.

Devolution of the social security and welfare systems, in whole or in part, will tend to shift the locus of social citizenship from the state to the devolved or federated territory. In the United Kingdom this provoked some concern from the Calman Commission ((Commission on Scottish Devolution, 2009) and the New Labour think tank Institute for Public Policy Research that this would in itself undermine social citizenship. In the wider literature three arguments are advanced for this. One is that the ´nation´ is itself a community of solidarity (Miller, 1995). However, the nation may not correspond with the state and other spaces, including stateless nations, could equally well be sites of solidarity and social citizenship (McEwen and Moreno, 2005; Béland and Lecours, 2008; Keating, 2009). Second, it is argued that solidarity is best organized at the highest level, where more resources can be mobilized. Yet smaller nations tend, in general, to be more solidaristic and the widest unit, the European Union, is the least solidaristic of all. Third, the literature on fiscal federalism sometimes expresses a fear that devolution of welfare will result in competitive regionalism and a race to the bottom. Yet it is equally plausible to hypothesize race to the top as has happened in Spain (Gallego and Subirats, 2011) and the United Kingdom, where the devolved territories have tended to enhance social entitlements and make them more universal.

There is, moreover, a curious finding emerging both from comparative work (Jeffery, Lodge and Schmueker, 2010; Sturm et al., 2010) and from CIS studies in Spain, that citizens in devolved territories will often favour more autonomy for their region but at the same time prefer that service standards and entitlements be the same throughout the state. This is less pronounced in stateless nations and regions with a strong cultural identity, but it is still there. It suggests that devolution max might lead to less divergence than might otherwise be possible, and that there could be mechanisms, including imitation and learning and even loose coordination akin to the EU's Open Method of Cooperation, to prevent welfare standards getting too far out of line.

A recurrent issue in the United Kingdom is the West Lothian Question, concerning the rights of members of the central parliament from asymmetrically devolved territories to vote on issues that concern the rest of the state but not themselves. This exists under any form of asymmetrical devolution but assumes extra force when taxation is asymmetrically devolved. The UK Government has appointed a commission to examine the issue, following an election promise and devolution in 1999 already resulted in a reduction in the number of

Scottish MPs (but only to correct an existing over-representation). The issue does not seem to have the same resonance elsewhere. Quebec MPs can vote on the Canada Pension Plan and, even more strikingly, MPs from the Basque Nationalist Party have frequently pacted with Spanish governments of both main parties to support the Spanish budget, in return for concessions on Basque autonomy. Neither the Allaire Report, the Ibarretxe Plan nor the CiU proposals make any reference to the question and Esquerra only makes mention of continued Catalan representation in the Senate.

There is frequent recourse in all these proposals to bilateralism and shared competences, which raises a number of questions. Each proposal assumes a single bilateral deal but, putting the Ibarretxe and Esquerra proposals together would produce two associated states in Spain. Devo-max for Catalonia as suggested by CiU would trigger parity demands in the Basque Country and probably other autonomous communities as well. Wales has been catching up with constitutional development in Scotland and will no doubt continue to do so. Bilateralism (or multilateralism if other territories are included) rests upon the idea of negotiation and compromise but there are important considerations of power. The smaller territory would be the weaker party and might have to concede more.

Then there is the position of the majority nation, whose attitudes have differed from one case to another. In Canada outside Quebec and in Spain outside the minority nations there has been resistance to asymmetry and an insistence that either Quebec, the Basque Country and Catalonia should not get more autonomy or, if they do, that it should be extended all round. This is not the case in the United Kingdom, where opinion in England has little problem accepting asymmetrical devolution. What is more difficult there is accepting the federal principle, that devolution might limit the freedom of the central parliament in its own sphere, as implied by devolution-max proposals for sharing powers and for negotiated representation in Europe. In Canada and Spain, there is even more resistance to the idea that the minority nations should enjoy a bilateral relationship with the centre. In Canada and Spain, this takes the form of resistance to radical change. In England, it often leads public and even elite opinion to the idea that Scottish independence would be a more acceptable choice, since that would allow England to reconstitute itself as a unitary state (although it is not clear where Wales would fit in).

The final difficulty is the process of negotiating change. The Ibarretxe and Esquerra proposals clearly lie outside the Spanish con-

stitution and would thus require constitutional change, although CiU has argued that it could stretch constitutional interpretation to cover its demands. Allaire was clearly a demand for constitutional change. In the United Kingdom the issue is moot since the constitution is unwritten and can be changed very easily. Unionists in all countries, however, have raised a more fundamental objection, that autonomy of whatever sort cannot be considered a right in the way that self-determination is, since it requires negotiation and agreement of both sides. This, I have argued above, is unfounded since any exercise in self-determination requires negotiation and any agreement, including independence, will have two sides and a lot of detailed bargaining.

Constitutionalism is about getting the widest agreement on governing arrangements in conditions where there is not an existing consensus, which necessarily entails compromise. This might seem to run against the idea of self-determination where that is seen as an absolute claim. It might also run against the idea of using the referendum, since that tends to polarize opinion. Yet public opinion in all the cases reviewed here has no problem with mixed solutions; it is the political elites who cling to outdated notions of sovereignty. Referendums can be a means of endorsing compromises (as in Northern Ireland) as well as answering ´clear´ questions. Forcing politics into the procrustean model of classical statehood is therefore a violation of democratic principles as well as popular opinion. Canada and the United Kingdom have come further than Spain in recognizing that, ultimately, Quebec and Scotland have a right to seceded. None of the states, however, has found a way of giving their constituent nations what they actually want.

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ABSTRACT

National self-determination does not necessarily entail independence. Many nationality movements in Europe have historically called for a continued association with the host state. Non-nationalist parties, in turn, have often embraced various forms of devolution. This has opened up a middle ground, in the form of 'independence-lite' or 'devolution max', which would give nations control of most domestic policy. Proposals on these lines have been put forward in Quebec, Catalonia, the Basque Country and Scotland. These would allow stateless nations to strike distinct social and economic compromises. They would not give them control over the levers of macro-economic policy. They would entail a bilateral relationship with the state. Such proposals have not found favour with state majorities, and recent debates have been characterized by rather traditional assertions of sovereignty at odds with our interdependent world.

Key words: self-determination; devolution; independence; nationalism.

RESUM

L'autodeterminació nacional no implica necessàriament independència. Molts moviments nacionalistes en la història d'Europa han necessitat una contínua associació amb l'Estat amfitrió. D'altra banda, alguns partits no nacionalistes han adoptat ocasionalment diverses formes de descentralització. Això ha obert la porta a propostes a mig camí entre els dos extrems, en forma d'"independència mínima" o "desconcentració màxima", que donarien als països control sobre la política nacional. Les propostes sobre aquestes línies s'han presentat al Quebec, a Catalunya, al País Basc i a Escòcia, propostes que permetrien a les nacions sense estat aconseguir compromisos socials i econòmics, si bé no els donaria control sobre la política macroeconòmica. Es tracta de propostes que impliquen una relació bilateral amb l'Estat. Aquestes propostes no han trobat el favor de les majories estatals, i els debats recents s'han caracteritzat per afirmacions de sobirania en la línia més tradicionalista i en absoluta discordança amb un món cada cop més interdependent.

Paraules clau: autodeterminació; descentralització; independència; nacionalisme.

RESUMEN

La autodeterminación nacional no implica necesariamente independencia. Muchos movimientos nacionales en la historia de Europa han requerido una

continua asociación con el Estado anfitrión. A su vez, algunos partidos no nacionalistas han adoptado en ocasiones diversas formas de descentralización. Ello ha abierto la puerta a propuestas a medio camino entre ambos extremos, en forma de "independencia-mínima" o "desconcentración máxima", que ofrecerían a los países control sobre su política nacional. Las propuestas sobre estas líneas se han presentado en Quebec, en Cataluña, en el País Vasco y en Escocia, propuestas que permitirían a las naciones sin estado alcanzar distintos compromisos sociales y económicos, si bien no control sobre la política macroeconómica. Se trata de propuestas que implican una relación bilateral con el Estado. Estas propuestas no han encontrado el favor de las mayorías estatales, y los debates recientes se han caracterizado por afirmaciones de soberanía en la línea más tradicionalista que no casan con un mundo cada vez más interdependiente.

Palabras clave: autodeterminación; descentralización; independencia; nacionalismo.