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De-configuring the European Union

A comparative approach

By

John Erik Fossum

ARENA – Centre for European Studies, University of Oslo

PO BOX 1143 Blindern

N- 0317 Oslo

j.e.fossum@arena.uio.no

Abstract

This article discusses the question of the EU's uniqueness. This issue is of particular importance when considered in relation to the nation-state. Uniqueness can then be considered as a case of departure from or transformation of the nation-state. The EU has emerged with a complex mixture of supranational, transnational and intergovernmental traits. The emerging system at the EU level combines with the closely linked process of Europeanisation of the member states to transform the nation state. To study the uniqueness of the EU in relation to nation state transformation, a comparative approach is necessary. This article discusses the question of the EU's uniqueness by means of a more extensive and systematic approach to comparison than has hitherto been undertaken. It argues that the application of four strategies of comparison to the EU, applied at different stages in the EU's development, offers the best way of clarifying uniqueness.

INTRODUCTION

The European Union is often portrayed as an entity *sui generis*. But how unique is the EU? Is it a novel type of polity? In what qualities of the EU might novelty and uniqueness reside? One problem in assessments is lack of specificity. Most of those that underline the unprecedented nature of the EU fail to offer any systematic account of how, and in what sense, the EU is unique.¹ Part of this problem relates to a second issue, namely deep disagreement on the nature of the EU, and on what standard reference that uniqueness should be measured against: should it be state, international organisation, or international regime? A third problem is the sheer dynamism of the EU. Discussions of the EU's uniqueness take place within a setting that is still undergoing rapid and dynamic changes. The EU has still not found its final form – how then to confidently establish its uniqueness, in particular in *polity* terms (with polity pertaining to the political organisation's form and constitutional essentials)?

Given these problems, why should we devote time and energy to these issues? The most obvious answer lies in their importance. Having said that it is not the newness of the EU *as such* that is the most important underlying issue: If a new type of entity is grafted on top of existing states, but these states retain core state attributes, the newness of the EU institutions may not amount to very much. The core issue is rather whether, and the extent to which, the EU contributes to, or even heralds in, the transformation of the nation-states in the EU, and across the entire Europe, which would be a development with global ramifications. Historically speaking, Europe was the cradle of the states system, and today it is here that the transformation of this system into a different polity configuration has proceeded the furthest. The upshot is that the discussion of the uniqueness of the EU should be linked up with and be considered in terms of nation-state transformation.² Then all the 'big' questions are raised: what are the implications of these processes for democracy, legitimacy, governance, cohesion, allegiance, and so forth?

¹ But consider for instance Schmitter (1992, 1996, 2000) and Hix (1999) who offer useful insights.

² Tilly (1992) makes an important distinction between national states and nation-states, with only the latter qualifying as one state with one nation. I consistently refer to nation-state because I am concerned with systemic change and that requires focus on the model itself.

My purpose in this article is to examine the EU, in relation to the larger issue of nation-state transformation (or departure). I will do so through offering a more systematic approach to *how* this can be done, than has hitherto been offered. To this end, comparison is essential.³

One strength of a comparative approach lies in its ability to capture the characteristic features of macro-social units (EU and the nation-states), within their contemporary and historical contexts. For this the comparative case study approach is particularly useful.⁴ This approach permits attention to cases as wholes.⁵ As such, it can be used to discern the defining features of the EU as a polity. Equally important, it also provides a means of capturing the complex and multifaceted nature of the nation-state, which is necessary if we are to properly understand how and the extent to which the EU departs from or transforms the nation-state. To analyse this, we need a framework that can yield a systematic assessment of the differences and the similarities with those units that are deemed relevant for comparison. Such a framework should permit us not only to understand core features of the individual entity, but also the *systemic* character of the state, i.e., as an intrinsic part of the *states system*. Clearly, the most important question pertaining to the EU relates to whether it represents a departure from or transformation of the *system of states*. Comparison, I will argue, can yield insights into questions that have generally been the preserve of students of IR.

We can get at this by comparing and contrasting the EU with relevant cases in a synchronic or cross-sectional manner. In that way we can get contextually sensitive information on a wide range of cases that is of value both to establishing systemic features, and to assessing whether such are transforming. Further, we can extend the analysis to take into consideration the diachronic or cross-temporal dimension, which will shed light on patterns of deviation or departure over time. A historically sensitive approach to systemic change would be to combine a cross-sectional and a cross-temporal approach. I will get back to this in the below.

³ This is in line with many calls for more comparative research on the EU. For a selection consider Ebbinghaus (1998); Hix (1994, 1999); and Sbragia (1992).

⁴ “Comparison provides a basis for making statements about empirical regularities and for evaluating and interpreting cases relative to substantive and theoretical criteria” (Ragin, 1989, p. 1). In a classical article, Lijphart lists 6 usages for the comparative case study method: atheoretical case studies, interpretative case studies, hypothesis-generating case studies, theory-confirming case studies, theory-infirming case studies, and deviant case studies (Lijphart, 1971). For more general studies on the comparative case study method, see for instance Ragin (1989); Skocpol (1979, 1984); Lijphart (1975); Tilly (1984).

To understand the magnitude of nation-state transformation, we need conceptual markers. I distinguish between change, transformation, departure and dismantling or withering. With *change* is meant familiar or ‘natural’ patterns of variation, which operate within the range of phenomena that we generally associate with the nation-state.⁶ With *transformation* I mean change along the core vectors of the nation-state, so that a new type of entity *might* emerge.⁷ With *departure* I talk of a programmatic effort to develop something that is *explicitly different* from the nation-state, and where the intended result will also qualify as such – in empirical and normative terms. With withering or dismantling is here meant the coming or taking apart of the nation-state without this leading to some other polity form. As I am interested in alternative polities I will not consider this latter option here.

Departure and transformation speak to systemic and constitutive features. To establish magnitude of difference, then, it is necessary to clarify whether the EU’s constitutive elements are different from those of the nation-state. This includes whether the normative principles embraced by the EU are different from those constitutive of the nation-state; whether the type of organisation is different from that of the state; and whether the mode of community is different from that of the nation. Transformation and departure pertain to the institutions at the EU level and to the states that make up the EU. Transformation focuses mainly on process, whereas departure focuses on design and result.

I believe that Charles Tilly’s four strategies of comparison: individualising, universalising, variation-finding and encompassing (Tilly, 1984) provide us with the best set of conceptual tools to undertake such a systematic comparative assessment. This approach can be thought of as a kind of methodological triangulation⁸, where the strategies serve as four different research angles or programmes for the study of the EU in relation to transformation/departure. I also try to bring them together into a more composite approach.

⁵ It “highlights complexity, diversity and uniqueness, and it provides a powerful basis for interpreting cases historically” (Ragin, 1989, p. xiii).

⁶ I use ‘natural’ simply to underline the great range of variation that already exists among states.

⁷ “The question of Europe is now a central dimension of the wider societal transformation of modernity, the reflection on which is also a reflection on the meaning of Europe. It is thus difficult to be specific on what we are talking about, for ‘Europeanization’ is not leading to a society, a state, a cultural or a geographical entity that can be specified with precision, but a process.” (Delanty, 2003, p. 472).

The process can take several forms. Bartolini (1993) provides a useful overview of periodization in developmental theory (p. 150). Relevant conceptions to transformation as here understood are: transitional models, trend/typology models, stage models, crisis models and threshold processes.

⁸ For different ways of thinking about triangulation, see Denzin (1970).

STRATEGIES OF COMPARISON

Comparison requires a clear idea of why we compare and also what precisely we use the comparison for. My point of departure is that the EU holds traits that set it apart from the nation-state. But that it holds deviant traits does not necessarily mean that it makes up a novel type of polity. To establish novelty and magnitude of transformation, the deviant features must be examined so that we can see what they amount to in polity terms. We therefore also need to be clear on what form the EU might take, including whether the EU (considered as a whole) is distinctly unique, or whether it is part of a more open-ended process of nation-state transformation.

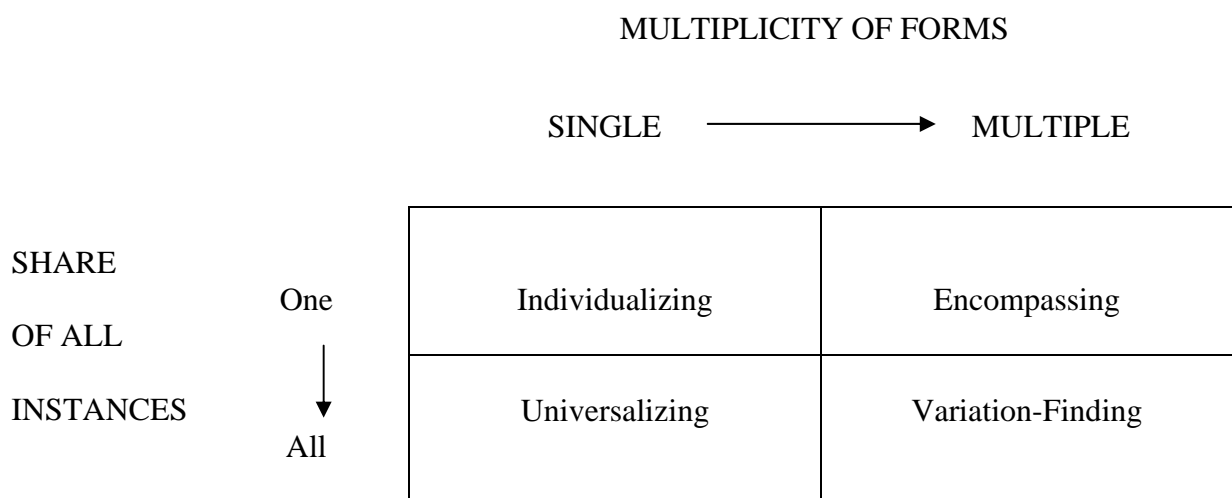
These concerns should inform our inquiry to the extent that they become part of the basic research design. This can be formalised into two dimensions. The first dimension is number of *forms* that a phenomenon might take. A political entity can be a state, an empire, an international organisation, and so forth. A state can also take many forms: nation-state, welfare-state, regulatory state, administrative state, and so on.⁹ In other words, a phenomenon may take one or several forms. If the EU is truly unique, it is a phenomenon of one: it has a unique form and it makes up all the relevant instances. If the EU shares traits with other forms of polity, to establish the EU's degree of uniqueness, we need to know whether that comparable entity manifests itself in one single form, or in multiple forms. If it manifests itself in multiple forms, we need to decide *which form(s)* to compare the EU with. A critical issue pertaining to the EU, as we shall see, relates to how far we can 'stretch' the state form.

Each form can have one or several instances. There are many instances of welfare-state, which vary, and the various instances of nation-state also differ. Therefore, to establish magnitude of difference, we also face the strategic question as to *what share of instances* to compare the EU with. From this we see that the examination changes depending on number of forms and of instances: if there is only one relevant form, to establish uniqueness, we should try to get the characteristics of this particular form right, either through focusing on peculiarities of one such instance or through focusing on all the relevant instances. If there are several relevant forms we should either try to get the characteristics of one such form right or focus on several or all.

In other words, if a form has only one instance, we should focus on it, but if it has several, we need to choose. If there are several forms with several instances we need to be clear on which ones to choose.

When combined in a four-fold table these two dimensions yield four *strategies of comparison*: individualising, universalising, variation-finding, and encompassing.

Figure 1: Strategies of comparison¹⁰



These strategies provide us with different takes on how to conceptualise and study nation-state transformation and the EU. The magnitude of transformation that we talk about and its systemic implications will likely vary from one strategy to another.

In the below I develop my own application of Tilly’s strategies so as to fit the case at hand. Tilly developed these to assess the literature on macro-social developments and changes (‘big structures and large processes’), but with no explicit or systematic attention to nation-state transformation or to the EU. I look at each strategy as a heuristic tool to the elucidation of how or the extent to which the EU represents a departure from or a transformation of the nation-state. One possible benefit is to bring forth new ways of framing comparative analysis

⁹ Caporaso (1996) uses the notion ‘forms of state’ as an umbrella concept, which can contain many such specific state forms.

¹⁰ Taken from Tilly (1984, p. 81).

of the EU. But the most important objective is to offer a framework that can yield a more thorough and systematic assessment of the question of the EU's uniqueness, framed within the context of nation-state transformation/departure.

The most effective way of developing the strategies as heuristic tools is to discuss each separately. Actual comparisons would very often draw on several strategies simultaneously. But to get a better handle on ways of seeing, each strategy must be developed and assessed independently. In the subsequent part I briefly consider how the strategies might be combined into a more synthetic approach. The final part holds the conclusion.

THE INDIVIDUALISING STRATEGY

An individualising strategy is intended to “contrast specific instances of a given phenomenon as a means of grasping the peculiarities of each case”(Tilly, 1984, p. 82).

The individualising strategy, in its pure form, “treats each case as unique, taking up one instance at a time, and minimizing its common properties with other instances” (Tilly, 1984, p. 81). Comparativists are well familiar with this approach. As Francis Castles notes “comparison is not merely a means of explanation or hypothesis testing, but also a mode of locating and exploring a phenomenon as yet insufficiently understood, and ... these two functions can and should be iterative in character” (Castles, 1989, p. 9).

To be used, this strategy first requires a designation of the phenomenon to be studied, then a determination of the relevant range of instances, and finally an in-depth study of the specific characteristics of each such instance, and where the purpose is to get the specifics of each such instance right. The focus is on uniqueness and the minimization of similarity among cases.

UNIQUENESS AS DEPARTURE?

When we discuss *departure* from the nation-state, we first need to establish that an explicit alternative to the nation-state exists, and second that the EU is designed to become such. The most obvious case of departure would be a global polity. The individualising strategy could then be used to spell out the core characteristics of such, since the strategy is designed to get

the specifics of the case – here the global polity - right. Many see the EU as a possible vehicle to foster such an entity,¹¹ but the EU was never itself set up to become a global polity. At most the EU could be conceived of as a *regional* system – and could serve as a stepping-stone to a world order.¹² The individualising strategy could be used to clarify the specific pattern of development of a given region, i.e., whether it contributes to the formation of a distinct regional order. Ernst Haas used the individualising strategy in his contrasting of the uniting of Europe with the uniting of Latin America (LAFTA). This was an individualising approach, because the purpose was to understand the unique traits in the development of the EU. Haas asked why such a dense system of co-operation emerged in Europe, and not elsewhere, and some of the answers were found in the Latin American contrast (Haas, 1966). The individualising strategy is not well equipped to answer the question as to whether the EU can serve as a stepping-stone to a global polity. To do so, we have to draw on the other comparative strategies.

There is no agreement among decision-makers and analysts alike that the EU qualifies as an explicit and viable *departure* from the nation-state. This statement applies to design, designation and result. If we look at the issue of design, the EU was never explicitly designed as a departure. On designation, if we look at how it is depicted in the literature, rather than a clearly hammered-out conception, we find that there has been a lengthy search for an appropriate label to designate this complex entity. There is a long list of candidates, none of which has been fully accepted. The lack of a compelling result has prompted some, and most famously, Jacques Delors, to designate the EU as an *objet politique nonidentifié* (cf. Schmitter, 2000, p. 2). The result is still unclear.

This conclusion is coloured by the individualising comparative strategy. What I have argued thus far is that the EU is not so unique as to warrant its examination as a unique form and where the *sole preoccupation* would be to get the characteristics of the only instance of that form, the EU, right. Note further that this in no way prevents us from pointing out that the EU has special traits and also that it has merit, even in its present form.¹³ But this nevertheless

¹¹ Cf. Held (2000); Habermas (2003), see also some of the constitutional proposals submitted to the Convention. Consider for instance The Altiero Spinelli Institute for Federalist Studies (2002).

¹² David Held's work could be interpreted in this light. Cf. Held (1993, 1995, 2000).

¹³ Some analysts consider the merit to reside in the transformative character of the EU. Other analysts, whilst they acknowledge that the EU itself is unique, they nevertheless find a particular merit in its preservation of the national identities of the member states. See Weiler (2001a, 2001b).

leaves us with a problem. When there is no agreed-upon alternative form of polity, explicitly framed as a departure from the nation-state, that can serve as the external standard,¹⁴ and which we can use as the yardstick for determining the EU's uniqueness, how then to proceed with the individualising strategy? We could assess the EU against all other existing polities or entities. If we use the individualising strategy to study existing polities, we would need an in-depth sequential study of each such entity. This is an extremely resource-demanding undertaking and one whose likely results would be dubious, as this strategy is set up not to establish benchmarks, but to minimize common properties among instances.

UNIQUENESS AS TRANSFORMATION?

Rather than think of the EU as an explicit departure from the nation-state, it might be more useful to think of it as a *process* of transformation. If so, what should then be the standard or the reference through which we can measure transformation? The strategy could look at each instance of transformation, and then try to get the specifics of each such case of transformation right. The vantage-point or benchmark would here be the nation-state.

There are several reasons that compel us to take the nation-state as our point of departure when we work from the individualising strategy. The result of the process of transformation is unknown and the process could also be reversed. The main reason however is that we are interested in the *possible systemic* implications of nation-state transformation. That requires considering the nation-state in *model terms*, so as to get to its core characteristics as political organisation and mode of belonging. If we look at concrete instances of nation-states and tease out what they have in common, in recognition of the fact that they do differ considerably, that would take us down the universalising rather than the individualising path, and in this case we would have no assurance that what we find would speak to the constitutive features of the nation-state.

To get at the systemic implications of transformation, therefore, we need to refer to the template, and not each individual instance. To cast the nation-state as model or template means that we would have to spell out a set of specific indicators that would permit us to assess patterns and processes of deviation from this model or template. One problem with the

¹⁴ With regard to the EU "there has never been a basic template or 'structural ideal'" (Walker, 2003, p. 373). In a similar vein, Helen Wallace depicts it as a partial polity (Wallace, 1993, p. 101), which underlines its partly

template approach is that states are quite different, and very few, if any, states would comply with all the tenets of the model. Variations among states suggest that there may be considerable deviations from the nation-state template, even in those states that we have come to take for granted, and that we do not question as 'states'. But if we abandon the template approach, and do as the strategy proposes, namely seek to minimize commonalities we might lose sight of the distinction between mere changes and larger transformations. There are at least two ways of dealing with this problem. The first could be to 'unpack' or disaggregate the template; and the second could be to look at failed nation-states.

Philippe Schmitter has offered the most systematic such unpacking of the EU (Schmitter, 1992, 1996, 2000, 2003). He has identified a range of traits of the EU that set it apart from the nation-state (as well as traits that cohere with it). Schmitter did this through disentangling the state into two core dimensions: territoriality and functionality. He argued that whereas in the state (considered as model or template, not empirical reality), the two dimensions cohere so as to form a stable and contiguous entity, in the EU both dimensions vary, so as to create considerable variation among functions, in their territorial embeddedness, and in their institutional anchoring. In the extension of this, he proposed a set of novel terms to depict this type of entity: *condominio* and *consortio*. Schmitter's approach is useful to get to the specifics of the EU. But there are limitations. One is whether the two dimensions properly caption the nation-state as template: the two dimensions say more about the state than they do about the nation, so that it is really only the state, not the nation that is unpacked. Such a further unpacking of the nation component could have discussed the notion that the EU seeks to solicit a *post-national* type of allegiance (Curtin, 1997; Eriksen & Fossum, 2000; Habermas, 1998a, 1998b, 2000). The other question is whether the type of assessment that Schmitter makes can tell us enough about the *process* of transformation. And although the notion of *condominio* is so different, as to probably qualify as a departure from the nation-state, the EU is not a full-fledged *condominio*.

Other analysts have unpacked the state through highlighting certain sub-forms of state (with relevant categories being administrative, regulatory, social-welfare, civilian vs. military, etc.) and have assessed the EU in relation to a specific type of state, such as regulatory state (Majone, 1996). Such studies can help us to prioritise which sub-forms of state are more as

formed character.

opposed to less relevant to compare the EU with, but for this to work as a test of the EU's uniqueness, it presupposes that they are set up to do so,¹⁵ and also that they consider *all* such sub-forms. No such study has thus far been undertaken.

Other analysts take up certain dimensions of a polity, such as the legal system, and assess whether the EU comply with such. Analysts have for instance underlined the non-hierarchical nature of its legal system (McCormick, 1999; Weiler, 1999). But to highlight distinctive features of the EU's legal system is not the same as to say that it is based on entirely different principles. For instance, it has also been pointed out how the EU's legal system can be construed as a kind of *fusion* of the common constitutional traditions of the Member States (Fossum & Menéndez, 2004). The problem is that many of the analyses that take up and highlight certain distinctive traits of the EU are not set up as explicit assessments of the overall uniqueness of the EU, as form or through a self-conscious comparison with the entire range of sub-forms.

But there are studies that take up some traits of the state and which self-consciously seek to minimize the commonalities with the nation-state. Many of those that designate the EU as a multi-level polity seek to distance themselves from the nation-state reference by drawing on the notion of territorial variability (Marks et al., 1996). Others take out the government component of the state and seek to minimize the EU's commonality with this through underlining how the EU has developed as a system of *multi-level governance*. But terms such as multi-level polity or multi-level governance, are too vague, indiscriminate and encompassing, as to help much in establishing what is the real uniqueness of the EU.

Some studies combine a self-conscious application of the individualising strategy to the EU with a theoretical re-orientation. The most prominent such examples are the attempts to designate the EU as a case of deliberative supranationalism (Joerges & Neyer, 1997; Eriksen & Fossum, 2000). These studies rely on different underlying templates, each of which requires further specification in polity terms, if we are to establish the distinctive character of the EU.

¹⁵ For instance, Majone, is more concerned with what the EU has in common with the regulatory notion of state than with minimizing the properties the EU has in common with the nation-state.

There are numerous studies that adopt a self-conscious individualizing strategy. Many of these do so through an explicit reference to the nation-state, but some also go further. But they need a more systematic design if they are to offer adequate assessments.

A second approach is to identify and focus only on those entities that were set out to be, but which *never succeeded in becoming* nation-states. History holds many such failed attempts at state-formation and nation-building. Those that failed to survive are not very useful here. Of more interest are entities that failed to succeed in becoming nation-states, but nevertheless managed to survive.

Do such count as cases of state transformation? Yes, but only under the following three conditions, which are set out to ensure that we take heed of the systemic dimension of transformation: First, that they were intended to be nation-states. Second, that their failure to comply prompted a search for alternative organisational forms or modes of belonging. Both conditions must be satisfied to make them relevant objects of study. With these added conditions we can rule out most of the nation-states. If we add a further, third, condition, namely that the search for alternative organisational forms or modes of belonging must also respond to those normative requirements that the EU officially subscribes to,¹⁶ then we are left with a small sample of relevant cases.

Before we consider the alternatives, it is useful to establish in what sense the EU qualifies here. It was never explicitly set out to be a nation-state, although throughout its history there have been many proposals and attempts to make it into such. It does therefore not fully comply with the first condition. On the second, the EU could itself be seen as a manifestation of the search for alternative forms or modes of belonging, given that it was itself a *response* to national failure in parts of Europe. On the third, there are also efforts to link this search for alternatives to explicit normative criteria. Using an individualising strategy we would then seek to minimise the commonalities with such similar cases and try to spell out what is particular about the EU.

¹⁶ Article 6, TEU states that “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.”

On possible comparable cases, Canada qualifies on all three counts above. It was set out to be, but has never succeeded in becoming a nation, albeit not for lack of trying. Its efforts at forging a viable sense of commonality and belonging have taken it at least partly outside of the nation-state frame of reference. One take on its uniqueness is the public recognition of its highly complex and composite character. Its particular brand of federalism, combined with the official embrace of the policy of multiculturalism and bilingualism, combine to make up a notion of human co-existence that in several critical respects is different from nationalism, both in its liberal and ethnic-communitarian trappings.¹⁷ Canada's particular sensitivity to the accommodation of difference and diversity (immigration, indigenous peoples and minority nationalisms) has fostered new designations such as *cultural mosaic* (as opposed to the American notion of melting-pot), *pluralistic civilization* (LaSelva, 1996, p. 165), and *multicultural and poly-ethnic society*.¹⁸ Will Kymlicka has noted that: "In our 130-year existence, Canadians have managed to build a prosperous, tolerant, free, and democratic society in one of the most ethnoculturally diverse countries in the world. We have become so accustomed to our diversity that we often fail to notice how exceptional Canada is in this regard." (Kymlicka, 1998, p. 1) The Canadian normative debate on these issues and its direct reference to an evolving practice offers a valuable take on the question of accommodating difference within a setting of recognized co-existence.

In our summary assessment, what does the individualizing strategy contribute with towards the questions posed at the outset? At a minimum, it offers a negative clarification, in the sense that it helps establish that the EU is not an explicit departure from the nation-state, in the sense of being a unique form. The strategy helps establish that there is a transformation of the nation-state, and that the EU is the most advanced, but far from only instance of such. The strategy is useful to bring to light those traits of the EU that deviate from the nation-state, as well as from its various sub-forms (regulatory, administrative, welfare-state etc.). But its main value resides in exposing deviations from a standard norm, not in synthesizing the core features of a new standard. It is also highly vulnerable to Galton's problem.¹⁹

¹⁷ For principled accounts of multiculturalism, see Kymlicka (1989, 1995, 1998); and Kymlicka & Norman (2000).

¹⁸ Charles Taylor has argued that Canada is marked by 'deep diversity' and James Tully has talked of the need for 'diversity awareness'. See Taylor (1993); Tully (2001, 2002).

¹⁹ This problem (from anthropology), runs as follows: "cultural similarities between different tribes on two islands may be due not to endogenous factors, but to the diffusion of a cultural trait from one tribe to the other" (cf. Ebbinghaus, 1998, p. 303).

The strategy nevertheless can be used to develop new suggestions for research, such as to examine the EU in relation to entities that were designed to be, yet failed to become nation-states, but which nevertheless survived. Canada is an obvious case here. But the strategy does not provide us with good enough guidelines for what counts as relevant information that needs to be extracted from the Canadian case so as to help establish precisely how unique the EU is in polity terms. The main limitation of this strategy is its ‘short-sighted’ nature, i.e. its limited usefulness to the spelling out of the character of the EU in polity terms. Therefore, it is not well set up to establish systemic departures or transformations. For this we need to rely on other strategies, or we need to combine them together.

THE UNIVERSALISING STRATEGY

The universalising strategy “aims to establish that every instance of a phenomenon follows essentially the same rule” (Tilly, 1984, p. 82). To use this strategy we first need to spell out the phenomenon we will study; second, we need to know what instances are relevant to this form; third, we have to establish the general rule(s); and finally we have to test that all instances actually comply with the rule(s). In its very design, the strategy is set up to study transformation. For instance, in natural history accounts, it was often held that every country had to go through the same set of stages in order to become industrialised.

In a similar manner, the process of state formation (and nation-building) could be broken down into stages, such as the ones identified by Stein Rokkan: penetration, standardisation, participation, and redistribution:²⁰

1. *Penetration*: state building *strictu sensu*:
Institutions for the extraction of resources for common defence, for the maintenance of internal order, and the adjudication of disputes; political, economic and cultural unification at the elite level
2. *Standardisation*: nation-building:
Conscript armies, compulsory schools, mass media, creating channels for direct contact between the central elite and parochial populations of the peripheries.

²⁰ Rokkan (1975). Rokkan’s strategy is not universalising, as he acknowledges that entities can start with any one of these. Tilly labels Rokkan’s strategy ‘encompassing’.

3. *Equalisation of rights of participation:*

Establishment of *political* citizenship: establishment of privileges of opposition, extension of the electorates for organs of representation, formation of organised parties, bringing subject masses into active participation

4. *Redistribution of resources/benefits:*

Establishment of *social* citizenship: growth of public welfare services, development of nation-wide policies for the equalisation of economic conditions through transfers and progressive taxation (Flora et al., 1999, p. 83).

These can be seen as the requisite components of the democratic nation and welfare state, as well as the stages through which this has emerged over time. The universalising strategy presumes that there would be a natural sequence to the process, for instance so that all instances of state formation would go through all the stages, in a particular sequence.

UNIQUENESS AS DEPARTURE?

When we apply this strategy to the EU we find that some analysts have used it to try to *debunk* the notion that there is a major nation-state transformation going on. Andrew Moravcsik uses a universalising strategy to stress that the EU, albeit a particularly successful case of interstate co-operation, nevertheless remains a creature of the states, and does not depart from the notion of international regime. Its behaviour largely conforms to that of other state-based international regimes (Moravcsik, 1998). As he notes in his book *The Choice for Europe*, “(t)he revisionist quality of the argument in this book lies precisely in its effort to normalize the actions of European governments – to treat them as a subset of general tendencies among democratic states in modern world politics” (Moravcsik, 1998, p. 5). To explain why the EU was so successful he uses an encompassing strategy (see below).²¹ Moravcsik’s point of departure is that the EU has never had the vocation of becoming a state. In other words, there is no need to talk of departure from the nation-state. But he goes further and argues that the EU does not seriously weaken the member-states. Hence by implication there is little real transformation of the nation-state. Other analysts underline that the story of the EU is that of transformation of the nation-state,²² although the pattern of transformation is

²¹ The overall process that the EU is assessed in relation to is internationalisation or globalisation within an increasingly interdependent world, and the EU is a particularly successful case of that.

²² Some analysts stress how the EU differs from the nation-state in overall terms (cf. Schmitter, 2000, 2003; Linklater, 1996; McCormick, 1999; Preuss, 1996; Weiler, 2001a, 2001b, 2002), whereas others stress how it also contributes to the transformation of the nation-states that make it up. For a small selection which

more complex than a mere top-down process of departure. It is the cumulative effect of vertical integration and horizontal (cross-state) co-operation, adaptation, copying and learning that generate transformation.

UNIQUENESS AS TRANSFORMATION?

To study nation-state *transformation*, we need to establish how this strategy approaches transformation: whether all instances of transformation follow the same pattern, so that it will be possible to establish a general rule that is applicable to all instances of that same form of transformation. That makes this strategy very apt to get at the systemic implications of transformation.

What would such a process of transformation look like? Would it be one where the stages of state formation and nation-building were somehow *reversed*? If so, what does a reversal entail? Consider penetration, the first stage of state-formation. What would a reversal of penetration entail? Would it mean the loss of control of a territory on the part of the responsible elites? But if loss of control entails the transfer of a territory from one set of elites to another, this hardly counts as a reversal of penetration. Reversal or *de-penetration* is clearly something different from the transfer of control from one set of elites to another, or from one entity to another. It rather entails a process of (a) *giving up exclusive control* of a territory; (b) the gradual dismantling of the instruments that were set up to ensure exclusive control over it; and (c) without another coherent controlling agent taking full control of these. If another entity takes over the territory, then there is no real case of de-penetration.

The usefulness of the universalising strategy would hinge on whether such a process of transformation could be conceived of as uniform, in an evolutionary or staged manner, and that it would be possible to establish a rule that all instances would go through. In other words, the presumption would be that all those instances that underwent state formation and nation-building would undergo the same transformation, and do so in the same sequence. This means that the process would not be merely one of de-penetration, but that it would also be one of *reversal* of the subsequent stages involved in state formation and nation-building. How, then, to conceive of reversal of standardisation, participation and redistribution? The

demonstrates that this is addressed at the level of polity, politics and policy, see Beetham & Lord (1998); Eder & Giesen (2001); Hanf & Soetendorf (1998); Kohler-Koch & Eising (1999); Olsen (2002).

strategy presumes that such a reversal would take place in the same order of sequence with regard to the whole range of stages, but what would this look like? How much slack would there be in the general rule? These are challenging issues, but they depend on the presence of such regular patterns as permit us to establish rules. If not, the whole idea of reversal of stages loses its significance. The nation-state did not emerge through any clear staged sequence (Tilly, 1984, 1992; Rokkan, 1975; Flora et.al., 1999). Tilly, for one, underlines the role of war and war-making in state formation (1975, 1984, 1992). This suggests that the first stage was far more important than the latter ones.

We could try to de-link the stages of state formation. Such a process could either be one in which the stages are completely independent of each other or that the initial critical stage affects the entire process, so that the subsequent stages do not occur or are entirely transformed. Let us consider such de-linking of stages by seeing de-penetration as akin to *transnational governance*.²³ Transnational governance is marked by a proliferation of organisations, where no single organising principle dominates, and where no single actor wields supreme control of a given territory. One of the hallmarks of transnational governance is the shifting loci of authority, which may converge, overlap, or diverge. It also entails shifts in the relative salience of political, legal, economic and social factors. Transnational governance does not entail reversal of stages, but a greatly differentiated and uneven development and phasing-in of these.

The EU is often referred to as a system of transnational governance, but there is no complete process of de-penetration in the EU. The EU is no doubt based on a system of functionally variegated control of territory, with the weakest control in the core state functions: military security, taxation, and police. But functional differentiation is reined in and curtailed by the legal system, the *acquis*. It also has elements of standardization and devices for participation and redistribution, but these are far weaker than in the nation-state. The EU has not reversed

²³ Governance is not political rule through responsible institutions, such as parliament and bureaucracy – which amounts to government – but innovative practices of networks, or horizontal forms of interaction. It is a method for dealing with political controversies in which actors, political and non-political, arrive at mutually acceptable decisions by deliberating and negotiating with each other. Governance is based on a variety of different processes with different authority bases, and highlights the role of voluntary and non-profit organisations in joint decision-making and implementation, and the semi-public character of modern political enterprise. Today, these structures span across boundaries; the boundaries are far more porous; and the actors are less tied to, as well as less dependent on, territory (Eriksen & Fossum, 2004). See also Rosenau & Czempiel (1992); Rosenau (1997); Hix (1998).

the stages, neither are these entirely de-linked. The stages of state formation are unevenly developed and phased in. What is often ignored is that the EU has emerged amidst a system of states that has converged greatly over time and where the EU has further stimulated such convergence, through common rules and institutions and through a set of standardised entrance requirements.²⁴

To some analysts the EU makes up the prime case of a major ongoing transformation: “If the absence of an ultimate authority signified the presence of anarchy during the era of hegemonic leadership and superpower competition, such a characterization of global affairs is all the more pertinent today” (Rosenau, 1997, p. 151). In other words, the EU suggests that these stages no longer apply today in the same way as before because of the global pattern of change. If that is the case, perhaps the strategy should start with the EU. Then we would seek to identify a set of rules that the EU could be said to have developed and then test these against all other *relevant* instances.

For the same rule to apply what should be expected from the process? We should expect:

- a common point of departure
- a common process of transformation
- a common end result

A critical issue is how much commonality that would be needed to ensure that the transformation follows the same rule. A universalising strategy does presume similarities along all three elements of the process.

If we try this on the EU, we first need to spell out the core elements of transformation that pertain to the EU. Three such can be identified. The first is that the EU is based on a system of states and represents a transformation of these. The second is that it has increased in membership over time, whilst at the same time integrating further in depth terms. The third is that the institutions that have undergirded these processes are a complex mixture of supranational and transnational ones. Once the core features of the EU have been outlined we proceed to find possible comparable cases, i.e., cases that follow the same patterns of change.

²⁴ For more on the entrance requirements, see Sjursen (2002); Sjursen & Smith (2001).

Is there any case other than the EU that has the same point of departure? In other words, is there another case that represents transformation on the basis of a system of states and where the number of states involved is constantly expanded or increased over time? Further, is there another case that experiences deepening of integration at the same time as it sees an increase in size and membership? Both the U.S. and Canada have expanded in size and membership, at the same time as they have become more deeply integrated. But their point of departure has not been established nation-states. In terms of result both have become established states with systems based on territorial penetration, whereas the EU has strong elements of de-penetration. The U.S. and Canada are also marked by comprehensive processes of standardization, participation and (some) redistribution. Canada differs from the U.S. in that the standardization phase was far less successful: the U.S. has developed into a - however complex - nation-state, whereas Canada has not. The strong nationalist tensions (Quebecers, aboriginals and English-Canadian nationalists) within largely preclude it from developing an overarching national sense of allegiance and leave it to pursue a thinner, more post-national, mode of allegiance. The EU, as such, also appeals to a set of thinner and more universal values. It is also, and more strongly and explicitly than Canada, precluded by its member states from fostering a European nation and national identity. The EU was set up largely in opposition to nationalism, and as an effort to overcome the divisions that had plagued Europe for centuries. At the same time, in the EU national allegiances are strong and the EU explicitly recognises national diversity and distinctiveness. Thus, although starting from quite different angles and undergoing quite different processes of transformation, both the EU and Canada seek to accommodate multiple claims for national difference and distinctness through embrace of a thin post-national mode of belonging.

The EU and Canada thus share some common points, although these are not similar enough to permit us to talk of them as belonging to the same form. The processes of transformation exhibit similarities. The EU is both a case of integrating and of accommodating difference through exemptions, deviations etc. that derive from the strong dis-integrationist thrust built into the entity itself. Canada is generally seen as facing the prospect of dis-integration, but already has a whole set of integrationist mechanisms, some of which resemble those of the EU, and other which are far stronger. These entities are not similar enough to generate the set of common rules that this strategy requires. Given the problems in establishing general rules for state-formation and nation-building, the problem may rest as much with the strategy itself.

In our summary evaluation of this strategy applied to the EU, we find that it is useful to study processes of transformation, but only insofar as there is a set of general rules that apply to all instances. I applied this strategy to state formation because here we could talk of distinct stages and specific rules could be discerned. Then I asked what this strategy would yield if we think of nation-state transformation as a possible reversal of the stages. I found that this is only useful when we de-link the stages and see them as distinct components. I further noted that the EU does not represent a reversal of the stages, but rather an incomplete incorporation of these. At this point we are largely outside of the reach of the universalising strategy, facing the prospect that the search for general rules might have to start with the EU. The EU, as the most advanced case of transnational governance around, could be the source of more general rules. But to establish that we need to find an approach that manages to balance the search for distinctiveness with commonality. The two latter strategies are more sensitive to this.

THE VARIATION-FINDING STRATEGY

The variation-finding strategy seeks to “establish a principle of variation in the character or intensity of a phenomenon having more than one form by examining systematic differences among instances” (Tilly, 1984, p. 116). Barrington Moore used this strategy in his discussion of different forms of transitions to modern politics, i.e. to explain why some countries opted for capitalist democracy, fascism, socialism, and stalled democracy, respectively (Moore, 1967; Tilly, 1984). Modernisation is the general phenomenon and regime form is the source of variation. A set of possible causal factors was identified and applied to the whole range of cases, to establish why this pattern emerged. Moore’s strategy was retrospective, in that it sought to trace the historical causes of different regime choices.

Applied to the theme under study here, the general phenomenon is nation-state transformation/departure and polity form is the source of variation. There are two presumptions in this strategy. The first is that there is a common process of departure/transformation; the other is that it fosters outcomes or results which are systematically different in their polity and/or regime characteristics.

UNIQUENESS AS DEPARTURE?

When applied to the EU the first strategic question is to establish the general phenomenon. If we take departure from the nation-state as the general phenomenon, we could trace the

emergence of all alternative forms of organisation, such as supranational organisation, transnational organisation, and novel types of international regimes. A retrospective approach would first seek to establish the nature of the general underlying phenomenon behind the cases of departure. Then it would explore for systematic similarities and differences among its manifestations. Finally, it would search for the historical causes of the choice of different organisational forms.

One relevant question could be to ask *why* it was that Western Europe, the cradle of the states system, is now exhibiting strong traits of departing from some of the core tenets of this system at the same time as the nation state – as idea, template and reality - continues to spread to other parts of the world? How unique is Europe and does it apply to all of Europe? Are we likely to experience differential patterns in Western and Eastern Europe, as recent responses to the EU integration process seem to indicate?²⁵ Further, are the changes confined to Europe? For instance, in North America, Canada appears to deviate from the nation-state template in important respects, whereas the U.S. domestically does less so. The U.S. could be said to do so in its outward projection of force and influence, but this does not seem to feed back on the polity. With transformations also in other parts of the world, the question as to what is the general underlying phenomenon, gains added weight. Are the factors that drive transformation the same in North America and in Europe? This strategy can be used to discern differential patterns, but it is set up to search for systematic variations along both form and instance. If we use it in the same, retrospective, manner as did Moore, we need clear ideas of the different outcomes.

Another possible usage of this strategy could be to examine whether the EU and Canada represent different cases of, i.e., distinctly different forms of democratically sanctioned (or driven) departures from the standard tenets of the nation-state model. The EU has its roots in the state form and has been forged largely through interstate co-operation, and exhibits traits of transformation of the nation-state form through the formation of an entity on top of established states, an entity with strong supranational traits. As noted above, novelty will have to be reflected in both the institutions at the EU level, as well as at the member state level, and both have to differ from existing nation states. This would then be a case of

²⁵ There are important historical differences that date long back in time. For an eminent assessment see Anderson (1974).

departure from the nation-state. The EU has established democracy and the rule of law as guiding principles, and it also requires that applicant states comply with these principles in order to become members. At the same time, the EU has very weak sanctioning abilities and relies on procedures that are subject to democratic sanction; albeit often deficient in relation to those we associate with democracy at the national level. The first key point, however, is that insofar as the EU does comply with these criteria and insofar as it does represent the development of a new type of entity, it could be the first new type of polity that has emerged through peaceful and democratic *means* (however deficient these are in relation to most accounts of democracy). The second key point would be that the EU represents a possible response to some of the shortcomings of the nation-state in democratic terms, with particular emphasis on inclusion and reflexivity (Fossum, 2003).

Canada, on its part, may be a democratic departure from the nation-state model on the basis of *one* existing state (with several nations or would-be nations).²⁶ Canada is a democracy and has sought to abide by democratic procedures in its efforts at constitutional reconfiguration, i.e., to foster particularly inclusive procedures.²⁷

The variation-finding strategy helps establish whether these represent two different cases of democratic departures from the nation-state model, i.e. ‘from within’ a single state and ‘from without’, through the transformation of a system of states. However, to properly address this, the type of variation-finding strategy we need cannot merely be retrospective, as the two entities in their present state hardly constitute departures in a formal, principled sense. The comparison needs a certain *prospective* element. Tilly does not use it in a prospective manner, but in other work, he has discussed the prospective approach. He notes that it “begins with a

²⁶ Canada is often portrayed as a two-nation state. This has meant that there was no pre-existing agreement on a single Canadian nation, that could be defined along ethnic or linguistic lines and clearly sets Canada apart from its US counterpart. The key issue facing the American framers or ‘Founding Fathers’ was not to create one nation out of several, but rather what kind of government the nation should have. As Samuel Beer has observed, “(i)n the United States, nationalism is an indispensable support of federalism” (Beer, 1995, p. 225). Therefore, in the US, there was little problem in supporting diversity insofar as this would strengthen individual freedom: “the issue was to create a large country without destroying individual liberty and local initiative” (LaSelva, 1996, p. xii). In Canada, since there was no pre-existing agreement on a single Canadian nation, the challenge was to establish a federal arrangement that could bridge the duality and foster an overarching sense of attachment to Canada. The importance of nationalism to the Canadian constitutional experience is revealed in the contrast between the Canadian term ‘Founding Nations’ as opposed to the American term ‘Founding Fathers’ (LaSelva, 1996; Beer, 1995).

²⁷ See for instance Gagnon & Tully (2001); Kymlicka (1995, 1998); Taylor (1993).

particular historical condition and searches forward to the alternative outcomes of that condition, with a specification of the paths leading to the outcomes” (Tilly, 1975, p. 14).

In both cases we find comprehensive processes of constitution making that have stretched over decades. These have important traits of ‘integration through deliberation’ (on the EU see Eriksen & Fossum, 2000), i.e., the fostering of a sense of trust and a thinner, perhaps best labelled post-national sense of commonality. Both are ‘communities of communities’, with complex and composite mechanisms to forge a sense of unity and belonging amidst recognised difference and diversity. Their common point of departure refers to the challenge of handling complex multinational and poly-ethnic co-existence in a reflexive manner. From this common challenge, we see two distinctly different ways of responding. This can be captured in the notion of the EU as a non-state and post-national *poly-centric deliberative polyarchy*, whereas Canada can be seen as a state-based but post-national *poly-ethnic deliberative polyarchy*. This difference signifies potentially different departures from the nation-state and into other, more inclusive, and other-regarding, systems. The EU represents the greatest amount of transformation here, as it changes both the state and the nation vectors. Canada has changed the nation vector and to a more limited extent also the state one (through provisions for secession and aboriginal self-government).

In our summary evaluation of this strategy, we find that the variation-finding strategy holds considerable promise. It is a demanding strategy, as it requires the spelling out of a general phenomenon from which different forms emerge. The historical research needed to trace the sources of contemporary patterns is almost unlimited. It is also not clear that a retrospective approach will yield the needed insight if we are at a critical historical juncture. My proposal thus is to take a greater risk, namely to reconfigure this strategy so as to develop it in its demanding *prospective* variant. I have tried to give some illustrations above as to how such an analysis might be conducted.

The focus on the prospective element also brings up its own problems: how and when do we know that a general phenomenon breeds a clear-cut set of different manifestations? It is easy to see that the source of variation could remain imprecise. Can the last strategy remedy this defect?

THE ENCOMPASSING STRATEGY

The fourth and last strategy, the encompassing one, “places different instances at various locations within the same system, on the way to explaining their characteristics as a function of their varying relationships to the system as a whole” (Tilly, 1984, p. 83). This strategy is premised on the presence of a large structure or process that the entities are located in relation to. This is a demanding form of comparison, to the practitioners: “Even to begin, they must have both a mental map of the whole system and a theory of its operation” (Tilly, 1984, p. 125).

Tilly derived this strategy from Stein Rokkan’s efforts to develop a theory of European political development, where Rokkan’s particular emphasis was on the nation-state and its democratization. Rokkan did not study state formation and nation-building as a set of distinct and isolated cases, but rather tried to establish and map these processes within a single interdependent system. He was concerned both with identifying the factors that made up this interdependent system, as well as with the patterns of variation among the entities that together made up the system. In other words, he sought to develop a model of European political development, from the vantage-point of Europe as a system of nation-states, and then examined patterns of variations among the nation-states in Europe.

Rokkan emphasised the need for comparison to be context-sensitive and thus sought to establish a region-specific model for European development – along political-territorial, economic and cultural lines, and then assessed the different parts of Europe in relation to these. The core concepts were *structure* and *boundary-building*. He derived his notion of structure from Parson’s theory of differentiation, but in his own reinterpreted version. He distinguished among four processes of functional differentiation, and these were intersected with a territorial differentiation. These were then set out in a model:

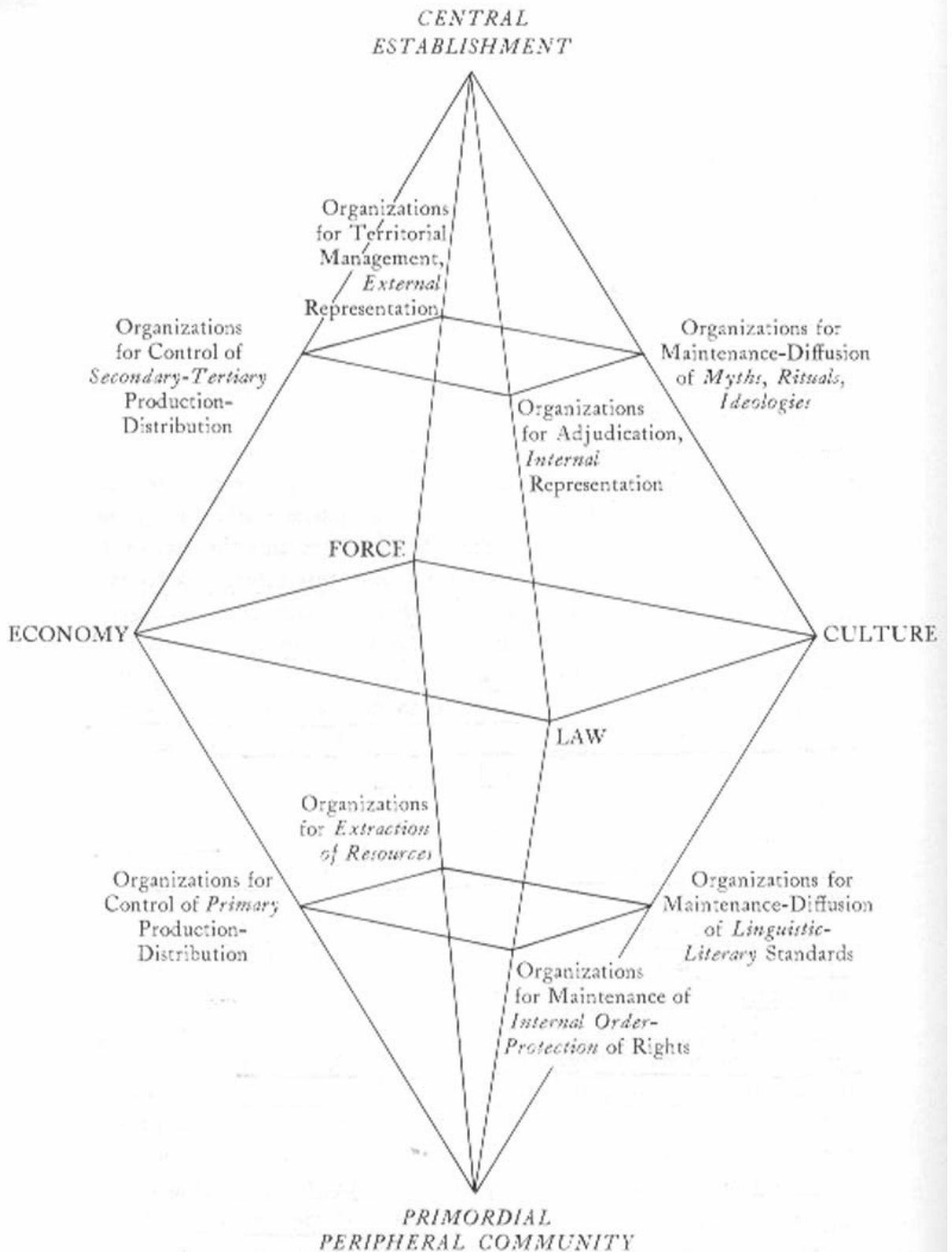


Figure 8-2. The Basic Grid of Dimensions

Through these concepts he captured the processes of state-formation and nation-building. But he went further and explored how the notion of boundary-building interspersed with state formation and nation-building. He inquired into “the consequences of *differential boundary control* for the internal *configuration of political resources* and by extending the boundary concept to include internal boundaries” (Flora et al., 1999, p. 9). This permitted Rokkan to study the differential patterns of co-operation and conflict within each functional domain in Europe – political-administrative, economic and cultural. Of particular importance to nation-building in Europe were four *critical junctures* (the Reformation and the Thirty Years’ War, the national revolution in the wake of the Napoleonic Wars, the industrial revolution, and the international revolution, i.e. Russian revolution communism, cf. Flora et.al. 1999, p. 303ff). This framework permitted Rokkan to study both the emergence and the development of the nation-state, and simultaneously to understand their considerable differences in Europe.

His approach can also be usefully applied to the study of European integration and the ensuing nation-state transformation, although he did not do so himself.²⁸ To do so, we could start by noting that the nation-state represents a particular constellation, a structure where the forces of differentiation and boundary-building have come to occupy an at least temporary resting-place. Transformation could then move either up in terms of differentiation to less integrated entities, or down to more integrated ones. We would have to explore these processes along each of the functional domains listed above. This opens up for highly variegated patterns of integration.

This could also be seen as a way of unpacking the nation-state in template terms, but Rokkan’s model differs from that of Schmitter in several important respects. The most important difference relates to Rokkan’s original encompassing comparative approach, which permitted him to relate the territorial-functional dimensions explicitly to boundary-building and critical junctures. Further, Rokkan’s model permits us to study nation-state transformation not merely in relation to the nation-state template which does Schmitter, but also within the complex context of the European setting. Consider the following observation from Rokkan:

²⁸ Rokkan, in comparison to his contemporary historical sociological colleagues, was less encumbered by the “constructions produced by historians of the nationalist phase” (Mjøset, 2000, p. 395).

The great paradox of Western Europe was that it developed a number of strong centers of territorial control at the edges of an Old Empire: the decisive thrusts of state formation and nation-building took place on the peripheries of the political vacuum left by the disruption of the old Roman Empire...

What turned out to be crucial in the European development was that the fragmented center belt was made up of territories at an advanced level of culture, technologically as well as organizationally. First, there was a well-developed *agricultural economy*...; second, there was a remarkable network of highly autonomous *cities*, institutionally distinct from the surrounding agricultural lands; third, these cities as well as the rural areas were linked together culturally through a common religion as a cross-territorial corporated *church*, through the operation of a major organization for long-distance communication through craft literacy in one dominant language, Latin; and fourth, the transactions across these varied autonomous territories were controlled under a body of inherited normative precepts, those embodied in the long tradition of Roman Law.

At the core of this highly developed region all attempts at military-administrative center-building failed until the nineteenth century (Rokkan, 1975, pp. 596-597).

In other words, if we think of the nation-state as representing the ‘freezing’ of a particular territorial-functional constellation, at a given period in time, then there are clear historical indications as to where such ‘un-freezing’ might foremost take place. It is also here that the European integration process has proceeded the furthest, and it is also here that there is the greatest will to proceed further, beyond the nation-state. But the will to integrate also entails the will to develop new internal boundary mechanisms so as to curtail the grip of the market. This might entail a closer linking of the legal-political and economic dimensions.

The prospect for this to happen depends to a large extent on whether we are currently faced with one or several new critical junctures. One such could be an increasingly global and boundary-breaking or boundary-exceeding capitalist economic system. How well-suited is the Rokkan framework to capture these developments? If we consider the European embrace of the ideas and institutions of economic globalisation, we find that they have been most readily accepted *on the fringes* of the city-belt, notably in the UK, which suggests that Rokkan’s approach may have been overly *retrospective*, and backward-looking in time. Today, the key

issue is to establish if we are faced with a critical juncture and if so, how wide-encompassing it is: whether it includes political, legal and cultural dimensions. Another problem with Rokkan's model then is his conflation of the legal-military dimensions into one. This means that the model downplays the prospect of a *law without a state*. The European Union is a non-state legal system. Its development feeds on internal legal developments, as well as on the emergence of a system of international or cosmopolitan law.

These brief comments are meant to demonstrate that Rokkan's encompassing strategy has merits for the analysis of contemporary European developments, but its full potential can only be unleashed when we reconsider the unit of analysis. My sense is that it can not be the nation-state, but has to be the EU. This would mean tracing developments along all four functional dimensions with particular attention to how they manifest themselves within the EU setting.

But even the choice of the EU as the unit of analysis may be overly limiting in today's globalized world. The uneven pattern of globalisation – across functional domains – suggests that some of the dynamics will emanate from within Europe and some will emanate from without. There is need to clarify which functional domains that feed on intra-European, as opposed to extra-European dynamics, and the extent to which the patterns converge, overlap or work at cross-purposes. For one such pattern, consider a possible critical juncture within the legal functional domain. In today's world it is a truism that state sovereignty is challenged by major transformations within the realm of international law. These developments can be placed within the framework of the encompassing strategy, but they raise the question of unit of analysis. Should it be the system of international law, as entrenched in the UN, or the system of supranational law that is part of the emerging structure of the EU? International law recognises individuals and groups as legal subjects of international law. The realm of international law is also shifting from primarily being focused on political and geopolitical matters to an increased focus on regulation of economic, social, communication and environmental matters. There is also a change in the sources of international law – which far more than before include international treaties or conventions, international custom and practice, and “the underlying principles of law recognized by ‘civilized nations’”.²⁹ This has also led to an increased focus on the relation between the individual and her own government.

“International law recognizes powers and constraints, and rights and duties, which have qualified the principle of state sovereignty in a number of important respects; sovereignty *per se* is no longer a straightforward guarantee of international legitimacy. Entrenched in certain legal instruments is the view that a legitimate state must be a democratic state that upholds certain common values.”³⁰

At the same time, it is clear that these legal developments are *not* uniform across the globe. They have been carried further in Europe than anywhere else. This applies to the European Convention of Human Rights (ECHR of November 4, 1950) and also to European Union Law (the two converge in the field of human rights). The ECHR permits citizens to initiate proceedings against their own governments. The Court is outside of the jurisdiction of the states, and its judgments are *de facto* legally binding on the states. “Within this framework, states are no longer free to treat their own citizens as they think fit... The European Convention on Human Rights is most explicit in connecting democracy with state legitimacy, as is the statute of the Council of Europe, which makes a commitment to democracy a condition of membership.”³¹ The most explicit curtailments of state sovereignty have occurred in Western Europe, where the greatest transformations of international law have taken place. Here these are bolstered and sustained by a supranational structure of governance.

This example shows that we can retain the EU as the unit of analysis and then trace the dynamic developments within each functional domain. To get a better sense of the unique ‘European’ stamp or imprint on these developments, and test to what extent we are faced with a critical juncture, we can extend this analysis to non-European cases such as Canada. Given that the EU and Canada face similar challenges, we can use this strategy to see if the challenges derive from the same source or whether they are region-specific, in other words test how encompassing they are. If we stay with legal developments, Canada’s complexity and greatly heightened internal tensions in the last four decades must be seen to have coincided with a greater sensitivity to international legal developments and have likely also contributed to its role in strengthening international law. In that sense it is being part of the same process of de-linking of law and state, albeit this is an uneven process. Canada was a

²⁹ Held et al. (2000, p. 63).

³⁰ Held et al. (2000, p. 65).

late-comer in fashioning a Charter of Rights, but after incorporating the Charter into the Constitution Act 1982, has subsequently undergone a Charter revolution (Cairns, 2003; Morton & Knopff, 1999). Part of the rationale for this can be traced to international factors and developments (Cairns, 1992, 2003). Vital actors in this transformation have been increasingly transnational social movements, such as the women's movement, gays and lesbians and aboriginals. They serve as conveyor belts for ideas and policy suggestions, from the international to the domestic arenas, and vice versa, and the Charter has been an important instrument to bring their concerns onto the country's political agenda. Other factors, such as Canada's complex ethnic composition, with a particularly high proportion of foreign-born citizens, may have made it particularly aware of and sensitive to developments in their countries of origin, hence giving impetus to Canada's strong stance on the strengthening of international law and multilateralism. The question of Quebec's status within or without the federation has been addressed through the development of a unique and pioneering legal framework for democratic secession, itself with implications for international law.³²

This example shows that the process of softening the relationship between state and law has exceeded well beyond Western Europe, albeit a further extension of this analysis to the US would show that this process is far from universal. The de-linking of law and state can be construed as further differentiation; but it is an uneven process. It faces boundaries and boundary-setting actors, both within and without Europe. This example shows that we can use this strategy to assess the uniqueness of the EU here, but it also shows us that there is a possible problem with establishing the proper unit of analysis. As the example showed, there is a strong temptation to have it vary with functional domain.

This raises questions as to whether the dynamics are found within the realm of law or in the interaction among functional domains. The deeper question this raises is: what are the system-generating factors? The strategy presupposes that we have a theory of the system and how it interacts with its constituent parts. I think such a theory has to take the possible disjunction between law and state as its point of departure, but note that this also manifests itself in two legally institutionalised principles: human rights (individual autonomy) and

³¹ Held et al. (2000, pp. 68-69).

³² Reference Re Secession of Quebec (1998). Incidentally, the only other entity with provisions for voluntary secession is the EU (Article I-59 in the Draft Treaty establishing a Constitution for the European Union) – albeit this draft has not yet been ratified.

states' rights (state sovereignty). If we start with this tension, which serves as a critical juncture, the encompassing strategy allows us to trace the patterns of the institutionalisation of these two principles along all four functional domains, so as to establish the nature of the relation between the structuring principle and the boundary-making and boundary-exceeding mechanisms and dynamics, within a given territorial configuration. We can then trace the magnitude of disjuncture between the different entities and how this shows up in the interaction among functional domains.

In sum, the encompassing strategy does provide us with a useful take on nation-state transformation and the EU, although we must be aware of its propensity to generate functional explanations (Tilly, 1984, pp. 125-126). It can however give us new insights into both the patterns of transformation, as well as into the nature and character of emerging new entities. In comparative terms, a particularly important feature of this strategy is its attempt to combine the two core dimensions of comparison, namely the cross-sectoral *synchronic* with the cross-temporal *diachronic* one. Such a combination offers the best way of getting to the core of systemic transformation. The problem we found when trying to apply Rokkan's own application of this strategy, was that his use of it was too retrospective and overly concerned with mapping differences. We need to re-examine the components that went into his model of Europe in light of contemporary developments, so as to get a better balance between the retrospective and the prospective dimensions. This should be done through shifting the frame of reference from the nation-state to the EU. In this way we can establish how the EU emerges cross-sectorally in Europe and in relation to other selected referents (Canada) and then also trace the historical roots of the constitutive dimensions of the EU across time, through diachronic analysis.

CONCLUSION

In the above I have discussed the question of the EU's uniqueness by examining what each strategy can yield to that end. I have found that all the strategies offer contributions to that end, but perhaps the encompassing strategy offers the best single take. The remaining question is what the analysis of uniqueness might benefit from somehow combining the strategies. If we take the encompassing strategy as our point of departure, we could combine the strategies to get the best possible overall test of uniqueness. I label these tests the test for unit change, the test for critical junctures, and the test for systemic transformation. First, on

the unit change test, the critical issue is whether we can usefully consider the EU as the appropriate unit of analysis. To test for this, we can examine departure and transformation of the nation-state as proposed in the above. The individualising strategy helps pinpoint how much the EU diverges from the nation-state, the universalising one helps establish and test for patterns of deviation, and the variation-finding provides an additional safeguard test through comparison with other transforming entities. Such a test would be mainly of a synchronic, cross-sectoral kind. In other words, it would use the nation-state template and contemporary instances to establish degree of EU uniqueness. Second, the test for critical junctures is aimed at establishing precisely *when* the EU became something distinctive and worthwhile to examine as a case of nation-state departure/transformation. To do so, we need a diachronic approach that examines patterns of transformation along all the functional domains in the states that made up the EU. Third, the test for systemic transformation is aimed at ascertaining, within a longer-time perspective, that we are actually faced with a deeper type of transformation. It would need a combined synchronic-diachronic approach: one which examines transformation cross-sectorally, and does so at different points in time, i.e., at those points in time that we have identified critical junctures within the respective functional domains (assuming that they do not necessarily coincide in time). Here again the other strategies need to be included, so as to be able to establish that it is the EU that is the main actor.

The core difference between the encompassing strategy and the three other ones lies in fixity vs. fluidity of polity. The three first strategies see newness and uniqueness as the emergence of a new form of polity, conceived of as a separate entity. The encompassing strategy conceives of newness and uniqueness not in the singling out of a distinct and clearly bounded entity, but rather in a more complex interweaving of entities, so as to weaken or even blend separate entities into something larger, more composite (cf. transnationalisation and de-penetration). Such a system could have boundaries between the entities, and to the outside world, and the system's internal and external boundaries may also differ with functional domain. To test both newness possibilities we have to combine the four strategies. The encompassing strategy requires a theory of the whole system and hence forces us to conceptualise an interdependent system, and it permits us to examine whether the EU is best thought of as a distinct new entity or as an interdependent system. The other three strategies help us establish how credible such a set of assertions are by acting as a reassurance that we take proper heed of the resilient nation-state.

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