

THE EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES:
CONFLICT, RESISTANCE AND CHANGE

by

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ABSTRACT

For centuries regional and minority languages, and the speakers of these languages, experienced a political and economic process of marginalization that resulted in decline and in some cases the total loss of Europe's diversity. However, the Council of Europe and the European Union have created a new model embodied by the European Charter for Regional or Minority Languages, which seeks to radically alter the dominant pattern of discrimination and marginalization toward minority language speakers. This is surprising considering the overall lack of resources at the state level for minority language groups, and considering the salience of language issues. However, the continued development of European integration has had an unintended effect: it has fostered and provided support for national minority groups in Europe. In this sense, the European Language Charter represents but one visible policy victory for national minority groups and exemplifies a new normative and institutional environment.

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INTRODUCTION

When visiting the European Parliament in Brussels, despite perhaps being struck by the large and open new-age buildings, your attention might be drawn to the shiny metallic sign announcing your arrival at the Parliament written in 24 languages. These 24 official languages — Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish — all reflect the dominant political forces in the 28 member states, and as such are generally seen as “national” or perhaps more dangerously, as the natural languages of the states that make up the European Union (EU). Seeing this sign one might presume that the EU then has done little to challenge the dominant political model that has for centuries attempted to forge cultural and linguistic (at times religious as well) homogeneity in Europe and elsewhere.

Arriving in Cornwall at the train station in Saltash you will be greeted with a large sign reading “Welcome to Cornwall.” Yet, on this same sign, written in a brighter and equally large font it reads “*Kernow a’gas dynnergh.*” This should be a bit surprising at least because the Cornish language was declared extinct over 100 years ago. The reality in Europe today, as it has been for all of history, is that of diversity; centuries of — often forced — assimilation have not inexorably changed

this. In fact, I will argue in this paper that bilingual signs in Cornwall symbolize a new respect for linguistic diversity, even if it was given begrudgingly. The dominant model, which I will call the assimilation model, has not gone away and is still robust. Yet, it has been, and is, increasingly challenged by the realities of diversity across Europe both in terms of the multiple centers of political control and in terms of overall cultural diversity. The new state-national minority relationships in Europe are just part of a wider “revolution around the world in the relations between states and ethnocultural minorities” (Kymlicka 3, 2007). Multicultural approaches to citizenship and rights has increasingly challenged approaches that focus on assimilation and homogenization across the globe (though not evenly and not everywhere), asserting that minority groups have a right to retain their own customs, language and culture. Will Kymlicka argues that: “this shift has often been the result of endogenous domestic political processes” but that:

Increasingly this shift has an international dimension to it. International intergovernmental organizations are encouraging, and sometimes pressuring, states to accommodate a more multicultural approach. Those states that are prepared to consider adopting models of multicultural citizenship will find an array of international organizations willing to provide support, expertise, and funding. Those states that cling to older assimilationist or exclusionary models find themselves subject to international monitoring, criticism and sanction. In short, we are witnessing the increasing ‘internationalization’ of state-minority relations. (3, 2007)

In this sense my research contributes to the rich theoretical debates about global human rights and provides an in-depth explanation for how and why the process of new state-minority relations happened and is happening in Europe for a specific set of groups (national minorities).

My research will argue that *some* minority groups have been aided and even fostered by the process of European integration that has been continuing most intensely since the end of World War II. The status quo has been shaken and we cannot understand the changes within states in Europe without referencing the crucial impacts of European integration. Much like the degree of power wielded by the EU, which could not have been foreseen by those founding the Coal and Steel Community in 1952, the support for national minority groups from European institutions was largely not intended and not foreseen by most policy makers. My research will therefore contribute to the rich theoretical debates on the European Union and its future.

In particular, I am interested in examining the European Charter for Regional and Minority Languages (ECRML) which has become the world's most important and powerful piece of language policy. The ECRML represents a refutation of the traditional model for the treatment of minority language groups which focused on either assimilation or elimination¹. By examining the creation and implementation of the ECRML I will show how the changing opportunity structure in Europe empowered national minority groups and how these groups found useful allies in European institutions. I will argue that certain discourses which favored national minorities were not only given newfound attention, but that these discourses were persuasive, and resulted in new policies due to the new European environment. The EU and the Council of Europe (COE) crucially provide resources to national minority groups; in some cases this was literally in the form of money, but more so

¹ I will elaborate in later sections on the lack of distinction between these two policies.

it came in the form of a new venue for discussion and a newfound ability to join together in groups such as the European Parliament's National Minority Intergroup. A unique and disparate group of interests and opportunities slowly became available over time, and when we take a broad look at the changes at the European level we can see clearly the evolving support for national minorities. Furthermore, national minority groups have taken advantage of the multiple centers of power in modern Europe by venue shopping for support across regions, states and the supranational level. Many regional groups have become "European" as they find policy success in Europe where they could not domestically. Taken together, my research suggests that the effects of European integration are profound beyond the traditionally focused upon topics of the economy and security issues.

Much of the literature on the EU has discussed how the EU's growth can or has promoted a postnational view; how Europe has struggled with the idea of a "European" identity. The longstanding search for the "European man" continues to fall short and largely the debate has shifted to discussions about the necessity of such a group for European integration. Often discussed in tandem with this, I think mistakenly, is the issue of member state autonomy and sovereignty. This topic generates a great deal of debate and has been the focus of much of the media coverage of the EU's growth. Of course, if Harold Lasswell was correct and politics is in essence about who gets what, when and how, then it is quite logical to focus on the EU's growing powers (1935).

It seems clear that at least to some significant extent, that member states have lost control over some policy areas; the real debate, which has dominated the

literature for some time, has been why they surrendered such control and whether or not they can easily regain their traditional powers. Neo-functional and later institutionalist theories have claimed that states were not the main force behind their loss of control and that they will not easily recapture their autonomy. Intergovernmental approaches, notably Andrew Moravcsik's work claims the opposite: that states have chosen to hand over some daily management of policy to the EU and that they can regain, and do regain, control when they feel it is necessary.

My research is not focused on conceptualizing the European project as postnational, quite the opposite in fact; the record instead suggests that the EU and COE's role in minority affairs shows a policy still framed very much in nationalist ways. In fact, the process can be viewed as creating or empowering increased nationalism from marginalized groups all across Europe. However, this nationalism is within a European framework thus we have the wonderful Scottish Nationalist Party (SNP) slogan "Independence in Europe." Viewed this way, the EU and COE pose less of a threat to the nations of Europe — by creating a homogenous new set of identities that overwhelm other forms of association — but they do pose a threat to the states of Europe. Power has shifted, and is likely to continue to shift toward Brussels and away from member-states even if this is unlikely to ever create a clear power hierarchy with states on the bottom.

Instead of either the states or the EU having all of the power, decision making has become mult centered and overlapping with decisions made on all levels impacting each other. Multilevel governance in Europe has had an enormous impact

on all policy areas and continues to develop over time. This view of Europe and the diffusion of power, for example, is only reinforced by the complicated set of responses to the current set of financial and economic crises where we have simultaneously seen a reassertion of national preference (especially the will of larger and more economically powerful states like Germany) and the development of deeper EU regulations.

The amount of influence wielded over linguistic/minority policies is a great place to examine the tensions and debates about how much power the supranational institutions of Europe should have. It is one of the most unexpected policy areas for any measure of integration and yet the ECRML has been established. Furthermore, the ECRML, and the change it embodies, is at the center of debates about what the role of supranational institutions *should* be (not what they are).

Language, and the central role it has played in nation and state building in Europe, connects deeply to larger political processes and would be ranked among the most sensitive of subjects in political discourse. In many cases language has emerged as a proxy for national groups and their struggle for survival. Every report published on the viability or strength of the Basque language in Spain, for example, is not just data collection in this sense, it is a highly political act and is interpreted in distinctly different ways. Creating and implementing the ECRML is a highly political act, and it has political consequences.

The literature on the Charter and the politics of language are lacking in two senses: first; nearly all of the scholarship has been written by linguists and has focused on the technical aspects specific to a single language. This is reasonable and

necessary, but my research takes a broader look and seeks to investigate the larger long-term impacts that the ECRML has and may have. Secondly, in the well-developed literature on the politics of language there is very little focus on the Charter². This is surprising in some sense because of the highly political and politically salient nature of the subject. However, as I will describe, the Charter was written in a way that was meant to technocratize language policy in some ways, and while its message and intentions are clearly significant and possibly major game changers, the implementation of the ECRML has for the most part been a low key affair with possibly the exception of France and a few other states where language policies are highly salient (such as the Baltic countries).

My research will seek to both add to the political science research and to bring some of the data and insight from sociology and linguistics into my own politics-centered research. I will combine the insights from linguistics on the ECRML's impact, goals and meaning with political science literature in order to demonstrate how the ECRML represents a new model for state-minority relations, how national minority groups have changed and how these changes were the result of the new European institutional environment.

In addition to having a multidisciplinary approach, my research provides important contributions to three important theoretical debates. First, my research provides an analysis of theories of multiculturalism, especially the application of multicultural policies. Heavily borrowing from Will Kymlicka's research, I show the

²Take David Laitin's work for example. He has published widely on the politics of language but has failed to take the ECRML into consideration, leaving a major gap in his theories.

importance of national minority classification, and the rhetorical power this category has in modern Europe. In this sense, I am providing a case study (a very large one at that) for evaluating responses and the impact of a specific version of group differentiated rights that is deeply connected to a multicultural approach.

Secondly, my research provides strong evidence for the validity of political opportunity theory. Building on the work of Sidney Tarrow, Claudio Holzner and others, I conclude that the timing and shape of the ECRML can only be explained by the unique set of consequences of European integration and the EU's growth in the late 1980s and early 1990s with the breakdown of Communism and the Cold War. In particular, my theory explores how political opportunity theory can be applied to situations where multilevel governance has developed and where power is spread unevenly across many institutions.

Finally, I contribute to the, at times intense, debates over the nature, future and impact of the European Union. While my findings validate much of Andrew Moravcsik's intergovernmental approach, I also discuss the important limitations of his theory. For example, intergovernmentalism is ill-placed to explain a policy result that had little to no state support. Chapter Five makes this all the more clear when we explore state responses to the Charter. My work builds upon theories of multi-level governance and venue shopping and provides a strong explanation for how and when states can be challenged, even by seemingly (politically) weak actors over time.

It is important to note that my research does not argue that large scale normative change (constructivism's main explanation for the ECRML) has occurred

in Europe, and in fact I provide evidence in Chapter Three to the contrary. Instead, my argument focuses on the political opportunity structure in Europe and how certain groups have succeeded in leveraging EU commitments such as the concept of “Unity in diversity” into policy success nationally.

The current environment in Europe provides a particularly interesting point in time to study the ECRML, language policy and state-minority relations. Austerity across the continent has challenged some of the most important of programs and it is therefore quite useful to examine the impact of the financial crisis on language policy: if the spending to protect regional and minority languages (RMLs) continues, this would suggest a powerful commitment from states.

Furthermore, many politicians in Europe including the German Chancellor have criticized multiculturalism and have called for deeper levels of “integration.” It is clear that for most of these leaders the target group is immigrants, especially Muslim immigrants, but more generally there have been renewed attacks on multiculturalism and some movement toward ideas centered on assimilation. All of this makes it a crucial time to focus on national minority policies. Finally, it is nearly 15 years since the ECRML entered into force which is probably a good point to conduct an inquiry. The data are there, and we can with some confidence, discuss ECRML’s impact.

This study therefore seeks to examine the evolving rights regime in Europe seeking to protect and strengthen national minority groups (and not immigrant groups). In order to do so I will specifically focus on the European Charter for Regional or Minority Languages. Chapter One will provide a short historical

overview of language rights in Europe. I will describe how the rise of the modern centralized state and nationalism both contributed to cultural homogenization and language death. This chapter will also describe the ECRML and focus on its overall intended policy implications.

Chapter Two will focus exclusively on the European Union. I will first describe the overall struggle for legitimacy and the so-called democratic deficit in the EU and the lack of a European *demos*. Next, the chapter will discuss the specific problems and history of the EU's language policies. I will review the tension between the need for an operational language of communication and the need to respect diversity. Finally, I will discuss the development of a minority rights scheme at the European level and the overall focus of the EU on diversity as one of its main attempts at legitimation.

Chapter Three will present the core of my argument about why the ECRML was created and discuss its potential impact. I will focus on the changing political opportunity structure in Europe and the creation of European institutions as the crucial independent variable that motivated the changes embodied by the Charter. The new multilevel governance model in Europe allowed for national minorities to succeed in venue shopping for support among regional, national and supranational institutions. I will detail how some arguments succeeded at the European level that could not find much support at the state level. In essence, national minority groups were able to successfully leverage the EU's concept of "Unity in diversity" to push for recognition and rights. This starkly contrasts with immigrant groups who are not

covered by the ECRML and are unable to make the same arguments about being part of the “European mosaic” despite their lengthy contributions and role in Europe.

Chapter Four will discuss state responses to the Charter with a focus on the decision to ratify, sign or reject the Charter. I will develop a general set of explanations for both why states choose to ratify or reject the Charter. I will focus on issue salience, existing norms and the power of EU membership. Overall, this chapter provides a strong set of generalized explanations about state responses to the ECRML and brings the state back into the discussion after the focus on the COE and the EU in Chapters Two and Three.

In Chapter Five I will go further and examine the responses of states after ratification. I emphasize the importance of the state and I will detail how states have tried to marginalize and control the impact of the ECRML. By reviewing the 146 reports generated by the ECRML, supplemented by Non-Governmental Organization (NGO) reports, I will provide an in-depth analysis of how the Charter is working and how states have implemented the changes envisioned by ratification.

Finally, I will conclude this paper by discussing the current crises in Europe and the impact that these problems will have on minority policies (especially language policies). I will focus on the exclusionary aspects of the Charter as well, and I will discuss the lack of coverage for immigrant languages and how this will develop over time. I will end with a discussion of some of the broader potential impacts of the ECRML and similar policies in Europe as well.

CHAPTER ONE

MINORITIES AND THE STATE

James C. Scott's 2009 *The Art of Not Being Governed* examines the Hill Tribes of Southeast Asia: groups that were culturally distinct from those in power in the growing empires surrounding their homeland, and whose main survival mechanism had been to avoid incorporation into any state. Scott calls the homeland of these people (Zomia) a "zone of cultural refusal" (2010). His work details the long struggles of these groups to survive and to maintain their own way of life. Ultimately he argues that they are fighting a war they cannot win and that the state has far too much power and time. At some point in history each of these groups were incorporated into states³. Scott's book details the growth of states and centralization in Southeast Asia and the impact that these developments had on local populations who had fought desperately to avoid being under control.

Much like these groups we might look at the Basque homeland in Northern Spain as a similar zone of refusal, especially during the Franco period where their language was illegal and the Basque culture was under direct attack from the state (the Catalans had a similar experience under Franco). Still, while the state in Europe

³ It is worth noting the decades long struggle between the Burmese government and precisely the people that Scott was writing about.

has certainly conquered every peak and valley it would be misleading to uniformly view modern European states as enemies of diversity and minority cultures in the same way that Scott characterizes the Chinese empire. Instead, I will discuss how the thinking about the age of the issue of diversity has developed and changed over time in Europe. This chapter will focus on the general trajectory in Europe while the next chapter will focus specifically on the European Union.

Internal diversity presents both challenges and opportunities for the state. In particular, since the age of nationalism began, cultural diversity has been seen by most states as an obstacle to progress and unity. Modern nation states generally view heterogeneity much different than empires which had little expectations of citizen likeness. The bases of power for empires were very different than today's democratic nation-states. Notions of popular sovereignty for example, have different implications for diversity than authoritarian systems that rule through coercion and often claim supernatural bases for their rule.

The European Union would in many ways seem an impossibility with so many distinct groups and cultures; but in fact, the modern European Union has presented a distinct view on diversity that has stressed "Unity in diversity." Diversity then, is not an obstacle to unity: commitments to mutual respect and recognition provide the basis for the Union itself. In no place have these commitments to mutual respect been more challenged than in terms of linguistic diversity. This is for two main reasons: first, the deep political and cultural attachments and symbolic importance of language to Europeans. As we will see, language became one of the central characteristics defining the nation (and state).

Second, the real logistical challenges posed by communication and cooperation among such diversity. Coupled together, a Union dealing only with the 23 dominant official languages of the member-states would have been quite a challenge let alone if the Union was to deal with the 100 or more regional and minority languages (a survey conducted in 2004 after enlargement counted approximately 90 minority language groups, see Kjaer and Adamo 2011).

The EU and especially the Council of Europe have gone much further than just recognizing the 23 dominant languages to commit themselves to respecting and fostering the languages of historically marginalized regional and minority groups. In this chapter, I will trace and discuss the history of how European states responded to diversity with a focus on language. First, I will discuss some of the important theories and approaches to identity and politics with a specific focus on language. Next, I will discuss the development of nationalism and the major decline of diversity. Finally I will conclude with a discussion of the new model presented in (among others) the ECRML. Deep tensions exist in Europe regarding these two distinct views of dealing with diversity and certainly the struggle is far from over. In this sense, discussing the ECRML and language rights in Europe sheds light on a much larger debate about democracy, rights and identity.

Why does language matter?

Before we discuss language policies it makes sense to discuss the importance of language to groups and individuals and why language is so politically significant. The role language has played in state and nation formation, especially in Europe,

cannot be understated. Modern nation-states from France to Estonia were founded based off of a claimed national unity which was hardly comprehensible without language. Language became the most important differentiator between nations and subsequently states. Germany, and the German nation for example are hardly comprehensive without referencing language and the same could be said of many (if not all) of Europe's nations. It is fair to say then that language has been, and continues to be one of the most important divisions among European people and states. In fact, as we will see, though the EU and its pro-European allies have been quick to point out the shared European experience of law, history, religion and even sport, it has not attempted to put forth a similar claim about language (that is, to claim a model EU language, of course Esperanto enthusiasts do exist).

More broadly, two trends can be discerned in terms of the worldwide linguistic environment. First, there is a rapid and long-term decline in overall linguistic diversity as smaller languages die out and larger languages like Mandarin Chinese, Spanish, English and others gain further dominance. It is estimated that 90% of the world's languages are threatened with extinction over the next 100 years (see Pinker 2007).

Secondly, in response to these changes, there has been a rise in the political will to reverse these declines. On one hand, many scholars view language loss as akin to species extinction in the natural world: languages are vessels of specific cultures that will not survive the loss of their language. We can also observe the growth of nationalist movements from groups witnessing a decline in the use of their language, who seek to end this decline in order to strengthen internal unity

and difference. In both cases, language is viewed as much more than a system of communication but instead is a vital part of group identity. Laitin and Reich point out that:

Nationalists are right to say that the value of one's native tongue goes beyond mere instrumentality. Language can be bound up with one's identity and with how one understands one's way of life. Thus, we would gladly take a bribe to compensate us for the costs of driving on the right side of the road, or for using euros instead of dollars. But we would be (as were Laitin's Ghanaian informants) far less willing to accept a bribe so that all Americans would speak Iroquois. This does not mean that in many situations (largely through immigration) families would not assimilate into new languages. It means that the cultural values embedded in languages, and the literatures that were written in those languages, will be lost. (88, 2003)

This argument, that language contains more than mere words, has been thoroughly debated in linguistics.

The Sapir-Whorf hypothesis argues that language contains and impacts the ideas that a speaker can access. Most strongly, this would mean that speakers of different languages live in cognitively different "worlds" with the language they speak having a major impact on their behavior beyond the language usage itself.

Whorf argues that:

No individual is free to describe nature with absolute impartiality but is constrained to certain modes of interpretation even while he thinks himself most free...We are thus introduced to a new principle of relativity, which holds that all observers are not led by the same physical evidence to the same picture of the universe, unless their linguistic backgrounds are similar or can be calibrated. (214, 1956)

Even less robust versions of linguistic relativism (as it is sometimes called) see one's language playing an important role in how an individual approaches and understands the world. Thus, one can argue as Fishman does that: "such a huge part of every ethno culture is linguistically expressed that it is not wrong to say that most

ethno cultural behaviors would be impossible without their expression via the particular language with which these behaviors have been traditionally associated” (3, 2001).

Languages then are important not just because of the attachment that speakers feel to their native tongue but also because they are an important part of the world’s cultural diversity. A world with only one language would be advantageous in many ways, but it would also be one where the loss of linguistic diversity would be accompanied by a loss of many of the richest cultures and frameworks that currently, in no small part, define the human experience.

One can therefore strongly defend the need to maintain and even increase linguistic diversity (in places where a language has died out) if we accept that uniform worldwide homogeneity would not be superior to the currently heterogeneous populations. It is also vital to recognize the role that language has in terms of being a vital characteristic of national identity, even the vital aspect of many nations.

This leads to struggles within communities that have lost much of their linguistic heritage such as in Northern Ireland in the nationalist community. Around the North you can find murals in Irish with slogans such as “Labhair cibe Gaelige ata agat” (speak whatever Irish you have) and “Tír gan teanga, tír gan anam” (Padraig Pearse’s famous, A country without a language is a country without a soul). The deep held conviction that language is a central part of group identity is not something new born out of scientific revolution even if our understandings have

increased over time. After all, the early leaders of nationalist movements in Europe were all too aware of the importance of language.

The challenge of nationalism

Nationalism, conceptualized as a program for political and cultural organization and power, created powerful incentives for homogenization and centralization. If the central goal of nationalism is the congruence between state and nation (see Gellner and Anthony Smith), then multinational states, as nearly all states are in Europe were and are, are quite a challenge. The clear “solution” to such challenges was to eradicate diversity either directly through legal channels and education policy or more slowly through incentive structures. Certain forms of diversity, especially linguistic diversity, were framed as threats and obstacles that needed to be overcome. Stephen May correctly points out that “the requirement of speaking a common language is unique to nation-states, and a relatively recent historical phenomena” (127, 2008). Mairead Nic Craith further argues that: “many nations have sought to cultivate a sense of belonging precisely through the promotion of a common language. Language is the medium which makes the nation as an ‘imagined community’ imaginable” (21, 2006).

This connection to the nationalist project succinctly points out the artificialness of language decline in Europe and the connection of such decline to large political changes. Peter Krause argues that:

A large majority of EU countries are today over 80 percent culturally homogenous. An important aspect of this homogeneity, however, is that it is not a ‘natural’ outcome of a quasi-evolutionary process but in large part reflects the deliberate use of political power by majority elites. Imposed

assimilation and enforced migration, not to mention more dramatic steps, played a significant role in the making of democratic statehood all over Europe. (30, 2008)

As Krause further points out, somewhat paradoxically, the Westphalian system in Europe was an attempt to institutionalize religious heterogeneity in Europe but also contributed to the rise of state projects that were committed to eradicating internal heterogeneity (ibid).

Nationalist movements in the late 18th and 19th centuries across Europe were revolutions in the name of the “people” and were often cast as democratic bottom-up endeavors. In contrast to prior dynastic monarchical systems, nationalist movements were claiming rights that were entrenched in membership of the nation, not based off of a relationship to a distant figure of power. The problem of course was that the nationalist claim was not by any measure inclusive. Instead, it was a deeply exclusive program that marginalized and eradicated the reality of internal state diversity. As Ernest Gellner has argued, nationalism’s: “myths invert reality: it claims to defend folk culture while in fact it is forging a high culture; it claims to protect old folk society while in fact helping to build up an anonymous mass society” (124, 1983).

Nationalist movements in Europe were almost without exception (the Swiss case comes to mind here) committed to a one-nation, one-state and one-language view of things. Will Kymlicka writes that:

Historically, virtually all liberal democracies have, at one point or another, attempted to diffuse a single societal culture throughout its territory. Nor should this be seen purely as a matter of cultural imperialism or ethnocentric prejudice. (26, 2001)

He goes on the state that having a standard language may facilitate goals such as education improvement, creating solidarity and economic progress (ibid).

The economic, legal, and social changes that defined the creation of the modern European nation-state then had profound implications for the relationship between minority populations and the state. The centralizing and homogenizing goals of nationalism were in direct conflict with the ethnic and linguistic diversity of many countries. Language in particular was central to delineating national borders and it was therefore critical for states to define the state/national languages that would be favored, explicitly marginalizing those left out. Jean Adrey argues that language plays two central roles in nationalism and nation-building processes: first; language is a “constitutive element of the state-building processes and a factor of economic development and growth, and social change” (30, 2009). Secondly, language is a “symbol and cement of national identity” (ibid).

It is hard for one to imagine the true linguistic diversity of Europe prior to state modernization and national revolution. For example, in France the percentage of citizens who were monolingual in a language other than French plummeted from 46% in 1794, to 25% in 1863, and finally to near zero in 1927 (Ager 37, 1996). This is particularly surprising considering the deep ties to language and the sunken costs involved in any community changing its language. Yet, in less than 200 years France goes from a country with less than half of its citizens speaking French to one where almost no one speaks anything else (a similar pattern happens at the same time in Ireland, Scotland and Italy).

The establishment of the Office de la langue française in 1539 with the Ordinance of Villers-Cotterêts and the subsequent efforts to establish a uniform language at the Court began the movement toward linguistic homogenization. The French Revolution in 1789 spread across France in a plethora of often unintelligible languages, but with the Jacobin victory a new centralizing and nation-building scheme emerged that stressed the need for uniformity which still dominates France today (see Wright 2004). One of France's leading Republicans during the revolutionary period, Bertrand Barere, famously stated in 1794 that:

Federalism and superstition speak low Breton; emigration and hate for the Republic speak German; counter-revolution speaks Italian and fanaticism speaks Basque. Let us break these instruments of domination and error...The Monarchy had reasons to resemble the Tower of Babel; in democracy, allowing the citizens to be ignorant of the national language, incapable of controlling the power, that is to betray the homeland...Being the language of the people, French will become the universal language...It must become the language of all the French. Among a free people language must be one and the same for all. (quoted in Judt and Lacorne 2004)

The bluntness and unambiguously discriminatory language Barere uses is out of place in today's France, but the sentiment is not. Just in 1992 for example, the French Constitution was amended to clearly state that the French language is the only official language of France and in 1972 French President Pompidou remarked that: "there is no place for regional languages in a France which is destined to play a fundamental role in Europe," suggesting that regional languages are a hindrance to French power internationally (Ager 43, 1996).

The pressures for homogenization came from two related sources: first, direct government activity via laws and practices. In France, this effort was tied to the establishment of the French Language Academy, the increasing use of French by

the Court and the emergence of nationalism. French citizens had to be made as Peter Kraus argues: “rarely did popular sovereignty emanate directly from the spontaneous articulation of a collective will; to a considerable extent, it was institutionally manufactured sovereignty, a sovereignty delivered from above. All in all, the people often had already been ‘made’ before it could become sovereign” (31, 2008).

However, the second and more difficult to change source of pressure on regional and minority languages came from indirect pressures, especially the economy. In large part due to governmental regulations, jobs, especially the important jobs in the public sector or private jobs that interacted with the public sector, required fluency in the dominant language of the state. This put significant pressure on RML communities and contributed to their economic marginalization, which further exacerbated their political weakness. The practice of educating one’s children in a second language — one that is economically important — and not passing along one’s “mother tongue” is a common practice (though unfortunate for many reasons) among immigrants, but surely a much more dramatic event when done across whole communities who are not emigrating to a new homeland, but instead adopting (by choice or by force) a new language for their community and home.

All of this touches on the loss of prestige and legitimacy that occurs when RMLs are marginalized. They become symbols of backwardness and poverty. In some cases, for example with German spoken in France and Russian in the Baltic republics today, there are also assumed connections between a minority language

and potentially traitorous political leanings. These views create huge incentives for language decline, especially among youth. The crucial factor in such precipitous language decline was legitimization: a combination of structural factors delegitimized minority languages to the extent that speakers of such languages could be characterized as being “symbols of religious backwardness and anti-nationalism” (Matta 2005). John Stuart Mill wrote that:

Experience proves it is possible for one nationality to merge and be absorbed with another: and when it was originally an inferior and more backward portion of the human race the absorption is greatly to its advantage. Nobody can suppose that it is not beneficial to a Breton, or to a Basque of French Navarre, to be brought into the current ideas and feelings of a highly civilized and cultivated people — to be a member of the French nationality, admitted on equal terms to all the privileges of French citizenship...than to sulk on his own rocks, the half-savage relic of past times, revolving in his own mental orbit, without participation or interest in the movement of the world. The same remark applies to the Welshman or the Scottish Highlander as members of the British nation. (quoted in May 2008)

Mill’s statements are important because they are representative of the views of many at the time. Advocates of a new democratic and dynamic national movement were also almost always discriminatory towards the realities of diversity.

Difference, especially of languages, was an impediment to progress and national unity. All of this creates a significant psychological barrier for RML speakers, one that persists even in the face of change. This is easily witnessed in the rejuvenation attempts of the Irish and Scottish languages. The major hurdle that often needs to be overcome is not just the sunken costs associated with language change, but the psychological factors associated with language prestige and pressure for conformity.

Today, many European states still focus on these concepts. France has argued that within a liberty-centered system that all citizens must speak French in the

public sphere. The immense contradictions of such a position are obvious but the same approach is dominant in Greece, Turkey and to a lesser degree some other states. Jean Adrey has argued that regional and minority language policy making processes “vary according to the brand of linguistic nationalism that prevailed during nation building processes” (xiv-xv, 2009).

The ongoing process of nation-building — and the eradication of difference that this has usually entailed — in Europe has left minority groups in small numbers generally and in weak political and economic situations at the margins of the state (quite literally in many cases, just look at the geography of the Sami, Scottish speakers, the Basques, Corsicans, etc., they are all physically distant from the centers of state power).

A new model?

Community in 1953 and especially the Treaty of Rome in 1957, which set up the European Economic “Europe” since the ‘50s has been significant to the point that it makes little sense to analyze politics in any of the member-states without also looking at the supranational level. Whether or not one views these changes as part of a shift away from the dominant nation-state model and to a new form of postnational cosmopolitanism or not: the changes since 1953 have had an impact on Europe’s national minorities.

Among the major changes to Europe postwar was the rise of immigration both in terms of absolute numbers and political salience. The numbers of immigrants in almost all countries soon dwarfed national minority numbers and the

political importance of immigrants and immigration policies have certainly been of vital importance. Internal diversity then, somewhat surprisingly, increased and was largely driven by economics and by colonial forces which increased across Europe after the war, despite a further consolidation of groups in the wake of Germany's defeat. Large scale forced migrations of Germans from eastern and central Europe, along with the loss of Jewish populations due to the Holocaust, did increase homogeneity in places like the Czech Republic and Poland, but all of the trends postwar were toward increased diversity.

The increase in diversity was accompanied by an even greater increase in the political salience of immigration, integration and rights as an issue. Not only were immigrants potential challengers to the status quo (though the extent of which is generally overstated) but the "indigenous" minority groups in Europe had not disappeared. A whole new set of arguments were presented by these groups that stressed the need for mutual respect and recognition. In some cases such as in Corsica, Ireland, Spain and Northern Italy, postwar movements quickly became violent. The zeitgeist of the 1960s and '70s civil rights movements helped propel these groups forward across Europe (with the notable exception of those living under Communism, where nationalist struggles were brutally put down until the 1980s). This was certainly one of the major pressures that led to the development and spread of multicultural approaches.

I will argue in Chapter Three that we cannot separate the creation of the Council of Europe and the European Union from these newly politically charged movements nor can we isolate the "solutions" to these problems from the European

level of policy making. What was needed was a new approach to thinking about diversity. Most of these national minority groups were quick to establish that they were not seeking to dismember the state and that they instead wanted equality and recognition from within the state. In some cases this clearly meant movements for federalism such as in Spain and Belgium, while in others it was more a movement seeking the dismemberment of the legal regime that was so detrimental to their survival.

The dominant model which stressed the need for a single language and nationality was not a failure. It had indeed succeeded to the extent that it had suppressed and eliminated (some) diversity and provided (some) stability. Still, the reality was that pockets of groups still existed with their own distinct languages and cultures despite the long-term pressures to conform. The horrors of both world wars had revealed the continued “ethnic” problem in Europe. An obvious “solution” would have been to continue to force assimilation and eradicate difference. However, the increasing tension between this position and the deepening commitment of Western European democracies toward human rights was all too obvious. This, coupled with the growth of supranationalism put immense pressure on European countries to develop a new way to deal with minorities, especially nonimmigrant groups.

Prior to World War II the vast majority of minority protections were based off of kin-state guarantees. For example, Germany and Poland had agreements about the right of Poles and Germans to receive education and other language rights (see Kymlicka 1995) and this policy was guaranteed by the League of Nations. These

types of guarantees are still fairly common, but were obviously delegitimized to a great extent following the war (having been seen as a contributing factor to the war's onset).

There was also strong movement in many countries to protect and give statehood or self-determination of some form to national minorities. Certainly, Woodrow Wilson's proposed policies on self-determination were implicit recognition of the need for minority rights. George Bernard Shaw even claimed that: "A liberal is a man who has three duties; a duty to Ireland, a duty to Finland and a duty to Macedonia" (quoted in Zimmern 63, 1918). This position was one that rejected the idea that minority groups could be treated fairly and equally without a measure of specific rights and perhaps even self-determination and statehood. Still, this position was marginalized after the horror of World War II and the supposed dangerousness of nationalism witnessed in both world wars. In this sense, the interwar period was a unique period for national minorities and open to ideas that were to disappear for decades after World War II.

Instead, the move postwar was toward deepening a set of basic human rights across states uniformly. Special or differentiated rights were seen as dangerous and antimodern or cosmopolitan. Kymlicka writes that:

The shift from group specific minority rights to universal human rights was embraced by many liberals, partly because it seemed a natural extension of the way religious minorities were protected. In the sixteenth century, European states were being torn apart by conflict between Catholics and Protestants over which religion should rule the land. These conflicts were finally resolved, not by granting special rights to particular religious minorities, but by separating church and state, and entrenching each's individual freedom of religion. (3, 1995)

This policy could be termed “benign neglect” in the sense that the state will position itself as neutral in terms of the establishment of culture and language. These equal before the law principles are embodied in many postwar human rights legislation like the United Nations’ Universal Declaration of Human Rights (1948) and the European Union’s Charter of Fundamental Rights (2000), which does not reference minorities at all. The current French and Greek government positions are very much in line with this thinking which emphasizes equality under the law for all citizens. However, two problems result from this position.

First, the state cannot divest itself of language in the way that it can in terms of religion. Constitutions, laws, official statements etc. all have to be made in a language. Even in places like the UK with no official language, there must be language choices made. Of course, multiple languages can be utilized but it is not possible to remain neutral or to divest the state from language questions. Even recognizing multiple languages is a political decision that speaks to the state’s standing on a wide array of issues. What languages are to be used in schools is a vital question that this liberal human rights position cannot answer.

Secondly, as has been detailed benign neglect does nothing to counter the economic and social force leading to language loss and cultural decimation. Benign neglect as a policy is strongly tilted toward the dominant culture and language; it is not an equal or neutral position. Therefore, many activists and scholars have pushed for differentiated rights that would give unique protections to certain groups. This has led to a great deal of legislation that has indeed established such a set of rights. Crucial to this slow turnaround of government policies toward “indigenous”

minority groups has been the development of the national minority concept which established a basis for protection and also importantly divided national minorities and immigrant groups.

National minorities

The term national minority suggests two things about a population: first, that they constitute a nation. Scholars of nationalism differ on definitions of a nation and the extent to which nations are grounded in modern or premodern bases (see Gellner, Anthony Smith and Anderson). However, all broadly agree that nations are a group of people who share a: “historical community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and culture” (Kymlicka 11, 1995). Immigrant groups from North Africa in France, for example, only share some or none of these aspects, lacking a historic shared experience, sharing a homeland in France, and depending on the group origin, generally do not share a common language or culture (besides French). The Bretons, for example, are certainly different than such immigrant groups with distinct histories, language and cultural understandings.

The second aspect, being a minority, is clearer. While there are major questions in federal systems, especially about the term minority, the most obvious measure is numbers: where the national minority group is a small percentage of the state’s population. More importantly, the term also may connote a lack of power and even an institutionalized political marginalization. As Kymlicka argues: “these groups were all involuntarily incorporated...through conquest or colonization. Had a

different balance of power existed, these groups might have retained statehood or established their own sovereign governments (11-12, 1995).” In fact, many of Europe’s national minorities did once have their own states and this experience is an important part of their national memory.

The success of national minorities in postwar Europe has been deeply tied to the rhetorical power behind the category. Returning to earlier criticisms of these groups, few would argue today that these groups are symbols of backwardness and antimodern. I will argue later that the EU has enabled these groups to also limit the effectiveness of arguments about their political threat to the state. The long historical record matters as well; national minorities are able to show the effect that government policies and overall social dynamics have had on their cultures, and this presents a powerful claim for change.

The move toward group-differentiated rights for national minorities has not been uniform across Europe. In some places like Spain, the UK and the Netherlands there have been deep institutional changes largely in response to national minority claims. Again, for these groups equal treatment is not equality. In defense of these right schemes Will Kymlicka argues that:

Group-differentiated self-government rights compensate for unequal circumstances which put the members of minority cultures at a systemic disadvantage in the cultural marketplace, regardless of their personal choices in life. This is one of the many areas in which true equality requires not identical treatment, but rather differential treatment in order to accommodate differential needs. (113, 1995)

This type of argument particularly has resonance when it is coupled with the desire to share with the majority in civil institutions of state and at the supranational level. Perhaps the most important and innovative change has been the European

Language Charter.

The Charter

The European Charter for Regional or Minority Languages is the world's most proactive and significant piece of language oriented policy. It aspires to protect and even foster languages in decline, and most importantly it is intended to re-legitimize such languages. Such a process necessarily involves a new way of thinking about minority languages in many societies and states, and perhaps underlines a fundamental shift in state identity. Despite the important role and support played by the European Parliament, the Charter was developed and is overseen by the Council of Europe. Unlike the European Union, the COE is essentially a human rights organization that dates back to 1949 and has a much larger membership than the EU (the COE has 47 members to the EU's 28).

The Charter was written very carefully to avoid member-state objections. Instead of directly establishing a set of new rights, it instead focuses on concrete measures to protect languages (not groups or individuals). François Grin writes that:

The Charter is not about rights. It is not about standards. It is not about national minorities. It is not even about the members of minorities. The Charter is about languages — more precisely, the regional or minority languages of Europe — and about the measures required for safeguarding their existence in the long run. (10, 2003)

Jean-Marie Woehrling agrees with Grin's assessment of the ECRML and explains:

As an international instrument, its chief distinguishing feature is its purpose: the protection it seeks to give to a European cultural asset, namely the linguistic diversity represented by regional and minority languages...the Charter does not define rights held by particular categories of person

whether individual rights or collective ones. This is the logical consequence of protecting languages rather than groups or individuals. Although it does not create rights in the conventional sense, it does place legal obligations on the states which accede to it. Thus, most innovatively, instead of reinforcing the legal position of individuals or groups, the charter protects minority regional languages. (27, 2005)

The claim that the ECRML does not establish rights is an interesting one considering on the ground changes required by the Charter which certainly would seem to any outside observer to look exactly like new rights: “the implementation of the Charter cannot be entirely detached from that of the rights instruments, since its prescriptions are capable of having profound effects on the lives of language speakers throughout Europe and of leading to the creation of collective entitlements” (Thornberry and Estabanez 158, 2004). Despite this potential confusion, the ECMRL was certainly unique and innovative.

There are two main reasons for this unique approach by the Council of Europe: first; member-states are particularly sensitive to the idea of creating or expanding upon language rights. There are fears that not only would they be allowing a supranational institution into the sensitive field of language politics (which they did anyway), but also that they would open a Pandora’s Box leading to massive changes including demands from immigrant groups. Claiming that the Charter targets the languages themselves and not the speakers of these languages stresses a technocratic and scientific approach that was intended to make the ECRML an easier “sell” to potential signees.

Secondly, there were fears (mostly from RML activists) that simply establishing new rights would be an empty endeavor. After all, symbolic treaties had already been passed that mentioned linguistic rights but were easy to ignore (such

as Article 2 of the United Nation's Universal Declaration of Human Rights and the Council of Europe's Convention for the Protection of Human Rights, Article 14).

Woehrling argues that:

This innovative approach means that the charter can go beyond merely prohibiting adverse conduct by states (for example the suppression of languages or the discrimination against speakers of regional or minority languages). Mere prohibition is no longer enough to safeguard such languages in their weakened state. Positive undertakings must be obtained from the public authorities. (27, 2005)

The concrete undertakings required by states that ratify the ECRML are then intended to make ratification more than just a pledge; they are intended to cause specific actions. In this sense, we arrive at a very surprising point: the Charter was written carefully to avoid seeming too grandiose and making it unpalatable to states, but at the same time it clearly is designed to force major changes. This balancing act will be addressed in Chapter Four but it is clear that the approach taken with the Charter is unique.

The Charter has its roots in the early 1980s with the passage of Recommendation 928 on the Educational and Cultural Problems of Minority Languages and Dialects in Europe in October 1981, which was supported initially by Cirici Pellice, a Catalan Socialist (see Grin 2003). Following this recommendation in 1984 the Council of Europe's Standing Conference of Local and Regional Authorities held a series of public hearings with the intent to lay the groundwork for a language charter. The hearings were attended by hundreds of representatives of minority language communities and resulted in widespread agreement on the basic form of the Charter (see Grin 2003). In 1992, the ECRML was passed by the Council of Europe with only one negative vote (from Greece). Interestingly, the United

Kingdom was one of only five member states to abstain from voting on the ECRML. Finally, it came into force after five states ratified the Charter in 1998.

In many ways the ECRML is a unique document that is both flexible and quite demanding of those states which ratify. The process is twofold; first, a state must sign the Charter, a somewhat symbolic move which expresses the state's commitment to the values and principles of the Charter. The second, and the most crucial part, is for a state to ratify the treaty. The first step in ratification is for a state to officially designate which languages are to be protected. All indigenous regional or minority languages must be protected by Part II per the Charter, but only those designated by the state can have provisions from Part III apply. It should be noted that only European languages or specifically languages native to those states applying can be protected. This is fairly ambiguous, but the intent is to limit protection and to refuse the protections of the ECRML to immigrant languages. Also, as I will discuss later, many states have either ignored certain languages or limited languages that really should be covered by the more extensive Part III.

Part II of the Charter is solely comprised of Article 7. This article requires the state to adhere to the following principles: first, a recognition of regional or minority languages as an expression of cultural wealth; second, to respect the geography of each language; third, the need to promote regional or minority languages; fourth, the commitment to the encouragement to regional or minority languages in both public and private life; fifth, to facilitate the teaching of such languages in an appropriate form; sixth, the promotion of such languages at the university level; and seventh, the promotion of relevant transnational exchanges (Grin, 2003). Again, any

country which ratifies the treaty must apply Part II to all languages designated. In order to achieve the aspirations of Part II the detailed and clear steps involved in Part III need to be involved.

Part III is a set of 68 “undertakings” which are quite specific and detailed. Instead of requiring a rigid application of all the features of the Charter, a ratifying country can instead “pick” (at least) 35 of these 68 measures. This is largely designed to not only ease ratification, but also to allow flexibility since language circumstances vary greatly. Part III has seven articles: education, judicial authority, public services, media, cultural activities, economic and social life and transfrontier activities (Grin 64, 2003). All states must select at least three measures from education and cultural activities, and one from the others. This perhaps implies a privileging of education and cultural activities as Thornberry and Estebanez have noted (144-45, 2004). States are free to accept levels of support above the 68 required and many states have indeed done so.

Each of these undertakings requires specific actions to be taken: for example, Article 8 (education) section b-ii requires states to: “make available primary education in the relevant regional or minority language” (ECRML). Article 11 (media) section 1-a requires the: “creation of at least one radio station and one television channel in the regional or minority language” (ECRML). Similar undertakings are required for all of the articles and taken together are quite comprehensive.

The Charter and its prescriptions are funded by, and up to the sole discretion of the state which ratifies. There is also a mechanism whereby public reports will be

made, both from the state to the Council of Europe, and from the COE to the state at 3 year intervals. States will first submit a report detailing their efforts and actions in-line with commitments. The COE will then respond with their own report, often after having on the ground meetings and investigation by members of the Committee of Experts who are experts on language issues and tasked with overseeing the implementation of the ECRML. The COE's reports have been forthright and have not failed to point out a state's failures or lack of compliance. As the COE points out:

The Committee is not a judicial body; it is not authorized to bring judgments on state parties. It is authorized, however, to monitor the implementation of the Charter and receive information to that end. Naturally, it is entitled to form an opinion on the performance by a particular party. (quoted in Thornberry and Estebanez 156, 2004)

The state reports are important especially because of how closely they work with local activists and NGOs who then can utilize the COE reports to push national governments to action based off of the COE's criticism. This gives the reporting mechanism some importance that has the potential to move governments who are either reluctant or outright hostile to change.

The reporting mechanism is the only coercive aspect of the Charter, which is essentially voluntary. Regina Jensdottir, who serves as the Council of Europe's Secretariat for the ECRML writes that:

Given that the parties are required to submit three-yearly reports on the measures they have taken to protect and promote regional or minority languages in accordance with the Charter, this monitoring process is designed to institute a permanent dialogue with each state and to encourage it to gradually reach a higher level of commitment. (7, 2004)

The dialogue between states and the Council of Europe is indeed happening, and the overall change in the discourse surrounding minority languages in Europe has changed greatly. Thirty-three states have signed the Charter and 24 have ratified it. There is a great deal of direct pressure then coming from the COE to member-states for compliance. As Jean-Marie Woehrling argues, the significant opposition the ECRML has faced suggests that: “as a legal instrument, it packs quite a punch” (35, 2005).

Perhaps the most significant aspect of the Charter is the legitimizing role it plays. The Romani language has been recognized by 6 countries, and in most cases this recognition has come from states that have historically oppressed and ignored the mere existence of the Roma. The loss of prestige and discrimination facing RMLs cannot be overturned without much longer and deeper changes, but the ECRML has certainly had a major impact. State recognition and support for RMLs reverses the long-term trend of state action in the opposite direction:

The first obstacle which these languages encounter, in a number of countries, comes when their usefulness or legitimacy is challenged, or where they are not recognized at all. With ratification of the charter and designation of a number of languages to be given the benefit of its provisions, an initial hurdle is cleared, the languages receive official recognition and their value is acknowledged. It then becomes possible to step up the demand for effective support measures. It will become more difficult to justify refusing these in the future. (Woehrling 36, 2005)

This long-term view is central to the Charter’s ultimate success or failure. The Council of Europe clearly believes that institutional change will result in normative change, which will lead to further and deeper institutional changes.

Some states like Estonia, Latvia, Lithuania, Turkey and Belgium have failed to sign the Charter for fairly obvious reasons that are unlikely to change in the near

future. In these cases, language issues are politically dangerous and the current atmosphere in these countries is fairly hostile to the provisions of the ECRML. One unusual case has been Ireland. Ireland has not yet signed the treaty due to a discrepancy about the Irish language, which due to its official status as the language of Ireland, is a difficult fit to the ECRML (many disagree with this, but Ireland is unique in having its official and national languages being spoken by so few citizens). However, it seems that in only 10 years the Charter has achieved widespread acceptance and has made some positive changes surrounding the status of regional and minority languages.

The massive changes in language policy in Europe have generally followed large scale political movements, and until recently only in one direction: toward the further marginalization and destruction of minority languages. In many ways the ECRML represents a new more inclusive policy. I will argue in Chapter Three that much of the drive behind the ECML was provided by the process of European integration. In the next chapter we will then specifically look at the EU and the challenge of diversity to European governance and unity.

CHAPTER TWO

WHY DOES LANGUAGE MATTER?

The European Union rests uneasily between having the traditional roles of a state and those of an international organization. Perhaps the central debate regarding the EU has been the question of its nature, both what it is and what it should or will become. The great post-Cold War energy burst that resulted in the Treaty of the European Union and later the Lisbon Treaty has been replaced with introspection and the need for innovative solutions to the current economic crises across the Eurozone and the EU more generally. In tandem with debates about the true and proper institutional capacity of the EU has been the long standing debate about legitimacy and the possibility of a European *demos* (or the lack thereof). Opponents of a strong EU would point to the lack of a European *demos* while supporters of the European project lament the seemingly weak growth of such a group identity in Europe but project the growth of loyalty over time. Many of the foundational links that have provided the basis for democracy and state unity over the centuries do not exist in Europe: for example, there is no shared European nationality, language or even a similar memory of shared historical experiences.

Yet, despite the lack of such links the EU has forged ahead quite successfully

in many ways. In this chapter, I will discuss the lengthy debates in the European Union about identity, legitimacy and language. First, I will discuss the legitimacy crisis in the EU and the role that identity has played in this crisis. Secondly, I will discuss the emergence of a European “solution” to both the lack of a *demos* and the crisis of legitimacy. Finally, I will delve more deeply into the new European language policies and influence on state policies. I will focus on exploring the debates and policy outcomes with a specific emphasis on language.

Legitimacy and identity

In many ways the debates over legitimacy and identity relate to the larger debates about what the EU is and what it should be: for example, if you are coming from the position that the EU should not have a great deal of autonomy and power then the legitimacy crisis is less important. I will argue that the EU has evolved as an organization not just in terms of the single market or its political role, but it has also developed over a time a fairly robust role in identity politics and minority rights. This certainly applies to language policy where the EU has become a strong advocate of multilingualism. However, the pressure and moves toward English as a working language are just as clear.

Especially early on, the EU was able to avoid involving itself in some of the more sensitive policy areas, especially those regarding identity by focusing on a low-key technocratic approach. This was due to the intense focus on the creation of the single market and the economic unification of six states. However, the question of language was unavoidable even when there were only six members and four official

languages. Today, with 27 members and 23 official languages the importance of language policies is even more obvious. Although this deeply understates the actual linguistic diversity of Europe and does not recognize regional and minority languages. In part, the lack of early efforts to engage with identity issues such as language reflected the perception that the EU (EEC, EC) did not have a legitimacy crisis. However, as time went on, and as the EU gained significant power⁴ the legitimacy crisis became more obvious.

We can broadly observe that Europe's nation states are legitimized by three broad themes: democracy, resource distribution and the link between identity (nationality) and the state. All three of these are difficult problems for the EU. Certainly this is a major problem especially as the EU grows over the years and increases its profile. I will address each factor in the following sections and then I will show the EU's policies that have been created by the EU in order to remedy the legitimacy crisis.

First, democracy has always been lacking in the EU if you mean democracy to be direct election of the EU's leaders. The so called democratic deficit remains a major problem in the EU, and one with no clear solution. Peter Kraus argues that:

The 'European question', namely, the question concerning the foundations of the political unification of Europe and its prospects of success, has by now become primarily a question of democracy. It touches, on the one hand, upon the impacts of processes of Europeanization on democratic will-formation in the member-states of the European Union and, on the other, upon the possibilities of a democratization of the Union itself. (1, 2008)

The lengthy debates in the EU literature have generally not focused on whether or not the EU has a democratic deficit (compared to national political

⁴ Think about the Court of Justice's direct effect power, for example.

entities) but instead on whether or not the deficit is reasonable. The most robust defense of the EU comes from Andrew Moravcsik. In his 2002 article *In Defense of the 'Democratic Deficit': Reassessing Legitimacy in the European Union* Moravcsik argues that: “judged against existing advanced industrial democracies, rather than an ideal plebiscitary or parliamentary democracy, the EU is legitimate” (603).

Moravcsik emphasizes that the EU tends specialize in low salience issues such as central banking and technical administration and that these technocratic areas are almost always managed in domestic politics by appointed civil servants not elected politicians (2002). Moravcsik’s argument rests on a view of the EU that underplays the nature of the organization and that stresses the constraints on EU autonomy:

The EU is more constrained than any national polity, in part by its own plural structure of checks and balances, and in part by its need to co-exist within a mutli-level system of governance with fiscally, administratively and legally more powerful nation-states. (611, 2002)

For Moravcsik, the fundamental source of EU legitimacy lies in its accountability to its member states and the democratically elected leaders of these states (619, 2002).

When examining the structures of the EU it is easy to see the problems with directly democratizing most of them (instead of relying on appointments from democratically elected leaders at the state level). The executive functions of the EU are split between the European Council — which directly represents member-states — and the European Commission which is controlled by state appointed Commissioners. Directly democratizing the Council would be essentially impossible

and while it is more feasible, elections for the Commission would greatly change the very nature of the EU.

As it is, the balance of power between “Europe” and its member-states has shifted with the Lisbon Treaty toward the member-states, especially the more powerful ones such as Germany and France. A directly elected Commission would greatly reduce the influence and power of national governments in the EU, and would almost have no chance of being approved for this reason alone. However, it is crucial to keep in mind the voting behavior and patterns for the Parliament, where low turnout and voter apathy often rule the day. This raises questions about the vitality and legitimacy of EU elections in general, and casts doubt on the idea of having more elections. Also, EU Parliamentary elections are often cases of votes reflecting their opinion of the national government and not the EU or the EP candidates. One can only imagine the complexity of a Conservative government in London, for example, and a British Labour Party member being elected from Britain to serve as the Commissioner. Of course the more complicated scenario would be the election of a Euroskeptic Commissioner. Considering the rising popularity of the United Kingdom Independence Party, it is not unseasonable to ponder such a possibility which would lead to clear crisis.

The “democratic side” of the EU is of course the Parliament which has been elected since 1979. The Parliament has increased its powers significantly over time, but certainly these pale in comparison to national parliaments. Overall, the democratic deficit remains and the Lisbon Treaty did not significantly alter the

problem. Of course, many national leaders prefer the current institutional configuration and we should not expect major changes anytime soon.

If a major move toward further democratization of the EU is unlikely, the question is whether or not the current configuration provides the EU with the legitimacy it needs to function and whether or not it is justifiable in the age of European normative commitments to democracy. Moravcsik's argument is quite convincing overall. Still, my research partially poses a challenge to his main point: the issues that I discuss in this paper are highly salient and certainly not technocratic. The EU's involvement in identity politics and language is obviously quite limited compared to the EU's role in establishing a common economic area and common currency, but it cannot therefore be dismissed. As I will detail later, the EU has had a significant effect on national minority policies over the years, and especially so in the area of language policy. The EU has now taken on some influence over health care, language policy, and even now has in essence a foreign minister. I would certainly argue that these roles are far more than the mostly technocratic roles that Moravcsik ascribes to the EU.

Overall, the democratic deficit remains. While the EU has focused mostly on technocratic and low salience issues, it certainly has not only done so. My research on language policy suggests that the EU has had an impact on this most salient and controversial of policy areas, and this alone undercuts much of Moravcsik's argument. However, as I have argued, further democratic reforms of the EU are unlikely.

The one area where the EU has done a lot has been resource allocation. Whether we are talking about regional funds (the second largest part of the EU budget), the Common Agricultural Policy or specific lines to projects in Europe, the EU certainly plays a significant role in who gets what and when in modern Europe. This is despite having a small budget and limited taxing powers. The EU has been able to cut across state borders to provide funds in a way that would be difficult for member-states, for example, with structural and regional funds which are based off of regions that generally do not follow state boundaries. Of course, the amount of daily influence on EU citizens is very limited in most ways, and the EU has only played a minor role in the critical areas of health care and housing for example. It is fair to say overall that the resource distribution element of the EU has provided the EU with some legitimacy.

This brings us to the role of identity and state legitimacy. As I detailed in the Chapter One, the link between modern state formation and nationalism is clear and deep. Across Europe language in particular became linked with political institutions and provided a source of deep legitimacy for the state. The creation of specific *demos* and often at the same time, modern states is not an accident. The process of nation building, homogenization and assimilation (not to mention eradication) required a central state apparatus⁵. This link, and subsequent claims to its naturalness, provides states with enormous amounts of legitimacy. In terms of the EU then, this is doubly a problem. First, the EU cannot easily create similar *demos*: no European nation exists and it is not even clear how such a nation could emerge.

⁵ For more see Benedict Anderson's *Imagined Communities*

The German Constitutional Court ruled as much in the 1993 *Masstricht-Urteil* case where the Court found that the Union did not and could not create and answer to a European people or *Staatsvolk* and therefore that the Maastricht Treaty did not violate German Constitutional commitments to democracy (see Neil MacCormick, 1995). The EU does not have a common set of cultural understandings and practices such as language to build upon:

The crucial problem is that there are no socio-cultural foundations which seem solid enough to provide a European democracy with the legitimation it will need: politically relevant collective identities are still deeply embedded in the structures of nation-states, and patterns of support transcending their boundaries are scarcely in sight. In brief, the project of enhancing democratic integration in the EU is bound to fail as long as there is no break-through in cultural integration across national borders. (Kraus 1998, 26-27)

Jean Monnet's famous quote that: "if we had to do it all again, I would begin with culture" succinctly demonstrates the importance of this lack of cultural unity (quoted in Kraus 1998, 43). European culture certainly seems a stretch, and if it does mean something it would seem to refer to the consensus surrounding democracy and human rights, not other cultural ties rooted in understandings of the self and the past. In other words, Europe may be united by a form of civic ideals but certainly cannot be united by an ethnic or explicitly cultural tie.

Secondly, the EU and its growth in power can be seen as a threat to Europe's nations and the status quo of nation-states. This is certainly at the core of arguments about Europe generally, and most anti-EU arguments contain some allusion to the illegitimate erosion of national sovereignty in the name of an amorphous and technocratic body. This argument only has merit if we cannot separate the national interest and will and specific state institutions. If, however, we can conceptualize the

national will as acting on, and being furthered by, both states and the EU the problem becomes less vital. Certainly the EU was built upon the idea that it would serve the best interests of its people and not that it would construct a new identity group to replace national attachments.

The policy that has emerged in the EU then has been one which seeks to legitimize itself not by creating a new European identity, but to respect and further the rights and freedoms of the already existing cultural groups in Europe. The EU is being built upon already existing groups including those who have been marginalized within their respective states. The seemingly novel approach to diversity taken by the EU is actually not unique in world politics and at times resembles policies of multinational states such as Switzerland and also multinational empires such as the Ottoman Empire. In some senses this is not a surprising claim due to the clear diversity of each institution. However, it is worth recognizing the highly heterogeneous nature of all of Europe's states, especially prior to the process of nationalism and state centralization.

The clear commitment constitutionally so to speak, from Europe to diversity is demonstrated throughout the Lisbon Treaty. One noteworthy section is (amendment) Article 2 (3) which argues that the Union: "shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced" (Lisbon Treaty). This declaration is hardly new in EU law, with similar provisions declaring a respect for diversity and promises to protect Europe's cultural heritage being in nearly all of the major treaty revisions since Rome. The Charter of Fundamental Rights of the European Union states that

the Union is committed to universally applicable notions of human rights but that at the same time:

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organization of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment. (Preamble, The Charter of Fundamental Rights of the European Union)

The Union is then both establishing a generally applicable set of rights (such as free movement, commitments to democracy etc.) and is committing itself to not only respecting diversity, but as we see in the Lisbon Treaty, committing itself to safeguarding Europe's diverse cultures.

The "Unity in diversity" position emerges quite necessarily and has provided the EU with a strong claim to legitimacy. In some ways the policy of the EU then appears to be not postnationalist but actually facilitating and operating in a nationalist framed space. One of the central arguments of this research is that the creation of European institutions has had a major effect on nationalism in Europe, specifically by fostering minority nationalism (from national minority groups). I will focus mostly on language policies for two reasons: first, as I have already demonstrated language politics are highly salient and central to the politicocultural divide within states. Secondly, the EU and COE have played a significant role in the language realm and in many ways have upset the status quo to an unheard of degree.

Language was one of the main drivers behind the creation of the EU's ultimate policy towards diversity which has further impacted many other policy

areas. In order to establish a union of diverse states and people, the only real option was to turn from the model of homogenization and centralization presented by European states over the past centuries. However, as I will argue elsewhere, this does not amount to a refutation of the nationalist model or nationalism more generally: instead, the EU is built upon a principle of respect and recognition of Europe's nations. To further develop my argument, I will discuss the complicated relationship between the EU and language and discuss how this led to the "Unity in diversity" model that currently defines the EU in many ways. I will discuss how this policy is and will continue to be challenged by the weight of its own complexity and how the rise of the English language may provide the core of another model or perhaps the beginning of a modification of principle.

The challenge of unity

Andrew Moravcsik argues that European integration has been driven by three factors: "patterns of commercial advantage, the relative bargaining power of important governments, and the incentives to enhance the credibility of interstate commitments" (3, 1998). He argues that the EU is largely driven and founded upon rational economic interests and that the continued faith in the EU as a venue to achieve such goals is the central "glue" that keeps it together. Intergovernmentalist approaches like Moravcsik's provide powerful explanations of decision making, and certainly can account for much of the events in Europe since 1953 at the supranational level.

Intergovernmentalism predicts that states will utilize the EU to get things that they either cannot obtain at the national level or when it is more efficient to pursue something on the EU level with cooperation. The selfish desires of states dominate all actions then, and in this sense the ECRML is a puzzle to intergovernmentalist theory. The most consistent policy for the EU in-line with Moravcsik's theory would be for the EU to stay clear of language policy where the benefits are unclear and where the costs are potentially severe⁶.

However, unlike other international organizations the EU could not have avoided involving itself in important cultural and identity issues that are not directly related to economic wellbeing. There are two reasons for this: first, the EU is too comprehensive and it has gained authority over many areas traditionally limited to states. Generating unity among 27 countries in such a deep way was necessarily going to involve diving into identity issues. In addition, as was pointed out earlier it is near impossible to remain neutral on language issues. Translators need to be hired, documents printed and official declarations written in a language (or languages). Secondly, many of the leaders involved in creating the EU and responsible for running it today were thinking of something much more than Moravcsik's economic union of limited scope. The longstanding goal of European unity in the wake of World War II was not limited to economic union, but instead, for many leaders, it was a genuine attempt at building social foundations for a new type of societal organization beyond the state.

In the end, the European Union has developed a policy of respecting and, on

⁶ The exception may be to establish a common "European" language, but as we will discuss, this is currently not being considered.

paper, establishing parity between languages. The former Commissioner for Multilingualism, Leonard Orban, argues that:

Today we live in a globalized world and Europe is building an ever closer Union. While, on a global level, some “big” languages tend to dominate the scene, Europe is not a melting pot where differences are blotted out. Europe is a common home where diversity is celebrated, and where our many mother tongues are or should be a source of wealth and a bridge to greater solidarity and mutual understanding. (2009)

Commissioner Orban’s statement succinctly summarizes the *raison d’être* of the EU’s language policy: facing immense diversity and also recognizing the importance of language to European citizens, the EU has chosen to embrace multilingualism and subsequently multiculturalism⁷. Frankly, there was little choice, especially early on: the European Coal and Steel Community’s High Authority and Court was certainly not going to be monolingual in 1953, and the only possible “solution” was to recognize all of the official languages.

Kjaer and Adamo correctly point out the paradox of this thinking:

The paradox of the commissioner’s speech is, of course, that the “many mother tongues” may be seen as a source of greater cultural wealth and a catalyst for greater solidarity, but at the same time they impede mutual understanding and almost invite being bridged — by a common language. On the one hand, linguistic diversity is a symbol of European democracy, but on the other hand, linguistic diversity complicates political dialogue and the exchange of ideas in a community that cannot communicate. (5, 2011)

In this sense we see two distinct ways to view diversity: one which stresses economic factors and downplays the importance of group identity; and the other view which does the opposite, stressing the importance of culture and the necessity of recognition of difference. As Kjaer and Adamo further point out we might see the

⁷ I will discuss later how this fits into the German and French positions on the failures of multiculturalism in Europe.

EU's commitment to linguistic diversity as running counter to the ideals of the four freedoms⁸ with language differences being a major barrier to free movement (5, 2011). This is certainly correct, and absent a *lingua franca*, linguistic diversity does make free movement and the common market in general more complex and difficult.

However, as I have argued, the EU has had to face the political realities that precluded the establishment of a monolingual policy in 1953 and certainly in 2012. Multilingualism then became the official policy of the EU and legally the EU is compelled to provide translations of all legislation in all 23 official languages. This creates an unbelievably complex and expensive burden on the EU's translation and interpretation institutions. For example, with the 23 official languages there are 506 translation and interpretation combinations possible (Euractiv February 2008). It might be relatively unproblematic to find a translator for German to English communication or French into English, but imagine the difficulty in translating Maltese into Irish! There would be very few people capable of doing this and instead the EU often translates into a third language such as English before then translating into Irish, for example. The General Directorates of Translation and Interpretation make up 10% of the Commission's permanent staff and cost the EU some 1.1 billion euros annually (Kjaer and Adamo 2011). The costs of this infrastructure are high, and with the possible ascension of Iceland and Croatia soon, they will grow. The policy of multilingualism that the EU has adopted fits naturally with the EU's official slogan of "Unity in diversity," which is an explicit rejection of

⁸ The free movement of goods, services, capital and people.

homogenization and instead a commitment to multiculturalism. This principle was both inevitable and necessary for any measure of European unity: only with principles of equality and respect would any state join, especially for those who were numerically smaller in terms of population. However, “Unity in diversity” is only a broad statement of purpose that has to be translated into actual policy outcomes. One of these outcomes has been the EU’s policy of multilingualism.

Perhaps surprisingly, the commitment to respect among states has also led to the EU increasingly pushing for internal policies that respect diversity within states. It frankly was not ever going to make sense to recognize the history and cultural wealth of say, the Spanish, without also recognizing the distinct Catalan or Basque nations that exist within Spain. Both Catalonia and the Basque territory have had lengthy periods of independence and certainly could not be written out of the European mosaic any more than the Spanish could be. The same could be said of the Scots who have only been part of the United Kingdom since 1707 and play a significant role in European history and developments.

If the argument was that states needed to respect each other’s differences then it is fairly easy for them to demand, quite logically, that a similar amount of respect for national minority groups be granted at the state level. As we have seen, in general this was an alien concept to most state who either officially or by common practice, were still “nation-building” in the sense that they were eradicating difference and pushing a central identity that was linked strongly to conceptions of citizenship. This was especially true with language where the trends had reduced the linguistic viability of many languages even while the groups associated with

these languages remained fairly robust. This was the case in Scotland, the Basque areas and in many other places. The movement toward this position of respect and protection of national minority groups was simultaneously affecting and being affected by the Council of Europe's crafting of rights legislation intended to give teeth to the goals of protecting national minority groups (such as the ECRML).

The cost (literally) of such multicultural and multilingual policies is high for the EU. As we have seen, linguistic barriers to communication and cooperation may be characterized as barriers to envisioning the common market, the EU's clear and deepest goal. The pressure and arguments in favor of something different than multilingualism are significant and have grown as the EU has expanded. So why not establish some version of a working language? This language would invariably be English, and would certainly ease communication.

English only Europe

The Anglicization of Europe has been occurring for decades and the process is increasing. The problems associated with multilingualism have likewise increased. The former American Ambassador to Denmark summed it up concisely: "The most serious problem for the European Union is that it has so many languages, this is preventing real integration and development of the Union (quoted in Phillipson 1, 2003)." This argument of course can be taken as a reference to the lack of a European *demos* or it can be a reference to the very real barriers to communication, understanding and integration. Either way, it is reasonable to point

out the cost of the extreme multilingualism of the EU (I will later point out the benefits of such a policy).

The English language dominates discussions in the EU currently and is the most common second language in Europe. The 2001 Eurobarometer report on language found that 31% of Europeans speak English as a second language and 16% spoke English as a first language; thus, 47% of Europeans speak English. The next highest number was German which is spoken by 32% of Europeans with all but 8% being native speakers (Eurobarometer Report 54, 2001). Since 2001 and the large expansion of the EU the numbers for German have certainly gone down as a percentage and English numbers have probably gone up. The same report detailed that 71% of Europeans thought that citizens should speak a second European language and nearly the same amount thought that this second language should be English (Eurobarometer Report 54, 2001). There is no competitor in Europe for a dominant language and it is clear that if the EU were to pursue a single language strategy that it would have to be the English language. Robert Phillipson writes that:

The forces of globalization and Americanization may be moving language policy in the direction of monolingualism. English may be seen as a kind of linguistic cuckoo, taking over where other breeds of language have historically nested and acquired territorial rights, and obliging non-native speakers of English to acquire behavioral habits and linguistic forms of English. (4, 2003)

Phillipson's book can be seen as an attempt to warn Europe about this possibility, and he is clearly concerned that English dominance is already established and on the rise. Language politics have been controversial in the EU from the beginning and show no end in sight. For example, in 1999 the German Government boycotted informal Council meetings in Finland due to the informal rule that meetings would

be held in English, French and the host country's language only. The boycott was ended when the Finns decided to add German to those languages to be used (Phillipson 21-22, 2003).

For a variety of reasons the informal domination of French, English and to a lesser extent German in EU meetings is unjustifiable. At the least this reinforces hierarchy and draws a false line around three languages as centers of power and relevance while excluding others. Since the eastward expansion this only becomes more obvious. It also flies in the face of EU official policy which as I have stated is firmly committed to multilingualism and equality. For now, let us focus on English as a solution to this problem: having a single working language would not only save billions of Euros, facilitate communication and understanding but it would also recognize a practice that has already taken hold. One linguist recently argued that:

The linguistic arrangement of the European Union is a highly political issue that has been carefully avoided by politicians both at the national and the supranational level...doing nothing is still taking a position. The maintenance of the current linguistic regime sustains institutional multilingualism formally but favors *de facto* linguistic homogenization with the increasing use of international English in informal settings. (quoted in Phillipson 107, 2003)

So in recognition of the already established agenda, it might make a lot of sense to just formalize the practice of using English as the *lingua franca* and process all translations through English if participants were unable or unwilling to speak English. The cost of translating from 23 languages only into English would be significantly lower than the current translation regime for certain.

It is also worth exploring the idea that English, or international English as the

above scholar mentions⁹, might also play a role in creating that elusive European citizen. After all, nearly every state in Europe pursued (or is pursuing) linguistic homogeneity as a way to generate a loyal and prosperous population. In a perhaps skeptical way, the EU's current embrace of minority languages does lead to a more important role for English. If we consider that today there are 23 official languages that can be used in communication, and that are officially equal, imagine the chaos of increasing this number exponentially by also granting such rights to regional or minority languages such as Basque or Roma. One might even argue that the prominority language policies of the EU and COE may be intentionally leading to the possibility of a two level Europe in terms of language: deeper diversity at the state and regional level and further homogenization (in English) at the EU level. This might appeal greatly to those European federalists who seek to weaken the states of Europe and build up the loyalties and usefulness of the EU.

⁹ I wonder if this is just a disguise for American English.

CHAPTER THREE

EXPLAINING THE ECRML

Considering the historical record, the ECRML certainly stands out as both unique and contrary to hundreds of years of precedent. At its strongest it represents a refutation of the single nation-state model and the widespread acceptance and institutionalization of a more (though limited) multicultural model. However, even if we take a more constrained view, the new rights regime and political empowerment of national minorities in modern Europe are striking discontinuities. As such, it is perhaps not surprising that much of the literature on the EU cannot sufficiently explain both the creation, survival and state responses to the Charter.

The ability of national minorities to affect change in their respective states was, and is, quite limited. Liberal democracy may have offered these groups the ability to publically speak out but the electoral realities often limited the effectiveness of their message. This is particularly true in states where preexisting ideas about minority rights and the place of national minorities in the state limited the efficacy of their message. Overall, this dynamic has not changed. As we will see when we examine the state responses to the Charter, national minority groups still have only a limited ability to lobby for change at the national level.

Yet, despite these weaknesses, the ECRML was signed by 33 states with 25 states also ratifying the Charter, many of whom had long histories of oppressing RML groups. The key change has been the establishment and growth of supranational institutions in Europe, most notably the COE, the European Commission, and the European Parliament¹⁰. The establishment of these institutions provided new opportunities. The predictions of intergovernmental theory are of little help in explaining the ECRML: if states are generally resistant to such an idea, intergovernmentalism's claims that states basically get what they want would predict that the ECRML would not come into being.

This chapter will fully lay out my argument and provide a solid foundation for explaining why the ECRML was created and later chapters will explain why it was accepted by most COE members. My explanation centers on the new political opportunity structure in the 1980s and early 1990s in Europe. The crucial agenda setting powers of the EU played an important role and helped ensure a policy success for regional and minority groups. In this chapter I will provide significant evidence of the EU's impact on RML groups and the political and economic opportunities that these groups have taken advantage of.

In particular I am focused on political openings that allowed many RML groups to achieve significant policy success and recognition; in many cases these successes were groundbreaking and unique in historical terms. These political openings not only encouraged national minority groups to engage with Europe and to be politically active, but the new institutions of Europe proved to be crucial allies

¹⁰ It makes sense that the Council has been less of an ally here, but the Court of Justice's absence is quite interesting and worthy of further investigation.

to these groups, resulting in policy victories such as the ECRML. I will argue that the EU in particular was fertile ground for language rights advocates to make arguments about preserving Europe's diversity. Jean-Bernard Adrey argues that:

The construction of the EU supranational framework of reference has re-configured the context of ideological, legal and institutional bargaining on RML issues, from a formerly bilateral model of political bargaining over (often conflict-laden) issue of RML recognition and rights between individuals and nation-states and their respective, territorialized subnational entities (the regions), into a tri-dimensional space characterized by patterns of multilevel, multi-actor governance. (1, 2009)

The new "European" space facilitated a new type of thinking and framing where minority groups were able to demonstrate their similarities to majority groups; the unifying element being European history and culture. Ultimately, this enabled national minority groups to make (often) nationalist arguments about self-governance and the right to preserve their distinctness while, at the European level, not seeming to demand outright independence.

Before I concentrate on my own argument, which will focus on political opportunities, I want to address two other possible factors: ideational change and state motivations. We might argue that the ECRML is the result of a European-wide shift in norms about minority rights. Considering the shift toward postmaterial values (see Inglehart 2008 and 1977) in Europe especially, we could argue that the normative environment in Europe has shifted away from viewing RMLs as backward and insignificant (if not outright dangerous) and toward a more inclusive view that mirrors a multicultural view of mutual respect. This could be both a top-down and a bottom-up argument: for example, ideas about minority rights could shift due to pressure and persuasion from elites or it could be that the masses elect

and pressure elites to adopt a more inclusive viewpoint. Of course, in these scenarios the causal chain is very different but in both cases the cause is ideational.

The evidence of such changes though is at best limited. There is widespread support for multilingualism in Europe: the 2006 Eurobarometer found that 84% of respondents favored the statement that “everyone in the European Union should be able to speak one language in addition to their mother tongue” (page 53). When asked the more significant question of whether everyone in the EU should be able to speak two languages in addition to their mother tongue, the results were much different with only 50% of respondents favoring this. In some countries over 70% of the respondents disagreed with the need to learn two additional languages (page 54). Finally, over 70% percent of respondents agreed that “every EU citizen should be able to speak a common language” (page 55).

Taken together, these results show the not so subtle view across Europe that most people want a common language for communication purposes, and this language is invariably English. The report argues that the wide support for one additional language: “can be understood in the light of the opinion of the majority of the Europeans that English is the most useful language to know and, also, a language which children should learn” (page 55). An interesting limitation to this view is that only 55% of respondents favored the EU communicating in a single language (page 55).

When we examine the attitudes toward regional and minority languages in this report we find a mixed result: 63% percent of respondents agreed that regional and minority languages should receive greater support (page 60). Yet, only 25% of

respondents strongly favored this statement with 38% choosing “tend to agree”; hardly an overwhelming amount of support for further help for RMLs. Additionally, when asked if they are “satisfied with the present range of languages available at schools in their country” 61% said yes (page 61). Of course, one of the major points of contention for RML advocates is the lack of educational resources that are available in such languages, and this survey offers little support for this view. While the 2006 Eurobarometer certainly shows support for multilingualism generally (though in a limited form), and some support for RMLs, it does not strongly support the claim to the normative environment in Europe has significantly shifted to the point of causing policy change.

This evidence is strongly in line with the lack of a legal consensus across member-states for supporting minority languages. Laws reflect normative commitments, and in this sense are codified norms. In some states such as Sweden and the Netherlands, member-states have chosen to draft national legislation that when coupled with European regulations such as the ECRML, are significant. However, in many member-states the domestic legal environment remains stagnant in terms of linguistic equality, and in fact many states, even ECRML signees such as Slovakia, have resisted implementing domestic legal reform. All of this suggests that the normative environment in Europe is varied and has not seen the uniform major changes away from the single-national state model that RML advocates push for. Instead, we see a more limited support for RMLs and a view that there are a significant minority of Europeans who view minority language preservation as vital. This evidence will be further discussed when I address the role of NGO groups.

Secondly, the ECRML could be seen as the result of incentivized state motivated behavior. There are two parts to this: first, were there incentives for states to favor the ECRML? Second, is there any evidence that states were more than reluctant participants in the Charter? In terms of the first question, the ECRML was certainly “sold” by some as a move toward unity and a way to help end domestic conflicts as discussed in Chapter Two. However, just as strongly, the ECRML is an “unfunded mandate” from the COE that states will be required to pay for once they ratify. This is especially significant considering the current economic crisis in Europe.

In terms of state motivations, one expert, Davyth Hicks, told me that he could think of no state that was in favor of the Charter; instead, the states who ratified were largely convinced that either the Charter would be toothless (we will discuss this later in the section on responses to the ECRML) or that the ratification was less costly than not ratifying (personal interview). If states were the driving force behind the ECRML I think it is fair to say that we would expect a different response to the Charter once it was established. We will discuss state responses in the next chapter, but it is fair to broadly characterize state responses as between the spectrum of lukewarm acceptance to outright intransigent attempts to limit the Charter’s impact (despite having signed it). This suggests that the creation and continued evolution of the ECRML is best explained not by state motivations or by ideational change despite the fact that both factors may have played a role in some state decisions.

Instead, I will argue that the main cause of the ECRML and its (limited) success are the changed opportunity structure: the establishment and development

of supranational institutions in Europe post-1945 changed the political opportunity structure for national minorities; where these groups found little opportunities for policy success at the state level they found a much more accommodating environment at the EU and COE. I will argue that there were three main factors in play here: first, the growth and strength of supranational institutions in Europe provided strong allies for national minorities largely because of the way that national minority groups were able to fit themselves into the rhetorical schemes utilized by the EU and COE about European unity and identity.

Secondly, the EU had already been engaged in a process that encouraged regionalism, most notably with the Committee of the Regions and Structural Funds. This was largely unrelated to arguments about minority rights, but as a side-effect it empowered some national minority groups. Finally, the new spaces created by the EU and COE, especially the European Parliament were able to allow for more efficient mobilization and coordination of minority groups. Perhaps what is most striking about this result is that it was unintended, and despite the potential significance of such changes in terms of the relationships between states and minority groups, it has gained little attention from academics.

The political opportunity structure

National minority groups did not suddenly acquire more resources in the 1980s and '90s, nor did their grievances multiply. Instead, they were able to take advantage of the political opportunities opened up for them by the new institutions of Europe. The creation of the EU and COE empowered some groups and proved to

be an obstacle for others. This is not surprising because any new institution has a significant effect on political participation and efficacy, this is intensely so with an institution as broad and important as the EU. Claudio Holzner argues that: “the institutional environment influences political behavior directly by shaping the incentives and opportunities (or obstacles) for political action” (3, 2010). Holzner further argues that: “all human behavior, including political activity, occurs within institutional constraints that shape actors’ choices of possible activities and influence the incentives they have for undertaking them” (13, 2010).

One of my main arguments is that national minority groups were able to successfully lobby for rights at the European level and to use their newfound ally in Brussels and Strasbourg to push for change domestically. The new supranational institutions of Europe incentivized regional groupings, especially through the use of structural funds, which in turn motivated national minority groups, who are often centered in specific regions, to organize and lobby. Furthermore, the costs for national minority groups to cooperate with each other were significantly lowered, especially by the European Parliament which provided an important venue for learning and cooperation. In addition, the agenda setting role of the EU (and to a lesser extent the COE) allowed national minorities to gain attention and support for their arguments about rights domestically. The new political opportunities found in Europe resulted in the ECRML and other rights legislation specific to national minority groups.

Sidney Tarrow argues that political opportunities are: “consistent — but not necessarily formal, permanent, or national — dimensions of the political struggle

that encourage people to engage in contentious politics...the concept of political opportunity emphasizes resources external to the group. Unlike money or power, these can be taken advantage of by even weak and disorganized challengers” (20, 1998). In this sense, the COE and EU both motivated engagement by already involved groups (such as the Scottish Nationalists or Corsican Nationalist Alliance) but it also facilitated the creation of new groups.

These groups found opportunities in Europe that they could not domestically; for example, they could make arguments successfully about their history and identity that would have been contentious in their home states. For some groups, trying to get ECMRL-like legislation passed at the state level would have been almost impossible, and this influenced groups to seek out a new venue and to lobby the EU as “participation is greater when important decisions are pending and when the outcomes are not foregone conclusions” (Holzner 43, 2010). This was partly due to the different vantage of European policy makers who were not rooted in local understandings of history and the state’s meaning in the same way local politicians were.

For example, when we discuss the rights of Scottish speakers in the United Kingdom, the debate touches on a variety of topics related to the identity of Scotland and the UK, which in turn expose sensitive debates about devolution, the creation of the United Kingdom and Scotland’s loss of independence and even the conflict in Northern Ireland and its complicated relationship with the Union. Much the same discussion and set of historical burdens could be attached to discussions of Catalan, Basque, Welsh, Breton, Corsican, Roma and other national minority groups’ rights.

In Brussels or Strasbourg these groups were and are able to move the discussion up a level, away from such dangerous specters of history.

Still, there is no *prima facie* reason to assume that European institutions would support national minority claims of inclusion and rights and reject the traditional position of marginalizing these groups. In fact, it was the development of these institutions and their ideational commitments that made the biggest difference. The largest factor linking the regional minority groups and the EU/COE has been the concept of “Unity in diversity” which is the EU’s official motto.

Unity in diversity

The European Union, whether it is essentially an economically motivated union or much more, requires a measure of cohesion and unity to work. The difficulty of getting 27 different states with diverse cultures and history should not be understated and has been a profound challenge for the EU throughout its history. The only way to limit fractures in the Union is to generate some sort of common ground and viewpoint while at the same time recognizing the obvious diversity of Europe. The phrase “Unity in diversity” sums up the EU’s view of itself quite well. Member-states are at once different, and deeply so, and yet unified toward the common goals of the EU. This requires member-states to do two things: first, to gain a measure of respect for this diversity; the EU has largely furthered this objective by stressing the common *European* heritage of all EU members.

In terms of language, this meant official multilingualism and respect for the diversity of Europe’s languages had to be claimed as a principle belief (even if the

evolution has suggested a clear hierarchy of languages). As Jean-Bernard Adrey has argued:

Multilingualism was understandably regarded as a highly symbolic and necessary feature within a supra-national organization intent on constructing long-lasting peace through supra-national economic collaboration and, in the longer term, a politico-ideological commitment to liberal democracy: what legitimacy could the EC have indeed gained had it not treated its founding members equally? (12, 2009)

Secondly, states have to decide what these common goals are (this has been at the core of debates about the EU, obviously), and interestingly this second aspect has been more controversial.

For national minority groups “Unity in diversity” was a powerful formula that would allow them to achieve not only the much needed recognition and unity within a political framework (the EU) but also to gain respect for their distinct cultures. The key was for national minorities to insert themselves into the European mosaic, and it is here that we see the factors that contribute to their marginalization playing the opposite role; while the former glory and independence of Catalonia, for example, creates concern in Madrid when mentioned, in Brussels it helps form a powerful argument about the importance of Catalonia (and Catalan culture and language) to Europe.

The ideas behind “Unity in diversity” were created to foster respect among member states but this logic can likewise be applied to respect for diversity *within* states. However, this step cannot be taken without national minority groups successfully overcoming the dominant views of their history and culture entrenched at the member-state level which stresses their outsider status and even at times has seen their existence as a threat to unity. The crucial distinction here is the ability of

these groups to cast themselves as national minorities verses being an immigrant minority group. In practice this is a difficult distinction to make at times, but generally the concepts are well defined.

National minorities

Will Kymlicka points out that national minorities are defined by two characteristics: first, they are nation defined as a: “historic community, more or less institutionally complete, occupying a given territory of homeland, sharing a distinct language or culture” (11, 1995). Defining what is and is not a nation is highly political and certainly a disputed topic (see Benedict Anderson, Anthony Smith and Ernest Gellner for example for differing views), but for the purposes of this paper Kymlicka’s brief definition will suffice. The important aspect for the purposes of my argument is the second aspect that Kymlicka attributes to national minorities: their historical incorporation into the state. Kymlicka argues that:

The incorporation of different nations into a single state may be involuntary, as occurs when one cultural community is invaded and conquered by another, or is ceded from one imperial power to another, or when its homeland is overrun by colonizing settlers. But the formation of a multinational state may also arise voluntarily, when different cultures agree to form a federation for their mutual benefit. (11, 1995)

The record clearly shows that a vast majority of national minority groups in Europe (and elsewhere for that matter) have been incorporated without their consent, having been the less powerful group in a given area or being conquered by a more powerful nation.

The importance of how national minorities came to be in their respective states is that they are not immigrants or foreign groups, instead they remain both

(to some measure) a national group and residing in their claimed homeland. For Kymlicka this means that they are entitled to rights that other minority groups are not. He argues that: “had a different balance of power existed, these groups might have retained or established their own sovereign governments...as they were incorporated, most of these groups acquired a special political status” (12, 1995). Kymlicka argues that we have no choice but to accommodate and give recognition to national minority’s special status and demands, especially those related to self-government since it is “no longer possible (if it ever was) to eliminate the sense of distinct identity which underlies these groups’ desire to form their own national societies” (185, 189 1995).

If we accept that national minorities are indeed not going away, and perhaps even that they deserve some form of recognition, then it makes sense to stop pursuing the traditional policies of forced assimilation which have caused so much disunity and conflict. Indeed, if states seek unity and peace the policy should: “involve accommodating, rather than subordinating, national identities” (Kymlicka 189, 1995). This at its most basic involves the principle of recognition, which is something that states have strongly resisted. Take for instance, France and Turkey’s constitutional assertions of linguistic and cultural unity, which of course are both factually incorrect, but also representative of a mindset that fosters marginalization and cultural dominance.

The clear intent behind the ECRML is to assert the legitimate rights of national minorities and to both recognize and protect their cultures. For example, the Preamble of the Charter states that:

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, particularly for the purpose of safeguarding and realizing the ideals and principles which are their common heritage;
Considering the protection of the historical regional and minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural wealth and traditions.
(2)

These statements of purpose clearly argue for the need to protect national minority languages for both the purposes of unity and to preserve Europe's "cultural wealth and traditions" (ECRML, page 2). Evidence of just how powerful the national minority frame is cannot only be seen in policy successes like the ECRML, but starkly in the contrasting way in which other minority groups have been treated.

While national minorities have certainly been able to achieve a level of acceptance and even protections over the past decades other minority groups are not seen in the same way at all. One need not investigate deeply to realize that the arguments made by and for national minorities are inapplicable to minority groups that are defined by immigration. Whether it is the French ban on Burkas, the Swiss ban on Minarets, or even the German, French and British leaders' statements on the death of multiculturalism the overwhelming view of immigrant (or immigrant descended) minorities is different in kind than the discussions of national minorities. For example, it would be unthinkable to imagine Turkish in Germany or Arabic in France to get recognition and government support. Instead, the official policy of all countries in the EU (even those who are the most tolerant such as the Netherlands and Sweden) is that immigrants need to learn the "national" language and, at least to a degree, assimilate.

The fundamental difference is that immigrants are said to have chosen to move to new cultural environments, thereby placing the onus on immigrants to learn some degree of the local customs and language. Deeply complicating this argument is the reality that many immigrants are refugees of some type, whether they are political or economic. Either way, the distinction is quite stark between national minorities and immigrant minority groups. Of course, this may be a defensible position, but it still shows how powerful the arguments of national minorities are that they were/are able to gain the policy successes that they have. Holzner argues that: “specific institutional environments do not distribute political opportunities equally; rather they create opportunities for some and constraints for others” (45, 2010). We certainly see this with the EU and COE, where national minorities were able to gain while other minority groups have fewer opportunities.

The EU and COE have been powerful allies at times for national minorities largely due to this convergence of ideas. The “Unity in diversity” theme which has been well established for decades was a powerful rhetorical tool for national minority groups to utilize in Europe, but as I have argued it is a unique argument that cannot be easily exported to other minority groups. It rests on the framing of the question changing from one of independence and often conflict to one that stresses commonality and if independence, independence within the same system. This argument has been made most powerfully by the Scottish National Party which has adopted the slogan *Independence in Europe*. Across Europe we see regional parties representing national minorities embracing the EU, which is surprising considering both the radical and nationalist roots of many of these parties.

The fact is that for some national minority groups the exigency of circumstance has overruled some policy options. Nationalism has often been defined as a movement to create a state for each nation (see Anthony Smith 1998, 2008). In modern Europe, however, statehood, or more properly, sovereignty, does not mean the same thing it has in the past. Furthermore, the closeness of many of these groups to total extinction means that the goal changes from statehood to survival. Embracing and working with the EU and COE then becomes a tactic for survival. As James C Scott (2009) has powerfully explored, groups will pursue even the most difficult of paths if it offers them a chance at survival. From the rural hills of the Isle of the Sky in Scotland to the Catalonian metropolises, the European institutions offer a welcome ally and at times a powerful one.

Beyond the convergence of thinking about European diversity, there have been other factors linking national minority groups to the European project, most notably the EU's policy toward regions. The growth of structural funds and the creation of the Committee of the Regions have both empowered Europe's regions and in many cases the minority groups living in these regions.

Resources

There are many factors that have influenced the EU's regional policies, from concerns about the democratic deficit, to the need to work with regional actors — and to align with them — in order to get EU legislation implemented and perhaps also a sense that a more regionalized Europe is also a Europe that needs the EU more. These regional activities are often not related to debates about minority

rights, at least not in the way we have been discussing so far. For example, the largest regional actors in the EU are the German Lander who are not nationally distinct. However, considering the deep connections between an overall lack of economic resources and minority groups (especially linguistic minorities), and the regional concentration of many national minority groups, it is not surprising that EU regional policies have had impacts on such groups.

The Structural and Cohesion Funds are part of the EU's Regional Policy which is officially tasked with reducing wealth and opportunity disparities in the EU. The current budget for these funds runs from 2007-2013 and is 347 billion Euros. These structural funds have had significant impacts on some regions not only in the sense of providing large sums of money for development goals but also in the sense of helping foster regionalism. In order to efficiently work with these funds regions need to have the apparatus to not only lobby for the funds but also to distribute the funds locally; in these cases local development agencies are often created (or strengthened).

This is certainly a political process as much as an economic one since it requires a re-assessment of local priorities which are in this aspect quite different than the overall state goals. Of course, a vast majority of the regions involved are not places where national minorities are concentrated. However, in those regions where these two overlap the effect of Structural Funds can be significant. Regionalism is a central aspect of the new Europe, and the EU now requires regionalism as a condition for EU membership in part due to the Structural and Cohesion Funds (Keating 2003). For example, Poland and other candidates in the 2004 expansion

round were required to create regional administrations in order to distribute structural funds and to join the EU (Hepburn 5, 2010).

A similar but perhaps more powerful influence on regionalism has been the Committee of the Regions (CoR). The Committee of the Regions came into being after the Maastricht Treaty (1994). Its original goal was to protect and strengthen the EU's guiding principle of subsidiarity. Officially, the EU defines subsidiarity as: "the principle that decisions must be taken as closely as possible to citizens. This means that in areas of shared competence, action should only be taken at an EU level if the policy aims cannot be achieved at local, regional or national levels and can be better achieved at Union level" (4, *A New Treaty*). In this sense, the CoR is a body that seeks to balance out Europe, preventing the EU from making decisions they would be better made at "lower" levels.

The original CoR was a fairly toothless organization with no standing before the European Court of Justice and no formal right to review or approve EU law. Andrew Evans has argued that the weakness of the CoR and the EU's regional policies in general actually force a strengthening of some central actors in member-states who have to deal with a powerful European Commission (27, 2003). Evans argues that in the face of such limitations some regions may seek secession (50, 2003).

The Lisbon Treaty greatly changed the CoR's powers giving it the right to bring legal actions before the Court of Justice in cases where subsidiarity has not been respected (2, *A New Treaty*). Furthermore, the European Parliament, Council and Commission must now consult with the CoR when making laws that have

regional impacts — which is certainly most, if not all actions (3, *A New Treaty*).

Given these newfound powers, the Committee of the Regions enters a new stage with a much more powerful role.

Much like the Structural and Cohesion Funds, we need to further examine the effects that the CoR has beyond its official role in safeguarding subsidiarity. Thomas Christiansen and Pamela Lintner argue that the Commission created the CoR in part to strengthen its alliance with Europe's regions and localities (8, 2005). They argue that there have been three long-term impacts of the CoR: first, the CoR has provided a place for disparate regional actors, facilitating communication between the EU and the regions (11, 2005).

Secondly, they argue that by providing such a forum the CoR has not only provided for vertical communication between the EU and the regions, but within the regions themselves and that it has the potential to serve as a catalyst for networking between these groups. They further add that the CoR has:

Facilitated networking among the various actors: either directly or through meeting in the chamber or more generally through the focus it has provided for discussions among regional and local representatives about the institutional arrangements in the EU. In the same vein, the idea of horizontal networking also implies that the CoR has been a meeting place for regions to share ideas, experiences and problems, and to engage in a long-term process of policy learning. (11, 2005)

The utility of this engagement cannot be understated for groups who are marginalized in both political and economic resources but who are also seeking ways to address the threats to their cultural and linguistic legacy. Armed with policy successes like the ECRML, further policy learning by regional groups (including national minority groups) will certainly have an effect on future policy goals and the

ability to consolidate the victories they have already had in the face of economic crisis.

Finally, Christiansen and Lintner argue that the CoR provided a symbolic strengthening of the idea of regionalism in Europe. They forcefully argue that the strengthening of the regions at the European level has had large impacts domestically:

In most Member-States, the existence of the CoR has legitimated the European aspirations of regions and localities, and has further accelerated the trend toward establishing dedicated representative offices in Brussels. But also within domestic systems, which witness continuous struggles about the allocation of powers across different levels, the CoR has, on the whole, strengthened the case of those who have wanted to see more powers given to the regional level. (11-12, 2005)

This is a good example of how new political opportunities for some groups have opened up in Europe, enabling relatively weak actors to achieve policy success in the face of significant opposition from their own governments. Unlike the “Unity in diversity” argument, I think here we can argue that the EU’s regional policies have been intended to do exactly what they have done; they have fostered regionalism and in some cases have weakened central governments. The long-term effects of the newly important CoR will be quite interesting

The opportunities for political learning and generating alliances in the CoR have been replicated and intensified in the European Parliament (EP). As we have discussed, there is a long history of legislation related to national minority rights passing in the EP. The ECRML was largely written there and the most important coercion of member-states to sign and ratify the ECRML has come from within the

Parliament. Specifically, the National Minority Intergroup has proven to be very successful.

Officially titled the Intergroup for Traditional Minorities, National Communities and Language, the National Minority Intergroup as it is known, has been at the center of the EU's role in RML issues and had a huge impact on writing the ECML (as we saw in Chapter Two). It has over 40 Members of the European Parliament (MEPs) and plays an important role in organizing RML actors in the EP. The European Parliament: "remains the most fervent supporter of an EU-pro RML policy and offers a path for regional RML activists to have their voice heard at the supranational level" (Adrey 78, 2009). The Intergroup holds monthly meetings at the EP (and occasionally more often as need arises) and usually hears from local RML activists about their own concerns or success stories.

This recognition and sharing of agendas is quite important, and certainly influences the views of Europe for regional actors. The EP emerged as a powerful meeting place for national minorities, and it provided an open forum for discussion of issues that often could not be discussed domestically. Any national minority group is by definition small in numbers, and because of the historical process of nationalism, marginalized beyond their numbers; the EP became a crucial place where these groups: "collectively represented they numbered tens of millions and might gain a politico-alternative to violence" (Adrey 85, 2009). We have already discussed how the EP (and especially the Intergroup) was crucial in establishing the European Bureau of Lesser Used Languages and Mecrator, both important predecessors to the ECRML.

Perhaps most importantly, the Intergroup often invites representatives from member-states to discuss their record, and often their lack of commitment to the principles of the ECRML or other similar legislation. This “naming and shaming” can be quite effective (see Keck and Sikkink 1998). For example, the Intergroup contacted many of the states who joined the EU in 2004 and pressed their demands for ratification of the ECRML and tied this to ascension (personal interview with the staff of Kinga Gal, Brussels 2010).

Overall, the creation of the ECRML and its successes since 1998 cannot be attributed to either widespread normative change or state motivations. I have argued that the creation of European supranational institutions have had the, largely unintended, consequence of providing resources and opportunities to national minorities. Intergovernmentalism cannot account for this and instead I argue that we need to examine the changed political opportunity structure in Europe to explain the creation of the ECRML. These new opportunities “activated” and strengthened national minority groups in line with political opportunity theory’s expectations.

Consistent with institutionalist approaches, the unanticipated consequences of integration — which in this work led to support in the EU and COE for national minority groups — took some control away from the states. However, this is a limited argument because states still have enormous control over policy outcomes. Considering the powerful position of member-states both in terms of enacting the writ of the ECML and in the Council then, it makes a lot of sense to examine state

responses to the ECRML since 1998. In the next section I will discuss the results of the ECRML and state responses.

CHAPTER FOUR

STATE RESPONSES: THE DECISION TO RATIFY

Why did some states ratify the ECRML and others reject it? Chapter Three laid out my argument which explained *why* the ECMRL came into being and how the COE and EU have strengthened the political resources available to national minority groups. In this chapter I will seek to explain national variation in terms of the ratification of the ECRML. On its face, the ECRML represents a major victory for national minority groups: not only does it provide actual support for their languages, but it simultaneously requires recognition. In many cases, this may be the first time many states have recognized the very existence of national minority groups. This underlines the impact of states pledging their support and arguing for the importance of preserving national minority groups. In this paper I am not arguing that a major normative change has washed over Europe, inspiring a profound movement to protect minority languages. The data I presented from the Eurobarometer polls suggests in fact that most Europeans care little about the language rights of regional and minority groups. Certainly the current climate toward minority groups in general in Europe today is not distinctly more favorable than say, 30 years ago. We might even argue that in some places the environment is

more hostile considering the success of the far right in the Netherlands, for example. Thus, norm based arguments are not sufficient to explain the state responses to the Charter. However, it is important to note that I am not discounting the impact of the normative environment in two senses: first, norms, measured as codified law toward RMLs are part of my explanation for why any individual state may ratify or reject the Charter. As I will detail in the chapter norms alone are not enough to explain responses to the Charter. Second, normative change or the lack thereof will have an enormous impact on the end result of the process initiated by the passing of the ECRML. With that said, we have not seen widespread changes across Europe regarding the politics and rights of regional and minority language speakers.

Despite the lack of significant normative change, the ECRML has been successfully ratified by 25 states and signed without ratification by seven more. In order to examine the factors that led states to accept the Charter, I will focus on those key factors that I will argue had the most impact. Of course it is always important to recognize the internal diversity of each state and the decision making processes among those in power across Europe. My research has identified a series of factors though that operated in a similar way either encouraging or discouraging policy makers to sign/ratify the ECRML.

Evaluating responses

During its lengthy incubation period the Language Charter saw strong support from states that were already committed to some forms of protection for RMLs. The real test of support for the ECRML was after it emerged for signature and

ratification in 1992. Not only did the ECRML need support to become legally binding, it needed (and needs) support to sustain the ideas and commitments contained in the Charter in order to become a genuinely new European framework and convention for the treatment of RMLs. If, for example, the Charter had only attracted the support of northern European states like Norway, Sweden and Finland (whom all had preexisting protections) the impact of the ECRML would have been substantially smaller and it would have had a much more limited regional impact. As an embodiment of normative change on a European-wide basis, it was then deeply important for the Charter to find success from Sicily to Hammerfest. Table 1 shows not just 25 ratifications, but two main waves: first, there were those states that ratified near the ECRML's entry into force in 1998 (Croatia, Finland, Germany, Hungary, Liechtenstein, the Netherlands, Norway, and Switzerland). Secondly, it is also worth noting the group of mostly Eastern European states that ratified the Charter later in the mid-2000s prior to EU ascension.

In order to more carefully discuss the impact of domestic and international influences on member-states decisions to ratify or not, I will focus on three categories of states: those with preexisting normative commitments to RMLs; states with high salience linguistic-political divides; and finally, states that were in the process of joining the EU. Of course as Table One shows, these are not isolated categories and some states share "membership" in more than one.

Table 1: ECRML Results

<u>Albania</u>		
<u>Andorra</u>		
<u>Armenia</u>	11/5/2001	25/1/2002
<u>Austria</u>	5/11/1992	28/6/2001
<u>Azerbaijan</u>	21/12/2001	
<u>Belgium</u>		
<u>Bosnia and Herzegovina</u>	7/9/2005	21/9/10
<u>Bulgaria</u>		
<u>Croatia</u>	5/11/1997	5/11/1997
<u>Cyprus</u>	12/11/1992	26/8/2002
<u>Czech Republic</u>	9/11/2000	15/11/2006
<u>Denmark</u>	9/1//1992	8/9/2000
<u>Estonia</u>		
<u>Finland</u>	5/11/1992	9/11/1994
<u>France</u>	7/5/1999	
<u>Georgia</u>		
<u>Germany</u>	5/11/1992	16/9/1998
<u>Greece</u>		
<u>Hungary</u>	5/11/1992	26/4/1995
<u>Iceland</u>	7/5/1999	
<u>Ireland</u>		
<u>Italy</u>	27/6/2000	
<u>Latvia</u>		
<u>Liechtenstein</u>	5/11/1992	18/11/1997
<u>Lithuania</u>		
<u>Luxembourg</u>	5/11/1992	22/6/2005
<u>Malta</u>	5/11/1992	
<u>Moldova</u>	11/7/2002	
<u>Monaco</u>		
<u>Montenegro</u>	22/3/2005	15/2/2006
<u>Netherlands</u>	5/11/1992	2/5/1996
<u>Norway</u>	5/11/1992	10/11/1993
<u>Poland</u>	12/5/2003	12/2/2009
<u>Portugal</u>		
<u>Romania</u>	17/7/1995	29/1/2008
<u>Russia</u>	10/5/2001	
<u>San Marino</u>		
<u>Serbia</u>	23/3/2005	15/2/2006
<u>Slovakia</u>	20/2/2001	5/9/2001
<u>Slovenia</u>	3/7/1997	4/10/2000
<u>Spain</u>	5/11/1992	9/4/2001

Table 1: Continued

<u>Sweden</u>	9/2/2000	9/2/2000
<u>Switzerland</u>	8/10/1993	23/12/1997
<u>FYROM</u>	25/7/1996	
<u>Turkey</u>		
<u>Ukraine</u>	2/5/1996	19/9/2005
<u>United Kingdom</u>	2/3/2000	27/3/2001
Total:	33	25

The leaders

For those states with preexisting legal and normative commitments to protecting the culture and language of national minorities, ratifying the ECRML was not likely to be controversial or as costly. In fact, the ECRML was in part crafted and supported early on by states like Norway, the Netherlands and Finland in the late 1980s and early 1990s. We can measure the commitment of these states by examining their legal environment in regards to RMLs. For example, the Sami Parliament was established by law 1989 in Norway, 1973 in Finland and 1993 in Sweden. The granting of some local autonomy and a Parliament to a national minority group (especially one as small and historically marginalized as the Sami) is highly significant and certainly exceeded the type of recognition and actions envisioned by the ECRML.

Issue salience

Switzerland and Croatia are both examples of states that have early commitments to language rights but where language policy is also a highly salient political issue. In many cases, issue salience is related to demographics: states with larger and more diverse language communities have more people who care about language policies and language is likely to become a highly salient political issue. However, demographics alone cannot account for the passion involved in language politics in many states.

History, and the complicated effect that our understanding of it has on contemporary life, makes an enormous impact as well to the salience of language

issues. The Irish historian ATQ Stewart succinctly described the weight of the past in conflict zones: “The past is dead, and nothing we choose to believe about it can either harm or benefit those who were alive in it. On the other hand, it has the power to harm us” (185, 2001).

For example, in the Baltic states of Latvia, Lithuania and Estonia citizens connect the politics of language today with policies during the Soviet era that discriminated against their national languages, and many people in these states fear that the Russian language will return to dominate. This is certainly similar to the difficult experiences of Basque and Catalan speakers in Spain during the Franco era. In the case of the three Baltic states this political crisis and the level of issue salience motivated all three to not sign or ratify the ECRML, making them (and Bulgaria) the only EU members from Eastern Europe that have not done so.

As Table 2 details, the strength of RMLs differ greatly, even with the same languages having different vitalities across borders (such as Basque in France verses in Spain). In many cases the stronger language groups also have stronger political commitments and influence, leading to higher issue salience. In general, the laws and policies toward very weak languages such as Cornish are less salient political issues than those with more vitality.

Whereas preexisting language protections make it easier and more likely that a state will ratify the ECRML, high issue salience does the opposite: high issue salience will make it more difficult for policy makers to ratify the ECRML and therefore ratification is less likely. One of the major concerns shown by Table Two is that in these cases is that by ratifying the ECRML, and allowing for some

Table 2: Language Vitality

(1= STRONGEST, 8= WEAKEST)

Stage 1	<u>Catalan in Catalonia, Luxembourgish, Welsh, Basque in the BAC</u>
Stage 2	<u>Catalan in Mallorca, Catalan in Valencia, Galician</u>
Stage 3	<u>Frisian, Sámi in Sweden, Sámi in Finland, Basque in Navarre, Irish, Occitan in Spain, Gaelic, Corsican</u>
Stage 4	<u>Friulian, Sorbian, Basque in France, Ladin, Asturian, Catalan in France</u>
Stage 5	<u>Irish in Northern Ireland, Franco-Provençal in Italy, Mirandese, Breton, Catalan in Aragon</u>
Stage 6	<u>N. Frisian, Occitan in France, Sardinian, Occitan in Italy, Catalan in Italy, Pomak in Greece, Berber in Spain</u>
Stage 7	<u>East Frisian</u>
Stage 8	<u>Aroumanian, Cornish</u>

(Reproduced from Grin and Mourning 2002).

“intrusion” by a third party, that not only might already existing tensions be made worse, but that governments (usually controlled by the majority group) may find it harder to keep up the status quo. This is certainly the case in the Baltic countries where all three have failed to ratify the ECRML largely out of fears that if they did ratify that the required protections of the Russian language would harm the policies established to further their own national languages. Furthermore, the complicated political environment in the Baltics further make it less likely that any of the three states would favor reopening or bringing emphasis to language policy.

In a slightly different situation are Turkey, Greece and France. All three of these states are deeply committed to singular notions of citizenship and historically deny the existence of minority groups. The model that these three states exhibit is

not unique but is instead a vestige of earlier policies in Europe that stressed the need for commonality and national similarity of goals and identity. In France, there have been a series of attempts to ratify the ECRML (having signed it in 1999), but each attempt has been denied largely by the Constitutional Court.

The deep commitment to an “ethnically blind” state has of course favored one group and significantly harmed others. As I discussed in the Chapter One, states cannot stay on the sidelines in terms of language policy, and France has absolutely not remained neutral on these issues. For example, the French Constitution names French as the official language and millions of school children are educated in French schools every day. President Hollande promised to ratify the ECRML as part of his 2012 electoral campaign, but he has faced opposition just as former Prime Minister Jospin did when he brought the ECRML up for ratification some 10 years earlier. Untimely, Hollande will have to modify the French Constitution (Article 2) in order to ratify the Charter (see Hicks 2012).

Our second variable, issue salience, will therefore lead to hypothesis two:

- Hypothesis Two: In states where language policies are highly salient political and cultural issues, ratification of the ECRML is less likely.

For a variety of reasons, these high issue salience states calculate that ratifying the ECRML is a costly gamble. In some states like France the legal system itself is a barrier while in others, like the Baltic states, domestic politics plays a larger role.

Eastern Europe and EU membership

In 2004 and 2007 the European Union added 12 members, with 10 coming from Eastern Europe. All of the Eastern European states that joined the EU had emerged in the late 1980s and early 1990s from communism and most had some level of Soviet control. The collapse of the Soviet Union and the freedom that spread across Eastern Europe had a major effect on the EU, facilitating and increasing integration (most notably with the signing of the Maastricht Treaty in 1992 establishing the European Union). It is also no coincidence that the ECRML was being written and **enforced during** the same time period. Many in the EU were able to foresee the potential problems that would come with the ascension of Eastern Europe and there was a great deal of pressure to create a firmer set of rules moving forward. For example, it was at this point in time, in 1993, when the Copenhagen Criteria — detailing the criteria for EU membership — was developed. The pressure to codify and develop new rules was especially strong in the fields of minority rights: the events in the Balkans and the growth of ethnic conflict in postcommunist states created a great deal of fear in Western Europe.

The ECRML very much reflects this time period and the great changes that swept into Europe with the fall of communism. Eastern European states were almost united in their interest in joining the EU and this gave the EU (and the COE) a great deal of influence over prospective members. While a great deal of attention was (rightly) paid to economic readiness and the consolidation of democracy in Eastern Europe, human rights concerns were also important. Will Kymlicka argues that the European experiment with multicultural rights begins with:

the collapse of communism in Central and Eastern Europe in 1989, which was accompanied by a number of violence ethnic conflicts. In retrospect, these violence conflicts have largely been confined to the Caucasus and the Balkans. But this wasn't clear at the time. In the early 1990s, many commentators feared that ethnic tensions would spiral out of control in wide swaths of post-communist Europe. (173, 2007)

Faced with this problem, leaders decided to create a more robust set of rules that would help prevent such problems. In 1990 for example, the Organization for Security and Cooperation in Europe issued a statement that the status and treatment of national minorities "are matters of legitimate international concern, and consequently do not constitute exclusively an internal affair of the respective state" (quote in Kymlicka 2007). The ECRML then was just part of a wider set of commitments created at the European level intended in part, to influence Eastern Europe.

The leverage exercised over Eastern Europe to ratify the ECRML was significant and it greatly impacted the end result: six of the ten new Eastern European states who joined the EU in 2004 and 2007 ratified the ECRML. Only three Baltic states, Estonia, Latvia, and Lithuania, and Bulgaria did not sign or ratify the ECRML. As I have discussed previously, this was entirely due to the high issue salience of language policy in these states (which remains today).

The role that the EU, COE and older member states had on those states from Eastern Europe to join the ECRML is clear and quite successful. EU membership has been a strong motivation for ECRML ratification as witnessed by the fact that every single state that has joined the Union since 1992 has signed the ECRML with only the three Baltic states and Bulgaria as the exceptions. Eight out of the twelve states facing EU membership during the Fifth Enlargement (2004-2007) signed the

ECRML. This then leads to our third hypothesis:

- Hypothesis Three: States who are prospective EU members are more likely to join the ECRML.

In this case, the argument is straightforward: prospective members face pressure to join the ECRML and choose to do so in order to gain support in Europe.

Finally, before I move on to put this all together, it is worth discussing the cases of Ireland and Malta. In both states there is the unusual circumstance of the official language (Maltese and Irish) being a minority language. This is especially so in Ireland where a very small percentage of the population speak Irish daily and where less than 25% of the population are functionally fluent in the Irish language. In Malta, the dominance of English (and Italian to a lesser extent) has put pressure on the Maltese language. Maltese is the EU's only Semitic language and is spoken daily by most of Malta's citizens. In both of these cases, the ECRML seems somewhat oddly suited to protecting a national language such as Irish.

When we put these factors together in Table 3, they provide strong explanations of why states did or did not ratify the ECRML.

The diversity of responses reflects the diversity of political and linguistic circumstances within the 33 states that have signed the Charter. Places like Spain and Romania have large vocal linguistic minority groups while other states like Denmark and Norway have less robust and politically salient linguistic minorities.

Taken together, my three hypotheses robustly explain why states rejected or ratified the Charter. Let us take those states with high issue salience and no

Table 3: ECRML Explanations

Country	Already Existing Protection	High Salience	Ratified
Albania	No	Yes	No
Andorra	No	No	No
Armenia	No	No	Yes
Austria	Yes	No	Yes
Azerbaijan	No	Yes	No*
Belgium	Yes	Yes	No
Bosnia	No	Yes	No*
Bulgaria	No	Yes	No
Croatia	Yes	Yes	Yes
Cyprus	No	No	Yes
Czech Rep.	Yes	No	Yes
Denmark	Yes	No	Yes
Estonia	No	Yes	No
Finland	Yes	No	Yes
France	No	Yes	No*
Georgia	No	Yes	No
Germany	Yes	No	Yes
Greece	No	No	No
Hungary	Yes	No	Yes
Iceland	No	No	No
Ireland	Yes	Yes	No
Italy	No	Yes	No*
Latvia	No	Yes	No
Liechtenstein	No	No	Yes
Lithuania	No	Yes	No
Luxembourg	No	No	Yes
Malta	No	Yes	No*
Moldova	No	Yes	No*
Monaco	No	No	No
Montenegro	No	No	Yes
Netherlands	Yes	Yes	Yes

Table 3: Continued

Norway	Yes	No	Yes
Poland	No	No	Yes
Portugal	No	No	No
Romania	Yes	Yes	Yes
Russia	No	Yes	No
San Marino	No	No	No
Serbia	No	Yes	Yes
Slovakia	No	Yes	Yes
Slovenia	Yes	Yes	Yes
Spain	Yes	Yes	Yes
Sweden	Yes	No	Yes
Switzerland	Yes	Yes	Yes
Macedonia	No	Yes	No*
Turkey	No	Yes	No
Ukraine	No	Yes	Yes
UK	No	No	Yes

* denotes states that have signed but not ratified.

preexisting legal protections for RMLs. These states should be the least likely to join the ECRML. In these states language issues are important political issues and there has been no “settlement” of the issue involving some sort of set of protections for threatened minority languages. We have 18 states in the COE who fit these criteria. Of these 18, 15 did not ratify the ECRML. This nearly accounts for all of the states who have not ratified the Charter. Of the three states who fell into this category of high issue salience and no preexisting legal commitments to RMLs, only Serbia, Slovakia and the Ukraine ratified the ECRML. I would argue that all three of these states were heavily influenced by the desire to join the EU (Slovakia has joined).

The states which should have most readily joined the ECRML would be those with low issue salience and preexisting protections. We have eight states that fit these criteria and all eight of them have ratified the ECRML. In these states national minority groups are generally small in numbers (such as in Germany, Denmark and the Scandinavia countries) and the state has agreed to some form of protection for these groups prior to joining the ECRML. All of this makes ratifying the ECRML much less likely.

Finally, the most interesting pairing might be those states where language policies are highly salient and where the state has protected RMLs with some legal rights. This would include states like Switzerland, Ireland, the Netherlands, and Belgium. Of the eight states who fit this criteria six have ratified the Charter while two — Belgium and Ireland — have not. Ireland has already been explained as an unusual case, but Belgium merits some attention.

Brussels is the capital of Belgium but also the clear center of the European

Union. Despite this, the intensity of debates over language policy in Belgium has prevented any movement toward signing the ECRML. The political debate about language policy (and federalism) is so intense in Belgium that it dwarfs any other issue and has made governance very difficult. In this case, it is useful to go further in-depth than my binary categories allow and to recognize the intensity of issue salience in Belgium, which is certainly far higher than Ireland or the Netherlands, for example.

Having provided an explanation of *why* states joined or rejected the ECRML the next chapter will explore the impact of ratification. I will focus on describing the ways in which states have managed the process and results of ratification and how this has impacted policy outcomes.

CHAPTER FIVE

OUTCOMES

The internal politics and norms of each member-state make an enormous difference in terms of the decision to ratify or reject the ECRML as detailed in Chapter Four. However, looking at ratification or rejection is not enough: the lengthy battle over the establishment of the ECRML and a Europe-wide language rights regime did not end in 1998. As I have detailed, the Charter is envisioned as an evolutionary process of slow but steady increases in support for minority languages over time. In some language situations, the ratification of the ECRML was received with an initial burst of optimism but over time this feeling has lessened. The cold reality of Europe in 2013 is economic crisis, major debates over multiculturalism and core debates over the necessary and correct size, scope and role of the European Union. In this context then, we have a uniquely challenging set of circumstances for the implementation and growth of the ECMRL.

In this chapter then I will examine the state responses to the ECRML after ratification. While I have argued for the importance of ratification itself, it is equally important to spend time evaluating the impact “on the ground” of the Charter. To this end, I will focus largely on the required reports from the member states and the

Council of Europe regarding the implementation of the ECRML at the state level. To my knowledge, no scholar has investigated all of the reports generated since 1998. This is no small task considering that a single report may be as much as 200 pages and that there are 146 reports (half from states and half COE responses).

It would be interesting to examine the state reports by themselves. After all, ostensibly we are reading reports on how the member-states have taken actions to protect those very languages (and groups) that they had so thoroughly damaged and nearly destroyed in many cases. However, the ECRML requires the Committee of Experts to then evaluate the state report, conduct their own findings (including country visits) and then to issue their own report. These reports are often very critical and certainly reflect a very different point of view when compared to the state reports. Having access to these set of reports is vital to my ability to characterize the impact and responses to the Charter.

However, to get a fuller view I will also supplement ECRML generated reports with local NGO and activist reports, my own interview data and scholarship (chiefly from the linguistics field). While it would be nearly impossible to provide a true account of the impact and responses to the ECRML, I can provide a worthy overview with some depth in particular cases (especially the United Kingdom). Ultimately, my research suggests that states have had a multitude of responses to the Charter. The most common response though was to seek the least costly way to implement the Charter. My research suggests that the Charter has been in general, of less impact than it could be but still significant despite the clear attempts to limit its impact by states.

In order to discuss the variety of responses to the Charter I will offer a series of broad groupings of state actions. The diversity of responses is just as complex as the linguistic-political circumstances of each state. However, when examining each state we can determine some broad similarities: when the responses to the ECRML are compared there emerges a series of common actions and decisions across states. In the following section, I will list a group of response categories and tactics used by states to limit the impact of the ECRML.

Failing to recognize internal diversity

The ECRML requires states to apply the provisions of Part II to “all the regional or minority languages spoken within its territory and which comply with the definition in Article One” (ECRML, Article 2). This is fairly clear and provides a baseline of protection for RMLs. However, it is also a potential starting point for states that wish to limit the cost and impact of the ECRML. First, it allows states to recognize languages under Part II without really committing themselves to major changes. As we have discussed, Part II is quite different than Part III and does not entail detailed and concrete actions. We will discuss this common response in more detail later, but it is clear that many states have ratified the ECRML without committing themselves to the real change embodied in the Charter.

The second conclusion that states have drawn from Article 2 is that they can use a “one size fits all” response. This has even happened to languages protected under Part III in some states. The great flexibility that the ECRML provides is intended to allow it to apply to a diverse set of languages that are at various levels of

threat and safety. It would make no sense to apply the same set of protections to Manx or Cornish (both languages recovering from extinction) and to Welsh, for example. Of course, if governments were choosing the highest of goals then using such a strategy might be favored by activists and the Council of Europe despite the impossibility of realizing a Cornish University, for example. However, those states that have applied the same set of protections to languages, especially Part III languages, have not set the goals so high: the tactic of treating different languages the same has been used to justify choosing the least costly and least impactful elements of the ECRML.

Armenia, Austria, Croatia, Hungary, Montenegro, Serbia and the Ukraine all applied the same exact same provisions to all Part III languages. It is worthwhile to examine Ukraine further in order to explain the weaknesses and reasons behind such an approach. Ukraine was an early signee of the Charter (in 1996) but did not ratify it until 2003. Upon independence, Ukrainian was established as the official language of the state. The deep linguistic and political divide in the Ukraine has been centered on the divide between East and West and Ukrainian and Russian speakers. This deep political divide has been further complicated by Russia's involvement in Ukrainian politics and the economic influence (especially centered on natural resources) that Russia has in the Ukraine. However, the dispute between Russian and Ukrainian speaking groups fails to account for the real diversity of the Ukraine where about 5% of the population speaks neither Russian nor Ukrainian as their mother tongue. These groups account for over 2.5 million people.

Amazingly, Ukraine has applied Part III to 13 languages: Belorussian,

Bulgarian, Crimean Tartar, Gagauz, German, Greek, Hungarian, Yiddish, Moldovan, Polish, Romanian, Russian and Slovak¹¹. The diversity within this group is demonstrated by the sheer numbers: Belorussian speakers number nearly 300,000 while German speakers in the Ukraine number less than 30,000. The complicated and highly salient issues of language policy in the Ukraine make it difficult to separate the treatment of smaller regional or minority languages from that of the Russian language. In the Ukraine's second report to the Council of Europe in 2012, the document was very focused on describing threats to Ukrainian, which is the official language and not covered at all by the ECRML (whether it could be is up for debate, a similar discussion surrounds Irish in Ireland).

Choosing a one size fits all strategy makes it much easier for states to justify their choices to specific linguistic groups. It also makes it easier for policy makers and bureaucrats to deal with the consequences and new legal environment based off of ECRML ratification. Of course, the negative consequences are clear as well. First, in the Ukraine and in the other states that have chosen to ratify the same provisions for all Part III languages, the level of protection has been limited and states have chosen those provisions that are the least costly.

Second, even with choosing the least comprehensive or substantive of provisions, the reality is that many languages are simply not robust enough to allow for significant gains in education or other areas, and this has meant that the protections have been impossible to achieve. This sets up the program for failure

¹¹ The COE report actually argues that Ukraine should ratify for two additional languages, Karaim and Krimchak.

from launch, where smaller language groups will be unable to meet the required chapter goal without impossible levels of growth. On the other side, languages like Belorussian in the Ukraine are harmed by being linked to significantly smaller groups and do not get the strong set of protections and support that would be possible. Overall, there are a multitude of reasons why states have chosen to treat all Part III (or II) languages as equal. These decisions run contrary to the intentions of the Charter and often lead to lower levels of protection and actions for languages.

Ignoring certain languages

Despite the clarity of Article 2, some states have simply ignored some languages when they ratify the Charter. There have been two general reasons for this. First, sometimes there are arguments about what is covered by the ECRML. Largely this has to do with dialects and their supposed distinction from languages. Of course, these arguments are often defined by domestic politics not scientific inquiry. The famous dictum that a language is a dialect with an army makes sense. There is no clear line between the two. Certainly the differences between Spanish and Portuguese, for example, pale in comparison to Romanian and English.

States have struggled with these marginal cases, and politics has been the crucial variable. Germany decided to protect Low German under Part II of the Charter despite Low German's close connections to the state sponsored version of modern German. Spain has gone the other way, not recognizing Valencian in Murcia, Tamazight in the autonomous city of Melilla and Arabic in the autonomous city of

Ceuta¹². Certainly arguments in Spain are animated by the deep divides between Castilian speakers and the Catalan and Basque communities. In this context, the Spanish government has been quick to stress the similarities between Castilian Spanish and Galician and to limit the protection for Valencian (Catalan) speakers outside of Catalonia. So one strategy utilized by states has been to deny the unique language status of some languages and therefore deny “dialect” protections under the ECRML.

Even when there are clearer lines between languages, there have been a variety of attempts by states to avoid recognizing certain languages under the ECRML. As always, the clear motivation here is political. The most well know case has been the failure of the Slovenian government to protect the Croatian, Serbian or Bosnian languages. Slovenia ratified the ECRML in the year 2000 just shortly after gaining independence from Yugoslavia. At the time of ratification, Slovenia named Hungarian and Italian as the only regional or minority languages that fit the laid out definition provided by the ECRML. In the three reports that have followed Slovenia’s ratification of the ECRML the Council of Europe has been highly critical of the decision to not cover Croatian, Serbian, Bosnian and German. The report argues that:

In the light of the available information, the Committee of Experts observes that the Serbian Language complies with the definition of a ‘regional or minority language’ contained in Article 1.a of the Charter and that the villages of Bojanci, Marindol, Milici and Paunovici correspond to the ‘territory which the regional or minority language is used’ in accordance with Article 1.b. It follows from the above that, pursuant to Article 2.1 of the Charter, the provisions of Part II apply to the Serbian language in Bojanci, Marindol, Milici and Paunovici. (Report Slovenia 3, 2009)

¹²Spain, like some other member-states have ratified on a regional basis.

This kind of detailed and clear criticism makes it abundantly obvious that the Slovenian authorities are not following their commitments under the ECRML. The Slovene authorities for their part do not entirely deny the existence of the language communities but they argue that those communities do not want to be identified as national minorities (Slovene State Report 3, page 24).

Surely there are a series of legitimate arguments about the effect and ramifications of identification, recognition and bestowing official categories on groups. However, on this subject the ECRML is silent and it is clear that the Charter does not allow a state to avoid recognizing any language that fits Article 1's definition of a regional or minority language for any reason. It may also be reasonable to be quite skeptical of the Slovene government's argument that these groups do not want to be recognized taken the politics of the Balkans and especially more recent events in Bosnia and Kosovo. Furthermore, the protection of the Italian and Hungarian languages preceded ratification of the ECRML and largely follows intergovernmental agreements between Slovenia and the respective kin states.

The problem of recognizing politically contentious languages is certainly at the core of why Lithuania, Latvia and Estonia have all failed to ratify the Charter. The deep questions regarding the status and treatment of the sizeable Russian speaking communities in these three countries are driving the failure to ratify the Charter. In all three Baltic states there is confusion and arguments about whether or not Russian speakers should be covered at all by the ECRML due to the fact that many Russian speakers came to the Baltics in the early 20th century as the Soviet Union was established.

If these people were to be considered immigrants, they would not qualify for ECRML protections. However, the issue is complicated by the existence of some Russian speakers prior to the Soviet era in all three states. Either way, we can clearly see with Slovenia that it is not easy for states to ignore languages and the Council of Europe's highly critical reports could provide important resources for those language communities being denied protection.

Delays in reporting

Another common problem that has come up over time since 1998 has been the failure of states to issue reports on time. Article 15 of the Charter states that: "The first report shall be presented within the year following the entry into force of the Charter with respect to the Party concerned, the other reports at three-yearly intervals after the first report" (ECRML). In addition, states are required to make their reports public. States may fail to submit reports due to the low priority given to their ECRML obligations. However, considering the evolutionary intentions of the Charter and the necessity of periodic reports, it is important to point out the problems that can result from delayed reporting. Crucially, the Committee of Experts cannot issue a report itself until it has received a state report. In this sense, once again states are the drivers of action.

There have been many instances of late reporting. Austria's second report was 2 years late in 2007. Currently, both Slovenia and the United Kingdom are more than 1 year overdue for their reports. Part of the reason why some reports are delayed is problems in getting the Committee of Experts' findings ratified by the

Council of Europe. While the process may take less than 6 months in some cases, it has taken more than 1.5 years in some cases. All of this underlines the importance of the reporting mechanism and how easily it can get derailed by either an unwilling member-state or gridlock in the Council of Europe. In general though, the reporting mechanism has been very effective and should be praised for its overall accomplishment of a fairly optimistic and challenging agenda.

Lack of evolving policy

As I have discussed throughout this work, the ECRML should not be thought of as a stagnant or finalized document. Instead, ratification should be seen as the start of an organic process that will lead to a series of steps toward significant change. After all, these languages were devastated by centuries of political and social factors and reversing these trends will not happen overnight. If anyone wants evidence of this, one only needs to look at Ireland where the post-Independence pushes for the restoration of the Irish language have met with mixed results.

The centerpiece of the process is of course the reporting mechanism which is meant to, over time, push states toward ever more substantial goals. It is also fair to say that each step could be seen as a building block, allowing for more to be done later. For example, adding primary school education in a RML will then build the possibility of those students enrolling in higher levels of education in the respective RML. Furthermore, these students can be assumed to be potential consumers of newspapers and services in the threatened language at some point and perhaps even be teachers themselves. Offering regional or minority language schooling is not

only a problem of finding students but also qualified instructors. Overall, it is clear that for practical reasons and due to the lofty goals of the Charter, it is intended to institute a lengthy period of dialogue and policy change.

Despite this reality (or perhaps due to it) many states have not acted in accordance with this policy. The state reports clearly detail which paragraphs and subparagraphs a state ratifies and for which languages. While this says nothing about how a state has progressed on achieving such goals, it does say a lot about the intentions or motivation of a state. Furthermore, it is clear that the intended process would see periodic changes in the parts of the ECRML that a state ratifies with ever increasing levels of protection. The state reports then are a useful place to examine how the overall process has gone in the nearly 15 years since the ECRML came into force.

The relative newness of the Charter certainly accounts for some of the lack of evolving policy. The earliest ratification was Norway in 1993 and Finland in 1994, nearly 20 years ago (of course the Charter was not functional until it came into force in 1998 after it received five ratifications). Norway ratified the Charter with three Part II Languages (Kven/Finnish, Romanes and Romani) and Sami, which was covered by Part III. Norway has submitted five reports, and has fully completed four rounds of reporting. Since ratification, there have been no changes to the languages covered. It is of note that the amount of speakers and funding going toward Sami is very low, with only 215 students enrolled in Sami language schools receiving government subsidization (Norwegian Government Report 5, ECRML). In the five reports, we can see that all of the paragraphs and subparagraphs applied in Sami in

1999 still apply in 2012.

While substantial progress has been made in achieving the goals of some of these, they have not shifted. For example, the Norwegian government chose to ratify the least significant paragraphs (1) under Article 8 (education). Looking at the difference between 1-4 we can see how important this is. Article 8 Paragraph a.1 reads: “to make available pre-school education in the relevant regional or minority languages” (ECRML). Fairly straightforward with no suggestion of the amount or depth of schooling offered. However, a state could instead choose Paragraph a.2 which reads: “to make a substantial part of pre-school education in the relevant regional or minority language” (ECRML). While this is not totally different, it clearly envisions a much greater effort to offer pre-school students (in RML areas) substantial education in the regional or minority language. These kinds of distinctions apply to almost all of the ratification choices a state has to make.

The Finnish government has also not modified its chapters from the original report it submitted in 1999. The same can be said for most of the ratifying states. In fact it is easier to list those that have changed. Slovenia added provisions for the Italian and Hungarian languages in their third report. Germany made the crucial step of adding Romani and Frisian to Part III after initially listing them as Part II languages. Hungary added Romany and Beas to the list of languages they protected (Part II). All in all though, this represents very a small subset of the whole, and suggests that the ECRML has been treated in some sense as more static and firm than was intended by the Council of Europe.

Ultimately, the ECRML has functioned better in some areas, especially in the

initial stages. The value of ratification cannot be overstated, especially in those states which were deeply committed to not recognizing or even denying internal diversity. Recognition is the first step in transforming state-minority relationships which cannot be changed when recognition itself is not achieved. Often states are locked into a normative and political framework where changing the status quo is difficult, and this is precisely where the ECRML has made a difference: by upsetting the status quo and forcing states to examine their policies, the Charter has brought change.

In some states like the United Kingdom and Spain, change was already happening as internal diversity was linked to new federalist visions (or in the UK, more properly said devolutionist). However, the ECRML helped usher in this new era, and due to the required comprehensiveness, other groups were brought in. For example, in the United Kingdom, the devolution project supported by voters and the Labour Party was intended for Scotland and Wales while the peace process in Northern Ireland was to see direct rule end. The ECRML was particularly attractive to the UK as a way to form a new relationship with Irish speakers, especially those who had a great deal of trust in the Council of Europe but little in London. Still, the UK could not ratify for just Irish, and eventually ended up ratifying for Welsh, Scottish, Scots, Manx, Irish, Ulster-Scots and Cornish. In this sense, the ECRML played a part in policy change, and helped shape the eventual policy outcome.

This chapter in some ways details the limits of the COE and the Charter as well, and they are many. The end result though is unknowable and if institutionalist

theories of drift are correct we might expect the COE over time to be “winning” the battle, even if at a slow pace.

CHAPTER SIX

CONCLUSION

It might seem somewhat surprising to write a lengthy paper such as this discussing the emergence of new minority rights in Europe. After all, it was just in 2011 when the French Government enacted a ban on some traditional Islamic clothing forms, and in 2007 that the Swiss people approved a referendum banning the building of minarets. Similar legal and cultural changes can be detected across Europe. The “death” of multiculturalism (or alternatively, the failure) in Europe has been claimed by many of the most important power brokers including the French, German and British leaders at various times.

The soul searching and rejection of certain forms of accommodation has been robust even in places like the Netherlands and Sweden which had most vigorously embraced multiculturalism. In fact, in June 2013 Sweden saw some of its more serious unrest and riots in some majority Muslim areas (largely over economic and social policies). In general, debates over the need for integration and the problems of diversity have increased over the past decade in many places.

It is worthwhile to divide the debate into two categories: first, there are those who focus on the economic impact of immigrants and the European welfare state.

This debate does not necessarily touch on my focus, which has been on national minority groups. National minority groups are “native” born citizens and are not joining the state from elsewhere in search of economic (or other) benefits.

However, the second category of debate is about identity. Samuel Huntington’s final book *Who We Are* (2004) provided an American perspective on the debate about diversity: with the U.S. facing sustained immigration and having laid out his view of the correct core traits of American identity, Huntington then makes the argument for a renewed “purification” and commitment to American tradition. Huntington specifically argues that large scale Hispanic immigration to the U.S. is having an adverse impact and changing American culture.

In the same way, many European citizens have deep concerns about the impact of culturally distinct groups on cultural attitudes and politics. One would not have to stay in Europe long to observe these debates, and in many states they are among the most salient of political issues. When Angela Merkel argued that multiculturalism had failed in Germany she was in part, appealing to those who were motivated by concerns over cultural trends and the values of immigrant groups.

Taken together then, these realities of modern Europe suggest something other than a universally welcoming climate for minority groups. Still, I have focused this paper on a new minority right scheme in Europe despite this climate. One of reasons that the ECRML can emerge while immigrant groups continue to face pressure, is that the Charter does not apply to immigrants.

The ECRML does represent a renunciation of homogeneity and assimilation but only for certain groups: as I have detailed, the Charter does nothing to protect immigrant groups: Turks in Germany and North Africans in France are still left on the outside. The underlying logic and arguments put forward by those in favor of the Charter was that national minority groups were and are an important part of the European “story” and that, for example, if we want to celebrate Britain we cannot leave out the Welsh. Immigrant groups have a strong case for inclusion as well, but they cannot easily make the same arguments about history and their roots on the continent. Theorists like Will Kymlicka have justified the deeper rights for national minority groups and the ECRML reflects a conscious choice by many in Europe to align themselves with this view.

Interestingly, this divide between “indigenous” minority groups and immigrant (or immigrant descended) groups has a long history in rights legislation. Will Kymlicka details how “indigenous” rights were always seen as distinct:

In one sense, indigenous peoples have always had a unique standing within international law. Even in the heyday of the post-war opposition to group-specific minority rights, there was still some acknowledgement of the special status of indigenous peoples. This was reflected for example, in the International Labour Organization’s Convention 107 and on the ‘Protection and Integration of Indigenous and Tribal Populations’ adopted in 1957. This was the clearest exception to the post-war rule that international law would not recognize any rights based on group membership. (31, 2007)

Kymlicka goes on to detail how the very beginnings of the multicultural “move” in international law in the 1980s began with indigenous rights in the UN (2007). The debates over indigenous rights often center not on just the right to access one’s culture, but on issues of self-determination rights.

These historical precedents — providing different and deeper rights to indigenous minority groups — certainly impacted the crafting of the ECRML. However, I would argue that political debates, and especially the combustible issue of Islam’s place in modern Europe, had an enormous impact on the decision to separate the rights of national minorities and other minority groups.

The ECRML then does reveal a certain fissure between immigrant groups and the rest of European society. What remains to be seen is how sustainable the current policy is. If multiculturalism is truly dead, what shall replace it? There is no answer to this, and French headscarf bans aside, there has not been a major legal or political movement to transform Europe’s states away from multicultural policies; national minority groups have a major tool that immigrant groups do not. The ability of these groups to leverage the support of the COE and EU for their rights claims is evidenced by the successes of the ECRML. In a domestic setting where policy changes were unlikely, or where national minority groups are unable to succeed without outside support, the new European environment has proven to be crucial.

The significantly changed environment that national minorities operate in across Europe (not uniformly) is largely the result of the new institutional environment, namely the existence of the EU and COE. Theorists have long noted the impact of new institutional settings which can make significant changes to the political opportunity structure. As Holzner notes: “the institutional environment influences political behavior directly by shaping the incentives and opportunities (or obstacles) for political action” (3, 2010). In this case, the European Parliament

especially, provided incentives for RML group activism and encouraging states to rethink their policy towards RMLs.

As I detailed in Chapter Three, the COE and EU provided both political and economic resources to national minority groups. Importantly, the European Parliament also provided a venue for cooperation and the sharing of tactics and ideas between national minority groups. Leadership in the Parliament by the National Minority Intergroup made a significant difference as well, establishing the committees and drafting the core of the ECRML in the late 1908s and early 1990s.

As was detailed in Chapters Four and Five, the COE and EU have not been able to achieve all of their desired policy outcomes nor should we expect such a one-sided story. State responses to the ECRML clearly show a large amount of variation and illuminate the continuing power of member-states. Perhaps one of the most important abilities that the supranational institutions of Europe have is the ability of agenda setting: with the ECRML we witness the successful invigoration of a policy and issue that certainly would have remained ignored in many member-states otherwise. National minority groups were able to leverage the EU to push rights onto the agenda and in many places this resulted in significant policy changes. In many cases, the transformation of minority political parties into Euro-enthusiasts was pure political calculation: the Scottish Nationalist Party (SNP), for example, had longstanding Euro-skepticism well into the 1980s. However, in a clear case of venue shopping, groups like the SNP were more than happy to align with the EU if they could get support in European institutions for their policies. It is worth noting that the democratization of the European Parliament (EP) and the requirement of

proportional representation for EP elections had a major impact on minority groups. With seats in the Parliament, national minority groups were now directly connected to Europe without the filter of having to go through their national governments (of which they had a limited influence over). Within a few years it became apparent that the EU was a good venue for the pursuit of rights and political autonomy, especially with the EU's agenda setting power. It is hard to imagine that the process would have occurred in the same way without the democratization of the European Parliament in 1979 and the subsequent election of many national minority representatives.

Changes in national minority strategies

The establishment of the "European" level of politics and policy making provided stable and long-term opportunities to national minority groups. One of the most significant powers of the EU in modern Europe, agenda setting, was one power that minority groups particularly had little influence over in domestic politics. Aside from extreme acts, including political violence, there were very few opportunities for national minority groups to have their voices heard: they were not electorally significant in most cases (the Conservatives have been able to win elections in the UK without any support in Scotland, for example) and as I have detailed, the normative climate in most states marginalized their claims and arguments for recognition for equality.

The shift toward Europe was hardly an obvious one as most nationalist/minority parties were, at the least, skeptical of the EU if not outright

hostile to the project. This was due to two reasons: first, due to many reasons (including the poor economic conditions for their respective groups) national minority political groups were often critics of neoliberalism and capitalism which made them natural skeptics of the European project. Secondly, the nationalist focus of these groups stressed the need for autonomy, self-reliance and independence, not exactly the terms one might describe EU membership as fostering.

Despite these barriers, groups like the Scottish Nationalist Party, *Plaid Cymru*, *Sudtiroler Volkspartei* and *Unione di u Popule Corusu* did shift their support and political actions to the EU level and to the European project in general. I have argued throughout this dissertation that the move was a case of venue shopping for minority groups and a political calculation that national minority groups could benefit from working with and in Europe. Eve Hepburn argues that:

Nationalist parties were no longer seeking independence, framing their demands in an ethnic manner, or competing exclusively for the hearts and votes of substate electorates. Instead, regional parties of all political creeds had begun talking about exercising self-determination in a modern European construct. It appeared that state sovereignty had lost its meaning, as territorial demands bypasses the state to strike a chord in Brussels. (ix, 2010)

Hepburn's observation fits in well with the growing multilevel governance (MLG) literature which argues that "non-state actors influence decision making across several interacting layers of political authority" (Hepburn 1, 2010).

Much of the literature on the EU has failed to properly conceptualize the multiple and dispersed nature of policy making and political power in modern Europe, and my research provides an important contribution to this problem. For example, the SNP in Scotland have simultaneously exerted pressure for autonomy

and rights at the Scottish, UK and European levels. The successful ratification of the ECRML and the recognition of Scottish (Gaelic) and Scots were important policy victories for the SNP. However, as I detailed in Chapters Four and Five, the implementation and final policy outcomes also depend on the actions of political elites and NGOs in Scotland, the UK and the EU. Thus, not only did the ECRML emerge out of a web of political struggle and diverse sets of power, its ultimate impact also depends on similar multiple levels of governance.

The multiple levels of governance in Europe today have changed the claims and strategies and policies of minority groups. These groups though should not be thought of as postnationalist in any way, nor would I argue that they have focused on civic conceptions of identity. Instead, they have adjusted to a new Europe where power is diffused among multiple levels and where sovereignty means something quite different than it did in the past. Hepburn argues that a two-way process of Europeanization is occurring:

Political parties have used European integration in order to advance their territorial projects at the European level whilst, correspondingly, changes and developments in Europe, such as the regionalization debates and creation of regional institutions, have had an impact on the territorial strategies of substate parties. (20, 2010)

In this paper I have focused not on territorial claims but specific claims about rights, however, the line between these two is not always clear. In many cases though, groups seek autonomy in order to achieve the rights claims that I have focused on. So, has the process of European integration lessened the separatist claims of minority groups? I do not believe this is the case. As I stated in Chapter Three, the EU has done a great deal to encourage and strengthen regions and this alone would

be enough to increase demands for federalism from many groups; but what about outright independence claims: has the process of European integration lessened this most serious of demands?

The impending referendum on Scottish Independence and the series of unsanctioned referendum (not to mention the massive pro-independence banners flown at Barcelona F.C.'s home games) in Catalonia suggest that independence has not lost its luster completely. However, independence does not mean the same thing it did in the past in modern Europe. None of the regions in the EU could easily gain independence and not remain (or apply to join, that question is unanswered) in the EU. Coming back to Hepburn's two-way process of Europeanization, she argues that:

The process of European integrations has caused traditionally centrist and pro-federalist branches of statewide parties to become involved in debates on the future of their region in Europe, and to develop stronger demands for autonomy, which are framed within the context of a 'Europe of the Regions'. Furthermore, instead of lessening the *risks* of independence for nationalist parties, European integration has lessened the *need* for independence, so that nationalist parties have moderated their demands, and have instead participated in the debates on the regionalism of Europe as a progressive territorial strategy. (21, 2010)

Hepburn's point about the lessened need for independence is worth emphasizing, especially when we consider the risks, especially the political ones that are taken by seeking a move toward independence.

The outcome of the European project to this point has been to increase regionalism, decrease state autonomy and to therefore decrease the utility of independence for regions like Catalonia. However, I would argue that nationalism and the policy goals that come along with it, does not always operate in a cold vacuum of deliberative decision making. After all, if Europeans simply lived based

off of cold utilitarian calculations it is hard to imagine that regional and minority languages would survive at all. Imagine the thousands of school children in Edinburgh, Scotland who are enrolled in Scottish language immersion programs: they are not there because their parents think that Scottish language skills will help them get jobs in the future. Instead, emotional and other psychological attachments are important and the value of one's culture cannot be measured in the same way we measure GDP. The continued desire for independence then should be expected in many of Europe's regions, even if it no longer has the meaning it once did.

Throughout this paper I have argued that institutionalist and intergovernmental theories are both insufficient to explain the ECRML. The Charter was not created to serve the needs of states and likewise we cannot point to the preferences of the COE or EU. Instead, the policy that emerged was the result of a complex change in policy making and power initiated with the process of European integration more than 50 years ago.

I have shown how political opportunities were created for national minority groups, and how these groups were able to turn opportunity into policy success (the ECRML). The surprising element here is that the EU's commitment to "Unity in diversity" was never about minority groups, but about interstate relationships for the most part. At its more grandiose it was about European unity, but certainly not about the kind of changes envisioned by the ECRML. Still, in part by leveraging this vision, RML groups were able to achieve policy success.

I will finish this paper in the same way I began it. From the outside looking in, the EU seems to have had little impact on minority-state relations and has

recognized only the 24 dominant languages that each member-state has favored. However, while the European Union and supranationalism in Europe has, as Millward (2000) points out in *The European Rescue of the Nation-State*, provided powerful tools and resources to the state of Europe, it has also provided a smaller but significant amount of support to national minority groups. Early 1990s enthusiasm for a new medievalist Europe of the regions was misplaced, and certainly the death knell of the European state has not sounded. In fact, the current economic crisis and the Lisbon Treaty have both strengthened the hand of the Council (who represent the states) a great deal.

The pendulum, so to speak, swings back and forth and the EU's involvement in minority affairs has generally been limited. My paper has focused on the ways in which minority groups have found policy victories due to the new institutions of Europe, and mostly in indirect ways. The EU has not mandated the ECRML, nor would it be likely to do so. Instead, the EU's regional policies have strengthened national minority groups as has the EU's clear commitment to "Unity in diversity" which was a policy created to unify member-states, not to recognize and support minority groups. Finally, the European Parliament has been a crucial ally and supporter of RML groups especially since the democratization of the Parliament through proportional representation (PR) elections.

A largely unintentional consequence of integration has been to support the claims of national minority groups and to therefore draw a line between these groups and immigrants. In an era of multilevel governance, national minority groups have been able to achieve policy success domestically by leveraging support at the

regional and EU levels. Despite such successes, as Chapter Five laid out, states are still the most important actors by far, and they largely control the impact of the ECRML. At least the recognition that the ECRML brings to national minority groups allows for them to start a new conversation, perhaps one that might prove more fruitful and could lead to more significant bottom-up normative change.

A Europe that recognizes and welcomes its diversity is much stronger than one that tries to ignore or eradicate diversity. Over 1000 years ago, St. Stephen I of Hungary was said to argue that: *Unius linguae uniusque moris regnum imbecille et fragile est.* (quoted in Kontra, 1999)¹³. The founders of the EU recognized this, and they created a diverse and complicated union that has succeeded despite many trials and tribulations including the current crisis. It is worth noting that Konrad Adenauer's native language was Kölsch, a very unique German dialect, and that Robert Schuman and Alcide De Gasperi were native German speakers living in France and Italy, respectively. While they might not have foreseen the EU playing a role in protecting national minority languages, I think they would be pleased that the EU has played some role in the creation of such a rights regime in Europe. The ECRML not only represents a new model of rights, it also represents a new model of state-minority relations and in this sense, a model that could do a great deal of good worldwide.

¹³ Make the strangers welcome in this land, let them keep their languages and customs, for weak and fragile is the realm which is based on a single language or on a single set of customs.

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