THE EMERGENCE OF A DEMOCRATIC RIGHT TO SELF-DETERMINATION IN EUROPE

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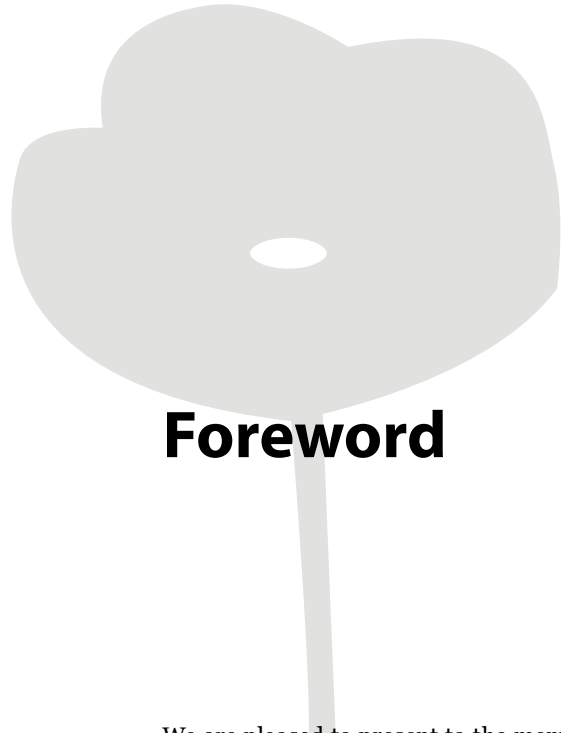CENTRE MAURITS COPPIETERS
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Contents

Foreword

We are pleased to present to the members of the European Free Alliance this multi-authored book on *The Emergence of a Democratic Right of Self-Determination in Europe*. Prepared under the auspices of the Centre Maurits Coppieters, this book endeavours to study the right to self-determination of peoples – a fundamental collective right. More than ever before, it is the subject of heated debate.

The Scottish referendum on September 18th, 2014, and the Catalan plebi-scitary election on September 27th, 2015, exemplify the exercise of this right. Yet, the United Kingdom and Spain had two very different ways of dealing with the claim of one of its nations to freely decide their political status. The first has recognized the right to choose for Scots and the second has been attempting to thwart such a right for the Catalans.

This book goes beyond Catalonia and Scotland and presents the cases of 22 nations, which claim a right to self-determination. These case studies show a clear evolution towards a democratic right to self-determination, but they also reveal a resistance in some countries to the idea that peo-ples should be able to determine their path towards autonomy or greater autonomy, or to independence and with ties to the European Union. Its content is diverse – it looks into the struggles of the peoples of Europe from many different perspectives, be they cultural, economic, historical, legal, political or sociological.

We would like to thank all the authors that took part in this project and provided all these perspectives. We are grateful to our friends in the Centre Maurits Coppieters, its Galician President Xabier Macias and its Flem-ish Director Gunther Fritz Dauwen, who trusted us to make this book hap-pen. We are particularly thankful to our Catalan friend Ignasi Centelles who has invested much time and energy into this project.

The right to self-determination of peoples is more alive than ever. It is important that the peoples of Europe and the international community as a whole persist in the quest for the recognition of this fundamental col-lective right that is theirs. Achieving freedom for a people is a matter of conviction and perseverance.

It is, to use the formula of Ernest Renan,
a plebiscite of every day.

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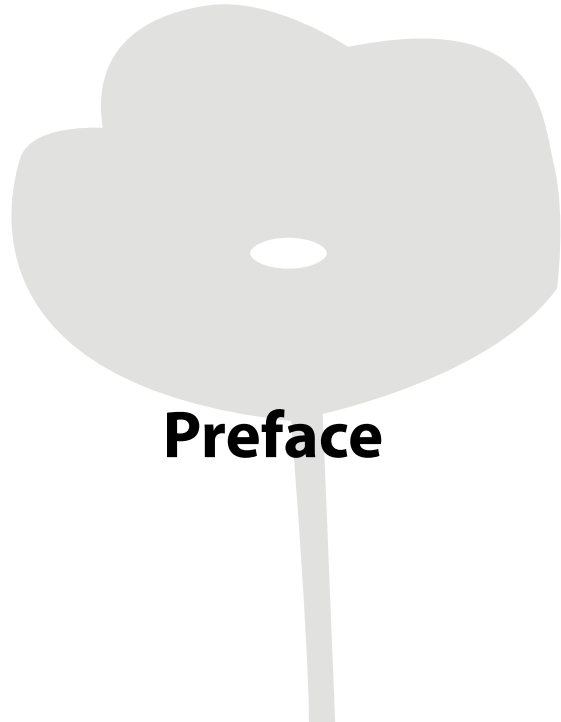
Preface

IMPLEMENTING SELF-DETERMINATION FOR BASIC DEMOCRATIC PURPOSES

François Alfonsi
President of EFA

We, in the European Free Alliance (EFA), believe that 2014 was the year of self-determination. With a demonstration in Brussels in March, drawing Europe-wide support for our key principle, and progress in European Parliament elections in May, as well as the Scottish referendum and the Catalan consultation, I believe that my opening statement is correct.

We also think that the period 2014-2017 is going to be seen as the time when the wider public discovered, embraced, and even recognized the principle of self-determination as a key to modernizing our 21st century democracies and building momentum for the idea in the European Union (EU).

That is why we are pleased with this initiative of the Centre Maurits Coppieters to demonstrate that the concept itself has moved on from remedial self-determination to implementing self-determination for basic democratic purposes, enhancing democracy for the people and peoples of Europe and the world.

Our foundation was set up in 2007. It has branches in Flanders, the Basque Country, Catalonia, Aragon, Wales, Valencian Country, Brittany, Rijeka, Sardinia, Transylvania, Occitania, the Balearic Islands, the Macedonian minority in Greece, Galicia and Corsica. As a Corsican, I am proud to have contributed to the development of the Centre Maurits Coppieters through our own think tank and weekly journal Arritti (Stand Up). Arritti celebrates its 50th anniversary this year. During this time, it has helped the likes of Coppieters and its founding members to capitalize on more than a century of political thought and social analysis in creating new ideas for Europe.

This publication is the result of all of our experiences and new ideas, and it is designed to provide reflections on self-determination in the Europe of the 21st century.

PROGRESS FOR PEOPLES AND PROGRESS FOR HUMANITY AS A WHOLE

Xabier Macias
President of Centre Maurits Coppieters

The idea for this book was conceived in March 2014. The World Network for the Collective Rights of Peoples met at the European Parliament in conjunction with a demonstration in Brussels in support of independence movements in Scotland, Flanders and Catalonia. Centre Maurits Coppieters was hosting the Network for the second time in the capital of the European Union, with the support of the EFA. It heard with interest the proposal made by Daniel Turp, who serves on its Scientific Advisory Council as an expert in international law, that the wording of the right to self-determination should be updated in light of new experiences of many stateless peoples and nations and their emerging civic and political movements, and that the basis of their democratic right to freely determine their own futures should be affirmed.

The Network in question had started to come together some years earlier, when efforts to include collective rights into the theoretical framework of the Left, which was in search of new approaches, led to the active participation of the Centre Internacional Escarré per a les Minories Ètniques i les Nacions (CIEMEN) and other Galician, Basque and Kurdish organisations in the World Social Forum (WSF), launched in Porto Alegre (Brazil) in 2001 as the principal expression of the anti-globalisation movement. This initiative was a continuation of earlier joint actions by the same players in the international sphere, such as the Conference of Stateless Nations of Europe (CONSEU), which first met in 1985.

The primary expression of this work took place at the 2009 WSF in Belém do Pará in Brazilian Amazonia with the organisation of a space for the collective rights of peoples, where experiences were shared and discussions were held among representatives of the Baluchi, Kurdish, Corsican, Cornish, Catalan, Basque, Galician, Sardinian, Aymara, Mayan, Mapuche, Quechua, Tamil, Amazigh, Palestinian and Sahrawi peoples. It became clear that there was a global dimension to the denial of political rights for peoples calling for sovereignty by certain states, which have been drawn into crisis by many anti-democratic trends that globalisation entails.

The World Network was eventually set up in Girona (Catalonia) in April 2010, alongside the resurgence of independence movements that were starting to demonstrate the potential for democratisation and social transformation inherent in processes of liberation. In sad contrast, more orthodox, traditional and emerging left-wing political forces retained a cosmopolitan attitude that prevented them from associating with the construction (or reconstruction) of new forms of sovereignty, which break away from old jingoistic states and economic globalisation.

This context seems to present a double challenge: convincing citizens that achieving or restoring self-government is the best way forward in achieving the prosperity and equality that these peoples need; and persuading them – as the Galician nationalists annihilated by Franco's dictatorship said – that a freed nation could be a symbol of inclusivity, its very existence enriching the cultural diversity that we all seek.

If we speak of rights, all arguments are to little avail. This book aims to show that progress made by the peoples of Europe is reflected in

progress for humanity as a whole. This was what we, at the Centre Maurits Coppieters, recognised when we decided to offer the European experience to this debate and work on this publication.

We are extremely grateful for the collaboration of Professor Daniel Turp and Catalan scholar Marc Sanjaume who made this multi-authored book possible.
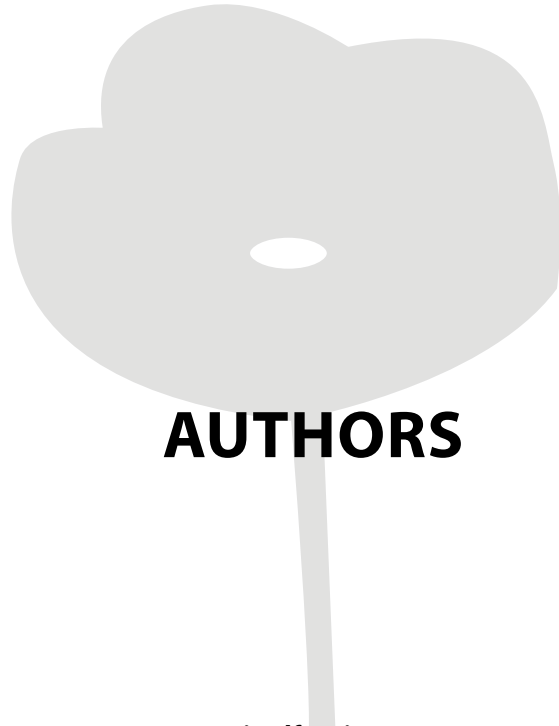
AUTHORS

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ÅLAND ISLANDS

Bjarne Lindström

THE AUTONOMY OF ÅLAND:
CONSTITUTIONAL STATUS AND ECONOMIC SYSTEM

The autonomous Åland Islands is often highlighted as a role model of international conflict resolution, sometimes referred to as "The Åland Example". Indeed, the international decisions behind the creation of autonomy were at the time a unique settlement of an ethnic and territorial conflict, including an extensive autonomy as one of its main components. One could, however, question whether the original ambitions were ever fulfilled regarding the freedom of the islanders to utilize their own resources and independently form their own fiscal policy.

1. INTRODUCTION [1]

The Åland Islands, an archipelago in the Baltic Sea with some 6,500 islands and 30 000 inhabitants, constitutes an autonomous territory within the Finnish realm. Following its separation from the old motherland Sweden in conjunction with the Russian conquest of Finland in 1809, the archipelago was demilitarized by the middle of the nineteenth century. At the time when Finland opted for independence (1917), the Ålanders decided to ask for reunification with Sweden because of their Swedish culture and language. The conflict was submitted to the League of Nations (LN) in 1920.

The LN decided in 1921 that the Åland Islands should come under Finnish sovereignty, but with an autonomy as extensive as possible without becoming a fully sovereign nation state. Guarantees were given to secure the islanders' Swedish language and culture. Åland's autonomy is thus not the result of internal delegation of state power. It is a division of power as a product of an international political resolution.

The resolution in 1921 also included an international guarantee. Åland was given the right to complain to an international body. The Parliament of Åland could thus submit complaints to the Finnish Government to be presented to the LN. If the matter was judicial, the Council should obtain an opinion from the Permanent Court of International Justice. This mechanism was not replaced when the LN collapsed, but has ever since been brought up at every major revision of the autonomy system by the Ålanders, and efforts are constantly being made to replace it by carving out its place in an international context.

2. BASIC CONSTITUTIONAL CHARACTERISTICS

The legislative power is divided between the Parliament in Helsinki and a Parliament formed in Åland in 1922, creating two separate jurisdictions. The laws passed by the two legislative assemblies are hierarchically on the same level, but in different spheres. The autonomy of Åland Islands is not, however, entrenched in the Finnish Constitution, where only reference is made to the Autonomy Act. The laws passed by the Åland Parliament are reviewed by a special body with members representing both Finland and Åland Islands, and if they do not agree on the judgment, it is referred to the Supreme Court. The final decision is made by the President of Finland

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[1] *The first two sections on the historical background and constitutional set-up of the Åland Autonomy is a re-worked and shortened version of a text co-authored with Elisabeth Nauclér for a forthcoming book edited by Godfrey Baldacchino: "Creative Island Solutions Festering Island Disputes" (Ashgate 2017).*

who has the right to veto a law if the law is not considered as belonging to the legal power of the Åland Islands.

3. CURRENT FINANCIAL SYSTEM

The current financial arrangements between Åland Islands and Finland can be summarized as follows:
- The Parliament of Finland decides on taxes and fees to be collected on Åland Islands;
- The Ålandic autonomy receives a fixed (legislated) share of the country-wide revenue from the Finnish Government;
- Income and capital tax collected on Åland Islands exceeding a certain share of the tax revenue of Finnish state, is paid back to the Government of Åland Islands;
- Åland decides on municipal taxation with some restrictions in practice.

It is thus the Finnish – and not the Ålandic - Parliament that decides on the set up and levels of most of the taxes in Åland.[2] This concerns all taxes and tax-like fees paid to the state by the Ålanders and their companies.[3] Instead, the autonomous entity receives a "block sum" of the revenues of the Finnish Government amounting to 0.45 percent of the state taxes. In addition, it retrieves the Åland-paid State taxes exceeding 0.5 percent of the total income tax in Finland. This tax return has to various degrees been paid every year since the system was introduced, indicating a higher per capita tax base on Åland Island compared to the rest of Finland.

There are thus four basic principles underpinning the distribution of power to tax the Ålanders and their business:
- The Finnish Parliament and Government is the main actor and decision-maker;
- There is no significant correlation between the island's own income base and the funding of the autonomy;
- The model of public sector funding is the same in Åland as in Finland;

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[2] *Legislation regarding municipal taxes is the only significant exception. It should, however, be noted that the close interconnections between state and municipal taxation in Finland gives little room for a separate municipal "tax regime" in Åland.*
[3] *There are some minor taxes and tax-like fees that Åland can decide on, but considering their marginal financial impact, they can be disregarded here.*

- The political and economic responsibility for the public economy of Åland primarily rests with the Government and Parliament in Helsinki, not with the Parliament and authorities in Åland.

Two important conclusions can be drawn on how these principles of the political power over Ålandic taxation is exercised. First, the autonomy does not have any real influence over taxation policies pertinent to Åland. Second, there is practically no interrelation between the development of the Ålandic economy and the funding of the autonomous public sector.

4. THE POLITICAL BACKGROUND

There has never been any substantial political support in Helsinki for Åland Islands to gain control over its own tax base. In the first Autonomy Act proposal (presented in 1919, before the final decision on the statehood of Åland was decided by the LN in Geneva), self-funding of the autonomous entity was limited to only a few insignificant areas, such as entertainment taxes. All main sources of tax income, including the "land tax" (the equivalent to today's income tax) were suggested to be decided upon by the Finnish Parliament. Moreover, it was strongly emphasized that the taxes from Åland were not to be used in other parts of the Republic.

However, this view on taxation powers in Åland, and hence, the funding of the autonomy, was opposed not only by the Ålanders, but also by some other countries. At the LN negotiations in Geneva, it was pointed out that the income from the suggested taxes would not be enough to secure funding for the Åland Islands. It was therefore advised that Åland should gain control over the taxation of land ("land tax"), which was at the time very important. The final outcome was a political compromise whereby the income from the land tax on Åland Islands was to be divided between the Finnish State and the autonomous entity.

This compromise was doomed to fail. Less than 50 percent of the taxes collected from the Åland Islands was – unsurprisingly – not enough to cover the costs of the autonomy. A few years later, the Finnish Parliament removed the land tax and replaced it with the current income tax, without compensating Åland for the economic loss (50 percent of the former "land tax"). Finland then introduced a yearly "advance payment" to cover the expenses of the autonomous entity. The use of these transfer payments

were strictly monitored and controlled by the state authorities in order to ensure that the money was used "in an equivalent way as elsewhere in the Republic".

5. GROWING PRESSURE FOR MORE ECONOMIC FREEDOM

The current Autonomy Act was implemented in 1993. The preparation of it began already in the early 1970s when the Åland Parliament appointed a cross-party Committee in order to prepare a proposal for a much needed renewal of the old 1951 Autonomy Act with a special focus on the financial system and the power of taxation.

The Committee summarized its view on the main role of taxation in the following points:
  • Funding of the commitments of the autonomous government;
  • Redistribution of resources between individuals, regions and between the private and public sector;
  • Contribution to counter-cyclical economic policies;
  • Instrument of active measures for commerce and industry.

In its final report to the Parliament, the Committee determined that the Åland's authority over these crucially important aspects of taxation policy were all missing. The conclusion was that the Åland Islands need to acquire "/... /general authority to decide on taxation required for the needs of the autonomy". The Committee further emphasized that the Åland should have "/.../ the right to decide on taxable entities and tax rates".

After the Committee had finished its work, a period of extensive political negotiations between the autonomy and the Finnish Government commenced. This continued with varying intensity for more than a decade before it resulted in a proposal for a new Autonomy Act (1991). However, yet again, it turned out that the political will in the Finnish Parliament to meet the the demands of Åland to expand its economic freedom was missing. The new Autonomy Act once again secured full State control over the taxation powers in Åland, and thus also the control over the funding of the autonomous Åland.

6. A DANISH SOLUTION?

Growing discontent, coupled with the lack of flexibility in the current design of the autonomy has provoked the Ålanders to take a closer look at the Danish model for handling relations with the north Atlantic islands; Greenland and the Faroe Islands. The Danish State does not tax its two self-governed island territories, neither directly nor indirectly. The two autonomies fully control their own tax base and have full responsibility for all money collected through taxation on the islands. Moreover, the Faroe Islands and Greenland receive and freely dispose of a considerable "block sum". Furthermore, the Danish State also pays for all of its own expenses on the two islands.

7. CONCLUSION

One can, to be sure, discuss and have different viewpoints regarding the pros and cons of the Danish and Finnish strategies for handling their autonomous islands' funding and taxation powers. It is, however, important to be clear about what this politically sensitive issue in Åland, as well as in Finland, is all about. It is not about whether Åland is a financial (net) contributor or receiver to the Finnish State budget. The key political question is rather where the authority and responsibility over taxation of the Ålanders and their economy belong – in Helsinki or in Mariehamn (the capital city of Åland). Hence, the core issue is how far Åland's autonomy should extend in terms of disposing of economic resources, the use of taxation as a mechanism for redistribution and the use of taxation as an instrument for an active economic policy.

ARAGON

Carlos Serrano Lacarra

ARAGON AND THE RIGHT TO SELF-DETERMINATION: HISTORICAL FACTS AND THE WILL TO SURVIVE

Aragonese citizens have demonstrated their wish to be governed by common rules. The area's past as a kingdom gives its "accord" and parliamentarianism a special significance in a contemporary setting, and its important milestones have continually been highlighted. Aragon can appeal for the right to self-determination based on a track record that includes awareness of its history, claims for its ancient rights and a reasoned approach to constructive and peaceful initiatives outlining its position in relation to the Spanish State. These range from the signing of the Federal Pact of Tortosa (1869), right up to the last regional elections in May 2015.

Aragon is an autonomous community within the Spanish State. Its degree of self-government is regulated by a statute, which, since its entry into force in 1982, has undergone several amendments. In the last amendment

(2007), the Statute of Autonomy recognized Aragon's status as a historical nation. This was in line with formulations dating back to the early 20th century, as quoted above[*] (alluding to the right to self-determination within a federalist approach).

1. THE HISTORICAL FACTS

Ask any Aragonese citizen what best defines their home territory and it is likely that (whatever ideology they may profess) their response will evoke how a shared history has greatly contributed to the sense of Aragonese identity. History is often a defining factor for a national community, but in Aragon's case, there are certain critical features worth bearing in mind.[1]

Aragon was a medieval kingdom, founded in the 11th century when groups of Christians living in the Pyrenees banded together to offer organised resistance to the forces of Islam. By the late 13th century, they had marked out a territory that corresponds to the current autonomous region. A century earlier, the kingdom had forged a dynastic union with the Counts of Barcelona known as the Crown of Aragon. This political entity joined Valencia and Mallorca in their struggle to rid their lands of the Moors and later had a significant presence throughout the Mediterranean.

In the late 15th century, the marriage of the Aragonese King Fernando to Isabel of Castile brought Aragon into an association with the Spanish monarchy that would dominate international politics for the next two hundred years. While sharing sovereignty with other territories, the kingdom maintained its own judiciary and institutions (Parliament, Councils and a highly original legal system). However, it failed to neutralize the authoritarianism of the king, as shown by the tragic outcome of the Aragonese revolt against Philip II (1591).

In the early 18th century, Aragon's unique laws and institutions were suppressed by the Bourbon dynasty, whose outlook was absolutist and

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[*] *I refer to «La personalidad de Aragón queda definida por el hecho histórico y la actualidad de querer ser. Como consecuencia (…), proclamamos la libertad absoluta de la nacionalidad aragonesa, para el pleno desarrollo de su vida pública, sin intervenciones extrañas, y afirmamos nuestra más consciente orientación de convivencia ibérica» in Bases de Gobierno de Aragón aprobadas por la Asamblea Regionalista Aragonesa (Zaragoza, 7 December 1919).*
[1] *A collective synthesis of the history of Aragon, in VV. AA. (1991) and VV.AA. (1993). Also, Germán (1998).*

centralist. Indeed, this logic would be applied by them throughout Spain after the War of the Spanish Succession.

Since then, the partial endurance of local laws and nostalgia for the old kingdom, have formed the basis on which national awareness has survived. In the 19th century, Aragonese identity was evoked by those calling for more liberalism through both progressive social measures and constitutional change (the re-establishment of the kingdom's parliament, reviving the tradition of regional pacts, etc.). Demands were also made for a more belligerent and nostalgic absolutism (appealing for the reconstitution of the old *Fueros* or regional privileges), as well as voices clamouring for a federal republic.

As the 19th century turned to the 20th (in the midst of crises and modernization), the current model of a centralised State became highly questioned. An argument firmly in favour of regenerating ancient national rights permeated proposals for an Aragonese regionalism proposed by the propertied classes and the bourgeoisie. This clearly influenced plans for greater autonomy or moves towards federalist principles in the Aragonese nationalist movement. Emigration to Catalonia also had a role to play here.[2]

The Second Republic (1931-1936) raised expectations that territorial identities would be recognised. In Aragon, the Left adopted a draft Autonomy Statute that was nullified by the Civil War. At the height of the conflict, the eastern half of Aragon, controlled by the Republic, experienced a degree of self-government through the Council of Aragon, later abolished by the victorious Spanish centralists.

After the fascist victory in 1939, the Franco dictatorship took steps to prevent the deepening of Aragonese identity. Aragon saw its symbols and history made to serve a reactionary and exclusive Spanish nationalism.

In its later years, the dictatorship proved incapable of adapting to the changes prevalent in Spanish society. These included the rise of neighbourhood movements, attempts to make the church more grassroots-based, clandestine labour and agricultural unions, cultural movements, etc. All of these evidenced the deficiencies of the regime and reinforced the

democratic opposition's demands for greater freedoms, as well as increasing interest in autonomy for the territories within the Spanish State.

In Aragon, centre stage was given to the reality of a territory that had been subjugated (by centralist powers and economic interests) and had suffered inequalities and imbalances, as well as having an undervalued historical identity. A popular protest song also contributed to these issues, as did cultural weeks and initiatives, such as the publication of the progressive magazine *Andalán* that was also in favour of more Aragonese autonomy. Nor should we forget incidents, such as the gathering of autonomy supporters in the town of Caspe (July 1976), and popular concern for the territory (on issues affecting the environment, such as railway planning, the threat of diversions along the River Ebro, the building of nuclear power stations, or social issues, such as emigration). There was also an intellectual effort to regain a lost historical identity and recover ancient laws, plus an interest in local anthropology and linguistic diversity. All of this, in addition to reviving memories of the old mediaeval kingdom, generated an awareness of Aragonese identity that became linked to the defence of the area and the struggle for democracy.

Between 1976 and 1978, Spanish politics revolved around reforms. In designing territorial reorganizations, the demand for self-government for Aragon would count on specific conditions and solutions.

2. "ARAGONESE POWER" IN A CHANGING SCENARIO

Recognition of Aragon as a historical nationality in 2007, although merely testimonial (and within a reform considered insufficient in some areas),[3] offered Aragon a status that it had previously been denied, given that no Statute of Autonomy had been passed by plebiscite during the Republic. It was also argued that such a status (or regional consciousness) was not accredited in the arbitrary criteria of the Constitution of 1978.[4]

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[2] *A general vision of Aragonese nationalism, with references to more specific studies, in Peiró (coord. 1999; 2002) and López & Serrano (coord. 2003).*

[3] *The CHA or Chunta Aragonesista (Aragonese Union) pointed out shortcomings in the recognition of Aragon's own history, in government funding, the competence ceiling and in defending the territory against the perceived threat in plans to interfere with the flow of the River Ebro. <http://www.aragon-digital.es/noticia.asp?notid=32093> [consulted 15/10/2015]*
[4] *For more information about the lack of definition and the ambiguity in the Constitution's designing of the Autonomies making up the Spanish State, see Solè-Tura (1985), Aja (1999), Beramendi, Máiz (2003).*

The reality belies this approach. Throughout its recent history, Aragon has had political policies proposed, by both the Left and Right, that clearly indicated such a regional consciousness. Let us start with the Left.

The opposition invoked the decentralized and democratic tradition that existed prior to the dictatorship, which placed emphasis on the reality of Aragon as an autonomous entity. Communists and socialists defended the right to self-determination.[5] Whether or not this represented an inherited issue (Ysàs, 1994: 87) or a tactical one (De Blas, 1989: 589-591), the Left were very clear that critiquing the regime involved questioning its obsession with centralization. Aragonese organizations of these parties continued to put forward these arguments, but they were certainly not new.

In 1972, the PCE (Spanish Communist Party) had presented its *Manifesto for Aragon* in which it stated: "the struggle to defend Aragon is part of the struggle for freedom across the entire country".[6] It insisted that under a democratic regime there would need to be economic decentralization, regional assemblies elected by universal suffrage and a Statute of Autonomy. The manifesto maintained that this "autonomy should connect with its historical roots in order to build its future as well as be a solution for urgent problems" (Cazcarra, 1977: 86).

That year the CAPAD (Aragonese Pro Democratic Alternative Committee) was established. Its program can be summarized as: forming a provisional government, autonomy for Aragon, uniting opposition groups and organising popular demonstrations demanding the fall of the Franco dictatorship. The CAPAD contributed to the formation, in 1975, of the JDA (Democratic Board of Aragon), a local version of the JD of Spain, funded by the PCE, which presented a *Manifesto* in which it stated "the Aragonese People [demand] that their right to affirm themselves a people with its own history be recognized through a series of democratic freedoms. This autonomy would return to the people of Aragon, not only their historical character, but also control over their own destinies."[7]

This would imply 'Aragonese power', the return of "regional consciousness" and a "new Aragonese identity movement" as a heterogeneous political movement that reclaimed institutionalized democratic power (Garrido, 1999: 78-83).

Once the dictator was dead, the JD merged with the PCE[8] to form *Democratic Coordination* in which the positions of the political forces converged. In 1976, a gathering of Aragonese Socialists and Communists issued a statement setting out their goals of popular sovereignty, amnesty, fundamental freedoms, the right to self-determination and a Constitution adopted by universal suffrage.

The subsequent process of democratic reform known as "normalization", directed by the powers that be from a reformist standpoint (involving the dissolution of the dictatorship's parliaments, the legalization of opposition parties, calls for elections, etc.) led to political differences. On the Aragonese Left, there was a federalist and autonomous grouping embodying the principles of "Aragonese power": the PSA (Socialist Party of Aragon) which, along with formations from other territories formed part of the FPS (Federation of Socialist Parties). The FPS advocated for a state of many nations, recognising the right to self-determination of the nations making up Spain.[9]

In 1977, the PSA claimed for Aragon the "recognition of its political character and the right of the Aragonese people to define their integration into the Spanish State (…). The character of Aragon is defined by the historical fact of its existence and its present desire to be a separate unit."[10] They transcribed the formula put forward by Aragonese nationalists in the early 20th century;[11] adding that "Aragon is a distinct territory due to the practicalities of its economy, the development of its specific history, and by the will of the Aragonese people to forge their own political power."[12]

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[5] *Manifesto-Program (1975) of the PCE (Spanish Communist Party), resolutions in Congress 1974 and 1976 of the PSOE (Spanish Socialist Party), and the Ideological-Political Program (1975) PSP (Popular Socialist Party. For more see Núñez (1996: 436).*
[6] *"Manifiesto para Aragón, del Comité Regional del PCE", in Royo (1978: 173-175).*
[7] *"Manifiesto de la JD de Aragón". Royo (1978: 229-234).*

[8] *Platform for Democratic Convergence, led by the PSOE with the support of Christian Democrats, Social Democrats, Carlists and Basque and Catalan nationalists. Its Aragonese version was the PCDA.*
[9] *See: Bada, Bernad y Bayona, in VV. AA. (2003); Serrano, Ramos (2002: 127-144)*
[10] *PSA (1977).*
[11] *Bases de Gobierno de Unión Aragonesista of 1919 & 1921, and the Green Paper for an Autonomy Statute of 1936.*
[12] *"Manifiesto-Programa del PSA", in PSA (1978: 12)*

The PSA obtained a seat in the first democratic Parliament, but an internal crisis led to many of its leaders and militants deserting to the PSOE (Spanish Socialist Party). The PSA became a minority party, which, until its dissolution in 1983, shared with nationalist organizations hard criticisms of the handling of the autonomy process (Serrano, 2005).

Aragonese political parties continued to speak for the right to self-determination (demanding their own "political power" and federalism) in statements made by their federations or state organizations. For example, PSOE, in its "Report on the nationalities and regions of the Spanish State",[13] referred to the right to self-determination, while maintaining the idea of the unity of the Spanish State. It outlined a possible autonomous or federal organization, which it included in its manifesto for the elections of 1977: "Socialist alternatives for Aragon".[14]

For those elections, representatives of political parties that had not yet been authorised stood as independent candidates. One of these parties, the Front for an Autonomous Aragon, demanded "freedom for the development of all the peoples of the Spanish State ... We believe in the self-determination of Aragon. We are in favour of a federal Spain."[15]

On the Right, there was also a place for Aragonese claims. In its later years, the Franco dictatorship drew up formulas for administrative decentralization, although it did not envisage political recognition of regional realities. These formulas were adopted in Aragon by officials of the regime, who attempted to articulate a congress of provincial councils (The General Community of Aragon), and outlined this in detail in a "Regionalist Declaration" (1976). These moves may be considered "opportunistic" (politicians seeking a political future within the imminent democratic framework), but they also denoted interests and concerns about regionalist rights that were not being reproduced elsewhere.

The CAIC (Independent Aragonese Candidacy of the Centre), the seed for the PAR (Aragonese Regionalist Party), obtained a Member of Parliament (MP) in the 1977 elections. Its proposals synthesized a conservative

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[13] Resolutions on nationalities at the XXVII Congress of the PSOE, December 1976. Royo (1978: 302-308).
[14] PSOE (1977).
[15] Communist Movement (a leading light in said candidature), in VV.AA. (1976: 55). In the same document (1976: 89), federalism was defended by the self-determining Carlists.

regionalism that reclaimed a historical and legal identity, autonomy within the unity of Spain, and a system of adequate regional funding (Gómez, 1978).

3. THE REALITY OF WANTING TO EXIST

The idea of "Aragonese power" demonstrated to the community that there were people who shared the political will to insist on Aragon's right to decide its own future. The right to self-determination was therefore expressed in terms of the will of the majority; a will that was externalized through specific events. One example being the mass demonstrations (in April 1978) marking the entry into force of the decree of pre-autonomy. This event (fostered in negotiations in the Aragonese Parliament that had been elected the previous year) initiated the path to self-government, led by the *Diputación* (Regional Government) of Aragon. The demonstrations had been institutional acts, but the people saw them as evidence of majority support for the regional autonomy process that had already begun.[16]

This process was conditioned by the main national parties,[17] which seemed to transfer their uncertainty and ambiguity to their local organizations. That fuelled criticism by the RENA (Aragonese Nationalist Studies Grouping). This grouping, formed in 1977 (Serrano, 2002), advocated for a nationalism rooted in culture, which took on a political dimension in the MNA (Aragonese Nationalist Movement). The MNA defined Aragon as a nation on the basis of historical, economic, cultural and social events.[18] It led the political struggle for recognition of the right to self-determination.[19]

Their slogan "freedom, amnesty and an autonomy statute" – linked to anti-Franco actions and the emergence of democracy – became "Aragon: a nation with the right to self-determination."[20] Nationalists were in the

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[16] There was a "formal Aragonisation" of all political parties. Self-government, as demanded by the anti-Franco opposition, became part of the official political culture.
[17] Union of the Democratic Centre (UCD) and PSOE: government and leading opposition between 1977 and 1982.
[18] MNA (1979).
[19] MNA (1980): "The MNA assumes the responsibility of fighting for the return to our people of their management and governing bodies, recognizing the People's Sovereignty as the foundation of all political power".

minority, but given the general dissatisfaction with the progress of the devolution process, several formations on the left became sympathetic to the principle and their positions began to converge with those of the MNA in the AA (Autonomous Assembly).

With the dissolution of the AA (due to differences over defining "Aragon as a nation"), a low profile political response to the slow track autonomy negotiations towards a Statute of Autonomy was extinguished. This deactivation, extended to other sectors, explains the scepticism with which Aragonese society responded to the Statute of Autonomy in 1982.

Nevertheless, the substratum of popular will (as evidenced in the defence of Aragon against centralist threats, as well as the fact that the idea of self-government was seen as positive for the development of Aragon) persisted. Hundreds of thousands of people flooded into the centre of Saragossa in the springs of 1992 and 1993 to demand full autonomy (demonstrating against the Autonomy Pact agreed among the major parties, which denied more powers for Aragon). They also took to the streets in 2000-2001 in protest against the National Hydrological Plan that supported plans to alter the course and flow rates of the River Ebro.

The right to self-determination has been exercised by the Aragonese people every time they have demonstrated (demanding full autonomy or rejecting proposals seen to have negative consequences for the territory). The people have also increasingly voted for the idea in free elections, including those that decided the composition of regional institutions.

In this light, it can be said that the first moment that "Aragonese power" was exercised was the holding of regional elections in 1983. The PSOE government that emerged (in both its choice of President and its granting of important ministries to former members of the Federalist PSA of the 1970s) attempted to reorganize territorial awareness, among a more informed society, around cultural policies that consolidated Aragonese identity.[21] This institutionalization included symbols and places associated, in the popular memory, with the Aragonese nationalist universe. These acts included a homage to Juan de Lanuza (a famous Justice Minister at the time of the Ancient Crown of Aragon).

[20] In Aragonese: "Aragón ye nazión, autodeterminazión."

In the 1980s, the right-wing PAR consolidated its position with the recruitment of local elites who had been members of the UCD (Spanish Union of the Democratic Centre), and led several autonomous governments (1987-1993). Despite its youth wing proposing discussions on self-determination, the term (identified with "independence") was never accepted by the party. However, they did accept the terms "federalism" and "nationalism" in 1998.

4. FEDERALISM

With the autonomy system up and running, Aragonese nationalism focused more on culture (while maintaining its historical and legal claims to nationality and a kind of internationalism). In 1986, the CHA (Aragonese Union) gathered various people who were disenchanted with the policies of the major parties, along with members of social and cultural movements and earlier nationalist projects, etc. The CHA drew up a leftist and federalist project for Aragon. They had their first members elected to the Parliament of Aragon and had their initial successes in major municipalities in the mid-nineties (entering the Spanish Parliament in 2000).

The CHA affirmed the right to self-determination in its Statute in 1992, referring to this right within a federalist setting in their program. In "ARA, a new political agreement for Aragon" (2014),[22] they demanded "the replacement of the current Spanish Autonomous State by a multinational state (...), among whose different nationalities would be Aragon (...) and recognizing the right to self-determination". In addition, they demanded the recognition of Aragon's full capacity to make political decisions, the recovery and modernizing of its historical rights and insisted on bilateralism as the main regulator of the relationship with the Spanish State. They also called for the federalization of the organs controlling the administration of justice (Soro, 2014).

[21] For Núñez Seixas (2001: 63), in Galicia "autonomy implies the dignity of the Galician cultural markers associated with Galician identity, the legitimization of symbolic references and the reinforcing of the reference points of regional identity." A similar situation was revealed in Aragon. As Izuzquiza (2003: 92) states: "Autonomy is rooted in the land and culture and has a historical foundation in shared traditions and events experienced in common".

[22] http://www.chunta.org/workspace/uploads/4-+ara.pdf [20 October 2015]

In their manifesto for the elections of 2015, under the heading "Aragon's historic nationality, a guarantor of rights and identity",[23] CHA aimed at "promoting a debate on the reform of the Constitution (...), through a call for referenda... Moves towards a republican and federal model of state organization (...) which respected the right to self-determination of the Aragonese people, based on acceptance of the multinational nature of the Spanish State, as well as the right to decide of its constituent nations."

Readings of the right to self-determination ranged right up to full independence, a position held though by a minority of organizations. The Aragon independence-seeking group *Puyalón de Cuchas* supports: "the struggles of peoples and the working classes for their liberation and the constant exercise of their sovereignty and independence",[24] declaring itself "radically self-determining" and maintaining support for the identity of a people in "their undeniable desire to be a nation within a just, humane and peaceful world".[25] In a similar vein, Aragonese State declared its commitment "to fight for the recognition of the Aragonese people as a human collective, politically and legally defined as a nation and, therefore, as a sovereign entity."[26]

5. CONCLUSION

Elements of historical, legal and cultural identity with indicators of diversity (notably linguistic)[27] combine in Aragon, where its citizens have demonstrated their wish to be governed by common rules. Its past as a kingdom gives its "accord" and parliamentarianism a special significance in a contemporary setting and its important milestones have continually been highlighted.

Aragon can appeal for the right to self-determination based on a track record that includes awareness of its history, claims for its ancient rights

and a reasoned approach to constructive and peaceful initiatives outlining its position in relation to the Spanish State. These range from the signing of the Federal Pact of Tortosa (1869), right up to the last regional elections (May 2015) and include action programs, the foundations of governments, draft constitutions, draft autonomy statutes, manifestos, executive bodies (Council of Aragon, 1936; General Community of Aragón, 1974; the General Council of Aragon, 1978), mass rallies and mass demonstrations for freedom, full autonomy, defence of the territory, participation in elections, political groupings pledging allegiance to Aragon, as well as representation in both left and right-wing parties, etc.

Some political options even view the right to self-determination as a step toward full independence. Others argue that this right should use federalism as its instrument, merely improving and refining the current Autonomous State, whose benefits are generally recognized,[28] but whose defects have not gone unnoticed.[29] Aragon remains a country of unfinished business, among which there is a restrained debate on the model of state that should be adopted. It is a debate in which self-determination (seen as an individual and collective right for all Aragonese to determine their political status and to pursue their economic, social and cultural development) is a priority.

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[23] http://www.chunta.org/workspace/uploads/programa-electoral-autonomico-2015.pdf [20 October 2015]
[24] http://www.puyalon.org/es/principios/ [20 October 2015];
[25] https://puyalon.wordpress.com/alazez-de-puyalon/[20 October 2015]
[26] http://www.estauaragones.org/castell/homecast.html [20 October 2015].
[27] Aragon has three native languages: Castilian, Aragonese and Catalan. Language is a means of communication (not a differentiating factor) and an enriching aspect of its heritage. So, linguistic diversity forms part of Aragonese identity.

[28] Martinez (2014: 116) states that the regional Government has fostered a political management system that is closer to the public. It is a leader in development, in services, and infrastructure and a prop for social groups that have been historically underserved. It strengthens local democracy by strengthening civic pride, solidarity and the sense of Aragonese identity.
[29] In contrast with a federal state, a regional autonomy lacks tools by which it can coordinate among communities. Overlapping powers and State interference have been inevitable. Nor have they been able to guarantee a funding system that would ensure accountability and self-management of resources and real solidarity between territories. They have also failed to encourage State investment in outstanding areas of conflict (communications, territorial restructuring, funds to halt rural depopulation and bilateral financing agreements, as well as the restoration of historical rights). Martinez (2014: 116 et seq.).

BAVARIA

Klaus-Jürgen Nagel

A RIGHT TO SELF-DETERMINATION AND SECESSION?

Bavaria is the largest of the 16 Länder of the Federal Republic of Germany and the second largest in population size (more than 12.5 million). Bavarian independence is currently not on the political agenda in Germany. While Bavarian politicians from time to time remind the public that "Bavaria can do it alone",[30] the German press usually jokes about "Lederhosen-Separatismus" (separatism in leather pants, which form part of the folkloric dress).[31]

1. BAVARIA – AN OLD EUROPEAN STATE

It is widely accepted that Bavarians do not have a common ethnic base. The

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[30] The title of a book published by CSU-politician Wilfried Scharnagl in 2012
[31] Christoph Seils, Der Lederhosen-Separatismus liegt im Trend, Tagesspiegel, 3.9.2012

population mix of romanized Celts with Germanic elements seems to have produced the tribe of the "*Baiern*". Accounts of Bavarian political history usually start in 555, when a duke (*Herzog*) was established as head of the Bavarians under the Merovingian King of Franconia. Bavaria became a territorial dukedom in 1180 and from that date until 1918 was governed by the Wittelsbach dynasty. Since 1806, it has been a kingdom, incorporating Franconia and part of Swabia. In the German war of 1866, Bavaria was defeated siding with Austria, but it allied with the Prussians in the German-French war of 1870. In 1871, Bavaria joined the German Empire and thereby lost its international sovereignty, while accepting the status of a (federated) state of the new *Reich*. The monarchy was substituted by the *Freistaat* (Free state of Bavaria, also translated as Republic) in the November Revolution of 1918. Bavaria became one of the *länder* of the Weimar Republic. At the end of WW II, Bavaria was occupied by US troops and it was the first German *land* to be established in September 1945. It was the only West German territorial state whose boundaries could be considered historic. After joining the West German Federal Republic, Bavaria, a mainly agrarian country, started its economic miracle that propelled it towards a modern economy based on high tech industry and services.

The Bavarian Constitution claims "over thousand years of history",[32] but this refers only to "*Altbayern*" (also called "Baiern", Old Bavaria: Niederbayern, Oberbayern, and Oberpfalz, Lower and Upper Bavaria, and Upper Palatinate), but not to Franconia or Swabia. Particularly Nuremberg, a city of a thousand years of history, and also the Swabian free city of Augsburg, have been more linked to the history of the *Reich*.[33]

2. THE LEGAL ISSUE

Under international law, Bavaria, which is not a colony, has no recognized right to secede. Bavarian independentists argue that Article 1 § 2 of the United Nations Charter also applies to the Bavarian people, and eventually

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[32] Bayerische Landeszentrale für politische Bildungsarbeit (ed.): Verfassung des Freistaats Bayern. Grundgesetz für die Bundesrepublik Deutschland, Stand: 1. Oktober 2010, Munich 2010
[33] See Graham Ford: Constructing a Regional Identity: The Christian Social Union and Bavaria's Common Heritage, 1949-1962, Contemporary European History 16.3, 2007, p. 277-297
[34] http://freiheit-fuer-bayern.de/juristische-wege-zur-eigenstatlichkeit (access 30/10/2015)

to each of the Bavarian tribes.[34] But even the *Bayernpartei*, a party that defends the right to secede, admits that the principles of international law are limited to nations that already exist.[35]

Bavarian self-determination is granted in terms of the Federal Constitution (*Grundgesetz*). The *Grundgesetz* basically provides the same self-rule for all member states; *Länder* autonomy is constitutionally protected. Shared rule is somewhat asymmetric, as states may have between 3 and a maximum of 6 votes in the *Bundesrat*, the second federal chamber. Individual states have no veto right. This applies also to amendments of the Federal Constitution. Bavaria joined the Federal Republic freely. The *Grundgesetz* does not provide any right to secede. Secessionists argue that it does not exclude secession; the constitution just does not mention it.[36]

According to prevalent opinion, the Federal Constitution is more than a treaty. But according to separatists, the act of Bavarian accession should be interpreted under the premise of conserving Bavarian sovereignty. The issue of an implicit constitutional right to secede (or its exclusion) has never been raised and has rarely been mentioned in literature. The rare contributions that consider the establishment of opt-outs and even an exit option come from fiscal federalism studies, where such an option is considered a possible positive device against inefficiency.[37]

Advocates of an implicit right to secede also argue that as the accession to the *Grundgesetz* followed Article 178 of the Bavarian Constitution of 1946, so should secession. Accession had to be the result of the free will of the Bavarian people, and therefore without this will, membership in the federation could not endure. The dominant interpretation does not admit this, as Federal law breaks *Land* law.

The Bavarian Constitution of 1946 had been accepted by a wide majority in the *Landtag* and in referendum (by 71% of the votes with a partici-

pation of 76%). In the eyes of the Military Government, accession to a German Constitution was not facultative, but mandatory.[38] A particular Bavarian citizenship (Article 6), to be acquired by birth or naturalization, was first suspended by the Military Government and then by accession to the Federal Republic. It is of merely symbolic value; even according to the constitutional text itself, a special law would be necessary to develop this citizenship, and this has never happened.[39]

It is telling that even the Bayernpartei, which is currently mobilizing for a popular initiative for a Bavarian law on secession,[40] admits that the Bavarian Constitution would have to be amended in order to permit secession. These amendments include the elimination of all references to the German people in the introduction, of the prescription to guarantee all German nationals residing in Bavaria the same rights and duties as Bavarians (Article 8), of the prescription to educate children not only "to love to the Bavarian *heimat* and in the spirit of friendship between peoples" but also to the "German Volk" (Article 131). Finally, and most importantly, Article 178, which states that "Bavaria will accede to a future German Federation", and should be substituted by "accession as an independent state to a Europe of the Regions", a somewhat contradictory formula.

We may conclude that under the prevalent interpretation of the laws, Bavarian self-rule is to be understood under the German Constitution. Its underlying philosophy is that of a federation where the limits to self-determination are compensated by a constitutionally enshrined co-decision at the centre. According to prevalent interpretation, there would be no right to Bavarian secession neither in international nor in German national law.

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[35] http://landesverband.bayernpartei.de/2013/ist-die-eigenstaatlichkeit-verfassungswidrig/ (access 30/10/2015)

[36] The Bayernpartei argues that any duties have to be spelled out in the Constitution (see http://landes-verband.bayernpartei.de/2013/ist-die-eigenstaatlichkeit-verfassungswidrig/ (access 30/10/2015)

[37] See Norbert Berthold/Michael Neumann: Opting-Out Klauseln und der europäische Einigungsprozess. Eine sezessionstheoretische Analyse, Bayerische Julius-Maximilians-Universität Würzburg, Wirtschaftswis-senschaftliche Beiträge des Lehrstuhls für Volkswirtschaftslehre 56, Würzburg 2002

[38] Haus der Bayerischen Geschichte (ed.): Politische Geschichte Bayerns, Munich 1989, p. 30

[39] See Werner-Hans Böhm: "Gott mit Dir, Du Land der (Ober-)Bayern". Das Land der Schlösser und Klöster, der Berge und Almen, Zur Debatte, special edition as supplement to number 4, 2015 (Bayerische Wegmarken), p. 22-24.

[40] According to http://freiheit-fuer-bayern.de/gesetzentwurf-zur-unabhangigkeit (access 30/10/2015) 7050 signatures have been gathered.

3. CAN BAVARIAN SECESSION BE DEFENDED ON MORALLY SOUND GROUNDS?

In political theory, there are well-established schools of thought that admit secession to be justified on other grounds. While some theories accept secession only if there are "just causes" to eliminate manifest injustices and if no other remedy is available, "primary right" theories consider secession to be morally acceptable either if the claimers are a nation, or if they are the majority in a territory.[41] Let us now analyze the standard arguments of these schools and their eventual application to the Bavarian case.

3.1. Is there a just cause for Bavarian secession?

The most widely accepted cause among "remedial rightists" is unjust incorporation of a territory by a state. Bavaria gave up its independence when it joined the German *Reich* on January 30th, 1871, with legal effect since January 1st, 1871. Bavarian independentist Wilfried Scharnagl argues that the debate on accession in the second chamber of the Bavarian Parliament only took place after the foundation of the *Reich*. However, this debate was won by a 102:48 majority; the first chamber had voted before the foundation (with only three votes against), the government and the monarch had been in favor, and the Bavarian people, in the context of the victory against France as an ally of Prussia and other German states, had been "carried away" by German nationalism.[42] It should be noted that even the adversaries of the accession defended a united Germany, albeit not the one proposed by Bismarck.

The Bavarian monarchy was overthrown by popular revolution in 1918. However, the short lived independent Bavarian revolutionary state is not claimed as legitimate by Scharnagl or other defenders of a Bavarian right to secede, maybe for ideological reasons. After the defeat of the revolutionaries, Bavaria accepted the Weimar republic and its Constitution that established Bavaria as a *land* of this Republic. It may be argued, however,

that the loss of the Bavarian asymmetrical self-governing "residual" rights was not properly redeemed, in spite of the *Reich*'s compromises. For example, the Bavarian railroads became *Reich* property without paying the previously established compensation. It is, however, very questionable whether an eventually unpaid historical debt may be considered a just cause for secession.

Secessionists argue sometimes that Bavaria has never joined the (West)-German Federal Republic in 1949.[43] On May 20th, 1949, the majority of the Bavarian Parliament (101:63 with 9 abstentions) rejected the text of the German Constitution. This happened after a heated debate; even the adversaries insisted on their German patriotism. With the word of PM Hans Ehard who argued against the acceptance of the Constitution: "*Nein zum Grundgesetz und ja zu Deutschland!*" ("No to the Basic Law but Yes to Germany").[44] In a second vote some hours later, the Parliament and the Government accepted the Constitution to be legally binding in Bavaria when at least 2/3 of the *Länder* accepted the text. This decisive vote was carried by 97 "yes" against only 7 "no" with 70 abstentions. We may conclude that a clear majority held a critical position about the text.

Current defenders of independence generally use the negative vote to demonstrate that Bavaria was a partner in a treaty, that cannot bind the Free State for eternity particularly if, by continued centralization in Germany and in Europe, Bavaria is downgraded from a *land* to a province.[45] It is this more recent political turn towards centralism that is seen as the main argument for independence. However, such a turn, backed by majorities in both houses of the German Parliament (several times with Bavarian votes) cannot easily be constructed as a "just cause" for secession, at least not under strict secession theorists like Buchanan.[46]

Since USA achieved its independence in a war against "taxation without

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[41] See for example Percy Lehning (ed.): Theories of secession, London/New York 1998
[42] Wilfried Scharnagl: Bayern kann es auch allein. Plädoyer für den eigenen Staat, Cologne/Berlin 2012, p. 18-52

[43] See Uwe Kranenpohl: Bayernpartei, in: Frank Decker/Viola Neu (eds.): Handbuch der deutschen Parteien, Wiesbaden 2007, p. 166.
[44] Arne Wilsdorff/Maximilian Steinbeis: Warum Bayern das Grundgesetz ablehnte, Deutschlandfunk 30.10.2015. http://www.deutschlandfunk.de/warum-bayern-das-grundgesetz-ablehnte.934.de.html?dram:article_id=131554 (access 30/10/2015)
[45] See "Zentralstaat Deutschland", http://freiheit-fuer-bayern.de/zentralismus-in-deutschland (access 30/10/2015).
[46] In Lehning, op. Cit.
[47] http://freiheit-fuer-bayern.de/ (Access 30/10/15)

representation", financial exploitation without consent has been considered a just cause for secession. For the independentist *Bayernpartei*, the Federal Republic is systematically depriving Bavaria of its prosperity – at an increasing rate.[47] Christian Social Union (CSU) politician Scharnagl does not shy away from naming the system of financial equalization between the *Länder* a "*Raubzug*" (raid), which leaves Bavaria "*ausgebeutet*" (exploited) by the German majority. The Bavarian Government should simply stop paying. Bavarian independentists propose to abolish the fiscal equalization scheme and the solidarity tax supplement for the Eastern – former GDR – parts of Germany. However, these laws have been negotiated with the *Länder*, and Bavaria could and often did use the Constitutional Court when claiming unjust treatment,[48] thereby arguably accepting the legitimacy of the whole process. It may also be important that the Federal Government spends a lot of federal money on highways and army barracks in Bavaria. Germany does not provide numbers on fiscal balances, including all cash flows of federal money to the different *Länder* and/or calculations on the benefits that the federal Government institutions may provide for the citizens in the different regions, nor has Bavaria claimed to get such numbers. Even politicians who, like Scharnagl, defend Bavarian independence often remit to reforms of German federalism as a workable and desirable remedy against exploitation.

Cultural oppression is one of the other just causes that at least some "remedial rightists" consider when discussing the normative premises for a just secession. In the Bavarian case, no actor claims such oppression to exist.

"Remedial rightists", however, are only one position in political theory. An alternative approach considers secession *prima facie,* a "primary right" either of nations, or of territorial majorities.

3.2. Is Bavaria a Nation?

It is quite difficult to decide whether a community is a nation. Usually, proponents allude to different objective criteria and/or the subjective national consciousness and political will. In a recent interview, the President of the *Bayernpartei*, Florian Weber, assured that *Bayern* has its own history, culture and language, like Scotland.[49] However, he did not use the term "nation". We have already established that the Bavarian polity for most of its history only referred to the Old Bavarian part of the state. As for ethnic identity, today's Bavarian state representatives use the idea of four Bavarian tribes, the *Baiern* (Old Bavarians), Franconians, Swabians, and finally the Sudeten Germans. This last "tribe" (*Stamm*) has no territorial base in Bavaria. About two million refugees and expulses were received after 1945 from the former Czechoslovakian republic. They had never been Bavarian, however, they were considered a part of the German nation that had resettled in Bavaria.

Bavarian independentists have on very few occasions referred to a common Bavarian dialect (but not language).[50] Linguists, however, have discovered two groups of dialects in Bavaria: middle German dialects like Rhine-Franconian in Lower Franconia and Thuringo-Saxon in a part of Upper Franconia; upper German dialects like Eastern Franconian, Bairisch (Bavarian) mostly in Old Bavaria, and Alemannic in Swabia. Bairisch is often seen as the archetype Bavarian, particularly outside Bavaria.

Bavaria is – after the Saarland – the German *land* with the highest percentage of Roman-Catholic believers. More than half of all Bavarians profess this religion. However, nearly 20% are Lutherans, and they concentrate in Central Franconia and parts of Upper Franconia. These regions are historic heartlands of the reformation, in particular Bavaria's second city, Nuremberg.[51] The protestant minority, whose main territories had been incorporated in the 19th century, resisted integration into an "all Catholic" definition of Bavaria and, where possible, orientated towards the *Reich* with its protestant majority. This was one of the reasons why Bavarian state-building has been successful while national identity-building would be difficult. Bavarian national myths, where they have been created, appeal quite often only (or foremost) to Old Bavarians. Typical dishes, dresses and architecture also differ between Old Bavaria, Swabia and Franconia. These "tribes" are often thought to have different

[47] Sometimes with, more often without success.
[48] *Sometimes with, more often without success.*
[49] *In Sascha Geldermann: Bayernpartei sieht auch gute Chance für eigenen Staat, Augsburger Allgemeine, 15.9.2014.*

[50] *Ingrid Fuchs: Bayernpartei setzt auf Schottland, sz.de 12.9.2014 (http://www.sueddeutsche.de/bayern/referendum-ueber-unabhaengigkeit-bayernpartei-setzt-auf-schottland-1.2124053 (access 30/10/2015)*
[51] *See Werner K. Blessing: Bayern – das Land der "ausschliesslichen Katholizität"?, Zur Debatte, Special Edition „Bayerische Wegmarken", 4, 2015, p. 19-21.*

mentalities. Even for Bavarian independentists, Bavaria is marked by its diversity, not its uniformity.

This is highlighted by the official state coat of arms, which includes symbols standing for the historic regions, while it is true that the blue and white rhombus of the flag stands for the whole state. In Franconia, the Bavarian ensign is sometimes accompanied by the Franconian white and red "rake" flag.

The Bavarian state anthem[52] hails from the 1860s. It received the title of Bavarian "hymn" in 1966 and is since then protected as a state symbol. But it was never meant to become a Bavarian national anthem – its text refers, instead, to the German nation. In Franconia, it is sung together with the "*Frankenlied*", symbol of Franconian identity.

While "state" terminology is widespread, "nation" terminology is reserved to the German nation.[53]

A Bavarian identity, however defined, is shared by an immense majority of Bavarians, but it is not seen as a national identity. Bavaria is usually defined as a *Heimat* (home or home land). In a poll presented by the public Bavarian Radio in 2009, 75% agreed "totally" with considering Bavaria their *Heimat*, and a further 17% agreed "partially"; only 9% denied this. More than half were absolutely proud to be Bavarian, an additional 28% felt mostly pride. 54% preferred Bavarian, 46% German identity.[54] According to another survey presented by the CSU party foundation (Hanns-Seidel-Stiftung),[55] Bavarians felt mostly attracted by their local community (89%), but the region and Bavaria scored both 88%, Germany was rated slightly lower (85%) and Europe (60%) lowest. Comparing Bavaria to the other *Länder*, only 1 of 8 did not see Bavaria on top. While objective elements of a Bavarian identity are often more difficult to establish than those of the single Bavarian regions, there is without doubt a strong link

to be found between the Bavarians and their country, which is widely seen as an emotional *Heimat*.

The existence of a nation is oftentimes more linked to the existence of nationalism than to objective identity elements; and national consciousness can also be established or strengthened by nationalist organizations and parties. While Bavarian civil society organizations generally follow the federal pattern and constitute Bavarian sections of German associations, this applies only partially to the party system. While the Bavarian Social Democrats (SPD), Greens (Die Grünen) and liberals (FDP) follow the federal pattern, the Christian Social Union and the very tiny *Bayernpartei* (independentists) present candidates only in Bavarian districts.

Non-state wide parties (NSWP) are a Bavarian tradition, since the adversaries of Bavaria's adhesion to the *Reich* in 1871 organized as *Bayerische Patriotenpartei* (Party of Bavarian Patriots). After the Second World War, the tradition of Bavarian NSWP was continued by the *Bayernpartei* and to a degree by the CSU.[56] *The Bayernpartei* received 17.9% in the first *Landtag* (parliament) election it was allowed to stand (1950), participated in coalition governments, but lost votes and leaders to the CSU. Since 1966, the *Bayernpartei* has no representative in the Bavarian *Landtag*. Since 1993, the party stands for an independent Bavarian state. In the 2013 *Landtag* election, for the first time since 1966, the party scored slightly more than 2% of the votes, and in Lower Bavaria, its stronghold, over 3%. The party currently asks for a referendum on Bavarian independence, while also advocating competitive and more dual federalism for Germany, as well as direct representation for Bavaria in Europe.

While the *Bayernpartei* looks for an alliance with other NSWP and in particular with minority nationalist parties in Europe, the NSWP status of the CSU is questionable. The CSU is the current governing party of Bavaria (47.7% and an absolute majority of seats). From 27.4% in 1950 and 38% in 1954, the party quickly rose to achieve majority status. With the exception

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[52] See Verfassung..., p. 86-88; Werner-Hans Böhm, op. Cit.
[53] See for example Bayerische Staatsoper, Bayerisches Staatsballett, Bayerisches Staatsschauspiel, Bayerisches Staatstheater. One of the few exceptions is the National Museum of Bavaria (founded in 1855, that is, before German unity, by the Bavarian king Maximilian II).
[54] According to Scharnagl, p. 79-86.
[55] Hanns-Seidel-Stiftung (ed.): Generationstudie 2009. Heimatgefühl und Leben in Bayern, Oktober 2009.

[56] Free associations of voters (Freie Wähler) are often playing an important role, too (9% in the last Landtag elections).
[57] See Alf Mintzel: The Christian Social Union in Bavaria: Analytical notes on its development, role and political success, in: M. Kaase and Klaus von Beyme (eds.): Elections and parties, London 1978; Alf Mintzel: Die CSU – Anatomie einer konservativen Partei, Opladen 1975.

of the years 1954-7, the CSU has always been in government, and normally with an absolute majority. The party has been described correctly as Bavaria's "official and hegemonic party" (*Staats- und Hegemonialpartei*).[57] The CSU is the only party that may successfully ask electors to "vote for Bavaria", meaning itself.[58] To achieve this position, the party had to develop from the traditional circle of Bavarian honorary politicians towards a professional organization, capable to "catch-all" Bavarian electors with its powerful machine, stretching out far beyond the Old Bavarian Catholic agrarian background of the former NSWPs and reaching out towards the cities, the north, and the Protestants. Combining *Laptop* and *Lederhose* (the traditional folkloric leather pants of Old Bavaria), to use the famous metaphor of former federal President Roman Herzog pronounced in 1998, was identified with CSU dominance. This went hand in hand with the construction of a Bavarian state consciousness. It was the CSU that developed Bavarian state symbols, clearly with a *"gesamtbayerisch"* (including the whole of Bavaria) approach. This also meant to include, even if somewhat belatedly, Franconians into the party leadership, and even Protestants.[59] For Franz Josef Strauss, the historic leader of the party, Bavaria was "our *Heimat*", Germany "our *Vaterland*", and Europe "our future".[60]

Some researchers like Sutherland have equalized CSU's Bavarian identity construction with nationalism. Sutherland is of course aware that the only nation CSU refers to is the German one. To save her argument, she asserts that "only the substitution of the term *Heimat* for Nation distinguishes the strategy" (p. 22) from other nationalisms. However, she herself quotes Minister Präsident Stoiber who in an interview in 1999 clearly stated: "My nation is called Germany. I am not Basque. I am not Québécois. Federalism is not separatism."[61]

In her efforts to equalize the CSU with nationalist NSWPs elsewhere in

Europe, Eve Hepburn "explores how the CSU constructs, and associates itself with, the Bavarian nation" (p. 185).[62] She quotes Eberhard Sinner, the then Bavarian Minister of European and Federal Affairs, who in 2005 told her: "Bavaria is very similar to Scotland. We see ourselves as a nation" (p. 185). But she gives no great importance to the fact that the CSU is not struggling for national recognition. However, this is one main difference toward the other NSWPs she cites. Graham Ford, already in 2007, "distinguishes the CSU from ethno-regionalist parties, for it neither constructs Bavaria as a nation in its own right nor eschews the German nation state". He comes to a conclusion that differs from Sutherland and Hepburn, but agrees more with the German research tradition: "Whereas ethno-regionalist parties typically use the past to assert their distinctiveness from the national state in order to legitimise demands for cultural protection, autonomy, federalization or separation, the CSU asserted its regionalism as constitutive of the (German, KJN) nation (...) by locating Bavaria's 'imagined past' firmly within a German historical context." Therefore, "the CSU committed Bavaria's 'imagined future' to the German nation".

Alf Mintzel, Germany's most renowned specialist on the CSU, always had stressed the "dual role" of the CSU, both as a regionalist and as a federal party. In spite of the presence of some independentists like Wilfried Scharnagl or *Landtag* MP Steffen Vogel, this should not be forgotten or downplayed. In fact, Hepburn (in her more recent article written together with Dan Hough)[63] also highlights that the CSU is a party on the national (German) level, and also a part of the Christian Democratic parliamentary group. And the authors could have added that the party enjoys special veto rights there, and that on more than one occasion Christian Democrat candidates for the highest German offices have come from the ranks of the CSU. Hepburn and Hough admit that the "fact that the CSU is a quasi-federal party allows it to punch above its weight in the federal political arena" (p. 85). Eventual successes and failures of the CSU in Berlin have an effect on the CSU success in Bavarian elections, as the decision of the Bavarian voter is not only guided by Bavarian issues.

The CSU has repeatedly argued that the German Government is not taking into account the Bavarian interest when acting in Europe. This has

[58] *See Eve Hepburn: The neglected nation: the CSU and the territorial cleavage in Bavarian party politics, German Politics 17, 2008, 2, p. 184-202, here: 190.*
[59] *Even some CSU PM have come from Franconia. For the region-inclusive strategy, see Ford, op. cit.*
[60] *Cited in Martin Knobbe: CSU-Urgestein Scharnagl. "Es ist Zeit für das grosse bayerische Aufbegehren", Spiegel online 22.8.2015.*
[61] *Claire Sutherland: Nation, Heimat, Vaterland: The Reinvention of Concepts by the Bavarian CSU, German Politics 10.3, 2001, p. 11-36, here: p. 27.*
[62] *Hepburn 2008, p. 184; see also Eve Hepburn/Dan Hough: Regionalist Parties and the Mobilization of Territorial Difference in Germany, Government and Opposition 47, 2012, 1, p. 74-96.*

[63] *See Eve Hepburn/Dan Hough 2012, p.85.*

triggered positions in favor of re-nationalizing policies (returning them to the German State). Re-allocating competences to the national (i.e. German) level is seen as better protecting the Bavarian interest.

It has to be concluded, therefore, that any claim of a primary right of self-determination or secession based on the existence of a Bavarian nation collides with the perceptions of the Bavarian people and its representatives.

3.3. Bavarian secession as a majority decision

Liberal democratic secession theorists (like Harry Beran)[64] do not ask for the existence of a nation to defend a right of self determination including secession. They just demand a democratic majority, considering that according to liberal democratic values individuals are entitled to choices, and that this in principle includes the decision on frontiers. Secession should be *prima facie* permitted, if a majority asks for it.

According to a survey commissioned by the *Bayernpartei* in 2003, only 33% of the Bavarians favored independence.[65] In the 2009 study on Bavarian *Heimat*, the party foundation of the CSU (Hanns-Seidel Stiftung) asked informants whether they would prefer "more independence" ("*mehr Unabhängigkeit*") for Bavaria; 39% answered positively, 20% partially agreed, and 37% said no. Bluntly asked whether Bavaria should be an independent state, 23% agreed, 16% agreed partially, but 56% rejected this opinion. A similar question by the same institute in 2003 had rendered 17% in favour, 21% partially, and 56% against. A more recent, but methodologically more problematic, online poll by ODC services conducted in August 2012 in the whole of Germany showed that 12% of the overall sample to be favorable and 62% against; looking at only the Bavarian respondents, the "yes" vote received 21% and the "nay" vote 57%).[66] With these figures in mind, secession cannot be defended on grounds of being the option of the majority.

A justification of secession under choice theories, however, does not only ask for the existence of a majority, but also conditions it on other features. The first condition is that an independent state should be viable. This does not seem much of a problem. According to its population, Bavaria would be the 9th state among 28 EU members; according to its GDP (2010), the 7th, that is, above Poland, Belgium, Sweden, Austria or Denmark.[67] Bavaria's low debts would give the independent state a push. Bavaria would be a viable independent state in Europe.

According to Beran's list of conditions,[68] secessions should be excluded if they take away economically, military, or culturally essential parts of the original state. Even the loss of some 11 million people and of an economically prosperous and innovative part would not make the "rest-of" Germany economically inviable. Although many of the German army's training grounds are located in Bavaria, and the Bavarian landscapes play an important role in Germany's self representation (and tourist industry), one could scarcely argue that these losses would render Germany militarily or culturally inviable.

Another set of conditions refers to an eventual exploitation of subgroups after secession. And with regards to nested groups with territorial majorities, choice theorists ask for a guarantee that these groups might be able to secede on their own if that is their preference.

With regards to Bavaria, up to now, no fears of remaining German citizens or of immigrant communities or religious minorities have been voiced. This may be due to their positive stance on living in Bavaria, or to the fact that they do not take Bavarian secession seriously. As for regionally concentrated minorities that might claim a right to secede on their own and therefore constrain the Bavarian right, Franconia would be the most important case to take into account. Situated around Bavaria's second city, Nuremberg, and incorporated into the Bavarian state only recently, Franconia counts some 4 million people (more than Slovenia) and claims a history, if not of independence, then of a strong link to the *Reich*. It concentrates most of the Lutheran minority in Bavaria. Franconia often voices complaints of being passed over by Munich politicians. Featuring

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[64] In Lehning op. Cit.
[65] Andreas Settele, then chief of the party, in an interview for the extreme rightist Junge Freiheit, 12.9.2003. http://phinau.de/jf-archiv/archiv03/393yy23.htm (access 30/10/2015).
[66] Marktforschung 17.8.2012; http://www.marktforschung.de/nachrichten/marktforschung/forderung-nach-unabhaengigkeit-bayerns-nicht-mehrheitsfaehig/ (Access 30/10/2015)
[67] Scharnagl 2012: 91; Rudolf Stumberger: Zerbricht Deutschland?, telepolis 16.9.2014.
[68] See Lehning op. cit.

a higher rate of unemployment (though still below German average), economic neglect is argued, too. The return of works of art brought by the Bavarian Kings to Munich is claimed, the concentration of Bavarian state cultural institutions in Munich is criticized. An under-representation of Franconian politicians in the Bavarian "state-party" and therefore in Bavarian Government is asserted. When a PM of Franconian origin had to step down because of loss of support in his party,[69] this was alleged to be an (Old) Bavarian plot.

While animosities are easy to be found, political organization of a Franconian movement is rare. After Bavaria's adhesion to the *Reich* in 1871, the political and electoral behavior in parts of Franconia has been different from the rest of Bavaria. This meant, however, preferring state-wide parties (SWPs) to Bavarian parties, and not organizing on a regional level. However, in 1991, the *Fränkischer Bund* was founded, arguing secession from Bavaria to become a German *Land* of its own.[70] Drawing new territorial boundaries is theoretically possible under the German Constitution, but according to Article 29, the territory in question has to fulfill criteria of cohesion. In addition, a popular initiative has to be supported by a quorum, and in the end, a referendum in the region has to be won. The *Bund* proposed to carve out a new *Land,* Franken, including 3 districts of Bavaria, but also some counties of Thuringia and Baden-Württemberg. The Federal Government rejected to organize a referendum on grounds of lacking cohesion of the territory; Franconia could not be delimited properly.[71] Appeals to the German Constitutional Court and to the European Court of Justice have failed.

In 2009, a *Partei für Franken* (Party for Franconia, also named *Die Franken*) was founded in Nuremberg.[72] The party claims a Franconian history of 1200 years, but also proclaims "Bavaria was yesterday – Franconia is today!". It sees the European metropolitan region around Nuremberg as an economical hotspot. The immediate objective is better

recognition inside Bavaria. The state should change its name to Bavaria-Franconia, and it should be federalized. Finally, a comprehensive restructuring of German federalism might create the desired *land* of Franconia. In its first electoral presentation, the Party won 0.7% of the *Landtag* votes in its area of reference.[73] The 2009 data presented by the Seidel-Stiftung show some particularities of Franconian identity. These are however not salient enough to challenge the overarching Bavarian identity. People in Central Franconia are a bit less proud to be Bavarian, but even in this region (around Nuremberg), Bavarian pride prevails. The results for the three Franconian departments diverge and are never consistently different from the other Bavarian districts. While Central Franconia has a somewhat more German than Bavarian identity, Lower Franconia does not.

Franconian identity is strong enough to be taken into account by Bavarian separatists. The *Bayernpartei* stands for federalizing Bavaria, albeit by upgrading the districts.[74] Asked in an interview on what would happen if the Franconians would not agree to be part of an independent Bavaria, the President of the party Florian Weber answered: "I do not hope that the Franconians would do this. But if we invoke a right to self determination, we would have to grant this to the Franconians, too. The *Bayernpartei* is even standing for more autonomy for Franconia inside Bavaria."

4. A RIGHT TO DECIDE FOR THE BAVARIANS?

As has been argued so far, it is difficult to argue a right to national self-determination (particularly a right to secede), if self-government and shared rule in a federation are granted, no national status is claimed, no irremediable injustices regarding taxation and survival are to be found, and no majorities for a secession can be mustered.

However, the recent Advisory Opinion of the International Court of Justice on the case of Kosovo's unilateral declaration of independence by parliamentary majority has spurred those that accept a right to decide

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[69] *Günther Beckstein in 2008.*

[70] *Bayern könnte es allein – und Franken auch, Abendzeitung München 17.9.2014; http://www. abendzeitung-muenchen.de/inhalt.unabhaengigkeit-bayern-koennte-es-allein-und-franken-auch.2dc9ded5-42a6-4695-bfa-e38a2fb7f=ec.present.... (access 30/10/2015)*

[71] *BVerfGE 96, 139 – Volksbegehren Franken. Beschluss des Zweiten Senats vom 24. Juni 1997.*

[72] *Partei für Franken. Grundsatzprogramm verabschiedet auf dem Gründungsparteitag der Partei für Franken am 31. Oktober 2009 in Bamberg.*

[73] *See Bayern, die neue Grossmacht, sz.de 15.4.2014.*

[74] *http://freiheit-fuer-bayern.de/ein-selbstaendiges-bayern (access 30/10/2015)*

[75] *International Court of Justice, Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo (Advisory Opinion of 22 July 2010). Reports 2010.*

by majority without having to prove whether the seceding population is a nation.[75] The Opinion holds that there is no guarantee in international law against state's disintegration. Unilateral declarations are not *eo ipso* outlawed. In fact, the Advisory Opinion of the Supreme Court of Canada had already established a conditioned right to negotiate secession for a member state without recurring to its national character.[76]

The case of a "right to decide" as an independent political principle deriving from democratic principles and different from the right to national self-determination has been discussed in Catalonia, too.[77] The *demos* character of Catalonia may be claimed by its history of self-rule, including the election of its own parliament and the establishment of a democratic practice, which, as result of the Kosovo Opinion, could extend to secession.

Such a practice of acting as *a demos* could also be invoked by Bavaria. However, a parliamentary majority would still be necessary, and difficult to achieve. In the case of Bavaria, even the staunchest defenders of this right do not seek a unilateral secession. Several of them use the claim for a right to decide as an instrument to force negotiations, for a more competitive form of federalism with independence as "Plan B".[78] One essential point would be how to establish direct relations between Bavaria and the EU. Scharnagl prefers more national policies to European rules; *Bayernpartei* independentists have promised not to build new frontiers between Bavaria and Germany;[79] they claim a commissioner and votes in the Council of Ministers,[80] but would also drop the euro and possibly consider (as the second best solution) leaving the EU.[81]

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[76] *Supreme Court of Canada, Case 25506, Reference re Secession Quebec (Decision of 20 August 1998).*
[77] *See for example Jaume López: A "right to decide"? On the normative basis of a political principle and its application to Catalonia, in: Klaus-Jürgen Nagel and Stephan Rixen (eds.): Catalonia in Spain and Europe. Is there a way to independence?, Baden-Baden 2015, p. 28-41.*
[78] *This seems most clear in the case of the book written by Scharnagl.*
[79] *Florian Weber in Augsburger Allgemeine, 15.9.2014.*
[80] *http://freiheit-fuer-bayern.de/volksbegehrenstext*
[81] *Florian Weber in sz.de 12.9.2014.*

BRITTANY
Tudi Kernalegenn

BRITTANY, BETWEEN REGIONALISM AND EMANCIPATION

Despite a strong and asserted identity, the claim for a right to self-determination is weak in Brittany. Since 1964, this aspiration has been mainly driven by the Breton Democratic Union (Union démocratique bretonne), which, however, has never managed much electoral success. From the early 2000s, though, Breton nationalists began to strengthen their political weight by integrating regional institutions. The emergence of the figure of Christian Troadec and the Red Caps social movement contributed also to the first electoral swing in their favour. However, this recent momentum remains fragile.

A geographically distinct region (it is a peninsula), historically stable (it was a kingdom and then a duchy in Medieval times until 1532), an independent province that was 'regarded as foreign' in the modern period (before 1789), with the only Celtic language in continental Europe (Breton) and its own

dynamic culture... Brittany has all the ingredients for fostering a strong movement in favour of self-determination. However, despite its dynamism and incontrovertible success in the cultural and economic field, the Breton movement is today one of the politically weakest in Europe among those regions where there is a demand for self-determination.

1. THE CONTESTED EMERGENCE OF A REGIONALIST MOVEMENT IN BRITTANY

The first political expression of the Breton movement - the *Emsav* - saw the light in 1898, in a moderate and conservative form: *Union régionaliste bretonne*. Close to the cultural circles, it was a striking representation of a conservative Brittany, dominated by the aristocratic and clerical classes. Limited to the political and social circles of leading figures, its social impact was virtually nil.

This circle of influence was reorganised after the First World War around the journal *Breiz Atao* (Brittany Forever). Rejecting the provincialism and folklore of their elders, the new generation of nationalists tried to draw the Breton movement into contemporary Breton society through a modernising break with the past, at once artistic (the *Seiz Breur*), linguistic (around the journal *Gwalarn*) and political, with the pro-autonomy *Parti autonomiste breton* (PAB, founded in 1927) and then *Parti national breton* (PNB, created in 1931). However, the social engagement and the political influence of this nationalist generation remained limited.

Rejecting federalism in favour of separatism, and replacing the relatively progressive ideas of the PAB with those of a fascist doctrine with a Breton inflection, the PNB moved towards the extreme right during the 1930s. This ideological turn found its conclusion in the collaboration of some Breton activists with the Nazi occupiers during the Second World, some going so far as to appear in German uniform, and the sometimes passive, but often active tolerance of the Vichy regime by the great majority. This was to discredit the Breton movement as a whole during and after the Liberation.

2. THE POLITICAL MARGINALITY OF BRETON AUTONOMISM

At the end of the Second World War, Breton demands thus started again from scratch. They rebuilt on a basis that was both cultural (with the emergence of Celtic circles and *bagadoù*, traditional dance and music groups), and economic (thanks to the *Comité d'étude et de liaison des intérêts bretons*, CELIB), which was the catalyst for economic recovery in Brittany. However, no new regional political movement emerged until 1957 with the creation of the *Mouvement pour l'organisation de la Bretagne* (MOB), a body which aimed to be 'neither left nor right'.

The creation of the *Union démocratique bretonne* (UDB) in 1964 turned a new leaf in the history of Breton demands. Explicitly positioning itself on the left, the UDB gave itself a dual task: to develop leftist ideas within the Breton movement and to have the legitimacy of its autonomist aims accepted by the traditional French Left. While it got off to a slow start, the UDB saw a real boom in support during the 1970s, and had up to 2000 activists at the end of the decade. From 1977, the party succeeded in having numerous councillors elected in municipal elections, usually due to pacts with the *Parti Socialist* (PS). Nevertheless, when it stood alone, the party consistently received between 1.6% and 2.6% of the vote at legislative elections. This lack of electoral success, which contrasted with the militant and intellectual dynamism of the party, led to repeated internal crises, particularly during the 1980s when it almost disappeared. The presence of the UDB also helped to expose the French Left to the regional question, which reclaimed in part its rhetoric and instituted a policy of decentralisation under the presidency of François Mitterrand.

Table 1: UDB elected representatives in municipal election

Date	1965	1971	1977	1983	1989	1995	2001	2008	2014
Elected representative or councilors	1	2	35	Approx. 80	Approx. 70	Approx. 70	65	83	Approx. 60

In parallel to the UDB, two other major political currents took shape in Brittany from the 1970s onwards. Traditional nationalist circles, leaning to the right, persisted under various names (*Mouvement pour l'organisation*

de la Bretagne, Strollad ar vro, Parti pour l'organisation de la Bretagne libre, Parti breton[82]), but never lost their limited appeal. An extreme left independence movement also emerged in the form of the party *Emgann*, founded in 1983, which attracted some of the activists who were members of the *Front de libération de la Bretagne* during the 1970s. Despite visible activism, mainly outside the electoral sphere, the party had little impact on the general public.

3. AUTONOMISM IN THE INSTITUTIONS

Starting in the 1980s, the UDB reinvented itself. It modernised its way of operating (abandoning democratic centralism) and updated its ideology. It rejected the analysis of Brittany as an internal colony in favour of a new approach, which cast the region as underdeveloped, and increasingly focused on environmental issues. It also joined European (it became a member of the European Free Alliance in 1987) and French (it was a founding member of *Région et peoples solidaires* in 1994) networks. After a decade of slow maturing, this new approach began to bear fruit, not least through a rapprochement with the Greens.

In 2004, the UDB acquired its first regional counsellors (three UDB and one affiliate, Christian Troadec) thanks to a pact with the Greens on the *Bretagne verte, unie et solidaire* list, which received 9.7% of the vote in the first round. This list merged with the Socialist Party list and helped to tip administrative Brittany to the Left[83]. The spokesman for the party, Christian Guyonvarc'h, became Vice-President of the Regional Council, responsible for European and international affairs. The Green-UDB alliance was successfully repeated in 2010 (12.2% in the first round, 17.4% in the second). Without an agreement with the PS on this occasion, the four UDB regional councillors were in opposition, before re-entering the majority in 2012. Christian Guyonvarc'h was then appointed *general rapporteur* for the budget. As a result of their good relations with the

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[82] *In 1999, the Parti pour l'organisation de la Bretagne libre (POBL) split into a radical extreme right wing, Adsav, and a moderate wing, the Parti Breton. The two parties still exist.*

[83] *It should be noted that the administrative region of Brittany only includes four of the five departments of historical Brittany. Loire-Atlantique (with Nantes, the historical capital of Brittany) is integrated in the adjacent administrative region, the Pays de la Loire. The question of the "reunification" of Brittany is of central importance to the Breton movement.*

environmentalists (now known as *Europe écologie Les Verts* – EELV) and the PS, UDB was given a reserved constituency at the 2012 general election and, against all expectations (since it was a firmly right-leaning constituency) had its first affiliated Member of the Parliament elected, Paul Molac. The new high profile of UDB in the political sphere was also marked by the arrival of a new generation of more dynamic and anti-establishment activists. However, the party's electoral results continued to stagnate when it stood for election alone, and none of its major figures were widely known to the general public.

4. CHRISTIAN TROADEC, A POLITICAL ENTREPRENEUR

Events took a new turn in the first decade of the new century with the emergence of an external and personal dynamic around the figure of Christian Troadec. A successful entrepreneur (after founding a local weekly paper, he became the owner of the biggest Breton brewery, Coreff) and a cultural facilitator (he is the co-founder and long-term President of the largest music festival in France, the Vieilles Charrues Festival), Troadec became mayor of Carhaix, a small town in the rural centre-west of Brittany, in 2001. He was elected Regional Councillor in 2004, affiliated to the UDB, and gained attention in 2008 when he successfully led the campaign to retain a maternity ward in Carhaix.

This was the moment when he decided to strike out on his own, politically: he left the majority on the Regional Council and founded the movement *Nous te ferons Bretagne*. With the support of the Parti Breton (the final embodiment of the MOB, founded in 2000), he stood in the 2010 regional election and received 4.29% of the vote. With some fellow list members, he then launched the *Mouvement Bretegne et Progrès (MBP)* movement, which elected two general councillors in 2011 (including Troadec himself), the first Breton regionalists to be elected in a two-round election system.

It is interesting to note that Troadec's strategic choices are exactly the reverse of those of the UDB even though they appear to occupy the same niche - moderate, centre-left autonomism. Whereas the UDB is a collegial organisation resistant to personality cults, Troadec has a political career as a dominant figure, with strong local roots and a highly personalised approach. Whereas the UDB emphasises a well-thought out ideological position,

Troadec is content with a minimalist, pragmatic approach, fluctuating and even populist. Troadec has constructed a political stronghold in the centre-west of Brittany, which the UDB has never succeeded in doing in its fifty years of existence.

5. THE SPRING OF THE RED CAPS

In 2013, a social movement changed the state of play and gave a new dimension to Breton autonomist claims: this movement is known as the 'Red Caps'. Against the background of a crisis in the agro-food sector (important to Brittany), the introduction of an eco-tax on heavy goods sparked a large-scale social movement throughout the western part of Brittany. It adopted the red cap as a symbol, in reference to a major Breton revolt in 1675. It was characterised by repeated actions to pull down the tax portals used to monitor lorries on the roads, and by two huge demonstrations in Quimper (November 2nd, 2013, 15,000-30,000 demonstrators) and Carhaix (November 30th, 2013, 17,000-40,000 people). These demonstrations were visually striking with their mixture of red caps, Breton flags and heterogeneous in the diversity of their participants (trade unionists and businessmen, farmers and white-collar workers, artists and political activists). In the meantime, at the initiative of the leaders of this mobilisation - including Christian Troadec - a collective entitled *Vivre, décider et travailler en Bretagne* was set up to coordinate the movement and to raise its profile on a clearly 'regionalist' basis. On March 8th, 2014, the Red Caps General Assembly adopted eleven demands at a meeting in Morlaix, calling notably for an official status for the Breton language and the 'relocation' of political decisions and economic power in Brittany.

As the figure with the highest media profile in the movement, Troadec acquired a new status in Breton public life. In the 2014 European elections, he headed a list known as *Nous te ferons Europe* with the support of several small autonomist parties, receiving 5.49% of the vote in Brittany, but 7.19% in administrative Brittany and 11.54% in Finistère, the western-most department of Brittany. The UDB also presented a list against him, but this list obtained only 1.77% of the vote (2.03% in administrative Brittany, and 1.91% in Finistère). With 106,836 votes overall, the Breton autonomist tendency was beginning, for the first time, to have an influence in the electoral landscape. However, the driver of this development was not the historical UDB, but Christian Troadec.

6. OUI LA BRETAGNE

Not without tensions, an alliance was formed between Christian Troadec (and his MBP) and the UDB for the regional elections of December 6th-15th, 2015, as part of the *Oui la Bretagne* platform, which also included environmentalists, including Daniel Cueff, outgoing regional councillor and head of the list in Ille-et-Vilaine, and activists in the *Parti breton*. The aim was to exceed the 10% threshold needed to move into the second round, and thus to elect some representatives. The UDB kept its distance from its traditional green and socialist allies; it was particularly disappointed by the territorial reform conducted by the PS (2013-2015), which allowed neither the reunification of Brittany nor the strengthening of regional powers.

For the first time, two independence lists also stood. The first, *Notre chance l'indépendance* supported by the *Parti Breton*, was an essentially traditional nationalist list, somewhat to the right (though rejecting this description). The second, *Bretagne en luttes – Breizh o stourm* was supported by *Breizhistance*, an extreme-left independence party created in 2009 and the successor to *Emgann*. In Loire-Atlantique (in the Pays de la Loire region), a single list bringing together all the components of the Breton movement also stood under the name *Choisir nos régions et réunifier la Bretagne*, headed by the former docker and general councillor for the Greens, Gilles Denigot.

The Breton issue was at the heart of the campaign as never before. Each list presented its own more or less eligible regionalists, and called for a politically and culturally stronger Brittany. The head of the list on the right, Marc Le Fur, put the reunification of Brittany among his political priorities, and enjoyed the support of several small regionalist groups, including *Breizh Europa* and *En Avant Bretagne*. The socialist party list even succeeded in poaching Paul Molac, a deputy hitherto affiliated with the UDB, and Mona Bras, UDB spokesperson from 2006 to 2014, both of whom would be elected and who formed a 'regionalist' group on the Regional Council.

The first polls indicated the dynamism of the *Oui la Bretagne* list: 8% according to IFOP (13-15 October 2015) and 9% according to BVA (6-15 October 2015). However, the impetus of the regional campaign was interrupted by the 13 No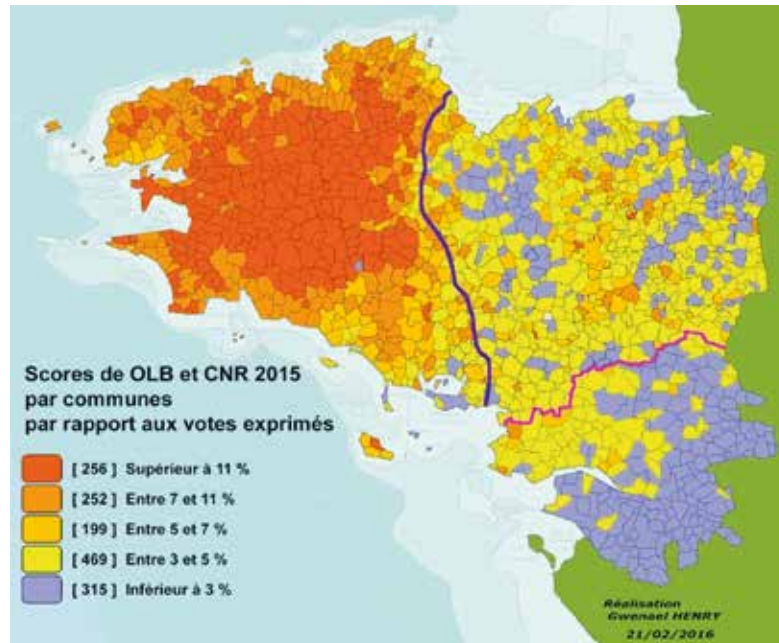vember attacks in Paris. The campaign was suspended. A climate of national unity, even an atmosphere of flag-waving, settled in. The campaign became a national one, to the detriment of regional issues. The head of the socialist list, Defence Minister Jean-Yves Le Drian, became untouchable. The *Oui la Bretagne* list was particularly vulnerable in this new context, as can be seen in the polls carried out after the attacks, which now put the list between 6% (BVA, 17-23 November 2015) and 7% (IPSOS, 20-29 November 2015).

The results therefore fell a long way short of expectations. The *Oui la Bretagne* list obtained only 6.71%, far from the hoped-for 10%. The pro-independence lists performed even worse, none receiving more than 1% of the vote. In Loire-Atlantique, results were equally unsatisfactory for *Choisir nos régions*, with 2.67% of the votes cast. Nevertheless, this result was the best ever achieved by the Breton autonomist movement in a regional election, and it maintained the levels obtained in the European election.

Table 2: Breton autonomists in the regional elections

Election	List name and components	Result	Comments
1986	*Convergence bretonne* (UDB, PSU, etc.)	1.55%	
1992	*Peuple breton-Peuple d'Europe*	2.07%	
1998	UDB	3.18%	
2004	*Bretagne verte, unie et solidaire* (the Greens + UDB)	9.70%	3 UDB councillors + Christian Troadec
2010	*Europe écologie Bretagne* (the Greens + UDB)	12.21%	3 UDB councillors
	Nous te ferons Bretagne (Christian Troadec, with the support of the Parti breton)	4.29%	
2015	*Oui la Bretagne* (Christian Troadec, with the support of the UDB and MBP)	6.71%	Dissident autonomists were on the PS list, including three councillors forming a 'Regionalist' group.
	Bretagne en lutte – Breizh o stourm (Gael Roblin, with the support of Breizhistance)	0.62%	
	Notre chance l'indépendance (Bertrand Deléon, with the support of the Parti breton)	0.54%	

Map 1: Results for the Oui la Bretagne (administrative Brittany) and Choisir nos régions (Loire-Atlantique) lists in the first round of the regional election of 6-13 December 2015

Scores de OLB et CNR 2015
par communes
par rapport aux votes exprimés

[256] Supérieur à 11 %
[252] Entre 7 et 11 %
[199] Entre 5 et 7 %
[469] Entre 3 et 5 %
[315] Inférieur à 3 %

Réalisation
Gwenael HENRY
21/02/2016

7. STRENGTHS AND WEAKNESSES OF THE BRETON MOVEMENT

While for decades the Breton movement was of marginal importance in electoral terms, the situation began to change in the first years of this century for two reasons. Firstly, the UDB played a part in Brittany's lurch leftwards, and thanks to an effective alliance with the Greens and then the PS, it obtained elected representatives in positions of responsibility on the Regional Council. Next, the emergence of the strong figure of Christian Troadec gave the Breton movement a charismatic leader it had never been able to produce from its own ranks.

But this is still a fragile dynamic, as the partial failure of the December 2015 regional election shows. It relies heavily on one individual, Troadec,

who now hopes to represent the 'regionalist' trend in the presidential election of 2017. The territorial dimension of this vote is also striking. As Jérôme Fourquet points out,[84] it reaches its maximum intensity in Carhaix, whether in 2014 for the *Nous te ferons* Europe list (44.64%) or in 2015 for *Oui la Bretagne* (44.84%). The vote then declines gradually as we move further from Carhaix. This is not just a fiefdom effect. The traditional boundary between western Brittany (Breton-speaking Lower Brittany) and eastern Brittany (Gallo-speaking Upper Brittany) appears very clearly, as does that between administrative Brittany and Loire-Atlantique, where results remain marginal. Even in Lower Brittany, however, the autonomists struggle to make an impact in towns and achieve relatively worse results on the coast.

Structural reasons for the poor electoral performance persist. The orthodox French opinion which regards as illegitimate any public discourse that might undermine the one and indivisible nature of France, and in particular any discussion of the pluri-national nature of France, lives on. The Breton identity, while still very strong – a 2009 survey found that 94.3% of Bretons are very or fairly attached to Brittany – is not divisive. 88% of the population of Brittany see themselves as to some extent both Breton and French (with 23% feeling more Breton than French, and just 2% feeling only Breton) (Pasquier, 2012: 72-82). Finally, the French electoral system, essentially a first-past-the-post model, is still hostile to emerging forces.

Nevertheless, the ideological opportunity structure has shown signs of opening up recently; this can only be reinforced by the discredit of the French political class, and more specifically of the PS, which is the dominant party in Brittany. It remains to be seen whether the autonomists will be able to exploit this window of opportunity, which could close again at any time. It all depends on their ability to organise themselves effectively and sustainably in Brittany as a whole, and to construct and disseminate a message that resonates with Breton socio-economic and political aspirations. More than ever, Breton autonomists hold their future in their own hands.

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[84] www.huffingtonpost.fr/jerome-fourquet/bonnets-rouges-christian-troadec_b_5483186.html

CATALAN COUNTRIES

Marc Sanjaume-Calvet and Lluís Pérez Lozano

CATALAN COUNTRIES (CATALONIA, VALENCIAN COUNTRY, AND BALEARIC ISLANDS): FROM REGIONALISM TO SOVEREIGNTY

The Catalan-speaking lands have struggled for democracy and self-government throughout their history. In 1979, after 40 years of dictatorship, Catalonia, the Valencian Country and the Balearic Islands recovered their own political institutions. The democratization of Spain and the 1978 Constitution led to a regional model called the "Estado de las Autonomías", which is nowadays perceived, by most Catalans, as insufficient in terms of the recognition of national diversity and a barrier to decentralization. The Catalan Parliament has petitioned to exercise the right to self-determination through a referendum on the future of Catalonia as a Spanish Autonomous Community. However, all attempts so far have been blocked by the Spanish Parliament and judicial authorities.

In the last elections, independentist political forces obtained a majority in the Catalan Parliament and are now pushing for independence from Spain and the creation of a Catalan Republic. Also, sovereigntist forces are also achieving significant victories in the Valencian Country and the Balearic Islands, and concepts like "right to decide" and "sovereignty" are gaining ground within their public spheres.

1. INTRODUCTION

Catalonia is an ancient European nation with a long cultural and institutional history. Since the conquest of Barcelona from the Moors by the Frankish Empire and the creation of the County of Barcelona, Catalonia experienced its political development within the Crown of Aragon. Within this Crown, two new kingdoms arose from Catalan conquest and settlement: Valencia[1] and Majorca, respectively comprising what nowadays are the Valencian Country and the Balearic Islands. The political institutions of these three polities were maintained until the War of the Spanish Succession that followed the death of the childless Spanish King Charles II. While the Crown of Aragon backed the candidate from the Hapsburg House, Archduke Charles, Charles II fixed the inheritance on the House of Bourbon's Philip V. The war, with a strong international dimension, began in 1701 and confronted the supporters of the two candidates to the Spanish throne. France and its allies supported the Bourbons, while England, the Netherlands, Austria and their allies favoured the Habsburgs. The Habsburg defeat at Almansa (1707), the treaty of Utrecht (1713), and the conquests of Barcelona (1714) and Majorca (1715) meant not only the practical destruction of the sovereignty of these territories and their political institutions, but also the persecution of the Catalan language and culture (McRoberts 2001).

While they had important regionalist and nationalist movements through the 19th and 20th century, neither the Islands nor the Valencian Country regained their self-government until the end of the 20th century. Catalonia, on the other hand, was able to develop its own institutions

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[1] *We should recall, however, that part of the Valencian territory was repopulated by Aragonese settlers, instead of the Catalans that were repopulating the rest of the country. This part of the territory has never had Catalan as its indigenous language.*

in two short periods during that century. One was known as the *Mancomunitat* (1914-1923). The other revived the ancient *Generalitat* during the 2nd Republic (1931-1936). However, two dictatorships ended these ephemeral experiences. The *Mancomunitat* (1914-1923/25) was an important opportunity to develop infrastructures including roads, railways, hydraulics and communications, but it also promoted Catalan culture and language. After Primo de Rivera's *coup d'État*, it was dissolved and outlawed. The Republican period opened the possibility of a second self-government experience in a context of political polarization and instability. Catalonia obtained its statute of autonomy in 1932 which included some legislative powers and a more robust self-rule than that of the *Mancomunitat*. Nonetheless, Franco's *coup d'État* in 1936, the following three years of civil war and the republican defeat in 1939 forced the Catalan Government into exile until its symbolic return two years after Francisco Franco's death in 1977. The Catalan President, Lluís Companys, was executed by Franco in 1940, and Josep Irla became the President-in-exile until 1954, when Josep Tarradellas replaced him. In 1977, on his arrival in Barcelona from exile in France, Tarradellas pronounced the famous words: "Citizens of Catalonia, I am here at last!"

2. MODERN AUTONOMY WITHIN THE SPANISH CONSTITUTIONAL FRAMEWORK

In 1978, a new Spanish Constitution was adopted. It was the outcome of a long Transition (1975-1978) to a period of democracy following almost four decades of Franco dictatorship. The constitutional text paved the way for regaining Catalan autonomy (which had had a symbolic continuity during the Dictatorship thanks to the figure of the President in-exile), as well as for developing new Valencian and Balearic autonomous institutions. The Constitution was approved by a majority of these territories as well as of the Spanish state as a whole, and established a new territorial model called the "*Estado de las Autonomías*". These new "Autonomies" were largely undefined at the time. The territorial model was designed with two complementary objectives: modernizing the Spanish centralized state and accommodating national minorities. The legal text was framed as a balance between the defence of Spanish unity and the right of regions and nationalities to political autonomy. Nonetheless, those regions and nationalities were not specifically delineated in the legal text. Moreover, the decentralization process may have begun in 1978, but due to prolonged constitutional

designing, it took several years until the current seventeen autonomous communities were established and were granted a certain degree of political power.

The peculiar Spanish regional system has some federal characteristics such as the existence of different levels of Government with a generous list of powers devolved to the regional level, but it is far from being a federation since there is a lack of fiscal decentralization. There is virtually no role for the regions when it comes to the central power structure and any constitutional reform by the central government would not need regional consent. Moreover, justice is still in the hands of the centralized authorities. The *de facto* plurinational character of Spain is not explicitly recognized or developed, despite the constitutional distinction between regions and nationalities, and references to "historical regions". Therefore, self-determination by sub-state units is constrained, legally, by Art. 2 of the Constitution, which declares that "The Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible country of all Spaniards", although internal self-determination is recognized by the "right to autonomy of nationalities and regions" (Requejo 2005).

In 1979, Catalonia finally exercised its right to autonomy by the approval of a Statute of Autonomy. The enactment of the Statute meant the beginning of a new democratic period for Catalonia and the recovery of its political power via a second restoration of the *Generalitat* after the earlier revival during the short period of the 2nd Republic. Symbolically, Catalonia could now begin to rebuild its own institutions through the *Generalitat de Catalunya*, while the Catalan language became co-official together with Spanish. However, it took a long time and a decade of legal clashes and Constitutional interpretations at the Constitutional Court to develop a solid Catalan administration and a legislative power with its own competences. At least five elements and trends should be pointed out within the framework that was born in this new democratic period.

Firstly, the Statute of Autonomy satisfied the demands of the political platforms of the Transition period such as the *Assemblea de Catalunya*, which had been demanding not only the restoration of a democratic regime in Spain, but also Catalan political autonomy. Secondly, the constraints imposed by the Constitution were very soon revealed as developments took place within the decentralization process. From the beginning, it was made clear by the political parties with support across the whole of Spain that they

were firmly behind a centralist model that ensured homogeneity among the Autonomous Communities formed through the "*pactos autonómicos*". This model would be soon baptized as "*café para todos*" (Coffee for everybody) an expression referring to the symmetry of the model. Thirdly, Catalonia played the role of the frontrunner in this decentralization process. By claiming new powers and developing its own administration, the Catalan Government encouraged other regions to follow their path and include more powers in their Statute of Autonomy. However, only Catalonia, the Basque Country, Galicia and Andalucía managed to access political autonomy through a "fast track" (Article 151), the other autonomous communities were developed through a "slow track" (Article 143) and only achieved the same powers in 1993 (although the Valencian Country and the Canary Islands achieved "fast track" status in a year through different legal paths).

Fourthly, the Constitution explicitly forbids the federation of Autonomous Communities (Article 145.1). This is, in fact, the sole reference to the word "federalism" in the entire constitutional text. This article had no immediate consequences for Catalan autonomy, but ruled out the possibility of a more narrow relationship between Catalonia, Valencia and the Balearic Islands. Therefore, the Catalan Countries were explicitly forbidden to pursue any common political project. Valencia got its own Statute of Autonomy in 1982 and the Balearic Islands in 1983. The three territories have developed important trans-regional cooperation despite political and legal obstacles. Finally, the achievement of political autonomy had an important effect on Catalonia's political parties. From its very beginning, the Catalan political party system had a winning coalition, *Convergència i Unió* (CiU), which became the governing party until 2003 under the leadership of President Jordi Pujol. The CiU was a coalition of two centre-right parties: the liberal conservative *Convergència Democràtica de Catalunya* (CDC) and the Christian-Democrat *Unió Democràtica de Catalunya* (UDC) (Guibernau 1997).

In a nutshell, the setting up of a regional model in Spain after the transition period largely satisfied the political autonomy aspirations of the Catalans, Basques, Galicians and other territories overcoming the centralized model of the Dictatorship. However, the regional model involved a gradualist approach, which required a long process of political bargaining between the centre and periphery in which Catalan parties, especially CiU, played a very important role. During the 1990s, minority Governments in Madrid, both of socialists and conservatives, provided an opportunity for Catalan politicians to negotiate new powers for Catalonia, while this dynamic encouraged other regions to do the same.

We will now examine the pitfalls of the Catalan autonomous path and its relation to the rise of independentism (sections 3 and 4). After that, we will take a brief look at the ongoing political changes in the Valencian Country (section 5) and in the Balearic Islands (section 6).

3. THE REFORM OF CATALONIA'S STATUTE OF AUTONOMY AND ITS FRUSTRATION

The beginning of the first decade of the 21st Century was a crucial moment for Catalan politics. The absolute majority of the conservative party in Madrid with it firm recentralization agenda pushed Catalan parties towards a reform of the Statute of Autonomy upgrading Catalan political powers and their scope for making policy. In parallel, a new coalition government was formed in 2003 bringing together three left wing parties (the Socialists' Party of Catalonia -PSC-,[2] Republican Left of Catalonia -ERC-, and Initiative for Catalonia Greens -ICV-) which favoured greater autonomy. This coalition ruled Catalonia until 2010, ending a 23 year period of consecutive CiU governments led by President Jordi Pujol.

The new Statute was ambitious in several aspects, but kept within the constraints of the Constitutional framework. It defined Catalonia as a nation, defined Catalan as a "preferred language" within the administration and noted its role as an integrating factor in Catalan society. It established the right of the Catalan Government to collect taxes and to negotiate bilaterally with the Spanish Government on fiscal issues. It also listed the rights and duties of Spanish citizens. In addition it considered Catalan laws as exclusive domains, in an attempt to protect them from the centralised *Leyes de Bases*. Moreover, it increased the Catalan Government's field of manoeuvre in foreign policy. In essence, then, the project was an upgrade of the 1979 Post-Transition text. It simply moved the goal posts and placed Catalonia in a higher position in terms of powers devolved to the regional authority (Aja 2007; Maiz, Caamaño, Azpitarte 2010; Gagnon 2011). It also belonged to a new wave of Statute reforms across all the regions (Orte, Wilson 2009).

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[2] *The semi-autonomous Catalan branch of the Spanish Socialist Workers' Party (PSOE).*

This ambitious reform of the Statute of Autonomy was first drafted in the Catalan Parliament and approved (towards the end of 2005) by 89% of the Catalan legislative chamber (all of the parties supported the text except the Catalan branch of the right-wing Spanish nationalist People's Party, the PP). The Spanish socialist Prime Minister José Luís Rodríguez Zapatero promised to respect the new Catalan Statute, but very soon it became clear that the required approval at the Spanish Parliament would have to be negotiated and that the Catalan text would be amended. The PP rejected the whole Statute project, but the Spanish socialists were ready to accept it with some changes in paragraphs dealing with national recognition and the scope of the Generalitat's powers.

During the negotiation process in Madrid, the definition of Catalonia as a nation was removed from the first article in the preamble (without any legal validity). Decentralization of the administration of justice was deemed unacceptable and several executive powers were reinterpreted while bilateral relationships and Catalan fiscal responsibility were eliminated from the document. Finally, at the beginning of 2006, the much amended Statute was approved in the Spanish Parliament. It was also endorsed by the majority of Catalans in a mandatory referendum after receiving the agreement of the Spanish Parliament (Guibernau 2012).

Nonetheless, the whole Statute reform project led to major political tensions between Spain and Catalonia. On the one hand, the right wing parties and the centralist media became very aggressive towards the new text (even after its butchering in Parliament) and campaigned against it, garnering support across Spain. These campaigns ended in a legal crusade against the Statute led by the PP, the Spanish Ombudsman and several Autonomous Community leaders who denounced the text at the Constitutional Court. This anti-Statute coalition considered the new text as unconstitutional and that it threatened the unity of the Spanish State. On the other hand, Catalan civil society formed a coalition to support the "right to decide" (López, 2011) arguing the case for Catalonia to have more say in its own policy making and national self-definition.

The ruling of the Constitutional Court on the issue of the Statute came in July 2010.[3] It was issued after a long period in which the legitimacy of the

institution was being questioned due to the partisan appointment of judges and their public comments on the political situation, which were largely seen in Catalonia as an attack on its political autonomy.[4] Since the Court is appointed by the central Spanish administration, the PP and the centre-left Spanish Socialist Workers' Party (PSOE) controlled the appointment of judges, most of whom belonged to the so-called "conservative" wing, while one Catalan judge was expelled, because he had written a report for the Catalan Government. Moreover, Catalan nationalist parties reminded the Catalan public that the text had already been severely diluted during the Madrid negotiations of 2006. In fact, the left-wing pro-independence party, the ERC, did not support the final version and campaigned for people to vote "No" in the referendum held to validate the text.

The perception of the ruling as a direct aggression by the Constitutional Court on Catalan autonomy had both a political and a legal basis. First, symbolically, the decision on the constitutionality of the text (despite the result being partially positive and partially negative) was announced more than four years after the modified text had received popular approval in a referendum. The decision came at a time of popular mobilizations and tensions at the beginning of the worst economic crisis of the democratic period in Spain (which had led to sweeping cuts in the budgetary capacities of regional governments). Second, from a legal perspective, the ruling revised 14 articles (considered unconstitutional) and "interpreted" 27 others. Three main areas were affected by the ruling: the recognition of Catalonia as a nation (which had already been declared of no legal value since it had been moved to the Preamble of the Statute during the negotiations in Madrid) the limitation of the scope of the "basic laws" (completely cancelled and concepts such as international relations, executive powers, civil law or immigration reinterpreted) and, finally, the financial powers were also affected by declaring fiscal parity, the levelling of incomes and the levying of local taxes to be unconstitutional (Requejo, Sanjaume-Calvet 2014).

In summary, the whole reform led to the complete frustration of Catalan

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[3] http://www.tribunalconstitucional.es/es/jurisprudencia/paginas/Sentencia.aspx?cod=16273

[4] http://premsa.gencat.cat/pres_fsvp/AppJava/notapremsavw/43029/ca/informe-juridic-sentencia-tribunal-constitucional-resol-recurs-dinconstitucionalitat-lestatut-dautonomia-catalunya.do

[5] A legally binding recognition of the national entity of Catalonia; protection of self-government vis-à-vis the central government's basic laws or a new financial model correcting the "fiscal imbalance" (quantified between 7% and 10% of Catalan GDP) and respect for ordinal principle among others.

aspirations to update their self-government. None of the main objectives that the "Catalanist" parties had formulated in 2005 were achieved.[5]

4. FROM REFORM OF THE STATUTE TO DEMANDS FOR SELF-DETERMINATION

The dissatisfaction and tensions derived from the frustrated reform of the Statute of Autonomy had a profound impact on Catalan politics. The debate in 2006 and the judgement of the Constitutional Court changed demands for greater regional autonomy, via gradualism, towards demands for self-determination (against the context of an economic crisis) from 2008-2009 onwards (Cuadras 2016; Guibernau 2013; Guinjoan, Rodon, Sanjaume-Calvet 2013). Catalan public opinion changed from majority support for the status quo and greater federalism towards a pro-sovereignty position (Graph 1).

Graph 1: Territorial preferences in Catalonia (2005-2015)
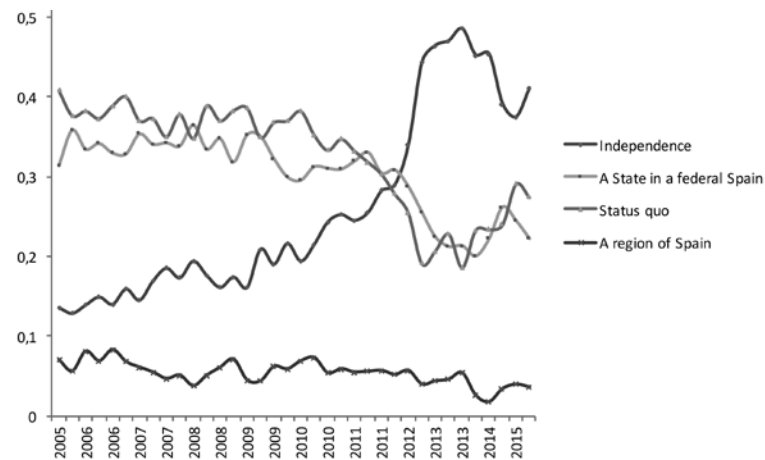
Source: Centre d'Estudis d'Opinió, Baròmetre d'Opinió Pública (2005-2015)

4.1 Civil society mobilization

The first signs of this change from regionalism to independentism appeared with the demonstrations organized by the PDD (Platform for the Right to Decide), which drew together more than 500 civil society associations

and demanded respect for the "right to decide", as well as encouraging investment in Catalonia. In 2006, during negotiations on the Statute, it organized its first demonstration under the slogan "We are a nation; we have the right to decide". Later on, several other demonstrations and related activities were organized. Between 2009 and 2011, 552 municipalities (out of a total of 947, representing 77.5% of the total population of Catalonia) organized unofficial referendums on independence, which were run by voluntary municipal associations. More than 800,000 people took part in these local consultations (Guinjoan and Muñoz 2012). In March 2012, a new civil society association, the ANC (Assemblea Nacional Catalana) was formed. Openly pro-independence, the assembly organized several massive demonstrations involving two-million people on Catalonia's National day (September 11th) in 2012, 2013, 2014 and 2015, as well as numerous local conferences and other activities. Over the last few years, the ANC has acted as a lobby promoting independence and pressurising political parties to take a pro-independence stance. It has also proposed a plan leading to independence and has taken part in political negotiations in 2014 and 2015.

4.2 Political parties and elections

The massive demonstrations organised and participated in by civil society (and the symbolic local consultations) had a direct effect on the party manifestos of the 2012 Catalan elections. All Catalan political parties, except the PP and centre-right Spanish nationalist Citizens - Party of Citizenship (C's), included in their manifesto the term "the right to decide".[6] Despite discussions on the exact meaning of this term (some "right to decide" supporters advocate for maintaining current political autonomy, others support the right to independence), the political agenda was clearly determined by the defence of Catalan sovereignty, which had so obviously not been respected by the Spanish Constitutional Court ruling on the Statute of Autonomy (despite it having been ratified in a referendum by the majority of Catalans).

As a result, the 2012 elections saw the beginning of parties vying to deliver a strategy that would bring about "the right to decide" (these groupings obtained almost 2/3 of the seats in Parliament). Convergència i Unió (CiU) the traditionally centre-right regionalist party of former President Jordi Pujol, then led by Artur Mas, won the elections with its pro-sovereignty plan for organizing a referendum on the political future of Catalonia. The centre-left pro-independentist party the Esquerra Republicana de Catalunya (ERC) supported the new minority Government of President Artur Mas and its pro-referendum plan in Parliament. CiU and ERC agreed to call for a consultation on self-determination in 2014 and reached a pact of parliamentary stability called the "Pact for Freedom". The strategy of these parties was focused on gathering support in Parliament to maximize the legitimacy of their demands. Therefore, they looked for support among the far-left independentists of the CUP, sympathetic to the idea of a referendum, but with a more hard-line party manifesto; the green/communist alliance, the ICV-EuiA whose deputies had not come out in favour or against independence, but were supporting a referendum on the issue and, finally, the PSC-PSOE who supported a referendum provided it was authorised by the central Spanish Government and was kept within strict constitutional legality. Later, in 2015, both parties agreed to form a coalition called "Together for Yes", which campaigned together for that year's elections on September 27th to be considered a plebiscite on independence. The CUP and ICV-EuiA, maintained their own structure, although the latter formed a coalition with the new left-wing Spanish party *Podemos* and other groups for the 27th September elections.

4.3 Institutional roadmap

The institutional strategies during the 2012-2015 parliamentary term were devoted to delivering the "right to decide" promise and studying future scenarios for sovereignty. The minority Government of CiU, was supported by the independentist ERC and had promised to deliver a referendum on Catalonia's territorial status in 2014. In February 2013, the Catalan Government created an advisory council, the *Consell Assesor per la Transició Nacional* (CATN) devoted to studying these scenarios. It produced a White Paper on the "national transition" made up of 18 reports on different subjects related to a future Catalan sovereignty. The first report detailed several legal and political ways in which a consultation on Catalonia's constitutional future could be organized. Some of

these options were explored by Catalan political forces but blocked, using legal and political ploys, by the Spanish authorities and Spain's nationwide political parties. Firstly, the Catalan Government demanded the authority to call referendums via article 150.2. The proposed law was passed in the Catalan Parliament by a clear majority of 87 members (out of a total of 135) but, later this was rejected by 299 Spanish MPs in Madrid (out of 350). Secondly, the Catalan Parliament approved the law of "popular non-referendum consultations and processes of participation" by an ample majority. This, in turn, was suspended by the Constitutional Court. Finally, the Catalan Government called for a participatory process on the November 9th 2014 on the constitutional status of Catalonia. This call was also declared unconstitutional by the Constitutional Court. However, it did take place on a symbolically important date, while legally without value. The consultation was partially organized by volunteers, but tacitly supported by the Catalan Government.

The consultation asked two Yes-No questions on a Catalan State and independence: "Do you want Catalonia to become a State?". If the answer is yes, "Do you want this State to be independent?". The Yes-Yes option received 1,897,234 votes (80.74%) with a turnout estimated (by the Catalan Government) of around 37-40%. The Catalan President Artur Mas, and two members of his former cabinet, have since been prosecuted for organising the unofficial consultation by the Spanish Attorney General. The MPs have been accused of disobedience and other charges. The Spanish central authorities' legal and political rejection of Catalonia's demand for self-determination led pro-independence parties to frame the September 27th elections as a plebiscite on independence.

The September 27th regional elections gave an absolute majority to independentist forces: 72 seats out of 135, and 48% of the popular vote (See Table 1). While *Together for Yes* and pro-sovereignty forces claimed to have won the plebiscite, the opposition pointed out the lack of a majority of votes supporting a break from Spain, let alone supporting the unilateral path proposed by the more 'radical' wings. The non-independentist forces had neglected the plebiscite nature of the vote during the campaign, but were quick to seize on the lack of an overall popular majority when the results came in. So, in practice, the political confrontation had indeed come down to an almost single-issue campaign on sovereignty. The opposition parties in the new parliament are divided into those rejecting Catalan self-determination and independence: C's; the Socialists and the PP (the

current ruling party in Spain); and those against unilateral independence, but supporting a referendum on the issue: "Catalonia Yes We Can" (a coalition including the Catalan branch of *Podemos*, the post-communists ICV-EUiA and several independent candidates).

Table 1. 27 September 2015 Catalan elections results

Electoral Platforms	Votes (%)	Deputies (135)
Secessionists	[47,8]	[72]
Junts pel Sí (Together for Yes)	39,5	62
Popular Unity Candidacy (CUP)	8,21	10
Pro-Referendum	[8,94]	[11]
Catalonia Yes We Can (CSQP)	8,94	11
Against secession	[39,11]	[42]
Citizens (C's)	17,90	25
Socialist Party of Catalonia (PSC-PSOE)	12,72	15
The Popular Party (PP)	8,49	11

Source: Catalan Government.

Consequently, after a long period of negotiation, a new pro-independene Government has been formed in Catalonia. Carles Puigdemont was elected the 130th President of the Generalitat and now has a clear mandate and a parliamentary majority to pursue the 18-month long independence roadmap the majority has approved.

5. THE VALENCIAN COUNTRY: A LONG NATIONAL WINTER, A YOUNG POLITICAL SPRING

The rise of Catalan independentism has coincided, in time, with profound changes in the Valencian political landscape. In order to describe them, it is important to recall that the last decades in Valencian politics are a direct legacy of the so-called Battle of Valencia: a huge and profound political conflict, developed during the late 1970's, that confronted different views on the culture and identity of the Valencian Country. Before the Battle of Valencia, and before Francoism, Valencian nationalism passed from being a minor movement at the beginning of the 20th century, to become a major

force in Valencian politics during the 1930's. The Spanish Civil War and the Franco regime resulted in an abrupt end for the rising star of this young movement, which had to be reconstructed from scratch during the last years of the dictatorship. One central problem for the articulation of a Valencian nationalist discourse was the answer to the question "who are the Valencians?".

Among the left-wing opposition to Francoism, a generic adherence to the defence of the Catalan language (historically known as "Valencian" in this country) and the Valencian self-government was generally shared. But beyond this generic conception, the works of Joan Fuster (1962) triggered the formation of a specific brand of Valencian nationalism, which regarded the Catalan Countries, and not only the Valencian Country, as the nation of the Valencian people. While this formulation gained important support among Valencian intellectuals, it never managed to become a political force among more common people, particularly within the city of Valencia. The rise of Fusterianism, the hegemony of the Valencian left-wing forces during the Transition, and the fear of an extension to Valencia of the Catalan nationalist advances at that time, triggered the formation, at the end of Francoism, of the so-called "*blaverisme*":[7] a (generally conservative) Valencian regionalism committed to Spanish national unity and focused on the vindication of a distinctive Valencian identity, not in front of the central government, but in front of Catalonia.

The *blaverisme* walked the opposite way of Joan Fuster's thought: if Fuster regarded the linguistic unity between Valencia and Catalonia as a sign of a common national identity, the *blavers* affirmed that, if Valencia and Catalonia where two distinct regions within a common Spanish nation, then they can't be regarded as speaking the same indigenous language. From this staring point, the *blavers* campaigned to deny not only the Fusterian idea of Valencia belonging to a Catalan nation together with Catalonia and the Islands, but also to deny the fact of the linguistic unity between this territories. Thus, the *blavers* not only attacked the Fusterians, but also anyone defending this linguistic fact. This was called "linguistic secessionism". Since the most compromised defenders of the Valencian language never adhered to it (regardless of their views on Valencian

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[7] *Literally "blue-ism", in reference to the local flag of the city of Valencia (which had a blue strip on its left side), which the blavers wanted (with success) to become the flag of the new Valencian autonomous government.*

national identity), the role of the *blaverisme* was that of a Valencian-flavoured Spanish nationalism, sponsored by the old Francoist elites (now integrated within new right-wing democratic parties such as the UCD)[8] and, paradoxically, eager to attack all Valencian nationalism as "catalanism".

A conflict soon developed between the *blavers*, on the one hand, and the Valencian nationalists (whether Fusterian or not), on the other. While the blavers basically aligned with the right-wing parties UCD and URV,[9] the Valencian nationalists sided with the PSPV[10] and UPV.[11] This was known as the Battle of Valencia. During it, the far-right factions of *blaverisme* didn't hesitate to use violence and intimidation against Valencian nationalists. In the end, and in good measure thanks to the Madrid government (in UCD hands), the *blavers* were rather successful concerning symbols (e.g. they managed to turn the *senyera coronada*[12] into the official autonomous Valencian flag), while achieving mixed results concerning language issues.

Despite this important victory of *blaverisme*, the political hegemony during the first decade of Valencian renewed self-government was held by the Socialist Party of the Valencian Country (the Valencian brand of the PSOE), which amalgamated different political families with different views on Valencian culture, identity and self-government issues, some more distant and some closer to Valencian nationalism.[13] Thus, while the Socialist Government approved an official Valencian anthem, which was pretty controversial among Valencian nationalists, this same government largely rejected linguistic secessionism. After the fall and dissolution of the UCD in 1982, the institutional force of *blaverisme* was confined to two

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[8] *Union of the Democratic Centre.*
[9] *Valencian Regional Union.*
[10] *Socialist Party of the Valencian Country.*
[11] *Unitat del Poble Valencià.*
[12] *The current flag of the Valencian autonomous government, consisting on the traditional Catalan-Aragonese four-barred senyera plus a blue strip and a crown within it. During the Battof Valencia, it was the option favored by the blavers, as it is said in footnote 5. Valencian nationalists, instead, favored a regular senyera with the Valencian seal placed right in the middle. A compromise was achieved in 1981 during the negotiations between Valencian parties for the Statute of Autonomy: the Valencian flag would be a senyera, plus a blue strip with the Valencian seal within it. However, in 1982, the Madrid government (then at hands of the UCD) overruled this compromise and imposed the senyera coronada as the autonomic Valencian flag. Nowadays, the senyera coronada is increasingly being reappropriated by several Valencian nationalists.*
[13] *Due to the adoption of its original 1909 lyrics, which included a first verse calling the Valencian people "to offer new glories to Spain". Since 1955, different proposals have been made to maintain the original melody while adopting new, more Valencian-centered lyrics.*

minority parties: the Valencian Union (UV, very strong in Valencia city and adjacent municipalities, but rather weak in the rest of the country) and the People's Alliance (a Spanish conservative party, founded by former Francoist Minister Manuel Fraga). Neither two were strong enough to challenge the Socialist hegemony.

This situation changed dramatically in the mid 1990's. The PP, successor of the People's Alliance, was able to gain the confidence of former UCD's voters, and started to challenge PSOE's hegemony in Spain. One of the fronts of this fight was the Valencian Country, in which the PP was able to win 1995's autonomic election, anticipating its victory in the Spanish election one year later. Thus started a long period of hegemony for the Valencian PP, eventually absorbing UV and becoming the only institutional representative of the old *blaverisme*. This period, lasting for 20 years, in many ways resembled Quebec's *Grande Noirceur* at the hands of Maurice Dupplessis: it was marked by a combination of widespread corruption and right-wing authoritarianism against all progressive movements. To this characteristics, PP's governments added a commitment (sometimes more diluted, sometimes stronger) to the objectives of old *blaverisme*; particularly, these governments promoted with greater or lesser intensity the notion of a "Valencian language" separated from Catalan. Curiously enough, this support for secessionism was coupled with an almost total lack of interest in the promotion of Valencian as the common language of the country.

During most of those 20 years, Valencian nationalism was divided among different factions, not always mutually exclusive. The main ones were: (1) Valencian nationalists who tried to work within left-wing Spanish parties (PSOE and the post-communist United Left -IU); (2) former Fusterianists who formed the Valencian Nationalist Bloc, formulating a "third way", which combined the recognition of the linguistic unity of the Catalan language and the Catalan Countries as a cultural nation, while at the same time affirming the Valencian Country as the political nation of the Valencians; (3) Fusterianists, increasingly linked to left-wing, pro-independence parties like Republican Left of the Valencian Country (the Valencian brand of ERC) or the CUP. Besides these three political sectors, there was an extended network of cultural associations, more or less close to Valencian nationalism, which struggled to defend Valencian culture and language, engaging in different and complex relations with those three sectors.

In 2007, the Bloc, as well as different left-wing, non-independentist parties

(excluding the PSOE) formed "Commitment for the Valencian Country", with a left-wing and Valencian nationalist platform. The coalition obtained 7 MVPs that year, but it experienced deep internal turmoil, which ended the coalition *de facto* just one year later. However, in 2010 a new similar coalition, called *"Compromís"* (or "Commitment" in Valencian), was formed by the Bloc and two left-wing parties (Initiative for the Valencian People and the Greens' Equo), obtaining 6 MVPs just one year later. During this period, ERPV and the CUP remained a minority within the Valencian nationalist stage, but they nevertheless obtained some political successes: ERPV sent an MP to the Spanish Parliament (through ERC's list in the district of Barcelona) from 2004 to 2008, while the CUP started to form its first local groups in the Valencian Country.

While Valencian nationalism was undertaking these attempts of re-composition and expansion, the Valencian society was shocked by the PP's policies and ways of governing with a sudden and massive protest: the so-called "Valencian Spring". The context of the protest was characterized by: (1) the worsening of the economic crisis started in 2008; (2) a wave of cases of corruption against the PP, many of them having one of its most important nodes in Valencia; (3) the formation of a PP government in Spain, and the implementation of several conservative economic policies, which were seen by progressive sectors of Valencian society as dangerous for the Welfare state; and (4) the hardening of the anti-peripheral-nationalism stance of the PP in general, and of its Valencian branch in particular. Amid this context, a protest in a Valencian public high school against cuts in public education budgets soon transformed into a spiral of tough repression by the Valencian government, on the one hand, and increased social support for the protests on the other one. This was the "Valencian Spring".

The Valencian Spring was chronologically parallel to the *indignados* movement[14] and the rise of independentist mobilizations in Catalonia. It had several effects, but the most important one was, probably, that it made an underground opposition to the hegemony of the PP visible and around which different actors converged: from anti-corruption platforms to left-wing movements and, of course, Valencian nationalist organizations. This opposition melting pot had effects on ERPV (which started a policy of

alliances with left-wing parties, such as the United Left, the Greens of the Valencian Country or the Valencian Nationalist Left) and the CUP (which obtained its first representatives on Valencian local councils), but it was basically capitalized, in electoral terms, by Compromís, which became the third most voted party in the Valencian election in 2015. This success, coupled with the irruption in Valencian politics of the new Spanish left-wing party Podemos, made the end of the PP's long reign possible. While it won the election again, it lost its absolute majority, therefore making the formation of a coalition government between Compromís, Podemos and the Socialist Party (which lost support, but retained is second position in the Parliament) possible.

The transformations of Valencian nationalism, the Valencian Spring and the formation of this left-wing government, heavily influenced by Valencian nationalists, will probably have deep implications on the Valencian political landscape. These implications are hard to foresee right now, just one year after the end of the PP's Government. However, for the purposes of this chapter, one implication is particularly important: while far from supporting Valencian independence (not to mention the unification of the Catalan Countries), both *Podemos* and (specially) *Compromís* have voiced their support for the right of the peripheral nations of the Spanish State to decide their own future. Only a few years ago, it would have been hard to believe that parties supporting the right to decide would have had a place (and a key one) in the Valencian Government. The concept of the right to decide has even arisen in the Valencian nationalist civil society after the creation, in 2013, of the Valencian Platform for the Right to Decide. Thus, it seems that, after a long national winter, a Valencian Spring has indeed flourished both in the streets and in the institutions.

Table 2. 24 May 2015 Valencian election results

Electoral Platforms	Votes (%)	Seats (99)
People's Party	26,3	31
Socialist Party of the Valencian Country	20,3	23
Compromís Coalition	18,19	19
Citizens (C's)	12,31	13
Podemos	11,23	13
Citizen Agreement (EUPV - EV - ERPV - AS:AC)	4,26	0

Source: Valencian Parliament

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[14] *A series of massive anti-establishment concentrations, happened in 2011, in the main squares of different cities of the Spanish state, similar to the Occupy Wall Street movement.*

6. WIND OF CHANGE IN THE ISLANDS

The recent political history of the Balearic Islands, particularly concerning the national cleavage, has many parallelisms with that of the Valencian Country, especially when we compare both to that of Catalonia. Both Valencian and Islander nationalisms have been placed in the left-wing of political landscape. Both are internally diverse concerning their views on the relationship between their territories and the other Catalan-speaking lands. Moreover, both have experienced recent processes of reorganization. In both cases, the right-wing has become dominated by the Spanish nationalist PP. In both cases, the PP has been winning all autonomic elections during the last decades (in fact, in the case of the Islands, it has actually won all autonomic elections since the end of Francoism). Furthermore, in both cases, the PP's hegemony has meant widespread corruption and right-wing authoritarianism. Additionally, a combination of changes within nationalism, social mobilization against PP's policies and recent electoral developments has substituted PP's rule for left-wing coalition governments in which peripheral nationalism has a key role.

But aside from these similarities, there also many differences. Firstly, part of the territory of the Valencian country has never had Catalan as its indigenous language (see footnote 1). Secondly, linguistic secessionism has never been a major force in Islander politics.[15] Thirdly, while sharing a common autonomous government, each Island has as well its own particular autonomous government and, more importantly, its own particular identity. Thus, rather than an common "Islander" nationalism, there is a nationalism of each Island, whether or not considering the Catalan Countries as a common nation in any sense of the word. Fourthly, while the PP has been winning all Islander autonomic elections so far, the Islander PP has often lost the government due to the formation of left-wing coalition governments in which Islander nationalists have had a role, sometimes weaker, sometimes stronger. And finally, until very recently, the Balearic PP has been much more sensible to Islander cultural identity than the Valencian PP. In fact, it could be argued that what CiU

has represented in Catalona has until recently been, in the case of the Islands, largely (while not completely) subsumed within the ranks of the Balearic PP.

Historically, the strongest expression of peripheral nationalism in the Islands has always been, naturally, that of the larger and most populated Island: Majorca. Majorcan nationalism, and generally all Islander nationalisms, emerged (like its Valencian and Catalan counterparts) at the end of the 19th century. As in the Valencian case, the relations between Islander's nationalisms and Catalonia's one has always been both constant and controversial. And, as in the case of Valencia, several projects for a Statue of Autonomy were discussed during the Second Republic, but none of them succeeded. The Islands regained self-government (again as in the Valencian case) with the end of Francoism. It is difficult to summarize the situation and evolution of Islanders nationalisms as a whole due to the complex nature of the Islands' identity (in which each Island, the archipelago as a whole, the Catalan Countries and Spain provide, for different groups of Islanders, different sources of identity), as well as for the fact that each Island is a political microcosm in itself. However, we can draw a broad picture to understand the context of the political and social changes that have conferred a major role in the Islands' politics to the concepts of "sovereignty" and "right to decide".

Broadly speaking, since the Transition we can distinguish between four major sectors of Islander nationalisms and regionalisms: (1) left-wing nationalists and regionalists working within the Balearic Islands Socialist Party (the Islander branch of the PSOE) and other Spanish-wide left-wing parties; (2) right-wing regionalists working within the PP; (3) right-wing regionalists and nationalists grouped first in the Majorcan Union (UM), and nowadays in the Proposal for the Islands (PI); (3) left-wing nationalists organized around the Socialist Party of Majorca (PSM) and its allied organizations in the other Islands, which in 1998 became federated in the Socialist Party of Majorca - Nationalist Agreement (PSM - EN); and (4) a small, but important group of left-wing nationalists supporting the idea of the Catalan Countries as not only a cultural, but also a political nation, basically organized around the Islander federation of ERC.[16] As in the case

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[15] *This is not to say that it has been completely out of the picture. Since the transition, there have been different anti-Catalanist groups affirming the existence of a "Balearic language", but they have always been a minority. The only serious attempt to challenge the unity of Catalan language in the Islands, as we will see, came with the last PP government, that of José Ramón Bauzá.*

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[16] *We must recall that, recently, a local group of CUP has been formed in Palma, so this sector of Islander (Majorcan, in this case) nationalism may be a little bit more diverse in the foreseeable future.*

of Catalonia and the Valencian Country, these sectors of Islander nationalisms have been diversely related to a broader civil society standing for different aspects of the Islands' culture, territory and identity, frequently in opposition to the PP's policies.

Among the nationalists that have preferred to work outside Spanish parties, clearly those organized around the PSM - EN (and its prior incarnations), have had the upper hand in terms of electoral support, usually forming, from the mid-1990's onwards, a sort of "third force" behind PP and PSOE. Again, the complexity of Islander politics has been manifested differently depending on the election. Thus, in some autonomic electoral contests, the PSM - EN played a single and distinctive force (e.g. in 1995); in some others, the PSM - EN ran as such in most of the Islands, while one of its branches formed, instead, an electoral coalition with other left-wing and/or nationalist forces of its island (e.g. in 1999 the Nationalist and Ecologist Agreement of Ibiza, the PSM - EN branch on the island, formed the Progressive Agreement of Ibiza along the Ibizan branches of PSOE, IU, ERC and The Greens); and yet, in some others, the entire PSM - EN entered into such alliances in every one of the Islands (e.g. in the last election in 2015, where the different branches of the PSM - EN concurred under different island-based alliances under the common name *Més*).

While opposition to PP's policies has been a common denominator for most Islander nationalists (especially the left-wing) for decades, a turning point in this opposition arrived with José Ramon Bauzà's victory in the 2011 autonomic election. This victory was preceded by a left-wing coalition government formed by PSOE, UM and a couple of left-wing nationalist coalitions, the most important being the Majorca's Bloc (sponsored, among others, by the PSM - EN and ERC). This government, led by Francesc Antich (PSOE), lasted from 2007 to 2011, but it was damaged by UM's corruption cases and internal crisis. In 2011, the PP obtained an absolute majority, and Bauzà became the Islands' President.

Bauzà's government represented a point of departure from former PP governments in terms of identity and linguistic policies. If the Balearic PP was generally opposed to any vindication of the Catalan Countries or the plurinational character of the Spanish State, it nevertheless remained reasonably faithful to some broad consensus concerning Islanders' identity and language. Thus, it rarely supported any form of linguistic secessionism, and if it was not enthusiastic about the notion

of normalizing the Catalan language in the Islands, it was nevertheless reasonably respectful concerning the consensus upon which the 1986 law on the matter was formed. In fact, it was under a PP President (Gabriel Cañellas) that the law, very similar to that of Catalonia, was approved. Jaume Matas' (PP) second government (2003 - 2007) already indicated an evolution of the PP towards a more Spanish nationalist view, with the implementation of some "bilingual" measures, which *de facto* favored the stronger language, Spanish, in detriment of the weaker one, Catalan. However, the effort was short lived, since in 2007 Antich's government returned to the 1986 consensus.

Bauzà drastically completed the shift initiated by Matas. In his one and only term as President, he introduced by decree a "trilingual" schooling system (in Catalan, Spanish and English) for which the Islander society was largely unprepared. It was not built upon any consensus, representing a blow to the idea that one of the missions of education on the Islands was to normalize Catalan as the common language of the land. This law triggered a huge teachers' strike, and motivated deep controversies among the ranks of the Balearic PP itself. Moreover, Bauzà flirted with linguistic secessionism, and passed a Law of Symbols forbidding to fly the traditional senyera in official buildings, among other bans intended to invisiblize the opposition to Bauzà's policies concerning identity, culture and language.

Bauzà's identity policies, as well as his cuts in public spending and the emergence of huge corruption cases involving the PP, led to social unrest, which culminated in 2015 when, in the Islander autonomic election, the PP, while winning the election, lost 15 MIP's and, with them, the absolute majority. A new left-wing government with key nationalist presence was formed with an agreement between PSOE, *Podemos* and *Més* (the left-wing nationalist coalition sponsored, among others, by the PSM - EN). As in the case of Valencia, this signified that two of the three parties of the autonomous government defended the right to decide (especially *Més*), although this was not exactly a radical innovation, since Bloc (present in Antich's government) was already a supporter of the idea of the Islands' sovereignty.

Table 3. 24 May 2015 Islander election results

Electoral Platforms	Votes (%)	Seats (59)
People's Party	28,5	20
Socialist Party of the Balearic Country	18,94	14
Podemos	14,69	10
Més	13,80	6
PI	7,96	3
Més per Menorca	1,53	3
Citizens (C's)	5,92	2
Gent per Formentera - Socialist Party of the Balearic Islands	0,47	1
Guanyem	1,66	0

Source: Islands' Government.

Besides this institutional strengthening of the support for the right to decide, the emergence of an Islander sovereigntist civil society also took place, similarity to Catalonia and the Valencian Country, with the concept of "right to decide" as one of its core values. One example of it is the creation of the platform *Avançam* (Move Forward), grouping several local councilors around the Islands and uniting them in their defense of the Islands' right to decide. Another example is the creation of the Sovereigntist Assembly of Mallorca (ASM), inspired by the experience of the ANC. This example is particularly illuminating of the shift that many actors in the Islands' are experiencing since the definitive alienation of the PP with hardline Spanish nationalism: the President of the ASM is Cristòfol Soler, who was also the President of the autonomous government between 1995 and1996 as a member of the PP.[17] The wind of change in the Islands seems to be shaking the archipelago's social and political sectors, even beyond the usual left-wing nationalist nucleus. And with this wind, come ideals like "sovereignty" and "right to decide".

7. CONCLUSIONS AND FUTURE SCENARIOS

The future of Catalan self-determination is still uncertain. Indeed, it is influencing, and it will keep influencing, events in the Valencian Country and the Islands, which have embarked on their own processes of change.

These processes do not foresee (at least in the short term) any vindication for the exercise of the right to decide in the foreseeable future. However, the role of the "right to decide" concept in the recent articulation of nationalist (particularly, left-wing nationalist) spaces, as well the proximity of the Catalan experience, may continue to strengthen the rise of sovereigntist tendencies within Valencian and Islander societies. Additionally, it is evident that this strengthening is strategically positive for the aspirations of the Catalan independence movement, for it makes the problem of the Spanish State with its peripheries in general, and specifically with its Catalan-speaking peripheries, even more evident as structural and not merely circumstantial.

Catalonia has achieved, indeed, a significant, but insufficient degree of self-government and recognition within the Spanish *Estado de las autonomias*, though nowadays, the majority of Catalans (and the political forces representing them) reject the status quo and are demanding greater powers, or even independence. A solution to this conundrum is not obvious. A unilateral declaration of independence would entail major institutional conflict, but it is equally difficult to see how a plurinational and federal reform of Spain could ever be feasible since that is not desired by the rest of Spain. Other cases, such as Quebec and Scotland show how difficulties involving nationalist conflicts tend to remain permanent over time. However, in the Spanish context, adopting the principles proposed in the Supreme Court of Canada's Reference on the secession of Quebec (democracy, rule of law, respect for minorities and federalism)[18] would help avoid an institutional conflict. The manifest desire for self-determination of the Catalan people should be made compatible with the avowed democratic principles of the Spanish State. The people's right to self-determination, far from being a threat, should be read as an opportunity to build a more democratic community within Europe (a Europe of its peoples and citizens). The answer is not to simply impose on a people the acceptance of a status quo that enforces on them a model based on rigid state structures.

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[17] *Precisely, Soler left the party after the Spanish nationalist shift led by Bauzà.*
[18] *Reference re Secession of Quebec [1998] 2 SCR 217: http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do.*

CORNWALL

Joanie Willett

IN TERMS OF HUMAN RIGHTS, IS CORNWALL JUSTIFIED IN SEEKING GREATER SELF-DETERMINATION?

In this article, using liberal political theory, we consider whether Cornwall (and other nations without states) are justified in seeking greater political self-determination. From a reading of Locke, Rousseau, and Thomas Paine, alongside 'modernist' theorists of nationalism, this article makes the claim that the purpose of the liberal nation state is to protect the natural rights that people hold by virtue of being human. The modern nation state is conceived as a way to protect the rights of man (and woman), through a set of institutions, which ensure laws of conduct are upheld. On a practical level, this means that when the state fails to care for the needs of all of its parts, or for the peoples within its territory, the state can be considered to no longer be protecting the natural rights of its citizens. This provides a pretext for citizens to fight back and call for a democratic settlement, which would enable the closing of the gap between theory and practice and to right any exclusions and inequalities that have taken place.

For nations without states, such as Cornwall, there is a clear case to be made that the British State no longer protects the rights of local citizens in an equal and fair manner. There is clearly insufficient investment of economic and political resources in the region and this has led to a failure to facilitate strong economic and cultural development. Consequently, we argue that Cornish people are morally justified in seeking self-determination in order to attempt to ameliorate the social, cultural, and economic exclusions that they have experienced over recent decades.

Cornwall is a small nation of just over 500,000 people, in the far southwest of the United Kingdom (UK). Similar to Scotland and Wales, it has its own language and cultural heritage that places it as distinct from neighbouring England, whilst still forming a part of the British nation state. Unlike Scotland and Wales, it does not have a devolved government or any form of political self-determination,[90] and in terms of government, it is administratively part of England. Aside from cultural differences, the relationship that Cornwall has experienced with England might be described in terms of Michael Hechter's 'internal colonialism'. In this model, wealthy 'core' parts of the nation state exploit the economically poorer, less powerful peripheries. Hechter initially envisaged this as an exploitation of resources akin to colonialism globally (hence, 'internal colonies'), but more recent spatial theorists have claimed that in its contemporary form, internal colonialism is much more subtle and discursive. Peripheral and/or rural areas become constructed through languages that use stigmatising stereotypes, which reinforce a perception that some regions are 'backward', 'slow', or 'inadequate'.

Cornwall has had the dubious distinction of being one of the poorest parts of the UK for several decades. Indeed, whilst London is one of the wealthiest parts of the EU, inequality in the UK is so acute that both Cornwall and West Wales and the Valleys are amongst the poorest, with both areas being long-term recipients of EU structural funding given to regions with less than 70% of the EU average GDP. Whilst undoubtedly Cornwall must take some responsibility for this situation, the fact remains that for decades central government policy has been focussed elsewhere. In part, this is a

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[90] *The British Government is currently in the process of a round of political decentralisation in what is administratively known in England. In July 2015, this led to Cornwall receiving a 'Devolution Deal', which amounts in practice to a minor decentralisation, but one which does not include strategic decision-making, fund-raising, or legislative powers.*

question of utilitarianism and rurality. In terms of rational economics, it makes better sense for the British Chancellor of the Exchequer to announce a 'Northern powerhouse' and a transport infrastructure to match, since the English North is comprised of many large cities within one or two hours of each other. Investments there offer a greater rate of economic return, and a larger number of potential new voters than rural Cornwall, with a total population of less than each of the cities of Manchester, Sheffield, or Leeds. This is exacerbated by the fact that Cornwall is at the far west of a peripheral-rural peninsular. Consequently, whilst the North is promised two large improvements to its rail network, the South West network has not even been electrified yet, and the vague plans that exist to make this improvement will not be extended into Cornwall.

Whilst British policy might be playing the numbers game in terms of where it focuses its resources, this does not negate the fact that the experience of many people living in one of the poorest parts of Britain, with the lowest average income; is extremely hard. Indeed, the rational efficiency of a utilitarian 'greatest good for greatest number' model is cold comfort for a region that has long felt hamstrung and overlooked by central government policy. It is no wonder then that calls for political decentralisation for Cornwall have resonated strongly over recent decades.

Furthermore, over the past few decades, power has shifted from the regions to the national level and the UK is now one of the most highly centralised nations in Europe. The process accelerated rapidly during the late 1990s, when much of the strategic decision making capacity that local authorities had held with regard to spatial planning was transferred to a new 'regional' layer of governance. These regions were rational constructs, created at an elite policy level with the aim of devising efficient units for policy planning and delivery. In practice, none of these regions were popular, and none of them were ever overseen by an elected body, which meant that English regional governance transferred decision-making to unelected, unaccountable and unpopular bodies. However, when regional governance was abolished in 2010, rather than transferring power back to local authorities, power was centralised in Parliament. Consequently, ordinary citizens of the UK have never been so far removed from strategic governance decisions.

The campaign for political self-determination for Cornwall has centred around devolved institutions along the lines of the Welsh Assembly model. The campaign for a Cornish Assembly has been ongoing for decades, but

gained considerable traction in the late 1990s with the introduction of devolved governance in Scotland and Wales, and with the development of English regional governance. Whilst the English Government was holding a referendum for a regional Assembly in the Northeast, people in Cornwall were actively campaigning for an Assembly. Whilst the Northeast Assembly campaign failed, because it lacked either popular momentum or engagement with civil society, in 2001 the Cornish Assembly campaign gained 50,000 signatures in less than one year - before widespread Internet use or the existence of social media (Willett, Giovanni, 2014). However, the Cornish campaign failed, because it did not fit within the schema of regional governance envisaged by the (Labour) Government of the time.

Far from fading away, Cornish calls for self-determination have become considerably louder over the intervening years, with the 2008 introduction of a Unitary Authority (as opposed to a County and District level Local Authority system) claimed by some as being on the path to self-governance. Equally, in 2009, a Cornish Member of Parliament presented a Bill calling for a Cornish Assembly, and before their election victory in 2010, the Conservative Party had a shadow Minister for Cornwall. Political parties in Cornwall have often tried to gain political capital by supporting the campaign for a Cornish Assembly, taking ground from the Cornish nationalist party, Mebyon Kernow, whose cultural politics has often set the Cornish political agenda. At the time of writing in 2015, calls for a Cornish Assembly, whilst not universally accepted in the region, are definitely mainstream, and it is probable that the Conservative Government's announcement of a 'Devolution Deal' for Cornwall formed part of an attempt to gain political capital in this way.

Moreover, in contemporary debates about political decentralisation in 'England',[91] Cornwall is playing a large discursive role, in a way that did not happen 15 years ago when regional governance was last on the UK-wide political agenda. In the early 2000s, for example, many academics writing about the recent changes in British policy included a paragraph explicitly excluding Cornwall from the debate, usually because they did not take the time to discern Cornish-based activity. In the latest 'devolution debates', governance in Cornwall has been able to capitalise on a strong bargaining

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[91] *Clearly, incorporating Cornwall as a part of England here is problematic. However in terms of governance it is widely imagined as part of the English administrative area, so this term has been used for simplicity of argument.*

position to become one of the front-runners with regards to recent policy changes.

Cornwall has developed a strong voice with regards to calls for political self-determination. Whilst it has been a constant in terms of Cornish political discourse for many decades, over recent years its volume has grown in intensity, and it has become a part of the mainstream political debate. The question this now leaves us with is whether it is *right* that this should be so? One criticism of pro-devolution movements is that even decentralisation campaigners (as opposed to independence supporters) are complicit in the break-up of the nation-states of which they are a part. This is problematic, not merely due to nostalgia for historical territorial allegiances, but also because of the function of the modern nation state in the contemporary global system. To this I am going to argue that the function of the modern nation state is to protect the rights of its citizens, however these rights are conceived. Citizens of nations that fail to do this have a right to demand fairer treatment and institutions required in order to facilitate fair practices.

THE FUNCTION OF THE LIBERAL NATION STATE

As a body of political theory, the early beginnings of Liberalism arose from the late 17th century, gained momentum with early industrialisation and what we might call the 'Modern' era, which fed into, and was fostered by, the Enlightenments' challenge to theological explanations of the world around us. Whilst philosophers sought a way to define a universal set of ethics without having to resort to the wishes of a deity, early theorists, such as John Locke (1688) were trying to find a moral justification for (1) non-patriarchal forms of government, and (2) a doctrine of popular sovereignty.

Previously, sovereignty had resided in the King. However, the English revolution of the late 17th century had questioned the role of absolute monarchical power. The populace (and, more importantly, the elites) were no longer comfortable being subject to the potential tyrannies of the King, and sought to find philosophical justifications and practical solutions for alternative forms of government. John Locke followed the popular feeling of his time, giving his ideas foundations based on the claim that under god-given natural law, all men possess certain rights. For Locke and other social contract thinkers, their ideas take man back to an imagined pre-social

state, where, unlimited by any constraints (apart from the need to survive), men went about constructing an early agrarian culture. The problem that the social contract thinkers met next was the question of security over contractual agreements. Quite literally, in a 'state of nature' man's natural freedom and the lack of limitations on man's natural rights meant that ensuring contracts are honoured regarding any aspect of landed or portable property would become extremely problematic. One solution was to combine with other men in order to enforce some kind of law and order. However, the next problem is, what happens if others do not recognise the legitimacy or validity of such ad hoc, vigilante type bodies – or even of the given set of rules that such bodies attempt to enforce.

Such a situation risks societal collapse into what Thomas Hobbes in Leviathan calls '*mutall warre*'. Hobbes' solution is for the collective transfer of natural rights from individuals to the sovereign body, which can then protect the community through the imposition of laws, their enforcement, and punishment for transgression. Hobbes uses this movement to justify the existence of a monarchy or similar absolutist form of government. Locke's problem with this was Hobbe's transfer of natural rights. He wanted instead to find a form of government that protects the natural rights of man. His solution was to develop a form of popular sovereignty, whereby sovereignty resides in each individual, rather than with a particular governing elite. This also ensures that, in conceptual terms, the practices of government do not contravene the centrality of the laws of nature, of which the natural rights of man are a part. In short, and as Thomas Paine demonstrated in "The Rights of Man", the Liberal State is designed to protect the natural rights that we all hold by virtue of our humanity, by transforming them into civil rights. Nations may determine their own laws and type of civil rights – as long as these do not infringe on natural rights.

In Locke's account, a central legislative body would be responsible for developing a coherent set of laws, or rules by which the community agree to be bound. The executive (or the power to execute these laws) is held by a separate body, thus developing an early form of the separation of powers and the beginnings of representative liberal democracy. The legislature and the executive would be formed of elected individuals directly accountable to citizens. This raised the matter of consent to be governed, which is crucial in our examination of whether Cornwall and other nations without states have the right to self-determination.

For Locke, and other social contract thinkers right up to contemporary theorists, such as Rawles, it would clearly be undesirable in terms of natural liberty for frequent dissent over legislative and executive decisions to occur. Individuals must consent to allow their government to govern them, either expressly, or through playing a participatory role in selecting their governors, or tacitly through enjoying the benefits of a stable society, provided by representative democracy. This is literally an agreement to follow the laws prescribed by ourselves. However, this does not negate the possibility of dissent and resistance. Crucially, the laws that we prescribe ourselves are only legitimate insofar as they protect our natural rights. Rules that infringe these rights cast doubt on the entire reason that individuals agree to enter into a contract with a government and form a state.

For our question regarding the validity of Cornwall's claims to self-determination through devolved governance, we may be able to use the concept of natural rights to make the case that the British Government needs to be able to protect the rights of people in Cornwall. There is also a nuance to this in that we can also find within the canon of liberal political thought, and that is the concept of identity.

According to Foucault, Machiavelli and others, monarchical systems of government relied on a display of power to ensure the compliance of obedient subjects. Modern liberal democracies have to find other techniques to foster consent, beyond the rational concepts offered by Locke above. Rousseau's response to this problem was his development of the concept of the 'General Will'. For Rousseau, the citizens of the polity were bound together in a common community under 'right' laws that facilitated, rather than inhibited, human freedom. For Rousseau, natural rights arose from the aggregate of popular opinion. Here, Rousseau offers us a means through which citizens, as a multiplicity of individuals, could come together to form a unity, or a common identity, from which legitimate lawmaking could be derived. This is the solution at the heart of modern state-building. According to scholars of nationalism, such as Ernest Gellner, the modern industrial nation-state underwent a process of standardisation and conformity, smoothing out regional differences and using vast improvements in communication and education to construct what Benedict Anderson describes as an imagined community of shared experiences. From a narrative of commonality and shared identity, the executive arm of government can appeal to a sense of togetherness in order for individuals to both accept the laws that are put in place, and to follow them.

However, even scholars of nationalism, such as Gellner and Erik Hobbsbawm, who argue that national identity is a rational construct of the modern state, still agree that for many different reasons some regions, or parts of states have either been inadequately socialised into the national whole, or else the broader whole has failed in some way to protect the rights of citizens in particular regions, through inadequate or neglectful lawmaking or policy. Following this logic, nations without states, such as Cornwall, or nations that are governed as part of a larger nation state, can be imagined as regions that for whatever reason have managed to resist modernity's standardisation. Moreover, the neglect of the nation state towards some of its regional parts amounts to a failure of the state to protect our natural rights (in contemporary political theory, now termed human rights).

However, can we really make the claim that Cornwall has a right to self-determination through devolved forms of governance, because the British state has failed in its duty to protect the human rights of people in Cornwall?

The Cornish claim rests on the fact of its peripheral nature and its extreme economic underperformance. The centrifugal forces of contemporary neoliberal forms of capitalism whereby wealth and investment is drawn towards 'central' regions are well documented. Rationally, investments in core central regions make sense as they stand to generate a better overall rate of return than in sparsely populated areas with lower levels of economic activity. The standard neoclassical economic argument would be that it is better to enlarge the size of the overall economic pie and then everyone within the body politic will get a bigger slice. An alternative metaphor borrows from Adam Smith's 'trickle-down' effect to argue that a 'rising tide lifts all boats'.

The problem with this is that whilst the South East of the UK has undoubtedly benefitted, Cornwall has continued to lag far behind, with central government investment mainly linked to match-funding EU structural funded projects within Cornwall, rather than ensuring infrastructural improvements, such as better land-based communications with other parts of the UK. One does not need to borrow from the dehumanisation of rural stereotypes applied to peripheral regions, such as Cornwall to argue that the UK is failing to adequately safeguard the rights of people in Cornwall. Neither do we have to refer to a stubborn refusal to see the physical place

and space as regions to be consumed by an urban elite, rather than spaces which can and do produce unique and world-leading products. Instead, we can claim that the British Government is failing to provide and protect equal rights throughout the UK, especially with regards to Cornwall in particular.

It is this failure to ensure an equality of rights across the UK, which leaves the population of Cornwall with little option, but to pursue political decentralisation. As in Scotland and Wales, this means that the structure of governance needs to be fundamentally reorganised if it is to be able to ameliorate the inequalities that have been allowed to open up. However, even given this political goal, the British State has been very slow to acknowledge the validity of Cornwall's claims, consistently and inaccurately characterising the region as 'too small' for governance purposes, or failing to match the boundaries, which were centrally ascribed to regional governance.

Cornwall's appeal to devolved governance references Rousseau's General Will, in that it divides the territory of the broader nation state into much more manageable units of identity and government. This is not to unfairly value the function of identity within the modern state. However, alongside the sense of 'we-ness' and shared experiences underpinning identity, the simplicity of its narrative allows a sense of mutual understanding that accepts that a well-run polity facilitates and enhances communication between individuals and government.[92] In turn, this can lead to much stronger forms of democratic engagement and policies, which can help to renew the social contract. Clearly then, Cornwall not only has a moral right to self-determination and devolved governance, but political leaders have a duty to provide it with both, if they are to protect the rights of people in Cornwall, and help the region to flourish.

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[92] *Here it should be noted that Rousseau modelled his ideal state on Geneva, and never envisaged its use in any but a city-state situation.*

CORSICA

Thierry Dominici

On December 17th, 2015, the Corsican nationalist movement became the foremost political force on the island thanks to its historical win in territorial elections. This electoral victory was the result of the merging of two ideologically distinct (autonomist and pro-independence) groups. With closer political agendas, both intend to propose a bill based on the right of Corsicans to self-determination. These two political parties, which came into existence during the 1970s, have managed after more than 40 years of political action to force France's national institutions to change Corsica's regional status to a "Territorial Collectivity" (semi-autonomous region). According to local public opinion, the internal (and external) self-determination plan of the nationalists in power has become the only solution to overcome the crisis inherent in the current political climate. After a brief look at the different self-determination claims, the central objective of our work is to show that the social and popular representation of nationalist power currently governing the island allows us to clearly answer the (internal and external) Corsican self-determination issue in terms of a "bottom-up" national consciousness.

Since the end of the 1970s, local political life in Corsica has been punctuated by demands and actions (both legal and violent) by two political forces or currents that reference the self-determination of the island in their societal projects. In a little over forty years of institutional combat (often backed up by violent action or abuses), these partisan groups succeeded in legally and democratically forcing French national institutions to amend the status of the region to that of a Territorial Collectivity.[93] More particularly, the unique geography of the island made it an institutional test bed, a tool with which the authorities could test the institutional flexibility of the unitary spirit of the French Republic, with the result that, reform by reform, Corsica has gradually become the most decentralised French region without being in any way a genuinely autonomous region.

In terms of political representation, the two groups demanding self-determination, the autonomists (or moderate nationalists)[94] and those calling for independence, have increased their standing with the electorate to the point where they are now established in the local political landscape and at the heart of public opinion as genuine political forces. United or in association, the two currents are now seeking to embody the sole alternative to traditional or clannish forces (Briquet, 1997; Lenclud, 1986: 137-173) that are losing ground electorally, because they are incapable of offering islanders political solutions to today's crises. This electoral aspect shows great political maturity. With the historic victory in the regional election of December 2015, with a representative in the European Parliament (François Alfonsi, President of the European Free Alliance) and the victory of Gilles Siméoni in the Bastia city council elections in 2014, moderate nationalism and the legal independence movement have now taken their place on an equal footing in the political history of Corsicans.

However, the idea that there is a 'Corsican question' does not merely date back to the last half-century. Its historical roots lie in the institutional work of the Corsican revolts (or revolutions) of the 18th century, which would serve as a catalyst and a social motor for the different nationalist currents that took issue with the centralising system of the French State.

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[93] *The institutions that are specific to Corsica were incorporated through three decentralising laws (1982, 1991 and 2002), which gave the island greater institutional flexibility within the regional system.*
[94] *In contrast to the "hard" nationalism of legal organisations close to armed factions.*

We will therefore start with a brief outline of the various internal processes of self-determination conducted by contemporary Corsican nationalist forces acting and interacting within the French Republic. Secondly, we will try to demonstrate that the current position of Corsican nationalist forces reflects considerable political maturity (both structurally and ideologically), enabling nationalist and legal independence parties to develop - like traditional parties - relationships of cooperation (local, national and European) in the service of the islanders, and thus to establish themselves today as an illustration or demonstration of the degree of feasibility[95] of the internal (and external) self-determination of the island's population. The core objective of this contribution is to show that such social and popular political representation, and such electoral weight, now make it possible to pose the question of (internal and external) self-determination in terms of 'bottom-up' national consciousness.

1. A NATIONALISM AT THE SERVICE OF THE ISLAND COMMUNITY: THE HISTORICAL PROCESSES SHAPING THE DEMAND FOR INTERNAL SELF-DETERMINATION

There is no doubt that nationalist organisations encouraged the politicisation and popularisation of Corsicans' right to internal self-determination. They all knew, at their own intrinsic levels of demand, how to use the media and politics to tip an ethno-cultural phenomenon in the direction of a social conflict engaging the State and its periphery. In order to read these mobilisations in light of the discourse of (internal and external) self-determination that lies at the heart of the demands of contemporary Corsican movements, we will approach the question of the right to self-determination via the paradigm defined in the formula: degree of feasibility of internal self-determination.

Since the late 18th century, nationalists have seen the feeling of belonging to a Corsican nation in a legal and historical context as a pervasive sense of identity, which is due, following the jurist Antoine Leca, to the fact that

"history has given the island of Corsica a particular status within French territory, insofar as it is the sole metropolitan region that was a sovereign state before its incorporation into France." (1981: 29-49). Without going into too much political detail, in November 1755 the island community established a sovereign nation and drew its main institutional inspiration from the efficacy of popular sovereignty: "the sovereignty of the people legitimates their own master".[96] This institutional development was the work of one man: Pascal Paoli. Apart from this historical fact, he embodied in scientific opinion the desire of a man to see the freedom of his people guaranteed in a social pact (Bartoli, 1999).

It is through this institutional, societal and political project that the figure of Pascal Paoli is acknowledged by all Corsicans as the national hero par excellence. A nationalist icon, Paoli is the statesman who led an entire national community to modernity and civil (or civic) liberty. The myth of Paoli, the legislator of Corsicans, the man of the enlightenment (Bartoli, 1999) inspired by the philosophers of his day (Verge-Franceschi, 2005) – whereas he was simply a product of Italian romanticism (Cini, 1998: 145) – was established.

In terms of nationalist demands for actual self-determination, Professor Xavier Crettiez writes that "nationalism on the island would be defined by its capacity to absorb and re-live the short history of mythologized independence. For, if Paoli's Corsica was long obscured by official historiography disinclined to nourish separatist sentiments, its symbolic use by radical nationalism instead represented a determined process of myth-making." As a result, all nationalist currents have always associated the idea of the Corsican nation with an authentic Paolism. This juxtaposition would form a sort of three-fold political unity: people, nation, territory.

In short, Paolism would act on the collective identity of the islanders at once as a practical idea of the Corsican nation and as a vector or catalyst for the national imagination, a sort of imagined national community as described by Benedict Anderson (Anderson, 1983).

In terms of the demand for self-determination by contemporary political forces, we have noted previously (Dominici, 2005: 63-82) that since 1896

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[95] We borrow this term from Professor Alain Gagnon of UQAM, who has used it for many years in his works, communications, exchanges and courses to define the objective feasibility of the autonomy (and/or separatism) proposed by nationalist tendencies.

[96] Introduction (preamble) to the constitution of November 1755.

(Dominici, 2013), the island has witnessed four waves or periods in which notions of identity were mobilised, in which we can trace the development of five families, distinct in terms of nationalist ideology and close in terms of their approach to self-determination.

The first family were the 'Corsistes' (1896-1945). Although they had no real place in the political arena, they were the first to call for a right to self-determination. This movement consisted or intellectuals, social and cultural figures (poets, writers, journalists, etc.) and veterans. Its political voice at this period, admittedly largely overlooked by the Corsican people, was expressed by a single political grouping dating to 1922: the *Partitu Corsu d'Azione* (Corsican Action Party), later the *Parti Corse Autonomiste*. During what we may think of as the formative phase of partisan autonomist identity, the political discourse of some of its members was undoubtedly influenced by the irredentist project of Italian fascists (Leca, 2007). Nevertheless, the 'corsistes' were the first to speak of the Corsican people's right to self-determination, and their demands would serve as a vanguard for all the other movements that would appear in local political life from the 1950s onwards.

In the years 1950-1966, interest groups of a regionalist type emerged in response to the events of the period (the end of WWII, Algerian war, etc.). Without claiming any political distinctiveness, these groups demanded more institutional decentralisation and more social and economic aid from the central State.

Very quickly, at the start of the 1960s, they were supplanted by two separate political bodies, which saw themselves as genuine parties of autonomy. This partisan family consisted of the *Front Régionaliste Corse* (FRC), a party of socialist persuasion, and the apolitical and inter-class groupings for which the *Action Régionaliste Corse* (ARC)*,* which advocated autonomy under state supervision, would provide the platform and act as spokesman.

Both sustained by a social project set out in a manifesto (Cedic, 1991), between 1960 and 1976, the FRC and ARC set about working for internal autonomy within the logic of integration as a 'small nation' at the European level. Only the ARC resisted the radicalisation of identity in the discourse of the new generation of activists.

This radicalisation of militant youth took practical form in 1976 with the birth

of a new player taking ownership of the discourse of Corsican identity and emancipation: the Corsican National Liberation Front (FLN-C). From then until the dissolution of this clandestine group in June 2014, there were two distinct strategies for the emancipation of the Corsican people: lawful action, and clandestine activities. More particularly, lawful action was conducted by a family, which we defined earlier as 'moderate nationalists' (from the regionalist and autonomist groups); meanwhile the clandestine activities were the work of independence-seekers in the FLN-C and their counterparts from the radicalised youth in the ARC. Despite this point of comparison, the partisan system of Corsican nationalists was different from other European cases because, although based on two distinct partisan strategies, the clandestine action of the FLN-C(s) would predominate (until its dissolution) over the whole political space of ethno-identity. As far as representation is concerned, the two political forces that emerged from 1976 onwards are the only bodies which have, year in year out, been able to offer a political alternative based on the right to self-determination of stateless peoples. This period marks what the nationalists call "the institutional claim in Corsica", to which we will return in more detail in the second part of our discussion.

2. NATIONALIST CLAIMS FROM 1976 TO TODAY

In its first manifesto, the FLN-C proposes a plan for independence based on an action programme with demands for self-determination in six areas, which together constitute the elements of the independence manifesto.

- The recognition of the national rights of the Corsican people;
- The destruction of all the instruments of French colonialism: army, administration, etc.;
- The installation of a popular democratic authority, the expression of all Corsican patriots;
- The confiscation of large colonial properties and tourist trusts;
- The creation of an agricultural authority to protect the aspirations of peasants, workers and intellectuals and to rid the country of all forms of exploitation;
- The right to self-determination after a three-year transitional period, during which administration would be shared equally between nationalist and occupying forces.

In response, from 1977, the former members of the ARC (which had become

Action Régionaliste Corse) created a new, legal, organisation: the *Union du Peuple Corse* (UPC). Settled on a project for internal autonomy as defined in the manifesto *Autonomia*, the UPC tried to leave its mark on the island's political landscape through legal means. The power of the UPC lay in its ability to play the card of (bourgeois) moderate, legal nationalism without losing sight of the ideological fight compared with other nationalist groupings of the same type.

This strategy paid off up to 1984, the year that separatist representatives supporting the FLN-C took seats in the Corsican Assembly. For Jean Michel Rossi, former ideologue of the FLN-C, between 1989 and 2000, "the political role (in the FLN-C) was more or less forced on him by events. In other words, as autonomism had proven incapable of radical attacks on the system, the FLN-C was obliged to be both the driving force behind the political resistance in Corsica and an army of liberation."[97]

Paradoxically, this period also highlighted the decadence of violent nationalism, stemming largely from its attractiveness to the criminal underworld and organised banditry. In 1989, this dual phenomenon caused the clandestine organisation to splinter into various armed groups, disconnected from the realities of *Lutte de Libération Nationale* set up by the original FLN-C, which plunged head first into a fratricidal war over legitimacy (Dominici, 2002: 133-161).

By contrast, having avoided lapsing into inter-nationalist confrontations, the UPC had a front row seat to the spectacle of this cannibalistic nationalism and became a political actor of first choice. Indeed, at each election, the UPC was felt by Corsican citizens to be the only structure capable of bringing the camps together and offering a democratic nationalist approach with a social project that could compete with the clan system. Nonetheless, each time the UPC lost a little more of its electoral and popular attraction to the profit of the legal wings of the FLNCs who were able to socially and politically structure and organise the island's society.

Nonetheless, at the Corsican elections of 1992, Edmond Simeoni, an emblematic and guiding figure of nationalism, was again parachuted in by separatists and autonomists as a number one of the *Corsica Nazione*

electoral coalition. This list was intended to represent a rapprochement between the UPC and the satellites of *A Cuncolta* (the political wing of the FLNC-*Canal Historique* faction at the time). However, although the *Corsica Nazione* list polled around 20% of the vote, this period was marked by a different phenomenon: the predominance of violence and warfare between FLNC factions over democratic discourse. This list would bring new separatist political figures to prominence, of whom Jean-Guy Talamoni was to be the figurehead[98] (he was to become the leader of the legal separatist structure from 1998 onwards). The separatists were to dominate electoral politics until 2010.

However, at the end of the 1990s, a new generation of elite reformists was to emerge onto the political landscape who supported moderate forms of nationalism and abandoning the armed struggle of the FLNC(s). They included Jean-Christophe Angelini, Fabienne Giovannini and Gilles Simeoni.

Structurally, following the assassination of the regional prefect, several independent organisations were led to reject the old relationships that went hand in hand with the political byplay between armed factions. It must also be noted that, since 1998, the vast majority of these organisations have concentrated on democratic, legal forms of nationalism.

This situation led the UPC to propose the construction of a platform that would bring together the forces who wished to practice a democratic, legal form of nationalism. Thus, the UPC would be strengthening its discourse about autonomy by prioritising a plan for internal self-determination for the region within the context of the European Union. In 2002, the UPC merged with several other legal nationalist organisations and became the Corsican National Party (*U Partitu Nazionale di a Corsica*).

Today, the two tendencies have brought about or encouraged, little by little, a third way in the local political landscape: a lawful and democratic model of political nationalism. Because of its proximity to the present, we will try to give a detailed account of the processes, which have led to the organisational change in the local political system.

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[97] *Interview at Ile Rousse in March 1999.*

[98] *Except the Mouvement Pour l'Autodétermination represented by Alain Orsoni.*

We have seen that, in terms of representation in current local political affairs, the 2015 regional election saw the combined nationalist parties emerge as the dominant political family in the political landscape as a whole and, de facto, as the sole force responsible for running the island.

This electoral development was already observable in arithmetical terms at the time of the 2010 election, when the only downside preventing these two tendencies from uniting was the omnipresence of the FLNC's political violence in political debates. There is no avoiding the fact that already in 2010, with the *Femu a Corsica* (Let's make Corsica) list uniting the three parties in the 'moderate' family (the PNC, *Inseme per a Corsica* and *A Chjama Naziunale*) with more than 26% of the vote (translating into eleven moderate elected representatives) plus the 10% (four representatives) for the militant separatists of *Corsica Libera* (Free Corsica), lawful nationalist parties received more than a third of the island's votes. According to an IFOP poll,[99] almost 50% of nationalist votes were young people aged 18-24 years. A political position combining identitarianism with a populist (anti-elitist) and pragmatic discourse, lawful nationalism speaks to, or interests, the great majority of young Corsican citizens, who are increasingly abandoning the centuries-old bonds of the clan system. In 2015, the players were the same, and the results were very nearly so.

In the final analysis, if we consider the new political landscape, which emerged with the nationalist victory in the December 2015 regional election, Corsican nationalism has passed from a role refereeing the political competition between two traditional political forces to the role of a major player, no longer potential but real, in local political life. Because of its near-absolute majority (24 of a possible 51 seats), the nationalist-separatist list will control all the government departments at the local level. This electoral pact between the two tendencies has enabled the separatist leader Jean-Guy Talamoni to be elected President of the Assembly, while the moderate nationalist Gilles Siméoni has been appointed President of the Executive. The new majority holds all the key posts in the Executive, to the extent that they are talking of a national government, *U Guvernu Naziunale*. Several European counterparts[100] have welcomed the historic

victory of Corsican nationalism, which appears to be a further step along the path trailblazed by the Catalan and Scottish regional revolutions that opened the way to external self-determination. In fact, these two political families have succeeded in getting involved in every sphere of activity on the island - social, cultural, economic, political and administrative - and today, with their new electoral weight, they seem to provide direct competition to the traditional political class, which has been in place since the time of the Third Republic. United, these two tendencies combine to create a new lawful nationalism. We can also see that, by defining themselves as defenders of the interests of Corsican citizens, the PNC and *Corsica Libera* are aiming to create a single social project for all islanders that directly addresses the waves of discontent engendered by the exhaustion of Corsican society in response to the current social and societal crisis.

The growing internationalism of the phenomenon should also be noted: as PNC members are associates of the *Europe Ecologie/Les Verts* group, lawful Corsican nationalism has acquired a significant European dimension. This explains why, on July 8th, 2014, François Alfonsi was elected President of the European Free Alliance, which represents all the moderate nationalist forces in Europe.

In terms of national representation, the PNC's discourse of internal self-determination enjoys a large audience among its national counterparts, not least through its core role in the inter-regional *Fédération Régions et Peuples Solidaires*, which serves as a platform during general elections.

Finally, in just a few years the two tendencies have succeeded in making headway in local public opinion by drawing close to the 'peasant class' and to young people on the island. Corsican youth is led by young nationalists' associations spearheaded by *Ghjuventu Indépendentista* (Separatist Youth).

Ideologically, the two organisations take a reformist, emancipatory and democratic stance. This approach enables them to respond to the expectations of a Corsican population, which feels abandoned by the traditional nepotistic powers that offer no solutions to a community trapped in social and economic poverty.[101] This is why we believe that, looking

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[99] IFO "analysis of the Corsican nationalist electorate following the Corsican elections of March 2010", August 2010, http://www.ifop.com/media/pressdocument/237-1document_file.pdf
[100] Among others, the Irish nationalist leader Gerry Adams and the elected representatives of the Catalan separatist party.

[101]More than 25% of the working-age population are without work, according to Le Corse Matin of 4 December 2013, and some 60,000 islanders live in conditions of poverty and social anomy.

beyond the historic victory of 2015 that has put Corsican nationalism in control locally, lawful nationalism now represents the culmination of a process of social emancipation and popular involvement not of the 'working' or 'peasant' classes, but of the whole Corsican 'middle class'. We may even be witnessing the first tentative steps in building a 'little nation' as defined by Miroslav Hroch (1985: 23 and ss).

The project for internal self-determination championed by the nationalisms that now run the region has become, for the great majority of public opinion, the only viable social project enabling the island to emerge from the societal crisis that is intrinsic to the current political circumstances and conditions.

3. CONCLUSION

This contribution has enabled us to suggest that the Corsican claim for internal (and external) self-determination depends on the social project refined over time, because it can mobilise Corsicans with each political crisis by adapting its message to national and international circumstances.

We have emphasised that since the 1960s, like a multi-stage rocket – political, cultural, social, economic, societal – nationalism as a political idea has emerged on the Corsican political stage as a project that is both long-lasting (because it is rooted in local identity) and modern (because of its pragmatism). With the result that it is now represented by or embodied in two groups with separate ideologies, but whose social projects are nevertheless very similar: on the one hand, the separatists of *Corsica Libéra*, formerly supporters of the *Lutte de Libération Nationale* based on armed violence, as well as the nationalists of the *Fému a Corsica* group, jointly defined as 'moderates' and rejecting violence in favour of the electoral approach offered by traditional French representative democracy and led by the PNC. We have tried to emphasise the fact that these two tendencies aim to provide an alternative to the traditional parties, which Corsicans now regard as incapable of offering solutions to the social, economic and political crises, which are currently engulfing all European States.

We have also observed that, thanks to their success in the 2015 regional election, they also aim to give a voice to the Corsican people.

Finally, to conclude, we have seen that lawful nationalisms as a political

discourse speak to a large proportion of the island's population and in representational terms several elites are now permanently installed in Corsican civil society. In less than fifteen years, resilience and the ability to adapt to social and political circumstances have made Corsican nationalism a genuine, visible political force. In other words, it is clear that the political dimension of the partnership that will govern in Corsica for the next two years is no mere symbolic grouping. Indeed, in the mind of the public, the nationalists ought to make a profound and lasting difference at the heart of local political life.

Consequently, with the nationalists in control of the local political system, should we not interpret this as a real desire for social and popular emancipation on the part of the islanders? Or simply the political expression of the practical feasibility of Corsican internal (and external) self-determination?

ALSACE
Étienne Schmitt

A NATION BEYOND BORDERS

Alsace has a strong and singular particularity formed by its past as a peripheral region between France and Germany. This chapter introduces the modern history for Alsace from the French conquest (1648) to the post-war trauma (1945), as it developed its contemporary political institutionalization of local democracy. Throughout its past and recent political history, the autonomist movement has changed. Rooted in traditional Alsatian identity, it supports transnational European identity through Rhinish humanism.

The word Elsass (or Alsace, in French) appears for the first time in the 7th century. According to different interpretations, it means the "foreign domain" in Old German or "seated on the Ill"[102] in Alsatian.[103] The etymological debate

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[102] *The Ill is a western tributary of the Rhine flows in Alsace.*
[103] *The classification of Alsatian as a dialect of German or as a singular language developed from some German and French substrates divides linguists. In this chapter, I employ "Alsatian" with reference to the Alemannic and Franconian speakers of Alsace, classification apart.*

highlights the fact that Alsace is a peripheral territory at the confluence of French and German cultures, though Alsace is equally deeply rooted in the Upper Rhine area. While the history of Alsace often merges into the history of nationalist rivalries between France and Germany, the region has developed its own particularities over the centuries. In the wake of dramatic wars in the 19th and 20th centuries, the autonomist issue erupted in Alsace. After these traumatic periods, local claims were assimilated into the Alsatian desire to aid the construction of Europe. However, new issues, such as collective concerns about the decline of the local dialect, transformations of the Alsatian population, the fusion of the region with Lorraine and Champagne-Ardennes and, perhaps, the end of immobility vis-à-vis the French Jacobin model, have led to a political resurgence in Alsatian autonomism.

1. A BRIEF HISTORY OF ALSACE

Although Alsace has never been independent, it has experienced many periods of autonomy, which have enforced its singularity within the French context. This brief history may offer some clues to understanding contemporary issues.

Several players coexisted in Alsace until the integration of Alsace into France in 1648. Prior to this, Alsace had never been fully integrated into a single state since it had been divided between the Imperial House of the Habsburgs, the German Princes, the Catholic Church and the free cities. During this very long period of Alsatian history, the most important experience of autonomy was the Decapolis (1354-1679), an alliance of ten free imperial cities recognized by the Holy German Empire. Those cities were ruled by the local bourgeoisie and elected a representative who dealt with the imperial power. In this context of urban autonomy, Strasbourg was an exception. A free city since 1201, the prince-bishop confiscated its power. Many conflicts between the nobility, allied with the church, and the bourgeoisie, emerged in the Middle Ages. During the modern age and the advent of the Protestant Reformation, they turned into religious civil wars.

The religious issue characterizes the second chapter of Alsace's autonomy. With the Peace of Westphalia (1648), France acquired the Habsburgs' possessions in Alsace. The treaty created religious clauses, including respect for a predefined religious map on which appeared Catholic, Calvinist and Lutheran cities. For the mixed localities, France established the *simultaneum*

regime in which churches were shared among the different confessions. This apparent tolerance derived from political considerations. France perceived Alsace as a buffer zone and, in those times, the stability of a region that could keep a military force supplied was the only concern of the central power. For this reason, the French kingdom allowed a certain degree of autonomy. Thus, the Sovereign Council of Alsace (1652) was not involved in local affairs: it was a mere registration chamber. But times changed and, with the treaty of Ryswick (1679), the Decapolis was disbanded, Strasbourg was annexed and the Sovereign Council of Alsace gave way to Catholicism above the other religions. Protestants became second-class subjects. Even so, Alsace was still autonomous culturally and economically. Under the absolutist reign, Alsace was gradually uniformized by laws and a strong military presence. Paradoxically, the bourgeoisie benefited from this situation economically and politically to a greater extent than the local nobility who had weak links with the French monarchy. The elite looked to the Rhine area, not to France, and the local culture continued to be German. In 1789, only 1% of the Alsatian population spoke French fluently.

The French Revolution is an important turning point in the region's history. It was the beginning of its economic and political integration into France, and the first attempt at cultural assimilation. The republican regime established the border on the Rhine and closed free trade with the German area. Political centralization (started under the *Ancién Regime*) accelerated. At the same time, equality of confessions allowed the adhesion of the Protestants and Jews to the Revolution. La Marseillaise (the French national anthem) was sung in Strasbourg for the first time. But this adhesion to revolutionary ideals was abruptly brought to a halt when Jacobinism threatened the area's cultural inheritance. In 1793, a policy of Frenchification was initiated with the exclusive use of French in administrations, the closing of all German schools and universities, and the renaming of many areas, streets and shop signs. After this reign of cultural terror, the local population developed an ambivalent feeling towards the Revolution. On the one hand, the nobility had massively emigrated to Germany, religious tolerance had been initiated under the Revolution, then renewed with Napoleon's concordat,[104] and a local bourgeoisie emerged as new political elite. On the other hand, those troubled times increased centralization. They divided the Alsatian people in twain: firstly, between Republican Protestants and Conservative

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[104] *Signed with the Holy See in 1801 for Catholics, the concordat was extended in 1802 to Lutherans and Calvinists, and Jews in 1808. It recognized religions, and gave them public support.*

Catholics; and secondly, between a minority of French speakers and the majority of German speakers.

The first German annexation of Alsace (1870-1918) is a second turning point in the region's history. Militarized and fortified, Alsace had long been considered by the French state as a borderland, a "near abroad" seen as a pawn in a larger chess strategy. With the French defeat in 1870, Alsace was perceived then as a body limb of the French nation and part of its "organic territory". The historical controversy about whether Alsace belonged in the French nation or the German nation illustrated this doctrinal shift. On the one hand, Theodor Mommsen defended the Alsace belonging to Germany, because of its geographical position, its culture and its language. On the other hand, Fustel de Coulanges argued that: "it is neither a race nor a language that makes a nationality", but "a community of ideas, interests, attractions, memories and hopes which Alsace forms a part." (1870: 10). This classic distinction between an ethnic nation and a civic nation is not a mere conflict of values, nor an opposition between an essentialist argument and an existentialist one: it is an attempt to stake one's legitimacy claim. Famous for his conceptualization of the civic nation, Ernest Renan compared Alsace's annexation to an amputation (2011: 31). This organic register was not just metaphorical; it legitimised the constitutional principle of Republican indivisibility, which prohibits the recognition of national minorities. Later, it would authorize the cultural assimilation of Alsace as a constituent organ of a greater whole "body".

While Germany recognized (and still recognizes) local particularities, its national ethnic conception subordinated Alsace to the status of a second-class territory. It was organized into the *Reichsland Elsaß-Lothringen* (Imperial territory of Alsace-Lorraine) and supervised from the central state. Alsatians lived under a colonial regime in which they were second-class citizens without civic rights until 1900. A Germanization policy prohibited the public use of French and aspired to erase any cultural hybridization by abundantly Germanic references in the area's cultural, economic and social life (Wahl and Richez, 1994: 233-236). This assimilation policy contributed to a genuine population transfer: 400,000 people from Alsace and Lorraine left the Reichsland (130,000 in 1872 when the treaty of Frankfort authorized the keeping of French nationality if those benefitting from it emigrated), and 300,000 to 400,000 Germans settled in the region (Smith, 1996: 27).

During the first annexation, autonomist claims arose. As a response

towards cultural assimilation, many Alsatians manifested a strong loyalty to France. This was especially due to the cult of Napoleon and the famous Alsatian military officers who served him, as well as veteran associations. The representation of a *"petite-patrie"* (simply called *Heimat* [homeland] in Alsatian) appeared. This *"petite-patrie"* was not only a psychic refuge with an idealistic representation of France and nostalgia for the "old days", the *Stürmer* ("vanguard") movement "propagated 'intellectual' or 'spiritual' Alsatianness, which, although rooted in the Alsatian Heimat, was not cantered around a *passéiste* programme of traditionalism and ruralism" (Klein, 2012: 178). Political claims were accompanied by an important development of arts, popular songs and performing arts, especially in literature with René Schickele, in poetry with Ernest Stadler, in paintings and sculptures with Émile Schneider and Hans Arp and in the theatre with Gustav Stoskopf. For the first time in its history, Alsace aimed to become a *Dreyeckland* – a "country with three angles", or more exactly "three borders": Germany, France and Switzerland. This would lead to years of torpor. Alsatians reacted to the German occupation culturally, because French had begun receding into only being used for the concerns of everyday life. Politically, the irredentist protestation at the beginning of the era turned into a willingness to embrace autonomy. Organized as a *Nationalbund* (national alliance) within the local parliament, the local political protagonists demanded an elected parliament, universal suffrage, a local government, a local administration and an army like the other German states. In 1879, the Imperial Power conceded a *Landtag* (local parliament), and the *Oberpräsident* (Imperial representative) was substituted by a *Statthalter* (governor) and a *Bezirkspräsident* (District president) in each district was established. In 1911, the autonomist movement obtained a constitution that gave Alsace-Lorraine the status of a federal state along with a great symbolic victory: the recognition and authorization of bilingualism. Although these concessions were restricted, they legitimised the self-determination movement.

The first annexation concluded with an anecdotal, but symbolic, event that happened at the very end of World War I. During the anarchic situation in Germany before the armistice in November 1918, a soviet of soldiers and workers was formed in Strasbourg on the 10th. The same day, the local political elite created the *Nationalrat* (National Council) to manage the transition. One of its members, the socialist Jacques Peirotes was elected as mayor of Strasbourg. He met the leaders of Strasbourg's soviet council and, following that proclaimed the short lived *Elsässische Räterepublik* (Alsatian Councils' Republic). The Strasbourg Soviet put up posters on the walls of

Strasbourg with the slogan: *"Nicht deutsch, nicht französich, nicht neutral. Die rote Fahne hat gesiegt"* (Not German, nor French, nor neutral. The red flag has triumphed). Even though the Alsatian Republic was disbanded with the arrival of French troops in Strasbourg on November 21st, the separatist idea caught on with a large section of local socialists.

The Alsace re-integration as a region of France after World War I closed this final chapter of Alsace's autonomy, but that ending marked the beginning of its autonomist movement. Collective enthusiasm for having been liberated from German control soon dampened as France rapidly committed many gaffs. Politically, the local government was substituted by a "commissariat général" and a consultative council, which reminded the German protectorate. There was no trace left of the autonomy of recent times. Socially, France deported whole populations based on ethnic criteria; dividing Alsatian society into four categories:

    A. Alsatian with Alsatian parents and grand-parents
    B. Alsatian with a German ascendant
    C. Foreigner from a neutral country
    D. German

The D population (110,000 people) were expelled; the C population had to apply for French citizenship in order to stay in Alsace, the A and B populations have to prove their pedigree and were reintegrated into the French nation. The humiliations, with incarceration of thousands of people who had served in the German army, the sacking of local civil servants automatically replacing them with people from outside, the harsh imposition of French language in the administration, in schools and in social life, and a strong Germanophobia against Alsatians explain the considerable increase in support for the autonomist movement after the war. Popular demonstrations forced the French Government to adopt a status for Alsace-Moselle in 1924, which promulgated the *"droit local"* (local law). This reinstated several German regulations from before the annexation and revived some French laws from before 1870. This included the right to have notarial deeds written in German, the introduction of a basic social security and the recall of the *"concordat"* which created exceptions to the *laïcité*'s law. This success incited the *Heimatbund* – a common front of autonomist parties and a few communist dissidents – to claim the right to self-determination in 1928. Despite state repression, many autonomists were elected and became the main party in Alsace in 1930s. With Hitler's rise to power in 1934, the autonomist movement split up into two trends: the moderates joined the

democratic parties, and the radicals adopted the national-socialist ideology. The collaboration of the autonomist movement with the Nazis during World War II explains the conformism of local political activists after the events. Autonomist groups ceased to question the French claim on Alsace. While the trauma did away with demands for self-determination, it led to the European aspirations of local political elites and their resentment towards nationalisms.

2. EUROPEAN REGION IN A CENTRALIZED-STATE

After World War II, the local elites converted the region, which had been a bone of contention between France and Germany, into a symbol of European peace, and the idea took hold that being European formed part of the Alsatian identity. In fact, the perception of Alsace as a bridge between France and Germany is even older. During the annexation, local elites had already proposed that Alsace become a buffer area with a quasi-messianic mission to "form a bridge between France and Germany that would not only ensure Alsace had an agreeable standard of living, but would also play a key role in maintaining the peace in Europe" (Smith, 1996: 14). Convinced by this symbol, in 1949, Ernest Bevin (the former British Foreign Secretary) proposed setting up the Council of Europe's headquarters in Strasbourg. This marked the beginning of a European willingness to create the political singularity of Alsace as a hub within a centralized state.

Like every French region, Alsace is ruled by conformity. This chapter will merely sketch the general trends instead of a comprehensive and exhaustive description of French local administrations and the decentralization process. French regions do not have much in the way of devolved competences due to a strong division of power among local authorities, a lack of local leadership and state control over them. While municipalities, departments (Bas-Rhin and Haut-Rhin) and the region are legal entities under public law, with a certain administrative and patrimonial autonomy, their powers are divided and restricted. For example, local authorities have a say in the education field: municipalities manage primary schools, departments handle middle schools and the regions control high schools. Despite their involvement, these bodies do not have the authority to hire teachers, nor to define their own school curricula. Those powers are the exclusive jurisdiction of the central state. The same is true for culture, health, social services, etc. Local democracies are managerial units specialized in areas, such as urban planning (munici-

palities), social services (departments) and economic development (regions) without any sovereign power. Moreover, local authorities are not answerable to the regions. In other words, the region does not have the final say in economic development and municipalities may put into operation ambitious projects without their agreement. The general jurisdiction clause covering local authorities allows project funding, local initiatives and some public co-operation, but this flexibility does not enable the exercise of any sovereign or assimilated power. Briefly, they have some flexibility when it comes to politics, but only within an exceptional or experimental framework conceded by the central state. Compared to *Länder* in Germany, *Comunidades Autónomas* in Spain or countries in the United Kingdom, French regions are powerless. Even symbolic signs (like regional flags) have been established by centralism: the current Alsace flag is not its historic one; it was created by the French state without any historical reference or popular consultation.

Faced with this domination by a centralist and assimilationist Jacobinism, Alsace developed other kinds of legitimization. Thus, enthusiasm for Europe can be interpreted as a substitute for autonomist ambitions, which are viewed with suspicion by the French authorities, because they were rooted in German culture and compromised by the flirtation with Nazism during the war. Suspected of being foreigners, because they were culturally German, the Alsatian elite attempt to reach a consensus between local aspirations and French Jacobinism, which strongly prohibits any recognition of the area's distinct nature. Thus, mention of "Rhenish humanism" by the local elite who legitimize and integrate European enthusiasm is a kind of loophole within the centralized state and its assimilation policies. Moreover, Alsace's distinctiveness is mutating as time goes by. Sociological changes (immigration, cultural diversity, frontier work, a decline in Alsatian speakers, etc.) have led the gradual disapproval of folkloric elements defining the Alsatician identity, and the renewal of this one. This phenomenon does not represent a disinterest by the local population in a collective identity. Alsatians declaring that they are "attached" to their region amounted to almost 88.5% in 2009, compared with 88.9% in 1999; an anecdotal loss of some 0.4% over a decade (Pasquier, 2012, pp.73-75). In an attempt to adapt to an increasingly diverse region, Rhenish humanism is a kind of bargain between the Europeanization of traditional culture and the persistence of Alsatianness.

Politically, this shift is expressed through cross-border cooperation and a formal para-diplomacy. Without waiting for the good-will of the central state, Alsatian political protagonists have initiated the Upper Rhine Tri-National

Euroregion. In addition, Alsace is the region of France with the most important number of cooperation institutions: the Strasbourg-Ortenau Eurodistrict, the Freiburg-Alsace Eurodistrict, the Basel Trinational Eurodistrict, and the Confederation of Universities on the Upper Rhine (EUCOR). As for para-diplomacy, the "Bureau Alsace" was created in 1990 in Brussels. It aims to strengthen the position of the region in European institutions. Besides managing these kinds of organizations, it also manages the Alsace Europe Network (a network of stakeholders and experts on European funding). This type of para-diplomacy is far from the "identity para-diplomacy", which reproduces the official diplomacy of national governments in order to challenge it on the international stage. It coincides with a "para-diplomacy of recognition" involving the fragmentation of communications and a convergence of resources in order to avoid any open conflict with the state, while seeking recognition as a credible interlocutor with official authorities (Paquin, 2014: 90). This regional policy is not rare in Europe, but it is more intense in Alsace where every single issue becomes a European one.

3. THE RESURGENCE OF ALSATIAN AUTONOMISM

After World War II, autonomist parties were largely marginalized in Alsace. Divided between conformism and particularism, challenged by multiple identities (regional, national, and transnational) the Alsatian people felt traumatized by their collective past and its violence. This context developed into a taboo towards nationalism. At the same time, France prohibited (and continues to prohibit) the recognition of any other "nations" in the Republic's sovereign territory. "To be French" meant to be absolved from national infamy. It became the leitmotiv of a generation that did not question the prohibition, but rather preferred an intimate regionalism. However, memories of the war fade and the rehabilitation of the Malgré-Nous (incorporated by force into the German army during the second annexation of 1940-1944) was late coming, but is now occurring. Wounds in Alsace are healing slowly and a renewal of interest in Alsatian identity has more or less corresponded to the contemporary crisis.

Alsatian culture is in constant change and the lack of intergenerational transmission is threatening to the basic claims of autonomism: the Alsatian language. The younger generations are speaking Alsatian far less. Cultural answers are being preferred "to political solutions" in several sectors of civil society, such as artists, who seek to keep Alsatian culture alive, while

parents associations have been demanding that Alsatian be taught in bilingual or trilingual schools. In 1994, regional authorities, interpreting their general jurisdiction clause, created an institution: the Office for Alsatian Culture and Language. Alsace is the only region in France with such an ambitious institution devoted to the regional language. In short, it is an advocacy group for the diffusion and promotion of the regional language. It provides support for the linguistic community itself, rather than for an academy. Going beyond the cultural, this regionalism is evolving and reinforcing traditional claims in interaction to contemporary issues. This latent regionalism has influenced the local political sphere as whole, but to varying degrees. Common regionalism has had many difficulties embodying itself politically. The trend was not in favour of regional parties a decade or so back. However, the last few years seem to indicate that is changing.

A recent popular demonstration against the merging of Alsace, Lorraine and Champagne-Ardennes can be interpreted as a larger collective awareness that the French prohibiton of the recognition of minority nations is being challenged in Europe where a powerful appreciation of pluralism seems to be on the rise. The modest results of Unser Land (USL) (a party calling for an Alsace "nation" and claiming an autonomy status) in the last election demonstrated a paradigm shift: the USL became the third largest party in Alsace after the regional elections of 2015 (10.07% in Bas-Rhin, 12.64% in Haut-Rhin).

4. CONCLUSION

Alsace has never been independent, has sometimes been autonomous, but has always been extraordinary; a symbol of French and German nationalist rivalries, a victim of assimilation perpetrated by both sides, its singularity is based on these conflicts. Its right to be considered a nation is forbidden by a France that will not tolerate any form of diversity. Locally, the idea of an Alsace nation is largely taboo due to collective mistakes made in the past and a kind of inferiority complex. As part of a nation-state that is too centralized and too assimilationist, Alsace cannot be content with simply being a small region. In counteracting the French prohibition of its national status, Alsace has developed a large scale European ambition within which it has effectively become an intimate nation.

BASQUE COUNTRY
Jule Goikoetxea

POLITICAL STRUCTURES AND SOVEREIGNTY DEMANDS

This article will demonstrate the relationship between the political structure of the Basque Nation without a state and its demands for self-determination. There is little demand for self-determination in the North of the Basque Country (currently part of France), while in the Foral Community of Navarre (FCN) the idea is only supported nowadays by a minority, though a rapidly growing one. In this article, we will thus focus on the Basque Autonomous Community (BAC) within Spain, where the demand is much more widespread across the population, its institutions and political parties. It is necessary to relate Basque political structures (party system, finance system, etc.) and their functioning with demands for self-determination since one of the reasons behind these demands is the impossibility of developing Basque self-government, in other words, a Basque political system.

1. INTRODUCTION

The Basque Country (BC) is a country partitioned by two states. It is divided into three administrative-juridical areas and seven territories; four are in Spain, in the south of the BC, and three in France, the north of the BC. Since there is a great deal of divergence in the development of these territories, their political institutions, society and economy etc., we will deal with them separately and focus only on the south, where demands for self-determination have been recorded informally and regularly on the streets, but also formally and repeatedly in the Basque Parliament.

We shall start with figures for the whole of the BC, and then explain what we consider to be the most relevant elements with regards to demands for sovereignty or the *right to decide*. We shall see how the figures change when we take into account only the north of the BC in France and when we turn our focus to the BAC and on the FCN.

In the first table (Q.1), people were asked about their opinion on independence across the whole of the BC. Here we can see that 40.7% are in favour and 35.3% against.

Question 1: Would you vote "yes" in a referendum on a Basque/Navarre Independent State?

	Araba	Gipuzkoa	Navarre	Biscay	North BC	Basque Country (BC)
In favour	29.2	54.9	40.0	38.7	28.3	40.7
Against	45.5	19.0	41.8	36.2	46.2	35.3
Abstention	4.5	3.5	2.2	4.0	12.2	4.3
Don't know	17.3	19.3	13.9	18.2	10.7	16.8
No answer	3.5	3.3	2.0	3.0	2.7	2.9
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source: Aztiker elaborated for IparHegoa and ParteHartuz Research Team (University of the Basque Country) in Perception of the Basque State (2014-2015)[105]

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[105] *Two thousand surveys were carried out, by phone, between October 2014 and February 2015. There is a calculated error index of ±2.4% for the South of the BC, ±4.9% in the north and a confidence level of 95.5% as a whole.*

However, asked about the right to decide (understood as the right to self-determination based on democratic principles), we see that two thirds of the inhabitants are in favour (Q.2). And, when asked about the viability of an independent state (Q.3), the majority sees it as viable at 54% (viable enough or very viable).

Question 2: Are you in favour of the right to decide?

	Araba	Gipuzkoa	Navarre	Biscay	North BC	BC
In favour	62.2	79.1	57.1	69.1	52.9	66.8
Against	28.0	12.2	34.9	20.7	31.0	23.3
Don't know	7.2	6.2	5.5	7.7	13.9	7.4
No answer	2.5	2.5	2.5	2.5	2.2	2.5
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source: Aztiker elaborated for IparHegoa and ParteHartuz Research Team
(University of the Basque Country) in Perception of the Basque State (2014-2015)

Question 3: Do you think a Basque/Navarre independent state would be viable?

	Percentage
No	6.2
Little	15.3
Enough	23.0
Viable	18.3
Very viable	13.9
Don't know	12.4
No answer	1.0
Total	100.0

Source: Aztiker elaborated for IparHegoa and ParteHartuz Research Team
(University of the Basque Country) in Perception of the Basque State (2014-2015).

Views on independence change according to the political party people support. There are French and Spanish state-wide parties, Basque autonomous parties and Basque regional parties, which all differ on the question. The Basque Nationalist Party (EAJ-PNV), for instance, is in favour of independence in Gipuzkoa, but not so in Biscay, and even less in Araba. The same is true in Navarre where Geroa Bai (which includes many EAJ-PNV members) is not seeking independence.

The most homogeneous group is EHBildu, a left-wing pro-sovereignty coalition in favour of independence in each and every territory.

Question 4: Views on Independence delineated by political party

	In favour	Against	Abstention	Don't know	No answer
PP-UMP-UPN	0.7	14.6	7.1	4.7	2.0
PSOE-PS	2.8	21.9	5.9	10.3	0.9
EAJ-PNV	18.9	7.1	0.0	12.3	6.5
Amaiur -EH Bildu	30.3	0.1	0.6	4.2	4.4
Geroa Bai (Naf.)	3.2	0.4	0.0	0.3	3.5
IU	2.2	4.6	1.2	4.2	0.0
UPyD	0.0	2.1	0.0	0.3	0.9
Others	1.6	3.8	1.1	6.0	2.3
Abstention	16.0	15.9	41.4	21.1	11.4
Spoiled paper	0.5	3.1	3.8	1.5	6.8
Unable to vote	5.0	2.7	1.7	3.8	0.0
No answer	18.6	23.7	37.3	31.3	61.3
Total	100.0	100.0	100.0	100.0	100.0

Source: Aztiker elaborated for IparHegoa and ParteHartuz Research Team
(University of the Basque Country) in Perception of the Basque State (2014-2015).

In the case of the BAC, on the question of independence (Q.5) in October 2014, we see 39% in favour of independence (up 5 points from 2000), 29% against (down 6 points from 2000), "don't knows" were at 20% and abstention at 12% as can be seen in the following table:

Question 5: Are you in favour of independence?
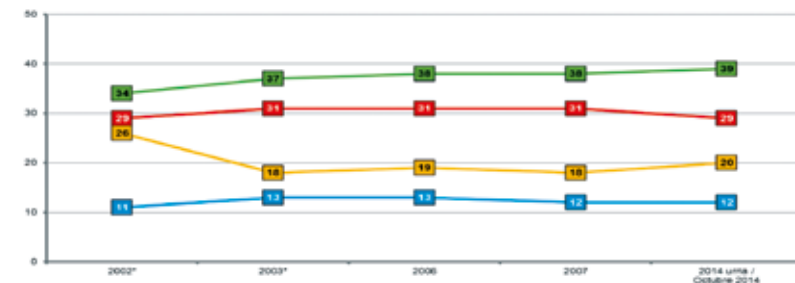
Source: Cabinet for sociological Prospection = CSP, 2015 - Basque Government (2014) (ies)

The aim of this article is to show the relationship between the political structures of the Basque County and its demands for self-determination. Since there is neither a formal demand nor any regular social movement demanding self-determination (or the right to decide) in the North of the BC, we will focus on the South, where we encounter both elements: Basque political structures and demands for self-determination.

2. BASQUE SELF-GOVERNMENT

Following Franco's death in 1975, Spain entered a period of transition to democracy that entailed an open-ended process of asymmetric decentralization through which the south of the BC: the FCN and the BAC acquired their Statutes of Autonomy. These Statutes included a provision ensuring the protection and safeguarding of the historical rights of the so-called Foral Territories.[106]

The updated Basque *Foral* structure establishes, as regards the Basque Autonomous Community,[107] a quasi-co-federal multi-level government system based on two pillars. The first being the territorial representation system outlined in the Law of the Historic Territories (LHT), which enshrines the political autonomy of the BAC's three historic territories of Araba, Bizkaia and Gipuzkoa, but which also applies to Navarre as a historic territory.[108]

The second keystone of the system is the Basque Economic Agreement that set up the pattern for the relationship between the Spanish and Basque systems of Public Finance.[109] This Agreement makes the BAC and FCN the only regions in Europe to have their own Public Finance system without being a sovereign state.

After 35 years of democracy (and against all the odds in view of dire

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[106] I want to thank Ethnopolitics for giving me the permission to reproduce here parts of the article "Nationalism and democracy in the Basque Country" (1979-2012), Ethnopolitics, 12(3), (2013a): 268-289

[107] With regard to the Foral Community of Navarre, it is not a federal system since it has been separated administratively from the other three Territories, with essentially the same system.

[108] "Law governing the relationship between the Common Institutions of the Basque Country and the Foral Bodies of its Historic Territories," 27/1983 (EHAA: 182/1983-12-10). See also the Statute of Autonomy, 1979, Art. 42.

[109] Organic Law 12/1981 and 4/2002 (EHAA: 2002-05-24)

predictions), the Basque community has the highest level of wellbeing in Spain. It has both the highest income per capita and the highest expenditure on R&D in Spain (Eustat and INE, 2015).

The federal parliamentary system of the BAC

The political equality and parity of the Basque Territories is ensured by the parliamentary representation system which the LHT establishes. The system is set up in such a way that territorial representation is given greater importance than individual representation.[110] Thus, each Territory sends the same number of members to the Basque Parliament: Araba, with around 300,000 inhabitants, sends 25 representatives; Bizkaia with over a million sends 25; and Gipuzkoa with 700,000 a further 25. In Araba a candidate needs around 5,000 votes to become a representative, while a Bizkaian candidate needs 20,000. In line with this electoral system, prominence is also given to territory in the territorial parliamentary system. Each Territorial Parliament has 51 *Foral* Deputies. In the Territory of Gipuzkoa, for instance, Donostialdea (which is a geographical constituency with 300,000 inhabitants) has 16 deputies, while Bidasoa-Oiartzun (another constituency with 100,000 inhabitants) has 11 deputies.

On the other hand, the Basque party system, labelled as a polarized pluralism, allows an average of seven parties to achieve parliamentary representation, which is the highest number in Spain and one of the highest in Europe. This radical pluralism is delineated into two competing sides: the classic division between right and left, and that between Basque nationalists and Spanish nationalists. These gaps open up a huge variety of political areas in which the division between Basque and Spanish nationalists has become the predominant one since the mid-1990s. Nonetheless, it should be borne in mind that this electoral system benefits Spanish nationalist parties because it is in Araba that these parties have most of their votes and it is there that a candidate needs far fewer votes than in Bizkaia and Gipuzkoa to become a representative. Despite this fact, from 1979 until the present day (except for 2009-2012, and due to the banning of the Basque nationalist and Basque Socialist parties by the Spanish Supreme Court), Basque nationalist parties

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[110] Electoral Law 5/1990: Heading II. Electoral System.

have always been dominant in the Basque Government and also in the three Territorial Governments (except for Araba in 1999 and 2007-2012).

In Navarre, this polarized pluralism is not so great and the divisions include the Navarrese right-wing axis (close, politically, to the Spanish nationalists) and the Navarrese left-wing (socialist–federalists). The multiplication of divisions within the Spanish nationalist side leads to a lower profile for demands for self-determination, which have, however, been increasing since the 1980s from 8% (Blas, 2009) up to 25% - 35% and, according to some surveys, up to 40% (EEP, ParteHartuz & IparHegoa, 2015).

Some of the reasons for this increase in the demand for self-determination in the FCN and, as we will see, in the BAC are related both to their party and parliamentary systems and also to their financial systems. Each and every system has prompted protests by the general population for non-fulfilment of promises, and by the other Spanish Autonomous Communities because the Basque system is different to the common system prevailing in the rest of the Spanish state. The constant intervention in these systems by the Spanish central Government in order to recentralize almost all of the regional competences has led to highly undemocratic institutional practices by the central administration, according to the Basque population (see the Sociological Cabinet Prospect for the BG in 2014).

That is why it is necessary to relate Basque political structures (party system, financial system, etc.) and their functioning to demands for self-determination, since one of the reasons for these demands has been the impossibility of developing a Basque self-government, that is, truly Basque political systems.

The co-federal finance system

The economic equality of the Territories was established by the so-called Economic Agreement (1981/2002) that developed and brought up to date what the Basque and Navarrese Statute of Autonomy and the Law of Historical Territories established in 1979 and 1983 respectively. This financing agreement endows the three historic territories of Araba, Bizkaia and Gipuzkoa, on the one hand, and Navarre, on the other, with powers to formulate, regulate and collect 92% of all taxes (which means all taxes except customs duties levied on goods imported from outside the EU).

This Economic Agreement has two main characteristics. The first is tax autonomy, which means that Basque Territories have the power to establish tax regulations and to manage, settle and inspect all taxes levied. After liquidation, each Territorial Government (in the case of the BAC) must deliver a part of the revenues collected to the Basque Government (BG), which does not have its own fiscal capacity (Gallastegui *et al.*, 1986).[111]

The second defining feature of the Economic Agreement is related to the obligation to pay a certain amount to the Spanish Treasury, which is referred to as the Basque Tax Contribution or '*cupo*' (Gomez & Etxebarria, 2000: 523). The taxation coefficient currently in use in the BAC and Navarre are very similar. In the BAC, it is 6.24%, i.e. the Basque Government pays 6.24% of the general expenses of the Spanish State in areas for which it has not assumed responsibility (the army, foreign diplomacy, etc.). Thus, the Territory of Gipuzkoa, for instance, distributes its budget (3.8 billion euros for 2012)[112] as follows: around 70% is for the BG (including the '*cupo*' for the Spanish central state); a further 10% is for the municipalities; and the remaining 19% (excluding financial adjustments: 0.8%) is for the Territorial Government.[113]

This system of distribution whereby the lower level of government (the Territorial Governments) gives to the higher level of government (the Basque and the Navarre Government, as well as the Spanish Treasury) almost all the money it has available, makes subsidiarity and decentralization the core of the Basque political structure. This, along with the fact that most competences are concurrent, implies that Basque public institutions must operate by consensus.

We think this internal constitution has had consequences on demands for self-determination. However, this connection has been established by the socio-economic well-being achieved in these territories over the last four decades. During the deep economic crises suffered by Spain during the 1980s and early 1990s, Bizkaia, along with other provinces

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[111] *This allowance is determined in accordance with different variables: Relative Cost of Assumed Powers (competences), Provincial Revenue (GDP) and the tax burden imposed by each Provincial Council.*
[112] *Gipuzkoako Foru Aldundia, Aurrenkontuak, 2011. See http://www.gipuzkoa.net/*
[113] *The Basque Finance Council is where representatives of the three Territories (one per Territory) and of the Basque Government agree on the transfer of money by the former to the latter on the basis of specific projects. See: LHT, 27/1983 Heading II; Arts. 20-29-30.*

and Autonomous Communities, such as Asturias and Catalonia, saw its industrial index reduced as many heavy industries shut down. However, Gipuzkoa, Araba and Navarre actively supported its SME (Small and Medium-sized Enterprises) industrial infrastructure and their eventual internationalization in the 1990s. At the same time, the Basque and Territorial Governments implemented Strategic Technological Plans that defined technology policy as the basis for industrial policy (Gomez & Etxebarria, 2000).[114] As a result, by the mid-1990s, the south of the BC had entered the third wave of restructuring, moving firmly into R&D or the so-called 'knowledge economy,'[115] and since then, it has continued to have higher levels of per capita income than Spain.

Basque industrial and technological restructuring turned out to be relatively successful in socio-economic terms, because, to meet the high demand for skilled labour that the technological reconversion entailed, the Basque and Navarre Government managed to ensure widespread access to higher public education for all those living and working in Bizkaia, Araba, Navarre and Gipuzkoa, where in the 1970s, 40% of the population were still migrants from other parts of Spain.

Nowadays, the BAC, followed closely by the FCN, has the greatest concentration of population with higher education qualifications (44.10%) in the European Union (exceeded only by the Inner London region, Eurostat – NUTS2, 2010). More remarkably, the percentage of population who have been through higher education is very similar in every Territory (Eustat, 2009 and 2011). Having similar rates of education in each Territory means that the restructuring of the BAC's industrial network, undertaken since the economic crisis of the 1980s and 1990s, entailed neither massive displacements nor depopulation of any one Territory (Goikoetxea, 1997), which happened in Spain (and also in other European countries).

3. BASQUE POLITICAL STRUCTURES AND DEMANDS FOR SELF-DETERMINATION

Basque nationalists understand the relationship with the central Spanish Government as being between two equal political entities, while Spanish nationalists understand it as one of subordination.[116] These conceptual antagonisms have shaped a discursive framework in which the defence of the Basque political structure in accordance with its *Foral* or federal system has become incompatible with Spanish constitutionalism and hence, with the Spanish Constitution, leading to constant political and institutional confrontations (Feldman, 2005: 329-39; Requejo, 2005: 263-4).

Spanish nationalists say they could never fulfil the Statute in accordance with the Basque *Foral*-federal system, since for the latter to develop (and for the Statutes to be fulfilled) a symmetrical (if not co-federal)[117] relationship between the southern Basque Country and the Spanish state would have to emerge according to, not only to the Statutes' First Additional Provisions, but also to the Economic Agreements and, to some extent, to the First Additional Provision of the Spanish Constitution itself.[118] However, State-wide parties conceptualize the BC as a region of Spain and hence, consider the BC's interests to be regional interests subordinate to national (Spanish) ones, since by definition, the latter are above the former (Lecours & Nootens, 2009; McRoberts, 2001: 684).[119] This was demonstrated again by the Spanish Congress and Courts rejecting the New Statute of Free Association (2004) and the popular consultation (STC 103/2008) respectively, both approved by an absolute majority in the Basque Parliament.

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[114] *The Plan for Technological Strategy (1990-1993); the Plan for Industrial Technology (1993-1996); the Plan for Science and Technology (1997-2000).*

[115] *During the 1990's diverse political forces joined the Basque Nationalist Party (PNV) in forming the Basque Government: PSE-PSOE (Basque branch of Spanish socialists), EA and EE (Basque nationalists and socialists).*

[116] *Since 1980, the so-called 'constitutionalists' have passed a number of basic laws that have restricted the scope of the Basque Statute's competences, such as the LOAPA in 1982 (Tamayo, 2008: 29). For further reading on the main legal and political elements that have led to the erosion of the Basque Statute, see Tamayo (2007) and Ordozgoiti (2010). See also McRoberts (2001: 72); Cairns (1988: 237-8); and Burgess (2009: 185) for similar examples in Catalonia and Quebec.*

[117] *A confederal pact with the state has also been requested by the CIU (the main Catalan party, and the left-wing republican ERC as well) and by BNG (Galician nationalist party) in various declarations throughout the 20th century and continuing into the 21st. See GALEUSCA. To read the 1998 joint declaration by the PNV, BNG and CIU see Tamayo (2007:739-40); and for a brief historical review of this demand see Tamayo (2008:71-3).*

[118] *See Herrero de Miñón (1998) and Lojendio (1988) for different interpretations of the Constitutional First Additional Provision: "The Constitution protects and respects the historical rights of the territories with Fueros".*

[119] *Many examples may be put forward: take for instance the 2007 Autonomous Community elections in Navarre, where Socialists from Navarre decided to govern with Nafarroa Bai, a coalition of Basque nationalist parties (PNV, EA and Aralar); but their own party in Madrid, the PSOE, forbade them from doing so.*

Box 1. Summary of the Basque Project for the Reform of the Statute of Autonomy

- The Basque People's right to self-determination (Preliminary Heading, Art. 1)
- A relationship with the Spanish State based on 'free association' (Heading I)
- The Basque Judicial System (Heading II)
- Direct representation in Europe (Heading VI)
- Exclusive areas of competence of Basque Institutions (Heading IV, Arts. 46 - 51, 53, 54, 60): Education, Culture, Language Policy, Social Policy, Healthcare System, Economic Policy, Industry and Commerce, Agriculture, Tourism, Employment Policies, Tax System, Financial Policies, Housing, Environment, Natural Resources, Infrastructures, Transport and Public Works, Policing and Public Security, Social Security
- Exclusive areas of competence for the Spanish state (Heading IV, Art. 45): Spanish Nationality and Immigration Law, Defence Forces and the Army, Production, Trade, use and possession of firearms and explosives, Monetary and Customs system (non-EU), Merchant Navy, Control of Air Space and Foreign Policy (i.e. Diplomatic services).

Following the Basque Parliament's approval of the New Statute by an absolute majority, President Ibarretxe (PNV) defended it in the Spanish Congress in January 2005, but it was rejected by 313 votes against and only 29 in favour, with two abstentions. Some scholars and politicians have argued that the Statute of Free Association reaches 'the ceiling of autonomism' since there is hardly any room left between the new level of autonomy demanded by the BAC and the autonomy/sovereignty of a current European state. Underpinning the notion of the state as a structure of coercion and cooperation lies the Hobbesian idea of sovereignty (the unchallengeable and unified site of authoritative judgment); a political aspiration whose fulfilment has always been a matter of degree (Dunn, 2000: 68). Spain is a highly illuminating example of how the divisibility of sovereignty (MacCormick, 1999: 129-130) downwards to the ACs and upwards to the EU is transforming the modern nation-state (Loughlin, 1996; Hooghe & Mark, 2001; Sorensen, 2004).[120] Contrary to what the 'ceiling of autonomism' scholars argue, Spain shows that the divisibility of sovereignty or co-sovereignty has, so far, no foreseeable limits (MacCormick, 1993), but it does have far-reaching consequences for a state's level of success in claiming a monopoly over authoritative law-making.

4. CONCLUSION: DEMANDS FOR SELF-DETERMINATION AND SOCIO-ECONOMIC WELL-BEING

Taking into account the high levels of cohesion in the south of the Basque Country in terms of social, economic and cultural capital and well-being, and that 85.9% of the population defend Basque self-government, while 62.8% want it to develop (CIS, 2005-2014)[121] into a federal state (26%) (Euskobarometro, 2011) or towards an independent state (40%) (IparHegoa and ParteHartuz, 2015; CSP, 2015), it is obvious that the BAC has met the needs of its population more successfully than the Spanish central State has. Therefore, the approval of the New Statute of Free Association by an absolute majority may be interpreted as a sign both of the BAC's growing success at upholding its claim to a monopoly in authoritative law-making and of the Spanish State's shrinking success at upholding the same claim.

Furthermore, as noted earlier, the political structure determines not only a community's socio-economic model and levels of cohesion (Beland and Lecours, 2008), it also determines its internal and external institutional relationships and the conceptions of what the community is and should be. In the BC, these conceptions and patterns of relationship have been realized through the divergent past and present institutional functioning of the Basque-Navarrese Territories (Larrazabal, 1996), which retain the status of Free Associates amongst themselves. Thus, the main emphasis of the BAC New Statute's demands falls not upon the right to be a nation, but upon the right to work as a co-sovereign political entity; as a modern European democracy with a federal system of government and an institutional culture of working by consensus, rather than subordination by other political entities.

Thus, the demand for Free Association status (including self-determination) was effectively articulated not because the Basque community is a distinct nationality (in the non-political sense of a pre-given cultural unit), but because it is a quasi-co federal political entity, which, due to its political and institutional operation, has shaped and most effectively met the needs of its population, managing to uphold the claim to a monopoly in authoritative law-making more successfully than the Spanish State.

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[120] *The single currency is a perfect example of this transformation (Keating, 2000: 41).*

[121] *When asked about the reform of the Statute of Autonomy of 1979 only 14.4% thought it unnecessary (CIS, 2005: http://www.cis.es/cis/opencms/EN/index.html).*

This raises the question of the connection between state-building and democracy-building. According to Tilly, the degree of democratization depends on the degree to which the state can translate citizens' expressed demands into transformations in society. However, "without significant state capacity, citizens' expressed demands cannot translate into a transformation of public life" (2007: 16-9, 35, 58, 77, 162-5). It has been shown that, at least in the south of the Basque Country, the process of democracy-building has entailed a successful process of state-building (Goikoetxea, 2014), even in this era of co-sovereignty.

It is therefore reasonable to argue that beneath this confrontation between Basque and Spanish nationalists lies a divergent development of the democratic system. The medium and long-term consequences of having a consensual and federal Basque democracy located within a Spanish state that is closer to a unitary and majoritarian democracy (Lipjhart, 1999) requires further research and analysis than can be offered here.

For now, we have explored how, and to what extent, the Basque political system has shaped the socio-economic structure and the current political and institutional confrontation. Thus, we may be closer to understanding how Basque political structures and their management shape demands for self-determination, whose nature is also highly controversial for a majoritarian, unitary and non-consensual Spanish democracy.

THE FAEROE ISLANDS

Sjúrður Skaale

NORTH ATLANTIC PRAGMATISM:
TOGETHER WHEN NECESSARY,
SEPARATE WHEN NECESSARY

Call it a calculated Danish "divide et impera" strategy or a respectful understanding of Faroese needs. But the fact is that the Faroe Islands thrive within the Danish Realm. They get the advantages of the Union when needed, and operate as state when needed. But they still want a constitution on their own, firmly establishing their right to self-determination.

During the campaign leading up to the Scottish referendum on independence in September 2014, the "Yes" side naturally used a lot of romanticism as a way to bolster enthusiasm. But beyond all the loose rhetoric about "freedom" and putting "Scotland's future in Scotland's hands", there were some very concrete arguments:

A "Yes" would, it was said, give Scots the opportunity to:

- adopt an immigration policy that was different from the British,
- control taxes paid by the Scots,
- control all public investments,
- obtain and spend the revenues from the production of oil in Scottish waters,
- allow Scotland to set their own welfare priorities,
- allow the Scots to represent themselves in the world.

As a Faroese politician, I found the intense Scottish debate extremely interesting (not least because it shed new light on our own, very old and, from time to time, also intense debate on self determination and independence). For the fact is, that we, the tiny Faroe Islands with 50.000 inhabitants, could put a tick in the box for almost all the concrete things that the Scots hoped to achieve by voting for independence. All of these rights we already have without being a sovereign state.

Even though the Faroes are part of the Danish Kingdom and formally subject to the Danish Constitution, not a single law is implemented in the islands, which has not been approved by the Faroese Government. Denmark does not interfere in any internal issues, and all forms of tax that are collected in the Faroes are spent in the Faroes in accordance with Faroese laws.

There are areas of government that are common to the whole Danish Kingdom and where the Danish Parliament has formal legislative power. These areas are first and foremost immigration, sections of the health and social security sectors, the police and the judicial system. However, in these areas the procedure is that when the Faroese Parliament wants some law changed, it sends a specific request to the Danish Parliament that then passes the law exactly the way the Faroese authorities want it.

The Faroese people thus have full control of all internal matters. Where this may not be the case formally, it is the case, at least, in reality. Take the police for example. It is paid for and formally controlled by the Danes. However, it enforces Faroese laws that are sometimes far removed from Danish laws.

For example, the killing of pilot whales is legal in the Faroes (but not in the EU/Denmark). Most animal welfare organizations recognize the Faroese hunt sustainably and humanely, but as it takes place in the open and you

can see and film the blood and the dead animals, it is an easy target for populist organizations like the notorious Sea Shepherd. They constantly campaign against the killing, and this year, activists have physically tried to stop the slaughter in order to get more dramatic pictures for the campaign. This is obviously illegal, and therefore the (formally Danish) police have used a lot of manpower, money and material to protect the hunt. A hunt that is illegal in Denmark.

This pragmatism does not stop at the border. The Faroese also have a lot of tools at their disposal when it comes to shaping foreign policy. In 1973, Denmark entered the European Economic Community (EEC). The Faroes were given the opportunity to choose for themselves, and opted to stay out. This construction made a political understanding between the parties necessary to avoid conflicts. As Denmark became part of the European integration process and increasingly more areas of government were sent to Brussels, Denmark had to grant the Faroes more competences in the international arena. Since then, the islands have made agreements on trade and fishing with all relevant countries without any interference from Denmark. In 2002, a further step was taken, when the Faroes became an Associate Member of the International Maritime Organization (IMO). This was the first time that the Faroes had achieved membership of a UN Organization in their own right.

From time to time, developments in the international arena have complicated things. In agreements made with the EU, Denmark has (as part of the EU) been the direct counterpart of the Faroes. This led to a peculiar situation in 2013 and 2014, when the EU, because of a serious disagreement about fishing quotas, decided to sanction all imports of the fish types in question - mackerel and herring.

Thus we ended up in a situation where one part of the Danish Kingdom ("Denmark proper") severely sanctioned another part of the Kingdom (the Faroes) and even forbid Faroese vessels to enter Danish harbours.

But the peculiarities went further: the Faroes, feeling unjustly treated, decided to take the EU to the courts of the World Trade Organization, as well as the court associated with the UN Convention on the Law of the Sea. This was formally complicated, as the Faroes, not having a recognized national sovereignty, do not form part of either organization. However, this was solved pragmatically: the Faroes did, so to say, borrow the two Danish membership-

cards, and sued the EU (incl. Denmark) in Denmark's own name. It all went well. The Faroes won the dispute over the quotas, not least because of the pressure put on the EU by the two lawsuits.

Another interesting case is taking place right now. As a response to western sanctions against Russia over Ukraine, Russia last year sanctioned imports of food products from the EU.

This was a typical example of trade policy becoming foreign policy, and as part of the EU, Denmark was hit by the sanctions. But the Faroes were not. As Russia is lacking fish products because of the sanctions, it has greatly increased imports from the Faroes. The Faroes, as a result, are being accused of ignoring the statement made by the EU in which the Union urged third parties not to take advantage of the situation.

In other words: this is high-level foreign policy, where Denmark and the Faroes have gone in opposite directions, and more importantly, another example of things working out fine without any serious clash between the two parts of the Danish Kingdom. The Danish Government understands that for the Kingdom not to break up, the Faroes need to be able to follow their own interests.

Of course, as in all close relationships there have been disputes between the Faroes and Denmark. One of the most severe and long-lasting was about the right to possible underground oil reserves in Faroese territory.

The Faroese Home Rule Act of 1948 gave the Faroes the right to take over most issues of government; though some require an agreement between the two parts. In 1975, the Faroese Parliament decided to take over the area called "natural resources in the subsoil". Denmark, however, refused to accept this. For 17 years, the position of different Danish governments was that giving the Faroes sovereignty over the subsoil simply was not possible in accordance with Danish legal principles as stated in the Constitution.

Nevertheless, one day in 1992, the Danish Prime Minister Poul Schluter put all the advice of his legal advisors to one side and made a Solomonic decision: "It's yours!" he said to his Faroese counterpart, Atli Dam, as the latter turned up to yet another round of negotiations.

When I later asked Mr. Schluter how he could take a decision that was

totally against the legal advice of his civil servants, he gave me an answer that in one sentence explains what the secret formula is behind what I see as a successful Danish/Faroese relationship: "I didn't base my decision on the legal analysis of my administration at all. That was all put aside. I based the decision upon my own political and philosophical estimations," he said.

It is this approach that has given room for the wise, political thinking that has made the relationship work. Such political thinking needs space and we are blessed that the provisions of the Danish Constitution pertaining to the Faroes and the relationship between the Faroes and Denmark are very general and rather obscure.

This opens up broad possibilities for politicians to make their own interpretations, so the Faroese very seldom get the feeling of being thrust into a judicial straitjacket.

Article 1 of the Constitution states that "this Basic Law applies to all parts of the Danish Realm". This signifies that there indeed is some division between Denmark Proper and the other parts of the Realm. But there are no institutions of the Realm encompassing other parts per se. The Constitution says nothing about the difference between the parts, nor does it create any political bodies exclusively to govern the parts or the whole.

The other provisions that include the Faroes deal with elections and such trivia and cannot in any meaningful way be said to set the framework for the relationship between the parts of the Kingdom and the Realm itself.

When it comes to secession there is one article of the Constitution that has been given practical consideration. It is Article 19, which states that "The king acts on behalf of the Realm in international matters. Without the approval of the Folk Thing (Parliament) he cannot, however, undertake any action that increases or decreases the area of the Realm, or undertake any obligation, when its fulfilment requires action by the Folk Thing, or otherwise is of greater importance. Neither can the King without approval by the Folk Thing cancel any international treaty, which has been ratified, without the consent of the Folk Thing." "The King" in the text obviously means the government.

In 2000 (following a serious crisis of confidence between the Faroes and Denmark), the Faroese Government asked for negotiations between the

parties on the establishment of a sovereign Faroese state with very close relations to Denmark. Denmark accepted the proposal, and both parties agreed that the procedure described in Article 19 should be followed if and when such a state was established.

But this is, as the late doctor of law Kári á Rógvi wrote in a 2003-essay, "utter crap". Article 19 in the Basic Law enables the Executive to act in international relations. That's it. The fact is that the Danish Constitution is completely silent on the issue of breaking up the Kingdom.

Do the Faroes, then, have a formal right to national self-determination? As was argued in the comprehensive "White-Paper" on Faroese sovereignty, written before the above-mentioned negotiations with Denmark in 2000, there is no doubt that the Faroes, being in all imaginable ways a land in itself, have the right to the so-called internal self-determination: the right to control internal matters. But this is what we do already.

When it comes to external self-determination (establishing a state), things are not as clearcut. As the Faroes are not, and have never been a colony, and the Faroese are not oppressed in any way, we cannot claim any rights based on international law.

If the Faroes are to take the giant step to national sovereignty, it must be done through an understanding with the Danes. This was the goal of the negotiations in 2000: to obtain a treaty stating, that the Faroes are a sovereign state in a close union with Denmark. The parties never agreed, and no referendum on a new "sovereignty-treaty" was ever held. The reasons for the fiasco were multiple. One, of course, is that Denmark did not want to let the Faroese break up the Kingdom too easily. But the most important was that Faroese popular support for the project was weak.

The Faroese suggestion was that economic subsidies from Denmark should continue for up to 15 years after the establishment of the Faroese state, that the citizens in what was going to be two countries should enjoy full rights as natives within each other's borders and that Denmark, over a long period, should support the Faroese in building their own national systems in various crucial areas. Polls showed that without these favourable terms, there would be a clear "no" from the Faroese electorate.

Facing this reality, the Faroese changed their focus to the fact that Denmark

neither recognized a legal right of the Faroes to unilaterally secede from the Realm, nor recognized the Faroes as a subject of international law. On the contrary, they vehemently refused the Faroese assertion, that the negotiations were not an internal Danish matter, but took place under international law. This, the Faroese Government said, was undermining the rights of the Faroese Nation.

It did not help that several Danish prime ministers have politically stated, that if the Faroese want independence, they can have it. And during the negotiations in 2000, the Danish Parliament even voted for an amendment stating that: "The Folk Thing recognizes that it is the Faroese population who can decide the future relationship between Denmark and the Faroes."

Faroese independence, it was said, should not depend on political goodwill from the Danes: it should be recognized as a legal right. Who was right, the Danes or the Faroese? Well, the answer was given straight from the horse's mouth. The Faroese Government not only blamed the Danes for their asserted unwillingness at the negotiating table. In July 2000, they brought their complaints before the UN.

I will cite the correspondence at some length, because it gives a perfect answer to the question whether the Faroes can claim to have a legal (as opposed to a political or moral) right to self-determination.

In the original letter the Faroese Government informed the UN that it had initiated negotiations with the Danish Government in order to conclude a treaty, which established the Faroes as a sovereign state. They complained that, after three rounds of negotiations, the Danish Government had not shown a sincere readiness to conclude such a treaty with the Faroes. Therefore, the letter said, the Faroese Government was considering the option of requesting a third party to participate as an observer at the negotiations. Furthermore, the Faroese Government asked the UN "to inform the Office of the Prime Minister of the Faroe Islands (...) regarding all relevant procedures applicable when the United Nations and/or its agencies participate as a third party at international negotiations."

The reaction of the UN was the only possible reaction of an intergovernmental organization that does not have any mandate in the area: the Legal Council contacted the Danish Mission to the UN, asking what the status of the Faroes was. The mission gave the following information:

"The Faroe Islands are part of the Kingdom of Denmark, but have a far reaching internal self-government with competences with respect to regulating their own internal affairs. The Home Rule Government had no competence to appear at "a level of international law", unless this had been authorized by the Government of Denmark pursuant to the 1948 law on the Local Government of the Faroe Islands and the scope of the Danish constitution. (...) The home government had no authorization from the government to appear "at the international level" in this matter".

Based on this information from the Danish Mission, the Legal Council gave the Faroese Government this answer:

"Please be advised that in accordance with its charter, which is the constituent instrument of this Organization, the United Nations, as an intergovernmental organization established by Member States, may participate as an observer at negotiations only if it is so directed by one of its competent organs, for example the General Assembly or the Security Council. The competent organ can act on such a matter only if it is put on the agenda of that organ. This can be done only at the request of a Member State. The same requirement must be observed by all subsidiary bodies of the United Nations."

That is it. The UN sees states as black boxes. What happens inside these boxes is not a matter for the UN, unless something very extreme (e.g. genocide) takes place. There is no legal right to external self-determination. Do the Faroes, then, have a political or moral right to establish a state of their own?

In my opinion they do. The Faroes have always had their own political system, their own economy and their own language and culture. The Faroese have never formally accepted being a part of Denmark, and the Faroes have a very well defined geography, far from Denmark. There was even a (highly controversial) referendum in 1946, in which a tiny majority came out in favour of independence, though this was never implemented.

This gives us a moral and political right to secede once there is a clear and lasting majority for the move. That is something we have not yet seen. From time to time, there is a small majority for independence, but that has not last for too long so far.

On the other hand, Denmark also has a right to value the fact that the Faroes are part of the Kingdom. This is important to many Danes and for the Government, the strategic importance of the islands is obviously huge. Losing the Faroes would be a huge blow to the credence of Denmark in international relations. The Danes also have a democratic right to politically pursue the objective of continued unionism. How can they do this without violating the political and moral right of the Faroese?

Well, the main task is to steer clear of flexing economic and judicial muscles. Instead, they should pursue the goal by building a political framework in such a way that the Faroese feel at home at not restricted within the Realm. This is the "philosophical and political considerations" that Mr Schluter talked about. You can call it a cultured strategy, or you can call it a calculated "*divide et impera*" strategy. The fact is that it has worked to the satisfaction of the majority. And the path has been followed to such a degree where the Constitution is a hindrance and the Faroes have been allowed to drift out of the frame. The best example being that the Faroes have a tax system that is completely separate from the Danish one, although the Constitution clearly states that taxes can only be collected based on laws adopted by the Danish Folk Thing.

What if the Danes had not been so liberal? Would there be a sovereign Faroese state if they had taken a different approach to things? I doubt it. Establishing a state with less than 50,000 people is, after all, a huge task. What can be said for sure is that there would be many more conflicts between the two countries and that the internal Faroese debate between separatists and unionists would be much more strenuous if the Faroese in some way felt oppressed by the Danish.

What, then, if the political climate in Denmark changes and a strategy of more centralization is followed? Would our political right to external self-determination then disappear? Maybe it would. Under all circumstances, many Faroese see it is as problematic that this right depends upon Danish goodwill. This is why the current Government of the Islands wants to have a referendum in 2017 on a Faroese Constitution which clearly states, that the Faroese people are the ultimate authority of the country and that if, one day, they wish to establish their own state, then it is their sovereign right to do so.

This, of course, does not change the way the UN or third countries look at things, but it will be a very clear political mandate and a clear platform for any Faroese Government that in the future might want to either take up the issue of independence, or seek to further integrate the Faroes into the Danish Realm.

If the constitution is passed, it will be of political importance only when the Faroese elect separatists representing a clear, lasting, democratic majority willing to take the step and lift the burden. On that day, political strength will matter because that is all there is to rely on. In reality there is no legal right to secede and the Danish Government is not legally obliged to go any distance in order to help the dream of Faroese separatists come true, let alone pay for it.

In the end, it all comes down to political will and political and philosophical considerations.

GALICIA
Henrique del Bosque Zapata

GALICIA AND THE RIGHT TO SELF-DETERMINATION

Galicia is a stateless nation. It may define itself as such without complexes or fear when democratically demanding to have the right to self-determination and, consequently, the right to decide on all those aspects that guarantee its continuity and future. The struggle of peoples for sovereignty is unstoppable; the struggle for the recognition of national identities will not wither away with globalisation. In 1990, the United Nations had 159 members; now it has 193. We must therefore agree that calls for sovereignty have justice behind them. We cannot deny that the possibilities and capabilities of a peoples with a State and a peoples without one are very different.

1. NATIONS

There is a general consensus that the modern concept of a nation was born from the processes that opposed the absolutist regimes of the 17th and 18th centuries and reached its current status with the French Revolution. Earlier, the term had referred to a variety of concepts, such as communities of people united by a common origin in ancient Rome, student groups united by geographical origin in medieval universities, linguistic groups in ecclesiastical councils, etc. However, there were cases, such as England where the idea of the nation had already been broadly accepted continuously since the 14th century.

Today, nations are considered as active political agents and legitimate bearers of the ultimate power of sovereignty. However, as Anthony D. Smith proposes, although the nation may seem modern from many points of view, it also has deep roots anchored in the past; shared historical memories, original cultural signals, a sense of differentiation, territorial location and a sense of belonging defined by history all constitute typical aspects of a modern nation, which are the basis for the way in which that concept is currently understood. All these historical and cultural components thus form part of a continuum, which takes shape in perceptions that persist over time.

Some of the elements that make up a nation have a clearly objective component while others are clearly subjective. Among the former, we can include territory, cultural expressions, language and history; among the latter, the feeling that its members have of belonging to a nation, national consciousness, and the will to give political expression to that community. These elements clearly distinguish the nation from the State; the latter concept refers exclusively to the collection of public institutions, which exercise a monopoly on coercion over the population of a given territory. The nation represents a link; it is a people that shares, within a historical territory, a culture and a consciousness of differentiation, with the will to have its own political institutions, even the desire to be considered as a State itself. Some authors emphasise the weight of the objectivist focus while others stress the importance of the subjective, but a perspective that encompasses both types of elements would be more helpful for a global understanding of the national phenomenon.

We could consider that a community that persists through time is a nation, as suggested by David Coop, if it meets the following conditions:

Firstly, it possesses a history and some cultural elements (language,

traditions, customs), which characterise it and differentiate it from others. Secondly, it possesses a territory in which the population have settled historically and over which it would be practicable to establish a State that would include the majority of its members.

Thirdly, its members share a consciousness of their own identity, a recognition of possessing differentiated aspects.

And, lastly, when there exists a desire or will for the people to create and express itself in its own sovereign political bodies.

From its origins, and on a pre-political basis of collective identity, the nation assumes a decisively political nature, from which it draws a legitimising role for exercising of power.

2. PEOPLES

Given that in international texts and resolutions the concept of a peoples often appears alongside that of the nation as the subject and protagonist of the right to self-determination, it would be apposite to consider it here to clarify any doubts concerning the similarities and differences.

In general there is a broad consensus that when we speak of peoples we are talking about communities in which the ethnic or cultural aspect displays certain clear differentiating characteristics. Here, we normally consider elements of objective nature. History, language, traditions and customs, etc., will be taken to define a peoples regardless of their desire to establish or express themselves through political institutions. When looking at nations, we more clearly find the political will or the aspiration to acquire political institutions, which express the sovereignty of the people.

We have the definition drawn up by the 1989 UNESCO experts' meeting in Paris, which established a series of criteria to be taken into account in order to identify the holders of the right to self-determination. This definition is based on that drawn up by the judge Michael Kirby in which he defines a peoples as a group of human beings who have all or some of the following elements in common: (a) a shared historical tradition; (b) a racial or ethnic identity; (c) cultural homogeneity; (d) linguistic unity; (e) religious or ideological affinity; (f) a territorial connection; (g) a shared economic life.

Likewise, in the report from the international conference held in Barcelona in November 1998 on the implementation of the right to self-determination as a contribution to conflict prevention, organised by the UNESCO Division of Human Rights, Democracy and Peace with Centre UNESCO de Catalunya, it is considered that the criteria used to define a nation should be similar to those used for a peoples. Among these criteria, territorial roots have particular prominence as do the myths and symbols that unite and mobilise peoples around their identity.

3. THE LEGITIMACY OF
   THE DESIRES OF NATIONALISM

There are a wide range of demands and claims made by the nationalisms, which we can be summarised under the heading, per the theoretical framework posed by Will Kymlicka, of external protection. The legitimate and democratic objective of this protection is that the members of a community should be able to maintain and preserve aspects of their life, culture, and economic development without imposition, restriction or limitation by another stronger or more powerful cultural, national or State community. These are the requirements for the protection of a nation's own survival and continuity; the ability to evolve and progress without guidance and coercion, seeking to limit impacts that would hinder an autonomous process of development. All measures aimed at this protection are perfectly admissible and can be legitimately claimed. Defence against - and resistance to - a dominant and coercive culture, when faced with imposed models of organisation that condition political and economic autonomy, are part of a long tradition of democratic thought. A common national identity brings with it the confidence required for democratic cooperation and taking up the reins of one's own community. This protection against external imposition enables members of the minoritized group autonomous capacity without seeing its societal culture destroyed while, in contrast, that capacity has been guaranteed to members of the dominant national group.

Nationalism attempts to create a modern democratic society on equal terms with other peoples of the planet. The demands of democratic nationalism are not a defensive reaction against modernity, but rather a way of constructing open societies in interaction with others and built by them. This means that the argument turns to homogeneity versus diversity. Nationalism thus becomes a commitment to national identity, language, culture, history and

the institutions themselves. It constitutes a movement that does not accept the injustice whereby some peoples are freely able to develop these facilities while it is forbidden to others. The blocking, forbidding and hindering of these legitimate expectations by dominant state majorities are signs of devalued and incomplete democracies.

4. GALICIA CONSTITUTES A PEOPLE
AND WE ARE A NATION

The combination of objective and subjective elements referred to above clearly and concretely shows Galicia to be a nation. We have a distinct history to which the core aspects of our identity can be traced, at least as much as those of other countries, which write and refer back to their own national histories. We were one of the first mediaeval kingdoms, the Galician Kingdom of the Suebi, established in the 5th century with phases of political independence up to the 13th century, but losing the capacity for self-government at the end of the 15th century and submitting to the Castilian-Aragonese monarchy. By the 19th century, numerous social, political and cultural movements had already emerged, claiming the identity of our people and calling for the recognition and preservation of our particular characteristics.

We have a thousand-year old Romance language, a language of our own, which has survived oppression, aggression and prohibition through the ages. We have artistic and cultural traditions, common and shared, maintained by our people through the centuries. We occupy a territory in which these differentiating features have been developing throughout history. We have our own political institutions, past and present. We have political forces at the national level, reflecting the collective political will of the people to express our identity traits. Europe has recognised us as such at the 9th Congress of European Nationalities. Galicia is a stateless nation, and may define itself as such without complexes or fears when democratically demanding the right to self-determination and, consequently, the right to decide on all aspects that guarantee its continuity and future.

5. A PEOPLES LACKING AUTONOMY

The division of powers between the Spanish State and our community is clearly incapable of providing us with the capacity to take economic, social, political and legal-administrative decisions, which are fundamental to our development as an autonomous people. It prevents us from having decision-making powers on matters, which go beyond our organisation and our future.

The ability to decide and plan the autonomous economic development of our country and the exploitation of our natural resources is non-existent since the Spanish State has reserved these powers for itself. These are powers, which are fundamental to the viability of any people, as many UN resolutions note.

Article 149 of the Spanish Constitution grants the State exclusive competence over thirty-two areas, which are essential to the establishment of self-government for a peoples. These include: nationality and immigration; international relations; defence and internal affairs; justice; civil, employment, commercial, penal and penitential legislation; intellectual property; official time; basic legislation on public administration and the civil service; sea fishing and the merchant marine; fundamental aspects of the mineral and energy regime; conditions for the acquisition, issue and approval of academic qualifications; basic regulation of press, radio and TV; basic regulations on the organisation of the education system; and popular consultation by referendum. Article 155 gives the State the power to unilaterally suspend autonomy, in a clear demonstration of the precarious situation that the autonomy system represents.

It is not difficult to conclude that when fundamental decisions were adopted by the State, it set an inadequate margin of manoeuvre for our Autonomous Community. The State's rules impose obligations and restrictions, which limit our scope for decision-making to a significant extent. The protection of our language, cultural traditions, education system, natural resources and productive sectors is seriously restricted. We also lack the capacity to express ourselves in a referendum on this model.

6. WE ADVOCATE THE RIGHT TO
SELF-DETERMINATION FOR OUR NATION

A reading of international texts, which incorporate this right enable both the right of peoples to freely determine their political status or condition,

and their right to seek economic, social and cultural development with full sovereignty over their own natural resources. It consists, therefore, of the right to decide about one's own political existence without external interference. Self-determination in the technical sense, on the basis of its incorporation in the United Nations Charter, is the principle under which members of a territorially fixed community may legitimately govern themselves without interference by third parties, being able to declare independence and live separately from any other, creating a new State, or choosing other models of interaction and relationship.

For a clearer approach to the meaning of the right and its constituent elements, we can refer to the United Nations Resolution 2625 (XXV), which states: "By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter. Every State has the duty to promote, through joint and separate action, the realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter [...]. The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right to self-determination by that people."

For further clarification it is also worth reading the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966, both of which state in the first point of Article 1 that, "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

We can conclude that self-determination is the right that peoples have to freely choose their own legal and political structures for coexistence, to define their relationships with other peoples or States and to make decisions about their own means and resources with the aim of guaranteeing their survival and full development.

7. THE RIGHT TO SELF-DETERMINATION IS APPLICABLE TO ALL STATELESS PEOPLES AND NATIONS

Some interpretations hold that this right applies only to the former colonies and to the sixteen non-autonomous territories that the UN considers should be decolonised. Given that the majority of these are separated from the mother country by the sea, this interpretation is known as the "blue water thesis". This argument lacks the juridical substance required since there is no text or international convention that restricts the scope of the right exclusively to those who are subject to a colonial situation; quite the contrary, self-determination is described as a universal right of all peoples and nations. So, although there certainly are relevant resolutions, which refer specifically to the colonial issue, international texts and resolutions grant the right to self-determination to all peoples and nations. The Conventions on Human Rights and the remainder of the international texts and documents do not establish any form of discrimination. The expert meetings called by the UN reached the conclusive decision that self-determination was the right of all peoples without exclusion. Indeed, many resolutions by the United Nations General Assembly on the universal implementation of the right of peoples to self-determination (the most recent being resolution 69/164 of 18 December 2014) are reminders that self-determination is a right applicable to all peoples, whether or not they have been subject to colonial domination.

The principle of territorial integrity must not be considered as a principle that annuls the right to self-determination. The principle of the territorial integrity of the State, as conceived in international texts, is valid only when invoked against the aggression of another State. Interference in internal affairs, acts prejudicial to sovereignty, the fomenting of territorial rivalries and the triggering of armed conflict by some States to destabilise others, are all reasons for this reference to the principle of territorial integrity in international legislation. Indeed, the need to protect territories and countries that are achieving independence from attempts at destabilisation by old or new powers is the very basis for States to respect territorial integrity. The principle of territorial integrity is constructed and defined to deal with threats and aggression by constituted States, which seek to undermine the sovereignty and integrity of others or to prevent them from exercising rights, including the right to self-determination. Territorial integrity is not, and cannot be, an obstacle to claiming or exercising the right to self-determination of peoples and nations, as the International Court of Justice has

affirmed in the case of Kosovo. The principle of territorial integrity cannot serve as an excuse against the exercising of a universal human right; there is no contradiction between them. To say otherwise would be a biased and tendentious interpretation contrary to law. Self-determination is attributed to peoples, while the principle of territorial integrity refers to States, and even to peoples and nations, but against threats and aggression from other States which threaten peace and stability.

8. CONCLUSION

We can safely say that the existence of nations is under no threat, notwithstanding moves towards globalisation. Likewise, the patterns shown in the most recent international developments with new sovereign political entities mushrooming, provide us with interesting criteria for a resolution of outstanding issues of stateless nations without violent conflict. The struggle of peoples for sovereignty is unstoppable; the struggle for the recognition of national identities will not wither away with globalisation. In 1990, the UN had 159 members; now it has 193. We must therefore agree that calls for sovereignty have justice behind them, because we cannot deny that the possibilities and capabilities of peoples with a State and peoples who lack one are very different. Possessing the tools to create an education system, to carry out general economic planning, to plan land use, to run a judicial system, to make a language official, to protect natural resources and cultural heritage, to enact sovereign legislation, in other words to do all that is covered by existing Constitutions, is a solution for peoples who, like us, cannot progress within the structures of States, which limit their development and their ability to progress. A demand for sovereignty is not something abstract, much less when you do not have it.

The defence of national communities, of their right to self-determination, peaceful resolution of conflicts between peoples and respect for collective identities, should be a part of the ideology of any democratic project that aims to achieve a fairer model of international relations that creates greater solidarity.

GREENLAND

Adam Grydehøj

This paper presents an overview of Greenland's history of colonisation and decolonisation and describes Greenland's political experiences as an autonomous territory. It also analyses what directions this arctic island community may take in the future. Denmark colonised Greenland in the 1700s. This resulted in changes in the indigenous population's traditional nomadic hunting lifestyle, eventually leading to rapid urbanisation in the 1900s. Greenland was formally decolonised in 1953. A system of Home Rule was introduced in 1979, followed 30 years later by even greater autonomy under the Self-Government system. Greenland is now an autonomous nation governed for and by Greenlanders, yet problems remain: economic difficulties and Greenland's gradual, negotiated decolonisation process are obstacles that stand in the way of fulfilling the widespread Greenlandic desire for full sovereignty and independence.

1. SETTLEMENT, COLONISATION, AND URBANISATION

By European standards, Greenland is a young society. Its history of settlement and societal formation has been conditioned by its peripheral location, harsh climate, and difficult geography. The concept of Greenland as we know it today emerged from the colonial imagination. It is a product of ethnic consolidation and largely unintentional nation-building undertaken in collaboration between Greenlanders and Danish administrators over a series of centuries.

Around 2,500 BCE, the first settlers arrived in Greenland, followed by successive waves of immigration, habitation, and depopulation by peoples from present-day Canada. For most of the first millennium CE, Greenland was uninhabited, but in the 9th and 10th centuries, the island was settled by the so-called Dorset 2 culture (in Northwest Greenland) and Norse immigrants from Iceland (in South Greenland). Given the vast distance between these two regions, there is little to suggest that these cultures interacted, much less that they regarded themselves as sharing an island. Around 1200 CE, the Thule people, ancestors of today's Inuit Greenlanders (hereafter, simply 'Greenlanders') arrived in Greenland, eventually replacing the Dorset 2 culture and spreading across the western and eastern coastal zones. In the 1400s, Greenland's long-declining Norse settlements finally failed completely. That is, there is no continuity between either Greenland's pre-Norse population or today's Greenlanders or between the island's Medieval Norse population and today's ethnic Danes resident in Greenland.

Greenland's colonial period began with the arrival in 1721 of the Dano-Norwegian missionary Hans Egede, who was seeking to convert Greenland's long-lost Norse inhabitants from Catholicism to Lutheranism. Failing to locate any Norsemen, Egede refocused his mission on converting the Inuit Greenlanders. In the late 1700s, the Dano-Norwegian colonial administration instituted a trade monopoly and regulations to shield Greenlanders from Western influence, in part to preserve traditional Greenlandic hunting culture (especially in ways amenable to the Danish fur trade). With the late-19th century polar expeditions, geographical knowledge of Greenland finally took shape as it became clear that Greenland was indeed an island and not connected to Canada or Svalbard.

The diverse Inuit communities of East, West, and North Greenland thus

gradually joined a consolidated Greenlandic ethnicity belonging to an identifiable territory. The colonial experience of interaction between coloniser and colonised produced, for the first time, a clear conceptualisation of Greenlanders as a distinct people and of Greenland as a distinct place.

Population growth (from 6,000 people in 1805 to 21,000 in 1947 to 46,000 in 1970) contributed to a collapse in the traditional nomadic subsistence seal hunting economy of the early 1900s. The Danish administration supported a nascent fishing industry by encouraging the consolidation of Greenland's population into permanent towns and settlements. The result was rapid urbanisation. As of 2014, Greenland's population was around 56,282, of which 86% live in towns, ranging in size from Illoqqortoormiut (population 444) in East Greenland to the capital city Nuuk (population 16,818) in West Greenland. 41% of Greenland's population still lives in towns or settlements of fewer than 3,000 people and none of Greenland's towns or settlements are connected to one another by road. Greenland is today a primarily urban society, but it is characterised by small towns and settlements separated from one another by vast expanses of icy sea and difficult terrain.

2. HOME RULE AND SELF-GOVERNMENT

On April 9th, 1940, Denmark was occupied by the German military. Cut off from Copenhagen, the local colonial administration in Greenland kept functioning, yet Greenland's experience on the periphery of World War II set in relief the problematical aspects of the Danish trade monopoly and its distant administration. Once the war ended, decolonisation was on the international agenda, and Denmark (chastened by Iceland's unilateral declaration of independence in 1944) was incentivised to reform Greenland's status. These reforms were planned almost entirely by the Danish Government, so when Greenland was legally integrated into the Danish state in 1953 (ceasing to be a 'colony' by virtue of becoming a Danish higher-level municipality) consent from the educated Greenlandic elite was somewhat grudging.

Greenland's formal decolonisation intensified Danish involvement in Greenlandic society. In order to raise Greenlandic standards of living to those of Denmark, significant improvements and investments were needed in the former colony's education, healthcare, housing, infrastructure, and administration. The proportion of ethnic Danes in Greenland's population rose from about 4% in 1950 to about 20% in 1960. Around 11% of today's

Greenland population was born outside of Greenland (including foreign-born children of Greenlandic parents).

The planning of Greenland's political future was increasingly undertaken by Greenlanders. A home rule (*Hjemmestyre*) system was introduced in 1979, following success in a consultative referendum of Greenland's voters (70.1% in favour, with 63.3% voter turnout) providing Greenland with its own parliament and limited autonomy. Greenland's Parliament consists of 31 representatives elected via nationwide proportional representation. All Members of Parliament are currently ethnic Greenlanders, but Greenland's administration continues to be dominated by Danes.

The desire for greater Greenlandic autonomy partially resulted from growing culturally oriented Greenlandic nationalism, but it was also a response to Denmark's (and hence Greenland's) entry into the European Communities (EC) in 1973. Indeed, in the 1972 Danish referendum on joining the EC, around 70% of Greenlandic voters were opposed. When the first Greenlandic Home Rule Government held its own consultative referendum on remaining within the EC in 1982, 53% of voters favoured withdrawal. Greenland officially left the EC in 1985 and is today regarded as one of the European Union's Overseas Countries and Territories.

The home rule system provided Greenland with substantial internal autonomy. When Greenland took over an area of responsibility from Denmark, funding for this policy area was transferred from the Danish state to the Greenlandic state. This funding eventually took the form of an index-regulated Block Grant (*bloktilskud*). Significantly, however, the Home Rule legislation neither allowed the Greenlandic state to profit directly from extractive industries nor presented Greenland as its own nation.

A sustained desire for greater autonomy led the Greenlandic Government to establish a self-government (*Selvstyre*) Commission in 1999, emphasising Greenland's status as an equal partner with Denmark; recognition of Greenland as a nation under international law; and strengthening Greenlandic control over external affairs, security, and extractive industries. A 2008 referendum on replacing home rule with self-government saw 75% of voters in favour on a 72% turnout. Self-government was instituted in 2009, granting the Greenlandic state various new powers and setting up a framework within which Greenland could gradually take on powers from Denmark as circumstances allowed and move toward eventual

independence. Although much was made of the Greenlandic State's new ability to profit from mining, extractive industries are nowhere near fulfilling their projected potential. Ambitions for a rapid, mining-fuelled transition to full sovereignty have been dashed.

3. THE FUTURE

The vast majority of Greenlanders and all four of Greenland's largest political parties seek Greenland's eventual independence from Denmark, though there is disagreement about the pace at which independence should be pursued. It is almost universally understood that Greenland cannot currently afford independence. The self-government legislation fixed the annual Block Grant from Denmark at around 3.5 billion Danish kroner (approximately 470 million euro), amounting to almost 27% of Greenland's GDP. As additional responsibilities are repatriated and Greenland profits from extractive industries, the block grant will decrease until it disappears entirely. At this point, Greenland will have become independent in practice, prompting new negotiations with Denmark. Yet, unless a source of massive new income is tapped, there is no prospect of the Greenlandic State paying its own way in the foreseeable future, at least not without severe cuts in government expenditure.

What does the future hold for Greenland, a nation with a strong desire for independence, but a lack of the financial wherewithal to achieve it? Since the 1960s, Greenland's political development has been a slow transition toward sovereignty, negotiated in partnership with Denmark. Despite significant disagreements and distrust between the Danish and Greenlandic Governments, Greenland has generally achieved its desired advances in autonomy on a piecemeal and manageable basis.

In a positive sense, this has allowed Greenland to gain further autonomy as and when it has been affordable and administratively feasible. This has guarded against the possibility that a passionate desire for independence would lead to a headlong rush into the unknown (resulting in a rapid descent into poverty and disappointment). In a negative sense, Denmark's collaborative stance has meant that mundane economic issues and present-day realities have prevented Greenlanders from embracing that unknown. The ability to get political work done comfortably in the here and now disincentivises risky, but potentially beneficial radicalism (why place your bets on

the future today when you can do so tomorrow?)

Greenland has not found itself at a crossroads. It finds itself at a continual, unending series of crossroads between dependency and independence. When every government policy, every initiative must be contextualised within an undramatic, decades-long independence struggle, an intense inertia against ever achieving that independence builds up. Regardless of the benefits and risks of Greenlandic independence, this inertia is worrying. Greenland is legally empowered to opt for independence, but further cultural and political empowerment may be necessary before Greenlanders can make the choices they desire for their future.

NORTHERN IRELAND

Alex Schwartz

The Belfast-Good Friday Agreement of 1998 provided a framework for the non-violent and democratic management of the conflicting aspirations of British unionists and Irish nationalists in Northern Ireland. The former have been assured that there will be no Irish unification without the consent of the majority of the people in Northern Ireland, while the latter have been given some institutional connections with their co-nationals in the Republic of Ireland and are assured that if consent for Irish unification were to be expressed in referenda (in each of the island's two jurisdictions) then it would be "a binding obligation on both Governments to… give effect to that wish". On the face of it then, the Agreement might be seen to recognise a kind of right to national self-determination. However, this chapter will argue that there is more to this issue than meets the eye. Not only are there potential complications with the enforcement of this putative right, but the very subject of self-determination in Northern Ireland is far from clear. What is more, the Agreement basically sidesteps the question of how a possible united Ireland would manage the circumstances of national pluralism, circumstances that are not likely to disappear regardless of Northern Ireland's ultimate constitutional destiny.

1. INTRODUCTION

Northern Ireland is part of the United Kingdom and a majority of its inhabitants would like this status to endure; these people are more likely to come from a Protestant background, identify themselves as British, and see the United Kingdom as their national state.[122] However, a sizeable minority of Northern Ireland's inhabitants, most of whom are Catholics, identify with a pan-Irish national community and many (but not all) of them would like to, at least eventually, join their co-nationals in the Republic of Ireland in a united and sovereign all-Ireland state.[123] The clash between these rival aspirations for national self-determination (though enhanced by religious, cultural, and economic differences) was at the heart of the conflict in Northern Ireland that claimed about 3,600 lives between 1968 and 1998.

The eventual cessation of the conflict can be squarely attributed to the Belfast-Good Friday Agreement of 1998; mainstream Irish Republicanism now endorses a non-violent (or 'constitutional') approach to achieving Irish unification and political violence in Northern Ireland is confined to a few sporadic attacks by so-called dissident Republicans and occasional sectarian riots. The Agreement does not so much resolve the question of national self-determination as reframe it. British unionists are assured that there will be no Irish unification without the consent of the majority of the people in Northern Ireland; Irish nationalists are given some institutional connections with their co-nationals in the Republic of Ireland (through cross-border all-Ireland administrative bodies) and they are assured that if popular consent for Irish unification were to be expressed in referenda (in each of the island's two jurisdictions) then this would be "a binding obligation on both Governments to… give effect to that wish".[124] In the meantime, a consociational system of executive power-sharing, proportional represen-tation, and mutual veto powers allows both ethno-national communities to enjoy a relatively equal stake in the government of Northern Ireland itself.

On the face of it then, the Agreement might be seen as recognising a kind of right to national self-determination. But, as I will argue here, there is more to this issue than meets the eye. Not only are there potential compli-cations with the enforcement of this putative right, but the very subject of

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[122] *Northern Ireland Life and Times Survey 2014, online at http://www.ark.ac.uk/nilt/2014/index.html/.*
[123] *Ibid.*
[124] *The Agreement, 1998: "Constitutional Issues" para. 1.*

self-determination in Northern Ireland is far from clear. What is more, the Agreement basically sidesteps the question of how a possible united Ireland would manage the circumstances of national pluralism, circumstances that are not likely to disappear regardless of Northern Ireland's ultimate constitutional destiny.

2. THE RIGHT TO SELF-DETERMINATION?

The bulk of the Agreement has been implemented through the Northern Ireland Act, 1998. Section 1 of the Act states:

"…Northern Ireland in its entirety remains part of the United Kingdom and shall not cease to be so without the consent of a majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule … But if the wish expressed by a majority in such a poll is that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland, the Secretary of State shall lay before Parliament such proposals to give effect to that wish as may be agreed between Her Majesty's Government in the United Kingdom and the Government of Ireland."

Schedule 1 of the Act clarifies that the Secretary of State shall call a referendum if at any time it appears likely that "a majority of those voting would express a wish that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland", but a referendum may not be called earlier than seven years after the holding of a previous referendum on Irish unification.

Although the duties of the Secretary of State with respect to such a referendum are phrased as though they are legally binding, the legal enforcement of these duties raises several important practical questions. One threshold question is who would have the legal standing to bring an action in the courts. Fortunately, at least for those who might seek to enforce section 1 of the Act, Northern Ireland's courts have a fairly liberal approach to the question of standing. The basic criterion for standing in an application for a judicial review of the decision (or omission) of a public authority is set out in S.18 (4) of the Judicature (Northern Ireland) Act 1978, which provides that "[t]he court shall not grant any relief on an application for judicial review unless it considers that the applicant has a sufficient interest in the matter to

which the application relates". The meaning of "a sufficient interest" has been interpreted broadly to grant standing to a representative person from a class of affected people, statutory bodies, non-governmental organizations, or just concerned individuals seeking to address a particular matter of "public interest" (Gordon, 2014: 95-96). Thus, in light of this generous approach, a lone Irish nationalist, member of the Northern Ireland Assembly, or political party might conceivably have standing under this "sufficient interest" doctrine to ask the courts to enforce the Secretary of State's statutory duty. A much thornier question is whether or not the domestic courts would find such an action to be justiciable. It is a well-established pillar of UK public law, codified in the Bill of Rights 1689, that what goes on (or not) in Parliament is immune to judicial scrutiny.[125] For the same reason that the courts will not review Parliamentary proceedings, they would also probably refuse to compel the executive to introduce legislation of any kind, including legislation to give effect to a popular referendum in favour of Irish unification.[*] And independent of the issue of parliamentary privilege, a decision such as this is likely to be seen as an inherently political, and therefore non-justiciable, matter. Indeed, several previous attempts to judicially review the actions of the Secretary of State have failed for this sort of reason.[126]

Whatever the case may be in domestic law, the British-Irish Treaty that underwrites the Agreement is a binding instrument of international law. The relevant portions of the Treaty state that:

"… it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right to self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland

"… if, in the future, the people of the island of Ireland exercise their right to self determination on the basis set out… above to bring about a united Ireland, it will be a binding obligation on both Governments to introduce and support in their respective Parliaments legislation to give effect to that wish".

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[*] But see R v Secretary of State, ex parte Fire Brigades Union [1995] 2 AC 513
[125] For discussion, see R v Chaytor and others [2010] UKSC 52.
[126] Anthony, supra n 4, pp. 122-6.

In theory, Ireland might bring a claim against the United Kingdom at the International Court of Justice (ICJ) to enforce these terms. But it is not a foregone conclusion that the ICJ would have jurisdiction to hear such a claim. The ICJ's jurisdiction over inter-state disputes is limited to three scenarios: (1) where the state parties consent, by special agreement, to submit a dispute to the ICJ; (2) where a treaty (or convention) between the state parties explicitly identifies the ICJ as a dispute resolution mechanism; and (3) where the state parties involved have recognized "as compulsory" the ICJ's jurisdiction over legal disputes in relation to each other.[127] The latter two bases of jurisdiction are clearly not applicable to a dispute relating to the British-Irish Treaty (the Treaty makes no mention of the ICJ). Although both the UK and Ireland have issued declarations of compulsory jurisdiction with respect to the ICJ, their respective declarations include reservations that would preclude the ICJ's jurisdiction over a dispute arising out of the Treaty. In the case of the United Kingdom, the exclusion of the British-Irish Treaty from the ICJ's compulsory jurisdiction is implicit in its recognition of compulsory jurisdiction over all disputes, arising after 1 January 1984, other than: "…any dispute with the government of any other country which is or has been a Member of the Commonwealth".[128] In the case of Ireland, the exclusion is explicit: the compulsory jurisdiction of ICJ over legal disputes is recognised "with the exception of any legal dispute with the United Kingdom of Great Britain and Northern Ireland in regard to Northern Ireland".[129] This leaves the first possible basis for ICJ jurisdiction: consent by special agreement. But there is no guarantee that both parties would agree to submit a dispute to the ICJ. Indeed, a dispute between the UK and Ireland over the terms of the Treaty, though unlikely, would be a high-stakes and politically charged episode, precisely the sort of circumstances where a relatively powerful state, such as the UK may refuse to take its chances at the ICJ (or be tempted to simply ignore an adverse ruling).

Whatever the legal channels for enforcement, it is almost certainly true that there would be tremendous political pressure on the UK to honour the results of a referendum in favour of Irish unification. A breach of the Agreement, and the associated Treaty, is likely to come with significant political costs. For one thing, it would play right into the hands of dissident Republicans (who have challenged the Agreement's framework for Irish

unity) and it might even trigger the breakdown of power-sharing and a wider resurgence of Republican violence. Such a breach would also make the UK Government look very bad, both abroad (particularly in the eyes of the United States, who helped broker the Agreement) and at home, where it would undoubtedly incite vociferous criticism (especially from Scottish nationalists who have themselves been the beneficiaries of a similar, albeit thoroughly "domestic" agreement to honour the results of a referendum on Scottish national self-determination) (Tierney, 2013). Nonetheless, it is conceivable that, under extreme circumstances, a UK Government might be prepared to pay the significant political costs associated with breaching the Agreement. If, for example, the threat of loyalist paramilitary violence or general civic unrest was severe and palpable, the UK might elect to delay legislation for a change to the constitutional status of Northern Ireland. Indeed, and for the same reasons, the Government of Ireland might delay its assumption of sovereignty over Northern Ireland, fearing that it would be incapable of handling the explosive situation. As will become clear later on, these circumstances are not actually so far-fetched.

3. WHO IS THE "SELF" IN IRISH SELF-DETERMINATION?

In addition to the above-noted challenges, there is a different kind of complication with the putative right to self-determination in Northern Ireland: who, exactly, is the subject of this right? Is it the people of Northern Ireland? The Irish nation? The people of the island of Ireland? The peoples of the island of Ireland? To answer these questions, we have to look at how the putative right is defined. The language of the Agreement and the British-Irish Treaty make no mention of Irish national self-determination per se. Indeed, the requirement that "a majority of the people of Northern Ireland" must first consent to Irish unification before it can be realised explicitly repudiates a traditional syllogism of Irish (Republican) nationalism: (1) the Irish nation is co-terminus with the island as a whole; (2) the partition of Ireland is therefore an artificial and illegitimate imposition; (3) and, consequently, requiring the consent of the people of Northern Ireland for Irish unification is equivalent to entrenching a "unionist veto" over the Irish nation's right to self-determination.

Although the term "unionist veto" may be a polemical trope of Republican rhetoric, it is accurate to describe the formula for the possible unification of

[127] Art. 35, Statute of the International Court of Justice.
[128] Declaration of the United Kingdom of Great Britain and Northern Ireland (31 December 2014).
[129] Declaration of Ireland (15 December 2011).

Ireland in terms of a double "veto gate". Two separate concurrent majorities are required in two distinct political units to set the process in motion. Neither of these units corresponds to an Irish "nation". The Republic of Ireland is no doubt the main locus of a civic Irish* demos, but many people across the border in Northern Ireland hold Irish citizenship and many Irish institutions operate on an all-Ireland basis. Moreover, the ethno-cultural Irish nation (the one that Irish nationalists identify with) is imagined as being coextensive with the entire island of Ireland. If the Irish nation was the subject of the right to self-determination in the Agreement there would be no double veto-gate; the people of Ireland as a whole would be the unit of decision. Consequently, the Agreement's provisions for the possible unification of Ireland are best seen as a contextually sensitive framework for managing a particular self-determination dispute (rather than the instantiation of a more general right to national self-determination).

4. WHICH UNITED IRELAND?

Although the Agreement may have been a prudent solution to the immediate problem of how to channel rival national aspirations into non-violent modes, it says very little about the kind of constitutional system that a united Ireland would have. There are really only two lines that go to this issue. First, it is agreed that:

"…whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities".[130]

Secondly, it is agreed that "all the people of Northern Ireland" enjoy a "birthright" to "identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments

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* See Desmond Clarke, 'Nationalism, The Irish Constitution, and Multicultural Citizenship' (2000) 51 NILQ 100
130 The Agreement, 1998: "Constitutional Issues" para. 1(v).

and would not be affected by any future change in the status of Northern Ireland."[131] The latter commitment has some clear legal bite to it: the existing arrangements that allow people in Northern Ireland to hold either British or Irish citizenship (or both) will be preserved. But while equality of civil, political, social and cultural rights may seem like a fairly straight-forward commitment on the surface, the meaning of "parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities" is far from clear. Does this commitment require territorial autonomy, power-sharing and community veto powers within a united Ireland? The text might allow for a broad interpretation along these lines, but more plausibly it might merely mean that public authorities must not demean or debase one community in favour of the other. In any case, no definitive legal meaning has been given to the concept of "parity of esteem" since the Agreement in 1998 (Schwartz, 2012).

The Irish Constitution is even less clear about how a united Ireland would be governed. The notion that public power shall be exercised impartially and with respect to both traditions is partly mirrored in the amended version of Article 3 of the Irish Constitution: "It is the firm will of the Irish Nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions". This language does appear to recognise the fact that a united Ireland would not be mono-national in a socio-political sense. But as far as government structures go, the Irish Constitution is silent and so the default presumption is that the structure of the Irish State will remain the same: a democratic, unitary and mono-national republic, albeit with an important place for local-level government.[132]

This unitary mono-national vision is sometimes, but not invariably, reflected in what Northern Ireland's Irish nationalist political parties have said about a united Ireland. In the run up to the Agreement itself, Sinn Féin stated that their plan for a united Ireland was a "32 county unitary state" that would preclude perpetuating the territorial lines of partition through any kind of "internal six-county arrangement".[133] That being said, the same document goes on to state that "[i]t is essential that any structures of a new Ireland recognise fully the diversity as well as the unity of the people of Ireland and

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131 Ibid, para. 1(vi).
132 Art. 28A.
133 Sinn Féin, A Sinn Féin submission to Strands One and Two of the Peace Talks (17 October 1997), para. 6.

ensure constitutional stability" and that "[i]n devising and determining the structures of Irish unity and in formulating the guarantees they require it is essential to have unionist agreement and participation."[134] Accordingly, "[m]inority rights would be entrenched with effective safeguards."[135] Nothing Sinn Féin have said then or since has clarified the precise institutional "nuts and bolts" they have in mind, although Gerry Adams (the party's President) has suggested that "transitional arrangements which could mean continued devolution to Belfast within an all-island structure".[136] The Social Democratic and Labour Party (SDLP), the other main nationalist party, has been more forthcoming and conciliatory in articulating the institutional accommodation for national pluralism within a united Ireland, stating that "…all the rights, protections, and inclusion that nationalists have sought within Northern Ireland while it is in the United Kingdom must equally be guaranteed to unionists within a United Ireland."[137] Accordingly, the SDLP propose that the Northern Ireland Assembly "would continue, as a regional parliament of a United Ireland with all its cross-community protections"; that a power-sharing executive for Northern Ireland would be retained; that the Agreement's commitments to equality and human rights hold; that the right "to identify oneself as British or Irish, or both, and hold British or Irish passports would endure"; and that "just as the Irish Government has a say in the North now, the British Government would have a say in the North in a United Ireland".[138] In short, the SDLP contemplate a united Ireland in which Northern Ireland remains a distinctive bi-national political space governed according to the same consociational principles that are currently in place.

Despite the differences in their respective visions, both Sinn Féin and the SDLP are clearly intent on reassuring Northern Ireland's unionists that they have nothing to fear from a united Ireland. Such reassurances are wise. One of the driving forces that motivated Irish nationalists to sign the Treaty that allowed Northern Ireland to opt out of independence and remain part of the United Kingdom was the very real threat of violence from unionists in the North. If a united Ireland became an imminent possibility, a similar threat would almost certainly materialise. Northern Ireland is still home to many loyalist paramilitary groups who, although no longer actively engaged

in political violence, retain command structures, weapons, and significant influence (if not outright control) over certain areas. The Northern Ireland Police Service, a majority Protestant force, have a hard enough time enforcing the law in those areas; the *Garda Síochána* (Ireland's national police force) would be even less effective. Beyond these more organized threats, there is also the more general threat of civil disorder. Several months of loyalist protests and riots followed when Belfast City Council decided in 2012 to restrict the flying of the Union flag from Belfast City Hall. The lead-up and aftermath of a referendum in favour of Irish unification would probably be marked by even worse unrest. To mitigate these threats, a concrete and carefully negotiated plan for accommodating unionists within a united Ireland would need to be worked out well in advance. In sum, serious and thoughtful constitutional foresight is a necessary precondition for a peaceful and democratic transition.

5. CONCLUSION

In the short to medium term, the foregoing is all academic. The reality is that a vote in favour of Irish unification is only a remote possibility, at least according to recent public opinion surveys. In a survey conducted by the BBC and RTE in 2015, only 13% of respondents in Northern Ireland favoured a united Ireland in the short to medium term.[139] While support for a united Ireland among Catholic respondents was greater, it was still only 27% (and not surprisingly, support for a united Ireland among Protestant respondents was only 3%). The results of the Northern Ireland Life and Times Survey from 2014 were similar: only 17% of respondents overall (32% of Catholics and 4% of Protestants) favoured a united Ireland over the long-term.[140] Although several political parties (including Sinn Féin and the Democratic Unionist Party) have recently proposed holding a referendum, the Secretary of State only has to call one if a vote for Irish unification "appears likely". It does not. However, if experience from Catalonia and Scotland has taught us anything, it is that public opinion on even big constitutional questions can be moulded and mobilised over a relatively short timeframe. In the meantime, those who favour Irish unification should work harder to devise a detailed and plausible constitutional blueprint for their preferred possible future.

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[134] Ibid., para. 13.
[135] Ibid., para. 16.
[136] Gerry Adams: There will be orange parades in a united Ireland', The Irish News (18 September 2015).
[137] SDLP, A United Ireland and the Agreement, online at
http://www.sdlp.ie/site/assets/files/1008/sdlp210305unity.pdf
[138] Ibid, p. 4.

[139] BBC-RTE Cross Border Survey (2015), online at http://www.rte.ie/news/primetime/2015/1104/739633-prime-time-cross-border-poll-test-page/.
[140] Northern Ireland Life and Times Survey 2014, online at http://www.ark.ac.uk/nilt/2014/index.html/

SARDINIA

Andrea Deffenu

SARDINIA, A "MISCARRIED NATION"

At the beginning of the 20th century Camillo Bellieni, one of the founders of the Sardinian Action Party (Partito Sardo d'Azione) wrote that Sardinia had been the victim of an unsolved paradox: despite having the geographical, historical, cultural and linguistic features that are typical of a nation, it had never managed to become a State. In previous centuries, Bellieni explains, this had happened because the Sardinian people had not been aware of their identity; now that they have achieved this awareness they have begun to think with an Italian intellect: Sardinia is therefore to be considered a "miscarried nation" (Bellieni, 1985). Camillo Bellieni and other important intellectuals and theorists of "the Sardinian movement" would begin with these considerations when criticising the centralist organisation of the Italian Kingdom and asking for the acknowledgement of an independent administration and legislation for Sardinia that would enhance Sardinian identity. The majority of the theorists of the Sardinian movement did not believe Sardinia should become an independent State separate from Italy, but that independence could be obtained by readjusting Italy as a federal

state. The "Sardinian" theory in the first half of 1900, did not therefore develop separatist solutions, but made a persistent call for the creation of institutions that would allow Sardinia and its people self-governance.

The history of Sardinia's autonomy in the 20th century revolves around key words like "federalism", "identity", "people", "nation"; words that have been (to this day) inflected in the on-going financial and institutional claims made to the central State, in the search for solutions to the social and economic recession that, though in a reduced measure, still characterises Sardinia. It is probably due to this very conflictive relationship that independence proposals regularly appear, even recently, in the political and cultural world, promoting the separation of Sardinia from Italy.

1. THE CONQUEST OF INDEPENDENCE IN THE REPUBLIC: THE SARDINIAN STATUTE IN 1948 AND THE IDEA OF SPECIALNESS

The fall of Fascism and the June 2nd, 1946, election of the Constituent Assembly created the basis for the acknowledgement of a Sardinian autonomy. The Constitution, in Article 116, stipulated that five of the twenty Italian regions "have distinctive forms and conditions of autonomy pursuant to the special statutes adopted by constitutional law". Sardinia, for evident geographical and cultural reasons, was classified as a Special Region and its Statute was approved by the Constituent Assembly on January 31st, 1948.

The creation and approval of the Statute of Sardinia, which included the participation of a Regional Committee that had been set up to manage the delicate transition of Sardinian institutions from Fascism to the Republic, generated discontent. Due to the Committee's slowness in getting things done, Sardinia never obtained the same degree of independence as Sicily. In fact, whilst the Statute of Sicily was approved on May 15th, 1946, a time when the national political climate still favoured the creation of a "strong" federalism, the Statute of Sardinia was examined and eventually approved by the Constituent Assembly in a very different context; there was great reluctance to concede too much autonomy.[141] Despite this significant

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[141] *On this subject see M. CARDIA, La conquista dell'autonomia (1943-49), in Storia d'Italia. Le Regioni dall'unità a oggi. La Sardegna, by L. Berlinguer, A. Mattone, Torino, 1998, p. 717 ss.*

limitation, Sardinia obtained an important form of autonomy ratified by a special Statute characterised by the same juridical strength as that of the Constitution.

2. CHARACTERISTICS OF THE DISTINCTIVE STATUTE OF THE REGION OF SARDINIA

The distinctive Statute of Sardinia, approved by constitutional law no. 3 on February 1948, is, from a legal point of view, the source of regional autonomy: "Sardinia and its islands make up an independent region with a juridical entity within the political unity of the one and indivisible Italian Republic, based on the principles of the Constitution and on this Statute" (Article 1 of the Sardinian Statute). The Sardinian Statute governs: (1) the region's functions; (2) regional finances; (3) the form of government; (4) relations between State and Region; (5) reviewing and enactment methods for the Statute.

a) With regards to the region's functions, Article 3 of the Statute allocated Sardinia, in compliance with the Constitution, some international obligations, national interests and crucial regulations for social and economic reforms, as well as legislative power over a series of subject matters, such as the organisation of regional offices, local police, agriculture and forests, construction, city planning, transport, hunting and fishing, tourism, public libraries etc. Sardinia had been granted considerable legislative power as it had a wide margin of usage and discretion. Sardinia, could, furthermore, exert its legislative power in other subject areas, though with less discretion. These concerned in particular: (a) industry, commerce, public health, etc. as the region could approve regional laws, though in full respect of the principles established by State laws (Article 4 of the Statute); (b) in matters such as education, work, social work, etc., some regional laws could be approved so as to adapt, via integration and implementation norms, the laws of the central State (Article 5 of the Statute).

b) Article 7 of the Statute conferred on Sardinia "its own finances, coordinated with those of the State, in harmony with the principles of national solidarity". For this purpose, the region has established a series of income taxes.

A very important feature in the history of Sardinian autonomy, which will be highlighted in the next paragraph, is Article 13 of the Statute, which established that "the State through an open examination of the region shall arrange a comprehensive project in order to favour the island's economy and its social rebirth".

c) Before the changes made in 2001, the Sardinian Statute had established, for the regional government, a form of parliamentary government.[142] In fact, the Regional Council elected by universal suffrage and the sole holder of legislative power, would also vote in the President of the Executive amongst the Regional Councillors and nominate the members of the Executive. The President of the Executive and the Regional Councillors made up the Executive Body of the Region.

d) Relations between the State and the Region, governed by Article 47 ss. of the Statute, are based on the principle of sincere cooperation. Particularly significant on this subject is Article 47 of the Statute, which established that the President of the Region's Executive Body "will intervene in the sittings of the Council of Ministers, when matters arise that specifically concern the Region". Article 51 of the Statute is equally significant as it authorises the Regional Council to present clauses on matters that concern the region.

e) The review of the Sardinian Statute, which requires the national Parliament to approve a Constitutional law, is governed by Article 54 of the Statute. The region can submit to the Parliament a project for the modification of the Statute, but does not have a monopoly in initiating constitutional review. In fact, a revision proposal may be submitted by at least twenty thousand voters and, especially, by national members of Parliament. With regards to these latter proposals, the region may express a contrary opinion and announce a regional advisory referendum. Parliament, however, is free to approve or deny the revision proposal of the Statute.

The implementation of the Sardinian Statute is assigned to a commission comprising four members: two appointed by the national Government,

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[142] *Constitutional law no. 1 of 2001 established, while awaiting Sardinia's own preference through the approval of a regional law on the matter, that the President of the Executive would be elected by universal and direct suffrage.*

whilst the other two are appointed by the Regional Executive Body. The norms approved by the Commission are put into operation via legislative decree (Articles 56 and 57 of the Statute).

The norms of the Special Statute, described here briefly, are the basis of the history of the autonomy of Sardinia.

3. THE TORTUOUS PATH OF SARDINIAN AUTONOMY FROM 1948 TO 2001

In order to summarise the complex history of the Autonomy of Sardinia from 1948 to date, we shall refer to the most significant political and institutional events, which will prove how, despite limitations and contradictions, the region has experienced a strong spirit of autonomy and identity, though at the same time fully participating in the history of the United Republic of Italy.[143]

The first fifty years of the 20th century were important because the political forces of the region tried to build on the idea of a united autonomy, so as to draw up a series of requests to make to the State. In 1950, the Congress of the Sardinian people took place in which political, social and intellectual forces from all over Sardinia took part. It was at this Congress that the movement for a rebirth began: the political forces agreed that the social and economic development of Sardinia needed a vast program to be agreed upon with the State. Article 13 of the Statute, which foresaw the creation of a rebirth plan, became the juridical basis for the first great claim by Sardinia for action by the central State.

With State law no. 558 of June 11th, 1962, the national Parliament replied to the region's requests and approved the first plan for the economic and social rebirth of Sardinia, which granted substantial financing, particularly in favour of industry. Other regional institutions had the task of putting into effect, via a regional law, the objectives set out in the rebirth plan.

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[143] *The historical events summarised in this paragraph can be studied in greater depth in Storia della Sardegna. 2. Dal Settecento a oggi, by M. Brigaglia, A. Mastino, G.G. Ortu, Roma-Bari, 2006; A. RAGGIO, L'impegno per una buona politica. Andrea Raggio racconta sessant'anni dell'Autonomia, by P. Alfano, G. Scroccu, Cagliari, 2006.*

In 1962, the Sardinian Antonio Segni was elected President of the Republic; he was an important political representative of the Christian Democrat (*Democrazia Cristiana*) party, further proving the region's full participation in the political and social life of the Republic.

In the late sixties, the political forces that had initially drawn up the autonomy plan for the region acknowledged the failure of this first rebirth plan. Unemployment was still high, emigration had resumed, crime rates had increased as bandits and kidnappings had reached disquieting proportions. The Christian Democrats, the Communist Party and the Sardinian Action Party, in particular, drew up a new strategy for dialogue with the central State: "the political challenge". These political forces believed that the rebirth plan for Sardinia was not sufficient on its own and that what was needed was a broader national policy for the development of all the southern regions. Autonomy was no longer seen as a mere demand for the State's restorative intervention, but also represented Sardinia's desire for full participation in the life of the Republic. The State and the Regions of Southern Italy would have to collaborate all together, with a unified spirit, in order to face the social emergencies of the south.

In reply to the region's new requests, the national Parliament approved law no. 268 of 1974, which financed another extraordinary rebirth plan for Sardinia. This response also sought to contrast the emergence, already apparent in the early seventies, of a strong independence movement whose cultural influence had already affected the Sardinian Action Party. The essence of this movement was that the relation between the State and Sardinia was in truth a form of neo-colonialism from which the region would only be able to free itself by declaring independence from the Italian Republic.

The second half of the seventies was characterised by the introduction of a second rebirth plan. Through Regional Law no.33 of 1975, the main political regional forces came up with a new autonomy plan for a unified government of the region.

The unified government lasted until 1982 when, for the first time in the history of Sardinia's autonomy, the Christian Democrats did not take part in the formation of a political majority and the first Regional Executive body supported by left wing parties and the Sardinian Action party was born. This was the beginning of a political phase marked by the blowing of a

strong "pro-Sardinian wind". In 1984, the Sardinian Action Party obtained 13% of the votes in the elections for the Regional Council and its main political representative, Mario Melis, was elected President of the Region. In 1985, the Sardinian Francesco Cossiga (a Christian Democrat) was elected President of the Republic.

The following years were characterised by great debates between the Region and the State, as Sardinia proved determined to demand economic and social development for its people.

In the nineties, as in the rest of Italy, the social and political transformations were explosive. Old parties disappeared and new ones arose, whilst the Sardinian Action Party began its rapid decline. The unified government of separatist forces was replaced, in Sardinia too, by a Left/Right debate that, in essence, continues to this day.

4. THE CONSTITUTIONAL REFORM OF 2001 AND THE INSTITUTIONAL AND POLITICAL CRISIS CONCERNING SARDINIA'S SPECIAL STATUS

The motor of the Sardinian autonomy movement broke down during the transition from the old to the new century. The turning point was the approval of constitutional laws no. 1 of 1999 and no. 3 of 2001, which modified, indeed entirely rewrote, Heading V of the Constitution, on the relationship between State, Regions and local Municipalities. The two constitutional reforms were an institutional response to the strong separatist petitions that the Northern League party, the vehicle for the interests of the rich regions of Northern Italy, had presented to the Central State. In response to the initially federalist, but later separatist, demands from regions like Lombardy and Veneto, constitutional reforms were introduced granting greater autonomy to the ordinary regions, though causing deadlock for the special regions. In fact, constitutional law no. 1 of 1999 established, in new Article 123 of the Constitution, that each region would have a statute, which in harmony with the Constitution, would lay down the structure of government. Nevertheless, Sardinia and the other special regions could not have the same organisational autonomy, since Sardinia's form of government was determined by the special Statute, approved by the national Parliament via a constitutional law. In order to eliminate this contradiction, Parliament modified the Statute of Sardinia

and that of the other special regions two years later, via constitutional law no. 2 of 2001, which established that, just like ordinary regions, the special regions would also be able to choose their form of government via a regional law approved by an absolute majority.

The second contradiction came with constitutional law no. 3 of 2001, which amongst other modifications made to the Constitution, gave the ordinary regions in the new Article 117 greater and more important legislative authority, including over matters in which Sardinia had no legislative power due to its Statute. To avoid a paradox in which the ordinary regions would have boasted greater authority compared to the special regions, thus totally negating the whole point of the original plans for the special regions, Article 10 of constitutional law no. 3 of 2001 stipulated a transitory norm. It established that, until the adaptation of the special Statute, dispositions of constitutional law no. 3 of 2001 would also apply to Sardinia and the other special regions "for the parts which envisage forms of autonomy which are greater than those that have already been assigned".

Following the constitutional reforms described above, Sardinia suddenly found itself going backwards and only managed to obtain the applicability of the same institutional and political rights granted to the ordinary regions of Northern Italy without being able to draw up alternative suggestions justifying its status as a special case. It was from that moment on that Sardinia began to undergo its institutional identity crisis, which has still not been resolved.

5. THE NEVER-ENDING DEBATE ON THE NEW SARDINIAN STATUTE: THE SEARCH FOR A NEW INSTITUTIONAL IDENTITY

Proof of the crisis in Sardinia's special regional status is the fact that from 2001 to this day the region has not been able to draw up a proposal for a constitutional law that will draw up a new Sardinian Statute. It is evident that the constitutional reforms described in the previous paragraph have significantly reduced the differences between ordinary regions and special regions. To give a new significance to special regional status, Sardinia would have to set in motion a huge debate amongst Sardinian society aimed at identifying reasons for a new special status for the region. This, however, has not happened. It's no coincidence that in the last few years some MPs

have brought forward proposals for a constitutional revision that would abolish the special regions, as they are considered today (by a significant segment of public opinion) to be the expression of unjustified privileges that are no longer acceptable due to the global economic recession.

The institutional crisis of Sardinian autonomy has not been matched by an identity crisis in Sardinian society. Recent research, at the University of Cagliari, has in fact shown how the Sardinian identity is still very strongly felt amongst residents in Sardinia, and in some ways it now even exceeds Italian identity. People interviewed replied that being Sardinian was the most important and qualifying feature with respect to other possible elements that normally characterise the identity of a person, such as, for example, being a man or a woman, young or old, etc. Faced with the request of putting in order of priority the various territorial identities, interviewees put their Sardinian identity in first place (28% of preferences) while Italian identity only came in at third place with 18% of preferences (Demuro, Ruggiu, Mola, 2013). Second place went to an identity based on one's home city.

These responses were confirmed by another very interesting question. In relation to a series of identity associated characteristics like culture, language, personality, food, politics, history and territory, interviewees were asked to rate the importance (from 1 to 10) of territorial identities that were being considered: Italian, Sardinian and European. The results again show unmistakeably that the higher values were always given to Sardinian territorial identity rather than the Italian or European identities; the only exception being that of politics, an element believed to be more associated to European identity than the Sardinian. In the Sardinian and Italian identity share, 26% of interviewees felt solely Sardinian, 37% felt more Sardinian than Italian, 31% felt both Sardinian and Italian in equal measure and only 5% felt more Italian than Sardinian.[*]

A strong identity without adequate regional institutions can, however, have a dangerous outcome. In order to find new meaning in the 21st century, the Sardinian belief in autonomy must succeed in creating identity demands and situating them within renewed institutions. Proving that the special

nature of the Sardinia region still represents an overriding necessity is a crucial challenge to this day.

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[*] *For a contribution that identifies the characteristics that would justify the qualification of "nation" for Sardinia, see C. Pala, Sardinia, in the Wiley Blackwell Encyclopedia of Race, Ethnicity and Nationalism, Wiley Blackwell, 2016, pp. 1-3.*

SCOTLAND

Ailsa Henderson

On September 18th 2014, 55% of Scots voted "No" to the question: "Should Scotland be an independent country?" While this might seem like a clear answer to a clear question, this is but one development in the campaign for constitutional change in Scotland. The following chapter outlines the various trajectories of these campaigns, with particular attention to the notions of perceived differences and institutional adaptation, before turning to the 2014 independence referendum, the post-referendum period and the contemporary debates that are shaping current UK politics.

In an immediate sense, the 2014 referendum came about because the Scottish National Party (SNP) won a majority in the Scottish Parliament in 2011. Elected by the Additional Member System, the 129-member assembly had previously been governed either by coalition governments (Labour-Liberal Democrat coalitions 1999-2007) or minority administrations (SNP minority 2007-2011). Taking the view that winning a majority of seats in the parliament provided a mandate for an independence referendum, the SNP announced that it would hold one in the future, but neither the question

nor the date were made clear until January 2012 when it introduced a draft Referendum Bill. The referendum was not the start of constitutional debates within Scotland, however, and to understand its origins we must explore the twin pillars of institutional compromise and perceived difference.

1. INSTITUTIONAL COMPROMISE

Scotland is a historic nation within a multi-national state, its historic boundaries predating the creation of the United Kingdom of Northern Ireland and Great Britain. For this reason, it is often considered to be one of a set of 'usual suspects' when looking for examples of political nationalism and campaigns for self-determination, partly because of the longevity of its claims and partly because it has pursued a democratic and peaceful course for change. Furthermore, its existence as a nation, (one of four constituent nations comprising the UK) is not a matter for political debate, but has been recognised in the legislation that brought about its union with England and Wales, the 1707 Treaty (or Acts) of Union.

The terms of the 1707 Acts of Union allowed for a degree of institutional completeness (Breton 1964). This included a separate Presbyterian Church of Scotland, a separate education system, local organisation along the lines of the burgh system and a separate legal system, based on the Roman civil code rather than English common law. Closer ties after the union of the crowns in 1603, along with the prospect of economic prosperity that came through joining a larger economic market with the backing of an Imperial power, would have made the union an attractive option. Although there is a fierce debate about the degree to which the union reflected the popular will of the Scottish people as a whole, or merely that of Scotland's elites whose arms had been twisted behind their backs by an English bailout plan after the collapse of the Darien Scheme (a disastrous attempt at building a Scots Colony on the Isthmus of Panama). Either way, it is clear that the union did not follow a military defeat. At the time, Scots became a minority of one million within a larger entity of 15 million inhabitants in England and Wales. Scottish elites gained opportunities both for representation in Westminster and participation in leadership roles within the British Empire and this led to a growth in unionist nationalism (Morton 1999) centred on shared political institutions, military successes and imperial power. This is not to say that there were not calls for change almost immediately after the union was declared. Efforts to reinstate a Stuart king on the throne in

1715 and 1745 emphasized the denominational differences between the two hereditary lines of kings, as well as the distinctive markers of Highland life. In a comparative sense, however, the minority Scottish population was culturally and linguistically closer to the majority population than in other possible cases of political mergers across Europe.

The institutional compromise protected in the Acts of Union suggest that the British State was accommodating towards differences, often more so than was the case abroad. Some examples include the creation of the Scottish Office in 1885-1886 and of the post of Secretary for Scotland, both of which ensured that a separate bureaucracy was dedicated solely to the interests of the Scottish population (Mitchell 2004, 2006). The latter post became the Secretary of State for Scotland in 1926 and shortly afterwards the Scottish office administration moved from London to Edinburgh (in 1934). The later creation of the Scottish Grand Committee, the Scottish Affairs Select Committee and Scottish Question Time, each provided time for Scots MPs to debate Scottish matters within Westminster. The pattern was one of maintaining elements of a unitary state while demonstrating an effort to adapt the internal structures to accommodate territorial distinctiveness. Sometimes, though not always, such adaptations were later extended to Wales. This is not to say that the UK Government consistently sought to accommodate Scottish differences. Reactions to the Jacobite rebellions in 1715 and 1745 proved that it was equally capable of pursuing a campaign of assimilation. The banning of tartan, bagpipes and the Highland games demonstrated a concerted effort to weaken the distinctive markers of Highland life. Such active efforts to stamp out practices coincided with ones that could be seen more as neglect, such as the 20th century treatment of Gaelic. Typically, policies of assimilation were aimed more often than not at Highland Scots rather than at Scotland as a whole, but this notion of cultural assimilation by design or by neglect provides a curious bedfellow of the various experiments in institutional compromise.

2. PERCEIVED DISTINCTIVENESS

As a case study in nationalism Scotland offers several unique character-istics. The absence of a written constitution makes possible more fluid arrangements. Change is far more achievable than in cases where formulae for multilateral constitutional amendment provide barriers to any modifi-cation. Scotland's campaign for change has been predicated at different

times on notions of Scottish distinctiveness. In the 18th century, claims of difference were rooted in a Catholic non-Tudor monarch, or markers of traditional life in the Highlands. Nowadays these have either waned or been adopted by the tourist industry as markers of Scottish life primarily for external consumption. The post-Culloden proscriptions are salient now primarily for their role it the chronology of injustices meted out by English monarchs, which sit alongside contemporary injustices to Scottish differences.

Before the devolution referendums in 1979 and 1997, calls for change were rooted in claims of distinct policy preferences. This reflected partially the particular socio-economic profile of Scots, with a higher proportion of employees in heavy industry or receiving state assistance. But it was also grounded in Scottish values that were portrayed as left of the UK centre of gravity. While it is clear that there were indeed different patterns of employment (or rather different areas of industrial strength) in Scotland rather than, say, in the south of England, the claim about values should come in for careful examination. Often, differences in values surfaced not between England and Scotland, but between Southern Britain and Northern Britain (Curtice 1988, 1992). This myth of distinctiveness is tangled with the notion that Scotland has a civic form of nationalism, where residency rather than place of birth matters, where values are what define Scots from others in the UK. What is undeniable, however, is that Scottish political preferences have often been out of step with UK preferences. The ruling UK administration has been a political party that was different to the most popular Scottish party for 66 out of the 130 years between 1885 and 2015.

3. CAMPAIGNS FOR CONSTITUTIONAL CHANGE

The earliest Scottish campaigns for change could be classified as national movements rather than national political parties. These included the 19th century Scottish Home Rule Association, which sought to influence existing parties, but did not field candidates itself. In the 20th century, there was a flourishing of smaller parties, including the Scottish Party and the National Party of Scotland. Because they sought to field electoral candidates and secure votes they earned greater media attention, but their electoral success was negligible. This changed with the arrival of the Scottish National Party which not only marked a partisan departure for Scotland (in the sense that it offered a viable alternative for voters keen to support independence), but

also in that its surges of support led other parties to change their constitutional policies. It was following one of these surges of support that the Labour Party in Scotland began advocating a form of devolution. After forming the UK government in 1974, the Labour Party introduced the Scotland and Wales Bill, later splitting it into two to better ensure that opposition to one form of devolution would not imperil devolution to the other. It was a Labour MP who, seeking to mollify detractors, introduced the notion of a threshold for public support for devolution. The required majority was 40% of the total electorate, rather than 50% of those who voted. The result in the 1979 referendum was 52% support devolution, but as this only represented 33% of the total electorate the newly elected Conservative Government repealed the act. From 1979 to 1997 campaigns for change could be seen working in tandem. There were political parties campaigning for devolution for Scotland, but accompanying these were civil society organisations, which sought to both marshal public support and publicise its existence. The well-known chronology includes the 1988 Claim of Right for Scotland, which declared that Scots had an inherent right to self-government. The title was designed to echo the 1689 Claim of Right of the pre-union Scottish Parliament. The claim was issued by the Campaign for a Scottish Assembly, which led to a cross-party Scottish Constitutional Convention in 1989 and included both main political parties and other civic organisations, such as the Church of Scotland and the Scottish Trades Union Congress. This also led to a detailed model of devolution, "Scotland's Claim, Scotland's Right", in 1995. Partly this stemmed from a concern following the 1979 referendum that devolution had failed to attract those who felt that the plan lacked specific measures. The SCC document filled that gap and many of the institutional design features of the eventual Scottish Parliament can be traced to this document.

Upon securing a majority, in May 1997, the Labour Party offered referendums to Scotland and Wales on different plans for devolution (and a third referendum was held in Northern Ireland following the Good Friday/Belfast agreement). In the Scottish case, this included two questions, one on the existence of a Parliament and a second on whether it should have tax varying powers. Both passed (74% and 64% respectively), although it is worth noting that the tax varying powers were never used. Arguments for devolution were made on the basis that (1) Scotland had administrative autonomy anyway (while recognising that administrative autonomy had perhaps afforded it more room to manoeuvre than democratic autonomy might have (Paterson 1994)), and (2) Scotland wished to pursue different

policy objectives due to distinctive Scottish policy preferences. The first elections to the Scottish Parliament were held in May 1999 and the first sitting was on July 1st.

In part, continual constitutional tinkering since has stemmed from the asymmetrical nature of the three devolution settlements, with Wales predictably seeking to attain powers held by Scotland. In part, support for independence and support for the SNP has ensured that enhanced autonomy for the Scottish Parliament has not disappeared from the public debate. In Scotland, this led to a revised Scotland Act in 2012, which implemented many of the recommendations of the Calman Commission. The Commission, which involved the three main unionist parties in Scotland, heralded a significant shift in the partisan spectrum of Scotland. Where once the Conservatives would have stood alone as the sole opponents of devolution, with the three other main parties united in support, now the SNP stood alone (notwithstanding support from smaller pro-independence parties, such as the Greens and the Scottish Socialist Party) and the three other main parties united in opposition to independence. Calman offered the first collective action in this respect and the result was a bill which offered changes to legislative competences, many of which did not take full effect until 2015. This leads us to the 2014 independence referendum and its aftermath.

4. THE 2014 REFERENDUM AND ITS AFTERMATH

Upon winning a majority of seats in the Scottish Parliament in the 2011 election, the SNP offered to hold a referendum on the issue of independence. The UK Government reacted with relative silence until the SNP administration introduced legislation in the Scottish Parliament stating that it intended to hold a referendum in 2014 with a question of its choosing and wished to extend the franchise to 16 and 17 year olds. There followed a long and public debate throughout 2012 between the two levels of government over whether Scotland had a legal right to hold such a referendum. According to the UK Government, the constitution was a reserved matter, and therefore the Scottish Government could not hold such a referendum. According to the Scottish Government it was asking the Scottish electorate a question about mandates, which was not *ultra vires*. In the end, the two sides agreed (via the Edinburgh Agreement) to the terms of a referendum, namely that it would be held in autumn 2014, but that it couldn't create a separate Scottish

Electoral Commission to manage the process. The referendum question was to be vetted by the UK Electoral Commission. The key concession by the Scottish Government was that it would hold a referendum on independence only and would not seek to gauge public support for an additional form of devolution, often referred to (in a somewhat ill-defined way) as devo max.

The Edinburgh Agreement, which was reached on 15 October 2012, marked the beginning of what would become a very long campaign. Despite former Labour Shadow Secretary of State for Scotland George Robertson claiming that devolution would kill nationalism stone dead, support for independence continued to hover around the 30% mark. It did not decline precipitously, as predicted, and well into the long campaign support remained stable. By late summer 2014, however, support had started to rise. The campaign began with a White Paper on independence issued by the Government. The "Yes Scotland" campaign, which included an amalgam of the SNP, Scottish Greens and SSP, framed independence as an opportunity to pursue policy goals distinct from the austerity policies of UK administrations. Much of the campaign was initially focussed on a positive message of sufficient economic resources. This changed in the latter weeks to pointing out the continued risks to Scotland of a United Kingdom that, for example, was causing the gap between rich and poor to grow, or which threatened to leave the EU. The claim that independence is a natural extension of devolution is an obvious corollary to pre-1997 claims about administrative devolution, as is the claim that Scottish preferences are at odds with austerity policies. The "Better Together" campaign, which was composed of the three largest unionist parties, emphasised the risks involved and in particular sowed doubts about the prospect of EU membership for an independent Scotland.

The referendum process has been praised both for the lack of irregularities in the conduct of the campaigns and the vote count, the judicious examination of the referendum question by the Electoral Commission and the considerable opportunity for deliberation. Referendums are often portrayed as having low salience, high uncertainty and insufficient capacity for knowledge acquisition. However, the two-year referendum campaign allowed for considerable debate and deliberation and much of the public opinion data suggests that there were significant shifts in leanings as people learned more about policies and postures.

There remain, however, a number of unresolved issues. Firstly, there is the issue of further constitutional change. In the final days of the campaign

the three main UK leaders issued a vow in the Daily Record newspaper, stating that further constitutional change would follow a No vote. While evidence is inconsistent on whether the vow swayed voters to the No side, the ill-defined promise set the stage for the immediate creation of a Commission (the Smith Commission) to investigate further devolution of powers, rather awkwardly before the full devolution of powers listed in the 2012 Act were passed. The Commission reported its findings quickly, and these have made their way into yet another Scotland Bill, which is currently moving through the legislative stages at Westminster. The speed with which the Smith commission findings were transformed into a draft bill, as well as the relative lack of public engagement given the flourishing of democratic participation during the referendum, came in for criticism. Proposed new powers include taxation, welfare, as well as onshore oil and gas extraction, although perhaps unsurprisingly additional competence in the area of taxation has warranted the most attention. One stumbling block is how fiscal transfers from the UK Government will operate if the Scottish Parliament has a larger role in collecting taxes and the two sides have so far failed to agree on a fiscal framework.

The second post-referendum issue has been the partisan transformation within Scotland and the changing role of Scotland within the UK. After the referendum, SNP membership climbed to over 100,000 and in the May 2015, in the UK General Election, the party won 50% of the popular vote and 56 out of the 59 Scottish seats at Westminster, by far the best showing since the October 1974 election in which they had gained eleven seats. This is further evidence that the Scots wish to get more involved in politics, but it also highlights divisions between Yes and No voters in the referendum. In terms of willingness to participate, "Yes" voters are reported to be far more politically engaged. It also illustrates the differing interpretations of what aspects of the debate had won the referendum for the "No" campaign (with Yes voter more likely to cite the vow and No voters more likely to cite the risks, specifically economic risks). This partisan realignment has led Westminster to attempt a further reduction in Scottish seats via the next round of Westminster constituency boundary reviews, which will reduce numbers across the whole of the UK, but particularly in Scotland and Wales, which have been traditionally over-represented. This changing landscape has caused further partisan splits with many Scots perceiving the proposed reduction in Scottish constituencies as an attempt to curtail Scottish influence at Westminster. These divisions have been sharpened by the introduction of proposals for English Votes for English laws, in which

MPs from devolved regions would be prevented from voting on legislation that only affected England.

Lastly, there is the issue of Europe. It was clear from public opinion surveys before the referendum that the Scots want to stay in Europe. Those who voted No cited that the risk of leaving Europe was too great if Scotland became independent, whereas Yes voters feared that a Euro-sceptic Conservative party would take the UK out of Europe. Pro-European sentiment (purely in the sense of EU membership) therefore animated both Yes and No voters' choices. Facing internal opposition from within his party, Conservative Prime Minister David Cameron had long floated the prospect of an "in-out" EU referendum. The date for it has now been set for 23rd June 2016. Recent opinion polls have suggested that a majority of voters in Scotland, Wales and Northern Ireland will vote to remain in the EU, but many polls are now showing that a majority of English voters wish to leave the EU. Curiously, given its strong current support for the EU, the SNP has not always supported EU membership. Before 1988, it opposed it, arguing that it was worse to be governed from a city even further away than London. EU policy towards the regions both in terms of institutional accommodation of regional preferences and of economic policies that treated constituent regions as core units have helped to change SNP policy to one of "Independence within Europe". SNP leader Nicola Sturgeon has made it clear that the UK voting to leave the EU could well trigger another independence referendum in Scotland if Scottish voters choose to stay. Campaigns for constitutional change are therefore very much unfinished business.

One of these is the issue of distinctiveness. We know that Scots have a distinct sense of national identity, that they support different political parties and have clear and distinct preferences in terms of the ideal consti-tutional architecture of the state, but the underlying values (on social welfare policies, attitudes to EU bureaucracy, etc.) are almost indistin-guishable from English values. Scottish voters are distinct not because they hold different values from those in England or Wales, but because those values lead them to make different choices and hold different preferences about policies. The other distinction is that there is a larger gap in Scotland between the subjective perceptions of what people think and the views they actually hold than is the case in England. Scots are less accurate in gauging the policy preferences of their fellow Scots.

SICILIA
Diego Praino

THE RIGHT TO SELF-DETERMINATION IN SICILY: THE SPECIAL STATUTE, REGIONAL AUTONOMY, AND THE PARTY SYSTEM

Starting from the idea that the right to self-determination is connected both to secessionism and regionalism, which are alternative solutions for territorial minorities aiming for self-government, this chapter tries to highlight the link between the pursuit of this right and the peculiar model of the Sicilian special autonomy within the Italian system. In particular, it describes the main legal and historical steps that led to the enactment of the Sicilian Statute in 1946, highlighting the role played by the ideas of independence and autonomy. In addition, it sheds some light on the regional model of autonomy delineated by the Italian Constitution and by the Sicilian Statute, by taking into account the main constitutional provisions on the relationship between the Republic and the Region. Finally, this chapter explains that the idea of self-determination has not played a significant role in Sicilian political dynamics. On the one hand, any attempt at pursuing secession after World War II, has been merely marginal: only the Sicilian independence movement has had some significance, and only in the 1940s. On the other hand, the Sicilian party system has not been characterized by the presence of strong ethno-regionalist parties, but dominated by dynamics associated with state-wide parties. In conclusion, in Sicily, the notion of self-determination has been extremely important because it contributed to shaping the Sicilian institutional model of special autonomy. However, it has only marginally affected the party system on the island.

1. INTRODUCTION

The right to self-determination is both a collective right to determine the direction of national life, and a right of all individuals to take part fully and freely in the decision-making processes affecting their nation. Peoples may invoke that right in order to secede from a state and create a new one, but also to achieve other aims, such as the establishment of autonomous regimes or subunits within the state (Mancini, 2008). Both secessionism and regionalism, which are two alternative strategies for territorial minorities, are linked to the idea of self-determination. While the former emphasizes the right to create an independent political entity, the latter stresses a certain amount of autonomy within an indivisible state (Sorens, 2008).

The aim of this chapter is to highlight the fact that, in Sicily, the pursuit of the right to self-determination contributed to the establishment of a special regional autonomy status[144] within the Italian State. This autonomy is legally guaranteed both by the Italian Constitution of 1948 and by the Sicilian Statute, approved in 1946, which may be interpreted as a 'basic law with a constitutional rank' (Palermo & Wilson, 2013: 7). In addition, this chapter explains that the idea of self-determination has not played a significant role in Sicilian party dynamics: after World War II, the Sicilian party system has not been characterized by the presence of strong ethno-regionalist parties, while any attempt at pursuing secession has been merely marginal.

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[144] *On the concept of regional autonomy, see Antonio Ruggeri, "L'autonomia regionale (profili generali)" in Antonio Ruggeri & Giuseppe Verde, eds, Lineamenti di Diritto costituzionale della Regione Sicilia (Torino: Giappichelli, 2012) 15.*

2. THE PURSUIT OF SELF-DETERMINATION AND THE ENACTMENT OF THE SICILIAN SPECIAL STATUTE

The independence of Sicily was a vibrant idea in the 19th century. The Sicilian Constitution of 1812 had a specific provision[145] that forbade the union of the crown of Sicily with any other crown and clearly stated that Sicily was independent from Naples or from any other kingdom or province.[146] Also the Fundamental Statute of the Kingdom of Sicily of 1848 (which, however, never entered into force) contained a similar provision, according to which 'Sicily will always be an independent State' and 'the King of Sicilians shall not reign or rule over any other country'.[147]

Since its political unification in 1861, Italy has been characterized by a highly centralist system, which peaked during the Fascist period (1922–1943) (Conversi, 2007: 122), but the idea of an independent State that might become part of a federation together with other Italian States re-emerged in Sicily during World War II. Already, in 1943, the Committee for the Independence of Sicily had asked the allied forces to establish a temporary government with the task of arranging a plebiscite to gauge opinion on the creation of an independent and republican Sicilian State. The program of the Movement for the Sicilian Independence was based precisely on this idea of an independent republic that could, if it wished, join a federation of states or even a European confederation (Tramontana, 2012: 8).

In general, the devastation caused by the war and the political isolation of the island fuelled the idea of independence and the activity of a clandestine group of volunteer troops guided by the aim of secession (Mangone, 1956: 77-78). On the other hand, for the most part, the unity-oriented parties wanted the establishment of regional autonomy.[148] When the allied Governments transferred the administration of the island to the Italian Government in 1944, they did not pursue on the independence path. Instead, they expressed the need to give more attention to the problems of the island, and to pursue the idea of autonomy (Tramontana, 2012: 9).

From its origins, the Sicilian Special Autonomy has been interpreted in terms of a unique relationship with the Italian state, from which the island needs to defend itself (Pajno, 2011: 522). Scholars have written that this autonomy derives both from an ancient desire for self-government and from the difficult socio-economic and political situation that characterized the region in the 1940s, when political tensions and separatist movements risked jeopardizing the stability of the island (which some viewed as abandoning it to banditry or risking civil war). In 1944, with the aim of protecting national unity and solving the serious problems of the Sicilian community, a broad administrative decentralization was pursued (Teresi, 1988: 386): the *Alto Commissario per la Sicilia* (High Commissioner for Sicily)[149] and the *Consulta Regionale* (a body appointed by the Government and composed of representatives of political, economic, social and cultural forces on the island)[150] were created.

In May 1945, the *Consulta* asked the High Commissioner to appoint a Commission to draft a project for regional autonomy. The work of the Commission began that September. The *Consulta* examined and approved the text drawn up by the Commission at the end of 1945 (focusing on topics such as the distribution of legislative competences, the administrative and financial autonomy of the *Comuni*, and the decentralization of the judicial system) – (Tramontana, 2012: 9). This proposal for a regional set up was then presented to the Council of Ministers, which approved it[151] giving birth, before the proclamation of the Republic and the enactment of the Italian Constitution, to the Sicilian Statute, which was the first act of regional autonomy in post-war democratic Italy (Teresi, 1988: 387). The threat of separatism and the risk of violence were decisive when it came to approving the text rapidly by means of a decree, rather than waiting for *Assemblea Costituente* to produce a response (Tramontana, 2012: 11).

Later, in 1948, in spite of debates on the matter, the Sicilian Statute was

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[145] *Sicilian Constitution of 1812, Per la successione al trono del Regno di Sicilia, §17.*
[146] *On this topic, see Carlo Tramontana, 2012. The author explains that in 1816 – after the defeat of Napoleon, the Vienna Congress and the return of the Bourbon King to Naples – the Monarch became King of the Two Sicilies, even if the Constitution of 1812 had not been formally repealed.*
[147] *Fundamental Statute of the Kingdom of Sicily of 1848, art. 2.*
[148] *In Sicily, the local branches of the main Italian parties agreed almost unanimously on the adoption of the regional model, while the same parties, at a national level, expressed different positions on the matter: Gennaro Ferraiuolo, 2006.*

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[149] *See r.d.l. no. 91/44, art. 1. According to art. 5, the High Commissioner was appointed by royal decree, in response to a proposal put forward by the Head of the Government in agreement with the Minister of Internal Affairs, after hearing the advice of the Council of Ministers.*
[150] *According to d.lg.lt. no. 416/44, art. 4, this body examined the problems of the island, advanced proposals for the regional order and assisted the High Commissioner.*
[151] *R.d.lg. no. 455/46.*

ratified by the *Assemblea Costituente* (Teresi, 1988: 387), which converted it into constitutional legislation.[152]

A relevant legal question concerning the Sicilian Special Statute is whether it derives from an 'agreement' between the Region and the State. In reality, some authors believe that it does not: as the description of the events that led to its approval show, although the text of the Statute originated in Sicily, it depended on the approval of the Council of Ministers, while the *Consulta* was, after all, a body of the State (Teresi, 1988: 387; Pajno, 2011: 521f).

3. REGIONAL AUTONOMY IN THE CONSTITUTIONAL SOURCES

It seems that the adoption of regionalism was the only possible choice for those drafting the Italian Constitution. They had to take into account the almost-spontaneous emergence of special autonomy in some regions and it was deemed not politically viable to revoke the Statutes (of Sicily and the Valle d'Aosta) that had already been approved: the revocation of these autonomy concessions would have fuelled separatist tendencies, jeopardizing the unity of the State (Ferraiuolo, 2006: 3f). From this perspective, it seems correct to say that the pursuit of the right to self-determination, and in particular the Sicilian experience, has contributed, among other factors, to the regional-based structure of the State, considering also that, before the war, the only decentralized entities in Italian institutional history had been the *Province* and the *Comuni* (Ferraiuolo, 2006: 2).

The Sicilian Statute explains clearly the relationship between autonomy and the indivisible nature of the Republic. In particular, it specifies that Sicily (together with the Aeolian, Egadi, and Pelagie Islands, Ustica and Pantelleria) is an autonomous region and a legal entity within the political unity of the Italian State, based upon the democratic principles that underlie the nation.[153]

According to the Italian Constitution,[154] the Italian Republic is composed of several entities, i.e., in addition to the State: the Municipalities, the Provinces, the Metropolitan Cities, and the Regions. These entities are autonomous

and have their own statutes, powers and functions, in accordance with the principles laid down in the Constitution.[155] In short, the Italian Constitution recognizes and promotes local autonomies, but explicitly states the principle of the unity of the Italian State (via the formula: 'the Republic is one and indivisible').[156]

Sicily is one of the five Regions that have special autonomous status pursuant to their special Statutes, which were adopted by constitutional law (that is to say, following the special procedure laid down in Aticle 138).[157] As far as the five Italian special regions are concerned, three of them (i.e. Valle d'Aosta, Trentino-Alto Adige, and Friuli Venezia Giulia) were created because of the linguistic and ethnic distinctiveness of their people (and in an attempt to solve complex territorial claims), while Sardinia was established 'by specific conditions of isolation'. Special autonomy was granted to Sicily, however, to hamper the strength of separatist movements (Rolla, 2009: 470). In other words, it is intrinsically connected to the pursuit of the right to self-determination.

From a legal perspective, it is worth mentioning that the problematic implementation of the Sicilian Statute has reduced the effects of the very autonomy that it was intended to protect. On the one hand, several provisions have never been implemented, and on the other hand, the case law of the Italian Constitutional Court has reduced the scope of the Sicilian special autonomy. Therefore, it is possible to say that the Sicilian model delineated in 1946 has remained, in some parts, unfulfilled (Piraino & Spataro, 2011).[158]

4. THE SICILIAN PARTY SYSTEM: THE AUTONOMY MODEL AND THE IDEA OF SELF-DETERMINATION

In general terms, the development of a regional autonomy is strictly connected to the structure and functioning of the regional party system. The relationship between political parties and the autonomous region is characterized by a reciprocal dynamic in which the two factors shape each other (Olivetti, 2013: 60). One the one hand, with the aim of

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[152] *L. cost. no. 2/48.*
[153] *Sicilian Statute, art. 1.*

[154] *As modified by l. cost. no. 3/2001.*
[155] *Italian Constitution, art. 114.*
[156] *Italian Constitution, art. 5.*
[157] *Italian Constitution, art. 116, para. 1.*
[158] *Ibid at 934.*

gaining control over the regional government, parties adapt themselves to the governmental setup (Friedrich, 1968: 47): for instance, they may organize themselves adopting a vertical separation of organizational units (Tuschhoff, 1999:23).[160] In addition, political decentralization seems to have a significant impact on the strength of regional parties (Brancati, 2008). On the other hand, inversely, the constitutional structure and the relationship between the different levels of government are affected both by the party system (once it has been stabilized) (Bifulco, 2009: 245), and by the direct action of political parties that operate at a local level (Toubeau & Massetti, 2013: 301), which, by pursuing their own policies, play a significant role also in determining the formation of governments (Ventura, 2008: 25).

In Sicily, in reality, the broad autonomy delineated by the Statute of 1946 has not entailed the presence of strong regional parties nor an asymmetry (Bifulco, 2009: 256) between the national and the Sicilian party system. Moreover, as far as political programmes are concerned, only marginal forces have invoked the right to self-determination and attempted to pursue secession.

In other words, ethno-regionalist parties have had a limited impact on regional politics. Only the Sicilian independence movement had some significance, but that was back in the 1940s (Tronconi & Roux, 2009: 158). In the first regional elections, held on April 20th, 1947 (before the ratification of the Italian Peace Treaty and the approval of the national Constitution), despite the enactment of the regional Statute and the establishment of the special autonomy, the idea of independence was still alive, and the *Movimento Indipendentista Siciliano* obtained 8.8% of the votes (Mangone, 1956: 78). However, the movement soon disappeared from Sicilian politics (Mangone, 1956: 83), and other signs of mobilisation for independence (*Fronte nazionale Siciliano and Movimento per l'indipendenza della Sicilia*) have only been marginal in the political dynamics of the island (Tronconi & Roux, 2009: 158).

The Movement for the Autonomies (MPA: *Movimento per le Autonomie*) is a political phenomenon that deserves mention, since it has had a certain impact on Sicilian politics in the last ten years. However, it does not seem possible to classify it as a regional party inspired by Sicily's right to self-determination. Firstly, it is not a regional party in the strictest sense,[164] but rather a 'pan-Southern movement' (for instance, in the 2008 general elections, it presented candidates in 10 different Southern regions, 'mirroring', in the South, the *Lega Nord*) – (Tronconi & Roux, 2009: 162). For this reason, its presence does not entail a strong asymmetry between the national and the Sicilian party system. In addition, its political Statute seems to focus, in general terms, on the protection of all regional autonomies and on the development of the South, rather than on issues that affect the island specifically, or its right to self-determination.[165]

In any case, while the MPA has been able to affect the results of regional elections, it has also been strictly linked to the 'big' state-wide parties. Firstly, its founder Raffaele Lombardo comes from a political career in the DC (in the 1970s) and within the Christian Democrat parties (CCD and then UDC) of the Second Republic (Tronconi & Roux, 2009: 162). In addition, its electoral success depends on alliances with other political forces. On this point, it is true that Lombardo became President of the Region in 2008 obtaining 65% of the votes (30 points more than his opponent Anna Finocchiaro). However, on that occasion he managed to do so thanks to the support of the PDL and UDC: the PDL alone in those elections obtained more than 900,000 votes (around 33.4%).[166] In contrast, in the elections of 2012,[167] the candidate supported by the MPA, running without the PDL and the UDC, obtained only around 15% of the votes.

In conclusion, from a constitutional perspective, the Sicilian model of autonomy delineated by its Statute and by the Italian Constitution derives from dynamics that are strictly connected to the idea of self-determination. However, on the other hand, politics on the island have been dominated by the 'big' state-wide parties, and the right to self-determination has not played a relevant role in the Sicilian political arena, despite the broad autonomy system delineated by legal sources.

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[160] On the topic, Eve Hepburn and Klaus Detterbeck (2013: 88) explain that 'state-wide parties operating in multi-level systems must adapt to the territorial breaches cemented by the institutionalization of political regions'. In particular, their regional branches may adopt a strong regional identity, offer constitutional alternatives to secession, and delineate differentiated party programmes.

[164] Especially if we take into account the definition according to which regional parties are parties that, participating in either national or regional elections, 'compete and win votes in only one region of a country' and focus their agendas on issues affecting only that region: Brancati, 2008: 138.
[165] The Statute of the MPA can be viewed at the site mpa-italia.it.
[166] Electoral data from regional elections in Sicily can be retrieved at the site elezioni.regione.sicilia.it.
[167] For more information on the 2012 regional elections, see Pasquale Colloca & Rinaldo Vignati, 2013
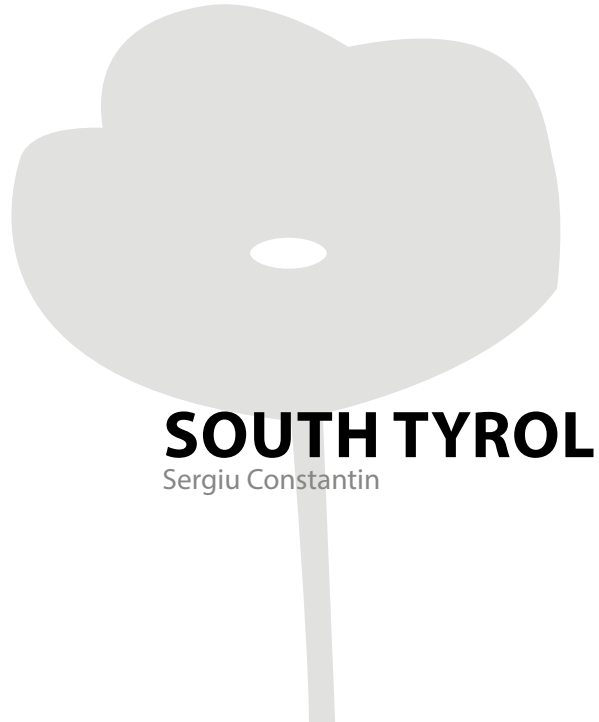
SOUTH TYROL

Sergiu Constantin

SOUTH TYROL: CONFLICT RESOLUTION AND SELF-GOVERNANCE

South Tyrol is an illustrative example of successful conflict resolution and minority protection through territorial and cultural self-governance. The region became part of Italy at the end of World War I against the will of the majority German-speaking population. In the inter-war period, the Italian Fascist regime adopted a series of harsh assimilation policies. The victorious powers in World War II ignored the plea of South Tyroleans for self-determination and the majority-minority conflict escalated after the dysfunctional First Autonomy Statute entered into force in 1948. The Second Autonomy Statute of 1972 established a system of consociational democracy in South Tyrol based on the principle of power-sharing among Italian, German and Ladin language groups. This legal-institutional framework led to the settlement of the conflict in 1992. The process for the elaboration of a Third Autonomy Statute started in 2015. It involves the entire population of South Tyrol through deliberative democracy mechanisms.

1. INTRODUCTION

South Tyrol is an illustrative example of successful conflict resolution and minority protection through territorial and cultural self-governance. This Alpine province enjoys a far-reaching autonomy within Italy's asymmetric regionalism and its legal and institutional framework is based on the principles of effective equality and power-sharing among three language groups, i.e. German, Italian and Ladin speakers. According to the 2011 census, 69.41% of South Tyroleans are German speakers, 26.06% are Italian speakers and 4.53% are Ladin speakers. At the end of 2014, the province had a total resident population of 518,518 persons (ASTAT 2015, 9-15). While people belonging to the German language group reside mainly in the rural areas, the Italian speakers form the majority population in the capital city, Bolzano/Bozen, and the Southern part of the province. In fact, all major cities have a consistent number of Italian-speakers (Ibid., 16-18). The Ladin language group is territorially concentrated in the Eastern part of the province, in the so-called "Ladin Valleys".

This chapter aims to provide an overview of the autonomy of South Tyrol. It starts with a succinct presentation of the historical background, focusing mostly on the events of the last 100 years that led to the establishment of the present self-governance arrangement. The main part of the chapter explores the four major elements of South Tyrol's consociational democracy: proportionality and a quota system for language groups, participation of all language groups in the joint exercise of power, the right of veto to defend each language group's vital interests, and cultural autonomy for each language group. Before concluding with final remarks, we will briefly discuss the ongoing process that aims to reform South Tyrol's legal-institutional framework by means of deliberative methods.

2. HISTORICAL BACKGROUND

Over the centuries, various ethnicities, languages and cultures entered into contact in the territory that is today defined as the Italian autonomous province of South Tyrol. Rome conquered the area in the 1st century BC and ruled it for 500 years. Ladins, the descendants of the Romanized local Raetian population still live in the south easternmost Alpine valleys of the Dolomite Mountains.[168] From the 5th century AD, the region fell to

Germanic tribes. In the 14th century, South Tyrol came under the control of the Habsburgs who ruled it until the end of World War I. Following the defeat of the Austro-Hungarian Empire and the Peace Treaty of St. Germain (1919), South Tyrol became part of Italy despite the opposition of the majority German-speaking population of the region. In the inter-war period, the Italian Fascist regime adopted a set of repressive policies against linguistic minorities aiming at their forced assimilation. In South Tyrol, the persecution included measures such as closing down German-language schools, associations and newspapers, firing all German-speaking civil servants and imposing an Italian monolingual administration, as well as the Italianization of place names and even personal names. In addition, the Fascist regime engineered a demographic change in the region by starting an industrialization process and offering incentives to Italian workers from other parts of the country to move to South Tyrol. As a result, the size of the Italian language group increased by a factor of five in a rather short period. The percentage of Italians living in South Tyrol rose from 4% of the population at the beginning of the 20th century, to 24% in 1939 (Kager 1998, 2). In the same year, Mussolini and Hitler agreed on an ethnic cleansing "solution" for South Tyrol. German-speaking South Tyroleans had to choose between staying in Italy (and accepting rapid assimilation) or moving to Germany (thus preserving their linguistic and cultural identity). This so-called "Option" remains to this day one of the most traumatic events in the collective memory of the German-speaking group. The majority of German speakers decided to emigrate, but the outbreak of the war hindered the full implementation of the Nazi-Fascist plan. Most of those who left returned after the war (Lantschner 2008, 6-9).

Founded in May 1945, the *Südtiroler Volkspartei* (SVP) proclaimed that South Tyroleans have the right to decide the future of their *Heimat* (homeland) and collected, in a short period of time, more than 150,000 signatures in favour of self-determination. However, in September 1946, Austrian Foreign Minister Karl Gruber and Italian Prime Minister Alcide De Gasperi signed an agreement that *inter alia* guaranteed the German-speaking population of South Tyrol equality of rights with the Italian-speaking inhabitants, education in their mother tongue, proportional representation in the civil service, as well as legislative and executive

autonomy.[169] The Gruber–De Gasperi agreement became an annex of the Paris Peace Treaty (1947), which confirmed the existing Italian-Austrian border. The anchoring of South Tyrolean autonomy in international law had a twofold significance over the following decades. Firstly, Austria as kin-state of the German-speaking South Tyrolese played a protective function and "South Tyrol became (…) one of the central issues of Austrian foreign policy" (Medda-Windischer 2008, 23). Secondly, Italy could not claim that South Tyrol is merely an internal matter, as the country has to fulfil its obligations under international law.

In 1948, Italy established the special autonomous region[170] of Trentino–South Tyrol comprising two provinces: Trento and South Tyrol. In the province of Trento, more than 90% of the population was Italian. In South Tyrol, the majority population spoke German as a mother tongue, but at the level of the region Trentino–South Tyrol, 71.5% of the residents belonged to the Italian language group. In practice, the representatives of German speakers in the regional legislative body were unable to influence the decision-making process, because they could easily be outvoted. On paper, South Tyrol had autonomy, but in reality, the self-governing powers of the province were rather limited. While German-speaking South Tyroleans challenged the effectiveness of the First Autonomy Statute of 1948, Italy claimed that it had fully implemented the Gruber–De Gasperi agreement. The Italian Government ignored the increasing dissatisfaction in the province, the situation escalated and, in less than a decade, the tensions erupted into violence. Claiming the right to self-determination (i.e. secession), underground groups, such as *Befreiungsausschuss Südtirol* (South Tyrolean Liberation Committee) organized a series of bomb attacks targeting industrial sites, symbols of the Italian state and members of law enforcement agencies. The individuals who carried out these attacks have been called "freedom fighters, idealists, patriots, South Tyrolean activists, bomb throwers, terrorists, or all of these" (Steininger 2003, 123).

In 1960, Austria brought the South Tyrol question before the United

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[168] *Ladins speak a Rhaeto-Romance language and live in several valleys located in the provinces of South Tyrol, Trenttino and Belluno.*

[169] *It is worth noting that Gruber–De Gasperi agreement contained no reference to the Ladin language group.*
[170] *Since 1948, Italy has 20 regions and an asymmetric territorial-administrative system. Five out of the 20 regions have a special autonomous regime; that is, they have autonomy statutes of constitutional rank, significant legislative and administrative competences, financial autonomy and a bilateral relationship with the central Government. The five special regions are Trentino–South Tyrol, Aosta Valley, Friuli–Venezia Giulia, Sicily and Sardinia.*

Nations[171] and in 1961, the Italian Minister of the Interior established the so-called "Commission of 19" with a mandate to propose solutions for settling the conflict.[172] Based on the report of the commission, the Italian Government prepared a set of 137 measures (the "Package") that required a comprehensive reform of the 1948 Autonomy Statute. At the end of 1969, the SVP and the Italian and Austrian parliaments approved the Package. There are two issues worth noting here. Firstly, there was a heated debate within the SVP on whether to accept the compromise or not. Only 52.8% of the SVP delegates voted in favour of the Package. By accepting the solution proposed by the Italian Government, the SVP gave up the unrealistic goal of external self-determination and opted for internal self-determination through the genuine autonomy of South Tyrol (Alber and Zwilling 2014, 38). Secondly, neither the regional nor the provincial legislative bodies had a say with regard to the Package and there was no direct consultation via a referendum of the population of the region of Trentino–South Tyrol or the province of South Tyrol.

The Second Autonomy Statute of 1972 transferred most of the legislative and executive powers from the region to the two provinces of South Tyrol and Trento.[173] It established a system of consociational democracy[174] based on the principle of power-sharing, which takes into consideration the needs and expectations of the German, Italian and Ladin language groups. In 1992, Austria and Italy formally acknowledged the settlement of the conflict in the United Nations. Today, South Tyrol is one of the most successful examples of conflict resolution and minority protection through internal self-determination. However, in the last decade increasing societal changes and challenges have triggered a vivid debate in South Tyrol over the necessity for a Third Autonomy Statute. In April 2015, the Provincial Parliament adopted a law concerning the establishment of a so-called "Convention" for the revision of the Autonomy Statute.[175] The Convention's purpose is to

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[171] The UN General Assembly issued two resolutions on South Tyrol, recommending all parties involved to negotiate a solution to the conflict. For details, see UN General Assembly Resolution 1497 (XV) of 31 October 1960 and UN General Assembly Resolution 1661 (XVI) of 28 November 1961.

[172] The "Commission of 19" was composed of 11 Italian-speakers, seven German-speakers and one Ladin speaker.

[173] The 1972 Statute of Autonomy relegated the region Trentino–South Tyrol to the role of an administrative-territorial "roof" over Trento and South Tyrol, which became the only two special autonomous provinces in Italy.

[174] According to the theory of consociationalism (Lijphart 1969; 1977), a divided society can have a democratic and stable political system if it ensures the following four elements: (1) proportionality (1) a grand coalition government, (3) the right of veto and (4) segmental autonomy.

reform the 1972 Autonomy Statute with the help of South Tyrol's population through deliberative democracy mechanisms.

3. AUTONOMY AND POWER-SHARING IN SOUTH TYROL

South Tyrol's consociational democracy system comprises four main elements: (a) proportionality based on quotas for language groups, (b) the participation of all language groups in the joint exercise of power, (c) the right of veto to defend each language group's vital interests, and (d) cultural autonomy for each language group.

a) The application of the proportionality principle requires a quota system based on the numeric strength of each language group, which is determined through declarations of either belonging or affiliation[176] to one of the language groups. There are two types of such declaration, which differ in several aspects, as summarized in the table below. An anonymous declaration is necessary to determine, statistically, the numerical strength of the language groups in order to ensure their proportional representation. Only Italian citizens who reside in South Tyrol can submit this information, every ten years, during the general census. The declaration containing identification data enables the individual to exercise certain rights, such as working in public service, applying for social housing[177] and standing as a candidate in elections. South Tyrol's residents coming from any EU

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[175] Provincial Law no. 3 of 23 April 2015 on the establishment of a Convention for the revision of the Autonomy Statute of Trentino-South Tyrol.

[176] The size of a language group is determined by summing up all the declarations of either belonging or affiliation to the respective group. To take an example, following the 2011 census, the Provincial Statistics Institute determined that the German language group consists of 314,604 persons (ASTAT 2015, 15). Out of this total number, 310,360 were persons who submitted a declaration of belonging to the German language group and 4,244 were persons who submitted a declaration of affiliation to this group. Thus, there is no difference between the two types of declaration from a statistical point of view. However, the type of declaration may have a symbolic meaning. For instance, a person from a mixed family background who feels at home in both Italian and German cultures might not like the idea of having to choose a language group to belong to. Therefore, this person declares only an affiliation to one of them.

[177] In public service and social housing, there are quotas for language groups. Allocation of public jobs and social houses is proportional to the size of the language groups. The quotas create a segmental competition meaning that for jobs allocated to language group X only candidates who have declarared they belong (or affiliate) to language group X are eligible. They cannot apply for jobs allocated to language groups Y and/or Z. Individuals who do not submit the declaration of belonging (or affiliation) to a language group cannot apply for public jobs and social housing.

member states can also fill in such declaration. To protect the personal data of the individual concerned, it is stored in a sealed envelope at the Bolzano/Bozen Court until he or she requests it. The person concerned has the right to withdraw or change their declaration, under certain conditions. All public bodies functioning in South Tyrol apply the quota system based on the size of language groups at provincial and municipal level.[178]

	Declaration of belonging (or affiliation) to a language group	
Identification data?	Anonymous	To exercise certain rights for individuals
What for?	To delineate proportional representation of language groups	Italian citizens and citizens of any other EU member state
Who may submit it?	Only Italian citizens	EU member state
When is it submitted?	Every 10 years during census	Not attached to the census; it can be withdrawn or changed
Where is it stored?	Provincial Statistics Institute	Bolzano/Bozen Court

b) According to the Autonomy Statute and provincial electoral rules, the Parliament of South Tyrol consists of 35 members elected for a mandate of five years through direct and universal suffrage based on an open-list proportional representation voting system.[179] All candidates must make public their belonging (or affiliation) to one of the three language groups. Voters can indicate up to four preferences for candidates selected from the party list for which they are voting. The number of votes that a party list receives determines the number of candidates elected in the Provincial Parliament from the respective party list. The fact that voters can indicate their order of preference within the list also makes it possible to elect candidates placed at the lower end of the party lists. The representation of the Ladin language group in the Provincial Parliament is guaranteed. If none of the Ladin candidates receives enough votes to be

elected to the Provincial Parliament through the regular procedure, one seat is assigned to the Ladin candidate who receives the highest number of votes. This Ladin candidate takes the place of his/her colleague from the party list who, according to the individual ranking of the votes, should have been the last of the elected candidates from the respective party list. The members of the Provincial Parliament elect its president and two vice-presidents, who must belong to different language groups. The Parliament has a rotating presidency: for the first two and a half years of the mandate, the president is a member of the German language group and for the subsequent period, he/she is an Italian-speaker. A member belonging to the Ladin language group may be elected president of the Provincial Parliament, subject to the approval for the respective period of the German or Italian language groups.[180]

It is worth noting that Italian citizens can only vote in South Tyrol's provincial elections after four years of permanent residence in the province.[181] The rationale for this is to impede any attempt to influence the election results by engineering demographic changes through the migration of Italians from other parts of the country. The 2013 provincial electoral law allows voting by correspondence, under several conditions, and requires a gender quota in the lists of candidates; that is, at least one third of the candidates from each party list must be women.[182]

The composition of South Tyrol's Government reflects the numerical strength of the language groups as represented in the Provincial Parliament.[183] However, one member of the executive must belong to the small Ladin language group, by derogation from the proportional rule. The Government is composed of a maximum of nine members. Males and females are represented in proportion to their number in Parliament.[184] The German-speaking Head of the Government[185] (who is

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[178] To take an example, in Bolzano/Bozen, the capital of the province, most civil servants working for the municipal administration belong to the Italian language group while the majority of civil servants working for the provincial administration belong to the German language group. The Italian language group in Bolzano/Bozen consists of 73.8% of the city's population (ASTAT 2015, 16) and, thus, a proportional number of jobs in the municipal administration is allocated to this language group. The German language group represents 69.41% of the provincial population. Therefore, it has a proportional share of civil servants in the offices of the provincial administration located in Bolzano/Bozen.
[179] Article 47 (3) AS and Provincial Law no. 5 of 8 May 2013 on the election of the Provincial Parliament in 2013 and the composition of the Provincial Government.

[180] Article 48c AS.
[181] Article 25 AS.
[182] Articles 5 and 8 of Provincial Law no. 5 of 8 May 2013 on the election of the Provincial Parliament in 2013 and the composition of the Provincial Government.
[183] Article 50 AS.
[184] Article 2 (3) of Provincial Law no. 5 of 8 May 2013 on the election of the Provincial Parliament in 2013 and the composition of the Provincial Government.
[185] The President of the Government is de facto, not de jure, a member of the German-speaking group. This is a consequence of the fact that the President is elected by the Provincial Parliament that always has a German-speaking majority.

also the President of the autonomous province of South Tyrol) has two Vice-Presidents - a German-speaker and an Italian-speaker. Local public bodies must ensure the proportional representation of language groups in the composition of their organs and guarantee the representation of the Ladins. In municipalities where a language group has at least two councillors in the local council, the respective language group has the right to be represented in the Municipal Government.[186]

c) The Autonomy Statute grants language groups the right of veto in the Provincial Parliament with a so called "alarm-bell procedure".[187] The majority of the Members of Parliament belonging to one of the language groups may trigger the mechanism when they consider that a draft law is prejudicial to the equality of rights between citizens belonging to different language groups or to the cultural characteristics of the groups themselves. In such cases, they may request a separate vote on the controversial draft law by each language group. If the request for separate voting is not accepted, or if the draft law is adopted despite the opposition of two thirds of the members of the language group that had put forward the request, the majority of the respective language group's members may challenge the law before the Constitutional Court.[188] Thus, the veto is not absolute because the disputed law remains in force until the judges decide otherwise. The Autonomy Statute lays down similar rules regarding administrative documents that are prejudicial to a language group. The Members of Provincial Parliaments and Municipal Councils may challenge such documents before the regional Court of Administrative Justice.[189]

d) The three language groups enjoy autonomy with regards all issues related to the protection and promotion of their cultural identity. According to the Autonomy Statute, the German and Italian language groups have the right to monolingual instruction in their mother tongues (from kindergarten to secondary school) by teachers who are native speakers of their respective languages. The teaching of the second language (i.e. German in Italian-language schools and Italian in German-language schools) is compulsory.[190] While kindergartens for the Ladin language group are monolingual in the mother tongue, the Ladin schools are bilingual in the sense that half of the subjects are taught in German and the other half in Italian. In addition, the members of the Ladin language group study their mother tongue as a separate subject.[191] Parents have the right to choose in which school they enrol their child, but the school administration can refuse enrolment if the child does not have a sufficient knowledge of the school's language of instruction. In such cases, the parents have the right to challenge the school's decision before the administrative court.[192]

The self-governance principle informs the structure and administration of the provincial education system. Each language group has its own school department within the provincial administration. The school department of a language group functions under the supervision of a ministry, which belongs to the respective group. Thus, each language group has its own ministry in charge of education and culture.

4. THE REFORM OF THE AUTONOMY STATUTE

The current Autonomy Statute is almost 45 years old and few would dispute the claim that South Tyrol has changed considerably since its adoption. The province witnessed an impressive economic development, the border between Italy and Austria practically disappeared through European integration, various institutionalized forms of cooperation increasingly balanced the strict separation of language groups and new minorities stemming from migration became a visible segment of society. A Third Autonomy Statute will have to address a complex set of challenges at local, regional, and European level.

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[186] *Articles 61 and 62 AS.*
[187] *Article 56 AS.*
[188] *We should consider a hypothetical example to explain this mechanism. Let us imagine that the Provincial Parliament of 35 members comprises 25 German speakers, nine Italian speakers and one Ladin speaker. Seven Italian-speaking members argue that a draft law debated in the Parliament is prejudicial to the Italian group. They request that each language group vote separately on the disputed draft law. The German language group in the Parliament announces the following result: 20 German-speakers vote for the draft law and five against it. Within the Italian language group, seven votes are against the draft law and two are in favour. Finally, the Ladin representative votes for the draft law. Summing up the votes of all 35 members of the Parliament, the draft law is approved with 23 votes in favour and 12 against, despite the opposition of more than two thirds of the Italian-speaking Members of the Parliament. In this case, the majority of the Italian language group in the Parliament (that is, at least five Italian members) may then challenge the law before the Constitutional Court.*
[189] *Article 92 AS.*

[190] *Article 19 (1) AS.*
[191] *Article 19 (2) AS.*
[192] *Article 19 (3) AS.*

In this context, the Convention for the revision of the Autonomy Statute established in 2015 aims to contribute to a comprehensive reform of South Tyrol's legal-institutional framework with the help of South Tyrol's population by means of deliberative methods. A series of discussion rounds organized from 23 January 2016 onwards all over South Tyrol will lead to the formation of a "Forum of 100" composed of residents in the province who are at least 16 years old.[193] The "Forum of 100" will regularly meet and consult the main body called the "Convention of 33", which will be appointed by the Provincial Parliament and will be composed of politicians, legal experts and stakeholders, as well as eight members of the "Forum of 100". At the end of a one-year process, the "Convention of 33" will present the consultation results to the Provincial Parliament. All working meetings of the "Forum of 100" and the "Convention of 33" are accessible to the public.[194] All citizens are encouraged to participate and contribute during the consultation process that is being facilitated by research institutes specialized in autonomy arrangements, minority rights and participatory democracy.

5. CONCLUSIONS

South Tyrol became part of Italy almost a century ago against the will of the German-speaking majority population, which suffered greatly under the Italian Fascist regime. At the end of World War II, the victorious powers ignored the South Tyroleans' plea for external self-determination, but anchored the autonomy of the province in international law. The First Autonomy Statute of 1948 failed to answer the needs and expectations of the German-speaking population and the growing tensions within the deeply divided South Tyrolean society erupted into violence.

The consociational democracy system established by the Second Autonomy Statute of 1972 provides individuals and language groups with a set of specific institutions and mechanisms that aim to ensure effective equality and participation in the public sphere through power-sharing, proportionality, mutual veto and cultural autonomy for each language group. One of the

special features of the legal-institutional design of the autonomous province is the quota system based on declarations of belonging (or affiliation) to a language group that guarantees proportional access to resources. Thus, no language group can claim discrimination. Moreover, the quota system is an essential element of the power-sharing mechanism because the provincial and local governments must reflect the numerical strength of the groups in provincially and locally elected bodies respectively.

Societal changes and challenges are fuelling a growing debate over the need for a Third Autonomy Statute. In 2015, South Tyrolean authorities started a process that aims to reform the legal-institutional framework of the autonomous province by means of deliberative methods.

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[193] *The members of "Forum of 100" will be selected by means of a stratified random sampling. The composition of this body must reflect a balanced representation of language groups (i.e. Italian, German, Ladin) and genders.*
[194] *Intermediate and final results are published in German, Italian and Ladin at http://www.convenzione. bz.it/.*

AOSTA VALLEY

Roberto Louvin

**THE AOSTA VALLEY: SELF-DEFINITION,
SELF-DETERMINATION AND SAFEGUARDS
FOR A NEGOTIATED REGIME
OF CONSTITUTIONAL AUTONOMY**

*The Italian policy of neutralising the danger of any internationalisation
of the Valle d'Aosta question has rendered it a purely internal state matter
in the eyes of its governments and of a large proportion of public opinion,
which for some, seems to legitimise a potential challenge to the very
existence of this Autonomous Region. After the surge in public opinion
witnessed in the Aosta Valley at the end of the Second World War, questions
regarding the possible exercise of an external right to self-determination in
the form of secession have never returned to the regional political agenda.
Local political energies have mainly been directed to the practical exercise
of regional autonomy through activities of the Regional Council and
Government and of representatives of the Valley in the Italian Parliament.*

1. THE ROOTS OF SELF-GOVERNANCE

Today, the Aosta Valley is an Autonomous Region, officially bilingual
(Italian and French), within the Italian Republic, where it enjoys a
special status under constitutional law no. 4 of February 26th, 1948,
approved by the Italian Constituent Assembly on January 30th, 1948.
This is the institutional form of this intermountain area of barely 3263
km², inhabited by a community of around 130,000 whose cultural
and political identity has emerged gradually over the centuries: a
development, which has always been marked by the peculiarities of its
mountainous area that stands astride the Po and Rhone valleys.

This political entity, situated in a very particular geopolitical position at
the crossroads of Italy, France and Switzerland, gradually developed in the
guise of a bilateral relationship that, from the Charter granted by Count
Thomas I of Savoy in 1191, was governed on the basis of 'franchises' giving
firstly the inhabitants of Aosta, and subsequently the whole region, the
sovereign's protection and his agreement to refrain from imposing any
taille or tax without the prior consent of the population, which undertook
in return to give the sovereign its military and financial support.

The unusual legal status of the Aosta Valley allowed the formation of
representative institutions in a dialectical relationship with the county
administration (the bailiff), and in particular with the Assembly of the
Estates General and the *Conseil des Commis*, a body exercising quasi-
sovereign powers between the 16th and 18th centuries. During this period
the Aosta Valley, a land traditionally under customary law, was governed
by its own legal regulation codified in the *Coutumier valdôtain* of 1588.

The standardisation of legal bases and the administrative centralisation
of the States of Savoy, brought about the decline of this centuries-old
autonomy. The foundation in 1860 of the Italian State saw the Aosta Valley
stripped of any kind of self-governance and separated after nine centuries
from Savoy, now annexed to France.

Despite the stout resistance of its local religious and civil elites, the Aosta
Valley sank into a dependent and entirely subordinated administrative
condition within the Kingdom of Italy, and during the 19th and 20th
centuries, it suffered the impact of a penetrating linguistic harmoni-
sation, accompanied later by a strong-arm migration policy on the part

of the Fascist regime, which enforced brutal politics of accelerated Italianisation.

The Aosta Valley finally regained its political existence in 1945, after almost two centuries in the wilderness, thanks to the combined effect of organised local forces reclaiming the right to self-determination and the shock of external forces (French, Italian and Allied) pitted against each other in a secret conflict on the grand geostrategic scale for the positioning of the French-Italian border of the Alps.

2. THE ACTION OF THE REGIONAL MOVEMENT IN A COMPLEX FIELD OF FORCES

From the 1920s onwards, the modern and democratic demand for the right to regional self-governance revived and spread underground under a fascist government that was equally hostile to local linguistic particularism and to the recognition of local political autonomy. The protagonists of this revival, coming together in the *Jeune Vallée d'Aoste* movement founded by the Abbé Joseph Marie Trier and by the notary Emile Chanoux, the future martyr of the resistance, had a strong influence on the political claims advanced by the armed resistance against the regime between 1943 and 1945 and in the events of the 'annexation' period of 1945-1946.

The main figures behind this political action imagined a very broad political, economic and cultural autonomy for the post-war future of the Aosta Valley, as is clear in the Declaration of Representatives of the Alpine Valleys signed in Chivasso in 1943. The unpredictable situation that developed during 1944, however, opened up a very wide range of options, which were pursued in turn, as a result of the shifting national and international external context: administrative autonomy within the Italian State, a fully autonomous system, independence and annexation to France.

During the period 1944-1946, these political demands played out within a highly complex field of forces.

The Italian and French secret services exercised an intense influence on broad swathes of the population, each in the service of their opposing interests: the preservation of Italian national sovereignty along this sensitive part of the alpine frontier, and the annexation of Aosta's people to France in virtue of their centuries-old francophone identity. Demands for the right to self-determination by the people of the Aosta Valley were apparently encouraged and 'inspired' by the French, whose partial military occupation of the regional territory came to an end in summer 1945 under the insistent pressure of Anglo-American forces, leaving the task of monitoring the restoration of legality in the region to the British alone.

Thanks to the highly effective "*Mission Mont Blanc*" campaign by the French secret services, pro-French sympathies rapidly made themselves known in massive and enthusiastic fashion. A very significant proportion of the population and its elite gave it their whole-hearted support, as is shown in widely documented instances, such as the demand for a plebiscite signed by nearly 18,000 heads of family (nearly half the population of the Valle at the time); the appeal of the *Comité d'action valdôtain* to the United Nations;[195] or the huge popular demonstrations of May 18th, 1945, and March 26th, 1946, in support of the plebiscite and calling for an international guarantee.

The prospect of annexation encouraged by France for primarily tactical reasons, but without any real will to achieve this end, faded definitively in the first months of 1946. By this time, the complexity of the international implications had prepared both sides to normalise relations between France and Italy.

Supporters of autonomy therefore turned their attention to a demand for an 'international guarantee' of the autonomy provisionally recognised by Italy,[196] while on the Italian side, efforts were made to prevent the question of the Aosta Valley from acquiring an international dimension. Within the provisional autonomous institutions, thanks to the strong pressure of the Italian authorities via the first President of the Council

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[195] Published by Le Monde on 13 February 1946: "In the name of the people of the Valle d'Aosta, we call on you to take note that the Valle d'Aosta demands its independence or at least its full autonomy guaranteed by the United Nations. We urge you to conduct an inquiry to establish the sincere wishes of the people of the Valle d'Aosta. We are counting on the UN to obtain the protection and safeguard of our rights as a foreign minority without assistance from any quarter".

[196] By the legislative decree no. 545 of 13 September 1945.

of the Valley, the historian Federico Chabod, the motion to formalise the demand for this guarantee was narrowly defeated on March 7th, 1946.

Consequently, negotiations over the definitive form of regional autonomy were definitively and exclusively conducted within a bilateral relationship between the State and local institutions, leading to the adoption of the constitutional law no. 4 of February 26th, 1948 (special status for the Aosta Valley), which finally sealed self-governing status for the Valley, alongside Sicily and Sardinia, and the Trentino-Alto Adige region with its substantial German-speaking minority[197] in the autonomous province of Bolzano. The demand for 'external' self-determination was henceforth transformed into a consistent practice of 'internal' self-determination, formalised in the Constitution and allowing the people of the Aosta Valley as a whole to take decisions as to their own institutions and to freely choose their representatives.

3. HARD-WON OR GRANTED AUTONOMY?

The genesis of autonomy in the Aosta Valley lends itself to two different readings. Internal Italian law initially recognised that the adoption of a special regime - provisionally described as an 'autonomous region', the first in the history of the Italian State - had occurred "in consideration of its very particular geographical, economic and linguistic conditions".[198]

The original nature of this concession was qualified by the constitutional authority three years later. The Special Status 1948[199] very clearly emphasises the internal and secondary nature of this self-governance, remarking that the Constitution of the Autonomous Region, endowed with legal personality, belonged "within the political unity of the one and indivisible Italian Republic, based on the principles of the Constitution and in accordance with the present Status".[200] Crucial demands, such as the military neutralisation of regional territory, were buried, while others, such as the duty-free zone, were formally granted, but would remain without practical effect.[201]

The events that led to the promulgation of these two documents broadly contradicts the 'unilateralist' interpretation of their nature, though this is generally accepted in Italian doctrine: these supposed 'concessions' were in fact the result of a forced choice by the national authorities, and their content, despite the form that they assumed, was fiercely negotiated. The Special Status was without question the result of a political compromise accepted on both sides.

The concerted nature of regional autonomy has been evident in several ways during the past seventy years of self-governance, and this remains one of the dominant characteristics of the special regime that the Aosta Valley currently enjoys, not least in terms of its financial status and the adoption of laws in application of the Status.

4. DEPRIVED OF THE RIGHT OF
EXTERNAL SELF-DETERMINATION

Meanwhile, the resolution of the disputes of 1944-1946 and the channelling of the Aosta Valley's demands into an effective regime of legislative, financial, administrative and linguistic self-governance with generally beneficial results has limited the right to self-determination to purely politically grounds, as a sort of advantage to be preserved for future and uncertain periods. One proof of this is the inclusion of the principle in the Constitution by the main and oldest political movement, the Valdostan Union, which "undertakes to achieve the political sovereignty of the Aosta Valley by democratic means to support the aspiration of the people for self-governance within a Europe of Peoples",[202] and by other regional political forces, such as ALPE. Today ALPE acknowledges "the individual and collective right to self-determination, as the capacity for autonomous and independent choice, to be exercised responsibly by the instruments of democracy" as its main principle.[203] Movements that strongly support independence remain very marginal, and have no representation in elected bodies.

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[197] The region of Friuli-Venezia Giulia was added to these four original special regions in 1963.
[198] Legislative decree no. 545/1945, Article 1.
[199] Constitution law no. 4 of 26 February 1948.

[200] Special Status, Article 1.
[201] Special Status, Article 14: "The territory of the Valle d'Aosta is place beyond the customs border and is a free zone".
[202] Constitution of the Valdostan Union, Article 2.

Regional institutions have promoted numerous initiatives aiming to have this principle acknowledged, including projects for updating the Autonomous Status, but none of these projects has so far resulted in any act with legal force.

In their overall strategy, the regional institutions have often insisted on the importance of a *de facto* strengthening of the recognition of the inherent political rights of the Region, not least in pursuing a crypto-policy in international relations. The most striking successes have been in its relationship with francophone countries; links that were originally political, but which have subsequently extended into inter-parliamentary and inter-governmental relations, with automatic presence in the Assemblée Parlementaire de la Francophonie (APF) and with the participation of the President of the Region with observer status at the Conference of Francophone Heads of State and Government.[204]

Again, the changing terminology used in regional political life indicates an increasingly less frequent use of the concepts of 'people', 'ethnicity' or 'language minority', all giving way to the more neutral notion of a 'Valdostan community'. At the strictly political level, the tension and opposition of the regional population to the national political bodies has at times alternated with prolonged phases of collaboration with the parties in government in Italy.

After the change in public opinion in the Aosta Valley at the end of the Second World War, questions regarding the possible exercise of an external right to self-determination in the form of secession have never returned to the regional political agenda. Local political energies have mainly been directed to the practical exercise of regional autonomy via the Regional Council, Regional Government and representatives of the Valley in the Italian Parliament, all the more so since the construction of Europe has since brought the interests of France and Italy closer together by removing much of the substance from their rivalry.

5. NEUTRALISATION AND NEW CHALLENGES

The Italian policy of neutralising any danger of internationalisation of the Aosta Valley question has rendered it a purely internal State matter in the eyes of its governments and of a large proportion of public opinion, which for some seems to legitimise a potential challenge to the very existence of this Autonomous Region.

The establishment of regions with ordinary status throughout Italian territory in 1970 has gradually weakened the original motivations for the special status, the initial reasons for which have no current relevance. Some legal experts now argue that the reasons, which led to the recognition of the particular nature of regional institutions no longer exist, and that it is time to definitively remove any political significance from this form of self-governance, allowing it to subsist only insofar as it proves sufficiently successful in economic terms.

The first movement towards abolishing the special autonomous status of the Aosta Valley began in 1992, in the wake of a study carried out by the Fondazione Giovanni Agnelli in Turin.[205] The gist of this study can be summarised in the theory that only regions of greater demographic size were really 'viable'. Smaller regions should therefore merge into larger macro-regions.

This ideological assault was repudiated in the following years during which Italy experienced a federalist craze, led by the Lega Nord, but also widely shared in other parts of the political chessboard. The constitutional reform approved in 2001 confirmed and even strengthened the nature and extent of the powers of the Autonomous Region.

The centralising ideology, resting on a sort of institutional Darwinism, has been resurrected since the start of the financial crisis and the widespread cycle of delegitimisation of political institutions and the party system that has engulfed Italy since 2010.

In the media, the Italian scientific community and some political milieu,

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[203] Constitution of ALPE, article 2.
[204] For example, within the Conférence des Minorités ethniques de langue française, subsequently known as the Conférence des Peuples de langue française.

[205] Fondazione Giovanni Agnelli, Nuove regioni e riforma dello stato, atti del seminario Torino, 3-4 December 1992.

the idea of 'overcoming' small regions to the benefit of larger and more competitive political units has rapidly gained ground. The decline in the use of French by the local population, which is due to multiple factors, is not offset as a justification for autonomy by the morphology, climate, and the perceptions of identity of the Region as a whole.

While the achievements of the institutional model, politically, economically, socially and in terms of cultural pacification are remarkable overall (the Region was second among Italian regions in the classification by GDP per inhabitant in 2013), the Aosta Valley is currently subjected to constant media berating based on the idea that the special autonomous regions are unfairly privileged by their asymmetric autonomy, particularly financially, compared with the rest of the country.

The entirely conciliatory and collaborative attitude of the people of the Valley has not, therefore, sheltered them entirely from recurrent attempts to strip them of their Special Status.

Proposals are currently multiplying, even in the form of parliamentary initiatives for draft constitutional laws with a view to merge a number of existing regions,[206] along the same lines as the reform introduced in France in 2015. The national government does not appear unmoved by this solution.[207] If this should happen, the little autonomous alpine region would be fatally submerged in a macro-regional unit with a population of almost six million.

It is still too soon to know whether these attempts will have any practical outcome. There is no doubt that the Region's gradual abandonment of the staunch attitude it maintained during the last century, along with diminishing cultural conflict and a perceptible decline in linguistic distinctiveness seems to have encouraged a resurgence of revisionist attitudes to the right of the Valdostan community to enjoy a special autonomous status. So far, this does not seem to affect the German-speaking minority in the Südtirol, which benefits from an international agreement on the basis of the 1946 Gasperi-Gruber agreement.

If such were case, the shape of the regional State – for which Italy is a blueprint – would be teetering on the brink of disaster; the prospect of democratic autonomist acquisition of a self-governing regime would be in danger of tipping into oblivion at any moment. Constitutional recognition would then inevitably – and regrettably – be maintained by a continuous climate of tension and protest by minorities, the institutional survival of which could be under constant threat.

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[206] For example, the draft constitutional law A.C. 2749, "Modifica dell'articolo 131 della Costituzione, concernente la determinazione delle regioni italiane".

[207] As can be seen from its support for the "Ranucci" agenda through which it undertook, on 8 October 2015, to "consider whether it is appropriate to propose [a reduction], even through a special procedure for revising the Constitution, in the number of Regions".

VENETO

Gennaro Ferraiuolo

THE LEGAL FRAMEWORK AND POLITICAL DYNAMICS OF VENETO'S REGIONALISM

The Republic of Venice arose around the maritime power of the city of Venice between the ninth and the eleventh centuries. At the end of a slow decline, the Serenissima fell in 1797. After the Congress of Vienna, Veneto remained subject to Austria until its annexation into the Kingdom of Italy in 1866. Veneto is today one of the regions that comprise the Italian regional structure: its legal bases are the Title V of Part II of the Italian Constitution, as amended in 1999 and 2001, and the 2012 Regional Statute. Among its principles, the Statute establishes that the self-government of the people of Veneto is implemented in forms that correspond to the characteristics and traditions of its history, and that the region protects and promotes the historical identity of its people and civilization. These principles are developed at a legislative level and also with reference to the linguistic dimension. However, the Veneto language does not belong to the protected historical linguistic minorities (within the implementation of art. 6 IC – of Law no. 482/1999).

Before the 1980s, there was a first stage (1948-1980) of perfect symmetry between the regional and the State party systems. This symmetry faced a moment of (limited) rupture in the period 1980-1987, when the Liga Veneta started taking part in elections. A significant change occurred in the following years, because of the implosion of the party system of the so-called First Republic. Several territorial movements in the North (which includes the Liga Veneta) became part of a new political force, the Lega Nord. The party has since 2000 always formed part of the regional Government within a centre-right coalition. Despite the ambiguity of the Lega's political strategy, there is no doubt that the establishment of this party has opened up strong feelings in the Northern regions against the central Government. These complaints have ranged from demands for the redefinition of the autonomy model to more radical secessionist threats. Recently, in 2012, the Regional Council of Veneto approved Resolution no. 44, entitled 'The right of the people of Veneto to the complete implementation of their self-determination'. Subsequently, the platform 'Plebiscito.eu' organized an online consultation held between March 16th and 21st, 2014. Anyone could cast a vote, if they wanted Veneto to become an independent and sovereign federal republic. Yet, the mode of organization of the consultation raised a number of doubts about the significance of the event, as well as the reliability of the data divulged by the event's promoters. In June 2014, the Council approved two laws (no. 15 and no.16) that set out several consultative referenda, including a referendum on independence. The two laws were declared unconstitutional in several sections by the Constitutional Court. The only referendum allowed to go ahead has been the one on further varieties and conditions of autonomy, compatible with Art. 116 IC.

1. BRIEF HISTORY

The Republic of Venice (*La Serenissima*) arose around the maritime power of the city of Venice between the ninth and the eleventh centuries. The greatest period of expansion occurred between the thirteenth and the sixteenth centuries, when it extended its control over different territories of the Adriatic and the Aegean Sea (*Stato da Mar*), and over the hinterland of the northeast of the Italian peninsula, including large part of the current Veneto, Friuli and Lombardia (*Stato da Tera*).[208]

After a slow decline, linked to the intensification of Ottoman pressure,

the *Serenissima* fell in 1797. The subsequent Peace of Campoformio established the subjugation of Venice by the Austrians. Subsequently, Napoleon's victories over the Austrians would cause the Venetian lands to merge (via the Treaty of Pressburg, 1805) with the former Cisalpine Republic, renamed the Kingdom of Italy, which was a client state controlled by the French. At the Congress of Vienna (1814-1815), Venice was among the few cases that were not restored back to the situation that had existed prior to 1789 following the principle of legitimacy. It was handed back to the Austrians and administered as part of the *Regno Lombardo-Veneto*. In the pre-unification period in Italy, the riots of March 1848 led to a brief restoration of the Republic of Venice. By July, however, the Veneto Region was back under the Austrians again, with the exception of the city of Venice, which would fall a year later (August 26th, 1849). Veneto would then remain subject to Austria until its final annexation to the new Italian State in 1866, as a result of the Peace of Vienna and the subsequent plebiscite, which is still criticized today by certain *venetisti* movements.[209]

2. VENETO AS A REGION OF THE ITALIAN REPUBLIC: ITS INSTITUTIONAL STRUCTURE

Today, Veneto is one of the fifteen ordinary regions that comprise, together with the five special regions, the regional structure of Italy. Fifth in population (nearly five million inhabitants), its legal basis is Heading V of Part II of the Italian Constitution, as amended in 1999 and 2001.[210]

These constitutional reforms increased regional autonomy and redefined the position of the regional statute in the legal system. That act has since

been approved by the legislature of the region via a specific procedure.[211] Among the main aspects regulated were the form of government and the holding of regional referenda.

Veneto was one of the last Italian regions to approve a new statute in 2012,[212] thirteen years after the 1999 reform.[213] Almost at the same time, the regional electoral law (EL)[214] was approved. The Statute and the electoral law are the acts that now define the essential institutional shape of the region.

The new autonomy arrangement has been structured into regions, which are mostly homogeneous. Veneto is no exception to this trend; both the form of government and the electoral formula reflect the solutions adopted by the other regions, which derive from the transitional rules adopted in 1999.

Power revolves around the figure of the President of the Giunta who is elected directly and simultaneously to the legislature (*Consiglio Regionale*) and has the power to appoint and dismiss the other members of the executive (*Giunta Regionale*).[215]

For the *Consiglio Regionale* elections, there is a 'majority-assuring' formula that assigns at least 55% of the seats to the lists linked to the most voted candidate for the Presidency (EL, Article 22, Para. 4, h). The President of the Giunta therefore has a solid majority in the *Consiglio Regionale* (at least after the elections). His/her position is further enhanced by a provision, which states that in the event of a vote of no confidence, resignation, death or permanent incapacity that leads to the end of his/her term in office also entails the automatic dissolution of the *Consiglio Regionale*.[216] It is a system, therefore, that combines direct elections and relationships of trust, presidentialism and parliamentarianism, always to the benefit of the chief executive.

[208] *For more on the passage from City-State to Region-State, see G. BORELLI, Momenti di un processo di lungo periodo. Venezia e la Terraferma veneta in età moderna: un rapporto dialettico, in P. Cavaleri – E Gianfrancesco (eds.), Lineamenti di Diritto costituzionale della Regione del Veneto, Giappichelli, Torino, 2013, p. 3 ff. and the bibliography cited at pp. 7-8.*

[209] *In the original text of the council resolution no. 44 of 2012 (see below, para. 6), modified during the approval, the plebiscite of 1866 was considered a fraudulent action implemented by the Kingdom of Italy; these positions use as their reference text E. BEGGIATO, 1866: la grande truffa. Il plebiscito di annessione del Veneto all'Italia, Editoria Universitaria, Venezia, 2007; against, see C. GHISALBERTI, Storia costituzionale d'Italia, Laterza, Roma-Bari, 2006, p. 127-128; recently, D. TRABUCCO, La Regione del Veneto tra referendum per l'indipendenza e richiesta di maggiori forme di autonomia, in www.amministrazioneincammino.luiss.it, 31.5.2014, p. 15 ff. In general, on the participation of the population of Veneto in the Risorgimento (unification process), G. QUARANTOTTI, L'opinione pubblica nel Veneto di fronte al problema unitario dal 1859 al 1866, in Movimento unitario nelle regioni d'Italia, Laterza, Bari, 1963; A.M. ALBERTON, Aspettando Garibaldi: il Veneto tra il 1859 e il 1866, in Venetica, no. 2, 2010, p. 15 ff.*

[210] *Constitutional laws no. 1 of 1999 and no. 3 of 2001.*

[211] *Before 1999, the statute was approved by State law on the basis of a proposal (voted for by an absolute majority) of the RC.*

[212] *Regional Statute law no. 1 of April 12, 2012.*

[213] *See P. CAVALERI – I. CARLOTTO, Dall'approvazione dello Statuto del 1971 al suo lungo processo di revisione, in Lineamenti, cit., p. 19 ff.*

[214] *Regional law no. 5 January 16th, 2012.*

[215] *Art. 51, para. 1 and 3 RS.*

3. THE PROTECTION OF A CULTURAL AND HISTORICAL IDENTITY

Among its principles, the Regional Statute establishes in its Article 2 that the self-government of the people of Veneto must be implemented in forms that correspond to the characteristics and traditions of its history, and that the region protects and promotes the historical identity of its people and civilization.[217]

These principles are developed, at a legislative level, also with reference to the linguistic dimension. The most significant act in this regard is Law no. 8/2007,[218] which establishes in its Article 5, the annual celebration of the people of Veneto on the day its founding (March 25th) and promotes the language of Veneto.[219]

However, this language does not belong to the protected historical linguistic minorities (within the scope of Article 6 of the Italian Constitution, State law no. 482/1999). Minority languages with special protection have the possibility of their use in schools and public offices. As the Constitutional Court has pointed out, the regional legislature can introduce tools for supporting and protecting regional languages or local languages as part of the cultural heritage of a given territory. However, it cannot extend to them tools reserved for historical linguistic minorities, whose identification is an exclusive task of the State Parliament.[220]

4. THE PARTY SYSTEM

In classifying a State system as plurinational, the key element that must be present is the party system. The asymmetry between the state

and regional dimensions, along with the capacity of peripheral parties to affect the State Government (in additional to the regional one) are important indicators of the coexistence of different national realities within a specific political context.[221] From this perspective, it is possible to distinguish between systems in which autonomy is considered only in terms of the efficiency of public powers and of improved protection of individual rights ('territorial federalism') or systems in which the complex idea of a nation linked to the notion of self-determination emerges.

The ordinary Italian regions only started to operate effectively in the 1970s, event even though they were established by the 1948 Constitution. In Veneto, there was a first stage (1948-1980) of perfect symmetry between the regional and State party systems. Veneto was, indeed, one of the largest contributor of votes for the main Italian party, *Democrazia Cristiana*. From 1948 to 1994, this party had control of the State Government, and in the region, on several occasions, it won an absolute majority.[222]

This perfect symmetry faced a moment of (limited) rupture in the period 1980-1987, when the *Liga Veneta* entered the electoral affray.[223] After only polling 0.47% of the votes (without winning any seats) in the regional elections of 1980, in the national elections of 1983, it obtained two seats in Parliament (one in each Chamber) with about 4% of the votes in the region. This result was not repeated in 1987 as it only won approximately 3% of the votes in the region and no member was elected. In the regional elections of 1985, its 3.73% of the vote gave *Liga Veneta* two councillors.

A significant change occurred in the following years, because of the implosion of the party system of the so-called 'First Republic', after the judicial events of *Tangentopoli*. Several territorial movements in the North (*Liga Veneta* among them) became part of a new political force, the

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[216] *See S. TROILO, Il Presidente della Regione e la Giunta regionale nella forma di governo del Veneto, in Lineamenti, cit., p. 115 ff.*

[217] *This provision strengthens a principle that was established already in the old statute (l. no. 340 of May 22nd, 1971, art. 2).*

[218] *Cf. also Regional Laws no. 40/1974 and no. 73/1994.*

[219] *Art. 1 of Regional Law no. 8/2007 defines as 'veneto' or 'lingua veneta' the languages spoken in the territory of Veneto and in places that have maintained the same cultural matrix. For an analysis of the topic from a linguistic and philological perspective, see M.A. CORTELLAZZO – M. ISNENGHI – E. PACE – L. RENZI, Il ritorno di San Marco. Retroterra, ideologia, possibilità politiche della Liga Veneta, in Venetica, no. 2, 1984, p. 78-85.*

[220] *See the decisions in no. 159/2009, 170/2010 and 88/2011.*

[221] *See E. FOSSAS ESPADALER – F. REQUEJO, Introdución, in E. Fossas – F. Requejo (eds.), Asimetría federal y Estado plurinacional. El debate sobre la acomodació de la diversidad en Canadá, Bélgica y España, Trotta, Madrid, 1999, p. 11; M. CAMINAL, Nacionalisme i partits nacionals a Catalunya, Empúries, Barcelona, 1998, p. 62 ff.*

[222] *See I. DIAMANTI, Mappe dell'Italia politica, Il Mulino, Bologna, 2009, p. 31 ff.*

[223] *On the Liga Veneta see M.A. CORTELLAZZO – M. ISNENGHI – E. PACE – L. RENZI., Il ritorno, cit., p. 78 ff.*

Lega Nord.[224] In Veneto, it obtained 5.91% (3 seats) in the 1990 regional elections. After the 1992 parliamentary elections, *Lega Nord* became a major player within Italian national and regional politics. Since 2000, the party has always been a part of the regional government within a centre-right coalition: firstly supporting President Galan (*Forza Italia*: 2000-2005 and 2005-2010), and later, supporting the chief executive Luca Zaia (2010-2015 and the current legislature).

The most recent political reality of Veneto is strictly connected with *Lega Nord*. This party, however, presents some peculiarities. It is important to highlight that, even though it shares its original matrix with *Liga Veneta*, it tends to be a macro-regional party. As a matter of fact, its territorial program is linked in some cases to specific regions (Veneto, Lombardia) and other times to a northern area without precise cultural or geographical borders (*Padania*, which, since 1997, has appeared in the name of the party).

In addition, with regards to its political strategy, *Lega Nord* seems different from traditional ethno-regionalist parties.[225] In European and national elections, it presents lists in every Italian region. Furthermore, in relation to the State dimension, it is not exactly a 'pressure' group (which is usually the case with peripheral nationalisms),[226] but rather a 'government' party. Therefore, the general impression is that the *Lega Nord* has become an extreme-right wing party (with xenophobic and racist connotations) that is involved directly, and mainly, in the party dynamics of the Italian State. After 1994, it has presented itself in coalition with state-wide parties in every parliamentary election (except in 1996). In 1994 and 2001, it did not have an autonomous list, but was a part of broader coalitions, such as *Polo delle libertà* and *Casa delle libertà*, together with strongly centralist parties. In the period

1994-2011, it was the party that lasted longest in State governments and had its own Ministers.

Since the 1990s, other minor parties and movements related specifically to Veneto have emerged. Some of them have competed in (national or regional) elections, sometimes within coalitions, other times on their own. Their electoral results have been mostly modest. In 2015, there was a proliferation, but also a fragmentation of such groups. They obtained about 6% of the votes,[228] and together with *Lega Nord* 17.8%.[227]

5. REGIONAL REFERENDA AND REFORMS OF TERRITORIAL AUTONOMY: THE 1990S

Despite the ambiguity of *Lega Nord*'s strategy, there is no doubt that the establishment of this party has opened up strong feelings in the Northern regions against the central Government. These complaints have ranged from demands for the redefinition of the autonomy model to more radical secessionist threats. From this point of view, the reforms of 1999 and 2001 may also be interpreted as a response to these tensions with several initiatives in Veneto.

Leaving aside some of the events that led to criminal proceedings, at the institutional level, there have been several attempts at popular consultations on the issue of autonomy. The most important constitutional case law relating to regional consultative referenda developed precisely from proposals drawn up by this region.

With the legislative resolution of March 5th, 1992, the region held a referendum on the approval of a bill aimed at modifying the Italian regional model. The legislative resolution of October 8th, 1998, gave impetus to another referendum, this time on the presentation of a proposal for a constitutional law, in order to offer Veneto further forms and conditions of autonomy. Both acts were declared unconstitutional by the Constitutional Court on the basis that the process of constitutional revision is unalterable and does not allow

[224] *On the Lega, see I. DIAMANTI, Il male del Nord. Lega, localismo, secessione, Donzelli, Roma, 1996; R. BIORCIO, La Padania promessa. La storia, le idee e la logica d'azione della Lega Nord, Il Saggiatore, Milano, 1997; ID., La rivincita del Nord. La Lega dalla contestazione al Governo, Laterza, Roma-Bari, 2010.*
[225] *See F. TRONCONI, I partiti etnoregionalisti. La politica dell'identità territoriale in Europa occidentale, Il Mulino, Bologna, 2009.*
[226] *See J. DE ESTEBAN – L. LÓPEZ GUERRA, Los partidos políticos en la España actual, Planeta, Barcelona, 1982, p. 172 ff.; S. VENTURA, Asimmetrie, competizione partitica e dinamiche centrifughe nelle nuove forme di Stato decentrate, in S. Ventura (ed.), Da Stato unitario a Stato federale. Territorializzazione della politica, devoluzione e adattamento istituzionale in Europa, Il Mulino, Bologna, 2008, pp. 199-200; F. TRONCONI, I partiti, cit., p. 58.*

[227] *In addition to the votes of the Lega, it is important to consider the result of the personal list 'Zaia', presented in support of the Lega's candidate for the presidency: achieving 23.1%, it was the most voted list.*
[228] *Precisely: Indipendenza Noi Veneto (2.7%); Progetto Veneto autonomo (0.3%); Unione Nord Est (0.6%); Veneto Stato – Razza Piave (0.2%); Indipendenza Veneta (2.5%).*

for regional referenda before the official initiative phase.[229]

The reform of 2001 had the effect of cooling territorial tensions. From then on, Veneto has focused primarily on the new text of Article 116 of the Italian Constitution, which allows regions (through State law adopted in agreement with the region) particular forms and conditions of autonomy.[230]

6. RECENT EVENTS: RESOLUTION NO. 44/2012, THE ONLINE PLEBISCITE AND THE 2014 LAWS ON REFERENDA

The path of Article 116 of the Italian Constitution has not yet led to any concrete outcome. Nevertheless, the idea of a referendum has been taken into account several times recently, in some cases with explicit references to the notion of self-determination.

On November 28th, 2012, the *Consiglio Regionale* approved (Decision no. 145) Resolution no. 44, entitled "The right of the people of Veneto to the complete implementation of their self-determination". This was a document drawn up outside the *Consiglio Regionale* by the *Indipendenza Veneta* movement,[231] presented by some councillors and approved by the assembly as a political act of no legislative value.[232] After an articulate introduction, the resolution affirms the right of the people of Veneto to a "democratic and direct referendum on the free expression of the right to self-determination". On the basis of this premise, it asks the presidents of the *Consiglio Regionale* and of the *Giunta* to urgently start institutional relations with all the bodies of the EU and UN, in order to guarantee the referendum.

Subsequently, the platform 'Plebiscito.eu' organized an online consultation, which was held between the 16th and the 21st March, 2014. During that period, anyone could cast a vote, if they wanted Veneto to become an independent and sovereign federal republic. These are the results (according to the event's promoters): a total of 2,360,235 votes cast, 63.2% of those with a right to vote, of which 2,102,969 (89% of voters) were in favour of independence.[233] However, the way in which the consultation was organized raises several doubts as to the true substance of the event and the reliability of the data reported.[234]

Since the consultation, other institutional initiatives have taken place. In June 2014, the *Consiglio Regionale* approved two laws that paved the way to consultative referenda. Regional Law no. 16/2014, explicitly citing Resolution no. 44 (Article 3.3), announced a referendum on the independence of Veneto.[235] On the other hand, Regional Law no. 15/2014, asked the President of the *Giunta* to start negotiations with the central Government in order to define the substance of a referendum (Article 1). If negotiations are to fail, the law specifies that the President must announce a referendum with five questions on the autonomy structure of the region.[236]

The two laws were distanced from suggestions or implications made in previous cases and left several aspects unclear. Firstly, the relationship between the referenda was not regulated in any way. It seems that the more crucial one on independence is to be held before knowing the outcome of the negotiations and of the consultations specified in Law no. 15. In case of a positive outcome of the consultations, the law imposes a

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[229] *See decisions no. 470 of 1992 and no. 496 of 2000.*

[230] *See M. GRECO, Procedure di attivazione dell'art. 116, terzo comma, della Costituzione. L'esperienza della regione Veneto, in www.federalismi.it, no. 3, 2008.*

[231] *The movement presented its own list at the 2013 national and at the 2015 regional elections, obtaining respectively 1.09% and 2.5% of the votes.*

[232] *The resolution was approved by 29 councilors (out of 60); 2 voted against; 5 abstained; 24 did not take part in the vote.*

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[233] *This data can be viewed at the site www.plebiscito.eu.*

[234] *See Numeri falsi, i counter confermano: «Il 10 per cento dei voti dal Cile», in Corriere del Veneto, 27.3.2014; Voti gonfiati al referendum veneto. "Un elettore su 10 collegato dal Cile", in La Stampa, 28.3.2014; I. DIAMANTI, L'indipendenza del Veneto non è uno scherzo. Bocciato lo Stato centrale, no alla politica locale, in La Repubblica, 24.3.2014; F. TURATO, Indipendenza del Veneto: la giusta distanza tra realtà e immaginazione, in www.limesonline.com, 27.3.2014.*

[235] *The question (Art. 1, Oara. 1, Regional Law 16/2014) was: 'Do you want Veneto to become an independent and sovereign republic? YES or NO'*

[236] *The questions specified in Art. 2 of Regional Law 15/2014 were: 1) Do you want additional forms and conditions of autonomy to be attributed to Veneto? 2) Do you want at least eighty percent of taxes paid annually by the citizens of Veneto to the central administration to be used within the region for goods and services? 3) Do you want the region to maintain at least eighty percent of the taxes collected in the region? 4) Do you want the revenue from sources of financing of the Region not to be subject to restrictions on use? 5) Would you like the Veneto Region to become a special region?*

[237] *Art 2, Para. 2 of Regional Law 15/2014 asked the PG to propose a program of negotiations with the State to the RC and to present a bill aimed at increasing regional autonomy.*

series of obligations on the President of the *Giunta*, altering the declared consultative value of the referenda.[237]

At the political level there were also several ambiguous aspects. In particular, Law 16/2014 was approved in a context of party fragmentation. Among the many groups that supported the initiative,[238] in some cases with serious internal divisions, only three were lists that had directly participated in regional elections in 2010, and were therefore traditional territorial parties. In addition, some of them (the NCD, PDL and FI) are State-wide parties, which do not seem to engage in the debate on delicate issues, such as support for a self-determination referendum. In this scenario, it is at least strange that a decisive contribution to the separatist aspirations of the people of Veneto has been provided by two groups that had the words *Forza Italia* in their name.[239]

In any case, several sections of the two laws were declared unconstitutional by the Constitutional Court via Decision no. 118 of 2015.[240] After this decision, the region discontinued the funding for a referenda (Art. incle 4 of Regional Law 16/2014) and ordered the restitution of the money previously deposited by citizens.[241]

The only question saved by the Constitutional Court was the one on further forms and conditions of autonomy (Article 2, Para. 1, Let. a, of Regional Law 15/2014). For the Court, this question was compatible with Article 116 of the Italian Constitution. Therefore, this is the legal tool through which Veneto's autonomy claim could find its way back into the political spotlight.

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[238] *These were Lega, Futuro Popolare, Unione Nordest, Nuovo Centrodestra, Popolo della libertà-Forza Italia per il Veneto e Forza Italia. The law was approved with the vote of 30 councilors (45 voters, out of 60 members of the assembly).*

[239] *On the topic see G. FERRAIUOLO, Due referendum non comparabili, in Quaderni costituzionali, no. 3, 2014, p. 703 ff.*

[240] *See G. FERRAIUOLO, La Corte costituzionale in tema di referendum consultivi regionali e processo politico: una esile linea argomentativa per un esito (in parte) prevedibile, in www.federalismi.it, no. 20, 2015.*

[241] *Deliberation of the Giunta no. 1440 of October 29th, 2015 (BURV no. 110 of 20.11.2015). Regional Law 16/2014 set €14,000,000 euros as the cost of its implementation, which was supposed to be covered by donations from citizens and companies (Art. 4). In the year in which the law was in force there were 1,363 donations (out of 5 million inhabitants) up to a total of €114,914 euros (an average of some 84 euros per donation).*
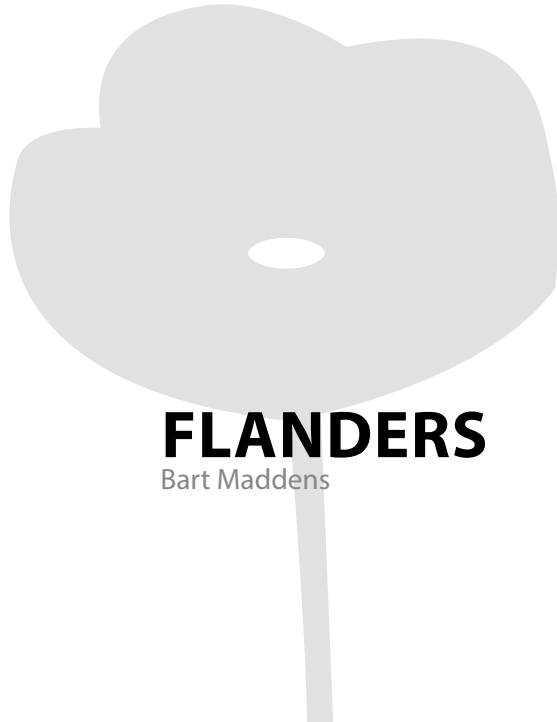
FLANDERS

Bart Maddens

AN INSTITUTIONAL STANDSTILL DESPITE SEPARATIST TRIUMPH IN ELECTIONS

Belgium's current institutional framework is often described as a hybrid sui generis model, containing both federal and confederal elements. The 2011 reform of the state did not fundamentally alter this system. There is a broad consensus that it remains unstable and that a new reform of the state is unavoidable. Whether the model will eventually swing towards federalism or confederalism will depend primarily on the future electoral results of the Flemish nationalist parties, which currently obtain about 40% of the vote in Flanders. The centre-right N-VA (the New Flemish Alliance) is now the dominant party in Flanders and Belgium, and favours Flemish independence in the long run and a confederal reform in the short run. However, it lacks the political leverage to enforce such a reform and in 2014 could only participate in the federal Government at the price of accepting a five year institutional standstill.

In 2010, the separatist Flemish nationalist party, the N-VA (the New Flemish Alliance), became the dominant party in Flanders and the largest party in Belgium. Taken together, the two separatist parties, the N-VA and Vlaams Belang, obtained no less than 40.1% of the Flemish vote. Never before had Flemish nationalism been so strong. Yet, the Flemish nationalists have not been able to impose their views on the Flemish right to self-determination. They were not involved in the agreement on a new reform of the State, reached in 2011. This reform did not fundamentally alter Belgium's institutional structure. In 2014, the N-VA, which had become even stronger, could only participate in the federal Government at the price of abandoning its institutional demands. The result was an institutional stalemate. Nevertheless, there is a broad consensus that the Belgian political system remains unstable and that a new reform of the state is unavoidable. Belgium's current institutional framework is often described as a hybrid *sui generis* model, containing both federal and confederal elements. Whether the model will eventually swing towards federalism or confederalism will depend primarily on the future electoral results of the Flemish nationalist parties.

In what follows, I will first briefly discuss the main characteristics of the Belgian system and distinguish between its federal and confederal aspects. Next, I will briefly sketch the development of the Flemish nationalist parties and elaborate on their current institutional stands. By way of conclusion, I will describe the present political situation and its implications.

1. BELGIUM: BETWEEN FEDERALISM AND CONFEDERALISM

In Article 3 of the Constitution, Belgium is defined as "a federal state composed of regions and communities". As indicated by this article, it is a peculiarity of the Belgian federal system that two different kinds of 'member-states' are distinguished. The country is divided both into three economic regions (Flanders, Wallonia and Brussels) and three cultural communities (the Flemish, French and German-speaking Communities). The Flemish and French Communities overlap each other in the Brussels Region. The Flemish Region and the Flemish Community have been merged into a single institution. This complex institutional structure is a compromise between the Flemish view that Belgium

is essentially a bicultural country, consisting of a Dutch and a French speaking part, and the Francophone view that Belgium consists of three socio-economic regions, including Brussels as a distinct and equivalent entity (Swenden and Jans, 2009).

Both the regions and the communities have full legislative powers. The powers of the regions are linked to a specific territory and include, amongst others, economic affairs, environment, housing and area development planning. The powers of the communities mainly include the areas of culture, education, the use of language and the so-called 'personalised' matters (for instance, health care and family policy). Both the regions and the communities have their own institutions at the legislative and executive level. These sub-entities also participate in decision-making at the federal level via the second chamber or Senate. As of 2014, this Senate is composed almost exclusively of representatives of the regions and communities: 50 of the 60 Senators are appointed by and from the sub-state assemblies. The powers of the Senate are largely limited to institutional matters.

From a formal point of view, Belgium is undoubtedly a federation and not a confederation. But at the same time, some institutional features of the Belgian polity can be considered as confederal, in the sense that they impose a confederalist or consociational form of decision-making on the country (Poirier, 2015; Lijphart, 1977). Article 99 of the Constitution stipulates that the federal Government must contain as many French-speaking as Dutch-speaking Ministers, with the possible exception of the Prime Minister. This implies that there is parity between the Flemish and the French-speaking community at the level of the federal executive, and both language groups have a right to veto at the executive level. According to the Francophone constitutionalist Francis Delpérée (2000: 419) this also implies that the federal Government has to have a majority in both the Dutch-speaking and the French-speaking language groups of the federal chamber. However, this was not the case during the last two legislatures. From 2011 to 2014, the federal Government did not have a majority in the Dutch language group, and the current Government does not have a majority in the French language group.

This confederal model of mutual vetoes also extends to the legislative area. The major institutional laws (the so-called special laws) have to be passed with a two thirds majority and a majority in both language

groups. Each of the language groups in the federal assembly can veto an ordinary law with a majority of three quarters. This is called the 'alarm bell procedure'. If it is applied, the legislative procedure is suspended and the federal executive (where the two language groups are equally represented) has to formulate an advice in response. In addition, the various sub-entities can invoke a conflict of interest against a law, again with a majority of three quarters. In that case, the legislative procedure is again suspended, and a complex and time-consuming process of deliberation starts. The case of the BHV-law (involving the splitting up of the bilingual electoral district of Brussels-Halle-Vilvoorde constituency) has illustrated that this procedure effectively allows the Francophone language group to block legislation (Sinardet, 2010).

These confederal devices were designed to protect the Francophone minority at the federal level. In the Brussels region, similar devices were installed to protect the Dutch-speaking minority. For instance, the executive of the Brussels Region has to have a majority in both language groups, and the legislative procedure in the Brussels Parliament can also be suspended via an alarm bell procedure. This parallelism between the protection of the Francophone minority at the federal level and the protection of the Dutch-speaking minority in Brussels is sometimes considered as a cornerstone of the Belgian institutional compromise.

The aforementioned confederal characteristics derive from the constitution. But the most important reason why some consider Belgium as a confederalist system is not related to the formal institutional framework. Belgium does not have national or federal political parties. Between 1968 and 1978, the three traditional parties (the Christian Democrats, Liberals and Socialists) split up into separate unilingual parties. As a result, Belgium has two different party systems. The Flemish voters vote for Flemish parties, the Francophone voters for Francophone parties. It is only in the constituency of Brussels (formerly Brussels-Halle-Vilvoorde) that they have a choice between the two. In a normal federal system, state-wide or federal parties constitute by far the most important element of linkage between the state-wide and the regional party systems (Swenden and Maddens, 2009: 253). State-wide parties are a crucial factor of integration within a federation, as they have to constantly balance and aggregate the interests of the regional party branches with the interests of the federal party. Conversely, the lack of such integrating federal parties is a factor of disintegration, as the regional parties only

have to take into account the interests of their region.

One of the consequences of this bifurcation of the party system is that the distinction between regional and federal elections has become blurred. Federal elections are *de facto* regional elections, as they are fought between regional parties. Until 1999, regional and federal elections were held concurrently, which facilitated the formation of similar coalitions at the federal and regional level. In 2004 and 2009, regional elections were held separately, resulting in regional coalitions which were not congruent with the federal coalition. Both this incongruence and the quick succession of regional and federal elections were considered as a factor of political instability. Hence the recent decision to synchronize both elections by prolonging the legislature of the federal elections to five years. From 2014 onwards, there will be concurrent federal and regional elections every five years (if there has not been an early dissolution of the federal chamber).

In recent years, the two party systems have tended to grow apart, in the sense that electoral swings have been increasingly divergent (Deschouwer, 2012: 136). This also leads to divergent dynamics in coalition forming. In 2007, for the first time, an asymmetric federal coalition had to be formed, with different parties in the two language groups: the Francophone socialists formed part of the government, the Flemish socialists formed part of the opposition.

The sixth and most recent reform of the state, agreed upon in 2011, did not fundamentally alter the above described institutional structure. As demanded by Flemish politicians, a lot of competences were devolved to the regions and the communities, amounting to about 17 billion euro of government expenses. Competences over health care and labour policy were also partly transferred. More importantly, for the first time, part of the social security system was devolved, namely child allowances. The institutional reform also involved an increase in the fiscal autonomy of the regions amounting to about 11 billion euro.

2. TOWARDS A NEW REFORM OF THE STATE?

In the past, reforms of the state often gave rise to a certain enthusiasm about Belgian institutional ingenuity. Belgium was often portrayed as a model for other countries coping with cultural and ethnic divisiveness. This is less

the case today. One has the impression that nobody is really satisfied with the way the Belgian political system is currently functioning. The more Belgian-minded citizens regret that the federal level has been 'robbed' of so many competences. They specifically resent that by splitting-up the child allowance system, a breach is made in the federal social security system, which is considered as the cornerstone of Belgian unity. But the region-alists are not happy either, particularly in Flanders. They argue that the competences were transferred in a very fragmented way, as a result of which the regions still lack the necessary levers to pursue an efficient economic and social policy tailored to the preferences of the citizens.

Constitutionalists generally acknowledge that the system has become even more complex due to the sixth reform and wonder whether this will be tenable. They expect that in years to come, the Constitutional Court will be overwhelmed with cases and will have to bring some order into the chaotic allocation of competences (Verrijdt, 2014; Pas, 2014). Other constitutionalists point at a democratic deficit at the federal level; while federal competences remain substantial, the integrated Belgian polity needed to legitimize federal policy-making has ceased to exist. Hence, either this Belgian polity should be recreated, or the federal level should be further dismantled (Sottiaux, 2011, 2014).

For all of these reasons, most politicians and political analysts believe that the current system will remain unstable and that a new reform of the state is unavoidable. At the same time, in the run-up to the 2014 election, most parties agreed that the country needed an institu-tional break. It was argued that the next government should focus on economic issues and the implementation of the previous reform of the state. As a result of this widespread fatigue with institutional matters and the near-consensus that a new reform of the state would have to wait until, at least, 2019, most of the parties did not present elaborate institutional proposals to the voters. They only gave some hints as to the desired institutional development of the country. The exceptions were the Flemish nationalist parties Vlaams Belang and N-VA, to which we now turn.

3. THE POSITION OF THE
   FLEMISH NATIONALIST PARTIES

Since the First World War, Flemish nationalism has become an increasingly important political factor in Belgium. During the interbellum period, the number of Flemish nationalist votes grew from 5.2% in 1919 to 15% in 1939 (Graph 1). The collaboration of many Flemish nationalists with the German occupation brought the Flemish movement into discredit. It was only during the sixties that a new Flemish nationalist party, the Volksunie, was able to catch up with pre-war electoral results. At its peak, in 1971, this federalist party obtained 18.8% of the vote in the Flemish Region. It was largely under pressure from the Volksunie that the traditional parties have transformed Belgium into a (quasi-)federation. During the 1990s, the centrist Volksunie was eclipsed by the far-right and overtly separatist Vlaams Blok. At its peak, in 2004, this party obtained 24% of the Flemish vote. In the meantime, the dwindling Volksunie had split up into progressive and conservative groups. The conservatives founded the pro-independence N-VA (Nieuw-Vlaamse Alliantie), which obtained poor result in 2003. From 2004 to 2008, it formed a cartel with the Christian democrats. From 2009 onwards, the N-VA has grown spectacularly, as the Vlaams Blok (now renamed Vlaams Belang) has waned. In 2010, the N-VA became (with 27.8% of the vote) not only the dominant party in Flanders but also the largest party in Belgium. The two Flemish nationalist parties now represent an unprecedented 40.1% of Flemish voters. In the 2014 elections, the N-VA managed to increase its share to 32.4%, but largely at the expense of Vlaams Belang. As a result, the total Flemish nationalist vote fell back to 38.2%.

The far-right Vlaams Belang is in favour of outright independence for Flanders. First, the Flemish Parliament would proclaim the sovereignty of Flanders. This would lead to negotiations with Wallonia about separation, in conformity with the international principles concerning secession. At the same time, Flanders would have to convene a constituent assembly. The party hopes that Brussels will agree to become an integral part of Flanders and remain its capital. If that were the case, Flanders would guarantee that Brussels would retain its bilingual status (Vlaams Belang, 2014). Vlaams Belang combines its radical separatist stance with an anti-immigrant and anti-Islam rhetoric.

The centre-right N-VA is also in favour of independence, at least according to its statutes. But this is a long-term goal for the party. In the short run, the N-VA wants to turn Belgium into a fully fledged confederation. During the 2010 election, the N-VA had already campaigned on a program of confederalism. But this program was in many respects ambiguous. The N-VA, which had now become a major political player, was increasingly criticized for being so ambivalent about confederal reform. This obliged the N-VA to develop a more coherent and detailed institutional program for the 2014 federal and regional elections (N-VA, 2014). This turned out to be by far the most detailed blueprint for a confederal Belgium that has ever been drawn up.

Graph 1: Percentage of Flemish nationalist parties in Flemish Region (Chamber and non-concurrent regional elections 1919-2014)

Source : Maddens, 1998; Election results Belgian Interior Ministry.

The N-VA proposes to transform the Belgian Constitution into a constitutional treaty between Flanders and Wallonia. In the present (quasi-)federal system, the regions and communities have only the competences that are explicitly devolved, while the federal state retains the residuary powers. In the N-VA model, this would be reversed: confederal powers would be limited to the competences transferred in the constitutional treaty, while the member states would retain all subsidiary powers.

The legislative powers for these confederal competences would lie with the confederal parliament. This parliament would be indirectly elected

by the parliaments of the member states on a parity basis. In the same vein, the confederal executive would be composed of six ministers. Two would be appointed by the Flemish Parliament and two appointed by the Walloon Parliament. One of these four would be the chairman. The remaining two ministers would have a double mandate and would also be a member of the Flemish and the Walloon Government respectively.

In an analogy to EU institutions, the cooperation between member states would be organized into two additional bodies. The Flemish and the Walloon Prime Ministers together would form the Belgian Council, (comparable to the European Council). The Belgian Council of Ministers would consist of all the ministers competent in certain policy areas. The competences of these two councils would include the preparation of a joint position on the confederation within the EU and other international bodies. Adopting joint positions in the EU would be necessary, because the Belgian confederation will remain a single Member State of the EU in the N-VA blueprint.

The N-VA does not consider Brussels as a separate component of the confederation. It is not a party to the constituent treaty. The capital region of Brussels would obtain full autonomy for all its territory-bound competences. With regard to the personalized matters, the inhabitants of Brussels would have to choose between the Flemish and Walloon jurisdiction. This would become an all-in choice, in the sense that it would not be possible to opt for, for instance, the Francophone health security system while paying income tax to the Flemish authorities.

The position of Brussels within this confederal framework would remain somewhat ambivalent. With regard to non-territory bound competences, the confederation would have a clear cut dual structure, with two components. But with regard to territory bound competences, these would consist of three equal components. In other words, it would be a confederation with 2.5 member states.

4. CONCLUDING REMARKS

The results of the 2014 federal and regional elections in Flanders were ambiguous. The N-VA won, but at the same time the three incumbent government parties (CD&V, Open VLD and SP.A) obtained a slight majority in Flanders. Therefore, it was in theory possible to form a

tripartite government at both the federal and at all regional levels. As the N-VA did not have any political leverage to impose a new reform of the state, it had to abandon all institutional claims during the negotiations to form a government. These led to an unexpected result. At the federal level, a centre-right government was formed by three Flemish parties (N-VA, CD&V and Open VLD) and only one Francophone party (the liberal MR). This Francophone party only represents 25.5% of Francophone voters. In Flanders, the coalition at the regional level mirrors the federal coalition. But in Wallonia, a centre-left coalition was formed of socialists (PS) and Christian democrats (CdH). Thus, for the first time in the history of Belgian federalism, a regional government was formed, which does not contain any party that is also part of the federal Government and which can function as a bridge between the two levels.

This outcome was initially considered as highly risky by political analysts. The complexity of the Belgian institutional framework requires a close cooperation between the various levels. Also, the centre-left Walloon regional Government has the power to interfere in federal decision making via the procedure of an executive conflict of interest. But initial threats by some PS politicians to use these powers were not carried out. While the federal and the Walloon Government have clashed over some issues, most notably the implementation of the new finance law, these conflicts have not (yet) escalated or led to institutional deadlock. The Francophone socialists probably fear that such an escalation would benefit the Flemish nationalists and lead to a breakup of the federation.

In any case, it can be argued that these recent political developments have given a more federal turn to the Belgian political system. Just as in a normal federation, a federal majority has been formed on the basis of the cross-cutting left/right split, without taking into account the balance of power and the coalitions in the member states. The fact that the Francophone component of the federal Government only represents a small minority of the Francophone electorate is clearly at odds with the logic of the consociational or confederalist model.

What will happen when the present institutional standstill ends in 2019? The N-VA appears to hope that the left-wing majority in Wallonia will become so fed up with being ruled by a right-wing predominantly Flemish majority that it will eventually demand a confederalist reform of the state. But such a scenario is unlikely in the short run. It would

take a spectacular U-turn of the Francophone socialists to accept the confederal model of the N-VA and the splitting-up of social security. Nevertheless, such a development cannot be ruled out in the long run. In the same way that post-Thatcher governments have radicalised left-wing Scottish voters and fuelled the drive for Scottish independence, the continuous dominance of right-wing Flemish parties at the federal level may sharpen the Walloon appetite for more autonomy. However, it is far from certain that the present highly exceptional coalition will be able to continue after the 2019 or 2024 elections.

In the meantime, it also remains to be seen how the N-VA will evolve. It is unusual for a regionalist anti-system party to participate in a national government. It is even more unusual that such a party obtains ministerial portfolios that are most associated with the central state (treasury, defence, interior affairs). This might draw the N-VA into the political system and gradually transform it into a centre-right mainstream party with, at most, moderate institutional demands. Throughout 2015, the party was increasingly criticised by the Flemish movement for abandoning its strong institutional profile. In response to this criticism, the party decided at the beginning of 2016 to breathe new life into its confederalist project. It commissioned two MPs to transform the confederal blueprint into legislation and to reach out to the Flemish movement.

Nevertheless, in the short run, an institutional standstill will be maintained and the definitive choice between a more federal or a more confederal system will not be made. Whether in the long run Belgium will evolve towards a more federal or a more confederal system will mainly depend on whether or not the N-VA will be able to maintain and consolidate its position as the dominant political force in Belgium while remaining true to its Flemish nationalist ideals.

WALES

Alan Sandry

NATIONAL SELF DETERMINATION: THE CASE OF WALES

Belgium's current institutional framework is often described as a hybrid. In recent years, Wales has faced something of an existential crisis. Its national self-identity, and other's perceptions of Wales as a social, political, cultural and economic entity, has been shaped by devolved government. But that devolution, being a London-down dissemination process, has quite often stifled Welsh national self-determination. Despite some good intentions to promote Welsh political identity, and to democratise civil society, in reality many barriers to national self-determination have been erected. Welsh national self-determination is still seen as overshadowed. Its momentum, or lack thereof, is determined by it being seen as on the coat tails of Scotland, where the SNP-led 'Scottish movement' is advancing rapidly to an all-encompassing 'Scotland First' vision of how they see their society operating. Wales is undoubtedly in the slow lane of this debate at this moment in time, but there are positive signs of regeneration and renaissance.

The nation of Cymru, or Wales to use its Anglicised form, has had a sense of its own independence, in the geographical, social, cultural and linguistic senses, for millennia. Nevertheless, it was around the Sixth Century AD that a recognisable territorial political unit evolved. As Gwynfor Evans noted in 'Land of My Fathers: 2000 Years of Welsh History', "Wales assumed the political form that was to persist more or less for eight hundred years, namely a nation without a centralist state system, but rather a number of small states continuing in part perhaps from the pre-Roman period" (Evans, 1992: 56). In anthropological terms, the Welsh are Celtic people, with a Brythonic language, that stretches back at least 2500 years; making it the second oldest language in Western Europe after Euskara. The early Welsh were artisans and traders in bronze and copper, and built over 600 hill forts. A Druidic learning culture developed that had three branches: druids, seers, and bards. These were the 'philosopher kings' of their time, who were the possessors of legislative and juridical powers. So, two thousand years ago in pre-Roman Britain, a system of governance and education was in place within Wales.

When assessing national development, and tracing national genealogy, it is important to look at how communities were held together by laws, customs and conventions. In legal terms, the Laws of Hywel Dda, laid down in 940 AD, represented the first instance of a codified system of the laws and customs in the land. Hywel, King and lawgiver, summoned six people from each *cantref* (community) in his kingdom to form what was essentially a parliament. The laws were extremely progressive, and included property equality for women. This was one of the reasons why Hywel was given the epithet '*Dda*' (Good). In terms of creating a system of law and governance, within a specific geographical and social context, the Laws of Hywel Dda, as a seminal 'national' project, pre-date the much-heralded Magna Carta of England by three centuries.

Following on from the earlier Roman occupation, Vikings, Angles, Saxons and Normans all led incursions into Wales, with varying degrees of success. Indigenous governmental continuity was finally disrupted when the English killed Llywelyn ap Gruffudd, Prince of Wales, in 1282. Despite this fracture, Llywelyn's legacy was notable. His achievement in developing Welsh national status was remarkable. He had succeeded "...if only for a time, in uniting much of Wales under a single ruler and in doing so contributed to the emergence of Welsh national consciousness" (Davies, 2008: 518).

The next major figure in the development of Welsh national self-determination was the iconic Owain Glyndwr, whose revolt against the English Crown, using innovative guerrilla tactics, began on 16th September 1400. For the next 15 years, rebellion and disorder spread throughout the land, as sporadic battles and incursions against the colonisers took place. In 1405, Glyndwr wrote the famous Pennal Letter, which set out details for transferring the religious affiliation of the Welsh people from Rome to Avignon, and established two universities on Welsh soil. This is another indication of the importance of education and teaching within Welsh society, which is deemed imperative for the nourishment of the Welsh national psyche.

Modern Welsh nationalism, and calls for national self-determination, took place within what Thomas Combs described as four stages of development; namely the "pre-political phase; the Liberal Party phase; the Labour Party phase; and the contemporary phase associated with the electoral success of Plaid Cymru" (Combs, 1984: 37). In the pre-political phase, the 1536 Act of Union, which established the politico-religious state of England and Wales, was a symbolic date, as it laid provision for a schism in Welsh society along linguistic lines. What was created in 1536, therefore, was a sense of linguistic oppression. Under this law, speaking Welsh in government circles, or any other official environment, was perceived to be in breach of legal norms. Hence, a sense of second class citizenship was put in place. The reality of a bilingual Wales has only been recognised, *de jure*, since the implementation of the Welsh Language Act of 1993. So, language division has, for centuries, fostered a feeling of oppression and has been one of the core arenas in challenging the hegemonic state and supporting demands for national self-determination.

Post-Enlightenment, and with the advent of a wider democratic franchise across the UK and Ireland, demands for national self-determination (often described as 'home rule') began to attract more activists seeking to achieve political autonomy. A distinctive radical voice emerged in Wales, which was often tied in with religious non-conformism, and a burgeoning rebellious tendency, especially within the agrarian and, later, proletariat and lumpen proletariat sectors. In 1886, *Cymru Fydd* (Young Wales) was established. Its mission was to promote the notion of Welsh identity, cultural and linguistic pride, and national self-awareness. Like many movements in Wales, it started as a cultural organisation, but soon developed a political edge. Many Cymru Fydd events centred

on Aberystwyth University, and that town has been an important centre in pioneering nationalist politics ever since the early 1880s. The historian KO Morgan notes of this period how "the young patriots….were profoundly influenced by the idea of nationalism and more intuitively sympathetic to the ideals of Young Ireland" (Morgan, 1991: 89).

Wales' distinct brand of nationalism can also be seen through the life and work of Liberal MP, Henry Richard. An author and Congregationalist minister, Richard embraced pacifism, Chartism and workers' representation. He viewed these causes as essential to his political philosophy, and saw them as co-existing with his patriotic and global outlook. Gwyn Alf Williams stated that Henry Richard was "a good internationalist precisely because he was a good Welshman" (Williams, 1988: 7). Richard also identified with European mainland politics and society, and many of the ideas that filtered into the later movement towards 'Welsh Europeanism' can be traced to Richard's time.

The formation of *Plaid Genedlaethol Cymru* (The National Party of Wales) in 1925 saw political calls for national self-determination take on a more focussed, and ultimately mainstream, approach to the issues surrounding Welsh identity and representation. The transition from pressure group to established political party (a party with representatives at all levels of government within Europe, and a party that has featured in coalition government in Wales through the 2007-2011 'One Wales' agreement) is well documented. But an outline of some conspicuous moments in that history will aid an understanding of the role of national self-determination within modern and contemporary Wales.

The 1920s and 1930s saw the cause of national self-determination becoming more prominent across Europe. In Wales, a cross section of writers, academics and clergy were at the forefront of promoting its ideals. People like Saunders Lewis, DJ Davies, Noelle Davies and Reverend Lewis Valentine were key personnel and proponents of Welsh nationalism during that era. Saunders Lewis published *Egwyddorion Cenedlaetholdeb* (Principles of Nationalism) in 1926. In it he extols the notion of 'freedom' as the primary driver for society. Focussing heavily on his contention that Wales had to reclaim her (linguistic and Christian) inheritance, Lewis states that freedom is more important than independence (Sandry, 2011:69). Lewis advocated freedom for Wales to truly flourish. A decade later, he commented that Plaid Cymru

has "sought to base itself on Christian sociology and that Christianity is as essential to the Nationalist Party as anti-Christian materialism is to Marxism" (Davies, 1983:102).

Seeking to add a rigorous economic base to calls for national self-determination for Wales, DJ Davies and Noelle Davies wrote the 1939 pamphlet, 'Can Wales Afford Self-Government?'. In it, DJ and Noelle Davies sidelined the romanticism of Saunders Lewis and instead argued for a reconstructed Wales "based predominantly on decentralist socialist policies and ... large scale nationalisation of key industries" (McAllister, 2001: 27-28). Furthermore, DJ and Noelle Davies highlighted ongoing colonialist exploitation. The reason they gave for Wales being poor was down to the contention that "under an alien imperialist Government, seeking alien interests, her resources have been unused, disused and misused" (D.J. & Noelle Davies, 1939:38). This document, and the wider work of DJ and Noelle Davies, ensured that economic policies, advanced from a challenging, socialist perspective, became rooted in Plaid Cymru, and broader Welsh nationalist, thinking.

Advocates of Welsh national self-determination, especially in the middle part of the twentieth century, were experimenting with themes that encapsulated anti-Capitalist, anti-modernist, and 'back to the land' theories. There was also much scepticism towards industrialisation, as this was seen to have been the breeder of austere working and living conditions. The propagation of alternative viewpoints, which differentiated Wales from the British State (and English influences), were deemed to be critical if Welsh national self-determination was to come to fruition. DJ and Noelle Davies had sought out unorthodox approaches to the education system, for example, and they skilfully intertwined nationalist and socialist discourses to offer a critique of imperialist capitalism and its effects on Wales. They also spoke of 'cultivating one's own garden' free from the shackles of the imperialists. This was a theme taken up by Gwynfor Evans, who guided Welsh nationalism out of World War Two, and into the purported 'new Jerusalem' of the post-war era; a phase which started with the infrastructural expansion of the 1950s, and led into the technological revolution of the 1960s.

Whilst the post-1945 drive for economic amelioration appeared, on the surface, to be a healthy development, it was in fact a period where traditional crafts, customs and cultural norms were being placed under ever-increasing

pressure. At the forefront of this were the stresses and strains being exacted upon the Welsh language, and Welsh speaking communities. Seen as imperative to any understanding of Welsh identity and national existence, younger activists within the Welsh nationalist movement started to campaign for a greater role for Welsh within society, and indeed for its very survival as a means of everyday communication and expression. The formation of *Cymdeithas yr Iaith Gymraeg* (The Welsh Language Society) in August 1962, followed on from the radio broadcast, *Tynged yr Iaith* (Fate of the Language) that Saunders Lewis made on 13th February 1962. National self-determination, in a political or governmental sense, could only be achievable if the Welsh language is fought for, promoted and sustained. Thus, a direct action campaign was instigated to ensure that the language not only survived, but flourished and grew.

Direct action, in its many guises, has been an important instrument within Welsh social and political history. In terms of its application in attempts to achieve independence, or at least to reflect a desire for national self-determination, direct action is visible in circumstances such as the firebombing of a Royal Air Force base at Penyberth in 1936; attacks on pipelines during the campaign to stop the flooding of Capel Celyn (Tryweryn) to provide drinking water for the inhabitants of Liverpool, England, that occurred in 1962 and 1963; and the arson campaign of *Meibion Glyndwr* (Sons of Glyndwr) from 1979-1990, which attacked second homes owned by people from outside Wales. Arguably the most famous, and successful, act of defiance in favour of national self-determination came when Gwynfor Evans (who had become Plaid Cymru's first Member of the UK Parliament when he won a by-election at Carmarthen in 1966) threatened to go on hunger strike unless Margaret Thatcher's Conservative Government reversed its decision not to establish a Welsh language television channel (something which they had promised to do in their manifesto for the 1979 UK General Election). Gwynfor Evans told the Conservatives that he would fast until death. Fearing chronic social unrest, and in the light of insurrectionary events unfolding at that time in Northern Ireland, Thatcher finally acquiesced and *Sianel Pedwar Cymru* (Channel Four Wales) was set up in 1982.

As the demands for political devolution rolled along in the 1980s and 1990s, it appeared that some semblance of national self-determination was inevitable. Nevertheless, for long-time supporters of establishing nationhood, and national politics, around autochthonous concerns, the

'top down' instigation of political devolution left a lot to be desired. It was seen as a government scheme drawn up by a bourgeois political class, with little grassroots involvement or enthusiasm. It was also, correctly, identified as being a British Labour Party project. Hence, many Welsh nationalists wanted little to do with campaigning for a limited form of self-government, which appeared to have hardly altered in substance from the package offered to people in Wales in 1979; a series of inconsequential powers, which had been soundly rejected in a referendum. For Welsh nationalists, using devolution as an instrument, rather than stirring Welsh consciousness onto the path to national self-determination, actually equated to an abdication of national consciousness.

In a positive sense, however, internationalist outlooks were being encouraged through the rise of a strand of thought labelled 'Welsh Europeanism'. The role of Plaid Cymru, in association with the European Free Alliance, ensured that an outlet was available and new links could be established and fostered with other civic nationalist groupings. This mood reflected a changing Wales in a more fluid Europe, and allowed contemporary Welsh identities to flourish; Welsh nationalism and Welsh internationalism were coalescing and harmonising. Alongside the presence of Welsh nationalist politicians within the National Assembly for Wales, the cause of Welsh national self-determination has also firmly rooted itself within all of the available democratic channels. Representation at the European Parliament level offers access to fellow seekers of structural reshaping, which can be achieved through the dismantling of old state systems, and the dismantling of imperial edifices.

In recent years, Wales has faced something of an existential crisis. Its national self-identity, and other's perceptions of Wales as a social, political, cultural and economic entity, has been shaped by the devolved government. But that devolution, being a London-down dissemination process, has quite often stifled Welsh national self-determination. Despite good intentions to promote Welsh political identity and to democratise civil society, in reality many barriers to national self-determination have been erected. For example, whilst the National Assembly for Wales has been granted increased powers and now maintains primary legislative powers, many bureaucratic and unyielding mechanisms have been established to halt, or slow down, the pace of development and deployment. Wales, as Aled Morgan Hughes and Matthew Woolfall-Jones have rightly pointed out, has also faced psychological bombardment

from the UK political and media establishment through their constant claims that Wales is "too poor, too small… a legendary dependency culture" (Hughes&Woolfall-Jones, 2015: 50).

Economic identities, alongside constitutional and legal identities, are playing a greater part in calls for national self-determination, and the realisation that 'glocal' economics can be aligned with demands for democratic representation, and societal enhancement, at a national level. In Wales, for example, there are moves to showcase a more confident post-industrial nation. Whilst branding may, on the surface, appear puerile, it could be contended that if this changes people's opinions, and places the nation in focus, then it may offer hope to civic nationalists promoting national self-determination. There is also an emerging Welsh legal identity, with Welsh laws being forged in Cardiff and moves to devolve as much legal power from London as possible. Some Welsh legal theorists, with one eye on the law providing a platform for calls for national self-determination, have been involved in recent years in detailed discussion with, among others, Catalan and Quebecois legal theorists.

In all reality, however, Welsh national self-determination is still seen as overshadowed. Its momentum, or lack thereof, is determined by its perception as being on the coat tails of Scotland, where the SNP-led 'Scottish movement' is advancing rapidly to an all-encompassing 'Scotland First' vision of how they see their society operating. Wales is undoubtedly in the slow lane of this debate, at this moment in time, but there are positive signs of regeneration and renaissance. Ultimately, within a disjointed political state, and an increasingly disunited kingdom, national self-determination is a multi-faceted proposition. One certainty for *independentistas*, in all of this uncertainty, is that it is time to cut the umbilical cord that currently binds Wales to the crumbling edifice that is the British State.

WALLONIE

Mathias Berhoumi

THE WALLOON REGION AND
THE WALLONIA-BRUSSELS SPACE

The Walloon Region is the outcome of the federalist project of the Walloon movement. Their initial linguistic claims have evolved to increasingly focus on giving Walloons control over their economic future and their industrial redevelopment. In the wake of this dynamic, the Region emerged as a federated body in 1980. The Region has its own institutions, a Parliament and a Government, and enjoys relative freedom in organising them as it sees fit. Successive reforms of the State have allocated key, territory-related competences to the regions. In addition to this, the French-speaking community has transferred some of its powers to the Walloon region. For sections of Walloon politics, the community's future and the relationship between Brussels and Wallonia are at the heart of the institutional agenda. Some wish the Walloon region to exercise all the powers that have been entrusted to the French-speaking Community. This implies both the existence of a Walloon identity independent of French-speaking identity and the

possibility for Belgian federalism to evolve into a territorial model. This question brings up the fundamental disagreement between the country's northern and southern federal doctrines, with the former favouring a state based on two large communities and the latter a Belgium of the regions.

Among its many unusual features, the Belgian State is characterised by an institutional organisation containing two types of federated entities. The federation is composed of three regions and three communities, each with their own different powers.

The Flemish Region consists of the five provinces in the north of the country. It has six and a half million inhabitants and extends over an area of 13.522 km². The Brussels-Capital Region consists of the 19 municipalities in the heart of the country. It includes the capital of the Kingdom and covers just 161 km², with a population of 1.200.000. To the south, the Walloon Region contains five provinces covering 16.844 km². 3.500.000 people live there.

The Walloon Region in turn is cut into two language regions of unequal size. In the east, nine municipalities form the German-speaking region. It is within this area of barely 854 km², with a population of around 80.000, that the German-speaking Community exercises its powers. The rest of Wallonia forms the French-language area to which the French Community's decisions apply. In the north, things are simpler: the Flemish Region coincides with the Dutch-speaking area, and is thus covered by the Flemish Community. Brussels is a bilingual region. No statistics are kept for the proportions of French and Dutch speakers. It is suggested that 90% are Francophone and 10% speak Dutch, bearing in mind that this estimate does not take into account bilingual residents and those inhabitants of Brussels who use other languages. Although in other language regions only one Community is competent, in Brussels both the French and Flemish Communities have powers. To prevent residents of Brussels from having to choose between French or Dutch-speaking identities, the Communities approach them indirectly: the decisions of the French Community and the Flemish Community apply to the Community institutions - schools, crèches, cultural centres, etc. - that they use.

If we believe that this little detour into the Belgian Constitution was necessary, it is because you cannot describe Wallonia without taking account of the dynamic in which it is situated. In fact, if we set aside the question of German speakers, the fact that Walloons belong to a larger whole – the French-speaking population of Belgium – is a key parameter for an understanding of their degree of self-rule and shared rule.

1. A BRIEF HISTORY OF THE BIRTH OF THE WALLOON REGION

Before the Second World War, the Walloon movement had but a small base in the population of the territory it claimed. This was due to its origins. When it emerged at the end of the 19th century in Liège and, in particular, in Brussels, it was initially a linguistic movement. Its role was to uphold the French language at a time when its authority was threatened by Flemish calls for bilingual national institutions and unilingualism on Flemish territory (Kesteloot, 1993: 13). Because of its industrial strength - steel-making, coal mines, etc. - Wallonia was at that time the economic driver of Belgium and identified with the dominant language of the unitary State as it then existed. The Walloon movement therefore emerged from the 'dominant' component of the Belgian State in reaction to the 'dominated' element (Kesteloot, 1993: 20). Between the two world wars, the Walloon movement gradually changed in two respects: it came to focus on Walloon territory, distancing itself from Brussels, and its claims became less a matter of upholding the French language than of avoiding the political marginalisation of Walloons due to their demographic weight. From this time onwards, we witness an increasing desire to re-balance a public investment policy that favoured the north of the country and to weaken the concentration of government offices and company headquarters in Brussels. These concerns took centre stage in the immediate post-war period. They translated into the emergence of a federalist project. The "Royal Question" (1944-1950), which sharply divided Belgian society into a Wallonia that was mainly hostile to the reinstatement of Leopold III, and a more monarchist Flanders, had a profound influence on Walloon identity. During the 1960s, the Walloon movement greatly extended its foothold in society with the birth of the *Mouvement populaire wallon* in 1961, following the general strike in winter 1960 against the national government's policy of austerity. Led by André Renard, this movement combined the trade union fight with

demands for federalism and social and institutional reforms (Delforge, 1999: 290). The federal doctrine which was born of this movement focused less on cultural autonomy and the defence of the language, as was the case in the equivalent Flemish movement at the time, and more on the economic autonomy of a region coping with economic decline and the redevelopment of its industries.

The first reform of the Belgian State (1970) did not satisfy this regional project. The unitary Belgian State entered into a process of federalisation from which three communities emerged. These entities were granted competences focusing on culture – theatre, libraries, museums, radio and television, etc. While this reform gave constitutional acknowledgement to the existence of three regions, Wallonia, Flanders and Brussels, it was left to a law to determine the powers and legal nature of the laws they could adopt. This constitutional measure remained dormant and without effect for ten years. It was the second reform of the Belgian State (1980) that gave life to two of these three regions; Brussels had to wait until 1989 to emerge from limbo.

2. THE WALLOON INSTITUTIONS

In 1980, the Constitution was amended to give regional bodies the power to issue decrees with the force of law. In accordance with the principle of equivalence, the decrees of the Walloon Region have the same legal force as the laws adopted by the federal authority.

The Walloon Region adopts its decrees completely autonomously, through its own institutions: the Walloon Parliament and the Walloon Government.

Originally, the regional parliaments were composed of members of the federal parliament. They were therefore indirectly elected. Since 1995, the Walloon Parliament has consisted of 75 members, directly elected every five years by citizens resident in Walloon territory. Walloon deputies are also members of the Parliament of the French Community, where they sit alongside 19 members from the Brussels-Capital Region Parliament. Not only do Walloon Members of Parliament no longer come from the federal parliament, but they can no longer combine membership of the Walloon and federal. This change reflects the increasing competences of the Walloon Region, whose powers have not ceased to grow. It is

also evidence of a desire to give it its own democratic basis. In parallel with these changes, the Senate was reformed to bring it closer to the American model of a federal legislative assembly representing federated entities. Following the principle of participation, eight members of the Walloon Parliament are also members of the Senate. Nevertheless, the powers of this assembly are quite limited, mainly relating to institutional matters. For the overwhelming majority of federal competences, laws are only passed in the other federal legislative assembly, the House of Representatives.

Members of the Walloon Government are elected by the Parliament. There are currently eight ministers in the Walloon Region. In order to strengthen the links with the policies of the French Community and to reduce the total number of ministers, Walloon governments regularly contain ministers 'with two hats', who are simultaneously regional ministers and ministers of the French Community. Currently, one of the eight Walloon Ministers is also a member of the Government of the French Community.

The Constitution grants the Walloon Region a "constituent autonomy" that enables it to amend many of the rules organising its institutions without the intervention of the federal Government. The Walloon Region may therefore increase or reduce the number of members of its parliament or its government, change the constituency boundaries for its elections or rule on incompatibilities for deputies or ministers. However, the scope of the principle of constitutive autonomy must not be misunderstood. It does not allow the Region to adopt a genuine constitution exhaustively organising the exercise of its powers, or establishing the fundamental rights of its citizens. It confers upon the Region a more modest freedom to organise its affairs in a certain number of areas.

3. THE POWERS OF THE WALLOON REGION

The Special Law of August 8th 1980 introducing institutional reforms, as amended during the following four reforms of the State (1988-89, 1993, 2001, 2011-14), grants the regions powers in crucial areas such as housing, economy, employment, transport, agriculture, environment and public works. To lend some coherence to these transfers of disparate powers, it is often said that these matters are all 'linked to the soil', a

presentation that lends itself to a contrast with the matters attributed to the three communities, which are matters 'linked to the person'. In reality, it is very difficult to trace any underlying logic to the powers that have gradually been transferred. The Belgian federation does not rest on a coherent doctrine; there is no overall plan that the architects of the north and south have gradually pursued, one institutional reform at a time. On the contrary: between the Flemish adherents of autonomy and the Francophone desire to maintain key powers, such as social security at the federal level, some ground for agreement had to be found one way or another. The need to forge laborious compromises led to a particularly complicated attribution of powers, particularly in the areas of energy and employment. The last institutional reform (2011-2014), which put an end to a political crisis lasting nearly four years, is a further example of such compromises.[242] While retaining certain Francophone taboos, it recognised the demands for autonomy that shifted the centre of gravity of the Belgian federation. Henceforth, in budgetary terms, the powers of the federated entities will carry more weight than those of the federal government.

To this irreducible tension between demands for autonomy, on the one hand, and calls for the maintenance of substantial powers at federal level, on the other, must be added the insoluble dilemma between two models of the federal State. Two visions of Belgium stand opposed; the one in which the country rests on two large Communities, French and Flemish, running the capital together, and the federal model comprising four federated entities, Wallonia, Flanders, Brussels and the German-speaking entity. The great majority of Flemish politicians support the first model. This is why, since 1980, the Flemish have chosen to rationalise their institutions; they have just one parliament and government, exercising the powers attributed to both the Flemish Community and the Flemish Region. French speakers tend to support the second model, though they are somewhat more divided. Unlike their equivalents in the north of the country, they have not opted to erase the institutions of the Walloon Region to the benefit of the French Community. Such an option was unimaginable. After all, it was the Walloons who fought for the creation of a region to enable them to control their economic destiny. To dissolve the Region into the Community would also give the residents

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[242] *For a description and evaluation of this reform, see H. Dumont, M. El Berhoumi and I. Hachez (2015: 250).*

of Brussels the right to have a say in Walloon affairs. Unacceptable. Since then, there has therefore been an institutional dualism in the south of the country reflecting the plurality of identities, at once Walloon and Francophone, identities with a different basis: the territory and the language (Caron, 2015: 33).

The south of the country has thus moved in the opposite direction to the Flemish Region. Since 1993, the French Community has transferred the exercise of some of its remit to the regional bodies. While this gave precedence to the regional perspective, it was not pushed to the limit. The French Community still exists. It remains competent for matters as essential as education and culture. However, the Walloon Region has taken over Community powers, such as family allowances, vocational training, policy relating to persons with disabilities and integration policy.

4. IS THE DUALITY BETWEEN WALLOON REGION AND THE FRENCH COMMUNITY ON THE WAY OUT?

If we look to the future, we should first emphasise a striking fact: the institutional demands, formulated by a part of the Walloon political world and Walloon civil society, do not call for new transfers of federal authority to the regions; instead they challenge the existence of the French Community. In Wallonia, the movement aiming at the independence of Wallonia, or its annexation to France, is now very marginal. The continual stripping of federal powers is essentially due to Flemish demands. In Belgium, the Flemish nation is incontestably a nation at sub-state level, though with the unusual feature of being numerically in the majority.[243] The existence of a Walloon nation is more contested, not least because of the relationship between this 'nation' and a hypothetical 'nation' comprising the Francophone populations of Brussels and Wallonia. This existential doubt is the root of the challenge to the French Community.

A regionalist current, identifying with no particular political formation

but which receives firm support from both the major Walloon parties - the socialists of the PS and the liberals of the MR – is calling for the abolition of this federated institution, pure and simple. The aim would be to improve the transparency of the institutions by ending an institutional duplication that citizens find hard to understand, bringing Wallonia closer to the Flemish architecture, in which one parliament and one government are responsible for federated matters over the whole territory. It would also ensure better consistency from the point of view of the policies conducted in the south of the country. Regrouping the powers under the Region would make it easier to match education policy with economic needs, or scientific research with industrial policies.[244]

While there is obviously a Walloon identity that fully justifies the existence of the Region, it is a difficult step from there to accepting that this identity supplants the Francophone identity. Whether in Brussels or in Wallonia, Francophones share the same media space, common political parties and universities with establishments in both regions. We cannot deny the critical role of a shared language in the construction of identities. The regionalists will say, however, that the emergence of a Walloon identity detached from the "Wallonia-Brussels" identity is impossible precisely because the Walloons will not be in complete control of cultural policy.[245] In essence, this debate harks back to the two partly contradictory approaches underlying the creation of federated entities: it is a matter simultaneously of reflecting identities in their corresponding institutions, and of promoting these identities through pro-active policies. On the one hand, the identities pre-exist the institutions; on the other, they are produced by them. This is a dialectical relationship. These twin approaches are inherent in any federalism that unbundles an existing state.

Nonetheless, the debate between regionalists and those identifying with the Community cannot ignore the fact that the federal institution above all reflects a divide between Flemish speakers and Francophones, rather than a regional dynamic. The composition of the federal Council of Ministers, for example, is obliged to observe parity between French

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[243] For this feature that distinguishes the pluri-national Belgian State from other pluri-national states, see H. Dumont (2011:180).

[244] For an example of this argument from the vice-president of the Walloon Government, see J.-C. Marcourt (2009: 121-131).
[245] In this respect, the regionalists represent the continuation of a part of the Walloon movement focused on the cultural dimension. H. Hasquin (1989: 57).

and Dutch speakers. What is more, members of the federal parliament are divided into two language groups. 'Special' laws must be passed by a majority in both language groups. These measures are intended to protect the French-speaking minority at national level. The elimination of the French Community in favour of a strictly regional approach would logically require a review of these mechanisms. But such a development would encounter opposition from the Flemish, who remain attached to this bipolar federalism.

Finally, most regionalists argue for the retention of joint management of some matters within the Francophone area. Instead of a federated entity with powers attributed by federal laws and its own institutions, the institutional link between the French-speaking populations of Brussels and Wallonia would take the form of a 'federation' of these two regions. This 'federation' would be a projection of Wallonia and Brussels, and its institutions would correspond to the reunion of regional governments and parliaments (Marcourt, 2009: 127). Expressing the desire to move towards this outcome, the parliament of the French Community passed a resolution in 2011 for the systematic use of the term 'Wallonia-Brussels Federation' to refer to the French Community. Not unsurprisingly, this initiative infuriated the Flemish, who did not accept the implicit suggestion that Brussels, a bilingual region, could be incorporated into such a Francophone dynamic. So far, this rebranding of the French Community has not been reflected in any institutional changes. Nevertheless, if the regionalist logic continues to gain ground, we must expect the number of issues transferred from the French Community to the Walloon Region to grow. Where this will take us, only the future can tell.
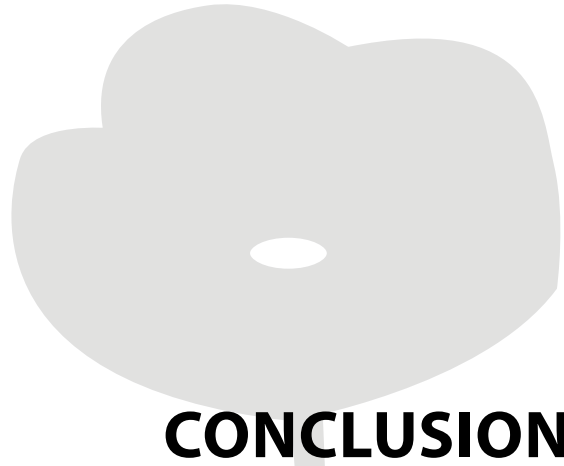
CONCLUSION
Daniel Turp

THE EMERGENCE OF
A DEMOCRATIC RIGHT
OF SELF-DETERMATION

As is evidenced in the 22 articles of this multi-authored book, the fundamental collective right to self-determination of peoples is today the subject of greater debate than ever before in Europe. The Scottish referendum of September 18th, 2014, and the Catalan election of a plebiscitary nature of September 27th, 2015, were opportunities for those two peoples of Europe to exercise their right to self-determination. From the 20th to the 21st century, one could observe that (I) there has been a significant shift towards the right of self-determination, that (II) a democratic right of peoples to self-determination has emerged, accompanied by an obligation of States to negotiate and that (III) the exercise of constituent power could open a new way for achieving such democratic right of self-determination.

1. A SIGNIFICANT SHIFT TO THE
RIGHT OF SELF-DETERMINATION

The right of peoples to self-determination has been acknowledged and enacted in international instruments as important as the Charter of the United Nations,[246] the International Covenants on Human Rights[247] and the United Nations Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,[248] to which we can also add – and this is of particular interest to the peoples of Europe – the Helsinki Final Act and other texts issued by the Conference of the Organization for Security and Cooperation in Europe. Yet, during the second part of the 20th century, there were attempts to contain this right within the colonial sphere and to refuse non-colonial peoples its benefits. Whether it be the peoples of Eritrea or Eastern Timor, or the republics of the former Soviet Union or Yugoslavia, there were repeated attemps to deny the right to self-determination and the achievement of independence in accordance with such right.

Yet, towards the end of the 20th century, the international community witnessed the accession to independence of all these peoples and republics. It also saw the United Kingdom recognize the right of the inhabitants of Northern Ireland to determine their own future and to decide, if such was the will of the majority, that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland.[249] The year 2000 saw Canada's acknowledgement of the right of Quebec to "cease to be part of Canada" in a Clarity Act[250] adopted in response to the Reference re Secession of Quebec[251] in which the Supreme Court of Canada had affirmed the "the right of the government of Quebec to pursue secession".[252] Adopted in 2007, the United Nations Declaration

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[246] *C.N.U.C.I.O, vol. 15, p. 365.*
[247] *See International Covenant on Economic, Social and Cultural Rights, (1976) 993 UNTS 3 and the International Covenant on Civil and Political Rights, (1976) 999 UNTS 171 [hereinafter International Covenants].*
[248] *GA Res. 2625 (XXV), UN GAOR, 25th Sess., UN Doc. A/8082 (1970) [hereinafter Declaration on Friendly Relations].*
[249] *See the The Northern Ireland Peace Agreement, 10 April 1998, art. 2 (Constitutionnal issues) and the comments of this Agreement by Alex Schwartz, supra p. 127.*
[250] *Statutes of Canada (S.C.), 2000, c. 26.*
[251] *[1998] 2 Supreme Court Reports [S.C.R.] 217 [hereinafter Québec Secession Reference].*
[252] *Id., par. 88.*

on the Rights of Indigenous Peoples[253] affirmed the right of such peoples to self-determination. With the support of several member states in the international community, Kosovo unilaterally declared its independence in 2008, and in an advisory opinion of July 22nd, 2010, the International Court of Justice maintained that this declaration was not illegal.[254] The early 21st century also saw South Sudan take its place in the community of nations, and the United Kingdom explicitly recognising the right of the Scots to organise a referendum and to become an independent state if such was the wish of the people. Several contributions to the present collective work show that recognition of the democratic right to decide one's political and constitutional future is gaining ground: in Belgium when we think of Flanders and Wallonia; in Denmark when we consider the peoples of Greenland and the Faroe Islands; and in the United Kingdom when we take the example of Northern Ireland.

But we cannot silently ignore the difficulty the Palestinian people have in fully achieving their right of self-determination,[255] not to mention the peoples of Western Sahara or Kurdistan, whose struggles for freedom face obstacles that have so far proved insurmountable. And what can we say of the obstinate refusal of the Spanish state to recognise the right of the Basques, Catalans and Galicians to consult their populations freely about their political and constitutional future, or about the iniquitous sentences of the Spanish Constitutional Court in these matters? As for the attitude of the French and Italian states to the nations and people that constitute them, to take the examples of the treatment of claims of self-determination by Corsica and South Tyrol, it is far from exemplary when it comes to guaranteeing the collective rights that arise from their right to self-determination.

Despite the continuing obstacles to the full achievement of the right to self-determination, it is nonetheless the case that a democratic right to

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[253] A/RES/61/295, UN GAOR, 61st sess., U.N. Doc. A/61/49 (2007).

[254] Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 403.

[255] See Robert P. Barnidge, Jr., Self-Determination, Statehood, and the Law of Negotiation : The Case of Palestine, Oxford, Hart Publishing, 2016.

[256] For a detailed analysis of the right to choose in a Québec context, see Daniel Turp, Le droit de choisir : essais sur le droit du Québec à disposer de lui-même/The Right to Choose : Essays on Québec's Right of Self-Determination, Montréal, Éditions Thémis, 2001, p. 814-821.

self-determination is emerging in this century, whose major attribute is "the right of peoples to choose", with the essential corollary of "the obligation for States to negotiate".[256]

2. THE RIGHT TO CHOOSE AND THE OBLIGATION TO NEGOTIATE

In accordance with the right to self-determination guaranteed in Article 1, common to both International Covenants on human rights, peoples may "freely determine their political status and freely pursue their economic, social and cultural development." In terms of political status, the Declaration on Friendly Relations stipulates that "[t]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right to self-determination by that people."

These provisions give peoples a genuine "right to choose" and confer a collective right, which is ultimately to be exercised by peoples. However, it should be remembered that the exercise of the right does not necessarily lead to national independence; it may take the form of association with another state or the acquisition of increased autonomy or fundamental individual and collective rights for the people within the state.

But it is also important to stress that the affirmation of the right to self-determination of peoples is accompanied in the same International Covenants on human rights by the imposition of an obligation on States. Therefore, "the States Parties to the present Covenant shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations." This requirement has not been more closely defined either in the Declaration on Friendly Relations or by other international instruments. It gives states a duty to negotiate with peoples who have chosen to exercise their right of self-determination and to enter into discussions about the political status that the peoples desire. Such an obligation to negotiate seems to me to derive from the duty to promote the realization of the right and to respect it.

This interpretation of the scope of the right to self-determination of

peoples is supported by the views expressed by the Supreme Court of Canada in its 1998 Reference re Secession of Quebec. Referring to the "clear expression of self-determination of Quebec" and drawing on the principles of federalism and democracy, the Canadian Supreme Court recognised that Quebec had "the right [...] to pursue secession" and that Canada has the obligation to negotiate. Two excerpts from the Court's opinion deserve quoting here:

88. The federalism principle, in conjunction with the democratic principle, dictates that the clear repudiation of the existing constitutional order and the clear expression of the desire to pursue secession by the population of a province would give rise to a reciprocal obligation on all parties to Confederation to negotiate constitutional changes to respond to that desire. [...] The clear repudiation by the people of Quebec of the existing constitutional order would confer legitimacy on demands for secession, and place an obligation on the other provinces and the federal government to acknowledge and respect that expression of democratic will by entering into negotiations and conducting them in accordance with the underlying constitutional principles already discussed.

92. However, we are equally unable to accept the [...] proposition, that a clear expression of self-determination by the people of Quebec would impose no obligations upon the other provinces or the federal government. The continued existence and operation of the Canadian constitutional order cannot remain indifferent to the clear expression of a clear majority of Quebecers that they no longer wish to remain in Canada. This would amount to the assertion that other constitutionally recognized principles necessarily trump the clearly expressed democratic will of the people of Quebec. Such a proposition fails to give sufficient weight to the underlying constitutional principles that must inform the amendment process, including the principles of democracy and federalism. The rights of other provinces and the federal government cannot deny the right of the government of Quebec to pursue secession, should a clear majority of the people of Quebec choose that goal, so long as in doing so, Quebec respects the rights of others. Negotiations would be necessary to address the interests of the federal government, of Quebec and the other provinces, and other participants, as well as the rights of all Canadians both within and outside Quebec.

Although the opinion of the Supreme Court of Canada is based on the principles of the Canadian Constitution, these principles should be seen as having a scope extending far beyond the borders of Canada and Québec. For example, could not Flanders invoke the principle of federalism as a basis for its right to choose? And is there no place for the Basque, Catalan and Galician peoples to base their right to decide on an analogous principle of democracy? Indeed, all the peoples of Europe who are seeking self-determination, could remind the governments of their States that their right to choose rests on a democratic principle, and that the exercise of such a right has as its corollary their obligation to negotiate.

The democratic principle is entrenched in many constitutions and should be seen as the source of the right to self-determination and has provided the basis for some peoples who organised self-determination referendums.

3. THE EMERGENCE OF A DEMOCRATIC RIGHT OF SELF-DETERMINATION

To determine their political status, peoples have chosen to involve their populations in a democratic process culminating in a referendum relating to such status, and notably that of a sovereign and independent State. Quebec has twice chosen to take this route. Scotland followed a similar path, which led to the organisation of the referendum of 18 September 2014. Catalonia also attempted to choose such a route. While this approach has been the preferred option in recent exercices of the right to self-determination, a new approach of a democratic nature is also emerging as an alternative.

To implement its right of self-determination, and achieve national independence or greater autonomy, a people can rely on its constituent power and initiate a process aiming to give the people their own fundamental law. This is the avenue that the Catalan government and parliament appear to have chosen, adopting a roadmap that focuses around a constituent process and the drafting of a Constitution for an independent Catalonia.[257]

There are many reasons that might favor an initiative to draft a basic law in the exercise of the right of self-determination. They relate to the necessity of defining one people's own constitutional identity, but also of resolving

the constitutional stalemate that often explains demands for independence and autonomy. In describing the values on which a political community rests and which guide institutions in the governance of the State, a constitution may become an instrument that gives a people an identity, both among citizens themselves and in the international community. A constitution is, first and foremost, a document aiming to establish the basis on which the life of a nation rests. It organises public life around a founding text that can become a tool for which a people desirous of taking part in the democratic life of the nation can take ownership.[258]

The exercise of constituent power can lead a people to draft a basic law which implies increased autonomy and the need to reform the constitution of the State to which the people belong. But it may also generate a confrontation between two constitutional orders and contribute to demonstrating that only additional autonomy or national independence will allow the people to fully express its constitutional identity. The adoption of a constitution and its approval by the people in a referendum as is envisaged in Catalonia can thus become a valid exercise of the right of self-determination. This approval could compel a state to fulfil its obligation to negotiate in response to the exercice by a people of their right to choose expressed in its first constitution.[259]

As I write the conclusion of this multi-authored book on self-determination, the results of the referendum held in United Kingdom on its future relationship with the European Union show that a majority of voters (51,9%) favored the "Brexit" option and expressed their will to leave the EU. This act of British self-determination clashed with the wishes of the peoples of Scotland (62%) as well as of Northern Ireland (56%) who voted in favor of the option of remaining in the EU.

After Brexit, and because of their own acts of self-determination, the First Minister of Scotland Nicola Sturgeon has suggested that a second referendum on independence is highly likely and Northern Ireland's First Minister Martin McGuinness called for a referendum on a united Ireland.[260] This suggests that the democratic right of self-determination of peoples, which has emerged is well and alive. And to use Ernest Renan's brilliant metaphor, that it is a "plébiscite de tous les jours".

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[257] On the constituent process, the Roadmap to Catalan Independence contains the following statement: "Setting up a project of writing a constitutional text in a term of approximately 10 months, by way of a participatory mechanism that facilitates gathering more voices around the project through an open constituent process in which there is direct citizen participation (a Catalan Constitutional Convention), and which is later subjected to a referendum". The full text of the roadmap is available at http://www.newscatalonia.com/2015/03/road-map-to-catalan-independence-signed.html. On this aspect of the roadmap, Catalan President, Carles Puigdemont, commented on Catalonia's process for becoming a new state in these terms: "[O]ur citizens, will […] need to decide at the ballot box whether they want to choose a new constituent parliament and move towards a definitive proclamation of independence", and the Catalan government, "will not take this definitive step without democratic validation": see Catalan News Agency, "Puigdemont explains Catalonia's roadmap towards independence to the international audience at Chatham House", May 11, 2016
[258] On the relationship between the right of self-determination and the constituent power, see Daniel Turp, "Le pouvoir constituant et la constitution du Québec", in Patrick Taillon, Eugénie Brouillet and Amélie Binette (dir.), Un regard québécois sur le droit constitutionnel : Mélanges en l'honneur d'Henri Brun et Guy Tremblay, Montréal, Éditions Yvon Blais, 2016, p. 677-702.

[259] After two referendums on the future sovereignty of Quebec, many people are now suggesting that it should follow a constituent process similar to that being followed currently in Catalonia : see Daniel Turp, « De constitution et de constituante au Québec », in Daniel Turp, La Constitution québécoise- Essais sur le droit du Québec de se doter de sa propre loi fondamentale, Montréal. Éditions JFD, 2013 and « Une démarche constituante s'impose- Contre le "coup d'État constitutionnel", le temps est venu pour le peuple québécois d'exercer sa souveraineté politique », Le Devoir, 15 avril 2013, p. A-7.
[260] See Aljazeera, "Brexit: Scotland and Northern Ireland reconsider ties to UK - Nationalist leaders in both Scotland and Northern Ireland ponder independence refe rendums foolowing Brxit ", June 24, 2016.

Abbreviations and acronyms

— AA: Aragon Autonomous Assembly

— AC: Autonomous Community

— ALPE: Autonomy, Liberty, Participation, Ecology

— ANC: Catalan National Assembly

— APF: Francophone Parliamentary Assembly

— ARC: Corsican Regional Action

— ASTAT: Provincial Statistics Institute (South Tyrol)

— BAC: Basque Autonomous Community

— BC: Basque Country

— BHV: Brussels-Halle-Vilvoorde

— BG: Basque Government

— BNG: Galician Nationalist Party

— CAIC: Independent Aragonese Candidacy of the Centre

— CAPAD: Aragonese Pro-Democratic Alternative Committee

— CATN: National Transition Board

— CCD: Christian Democratic Centre

— C's: Citizens

— CDC: Democratic Convergence of Catalonia

— CD&V: Flemish Christian Democrats

— CdH: Humanist Democratic Centre

— CELIB: Study and Liaison Committee for Brittany

— CHA: Aragonese Union

— CIEMEN: International Centre for Ethnic Minorities and Nations

— CiU: Convergence and Union

— CIS: Sociological Centre for Research

— CONSEU: Conference of Stateless Nations of Europe

— CSQP: Catalonia Yes We Can

— CSU: Christian Social Union

- DC: Christian Democracy
- EA: Aragonese State
- EA: Basque Solidarity
- EC: European Communities
- EE: Basque Country Left
- EEC: European Economic Community
- EELV: Europe Ecology - The Greens
- EFA: European Free Alliance
- EGTC: European Grouping for Territorial Cooperation
- EH: Basque Country
- EL: Electoral Law
- ERC: Republican Left of Catalonia
- EU: European Union
- EUCOR: Confederation of Universities on the Upper Rhine
- FCN: Foral Community of Navarre
- FDP: Free Democratic Party
- FI: Forza Italia Political Movement
- FLN-C: Corsican Regional Liberation Front
- FPS: Federation of Socialist Parties
- FRC: Corsican Regionalist Front
- GDP: Gross Domestic Product
- GDR: German Democratic Republic
- IC: Italian Constitution
- ICJ: International Court of Justice
- ICV-EUiA: Initiative for Catalonia Greens - United Left
- IMO: International Maritime Organization
- JD: Democratic Board
- JDA: Democratic Board of Aragon
- LHT: Law of the Historic Territories
- LN: League of Nations
- MBP: Breton Movement and Progress
- MNA: Aragonese Nationalist Movement

- MOB: Movement for the Organisation of Brittany
- MP: Member of Parliament
- MPA: Movement for Autonomy
- NCD: New Centre-Right
- NSWP: Non-State Wide Parties
- N-VA: New Flemish Alliance
- PAB: Autonomist Breton Party
- PAR: Aragonese Regionalist Party
- PCE: Spanish Communist Party
- PDD: Platform for the Right to Decide
- PDL: The People of Freedom
- PG: President of the Giunta
- PM: Prime Minister
- PNB: National Breton Party
- PNC: Party of the Corsican Nation
- PNV-EAJ: Basque Nationalist Party
- POBL: Party for the Organisation of a Free Brittany
- PP: Spanish People's Party
- PS: Socialist Party
- PSA: Socialist Party of Aragon
- PSC: Socialist Party of Catalonia
- PSE: Basque Socialist Party
- PSOE: Spanish Socialist Worker's Party
- PSP: Popular Socialist Party
- RC: Regional Council
- R&D: Research and Development
- RENA: Aragonese Nationalist Studies Grouping
- SDLP: Social Democratic and Labour Party
- SNP: Scottish National Party
- SP.A: Socialist Party Differently
- SPD: Socialist Democratic Party
- SVP: South Tyrolean People's Party

- UCD: Spanish Union of the Democratic Centre
- UDB: Democratic Union of Brittany
- UDC: Democratic Union of Catalonia
- UDC: Centre Democratic Union
- UK: United Kingdom
- UN: United Nations
- UNESCO: UN Educational, Scientific and Cultural Organisation
- UPC: Union of Corsican People
- USL: Unser Land
- UWIC: University of Wales Institute, Cardiff
- VLD: Open Flemish Liberals and Democrats
- WSF: World Social Forum

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Centre Maurits Coppieters

The European Parliament recognized the Centre Maurits Coppieters (CMC) as a political foundation at a European level in 2007. Since then, Coppieters has developed political research focused on European issues in the fields of multilevel governance, management of cultural and linguistic diversity in complex (multinational) societies, self-determination, decentralization, state and constitutional reform, conflict resolution and protection of human rights.

So far, every step has been important to the steady consolidation and growth of the Centre. That is why I am especially proud of this publication. Indeed, it undoubtedly represents a crucial contribution to the current state of affairs and will certainly have an impact, both in academia and among European decision-makers, as well as think tanks and other contributors to the European integration process.

On behalf of Coppieters and our partners, I sincerely wish to thank the authors for their analytical and thorough approach to the subject and their passionate, conceptually robust, well-structured and factual presentations. Finally, I also wish to thank you (the reader) for your interest in our organization and for reviewing our contribution to a Europe-wide political debate.

Günther Dauwen
Secretary of Centre Maurits Coppieters
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GOALS OF THE CENTRE MAURITS COPPIETERS

In accordance with its Statute, the Centre Maurits Coppieters asbl-vzw pursues the following objectives:

- Observing, analysing and contributing to the debate on European public policy issues with a special focus on the role of national and regional movements and the process of European integration;
- Defending the peoples' right to self-determination and the democratic respect for the right to decide by the majority of citizens, freely expressed through a consultation or referendum;
- Promoting scientific research, as well as gathering and managing information on the functioning and the history of all national and regional movements in the EU and making the results available to the public;
- Making information available to the public on the implementation of the principle of subsidiarity in a context of a Europe of the Regions;
- Serving as a framework for national or regional think tanks, political foundations and academics working together at the European level;
- Maintaining contact with all organisations active in the promotion of self-determination, human rights and diversity and institutions of the EU;
- Developing actions to open (historical) information sources in a structured and controlled way with the aim of building a common data network on issues of civic nationalism and regionalism in Europe.

The Centre Maurits Coppieters asbl-vzw takes all the necessary actions to promote and achieve the higher stated goals, always observing the principles on which the European Union is founded, namely the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.

MAURITS COPPIETERS
(SINT-NIKLAAS, 1920 – DEINZE, 2005)

The Fleming Maurits Coppieters studied history and later became a Doctor of Laws and obtained a Master's degree in East European studies. During the Second World War, he refused to work for the German occupier. After many years as a teacher, he worked as a lawyer for a while. He was one of the people who re-established the Vlaamse Volksbeweging (Flemish People's Movement), of which he was the President from 1957-1963.
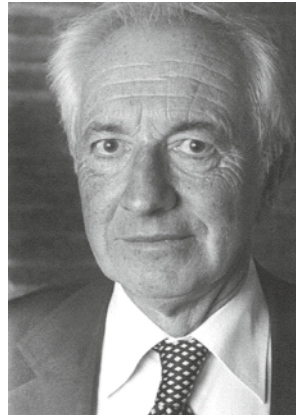
Coppieters' political career began when he became a member of the Flemish nationalist party *Volksunie* (VU), which was formed in 1954. With the exception of two years, Coppieters was a town councillor between 1964 and 1983. He was also elected as a member of the Belgian Chamber (1965-1971) and Senate (1971-1979). At the same time, Coppieters became President of the newly formed '*Cultuurraad voor de Nederlandstalige Cultuurgemeenschap*' (Cultural Council for the Dutch-speaking Community), from which the Flemish Parliament emerged, when the VU formed part of the government. In 1979, Coppieters was elected during the first direct elections for the European Parliament.

As a regionalist, he became a member of the Group for Technical Coordination and Defence of Independent Groupings and Members in the European Parliament (TCDI). Among other things, he made a name for himself when he championed the cause of the Corsicans. In the meantime, Coppieters also played a pioneering role in the formation of the European Free Alliance, of which he became the Honorary President and continued to play a role in its expansion, even after he said farewell to active politics in 1981. In 1996, Coppieters joined forces with the President of the Flemish Parliament, Norbert De Batselier, to promote '*Het Sienjaal*', a project with a view to achieve political revival beyond the party boundaries. Coppieters died on November 11, 2005.

Among other things, Coppieters was the author of: '*Het jaar van de Klaproos*'; '*Ik was een Europees Parlementslid*'; '*De Schone en het Beest*'.

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