

**Self-determination and the Reconfiguration of the Nation-state in Europe**

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The contributors to this volume were tasked with rethinking and answering questions about borders and boundaries, sovereignty, and self-determination in Europe. Coming from different disciplines such as political science, sociology, and law, they have analyzed the cross-fertilization between these three concepts. The authors have shown that the meaning of borders/boundaries, sovereignty, and self-determination in Europe is changing, and the transformation of one concept directly influences the content and interpretation of the others.

As far as sovereignty and borders/boundaries are concerned, most of the contributions confirm previous research that has indicated how shifting authority structures between the nation-state and the EU have changed the meaning of sovereignty *in* and *for* Europe (Walker, 1998; Keating, 2004; Grimm, 2009). They have created new cleavages on a vertical axis; among different levels of government, as well as horizontally, with an ever-expanding EU membership. In some policy fields, authority can shift vertically, between the supranational, national or the sub-state level. However, revisions of the European Treaties have affected not

only the vertical axis, introducing an increasing horizontal complexity. This complexity has been deepened, not only as a result of various enlargement rounds, but also with the rise of different forms of association with non-EU states, as well as particular arrangements that include only some EU member states. Thus, ironically, it seems that in Europe, where the concept of sovereignty itself was invented, is also where it is most challenged (Grimm, 2009).

The notion of self-determination is central to this book. We define self-determination as a two-fold claim of a nationalist or regionalist movement. First, it is an ontological claim that the reference group (nation or people) exists as a social and political reality. Second, it is a normative claim that this group has a right to its own self-government. Both claims are closely interlinked. For a long time self-determination had been seen as leading to the creation of a sovereign nation-state, with fixed boundaries. On the one hand, the transformation of statehood and of borders in the process of European integration runs counter to this key assumption. On the other hand, the EU, as an organization based on nation-states, has not yet adapted to these changing realities and has refrained from accommodating new kinds of claims to self-determination. Instead, as shown in this volume, the EU remains anchored to traditional concepts, and not even in a consistent manner.

The core ideas of this book can be summarized along three dimensions. The *first dimension* focuses on examining the dynamics between the nation-state and political integration, in particular within the EU, where the authors analyze the conditions for political and territorial stability of the nation-state or the EU. There are two aspects to this: one relates to the socioeconomic differences among member states and the other focuses on the institutional nature of the Union. More generally, the authors consider the conundrum of how to manage

citizens' preferences for political integration in Europe. Differentiated integration through opt-outs has become a widely used – and somewhat successful – institutional instrument to cope with such a variety of preferences. However, there are many circumstances in which preferences go beyond *policy* and become matters of *polity*, including claims for self-determination. In this case, there are no easy solutions as the scale of the political communities that may benefit from public goods is the foremost matter of contention.

Approaches within this dimension mainly analyze how these dynamics may entail greater fragility, or look into the potential for greater flexibility of the EU as a political union, with the underlying assumption that member states are the only political agents with a significant role to play in the European integration process. Other contributions adopt a different perspective, constituting a *second dimension* which focuses instead on the different layers of political activity beyond nation-states, emphasizing that nation-state borders are only one fault line among many within the EU. In this way, these authors argue that political integration in the EU also occurs beyond the scope of member states, suggesting that the increasingly evident emergence of elaborate, multi-layered political dynamics, contributes to better articulating the preferences of EU citizens at various levels.

The contributors focusing on these ideas examine the issue of how nation-state borders have become increasingly blurred across Europe. This is a development that has emerged in recent decades within the EU and which has a direct impact on member states and their citizens. From the new dynamics of electoral rescaling to recurrent transborder tensions, changes have occurred to reflect the diverse preferences of EU citizens. These developments do not coincide with the strict confines of nation-states forming part of the EU and neither do they configure a homogeneous space for all of those citizens. Even foreign policy is no longer

monopolized by the nation-state apparatus, and is often used as a new political strategy by regions or even cities. The complexities of European citizenship – as a mix of ethnic identities, languages, and cultural frameworks – also highlight the limitations of identity-making policies which are closely related to nation-state building, indicating how state borders within Europe are too simplistic a delimitation for managing intricate citizenship configurations.

A *third dimension* in this volume is the focus on the self-determination claims of sub-state political communities within the EU, and their political and legal actions. Contributors adopting this perspective explore and assess the potential of these communities to change territorial borders within the EU, challenging the current territorial status quo. In other words, they discuss the internal secession of states within the EU as a plausible way to reconcile advances in European political integration and adjust to citizens' preferences in the territories. The contributors delve into the obstacles that such strategies might face, addressing the challenges raised by some authors in the context of the other two conceptual dimensions, by discussing to what extent the current status quo of EU member states and their 'national' preferences can be changed, and examining contemporary trends in the rescaling of European territorial politics.

The various contributions are rooted in diverse analytical and normative perspectives, as well as different legal and political methodologies, therefore providing diverse interpretations. In what follows, we discuss in greater detail some of the interpretations presented, and show how the contributions relate to each other, also across the three dimensions identified. We will argue that recognizing the self-determination of democratic communities as a constituent characteristic of the EU's institutional design could generate a new potential for European

integration, instead of a tendency towards EU disintegration. This could be seen as paradoxical, but it could overcome the limitations of the nation-state approach to political integration.

### **Nation-states and political integration in the EU: cohesion and fragility**

The prevailing consensus on European integration nowadays is that the EU is less than a federation with a shared system of sovereignty and interdependencies, but more than a collection of sovereign states that share borders and are involved in international organizations. EU institutions represent a hybrid case of multilevel government with a sophisticated system of coordination in many policy areas, and specific fields where the delegation of sovereignty to the European level is particularly evident. However, nation-states still play the most prominent role and retain the power to veto any institutional reform. The EU is an institutional complex constantly under construction that employs critical conjunctures to experiment with new formulas of integrated government under adverse decision-making conditions. The chapters related to the first dimension show different approaches to member state heterogeneity, considered one of the salient challenges to European integration.

The contributions of Pablo Beramendi and Juan Díez-Medrano indicate how different member states react to European-wide economic differences and implicitly suggest that maintaining some degree of political integration in Europe involves overcoming tensions related to the heterogeneity between member states.

Beramendi identifies economic heterogeneity and externalities among EU member states as crucial to comprehending why political unions face requests for secessionism (or demands to reduce the policy intensity of the union), while in other cases, the member states decide to opt for more integration. He argues that when externalities across borders induce otherwise heterogeneous units to pool risks, the actors involved can harmonize their political responses. In this case, integration can become a feasible preference for the states involved. Beramendi claims that concerns about unions are as much concerns about who *does* what, as they are about who *gets* what, and this increases when there is greater economic heterogeneity. Both concerns are endogenous as determinants of the nature of preferences for distributive changes within the units and with the emergence of political movements, create fragility within the political union and trigger secession options.

Economic heterogeneity among citizens *within* states – set off by interstate market integration – is the central topic of Juan Díez-Medrano's chapter, where he develops a new concept, that of unequal market insertion. This idea accounts for why citizens of a country or a region, which is expected to benefit from membership in a larger market, choose to exit even if their state or region profits from participation in this market. Díez-Medrano finds that when overdevelopment overlaps with unevenly allocated profits of market insertion within a political community, only a small part of the population has reasons to give up some sovereignty to keep benefiting from this bigger market. Such tensions make a political union more vulnerable, and only compensatory policies, mainly addressed to those losing from those integration processes, can help reduce the existing political dangers. These compensatory policies, however, run the risk of multiple forms of political manipulation, particularly when relations between member states are framed as zero-sum games and the political union is unable to introduce effective and more visible policy instruments.

From a rules-based perspective, Frank Schimmelfennig's chapter explains how the EU reacts to the heterogeneity of integration preferences and capacities among member states. He identifies *differentiated integration* – the uneven participation of member states in different EU policy fields – as central to understanding the development of the EU over the last decades. This differentiation yields to sovereignty and self-determination concerns, but tends to create a core-periphery structure among member states. Schimmelfennig argues that increasing heterogeneity has resulted from the many rounds of enlargement and Treaty revisions in the EU, which has made membership more varied. Differentiated integration is one of the ways to avoid an integration deadlock. At the beginning, differentiated integration was largely unintended: today, even if still not fully recognized, it is a reality and, at least to a degree, beneficial.

Schimmelfennig shows that European integration has not only removed or weakened national borders but also created new borders within Europe. Internal borders vary across policy areas – sometimes excluding member states (as in the Eurozone), sometimes including non-member states (the European Economic Area), and at times excluding member states and including non-member states (the Schengen zone). In this way, various fields where states want to self-determine can be recognized, while integration efforts may continue without suffering from decision traps.

The aforementioned three contributions consider member states and their relation to the political union as essential to their analysis, and focus on economic and political determinants, without considering transformations or adjustments to the current status quo. Though the chapters by Ferran Requejo and Klaus-Jürgen Nagel and by Margaret Moore are

based on normative arguments about the configuration of nation-states, they also share the same logic about the state as the primary locus for the formation of citizens' preferences, discarding the multilevel political integration process and the supranational dimension.

Requejo and Nagel focus on the conditions that could make possible the emergence of a new state, and discuss this in the EU context, analyzing internal EU secession, which refers to citizens' preferences for territorial restructuring in Europe, establishing new states within the EU. From a political economy perspective, this can be a reaction to unequal market insertion or an adjustment to externalities created by the EU that challenge the internal equilibria of nation-states in Europe. Requejo and Nagel assess federal practices of 'internal secession' and find that federal governments owe loyalty to the constituent states but also to the secessionists' preferences as citizens of the federation. However, when analysing cases of internal secession in federations such as Switzerland, Canada, and India, they find that it has not been easy for these new entities to achieve 'member state' status. Such internal secession implies accepting the federal constitution (in the case of the EU, the Treaties), which may provide citizenship. Within a fragile political union such as the EU, however, efforts to promote an internal secession by a political community are likely to be unsuccessful, lacking the support of 'federal' institutions, due to the strong resistance from member states.

Secession from the Union would perhaps continue to be an option, to the extent that the benefits of market integration are reaped by only a small fraction of supporters of state secession (while those against market integration might expect the external secession to contribute to improve their situation).

The chapter by Margaret Moore adopts a pure normative perspective and embraces the premise that a state is unavoidably territorial. Moore focuses on the normative question as to why, although there may be justifications for the territorial claims of states, some states raise

the claim to cover specific territorial areas. She contends that a successful justificatory argument for the state invokes the idea of the 'people' who are self-determining through the state. This idea examines the relationship between people and land to explain the reach of the state and the particular geographical area of any state territory. Moore proposes a normative argument for state legitimation based on self-determination processes and identifies states as building blocks in any political process focusing on regional integration. States, and their necessary territories, are formal structures made to deal with differences and the challenge of preference formation, and the building blocks of complex multilevel polities.

### **Permeable and fluid state borders in the EU**

The main ideas related to this second dimension examine integration from a different perspective, by considering that the relevant actors in the political union are not only nation-states. They share the understanding that territories may play a role within the EU at different scales, and political communities can emerge or express themselves either at the subnational level or at transnational level, blurring nation-state borders.

Arjan Schakel uses this approach by analysing the differences in voting behaviour within the EU and asking what would have happened if the EU had developed a truly multilevel party system. He looked into how citizens behave when they have multiple opportunities to voice their preferences on different voting levels when electing their representatives. He tracks the differences in the level of party support between European, national, and regional elections, by constructing a congruence index which aims to capture the degree to which voters express the same preferences across three levels of elections. Schakel finds strong empirical evidence

that the party system in Europe is diverging across levels. National state elections are not the only first-order elections, where preferences for all policies – at different levels – are set. In spite of some media simplification, and the efforts of national political leaders to keep the flavour of a single and determinant level for politics in Europe, it appears that citizens are increasingly aware of the votes they cast and the preferences they express at different levels of representation. Voting for different parties at each political level has become an increasingly common behaviour in many countries.

In her chapter, Erika Harris deals with questions of fading borders and territorial heterogeneity, by examining the interrelationship between identity, borders, and self-determination in the transborder regions of eastern and central Europe, which were created after the dissolution of the Warsaw Pact. At that time, the reconstitution of democratic regimes within the European framework created not only permeable borders but also a perpetual flux in the legal and political status of different national and ethnic groups. Transborder regions are a territory without precise boundaries in which ethnic networks stretch across one or more state boundaries. The status of these transborder regions is difficult to assess. Even if they are important and the majority of their populations understand these regions as important, they lack the capacity to address people's interests and still rely on nation-state policies, which they might see as alien. In these regions, there is a conflict between these permeable borders and the static decision structures by different nation-states.

From a similar perspective, Dejan Stjepanovic analyses the impact of external citizenship acquisition targeting regional populations, on the stability of bi-, plural- and multinational regional polities. He examines the impact of supra-state regional integration (or the prospects thereof) in the sub-state regions. Stjepanovic's main finding is that presenting citizenship

based on some ethnic criteria (such as language), combined with territorial beliefs (as in the cases of Hungarian external citizenship in Vojvodina or Italian in Istria) where the targeted minority benefits from some rights in the regional pluri- or multinational polity, does not necessarily cause intergroup tensions. Building on the concept of citizenship constellations – the idea that citizenship regimes overlap in a certain territory – Stjepanovic argues that we should consider adding a temporal dimension to our understanding of citizenship. When talking about self-determination constellations, we should involve spatiotemporal relations between self-determination, citizenship, and territory.

Caterina Garcia and John Etherington discuss the foreign policy of sub-state entities, taking Catalonia as their case study. They show that the external relations of sub-state entities provide us with a useful lens through which to analyze questions relating to the nature of sovereign states today, in particular those within the EU, where external trade and other significant foreign policy issues are formulated at the EU level. They argue that when sub-state units engage in their own foreign policy, this can (but does not necessarily) lead to conflict with the central state. In an international order increasingly dominated by overlapping, shared, and shifting sovereignties, multilevel coordination is required if sub-state entities are to engage meaningfully in foreign policy. Analyzing the Catalan case, they suggest that coordination problems and power-related tensions in the foreign policy arena, together with the rise of Catalonia's self-determination claims, transformed the style of Catalan external relations, from a multilevel co-operative approach to a 'proto-statist' foreign policy during the 2010s. This case illustrates that nation-states confront increasing tensions to keep the monopoly of territorial representation, in particular if they are not capable to share it with a variety of political communities, at least in a post-Westphalian Europe, which is no longer exclusively based on the logic of nation-states.

Stephen Tierney looks closely at the dynamics of constitutional change through referendums in federal states. According to Tierney, federal or other territorially devolved states, implement complicated models for constitutional change, requiring consent from a plurality of actors or institutions. In this way, the process of constitutional change itself acts to contain more fundamental self-determination claims that might be made by the polity's constituent territories by turning cross-territorial deliberative consensus into major constitutional decision-making. Tierney considers the ways in which a referendum acts as a nation-building or demos-building instrument, which can serve to stabilize vernacular identities. He considers how this, in turn, can harden both borders and self-determination claims in a way that runs counter to the key constitutional purpose of federalism, which is to weaken these claims and make borders more fluid in support of constitutional projects to accommodate territorial pluralism within a wider union project. Tierney concludes that more imaginative and innovative institutional advances, both at the EU level and the member states level, would be necessary in the future.

### **Self-determination in Europe: constraints, strategies, and alternative solutions**

There are almost 200 sovereign states in the world today. There are also some in-between cases, which have not achieved the full recognition of the United Nations. In the last three decades, at least 30 new states have joined the UN, most of them after the breaking up of the Soviet Union and the former Yugoslavia. The creation of a new state is always a singular event. Establishing a new state involves overcoming internal obstacles placed by the pre-existing state, but also the international community may be reluctant to easily accept new members. Many conditions need to be fulfilled to make this possible and effective.

Approaches related to the third dimension in this volume explore the different political and legal strategies to create a new state in Europe, with all the complexities and difficulties that this implies. Some of the chapters which align with this perspective focus on strategies of state secession in Europe, and indicate that establishing a new state will in the end be the result of political will and compromise. Secession is obviously a potential strategy for some political communities within the EU that are currently sub-state or subnational entities who consider that their singular characteristics deserve a nation-state form within the EU, or simply because existing territorial compromises are seen as no longer viable. This kind of state creation could be triggered by an internal secession based on the majority's preference.

Chapters inspired by this dimension share a similar angle, but explore different strategies. Jure Vidmar examines the legitimacy of referendums on territorial and self-determination matters doubting that popular referendums are more legitimate than other forms of democratic decision-making. He argues that the theoretical ideal of answering territorial claims 'in accordance with the will of the people' is incompatible with the international legal framework built on the territorial integrity of states. This conflict between self-determination and territorial integrity, however, creates a zone of legal neutrality in which striving for independence is not illegal, just unlikely to succeed. Vidmar claims that international law does not entitle the independence-seeking entity to secede but does not prohibit it either. In addition, he analyzes similar constitutional developments in different parts of the world. He submits that, as noted by the Supreme Court of Canada in the *Quebec case*, in a constitutional democracy the will of the people in favour of independence cannot be ignored. It is arguable that the central government, and the independence-seeking side, has the duty to, at the very least, negotiate. This may end up with a compromise and the secessionists may be forced to

accept a viable new internal arrangement rather than insist on independence. Vidmar concludes that a unilateral path to independence is virtually never successful and negotiation is necessary.

Jessica Almqvist also analyzes the possible tension between secessionism and basic principles of international law, including those related to territorial integrity, the equal sovereignty of states, as well as the respect for human rights and the rule of law. However, while Vidmar analyses how nation-states react to state creation, Almqvist examines the recognition of new states by the EU since the end of the Cold War. She considers whether EU member states should support the aspirations of self-determination movements to become states through recognition and if so, why. Almqvist claims that the EU has developed a new pragmatic approach to the recognition question, which places security and peace considerations at the top of the European agenda. In these cases, recognition acts are tailored as practical solutions to changing political realities. However, this pragmatic approach is not ideal to resolve demands for self-determination that do not take the requirements of rule of law and human rights sufficiently into consideration. Almqvist finds that in situations where peace and security are at stake, such as in the absence of friendly settlement with the parent state, the usual outcome is contested statehood.

Finally, other contributions directly explore possible strategies to fulfil self-determination claims. Neil Walker argues that the new account of sovereignty in the EU has strengthened the development of a reflexive nationalism. This concept is the opposite of a teleological nationalism, which is the more conventional form of modern political nationalism and involves a menu of set goals, the ultimate of which is the achievement of legal and political sovereignty, concluding with the creation of a new state. Reflexive nationalism, however,

involves an ongoing and adjustable relationship between a national self-defining ‘people’ and territorial homeland. It is also a set of institutions in which, unlike the teleological focus on the national sovereignty monopoly, allocating collective goals across levels of government is understood as instrumental rather than essential.

### **Upward and downward policy delegation in the EU**

In this section we present, first, some general observations which relate to the upward and downward delegation of policies and the re-affirmation of core competences of the state. Secondly, we aim to reflect on the implications of the challenges discussed in this volume.

In recent decades, globalization has accelerated transgovernmental dynamics. Formal and informal international organizations, transnational networks, and many other structures beyond the sovereign state have increasingly concentrated power resources for the governance of many different policy areas, while states increasingly delegate responsibilities to supranational organizations (Marx and Wouters, 2018). Consequently, in the last few decades there has been a reduction in absolute levels of state sovereignty, although states are more active on many fronts. There is greater participation in global governance initiatives, control of borders both for people and goods – i.e. improvements in governance capabilities and expanding budgets (Zürn, 2018). For European countries, transgovernmentalism has become even stronger, as EU integration has introduced an additional layer of upward state delegation, which undermines state capabilities to innovate in many areas of public policy and regulatory governance (Genschel and Jachtenfuchs, 2014).

States are nowadays more interconnected and interdependent, and this reduces their sovereignty in multiple areas where they have accepted policy delegation (upwards, horizontally, to independent agencies, or downwards). The EU is a good example of these tendencies, with its complex supranational institutions. However, this interdependence also increases the value of states' contribution to effective global governance, as key organizational nodes. Member states retain constitutional sovereignty vis-à-vis the EU, which includes the right to veto treaty changes and the right to exit, although the exercise of sovereignty is often delegated to supranational institutions, such as the Commission in trade and competition policy, or the European Central Bank in monetary policy. Alternatively, it is pooled, i.e. jointly exercised by the member state governments in the Council.

With regard to territorial matters, many European states cope with claims for self-determination, often managed by devolving powers to lower layers of authority, making state decentralisation very far-reaching in some cases (Closa, 2017). Regional authorities are now a well-established institutional dimension across most European countries, assuming many policy responsibilities, including the implementation of EU policies (Keating, 2017). This phenomenon has hollowed out – to some extent – the organizational role of the state apparatus, as policy implementation and delivery of public goods has become increasingly dominated by local and regional governments. Nation-states have fewer public goods to provide under their direct responsibility, although they retain core state tasks such as foreign policy, and remain the most relevant players in matters of policy coordination. In addition, we observe that many big cities and large metropolitan areas are increasingly carving out their independent roles in the global arena. Global cities in Europe are becoming political actors with their own identity beyond established states, and are even able to exercise considerable influence upon state priorities and strategies. Such complex and contradictory

trends in contemporary states in Europe open the door to different future scenarios. The role and nature of EU member states has changed significantly, and we cannot foresee all the possible combinations that might emerge in Europe, whether new states will be born or innovative institutional designs will be able to cope with the existing dynamics and challenges.

Considering the previous discussions, and at the risk of oversimplifying, we claim that there are two main pathways to the rescaling of the EU, if we consider the multiple territorial tensions and political trends existing in Europe. On the one hand, there is the possibility of secession and the emergence of new states. This would mean that the family of nation-states could include some cases where the self-determination of strong political communities may reveal itself to be successful in creating a new nation-state, fragmenting EU member states. This scenario would imply that nation-states remain the main players in the European integration process, that the current mechanisms of integration will remain in place, and that bargaining among member states would become more complex as their numbers increase as a consequence of internal secessions. Potentially, this can be a development that the contributions to this volume related to the first dimension we identified above could describe easily within their framework, including potential emerging problems and conflicts.

On the other hand, there is the potential for increasingly differentiated states with greater capabilities to accommodate salient political communities and receptive to European-wide political institutions. This path probably entails a stronger European integration process, in which nation-states play a diminishing role, in the context of which self-determination is widely acknowledged not as a dichotomous choice, but rather as varying among different policy and functional areas, each having its own differentiated scope and relevant political

and cultural community. Ideas related to the second dimension we referred to above, contribute to explore this scenario of permeable and fluid state borders in the EU, examining challenges and potential political arrangements.

Unless one of these two possible alternatives becomes practicable and institutional changes occur in the coming years, self-determination claims and aspirations will probably remain an unresolved issue facing European integration. More generally, as the contributions related to the third dimension discuss extensively, these aspirations will constitute a challenge for the establishment of a renewed institutional design that could embrace the plurality and diversity of identities, interests, and preferences as to the production and delivery of multiple and diversified public goods in Europe. It is also possible that a mix of the two scenarios may occur, with initial conflicts related to self-determination claims in a few instances, triggering broader institutional changes that could rescale territorial politics in Europe. In the final section of this chapter we explore the challenges that large institutional changes should cope with in order to accommodate multiple political voices.

### **Accommodating political voices in multilevel Europe**

The search for new institutional alternatives to rescaling European territorial politics is not only a task of isolated nation-states dealing with internal pressures from certain parts of their territories, but also a task for the EU. We are well aware of the weakness of European doctrines and instruments to cope with what is as much a European as it is a member state issue. This became very apparent as the ‘Catalan question’ unfolded, following the unilateral independence referendum held in October 2017, a crisis in which the EU remained inexplicably absent. The contributions to this volume identify several transformative

challenges with which the EU is confronted and that might even change the EU's current structure and modus operandi. An important challenge is to develop a political democratic system which can accommodate these transformations and which gives sufficient political voice and representation to the different political constituents of the EU. In her contribution, Harris explicitly notes that in the case of transborder regions '*a more democratically reformulated self-determination, applicable to peoples and their territories, would make transborder regions more stable [...] and ultimately more effective partners in European integration*'. Then the question becomes how to ensure a political voice in this multilevel political structure. Several possible answers are suggested and partially assessed by several among this volume's contributions.

One possible answer is to rethink political representation for decision-making procedures and practices. A key innovation here might be to revert to different forms of direct democracy in the form of referendums or direct consultation of citizens. However, some contributors are highly sceptical about what can be achieved through referendums in a multi-layered political system. Both Tierney and Vidmar raise several objections to the use of referendums especially in federated states and in relation to constitutional issues, given that referenda tend to ignore the careful political construction of federal states which balance the participation and representation of different groups. Referendums, rather than resolving political conflict and contestation, may even aggravate or deepen them. These fundamental objections could be extended to other forms of direct democracy. In this context it is important to recognize that addressing the so-called democratic deficit entails much more than creating a direct interaction between the rule-maker (EU or different levels of governments) and the rule-taker (citizen). This democratic shortcut often neglects the subtle political construction with multiple political actors and institutions upon which a democracy is built. This 'subtle'

construction of course also has political equilibria which are challenged by some political actors and movements which seek to change the balance, as is illustrated by the different chapters that focus on secession. But whether this is best achieved through direct democracy, is quite a different matter, which is questioned in this volume.

A second answer might be to focus on those actors which transpose citizens' preferences into political decisions in a liberal democracy, namely political parties and political movements. Traditionally, these actors have national politics as their frame of reference. In order to operate successfully in a new political constellation they might reconsider their current mode of action. It is beyond the scope of this volume to fully address these potential transformations, but two chapters address aspects of this specific issue. Concerning political movements Neil Walker provides an in-depth analysis of how nationalist movements are ceasing to be firmly focused on independence, and becoming 'reflexive' movements which recognize that they need to operate in a complex and multilevel political environment and develop their political strategies accordingly. This might lead to a pragmatic approach towards engaging on multiple levels, therefore not only on the level of the central government in an EU member state, but also on the European level. However, Walker questions how sustainable this shift in orientation of political movements is and notes how they might become redundant because they are liable to lose their '*internal and external audiences alike as a nationalism that has simply lost its momentum*'. This might give rise to the emergence of new movements which will pursue different strategies. A more structural change may be identified in the landscape of political parties. This is at least argued by Arjan Schakel, who finds strong empirical support for the claim that the European multilevel party system is diverging and hence is creating different avenues for participation of citizens through parties on multiple levels of governance. This diversification of political parties also

increases the risk of political conflicts between levels of government, since different actors operate on different levels and do not necessarily need to align their political priorities.

A third answer considers potential institutional mechanisms to accommodate diversity. In this context two institutional mechanisms are relevant, namely differentiated integration and subsidiarity. The first mechanism, which is discussed extensively by Schimmelfennig, focuses on different degrees of integration. Although this differentiated integration is not ‘*by design*’, but rather the outcome of a political process, one could conceive it as an approach to deal with diverging preferences. Such an idea was also included as one of the five scenarios (scenario 3) outlined in the European Commission White Paper on the future of the EU (European Commission, 2017). This scenario was not supported by the European Commission but is theoretically possible. However, for this mechanism to provide an answer to some of the sub-state dynamics identified in this volume, it would need to be also applied to sub-state governments. This type of institutional mechanism currently only operates at the level of the member states and does not spill-over into sub-state governments, which might hold different preferences on differentiated integration. In theory, differentiated integration extended to sub-state entities could imply that member states *and* sub-state regions will be integrated differently according to the division of competences in federated states.

Subsidiarity is the second approach for institutional mechanisms that can be found in the current architecture of the EU, although it was not addressed at length by any of the contributors. The principle of subsidiarity ensures that legislative decisions are taken at the level that is closest to citizens, to ensure that EU integration recognises the diversity of cultural and linguistic identities within the member states (Schmitt et al., 2014). The subsidiarity principle, which first appeared in the area of EU environmental policy in the

1986 Single European Act, was included as a more general principle in the 1992 Maastricht Treaty. In a similar direction, the 1992 Treaty changes also brought about two further institutional developments that sought to ensure greater recognition for sub-national governments: the establishment of the Committee of the Regions and the possibility for regional representatives to participate to the Council of Ministers on behalf of a Member State, both of which failed to significantly enhance EU-level representation. The overall approach to the application of the subsidiarity principle was decided by the European Council in Edinburgh in December 1992, and integrated into a Protocol annexed to the 1997 Treaty of Amsterdam.<sup>1</sup> The central position of the subsidiarity principle in the EU architecture was reinforced by the 2007 Treaty of Lisbon, which also added an explicit reference to the sub-national, regional and local dimensions of subsidiarity. In addition, the 1997 Protocol on the application of the principles of subsidiarity and proportionality was replaced by a new Protocol of the same name, but explicitly granting a role to national parliaments in ensuring respect for the principle of subsidiarity.<sup>2</sup>

The Treaty of Amsterdam also introduced specific monitoring mechanisms related to the subsidiarity principle. As a result, the European Commission is under an obligation to consult national and local institutions and civil society before proposing legislative acts. The Treaty of Lisbon has further reinforced and improved these monitoring and enforcement mechanisms. In particular, every draft legislative instrument must be systematically communicated to all the national parliaments of EU member states. Under this Early Warning System (EWS), the national parliaments then have an eight-week period in which to object to

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<sup>1</sup> Protocol on the application of the principles of subsidiarity and proportionality, Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and Related Acts, *Official Journal C* 340, 10 November 1997.

<sup>2</sup> Protocol on the application of the principles of subsidiarity and proportionality, Treaty of Lisbon amending the Treaty on European Union, the Treaties establishing the European Community, *Official Journal C* 306, 17 December 2007.

the draft EU legislative act on grounds of subsidiarity. This objection is pursued through the submission of so-called reasoned opinions. When reasoned opinions represent at least one third of all the votes allocated to the national parliaments, the Commission must review its proposal, a procedure which is known as the ‘yellow card’ procedure. There is also an ‘orange card’ procedure which is triggered when a *majority* of national parliaments consider that a draft legislative act infringes the subsidiarity principle. In 2016, the European Commission received 74 reasoned opinions from national parliaments on 26 legislative proposals. So far, the yellow card procedure has been triggered three times while the orange card has not been triggered yet.

The changes brought about by the Lisbon Treaty have the potential to greatly enhance the (sub-state) parliaments’ political participation in EU decision-making, including the participation of sub-state or regional parliaments and, in doing so, provide an institutional answer for greater autonomy of sub-state political entities in the EU. Some scholars also argue that the introduction of the EWS contributed to a closer involvement of national parliaments in EU affairs (Cooper, 2015; Miklin, 2017). However, on the involvement of sub-state parliaments, and hence the ability to have political voice from sub-state political institutions, there is more scepticism. The EU’s 2001 *White Paper on Governance* appeared to represent the start of a process that would lead to a concrete institutionalization of multilevel governance; however, its proposed approaches were never implemented. The involvement of sub-state parliaments remains more of a theoretical possibility than a real mechanism to ensure the representation of sub-state preferences at the European level.

Schmitt et al. (2014) identify several hurdles for sub-state parliament participation in the EWS. These obstacles relate to the internal power dynamics within federated states and the

related coordination costs and barriers through which central states (try to) keep sub-states excluded from the EWS process. This dynamic is aptly illustrated in another context, by the contribution of García Segura and Etherington to this volume. These developments indicate that the current institutional mechanisms are insufficient to deal with the more fundamental societal transformations with which the EU is confronted and are unable to provide political voice and representation to the diverse constituents of the EU. In addition to this, recent trends indicate an increased prominence of the European Council (bringing together national heads of State and government), which has played a very significant role in the management of recent crises, and demonstrates the enduring and even strengthening influence of central governments.

A fourth answer to the challenge of accommodating political voices in a multilevel polity takes us away from politics and turns our attention to some of the root causes which might trigger political destabilization, most notably economic inequality. Pablo Beramendi and Juan Díez-Medrano, in their respective contributions, make a convincing argument that fragmentation and integration in federated entities is driven by underlying economic dynamics. When inequality increases internal tensions, also claims for secession become more likely. In order to address these dynamics, solutions might not only be sought in political reform, which might offer political voice through formal procedures and institutions, but also in economic or other policy areas which enable different political constituents to participate on multiple levels of policy-making (Dingwerth, 2014). The point by Beramendi and Díez-Medrano is not that fragmentation or possible secession is illegitimate, but that decisions are partially driven by deeper underlying socio-economic conditions and hence are not only a manifestation of political preferences rooted in cultural and historical trajectories. These cultural and historical trajectories related to notions of identity and community surely

also play a role, as is demonstrated by the contributions of Dejan Stjepanovic and Erika Harris. However, significant inequalities influence preferences on political reform and transformation and constitute an important factor in understanding political changes related to self-determination and shifting borders.

All of these answers, however, remain unsatisfactory or partial, making developments such as those in Catalonia and Scotland (following the 2014 independence referendum) increasingly likely. Key to providing more far-reaching solutions in the future is to acknowledge that addressing these issues is to ensure that the EU is truly able to uphold its core values, as these are not simply internal matters for the member states to deal with. The ultimate hurdle to the EU's involvement is the aversion of central governments, which is likely to be overcome only through the establishment of an independent body tasked with monitoring democracy, rule of law and human rights, along with ensuring that the EU is well informed on the constitutional processes within the member states. For instance, an extended mandate (and increased resources) of the existing Fundamental Rights Agency (FRA) could constitute a positive step in this direction, though this is currently politically unattainable. Still, the EU's inability in the recent Catalanian crisis to go beyond reactive and rather ad hoc approaches is perplexing and somewhat in contrast with its eagerness to diffuse and resolve similar crises beyond its borders (e.g., Kosovo or Cyprus). To remedy this, the EU should, for example, also take a more active role in the direction of developing 'track-2 diplomacy' channels, under the careful guidance of a reputable 'honest broker' who, without vested interests, would be well suited to mediate these complex internal conflicts (Wouters and Verhelst, 2018).

It is time for the EU to define and agree, in its own interest, on the participatory and decision-making mechanisms that would allow communities of different scales to be involved in European institutions. It is not enough – although probably necessary – to reorganize territorial politics within the member states, improve the balance of political participation and minority rights, and establish a new compromise among competing elites and their supporters within each member state. In other words, the aim should be to finally reform the European model of government, finding innovative and creative ways to ensure the representation of constitutional regions and the recognition of their constitutional powers. A more fundamental rethinking is necessary to cope with these challenges and, crucially, to deal with the unsurprising resistance of the member states to EU involvement. The EU can and should play a role in territorial conflicts, as it has the potential of facilitating dialogue and allowing credible commitments to emerge to ensure the stability and performance of multilevel government in Europe.

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