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AFTER THE NATION?

**Critical Reflections on Nationalism
and Postnationalism**

EDITED BY KEITH BREEN AND SHANE O'NEILL



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After the Nation?

Critical Reflections on Nationalism and Postnationalism

Edited by

Keith Breen

*Lecturer in Political Theory, School of Politics, International Studies, and Philosophy,
Queen's University, Belfast, Northern Ireland*

and

Shane O'Neill

*Professor of Political Theory and Dean, Faculty of Arts, Humanities, and Social
Sciences, Queen's University, Belfast, Northern Ireland*

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Notes on Editors and Contributors

Chris Armstrong is Senior Lecturer in Politics at the University of Southampton. He has recently completed a Leverhulme Research Fellowship on global egalitarianism and has published papers defending that view in *The Journal of Political Philosophy*, *The Journal of Social Philosophy*, and *Social Theory and Practice*. He is currently working on a monograph on the political theory of global egalitarianism.

Keith Breen is Lecturer in Political Theory at Queen's University, Belfast. His interests lie in democratic theory, violence, and the ethics of work. He has published in a number of journals on the thought of Alasdair MacIntyre and Hannah Arendt, critical theory, and philosophies of work. He is the author of *Under Weber's Shadow: Modernity, Subjectivity and Politics in the Work of Arendt, Habermas and MacIntyre* (Ashgate, 2011).

Catherine Frost is Associate Professor of Political Science at McMaster University, Hamilton, Canada. She writes on contemporary normative theory, including nationalism, multiculturalism, and representation, as well as on communications theory and new media. Her work has appeared in *The Journal of Political Philosophy*, *The Review of Politics*, *The Information Society*, *The Canadian Journal of Communication*, and *Irish Political Studies*. She is the author of *Morality and Nationalism* (Routledge, 2006).

John Hutchinson is Reader in Nationalism in the Department of Government at the London School of Economics. He is the author of *The Dynamics of Cultural Nationalism* (Allen & Unwin, 1987), *Modern Nationalism* (Fontana Press, 1994), and *Nations as Zones of Conflict* (SAGE, 2005). He has co-edited a number of works, the most recent being (with Anthony Smith) *Nationalism: Critical Concepts in Political Science* (Routledge, 2000), (with Montserrat Guibernau) *Understanding Nationalism* (Polity Press, 2001), and (with Montserrat Guibernau) *History and National Destiny: Ethnosymbolism and its Critics* (Blackwell, 2004). He is currently completing a monograph on nationalism and warfare.

Michael Keating is Professor of Politics at the University of Aberdeen and has taught in England, Scotland, Canada, Spain, and at the

European University Institute in Florence. He has published widely on urban and regional politics, comparative nationalism, and public policy. His most recent book is *The Independence of Scotland: Self-Government and the Shifting Politics of Union* (Oxford University Press, 2009).

Cillian McBride is Lecturer in Political Theory at Queen's University, Belfast. His research focuses on deliberative democracy and on the politics and philosophy of recognition. He has published in *The European Journal of Political Theory*, *Irish Political Studies*, *The Journal of Political Ideologies*, *Political Studies*, and *Res Publica*. He is currently working on two books, the first on inclusion and democracy, and the second on the concept of recognition.

John McGarry is Canada Research Chair in Nationalism and Democracy in the Department of Political Studies at Queen's University, Kingston, Ontario. He has edited, co-edited, and co-authored 12 books on ethnic conflict, nationalism, and the politics of Northern Ireland, the latest of which are (with Michael Keating) *European Integration and the Nationalities Question* (Routledge, 2006) and (with Brendan O'Leary and Khaled Salih) *The Future of Kurdistan in Iraq* (University of Pennsylvania Press, 2005). From 2008 to 2009 he served as Senior Advisor on Power-Sharing to the UN's Mediation Support Unit.

David Miller is Professor of Political Theory at the University of Oxford and an Official Fellow of Nuffield College. His books include *On Nationality* (Clarendon Press, 1995), *Principles of Social Justice* (Harvard University Press, 1999), and *National Responsibility and Global Justice* (Oxford University Press, 2007). He is continuing to work on questions of global justice, as well as on the issues of boundaries in democratic theory and territorial rights.

Margaret Moore is Professor of Political Theory at Queen's University, Kingston, Ontario. She is the author of *Foundations of Liberalism* (Oxford University Press, 1993) and *The Ethics of Nationalism* (Oxford University Press, 2001) and is currently working on issues of citizenship, territorial rights, and global justice.

Ephraim Nimni is Reader at the School of Politics, International Studies, and Philosophy, Queen's University, Belfast. He has published widely on questions of nationalism, multiculturalism, cultural autonomy, and Jewish identity. He is the editor of *National-Cultural Autonomy and its Contemporary Critics* (Routledge, 2005) and *The Challenge of Post-Zionism*

(Zed Press, 2003). His new book, *Multicultural Nationalism*, will be published by Routledge in 2011.

Geneviève Nootens holds the Canada Research Chair in Democracy and Sovereignty at Université du Québec à Chicoutimi. Her research interests are contemporary liberalism, nationalism, plurinational societies, and democracy. She is the author of *Désenclaver la démocratie: Des huguenots à la paix des Braves* (Québec Amérique, 2004). She has co-edited (with Alain-G. Gagnon and André Lecours) *Les nationalismes majoritaires contemporains: Identité, mémoire, pouvoir* (Québec Amérique, 2007) and (with André Lecours) *Dominant Nationalism, Dominant Ethnicity: Identity, Federalism, Democracy* (Peter Lang, 2009). She has also published papers in *Nations and Nationalism* and *Contemporary Political Theory*.

Brendan O'Leary is Lauder Professor of Political Science and Director of the University of Pennsylvania Program in Ethnic Conflict, University of Pennsylvania. Recent books include *How To Get Out of Iraq with Integrity* (University of Pennsylvania Press, 2009), (with Marianne Heiberg and John Tirman) *Terror, Insurgency and the State: Ending Protracted Conflicts* (University of Pennsylvania Press, 2007), and (with John McGarry and Khaled Salih) *The Future of Kurdistan in Iraq* (University of Pennsylvania Press, 2005). In 2009–10 he was the Senior Advisor on Power Sharing to the Standby Team of the UN's Mediation Support Unit.

Shane O'Neill is Professor of Political Theory and Dean of the Faculty of Arts, Humanities, and Social Sciences at Queen's University, Belfast. He is the author of *Impartiality in Context: Grounding Justice in a Pluralist World* (SUNY, 1997) and of numerous articles in politics, law, and philosophy journals. He is co-editor (with Iain Mackenzie) of *Reconstituting Social Criticism: Political Morality in an Age of Scepticism* (Palgrave Macmillan, 1999) and (with Jürgen De Wispelaere and Cillian McBride) *Recognition, Equality and Democracy* (Routledge, 2008).

David J. Smith is Professor of Baltic History and Politics at the Department of Central and East European Studies, University of Glasgow. He has a long-standing interest in issues of statehood, nationality, and identity in Central and Eastern Europe, and is currently completing a monograph on the theory and practice of non-territorial cultural autonomy during the inter-war period. Previous works include (co-edited with Karl Cordell) *Cultural Autonomy in Contemporary Europe* (Routledge, 2008) and *Estonia: Independence and European Integration* (Routledge, 2001).

Daniel M. Weinstock holds the Canada Research Chair in Ethics and Political Philosophy in the Department of Philosophy, Université de

Montréal. He is also the Director of the Centre de Recherche en Éthique de l'Université de Montréal. He has written extensively on the normative challenges facing multicultural and multinational societies. Other research interests include global justice and global democracy, distributive justice in the areas of health and education, and issues that arise in the relationship between children, families, and the liberal democratic state.

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Introduction: A Postnationalist Era?

Keith Breen and Shane O'Neill

This volume explores the various ways in which the nation-state as an organizational structure and nationalism as a motivating ideology are challenged by contemporary political realities, and how these challenges can be met. Nationalism has, of course, been a dominant political ideal for a very long time now. The received and still prevalent conceptualization of this ideal is that the state and the nation should cohere within a single, sovereign territory and that the nation-state thereby constituted should express, and ensure the continued expression of, a determinate national culture or identity. There have been many defenders of this ideal. For Mill (1861), for example, nationalism conceived in this manner was a basic condition of representative government, since only nationalism could ensure the development of the ‘fellow-feeling’ or unifying culture necessary for the functioning of such government. Many have also argued that nationalism is a requirement of modern industrial societies, since the common, homogeneous culture it helped generate proved decisive in the rise of an educated workforce essential for technological advancement, economic growth, prosperity, and progress generally (Gellner, 1983). For others, nationalism represents not only a functional response to the upheavals heralded by modernity, but also a profound source of meaning for people in the modern age, national culture granting them a feeling of rootedness, a nourishing link to a rich past, and a sense of community (Hutchinson, 1987; Smith, 1986). And nationalism has often been thought to be the foundation of freedom and democracy, since it was by way of the nation that the *demos*, ‘the people’, was historically constituted (Greenfeld, 1992; Schnapper, 1998). In this guise, the nation-state proved a resource for nineteenth-century resistance to imperial domination, as embodied in the figures of Mazzini or Parnell, and twentieth-century struggles against colonialism (Fanon, 1961).

But alongside these arguments there are many equally familiar anti-nationalist claims. Against the nationalism of Mill, Acton (1862) saw in nationalist movements and the nation-state model not the guarantor of judicious representative government but a harbinger of bureaucratic centralization and of the coercive effacement of communal difference and autonomy. Reflecting Acton's view, Kedourie (1960) famously chastised nationalist projects for embodying a millenarian and immoderate politics which repeatedly concluded in irrationalism, intolerant tribalism, and violence. For others, the origins of the nation-state and nationalism lie less in the functional demands of an emergent modern economy than in the imperatives of a European, and now international, military system (Tilly, 1975). Nationalism was and is, therefore, not so much a requirement for social prosperity and progress but a key factor in modern mass warfare and a bulwark of militarism. There are those, too, who question nationalism's democratic credentials. Far from being expressive of the democratic spirit, nationalism is a movement driven by elites who seek to mould and manipulate the masses in order to gain and retain power (Brass, 1991). Although many of these arguments are pitched as historical explanations, rather than ethical analyses, of nationalism, viewed normatively their import is quite clear: it is a dangerous doctrine and a frequently malignant political force.

In recent years, the debate has taken a somewhat different turn. While critiques of nationalism for its irrationality or militarism are still expressed, especially as regards 'ethnonationalism', the focus of concern has been less the origins or character of nationalism and more whether it is currently *viable*, whether, in short, the nation-state remains the primary unit of political concern or is instead being eclipsed and rendered increasingly marginal by contemporary events. In line with this shift, since the 1990s there has been a growing number of authors who contend that we are now in a 'postnational' or 'postnationalist' age (for example, Archibugi and Held, 1995; Habermas, 2001; Held, 1995; Sassen, 2003; Soysal, 1994; Tambini, 2001). Drawing from a number of disciplines – sociology, comparative political science, international political economy, and political theory – they argue on the basis of empirical, theoretical, and normative reflections that the high point of the nation-state is over and that the time has come to celebrate the rise of new socio-political formations and possibilities.

There is a need for conceptual clarity here, since 'postnational' and 'postnationalist' have importantly different potential meanings (Geoghegan, 1994). The term 'postnational' may be taken to suggest that the nation-state and national identities no longer matter, that they

have no political significance. This is a very strong view to which few subscribe. By contrast, the term 'postnationalist', which best captures the nature of the debate, does not imply a denial of national identity or its endurance. Rather, the suggestion is that the nation-state and the forms of nationalism that underpinned it, while they have not been dissolved, are being empirically and normatively *superseded*. This claim of supersession rests on two key arguments which typify the postnationalist perspective: that the nation-state is being relegated as an effective political institution by processes of globalization, and that national identity is being outstripped and displaced by the rise of alternative forms of identity.

The argument from globalization rests on three observations. The first is that global capitalism, via the mechanisms of financial and commodity markets and institutions such as multinational corporations, shows little regard for either national borders or the prerogatives of national governments. The result is that accelerated capital flows and increased locational competition make it ever more difficult for nation-states to control their own economies or maintain their welfare systems. With this there is, second, the appearance of threats whose scope the nation-state is incapable of dealing with and which therefore transform nation-states from discrete units into 'overlapping communities of fate' (Held, 1995, p. 136). These include environmental degradation, climate change, population growth, disease, and global terror networks. The third is the rise of transnational institutions, including the World Bank and the IMF, and regional blocs, such as the European Union and NAFTA, which increasingly circumscribe the nation-state's room for manoeuvre. The consequence of all three is that 'the areas in which a state's political community can make decisions autonomously are decreasing' (Archibugi, 2004, p. 443; see also Linklater, 1998).

The erosion of national economic and political sovereignty is also accompanied, so the claim goes, by diminutions in national identity. This is on account of an increasing pluralization of identity and affiliation from *within*, through the assertion of minority national and ethnic affiliations, and *without*, that is, through immigration and the diversification of populations. These arguments are made in different ways and towards different ends by cosmopolitans (Habermas, 2001; Waldron, 1992) and by multiculturalists (Parekh, 2000, 2008). The implication in each case is that the traditional identification of the state with a specific national identity can no longer be sustained practically or defended morally. Associated with this is the contention that nationalism, insofar as it presumes an identity of nation and state, is incapable of addressing

the oftentimes brutal conflicts that arise in territories where there are two or more mobilized and antagonistic nationalities. Indeed, it is nationalist ideals and goals which initiate many of these conflicts in the first instance and exacerbate them thereafter (Glenny, 1996, p. 32; McCabe, 1997).

The upshot of these arguments is that national politics and citizenship lack the relevance they once had. Some even now maintain that national citizenship has given way to local, regional, and transnational forms of citizenship based upon non-national institutions and universal human rights frameworks (Jacobson, 1997). Here the EU is deemed a portent for things to come, European citizenship being seen as embodying 'postnational citizenship in its most elaborate form' (Soysal, 1994, p. 148; see also Bosniak, 2006; Sassen, 2002). Together these reflections provide the impetus for wide-ranging moral-ethical critiques of nationalist politics centred on the ideals of democracy and distributive justice. With regard to democracy, if it is the case that the nation-state is haemorrhaging sovereignty and national ties are waning, then the only defensible form of democratic rule is one which institutionalizes decision-making procedures *across* national boundaries. As Held (1995, p. 235) puts it, 'democracy within a particular community and democratic relations among communities are interlocked, absolutely inseparable' and therefore 'new organizational and binding mechanisms must be created if democracy is to develop' in the future. With respect to theories of justice, such thinking finds expression in thoroughgoing rejections of the particularism of national commitments and attachments. If, as argued by many liberal egalitarians, the individual is primary, and if, as well, the major challenges to individual well-being – poverty, environmental degradation, and exploitation – are transnational in origin and nature, then what is required is a universal, global theory of redistributive justice that makes no significant distinction between co-nationals and foreigners (Beitz, 1999; Caney, 2005; Pogge, 2002). From this cosmopolitan perspective one's nationality is arbitrary and thus irrelevant from the normative point of view, since 'it is [only] the person and the general duty we have toward him that matters morally' (Goodin, 1988, p. 686).

If these criticisms ring true, nationalism would appear to have little current purchase. However, there are strong grounds for scepticism. While it is true that there has been an intensification and deepening of global networks, this need not entail a supersession of the nation-state, indeed quite the reverse. As regards capitalism, critics of post-nationalism observe that historically the rise of the nation-state and

of transnational capital have gone hand in hand, that the two stand in a symbiotic or 'complementary', rather than opposed, relationship (Holton, 1998, p. 7). This is not only because transnational capitalism is itself largely the product of powerful Western nation-states, but also because capitalism as an economic system requires for its smooth functioning the existence of stable, culturally unified societies (Hirst and Thompson, 1999; Mann, 1993, 1997). In relation to the amelioration of global crises, the societies that have been most successful in this regard – think of the AIDS epidemic – are those with strong and long-established nation-state structures, not least because these states have been able to harness intergovernmental institutions to their own interests. And while the existence of regional blocs does impact upon the sovereignty of their constituent member states, the EU, the most developed regional bloc to date, nonetheless 'remains an association between nation-states, an inter-national network of interaction' (Mann, 1997, p. 486, our emphasis).

Doubts are also expressed as to the waning of national identity. Here critics often point to the distinctive status and class characteristics of postnationalists, who as members of transnational, mobile academic elites are predisposed to think of themselves and of the world generally in non-national terms (Hansen, 2009, p. 20; Joppke, 1998, p. 26). The experience of the majority of citizens is likely to be very different, however, as the endurance of strong national affiliations in Europe and elsewhere among the middle and lower economic classes shows (Fligstein, 2008). As to the pluralization of identity, while this certainly undermines exclusivist notions of nationhood, it need not be at the expense of national identity *per se*. Indeed, it is notable that many of those who stress plural group identities, with the exception of strong cosmopolitans, stop short of rejecting national identity, the nation-state, or even nationalism, properly conceived. Instead, they typically call for the internal transformation of nation-states and a reconceptualization of nationalism along lines that are more inclusive and hospitable to cultural difference (for instance, Parekh, 2000, pp. 230–6). Postnationalism consequently errs in neglecting the truth that 'there are genuinely liberal forms of both state nationalism and minority nationalism' (Kymlicka, 2001, p. 10). The existence of violent ethnonational conflict may also be understood as providing little reason for endorsing postnationalism either as a diagnosis of the present or as a political programme. The resurgence of ethnonational conflicts in the post-Cold War period, while lamentable, is in fact testimony to the enduring appeal of nationalism as a living ideology. Under this

view, such conflicts will not be solved by calling for a supersession or transcendence of nationality, but only by institutional innovations that recognize the strength of national attachment and yet allow for the peaceful coexistence of rival national projects within overlapping homelands (O'Neill, 2007; Tamir, 1993).

These and related considerations unsurprisingly feed into normative criticisms of postnationalist accounts of citizenship, democracy, and justice. Not only is there ample evidence that national citizenship is not giving way to alternative modes of citizenship (Brubaker, 2001; Joppke, 1998; Koopmans and Statham, 1999), but such would be undesirable even if it were to take place. This is so because national citizenship continues to represent the best guarantor of people's civil, political, and social rights – a truth sadly highlighted by the vulnerabilities of migrants and refugees who are denied citizen status. The 'moral poverty' of postnationalism, as Hansen (2009, p. 14) sees it, consists in its trivialization of 'the importance of hard-won rights that attach only to national citizenship'. Thus, rather than seeking ill-defined and unpromising alternatives to national citizenship, we should be encouraging its expansion to include those currently marginalized and unprotected. Similar misgivings underpin rejections of postnationalist democracy. According to Kymlicka, genuine democratic participation by ordinary citizens and a vigorous public sphere depend upon there being a shared language that all citizens speak. This means that 'linguistic/territorial political communities' – nations – remain the 'primary forum for democratic participation in the modern world' (Kymlicka, 1999, p. 120). Shifting power from the national *demos* to the transnational level where no effective public sphere exists or can exist, since there is no shared language, will only lead to an elite dominated politics marked by gravely attenuated mechanisms of democratic legitimacy and accountability. Finally, with regard to distributive justice, liberal nationalists reproach cosmopolitans for forcing upon us a false choice: either we adhere to the principle of national self-determination and uphold our particularist attachments or we reject these attachments in favour of global duties. What they neglect here is that the principle of self-determination is *also* mandated by justice. Accordingly, what is required is a theory of distributive justice that marries the right of self-determination, the freedom of peoples to choose and be responsible for their own destinies, with broader, universal duties to non-nationals. Such a theory would necessitate significant redistributions of wealth between nations, but certainly not of the extent or scope envisaged by cosmopolitan egalitarians (Miller, 1995, 2007; Moore, 2006).

As the foregoing reveals, there is little consensus as to whether we are in postnationalist age. It would appear on balance that we are not yet in such an age, that what we are witnessing instead is a contest of very different understandings of the present and visions of the future whose eventual outcome remains uncertain. This volume addresses some of the key areas and issues defining that contest. With notable exceptions, as will become clear, most of the authors of this book do not fit under the banner of postnationalism, or at least not easily. They largely accept that nationalism as a cultural and political force remains hugely significant in the contemporary world and, therefore, that postnationalism is questionable empirically, normatively, or both. However, at the same time they recognize that nationalism and the nation-state cannot endure as they did in the nineteenth and twentieth centuries, but must take irreducible diversity and multiplicity into account, as well as the global occurrences and developments which shake the foundations of national sovereignty, traditionally conceived.

The book is divided into two parts. Based upon a range of theoretical and comparative explorations of a number of contemporary cases – Northern Ireland, the UK, Iraq, and Central and Eastern Europe – the first part addresses changes in our understanding of the nation, with a particular emphasis on the challenges posed by minority ethnic groups, multinationality, and national conflict in societies marked by deep historical divisions. Four principal questions are asked here. First, how should we conceive of nationalism and the nation-state in a world in which there are many more nations than states? Second, can plural ethnic identities be accommodated within overarching national frameworks or do they pose a fundamental threat to such frameworks? Third, can conflicts generated by rival national projects find satisfactory institutional resolution? And, fourth, is nationalist politics of necessity a politics prone to violence and war? Although the focus of these questions is primarily empirical, all are underpinned by a basic ethical impulse to comprehend where we now are and, if possible, to find ways of channelling nationalist identities and energies along productive, non-destructive paths.

The second part of the book complements the first by addressing the normative-theoretical and philosophical questions arising from the debate over nationalism and postnationalism. It explores three core themes. The first is democracy, the main concerns here being the feasibility of global or transnational democratic institutions, whether national solidarity is a necessary condition for democracy, and the question of which decision-making rules are appropriate in a world

where many people are citizens of two or more countries. Echoing these discussions, the second theme is that of identity and the ‘politics of recognition’. Here the focus is on the implications of giving institutional recognition to national and cultural pluralism for state sovereignty and the demarcation of democratic constituencies, and on the defensibility of multicultural politics, that is, whether multiculturalism can accommodate difference while also enabling a cohesive polity. The third theme, and perhaps the most contentious, is distributive justice. The key questions pursued in this regard are the extent of the duties owed to non-compatriots and whether global egalitarianism is at odds, as is often claimed, with the principle of self-determination. Taken together, these themes and problems are not the only ones in the philosophical literature, but they certainly are the most significant.

In the opening chapter, Ephraim Nimni sets the scene for the book by arguing for an evolving paradigm shift in the relation between nationalism, sovereignty, and self-determination. The reason for this shift is the structural differentiation of nation-states through internal devolutions of power and the dramatic rise of demands for political recognition by indigenous peoples, stateless nations, and ethnic minorities. This does not amount to a Habermasian ‘postnational constellation’, but it does force us to reject the identification of ‘state’ and ‘nation’ and insistence on homogeneity that have typically characterized nationalism. The traditional nation-state model has now given way to governmental regimes that are multilayered and composed of overlapping jurisdictions. Nimni welcomes this reconfiguration of state sovereignty because, in satisfying minorities’ demands for equal political rights, it lessens disaffection and the likelihood of their seeking states of their own through violent means. Unfortunately, these developments have not yet filtered through to the dominant theories of nationalism – ‘modernism’ and ‘ethnosymbolism’ – which remain blind to the ongoing dispersal of sovereignty across multiple jurisdictions. This is perhaps inevitable in the case of modernist theories, since they are premised on an identification of nation and state, but it is not so in the case of ethnosymbolism, which represents a potentially rich resource for theorizing the resurgence of cultural and national difference. Nimni’s goal is to free ethnosymbolism from the received nation-state model and unlock its potential for understanding ongoing institutional innovations.

One institutional innovation highlighted by Nimni is consociationalism. Within the field of conflict studies, the best-known consociationalist scholar is, of course, Arend Lijphart. In their contribution, Chapter 2, John McGarry and Brendan O’Leary return to Lijphart’s work with the

problem of national self-determination disputes in mind, in particular those between two or more mobilized national identities within the same territorial space. They argue that because consociationalism was originally conceived without reference to such disputes, it has been unable to properly specify the institutional arrangements that these conflicts require if they are to be managed successfully. This is deeply problematic given the increasing salience of such conflicts – from Chechnya and Afghanistan to Bosnia and Cyprus. However, rather than opt for postnationalist or integrationist alternatives, McGarry and O'Leary insist that consociationalism yields the best route for ensuring peace, once it is suitably modified. The settlement of the Northern Irish conflict reveals the direction in which consociationalism needs to go in this regard, thereby providing a fruitful example for actors in nationalist quarrels elsewhere. Key to Northern Ireland's success was the coupling of the traditional consociational measure of power sharing with a stress on territorial autonomy and the establishment of novel binational institutions so as to give lasting recognition to the claims of the contending nationalities and their historical allegiance to two different, independent nation-states. The lesson to be learnt here is that national conflicts may be difficult to resolve, but they are certainly not intractable.

Brendan O'Leary continues this line of argument in Chapter 3, this time in relation to one of the most bloody and contentious conflicts of recent times, that of Iraq. The complexity and sheer scale of the Iraq crisis, defined by a murderous nexus of rival alliances and pitiless civil wars, has driven many to despair over the future of democracy in that land and, indeed, its survival as a multinational federation. In particular, its 2005 Constitution is frequently dismissed as an American imposition which can neither take root nor live up to its goal of accommodating Iraq's various nationalities and religions. In this view, the prospects look bleak – sectarian contestation, secession, perpetual war. However, O'Leary cautions against pessimism and argues that the 2005 Constitution provides a framework through which Iraq may eventually be transformed into a stable, democratic state. The reason for this is that it spurns the traditional Sunni Arab and US preference for a strong central state along the lines of that seized and brutally consolidated by Saddam. Instead, the Constitution ensures consensual power sharing at the central level, but within a broader context of substantially limited central competencies and asymmetrical federalism, with the regionalization of internal security and strong autonomy powers being granted to Kurdistan and other future regions. These prudent measures, O'Leary suggests, promise a political reconciliation of Sunni, Shia, and Kurd and

embody one of the few positive legacies of the US's grossly incompetent occupation of Iraq, clearing the way for a secure peace.

David J. Smith, in Chapter 4, considers a different institutional innovation for accommodating national and ethnic difference – 'non-territorial cultural autonomy'. Since the fall of the Soviet Union, the notion of non-territorial cultural autonomy has become the subject of growing interest, being implemented or seriously considered in a number of countries. This development represents a revival of ideas first articulated by Austrian socialists Karl Renner and Otto Bauer, who sought a solution to the Austro-Hungarian 'nationalities question' of how to give recognition to a large number of competing national identities without contributing to territorial disintegration. Their answer was a non-territorial form of cultural recognition, centring on education, language, and other salient areas of concern, that would cater for the needs of the many communal groups which shared overlapping homelands. The novelty of this approach inhered in its sundering of the traditional nationalist pairing of territory and ethnicity. Tracing the history of this approach from the work of Bauer and Renner to the Minorities Congress in the 1920s, Smith shows that it promised to avoid secessionist claims focused on territorial autonomy, while also promoting greater liberalism and tolerance of diversity. The post-World War I Peace Settlement and the thinking of leading figures within the League of Nations and elsewhere meant, unfortunately, that the promise of non-territorial cultural autonomy was left unrealized. However, it has once more assumed relevance within Europe, and the EU in particular, which is witnessing important attempts to generate new understandings of sovereignty and the implications of shared territorial space.

The United Kingdom is one of the oldest multinational states and one which at its highpoint in the nineteenth century claimed to hold four distinct nations in harmonious union. Since then most of Ireland has seceded from the union and Scotland, Wales, and Northern Ireland now enjoy considerable devolved powers. Moreover, the recent growth of Scottish nationalism appears to threaten the foundations of the UK as a whole. In Chapter 5, Michael Keating explores the significance of Scottish nationalism for the UK and asks why the old British doctrine of union has largely disappeared. Focusing on the external and internal reasons for the disappearance of this doctrine, as well as issues of identity, economics, and competitive nation-building, Keating argues that while the unionist consensus is no more, there is as yet no consistent nationalist alternative to it. Majority Scottish opinion is neither for national independence nor British unionism but seems, as with

other stateless nations, to be reaching for a postsovereigntist framework within which to situate Scotland in relation to the rest of the UK and the EU more broadly. The current central division, Keating suggests, is between neo-nationalists who see Scotland as their primary political reference point and wish for a reconfiguration of the union on confederal lines, and neo-unionists who accept devolution but wish to uphold a strong overarching sense of British identity and belonging. What we are witnessing in the UK, therefore, are rival yet ambivalent attempts to reconstruct the nation, with the ultimate conclusion remaining for now obscure.

In Chapter 6, John Hutchinson turns to one of the most problematic aspects of nationalism – its historical association with violence and war. As discussed above, many have argued that violence is *inherent* in nationalism as an ideology and political phenomenon. Hutchinson explores four important theories or explanations which advance that claim in different ways. The first is the functionalist view that warfare and ‘blood sacrifice’ are necessary for the genesis and reproduction of nations. The second, based on idealist premises, maintains that nationalism is in effect a political religion whose utopian elevation of the principle of self-determination inevitably encouraged unrestrained violence against older political orders and between rival nations. The third major theory understands nation-states and nationalism in geopolitical terms as unforeseen consequences of the rise of the modern, bellicose European military system. The fourth attributes nationalist violence to tensions inhering in the international order itself, specifically between claims for self-determination on the part of minority stateless nations and the assertion of territorial integrity by dominant nations. While all four theories have some plausibility, Hutchinson believes they fail to show any necessary connection between nationalism and violence. As the historical record demonstrates, nationalism has just as often been allied to liberal values and cooperative internationalism as to militarism and aggression, and nation-states have frequently been a force for peace and stability. The links between nationalism and violence are, therefore, contingent. However, Hutchinson cautions against over-optimism here, seeing in contemporary struggles over increasingly scarce resources the potential for future nationalist mobilizations and wars.

Opening the second part of the book with Chapter 7, David Miller offers a critique of global democracy in terms of its feasibility and normative appeal. His argument is based on two general observations. The first concerns a basic condition of possibility of democracy, that for a democracy to work those subject to it must be *willing* to abide by its

decision-making procedures, which requires, in turn, faith on their part in the representativeness of the system and its congruence with their overall interests. The second concerns the *quality* of democracy, which varies from the 'strong' – egalitarian, participatory, and broad in competencies and powers – to the 'weak' – inegalitarian, elitist, and narrow in powers. In Miller's view, proposals for global democracy, whether conceived along the lines of a democratic world assembly or the democratization of existing global governance mechanisms, would fail to fulfil the willingness condition and ensure only the weakest form of democratic rule at the supranational level. Specifically, a general global assembly would give inadequate representation to the world's various constituencies or peoples, leading to their disenfranchisement and reluctance to comply with its decisions in all but the most uncontroversial of areas, while attempts to democratize global governance would founder on a lack of accountability and the impossibility of reconciling different constituencies of interest. Miller concludes from this that the very idea of global democracy is mistaken and that our current global crises would be better addressed by strengthening international cooperation, upholding international law, and nurturing democracy at national and local levels.

In Chapter 8, Cillian McBride rejects the preceding line of argument and seeks to defend cosmopolitan democracy from its critics. His defence of postnationalist democratization is premised upon a deliberative model of democracy, the basic idea of which is that our collective actions necessarily give rise to the obligation to justify or account for these actions to others, and that such deliberative accounting cannot be limited to nation-state borders. Opening spaces for transnational deliberation is the only way to avoid elite domination and secure democratically legitimate solutions to our many global problems. But for this project to get off the ground, two nationalist claims need to be contested – the first being that democracy requires as an enabling condition a shared linguistic background, the second that only national identity can supply the civic solidarity or trust necessary for democratic citizenship. As regards the first argument, McBride maintains that it is premised upon a flawed understanding of collective self-determination and of the public sphere, and neglects the fact that linguistic differences are but one of the barriers to ensuring democratic accountability. As for the second, it is seriously questionable whether cultivating national identity or fellow-feeling will lead to greater civic trust between citizens, especially in the context of multinational states, and even if it does, trust is not something which is necessary for effectively functioning

democracies. McBride concludes that national identity is no bulwark of democracy and that the path for postnationalist democratization lies open.

The most basic question of democracy concerns citizenship and, more specifically, the determination of who should have the right to partake in decision-making. In Chapter 9, Daniel M. Weinstock asks whether having dual or multiple citizenship, a status enjoyed by increasing numbers of people, should be coupled with the right to vote in two or more nation-states. This suggestion is anathema to most nationalists, who limit political rights to one nation alone. The nationalist position is typically underpinned by three claims: that dual voting gives some people more power than others, which contradicts the ideal of political equality; that the principle of democratic self-government demands that only those affected by a political decision be allowed to contribute to that decision; and that granting diasporas voting rights will cause domestic instability in the countries in which they are not resident. In Weinstock's view, none of these arguments holds water. Indeed, the practice of multiple voting is perfectly compatible with the ideals of equality and democratic self-determination, since equality demands that all citizens, resident or not, be allowed to partake in the electoral process, and external citizens are clearly affected in morally relevant ways by the actions of their respective governments. As for stability, diaspora citizens are unlikely to vote more ignorantly or irresponsibly than their domestic counterparts. Weinstock closes his defence of multiple voting with two positive reasons for endorsing the practice – its potential for broadening political horizons beyond the narrowly national and for giving people the opportunity to express their identities in full.

Returning to problems highlighted by Nimni, Geneviève Nootens, in Chapter 10, examines the implications of national pluralism for our conception of popular sovereignty and democratic self-rule. The traditional understanding of sovereignty, which underpins nationalism and modern constitutionalism as a whole, pictures it as being located in a homogeneous state-wide *demos* or nation exercising exclusive control over a determinate territory. Arguing from the standpoint of the 'politics of recognition', Nootens wishes to disrupt this understanding and theorize an alternative view of legitimate authority founded on the existence of distinct, intersecting, and self-governing communities. This leads her to the problem of determining democratic boundaries or constituencies in societies distinguished by plural national identities. Rejecting standard nationalist solutions, Nootens also rejects influential attempts to solve the boundary problem through an appeal to the

'all-affected interests' principle. These attempts fail because they leave unexplained why different groups want governments of their own and neglect that any legitimation of the *demos* and its boundaries is embedded within ongoing power relations and struggles. Nootens then turns to one recent struggle for recognition to throw light on how we should reconceive sovereignty in plurinational states: that of the Innu First Nations. The 'Agreement-in-Principle' won by the Innu peoples is significant because it rejected the identification of state with nation, enabled the honouring of different self-determination claims, and resisted the traditional constitutional prejudice of viewing territory in zero-sum terms.

In recent years multiculturalism has come under increasing political strain with the rise of anti-immigrant sentiment and a return to assimilationist state policies. This has been accompanied, on the theoretical level, by numerous postnationalist and neo-nationalist criticisms of the multicultural perspective on minorities and socio-political integration. Postnationalists reject what they see as its reification of culture, which bolsters unjust traditional practices, and argue instead for proceduralist modes of integrating minorities that centre on civic practices rather than particularist cultural identities. Neo-nationalists, very differently, condemn multiculturalism for weakening the overarching national identity they believe essential for social cohesion and solidarity. In Chapter 11, Catherine Frost wishes to rescue multiculturalism from these charges. On the basis of a review of the different waves of multicultural theory, she contends the critics have failed to recognize that multiculturalism seeks simultaneously to preserve *and* to transform cultural identities. Thus, far from reifying culture, multiculturalism endeavours to keep the expression of culture within just limits and this without neglecting the political significance of particular identities, an error into which postnationalist theories fall. Against neo-nationalists, multiculturalism is in fact a 'nation-building' project, but one which spurns exclusive conceptions of nationhood and demands the transformation of both minority and majority self-understandings. For Frost, then, the challenge to multiculturalism is neither normative nor theoretical, but practical: of arriving at coherent and effective political strategies for realizing its ideals.

The final two chapters address the problem of distributive justice. Margaret Moore, in Chapter 12, considers an apparent dilemma for liberal nationalism, the tension between its foundational commitment to the domestic right of communities to determine their own futures and the duty to respect individuals everywhere, no matter their nationality.

Moore believes it is possible to reconcile the demands of domestic and global justice, but she rejects a number of attempted reconciliations which encourage us to think of this issue in misleading ways. If we understand the reconciliation required correctly, it becomes clear that a commitment to justice at the domestic, state level actually entails a commitment to justice globally. As Moore sees it, adherence to the general right of national self-determination entails a duty to ensure that all peoples are in a position to enjoy that right, which in turn necessitates substantial transfers of resources to those who are insufficiently independent or wealthy to be self-determining. It also entails that we respect universal constraints on our community's actions and refrain from harming or exploiting other peoples. Together these duties provide the foundation for a robust theory of global justice, but they do not justify global egalitarianism, *pace* the suggestions of cosmopolitans generally and 'luck egalitarian' theorists in particular. In Moore's view, the luck egalitarians' excessive stress on equality renders them incapable of recognizing the value of particular attachments and loyalties or of seeing political communities as themselves sites of justice.

Chris Armstrong, by contrast, wishes to defend global egalitarianism and to show that liberal nationalists are wrong in thinking this commitment inconsistent with the principle of self-determination. He begins Chapter 13 by recounting the main points of opposition between global egalitarians and nationalists and the arguments for considering global equality at odds with political autonomy. He then moves to reject these arguments, claiming that most global egalitarians are able, in a variety of ways, to give appropriate recognition to the principle of self-determination. The first point to acknowledge is that, just like defenders of domestic equality, global egalitarians can coherently accept the existence of values other than equality and modify their positions where necessary. Additionally, in many circumstances recognition of national self-determination will be compatible with global egalitarianism, especially if the latter is understood in a differentiated manner, with no trade off between the two principles being required. More than this, however, the goals of equality and national self-determination may often be complementary. More equal distributions of resources can increase the opportunity for genuine self-determination and the establishment of stable states can raise, in turn, the level of equality worldwide. Thus, global egalitarianism and communal political autonomy are not necessarily rival projects, and there are very good reasons for egalitarians to incorporate some form of self-determination within their theories. However, Armstrong concludes that the most important forms

of self-determination are now most likely postnationalist in character, the nation's claim to being the sole vehicle for political autonomy being open to significant doubt.

The issues addressed in these chapters are diverse but nonetheless interconnected, reflections on empirical cases impelling new theoretical understandings, these understandings in turn changing our perception of the world and leading to the recognition of new, or at least altered, possibilities for dealing with venerable problems. Of course, it is impossible in one volume to cover all the questions posed by nationalism or every aspect of the contest between nationalist and postnationalist projects, and inevitably some important concerns have been left out. However, the problems explored within these pages are among the most central and pressing in contemporary national and international politics. How they are addressed and resolved will determine not only how we conceive of contemporary politics, our basic terms of reference, but also the fates of ordinary men and women and their respective communities across the globe. We hope to have contributed something positive, however modest, to the course of future debates. If we have achieved this, if we have helped to increase understanding and awareness of the challenges we collectively face, then this volume will have accomplished its goals.

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Part I

Nationalism Now – Theoretical and Empirical Reflections

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1

Nationalism, Ethnicity, and Self-Determination: A Paradigm Shift

Ephraim Nimni

In this chapter I argue that an ongoing paradigm shift is giving birth to a more multidimensional understanding of the relationship between nationalism, sovereignty, self-determination, and democratic governance. A common element across the various versions of this new paradigm is the dispersal of democratic governance across multiple and overlapping jurisdictions. Governmental processes are no longer seen as discrete, centralized, and homogeneous (as in the old nation-state model) but as asymmetrical, multilayered, multicultural, and devolved into multiple jurisdictions. However, these changes have hardly affected the two main conceptual frameworks that dominate the study of nationalism: modernism and ethnosymbolism. As a result, these frameworks risk becoming irrelevant to new forms of national self-determination, asymmetrical governance, and shared sovereignty. Modernism and ethnosymbolism insist that nationalism seeks to equate the nation with a sovereign state, while in reality an overwhelming majority of nations are stateless and unable to build nation-states because they often inhabit territories shared with other nations. The paradigm shift occurs through the realization that nation-state sovereignty is no longer a feasible solution to the demands of stateless nations. In contrast to modernism, ethnosymbolism is in a better position to adapt to the paradigm shift, provided it abandons the claim that the nation-state represents the best shell for the nation.

1.1 The transformation of the politics of ethnicity and culture

We have grown accustomed to understand nations as axiomatically connected with states. In many cases, particularly in common parlance,

we tend to understand the nation as indistinguishable from the state. However, these misleading assumptions have been challenged extensively by events in the last 30 years or so.

On the one hand, we are experiencing a devaluation of the nation-state as a model for national emancipation; not only because democratic nation-states are devolving power internally and externally to regional forms of organization but also, crucially, because many democratic nation-states have begun transferring jurisdictions to devolved regional governments that in many cases embody minority nations. Quebec, Nunavut, the Innu and Cree First Nations, Catalonia, Euzkadi, Galicia, Wales, Scotland, and binationalist devolution in Northern Ireland are but a few examples. Multi-level governance, understood as the exercise of authority across and within different jurisdictions, is therefore changing the way democracy is understood.

On the other hand, we are certainly not experiencing a reduction of nationalist demands. On the contrary, we are witnessing an extraordinary expansion of a variety of demands for cultural recognition. These increased demands appear in many forms, including indigenous emancipatory movements, minority nationalisms, and the politics of recognition for ethnic minorities. This extraordinary expansion in the politicization of cultural communities signals, in Will Kymlicka's (2007, p. 1) words, 'a veritable revolution' in the relation between states and ethnonational communities. The reasons for this are clearly explained by Tony Judt (2003, p. 16):

Most of the readers of this essay live in pluralist states which have long since become multiethnic and multicultural. 'Christian Europe', *pace* M. Valéry Giscard d'Estaing, is a dead letter; Western civilization today is a patchwork of colours and religions and languages, of Christians, Jews, Muslims, Arabs, Indians, and many others – as any visitor to London or Paris or Geneva will know.

From the perspective of students of nationalism, the most puzzling dimension of this expansion is that it is taking place mostly among cultural communities that have no possibility, or indeed desire, to build separate nation-states. Of course, we can identify a diminishing number of nationalist movements that steadfastly persist in the aim of building separate states (for example, the Israeli-Palestinian conflict) where intractable bloody conflicts fester without the prospect of resolution. But in other, increasingly frequent, cases ethnonational communities exercise self-determination without constituting separate

states, instead using mechanisms of devolution or national accommodation. In such cases, conflicts are defused, become manageable, or simply disappear.

Whichever way we look at it, the relationship between nationalism, ethnicity, and self-determination has changed significantly in the last three decades. But, enigmatically, this change has not been reflected adequately in the paradigms that dominate the study of nationalism. Indeed, the two most influential frameworks for the study of nationalism – modernism and ethnosymbolism – remain by and large oblivious to these momentous changes. These frameworks remain unaware of, or do not acknowledge, recent advances in the area of the dispersal of sovereignty and overlapping multiple jurisdictions (Benhabib, 2007). Consider the governance of the European Union, for example: nation-states are no longer predetermined units of sovereign space. These new advances decisively overcome the limitations of earlier understandings of democratic governance. For a long time the dominant conception of nation building was that stable democracies could not be maintained in the face of cultural diversity (Gagnon, 2001). The best known and most influential articulation of this idea was John Stuart Mill's (1972, p. 361) assertion that:

Free institutions are next to impossible in a country made up of different nationalities. ... Among people without fellow-feeling, especially if they speak different languages, the united public opinion necessary to the working of representative government cannot exist.

In a decisive break with this unproductive tradition, a momentous paradigm change over the last 30 years is giving rise to a new, more pluralist and multidimensional understanding of the relationship between nationalism and democratic governance, particularly in settings that encourage multiple jurisdictions. A key feature of the various versions of this new paradigm is that the diffusion of governance across multiple jurisdictions is both more efficient than and normatively superior to a central state sovereign monopoly (Bache and Flinders, 2005). These new theoretical insights emerged in the areas of conflict resolution and multiculturalism. They point to, through a vast array of empirical and comparative cases, a system of governance based on the participation of several democratically organized ethnonational communities with multiple jurisdictions. Here the governmental process is not one of discrete, centralized, homogeneous units, as in the old nation-state model, but one in which governance is understood as a multilayered

and multicultural mechanism, with regional and minority devolution and multiple jurisdictions.¹

These new forms of democratic administration emerged precisely because they came to terms with a problem that broke the back of old versions of national sovereignty and centralized government. This problem is simultaneously at the centre of the call for a paradigm change. The shift responds to the need to break with the oppressive governance of cultural minorities to avoid the pain and wanton destruction that result from the disaffection of these minorities and their demands to build new states, as well as the need to find ways to provide national minorities with equal rights, governance, and political participation – without dismembering existing states.

1.2 Nationalism and changes in ethnicity and culture

However, these momentous changes have affected the two main conceptual frameworks that dominate the study of nationalism – modernism (and the theories of nationalism associated with Ernest Gellner) and ethnosymbolism – only minimally. In the case of modernism, one common misunderstanding has been to amalgamate these diverse theories into a common paradigm. In the study of nationalism, there is no clear paradigm that can be called ‘modernist’: there are vast paradigmatic differences between Gellner, early liberals, Marxist writers, and nation-building advocates, among many others (see Smith, 1998; Tambini, 1996). However, and in following Ludwig Wittgenstein (1958), I prefer to consider these different theories to be unified by a ‘family resemblance’. Modernist theories of nationalism are not connected by one essential common feature but by a series of overlapping similarities. The family resemblance is best expressed in the view that nationalism functions to sustain the formation of nation-states, whatever the vastly different empirical, normative, or conceptual arguments put forward to support this claim. Ernest Gellner’s (1983, p. 1) famous dictum that nationalism ‘is primarily a political principle, which holds that the political and the national unit should be congruent’, posits a strong causal relation or chain from the state to the nation. For different shades of modernism, the causality may be less strident but the nation-state remains the driving force in the emergence of nationalism. When nationalism ceases to have a functional connection to the formation of nation-states, these very diverse modernist theories are left wanting. They become conspicuously unable to explain the recent processes of national and ethnic emancipation that do not aim to form nation-states. Consider,

for example, John Hall's (1998, pp. 14–15) sympathetic comment on Gellner's prescriptive arguments:

His hope that different cultures could be allowed to flourish did not diminish his insistence that power remain politically centralised. ... Linguistic difference does raise a difficulty: Quebec may yet secede from a relatively liberal regime, whilst the continued unity of India is not guaranteed.

Well, *pace* Hall, India not only remains united but it is also on its way to becoming a world power as a multiethnic and vibrant multilingual democracy with an exemplary asymmetrical devolution of governance. The bilingual Canadian Parliament approved by acclamation in 2006 a motion submitted in French by Stephen Harper, the then Conservative Prime Minister of Canada: *Que cette Chambre reconnaisse que les Québécoises et les Québécois forment une nation au sein d'un Canada uni* (This House recognizes that Quebecers form a nation within a united Canada).² Modernism simply got it wrong.

The case of ethnosymbolism as expressed in the work of Anthony Smith is rather different and more perplexing because of its paradoxical claims with regard to the nation-state. At first glance, ethnosymbolism presents an argument that is inspiring and attractive for those who wish to explain the resurgence of cultural minorities of different kinds and sorts, including the Jewish people among many others. Because of this, ethnosymbolism could have easily escaped the trap of tying the nation to the state because it is conceptually very well equipped to do otherwise. Smith (2009, p. 23) explains that his theory aims to understand ethnicity and nationalism through an analysis of their symbolic elements and subjective dimensions. Myth, symbol, and memory occupy a central place in the formation of ethnic identity; ethnic groups play a central role in the formation of national identities because they are communities whose members hold myths of common ancestry, shared memories, and elements of common culture, including a link with a territory and a measure of solidarity (Smith, 2009, p. 27). As a quintessential culturalist theory, ethnosymbolism could easily have found common ground with fellow culturalists who perceive a widening gap between nationalist demands and nation-states and even those who see the nation-state as the prison house of minority nations. It could have lent a sympathetic ear to the proliferation of cultural demands for emancipation that do not lead to the creation of separate states – indigenous nations, for example.

Yet, enigmatically, ethnosymbolism follows the path of its appointed nemesis, modernism, in considering that nations are realized mainly by building nation-states. Smith argues that nationalism aims to nurture and protect the nation, and any arrangement that suits this purpose will suffice; while it is not the only one available, the territorial state is best suited for this protective role. Smith further argues that while nationalism must be separated from the nation-state, and national identity separated from national sovereignty, the aim of nationalism is to make the nation the mould and measure of the state and to make the state bend to and express the will of the nation:

In and of itself, the state is nothing but an instrument for executing the will of the nation ... the state that nationalism aims to create is a culturally defined and suffused polity; it derives its *raison d'être* as well as its character from the historic culture of the dominant ethnic.

(Smith, 1995a, pp. 112–13)

Montserrat Guibernau (2004) rightly concludes from this that Smith fails to establish a clear-cut and meaningful distinction between the concepts of nation and state; he attributes to the nation some of the features of the state. So, a nation is a cultural-historical construct and myth; symbol and historical memories play a key role in its creation. But the case as to why the nation *needs* to take over the state remains unexplained. Indeed, this belief appears deeply paradoxical as well as practically untenable.

Consider the following. A conservative estimate puts the number of nations in this world at well above 3000 while, with the admission of Montenegro in 2006, there are 192 states currently represented in the United Nations. Fewer than 20 states are ethnically homogeneous in the sense that cultural minorities account for less than five per cent of the population (Brown, 1993, p. 6). Nations that have states make up only a very small fraction of all nations, and it is not an exaggeration to say that the term 'nation-state' – understood as one (cultural) nation in one state – is a complete misnomer (Govier, 1997, p. 269). While the overwhelming majority of states represented in the UN are not culturally homogeneous, the configuration of their political institutions often gives the impression that they are, trapping cultural minorities that have different myths, symbols, and memories into, at best, ambiguity and, at worst, alienation, subordination, and ethnic cleansing.

Despite this evidence that most nations do not have or cannot have a state, most theories of nationalism contend that nations need to establish

a nation-state of their own to be fully realized. For the last 100 years we have been immune from seeing this obvious problem because it did not 'fit' dominant ethnosymbolic or modernist paradigms that argued sociologically, normatively, or ideologically that nations must aspire to have a state of their own. This has led to a younger generation of students of nationalism being perplexed by the proliferation of demands for national emancipation that are not designed to build separate nation-states. This perplexity is the first step towards a paradigm shift.

1.3 Nations, national sovereignty, and national self-determination: a paradigm shift

Thomas Kuhn (1996) famously conceptualized the use of paradigms in scientific thought. A paradigm is a body of knowledge containing commonly accepted views about a subject, as well as a prescription as to what direction research should take and how it should be validated. Paradigms are hegemonic because they establish a dominant and exemplary position in a field of study (or social practice), one that needs to be emulated by younger scholars who wish to progress within their profession. For Kuhn, a paradigm creates exemplary linkages that presuppose a logical connection between events and constrain the possibility of scientists asking questions about an observed event. Furthermore, paradigms also have a disciplinary dimension: they are by definition *conservative* – enhancing the authority of the established scientist – and *pedagogical* – educating younger generations of researchers and initiating them into professional practice. For Kuhn, then, paradigms determine ruling epistemological premises and restrict what he calls 'scientific understanding' to what can be explained within the confines of dominant worldviews and perspectives.

A paradigm shift occurs when alternative understandings and practices burst out of the confines of previous paradigms to establish new epistemological and practical frameworks. This happens on account of anomalies that accumulate and leave the observer increasingly puzzled because explanations cannot be constructed from within the prevailing paradigm of knowledge. A paradigm shift is therefore a transformation of the way we perceive events and the relation between them. Kuhn argues that these paradigm shifts can have dramatic effects on the way we live our lives or see and understand the phenomena we study. At the extreme, a paradigm shift can lead to a 'scientific revolution,' which represents 'a non-cumulative developmental episode in which an older paradigm is replaced in whole or in part by an incompatible new one' (Kuhn, 1996, p. 92).

In the study of nationalism, a paradigm shift is occurring based on the realization that the nation-state model is no longer a feasible solution to the demands of stateless nations. Most states are multiethnic and multinational, and national communities often inhabit overlapping areas of residency (see Nootens in this volume). An examination of the resolution pattern of recent ethnic conflicts further suggests the slow emergence of alternative models for the accommodation of national minorities and majorities in the same territorial area. These models often entail dual or multiple governmental jurisdictions and overlapping sovereignties. This situation cannot be explained satisfactorily by either modernism or ethnosymbolism.

We must carefully distinguish this perspective from the 'postnational' family of theories maintaining that ethnicity, nations, and national cultures are no longer of major importance in the contemporary world (see, for instance, Habermas, 1992; Soysal, 1994). These theories are both erroneous and dangerous. They are erroneous because culture occupies a central position in the formation of human identities; it informs and facilitates the development of individual identities through social relations, institutions, and, indeed, symbols (Kane, 1991). And in these processes, culture is simultaneously politicizing and politicized in myriad ways. Multiethnic and multicultural societies have existed since time immemorial and are a reflection of the cultural plurality of human life. Without understanding human cultural diversity and its political significance, the very concept of a core common humanity becomes incomprehensible; diverse ethnic and national cultures are inalienable attributes of our common humanity. In contrast, postnational theories argue that communal identities no longer draw from distinct cultures but rather from institutional practices and arrangements such as democracy, citizenship, civic rights, and so forth. In doing so they mistakenly suggest that such institutional arrangements are culturally unmediated, that they are somehow trans- or extra-cultural, when the opposite is in fact the case.

Postnational arguments are also dangerous because they fail to give due recognition to the political implications of cultural diversity. Specifically, the postnational claim that culture is no longer of prime importance is deeply misleading in socio-historical horizons where dominant majority cultures disguise themselves in the robes of universalism. The error here is the assumption that there can be a *demos* which is purely civic, rather than ethnic, in content. This thinking is encouraged by the well-known and yet simplistic dichotomy between civic and ethnic nationalisms or identities. However, in reality, no states or political communities are purely civic or ethnic in content; rather,

they all fall into a messy continuum between these two ideal-typical poles. And liberal democracies that think themselves wholly civic are most likely complicit in the perpetuation and privileging of *specific* dominant ethnicities and cultures, which over time come to be seen as 'universal', the norm to which all must conform. Here we have an explanation for a key 'blind spot' of contemporary liberal majoritarian democracy. The exclusive system of 'one person, one vote' cements by default the hegemony of the cultural majority, for the equality offered is between individuals and not between cultures (Nimni, 2005, p. 241). This leads, at best, to the alienation of minority communities and, at worst, to their marginalization and collective disadvantage. In the most extreme, and mercifully few, cases the end result is expulsion and ethnic cleansing. Michael Mann (2005, p. 3) rightly argues that 'ethnic cleansing is the dark side of democracy': the ideal of rule by the people tends in some cases to convert *demos* into *ethnos*, where belonging to the dominant culture is the sole criterion for citizenship. The consequence of this is a culturally organic nationalism that inevitably encourages the cleansing of minority cultures.

The culturalist emphasis of ethnosymbolism makes it less inclined to conflate nations with states, yet there is an unexplained ethnosymbolist fixation with the consummation of national existence in nation-states. Privileging the sovereign nation-state appears in ethnosymbolist theory as a *deus ex machina*, a contrived solution to an insoluble difficulty and a surprising turn of events at odds with the cultural symbolic understanding of nationhood. Besides the argument that the state represents the best protection for the nation, the closest ethnosymbolism comes to states is through, borrowing from Arjun Appadurai (1990), the evocative and illuminating notion of *ethnoscapes* (the symbolic landscapes of an ethnic group identity). But ethnoscapes are territorial symbols, not sovereign categories. I have argued elsewhere that it is most important not to confuse a millenarian and symbolic cultural attachment to a territory with the very modern doctrine of undivided and exclusive sovereignty over the state (Nimni, 2005). As most indigenous peoples and the ultra orthodox Jewish religious sect *Neturei Karta* show, a millenarian attachment to an ethnoscape can be antithetical to the modern understanding of nation-state sovereignty.³

1.4 Political Zionism and ethnosymbolism

Perhaps the explanation of ethnosymbolism's paradoxical emphasis on the nation-state lies elsewhere – in the affinities between ethnosymbolism

and political Zionism. Throughout the prolific and illuminating work of Anthony Smith, the Zionist interpretation of Jewish history and its modern territorial nationalist movement (political Zionism) offers an important source of inspiration. More than anywhere else, this is developed methodically in Smith's (1995b) important article 'Zionism and Diaspora Nationalism'. Here Smith is aware of different kinds of Jewish nationalism, but he represents political Zionism as its archetypal form, incorporating some key elements of ethnosymbolism in the process. In criticizing Hobsbawm and Trevor Roper, Smith invokes an historical *longue durée* that blends ethnosymbolism with the survivalist, genealogical explanation of political Zionism whose *telos* is the constitution of a Jewish nation-state in Palestine. There is no space here to discuss this in detail, but this particular *longue durée* explanation of Jewish history, one that culminates in the constitution of a Jewish nation-state in Palestine, is peculiar to political Zionism. It is contested by alternative Jewish interpretations of Jewish history, both religious and secular.

Undeterred by this, Smith defends the role of 'collective memory' as central to the rise of Zionism. But again, these collective memories are interpreted differently in Jewish historiography, and it is only in political Zionism that they lead to the validation of the *telos* of a Jewish nation-state. In a systematically documented book, Yael Zerubavel (1997) shows how Zionist settlers in Mandatory Palestine sought to rewrite Jewish history by reshaping Jewish collective memory and conveniently forgetting those crucial dimensions of Jewish collective memory that were not conducive to statehood. This vindicates Ernest Renan's (1990, p. 11) claim that 'forgetting, I would even go as far as to say historical error, is a crucial factor in the creation of a nation'. Smith further argues that implicit in the conception of diaspora is the contrast with an ancestral homeland and the possibility of returning to it. Again, this interpretation is peculiar to political Zionists and it is not accepted by other branches of Judaism. There is a crucial difference between *galut* (exile) and *t'futsoth* (dispersion), the latter being a term that denotes diasporic continuity and that is particularly at odds with political Zionism's idea of an ingathering of exiles (Nimni, 2003). From Smith's analysis, an ineluctable convergence emerges between the main ingredients of ethnosymbolism and the ideology of political Zionism. However, for the interpretative convergence to be complete the teleology of the nation-state needs to surface in ethnosymbolic theory. Here, perhaps, is the reason why the idea of the nation-state appears *deus ex machina* in ethnosymbolic analyses.

In this regard, the affinity between ethnosymbolism and political Zionism uncovered by Gal (2007) is not coincidental. Yet the Jewish

historiographic tradition is rich and plural, and the political Zionist interpretation is just one among many – a modern view of Jewish history tainted with the axioms of a now archaic nineteenth-century Central European nationalist model. What sharply distinguishes political Zionism from other more pluralistic interpretations of Jewish history is the assimilation of Jewish historiography into nineteenth-century Central European romantic visions of the realization of national life in the sovereign state of the cultural nation. This is rejected decisively by other forms of Jewish nationalism (see Gechtman, 2005; Weinberg, 1996). Thus, much in the same way as modern Jewish diaspora life needs to be decoupled from Zionism in the quest for participation in the twenty-first century's ethnically plural liberal democracies, ethno-symbolist theory needs to part ways with a teleological vision of the sovereign nation-state as the highest form of national life. This will enable it to contribute its rich insights to the newly evolving paradigm and accommodate new forms of cultural nationalism.

The strength and importance of ethnosymbolic categories reside in their enabling theorization of ethnicity and nationalism in their symbolic elements and subjective dimensions. Myth, symbol, and memory occupy a central place in the formation of ethnic identity. Yet these often millenarian subjective identities are pitched at a sufficient level of generality to allow for different and contrasting interpretations. Over time nations, and indeed any type of human collectivity, develop different, contrasting, and competing interpretations of their identities. Sometimes these competitions for a 'genuine' interpretation are unrefined, violent, and exclusionary. The chameleon-like configuration of nationalism, so eloquently explained by Smith (1998, p. 44), is just one aspect of this floating signifier characteristic. Myth, symbol, and memory are themselves arenas for struggle between competing interpretations, each with different agendas and each claiming to be the genuine repository of national culture. For example, when Fidel Castro appealed to the idiosyncrasy of the Cuban nation to fight imperialism, he was interpreting myth, symbol, and memory from a revolutionary perspective. Likewise, when the Cuban exiles in Miami appealed to the idiosyncrasy of the Cuban nation to overthrow communism, they were appealing to the same myth, symbol, and memory but incorporating them into a conservative perspective. Needless to say, both perspectives are exclusionary. In most cases the dominant interpretation becomes hegemonic and displaces competitors as less genuine aberrations.

If Anthony Smith's ethnosymbolism owes its paradoxical fixation with the nation-state to its affinity with political Zionism, other competing

Jewish interpretations are easily available. This will enable ethnosymbolism to be decoupled from the fetish of the nation-state, much in the same way as contemporary Jewish myth, symbol, and memory can be decoupled from a fixation with territorial Zionism.

1.5 Cultural minorities and the nation-state: landmarks of the new paradigm

If modernism and ethnosymbolism remain focused on the nation-state, the new paradigm focuses instead on the multilateral acceptance of cultural minority rights and the international acceptance of various power sharing agreements – including the participation of cultural minorities in governance – that are central features of attempts to peacefully accommodate majorities and minorities in many troubled areas of the world. The issue here is not only that states should recognize the autonomous rights of cultural minorities but also that states should participate in collective efforts to implement and enforce standards of cultural minority self-governance internationally (Roach, 2005). In the last few decades a change has taken place in the way in which we understand and conceptualize conflicts between cultural minorities and states. Through the struggles of mainly indigenous peoples, linguistic and cultural rights are now seen as acceptable parts of the compromise necessary to reach equitable forms of governance.

In an ideal world, the problem of stateless nations could be resolved by the reorganization of nation-states into multination-states with enshrined collective rights for all participant cultural communities. The National Cultural Autonomy (NCA) model and consociationalism use this organizational logic in deeply divided societies when the abodes of constituent cultural communities overlap. The NCA model has its origins in the twilight of the Habsburg Empire and the attempt of Austrian socialists to transform the decaying Empire from a conglomerate of squabbling cultural communities into a democratic federation of nationalities (see Nimni, 1999, 2001; Smith and Cordell, 2008; Smith in this volume). In sharp contrast to most other forms of national autonomy, the NCA model rests on the idea that autonomous cultural communities could be organized as autonomous collectives, whatever their residential location within a multinational state.

Consociationalism is a better-known form of governance that requires collective (group) representation. It presents an alternative to the principles of majoritarian democracy and is used to manage conflict in deeply divided societies. The term was popularized by Arend Lijphart

(1977) and subsequently developed in a series of seminal works on conflict resolution and on Northern Ireland (McGarry and O'Leary, 2006; O'Leary, 2005; Taylor, 2009). It is more elite based than the NCA model and is founded upon the principles of a grand coalition across cultural divides, mutual veto on matters vital for the continuity of minority communities, proportionality in representation, and the segmental autonomy of each community. As with the NCA model, the aim is to make government more responsive to the concerns of minorities and offer alternative outcomes to territorial nationalism and secession. In this way, secessionist demands are neutralized and cultural minorities are encouraged to feel confident of representation and protection of their vital concerns (Lustick et al., 2004).

1.6 Conclusion: the practicalities of ethnonational accommodation

Even if the power of the nation-state has diminished in the contemporary world with the development of multilateral institutions such as the European Union, states remain the principal focus of institutional organization. In this context, the paradigm shift discussed here must both advance our understanding of the accommodation of nations in multination-states and, at a multilateral level, help set standards that facilitate the coherent adoption by existing states of specific measures that alleviate tensions related to the presence of diverse cultural communities within overlapping territories.

In this regard and in a world of states, two remedies are available for cultural minorities that feel alienated by the hegemony of the national majority. The first is secession and the constitution of separate nation-states. This route is clouded with difficulties, for it almost always incurs the veto of the dominant nation (rare exceptions here are Singapore and Slovakia) and, moreover, the abodes of different cultural-national communities frequently overlap. When cultural grievances become entangled with territorial disputes they become bitter, protracted, bloody, and extremely difficult to resolve. Cultural-territorial conflicts are classic zero-sum situations: the gain of one is by definition a loss for the other. In the contemporary world it is impossible to find sufficient portions of 'real estate' to allow for each and every cultural community to have a territorial state of their own (see Dion, 1996). The UN Charter offers contradictory advice here: on the one hand, it sees the right of self-determination as the right to constitute separate states, but, on the other hand, it opposes the dismemberment of its members (Musgrave, 2000).

The second route is to find solutions to the problems of cultural minorities that are compatible with the existing system of nation-states. For this reason, advocates of the paradigm shift propose recommendations designed to encourage and facilitate states to overcome the alienation of minority communities and alleviate tensions inherent in situations of territorial cohabitation (Packer, 2000, pp. 41–2). The recommendations for cultural minority self-governance are crucial ingredients in this formula, because they set standards for a different interpretation, away from secession, towards forms of self-determination that do not entail breaking states.

But the accommodation of national communities within a single state also requires a better understanding of the crucial role of national culture. As noted, culture is seldom interpreted in the same way by all members of a cultural community. It is instead an arena for struggles between different interpretations. In democratic societies, when individuals cannot find some expression of their culture in governing institutions they experience a sense of loss, powerlessness, and social distance. Hence, an examination of the role of culture in the political participation of citizens is concerned not only with minorities but also with the place of culture in a multitude of governance processes. One cannot discuss minority rights without asking why minorities are politically relevant and this requires, in turn, a considered theory of the role of culture in political life (Parekh, 2000, p. 346).

Consequently, an important way of enhancing the integration of cultural minorities is to encourage their participation in governance through inclusive political representation. In places where this is implemented, minority representation strengthens intercultural links, fosters more positive attitudes towards the common government, and encourages individual political participation (Banducci et al., 2004, p. 534). It is here that a revamped ethnosymbolism, sanitized from its earlier fixation on the nation-state, can help inspire the evolving new paradigm. For the system to work and overcome the alienation of minorities, intercultural recognition has to be based on mutual trust and built through autonomous self-governing participation. In this regard, it is crucial to create a level playing field between majority and minority communities so that all feel that their cultural values and sense of self are deemed institutionally relevant, appreciated, and welcomed. The trust, confidence, and resulting sense of belonging that are brought about by these self-governing measures go a long way towards securing minority integration. But, of course, all this requires a revolution in mainstream theories of nationalism, a fundamental turn away from our historical

obsession with uniform nation-state sovereignty towards an embrace of cultural diversity within plural and overlapping jurisdictions.

Notes

1. The proliferation of studies in this area is astonishing. Examples include Gagnon and Tully (2001), Keating and McGarry (2001), Kymlicka (1995), Nootens (2004), Parekh (2000), Taylor (1994), and Tully (1995) – to name but a few.
2. Parliament of Canada, *Order Paper and Notice Paper No 86*, Government Business No. 11, 26 November 2006.
3. *Neturei Karta*, from Babylonian Aramaic, נטורי קרתא, means ‘Guardians of the City’. The ethnoscape is obvious. The term itself comes from Jerusalem Talmud, Hagigah, 76c. *Neturei Karta* is a sect of orthodox Jews that considers political Zionism an abomination and calls for the dismantling of the state of Israel.

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Consociation and Self-Determination Disputes: The Evidence from Northern Ireland and Other Recent Cases

John McGarry and Brendan O'Leary

This chapter examines the relevance of Arend Lijphart's theory of consociation to self-determination disputes. A self-determination dispute is an empirically testable phenomenon that revolves around discrete national identities and rival nationalist movements. The division over nationality is the key political division. The region's dominant political parties, and its popular civic associations, are nationalist in character and support the classical political goals of self-determination: autonomy, with or without links to national kin in other states, or independence, or irredentism. A self-determination dispute does not suggest that everyone in the region is a nationalist, or embraces nationalism with the same intensity. It does not imply that national identities are fixed, although it suggests they are durable and unlikely to fuse, assimilate, or dissolve into one common identity within the foreseeable future. Contrary to what is suggested by the title of this volume, self-determination disputes are ubiquitous, occurring within and throughout each continent.

Lijphart's theory of consociation was not originally developed with self-determination disputes in the foreground and, consequently, it has not specified sufficiently the institutional arrangements that such disputes require if they are to be successfully regulated. This consideration is of critical policy relevance given that many conflicts, including many violent conflicts, are waged over self-determination.

The argument of this chapter is divided into three sections. The first examines general consociational theory and suggests that in the cases selected, terminology employed, and prescriptions advocated, self-determination disputes were not central in its early formulations. The second shows how this orientation affected orthodox consociational analysis of the conflict in Northern Ireland. While consociational

institutions were and remain vital to the political settlement in Northern Ireland, a settlement was reached only because traditional consociational prescriptions were supplemented by key binational institutions that squarely faced the national dimension of this conflict. Consociation, in short, was a necessary, but insufficient, requirement for a stable agreement. The last section briefly examines a number of other self-determination disputes where settlements have recently been reached, or are being negotiated, and suggests that these, too, have required or will require institutional arrangements that may be captured in the slogan 'consociation plus'.

2.1 Consociational theory and self-determination disputes

Lijphart, the pioneer of contemporary consociational theory, developed his work from a study of his native Netherlands, which he then extended to three other small Western European democracies, namely Switzerland, Austria, and Belgium, though he also considered other cases (Lijphart, 1968, 1969, 1977). His choice of case studies has been criticized. Critics have argued that the four exemplary European democratic cases were not violently divided, or not deeply divided, at least in the immediate past, and so they questioned their relevance, and that of consociational theory, for societies that are deeply divided. Others noted that the four were prosperous and raised doubts about their relevance for less well-off places in the developing world. Some indicated that the four were small and argued (this time in agreement with Lijphart) that small places were advantageous for consociational institutions. However, a feature of the four cases that has been less often noticed is that none of them involved a dispute over self-determination, at least not when Lijphart was developing his theory (Belgian politics has since become focused on self-determination, which is why it is now federal as well as consociational). The Netherlands – the most important case informing the development of consociational theory, Lijphart's home, and the focus of his first book – was divided along religious lines between Catholics and Protestants and between Christians and secularists. The main division within Belgium, when Lijphart (1977, p. 104) wrote, and the one to which consociational prescriptions were applied, was between Catholics and secular socialists. Switzerland's main historic cleavage, stemming from its nineteenth-century civil war, was between Protestants and Catholics. Language divisions have become more important recently, but these have cross-cut religious divisions and have not translated into national mobilizations. Few members of the

Swiss language communities see their linguistic communities as distinct nations. Instead, virtually all see themselves as Swiss, albeit of different linguistic or religious communities. Austria, by contrast, was divided between right-wing conservatives and socialists. There was a national division between those who saw themselves as German and Austrians, but this was overcome, and it was not ethnonational.

That Lijphart's foundational work did not focus on national divisions is suggested by the terminology he employed and did not employ. *Nowhere*, as far as we can see, does Lijphart use the terms 'nation', 'stateless nation', 'minority nation', 'nationality', 'ethnonational', or even the somewhat ambiguous 'national minority' (which could mean a minority within a nation) to describe the minority political communities with which he was concerned. This is surprising for a theorist whose life work has been devoted to resolving intra-state conflicts and promoting consensual democracies. Many of these conflicts have focused on national differences. The most frequent term he and other consociationalists used, though less popular now, is 'segment'. A 'segment' is like a 'fraction' or a piece of pie; that is, it could be construed as a part of something larger. The something larger that Lijphart may have had in mind was the state, or the 'society' coterminous with that state. When Lijphart used the key term 'plural society', for example, in the title of his classic work on consociational democracy, *Democracy in Plural Societies*, or the generic term 'divided society', he appeared to have in mind a *single* society which is plural or divided.

In short, consociational theory, unintentionally, historically tended to have a state-centred focus and aimed at the management of divisions within a society seen as congruent with its state. When minority nationalities, by contrast, think of themselves as segments or fractions, they tend to think of *their* nation as the pie and to complain that it has been segmented (partitioned) by 'international' or sovereign borders. The pie of which Kurdish nationalists in Iraq (or in Turkey, Syria, or Iran) see themselves as segments, at least aspirationally, is not Iraq (or Turkey, Syria, or Iran) but Kurdistan (including Kirkuk in Iraq, as well as Kurdistan in Turkey, Syria, and Iran). The pie that many Basque nationalists prefer to associate with is not Spain, or even the current Basque autonomous community (Vizcaya, Guipuzcoa, and Alava), but Euskadi, which also comprises a Spanish province outside the autonomous region (Navarre) and three in France (Lapourdi, Soule, and Basse Navarre). Stateless nations prefer to see the state in which they live as comprising divided or parallel *societies*, rather than a divided society. The focus on conflict regulation within states, of course, is not unique

to consociational theory. Indeed, most other theories of conflict regulation are far more integrationist.

The other difficulty with 'segment' is that it does not distinguish between national divisions and other divisions, such as those based on religion or class. In more recent years, Lijphart (1995, 2004) has abandoned the use of segment in favour of 'ethnic group'. This term is more appropriate for describing mobilized minority nationalities, as these are often associated with particular ethnic communities. However, 'ethnic' is a word used to describe a number of different categories, including minorities residing in their ancestral homelands who consider themselves nations and who seek self-determination; minorities residing on their ancestral homelands who are not nationally mobilized; and immigrant communities interested in integrating into their new nation-states, albeit, perhaps, with some protection for their culture and religion. The expression 'ethnic' group and its extension 'multi-ethnic' elide the distinction between 'plurinational' and 'polyethnic' or 'multicultural'. As exemplified historically by the Quebecois, mobilized stateless nations are often at pains to point out that they are not mere cultural groups and to distinguish their collectivity from the term 'ethnic', which is sometimes used in a pejorative way to suggest that the group in question is exclusive and ethnocentric. Minority nationalities are often labelled as 'ethnic' nations by dominant nationalities, but minority nationalities and their supporters frequently insist that they are also civic nations, open to outsiders in the same way that the state claims to be, and observe and complain that the state's nationalism has been constructed around a dominant ethnic core. This is the standard response of groups such as the Kurds of Iraq, the Quebecois, or the Catalans to charges of ethnocentrism.

Given Lijphart's initial exploration of four Western European cases which did not then involve self-determination disputes, his avoidance of terms appropriate to national conflicts, and the fact that such conflicts were not as salient then as now, it seems fair to suggest he did not have national conflicts in the forefront of his mind. Arguably, this affected the development of his prescriptive inventory, which, particularly in the early period, looked more appropriate for divided societies (that is, religiously, linguistically, class, or ethically divided societies in which there was a reasonably strong overarching national identity) than for places that were nationally divided.

In his classic work of 1977 (p. 25), Lijphart explained that the 'primary characteristic of consociational democracy' is that segmental leaders should share power within the state's central government. The

primary concern of mobilized stateless nations, on the other hand, may be *how much* power should be exercised by the central government and, sometimes, whether there should be more than one central government (namely, whether the state should be reconstituted as more than one state). Stateless nations, in short, may value autonomy over power sharing, and may be prepared to trade power sharing for more autonomy, though they often insist on both. The secondary consociational devices of 'proportionality' and 'mutual vetoes' also suggest a focus on central power sharing, because these are usually thought of as proportionality within the central state's public sector and as vetoes within central institutions, though, of course, both principles are consistent with the promotion of autonomy. It is hardly surprising, then, that consociation has been understood by others to be *entirely* focused on power sharing in central institutions. Berman et al. (2004, p. 20) write that the 'key feature of consociationalism (as opposed to federalism) is power sharing across ethnic lines at the central level'. The index to Jack Snyder's (2000, p. 364) influential book *From Voting to Violence*, states: 'Consociational democracy, see power-sharing'. Indeed, many people use 'consociation' and power sharing as synonyms.

Lijphart (2004, p. 97) has recently elevated 'group autonomy' to the status of one of consociation's two 'primary attributes'. This, arguably, reflects his recognition of the increasing saliency of self-determination disputes. We agree with him. But by group autonomy he means both *corporate* autonomy, a type which involves 'non-territorial' self-rule for a community over matters of common interest, such as schooling or religious affairs, and *territorial* autonomy. The former was the dominant form of autonomy in three of the four classic cases of consociation – Belgium, the Netherlands, and Austria – and was also present in the fourth, Switzerland.

For Lijphart, corporate autonomy is particularly useful for groups that are territorially dispersed, while territorial autonomy is useful for groups that are concentrated. But this reasoning, while eminently sensible, does not fully capture the relationship between nationalism and autonomy. Nationalist movements normally have a vital relationship with a homeland or 'national territory' and seek self-government in *this* territory, and not simply over their co-nationals. This relationship to the land is clearly evident in the discourse of indigenous peoples, but it is true of all minority nationalities, including the Scots, Catalans, and Uighurs (Connor, 1986, pp. 16–45). The types of powers usually sought by nationalist movements – power over the economy and policing, control over population influxes and over which language is locally

dominant, *et cetera* – are believed to *require* control over national territory. This belief is connected with the territorial nature of the modern state and the fact that the exercise of its most important functions tends to be on a territorial basis. Many minority nationalities, furthermore, have little interest in corporate autonomy unless they are very small and dispersed (see Smith in this volume).

The emphasis on corporate autonomy over territorial autonomy in consociational theory, and the evidence from the West European consociations, may explain why some academics and political agents think that consociation need not involve any provision for territorial autonomy at all, and why consociation is often treated as an antonym of federation, which is focused on territorial autonomy (Bakvis, 1987). The authors of one recent book have claimed that an advantage of consociation over federation is that consociation does not give rise to fears of irredentist secession, 'as groups are not given control over territory' (Berman et al., 2004, p. 20). Another leading authority on ethnic conflict explains that 'consociational autonomy is not territorial, it is instead institutional, with government agreeing not to interfere in this aspect of self-management', and that 'consociational systems are *explicitly* designed to manage conflicts where the distribution of ethnic populations does not allow for federal arrangements' (Esman, 2005, pp. 144, 182, our emphasis).

When discussing territorial autonomy, which he clearly regards as compatible with consociational prescription, Lijphart (1979, p. 505) writes that segments may have more than one federal unit, particularly if they live in a large area or in non-contiguous areas. This is consistent with the pattern in Switzerland – the only one of the four classic consociational democracies to practice territorial autonomy, and where the French and German language communities each have several federal units. There are cases where minorities are happy with such arrangements. However, stateless nations, mobilized *qua* nations, will generally shun the idea of such partitioned autonomy. They generally seek to be *collectively* self-governing, that is, to incorporate most, if not all, of their members within a single autonomous unit. In cases where it is proposed to partition minority nationalities into multiple units, especially where the nationalities concerned already enjoy significant collective self-government, the division is likely to require massive coercion by state-wide majorities or military dictators. For instance, the partition of the three states of the Nigerian First Republic, dominated by Ibo, Hausa, and Yoruba respectively, was carried out by military rulers in the late 1960s.¹

Dividing nationalities into multiple federal units is a tactic often recommended by integrationists. They think that dividing a minority into different units of self-government will make it more difficult for it to secede. It also, supposedly, opens up intra-minority divisions, facilitates the construction of inter-group and cross-cutting alliances, and strengthens core or central state 'nation-building'. Supporters of such 'integrative' federalism include Donald Horowitz (1991, 2001), Andreas Wimmer (2003), the Dawishas (2003), and Kanan Makiya (2003). The latter three explicitly supported such arrangements in Iraq, which would have involved breaking up Kurdistan into at least three units. Such manoeuvres are clearly in breach of the spirit of consociational politics and pay scant respect to the consent of nationalities – it is thus unthinkable that Lijphart would support them. Consociationalists, therefore, need to make clear that in many circumstances stateless nations will strenuously oppose integrationist partition, which is in effect conflict-promoting rather than conflict-reducing.

Like other theories of conflict regulation (particularly integrationist theories), consociational theory, at least in its early forms, has focused on institutional prescriptions that coincide with a state's territory. The problem with this is that self-determination disputes often involve national communities that are dissected or multi-sected by state borders. It may be difficult to satisfy the desire for collective autonomy in cases like these even if a national community has territorial autonomy *within* a state or, indeed, even if it has control of its *own* state. Here the partitioned fractions of the nation will typically seek links, including political institutional links, with their co-nationals across state borders. This is the case with Northern Ireland's Irish nationalist minority. It is also one reason why several national communities in Eastern Europe – for example, the Magyars in Hungary and the Magyar minorities in Slovakia, Serbia, and Romania – support European integration, which not only erodes the importance of state borders, but also builds amicable relations among states, based on respect for existing borders, and facilitates interstate cooperation over the construction of links between partitioned elements of national communities (McGarry et al., 2006). The development of European integration, which deepened after Lijphart's seminal work on consociation, has broadened the possibility of such interstate cooperation.

In addition to placing at least as much stress on autonomy as power sharing, preferring territorial autonomy to corporate autonomy, seeking collective autonomy over partitioned autonomy, aspiring in some contexts to trans- and interstate, as well as intra-state institutions, minority

nationalities may also seek to have the state officially designated as plurinational rather than as a 'nation-state'. They may desire to have their peoplehood recognized constitutionally and in the emblems, flag, and official languages of the state. Even Quebec federalists have traditionally insisted that the Quebecois are a 'distinct' people or nation. Kurdistan successfully struggled to have a clause inserted in Iraq's 2005 constitution which stated that Iraq comprised several nationalities (Constitution of Iraq, Article 3). Nationalities may even seek an asymmetrical form of collective territorial autonomy in which their homeland enjoys more and distinctive autonomy, and therefore possesses a distinct status compared with other regions belonging to the state's dominant national community. Traditional consociational theory has not yet addressed such matters.

2.2 Consociational theory and Northern Ireland's conflict and agreement

The problems that overlooking the specificities of self-determination disputes can give rise to can be seen from Lijphart's (1975, 1977, p. 136) otherwise masterly analysis of the Northern Ireland conflict. Lijphart, with his background in the Catholic and Protestant divisions in the Netherlands, initially under-appreciated the fact that Northern Ireland's conflict had little to do with religion but was based squarely on rival national movements. He saw the two groups in conflict in Northern Ireland as 'Catholics' and 'Protestants', and the basis of the cleavage as 'religious', even though he was fully aware that the groups gave virtually all of their support to 'nationalist' and 'unionist' parties respectively. Lijphart (1975, p. 100) argued that the key difficulty was the absence of support for power sharing among Protestants because they were capable of exercising hegemonic power alone and because they were disposed to Westminster majoritarian practices rather than continental power-sharing norms. This analysis was accurate, but limited. It overlooked the fundamental fact that Northern Ireland's Catholics, as Irish nationalists, were also opposed to internalist power sharing within the United Kingdom. Radical Irish nationalists (republicans) wanted national self-determination and a complete withdrawal of the British state from Ireland, whereas moderate nationalists wanted any consociation to be internationalized, namely, to have a linkage to the Republic of Ireland and a role for the Irish Government. Thus, even if unionists had proposed a consociation, it would have been insufficient for Irish nationalists. Moreover, a key reason why unionists opposed consociation was because they were British

nationalists, profoundly concerned about Irish nationalists' insistence upon links with the Irish Republic. They also had no incentive to share power for most of the period after 1972, since the default option was direct rule from Great Britain, their preferred nation-state.

These facts principally explain why no consociational settlement was reached in Northern Ireland before 1998. An early attempt at a consociational agreement in 1974 collapsed after just five months because it was attacked by both Irish nationalist and British unionist hardliners. The former thought that it did not go far enough towards satisfying their aspirations for Irish self-determination. The latter feared that it undermined the Union with Britain and portended a united Ireland. Subsequent initiatives between 1974 and 1998 failed because they could not achieve agreement on both sides, or on either side. Any feasible agreement in Northern Ireland had to deal squarely with the disputes that flowed from the inequitable legacies of the partition of Ireland in 1920, which had occurred without any formal respect for Irish self-determination. At least three parts of the Agreement (the Good Friday Agreement) that was reached in 1998 are relevant here, and all departed from traditional consociational accords.

2.2.1 The North-South Ministerial Council and the British-Irish Intergovernmental Conference

Had the Agreement included only traditional consociational institutions, not even moderate nationalists would have signed it. The Social Democratic and Labour Party (SDLP) signed because the Agreement provided for a number of political institutions that joined both parts of Ireland and maintained an oversight role for the Republic's government. The most important all-island institution was the North-South Ministerial Council (NSMC), a body nominated by the Irish Republic's government and the new Northern Ireland co-premiers. It was agreed that it should meet in plenary twice a year, and in smaller groups to discuss specific sectors (agriculture or education, say) on a 'regular and frequent basis'. In addition, the Agreement provided for a number of cross-border or all-island 'implementation' bodies. It also established the British-Irish Intergovernmental Conference (BIIC), the successor to the Intergovernmental Conference established under the Anglo-Irish Agreement of 1985. This guarantees the Republic of Ireland's government access to policy formulation on all matters not – or not yet – devolved to the Northern Ireland Assembly or the NSMC. In the event of the collapse of the Agreement, this institution will resume the all-encompassing role it had under the Anglo-Irish Agreement. It also promotes bilateral

cooperation between the Irish and British governments on all matters of mutual interest within their respective jurisdictions.

2.2.2 Recognition of Irish self-determination

Irish republicans would not have approved the Agreement had the UK Government not recognized, in a treaty, the right of the people of Ireland, meaning the whole island, to exercise their right to self-determination, albeit conjointly and severally as 'North' and 'South', to bring about a united Ireland if that was their wish.² The referendums and the British-Irish Agreement (the treaty incorporating the Agreement) endeavoured to make the partition of Ireland – and its continuation – and the Agreement and its institutions dependent upon the expressed will of the people of Ireland. The consociation established by the Agreement is the first that has been endorsed in referendums that required concurrent consent in jurisdictions in different states.

2.2.3 Recognition of the principle of consent and the British-Irish Council

Unionists, who were ambivalent about the Agreement, were persuaded to ratify it because it entrenched the principle of consent. That is, Northern Ireland cannot become part of the Republic of Ireland unless a majority in Northern Ireland agree. The Republic's constitution was changed, after a referendum in both jurisdictions, to reflect this principle. Unionists also secured a new east-west institution to reflect their link with Great Britain. The British-Irish Council (BIC) comprises the two governments of the UK and the Irish Republic, along with all the devolved governments of the UK and its neighbouring insular dependent territories (Scotland, Wales, the Isle of Man, Jersey, and Guernsey).³

In addition to these three distinct sets of provisions, a number of other key provisions in the Agreement, or which flowed from it, also mark it out as a settlement between national communities rather than simply ethnic or religious communities. Ministers in the power-sharing executive have to take a 'Pledge of Office', not an 'Oath of Allegiance'. This cements the binationalism at the heart of the Agreement: nationalist ministers do not have to swear an oath of allegiance to the Crown or the Union. One of the key concerns of nationalists was that Northern Ireland's police, the Royal Ulster Constabulary, was partisan unionist, with the primary task not of combating crime, but of defending the Union between Great Britain and Northern Ireland. The Patten Commission, mandated by the Agreement to reform the police,

recognized this, explaining that the 'main' problem facing policing was the political divide between unionists and nationalists and the fact that the latter associated the 'police with unionism and the British state' (McGarry and O'Leary, 2004, p. 381). It recommended, therefore, that the names and symbols of the police be freed from 'any association with either the British or Irish states'. It also proposed that the name be changed from the 'Royal' Ulster Constabulary, which clearly signalled links to the British Crown, to the 'Northern Ireland Police Service'. When it was discovered that this gave rise to the unfortunate acronym 'NIPS', the government changed it to 'Police Service of Northern Ireland'. The RUC's emblem, which showed a crown on top of a harp and which the RUC's defenders argued represented both of Northern Ireland's traditions, but which nationalists rejected as signalling the subjugation of nationalist Ireland to the British crown, was replaced by a new impartial badge: a Saint Patrick's Cross surrounded by six symbols – a harp, crown, shamrock, laurel leaf, torch, and scales of justice. Patten also recommended that the display of the Union flag and the portrait of the Queen in police stations should go.

To operationalize consociational governance, the Agreement required that members elected to the Northern Ireland Assembly designate themselves not as Catholics and Protestants, but as 'nationalists, unionists, and others'. The co-premiers, who head the executive, had then to secure the support of a majority of both nationalists and unionists, as well as a majority in the Assembly as a whole. Similarly, the designation rules provided legislative vetoes to both the nationalist and unionist communities: legislation either required 'parallel consent', a concurrent majority of both nationalists and unionists as well as a majority in the Assembly, or a 'weighted majority', 40 per cent of both nationalists and unionists, as well as 60 per cent in the Assembly overall. These rules were unfair in that they discriminated against those who were neither nationalists nor unionists. They also, arguably, created a minor incentive for people to vote nationalist or unionist, as their votes would count more. However, they reflected the fact that the national division was the most important division in Northern Ireland and the basis of the conflict there. Of the 108 members elected to the Assembly in 1998, 100, representing 91.6 per cent of the vote, were from nationalist or unionist political parties.

Mutual recognition of national claims lay at the core of the Agreement. The Republic of Ireland recognized the British political identity of unionists. The UK recognized Irish northern nationalists as a national minority, not simply as a cultural or religious minority.

This was an advance on earlier agreements, such as the Government of Ireland Act, 1920, which had outlawed discrimination on the basis of religion, but which had said nothing about nationality. Unionists who made the Agreement recognized nationalists as nationalists, not simply as Catholics. Nationalists recognized unionists as unionists, and not just as Protestants.

The basic consociational framework of the Agreement is similar to the arrangements that historically have been practised in countries such as the Netherlands, once divided between Catholics and Protestants, and in Lebanon, divided among ethno-confessional blocs, and, more recently, the provisional arrangements in South Africa's interim constitution, which has been and is divided along ethnic and racial lines. The additional features are there because the British and Irish governments are aware that Northern Ireland, unlike these other societies, is nationally divided, that is, divided between two national communities who want to be ruled by their respective nation-states. As a result, a purely internal consociational arrangement would have been inadequate. It would have addressed the minority's desire to resist majority rule, but would have done nothing to satisfy its nationalist aspirations for a united Ireland, or for institutional links between Northern Ireland and the Republic, or to remedy its complaint that the very existence of Northern Ireland as part of the UK is an injustice. As a fresh partition of Northern Ireland between the two communities would have been very difficult, the two governments sensibly agreed that justice and stability required institutional arrangements which go beyond the boundaries of the UK to include the Republic of Ireland.

The instability that affected Northern Ireland's consociational institutions after 1998 is importantly related to the fact that its dispute is based on rival self-determination claims. At the most basic level, many unionists were unwilling to embrace the Agreement because they thought it moved too far in a nationalist direction. These unionists took the reasonable view that nationalists see the Agreement not as a 'settlement' – a long-term or permanent arrangement – but as a 'process' aimed at hollowing out the Union and achieving Irish unification. Steps by nationalists to strengthen the North-South bodies and to strip British symbols from police stations and courthouses were (correctly) interpreted in this light, as were the reluctance of armed republicans to relinquish their weaponry and speeches from the Irish prime minister (Bertie Ahern) and the leader of Sinn Féin (Gerry Adams) that envisaged a united Ireland in their lifetimes (*Irish Times*, 27 November 1998 and 20 April 1998). On the nationalist side, the perceived problem was the

unwillingness of unionists to work the political institutions, including the power-sharing executive and the North-South bodies. There were also concerns that the British Government was not implementing the Agreement's self-determination provisions in a forthright manner. The UK Government's initial response to the Patten Report's recommendations was minimalist, retaining much more power for the British state than had been recommended by Patten or wanted by nationalists. London also responded to the Ulster Unionist Party leader's (David Trimble) difficulties with his party and the unionist public by unilaterally suspending the Assembly on four occasions, in breach of the international treaty that had been signed with the Republic and the agreed view that the people of Ireland (in both jurisdictions) should determine their own future. These moves help explain the IRA's reluctance to decommission its weaponry, which in turn worsened the position of unionist moderates. The resolution of the impasse over decommissioning was achieved during the summer of 2005, in part because the British Government agreed to address republicans' self-determination concerns by repealing its suspension power and by promising to transfer control over policing from the British Secretary of State to the Northern Ireland Assembly, as soon as there was agreement among the local parties. This prepared the ground for the resumption of power sharing in May 2007 on a basis supported by all parties in the Northern Ireland Assembly, including the erstwhile rejectionist Democratic Unionist Party (DUP). The subsequent refusal of the DUP to endorse the devolution of policing gave rise to another crisis in the summer of 2008, when the executive failed to meet for five months. However, Sinn Féin and the DUP have now reached an agreement on the devolution of policing and the power-sharing arrangements look more stable than at any time since the Agreement was signed in 1998.

2.3 Consociational theory, negotiations, and settlements in other self-determination disputes

Not all of the world's recent conflicts have revolved around self-determination. Many conflicts in Africa and Asia are waged by what Gurr (1993) calls 'communal contenders' – ethnic movements which do not see themselves as distinct nationalities, and which are focused on a share of power in, and the fair distribution of resources by, the central state. This is the case in Rwanda, Burundi, Liberia, Sudan (Darfur), Sierra Leone, and Malaysia. It is also the case in Kenya, where an inter-ethnic dispute among communal contenders in 2007–8 gave rise to violence in

which over 1000 people were killed. In Zimbabwe, the dispute between Robert Mugabe and the Movement for Democratic Change (MDC) has an ethnic (Shona-Ndebele) dimension, but both Mugabe and particularly the MDC draw support from both of the main ethnic communities. However, many other conflicts are waged between nationalist movements, led by political parties and civic associations, which stress the peoplehood of the groups they represent and who aspire explicitly to self-determination. There is a tendency in integrationist circles to dismiss the authenticity of such claims, to see them as the product of manipulation by self-interested elites rather than as an expression of deeply rooted (although not primordial) and mass-based sentiment (see Brass, 1991; Brubaker, 1996; Silber and Little, 1996). However, the popularity of such claims, at least in democracies, is empirically testable. The argument here is that when national divisions are politically salient, as evidenced by electoral support for parties that are explicitly nationalist in their programme and by opinion survey data, prescriptions will need to move beyond power sharing within the central government.

Within the past 15 years or so there have been settlements, as well as attempted settlements, of a number of self-determination conflicts, including Bosnia-Herzegovina, Cyprus, Macedonia, Iraq, Moldova (Gagauzia), Papua New Guinea (Bougainville), the Philippines (Mindanao), Sudan (the South), as well as Northern Ireland. The key prescriptive feature in several of these settlements is, arguably, not executive power sharing but autonomy, and not corporate autonomy but territorial autonomy. Indeed, in some of them – Gagauzia, Mindanao, and Bougainville – there are no provisions for power sharing at all. Although Bosnia-Herzegovina's Dayton constitution has crucial provisions for power sharing within its central government, the emphasis until very recently has been on autonomous institutions for Serbs, Bosniaks, and Croats. The state of Bosnia-Herzegovina is a highly decentralized federation of two 'entities', Republika Srpska and the Federation of Bosnia and Herzegovina. The latter is itself radically decentralized, with most powers held at the level of its ten, relatively homogeneous, cantons. In Cyprus, the United Nations' 'Annan Plan' of 2004 prescribed a radically decentralized bicomunal and bizonal federation, although the package was massively rejected by the Greek Cypriot community in April of that year. In Macedonia, where there are also rival national communities, there are territorial autonomy provisions, albeit weaker than the other cases, but still crucial. The relative weakness of the autonomy provisions, moreover, reflects more the Macedonian Slav majority's reluctance to concede strong territorial autonomy than

any reluctance on the part of the Albanian minority to exercise it. In Iraq's new constitution, the emphasis is on autonomy for regions, with Kurdistan recognized immediately as a region, while the provisions for power sharing at the central level are relatively weak and informal (see McGarry, 2007; O'Leary, 2007; and O'Leary in this volume). The priority of the Kurds is a weak central state, which is hardly surprising given the way in which they were treated by the Baathists; thus, they have traded *some* power sharing for autonomy. The Kurds have also insisted not just on autonomy but on collective autonomy. They have resisted attempts by many of Iraq's Sunni Arab politicians, and several American policymakers, to partition Kurdistan into a number of governorates, and have consistently insisted on the inclusion of Kirkuk within Kurdistan (McGarry, 2005, pp. 94–5).

Ireland's interstate institutional links are the most radical to be found in recent peace settlements. Interstate links have been frowned upon in several other cases, including Macedonia and Kosovo. However, Bosnia-Herzegovina's two entities, the Federation of Bosnia and Herzegovina and Republika Srpska, have used powers extended to them under the Dayton Accords to conclude external confederal agreements with Croatia and Serbia respectively. Bosnia-Herzegovina's central government has also signed agreements with other former Yugoslav republics, including Croatia, on cooperation in matters that are sensitive to its ethnic communities, not least higher education, science, and technology (Palermo, 2007). In Cyprus, the Annan Plan provided for the continuation of Turkey and Greece's unilateral powers of intervention under the 1960 Treaty of Guarantee that accompanied Cyprus's 'independence', and for 'special ties of friendship' between Cyprus and Turkey and Greece.⁴ Bougainville is now entitled to a permanent representative in Papua New Guinea's delegation to Bougainville's kin-state, the Solomon Islands, dealing with new border agreements. Even where cross-border links have not been included in initial agreements, as in Macedonia and Kosovo, there have since been proposals and exploratory steps towards establishing them (Palermo, 2007).

Beyond territorial autonomy and interstate links, some of the recent agreements have other provisions that recognize, at least implicitly, the plurinational character of the place in question. Sometimes there is legal or constitutional recognition that the minority constitutes a distinct people or nation. The preamble to the Law on the Special Legal Status of Gagauzia states that the law has the aim of 'satisfying the national needs and preserving the identity of the Gagauzes'.⁵ Article 4 of the Bougainville Peace Agreement includes, as one of the objectives

of autonomy, the 'expression and development of the Bougainville identity'.⁶ After the Ohrid Agreement, Macedonia altered its constitution to give its 'communities' the 'right to establish institutions for culture, art, science and education, as well as for scholarly and other associations for the expression, fostering and development of their identity'.⁷ While the autonomy provisions in Macedonia's Ohrid Agreement are not extensive, local authorities are permitted 'to place on front of local public buildings emblems marking the identity of the community' (Jackson-Preece, 2007). Kosovo's Rambouillet Agreement, which was superseded by conflict and NATO's military intervention in 1999, provided for its 'national communities' to be able to 'preserve and express their national, cultural, religious, and linguistic identities'.⁸ Iraq's constitution recognizes that it is a 'country of multiple nationalities', requires that its flag, anthem, and emblem symbolize 'the components of the Iraqi people', and declares that both Arabic and Kurdish are official languages.⁹ In addition, the autonomy arrangements in Mindanao, Bougainville, Gagauzia, and Kurdistan, which are particular to these regions rather than part of a state-wide symmetrical decentralizing programme, suggest some implicit recognition that their people are different from those in the rest of the state. Elsewhere, such as Sri Lanka, the state has rejected such asymmetrical arrangements precisely for this reason.

Several recent settlements, including those in Bosnia-Herzegovina, Cyprus, Macedonia, Iraq, and Mindanao, as well as Kosovo's provisional arrangements in 2001, take traditional positions in defence of state sovereignty and territorial integrity. The 2004 Annan Plan (Article 2(1)) even describes Cyprus as an 'indissoluble partnership'. However, three of them (in addition to Northern Ireland's) acknowledge the minority's right of self-determination, including its right to secede, albeit under carefully specified circumstances. In the 1994 Law on the Special Legal Status of Gagauzia, the 'people of Gagauz' were extended 'the right of external self-determination' in the event of a change of status of the Republic of Moldova, that is, its union with Romania.¹⁰ The Bougainville Peace Agreement (Articles 309–10) of 2001 provides for a 'referendum on Bougainville's future political status' to be held within 10–15 years, with one of the choices being 'independence for Bougainville'. The Agreement makes the holding of the referendum dependent on 'good governance' on the part of the Bougainvilleans and gives a veto on the wording of the question and final (postreferendum) decision-making authority to the national parliament of Papua New Guinea. In Sudan's agreement, reached in December 2004, the South

can secede after six years although, in the interim, it must make efforts to achieve a rapprochement within Khartoum. In Jackson-Preece's (2007, p. 640) view, provisions like these 'represent a considerable departure from previous international practice in the area of minority rights and self-determination'.

These various prescriptive arrangements – territorial autonomy, provisions for asymmetry, interstate linkages and institutions involving sovereignty pooling, constitutional recognition of peoplehood, and, in some cases, a qualified right to secede – are specifically addressed to self-determination disputes. In each case, as in Northern Ireland, it is plausible to claim that these provisions either facilitated agreement or were necessary pre-requisites for agreement.¹¹ No recent conflict in such places has been ended by central government power sharing alone, although some agreements, such as Macedonia's, have been based primarily on power sharing. Macedonia's Slavic majority, surrounded by hostile neighbours and preoccupied with concerns about territorial integrity, seems unprepared to concede self-government to the country's large Albanian minority. However, the Ohrid Agreement is unlikely to be the end of the matter.

In addition to these settlements, negotiations have been recently completed, or are ongoing, or have collapsed in a number of other conflicts that appear to be plurinational in character, including Cyprus, Georgia (South Ossetia), Indonesia (Aceh, Irian Jaya), Israel/Palestine, the Philippines (Mindanao), Sri Lanka (Tamil Eelam), and Serbia (Kosovo). In these cases too, the emphasis has been on territorial autonomy and on recognition of peoplehood. In the current negotiations in Cyprus, in which one of the authors is involved, both sides, as well as the UN, are agreed on a two-unit decentralized federation. In one case, that of Israel/Palestine, a complete separation into two independent states is envisaged. While the detailed prescriptive arrangements that each of these cases requires may differ radically, it is reasonably clear that a settlement in any of them will be more difficult, or perhaps impossible, if that settlement does not embrace the plurinational principles described in this chapter.

Arguably, consociationalism's lack of focus on the specificities of plurinational places has contributed to confusion among academics about where it is appropriate. Thus, the academics whom we cited earlier as believing that consociationalism does 'not involve control over territory' suggest that it is relevant only in those cases where groups are not territorially concentrated and do not seek autonomy, while groups that are territorially concentrated and seek autonomy will need to use

federalism instead (Berman et al., 2004, p. 20). If this claim – that consociation is appropriate only for places that are not plurinational – were true, it would mean that it would be irrelevant for huge areas of the globe, including most of Eastern Europe, as well as all of the plurinational places that exist in Asia and Africa. It is not true. The view that consociation does not involve territorial autonomy is a misperception, but it is one which consociationalists need to counter.

2.4 Conclusion

It is clear from our account that we do not yet live in an age of post-nationalism, and such an age is not on the horizon. Self-determination disputes are widespread and likely to be undercounted by cosmopolitans, European integrationists, and those who think, in spite of the evidence, that conflicts in Chechnya, Afghanistan, Bosnia, Gaza, and Northern Ireland are about religion. As we have argued, the existence of nationalist disputes does not mean they are intractable, although the failure to appreciate their basis and to prescribe appropriately may make them so.

This chapter is a friendly addendum to Lijphart's work, in keeping with the spirit of his call for consociationalists to engage in constructive criticism. Its approach is different from Brian Barry's (1975a, 1975b), who argued, in a superficially similar way, that consociational theory may be more relevant to religious or class conflicts than 'ethnic' conflicts. Barry's point was that consociational theory works better for religious and class groups than for ethnic groups, because the last of these are less amenable to control by their leaders and likely to be secessionist in nature. Our position is that not all ethnic groups are secessionist (or even nationalist) and that it is not true that ethnic divisions are necessarily more intractable than religious or class disputes. Unlike Barry, who rejected consociation, our argument is that self-determination disputes often require consociational arrangements, including power sharing and territorial autonomy, but that these may not be enough. There may also be a need for interstate or inter-regional and trans-border institutions, and for symbolic and functional recognition of other nationalities' languages and identities in the constitution and public institutions. Whatever consociational arrangements are agreed to in self-determination disputes should be liberal rather than corporate, that is, they should accommodate the parties that win elections rather than any predetermined demographic quota of national collectivity, and they must be accompanied by a rights-protection regime which

safeguards individuals as well as national communities. Such liberal consociational arrangements are necessary precisely because national identities are not fixed and not everyone adheres to them (or adheres to them equally). A liberal consociation is necessary because it treats equally those individuals who subscribe to rival national identities, to no national identity, to nested national identities, or have identities which crosscut national lines, such as those based on gender or class (McGarry and O'Leary, 2004, pp. 32–6).

The shortcomings that exist in classical consociational theory with respect to self-determination disputes are, in our view, not as problematic as those that pervade the integrationist family of strategies. Integrationism is based on civic nationalism, the view that all individuals and groups in a state can be enticed to share a common national identity. There are circumstances where this can work: for example, immigrant societies where individual immigrants arrive voluntarily from another country and are prepared to accept the national identity of their new homeland, or where ethnic groups are not yet nationally mobilized or are too few in number or too dispersed to sustain a nationalist project. But it is much more difficult to envisage civic integrationism working in states where communities are already organized into rival nationalist projects. Here nationally mobilized communities and their political spokespersons normally insist on protection for their communities and decode integrationism as biased in favour of the state's dominant community. Consociation, by contrast, is built squarely on the view that politically salient groups should be treated fairly, proportionally, and with self-government, and is therefore consistent with what is needed in plurinational places, once we have clarified what justice mandates.

Notes

1. Majority, or dominant, national communities may, by contrast, be *relatively* open to the idea of dividing themselves into different self-governing regions, particularly when the state is so large that it makes sense to do so. Thus, in the US, Russia, and Canada, the dominant peoples are divided into several regions without protest. One reason for the lack of protest is that the dominant peoples see the federation itself as satisfying their desire for collective self-government, which is our explanation for the stability of such federations, in slight contrast to the interesting claims of Henry Hale (2004, 2005).
2. The Agreement recognized the right of 'the people of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if

that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland' (*The Agreement, 'Constitutional Issues'*, 1(ii), available at <http://www.nio.gov.uk/the-agreement> [accessed 20 October 2009]).

3. For more details of the Agreement's cross-border institutions, and the federalizing and confederalizing processes that may flow from them, see McGarry and O'Leary (2004, pp. 272–81).
4. The Comprehensive Settlement of the Cyprus Problem (the 'Annan Plan'), Article 1(5) and Article 8(1), available at http://unannanplan.agrino.org/Annan_Plan_MARCH_30_2004.pdf [accessed 20 October 2009]. The Plan, and the Treaty, also gave the ex-colonial power, the UK, the power to intervene unilaterally in Cyprus.
5. The Law on the Special Legal Status of Gagauzia, 1994, available at <http://www.regione.taa.it/biblioteca/minoranze/gagauziaen.pdf> [accessed 20 October 2009].
6. Bougainville Peace Agreement, available at <http://rspas.anu.edu.au/melanesia/documents/bougainville/PDF/BougainvillePeaceAgreement29Aug01.pdf> [accessed 20 October 2009].
7. Constitution of Macedonia, Article 48, available at http://www.servat.unibe.ch/icl/mk00000_.html [accessed 20 October 2009].
8. Rambouillet Agreement, Article VII, available at http://www.state.gov/www/regions/eur/ksvo_rambouillet_text.html [accessed 20 October 2009].
9. Constitution of Iraq, 2005, Articles 3, 4, and 12 (*Iraqi Constitution* (Baghdad: Iraqi Council of Representatives Media Directorate)).
10. Article 1(4). This article has recently been removed by the Moldovan Government, acting unilaterally.
11. One possible charge against our reasoning is that, while these settlements coincided with an end to conflict, we have not *proved* that it was their plurinational provisions that brought or facilitated peace. However, there are limits to proof in the social sciences. In the case of Northern Ireland we have shown that earlier settlements that did not include these provisions failed, and this, along with the fact that the warring parties insisted on such provisions, suggests, with some plausibility, that their inclusion made a crucial difference. In Iraq there were plurinational redlines which Kurdistan insisted upon as its price for ratifying the 2005 constitution (O'Leary, 2005). There are thus solid *prima facie* reasons for regarding the plurinational nature of the settlements as a helpful or necessary condition for an end to fighting in the other cases mentioned.

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3

Iraq as a New Multinational State: A Cautious Defence

Brendan O'Leary

This book had its origins in a conference titled 'Beyond the Nation?' The question mark was appropriate. Nations, as vehicles of popular sovereignty and as subjects of collective self-determination, are not about to be superseded by novel postnational formats – at least not everywhere, not even in most of Europe. The empirical picture that confronts a sober political scientist at the beginning of the twenty-first century sharply conflicts with the fantasies of liberal cosmopolitan globalization. Political theory should, perhaps, devote at least some of its focus to deep national political conflicts, rather than piously looking forward towards their utter transcendence. The number of nominal nation-states expanded throughout the twentieth century, though mostly in the aftermath of sudden shocks, such as the crushing defeat of one European and two Eurasian empires in 1917–18, or the collapse of the Soviet Union in 1991. There were apparent counter-tendencies in the growth of confederal and federal organizations, most famously the European Union. But most of these, including the EU, are multinational confederations or federations rather than truly supranational or postnational entities. The end of the formal European Empires in the South after 1960 was supposed to halt the growth of nation-states, but it has not. Who would wager that East Timor and Eritrea will be the last places to send ambassadors to the United Nations buildings in Manhattan? The urge to create new sovereign and independent nation-states has not ended. Moreover, state-building failures to come will lead to both peaceful and bloody efforts to create new nation-states, rather than wholly novel political formats, to recensions rather than reversions to pre-national forms or creations of postnational entities. The challenge of the century ahead, therefore, is to manage multinationality, not to supersede it. To confederate and federate, without breaking

or deliberately eroding national communities without their manifest consent; to manage and, indeed, intervene in nations where they bleed over one another, and where they bleed because of one another; and to consociate where they are too mixed to separate without new or renewed horror. These premises underlie the arguments that follow.

National and international horror will remind some of us of Iraq, but likely not of its new Constitution, which addresses its past horrors and which represents one of the most challenging present efforts to manage multinationality. Iraq was a nation-building dystopia for most of its peoples long before Gulf War I or 19 March 2003, the beginning of the Iraq War (Gulf War II). The current question of profound consequence is whether Iraq can 'hold together' as a multinational federation, and whether it should be facilitated in so doing. Most people outside Iraq have very clear opinions on these matters. World opinion is deeply sceptical that Iraq's parties can develop the parliamentary democratic federation proclaimed in the first article of its new Constitution; or that it will develop the pluralist provisions evident in its new definition of the state as a 'free union' (Preamble), and of 'a country of multiple nationalities, religions and sects' that is 'a part of the Islamic world' and 'a founding and active member of the Arab League' (COI, 2005, Article 3); or that it will keep its formal commitments to bilingualism, with protections for minority languages (Article 4). Many people see Iraq's Constitution as a US imposition with no organic roots among Iraq's populace and therefore fated to be like most such constitutions, repudiated after the departure of the imposers. This is essentially the position taken by Andrew Arato (2009), though he held some hopes to the contrary.

Scepticism about Iraq's constitutional stabilization has warrants, but there are nevertheless reasons to be positive, despite the horrific and genocidal traumas of Iraq's past under Saddam's Baathists and the recent and current bloodshed occasioned by the three major related wars, namely, the sectarian civil war among the Arabs of Iraq; that between the elected federal government of Iraq and the US-led coalition, on one side, and a diverse array of mostly Sunni Arab jihadist, Wahhabist, and neo-Baathist insurgent organizations, on the other; and, lastly, that between the Sadrists and their foes in the elected federal government, in the US army, and among the Sunni Arabs. The argument that follows maintains that the Constitution of 2005 was the only feasible bargain that could have been made by Iraq's major parties that summer. It further maintains that the Constitution is the sole obvious framework through which Iraq may stabilize as a democratic state. If

that is so, Iraq's Constitution deserves the conditional support of other democrats, and Western governments and analysts should cease futile efforts to persuade the Shiite dominated parties and Kurdistan to make dramatic changes to it. This claim will be underlined by arguing that no significant amendments are required to address reasonable Sunni Arab concerns, whereas to concede to unreasonable Sunni Arab preferences invites Kurds and Shiite Arabs to commit political suicide. If Iraq's civil wars deepen after the US withdraws its military, or if Iraq breaks up, these outcomes should not be blamed on its new Constitution. In fact, the Constitution provides the best mechanism through which break-up can be managed, if that proves to be the final outcome – though I neither favour, nor expect that.

3.1 The making of a multinational federal constitution

The new permanent Constitution was ratified on 15 October 2005 and validated by the United Nations Election Assistance Unit. The constitution-making process had hardly been ideal. The text was drafted in Baghdad amid extraordinarily high security, with the US ambassador, Zalmay Khalilzad, playing a key mediating role, though not a dictatorial one. The first published history of the drafting process is available (Deeks and Burton, 2007). It has some errors with respect to Kurdish positions and understandings and is overly influenced by defeated ambitions held in the US embassy, as well as by US assumptions about what makes a good federation, but it is professional and mostly reliable, though it perhaps underplays the degree of makeshift spontaneity in the manufacture of the text. The subsequent campaign for popular ratification scarcely met the criteria of Jürgen Habermas's 'ideal speech situation' or the axioms of social contract theory and deliberative democracy. But the public security provided on referendum day was effective, and the text was endorsed by four out of five of Iraq's voters on a high turnout. The UN's advisers, rightly, blocked a Machiavellian effort by some in the pro-constitution parties to construe an ambiguity about the meaning of 'voters' in the Transitional Administrative Law's (Governing Council of Iraq, 2004) rule of constitutional ratification in two separate ways. Article 61 (c) of the Transitional Administrative Law (TAL) stated that the 'general referendum will be successful and the draft constitution ratified if a majority of the *voters* in Iraq approve and if two-thirds of the *voters* in three or more governorates do not reject it' (O'Leary et al., 2005, Appendix 2, p. 340, my italics). The ambiguity was whether voters should be construed as those who turned out or as

those registered (or eligible). This was a genuine drafting problem and the fault of the US lawyers who had major responsibility for the text of the TAL. What was unreasonable was to attempt to read the first reference to mean the voters who turned out and the second as registered voters. The ruling by the UN, that voters were to be defined by turnout not eligibility, ensured that the ratification process was proper. The Constitution was, however, opposed, with both bombs and ballots, by most of Iraq's formerly dominant minority of Sunni Arabs.

The Constitution's birth was bloody, preceded and succeeded by mass casualty bombings and other vicious violence. But the making of a constitution in crisis conditions is not unusual: 'The task of constitution-making generally emerges in conditions that are likely to work against good constitution-making' (Elster, 1995, p. 394). The birth of Iraq's Constitution was rushed; it is incomplete – notably in its senate and constitutional court – and its lack of textual polish shows. But, again, in these respects it is not unusual. Constitutions are rarely made in one 'great constitution-making moment. It would be hard to name any constitution that was created or consolidated in such a way, except perhaps those that have been created only on paper' (Soltan, 2009, p. 136). Iraq had had a *de facto* interim constitution negotiated under US dominance, and there will doubtless be some adjustments made to the permanent Constitution if it becomes fully operative.

The Constitution of 2005 was just one outcome of a US-led intervention that has led to more violence than many had anticipated – though estimates of postintervention casualties have been exaggerated (O'Leary, 2009b, Appendix 1). An external US-led coalition, together with Kurdish Peshmerga and a small number of Arab Iraqi allies, overthrew Saddam Hussein's Baathist regime in a short campaign between March and May 2003. That regime had been extraordinarily bloody: genocidal, politicidal, expulsionist, and coercively assimilationist. Its officials committed every conceivable gross human rights violation and atomized the populace when they could (Makiya, 1992, 1993, 1998). They bombed and drained the marshes of the South. They burned the forests of Kurdistan. They used poison gas on their citizens. The detention centres that pockmark Kurdistan's towns and cities are stony reminders of Baathism. In 1991 the intifada of Shia Arabs and the insurrection of the Kurds, both encouraged by the first President Bush, were machine-gunned down until embarrassment prompted the US, the UK, and France to organize 'no fly zones' and a safe haven for the Kurds. The Shia Arabs were abandoned. The Kurds won partial freedom but spoiled it in an internal civil war in the mid-1990s. Film-maker Hineer

Saleem's (2005) recollection of his grandfather's words then seemed like an epitaph: 'Our past is sad. Our present is a catastrophe. Fortunately, we don't have a future.' Fortunately, these thoughts no longer apply. The Kurds of Iraq, at least, have reasons to hope (Salih, 2005).

The legacies of Saddam's regime were dreadful. At least 300,000 unidentified corpses in mass graves (O'Leary et al., 2005, pp. xii, xx-xxi), over three times that number dead from Saddam's foreign wars, and as many severely disabled (Kutchera, 2005). There was economic ruin in Arab Mesopotamia, brought about by the costs of wars, the sanctions that the regime attracted and dispersed to its subjects, and the postintervention conflict. Saddam released Iraq's ordinary criminals before the US invasion, deeply aggravating the violence that flowed from America's shameful failure to restore order in the early summer of 2003.

The legacies of the formal US-led occupation, and its aftermath, are also grim. The Bush administration had no worthwhile postwar reconstruction plan (Galbraith, 2005; von Hippel, 2005). Vice-President Cheney and Secretary of Defense Rumsfeld hoped to handover to a new regime and exit without any 'social work'. It is widely believed Paul Wolfowitz wished to install Ahmed Chalabi at the head of a provisional Iraqi Government, a plan, whatever the current reputations of Wolfowitz and Chalabi, which might have been better than the planless occupation because it would have quickly restored nominal self-government to Iraqis. The US military had no postconflict 'Phase IV' plan, and General Franks went on leave in May 2003 (Packer, 2005, p. 147). The Bush administration's arrogance and incompetence facilitated the eruption of Baathist organized resistance in the summer of 2003. And the Baathists would soon be in an unholy tacit alliance with local and foreign jihadi, including 'al-Qaeda in Mesopotamia'.

The Coalition Provisional Authority, quickly known as 'Can't Provide Anything', improvised from scratch one constitutional design process after another. Maladministration, mass detention, and torture returned. The US army had to relearn from scratch how to deal with insurgencies and how not to provoke them (The US Army and Marine Corps, 2007). It is not possible to assess reliably the civilians killed by local insurgents, jihadists, the government, multinational coalition forces, and party-based militias. On 12 November 2005 the Iraq Body Count estimated that between 26,931 and 30,318 Iraqi civilians were killed between March 2003 and 12 November 2005, that is, just after the making of the Constitution. Including criminal killings doubles the lower estimates of the civilian death toll and nearly triples the higher end estimates. Many of these killings represent the continuation of genocidal

Baathism, albeit now as an insurgency rather than as a government. Foreign jihadists, as well as former regime loyalists, organized the mass casualty suicide bombings (Hafez, 2007).

No good, many have reasoned, can be expected from these legacies. But the Constitution of 2005 offers means through which Iraq may hold together without dictatorship or permanent civil war. It, of course, does not guarantee that outcome. This claim rejects two standard scepticisms, the 'vulgar' and the 'impossibilist', as I have elsewhere dubbed arguments found in cartoons in America's *The Onion* and *The Los Angeles Times* (O'Leary, 2009b, pp. 111–13). The vulgar thesis assumes that inter-group hatred is pervasive throughout Iraq. Saddam's major victims, the Kurds and Shiite Arabs, may not love one another, but they have pragmatic affinities. Their leaders became *de facto* allies under Saddam, and are *de jure* champions of the new Constitution – albeit inclined to emphasize different components. The impossibility thesis is that Iraq is unworkable as a democratic and multinational federation because of its national (Arabs versus Kurds) and sectarian (Sunni versus Shia Islam) conflicts. But in making Iraq's Constitution Kurdish and Shiite Arab politicians extensively negotiated face to face and found much common ground. Sunni Arab negotiators barked orders outside, and others were 'simply barking', as the English say.

This claim also rejects a third scepticism, namely that constitutions that are, or appear to be, imposed cannot last. Iraq's permanent Constitution was not externally imposed – except on Sunni Arabs by other Iraqis. Elected Kurdish and Shiite party leaders negotiated most of its substantive content. It is true that they negotiated in the shadow of American guns, but those guns had freed them from Sunni Arab domination, and Sunni Arabs had generally absented themselves from the key elections to the constitutional assembly. Though they started with the TAL as the opening text, which had been strongly steered by Ambassador Bremer, they radically re-made it when it suited their joint preferences. For that reason, Iraq's 2005 permanent Constitution falls into the category identified by Noah Feldman (2005, p. 883) of 'constitutional practices [that may] emerge and ripen into custom [because] the relevant elites see it as consistent with their interests for these practices to be adopted'. I share Feldman's (2005, p. 885) cautious optimism 'about the capacities of constitutionalism to succeed when constitutional norms are adopted by political elites as a matter of self-interest', provided, I would argue, that self-interest is defined broadly to encompass both party and group interest, and not merely the benefits of office, which are over-emphasized in narrow versions of rational choice theory.

The critical question is whether the new constitutional design is sufficiently fair to enable the subsequent inclusion of Sunni Arabs on equal and proportional terms – and I will argue, in my conclusion, that it is.

3.2 It is not possible to include those who exclude themselves as well as others

No successful negotiations, regrettably, could have materialized in 2005 from the comprehensive ‘inclusion’ of representative Sunni Arab politicians. Most of their demands were simply unacceptable to the elected representatives of at least four-fifths of Iraq’s population (O’Leary, 2005a). Key Sunni Arab political leaders had boycotted the elections to the assembly that was to function as a convention. Many of them were supporting armed violence against the Americans, or, and it is an inclusive or, Shiite Arabs – while their moderates were often intimidated from indicating what willingness to compromise they possessed. The boycott backfired spectacularly: they could only have people with utterly questionable mandates incorporated into committees. Some of the elected and co-opted Sunni Arabs leaders compounded this huge strategic error with demographic fantasies about their people’s numbers, leading them to imagine they might be able to vote down the Constitution in the ratification referendum. Their negotiating tactics were consequently poor. Those ‘negotiating’ in Baghdad in the summer of 2005, notably Salih al-Mutlak, were determined to block federalism because they saw that, as they said endlessly, to be ‘the end of the country’. They thought their best hope was to prevent a constitutional settlement in the summer of 2005 and precipitate fresh elections under the provisions of the TAL. Under its Article 61 (g), the failure of the Iraqi Assembly to write a draft constitution (without having granted itself an extension) would trigger the dissolution of the Assembly, fresh elections, and the recommencement of constitutional drafting (O’Leary et al., 2005, p. 340). They then hoped to return stronger to a new set of negotiations. In short, they did their best to become procedural obstructionists – and so devalued the likelihood that other Iraqi politicians would treat their concerns seriously. The Sunni Arab negotiators’ second-best hope, they thought, was to campaign for a ‘No’ vote, which most of them tried – apart from the Iraqi Islamic Party. Though they mobilized their voters, they failed to achieve the requisite blocking super-majority of two-thirds in three governorates.

Many Sunni Arab leaders were strongly inclined, and still are, to see Shia Arabs and Kurds as ‘special interest groups’, and as religious and

racial inferiors respectively. Many Sunni Arabs also acted like a deposed *Staatsvolk*. They saw their identity as coterminous with the so-called nation-state of Iraq, built around them between 1920 and 1968. Little overt repentance for Baathism was publicly evident among them. The neo-Baathists wanted some form of political restoration of Sunni dominance; jihadists and al-Qaeda's affiliates wanted some type of (Sunni) caliphate. They sought, in short, to destroy the emerging new regime. In 2005, whatever the deficiencies in American policy and in the constitution-making process (Morrow, 2006), there simply was no workable political appeasement or incorporation strategy for other groupings in Iraq short of outright surrender to the traditionally dominant ethnoreligious community. Combining successful constitution making and a comprehensive and inclusive peace process, though highly desirable, was not then possible. It took the subsequent military and political defeat of Sunni Arabs to make them more willing to consider negotiating within the ambit of the Constitution. Sunni Arab terrorists, in their deliberate targeting of Shiite civilians in the hope of provoking a civil war, got far more than they bargained for. They provoked a huge backlash among Shiite Arabs, both within the federal government and the Mahdi militia. Only the American 'surge' prevented Sunni Arabs from being utterly expelled from Baghdad. Sunni Arabs in Anbar and the West of Iraq fell to fighting among themselves and eventually made piecemeal pacts with the American military. The not so ex-Baathists were, in effect, put on the Pentagon's payroll. It therefore took two defeats – in formal war and in insurgency – to render significant numbers of Sunni Arabs more constitutionally and democratically reasonable. How reasonable remains to be seen.

A successful peace process, defined as the end of most of the Sunni Arab insurgencies and the withdrawal of the US-led multinational forces from Iraq, does require some significant Sunni Arab compliance with the new constitutional dispensation. That compliance cannot be wished into existence. Significant numbers of Sunni Arabs have come to try to work the new order, but only when significant numbers fully accept federalism, at least for Kurdistan, and negotiate within the Constitution, will Iraq's civil wars move to a definitive end. American and British policymakers and commentators continue to insist that the Constitution should be dramatically modified to appease Sunni Arab interests. But no strategy for appeasing Sunni Arabs is worth considering if it leads to an equal and opposite negative reaction among Shia Arabs or in Kurdistan. And, as I will indicate, the constitutional design is sufficiently encompassing to address reasonable Sunni Arab interests.

The Kurdistan Region and most of the South of Iraq can flourish and function respectively with or without widespread Sunni Arab compliance with the new Constitution, and with or without the presence of the coalition's multinational troops. That was so before the Constitution was made. The principal negotiators ratified that reality under the new provisions. The leaders of the Shiite Arabs and the Kurds have the will, the formal lawful capability, and now military and policing capability to insulate their communities from what they regard as Sunni Arab aggression and regression.

Kurdistan is institutionalized, its civil war is long healed, and relations between its major parties, the KDP and PUK, are much improved as their joint negotiating team proved in Baghdad. Kurdistan's public favours independence but its leaders are prudent: integrating Kirkuk and other 'disputed territories' into Kurdistan is part of their price for staying in Iraq. The Shia Arabs' institutions are slowly standing up in the South. Between them, the Kurds, Shiite Arabs, and Americans were mostly able to confine major conflict by the end of 2007 to Baghdad and the two Sunni Arab majority governorates of Salahaddin and Nineva. The programme of the Constitution, which has recognized a big and powerful Kurdistan and which allows the emergence of a big and powerful South or two Souths, or simply powerful governorates, has pointed towards the regionalization of security. The regionalization of security has become easier because the Sunni Arab insurgents' actions have precipitated mass flight, and therefore much greater territorial homogenization of sectarian communities – a deeply regrettable shift. But this regionalization and provincialization logic has been partly thwarted by American military policy since 2006–7. Convinced of the merits of re-centralizing Iraq, General Petraeus and his colleagues have helped re-build a stronger army run from Baghdad. They have also done their best to re-incorporate the Baathists into the federal government. The American military departure from Iraq, now scheduled for 2011, will therefore leave matters finely poised between two fateful logics. In the benign scenario, Sunni Arabs will be encouraged to police themselves in the provinces where they constitute majorities, and thereby consolidate the new federation (O'Leary, 2009a, 2009b). In the malign scenario, Shiite and Sunni Arabs will compete for control over centralized military institutions – the previous bane of Iraq's development (Salih, 1996) – perhaps jointly agreeing to scapegoat the Kurds and prevent them from exercising their full constitutional rights, especially as regards Kirkuk and the disputed territories.

The argument suggested here is that the Bush administration was lucky in the making of the 2005 Constitution, but wholly failed to

recognize that fact. To date, the same perspective has remained true of leading figures in the Obama administration, many of whom operate on the assumption that what was made under Bush's watch cannot have any merits. The Bush administration did not want a radically decentralized Iraq, and the explanation is geopolitical. It was determined to appease Turkey's fears of an independent Kurdistan even though Turkey's parliament, fortunately, voted in 2003 not to join the American intervention in Iraq, perhaps the single-most important piece of luck (at least for the Kurds and other Iraqis) and sound judgement (by the Turks) in recent Middle East international politics. Most importantly, since 1979–80 Washington, when it has not followed a policy of 'dual containment' of Iraq and Iran, has a record across all administrations of favouring a strong Iraq to counterbalance Islamist Iran. There is another geopolitical factor. Three predominantly Sunni Arab populated states, and one future state, are on Iraq's western flank – Jordan, Saudi Arabia, and Syria, to be joined in some form by Palestine (Syria is not, however, a Sunni Arab regime – indeed we may say it confirms to the universal law of Baathism in resting on a dominant sectarian minority (Haklai, 2000)). The Gulf mini-states are also ruled by Sunni Arabs. Since 1979 these considerations have generally led US policymakers to favour the appeasement of Sunni Arab interests in Iraq. Though a Sunni Arab dominated, centralized, and oil-rich Iraq started two wars with its neighbours, paid the families of Palestinian suicide bombers, and committed genocide against Kurds and Shia Arabs, such facts have not furrowed the brows of American policymakers in the State and Defense departments who still wish to restore a centralized Iraq. But at least their goal of a fully recentralized Iraq became temporarily unattainable because of the unintended consequences of 'democracy promotion'.

3.3 Luck and positive unintended outcomes among tragedies

As Donald Rumsfeld infamously put it, 'stuff happens' when people are freed. After the spring liberation of 2003, Shiite Arabs mobilized around Grand Ayatollah Ali al-Sistani, a Persian without ambitions to hold political office and an orthodox quietist, unlike the theocratic exponents of the 'guardianship of the jurists' in Iran (O'Leary, 2009d). Sistani insisted that 'the guests' call democratic elections to an Iraqi constitutional convention. Only Iraqis could write and endorse Iraq's Constitution, he rightly insisted. To reject his demands would have placed the occupation in opposition to the newly liberated majority

of Iraq's Arabs, as well as the aggrieved Sunni Arabs. Sistani's astute, peaceful, and constructive intransigence, and the Bush administration's desire formally to close its occupation before the US presidential election campaign in the fall of 2004, led to two key events. The first was the negotiation of the TAL of 8 March 2004, a *de facto* though not *de jure* interim constitution; the second was the election of an Iraq-wide constitutional convention in January 2005. These events opened the door to the strategic alliance between Kurdistan's parties and Shiite Arabs, which unlocked and kicked down the lingering remains of the Sunni Arab dominated state that had subordinated them since Iraq's consolidation under British tutelage.

During the negotiation of the TAL there was, on the surface, a deep clash of visions between all Sunni (and some Shia) Arabs on the Iraqi Governing Council and Kurdistan's leaders. The majority Arab vision proposed an integrated federation ('a little US') that would be mononational, centralized (in its security and fiscal resources), and majoritarian. Kurdistan, by contrast, wanted a pluralist federation ('a big Belgium'), radically decentralized and consensual in the federal government. The TAL, however, was negotiated to a conclusion (O'Leary, 2005c). Kurdistan achieved some of its principal objectives: Iraq was recognized as a state of many nationalities and as officially bilingual (TAL, Articles 7 and 9). Kurdistan was recognized, granted the right to amend some federal legislation, and given control of its internal security and the right to tax (TAL, Articles 53–4). Kurdistan ensured that the three-person federal presidency council and the initial nomination of the Prime Minister would require a qualified majority of two thirds in the Iraqi National Assembly, thereby mandating a coalition government. But the centralists, supported by Ambassador Bremer, had victories to report: fiscal policy and natural resources were federal prerogatives, and the future Prime Minister's powers over the cabinet and the army appeared ominous (the latter, with their potential for executive predominance, remain the major threat to the practical functioning of federal power sharing in Iraq). The status of Kirkuk and that of the other disputed territories were not resolved, though processes were promised to redress injustices and to enable changes in internal boundaries that had been manipulated by Saddam (TAL, Article 58).

Kurdistan's and Shiite Arab leaders on the Iraqi Governing Council, with the approval of Sistani, resolved on a formula for the management of Islam which recognized Islam's official status, the full religious freedom of non-Muslims, and which seemed to protect the 'principles of democracy' and a new charter of rights drawn from the Sharia (TAL,

Article 7; see O'Leary, 2005c, p. 50). The formula pointed towards a *modus vivendi*. Some Shia Arabs, inspired by Kurdistan's comparative success from the late 1990s, signalled that they wanted to aggregate the provinces in the South into a larger region or regions. If and when they consolidated behind this position, Kurdistan could expect firm support for a radically decentralized federation. That is what transpired in the negotiations of 2005.

Moreover, the American promotion of the re-centralization of Iraq's security in 2004 proved merely a paper victory (TAL, Article 27). Kurdistan's lawful army, the Peshmerga, and the Shiite Badr Brigades were not dissolved – the latter only nominally. The reconstructed Iraqi army by late 2005 had not been able to build more than one integrated regiment, or one Level 1 'fully capable' unit (Fallows, 2006). The failure of new central institutions to provide security for civilians reinforced Kurdish and Shiite Arab politicians' impetus to favour autonomous security – self-reliance in its most foundational form. The tactics of the Sunni jihadists had the same effect. Openly treating Shia Arabs both as religious heretics and national traitors, and bombing their mosques, provided few reasons for the victims' relatives to regard themselves as Iraqi first. The jihadists and the Americans therefore completed the work of Saddam. They made the Kurds and significant numbers of Shiite Arabs into military and political allies.

These consequences were not apparent to everybody in 2004 because of a public row over Article 61 (c) of the TAL, which we cited earlier for its ambiguous phrasing on voters. The clause expressed Ambassador Bremer's compromise between the position of Kurdistan, which sought the right of separate ratification of the permanent Constitution, and that of Shia Arabs, in particular, who strongly preferred simple majority endorsement (Arato, 2009, is wrong, though in agreement with many on this matter; Kurdistan was not the author of the proposal, though it accepted the proposal). Article 61 (c) gave Kurdistan 'pivotality' in the negotiation of the permanent Constitution because its capacity to mobilize a sufficient 'No' vote in three governorates was not in doubt – unlike the capacity of Sunni Arabs, who only had overwhelming supermajorities in Anbar and Salahaddin. Shia Arab politicians eventually agreed to abide by Article 61 (c), despite equivocation and despite interim Prime Minister Ayad Allawi's reluctance to legislate – and thereby formally validate – the TAL. This, in turn, meant that only a coalition of Kurdistan's leaders and Shia Arab leaders could constitute the minimum winning coalition necessary for popular endorsement of the draft permanent Constitution (Ekland et al., 2005).

The second process that foreshadowed the bargain made in the summer of 2005 was the elections held to create what would function as a transitional legislature and a constitutional assembly in January 2005. As Kurdistan recommended, and the UN Electoral Assistance Unit commended, list proportional representation was used – both on sound administrative grounds and because of sensible political arguments about how to constitute a constitutional assembly (O’Leary, 2005b, pp. 304–5; see also Elster, 1995, p. 395). The results were decisive. Most Shiite Arabs mobilized behind the United Iraqi Alliance, endorsed by Ayatollah Sistani, which won over 48 per cent of the vote. Sunni Arabs mostly boycotted the elections. The Kurdistan Alliance won almost 27 per cent of the vote. Ayad Allawi’s secular list trailed in third place. The leading lists formed a coalition government, which others joined. They were therefore free to shape the permanent Constitution.

It was clear what Kurdistan would seek, namely, recognition, full powers of domestic statehood, and protections for Kurdistan within the limited domains of the federal government. These *desiderata* were publicly set out in February 2004 in ‘Kurdistan’s Constitutional Proposal’, and in an enclosed document, ‘Principles of Federalism’, sent to Bremer (O’Leary et al., 2005, pp. 309–14; ‘Principles of Federalism’ is in the possession of Dr Salih, Ambassador Galbraith, and in my files). Kurdistan’s public would have preferred independence, but prudential considerations restrained this ambition, in particular the opposition of regional neighbours with the capacity to blockade Kurdistan’s landlocked economy; the US’s opposition; the opposition of their Iraqi allies who opposed Saddam; internal divisions within Kurdistan; and the exclusion of Kirkuk and other disputed territories from the jurisdiction of the KRG. The full domestic autonomy powers were to be accomplished through the primacy of Kurdistan law: its right of amendment, including nullification, of federal law (except where the matter was in the exclusive competence of the federal government), and the supremacy of Kurdistan’s courts where there was a clash with federal jurisdiction in areas of shared competences. These powers were to be consolidated by control of internal security and by confining the federal forces of Iraq to external defence (except where expressly permitted to do otherwise by Kurdistan’s National Assembly). Kurdistan was to be fiscally autonomous and sought exclusive ownership of its unexploited natural resources and a per capita share of resources from revenues of already exploited natural resources. Its borders were to be settled, and Kurdistan unified, through a referendum to settle the status of Kirkuk and other disputed territories after a fair process to unwind Saddam’s coercive

Arabization programmes. Kurdish was demanded as an official federal language, and proportional and power-sharing principles sought in the organization of the federal government. Finally, Kurdistan strove to prevent or limit the Islamization of the federal government, and if that was impossible, of its own regional government. These objectives were substantively met in the 2005 negotiations. The sole important internal constitutional goal that Kurdistan failed to achieve was permanent constraints on the power of the prime minister – though it obtained (for a transitional period) a three-person presidency.

The federal government has very limited exclusive powers, especially in territories where there are regions. Natural resources are no longer an exclusive federal competence and, indeed, the natural resources clauses establish the supremacy of regions (COI, Articles 111–12; for commentaries, see O'Leary, 2007; Crawford, 2008). There is no exclusive power of taxation for the federal government (Article 110; see Deeks and Burton, 2007, pp. 70, 72). Where powers are shared, regional laws prevail in clashes with the federal government (Article 115). Outside the federal government's exclusive competences, the regions have the general power of nullification (Article 121 (2)). Amendments to the Constitution that might weaken regions' competences are blocked unless the relevant region's parliament and people consent to them (Article 126 (4)). In foreign affairs, regions 'shall' have offices within embassies and diplomatic missions to pursue the matters within the powers of their governments (Article 121 (4)). Exclusive federal military authority is confined to the external borders and defence of Iraq, because internal security (policing and regional guards) is a defined regional competence (Article 121 (5)). Because Kurdistan's laws since 1992 are recognized, the Peshmerga are the lawful (internal) army of Kurdistan. Lastly, the Constitution promised a resolution of Kirkuk's status by referendum by December 2007, and similar procedures for other disputed territories which have Kurdish majorities (Article 140 (1) and (2)), and mandated the federal executive to enforce and implement Article 58 of the TAL, which redresses Saddam's Arabization programmes. Kurdistan, in short, achieved most of its core negotiating objectives. That is why it will resist any amendments that might weaken its powers.

Though the TAL was the base line from which negotiations began, there was a major political shift of textual style in the new Constitution. The permanent Constitution does not treat Kurdistan as an exception. It has the status and powers to which other parts of Iraq are entitled – if they wish. Kurdistan's former exceptionality is now the approved norm. Any governorate may aggregate with any other number, the exceptions

being that Baghdad may not join with other governorates, while Kirkuk may become part of Kurdistan through independent procedures. Future regions have a general right to opt for the powers of Kurdistan or to have as many shared powers with the federal government as they want (Article 120 (3)).

How did this major turnaround occur? Because of the TAL Clause 61 (c) Kurdistan had pivotality. Kurdistan's voters therefore had a veto over the Constitution's ratification. The Shiite parties that comprised the United Iraqi Alliance, especially SCIRI, also mattered. Under the leadership of Sayyid Abd el-Aziz al-Hakim they embraced federalism and the logic of a big South, an idea he publicly aired in the holy city of Najaf in the last days of the negotiations. To understand that shift requires a brief appraisal of the five forms of territorial government canvassed for Iraq after 2003.

An integrated federation built around the 18 governorates designed by the Baathists was the starting preference of the Coalition Provisional Authority and Arab liberals. It was a non-starter for Kurdistan's political elites and public because it failed to recognize Kurdistan's distinctiveness or integrity and, in fact, proposed a partitioning of Kurdistan in Iraq. The second model was intended to be transitional, that of the TAL, the compromise between an integrated federation and Kurdistan's preferences. In Arab Mesopotamia it envisaged the governorates as the building blocks of a centralized federation, that is, as enlarged local governments. The Kurdistan Regional Government, by contrast, would be a 'federacy' (O'Leary, 2005c). The TAL settlement left unresolved the boundaries of Kurdistan so it was certain to be transitional because the existing boundary, created by Saddam's withdrawal, cuts across existing governorates. A third proposal, by contrast, foresaw Iraq disaggregated into approximations of the three Ottoman vilayets of Mosul, Baghdad, and Basra from which Churchill had constructed it (Catherwood, 2004). This model would have enabled symmetry, had elements of historical legitimacy, and would have ensured each of the three largest communities a clear demographic and electoral majority in a home region. But Kurdistan is not exactly the old Mosul, and the old Basra would not neatly map onto Shiastan. Would Baghdad be part of 'Sunnistan'? If so, that region would have a very large Shia minority. Would it be part of 'Shiastan'? If so, why have an Iraq? If Baghdad is made a region of its own then logically there cannot be a three regions model. The three regions model was not in fact openly canvassed by major political leaders from any of the three major communities in the 2005 negotiations. The 'five regions' model, by contrast, has been supported by academics

(Anderson and Stansfield, 2005), including me (O'Leary, 2005c), but far more importantly by Mowaffak al-Rubaie, Iraq's national security adviser (O'Leary, 2009b, pp. 120–3). This model would satisfy Kurdistan. It would solve the problem of Baghdad by making it a region. By arguing for two Souths, rather than one, it envisages making Iraq conform to an empirical finding on the stability of federations: dividing the largest community is what matters for stability, not dividing the smaller communities (Hale, 2004, 2005). A five regions model would create roughly equally sized entities of roughly equal populations – three with Shiite Arab majorities, one with a Kurdish majority, and one with a Sunni Arab majority (the ratio mirrors Iraq's demography). But this model was not widely embraced by Shia Arabs, who, for now, do not want to divide the South if that creates one resource-rich and another resource-poor region, though their political elite was willing to see Baghdad as a separate region. Indeed, between 2005 and 2009 the impetus for regionalization in part or all of the South stalled – though that did not mean that Shiite Arabs wanted the governorates where they constitute majorities to be weak.

That brings us to the model implicit in the Constitution, the '1 Plus N' formula. This model is based on an adaptation of the Spanish Constitution. The credit for this part of the drafting process should, in my view, go to Professor Nicholas Haysom of South Africa, the UN's constitutional adviser during the negotiations of 2005. The Constitution recognizes Kurdistan and mandates, through Article 140, its expansion after a referendum in Kirkuk and the allocation of many of the disputed territories. That is the one certain region. The 'plus N' refers to open possibilities. The Constitution, and subsequent law, permits the governorates outside Kurdistan to create regions out of themselves or to aggregate with other provinces to make regions – except Baghdad. The Constitution therefore leaves Arabs to determine what degree of decentralization should occur in Arab Iraq while protecting Kurdistan's full regional autonomy. It leaves, in short, the decisions between degrees of symmetrical and asymmetrical federation to the provinces of Arab Iraq (O'Leary, 2009c).

3.4 God, oil, and boundaries

Let me deal more briefly with the other controversial elements in the Constitution – Islam and the status of marital laws, oil and gas, and the status of Kirkuk and the disputed territories.

The permanent Constitution does much the same as the TAL, treating Islam as a foundation source rather than the source of legislation,

and stipulates that no law may contradict the 'established provisions' of Islam, which, in principle, prevents federal sectarian legislation, given that Muslim jurists have to agree what these are. For Kurdistan's secular negotiators these provisions are of little importance: Iraq's parliament and courts will decide what role Islamic jurisprudence will play (Deeks and Burton, 2007, pp. 5–18). The Shia Marji'iyya wanted constitutional protection for their shrines, which was granted. They wanted their own status recognized, in particular the right to serve as judges on the federal constitutional court, a demand mediated by Ambassador Khalilzad, the Sunni Muslim US ambassador (Galbraith, 2006, pp. 199–200). He considered it reasonable. In response, Kurdistan's parties stripped the constitutional court of its right to review regional laws, implementing what I call the 'federalization of God'. In Iraq's Constitution religion, human rights, and the rights of persons are not among the exclusive powers of the federal government. In Kurdistan's view, they are therefore subject to the supremacy of regional law by virtue of Articles 115 and 121 (2). Kurdistan will be able to maintain its secular laws, while the South and the Centre, if they wish, may apply versions of Islamic law. Western liberals prefer secular liberalism everywhere, but this bargain reflects local political choices, which enhances the prospects that constitutionalism might take root (Feldman, 2005). Article 39 of Iraq's Constitution grants a free choice in personal law for marriage – protecting non-Muslims, while Article 43 (a) forbids tribal customs that are contrary to human rights – so regions that apply these federal provisions will respect Western secular standards. The final rules on how the supreme court will work were postponed, Article 92 (2) of the Constitution simply stating that the 'Supreme Federal Court shall be made up of a number of judges, experts in Islamic jurisprudence, and legal scholars, whose number, the method of their selection, and the work of the court shall be determined by a law enacted by a two-thirds majority of the Council of Representatives.' This article plainly prevents Shia Arabs from dictating the selection of judges and the powers of the court. Any Federal Supreme Court that emerges will be weak, will have no pre-enactment role, and will be regionally representative and required to operate with a high threshold of consensus.

What about oil and gas? The Western press conveys the impression that the Constitution licenses the Shia Arabs and the Kurds to deprive the Sunni Arabs of any access to oil and natural gas: the myth is that the Constitution leaves Sunni Arabs to diet on sand and the Koran. However, the Constitution in fact guarantees that revenues from currently exploited fields – supplying the overwhelming bulk of Iraq's

current exports – will be allocated across Iraq on a per capita basis and the draft federal oil law respects this obligation. The Constitution does not prevent regions, which now control revenues from future fields, from agreeing to share revenues across the federation on a per capita basis. Such provisions are part of the draft federal oil law proposed by Kurdistan – but regrettably blocked by Baghdad. It is not, in any case, true that Sunni Arab majority areas have no future prospects. Allah has blessed Anbar, as well as Basra, Kirkuk, and Erbil (Glanz, 2007). The ‘curse of oil’ is one of the major impediments to the prospects of Iraq’s democratization. The democratic calibre and development of oil-rich states that were not democracies before they obtained their wealth have generally been dreadful. Oil-wealth weakens the chain of accountability between governments and taxpayers, encourages corruption and clientelism, and heightens dependency. Democrats should applaud the Constitution’s decentralization provisions over control and ownership of natural resources, and the state of the art transparency provisions in Kurdistan’s subsequent oil law and the draft federal oil law, rather than assume a conspiracy against Sunni Arabs. The oil clauses have not worked as intended – but that has been because of the centralizing and anti-constitutional conduct of the Baghdad oil minister, Shahrastani, and his supporter Prime Minister al-Maliki. It is obvious, however, that if the federalization of natural resources is not sorted out with sufficient amity then Iraq will not function as a pluralist federation.

What about Kirkuk and the disputed territories? The Constitution mandated a referendum on Kirkuk’s territorial status by December of 2007 (this deadline has since expired). The compromise over Kirkuk was meritorious. Because Kirkuk’s oil field is currently exploited its revenues must, constitutionally, be allocated across Iraq. The oil benefits of Kirkuk, in short, are not for Kurdistan alone. Kurdistan and SCIRI’s negotiators decoupled Kirkuk’s oil from the territorial status of the governorate and the city. The two elections in 2005 and the constitutional referendum showed a clear majority in the governorate favour joining Kurdistan, and that is before the key adjustments in boundaries and the electoral register, in the interests of justice, are fully implemented. Under ‘normalization’, Saddam’s gerrymandering is being reversed, and the southern settlers brought by Saddam to dilute its Kurdish majority are being paid generously by local standards to return to their place of origin if they wish, and though their Iraqi citizenship will not be affected they will have no right to vote in the referendum, whereas those expelled by the Baathists will have that right. Those concerned for minorities in the Kirkuk governorate should therefore advocate entrenched urban power-sharing arrangements

after its unification with the Kurdistan Region so as to protect Chaldean Christians, Turkomen, and Arabs. But UN, European, and American policymakers should not encourage Turkish governments into thinking they have rights at stake in Kirkuk, or unintentionally aid the Sadrists who align with Baathist and jihadist Sunni Arabs on this question.

3.5 Conclusion: Leaving with responsibilities to clean-up

As the US withdraws its troops from Arab Iraq's cities – they have never been significantly deployed in the existing Kurdistan Region since 2003 – we can see three principal fault lines that may prevent Iraq's Constitution from working, centred on security, natural resources, and Kurdistan's southern boundaries. The emerging security controversy is over whether the Baghdad military will become dominant throughout Iraq or whether, instead, the regionalization or provincialization of internal security will be affirmed. It is also, less subtly, over whether Sunni Arabs will fight for security at the centre or settle for provincial control. The natural resources controversy is over whether regions and provinces should be pre-eminent, or whether centralists will be able to overthrow Articles 111–12 of the Constitution. The boundaries question is centrally over whether Arab Iraq will follow the Constitution's Article 140 and permit a democratic and lawful expansion of the size of the Kurdistan Region. It is, no less importantly, about the need for power sharing in Kirkuk province. All three questions affect Kurdistan's relations with Arab Iraq, and if they are not resolved a return to conflict between Kurdistan and Arab Iraq cannot be indefinitely postponed.

This analysis points to the importance of the US organizing its departure responsibly (O'Leary, 2009a). Its key policy recommendation is that in its departure the US should not encourage any further re-centralization of Iraq; rather, it should respect Iraq's Constitution and use whatever good offices it still commands to support fair revenue sharing and fair boundary delimitations. These are not beyond the wit of diplomats, but so far they do not seem high on the radar screens of the State Department or the Pentagon. The deepest tragedy that may yet unfold is that the US military re-think in 2006–7, switching from a battlefield to a counter-insurgency mentality, may unintentionally lead to the renewal of conflict over a rebuilt and strongly centralized military, now re-penetrated by Baathists. This negative vista will be magnified if the Obama administration's determination to leave occurs with neither boundary nor natural resource questions properly

resolved – issues over which the US is capable of mediating sustainable resolutions.

The Constitution should be defended both by Iraqis and by the Western democracies, and not just because they should support elected governments against unelected mass killers. The Constitution offers the prospect of resolving Iraq's major national question, by settling the conflict between Kurds and Arabs through a pluralist federation that combines a highly autonomous and unified Kurdistan with voluntary consociational arrangements in the federal government. These measures facilitate coalition governments, proportionality, veto rights, and autonomy (McGarry and O'Leary, 2007), though it would be better if federal legislation were to ensure a more collegial form of executive decision-making. The Constitution also offers the best prospect of resolving the sectarian disputes among Arabs through regionalization or provincialization, and, provided the will is there, intra-Arab power sharing at the federal level. The importance of holding power in Baghdad needs to be reduced through federalization in order to make any conflicts there of less consequence. The best way to do that remains that mapped out in the Constitution – preventing the federal government from owning or controlling oil and preventing it from being dominant over internal security. That obviously requires sufficient numbers of Sunni and Shia Arabs willing to make the Constitution work, and it requires each to know that they cannot achieve a comprehensive military or political victory.

No federal multinational constitution works unless it bears an approximate resemblance to the state's internal configuration of power and interests. This Constitution was endorsed by four out of five of Iraq's voters, even if not all of them understood every provision. Kurds have the constitutional warrant to proceed. They are developing the security capacity to protect the settlement they made. The same is true of Shiite Arabs. This argument does not commend the exclusion of Sunni Arabs' interests or rights, since that would merely recommend reversing the behaviour of the Baathists, and would be deeply unjust. Under the 2005 Constitution Sunni Arabs have the right to domestic autonomy in any province, or in any region they organize, including control over their own security; they have the right to a per capita share of the oil revenues from the existing fields which supply most of Iraq's current revenues; and they have solid prospects of further oil and gas development in their own possible regions or provinces, which they can develop as they see fit. The Constitution recognizes Iraq's membership of the Arab League and imposes no rival version of Islam on them. They

have a proportional stake in Iraq's federal institutions. They have the constitutional right, along with Shiite Arabs, to make Iraq outside of Kurdistan more centralized in domains outside of oil resources. Sunni Arabs are therefore not maltreated by the Constitution of 2005. Even the Constitution's de-Baathification provisions are politically targeted, not sectarian, and the leaders of the Shiite parties and Kurdistan have shown that they are prepared to reconsider them, especially in legislation, but not while Baathists are trying to kill them.

No constitution can survive easily if its neighbours reject it. Iran is satisfied by the removal of Saddam and by Iraq's constitutional reconstruction. What its regime fears is being overthrown by the US. That anxiety will likely diminish under the Obama administration – and the regime of the Ayatollahs will have more to fear from its own public than from Washington. Turkey, undergoing a major constitutional debate between secularists and soft Islamists, will not invade Iraq over Kirkuk provided it is given clear 'red lines' by the US and the EU. Ankara has come, albeit slowly, to recognize that the Kurdistan Region is a force for democratic stability in its neighbourhood – *détente* over the PKK question and Kirkuk is possible. The current signs are good. The neighbouring Sunni Arab states cannot sustain any renewal of the Arab Iraqi civil war for long. They have interests in reducing refugee flows, in general stability, and in preventing the incubation of their own jihadists. These regimes will respect the new order when their co-religionists in Iraq settle. When that will finally be I cannot say. In the meantime, the existing Constitution provides a road map to workable institutions for other Iraqis, and does not prevent Sunni Arabs from coming in from the heat.

It may not, of course, work. It is plausible to envisage catastrophe, but it is more constructive to focus on what is feasible among possibilities. The Pope, among others, was wrong in his Easter message of 2007 when he argued that 'Nothing positive comes from Iraq, torn apart from communal slaughter as the civil population flees' (Douglas, 2007). There has been terrible slaughter in Arab Iraq, and there have been extensive mass flights and cruel sectarian expulsions. But the removal of the genocidal Baathists, the unification and constitutional recognition of the Kurdistan Region, and the new Constitution of Iraq are positive outcomes of the US- and UK-led liberation of Iraq. The Kurdistan Region and the new Constitution deserve to succeed and have some prospects of success. Understandable dislike of the Bush administration should not blind Western academics or Iraqi democrats from noticing the pearls that can result from the combination of grit and sand.

Note

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4

Non-Territorial Cultural Autonomy in Contemporary Europe: Reflections on the Revival of an Idea

David J. Smith

Non-territorial cultural autonomy (NTCA) for national minorities is a concept that has elicited growing academic and political interest across Europe during the post-Cold War era. This is especially so in the post-communist East, where over the past decade and a half variants of NTCA have been adopted or actively considered in a range of states, including Estonia, Hungary, the Russian Federation, Croatia, Ukraine, and Romania. During this time, the NTCA concept has also been discussed as a possible vehicle for the cultural self-determination of 'stateless nations' such as the Roma (Klímová-Alexander, 2008) and has found its way onto the agenda of those international organizations – notably the OSCE and the Council of Europe – charged with the task of regulating the open and latent nationalist conflicts that continue to manifest themselves in the 'New' Europe (Kymlicka, 2008; Smith, 2008). Seeking to work within the framework of existing state boundaries, these bodies have promoted a new multicultural vision of nationhood that fosters integration without allowing assimilation, or, put another way, gives cultural recognition to national minorities without undermining the civic cohesion of multiethnic countries. A similar philosophy has been adopted by the European Union in its dealings with the new accession states.

Eastern Europe is still frequently understood as being inherently predisposed to intolerant ethnic nationalism and violent conflict (Chandler, 1999, p. 70). Yet while there have indeed been numerous instances of such conflict following the collapse of communism, recent developments have also brought into focus a rich indigenous tradition of multicultural thought and practice within the region. A good example is the NTCA concept, devised at the start of the twentieth century by the 'Austro-Marxists' Karl Renner and Otto Bauer, which

was designed to overcome nationalist animosities and move towards a united Europe that would transcend exclusivist notions of ethnic control over territory. This historical tradition, however, remains relatively under-researched, despite its obvious relevance to debates on state and nationhood in Europe.

Thanks not least to recent work by Ephraim Nimni (2000, 2005, 2008; see also Bottomore and Goode, 1978), the English-speaking world is now much better acquainted with the work of Renner and Bauer. Less well known is the interesting set of debates surrounding NTCA in the rather different setting of 1920s Europe. These debates were clearly inspired by the theories of Renner and Bauer, yet they also drew directly upon the practical work and experiences of a range of minority political activists, both within individual states and as part of the Congress of European Minorities, which met annually in Geneva from 1925 onwards. In what follows, I revisit the ideas of the Minorities Congress, showing how these built upon and adapted the original Renner and Bauer model, and highlighting their often startling relevance to contemporary debates on state and nationhood in Central and Eastern Europe. My basic contention is that while cultural autonomy cannot be viewed as a panacea for ethnic disputes in the region, it remains a crucial component in efforts to move beyond nationalist perspectives towards a more pluralistic conception of political space.

4.1 The origins of NTCA

Karl Renner and Otto Bauer first devised NTCA as a practical response to growing calls for self-determination on the part of Austria-Hungary's subject nationalities. In a clear departure from existing Marxist doctrine, the two men argued that national consciousness was not simply contingent upon capitalism but would persist and, indeed, deepen through the process of building socialism. National differences could, therefore, not simply be dismissed as irrelevant, but had to be accommodated within a broader, overarching socialist framework. In the immediate term, the Austrian Social Democrats were anxious to prevent the fragmentation of the workers' movement along ethnonational lines and to forestall any moves towards a disintegration of the existing territorial space of the Habsburg Empire into smaller, less economically viable units.

Renner and Bauer thus advocated the transformation of the Empire into a genuine democratic federation of peoples. Here they contended that, in the context of Central and Eastern Europe, such a federation could not be constructed on a territorial basis. So complex was the

region's ethnic mix that it would be impossible to achieve complete congruence between political and national boundaries. For this reason, they insisted on the need for a separate, *non-territorial* form of recognition for national groups. This would act as a complement to a territorially based division into economic regions and would cater specifically for the cultural needs of persons living as cultural minorities within particular territorial units.

According to Renner and Bauer's scheme, representatives of national groups would be allowed to set up public-legal corporations and elect their own cultural self-governments. Once established, these institutions would assume full control over schooling in the relevant language and other cultural issues of specific concern to the group in question. The jurisdiction of the aforementioned bodies would not be confined to particular territorial sub-regions, but would extend to all citizens living within the state who professed belonging to the relevant nationality, regardless of where they lived. Nationhood was thus to be understood in terms of the 'personality principle' – the notion that 'totalities of persons are divisible only according to personal, not territorial characteristics' (Renner, 1899/2005, p. 32). Here one sees a deliberate attempt to break the conceptual link between ethnicity and territory that sits at the heart of nationalism, famously defined by Ernest Gellner (1983, p. 1) as the 'political principle that holds that the political and the national unit should be congruent'.

Equally novel to Renner and Bauer's thinking was the contention that a person's ethnicity was not something conferred automatically by birth, but a matter of personal choice. The public-legal corporations that they envisaged were to be democratically constituted on the basis of citizens freely determining their ethnicity and voluntarily enrolling on a national register. While state and municipal authorities would continue to provide the bulk of funding for schooling in the relevant national language, those enrolled on the register would also be liable to pay additional cultural taxes to the national corporation in which they had opted to participate. The operation of autonomous national institutions would therefore rest upon 'the deliberate personal will of individual nationals residing within the state territory' (Aun, 1949, p. 241). In this respect the proposed bodies could be sharply differentiated from pre-existing corporate structures based on more organic, exclusivist, and hierarchical conceptions of group belonging. Judged by the standards of today's Europe, Renner and Bauer's scheme appears consistent with the terms of the Council of Europe's *Framework Convention on National Minorities*. This stipulates that minority rights cannot be given to

groups, but only to 'persons belonging to national minorities'. It also states that said persons may exercise these rights individually, as well as in community with others. Article 3 Paragraph 1 also 'guarantees to every person belonging to a national minority the freedom to choose to be treated or not to be treated as such' (Council of Europe, 1995, p. 3).

In Renner and Bauer's eyes, cultural autonomy was central to ending the conflicts within the Habsburg realm and thus moving towards 'a more progressive agenda of political action unhampered by nationalist division' (Schwarzmantel, 2005, p. 64). Of course, cultural autonomy in itself is not enough to ensure loyalty to a state order if it is accompanied by continued power disparities and differential treatment in other realms. In this respect, Renner and Bauer's system of territorial and non-territorial recognition for national cultures went hand in hand with proposals for a power-sharing government that would enable all national groups to participate meaningfully in political decision-making processes at the overall state level. Ultimately, they believed that the construction of a socialist order would ensure equal treatment for all residents, regardless of nationality. They also believed that by qualifying the model of the culturally homogeneous and indivisibly sovereign nation-state, it would be possible to extend federalist principles to the international level and work towards a future United States of Europe.

4.2 'Nationalism reframed': the inadequacies of the post-World War I Peace Settlement

Renner and Bauer's vision of democratic multinational federation attained widespread currency among national activists in the western borderlands of the neighbouring Tsarist Empire, where it resonated with similar ideas propounded by the Jewish politician and thinker Simon Dubnow (Dohrn, 2003; Laurits, 2008, p. 45). The scheme was never implemented in its original context, as the turmoil of war and revolution soon intervened and brought about the dismemberment of the multinational empires during 1914–23. However, the new Europe that emerged from World War I simply confirmed the contention that it was impossible to solve the 'nationalities question' solely on the basis of territorial adjustments, as the successor states to the old empires remained highly complex in terms of their ethnic mix and ethnicity a stubbornly salient feature of politics within the region.

In Soviet Russia, the policies of cultural pluralism introduced during the early 1920s can be seen as a grudging acceptance by the Bolsheviks (previously implacable ideological foes of Renner and Bauer) that nationality

did constitute an independent variable within social development. The Soviet model of ethnofederalism, however, enshrined a primordial and above all *territorial* understanding of nationality that was in sharp contrast to the scheme elaborated by the Austro-Marxists. Moreover, the Soviet Union could in no way be described as a genuinely democratic multinational federation, insofar as all republics operated within the context of highly centralized, single-party rule. The subsequent targeting of particular ethnic groups within this framework during the period of Stalinist terror, and an increasing tendency to portray Russians as the 'first among equals' of the Soviet nationalities, did much to strengthen 'subjective perceptions of empire' on the part of non-Russian borderland nationalities (Suny and Martin, 2001). In this regard, efforts to promote use of Russian as part of an integrative nation-building project were all too often perceived through the lens of 'Russification' (cultural assimilation) rather than 'Sovietization' (the creation of a transcendent civic identity alongside existing ethnic identities).

In Central Europe, meanwhile, the putative 'nation-states' that emerged after 1918 were in fact anything but. To be sure, these did provide for the national self-determination of several of the larger nationalities, and the overall proportion of the region's inhabitants living as 'national minorities' was now significantly reduced (Laurits, 2008, p. 41). Nevertheless, a significant proportion of the region's population continued to reside in states other than 'their own' following the Peace Settlement. Since these new ethnic minorities had in many cases become nationally mobilized prior to World War I, it could not be assumed that they would be willing to pursue the path of linguistic and cultural assimilation with the majority nationality that lay at the heart of the Western nation-state model. This was all the more so given that newly empowered titular national elites frequently cast minorities – certain of whom had previously been the ruling caste – as an unwelcome 'Other' who prevented the realization of a 'complete' nation-state. Thus, as Rogers Brubaker has observed, the events of 1918 did not 'solve' the nationalities question but simply recast it in a different form. The region was beset by tensions between the new states, their minorities, and 'external national homelands' – states which claimed the right and obligation to defend the interests of ethnic kin living as minorities in neighbouring states (Brubaker, 1996).

The latent conflicts arising from this situation led the victorious Western powers to devise a system of minority protection for Central and Eastern Europe. Those successor states created under the auspices of the postwar Peace Settlement were required to sign treaties containing

guarantees of minority rights. These were to be overseen by the League of Nations and enforced by means of a petitions system, whereby the representatives of particular minority groups or League member states could bring alleged violations to the attention of the League Council.

In the course of 1914–18, a number of bodies such as the Union for a Lasting Peace and the various Jewish agencies located in neutral countries had argued that NTCA should form the basis for a settlement of outstanding nationality issues following the War. A memorandum on the subject was also presented to the St Germain Peace Conference by the Hamburg Law Professor Rudolf Laun, who was to prove influential in shaping the thinking of the Minorities Congress during the 1920s (Spindler, 1922, p. 30). The peacemakers, however, were unwilling to countenance any suggestion of establishing autonomous minority bodies as an intermediary between state and individual, on the grounds that this might lead to the creation of ‘states within states’ that would, in turn, generate irredentist demands and destabilize the postwar territorial settlement (Steiner, 2005).

The postwar minority treaties thus enshrined an ‘atomist–centrist’ conception of nationhood that took the unitary and culturally homogeneous nation-state as its benchmark (Nimni, 2008, p. 12). The guarantees of minority protection contained in the treaties were designed first and foremost to counteract *dissimilation* on the grounds of ethnic origin: representatives of national minorities were to receive equal treatment within their new states of residence; they were to be guaranteed citizenship, the right to life, liberty, and free practice of religion, equality before the law, and the same access to public employment and professions as members of the majority nationality. Beyond this, representatives of minorities were granted certain additional rights relating to the preservation and practice of their own culture: most notable in this regard were access to state-funded native-language primary education and the right to establish and manage privately funded cultural and educational organizations. Leading figures within the League of Nations quickly made it plain that they saw these cultural freedoms as a temporary expedient pending the ‘merger’ (that is, cultural assimilation) of minority representatives into the dominant societal culture (Hiden and Smith, 2006, p. 388).

By the same token, the League of Nations’ procedures for upholding the minority treaties ensured that ‘the sovereignty of the [signatory] states was scrupulously respected and safeguarded’ (Crols, 2005, p. 188). Petitions from minority representatives were referred in the first instance to a specially established Minorities Section within the

League Secretariat. If this found the complaint to be justified, it referred it to a minority committee consisting of three members nominated by the Council of the League. This committee sought to resolve the issue through consultations with the state accused of having defaulted on its minority obligations. If this failed, the committee could refer the matter to a meeting of the full Council, where the accused state was invited to take a seat and given voting rights. Since Council decisions required a unanimous vote, it was impossible to impose any decision that was not wholly acceptable to the state concerned. In reality, though, only a small minority of the complaints that were made actually got as far as a meeting of the League Council. A total of 325 complaints were taken up by minority committees during the period of the League, but of these only 14 went forward to the Council. In most cases, complaints led to compromises being hammered out between the Minorities Section and the government concerned (Crols, 2005, p. 187).

Thus, although the relationship between state and minority had been internationalized by means of the League guarantees, minority representatives felt with some justification that they were being treated as objects rather than subjects of international law. In reality, the League of Nations' system of supervision offered little practical defence against 'nationalizing' practices on the part of the Central and East European successor states, most of which were only too happy to echo the League line about minority recognition being tantamount to creating a 'state within a state'.

4.3 The Minorities Congress and the quest for a 'New Europe'

It was in response to this state of affairs that the Congress of European Minorities was established in October 1925. Ethnic Germans from Estonia, Latvia, and Romania were instrumental in setting up this new body, which built on the work of the existing Association of German Minorities (*Verband der Deutschen Minderheiten*, founded 1923). Yet, at its inception, the Congress was not simply a German concern, but a genuinely transnational 'lobbying machine' which brought together 50 delegates representing 34 different national groups from 14 different European states at its inaugural meeting in Geneva. Meetings were then held annually until 1939, usually in Geneva ahead of sessions of the League of Nations Council, with a Permanent Secretariat coordinating activities in the interim (Bamberger-Stemmann, 2000; Hiden and Smith, 2006, p. 395).

In essence, the Congress sought to apply Renner and Bauer's 'personality principle' at the level of both the state and of European international organizations. With regard to internal state organization, it called first and foremost for a genuinely pan-European guarantee of minority rights based on the principle of NTCA. It also argued that in organizing themselves corporately within states, representatives of various nationality groups should be free to interact with their ethnic kin living in neighbouring countries, just as members of different religious communities habitually maintained contact with their co-religionists across Europe. These supranational ethnic communities should, moreover, be given representation at the League of Nations alongside state governments through the medium of a permanent committee on minority rights. Only in this way, it was argued, would minorities secure adequate protection against forced assimilation within their states of residence, while also attaining an international voice in matters relating to the protection of their rights (Hiden and Smith, 2006, p. 396).

In the thoroughly securitized and unstable postwar environment, state governments in Central and Eastern Europe and beyond viewed the Congress with suspicion, seeing it as little more than a Trojan horse for revisionist German nationalism. Such allegations were fully justified in the infinitely more unfavourable international context of the 1930s, when, exploiting financial support networks established by the German Foreign Office a decade earlier, the Nazi regime was able to exert significant influence over the *Verband* and, through this, the wider Congress. In its original 1920s incarnation, however, the Congress was a thoroughly liberal and democratically minded organization, which produced some truly innovative thinking on the state–nation relationship and on the concept of European unity.

In response to the inevitable claims that they were seeking to construct 'states within states', the initiators of the Congress retorted that irredentism was far more likely to arise in those states that denied cultural recognition to national minority groups. By way of illustration, they pointed to the experience of Estonia – a state not created under the auspices of the Peace Settlement – which, remarkably, implemented a law on non-territorial autonomy that drew heavily on the precepts laid down by Renner and Bauer. This unique 1925 legislation – promptly adopted by the country's German and Jewish minorities – was widely hailed as having contributed to a significant improvement in ethnic relations during the late 1920s (Ammende, 1931). Taking the Estonian model as their point of departure, Congress representatives emphasized that the autonomy being demanded was confined to the sphere

of culture and would be delegated to the minority by the state, which would retain powers of oversight. In order to underline the point still further, one of the first resolutions of the Congress stated that all individuals belonging to minority groups should have the right and, indeed, the obligation to learn the majority language of their state of residence, which should remain the sole official language of central government (European Nationalities Congress, 1925, pp. 34–5). Moreover, the founding statutes stipulated that nationality issues could only be discussed within the existing territorial framework created by the Peace Settlement: any discussion of border revision was expressly forbidden, as were attacks on the policies of individual states. Deliberations were to focus exclusively on general issues of minority protection.

In sum, the Congress argued that the primary task of minority representatives was to work positively within their states of residence in order to reduce mistrust between different nationalities and create a climate more conducive to cultural pluralism and equality of treatment. This philosophy is neatly encapsulated in the following quote from the German Latvian politician Paul Schiemann, who served as Vice-Chairman of the Congress from 1925 to 1932 and was hailed as the liberal ‘thinker of the inter-war Minorities Movement’ (Hiden, 2004). According to Schiemann, ‘politics entailed “work for the good of the place one inhabits. Any diversion to other ends is suicide”. ... Groups unable to identify with the policy of the state in which they lived “must forgo any sort of activity in an international sense”’ (in Hiden, 2004, p. 144).

Schiemann and his liberal fellow travellers within the Minorities Congress thus attached as much importance to the concept of *Staatsgemeinschaft* (state community) as they did to that of *Volksgemeinschaft* (ethnic community). They were not questioning the concept of the nation-state as such, merely trying to alter its hitherto ethnically exclusivist, culturally homogenizing essence and to embed it within a new international political framework. Minority rights, while intrinsically important to the national groups in question, were also viewed as a means to the end of building a durable European peace and, ultimately, a ‘United States of Europe’ within which organized national groups would enjoy subjectivity alongside – *not* in place of – nation-states. In this respect, their thinking bears many similarities not only to the ideas of Renner and Bauer but also to the contemporary ‘neo-medievalist’ vision of complex and overlapping patterns of authority at many levels, which some authors see as emerging in response to processes of globalization and European integration (Camilleri and Falk, 1992; Deets, 2006).

In the context of the late 1920s, the NTCA vision was way ahead of its time. The liberal leaders of the minorities movement faced an uphill struggle against reactionary nationalist elements within their own communities, as well as scepticism even from among those circles that did subscribe to the concept of minority rights. While the Congress of Minorities was seeking to influence the attitudes and behaviour of individual governments and national groups, the focus of its attentions was the League of Nations, which remained the principal embodiment of hopes for a new international order. Here, however, its arguments cut little ice.

In 1931, Ewald Ammende, Secretary of the Congress, hailed the successful application of non-territorial autonomy in Estonia, and called upon the League to examine its broader applicability to other European states (Ammende, 1931). The Minorities Secretariat of the League responded to the appeal, but the report that it published in 1931 was deeply sceptical in its conclusions. In a wide-ranging discussion, League official Ludvig Krabbe argued that the Estonian model reflected the particular conditions that existed within that country and, moreover, the specific needs of the German and Jewish minorities. These minorities were small and territorially dispersed, and thus unable to realize native language schooling through existing territorially based local government, according to the terms of the 1920 Estonian constitution. Moreover, they were relatively prosperous, highly educated and urbanized, and possessed the socio-political cohesion necessary to set up and sustain the elaborate NTCA scheme. Krabbe was at pains to point out that more compactly settled (and less socio-politically developed) groups residing in Estonia, such as the large Russian minority, had remained wedded to territorial autonomy under Ministry of Education auspices, despite frequent calls by key leaders to establish a cultural self-government under the terms of the 1925 law. Thus, not even all of the eligible groups within Estonia had actually adopted NTCA. Elsewhere, Krabbe alluded to concerns on the part of certain minority leaders that implementing NTCA might lead to their co-ethnics being branded a 'caste apart' and singled out for differential treatment. Thus, as regards the more general applicability of the law, Krabbe maintained the Congress leadership had 'failed to make a convincing case' (Krabbe, 1931).

Krabbe's report highlighted some undoubted practical obstacles to the implementation of NTCA. At its heart, however, remained the conviction that cultural autonomy, far from fostering greater understanding between groups, would lead inexorably to the emergence of 'states within states'. In this regard, Krabbe argued that the challenging

task of developing national tolerance and liberalism within states with ethnically mixed populations would become all the more difficult if a system of separatism in certain branches of the common life of the state became generalized.

A system such as NTCA obviously brings into focus the question of how, within a context of institutionalized cultural pluralism, to ensure communication across ethnic boundaries in the interests of promoting a common civic consciousness. Yet do the challenges of sustaining inter-cultural interaction give sufficient grounds for denying the validity of the autonomy concept *per se*? The liberal thinkers of the late 1920s and early 1930s certainly grappled with these issues. As regards Krabbe's argument, they could retort with some justification that for all the problems inherent in the NTCA scheme, the atomist-centrist model promoted by the League was not doing much better in terms of promoting greater liberalism and tolerance of cultural diversity within the new and reconfigured states of Central and Eastern Europe. Indeed, by the time Krabbe drafted his report, the limitations of this approach were becoming more and more apparent, as Europe lurched towards a generalized crisis on the back of the Great Depression (Hiden and Smith, 2006, p. 397).

4.4 Cultural autonomy today

The subsequent experience of World War II and the superpower division of the continent contrived to remove the concept of collective minority rights from the European agenda. The issue of ethnicity was subsumed under the general rubric of individual human rights and was widely deemed to be losing its relevance within the modernizing contexts of both Western and Eastern Europe. This view, however, gradually shifted from the late 1960s onwards, as ethnoregionalism began to reassert itself within Western societies. With the end of the Cold War and the demise of communism, the political 'dilemma of ethno-cultural diversity' (Roshwald, 2008) came squarely back into focus, prompting the quest for new frameworks on the part of the OSCE, the Council of Europe, and other interested organizations.

The revival of interest in NTCA within this setting has owed much to the experience of secessionist nationalist conflicts in the countries of the former Yugoslavia, as well as in former Soviet republics such as Azerbaijan, Moldova, and Georgia. From the point of view of international organizations and national governments alike, the NTCA model has been seen as one possible way of forestalling demands from national

minorities for the kind of territorial autonomy that previously existed within Yugoslavia and the USSR, and which – more concretely – has been introduced within a number of Western European states over the past half-century (Kymlicka, 2008). From the point of view of minority representatives, territorially based devolution may be seen as a logical extension of democratization. Central governments, however, often see it as harmful to the integrity of the state as a whole. The claim by OSCE High Commissioner for National Minorities, Max van der Stoep (1999, p. 172), that ‘insufficient attention has been given to the possibilities of cultural autonomy’ can thus be explained by a desire to sidestep politically destabilizing debates in the region.

This reasoning certainly became apparent during pre-EU accession debates on a new minority law in Romania, where the ethnic Hungarian party within the governing coalition advocated a model of non-territorial autonomy in an effort to defuse historically conditioned insecurities among the titular population over the possibility of Hungarian separatism in Transylvania. It was in this connection that the present author was invited to Bucharest in February 2005 to brief government ministers on Estonia’s model of NTCA. Similar concerns over the territorial integrity of the state lay behind Russia’s NTCA law adopted in 1996, the original aim of which was to undercut the inherited Soviet model of ethno-territorial federalism in an effort to instil a more cohesive concept of Russian (*Rossiiskii*) political community (Tolz, 2001, pp. 249–56). In Estonia, too, the revival in 1993 of the celebrated inter-war NTCA legislation went hand-in-hand with a refusal by the state to countenance territorial autonomy for the heavily Russian-populated north-east region of the country (Smith, 2001).

If one takes institutional density as a measure, then the Russian law was a great success, with over 250 bodies of NTCA established across the Federation during the period 1996–2000 (Bowring, 2005, p. 201). This reflected the fact that even where ethnic groups have their own designated territorial homeland, a high proportion of members actually live outside its boundaries (Tolz, 2001, p. 251). Many smaller groups, meanwhile, previously had no public recognition at all. Yet, as Bowring (2005, p. 203) has observed, the powers and resources allocated to these new bodies has been extremely limited, to the extent that there is little in practical terms to differentiate them from existing NGOs. Under bold new proposals developed at the start of the 1990s, the institutions of NTCA were to have a legal standing equal to that of the national republics within the Federation. What actually emerged was a much watered-down variant, in which NTCAs functioned as a supplement

to an essentially unchanged system of territorial autonomy. In recent times, moreover, national autonomy *per se* has found itself under growing pressure, due to the more centralizing impulses evident during Putin's presidency.

Similarly in Estonia, prospects for successful application of the NTCA law have been stymied due to the remedial 'nationalizing' policies of the state, which refused to recognize Russian-speaking Soviet-era settlers and their descendents (30% of the population in 1991) as representatives of a genuine 'national minority', and did not extend automatic guarantees of citizenship to them. Most of the minority groups eligible for NTCA have thus had to contend with a citizen/non-citizen cleavage among their members, and have thus fallen back on a law on non-commercial organizations as a basis for developing cultural societies and schools. Thus far, only Estonia's small, scattered, and historically rooted Swedish minority have actually implemented the 1993 law. In Romania, meanwhile, the 2005 NTCA proposal foundered amidst disputes over the degree of powers to be allocated to the proposed minority cultural self-governments and the question of who was to appoint them – the government or the minorities themselves. As an 'organic law', the draft bill required the assent of both houses of parliament, and with only a slim overall majority the government was unable to command this (Decker, 2008, pp. 106–12).

There is, therefore, something to be said for the recent assessment of NTCA by Aviel Roshwald (2008, p. 37), who notes that 'pointing to the practicalities of such an approach is one thing, and winning the support of cultural majorities and minorities alike ... quite another'. One can, nevertheless, point to successful applications of the concept, not least in Hungary, which in 1993 became the first of the post-socialist states to adopt a national minority law along these lines. In the Hungarian context, NTCA proved relatively uncontroversial: the overall proportion of national minorities within Hungary's population is numerically small, while the territorially dispersed nature of minority settlement lent itself to non-territorial autonomy (Dobos, 2008). The law was also adopted partly with an eye to the needs of Hungarians living in neighbouring countries such as Slovakia and Romania. These, it was hoped, might follow Hungary's example by adopting corresponding laws towards their own non-titular minorities.

Once again, the existing literature focuses, as often as not, on the deficiencies of Hungary's 1993 law. Authors have noted that due to memories of past persecution on the basis of ethnicity, minorities such as the Roma and the Germans were reluctant to declare publicly their

ethnicity by enrolling on a national register. Thus, under the initial law of 1993, elections to minority self-governments were not conducted on the basis of registers, but were open to all citizens residing in a particular electoral district, regardless of ethnicity. This has, in certain cases, led to problems of representativeness and legitimacy of the elected bodies, including the phenomenon of so-called 'ethnobusiness' whereby political entrepreneurs have been able to pose as minority representatives in order simply to gain access to office. As a result of these anomalies, the cultural autonomy law was eventually amended in 2005, and an obligatory system of enrolment on national registers – for candidates and voters alike – was introduced (Dobos, 2008).

Yet, for all of these problems, Dobos notes that overall NTCA has helped to boost both the cultural self-awareness of non-titular minorities and their participation in public life. Over 1200 minority self-governments have come into existence across Hungary since the mid-1990s, and it is notable that over half of these have been established by representatives of the Roma, Hungary's largest minority group. To speak approvingly of NTCA is not to deny the very real problems of discrimination and social exclusion still faced by the Roma minority; however, the fact that growing numbers of people have apparently been willing to identify themselves as Roma in national census returns would seem to suggest that the situation is more favourable than in some neighbouring countries of the region (Dobos, 2008).

Recent discussions of NTCA within Central and Eastern Europe have dovetailed with parallel debates on European integration and the future of the nation-state; here too, the ideas of the 1920s Minorities Congress seem almost startlingly relevant. According to some recent accounts (see Klímová-Alexander, 2008), there is a possibility that Europe's Roma might be granted the status of a 'transnational minority' with its own targeted rights regime within the EU, thus resurrecting an idea propagated by an earlier 'stateless' nationality (the Jews of Central and Eastern Europe) in the immediate aftermath of World War I. As already noted, the adoption of NTCA in Hungary was inextricably linked to the issue of ethnic Hungarians living outside the boundaries of the Hungarian Republic. The aforementioned case of Hungarians in Romania also illustrates the political sensitivity that surrounds any suggestion of enhanced cross-border links between minorities and their external national homelands. The continued climate of mistrust in this regard was especially apparent at the start of the twenty-first century during the discussions surrounding the proposals for a 'Status Law', whereby the Hungarian state would extend certain rights to ethnic

Hungarians living in neighbouring countries. The initial Status Law proposals made reference to the concept of a 'transsovereign Hungarian nation'. Echoing the Minorities Congress debates of the 1920s, the then Hungarian Prime Minister, Viktor Orban, also expounded his vision of how a future 'Europe of national communities' might evolve within the overall context of a deepening and widening EU (Deets, 2006).

Orban's vision met with a distinctly wary response from the EU and other international organizations, such as the Council of Europe and the OSCE, all of which denounced Hungary's pretensions as an external national homeland to its co-ethnics abroad. The main objection by these bodies to the Status Law was that persons belonging to minorities have to be seen first and foremost as citizens of their state of residence, and that this state must bear the primary responsibility for their welfare. Furthermore, it was established that the proposed Status Law violated the principle of equality in that it discriminated on the basis of ethnic origin between citizens of foreign states (Deets, 2006). This response seemed to underline the continued primacy of nation-state-centric thinking within the EU and the international system more widely, suggesting that the ambitious vision of a 'Europe of nationalities' is as distant a prospect now as it was between the wars.

And, yet, the issue perhaps merits closer scrutiny. The international deliberations on the Hungarian Status Law certainly vetoed the concept of 'transsovereign nation', but they did not entirely refute the contention that national governments can legitimately maintain ties with ethnic kin living beyond their borders (Majtenyi, 2006). The terms of the Council of Europe's *Framework Convention on National Minorities*, for instance, stipulate that Hungary can (albeit to the extent allowed by bilateral treaties with neighbouring states) legitimately promote Hungarian language and culture abroad (Council of Europe, 1995). Inasmuch as cultural and linguistic ties lay at the core of the Minorities Congress's vision of uniting ethnic communities across state borders, the relevant provisions of the Convention do not appear too far removed from the ideas advanced back in the late 1920s.

More broadly, the EU, the Council of Europe, and the OSCE in Eastern Europe seek to work within existing state borders to create a new understanding of shared territorial space. This is an approach with which the leaders of the 1920s minorities movement would no doubt have wholeheartedly concurred. Remember that the likes of Paul Schiemann did not question the existence or the established borders of the newly sovereign states of Central and Eastern Europe, but argued instead that the primary responsibility of each individual was to work for the good

of the *place which he or she inhabits*. In this regard, the Congress programme can be seen as part of an effort to adapt Renner and Bauer's original model – coined in an age of multinational empires – to the new realities of the modern nation-state system.

Today, it is perhaps even more fanciful to posit (as Renner and Bauer surely did a century ago) that the conceptual link between ethnicity and territory can be broken entirely. As Will Kymlicka (2008) has argued in his recent work, territorially based devolution is today commonplace within the longer established democracies of the West; as such, it seems unlikely that larger and more territorially concentrated minorities living in Central and Eastern Europe will be willing to eschew this model in favour of NTCA. And yet, Renner's central contention – that territorial approaches alone cannot definitively regulate the 'nationalities question' – remains valid, insofar as ethnic and political boundaries will never be completely congruent and some members of national minorities will inevitably fall outside a territory 'of their own'. In this respect, as Kymlicka maintains, there is a clear need for NTCA as a *complement* to other, territorially based models of minority rights.

Minority rights remain a contentious issue within the societies of Central and Eastern Europe, where latent conflicts between states, national minorities, and external national homelands continue to operate both across the external EU frontier (in the case of Russian minorities in the Baltic States) and within the EU (in the case of Hungarian minorities in Slovakia and Romania). Yet, if one looks at the bigger picture, the liberal activists of the inter-war Minorities Congress would surely find much to approve of in today's Europe. As Norman Davies (2007, p. 19) has observed, between the wars liberalism had the appearance of the 'ailing third way in European history'; 20 years on from the end of the Cold War, however, its position appears securely entrenched. Moreover, multiculturalism is today a far more established fixture on the European political agenda.

Nor do the contours of the nation-state appear so implacably sovereign and 'selfish' as they did between the Wars. Within the context of the EU Schengen area, at least, one can also envisage a longer-term scenario whereby state borders will lose much of their former significance, thereby reducing any perceived conflict of loyalty between (trans)national group and state of residence. It is this state of affairs which, ultimately, the inter-war Minorities Congress was seeking to realize. In sum, while contemporary developments can hardly be characterized as 'Austro-Marxism's last laugh' – to paraphrase Bowring (2002) – neither can the debates and practices of the 1920s simply be dismissed as an historical 'dead end'.

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5

The End of Union? Scottish Nationalism and the UK State

Michael Keating

Every few years, the question of Scottish independence returns to the political agenda, usually following a rise in the fortunes of the Scottish National Party (SNP). This is not exceptional, since other stateless nations – such as Quebec, Catalonia, or the Basque Country – which have kept their constitutional options open have similar recurrent debates, while experiences in Central and Eastern Europe and the Balkans have reminded us of the contingency and fragility of states. Yet there are some peculiar features of the Scottish debate, attributable to the specific nature of the United Kingdom, its history and institutions, and the way in which nation is linked to the state. There are three levels of analysis here: of mass opinion, of political elites, and of institutions. These levels are not independent, since elites and masses obviously have mutual influence. Institutions shape attitudes at both mass and elite level, represent compromises among competing visions of the state, and contain their own dynamics, which may be centripetal or centrifugal. The old unionist consensus has been undermined but there is, as of yet, no nationalist consensus to replace it. There are few constitutional, legal, or political obstacles to Scottish independence. A bigger problem is that nationalist and renewed unionist options require a reconstruction of the nation in a wider sense, a task that the political parties have not addressed. Independent or not, Scotland faces many of the same challenges as a small nation adapting to European and global challenges.

5.1 The strange death of unionist Britain

One of the most striking features of the debate about Scottish independence is that almost nobody, whether in Scotland or the rest of the

UK, questions its legitimacy. This applies even to arch-unionists like John Major (1993), who wrote that no nation can be kept in a union against its will, and Margaret Thatcher (1993), who agreed that if the Scots wanted to be independent nobody could stop them. There is little emotional rejection in England of Scottish independence and, indeed, opinion polls have found almost the same levels of support for Scottish independence on both sides of the border (Keating, 2009). Most of the public and political class accept that all that is required is an expression of will of the people of Scotland, with only some quibbles about the size of referendum majority that might be needed. This is in sharp contrast to debates in Spain and Canada, among other cases, where people out-with the historic nationalities are highly exercised about the prospects of secession, which they see as damaging to the interests of the state as a whole and to their own conception of the nation.

When I mentioned this elsewhere in Europe, friends and colleagues attributed it to the stereotypical British pragmatism and common sense. Within the UK, some argue that the Union was never more than an institutional convenience for the constituent nations, to be discarded when no longer useful. Yet 100 years ago, the British Conservative Party was prepared to play with treason and armed resistance to sustain the Union against a mere home rule scheme for Ireland. Now the secession of the remainder of Ireland is not merely allowed but, to judge from opinion polls, supported by public opinion elsewhere in the UK, while even the departure of Scotland is greeted with some equanimity. Nor is it true that Britishness was never invested with emotive force or affective loyalty. Wars and, in peacetime, the welfare state have tapped deep reserves of British national identity and polling evidence shows that Britishness, however weakened, is still evident in popular sentiment. Political parties of both right and left have used British themes and iconography, especially to reach out beyond their natural class bases. The death of unionist Britain is not explained so easily.

The Union and support for it must be understood at three levels. There is mass opinion, for which we have little evidence before the middle of the twentieth century and which, even now, is difficult to interpret. There is elite opinion within the political class and civil society, and the ideologies which elites develop to make sense of their choices. Then there are institutions, which filter mass opinion to decision-makers, transmit elite attitudes to the public, and represent compromises among competing aims and ideas. Institutions are understood here in a broad sense, encompassing constitutional arrangements as well as the practices that grow up around them. The lack of a codified

constitution in the UK makes the differences between these even more blurred than elsewhere. Institutions have a dynamic of their own, reinforcing or undermining the Union at different times.

Unionism in the British sense must be understood at these three levels, linked together in an embracing ideology. It does not entail the uniform and unitary state on the French model, in which local identities are subordinated to a totalizing nation-state identity. Rather, it has always recognized the existence of the nations making up the UK, their historic traditions, and their institutional continuities. Yet it has been more than a mere instrumental doctrine (Aughey, 2001). Unionists, thus, have been able to straddle their local and state-wide patriotisms in a manner that has been well-charted for elites (Ward, 2005), using the term 'nation' to refer to both levels, a challenge that has led Canadian and Spanish politicians into semantic labyrinths. The peculiar nature of the resulting state was labelled the 'union state' by Rokkan and Urwin (1983) but, while the term has gained new currency since the 1990s, there has been little systematic effort to investigate its nature (Keating, 2001). One element is the institutional legacy, which has allowed distinct features like the Scottish 'holy trinity' (Church, law, and education) to survive within the Union. Another is the survival of constitutional doctrines like the distinctive Scottish view of sovereignty (MacCormick, 1999). The constitutional practice of unionism has involved recognition of these distinctive features, while refusing political devolution precisely on the grounds that a nation equipped with self-governing institutions will assume sovereignty to itself. The British acceptance of a wide role for self-governing civil society allowed a measure of informal home rule for much of Scotland's history within the Union, while other matters were taken to Westminster by territorial brokers charged with managing Scotland within the Union (Paterson, 1994). This was an elite compromise, in which autonomy in Scotland was exchanged for access to the centre and opportunities for Scottish politicians. There was always a disjuncture with mass opinion, since every test of public opinion in the last 100 years (whether by opinion survey, referendum, or election at which it was an issue) has shown that home rule within the UK was the most preferred option; yet the institutional compromise of administrative devolution allowed expression to Scottish sentiment, while linking it to a British project.

In England, unionism took another form, illustrated by the ambivalent use of the term 'England' itself. Sometimes this was a sloppy substitute for Great Britain; sometimes it referred to a specific territory within the Union; and sometimes it implied that England was the defining

core, with the peripheral parts not fundamentally affecting its constitution. This ambiguity, while often infuriating to the smaller nationalities, is one of the secrets of the Union since it allowed the English to think that they were living in a unitary state, while the Scots could celebrate a multinational Union. So if we are to explain attitudes to the prospect of Scottish independence, it is not the unravelling of a unitary nation, nor the loosening of a marriage of convenience, that we must address, but this specific doctrine and practice of Union and its disappearance at the turn of the twenty-first century (Gardiner, 2004; McLean and McMillan, 2005; Nairn, 2000, 2007).

5.2 External explanations

One set of explanations focuses on Britain's external relations and the declining instrumental value and emotional hold of the Union at both mass and elite level. A common explanation is to take Linda Colley's (1992, 2003) account of the rise of popular Britishness, forged by war with France and Protestantism, and show how these factors are no longer relevant (Bryant, 2006). This approach – as a kind of Whig history in reverse – is open to a number of objections. Protestantism was divisive within the UK, marking first Scotland and then Wales off from England. War with neighbours was the common European experience, not a British peculiarity. In any case, national identities forged in one era normally become self-sustaining and adapt to new circumstances and new issues. So France, united by Catholicism, was further unified by the Republic. Germany was united and nationalized in spite of religious divisions.

An older version of the external theory is that the UK was the creature of Empire and, after its disappearance, lost both its instrumental appeal and its ideological underpinnings (Marquand, 1995; Weight, 2002). The argument is plausible, but is drawn at too general and broad a level and downplays Britishness itself (Aughey, 2001). Scots did participate disproportionately in the Empire, so much so that there was no frustrated upward mobility such as is credited with favouring nationalism in some other cases (Devine, 2003; Fry, 2001). Yet there were episodes of Scottish nationalism in the late nineteenth and early twentieth centuries, usually placed within a broader imperial narrative. The demise of Empire did indeed force Britain (I leave aside the more difficult question of the UK) to reconstruct itself as a nation-state, but few people in the 1940s or 1950s, with the foundation of the welfare state, would have considered this problematic; on the contrary, these were bleak times for

anti-unionists. Decolonization did not immediately put in question the nature of the metropolitan state in the way it did, for example, in Spain after 1898 or in France during the 1950s and 1960s. This is all the more remarkable since the first breach in the Empire was made not at the periphery but in the very centre, in Ireland, a country that had for over 100 years been part of the metropolitan state itself. This perhaps points again to an institutional explanation, the failure of the UK to develop a nation-state constitutional doctrine and set of practices in the critical era of nation-building: the Empire may have served as a distraction from the process of nation-building.

Another external explanation is that Britain has come apart under the influence of European integration. Euroscepticism, however, is something that we could expect to unite the UK, given its diffusion across the nations in, according to the opinion polls, rather equal measure. The argument that Scots have embraced Europe while the English reject it finds little support from surveys (*pace* Weight, 2002). There is a slight but consistent tendency for Scots to be less Eurosceptic, but nationalist voters do not stand out as particularly pro-Europe – indeed, they are divided between pro- and anti-European tendencies (McCrone, 2006). Not even supporters of independence-in-Europe are particularly pro-European (Keating, 2009). The argument operates rather at the elite level, enabling nationalists to construct an ideological and institutional alternative to the Union, rebutting old arguments about the isolation of Scotland, and sidestepping otherwise important issues about currency matters and borders. It is this filtered version of the argument that seems to have worked at the mass level. At a time when leading Labour politicians were trying to scare the voters by talking of border posts between Scotland and England, an opinion poll showed that just ten per cent of Scottish voters thought that an independent Scotland would erect border posts (YouGov/*Sunday Times*, January 2007). Similarly, the confidence that England and Scotland would share a wider security area is reflected in the fact that only eight per cent thought that an independent Scotland would be more vulnerable to terrorist attack, another fear raised by Labour.

5.3 Internal reasons

Internal explanations are legion. One is that the destruction of the welfare state has broken an essential bond of Britishness, especially among the working class. There is much to be said for the argument that the welfare state was critical in building Scottish working class support for

the Union, and was decisive in turning Labour and the trade unions away from lingering nationalist sympathies in the 1930s and 1940s (Keating and Bleiman, 1979). Yet it is not true that the welfare state has been dismantled. On the contrary, it resisted most Thatcherite assaults and now enjoys record levels of spending. There have been shifts in priorities, notably away from publicly provided housing and unemployment support, but this is hardly enough to explain a disengagement from state-wide solidarity. Indeed, there is little evidence for the disappearance of state-wide solidarity, or at least that it preceded the decline of unionism, as would be necessary to give it causal primacy. The hypothesis that English voters have abandoned their belief in the welfare state, while Scots have clung to it, can also largely be rejected. Neither Scottish nor English voters have rejected basic welfare values and surveys show Scots only marginally to the left of the English as a whole, and even that small difference is due to Southern England, rather than Scotland, being the outlier from UK norms (Rosie and Bond, 2007).

The argument becomes more plausible, however, if we add an institutional mechanism. Northern England and Scotland do seem to share some welfare values and together may be the relevant unit for attitudinal clusters, dispelling any idea that there is anything particularly pro-welfare about the Scots. Yet they are not a common political space. Scotland is available as a political space for articulating welfare values and there is some evidence that Scottish identity was rebuilt in the 1990s around defence of welfare values in a manner that had no counterpart in England.

While spending on public services has not been radically cut over the long term, there has been an important discursive shift under both Conservative and New Labour governments. The emphasis on individualism and competition, and the move away from universalism, may have undermined the sense of political community. The effect here depends, again, on the filtering of elite discourse and on institutions and practices. The rhetorical attacks on the state, bureaucracy, and government mean that the state cannot work as the focus of national identity as it can in countries like France, where there is a fusion of state and nation. New Labour's counterpoint rhetoric of community and moral values (or David Cameron's 'Big Society') thus lacks any institutional expression beyond vague references to civil society. Traditional unionism is not a thick enough identity on its own when delinked from the state. The frantic efforts to reinvent Britishness merely expose the hollowness of the concept in the face of competing projects to rebuild identities at the sub-state and supra-state level.

The decline of class identities might also be an element in the demise of unionism, but again the effects are institutionally mediated and depend on the specific forms of class representation in the UK. In the early twentieth century, Scottish labour was rather particularist and only aligned with the rest of Britain after the First World War, taking the working class into the British political system (Keating and Bleiman, 1979). Working-class solidarity was in principle universal, but in practice followed the boundaries of the British state, as Labour opposition to European integration in the years after the Second World War showed. As with unionism as a whole, this Labour unionism was not entirely assimilationist and allowed for various degrees of Scottish distinctiveness as well as the existence of an organized Scottish lobby crossing party boundaries. The old institutions of the Labour Party and the mass trade unions are no more, and there is evidence that class and national identities are merged now in a new mix, with Scottish people more likely to identify themselves as working class irrespective of objective occupational category (SurrIDGE, 2003), and stronger Scottish identifiers even more likely to do so (Paterson et al., 2001). Between 1979 and 1999 there was a reduction in the percentage of Scots who identified more with an English person of the same class (from 44% to 24%) and an increase in the percentage of those who identified more with a Scottish person of a different class (from 38% to 43%) (Paterson et al., 2001). There is some evidence to suggest that Scottish identity and left-wing attitudes are related, especially among exclusive Scottish identifiers (Paterson, 2002b). It appears, then, that as pan-British class identities have declined there is a section of the working class divorced from Britishness and no longer subject to the unionist pressures of Labourism.

On the right, unionism was represented for most of the twentieth century by the Scottish Unionist Party, which adopted the name Conservative only in 1965. While the convergence of voting behaviour in England and Scotland during the 1940s and 1950s looked like evidence of a broader social and political assimilation, the Unionist Party was a rather different coalition from its counterpart south of the border. Its largest element came from the old Liberal Unionists and its leadership was shared by the landowning upper classes and the urban bourgeoisie. It never secured a strong municipal base, being present in local government in force only between the late 1960s and mid-1980s, and during the 30 years after the Second World War its parliamentary contingent became gradually more, rather than less, dominated by the landed upper-class element (Keating, 1975). These elites were

instinctively unionist in the traditional way, often linked by family and landholding to other parts of the UK, and their demise from the 1960s undermined one social pillar of the Union. The rise of the middle classes did not, on the other hand, provide new recruits for Scottish Conservative unionism. Professionals were attracted to the Labour Party, while the petite bourgeoisie (one of John Goldthorpe's social classifications) showed strong support for the SNP. Among the political failures of Thatcherism in Scotland was the absence of an effort to build a new indigenous Scottish bourgeoisie loyal to the Union, although privatization might have provided the opportunity.

5.4 Shifting identities

Survey evidence on these shifting identities and constitutional preferences is often difficult to interpret, given the subtleties of the issues, but some trends are clear. On the Linz/Moreno scale, asking people about which identities they prioritize, there has been a shift over the years towards a stronger Scottish and a weaker British identity. According to the Scottish Social Attitudes Survey, those prioritizing a Scottish identity went up from 56 per cent in 1979 to 76 per cent in 2005, while the British identifiers declined from 38 to 15 per cent. More recently, there is evidence of English people beginning to prioritize an English identity and of a weakening of pride in Britain (Curtice, 2005; Heath, 2005).

There is no evidence of a widespread desire to break the Union, but surveys do show a large measure of indifference and a belief that it will end at sometime in the future, both evidence of its rather contingent nature. A YouGov poll for the *Sunday Times* in January 2007 showed 59 per cent of Scots thinking that independence was likely within the next 20 years (31% within ten years). By contrast, Surridge (2006), using election study and social survey data, finds a fall from 59 to 31 per cent of Scots thinking that independence was likely within 20 years. In 2003, 48 per cent of them would have been unhappy to leave the Union, against 24 per cent who would have been pleased. A YouGov poll for the *Daily Telegraph* in June 2006 showed that 70 per cent of people in Britain as a whole expected the Union to survive. Yet only 25 per cent would be unhappy if Scotland were to become independent, with 44 per cent indifferent.

Evidence about the disintegration of Britain is ambivalent (Paterson, 2002a). The press in Scotland periodically get excited about opinion polls indicating a majority for independence. In fact, a great deal depends on the wording of the question, with 'hard questions'

mentioning separatism or stressing the end of the UK gaining less support than 'soft' questions that are vaguer on the implications. Support for independence also falls when respondents are given other options. A series of ICM polls between 1998 and 2001 showed support running about 50 per cent, but when it was placed alongside other options, including devolution, support fell to around 30 per cent (Keating, 2001). In January 2007, a YouGov poll showed 40 per cent support for independence on a straight choice, but when it was put against devolution options, this support fell to 31 per cent. Other quirky findings abound, such as an ICM poll in February 1999 showing that 82 per cent of respondents thought that an independent Scotland should be defended by the British army. Scotland is not unique here. ICS polls in Catalonia over a longer period show that about 35 per cent think independence for Catalonia a good idea, but when asked about constitutional options support for independence falls to half of that. Evidence of similar attitudes is abundantly available for Quebec, since the anti-nationalist parties have commissioned surveys precisely to expose what they see as a contradiction in the independence position. Support for independence in the Basque country has fluctuated around 30 per cent, but surveys have repeatedly found that about half of Basques would like to have a Basque rather than a Spanish passport (Centro de Investigaciones Sobre la Realidad Social (CIRES) surveys, 1991–6; Moral, 1998).

More careful reading, however, shows that these apparent contradictions hide some consistencies in attitudes. Voters in these places do not want their own armed forces or currency or closed borders. Majorities do tend to think that they have a right to recognition as more than an undifferentiated regional unit and would want to be able to renegotiate their place in the state and international order. There is a desire to control their own taxation, but not a total rejection of social solidarity with the rest of the state. What is striking in comparison with other countries, however, is the general consistency between English and Scottish attitudes on reshaping the Union. For example, on a rather 'soft' question about Scottish independence in January 2007, ICM found that 51 per cent of people in Scotland and 49 per cent in England would approve of Scotland becoming an independent country. On a harder question posed by YouGov in the same month, English respondents were divided 52–28 against Scottish independence. The same survey, on a similarly hard question, found Scots dividing 47–35 against independence. This is consistent with surveys over the years (Keating, 2001). The arrival of the SNP in government, strangely, was accompanied by a fall in support for independence in the Scottish Social Attitudes Survey

(generally agreed to be the best indicator). It seems that many Scots are still balancing their options, voting SNP to press forward with self-government but pulling back from a rupture with the UK.

There is strong evidence for the delegitimation of institutions and politicians at all levels. This could undermine support for the Union without increasing support for Scottish independence (since this might appear as more of the same thing on a different scale). Devolution was an effort to re-legitimize government in Scotland by providing a revamped Union. In the initial phase, opinion in Scotland showed that a great majority believed that the Scottish Parliament both should and would be the most important level of government. Since then the number believing that it *is* has fallen sharply, albeit recovering in 2007, but the number believing that it *should* has held up better. At a time of massive disillusionment with politics in general, the Scottish Parliament has at least lost less confidence than Westminster. By 2003, 62 per cent of Scots were reporting that they trusted the Scottish Parliament to work in Scotland's interests all or most of the time, as against 21 per cent similarly trusting Westminster (SurrIDGE, 2006; see also Hebbert, 2006). Both figures had fallen since 1997, but showed a recovery in 2007, with Scotland still ahead.

5.5 The economic argument

Purely instrumental analyses reduce the question to one of economic advantage, which could play either way depending on the circumstances of the time. Scotland acceded to the Union largely for security and dynastic reasons, combined with some economic fears, and in the early years seemed to have done badly out of it. By the late eighteenth century, however, a general consensus had emerged that the Union was in Scotland's economic interests, a view that persisted until well into the twentieth century. In the earlier part of this period, the Union and Empire were seen as opportunities for trade and careers and the heavy industries of the Clyde were highly dependent on imperial markets. After the First World War, however, the idea took hold that Scotland needed the Union to stave off economic collapse, that it could not afford to go its own way, and that transfer payments from the South were the only way to sustain living standards and attract business. Hence, during periods when Scotland was doing rather poorly, as in the 1930s, 1950s, and 1980s, nationalism was weak, while it strengthened during times of relative prosperity, such as the mid-1970s and 1990s. This seems to fit the facts better than the old 'relative deprivation' theory, according

to which nationalism was a response to adverse conditions (advanced again by Weight, 2002). More specifically, Scots seem to make a judgement as to whether, in any given circumstances, the Union is helping or hindering, but still tend to fall back in hard times on unionism and particularly the Labour Party. The economic crisis of 2008–9 provided an opportunity for the Labour Party again to argue that Scotland could not make it on its own, especially since two of the failed banks (Royal Bank of Scotland and HBOS) were so closely associated with Scotland. However, this does not seem to have made an impact on the support for the SNP or for independence, perhaps because the crisis was so obviously a result of failure on the part of the British regulatory state.

Insofar as Scottish attitudes to the Union are shaped by economic considerations, it is less likely to be a matter of whether Scotland is doing better or worse than England but of whether it would be doing better or worse at any given time by becoming independent. Although there is no correlation between supporting Scottish independence and being in favour of European integration at the individual level, it is true that the economic argument has been transformed by the European Union context and the knowledge that access to wider markets is secure. The old political economy in which Scotland survived as a dependent periphery of the UK has gone, as regional policy has been run down and the emphasis, in Britain as elsewhere in Europe, turns to endogenous development and competitive regionalism. Surveys show that SNP voters think that independence will make Scotland better off, while supporters of the unionist parties think otherwise, but we do not know whether it is partisanship which has shaped the economic judgement or the other way around. The November 2006 YouGov poll asked people a fairly hard question about independence, then a series of questions in which they listed instrumental advantages and disadvantages to independence. At the end, they asked the independence question again, with support for independence barely unchanged (in fact, it very slightly increased). Opinion about the economic advantages and disadvantages was rather confused, with a majority (67%) accepting that an independent Scotland could boost the economy by, for example, cutting taxes, while a plurality (48%) believed that Scotland might be poorer, losing investment and businesses. According to the 2005 Scottish Social Attitudes Survey, just over a third of the population favour independence; the same number think that England does better than Scotland from the Union (eliminating 'don't knows'). The symmetry is misleading, however, since these are not the same people. Just over half of those favouring independence think that England does

better and just over half of those who think that England does better are in favour of independence, leaving a core of about 17 per cent believing that Scotland does worse and supporting independence. This suggests that the case can be made either way and that unionist efforts to scare voters will not work, quite apart from these efforts being a tacit admission they have lost the core ideological argument.

5.6 Competitive nation-building

None of this is to say that Scottish independence is or would be uncontroversial. The Labour Party, in particular, can be expected to mount a strenuous opposition, since Scotland's departure would not only undermine its position within UK politics but also decapitate the party leadership. It is tempting, as some commentators occasionally do, to reduce the whole question to one of partisan advantage, saying that the parties' attitudes to the Union depend on their gaining or losing from it. Yet the Conservatives did not waver in their support for the Union during the 1980s and 1990s when it brought them no political advantage and cost a lot of money. Party leaders in other established states have not acquiesced in secession of part of their territory merely because they did not get votes there. Unionism and state-based nationalism are deeply rooted values in most states, to which parties can appeal in order to straddle the local and state-wide electoral arenas. The question is whether British unionism any longer possesses such reserves.

Nations may have deep historic roots but they are constantly being rebuilt, their ideology and institutional form changing with the times. It is a mistake, therefore, to assume, as do some observers (Colley, 1992), that as Britishness declines it will give way to the underlying national realities of pre-Union identities. Both Britishness and Scottishness are being reforged, and part of the reason for the clash between the two is that they are increasingly occupying the same normative ground. The strength of Scottish nationalism is not its rooting in a strong sense of ethnic differentiation or contrasting values. Nor has Scottish society become more distinct from that of the rest of the UK, quite the contrary. Rather, it is that Scotland has become the focus for the rebuilding of political community as a civic nation in the context of state transformation and transnational integration. The institutionalization of the nation thus provides its own momentum. Yet this is also Scottish nationalism's weakness, since this civic form of nationalism does not provide the emotive impetus to transcend other political priorities and does not imply the necessity to create a separate state.

It faces a British national project that is also in serious difficulty. Here the discourse of elites comes into play, since they have to weave the new nationalism into their existing ideological make-up. New Labour, in particular, needs Britishness for imperative political reasons, but cannot articulate it without falling into ridicule or behaving in profoundly un-British ways. Its Britishness agenda is aimed at two distinct targets: what it sees as an excess of multiculturalism and peripheral nationalism. Britishness is seen as an identity that is the same in all parts and sectors of the state, poised above the various particularities. Yet the multicultural challenge, largely stemming from fairly recent immigration, and the multinational challenge, rooted in the territorial structure of the state, are quite distinct issues. A traditional unionist would know that Britishness is not something that exists above the local identities, but rather takes very different forms in different parts of the UK, from the Surrey garden party to the Orange parade. That one could be British in different ways was the genius of the old Union, which freed Britain (if not the UK) from the tensions of multinational states like Spain, Canada, or Belgium. This old unionist Britishness, of course, depended on separating the concepts of state and nation or ensuring, as Colls (2002) puts it, that the wires of nationality and statehood did not cross. Identities and elements of civil society could be distinct, but all politics was brought to Westminster to resolve. This has become increasingly difficult since at least the 1970s. Moreover, the civic nationalism promoted for Britain by New Labour has already largely been appropriated by the new Scottish nationalism, which, moreover, has at least a little more to say about Europe and the wider horizons than do the prophets of Britishness. All the main British parties have now given support to a British Charter of Rights, albeit for different reasons. The Conservatives see it as a way of weakening the European Convention for the Protection of Human Rights; and Labour as a way of introducing duties. For all of them, it is also a way of tying rights to national citizenship. The same is true of proposals for a written constitution. Both ideas must be seen not as a way to limit the over-mighty state but as a form of British nationalism, just as the Canadian Charter of Rights was seen in Quebec as an imposition of Canadian nationalism. Indeed, New Labour seems to see the Charter of Rights more as a matter of imposing duties, while the Conservatives use it to further Euroscepticism. Another revealing sign is the way in which proposals for Britishness or citizenship education are invariably related to English assumptions and practices, as in Lord Goldsmith's (2008) report.

5.7 Conclusion: the new divide

We cannot explain the problems currently faced by the Union simply by reading off public opinion or looking for some value difference between the Scots and the English. This is neither a case of ethnic antagonism nor one of sharply clashing social values. Rather, it is an argument about the boundaries of political community and the institutional framework for the realization of universal and shared values. The strategies and ideology of elites are critical here in providing a rationale for the competing unionist and nationalist projects. Unionism is elusive in its doctrines and implications. Its institutional form is protean, with its mixture of diversity and unity changing over time. Yet so is its competitor, nationalism and the independence option. We are used now to a distinction between home rulers (or devolutionists), on the one hand, and independence supporters, on the other. Yet historically the line has never been entirely clear in Scotland, as in other parts of the world. In the nineteenth and early twentieth centuries, home rule for Scotland and Ireland was usually placed within the Empire, with Scotland sometimes presented as a co-motherland, similar to Hungary in the Hapsburg Empire after 1867, or as a dominion, along with Canada, Australia, New Zealand, and South Africa. It was not until the Statute of Westminster in 1931, or even until the separate declarations of war or neutrality in 1939, that the reality of dominion status as effective independence became clear. Even then, Scottish nationalists would often place their project in the imperial context (Finlay, 1992). The 1930s have sometimes been seen as the time of birth of the first real Scottish nationalism. This was indeed the era of the first nationalist parties, but their very separation from the mainstream exposed their weakness. For years afterwards, nationalists like John MacCormick could oscillate between support for the SNP and involvement in all-party home rule movements. Again, this is consistent with practice elsewhere, where the line between independence and devolution was not always obvious. The question was only really clarified in the late 1980s with the SNP formula of independence-in-Europe, giving rise to a three-way division of the political offer in Scotland: independence, devolution, or centralization. Since 1998 this has been reduced to two. Europe has now replaced the Empire as the external support system for an independent Scotland and, according to the advocates of independence-in-Europe, resolves many of the tricky problems associated with statehood in the past.

In practice, however, matters are as ambivalent as ever. There is majority support in Scotland neither for the nationalist/separatist nor for the

unionist/British option. Rather, majority opinion here, as in other stateless nations, is searching for a postsovereigntist option in which Scotland can negotiate its place within the wider unions to which it belongs (Keating, 2001). This is not, with due deference to the title of this volume, a matter of postnationalism. Nationalism is alive and well, with nationalist parties in office in the three devolved territories of the UK and both main British parties seeking a new British national project. What has changed is that nationalism is no longer necessarily associated with the creation of an independent state. Even within the political parties there is some willingness to explore the middle ground. Yet there remains a division between what I call neo-nationalists and neo-unionists. Neo-nationalists see Scotland as the primary reference point for political and social citizenship, negotiating its own relationship with the UK, the EU, and other imagined communities, such as the 'Isles' (what used to be known as the British Isles), on generally confederal lines. Neo-unionists have abandoned the doctrine of absolute parliamentary unity and accept political devolution, but insist on a strong overarching British identity and citizenship, including a strong charter of rights and duties and uniform social entitlements. Moreover, elite opinion in the shape of the political leadership has sought to maintain a polarization between the traditional unionist and nationalist options. Institutional factors, meanwhile, are transforming the Union as devolution in Scotland becomes a more important reference point for political debate and policymaking. The experience of an SNP government in Edinburgh, while it has not converted anything like a majority of Scots to the cause of independence, has raised the salience of the Scottish level of politics and helped to frame issues differently.

There is no shortage of ideas in Scotland for renegotiating the Union, from extended devolution, through federalism, to quasi-independence. The obstacle lies, rather, in England where the doctrine of the unitary state remains dominant. So while English mass and elite opinion is relaxed about extensive home rule for Scotland, it is more resentful over Scottish influence over UK and English policy. Scottish opinion inclines towards federal or confederal notions, providing more self-government but leaving common UK matters to be decided at Westminster or in intergovernmental arenas. Insofar as such arrangements bind and limit the discretion of an English majority, they are unlikely to be accepted there. Scottish independence, leaving the unitary state intact, may thus paradoxically prove more acceptable than federalizing the UK as a whole. The old Union has gone, a new one has not yet been made, and Scotland, like other stateless nations,

seems destined to live with the politics of an unresolved national question for a long time to come.

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6

Nationalism and Violence

John Hutchinson

There appears to be an intrinsic linkage between nationalism, the striving for nation-statehood, and warfare in the modern period. Warfare is defined here as politically organized violence between two or more collectivities. In a recent study examining over 480 wars occurring between 1816 and 2001, Andreas Wimmer and Brian Min (2006, p. 868) argue that they are associated with two major institutional transformations, the first of which is the spread of nation-states and the second the expansion of empires. For many nationalists the nation is a site of primordial energies, exemplified above all in acts of auto-emancipation where the people arise to liberate themselves from tyranny. During the nineteenth century, claims were made that the right to national independence and martial virtues were indissolubly linked. A German delegate to the Frankfurt Assembly in 1848 declared: 'Mere existence does not entitle a people to political independence: only the force to exert itself as a state against others' (in Howard, 1991, pp. 39–40). Some young would-be nation-states have viewed large-scale sacrifice in war as an essential rite of passage, as Australians viewed the Gallipoli campaign in the First World War.

States, of course, have always gone to war, but the wars of nation-states, it is often argued, heralded a new type of unlimited war, of peoples gripped by a quasi-religious fervour and of conflicts expanding well beyond their local settings. Warfare for the Girondins of the French revolution was a national blessing, and a military campaign directed by peoples against kings would be 'salvation both of France and the human race' (Knox, 2001, pp. 63–4). Many have regarded this and the subsequent Napoleonic wars as the first of the total wars, involving not just military but ideological, economic, and political mobilization (Bell, 2007). War was not only conducted with a new intensity but also on

a new scale, with a much higher proportion of the population and the revenues of the state mobilized.

In 1816 only Great Britain and France were autonomous nation-states, but by 2001 almost the entire globe was controlled by modern nation-states (Wimmer and Min, 2006, p. 871). The global diffusion of the nation-state worldwide was accompanied by violence, manifestations of which include the outbreak of two World Wars, and, in their aftermath, colonial revolt against European empires. Such violence has erupted within mixed populations who previously lived side by side, and the formation of putative nation-states is typically followed by wars over territory against neighbouring states, particularly where the states concerned are multiethnic and share ethnic populations. Cycles of conflict which last over generations have broken out between neighbouring states (for example, France and Germany). Even though a world of nation-states has become institutionalized, irredentist and secessionist conflicts continue in which the principles of self-determination are invoked.

Is violence, then, inherent in nationalism and its referents the nation and nation-state? What role does it play in their constitution and practices? In this chapter I review several competing interpretations. The first is the functionalist view that war is inherent in *nations* since regular blood sacrifice is required for their origins and reproduction. The second is the view that *nationalism* is a form of millenarian politics whose rejection of all institutional limits leads necessarily to external and internal conflict. I then turn to a third interpretation, the belief that militarism is embedded within *nation-states* since they are creations of a competitive European state system that has expanded worldwide, one characterized by recurring war that has shaped their central institutions. Finally, I examine the claim that violence derives from contradictions in an international order founded on the principles of nationalism, which are invoked by national minorities to justify rights to secession and by dominant nations to defend the territorial integrity of existing states.

I conclude by arguing that the connections between nationalism and violence are contingent rather than necessary. A major driver of nationalism, as Ernest Gellner (1964) famously noted, is accelerating competition over resources that leads to discrimination against some populations on cultural grounds, but nationalism then is adduced less as the cause than as an effect of conflict. Historically, much of nationalist violence, as Wimmer and Min (2006) observe, has been associated with the struggle against an empire to achieve a state of one's own. Statehood is sought as a mark of dignity and because citizenship in such a state is seen

as the most effective means of achieving progress in an uncertain world. This perception makes violence more likely, given that there are many more nations or potential nations than there are states. Some argue that globalization now makes modern nation-states (and hence the incentives for engaging in nationalist campaigns) obsolete, since they are faced with new and unpredictable threats (such as nuclear proliferation, terrorism, and climatic change) that can only be solved at a world level. But since membership of global and regional institutions is based on the possession of a nation-state, this is doubtful. Moreover, the enforcement of transnational agreements is still dependent on the existence of effective and cohesive nation-states. If nationalism can operate as a threat to order, strong national identities can also contribute to the resolution of disorders.

6.1 Blood sacrifice and the nation

War between nations appears to be a recurrent feature of modernity, and central to many nations is the myth of fallen heroes who die in blood sacrifice for the nation (Mosse, 1990). The role of warfare in the genesis and reproduction of nations is often ignored in standard explanations of nationalism that focus on the emergence of new concepts of popular sovereignty and citizenship, industrialization, or the bureaucratization of the state.

Such approaches are roundly rejected by Carolyn Marvin and David Ingle, whose powerful and original study, *Blood Sacrifice and the Nation: Totem Rituals and the American Flag* (1999), emphasizes the importance of violence in national identity formation and reproduction. In the modern world where authority has passed from Church to the State, blood sacrifice for the nation has replaced religion as the central legitimizing social and political ritual. Through war the violence of human beings (particularly of young males) that is an inherent threat to social order is tamed by diverting it against outsiders. A cult is subsequently created around the young male dead, now worshipped as martyrs who have died in willed sacrifice for the nation. This cult, in turn, creates and recreates the sense of a unique bounded group and binds the living in moral obligation to the dead to maintain the social order. Great commemorative ceremonies focused on the flag, which stands for the body of the nation, have created a surrogate civil religion that legitimizes the political system. Hence, the nation is defined as 'the shared memory of blood sacrifice, periodically renewed' (Marvin and Ingle, 1999, p. 4).

The ugly secret (or totem taboo), however, behind this cult is that the voluntarism of the young is an illusion because they are coerced to fight

by their society. Although to elicit sacrifice and solidarity wars need to be portrayed as in the nation's defence, in reality the nation-state acts as a deity demanding the mass death of the young on a regular basis (Marvin and Ingle, 1999, p. 9). In this model, the state exists merely to implement the national social compact that has been sentimentally forged in violence. The role of ritual is to hide contradictory attitudes to the young, who are indeed viewed with deep ambivalence. Although violence is regenerating, it must be separated from the centre of the nation and must be performed outside its borders. Because all who kill, even with official sanction, are regarded with fear, the defenders of the nation must ritually leave the group (through first assuming a distinctive military identity), and ideally die as heroes, lest they return to pollute society.

Marvin and Ingle (1999, pp. 63–98) qualify their interpretation. Wars are effective the more they touch the members of the group (the greater the casualties), the more they evoke a willingness to fight, the more credible the enemy, and the more threatening they are to group survival. There are other authority systems that either rival the official totemic order or act as a backup when it weakens – affiliative systems such as families, churches, sporting associations – but they lack the totemic authority to kill (Marvin and Ingle, 1999, pp. 172–215). Electoral contests operate as a contained war between opposing interests, which through the process of struggle regenerate the nation.

Nevertheless, it is above all warfare that establishes the boundaries of the group against hostile others: it diverts potentially damaging energies outside the group towards strangers, and it creates a cultic object, the memory of the dead (the young), whose sacrifice is invoked to demand the subordination of individual egos to the common good. In periods without such wars the nation falls into malaise.

Theirs is a neo-Durkheimian interpretation, and one based on a single case study, the US. This is usually perceived to be the exemplary *modern* society by virtue of its enlightenment-based democratic constitution separating religion and state, its integrating ideology of individualism, and its status as the leading capitalist economy. But the history of the US is, as the authors say, punctuated by wars and their arguments are generalizable beyond the US. A cult of fallen youth has become a surrogate religion for many modern societies, pervading every aspect of social life. It has often been observed (notably in Europe in 1914) how the outbreak of war can release euphoria and quasi-religious desires for transcendence, particularly among young males. In mobilizing populations, political leaders invariably portray the nation as innocent and

the war as defensive against an evil projected outside or towards enemy agents within. After the war, the death of fighters is romanticized as voluntarist, even when enlistment was coerced by state conscription, and taboos are enforced to repress ugly realities – of hostility to the draft, episodes of cowardice, mutinies, wanton killing, and collaboration.

Insightful though this interpretation is, many of the linkages it claims remain questionable. As Anthony Smith (1981) argues, warfare may strengthen and reinforce group identities, but cannot by itself create them. For a population to defend itself, there already has to be a sense of common values and interests around which it can be mobilized. This thesis can at best only explain the role of violence in the reproduction of nations, not in their formation.

The model is socio-biological and, as Marvin and Ingle (1999, p. 12) admit, would apply to any enduring group, not just the nation. It stresses the primitive bases of nation-states and explains the outbreak of wars by the pressures produced by an excess of young males without whose death on the battlefield societies would perish in internecine violence (Marvin and Ingle, 1999, p. 83). Its explanation of war is thus functional and intra-societal, ignoring exogenous factors. If the key is internal build up of pressures, then wars or severe social instability should occur generationally. This fails to explain the incidence of wars and how long periods of peacetime can alternate with clusters of conflict. Certainly, politicians sensitive to growing social tensions are capable of manufacturing a sense of external threat in the hope of diverting popular energies from social revolution into wars of external conquest. But the tensions building before the First World War were arguably a product of intensifying military competition between the great powers in this period. The subsequent Second World War was, in turn, an outcome of the unjust settlement forced on the defeated in the previous war.

Moreover, the solidarist effects of war are dependent on a match between the goals of participating populations and actual consequences. Whereas the wars of Prussia against Austria, Denmark, and France (in reality wars of aggression) were unifying since they achieved the formation of a German nation-state, catastrophic conflicts may indeed undermine national cohesion. The defeat of Germany in 1918, for example, triggered the November Revolution, and a demoralizing peace treaty delegitimized the new Weimar Republic.

Finally, it is implausible to view regular warfare as a requirement for nation-state cohesion, since there are many examples of polities without experience of recent wars, such as Switzerland, Iceland, or Sweden.

Marvin and Ingle (1999, p. 5) view the nation as the memory of the *last* sacrifice, but in many countries the event that is the focus of commemorative ritual is often far distant. This suggests we need to separate the solidarist effects of the mythologization and memorialization of war from the experiences of war. If this is so, nations may require at most *one* war. Arguably, then, it is the memory of war, socially embedded through ritual, that is crucial for social unity rather than regularized aggressive bloodletting. In the twentieth century, the message of such commemorations is often pacific: 'never again'. This is not to deny a linkage between nationalism, nation-states, and violence. But functionalist explanations are insufficient. We need to examine the goals of nationalists and the conditions under which they engage in violence, as well as the ways individuals and groups process violent experiences of the past to guide action in the present.

6.2 The poison of nationalist ideology

For Elie Kedourie (1960) it is the mismatch between the utopian goals of *nationalism* and the necessary limits of any human social order that explains why the global spread of nationalism is accompanied by violence. Kedourie interpreted nationalism as a form of political religion, invented in the late eighteenth and early nineteenth centuries by Enlightenment thinkers such as Herder, Kant, and Fichte, that linked the idea of authenticity to individual and collective self-determination. Nationalism crystallized into the doctrine that humanity was divided by nature into many distinctive peoples (nations) objectively differentiated by their own languages and cultures, and that the only legitimate form of government was national self-government (Kedourie, 1960, p. 1).

The proponents were intellectuals who felt arbitrarily excluded from power by placeholders and who viewed the modern state as a bureaucratic machine that separated man from nature. To find an authentic model of society and to rally support for it, they invented an ancient past, selecting often violent exemplars to justify an overthrow of the established rulers. Nationalism displaced the idea of salvation from heaven to earth, and the mechanism by which this was to be achieved was an organic polity that dissolved the boundaries between the public and the private and embodied the collective will of the people (Kedourie, 1960, pp. 43–50). The task of nationalists was to destroy a corrupt world and establish a reign of nationalist saints. The drive to establish a world order based on nations meant tearing up the established compacts between polities, regarded as illegitimate because they had not been agreed to by peoples.

This led inevitably to conflicts between states and, also, in the French revolutionary period, to uncontrolled wars of peoples against peoples on the basis of abstract principles (Kedourie, 1960, pp. 18–19).

In reality, the nationalist doctrine was historical fantasy – there were no such objective linguistic and historical entities, and in many regions of the world characterized by cultural intermingling attempts to apply the principles of self-determination have been disastrous. Kedourie (1960, pp. 87–135) observed how Woodrow Wilson's plans to reorder Central Europe on national lines after the collapse of the Habsburg Empire generated conflicts between rival nationalists, who invented criteria of nationality opportunistically in order to claim populations and territories as their own. The effects of nationalism on the non-Western world have been still more disastrous, as deracinated intellectuals, in seeking to mobilize the masses against the 'spell' of imperialism, felt compelled to appeal to 'the dark gods' of religious traditionalism, generating a violent irrationalism (Kedourie, 1971, pp. 73–7).

While Kedourie's polemic may be idiosyncratic in tone, it does articulate widely held views of the baneful impact of nationalist ideology found in many contemporary scholars (see Geary 2002; Wimmer and Min, 2006). It powerfully identifies the violent and irrationalist sides of many nationalisms, but it nonetheless ignores the many conservative or reformist aspects of nationalism and exaggerates the causal power of ideas. In the first place, although nationalism is a novel ideology, many nationalisms are built on much older national sentiments that strongly reinforce the established territorial monarchies, such as Britain and Spain. Secondly, many nineteenth-century nationalist movements were liberal constitutionalist in character, including Daniel O'Connell's Repeal Movement in Ireland. Although nationalists, such as the Carbonari, did adopt revolutionary strategies, this was in part a response to political censorship and repression by *anciens régimes*. Thirdly, Kedourie's idealist arguments fail to recognize that nationalist campaigns against existing states remained very much minority movements. Scholars, such as James Mayall (1990), convincingly show how nationalism was co-opted by the great power system, which privileged the sovereignty and territorial integrity of states at the expense of the idea of the self-determination of peoples. Indeed, the diffusion of the nation-state was rather the effect of the collapse of the great empires in war, rather than of nationalist violence. Nation-states are as much a consequence as a cause of war. This is not to deny the transformative significance of nationalist ideology, but its effects were manifest after the disintegration of existing state structures, when it supplied, in its territorial rather than its ethnic variants, the principles upon which polities should be established.

It is undeniable that nationalism is implicated in wars, but the wars of nationalists are generally limited, given that their goal is the realization of an independent state on its 'natural' or historical homelands. Indeed, Kedourie creates a false contrast between the era of nationalism as one of endemic conflict and unprecedented destructiveness and the era preceding nationalism. The revolutionary wars which conventionally initiated the era of nationalism were preceded by centuries of wars on the European continent – in the eighteenth century dynastic and imperial, in the sixteenth and seventeenth centuries religio-political – and it is from these wars that the national identities and patterns of enmity of many modern nations crystallized. The English defined themselves as a Protestant nation with Catholic France as its enemy other; the Poles as a Catholic martyred nation, crucified by Orthodox Russia and Lutheran Prussia; and the Germans as the nation of Luther and of the Holy Roman Empire, hostile to the power pretensions of France.

In short, nationalism and national identities emerged within a European state system that was militaristic, and nationalism became dominant as it took root within powerful states and fed off the memories of historic conflicts. Can, then, the proliferating conflicts accompanying the diffusion of nationalism be explained by its militaristic state origins and the memories of bloody enmities with neighbours?

6.3 The nation-state as military power container

For many scholars it is military developments that explain the rise of the nation-state in Western Europe and its peculiar characteristics. Nations formed as unintended consequences of the military triumph of centralized territorial states on a continent divided into multiple political jurisdictions and engaged in incessant conflict after the collapse of the Roman Empire. To modify Charles Tilly's view (1975, 1994), war makes the state and the bellicose state creates the nation in the process of mobilizing its populations in a struggle with other political units.

The argument goes that whereas in 1400 there was a mass of independent and quasi-autonomous polities – kingdoms, principalities, duchies, city-states – by 1600 states were larger, fewer, and more centralized, and although there were many factors at work, a European military revolution best explains this, a revolution that includes the introduction of gunpowder weaponry and, in response, the artillery fortress (Bean, 1973, p. 203; Parker, 1996, pp. 156–9). The emergence of the Renaissance state, with more effective bureaucratic structures and improved methods of finance, accompanied military innovations. These

novelties favoured the rise of a professional infantry at the expense of cavalry and feudal levies, and thus efficient and centralized states over smaller and more decentralized polities, since an infantry requires intensive training and is more expensive to maintain. Permanent standing armies, in turn, strengthened central governments over feudal aristocracies, and once the power to tax had been appropriated by one sovereign, neighbouring states had to centralize and raise taxes or face conquest (Bean, 1973, p. 220).

The scientific revolutions of the seventeenth and eighteenth centuries generated further technological improvements that put a premium on powerful territorial states that could establish educational systems to recruit and train officers to staff their armies. States engaged in cartographic surveys and new chains of communication to map their territory and establish military fortifications, out of which a bounded territorial consciousness developed. States promoted scientific agriculture, trade, commerce, and external colonies to enhance their economic base (Howard, 1976). Until the post-Napoleonic period, the bulk of expenditures of rulers was assigned to military-associated activities (Mann, 1993, pp. 370–5). A large and permanent infantry army also required extensive training and motivation to sustain intricate manoeuvres in battle, as well as the stoicism necessary to retain formation and resist firing until the last moment in the face of an advancing army. This culture of forbearance, based on neoclassical patriotism combined with regimental organization, enabled European armies to prevail over others in the eighteenth and nineteenth centuries. The rising costs of war in Europe, however, produced a fiscal crisis in the late eighteenth century which resulted in demands for political representation on the part of significant sections of the population. The failure to respond to these led to the French Revolution and a quite novel republican democracy (Mann, 1993, pp. 167–253). Perceived as a threat to the European order, this state, when facing invasion by monarchical rivals, turned to nationalism to mobilize the French people.

Nationalism, together with the exigencies of war, caused the next innovation – the use of popular conscription to defend the state *in extremis*. The French revolutionaries, under invasion and faced with the collapse and disloyalty of the professional army, initiated the patriotic *levée en masse* that enabled the raising of huge numbers of highly motivated troops who swept aside the professional armies of Europe. Opponents of the Revolution had to appeal to and appropriate the national sentiments of their populations by engaging in a partial liberalization of political and social rights, as in the Prussian state.

In Europe most of the territorial states of the early modern period disappeared during the nineteenth century as a result of war, reducing from about 500 units in 1800 to about 20 states in 1900 (Leonhard, 2006, p. 235). Charles Tilly (1994) explains the diffusion of nationalism and the nation-state model by geopolitical competition. During the nineteenth century, European states faced with intensified military competition from their neighbours used nationalist appeals to extract ever greater resources (including military sacrifice) from reluctant populations through policies of centralization and circumscription. Populations were thereby 'caged' within tight territorial boundaries (Mann, 1993, p. 20). Posen (1993) suggests that the two key institutions of the mass nation in the nineteenth century were universal military conscription and primary education. European states competing with each other required a mass army which was now larger than before, ideologically motivated, and more lethal. Many of what we now view as the central institutions of the nation-state – speedy communications such as the railways, extensive heavy industry, and a welfare system to improve the health of workers – were promoted because of military imperatives.

The enhancement of the military power of European nation-states produced the great wave of European imperial expansion that further enhanced the prestige of the armed forces, which were now identified with the European nations' civilizing mission. Faced with the new threat of European power in the nineteenth century, the Ottoman Empire, Japan, and China embraced military reform and saw in the nation-state a dynamic power container that could mobilize popular energies to defend traditional regimes against Western imperialism. Japan's successful elite-driven adoption of nationalism from above, its victory over a European empire (Russia) in 1905, and its march to establishing its own empire in Asia made it a model for other non-European powers, including China and Thailand.

Charles Tilly identifies the existence in Europe of two main phases of state-making. The first is the growth in power and extent of existing states by conquest, dynastic alliance, and bargaining; the second is the creation of new states by existing states (for example, German and Italian unification), which from 1648 occurred at the ends of wars. These phases are part of a shift to a worldwide system of nation-states that occurred in five steps. There is, first, the development in Europe of the early modern national state that coexists with many other political units; second, the crafting of most of Europe into nation-states by war and alliances; third, the spread of European political and economic

domination to much of the world by the formation of client states and colonies; fourth, the creation from these latter polities of autonomous states through rebellion and international agreement; and, finally, the extension of this state system to the rest of the world. Europeans played the dominant role in the making of this system (Tilly, 1975, pp. 632–8).

The period from the seventeenth century onwards, then, is one where existing interstate structures were disrupted by the entry of large numbers of new political actors (nation-states) that sought a redistribution of power. The resulting disequilibrium, in Robert Gilpin's (1983, p. 197) understanding, is a classic recipe for war. War, therefore, is centrally implicated in the rise of the nation-state and is also its consequence. National-imperial competition was one factor in the outbreak of the two World Wars. During the total wars of the last century, the whole population became involved and, thus, a legitimate target of military planners through blockades and bombing. States came to regulate every aspect of life for national ends, conscripting labour for economic purposes, determining diet and alcohol use, and so forth. Since the Second World War, military imperatives remain powerful in many states, as exemplified in the military-industrial complex of the US and the geostrategic considerations inspiring programmes of economic development in East Asian states.

This would suggest an interpretation of the nation-state as the construct of a bellicose European-based state system and as a collectivity in which militarism is therefore embedded. However, this oversimplifies the situation, for the relationship between nationalism, the nation-state, and war is much more contingent. The first reason why we should doubt this relationship is that there are regions (such as Latin America and Africa) where *interstate* violence is not the norm. Second, warfare is only one of the sources of national identity, and many populations reject an equation of national identity with great power in preference for a moral mission. Third, many nationalists share a pluralist vision of humanity that promotes international agreement and institutions to contain conflict. Fourth, many nationalist struggles arise out of a democratic response to coercion and oppression, imperial or otherwise.

State systems by themselves are not necessarily warlike or nation-forming. Centeno (2002) has argued that although warfare between Latin American states did occur in the last two centuries, these wars were less common than in Europe, were shorter and less lethal, had a much smaller proportion of the population militarily mobilized, and were less costly. This was not because Latin Americans were less brutal

than Europeans; rather, violence occurred internally in the form of civil wars, including military campaigns against indigenous peoples. He suggests this was in part because of the weakness of the state (its incapacity to mobilize its population, for instance), and in part because neither political elites nor the general population were predisposed to conflict with neighbours. There is also no bellicose tradition of hostile commemoration of past wars, with the exception of Peru-Ecuador conflicts. The wars that are commemorated are those of national liberation (against Spain or Portugal) and there is participation in Pan-American celebrations. Moreover, unlike Europe, there is no heritage of interstate wars fought on rival ideological or religious lines. In short, the absence of a tradition of bellicose warfare and limited state capacity are intertwined (Centeno, 2002, pp. 33–100).

In the case of Africa, John Lonsdale (2002) has argued that before European incursion, states, except coastal polities, were isolated from global trading networks and lacked resources by which to cage and mobilize their societies for warfare. After achieving independence from European powers, African states have lacked authenticity because they are largely products of colonial rule, and, at the same time, their rulers preside over multiethnic populations, some of whom share ties with neighbouring states. Sensing a lack of legitimacy, and the possibility of endless unravelling if they should seek to reconstitute polities on ethnic boundaries, these rulers have for the most part avoided warfare against neighbours. There is considerable intra-societal violence, in the form of ethnic conflict and private brigandage, but this is in part a result of the weakness of overarching national and nation-state identities.

In short, nationalism by itself is not bellicose in the absence of state capacity and/or a national population that can be mobilized. But what of situations where there *are* cohesive nation-states? As regards these, factually the dominant form of nationalism emerging within the established territorial states of Europe has been liberal. Liberal nationalists rejected the martial tradition of nationalism, as well as European imperial expansion, favouring the development of international law and institutions as a means of regulating conflict, as in the League of Nations and later the UN. The internationalism of a Mazzini, who looked forward to an alliance of European nations freed from imperial despotism, can be viewed as a forebear of the European Union, a project formed in reaction to militarist traditions to ensure national co-operation on the subcontinent and the institutionalization of democracy.

This might suggest that the problem is rather with ethnic, as opposed to civic, forms of nationalism, which cultivate historical memories

and a sense of cultural exclusivity. But this also is too simple. Just as a civic liberal nationalism does not lead to peace, as we see in the case of France, ethnic nationalism does not of itself generate war. Many ethnic nationalists, although shaped by warfare, define their nation not in martial but in religious or cultural terms as having a moral mission to humanity. A sense of ethnic superiority does not necessarily lead to aggression; it may lead to nationalists seeking to isolate their nation from other influences so as to avoid 'contamination'. This is especially true of populations, subordinated within empires, that rejected great power politics in favour of superior otherworldly ideals. Hence the many Irish, Jews, Greeks, and Poles, for example, who saw themselves as exemplars of religious values and of a universal cultural mission.

It seems simplistic, therefore, to consider the nationalism either of stateless nations or nation-states as having inbuilt militaristic biases. Nationalism does not of itself result in war, and armed campaigns often occur where nationalism is relatively weak. Admittedly, nationalism was a factor in much collective violence during the nineteenth century in Europe and also in the twentieth century worldwide, but in many cases this was inspired by a democratic drive for freedom against imperial oppression.

6.4 Nation-statehood and interstate order

If this is the case, since the twentieth century has seen the replacement of most of the historic empires by a world of putative nation-states, can we look forward to a decline of violence? Moreover, in a period of intensifying globalization, which in the opinion of many contemporary theorists makes the traditional nation-state obsolete, will struggles over national sovereignty become increasingly irrelevant?

To both of these questions, the answer is probably a qualified no. The key word in the introductory sentence above is 'putative'. Although the historic empires have largely crumbled, this does not mean the era of nations has emerged. Gellner (1983, p. 44) claimed there are about 200 independent states in the world, but about 8000 languages and, hence, potential nations, and, as Walker Connor (1978, pp. 382–3) observed, of those entities called states in 1971, only 12, at most, could be considered as nation-states in the sense of being ethnically homogeneous. From a political nationalist perspective we *still* await the self-determination of nations.

How can this be when the ideology of nationalism, usually equated with the achievement of nation-statehood, is so dominant? James

Mayall's answer (noted earlier) is that nationalism has largely been domesticated by the earlier interstate system, which privileged the territorial integrity of existing states over the rights of nations to self-determination. Such would seem to suggest that nationalist ideology is a weak political force. However, this is an overhasty and unwarranted generalization, since nationalist ideology is used to justify both existing states *and* insurgent anti-state movements. The problem is, rather, that there is a disjunction between the nationalism of dominant and of minority nations. The former have tended to identify their national identity and interests with the territorial integrity of the existing state, whereas the latter have often associated their identity and interests with the break-up of existing states. Why is this so?

There are several historical reasons. Where nationalism obtained early success, it was congruent with existing territorial states, such as Britain, France, and the Netherlands, and even here nationalist identities crystallized during the wars of the late eighteenth century. In much of the world the achievement of national independence was secured generally not by peaceful means but by war or as the aftermath of war. The German and Italian nation-states were unified from above by elites in war in large part because of the sponsorship of a powerful state (Prussia, Piedmont) and, in the latter case, foreign intervention. As noted earlier, the most spectacular creation of nation-states followed the collapse of empires after the First and Second World Wars. In other words, nationalists noted that without a supportive state it was all but impossible to realize national ideals; it was therefore understandable for them to conclude, once these ideals were achieved, that only by preserving the integrity of the territorial state could they preserve the nation.

A second factor was that the early nation-states were also possessors of great empires, so that national prestige was perceived as being obtained by an imperial civilizing mission. This entailed denying that minority nations had (universal) rights to self-determination. When newer nation-states such as Germany, Italy, and Japan entered the state system, they sought prestige by seeking an equivalent imperial greatness. Geopolitical competition for empire between the great powers was one of the causes of the First World War, and in this struggle national minorities were used by rival powers in order to threaten the integrity of their opponents.

It is true that the collapse of the great empires of Central and Eastern Europe led to Wilson's attempts to construct a world (within Europe) of democratic nation-states based on the principle of self-determination,

but the failure of these attempts, producing weak states with aggrieved minorities, contributed to the outbreak of the Second World War. Because of this, the principle was abridged and subordinated to the recognition of existing states as a higher order principle, since the Westphalian principles of non-interference and respect for existing states were held to underpin stability and peace in the international order. Exceptions have been made by international organizations such as the UN for the rights of colonized peoples to obtain eventually their freedom from traditional empires, but general rights to secession have never been acknowledged.

Nonetheless, why have the further deepening of international institutions and the diffusion of democratization in the contemporary period not led to the recognition of the rights of national minorities to self-determination? One reason is the attachment of the majority or dominant nationality of the state to its territory as a homeland sacralized by memories of previous wars or by virtue of its cultural or religious associations: for example, the status of Kosovo for Serbia or the West Bank for some Jewish settlers. Since nationalism has been the regulative norm of international politics, opposition movements with a territorial basis are tempted to employ it to wrest from the state concessions, whether these be economic, cultural, or political. For states (and majority nationalities), especially those with numerous minorities, there is a temptation to dismiss the validity of such claims as opportunistic, as well as the fear that conceding claims in one sphere will open a Pandora's box leading to territorial truncation.

But must self-determination be viewed in statist terms? Can it not refer to political or cultural autonomies, and can this not lead to a reconciliation of the interests of dominant and minority nations by states reforming on federal and consociational lines or by offering more powers to (national) 'regions'? This seems to be the pattern in North America and, in particular, Europe, where the European Union provides a protective umbrella and institutionalizes, albeit imperfectly, the idea of multiple sovereignties. It might be argued that such transnational institutions are the future, with nation-states being compelled to devolve power downwards and at the same time pool their sovereignty in regional and global bodies. It might even appear that as populations become increasingly interconnected, they are faced with a host of problems – climate change, mass migration flows, nuclear proliferation, and financial collapses – that cannot be addressed at the nation-state level, but only by regional and indeed global co-operation. One potential harbinger is the rush of populations in Eastern Europe to transfer their

sovereignty, recently acquired from the USSR, to the European Union in the name of enhanced socio-economic progress and military security.

North America and Europe, however, are arguably special cases, operating in regions characterized by high living standards and a sense of military security. In other areas, such as the Middle East, the Balkans, the Caucasus, and the Asian subcontinent, insecurity persists, where memories of historical conflicts remain vivid and competition for the scarce resources of power, status, and wealth remains intense. Here the possession of a territorial state, with its protected borders/geography and its resources (including population size), is perceived to be a *sine qua non* for the defence of national identity and the achievement of economic progress. Understandably, dominant nationalities in such circumstances have been resistant on geopolitical and economic grounds to even democratic campaigns for autonomy, let alone secession. Minorities, in turn, such as the Kurds in Turkey and the Tamils in Sri Lanka, have seen violence as the only means by which to obtain their goals.

Moreover, one consequence of increased global interconnectedness is exposure to sudden and unpredicted challenges which upset existing balances between ethnic populations. A major exacerbator of conflict is competition for scarce resources in a world undergoing a demographic explosion and confronting the multiple threats mentioned above. Possessing an effective nation-state is still perceived to give populations a measure of control in an uncertain world, as well as a platform for managing such problems. As Mann (1997) has argued, it is still the most effective provider of the infrastructures of development – fiscal mechanisms, property rights, education, social security – as well as defence. It is true that the political and intellectual leaders of even powerful nation-states recognize the necessity of international co-operation to deal with global threats, but only by possessing a nation-state can populations obtain membership of regional and global bodies such as the United Nations and thus participate in decision-making on the world stage. There is, consequently, a hierarchy of power between populations with and without such nation-states, which in turn encourages new waves of nationalist mobilization.

A solution, if there is one, would be to establish stronger transnational or international institutions with a greater reach that can offer security guarantees, contain arms races, manage scarce environmental resources, and support economic development in troubled states, while demanding in return recognition of minority rights. This requires strong nation-states as sponsors of internationalism and also, on the receiving end, effective states through which enlightened policies of co-operation

can be implemented. But this seems to be a tall order, given the discord between the great powers and the incapacities of states in the much of the developing world.

6.5 Conclusion

Nationalism, nations, nation-states, and collective violence are linked in several ways. War and collective violence can operate as a constitutive element in nation-formation. For some nations, war is linked to the birth of national identity or to the achievement of national freedom. I have underlined the important role played by myths of sacrificial heroism in the cohesion of nations. Most states are founded on conquest, and we observe in Europe the formation of the nation-state as a result of military competition and war, and later the adoption of this model outside the West in order to mobilize populations for defence and development. Some nation-states exist because nationalism emerged within existing polities, but many were constructed from above by militaristic elites or arose out of the collapse of an imperial multiethnic state in war. Where the nation-state was forged from above, one should note the high prestige of war among some state elites, which significantly shaped the values of the nation, and the co-option of nationalism by conservative elites who attempted to smother its democratic potential. Coercion can be viewed as inherent in the organization of state power and distribution of resources, especially by aggrieved ethnic or national minorities. We have noted violence being employed as a strategy by groups when other means to achieving socio-political goals fail, whereas at other times it can be viewed as a symptom of despair.

That being said, nationalism by *itself* cannot be the cause of violence. Without the existence of a cohesive *nation* or an effective *state*, nationalists can do little. Many nationalists are also pacific and liberal internationalists. Strong nation-states seem to be a necessary precondition for social pacification. In their absence there is considerable violence, as in Africa. Effective nation-states are also required for international peace-keeping missions. Violence between collectivities long predates the era of nationalism and nation-states and can be found where they are weak. As Holsti (2000, p. 146) has observed, most wars since 1945 have been internal, with a ratio of intrastate to interstate wars of 7:1 (excluding anti-colonial wars), and most wars or armed interventions began as domestic armed conflicts. In many of these 'new wars' the problem is the absence or weakness of an overarching national identity integrating the different interests within clear territorial state boundaries (Munkler, 2005).

In the contemporary world where competition for scarce resources remains intense, the possession of a state is viewed as essential for achieving and defending such resources, and recognition is granted on condition of a collectivity being a nation-state. Given that there are many more claimants for independent nationhood than there are states, it is difficult to see how violence can be avoided except by engineering a new political order based on effective interstate co-operation. We see such (stumbling) initiatives in parts of the world, for example in Europe, where a pooling of sovereignty has de-emphasized the imperatives of state autonomy, reduced fears of military conflict, and enabled the concession of greater autonomy to minority nationalities. But is this a limited case dependent on memories of common disaster (two World Wars)? Can it be generalized to the rest of the world? Can international co-operation overcome the tremendous stresses on vulnerable populations imposed by water shortages, mass migrations, and energy shortages? In our present circumstances, we cannot be optimistic.

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Part II

Normative Challenges – Democracy, Identity, and Justice

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7

Against Global Democracy

David Miller

There is much talk today of the need for forms of democracy that transcend the boundaries of the nation-state – for democracy at the transnational and/or global level. I begin by drawing attention to the word ‘need’ in that sentence. People who talk in these terms do not suppose that there is an eruption of demands by ordinary citizens for new, higher-level forms of democracy – that these citizens have come to realize the limitations of national democracy and are actively seeking new arenas in which to practise self-determination. To suppose any such thing would surely fly in the face of the evidence. The argument, instead, is about changes in the current world order that necessitate, according to its supporters, some form of global democracy. The argument is functional in form: there are certain essential tasks that need to be fulfilled, and that can only be fulfilled by democratic institutions operating above the national level.

In its own terms, the argument is plausible enough. It is so familiar that it requires only a brief rehearsal. Present-day democracies find themselves unable to deal with a range of issues that take the form either of externalities – where decisions taken in one state have a serious impact on people living in other states – or of collective action problems, which can only be solved by co-ordination at a higher level. National economies, for example, are increasingly vulnerable to financial decisions and other events taking place elsewhere as they become more tightly interlocked by patterns of ownership and investment. This has been vividly brought home to us in the recent period through the impact of the collapse of the US housing market on banks and investment companies elsewhere in the world, and through them, on ordinary people living in those countries. Among collective action problems, the most pressing is surely the need to take steps to limit climate change

by radical reductions in emissions of carbon dioxide, methane, and other greenhouse gases, which requires international agreement and co-ordination. So the need for some form of international authority to deal with problems of both kinds is clear enough, and the argument I am considering assumes that this authority, to be legitimate, must be democratic in character.

Unfortunately, however, the fact that something is needed does not entail that it will be forthcoming. A simple analogy serves to make the point. Consider the case of civil war, perhaps the most ruinous of all conflicts. One might say that what is needed here is some impartial authority able to resolve the dispute that began the war and to impose a solution on both sides. But although it is logically possible that such an authority might appear on the scene, the very fact that the two sides have already resorted to arms suggests that, empirically, it is highly improbable that there could be a body that both parties will regard as a legitimate arbiter. The functional argument does not, by itself, show that it is possible for the function in question to be discharged in a way that meets other *desiderata* (such as a particular form of legitimacy).

I assume here that arguments for global democracy are intended to be practical and not merely aspirational. That is, people who advance these arguments are not merely trying to describe the way the world ought to be, according to some normative standard: they are setting forth a goal that political reformers should try to work towards. Nobody pretends that the task of establishing adequate forms of global democracy would be quick or easy. But the assumption must be that these institutions are at least feasible – that the obstacles we face in creating them are familiar ones, such as vested interests that would be threatened if the institutions came into being. The question, therefore, is whether global democracy is indeed feasible, in a world which is in other respects like ours – which means, for example, that it is divided along cultural lines, contains large inequalities of income and wealth, and so forth. The problem, I suggest, is not one of how to engineer the transition; the problem is with the idea of global democracy itself.

To be clear, my question is whether we can hope and should wish to have something recognizable as *democracy* operating at global level. I do not want to offer a definition at this stage, since in fairness to advocates of global democracy it is important to be flexible and not to insist that democratic institutions at this higher level must simply mimic the familiar forms of national democracy, with competitive elections between parties and so forth. On the other hand, we need to distinguish democracy as a means of constituting and controlling power from other

mechanisms that fall under the general heading of accountability (see Philp, 2009, for the reasons why it is a mistake to think that accountability mechanisms must or should always be democratic). There are many proposals in the literature for making states and international bodies more accountable to something or somebody – mechanisms intended to limit their exercise of power and make it less arbitrary. But not all of these mechanisms can properly be described as democratic, even though they may well be desirable in themselves. Suppose, to take a simple case, that two neighbouring states enter into an agreement by which each undertakes to respect certain of the other's rights and to allow its actions to be monitored for this purpose. We could say that each state is now accountable to the other in a way that it was not before. But this is not a case of interstate democracy, even if as it happens both states are democratic internally. What is missing is any form of popular control over decisions and policies which, without being more specific at this stage, is widely assumed to be an essential component of democracy.

7.1 How is democracy possible?

I begin by asking a very simple, but basic, question: how is democracy possible? That is, under what conditions can a group of people accept democratic authority, in the sense of regarding decisions taken by a democratic procedure in which they have some role as having binding force for them – binding in the sense that they will normally comply with the decisions taken even when it is against their interest or their personal convictions to do so? But is this a good question to ask? Since democracy comes in many different shapes and sizes – it can be direct or representative, unitary or federal, constitutionally limited or unlimited – it might seem that one should always ask about the conditions under which a *particular form* of democracy is possible, not about democracy as such. I sympathize with this more discriminating approach, but I want to begin by pressing the simpler question to see where it leads. For what all forms of democracy have in common is the fact that, at a certain point, decisions have to be taken by majority vote. All kinds of procedural and substantive safeguards can be built in to protect minorities, but a democracy must have a decision procedure, and that procedure must be majoritarian in character. It need not be *simply* majoritarian – it can require super-majorities on certain issues, it can parcel out issues to different constituencies, *et cetera* – but it cannot avoid the possibility that, when a question has finally to be resolved,

the *demos* finds that it is divided into two or more camps, and those in the largest camp will get their way against the wishes of the smaller group or groups.

It follows that a person who is considering whether to submit to the authority of a democratic institution must ask questions such as: how likely is it that when decisions have to be made I will find myself among the satisfied majority or among the frustrated minority? In the latter case, how much do I stand to lose, in having my interests set back or my convictions overridden? Now, it might seem that these questions are readily answered because considering the matter in general terms – from behind a veil of ignorance, so to speak – a majoritarian decision procedure gives everyone the best chance they have of getting their way when issues are being decided; any other procedure must increase the chance of being subject to decisions taken against one's wishes (this was formally demonstrated in Rae, 1969; for discussion, see Barry, 1979, and Beitz, 1989). But if we lift the veil of ignorance and suppose that the person in question knows a fair amount about the interests, beliefs, and so forth of the other members of the constituency in question, then it may be predictable that he or she will end up on the losing side more often than not. Where, for example, the constituency in question is divided unequally into two rival ethnic groups, a member of the smaller group may be able to predict confidently that over a wide range of issues, the decisions will go against that group.

Even so, it might be said, the person in question has no real alternative to accepting the democratic procedure. In fact, there are three obvious alternatives. The first is to put one's trust in some non-democratic authority – a military leader, say – in the hope that the chosen authority will deal fairly with the claims made by different groups within its jurisdiction. This might seem naïve, but one should keep in mind that unless the authority chooses to rule simply by the use of coercive force, it has an incentive to keep these groups satisfied by delivering benefits of one kind or another. So a minority whose co-operation the authority needs might expect to gain more in this way than it would if democratic procedures were allowed to operate (see Chua, 2003, for an analysis of the threats posed by majoritarian democracy to minority groups in ethnically divided societies). The second alternative is secession: break away from the political community as it is currently constituted and establish another in which the person's interests or beliefs will be better protected than they are at present. So, an ethnic group within a state may opt for secession in order to form a breakaway state in which it forms a majority. The third alternative is simpler still: rebellion. The

person we are considering may refuse to recognize the authority of the democratic institution and take up arms against it. This, again, may sound like a self-defeating strategy, and in most cases it probably will be, since the rebels will have no clear idea of what arrangement will give them the protection they want, but, if desperate enough, they may think that a cast of the die is better than the certainty of oppression by a majority that has no regard for their interests.

To be clear, I have not tried to show that any of these alternatives to democracy are *rational* choices for the person we are considering. The important thing to see is that we cannot take it for granted that people will accept democratic authority no matter what the circumstances, and, in particular, no matter how they see their relationship to the rest of the constituency within which democratic procedures are going to operate (Barry, 1979). Putting the point more positively, for democracy to be possible, there must be sufficient convergence of interests and belief among the set of people who will constitute its domain that minorities will be willing to accept the risks imposed by submitting to majoritarian decision procedures.

Take interests first. Consider a society sharply divided in such a way that any policy that benefits one group is likely to harm the interests of the others – for instance, a class-divided society in which the division of economic resources is zero-sum. Slave societies and early capitalist societies might fall into this category. Democracy is impossible in these circumstances. It becomes possible only when both groups see the possibility of mutual advantage: for example, because members of the deprived group come to believe that they have a chance to rise into the advantaged group, or because both sides can benefit if economic growth permits some degree of redistribution or increased public provision of benefits. There can still be fierce arguments between representatives of the two sides, but what has now entered the realm of possibility is a compromise solution from which both gain to some extent.

Beliefs also matter, however, since a democracy whose authority is acceptable to all requires that the majority should not attempt to impose a wholly alien worldview on the minority. The obvious example is a society divided along religious lines, where the division is such that if the majority is allowed to get its way it will force upon the minority (or minorities) beliefs and practices that the latter find intolerable. Here there must either be substantial convergence in the beliefs of the various groups or, alternatively, the majority at least must subject its own beliefs to an overriding principle of tolerance. More generally, we can say that for democracy to be possible, there must be something like a

Rawlsian overlapping consensus on basic principles of justice so that the minority can count on the majority to constrain its use of power within the bounds set by these principles. Putting in place a formal constitution can help, but this can only work if most members of the society in question are genuinely committed to the principles that the constitution embodies, and if the various groups trust one another to remain committed even when they have the opportunity to gain substantially by violating them.

I make these points to guard against the tendency to think that democracy is somehow the 'natural' way for human beings to govern themselves. Despite the fact that the historical record shows us clearly that democratic government has only made its appearance in quite specific circumstances, especially in societies at a high level of economic development, someone may argue that this was only because its appearance was previously blocked by some combination of ignorance and 'sinister interests' determined to hold on to power. This way of thinking is profoundly unsociological and can lead us badly astray when we have to think about new forms of democracy and how they might be constituted. Although we should certainly not assume that the possibilities for democracy are exhausted by the institutions that we can already see around us, we should proceed inductively and ask, about each proposal for extending democracy to new arenas, whether there is evidence to suggest that *that* form of democracy can work in *those* circumstances – where 'work' means, at the minimum, that those who will be asked to comply with democratic decisions are likely in practice to do so.

7.2 Stronger or weaker democracy?

So far I have explored the question of what must be true of a group of people if they are to form a constituency that can practise democracy. But besides asking whether democracy is possible at all, we can also ask about the likely *quality* of the democracy that will emerge. For there are stronger and weaker forms of democracy, and the form one aspires to will depend upon the underlying normative reasons one has for valuing democracy in the first place (see Miller, 2009, for a discussion). The relative strength of a democracy can be measured along a number of different dimensions. Let me just mention three of these.

The first is the extent of popular control over the decisions that are reached. Here we might envisage a spectrum of possibilities running from, at one end, the minimalist version of democracy outlined by Schumpeter (1976) in his famous discussion of democratic theory

to, at the other, a maximalist version that follows in the footsteps of Rousseau's (1997) *Social Contract*. In the minimalist version, the ordinary citizen's role is limited to a periodic choice between parties offering different policy packages: voters are not expected to investigate or discuss particular issues, or to have any direct input into policymaking. All of the substantive work is done by the political elites, and the element of popular control really boils down to citizens' collective capacity to eject from power a team of leaders whose performance they find unsatisfactory. On the maximalist version, by contrast, citizens are expected to be directly involved in the making of law and policy through assemblies that all are entitled to attend. They can propose items for discussion and decision and their deliberations should aim at finding solutions that represent a rational consensus or 'general will' in Rousseau's sense. In this case they are fully in control of their collective decision making.

The second dimension of strength is the wider or narrower scope of the decisions that are taken. All democratic units will have their decision-making powers limited in certain ways. They may, for example, be subordinate parts of a larger political system that defines their area of competence. Or they may be nominally sovereign, but find that in many areas their scope for decision is restricted by the actions of other bodies. A democracy will be strong to the extent that matters that its members consider important fall within its scope, weak to the extent that they fall outside. This dimension of strength may sometimes collide with the first: think of a parish council that is strongly democratic on the first dimension – there is a high rate of direct participation by members in its business – but is weakly democratic on the second, because many matters of concern to the community in question are decided at a higher level.

The third dimension of democratic strength that I want to introduce is political equality – the degree to which each member of the *demos* has an equal opportunity to advance his or her interests and concerns through the decision-making process. I assume here without argument that equality in this sense is a core component of the democratic ideal (Beitz, 1989; Jones, 1983). Formal equality, however, in the one-person one-vote sense is not sufficient to achieve the political equality that matters because of the possibility that permanent majorities may simply ignore the interests and concerns of those who belong to minority groups. There are several ways in which greater political equality can be achieved in the face of majority–minority conflicts. Some involve formal adjustments to the voting system, such as taking turns to make decisions or lottery voting (see Saunders, 2008, for a qualified defence of

the latter). Another is a deliberative process before a decision is reached that offers minorities a chance to influence the outcome and achieve a compromise that gives some weight to their interests and concerns. The closer that a political system comes to achieving political equality, then, the more strongly democratic it will be judged to be. Once again, this dimension of strength does not necessarily correlate with the first two identified above.

So we now have a second question to ask about proposals for global democracy. The first question was: is democracy, in any form, feasible at global level? Could it have the authority that would lead individual people, or smaller political units, to comply with its decisions? The second question is: if some form of global democracy *is* feasible, how strong or weak should we expect it to be? Will it be, on the one hand, populist, egalitarian and wide in scope, or on the other hand, elitist, inegalitarian and narrow in scope (I have indicated it need not be equally weak or strong along each dimension). This obviously bears on the importance we should attach to promoting global democracy as against other political goals, including strengthening democracy at lower levels.

7.3 World government

Proposals for global democracy usually involve some combination of two elements, with different authors attaching different weight to each (leading examples include Archibugi, 2008; Archibugi and Held, 1995; Dryzek, 2000; Held, 1995; for an overview, see Gould, 2004). The first is the idea of democratic world government, where existing national democracies would be inserted into a federal structure at the apex of which stands an elected global assembly with an executive arm. The second involves a more pluralistic and dispersed system of 'global governance', whereby democratic policymaking would be carried out in a number of different fora with no single hierarchy of authority. For ease of discussion I shall consider these separately, beginning with the idea of world government, though as indicated they can be combined in various ways.

Defenders of the first idea usually begin by assuming that, since the United Nations is the closest thing to a world government that actually exists, the path to global democracy must lie through a radical reform of that institution. Since it is currently organized on the basis of state representation, the first step would involve eliminating (or at least reducing) the inequalities between states that are created by, in particular, the structure of the Security Council with its five permanent, veto-bearing

members. But recognizing that this would only amount to a very small step in the direction of genuine democracy, advocates such as Archibugi (2008) and Held (1995) propose creating an assembly elected directly by all the world's peoples to sit alongside the current General Assembly whose members represent states. From a democratic point of view, this is intended not only to introduce an element of direct popular control but also provide a means to bypass the state-to-state negotiations that tend to dominate the proceedings of the General Assembly itself.

But now we must ask about the composition of the proposed popular assembly, and the purposes it would serve. First of all, who is to be eligible to form constituencies that would elect members of the assembly? Since many of the world's peoples are governed undemocratically, it would be problematic, to say the least, to attempt to hold free elections to a global assembly in those territories. And it would presumably not be appropriate to allow officials from one-party states, even if 'chosen' through some kind of election, to attend. But if only democratic countries are represented, it is hard to see what legitimacy the popular assembly would possess, alongside a General Assembly that for all its shortcomings is at least inclusive of all states.

Suppose instead we see the global assembly as a future project that must await the democratization of all, or nearly all, states. There is still a serious problem about its actual composition that needs to be addressed (but rarely is in the literature on global democracy). If we follow the logic of one-person one-vote one-value, we should divide the world into constituencies of equal size. Suppose the assembly were to have 1000 members – rather larger perhaps than what is usually taken to be the optimal size for democratic parliaments. The world population currently stands at about 6,742,600,000 people, so the size of each constituency would need to be one-thousandth of that, that is, 6,742,600. On that basis, over half of the world's peoples would not get a seat all to themselves. Countries that could only elect a delegate by forming a combined constituency with somewhere else include Norway, Ireland, New Zealand, and Slovakia. At the other end of the spectrum, China would be entitled to over 190 delegates, India to nearly 170 and the US to 45 (the UK would get 9 overall, but neither Scotland nor Wales would have a whole constituency to themselves).

Of course, the principle of equal constituency sizes is not sacrosanct: no existing democratic state adheres to it rigidly. So world government advocates can as a first move propose that every state should be entitled to send one delegate at least to the global assembly (see, for example, Segall, 1991). But this would still leave a great imbalance between states,

with a few very large states being able to form a majority if they act together. Again it is possible to counteract this by coming up with a scheme of representation that gives larger states relatively fewer seats in proportion to their populations, such as the Penrose scheme favoured by Segall which gives states seats in proportion to the *square root* of population size. Although this is claimed not merely to be a pragmatic compromise, but also something that can be given a principled justification, the reasoning behind it is quite opaque, and certainly not accessible to ordinary citizens. If individuals rather than states are going to be represented in the popular assembly, alongside a second chamber in which the units represented are states, then it is going to be hard not to follow the principle of equal constituency size, with minimal adjustments to ensure that each nation gets at least one member. The question then is whether, given the differences of interest and belief that prevail in the world as we know it, many people would be prepared to put themselves under the authority of a body that was composed in this way. They might well think that they were exposing themselves to the risk of domination by a coalition of delegates from different places that might form along lines of economic interest or political ideology.

To guard against this problem, advocates of world government are keen to stress that the global assembly would only have limited powers. Its role would be limited to deciding matters that cannot be decided at lower levels because, for example, they involve conflicts between states, or global issues that require transnational co-operation, such as preventing dangerous climate change. Indeed, some cosmopolitans would restrict its scope still further: Habermas, for instance, argues that, because of the need for the authority to act on the basis of a global consensus, it must restrict itself to preventing 'wars of aggression' and 'crimes against humanity'. As he (2006, p. 143) puts it, 'if the international community limits itself to securing peace and protecting human rights, the requisite solidarity among world citizens need not reach the level of the implicit consensus on thick political value-orientations that is necessary for the familiar kind of civic solidarity among fellow-nationals'. But then we might well ask why there is any need for a democratically elected body at this level at all; why not simply have a system of international law with courts and judges to rule on these matters, whose legitimacy would derive from states agreeing to abide by such rulings in advance? The point of democracy, after all, is to reach decisions on matters over which there is *no* consensus in advance of the democratic procedure being carried out. That is why majority voting forms an essential element in any democratic system. I argued earlier

that some degree of underlying agreement was necessary for democracy to be possible at all. But where there is already substantial agreement on a body of rules, such as those prohibiting certain forms of war, or protecting human rights, we might suppose that what is needed is an impartial judicial body to apply these rules to particular cases, not a series of democratic decisions which might turn out to be biased and inconsistent because of the interests of the parties involved.

There is a further point to be made here. Habermas's proposal for limiting the scope of global democracy sounds plausible partly because we can fairly readily imagine widespread agreement on the issues he cites, and partly because these issues are urgent and immediate. Nothing matters more to us than stopping wars of aggression and large-scale violations of human rights. But if the formation of a global popular assembly is to await widespread democratization at state level, then it is questionable whether these issues would still arise, except in isolated cases involving the remaining non-democracies – that is, if we assume that democracies will not conduct wars of aggression against each other, and that local democratic mechanisms will be sufficient to prevent serious violations of human rights. In other words, when it becomes feasible to implement Habermas's proposal in the form of a global assembly, it also becomes far less urgent to do so (note that Habermas himself does not explicitly advocate a global assembly, preferring instead to speak of 'global communication in an informal public' and the role this might play in conferring democratic legitimacy on decisions taken by the UN).

So far I have been asking whether an elected global assembly would be accepted as a legitimate authority by all the world's peoples, in the light of the very large imbalances in national representation that would exist if the assembly were elected in constituencies of roughly equal size. I have suggested that the basic conditions of democratic legitimacy would not be met unless the assembly's role were very narrowly defined, to include only those issues on which we might expect to find a genuine global consensus. But even supposing global democracy in this form were possible, what about its likely quality? How strong would the democratic element actually be?

In national elections, citizens vote for parties in the expectation that the party they favour may form a government (either alone or in coalition with others) and enact the programme it has laid down in its manifesto. The lines of political division are reasonably clear, and there is a good chance that a voter will be able to see most of the policies he or she has supported being pursued. Although this is by no means the strongest form of democracy one can imagine – in particular, policies

are still largely devised by political leaders and their advisors and put before ordinary citizens for their approval or disapproval – it is at least possible for ordinary people to feel that they are controlling the direction in which their society is moving. How do things stand once we move beyond the national level? If we consider the EU as the best-developed example of transnational democracy to date, people on the whole cast their votes in European elections as if they were participating in a national election, either supporting the party they usually support in domestic elections or taking the opportunity to register their disapproval of their national government by voting for a minor party. This makes some sense because the issues that arise and the political cleavages that exist at the European level correspond more or less closely to those found in the individual member states. So, fortunately, people can cast their votes in a way that is not absurd without having to understand the particular party balances and coalition strategies that exist in the European Parliament. At the same time, they have little control over the outcome of the election itself. Because the political currents are likely to be moving in different directions in different countries at any time, the relative size of the large party blocs from which coalitions are formed does not change much over time – so no one wakes up on the morning after a European election to discover that she has taken part in the rebirth of European social democracy, for example. Democracy at this level is best understood as a procedure for choosing individuals who are expected to look after the interests, in a broad sense, of those who form their constituency, rather than as an instrument of popular control. Judged by the criteria discussed earlier, it is far weaker than democracy at the national level.

Suppose now we think of elections to a global assembly. On what basis would citizens decide which candidate to support? It would no longer be reasonable to assume that the political dividing lines in the assembly would correspond to those already familiar in the national context, so it would make little sense to choose on the basis of national party affiliations. Nor, if the assembly is to be kept to a reasonable size, is there likely to be room, in the case of the citizenry of most states, for a spread of public opinion to be represented (Bienen et al., 1998). Should one then support whoever is most likely to defend the national interest effectively, or instead vote on ideological lines – for the free trade, or human rights, or anti-global warming candidate, for example? Given the composition of the assembly, it hardly matters which one does, so voting in this case would take an almost entirely expressive or symbolic form. On both the popular control and political equality dimensions

identified earlier, the assembly's democratic credentials would be very weak, and for the reasons given earlier it would not be likely to score highly on the scope dimension either.

7.4 Global governance

So let us turn our attention instead to the second way of thinking about global democracy, namely the idea of democratic global governance. This way of thinking starts from the observation that there already exists a substantial framework of global governance, understood as sets of rules and other conventions that are complied with by states and by other bodies such as international corporations (see Hurrell, 2007, pp. 95–119, for an overview). These rules have not, in general, been legislated into existence by formal means. In some cases they will have emerged from international treaties; in other cases from custom and practice that becomes recognized as part of international law; in still other cases from lobbying by non-governmental organizations (NGOs), which results in states and corporations signing up to codes of practice produced by these organizations, applying, for example, to the use of child labour or the exploitation of forests and other ecologically sensitive areas. These rules are not backed up by punitive sanctions; nevertheless, states and other bodies often comply with them out of conviction or for instrumental reasons such as fear or loss of reputation, and so it is not wrong to use a term such as 'governance' to describe what is going on.

So far this is simply a description of forms of regulation in international society. The normative question is whether global governance could or should become democratic. What would this mean? Presumably that the agencies that formulate the rules in question, monitor compliance with them, and try to deter breaches (by, for example, causing states or corporations that violate the rules to suffer reputational damage) should be democratically accountable. Broadly speaking the agencies in question might be states, international bodies established by states (such as the World Bank), or NGOs. How should democratic principles be applied to these bodies?

The problem in each case is to decide what the democratic constituency might be that should exercise accountability. Following Keohane (2003; see also Grant and Keohane, 2005), we can draw a distinction here between internal and external accountability. Internal accountability means accountability to the people or the institutions that authorize and sustain the body in question. Thus we might say that the World

Bank should be accountable in this sense to the states that created it and continue to fund it. An NGO such as Oxfam should be accountable to all those individuals and groups who contribute to its work by volunteering, donating money, *et cetera*. External accountability, on the other hand, means accountability to those whose lives are affected by what the organization does. In the two cases just mentioned, for example, we may think that these organizations should be externally accountable to people in poor countries whose life prospects would be raised or lowered by the decisions that the World Bank or Oxfam takes.

Either of these forms of accountability might, in principle, be democratic. If we say that accountability 'implies that some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards, and to impose sanctions if they determine that these responsibilities have not been met' (Grant and Keohane, 2005, p. 29), then it will be democratic insofar as the first set of actors is a *demos* of some kind. But straightaway we encounter the first problem, which is that the *demos* that might provide internal accountability is not the same as the *demos* that might provide external accountability, and, moreover, there is no reason to think that these two constituencies will necessarily converge on the same set of standards. For example, if we take the members and supporters of an NGO, they are likely to see the NGO as having a particular kind of mission, and will judge it by its success in carrying out that mission, whereas those who are subject to the effects of the NGO's activities may have different priorities. There is no obvious way in which the two constituencies can be brought together. The best practical hope is that the NGO in question might consult both groups when it sets its goals and try to achieve a compromise when there is disagreement. However, this is not the same as accountability proper, which, as we have seen, must include the possibility of an agency being subject to sanctions if it fails to meet its responsibilities.

The second problem is that of identifying the relevant *demos*, in either case. In the most thoroughgoing treatment of this problem to date, Macdonald (2008) addresses it using the language of 'stakeholding', but this is an elastic term that can be used to include anybody who has some kind of interest in the way that an organization functions. Macdonald therefore distinguishes between 'primary' and 'secondary' stakeholders according to whether or not their 'autonomy-constraining interests' are at stake, and confines rights of democratic participation to those in the former category. In practice, this will mean that the organization's external constituency are treated as its primary stakeholders. But how

is the composition of that external constituency to be determined? Consider an aid agency that decides to concentrate its efforts on helping a particular group of clients, say people in country X who do not presently have access to clean water. According to Macdonald's criterion, these people become the agency's 'primary stakeholders'. But the agency might have opted instead to focus on feeding people in country Y which is experiencing prolonged drought. Since their autonomy is constrained by the NGO's decision, should these people too be counted as primary stakeholders? Macdonald (2008, pp. 86–7) suggests that the relevant question to ask is whether the agency has a *responsibility* to help people in country Y. But this question cannot be answered without asking what the NGO's internal constituency takes to be its mission. In other words, to the extent that the NGO is internally democratic, its secondary stakeholders (supporters, employees, and so forth) will determine who its primary stakeholders will be. And this is surely paradoxical.

The third problem we must address is that, even if we could identify a relevant *demos* to whom international agencies might be held accountable, it seems unlikely that the democratic quality of that accountability would be at all high. Consider internal accountability first. If the main actors imposing accountability here are (democratic) states (as in the case of the World Bank, for example), then we could say that formally at least the bodies that exercise control are democratically constituted. But this still falls far short of real democratic governance. The point has been powerfully made by Dahl (1999, p. 31), who points out how much information and political motivation ordinary citizens would need to have in order to enjoy even the degree of popular control over international organizations that they currently have over domestic decision making. So in this case accountability may be real, but the group exercising it is narrowly composed of a few top politicians and civil servants whose decisions are opaque to ordinary people. In the case of NGOs, on the other hand, there is typically a more heterogeneous group of actors – employees, volunteers, private philanthropists, government agencies, and so forth – who finance and sustain the organization, and whose purposes in doing so may be somewhat conflicting. Although it is possible to imagine mechanisms by which representatives of these various constituencies could be brought together for the purpose of ensuring some degree of accountability, it is hard to see what the principle of representation should be here (should contributors be represented according to the size of their donations, for example?). It is important also to keep in mind that NGOs are always voluntary bodies.

Supporters can leave and devote their time and money to some other organization in the same field or to another cause entirely. The possibility of exit ensures a form of internal accountability, but one that may potentially compete with the accountability of voice – for example, if a major private donor threatens to withdraw support unless the NGO changes its policy in some way (see Hirschman, 1970, for the contrast between exit and voice as competing strategies for those dissatisfied with an organization's performance).

If we turn now to look briefly at whether international organizations can be held externally accountable, then the main obstacle is likely to be the dispersed and uncoordinated nature of the constituency that might do the accounting. The global poor, for example – all those who might benefit from the activities of the World Bank or Oxfam – are not a politically organized group, and their interests will often be conflicting in cases where investment or aid might be delivered either to this place or to that. It obviously makes sense for these organizations to consult the people they intend to benefit before making their decisions, but this is very different from saying that they can or should be held accountable by the beneficiaries. Talk of sanctions, in particular, seems out of place in this context: not only will the constituency be unable to impose such sanctions directly, but it is hard to see how they can authorize some representative body to impose them on their behalf.

Let me reiterate the main point of this section. I have not denied that something called 'global governance' exists, or that it is beneficial in controlling the behaviour of states in general. I have merely questioned whether the agencies involved in global governance are themselves capable of being democratically accountable in any real sense. This is not intended as a challenge to their importance or their legitimacy: one should not assume that the only kind of legitimacy is democratic legitimacy (see also here Kymlicka, 2001, pp. 317–26). This thought is pursued further in the concluding section of this chapter.

7.5 Alternatives to global democracy

I began this chapter by observing that arguments for global democracy are often introduced by giving lengthy descriptions of global problems whose solution, it is claimed, requires new and higher forms of democracy. I pointed out that to say that something is needed is not to say that the something in question can be found or brought into existence. There are good reasons to think otherwise in the case of global democracy. It is doubtful whether the stronger forms of global democracy

(such as a global assembly with legislative powers) would be regarded as legitimate in a materially and culturally diverse world, unless their scope were narrowed in such a way that democratic procedures would be applied only to issues about which there is already a high level of agreement (such as the prevention of human catastrophes like genocide or ethnic cleansing). And in cases where the legitimacy threshold is lower – for example, because the decisions that are reached do not have binding force over independent political communities – I have expressed scepticism as to whether anything but the weakest forms of democratic control are actually possible.

Since I have not denied that there are urgent global problems that individual nation-states cannot solve on their own, this might seem like a recipe for despair. But that is not the conclusion I wish to draw. On the contrary, I believe that we have available a range of mechanisms for dealing with international and global problems whose effectiveness and legitimacy do not depend on their democratic credentials. These mechanisms are familiar, but it may be worth running through them briefly to underline the fact that there are plenty of alternatives to democracy when we face problems that cross state boundaries – problems involving the external impact of one state on others, or problems whose solution requires collective action by a number of states.

First, then, we have international law, the evolving set of rules that apply primarily to states and govern their behaviour in a wide range of areas including war, territory, natural resources, the movement of people, human rights, and so forth – rules that are applied by various bodies including the International Court of Justice and the United Nations, and to whose decisions sanctions can be attached. Next, there are what we might call international standards, where states commit themselves to the provisions of an international convention, and thereafter become liable to report on their compliance with these provisions and to allow themselves to be inspected by the relevant international body – for example, the standards governing the employment of workers laid down by the International Labour Organization. Third, there are interstate treaties that impose obligations on states; these can simply be bilateral or multilateral, but can also be universal in scope, as may soon (one hopes) be the case with the climate change treaty that supersedes the Kyoto Protocol. Fourth, we have the range of mechanisms whereby one state, or a group of states, can control the behaviour of other states by, for example, threatening reprisals unless the target state ceases to do such-and-such, or promising rewards (such as EU membership) if the target state complies with certain conditions (such as respecting

human rights). Finally, there is pressure exercised by non-state bodies such as NGOs, who are able to embarrass states by exposing their non-compliance with certain standards of behaviour, lobbying other states to take action under the fourth range of mechanisms just mentioned, bringing cases before domestic, regional, and international courts, and so forth.

It might be said that, even if these various mechanisms succeed in placing significant constraints on the behaviour of states, and also contribute to solving collective action problems such as those posed by resource depletion and global warming, there is no guarantee (given the absence of democratic accountability) that they will promote the interests of ordinary people in a coherent way. That is, what gets protected from state excesses depends on who else has an interest or a conviction in the opposite direction. Sometimes, as in the case of human rights, for example, the protection *is* of universal significance – everyone potentially benefits if a human rights treaty or an effective NGO succeeds in preventing rogue states from abusing these rights. But other restrictions may be driven by the interests of states themselves (in maintaining their territorial integrity, for instance) or by the convictions of activists that may not be widely shared (in the case of radical green groups, for example).

There is something to this objection, but if it is put forward as a justification of global democracy, we have to return to the question raised earlier of whether there is indeed sufficient convergence of interests and beliefs among peoples worldwide that democratic procedures (if we could implement them) would produce majority decisions that fairly accommodated the interests of different groups. In the case of an issue such as global warming, for example, the treaty on atmospheric gas emissions that is likely to emerge from interstate negotiations will have its flaws and limitations, but it may still be fairer (and therefore more viable in practice) than what would emerge from majority voting in a global assembly. Although one could imagine deliberative processes that might avoid the problem of majority interests prevailing over minorities, the chances of such processes emerging in contested international arenas seem slim, as I have argued elsewhere (Miller, 2000, pp. 81–96).

My claim is that it is not necessary to create democratic institutions at the global level in order to achieve the goals that are usually cited to justify them; we have other mechanisms that can discharge the functions in question. Moreover, the prospects of creating such institutions are quite remote. But this does not quite explain my title. Why not at least *try* to move in the direction of greater global democracy? My concern is that

such an effort will distract our attention from the more urgent task of strengthening and extending democracy within states, at national and local levels. We need to counteract the forces that are acting to attenuate popular control in established liberal democracies (for a diagnosis, see Crouch, 2004), and even more urgently we need to encourage the democratization of those states that are currently governed autocratically. Creating a world of strong democratic states is challenge enough. If we could meet it, then first of all international organizations would at least be accountable to bodies that were democratically legitimate, even if not directly to their citizens; and second, many of the problems for which global democracy is said to be the remedy – large scale abuses of human rights, for example – would simply disappear. Democratic states would still need to co-ordinate their activities on issues such as climate change, and would no doubt bargain with one another in the process over how costs should be shared, but the bargaining would be conducted within the normative limits that democracy itself imposes; and the chances that agreements once reached, or conventions once adopted, would be respected thereafter would be greatly enhanced.

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8

Postnationalist Democratization: Rethinking Nationality, Trust, and Accountability

Cillian McBride

If nationalists are right to argue that there is a special link between national identity and democratic politics, then schemes for transnational, cosmopolitan democracy must be misconceived. I cannot defend a detailed blueprint of cosmopolitan democracy in this chapter for the simple reason that I do not possess such a blueprint. What I hope to do, however, is to refocus the debate about nationality and democracy away from the idea that democratic accountability requires a unified national identity and on to the idea that all democratic politics, domestic and transnational, should approach this issue with a view of the *demos* as plural and decentred. Far from strengthening democratic accountability and fostering civic trust, I argue that a concern with national identity embodies a misunderstanding of collective self-determination and has the potential to expose citizens to elite manipulation.

8.1 Why postnationalist democratization?

The argument for cosmopolitan or postnationalist democratic institutions does not turn on the opposition between some heroic cosmopolitan vision of a world emptied of troublesome partial attachments and an alternative vision of a richly diverse social world in which individuals associate and affiliate with others in pursuit of their various personal and common projects. If anything, a postnationalist world would, perhaps does, resemble more nearly the latter vision; it is not a world without communities and associations, but one in which these are not subordinated to the nation-state. While national identity undoubtedly features in the background of most people's lives, albeit rarely distinguished clearly from their formal civic identities, the number of people who make this the primary focus of their lives is quite small, outside

very specific circumstances (discriminatory treatment leading to secessionist struggles may provide a relevant context for such a move). The nation struggled to establish itself as the organizing framework for pre-existing patterns of identities and affiliations and is now under pressure from social and economic forces cutting across the boundaries of both nation and state. There is no reason to suppose that these identities and affiliations will not survive any reconfiguration of our civic identities, for the simple reason that they are not dependent on the nationalist version of those identities in the first place. Indeed, some of these identities and solidarities – regional identities, for example – have struggled to survive the centralizing pressures of nation-states and are not obviously placed in danger by the decentering processes of postnationalist democratization.

My argument takes its bearings from the idea that where our actions affect others, we may be called upon to offer them some justification for those actions and engage in collective reasoning with them should this be necessary (Elster, 1997). This basic idea underlies standard accounts of deliberative democracy and provides the justification for the move towards a postnationalist model of democracy, in which such deliberative exchanges are neither confined primarily to the domestic politics of nation-states nor to the elite deliberations of national governments engaged in narrowly international negotiations. This latter model must give way to an alternative in which collective reasoning flows across national and institutional boundaries and wells up in a multiplicity of locations, regardless of national frontiers. On this view, the only legitimate way to limit the flow of political deliberation across the borders of the nation-state would be to limit our *interactions* with others beyond our borders. A nationalist might well argue that this is insufficient to motivate a move beyond an *international* form of political organization, but as there are good (Condorcetian, for example) reasons to prefer more open, inclusive forms of collective political deliberation over exclusive forms, I suggest that opening up spaces for transnational deliberation is ultimately likely to produce better collective solutions to collective problems (Goodin, 2003, pp. 91–108; Sunstein, 2003). The move to postnationalist forms of democratization is motivated by the scope of our practical engagements. To the extent that we have an interest in protecting ourselves from domination (Pettit, 1996), whether from political elites or the destructive effects of the global financial system, and a corresponding duty to avoid participating in an institutional order which exposes others to the possibility of domination, then we have reason to explore the possibility of postnationalist democratization.

I cannot hope to offer anything like an adequate defence of these arguments here, but I do want to address an important challenge to this project regarding its ability to ensure democratic accountability. The nationalist charge that any move in the direction of cosmopolitan democracy will weaken democratic accountability, because there is a special link between national identity and democratic self-determination, merits serious attention. In the following, I consider two sorts of argument which present the nation-state as a precondition of democracy, one focusing on the need for a shared linguistic background and the other on the idea that national identity supplies the civic trust necessary for democratic cooperation. I argue that underlying these arguments is an assumption that democratic self-determination rests on a unified identity, an assumption I believe we should reject in favour of a decentred understanding of the democratic public and of democratic accountability.

8.2 Decentred publics and democratic accountability

There is a long tradition within democratic thought of supposing the *demos* to be a unified collective agent. It underlies the views of direct democrats, like Rousseau, on the one hand, who condemn representative institutions as undemocratic because they divide the people into rulers and ruled, as well as the views of representative democrats, on the other hand. The latter, with Mill (1991, p. 428), believe the ‘united public opinion’ on which democracy rests can be supplied by a shared language and nationality, rather than through the geographical centralization of politics within a city-state. Kymlicka articulates a version of this argument for civic unity in response to David Held’s defence of cosmopolitan democracy, although, of course, he rejects the traditional nationalist claim that national identity must be co-extensive with civic identity in a given state. In his liberal multicultural model, legal-political citizenship is a shared umbrella under which a plurality of cultural and national identities may shelter within a given state. Nonetheless, he worries that cosmopolitan forms of international or transnational governance may pose a threat to the sort of democratic accountability currently enjoyed within states.

The argument centres on the idea that the dealings of political elites will increasingly become opaque to the national publics whose interests they are to advance on account of the absence of a shared language at the transnational level. Kymlicka (1999, p. 121) argues that a shared language has been essential to the success of nation-states in securing

the accountability of elites to their publics and that the absence of this common medium on the international stage will have the effect of diminishing democratic accountability. While this is not, of course, an argument that a thick national culture is required for democratic accountability to be realized, it does pose a genuine challenge to transnational democratization: if there are linguistic limits to effective democratic accountability, then any good democrat has reason to prefer interstate negotiation to transnational forms of global governance.

It is a little surprising to find Kymlicka taking this line, since it appears to link democratic accountability to precisely the sort of centralizing linguistic assimilation that has traditionally made the nation-state an inhospitable home for minority cultural groups and speakers of minority languages. That said, the accommodation of linguistic pluralism within federal political structures, permitting the formation of relatively linguistically unified political units, will clearly satisfy the view that linguistic unity is a condition of democratic participation within multilingual states. In addition, multicultural states can plausibly expect that a measure of multilingualism will increase communication *across* linguistic publics. The resulting picture, then, is one of at least partially *overlapping* linguistic publics within a multicultural state, rather than of discrete publics existing alongside one another with limited communication between them. We cannot, however, imagine that such multilingualism would be broad enough in scope to be relied upon in any postnationalist democratic order.

Of course, this picture of overlapping spheres of communication, in place of the traditional nation-state model of a public sphere constituted by a single unifying national language, is one already familiar from Habermas's (1996, 1998) account of the postnationalist public sphere. Democratic legitimacy depends on the flows of communication between the informal public sphere and the formal, parliamentary sphere which has the task of formulating laws. In Habermas's view, however, it no longer makes sense to talk about a single public opinion-forming public sphere within modern democratic states. Instead, it is more accurate to think in terms of a plurality of overlapping public spheres within which citizens come to form and express their opinions. These are not only geographically dispersed but also vary according to the particular groups of citizens who participate in them, as Fraser (1997) indicates in her account of 'subaltern' publics. There is no single public sphere in which all citizens simultaneously interact on the model of the Athenian *agora*. Rather, there is a collection of uncoordinated publics, some involving face-to-face interactions, others involving the

consumption of traditional mass media, and yet more involving the new media world of blogging, twittering, *et cetera*. Habermas (1996, p. 301) argues that a unified public is unnecessary for discursive control over the formal public sphere, provided there is communication between these publics – that conversations take place across their boundaries and between these publics and the formal, parliamentary sphere. Indeed, it is not hard to see that behind the image of a unified, centred public sphere, based initially in the eighteenth century on the consumption of print media, there was already a plurality of dispersed publics – publics that fed into an ‘imagined public’ in which the same political affairs could be argued over in localities throughout the state by actors who never personally interacted with one another. While the technologies have changed and the flows of communication speeded up and intensified in density and variety, it is plausible to maintain that the unified public sphere was already in fact constructed out of a plurality of partially overlapping, intersecting publics.

As is well known, Habermas believes the success of postnationalist democratic institutions depends not on the possibility of forging a new unified national identity corresponding to these institutions, but on the strength of the interactions between the various publics, which must exercise discursive control over formal democratic institutions. From this perspective, democratic politics does not require citizens to participate in the same way, in the same context, at the same time, or in the same language in order to generate the public reasoning sufficient to ensure the appropriate responsiveness from formal political institutions. The linguistic uniformity aspired to by the traditional nation-state has, of course, only ever been imperfectly realized in practice, and if one were to insist on a strong version of this argument, with linguistic uniformity viewed as a necessary prerequisite of democratic accountability, then we would be forced to deny that such accountability is possible within multilingual states.

All this talk of dispersed, overlapping publics may do little to allay suspicions that our political autonomy is under threat. How can we hold elites to account when the public is itself plural in this way? In what manner can such a public be said to exercise proper democratic control over the formal political institutions of society? Underlying my analysis of the public sphere is an argument about the nature of democratic self-determination. The nationalist argument sketched above belongs to the populist strand of democratic thought, which is based on the supposition that the *demos* is a unified collective agent possessing a collective will prior to any formal political institutions, and which

depicts these institutions as instruments for translating this pre-formed will into action. This view typically regards legal restraints upon the sovereign as diminishing democracy in the name of individual liberty. By contrast, many republican and deliberative democrats reject this populist model, arguing that the idea of a unified agent with a collective will independent of formal institutional decision-making structures is mistaken, as is the idea that legal defences of individual rights represent restraints on democracy enacted in the name of the independent value of liberty (Habermas, 1996, p. 298; Pettit, 1999). On this alternative view, it is the institutional structure of contemporary democracy itself that *constructs* a collective will, and, as such, this structure cannot be reduced to a mere vehicle for some pre-existing collective will. Strictly speaking, then, any talk of national self-determination, independent of political institutions, is misplaced: collectivities of this sort do not possess a will at all (which need not exclude the possibility of collective intentionality, however).

Pettit (1999) argues that if we are serious about affording all citizens an equal share in collective self-determination, then we must adopt a pluralist, contestatory model of democratic institutions, one that operates with an expressly decentred model of democratic accountability and embraces not simply the traditional ideal of electoral accountability to majorities of voters but also a range of oversight bodies, such as constitutional courts and other institutional agents, which perform vital 'editing' functions on legislation in order to protect minorities from domination. Only on implausible populist assumptions are such 'contestatory' mechanisms an external restraint on democracy. Rather, they are constitutive of democratic will-formation itself, conceived as an ongoing process involving citizens who are understood as a plurality, not a unified subject.

The nationalist fear that we are exchanging the accountability of the nation-state to a unified popular will, exercised unproblematically through periodic elections, for a complex world of dispersed publics in which it is unclear to whom political institutions should respond, is premised on a flawed model of collective self-determination. There is no unified popular will to respond to, but only a plurality of democratic institutions for constructing collective decisions and taking collective action, each performing its particular role in shaping and constraining this process. As the *demos* of contemporary democracy is plural, so too are the mechanisms available for ensuring democratic responsiveness, and only a plurality of mechanisms can deliver this responsiveness. This is not to deny that there is much work to be done on how to design

institutions to effectively perform democratic editing functions, but if this account is sound, such work must be focused on the institutional intersection between informal publics and formal decision-making institutions, rather than on shoring up national or linguistic identities in the name of civic unity (Bohman, 2007).

Even if we abandon the link between populist notions of democratic self-determination and linguistic unity, we may still worry that linguistic barriers to communication pose a problem to democratic communication. However, it is important to get this problem in perspective as just *one* among a range of challenges facing democracy, domestic as much as transnational. The ability of elites to coordinate their actions while their dealings remain opaque to ordinary citizens does not require linguistic differences, but only the standard differences in education, wealth, and cultural capital. That aside, a still more difficult problem for populist accounts of democratic accountability is that of epistemic differences, that is, the degree to which collective decision-making must be informed by scientific evidence which the ordinary citizen will never be in a position to evaluate. This all suggests that the argument from linguistic uniformity offers weak reasons to suppose that citizens can exercise more effective democratic control over domestic, national elites than over transnational elites. Instead, all democratic institutions face the same problems of enabling adequate communication between democratic publics and of ensuring the accountability of elites to their various constituencies.

8.3 Nationality, trust, and democratic cooperation

David Miller has expanded on Mill's arguments for the necessity of national identity to democratic politics, and has argued against multiculturalist-inspired accounts of the public sphere on the grounds that they weaken the commitment to the public good which democratic politics requires. Miller's (1995, pp. 89–90) claim centres on the idea that democratic politics cannot be successful if citizens do not trust one another sufficiently to cooperate on collective projects. The need for trust, he insists, is greater still for deliberative conceptions of democracy of the sort he subscribes to, for while minimalist conceptions can get by (or at least claim to do so) with the bare idea of party competition and majority voting, the deliberative view requires citizens to reason with one another in good faith about collective problems, and this enterprise requires a measure of trust to get off the ground. Nationality, Miller argues, supplies this civic trust, the shared embrace of a common

nationality serving to strengthen citizens' trust that their fellow nationals can be relied upon in cooperative ventures.

One could respond that Miller's account of the link between nationality and identity is simply too demanding and that we should be content with a more competitive, minimalist model of democracy. As I broadly agree with Miller on the need for a deliberative account of democracy, I shall take a different tack and question, first, the extent to which nationality delivers civic trust or solidarity, however this is to be understood, and argue, second, that trust is not in any case an asset to democratic politics, so that its absence need not be a cause for concern. I should note, however, that there are reasons to be sceptical of the more general idea that deliberative democracy requires civic unity to thrive. Deliberation can be undermined rather than strengthened if the bonds of reciprocity between participants are too strong, for these may intensify the pressure on participants to maintain a reputation for reasonableness by suppressing unwelcome opinions and engaging in preference falsification, thereby diminishing the quality and inclusiveness of public deliberation (Grogan and Gusmano, 2007; Kuran, 1995; Sunstein, 2003).

In pointing to the threat to social cooperation of a general lack of trust between citizens, Miller touches on a deep seated concern about the individualism of modern life shared by many social commentators (Putnam, 1995) and participatory-inclined democrats (Barber, 1984, pp. 213–60). However, it is not immediately obvious that efforts to strengthen national identities will necessarily produce the civic solidarity that is said to be required. Few states actually conform to the classic nationalist nation-state model, with very many states containing multiple nationalities and ethnicities within their borders, some marked by linguistic differences, as indicated earlier. Contemporary liberal nationalists, sensitive to the severe dangers posed to political stability by the traditional nationalist doctrine of self-determination, have typically insisted that civic versions of nationalism need not provoke orgies of secession and annexation. This is because it is possible, they maintain, to satisfy the desires of minority nations for national self-determination within the borders of existing states through the use of federalist mechanisms, *et cetera* (Miller, 1995, 2000; Tamir, 1993, pp. 140–5). Yet, against this, it is difficult to see why minority nationalities should readily settle for something less than the statehood held by the majority nationality they find themselves closeted with. If national self-determination *matters*, then it is hard to see why a minority nationality should settle for a smaller share of it, when secession might secure for them the same

status as the currently dominant nation. The doctrine of national self-determination does not appear to contain any principled restraint on the pursuit of secessionist projects and its wide acceptance seems likely to encourage such schemes.

Also, besides stoking secessionist pressures on the part of national minorities, a policy of strengthening national unity would seem more likely to provoke division and disaffection among the citizen body in general, than a policy which takes a more relaxed attitude to such ideas and allows a plurality of self-understandings to flourish within the various publics which constitute the public sphere of that particular *demos*. The UK government's attempts to foster a stronger sense of Britishness among new citizens, by introducing a new citizenship test for immigrants, immediately ran into controversy when it became clear that the ministers appeared to be identifying British citizenship with speaking English – to the annoyance, if not surprise, of Welsh-speaking Britons (Mann, 2007). Jokes to the effect that most existing citizens would probably fail the test themselves touch on an important truth: contemporary national identities are not constituted by clearly defined criteria, as if we possessed a checklist of the properties all genuine nationals must exhibit in order to qualify as members. Rather, taking our lead from Wittgenstein, the robustness of these national identities depends on their 'family resemblance' character. That is to say, there is no consensus on the necessary and sufficient conditions of Englishness, Irishness, Scottishness, *et cetera*. Instead, there are a range of partially overlapping variations on these themes, not necessarily possessing a common core, but reflecting the diverse self-understandings characteristic of any modern social identity and embedded in the plurality of publics present within the state. Given the plurality of publics noted earlier, we should not be surprised that this plurality sustains a corresponding pluralism in the ways in which we can be English, Irish, and so forth. This structure permits widely divergent understandings of nationality to co-exist, which in turn contributes to the persistence of diverse national identifications.

Thus, seeking to codify this plurality in order to better promote civic solidarity, even in the limited way proposed by Miller, which attempts to restrict consensus to the nation's 'public culture', would most likely produce the opposite effect (Osler, 2009). Multicultural theorists have persuasively argued that the cultural baggage exemplified in the 'Anglo-Conformity' model of citizenship has historically served to marginalize minority citizens (Kymlicka, 1995). There is every reason to suppose that a policy, however well-intentioned, which aims at foregrounding

these cultural accretions, rather than adopting a critical stance towards them, will marginalize rather than unify. Indeed, it is worth remembering that the rhetoric of national identity can be brought into play against any group of citizens in order to delegitimize their position in the eyes of the public (Smyth, 2005). If we are concerned with strengthening civic inclusiveness and fostering a shared sense of ownership of political institutions among all citizens, then we should seek to further liberate common institutions from divisive historical baggage. Of course, the norms and institutions of democratic citizenship can never be wholly disconnected from any socio-historical context whatsoever. Yet, logically, an attempt to build and promote a normative account of national identity must create exceptions and exclusions regardless of questions of the content of such an account. Civic unity, I suggest, is better defended by refraining from such projects and embracing the idea that national self-understanding is irreducibly plural.

The nationalist agenda is faced not only with the problem that few states conform to the ideal type in which the bounds of the nation align tidily with the borders of the state, but also with the problem that it is hard to think of any nation which is free from internal disagreement as to the nature of its identity. While this does not entail that there is no such thing as national identity, it does mean that states which seek to impose a particular understanding of identity are unlikely to achieve their goal of strengthening civic trust and solidarity. But suppose we were to grant the (dubious) claim that nationality fosters civic trust, rather than social division. Would we be right to think that this is of central value to democratic politics? I want to suggest now that nationalist accounts of democracy are mistaken in placing such a high value on trust in the first place, and that therefore it does not count as a serious objection to postnationalist democratization that it does not appeal to a unified social identity capable of generating such trust.

The idea that there is a link between democracy and social identities is not confined to nationalist political theory – it also has feminist and multicultural variants in arguments for special representation and federalism (Phillips, 1995; Young, 1990). The strongest version of this view is, of course, the nationalist one, for while these other accounts ultimately envisage marginalized groups enjoying a share of collective self-government with others who do not share their identity, nationalists insist that collective self-determination is not really possible unless participation is confined to one's fellow nationals. To be sure, liberal nationalists soften this claim by seeking to blur the lines between nationality and citizenship, so much so that it can be difficult to discern

how much work the notion of a cultural, pre-political, *national* identity is really doing in their arguments by the time they have finished (Barry, 1996). Be that as it may, the idea that one's interests will be ill-served by a government that contains no one from one's particular social location is a powerful and not at all implausible one. In such circumstances, it will be difficult to dispel the suspicion that one is being ruled over, rather than participating on an equal footing in collective self-government. It is natural to fear that unfavourable policies will be visited upon you and your social group because they benefit and advance the interests of the social groups represented in government. Nationalist movements have plausibly taken this line in struggles against rule by imperial and colonial powers, and, indeed, it is a concern familiar to class and gender politics also.

How are we to understand this apparent link between social identity and self-determination? In her argument for the 'politics of presence', Anne Phillips (1995) reveals how problematic this connection is, suggesting that we cannot endorse the strong claim that our interests can *only* be represented by someone who shares our social identity. At best we can say that someone who shares our social identity, our social location, is simply *more likely* to press our interests in the public sphere than someone who does not, because for the latter person the stakes are much lower. Phillips goes on to acknowledge, however, that even where one's representative does share one's social identity, this is no cast-iron guarantee that they will, in fact, defend one's interests.

It is not hard to see why this may be so. There are two sorts of complexity at work here. First, whether it be a class, gender, racial, or ethnic group, the interpretation of a group's interests will be no easy matter. Merely possessing the identity in question will not solve the problem of interpreting just what that group's interests are, for this depends upon complicated assessments of a vast array of relationships between the group and other social actors, institutions, and events. Second, for any politically salient social identity there are likely to be a plurality of competing interpretations of how membership of that group is to be understood – which bears on the former problem to the extent that we always interpret a group's interests *under some description* – and there may be rival descriptions which give very different readings of the group's interests. For any individual member of that group, then, their personal identity will be a complex arrangement of social identities the configuration of which may differ significantly even among people who nominally share the same social identity, such that it may not, on its own, be an entirely reliable predictor of their behaviour, even in a fairly

well-defined domain. Indeed, we might say that the expectation that a particular social identity – race, religion, or ethnicity, for example – is a reliable predictor of behaviour right across the various domains of social life is the hallmark of the bigot, an unhelpful prejudice rather than an asset in our ordinary epistemic toolbox. The upshot is that we cannot be sure that a representative who shares a social identity with us will understand it in the same way, or where we share this understanding that they will interpret our shared interests in the same way, even if they are determined to represent us as best they can.

This shows the link between self-determination and social identity to be problematic, to say the least. Nonetheless, Miller (1995, p. 92) argues that:

ties of community are an important source of such trust between individuals who are not personally known to one another and who are in no position directly to monitor one another's behaviour. A shared identity carries with it a shared loyalty, and this increases confidence that others will reciprocate one's own cooperative behaviour.

The virtue of shared nationality is that it can encompass everyone in a given state and so promote cooperation by fostering trust that others will reciprocate, even where these are distant others with whom one does not otherwise interact. The 'imagined community' of the nation thus underwrites social cooperation. Certainly, when the 'national interest' is evoked by politicians and other actors, this is the sort of thing they must have in mind, and there is no doubt the idea has the power to enjoin cooperation, or at least compliance, even when the proposed course of action is deeply unappealing to the public at large.

However, while nationality may often grease the wheels of social cooperation in this manner (bearing in mind the caveats entered earlier), it is not clear that democrats in particular should be especially reassured by this. As Russell Hardin (2002) suggests, it may be a mistake to place too high a value on trust in general, and on the idea that citizens should normally trust their governments in particular. It is common to bemoan the fact that modern societies appear to suffer from a deficit of trust, but Hardin (1999) argues that trust in itself is of little value – what we should be concerned with rather is *trustworthiness*. Indeed, it is clear that trust, in the absence of any corresponding trustworthiness, is a positive danger to the interests of the trusting person. Hardin (2002, pp. 74–8) claims that a common defect of the literature on trust is its treatment of trust as a moral ideal – as if it is morally praiseworthy to

exhibit trust and blameworthy to withhold it – whereas instead we should properly regard it as a *cognitive* concept. This means that we trust others when we form the belief that they are trustworthy, a belief which can be true or false, having weak or strong evidential support. While we can form such beliefs about actors we interact with regularly and about whom we possess adequate knowledge, Hardin maintains that ordinary citizens are never in this position with respect to their government. Its operations are too complex and removed from the citizenry for them to be in a position to form beliefs about its trustworthiness. Yet this is no great defect in our democratic institutions. Rather, we should give up the unrealistic expectation that citizens should normally trust their governments (which is not to say that they should necessarily *mistrust* them, for this too would require evidential support which is not readily available). Against this backdrop, it would seem the argument that a unified national identity serves to sustain trust between citizens relies on the idea that nationality can serve as a *proxy* for more detailed information about others' beliefs and interests, supplying a cognitive basis for cooperation which might otherwise be lacking. Nationality, it seems, is supposed to offer us a useful epistemic short cut which promises to relieve us of the burden of having to gather more individualized information about others' interests and likely intentions.

Is it really plausible that nationality can perform this function for us? If not, we may conclude that, to the extent that nationality succeeds in encouraging trust in the absence of sufficient information about the basis for this trust, namely, trustworthiness, it should be viewed rather as a threat to the self-determination of democratic citizens. If, following Phillips, social identity is not a reliable predictor of behaviour, insofar as it is open to a wide range of interpretations on the part of the actors concerned, then its general, encompassing nature, which is typically presented as its great virtue, would seem to constitute a significant weakness. Its very compatibility with every other social identity within the state in question, save for alternative national identities, suggests that on any significant matter of public concern it will be no guide whatsoever as to an actor's likely behaviour. In short, it tells us so little about the possibility that our fellow citizens may defect from any cooperative venture, that it provides no basis for making any remotely defensible judgements about trustworthiness. Social cooperation motivated by faith in one's fellow nationals, simply because they are one's fellow nationals, threatens to expose citizens to domination by elites who can encourage compliance by deftly playing the national card to damp down class politics, or to sideline internal critics of a state's foreign policy, for example.

This is not at all to suggest that we should not care about trust or social cooperation but rather to focus our attention on the basis for trust – adequate knowledge about the interests of those we cooperate with. To the extent that we may trust our political elites to respond to our interests, or our fellow citizens to successfully cooperate with us, it should not be because we speak their language or share their national identity but rather because there are institutional mechanisms which give us a relatively clear sense of the incentive structure within which any cooperative action takes place. This is not to say that we need not rely on a whole repertoire of proxies or epistemic short cuts of various sorts when detailed information is lacking, since uncertainty is a fundamental feature of social life. It is simply to say that these function best when they are relatively constrained by the various domains in which they best apply – the more general these are, the less reliable they are likely to be. The less we know about the persons concerned, the more we will be advised to rely on the formal legal framework of society to perform its coordinating role, rather than on faith in the unacceptably weak constraints of national identity. With sufficient knowledge we may be justified in trusting our elites with our interests, but it is an open question whether the ordinary citizen is well-enough informed or properly placed to make such judgements with much reliability. We may, therefore, justifiably worry about the degree to which our domestic political institutions do indeed secure us from domination and make collective self-determination possible, and we should reject the suggestion that shared nationality can do much to supply trustworthiness, even where it can help to supply trust.

8.4 Conclusion

I am conscious that I have not indicated how postnationalist institutions might deal convincingly with the sorts of questions about democratic accountability raised in this chapter, and that the thrust of my argument has been largely negative, rather than constructive in this sense. What I hope to have indicated, however, is the direction we must take in the search for democratically accountable institutions in a postnationalist world – that we must look to institutions rather than identities, and that we must give up the populist, nationalist picture of collective self-determination which relies on the notion of a unified public and a correspondingly centralized vision of accountability. To this extent, any vision of cosmopolitan democracy that seeks to extend the model of nation-state democracy to the global stage, pursuing some

vision of a global electorate calling a world government to account, must be misconceived. What should be clear by now, too, is that I also reject two-level accounts – the suggestion that we should think of transnational democratic accountability in ways that are distinct from domestic accountability. Instead, the model of plural public spheres and decentred democratic accountability sketched here is one which must inform all democratic politics, at all levels. We should not ask whether we can ever enjoy the same degree of collective self-determination in a postnationalist world that we have enjoyed within nation-states, but whether we ever had reason to think that the nation-state afforded us the possibility of collective self-determination, rather than its mere appearance.

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9

On Voting Ethics for Dual Nationals

Daniel M. Weinstock

Some people believe that holding dual or multiple citizenships is morally wrong. The currency of citizenship, they believe, is cheapened when citizenship is not tied in tightly with membership in a specific nation-state. Others believe that though dual citizenship is ethically permissible and perhaps even desirable (Spiro, 2007), the implementation of regimes of multiple citizenship poses problems that need to be addressed so as to maximize the benefits generated by people having more than one citizenship while minimizing its costs.

Those who reject dual citizenship outright will see little point in trying to address the problems that arise from many people in the world holding more than one citizenship. This is a mistake. For, whatever the normative merits, dual citizenship is not going away anytime soon. As a matter of fact, many trends are today coalescing so as to make the holding of multiple citizenships a more frequent occurrence than it once was (Martin, 2003). Increased mobility of at least some segments of the world's population, along with a diminishing willingness of countries who in principle do not allow dual citizenship to enforce laws against it, are contributing to making the status fairly commonplace. Though opponents of multiple citizenship may dream of a day when each human on the planet will have only one citizenship, facts on the ground make it the case that there exists a wide array of ethical and political quandaries that must be addressed *given* the existence of multiple citizens.

One of the problems raised by dual citizenship has to do with the *right to vote*. Many dual nationals are, by virtue of the electoral laws of the countries in which they hold citizenship, able to vote in both. Some countries allow non-resident nationals to vote, regardless of whether they hold a citizenship in another country, and regardless of how long

they have been non-resident. This is the case, for example, in France. Other countries allow non-residents to vote for a number of years after they have taken up residence in another country, again regardless of whether they hold voting rights in the country to which they have moved or in another country altogether. This is the case in Canada and the UK.

A number of observers who believe the status of dual citizen ought to be permitted, and perhaps even encouraged, also believe the right to vote ought to be circumscribed in such a way that, though individuals might hold citizenship in more than one country, they could only exercise their political rights in one (Lopez-Guerra, 2005; Martin, 2002). The most obvious way in which to do this would be by linking the right to vote more tightly with residence. But other mechanisms could also be envisaged. For instance, for individuals who do not reside in either of the countries in which they hold citizenship, the right to vote could be circumscribed by requiring of them that they choose to vote in one of the two countries.

I want, in this chapter, to argue that the principal reasons that have been adduced by some friends of multiple citizenship to limit the voting rights of citizens of more than one country are unconvincing. I proceed as follows. The first three sections address what I consider to be the three principal arguments against multiple voting made by theorists who are otherwise not opposed to multiple citizenship. The first of these arguments has to do with the paramount democratic value of *political equality*. It holds that if some individuals get to vote in more than one country, this introduces ethically unacceptable political inequalities among the inhabitants of the planet. The second points to the (equally impeccably democratic) principle according to which only those who are *affected* by a political decision ought to be able to contribute to determining how that decision gets made, and maintains that expatriates are not affected by elections that take place in a country in which they do not reside, and thus should not possess the right to vote there. And the third has to do with the potential for destabilization that might arise from a situation in which many people get to vote in countries in which they do not reside. The key worry here is that countries with large diasporas might see their electoral balance with respect to momentous political decisions tilted by people who do not reside on the territory concerned.

Having addressed these criticisms, I then move, in the fourth section, to develop two independent lines of argument that point to benefits that multiple citizenship might have. The first invokes the enlargement

of political awareness that multiple voting could induce. The second has to do with the expressive function of voting. Regimes of multiple voting allow the political rights that people have to reflect their complex identities to a greater degree than do regimes that restrict each individual to only one vote. While the arguments against multiple voting that I consider in this chapter do not exhaust the range of arguments that could be adduced in opposition to this practice, and while, further, the arguments that I develop in favour of it far from settle the issue once and for all, I conclude that the balance of reasons presently favours a liberal attitude with respect to multiple voting. This is encouraging news given that, according to Rainer Bauböck (2007), more than 100 states presently allow their expatriates to vote in national elections. If the arguments presented here are convincing, this would suggest that there is no need to sound the ethical alarm bells just yet.

9.1 The argument from political equality

Intuitively, the most obvious reason to oppose people having the right to vote in more than one country has to do with political equality. Those individuals who get to vote in more than one country possess more of something – namely votes – than do others. But political equality requires that individuals be *equally* endowed with respect to that very thing. Thus, it stands to reason that political equality is incompatible with the practice of dual, and multiple, voting (Martin, 2002).

First appearances are, however, misleading. The basic reason for this is that the principle of political equality applies within a polity, rather than among human beings taken simply as such. It claims that citizens of a polity ought to enjoy equal political rights. Now, one may argue that expatriates ought to be stripped of their citizenship in the country in which they no longer reside, or in which they have never resided to begin with. But we are considering the views of those who hold that expatriates *can* be citizens of more than one country, but that they ought not be allowed to vote in the country or countries in which they do not also reside. The principle of equal citizenship tells against this hybrid position because it holds that citizens of a polity ought to have equal political rights.

When dual citizens vote in both countries in which they hold citizenship, the principle of political equality is instantiated rather than denied. For in this case, each citizen gets to vote. Indeed, the principle of political equality, when applied to an empirical context that includes the fact that some individuals are citizens of more than one place,

actually *requires* multiple voting, since if multiple voting were prohibited there would be some citizens who would not have the right to vote. There would, in short, be political inequality between them and their fellow citizens of country X who, because they have only one citizenship and/or because they reside in X, do possess the right to vote.

So, simply as stated, the argument against multiple voting from political equality fails. Indeed, it can be turned on its head, inasmuch as political equality requires that all citizens get to vote. In the context of multiple citizenship, it is simply the case that there are more citizens than there are adult human beings satisfying the requirements of citizenship.

But perhaps something different is at stake in the opponent of multiple voting's appeal to equality. Although multiple voting may satisfy the requirements of political equality, narrowly understood, there is a deeper sense of moral equality against which it might be taken to offend. Think of each vote as a miniature lever, the activation of which allows individuals to change the world so as to make it line up with their interests more closely than it would but for their activation of that lever. Why should some people have more levers at their disposal than others, simply by virtue of the citizenships that they happen to hold? What citizenships one holds is, after all, usually a matter of brute luck. One is born in a certain territory, of parents who happen to hold this or that citizenship; or one marries someone who happens to have a certain citizenship which one can then acquire. Immigration is a more voluntary sounding process through which to acquire more than one citizenship. But it seems far-fetched to say that individuals in any sense deserve the extra power to shape the world that the acquisition of a new citizenship affords them relative to other human beings.

The idea that the principle of equality requires that each human's voting rights afford him identical quanta of power to effect change is certainly attractive. But its demandingness is such that it would require changes to the present state structure that go far beyond the mere prohibition of multiple voting. Setting aside the fact that many people in the world do not have the right to vote at all, some people are citizens of powerful states, such as the US, while others are citizens of tiny powerless states, such as San Marino. A principle of equality that looked askance upon dual voting because of its impact upon the distribution of political effectiveness away from equality would also have to view as equally problematic, and as equally deserving of reform, the distribution of political power among (non-multiple) citizens of different democracies.

It might be argued that citizens of powerful states do not in fact have more power than citizens of less powerful ones because the populations of powerful states are usually quite *large*. Thus, while a citizen of the US has a say in the way in which the most powerful country on Earth conducts its affairs, she does not have *much* of a say, since there are close to 200 million eligible voters in the US. A citizen of Portugal, which has around seven million voters, has a proportionately greater say over the way in which a smaller amount of power is wielded.

Doing the tabulations required to determine whether one has more power as a voter in a small and relatively powerless state in contrast to voters in a large and powerful one would be tricky, to say the least. But it suffices for my present purposes for us to agree that it is vanishingly unlikely that, once all the math had been done, it would turn out that the citizens of all democratic states had the same amount of electoral power.

Suppose it turned out that, rough estimates having been tabulated, the average American voter had twice the power to change the world so as to make it concur with her preferences than the Portuguese voter. Would we view this as a problem from the point of view of *fundamental democratic norms*, one that required institutional reform aimed at redressing the inequity? Some might argue that we should. After all, they could maintain, the fact that the US has achieved the level of power it has is due to all manner of injustice and exploitation. If it turned out that the average American vote was twice as effective as the average Portuguese vote, then there would be a genuine normative case for attempting to address this imbalance, given that the power of the US over world affairs was achieved unjustly.

But this would be to conflate issues of justice with issues of democratic fairness. We can imagine a world in which there has been no injustice at all, but in which certain countries achieved greater power than others through entirely morally innocent means, greater power that would then be transferred 'down' to its citizens. I doubt very much that we would be inclined to argue that the mere fact that differentials in power arise from the operation of morally unproblematic processes poses a democratic problem. We would admit, instead, that cultural, geographic, and other such factors make it the case that some nation-states are smaller, others larger, and that the resulting differentials in terms of vote-effectiveness are a reasonable price to pay in order to allow for what on other fronts might be seen as healthy diversity among the peoples of the world. Why, for instance, should Lichtenstein be forcibly annexed to a larger neighbouring country, or the US forced to

splinter into smaller subunits, simply in order to achieve parity of vote-effectiveness among the voters of the world?

If this is the case, it follows that parity or rough equality of 'political effectiveness' *across polities* achieved through voting by citizens of the various countries of the world is not an objective that democratic theory sets for us. Thus, dual citizens may, depending on what countries they are citizens of, have more effectiveness than do citizens of just one country – then again, they may not. But this does not in and of itself constitute a problem calling for any kind of institutional reform, unless, of course, the differentials in power are directly related to injustices that occurred in the past or are presently being perpetrated.

9.2 The argument from democratic self-government

A second line of argument advanced by opponents of dual voting schemes points to another principle of democratic theory, that of democratic self-government. According to this argument, when expatriate citizens vote in elections, they contribute to making decisions whose consequences they will not have to live with. As a citizen of Canada and France residing in the first of these two countries, it is very well for me to vote for a French political party advocating huge increases, or decreases, in taxes. If the party I have voted for is successful, then those people whose lives I have impacted upon, and whose political preferences and values are contrary to mine, can voice the complaint that the system allowing me to exercise that influence is undemocratic, since, surely, I should not be authorized to contribute to the making of decisions over matters which will not affect me in any way, shape, or form. Democratic self-government is about a *demos* making decisions democratically over matters that affect the *demos*. When a person lives abroad, the argument goes, she has effectively removed herself from the *demos* (Lopez-Guerra, 2005).

Delineated in this crude manner, the argument from democratic self-government is obviously question-begging. The question of 'Who constitutes the *demos*?' is one of the thorniest ones in democratic theory. Briefly stated, the problem is that 'we the people' cannot determine who will be included or excluded from democratic decision-making democratically, for to do so is to decide antecedently of any democratic procedure who constitutes the *demos* (Whelan, 1983).

However, one way out of this problem is to claim that though we might not be able to determine the contours of the *demos* through a democratic *procedure*, we might be able to do it by adverting to a

democratic *principle*. Ian Shapiro's (1996) influential proposal, which has subsequently been discussed and refined by Robert Goodin (2007) and Gustaf Arrhenius (2005), is that for any decision the *demos* is constituted by all those persons whose interests are affected by that decision – the 'all-affected' principle. This proposal has, however, raised a raft of theoretical worries (see also Nootens in this volume). What is the level of 'affectedness' beyond which it makes sense to give people voice in a decision? Too low a threshold means that everyone always gets to have a say in everything, since there are no decisions which do not have some kind of an impact on everyone. Too high a threshold smacks of arbitrariness, of taking away with one undemocratic hand what has been granted by the (democratic) other hand. And to the extent that different decisions will have differing relevant levels of impact on different sets of people, the proposal faces the problem of perpetually shifting *demoi*.

I want ultimately to defend the spirit of this principle, if not the specific content given to it by Shapiro and Goodin, in a revised form. To do so requires addressing an alternative developed by those who have been impressed by the apparently insuperable obstacles faced by the 'all-affected' principle. These problems have led a number of theorists to reach for a different formulation of the appropriate democratic principle upon which to ground the definition of the *demos*. Rather than all *affected* by political decisions having a say, we should instead hold that all who are *bound* by a decision should have a say (Lopez-Guerra, 2005). This solution has considerable theoretical advantages. Since 'boundedness' does not admit of degrees as is the case for 'affectedness', we are spared the theoretical challenge of having to specify a threshold. Also, the set of those who are 'bound' is conveniently co-extensional with the set of residents, a more tractable set from an institutional point of view than the set of those who are 'affected'.

Nevertheless, a number of basic flaws afflict the argument according to which the *demos* ought to be thought of as constituted solely by those people who fall under the jurisdiction of the laws of the state. First, consider the following example. Imagine the US builds a nuclear power plant a few kilometres from the Canadian border. Although there is a formal sense in which the law appropriating the funds necessary for the construction and operation of the plant 'binds' US citizens in a manner in which it does not bind Canadian citizens – it is their tax money, after all – there is surely a more substantive sense in which the potential constraint or risk occasioned by the plant impacts upon the Canadians who live along the border far more than it does on

Americans who may live thousands of miles away. This example shows that the theoretical simplicity achieved by defining the *demos* in terms of jurisdictional authority is purchased at the price of moral arbitrariness. Why, precisely, should an individual who lives thousands of miles from such a plant have more of a say over whether it should be built, and what safety regulations should be imposed upon its operation, than a person whose life will be affected by it in a very real and tangible way? The moral attractiveness of some form of principle of affectedness seems difficult to do away with completely.

To this it could be replied that the problem is a matter of justice rather than of democratic self-determination. If a decision made in the US imposes costs upon Canadians, then mechanisms should on this view be developed to ensure that these externalities are internalized. Compensation might be due to Canadians, but certainly not a say.

It is doubtful, however, that the rigid distinction between democracy and justice presumed by this reply can be defended. After all, on a plausible conception of the rationale of democracy, one purpose of democratic decision-making procedures is to ensure that the interests that ought by justice to be represented in decision-making actually are represented. It is very well to argue that the imposition of externalities upon others calls for compensation. Thought must also be given to the ways in which we might increase the likelihood that compensation will actually occur, and perhaps also to how we might increase the likelihood that the perspective of those to whom compensation is likely to be owed will be incorporated at the moment of decision-making. Providing the holders of this perspective with democratic voice is a plausible way in which to do just that. Robert Goodin (2007) has recently argued that the most plausible form of institutionalization for the 'all-affected' principle is through some compensation scheme, rather than through the implementation of a supranational democratic decision-making structure. While the practical worries he voices over the latter option are obviously not to be minimized, we should nonetheless be careful not to naively suppose that compensation will occur in the absence of some such structure.

The argument according to which only those people bound by a decision ought to have a say in it trades illegitimately on the rhetorical effect of the notion that through laws populations 'bind' and thereby impose a sacrifice upon themselves in order to achieve some greater good. Though laws do by their very nature have the effect of making certain things that were previously permissible impermissible, taking a wider perspective upon law-making reveals that the greater good for

which these constraints are enacted often reflect national interests that are opposed to the interests of other peoples. In other words, though law-making involves some self-binding, it also involves a fair amount of conferment of benefit. Indeed, these benefits are often conditions of the constraints being viewed as acceptable. Only a rather doctrinaire Rousseauian would see self-binding without any corresponding benefits as a good thing.

So while there is certainly something to the case that no external agents are morally entitled to visit bads upon others which they will not themselves have to bear, substantially less can be said for the argument that no one can have a say about the goods agents confer on themselves, especially when the costs associated with these benefits are imposed upon other agents. The mistake of the argument according to which the *demos* is constituted by those who are bound to it is to ignore that polities rarely bind themselves for no reason. Rhetorically, the claim that the *demos* is constituted only by those who enjoy the benefits of legislation is rather less impressive than the claim that it is made up by the community of the 'bound'. Yet this seems a more realistic description of the motivations underpinning a lot of national legislation.

So the 'all-affected' principle seems more morally attractive than the 'community of benefit' principle. This is especially the case if some threshold and proportionality riders are affixed to it. In order to have a voice, one should be affected at least to some specified degree, and the weight of one's democratic voice should be proportional to the degree to which one is affected beyond that threshold. But this is near impossible to implement. For one thing, in the case of some decisions, it extends to the planet as a whole. And for another, *demoi* will be defined issue by issue. Constantly shifting jurisdictions are institutionally even more difficult to fathom than a single global jurisdiction would be.

How do these rather abstract considerations apply to the question of whether or not dual citizens should be allowed to vote in the country (or countries) in which they do not reside? We have already seen that the principle of political equality tells in favour of giving external citizens the right to vote. If a country is going to allow people to hold dual citizenship, political equality requires that they all be allowed to exercise the franchise. The foregoing considerations strengthen the case for dual voting in the following ways. First, to the extent that the 'community of the bound' argument really cloaks a far less attractive 'community of benefit' argument, the resolution of the *demos* problem in no way tells against external voting. But, second, to the extent that the 'all affected'

principle is unimplementable, allowing external citizens to vote may actually be a way of approximating to it without having to contemplate outlandish institutional reforms. The external citizens of a country, its diaspora, are most often dispersed in many regions of the planet. Democratic theorists reflecting on dual voting have worried about and debated the impact upon polities of having citizens of other countries voting in their elections. The concern has been voiced by some that when, say, a Hungarian-Canadian residing in Canada votes in Canadian elections, she may, in what is for some a morally problematic way, bring Hungarian interests and concerns to bear upon decisions that should be taken instead without non-Canadian perspectives being taken into account. Rather less attention has been devoted to the *benefits* that can be derived from the goods that flow to the Hungarian polity when that same person votes in Hungarian elections. She will inevitably contribute to the making of a decision a perspective made up of experiences, concerns, and values not available to Hungarians who reside in Hungarian territory. To the extent that the decisions upon which she votes affect the interests of Canadians in some way, this perspective will be not only epistemically, but also morally, relevant.

If it is institutionally unfeasible to implement the 'all-affected' principle, allowing diasporas to vote may be a reasonable second best. Though it is unfeasible to identify the Canadians who will be affected by Hungarian decisions and to extend the franchise to them, it is quite easy to empower Hungarian-Canadians, and Hungarian-Americans, and so on, to vote. Surely, it could be argued, most Hungarian decisions will affect Hungarians living on Canadian soil far less than they will residents of Budapest. This is where the threshold and proportionality riders that I briefly described earlier come in. It would be appropriate to *weight* the vote of external voters so as to reflect the stake that they have in decisions made in countries in which they do not presently reside. Some countries allow for parliamentary representation for its foreign nationals, but do so at a 'discounted rate'. Each such representative represents a far greater number of people than representatives representing residents do. This strikes me as appropriate. The 'all-affected' principle does not require that people have voice in decisions that is disproportionate to their stake in these decisions (see Brighthouse and Fleurbaey, 2010).

But does this not negate the principle of political equality we used in order to argue that external citizens ought to have the right to vote in the first place? Am I trying to have my philosophical cake and eat it, invoking the principle when it suits my purposes and rejecting it when it does not?

I do not think so. Political equality requires that all citizens have the right to vote. But many countries weight the votes of citizens differently in order to achieve other worthwhile political objectives, such as achieving regional balance in heavily urbanized societies. Thus, in such countries, rural electoral ridings are made up of far fewer voters than urban ridings. While this might seem ‘undemocratic’ – why should the vote of an urban voter ‘weigh’ one third of what the vote of a rural voter weighs? – it is often an effective way in which to ensure that the concerns of communities get a hearing in what would otherwise be legislatures tilted too heavily towards the interests of populous regions (this is not to say that *all* such weightings are morally legitimate. Sujit Choudhry and Michael Pal, 2007, have shown, for example, that in the Canadian context weighted riding schemes massively under-represent immigrant communities). Having the vote of foreign nationals somehow weighted less than those of residents does not in and of itself offend against the principle of political equality.

One final note on this issue. There is a sense in which all external citizens are affected equally by political decisions made in countries of which they are members. When the Canadian or the French governments make a political decision, they purport to do so in my name. If I am powerless to affect the nature of that decision, then I am morally affected without being able to do anything about the way in which I am affected. There are practical effects to this, reputational consequences for example. But other impacts are not *practical* in the way reputational consequences might be. If I identify as a Canadian, then my sense of self is impacted, positively or negatively, by the decisions taken by the state that claims to speak and act in my name. I feel pride when one of the countries that claims me as a member acts as a good world citizen, and shame when it acts badly. It does not seem an excessive request that I be able to have a say in what is for me a morally significant matter.

9.3 The argument from stability

The third reason invoked in order to oppose the attribution of voting rights to external citizens, whether they are dual citizens or not, has to do with the potential impact of their voting behaviour on domestic politics. When diasporas are sufficiently numerous relative to the domestic population, the fear is that they could determine the outcome of elections (Lopez-Guerra, 2005).

Stated in this very general way, this concern actually encompasses a number of concerns, some of which have already been addressed in

previous sections. One is the worry that the voting behaviour of dual nationals may be quite different from that of domestic voters. In and of itself, this is not really a problem. Domestic voters are rarely ever consensual. Differences in voting behaviour reflect regional, class, ethnic, and other differences. To the extent that external citizens are considered to be *citizens*, there should be no more worry about their voting behaviour than there is about the voting behaviour of workers, women, or the young.

The issue may, however, be not so much that external voters will vote *differently* but rather that these differences will result from determinants that are problematic from the point of view of democratic theory. More specifically, the problem might be that external voters will, given their location, vote *ignorantly*, or that they will vote *irresponsibly*, or both.

The concern about irresponsibility can mean one of two things. It can mean external citizens will make voting decisions that are oblivious to the consequences of voting in certain ways rather than others, since they do not have to live with the consequences of their vote. I take it that the arguments developed in the foregoing section (9.2) address that fear adequately. External citizens *are* practically affected by many decisions made in their country of citizenship and, what is more, they are morally impacted upon to the extent that the state of which they are citizens purports to speak and act in their name.

The charge of irresponsibility might also mean external citizens will vote in an *unprincipled* manner. However, there is no *a priori* reason to think external citizens will not express sincere convictions when they exercise their franchise. The fact that they most often have to go to greater lengths in order to vote than domestic citizens provides evidence to suggest that when they do vote, they do so as a result of some process of deliberation that has convinced them that voting in a certain way is of sufficient import to offset the often not inconsiderable costs associated with external voting. Compared to citizens who live in countries with automatic voter registration and easily accessible polling stations, there actually may be reasons to think external voters will vote more responsibly than domestic voters, at least insofar as we think the overcoming of hurdles and obstacles to voting is an index of seriousness of purpose.

This consideration also addresses the worry that external voters may be *ignorant*. It is typically more difficult for external voters to obtain information about how to vote from abroad. There are reasons to believe that citizens who have gone to the trouble of acquiring the information necessary to exercise their franchise will also possess the

ability and motivation to acquire the information necessary to exercise their vote in an informed manner. What is more, it is important that the epistemic bar not be raised too high. The problem of 'civic incompetence' of domestic voters in many modern democracies has been abundantly documented. And there does not seem to be a moral case for imposing an epistemic threshold on external voters that is higher than the bar set for domestic ones (Friedman, 1998).

Concerns about the impact of external voters on the outcome of national elections are also allayed by the robust empirical finding that, by and large, external voters do not vote in very high numbers from abroad (Spiro, 2003). Furthermore, when numbers of external voters and regimes of external voter enfranchisement remain fairly constant, this creates a 'steady state' that can and will be factored into the way in which political parties campaign, and into expectations about the way in which elections will be carried out.

Of course, when one of these two conditions is lifted, a one-time seismic shift can occur. A sudden increase in external voters can occur through a large-scale exodus of domestic voters, or through changes in laws that enfranchise previously unenfranchised external voters. In these cases, there may be a fear that the electoral landscape will shift dramatically in a fashion unassimilable by the body politic (this is especially the case with the latter scenario, as large-scale emigrations do not change the number, but rather the location, of voters).

The first remark that needs to be made here is that such cases are fairly infrequent. It would thus be a mistake for normative reflection to focus to too great an extent upon them in arriving at a general framework. The second has to do with the fact that one of the two potential causes for abrupt changes in numbers of external voters is within the control of democratic states. When citizens already residing abroad are brought into the voter pool, this is done as a result of a deliberate policy decision. Policies aimed at extending the number of eligible voters in this way can thus be accompanied by policies aimed at preparing political parties, the general population, relevant national institutions, and the general population for the potential impact of a sudden increase and diversification of the voter pool.

This leaves the case of sudden mass emigrations. These are rare in established democratic societies. For example, Ireland is reportedly trying to encourage as many as 150,000 Irish resident citizens to emigrate as a way of dealing with the economic and financial crisis that decimated the Irish economy in 2009 (Fincham, 2009). Were Ireland to allow its nationals living abroad to vote – it presently does not – this

would lead to a quite significant one-shot increase in external voters. But unlike what happens when a country grants voting rights to its citizens already residing abroad, as Mexico did in 2000, allowing large groups of voters who have emigrated all at once does not change the total number of voters, since emigrants were eligible voters before they left. Granted, emigration may change their electoral behaviour. But the expression of political attitudes developed by individuals who were forced by circumstances to leave their country of residence is not obviously inappropriate. Quite the contrary, these people have directly experienced the consequences of government policy. If the 'all-affected' principle defended in this chapter has any practical implications at all, it is that people who have been affected in this manner should be able to voice their opinions about these policies through the exercise of their democratic franchise.

9.4 Two additional reasons to support dual voting

I hope to have established that the main arguments expressed in the academic literature, and within the punditry, against non-resident citizens having the right to vote do not succeed. Worse, some of the considerations they adduce actually tell in favour of dual voting. First, the norm of political equality requires that all citizens be allowed to vote. Where dual, or even multiple, citizenship is permitted by the various countries with which a person has the relevant kinds of attachments, the principle enjoins all of these countries to allow them to take part in the electoral process. Second, allowing national diasporas to vote in the countries they are members of, but in which they do not presently reside, is a feasible 'second-best' way to implement the morally attractive but practically unimplementable 'all-affected' interests principle which has been proposed by many as a way to solve democratic theory's notoriously difficult '*demos* problem'. And, third, we saw that there are reasons to think that criteria of responsibility and knowledge at least do not tell against external voters. In fact, given the greater obstacles faced by external voters relative to their domestic counterparts, these criteria may actually favour the former. In this brief closing section, I wish to suggest two additional positive reasons for looking kindly upon the practice. The first highlights the possibility that the right to vote in more than one country might broaden people's horizons beyond the more narrow nation-state-centred perspective that voting in a single country arguably tends to promote. The second points to the expressive benefits accruing to individuals when they are allowed to vote in

countries with which they identify. While not decisive, these two arguments nonetheless add to the case for the moral attractiveness of dual or multiple voting.

Discussions of voting rights tend to labour under a simplifying assumption that risks misrepresenting the ethical issues involved if it is not recognized *as* a simplification. This assumption is that people's interests in political issues and the values they propound with respect to these issues are fixed independently of the voting rights they possess. The question thereby posed is: what voting rights should people have, given the stakes that they have, or fail to have, in the affairs of this or that polity?

My contention is that this assumption simplifies matters in ways that distort the ethical stakes. The stakes that one properly takes oneself to have in the political affairs of a country are in part a function of whether or not one can vote in that country. And, perhaps more importantly, the stakes one properly considers oneself to have in the *other* countries to which one is linked as a citizen, a resident, or both are partly a function of one's set of voting rights. Let me expand on these two related points.

Let us take an anecdotally generated but nonetheless plausible case. As a non-resident French citizen, for example, with voting rights in French elections, I take an interest in French politics. I have lived in the UK for far longer than I have lived in France, and yet I do not follow the politics of that country nearly as closely as I do those of France. So at the barest level, I take an interest in what happens in France in ways that I do not in the case of the UK. This interest is, moreover, not a purely cognitive one. I develop preferences as to the way in which I feel that politics in France should go, and when my preferences are not realized, I experience this as a bad. More than this, however, the values I have gradually developed as a person reflect the fact that I have spent considerable time thinking about French and – at least in the last 15 years or so, let's say – more broadly European issues. My views on state policies grounded in nationalistic considerations and on foreign policy matters, to name only these, reflect the fact that I have deliberated upon these issues because of the responsibility that accompanies the right to vote. To the degree that the stakes I have in a polity include not just self-regarding interests but also more general values, they are affected by what happens in France in ways that they are not affected by what happens in the UK.

Why is this? The answer touches on an issue that has already been foregrounded in this chapter – the fact that the French state purports

to speak and act for me, and that I therefore take its actions as having a moral impact upon me. I feel morally compromised when the French state acts badly. It makes sense for me to say in relation to the actions of the French state 'we ought not to have acted in this way' – and this in a manner that would be completely inappropriate in my talking about the British government. My sense of identity encompasses my status as a French citizen, and so I experience as a harm occasions in which I take that identity to have been morally sullied by the actions of my representatives.

Thus, having a vote in more than one country has an impact upon the way in which one perceives one's interests and one's values, and upon the extent to which one is able to act on behalf of those stakes. But is this impact to be counted ethically as positive or as negative, or, perhaps, as neutral? I would hold that the impact is primarily positive, insofar as it can broaden one's moral and political outlook, thereby potentially enriching the ways in which one views the politics of both countries of which one is a part, including the country in which one presently resides. I can see two main reasons for this.

First, when I consider an electoral issue in one of the two (or more) countries in which I am allowed to vote, I do so in a manner that also encompasses the perspectives and interests born of my affiliation and engagement with the other country. As a citizen of more than one country, I may be more likely to consider the interests of other lands in trying to decide among Canadian policy alternatives. This has nothing to do with any greater moral virtue that dual citizens have, but simply with the fact that, as dual citizens, their individual viewpoint on any given issue naturally comes to encompass *more* than one national perspective. This is the main reason why liberal permissive regimes of multiple voting for multiple citizens represent the best, albeit imperfect, means to approximate to the 'all-affected' interests perspective discussed above. Dual citizenship may therefore enlarge sympathies – as a Canadian, I look upon Canadian issues to some degree from the perspective of others because as a French citizen *I am one of those others* – and it may also enlarge one's moral-epistemic vantage point. As a member of two traditions, the repertoire of values and of ways of conceiving the political order that I bring to bear on any particular national issue promises to be broader, at least to a degree.

Second, and more practically, having knowledge of policy debates in more than one country affords voters the possibility to think of domestic problems with a richer sense of policy options than when they are stuck in the ruts that national policy debates often get caught in. It may

therefore be good for the polity in which one resides that one has the right to vote in another country. That right may provide the incentive required to acquire information about policies at work in another country, which might then be put to profitable use for the country in which one resides – to the extent, of course, that one is able to participate in its electoral process.

Thus, dual voting rights can, among other things, be seen as a mechanism through which voters' epistemic, ethical, and policy perspectives are enlarged beyond the perspective afforded by voting in a single country. Now, Linda Bosniak (2003) is certainly right to point out that it would be a grand overstatement to pretend that dual citizenship, and the dual voting which, as I have argued, should accompany this status, is the harbinger of the decline of national citizenship and the emergence of a truly transnational citizenship. Dual citizens are still citizens of distinct nation-states. Nonetheless a perspective incorporating two states, though not fully transnational, is palpably different from a mono-national one. I have tried to provide reasons for thinking that there may be some advantages for all concerned in having a number of such perspective holders around.

A second independent reason for allowing dual citizenship can only be mooted briefly. The claim is that when citizens are allowed to vote in all the countries with which they are linked by birth, ancestry, or choice, they are able to express their identities in a morally attractive way. I can only give the barest sketch of why I think that this is the case here.

Why do people vote in large-scale democracies, given the very low probability that their vote will make enough of an impact to repay the even very minimal effort that it takes in order to cast their ballot? To the extent that one sees agents simply as utility maximizers, that is, in rational choice terms, there is something apparently irrational about voting (for a discussion, see Blais, 2000). Yet there is something *prima facie* problematic about a theoretical perspective that condemns to irrationality a practice that is carried out by most people in liberal democracy, dreamt about by most people in non-democratic countries, and seen in ordinary morality as something that one *ought* to do.

In an influential book, Geoff Brennan and Loren Lomasky (1993) have argued that voting should be seen as serving an expressive rather than a utility-maximizing function. More specifically, they argue that voters express their values when they step into the voting booth. Assuming Brennan and Lomasky are at least partly right in this conclusion, one could conceivably argue the following. Suppose that one's personal identity is made up in part by one's *national* identity or

identities. If they are part of our identities, then it follows that we will attempt to find avenues and vehicles through which to *express* that identity. The right to vote orients one towards the *values* and *ideals* that one thinks the nations with which one identifies through citizenship ought to pursue through its laws and policies, and through its relations with other nations. Were this channel denied, national identity would have to find some other outlet, and this outlet may orient agents less towards the ethical dimensions that national identity ideally has in its democratic modality, and more towards sentimental folklorism or even morally problematic national chauvinism. Tersely stated, the right to vote moralizes a national identity which may, without this right, find morally less attractive ways in which to express itself.

9.5 Conclusion

The conclusion arrived at as a result of these necessarily limited considerations is that dual citizens ought to be allowed to vote in both countries in which they hold citizenship, but also that no harm would be done were this right expressed through an institutional medium which gave their vote less weight than that possessed by resident voters.

Dual and multiple citizenship are, for better or worse, an indelible part of our world order. There are a range of issues that political philosophers should begin to address in order for dual citizenship to promote attractive values, and in order to avoid any perverse consequences it may have. These considerations touch on only one of the many issues around which a broad research agenda needs to be constituted.

Note

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10

Nations, Sovereignty, and Democratic Legitimacy: On the Boundaries of Political Communities

Geneviève Nootens

It is now quite widely acknowledged that the conventional modern Western conception of the *polis* – namely, liberal democracy embedded in a sovereign territorial state – faces powerful challenges. State autonomy is either eroded or inflected by increasing integration into international regimes, sub-state regionalization, capital mobility, the resurgence of minority nationalisms, and civil society networks, among other things. One must be careful not to blur the varying nature of those phenomena, to overestimate their impact on the state, or to underestimate the part played by states themselves in the internationalization of governance (see, for example, Wolf, 1999). Yet it seems indisputable that some diffusion of power actually characterizes the current era. This has led to significant debates on states as the primary locus of constitutional authority.

One would have expected these debates on state sovereignty to be paralleled by debates on popular sovereignty in a historical context also characterized by growing recognition of the legitimacy of forms of national pluralism within states. Such recognition undermines the assumption of an indivisible and homogeneous *demos* as the holder of popular sovereignty and the source of legitimate public authority. However, there have been, up to now, very few significant explorations of the nature of popular sovereignty, even among advocates of the ‘politics of recognition’. This is perhaps not really surprising, since popular sovereignty is closely identified with democratic self-rule, that is, the normative requirement according to which law is legitimate insofar as it is the product of the people’s decision-making (Kalyvas, 2005; Lindahl, 2001; MacCormick, 1999; Tully, 1995). Yet if the recognition of national pluralism is normatively justified, and if democratic theory is to account for such justifications, popular sovereignty viewed as being

located in one, state-wide nation has to be contested. A preliminary step is to explain why it requires contestation. This chapter addresses that preliminary task by focusing on the question as to what we are left with as a means of delineating political communities once the recognition of plural identities is taken seriously (let me stress that I use the term 'communities' in a wide, generic sense without intending it to point to 'thick' social relationships as envisioned by communitarians, for example). In this chapter I therefore seek to contribute to debates on how legitimate public authority can be founded on the democratic consent of diverse, overlapping, and self-governing communities, an issue which is relevant and pressing simultaneously at the sub-state, state, and supra-state levels. Indeed, plurinational democracies represent a microcosm of our plural and globalizing world in illustrating both the difficulties and the possibilities of democratic negotiations between diverse constituencies. They point to the fact that while nations remain significant communities of fate and allegiance in the current era, doctrines of popular sovereignty that invest political legitimacy in a state-wide homogeneous *demos* or nation appear increasingly inaccurate and untenable. Hence, while it is inappropriate to characterize our era as postnationalist, since this would be to equate nations with states and leave unchallenged modern doctrines of state and popular sovereignty, it is nonetheless correct to argue, with Michael Keating (2001), that what we are witnessing is the advent of an era of *postsovereignty*, of the diffusion of sovereign power and legitimacy across various constituencies and boundaries.

The first section of my argument focuses on the normative import of the recognition of national pluralism in order to explain how it challenges the view that the legitimacy of public authority must rely upon an overarching *demos* understood as one nation. For reasons of space, it is impossible to recount all the claims for and against the 'politics of recognition'; instead, I concentrate on those claims that provide normative grounding for the 'politics of recognition', and rest my subsequent arguments on the assumption that one *may* agree with these reasons. The central concern here is the fact that dominant representations of political communities as national states conceal significant exclusions and asymmetries, in particular as regards self-rule. The argument is that acknowledging these exclusions and asymmetries yields sufficient grounds for embodying significant forms of plural recognition in political principles, norms, and institutions. The focus of the argument is minority nations, in particular Canadian First Nations, though there are clearly other forms of exclusion that characterize national states,

the traditional assumption of a homogeneous *demos* having informed the workings of liberal democracies throughout so as to silence and marginalize the voices of many other groups, including women, ethnic minorities, and various subaltern classes.

The normative import of recognition raises the issue of the nature and bounds of constituencies in plurinational societies, as well as that of how best to democratically manage interdependence. It is important here to note that democratic theory faces the 'boundary problem' – it all too often simply assumes that there is a *demos* prior to democratic decision-making, in short, that the question of 'who' is to participate in democratic decision-making is already a settled issue. Modern doctrines of popular sovereignty have 'solved' this problem by identifying the people with the nation, and modern states have consequently consolidated as national states (Hont, 1994; Näsström, 2003; Yack, 2001). But the normative reasons grounding recognition require that we revisit this simplistic identification. The second section therefore asks whether there is an independent, yet democratic, principle that may help us solve the problem of boundary setting. Robert Goodin (2007) has interestingly argued that the best principle of inclusion in democratic decision-making is the 'All-Affected Interests Principle' (hereafter AAIP). However, as we shall see, the grounds on which Goodin justifies this claim are flawed. On the basis of serious criticisms of the AAIP, I then argue, in the third section, that current democratization processes in plurinational states have important implications for democratic theory generally. They point to the need to account for minority nations' claims to self-rule and to overcome the 'statist assumption' that the state and some form of the nation have to coincide in accordance with the principle of territoriality (Nootens, 2006). They also reveal the untenability of assuming the indivisible *demos* to be the prime engine of popular sovereignty. Once this is established, we are inevitably led to doubt as fallacious the venerable presumption that territory is a matter of zero-sum games. Instead, there appears the real possibility of the coexistence of two (or more) sovereign orders within specific territories, which demands the investiture of popular sovereignty in the self-determination of several, often overlapping, body politics. First Nations' claims to self-government, upon which the third section builds, are employed to substantiate this argument. Understood as part of democratization processes, these claims point to fruitful ways of rethinking how legitimate public authority can be grounded and justified once democratic theory acknowledges the import and consequences of the recognition of national pluralism.

10.1 Liberal democracies, minority nations, and recognition

In liberal democracies legitimacy is dependent on three core ideas: consent, rights, and the sovereignty of the people. Legitimate government is based on the consent of individuals, and any assessment of such legitimacy includes respect for fundamental individual rights (freedom of conscience, say). Liberal democratic theory is also dependent upon modern doctrines of popular sovereignty and their reliance on the nation to solve the issue of the people's own legitimacy, that is, in ascertaining who the people in fact are. It is deeply intertwined with institutions and practices conveying the idea of an overarching uniform citizen identity, an identity that makes them a people whatever their other commitments, including allegiances to sub-state political communities. This is reflected, for instance, in the assumption that belonging to one overarching community mitigates the impact of majority mechanisms, since such belonging ensures solidarity even when some are in a minority on specific decisions. Yet the situation of minority nations obviously contradicts these beliefs; in their case the impact of majority mechanisms may not be mitigated by belonging to an overarching citizenry, particularly in matters closely related to their self-representation as minority nations, not least language and education. In other words, minority nations' claims to recognition and self-rule dispute the notion that there is 'a people that can speak in one voice' (Chambers, 2004, p. 153).

Keating (2001, p. 3) rightly stresses the special status that nationality claims have: these carry with them 'a more or less explicit assertion of the right to self-determination', being based on the beliefs 'that the nation is historically constituted as a self-governing community' and 'that its people see themselves as a nation and wish to determine their future as a collectivity'. Self-determination is thus 'part of the normative content of nationality itself' (Keating, 2001, p. 4). Self-rule does not imply outright secession, but it does require equal participation, as constituent powers, in deciding the credentials of association in a common polity. When minority nations' self-rule is subordinated to the decisions of the majority nation within a state, and their participation in shared rule made dependent upon a constitution that crystallizes the dominance of the majority nation, they are effectively denied equal status within the commonwealth (Tierney, 2009).

My focus is on national pluralism, not on multiculturalism or some version of 'the politics of difference'. Minority nations' claims to recognition may be framed as claims to be recognized as culturally unique,

in accordance with the justifications Taylor (1992) gave for 'the politics of recognition'. But the most significant point to stress is that they involve claims to collective self-rule that distinguish them from other types of claims to recognition, and claims to self-rule do *not* have to be framed in the language of 'identity politics'. Hence, I do not tackle here the criticisms addressed to multiculturalism, 'the politics of difference', and to 'identity politics' generally by, among many others, Brian Barry (2001) and Susan Moller Okin (1999). Recognizing national pluralism means recognizing that minority nations possess 'a constituent power of their own' (Keating, 2001, p. 161), a power which entails questions very much distinct from the problems of integrating immigrants or of realizing equal rights for women.

Of course, the recognition of national pluralism is a challenge for polities only if one agrees that such recognition has normative significance for our conception of political communities and democratic theory. This normative significance need not be grounded on reasons anchored in the debate over individual versus group rights, nor need it rely upon an essentialized view of group identities. It can be located, instead, within a perspective stressing the asymmetries in power that mark out majorities from minorities. Three aspects of these asymmetries are particularly relevant for the purposes of this chapter. First, liberal democracies are not ethnoculturally neutral: all of them are based upon the diffusion of a majority culture and identity as a means to suppress national and ethnocultural differences between groups within the state, in order, typically, to ensure consolidation and stability (Kymlicka, 2000; Lecours and Nootens, 2007). Second, both majority and minority nationalisms embody claims to self-determination in a complicated blend of culture and politics; contrary to what was once a widespread view, minority nationalisms are not necessarily less democratic than majority ones. This has at least two consequences from the point of view of normative justification: that there is no *a priori* reason to support majority nationalisms, while denying legitimacy to minority nationalisms; and that there are no justifications for forcing upon minority nations an allegiance to the central state that has absolute priority over their own national or cultural allegiances. The capacity of a majority group to diffuse its culture as the dominant one in a state is a contingent historical result, not a question of its being more democratic than other groups or otherwise justified in its cultural dominance. Finally, it is now widely accepted that the enforcement of basic individual rights does not suffice to ensure that the rights of persons as members of minorities will be respected. Even when policies do not violate individual rights *sensu*

stricto, they can harm people as members of minority nations. For example, large-scale settlement policies may be deliberately used as a weapon against national minorities, or the boundaries of internal political subunits may be drawn so as to disempower minorities, as when, for instance, a minority's territory is incorporated into a larger political subunit (Kymlicka and Straehle, 1999, pp. 11–13).

Some fear that recognition may endanger stability, but in fact denials of recognition may generate substantial threats to stability as well. We need only think of East Timor prior to 2002, of Northern Ireland until 1998, and of the Palestinians currently. And stability requirements that deny self-rule to minority nations solely on numerical grounds – simply because they are minorities – cannot be first-order requirements in liberal democratic theory. Rather, one would have to demonstrate that self-rule by a specific minority nation would produce undemocratic consequences that are not in any way paralleled by the undemocratic consequences produced by this minority being subjected to a majority nation and denied self-rule.

10.2 On the boundaries of democratic constituencies

If this argument is sound, consistency requires that its implications be embodied in the principles, norms, and institutions that frame polities. Let me stress that the claims of minority nations to self-rule do not challenge current dominant representations of the common good in the way that typical policy disputes do – as when, say, some argue for increased taxes to support robust social policies, and others demand a reduction in taxation burdens. Instead, claims to recognition challenge the very way the existing legal and political overarching order – the constitution, basic institutions, and norms – is framed and how that order in turn frames the manner in which representations of the common good can be debated. More specifically, First Nations dispute a legal normativity from which they consider themselves to be *estranged*, a legal normativity that was imposed through waves of colonialism and which rendered them objects of policymaking rather than genuine participants within democratic decision-making. Hence, the normative import of recognition in the case of minority and First Nations brings to light the nature and bounds of constituencies in plurinational societies in a peculiar way. It does so by contesting the assumption that the legitimacy of public authority relies upon a *demos* or nation whose popular sovereign base must always remain singular and indivisible. Furthermore, it suggests that the question posed by recognition of

minority nations is not merely one of delineating different decision units, corresponding to different groups, but of the codetermination of many, oftentimes overlapping, *demoi*.

This brings us to the classic 'boundary problem' underlying theories of democracy. The question of boundary setting is a problem, as Whelan (1983, p. 22, my emphasis) explains, because it appears to be the one 'matter of collective decision that cannot be decided democratically', since democracy 'can be practiced for making collective decisions *once* the collectivity has been defined, but democratic methods themselves are inadequate to *establish* the bounds of the collectivity', whose existence is often in the main presupposed. However, some have optimistically argued that we can solve this problem by turning to the AAIP. Reduced to its essentials, this principle states that since democracy means the people are to have a say in decisions significantly affecting them and their well-being, the boundaries of a particular democracy are to be delineated by determining those who will be affected by these decisions. Such is how David Held (2004), for instance, suggests we proceed in order to match circles of stakeholders with decision-makers in the context of current globalization. Held's account of the AAIP has been subjected to robust criticism (see Näsström, 2003; Nootens, 2009; Wendt, 1999), so here I explore Goodin's more sophisticated defence of the principle in order to assess whether in fact it has utility in determining the contours of plurinational democracies.

Goodin (2007, p. 51) argues that the constitution of the *demos* should be determined according to the AAIP, which he considers, following Dahl (1970), as being 'very likely the best general principle of inclusion that you are likely to find'. In making this argument, he (2007, p. 43) takes the following statements to be 'logical truths': (1) constituting the *demos* is the first step, temporally, in constructing a democracy; (2) constituting the *demos* cannot be the product of ordinary decision-making, and membership in the *demos* 'must itself be constituted according to some principle independent of any decision of the *demos*'. In order to identify this independent principle, Goodin (2007, p. 47) then asks whether there is a connection between the 'how' and the 'who' of democratic politics, namely, whether our standards of democratic decision-making and of democratic ways of constituting the *demos* might both be derived from one and the same underlying principle. Real world *demoi* are usually constituted on the bases of territoriality, nationality, and history, all arbitrary from the moral point of view. What makes these arbitrary factors matter – that is, what justifies constituting our *demoi* around them – is simply the ways in which they lead to people's

interests being interwoven. In other words, what makes specific groups or *demos* fitting units for collective democratic decision-making is the 'common reciprocal interests' of individuals in each other's actions and decisions: 'This is what defines "a people" that is to be self-determining' (Goodin, 2007, p. 48). The AAIP is the standard, then, by which the adequacy of territory, nationality, and history is to be properly assessed because protecting people's interests is 'the most plausible candidate principle for bringing the "who" and the "how" of democratic politics into alignment' (Goodin, 2007, p. 50).

But does this actually provide for an independent principle according to which the *demos* is to be constituted? There appears to be room for significant scepticism here. This is because making the AAIP the normative ground on the basis of which the *demos* is to be constituted in no way addresses or settles the issue of affected interests: one still has to specify *which* interests are relevant, *who* is going to decide upon their relevance, and *what* standards will be employed in determining their relevance (as Arrhenius, 2005, p. 8, admits in his own defence of the AAIP). In other words, using the AAIP requires that the issue of appropriate boundaries *and* the question of the content of legitimate interests be settled in one go, since it entails acknowledging, first, that those making claims are *rightful* bearers of interests, and, second, that their interests are indeed relevant, *legitimate*. In turn, such acknowledgement presumes either that there are already some legal–normative criteria according to which claims can be made, or at least an agreement between people to engage in dialogue about generating a legal–normative order. But in reality there is never an uncontested vision or notion of what that legal–normative order is or ought to be. For example, the incorporation of women into the political process required as a first step forcing through recognition of the fact that women did have interests that were affected by political decision-making, and that they could therefore legitimately claim to contribute to such decision-making. Had women not won, through committed struggle, acknowledgement as legitimate bearers of interests, they would never have gained inclusion within democratic processes. Thus, it is very unlikely that we can solve the boundary problem with the sole criterion of 'affected interests', inasmuch as there may – indeed, certainly will – be wide disagreement as to who is affected and what kinds of voice they are entitled to in decision-making. This difficulty becomes even more striking when Goodin discusses the institutional arrangements that could lead to a realization of the AAIP in its 'expansive possibilist' form (his preferred interpretation of the principle). He (2007, p. 67) argues

that approximating the ideal conveyed by the principle requires setting up overlays on the existing state system: either a world (federal) government that would internalize externalities, or an international law that would compensate for spillovers. He concedes that he is unsure how the former could work short of a *demos* comprised in the maximally expansive way. However, including everyone clearly does not solve the boundary problem – it merely sets it aside. As to the latter strategy, the dilemma of contested interests reappears once we have to decide who will determine what is to count as a spillover, and which spillovers are to be compensated for.

There is a further reason to dispute Goodin's argument, namely, that it is inaccurate to describe as 'logical truths' the ideas that the constitution of the *demos* is a first temporal step and that membership must be constituted according to some principle independent of any decision of the *demos*. As Hans Lindahl (2006, pp. 886, 891) has argued in his analysis of the genesis of political communities – an analysis that is not intended to be a moral argument about the legitimization of political communities – the 'self-closure' of a political community involves setting boundaries that are both *normative* and *physical*. They are normative because the genesis of political communities involves selecting certain interests as worthy of legal protection and rejecting others as irrelevant. They are physical because a legal order's claim to common interests is determined by means of boundaries that partition space. Hence, there are two forms of the 'outside/inside' divide: the first between individuals who are 'in-legal-space' and those who 'claim a legal place of their own for which there is no place within the distribution of places made available', and the second between a community's own territory and foreign territories (Lindahl, 2006, p. 889). Let me stress that the former is very much characteristic of the situation of First Nations and other minority nations in the context of what Tully (1995) calls 'modern constitutionalism': both challenge a legal normativity from which they are estranged to a significant degree. Understanding the closure (bounding) of communities as the setting of normative and physical boundaries also reveals that the features identifying a community as the subject of a legal order are not given prior to, or independently of, the legal order itself. A people does not exist independently of its self-representation as a people (think, for instance, of how the French revolutionaries laid out and concretized their conception of the French nation), and the unity of a community depends on the acts that constitute it *as* a community (Lindahl, 2001, p. 178). Moreover, a founding act is necessarily a self-mandating act, since the community thereby founded or created,

and in the name of which the legitimacy of the new normative order is claimed, is not yet existent. In any case, self-determination depends upon a representation that is legitimized retrospectively by its actualization: it is the realization and consolidation of a specific view of the body politic that allows it to 'exist' at all. Legitimization is not, therefore, independent of existing power relationships, although those relationships may be constrained by norms and institutions enabling greater equality between peoples and groups.

Hence, Goodin's 'logical truths' are disputable if they are really intended as *logical*, as presupposed by reason itself. If self-determination ultimately depends on a representation that is validated by its actualization, the first temporal step in bounding a democracy is actually that of a non-authorized (or partially authorized) closure grounded on an interpretation of how the unity of the community ought to be realized – selecting some interests as worthy of legal protection under a specific normative order – an interpretation that can only be legitimized *post factum*. If this is so, it cannot be the case that belonging to the *demos* is given by a principle that is independent of any decision of the *demos*. Indeed, it would seem instead that belonging is decided by the representation of a *determinate* unity, of the *demos* as the closure of a particular legal space.

This brings us to a third reason for questioning Goodin's argument that self-rule can be explained solely in terms of 'reciprocity of interests'. Democracy concerns the government of polities (whether one labels them 'communities' or 'collectivities' make little difference here). Democratic self-rule relates to a group of people who see themselves as being part of a body politic, and thus such self-rule depends fundamentally on how they represent themselves as a polity, whether it be as a nation or a collection of nations, *et cetera*. But reciprocity of interests is in no way specific to politics or to polities; it is a characteristic of many individual and social relationships. What makes it relevant to politics is the significance invested in *some* kinds of reciprocal interests. Seeing oneself as playing a part in the flourishing of specific public norms and institutions is quite different from seeing oneself as having common interests with a business partner or a spouse or a church (although political norms and institutions may in turn legislate on these other common interests). In other words, what the AAIP fails to reflect is the basic fact that it is the 'group' – or, more to the point, distinct visions of the 'group' that legitimate specific articulations of interest – that is the fundamental unit of democratic theory (Wendt, 1999). This, in turn, reinforces the suspicion that the AAIP is not an independent

principle, and that the boundary problem cannot be addressed with the help of the AAIP alone. That is not to say the AAIP is useless, for it can be beneficial in adjusting existing boundaries by ‘testing’ existing legal–normative orders. But even then it would have to proceed on the ground of some representation of what are to count as legitimate affected interests.

10.3 Democratization processes and the boundary problem

The boundary problem of plurinational societies undermines modern doctrines of popular sovereignty, since contrary to what they assume popular sovereignty cannot in these societies be located within one indivisible state-wide *demos*. Rather, it must be invested in the self-determination of several constituencies contingently deciding together the principles upon which the commonwealth is to be grounded. Claims to self-rule therefore challenge the national state as a perennial political subject. Yet they also contribute to democratization insofar as they unveil significant asymmetries in access to, and exercise of, self-rule. Indeed, democracy’s boundaries are constantly moving on account of daily social and political struggles for recognition, inclusion, and redistribution. Mobilization and contention create solidarities and affinities that act upon the boundaries of democracy – on the foreign/domestic divide, as well as on the ‘estranged’/‘in-legal-place’ divide. And attention to actual ongoing recognition negotiations in plurinational societies may help us to determine some of the requirements of democratic legitimacy in circumstances characterized by national pluralism.

One very revealing case in this context is the *Agreement-in-Principle of a General Nature* (Secrétariat aux affaires autochtones, Quebec, 2004a) negotiated by a number of aboriginal Innu communities with Quebec and Canada’s governments in 2004 (it is not possible here to describe this case in full, but see Nootens, 2009, for a more thorough account). This Agreement-in-Principle was intended to serve ‘as the basis for the drafting of a Treaty which shall be a land claims agreement and a treaty within the meaning of Sections 25 and 35 of the *Constitution Act, 1982*’ (Agreement-in-Principle, Preamble). Section 25 of the *Constitution Act, 1982* states that the guarantee of rights and freedoms in the *Canadian Charter of Rights and Freedoms* ‘shall not be construed so as to abrogate or derogate from any aboriginal treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada’, whereas Section 35 recognizes existing aboriginal and treaty rights, explaining that ‘treaty rights’

include 'rights that now exist by way of land claims agreements or may be so acquired' (Constitution Act, Dept of Justice, 1982, my emphasis). According to Lajoie (2004), these two sections reflect the conviction that aboriginal rights *predate* Canadian constitutional laws; the latter can only recognize the former, they cannot be considered as being their origin or source. The goal of the Agreement-in-Principle was precisely to grant such customary aboriginal rights constitutional and institutional enshrinement.

We can understand the full implications of the Agreement-in-Principle if we consider what democracy fundamentally means. At a very general level, democracy means rule by and for the people. Following Pogge (1997, p. 179), I take the basic idea of democracy to be 'the moral imperative that political institutions should maximize and equalize citizens' ability to shape the social context in which they live'. Political equality stands as a basic principle of democracy. This requires, minimally, that those who rule are to be accountable to those who are ruled (Keohane and Nye, 2003, p. 389). Mechanisms must exist to ensure that accountability is effective and that citizens can actually control decision-takers. Hence, democratic accountability requires sanction mechanisms – for example, the possibility to change governments through elections – transparency, and public spaces of deliberation to enable genuine will formation. These conditions ought to allow, ideally, for actual bottom-up control. Moreover, in democracies people not only have the right to partake in the choice of government but also the right to *govern* proper, that is, to run for elective office.

Yet these basic requirements, although the fundamental criteria of democratic rule, do not account for one significant aspect of it. As discussed above, claims to self-rule are always also grounded on some representation of what makes a specific group of people a distinct community with a legitimate right to self-government. First Nations, such as the Innu, claim self-rule precisely because they want the governments they partake in to be their *own*. They want these governments to be part of how they conceive of themselves as communities, and they want to decide for themselves how they are going to deal with significant social, political, economic, and cultural issues. It is this desire which explains why First Nations have consistently resisted assimilation into mainstream Canadian society. The Agreement-in-Principle reflects this by recognizing and confirming aboriginal rights, and by granting the Innu communities an *inherent* right to self-government. It ensures the confirmation and continuation of aboriginal rights, including aboriginal title, rather than their extinguishment. In stark contrast, previous treaties

with aboriginal peoples usually required that they had to consent to the nullification of all their undefined rights relating to land and resources, these traditional rights being effectively usurped and replaced by the rights set out in the articles of the treaties (Lajoie, 2004). However, all the parties to the Agreement-in-Principle (Section 3.3.3) explicitly assert that self-government is a basic right: 'Self-government, as an inherent right, is included among the ancestral rights of First Nations.' This means that self-rule is not seen as a mere devolution of powers by a benevolent central state, but is instead deemed a practice flowing from the organization of minority nations themselves. As such, the Agreement-in-Principle rules out any *a priori* presumption and imposition of an overriding allegiance to the state, thus enabling the existence and flourishing of competing civic identities.

Against the monistic prejudices of modern constitutionalism, the Agreement-in-Principle additionally provides for each community party to the agreement to adopt its own constitution according to democratic processes. These constitutions would have the status of fundamental laws subordinating the exercise of the powers and jurisdictions of governmental authorities. The Agreement-in-Principle (Sections 8.1.1 to 8.1.5) confers on the legislative assemblies of the Innu communities the power to enact laws on any matter related to the organization, general welfare, development, and good government of their communities, institutions, and members (this is alongside a measure permitting the application of personal Innu laws to Innu not living on Innu-controlled territory (*Innu Assi*), provided these individuals voluntarily agree to their application and the personal laws concerned are compatible with the laws in effect where they live). Even though there has not yet been any significant work on how governments are to ensure fair and equal participation of First Nations in legislation on common matters, such as laws of general application, the Agreement-in-Principle (see Section 3.3.11) explicitly allows for a process of ongoing negotiation and for the involvement of Innus in the management of land, natural resources, and the environment.

Finally, the Agreement-in-Principle breaks fundamentally with traditional constitutional thought and practice by not making territory the issue of a zero-sum game. It does provide for a territory (admittedly rather small) upon which aboriginal title is deemed to include all the attributes of full ownership of soil and subsoil – except for one of the aboriginal communities – and which is to be the place of self-government (*Innu Assi*). However, it further provides for the recognition of a much wider

ancestral territory (*Nitassinan*) of 300,000 square kilometres within which Innu authorities can participate, together with Canada and Quebec's governments, in the administration of land and other resources. On this ancestral territory practices relating to the perpetuation of the national culture, fundamental values, and traditional lifestyle of the Innu – including hunting, fishing, trapping, and gathering for subsistence, ritual, or social purposes – are guaranteed (Agreement-in-Principle, Section 6.1.1; see also Map of the Agreement-in-Principle, Secrétariat aux affaires autochtones, Quebec, 2004b). In other words, the special relationship of the Innu communities to their ancestral territory is recognized, *yet* they are not considered to be the exclusive 'owners' of the larger ancestral territory, since they share it with non-aboriginal communities and governments.

Of course, we need to emphasize here that the Innu's long legal and political struggle to achieve self-rule occurred within a distinctive socio-historical context marred by large asymmetries of power. And it is assuredly true that the Agreement-in-Principle is the result of a political compromise which some groups strongly oppose. For example, some within Innu communities disagree with the way the issue of the territory has been dealt with, as do certain members of non-aboriginal communities, who fear that they may be denied access to parts of the ancestral territory. It should be acknowledged, as well, that the sections of the Agreement-in-Principle granting Innu communities the power to enact laws stipulate that these laws will still be subject to the *Canadian Charter of Rights and Freedoms* and the *Charte québécoise des droits de la personne*, as well as to Canadian and Quebec laws of general application. This is problematic not because Innu communities are unwilling to commit to the protection of individual rights and freedoms, but because they were not privy, as communities invested with a constituent power of their own, to the negotiations that led to these laws and charters, which they have simply had to accept as objects, rather than subjects, of policymaking. Furthermore, although the Agreement-in-Principle was concluded in 2004, it has not yet been ratified as a treaty on account of the governments having had to address local non-aboriginal communities' concerns, and because Quebec's administration changed in 2006, with a consequent delay to the process. But all this does not detract from the truth that the negotiators of the Agreement-in-Principle, both aboriginal and non-aboriginal, reached a settlement that embodies an original and promising way of managing the fraught problems of territory and plural political allegiances. The task they addressed was hugely formidable, inasmuch as they sought to find a way to reconcile the prior presence of

the Innu First Nations with the assertion of the sovereignty of the Crown (see Agreement-in-Principle, Preamble). Their search for a workable compromise, and the one they reached in the end, together reveal that the sovereign claims of First Nations and the Crown are not mutually exclusive, *pace* the venerable prejudices of modern political thought, but in fact reconcilable. The lesson taught, in sum, is that if we wish to break with the historical injustices of majority nationalism, multiple sovereign orders must of necessity coexist and overlap on the same territory.

This brings us back again to AAIP and the general problem of boundary setting in democracies. The Agreement-in-Principle brings into relief on the level of practice the AAIP's failure to explain why communities want a government of their own or to offer guidance on delineating different constituencies in plurinational societies. This is because, as argued earlier, the principle has no means to determine who is to have a say in this or any other agreement. Is it to be all Canadians, local communities, or aboriginal peoples only? Here the AAIP is silent (Nootens, 2009). Indeed, it is inevitably so since the principle demands that we abstract from the contingencies of particular contexts, thereby neglecting the truth that it is only through local struggles between specific groups that determinate constituencies and visions of the polity come into being. The AAIP also blinds us to the insight that democratic deliberation among the citizenry as a whole cannot trump considerations of fairness conveyed by recognition of First Nations' inherent right to self-government. This does not mean, of course, that non-aboriginal citizens should be kept in ignorance of what is being negotiated with First Nations, or that they should have no say in how their own communities are to interact with First Nations in terms of, for example, the employment of land and resources. But what the Agreement-in-Principle reveals, in contrast to the AAIP, is that having that say is premised upon the realization that First Nations form distinct communities in the commonwealth with an irrevocable right to determine their own political destinies.

10.4 Conclusion

The ongoing work of representation, mobilization, and deliberation plays a fundamental part in the constitution of communities. This is how communities with claims to self-government emerge, develop, and change. Of course, power relationships and asymmetries play a significant part in that process. But self-representation as a community also embodies normative claims as to legitimate interests, and hence necessitates reflexivity and deliberation. As the Innu case shows, it is clear that the recognition

of an inherent right to self-government requires sustained political and social struggle. But recognition remakes the boundaries of inclusion and exclusion: recognition of an inherent right to self-government means acknowledging the unfairness of non-recognition, hence the need to modify how the 'dominant' society represents itself.

James Tully (1995, pp. 4–5) rightly argues that self-rule is the oldest political good. Liberal democracies, on the basis of modern doctrines of sovereignty and historical processes of state consolidation, have located the source of political legitimacy in an indivisible *demos* depicted as one nation. By doing so, they have actually favoured majority nationalism. But the political recognition of the rights of minority nations rules out *a priori* the presumption and imposition of an overriding allegiance to the central state. The Innu case demonstrates that there are various ways to reorganize relationships between constituencies within a larger commonwealth, the Agreement-in-Principle yielding important points of reference for ensuring fairer relationships between communities (the fundamental units of democratic theory) and for avoiding the dangers of understanding territory in zero-sum terms. And it is instructive to note here that the international community has implicitly recognized that need to rethink the constitution of polities, at least where the rights of indigenous peoples are concerned (see United Nations, 2007). We should observe once again that it is not the significance of nations that is currently at stake, but only the way that the unity of body politics was assumed to be realized and embodied in the unity of a sovereign state and the indivisibility of an overarching *demos*. Given this, accounting for self-government in a context of strong plurality can no longer depend on thinking unity *despite* plurality.

It is worth recognizing, by way of conclusion, that attention to contestation, mobilization, and democratization within plurinational societies may also help in addressing the wider problems posed by globalization for attempts to determine appropriate constituencies and modes of democratic decision-making. In particular, the experience of plurinational polities illustrates the fact that any proposal for a multilevel cosmopolitan democracy must take seriously both the need to bridge diverse constituencies and the ideal of self-rule as a fundamental political good. So far very few advocates of cosmopolitan democracy have shown awareness of this (Nootens, 2010). Of course, the democratic constituencies at play globally are not necessarily majority and minority nations. Yet the fundamental challenge of delineating and bridging constituencies at the global level is very much the same as that faced by citizens, decision-makers, and theorists within plurinational societies.

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11

Dilemmas of Belonging: Multiculturalism in Plural Societies

Catherine Frost

Advocates of postnationalism argue that we must move past the particularist bonds of cultural and national identity in order to escape the narrow rigidity of culturalism and organize political life in a way that best captures the ideals of citizenship. These postculturalist and proceduralist alternatives are proposed as an improvement upon both traditionalist nationalism and multiculturalism. Since it appears that multiculturalism has been in retreat in recent years (Koopmans et al., 2005; Levey, 2009), it looks like the time is ripe for these developments to take hold. Yet public controversy over multiculturalism has rarely taken the form of a demand for more postnationalist policies. If anything, it has fostered a kind of neo-nationalism, based on fears that multiculturalism endangers the bonds of mutual obligation (Joppke, 2004). If multiculturalism is running into problems, why is it taking the form of a *renewed* concern with particularist identity, rather than a call for greater postculturalist politics and civic proceduralism?

This chapter argues that the postnationalist ideal has not captured popular imagination because it leaves out something that multiculturalism retains: a concern with how we manage cultural and particularist identities. Multiculturalism aims to strike a balance between cultivating collective identities and containing the claims of culture within liberal bounds. The difficulties of getting this balance right may have hampered the development of multicultural politics. But tricky as this exercise is, without it we are caught between a postnationalist ideal that underestimates people's particularism, and a neo-nationalist reaction that overestimates the moral value of common identity.

Will Kymlicka (2001, p. 42) uses the umbrella of 'liberal culturalism' to cover both minority rights and the accommodation of national identity under liberal constraints, suggesting that the two are correlated

through the logic of multiculturalism. In the interests of simplicity, I will use the term 'multiculturalism' in this discussion since this terminology has dominated in recent debates. But I intend this term to also cover claims concerning national identity – whether that involves minority nationalities within a larger federation, or the dominant national identity associated with a state project.

This chapter outlines the multiculturalist position by examining how it responds to three objections. Two of the objections are associated with postnationalism – one objects to the emphasis on culture, the other argues that multiculturalism is a proceduralist approach gone wrong. The third objection reflects the neo-nationalist claim that accommodating minority identities undermines social unity and social justice. Multiculturalism can respond to these objections because: (a) it is designed to constrain and transform culture in significant ways, rather than transcend the issues of culture entirely, an alternative that raises its own problems; (b) it involves a conscious effort to cultivate identities that support political and cultural change, and in this regard goes further than conventional proceduralism; and (c) it takes seriously the importance of common identity, but it does not make the error of thinking existing identities should prevail.

The chapter begins with a review of the rise of multiculturalism and then moves on to consider the three objections in turn. These considerations reveal that multiculturalism aims at a new kind of nation-building that combines measures to constrain the excesses of culturalism and ethnonationalism with the readiness to cultivate new particularist identities. But the multiculturalist approach has encountered problems because the strategies of simultaneously building and thinning attachments among increasingly diverse populations are not yet fully worked out. However, multiculturalism's transformative features show it to be especially relevant in an increasingly diverse world, thus making it imperative that robust strategies for transformative multiculturalism be developed. Such will most likely involve shifting attention away from education policy and towards broader-based measures focused on public culture.

11.1 The rise of multiculturalism

Multiculturalism has its roots in late twentieth century efforts to understand the deep attachment people have to particularist identities rooted in culture and nationality. Its aim is to reconcile liberal priorities regarding the rights of the individual with claims about common identity as a

social good. Advocates believe that liberalism needs cultural structures in order to get off the ground, while without some form of restraint, cultures may put traditional, sometimes authoritarian, practices ahead of the needs and well-being of individual group members (Shachar, 2001b). Specifying the appropriate relationship between the two is therefore the main aim of multiculturalist theorizing. Accounts of the relationship differ, as theorists emphasize a range of factors such as recognition (Taylor, 1994), autonomy (Kymlicka, 1995), belonging (Tamir, 1995), democracy (Moore, 2001), or social solidarity (Miller, 1995).

The theoretical development of multiculturalism has been described as involving three major 'waves' (Kymlicka, 2001, p. 19; Shachar, 2001a, p. 254). The first wave focused on establishing the moral significance of groups and social embeddedness. A leading theorist in this first wave, Charles Taylor (1989, 1991, 1994) argued that much of liberal theory was based upon an excessively atomistic idea of the individual. In contrast he outlined a communitarian position, saying that we are the product not only of our choices but also of our social experiences. Taylor argued that recognition of our sense of collective or individual identity proves critical to healthy social exchange, and when it fails, the individual may be harmed. The broader communitarian critique of liberalism actually had two elements, however. One held that liberalism had the wrong idea of the self (as Taylor argued); another held that traditional liberalism led to a failure of justice, because its almost exclusive focus on the individual meant that it was more difficult to pursue collective goods (Sandel, 1982, pp. 62–4).

Arguments like these prompted a re-examination of the place of culture within liberalism. The second wave of multiculturalist theory set out to integrate the situated self into liberal theory. Theorists like Avishai Margalit and Joseph Raz used the idea of a situated self to argue for the justice of national self-determination where there is a strong and 'encompassing' collective identity (Margalit and Raz, 1990, p. 448). In a similar vein Yael Tamir argued that nationalism could be coherent with a liberal political project because all that was required was some public space to express a shared cultural life. In fact, accommodating national identity could enhance liberalism, because such identities deepen the sense of attachment and belonging between individuals, which would in turn deepen moral bonds through associative obligations (Tamir, 1995, pp. 99–102). Will Kymlicka shared Tamir's focus on the individual, but felt that the issue of fairness was also at stake. Too often what was put forth under the banner of liberal neutrality, he suggested, turned out to be policies or practices that favoured dominant majorities.

Liberal principles require us to level that playing field (Kymlicka, 1995, p. 108).

But there was another reason for taking cultural claims seriously. Central to liberalism is the ideal of autonomy, a life lived from the inside based on individual choice. But for this process to work, life choices must have meaning. Having the freedom to choose can be an empty experience if all choices have been flattened or drained of their traditional meaning by the forces of modernity (Taylor, 1991). Even in a modern setting, culture invests our choices with meaning and therefore can provide a context within which liberal autonomy, the freedom to make life choices, is worthwhile (Kymlicka, 1995, pp. 83–4).

Tamir and Kymlicka both outlined a new order of rights based on a revised idea of the liberal individual. But not all the focus was on the ontology of the subject. David Miller, for example, emphasized the requirements of collective justice and argued that any self-respecting liberal project would need to engage in significant levels of redistribution. To be sustainable, this redistribution requires high levels of social solidarity, the kind of solidarity associated with national identity (Miller, 1995, pp. 70–3). For this reason, cultural claims around national identity must be taken seriously. In a similar vein, Margaret Moore argued that democracy, and new forms of deliberative democracy in particular, make significant demands on social solidarity. As with redistribution, populations need to be prepared for significant levels of compromise. A shared political identity provides an essential backstop for the democratic process, which might otherwise breed resistance and resentment (Moore, 2001 pp. 85–98).

This review does not exhaust the variety of positions associated with the second wave of liberal–culturalist theorizing, but it does give a sense of the range of viewpoints involved. Once these viewpoints had developed, a third wave of theory focused on working out the details of multiculturalism as applied policy, paying special attention to its impact on women (Shachar, 2001b), religious or language groups (Kymlicka and Patten, 2003; Modood, 2007), and minorities within minorities (Eisenberg and Spinner-Halev, 2005), as well as the impact of particular institutional forms (Baubock, 2000, 2001). As multiculturalism has developed in terms of political practice, theorists have called for more awareness of intercultural dynamics (Parekh, 2000, 2008). Indeed, the sense that multiculturalism needed to develop better ways of dealing with the concept of culture has emerged as a leading theme in recent writing (Modood, 2007; Phillips, 2007).

11.2 Postculturalism

The concept of culture is at the heart of one major postnationalist objection to multiculturalism. Culture is, of course, a notoriously difficult concept to define. Culturalism, however, is taken to mean a perversion of the ordinary course of cultural development, usually one that interrupts social progress and/or maintains authority and power structures based on inequality. Multiculturalism, it is argued, either facilitates or actually rewards behaviour that tends to harden group boundaries and narrow definitions of cultural identity, exacerbating the problems of culturalism. Susan Moller Okin (1999) argued that the emphasis on culture would overwhelm important individual rights, especially of more vulnerable group members. And although he did not adopt a postnationalist position, Brian Barry (2002) shared Okin's view that the multiculturalist approach would empower essentialist versions of culture.

A more clearly postnationalist position emerges in the work of Seyla Benhabib (2004) and Nancy Fraser (1995), who both argued that too much concern with cultural identity encourages us to reify social and political boundaries in ways that create unjustifiable inequalities. This is because, as Abizadeh (2004, p. 241; see also Abizadeh, 2002) puts it, the desire to treat cultures like 'bounded things' belies a latent ethnocentrism in multiculturalist thinking that sets off a downward spiral of authoritarianism and discrimination. These critics challenge the idea that culture or other forms of belonging have such a significant role in social and political life that we must address them through political measures. They argue that such thinking leads to a dangerous shift in priorities – where we become so blinded by claims to cultural self-preservation that we lose sight of its negative consequences for individuals and fail to see how it warps the justice of our political structures.

Concern with the excesses of culturalism is not unique to postnationalist critics, however. Multiculturalist theorists share these concerns, and from the very outset have rejected the association with culturalism (Tully, 1995, p. 10). But it has been a difficult association to shake, and the desire to rid multiculturalism of its culturalist baggage has become more pronounced with time. This desire is captured in Anne Phillips's recent book, *Multiculturalism without Culture* (2007), and in Geoffrey Brahm Levey's (2009) pronouncement that what is dead in multiculturalism is culturalism itself. Yet Phillips (2007, p. 52), with her provocative title, admits that it is not really possible to do multiculturalism without some attention to collective identity, simply because 'people are cultural beings'.

Difficult though it has proven, the answer, Levey feels, is to make a distinction between culturalism and multiculturalism, because if the multicultural project fails we may end up adopting dangerously self-serving forms of universalism in its place. Such a distinction should be possible because the aim of multiculturalism is not to give *carte blanche* to cultural identities; rather, it is a mode of coexistence that requires constraints on culture, as well as creative ways of transforming and interacting across cultures. We need to re-examine those constraints and how they operate, but it is incorrect to say that liberal multiculturalism lacks such measures. In other words, the culturalism critique provides an important caution on the exercise of multiculturalism. But it does not fundamentally undermine the heart of the theory for the reason that the approach already involves limits on culture.

Multiculturalism is distinguished by the conclusion that we should aim at cultural accommodation, *under careful conditions*, which involves a complex boundary-setting exercise to distinguish between acceptable and unacceptable forms of collective identity. This is especially true when a dominant majority group can recruit the state to support its own identity project. Rather than reject or transcend collective identities, multiculturalism aims to constrain those identities within reasonable limits, setting out new ways for them to be expressed and for cultural interactions to unfold.

Although there are differences among various accounts, multicultural theory generally integrates a commitment to basic individual rights and at least three other constraints on culture. First, it requires that personal identity be understood as chosen and revisable; second, it guarantees open public institutions and the opportunity to debate the features of shared identity; and, third, it calls for social transformation of identities, which are expected to become 'thinner' or more accommodating of alternate forms of identity. This is especially important in the case of state-dominant identities.

The liberal roots of the approach are evident in the requirement that an individual's identity must be chosen. Collective rights, the theory holds, can exist only by virtue of their instrumental value to, and actual endorsement by, individuals. Otherwise recognizing cultural claims could slip into the kind of communitarianism that makes the group prior to the individual (Kymlicka, 1995, p. 91). However, this does not mean that all identities are voluntary in the sense of reflecting a specific act of volition to adopt such-and-such an identity, what David Miller (1995, p. 44) calls the 'radical chooser' model. The vast majority of individuals find they have acquired values or identities, although they can

and should examine and revise that inheritance over time, the outcome of that process reflecting their own decision-making. Even then, identities are of necessity provisional and fluid (Miller, 1995, p. 45). When an individual is closely associated with a group or cause it can be practically difficult, and psychologically wrenching, to question one's deepest commitments. Yet even in these cases an identity must be regarded as revisable. In short, multiculturalism will not permit the binding of individuals irredeemably to any group, and requires that identities seeking recognition must be open to debate and revision.

This concept of revisability leads to a second requirement for cultural openness and public debate. Under a minimally defined liberal approach, individual identity can be subject to revision through introspection, and all that is necessary is to ensure that the process is not interrupted and that individuals are not interfered with. How, though, do we ensure revisability for collective identities? It's not enough, multiculturalists say, to ensure reasonable terms of exit – an option Chandran Kukathas (1992) endorses as a way to resolve the problem of cultural rights. That places too great a burden on those who seek change and leaves the original identity untouched (Shachar, 2001b, pp. 41–2). Instead, endorsing the role of cultural or national identity entails a commitment to revising and renegotiating collective identities through debate in the public sphere, where everyone can take part 'on an equal footing' (Miller, 1995, p. 153).

This in turn leads to a third requirement concerning thinned collective identities. Requiring that collective identities be subject to open and continuous debate means that in most cases the kinds of identities that emerge will be less extensive or all-encompassing. This is especially true where diverse multicultural or multinational populations are involved. Kymlicka thinks this requirement makes sense at two levels. At one level the most morally desirable arrangement in diverse societies will involve reducing the dominant identity to a shorter and more accessible list of features. But there is also a practical advantage to revising group identities: groups that try to maintain thicker identity requirements will find it hard to gain new adherents and may alienate existing members. In other words, thinned identities are somewhere between a condition, and a by-product, of the successful application of the other requirements. No matter where they start out, however, multiculturalism anticipates that collective identities should become thinner and more accommodating to minorities as we uphold the constraints on culture (Kymlicka 2001, p. 40; Miller 1995, pp. 180–1).

Taken together the requirements for basic rights, chosen and revisable identities, open and accessible debate, and thinned collective identities

describe how multiculturalism constrains the activities of cultural promulgation. It may not address the situation of women or vulnerable group members as thoroughly as Okin might wish, but, in fairness, even classical liberalism has problems in this regard (Phillips, 1991). The approach aims to develop accommodating forms of identity, while upholding commitments to equal moral respect. And despite claims that culture trumps individual rights under this perspective, it places individuals before social institutions even if it means limiting the scope of those institutions. Multiculturalism, therefore, draws its distinctive flavour from how it *bounds* cultural politics within liberal expectations concerned with individual autonomy and egalitarian politics.

There is a significant element of reformation and transformation implied in this process. It is not the deeply transformative ideal of justice that theorists like Nancy Fraser have advocated, but there are legitimate questions to be asked about our mandate to deconstruct identities when people still find value in them. In fact, even Fraser (Fraser and Honneth, 2003, pp. 81–2) has acknowledged that attachment to identity can serve the ends of justice and has come to terms with the idea that we should find acceptable ways to live with cultural practice rather than transcend it wholesale. So while the problems of culturalism are real and demand attention, they will not be solved by setting up a postculturalist ideal.

Instead, one of the important lessons coming out of the debate on culturalism is that the way we approach other cultures shapes the possible outcomes. Anne Phillips makes this point by examining the perceived excesses of ‘the cultural defense’ in legal cases. She (2007, pp. 73–100) argues that these controversies often have a lot to do with the way dominant majority groups frame and interpret minority cultures, casting them as exotic, violent, and paternalistic. In other words, it is cultural interaction, and not just cultures themselves, that needs to be examined. You cannot solve that kind of difficulty by recommending we put culture behind us, because that would only exacerbate an already complicated situation by continuing to frame other cultures as the problem.

11.3 Proceduralism

Not all postnationalists reject the premise that collective belonging is a proper object of concern. Republican or democratic theories that favour civic proceduralism over cultural commonality also aim to thin identity, but without the baggage of cultural accommodations. However,

the proceduralist alternative cannot easily displace multiculturalism, because there is more to multiculturalism than constraints on culture. It also integrates a concern with building or cultivating identity – and this is a requirement for shared political and social life that proceduralism struggles to provide.

A key figure in this debate is Jürgen Habermas (2001), whose account of civic development explains nationalism as a temporary phase that states go through as they develop their democratic potential. When democracy was a fledgling project, it drew on the concept of the ethnic or cultural nation for its binding power. With the rise of late-twentieth-century globalization, however, states must leave such attachments behind and reach their fully democratic form, replacing a concept of the people based on ancestry and culture with one centring on civic practices. Though it served as a ‘catalyst’ for democracy, at this point nationalism becomes ‘superfluous’ for the new state since the integration it once provided is now achieved through democratic means (Habermas, 2001, pp. 73–4). The right development of states, then, leads to a situation where citizens do not derive their identity from ‘some common ethnic and cultural properties, but rather from the praxis of citizens who actively exercise their civil rights’ (Habermas, 1992, p. 3).

In light of Habermas’s (2001, p. 74) account of ‘constitutional patriotism’, the rise of multiculturalism looks counterproductive. But the proceduralist position is not as complete as it might first appear. As Arash Abizadeh (2002, p. 496) explains, proceduralism traditionally struggles with ‘the twin problems of motivation and integration’, the question being whether civic practices can cultivate the kind of political resources that culture and nationality previously have. We know that cultural and national identities have tremendous power in this regard – so much so that they must be carefully managed and contained, say multiculturalists. But if it is not drawn from these identities, which are expected to fall behind as we move forward into postnationalism, then where is socio-political solidarity to come from?

This is where proceduralists draw some inspiration from the multiculturalist approach. They argue that if national and cultural attachments must be open to debate and revision, then they cannot also be a ‘privileged source’ of the resources of politics (Dzur, 2002, p. 197). At the very least we should not assume that shared cultural or national identity is necessary to solve the problems of motivation and integration, or that it has some unique qualities in this regard (Abizadeh, 2002, p. 501). If revising nationality can be a binding experience, as multiculturalism is taken to suggest, then civic practices must have some binding power of

their own. To proceduralists this suggests that the central factor is political practice, not past association. Multiculturalists put the emphasis in the wrong place. It is praxis we need to support, not the national or cultural object. If the praxis of revision can bind and bond a population, then praxis *per se* cannot be motivationally impotent.

This is how Ciaran Cronin argues in his response to the multiculturalist position. Like Habermas, he (2003, p. 2) offers a 'procedural democratic account of identity' which will rest upon the binding power of a common project. Others argue for a shared sense of obligation based on public practice (Andronache, 2006) or on institutional commitments such as 'rule of law, legal systems, free elections, [and] economies where occupations are open to talents' (Dzur, 2002, p. 206). Nonetheless, Max Pensky suggests that all particularist identities should be set aside because '[c]ulture in the emphatic sense', which he associates with the multiculturalist position, is 'gone'. Whatever binding power we can now access comes only from a shared experience of 'collective loss' (Pensky, 2000, 75–8).

While these accounts represent bold attempts to sketch an alternative ideal for public life they overstate the binding power of civic practices. Even Habermas does not suggest that proceduralism can serve as the sole basis of political life. Instead, he (2001, p. 73) argues that his proceduralist ideals must be set within a particularist framework in order to work. Politics, he (1998, p. 6) believes, requires us to negotiate a balance between our ideals – the realm of universal principles and norms that he calls 'validity' – and everyday experience based upon a particular context – the linguistically structured lifeworld of hard facts and practical reality he calls 'facticity'. Yet despite the role granted real-world identities, Habermas's constitutional patriotism does suggest that ideals can play an increasingly important role in contemporary politics, shifting our political structures away from their original particularist roots.

However, Patchen Markell convincingly shows that the binary structure of Habermas's thinking – organized around the validity/facticity or universal/particularist divide – sets up unrealistic expectations. Habermasian theory leads to the idea that we can redirect attachments from ethnic to civic objects, an idea that inspires the proceduralist critique of multiculturalism. Yet because politics can never escape the lifeworld and all its particularist facticity, we can just as easily 'misrecognise ourselves in our shared political culture or common institutions' as we can in 'other nationalisms' (Markell, 2000, p. 52). For this reason Markell argues that what Habermas's arguments actually support is a call to better manage the identities we have, rather than a

shift towards universalist objects of identity. What will change politics, Markell argues, is not achieving some optimal mix of civic content to our identities; rather, it is how we manage the attachments we already have – civic and particularist alike. We need to be able to approach them with ‘ambivalence’, and be ready to revise them as needed, to avoid the problems of essentialism (Markell, 2000, p. 54).

If Markell is right, then a purely proceduralist alternative is not the answer. It is our orientation towards identity, and *not the object of identity itself*, that makes the difference, because identity – no matter how civic, proceduralist, or universalist its aspirations – will never be fully equivalent to our ideals (Markell, 2000, pp. 57–8). Even the highest political principles can only be communicated through a common language rooted in particularist experience, and so the moral life is a function of how we organize our particularisms, rather than an effort to overcome them. Most important is our readiness to examine them from a critical distance, and this requirement is already built into multiculturalism.

Proceduralists are correct to point to the reliance of multiculturalism on democratic procedures, although this is not something its advocates would deny. But multiculturalism never fully detaches from particularist identity and so it never runs into the motivation problems that can arise when proceduralism is misconstrued as a stand-alone approach (an error Habermas arguably does not make, although his work is sometimes read as promising movement in this direction). What distinguishes the multiculturalist approach is the belief in the interdependence between cultural and political practice and a readiness to accept this relationship under careful conditions. This is what Kymlicka (2001, p. 213) means when he says that ‘democratic politics is politics in the vernacular’: it does not come in a culturally neutral form.

This interdependence should not be overstated, however, or else it would make no sense to aim at thinned identities through political debate and reform. In effect, the claim is about the *significance* of cultural identities to politics, rather than about their inviolability. This is why it is possible to evaluate the need for changes in even the most significant identity practices – for example, how children are raised or the organization of gender relations, issues which have been the object of sustained debate within multiculturalism. Answering the proceduralist critique reveals how multiculturalism puts the focus not just on having a particularist identity, but more importantly on how we organize our identities, manage their interactions, and negotiate the divide between our cultural attachments and political aspirations. All of these activities are compatible with a proceduralist approach. But while civic procedures

certainly play a critical role in containing the excesses of these activities, they are clearly no substitute for conscious cultural engagement.

11.4 Neo-nationalism

Not everyone thinks that multiculturalism puts too much stress on collective or cultural identity. In fact, one of the leading objections to multiculturalism as a public policy involves the argument that it actually underestimates the importance of common identity and social unity. David Goodhart (2005) has suggested that measures to accommodate diverse identities can fracture a political project and undermine its capacity to create political justice. Traditionally, a unified national identity provided solidarity, and sacrifices and political compromises made sense within this system of common identity and mutual obligation. But multiculturalism creates divides within this system, and seems to reward insular and isolationist behaviour among minority populations.

Would-be political reformers are therefore faced with a difficult choice – accommodate cultures and undermine progressive forms of redistribution, or support social justice but place demands for cultural integration on newcomers and minorities. Goodhart (2005, p. 156) calls this the ‘progressive dilemma’, which is premised on the assumption that national identities require a traditional, unitary form, and that they do not weather change well. Multiculturalism, which aims to thin state-dominant majority national identity in order to accommodate increasing levels of diversity, puts unacceptable strains on this resource. Goodhart recommends a return to national identity: as social diversity increases, it is more important than ever that immigrants and minority groups accept the dominant national identity and adopt social values associated with the system of mutual obligation and support.

Goodhart is responding to what Christian Joppke (2004, p. 224) calls the ‘unilaterality’ of multiculturalism, that minorities can make demands on majority groups, but not *vice versa*. Yet multiculturalism does not advocate this kind of one-sidedness. While it does recommend thinning identities, it also stresses the need to cultivate new forms of belonging that support broader political projects. Margaret Moore (2001, pp. 85, 87), for instance, believes ‘it is essential that the people have sufficient unity and organizational structure to generate representatives’ because national belonging or identity ‘tends to facilitate the proper functioning of democratic institutions’. She warns we cannot be parochial about that identity without fracturing the representative

system, which is why there must be attention to both national identity and multicultural dialogue for democratic representation to work.

Likewise, David Miller maintains that there must be a careful balance between multicultural and national projects. He (1995, pp. 140, 172) lists shared identity among the conditions for social trust, and sees debates over collective self-definition as part of the work of liberal politics. Underestimate the importance of cultural and national belonging, Moore and Miller caution, and the practice of politics is denied a critical resource. Whether common culture or belonging makes civic and democratic renewal possible, or merely makes it easier, what multiculturalists have in mind involves conscious attention to the cultivation of belonging.

Nor is a 'vague commitment to the value of cultural diversity' enough to provide these kinds of bonds (Kymlicka, 1995, p. 191). The 'missing ingredient' according to Kymlicka, is shared identity. And that identity arises in a shared language and history, perhaps also a shared religion, as well as a readiness to debate these attachments over time (Kymlicka, 1995, pp. 92, 188–9). David Miller also argues that multiculturalist belonging should incorporate a specific historical understanding, even if it remains open to debate. Such attachments are things that we can cultivate, adapt, or revise as circumstances require, but rarely create *ex-nihilo*. Where they do not exist, it is unlikely that we can argue them into being (Miller, 1995, p. 191).

So the first response to the progressive dilemma is to point out that multiculturalism involves the idea of cultivating new forms of identity and attachment. But Kymlicka, writing with Keith Banting (2006), makes a second argument in defence of multiculturalism. They point out that the idea of a 'trade-off' between diversity and social justice often gets treated like a 'well-established fact' when there is little evidence that a dilemma really exists, and concrete research along these lines is rarely undertaken. Their own study found limited support for a trade-off relationship, although there was a caveat. They argued that the *way* multiculturalism was adopted made a difference. Social spending and multiculturalism both generally thrived in the cases they examined because there was a third element to the equation. That element involved strong concepts of citizenship or national identity, an element that for Kymlicka and Banting (2006, p. 298) 'may be significant to success'.

As Kymlicka and Banting (2006, p. 302) explain, the 'happy compatibility of diversity and solidarity depends on preserving the category of national citizenship as a reference point for debates on the management of ethnocultural diversity'. This mode of nationality will need to be

'modified' or 'thinned' for inclusivity, but in their view that does not rule out the role of nation-building policies – instead they are central to avoiding the trade-off scenario. In summing up their response to the so-called dilemma, Kymlicka and Banting say that the social-democratic left attacks multicultural policies for 'eroding national solidarity', while the postmodern left blames them for 'relegitimizing nationhood'. For their own part these authors (2006, p. 302) think the postmodernists got it right, that multiculturalism can be understood as 'a tool of nation-building'.

However, this is not nation-building of a classic nineteenth- or early-twentieth-century kind, which focused on creating homogeneous, well-disciplined, and loyal populations. This is because under this new version minority rights may be introduced and the focus is on curtailing the capacity of dominant groups to wield unfair advantages. But once such rights are established, they make nation-building acceptable again by ensuring it stays within bounds (Kymlicka, 2001, pp. 2–3). Whether a state is faced with building one or many nations is determined by its particular history, but, as David Miller (1995, p. 178) puts it, 'there is no realistic alternative to the long-standing project of nation-building' since politics requires that we cultivate some kind of particularist identities alongside our universalist ideals.

11.5 What is multiculturalism building and how?

Multiculturalism marks out a position between the concerns of worried progressives, who could be either postnationalist or neo-nationalist in leaning, and the ideals of optimistic proceduralists. The multiculturalist response to the objections considered here tells us something important about the inner workings of the theory. First, it integrates a system of constraints designed to bind cultural claims within acceptable limits. Second, it assumes that civic engagement takes place against a background of cultural belonging and attachment. Third, there is a critical identity-building element in the approach, albeit based on new 'thinner' standards. Concerns about minority rights remain a major theme in multiculturalist thinking, of course, yet the aim is not to undo or counteract collective identities, even of state-dominant majorities, but to reconfigure them using 'permissible' forms of nation-building and identity change (Kymlicka, 2001, p. 38). And it is believed that national and cultural belonging can weather this kind of change.

Yet if nation-building is a key component of multiculturalism, how is this to be reconciled with its commitment to thin, open, and revisable

identities? The simple answer is that national groups should limit themselves to building thin identities. However, proceduralists could respond by saying that this amounts to the kind of democratic and civic vision that is better served by their theoretical perspective. So the question becomes, just what is multiculturalism interested in building and how?

On one level it seems that multiculturalism aims to build restraint, primarily but not exclusively among state-dominant national majorities, by problematizing concepts of state neutrality and tempering dreams of national homogeneity (Kymlicka, 2003, p. 150). Nation-building must be constrained by minority rights, as well as by the reiterativity of any claim to national autonomy, meaning that no national identity should be privileged and no one group should expect to make an unfettered claim on political attachments. In the case of multinational-states, this entails tough and ongoing negotiations to keep the various national identities in accord. And multiculturalist style nation-building should not invoke characteristics that are difficult, if not impossible, for newcomers to adopt, such as ethnicity or religion. These prohibitions take nation-building from its thick traditionalist manifestations to a new thinner version that reflects the liberal principles underpinning multiculturalism. Yet these stipulations do not entirely account for what multiculturalism is concerned with building, because they mainly address constraints and proceduralist requirements rather than the affective/belonging dimension.

So what is the multiculturalist strategy for nation-building as a form of social and identity transformation? Multicultural theorists generally touch on three major areas. First, they contemplate transformation through public culture; second, they detail efforts aimed at the integration of newcomer or minority populations; and, third, they stress the role of education policy in creating the right mindset for cultural coexistence.

The concern with public culture is a familiar theme. There should be open public debate and fairness in access to the public sphere but, as noted, this is not unique to the approach and would also be a feature of a civic or proceduralist account. Still, the state cannot remain uninterested and should guide the intercultural experiences of a diverse population in a particular direction by fostering positive interactions and the display of mutual respect through cultural measures such as public speeches, museum and art exhibits, *et cetera*. One difficulty with this public culture strategy, however, is that it ends up being mainly voluntary and aspirational because, as Parekh (2000, p. 222) explains, it

'cannot be officially engineered'. Therefore, much of the work of identity-building must happen through other measures, particularly those focused on immigrant integration and public education.

A point many multiculturalists agree on is that education is key to the right identity-building process, but unfortunately they often disagree on how it should work. David Miller (1995, pp. 180–1), for instance, calls for a common core curriculum focused on national identity, combined with a 'periphery' that is 'flexible' on points of interpretation. Yael Tamir (1995, p. xxix) thinks 'thick' national content should be delivered through separate systems, with only 'a thin layer' focused on 'liberal rights and rationality' in order to create 'civic friendship' among differing nationalities or groups. Bhikhu Parekh (2000, pp. 226–7), in contrast, rejects parallel systems, saying that a unitary system can better promote intercultural experiences. He prefers to focus on the kind of personality the education system should develop, and recommends students should learn to be open-minded, sensitive, and capable of critical thinking with a 'sympathetic imagination'. So within multiculturalism there is a general agreement that a new orientation towards identity should be cultivated, although there is little agreement on how this should be done.

It is not just school-age students that are the focus of identity-cultivation measures. Multiculturalists agree on the need to ensure immigrants are well integrated and, unlike assimilationist models, the multiculturalist approach assumes that this is a shared responsibility between immigrants and the societies they join. In terms of actual practices, the recommendations for immigrants tend to follow those for education, except for requirements to facilitate the process through measures like second language education, housing, and job training/certification. In essence, whatever is right for the next generation of citizens is generally also right for the new citizens arriving at state borders.

But there is a difficulty here. What the education and immigrant integration strategies have in common is a focus on a sub-segment of the population. In fact, they say more about *who* should be the focus of efforts to build thin identities than they do about how it should be done. The problem here is that this amounts to a replacement strategy that gambles on the prospect of revising dominant values through generational or demographic turnover. Not only is this an uncertain gamble, because decision-making power lies with those who have the unreformed version of collective identity, it also means that the burdens of identity change are placed on an unenfranchised population made

up of school-age children and pre-citizenship immigrants. Their status as political outsiders makes them the main targets of the identity-building process, while the politically established members of society participate in identity change under much less constrained terms, assuming they participate at all.

Multiculturalism does not merely trim down existing identities. It sets out to engage and cultivate identities based on a new approach to cultural content. But this cultivating aspect has not been well developed in practical terms. Other than rejecting ethnic exclusivism and building a sense of restraint, humility, and readiness to welcome newcomers – features not unique to multiculturalism – the theory only vaguely specifies what the new public culture should look like, and multiculturalists do not entirely agree on how more specific measures for education and immigration should be applied. Even if the differences over education were ironed out, this strategy addresses only a sub-segment of the population, one that generally lacks political influence.

To live up to its transformative mandate multiculturalism needs a broad-based strategy that works across entire populations. Education can be part of this process, but there must be a concerted effort to introduce transformational measures through the public culture as well. This is not the place to attempt to outline such a strategy, since it would need to be carefully conceived to support dynamics of change without inviting heavy-handed government intervention. But addressing this aspect of multicultural policy is a pressing issue in order to maintain the delicate balance between containing and cultivating identity that multiculturalism demands.

11.6 Why be a multiculturalist in an increasingly plural world?

Postculturalist critics are right to point out that cultural continuity is not an inherent good. Proceduralist critics are right that multiculturalism has a deep debt to civic practices. And neo-nationalists, while they underestimate the malleability of national identities, are correct in emphasizing the significance of shared identity to the realization of political justice. Multiculturalism is able to answer all of these critiques because it integrates elements that address each of these concerns. The picture of multiculturalism that emerges is one of recognizing, but also renegotiating, shared identity within and across cultures.

Where the approach runs into difficulties is in specifying the strategies for achieving this kind of identity transformation. One cannot create these identities merely by thinning existing ones, so a more robust cultivating strategy is required. This cultivating side of the theory entails the idea of 'nation-building', but this can be a misleading term, summoning as it does thickly defined concepts of the national character or problematic measures to assure citizen loyalty. Such is not what multiculturalists have in mind. The new forms of attachment nurtured under its principles cannot be ethnically exclusive and must organize identity in ways that are tenuous and open to revision. The desire among multiculturalists for new forms of identity and coexistence is evident, but the transformative element in multiculturalism needs further development. Multiculturalists need to specify what it means to 'build thin' because the old methods of nation-building will not be appropriate for this new goal. The current focus on education is evidence of the effort to do so, but it addresses only a segment of the population when in reality the broader society needs transformation.

So why be a multiculturalist in the contemporary world? Given the concerns raised by critics, together with gaps in its transformative strategy, is it wise to invest more effort in refining the approach rather than turn to a postnationalist or even neo-nationalist alternative? In reality, these different approaches may not be that far apart in their basic commitments. Versions of multiculturalism can look postnationalist when it comes to their transformational intent, and that is no bad thing so long as the key errors are avoided. These errors include trying to transcend culture and over-interpreting the motivational capacities of bare procedure. Multiculturalism can, by the same token, share a neo-nationalist concern with national identity, so long as it does not set up existing identities as sacrosanct. For these reasons multiculturalism remains a resourceful position from which to address the many challenges presented by contemporary politics.

Perhaps the best reason for sticking with a multiculturalist approach, however, is that it follows Rousseau's (1968, p. 49) classic formula for politics: it takes 'men as they are and laws as they might be'. As Rousseau recognized, that means taking collective identity into the picture and addressing the need for attachment and solidarity in political life, *as well as* designing ways to rise above them. In a world that must accommodate diversity as well as belonging, 'taking men as they are' means developing a form of transformative multiculturalism. It is a project worth pursuing because, done correctly, it promises to balance the claims of culture with the need for social justice and political efficacy.

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12

National Commitments and Universal Duties: On the Interrelationship between Domestic and Global Justice

Margaret Moore

This chapter addresses a problem that has dogged nationalist theory for a very long time, namely, the tension between domestic justice and universal, global duties. What appears to be needed is a position that gives due weight both to cultural and identity attachments, including our attachment – loyalty or patriotism – to our particular political community, *and* the obligations that are owed to humanity as a whole, those people who live outside our state and who we have never met. The goal of this chapter is therefore to examine the extent to which our commitment to justice at the domestic state level requires us to be concerned with global justice.

This chapter does not attempt the more ambitious task of specifying precisely the conception of global justice with which we should be concerned – its scope and site, whether it is prioritarian, egalitarian, or sufficientarian, or the metric by which we should measure the achievement of justice. Such is obviously the end goal for a theory of global justice, but here I confine myself to the much more modest task of, in the first section, achieving clarity as to what a reconciliation between domestic and global justice *cannot* mean; in the second section, rejecting two implausible positions on the issue, that of John Rawls, on the one hand, and of his cosmopolitan critics, on the other; and, in the third and fourth sections, identifying three ways in which we might begin to productively effect a reconciliation of global and domestic justice commitments. I try to show that our commitment to upholding justice at the level of the state, which has been theorized extensively by political philosophers, also entails commitments to global justice. However, in doing so I argue against a very common position among egalitarian global justice theorists, which depends on the acceptance of luck egalitarianism, for not providing the necessary or appropriate reconciliation of domestic and global justice.

12.1 What reconciliation cannot entail – two extreme views

At the outset, it is important to examine the sort of reconciliation between global and domestic justice that we should rule out: this is the view that local duties are merely instruments for the achievement of cosmopolitan duties, that they have no independent moral weight. This view has been put forward by Robert Goodin, who has argued that dividing up our duties along the lines of national affiliation is an effective or efficient way of coordinating the achievement of our universal duties, that is, our duties to individuals at large (Goodin, 1988). On this view, duties to fellow nationals or compatriots are justified in terms of their contribution to more fundamental, universal duties. Although this position has the advantage of theoretical neatness, I believe Goodin's instrumental account of the relationship misrepresents the source of these duties to compatriots. As Tan (2004, p. 144) has argued, the problem with this purely instrumental defence of patriotic commitments is that it accommodates these duties by morally impoverishing them. It treats the duties that arise in political associations, and, by extension, any kind of association, as merely instrumental to the achievement of the requirements of an impartial principle, but not as themselves arising from morally valuable relationships. As will be evident later, I have quite a different account of domestic justice, which explains my disagreement with Goodin.

The opposite view, which does not have a philosophical proponent that I know of but is often asserted in ordinary common-language views on the relationship, is that local duties should be prioritized, that we are in a concentric circle of commitments and obligations, and that the strength of the duty involved in each circle is weaker the further away it is from one's person. This is discussed briefly (but not endorsed) by David Miller in *National Responsibility and Global Justice*. A strict priority interpretation of the concentric circles argument is obviously implausible, since it would mean that there are no limits to the harm that we are prepared to inflict on outsiders if this proved necessary to carry out local duties (Miller, 2007, pp. 44–50). It is doubtful that even a weaker claim about decreasing strengths of the duty is plausible, since we do not think that it is okay for me to extract someone's kidney, without their consent, if my daughter needs a kidney transplant. It is not okay to secure one's own flourishing at the cost of inflicting harm on others, violating their rights, stealing their land, torturing them, or other unjust acts. There are obviously serious and important moral constraints on our actions.

We all agree that there are things that we should not do to anyone, and this is so even if doing such would mitigate or somehow improve the situation of one of our compatriots or close friends or family members. This suggests that the concentric circles model is not the right way to think about the relation between domestic and global justice, since it fails to take into account many other complicating factors – negative and positive duties, direct and indirect harms, and so on.

How, then, might we try to bring into relation domestic justice and global justice? Are there any theoretical resources that might assist us in thinking through the relations between the two? Or is justice at the global level identical to justice at the level of the state?

12.2 Rawlsian moves

It is useful here to begin with Rawls. In *A Theory of Justice* Rawls is quite explicit that justice is concerned primarily with the justice of institutions or the ‘basic structure’ of society. His account of justice as ‘the first virtue’ of social institutions confines questions of justice to the governing arrangement of particular societies; and indeed Rawls (1999) explicitly argues that the principles of justice argued for in *A Theory of Justice* do not apply globally. This is because the global order does not constitute a ‘basic structure of society’, which is characterized by the presence of two features – that it is a coercive *and* formative social institutional arrangement. The emphasis on coercion has given rise to the arguments of Blake (2002) and Nagel (2005) that the reason why justice is restricted to citizens of a single state is because there are distinct burdens of justification between individuals who share liability to the coercive power of the state.

Rawls’s device of impartiality – the original position – assumes a common standpoint whereby all those who are governed under the basic structure of society are deprived of knowledge of things that will bias their choice of principles. They assume the same standpoint under the ‘veil of ignorance’, and arrive at rules that are justified because they issue from and are the product of an impartial standpoint. This form of impartiality, though, is impartiality within a focal group: it is impartiality among all those people who are subject to the rules that they make.

What is missing from this account is the perspective of people outside the focal group. The people who are outside the political community, but who might be affected by its policies, principles, and practices, are excluded from the standpoint of impartiality, although they can, of

course, agree on principles of justice within their own political communities (presumably, since they adopt the same standpoint of impartiality, they arrive at the same principles of justice). This method of conceiving of societies as 'closed' (Rawls, 1971, pp. 4, 7; 1996, pp. 135–6) is problematic not only because it abstracts from very important and interesting contemporary questions of immigration and emigration, but also because there is no mechanism to incorporate the effects that the policies and procedures of the focal group have on outsiders (on those who, *ex hypothesi*, are not members of the just state and are not participants in the first-level original position). The approach, in short, is unable to give sufficient weight to the interests of people outside the political association. This is an especially pressing consideration because, even if there is no social interaction between two 'closed' societies, one society could have significant impact on the life chances and choices of people in the other society – by polluting downstream, overfishing, *et cetera*.

Rawls is aware of the need for rules and principles to guide the interaction of these communities, and so in his *Law of Peoples* (1999) he proposes a further (second-stage) original position to model impartiality between political communities (or 'peoples') and arrive at justified rules between societies. However, the problem with this two-level original position is that it is insufficiently dynamic insofar as it assumes most interaction is either within political communities or between political communities. It fails to consider the extent to which there are very different and variegated types of global interaction – between and among individual people, non-governmental organizations, (multinational) corporations, governments, as well as international organizations like the IMF, UN, World Bank, and various regional associations (the EU, the Association of African States, Mercosur, *et cetera*). Consider the World Bank's promotion of the privatization of utilities, especially water, in countries like Bolivia, where a French company, Aguas de Elimani, has a monopoly on the provision of water to the inhabitants of El Alto, and whose 'connection fee' is very steep, especially for the people living in the various slums above the water pipe (Schultz, 2005). Rawls's relatively static conception of justice within the state and his thin account of justice at the international level cannot properly account for the richness and complexity of the various overlapping non-state actors whose various activities give rise to issues that fall under the general ambit of a proper theory of justice – issues of distributive justice, basic human rights, as well as of exploitation.

If Rawls's account, especially as articulated in *Law of Peoples*, has been criticized as too statist and distorting – insofar as it assumes

homogeneity within the state order – and as insufficiently cognizant of the variety of interaction and impacts that people have upon one another in a globalized world (Buchanan, 2000; Caney, 2002), other alternative accounts fall victim to the opposite problem. Many of the political theorists who have been frustrated by the tension between the universalist aspirations of the basic Rawlsian conceptions of freedom and equality and the requirement of a closed contract within a focal group have tended to want to universalize Rawls's original position in various ways. Indeed, all the recent prominent theories of cosmopolitan justice begin from various interpretations of the Rawlsian framework. The institutional and interactionist accounts of global justice have disagreed with Rawls about limiting the scope of justice to the state, and have developed two distinct justificatory arguments for this move.

Both Thomas Pogge (1989, 2002) and Charles Beitz (1999) put forward a form of institutionalism, in the sense that they accept Rawls's view that justice applies to a set of institutions, but then argue that, in this increasingly globalized world, the global order constitutes a set of institutions and membership in this institutional system is of prime moral relevance. By contrast, Iris Marion Young argues that justice applies globally because of the increasing networks and webs of interactions that link people together, appealing not to a single set of institutions but to the extent of global interdependence. In Young's (2007, pp. 159–86) view, the applicability of justice claims rests on the networks of interaction between the global rich and global poor.

These moves to describing the world as a sphere in which justice claims apply simply extend the argument for justice in the state in a global direction, by saying that the world now meets the conditions that were once thought to be confined only to the state: the world is now a state writ large. However, the form the arguments take – stating that the 'basic structure' is now global in scope – does not offer us a theory of the value of particular political communities. It does not offer a reconciliation of political communities and global justice, but rather a conception of global egalitarian justice which sits uneasily, or at least not without further argument, with the view that there is also important value in our more particularist aims, relationships, and attachments, including attachments to our political communities. Although these arguments endorse moral cosmopolitanism, not political cosmopolitanism (they do not talk about a world state), they fail to provide a coherent account of what values might inhere in political communities, and relatedly, offer no conception or theory of the role of boundaries or of the non-instrumental value of territory and of membership in specific communities.

12.3 National justice and its implications for global justice

In this section, I take it as given that it is unproblematic to view the state as a site of justice. I also accept Arash Abizadeh's (2007) view that we can disaggregate the scope of justice and the site of justice: there is no need to think that because the scope of justice is universal, the site of justice must also be universal (global), or that because the site of justice is the political community, then the scope of justice is limited or confined to the political community. It is useful to disaggregate these two issues. My claim here is that we should view political communities, including the state, but also possibly political communities that have significant jurisdictional authority and self-governing powers below the level of the state, as sites of justice, as political spaces where people can create and uphold the normative rules that will govern their collective lives. It is one of the great virtues of the state as a political community that it is a site where people co-create and abide by the rules that determine their living together. On this view, the state as political community establishes justice within a territory through the legislation, adjudication, and enforcement of the rule of law, and states appropriately seek political autonomy to develop their *own* brand of justice.

If we agree that this is broadly the right conception of the relationship of the state to justice, then a number of implications follow. First, it suggests that, as sites of justice, political communities are morally valuable. If we concur with this, and this is a move that many statist would accept and even many global justice theorists who are not political cosmopolitans (and most self-identified cosmopolitans at least officially eschew the idea of a world state), then we need to think about how that commitment leads us to other commitments which we might class as global justice commitments. In what follows, I, taking Kok-Chor Tan (2004) as a lead, explore three ways in which we might think that the tension between valuing political communities and global justice can be bridged. These are (a) arguments for the background conditions to realize the universalizable right of self-determination; (b) arguments for universal constraints on the type of actions that political communities can pursue on their own behalf; and (c) arguments for egalitarian global justice as a background condition for the exercise of collective self-determination. I suggest that the first two arguments from the right of self-determination and from universal negative duties have validity. However, the third argument, addressed in the fourth section, is incompatible with giving serious value to political communities, at least as presented by Tan.

12.3.1 A reiterative right to self-determination

Earlier I identified the state as morally valuable because it provides a space for the creation of rules of justice. Here I assume, without a full or complete argument, that there is a right to collective self-determination. There is a right to collective self-determination in international law, and there is a moral right to collective self-determination that follows from the idea that political communities are valuable precisely because they are spaces in which members co-create their own political project and together implement their own conception of justice (see Moore, 2009). But the main argument here is a conditional one: *if* we think that there is a right to collective (political) self-determination held by political communities, *then* that should be a component of any plausible conception of global justice. More specifically, the right to political self-determination is a universal right, and it suggests that all similar collective entities have similar rights, and that the global order should be organized to ensure that the conditions for the right to self-determination are realized. This has significance not only for the rules surrounding the international order but also for the power relations among right-holding communities.

If political communities have a right to self-determination, then not only should they be permitted to exercise their self-determination, but the global order should also allow for the meaningful expression of that right. The right to collective self-determination is a reiterative right in the sense argued by Kai Nielsen (1998): it is a universalizable right that attaches to all relevant right-holders (aspirant political communities) under appropriate conditions. Taking the right to collective self-determination seriously entails committing ourselves to ensuring that this right obtains for all relevant political communities. This further obliges a concern, first, with the political and legal equality of all political communities within transnational and international bodies. It suggests, not only internal self-determination within each community over its own affairs, but also that, in international bodies, each political community has equal say and voice so that they all can play a role in shaping the conditions of their collective existence in the global order.

Second, it implies a concern with the material preconditions for the exercise of self-determination. This means that it requires a basic level of development and wealth so that political communities are above the threshold at which they are vulnerable to coercion and exploitation by more powerful political actors. It is important to be clear about what distributive justice demands here. It does not require *equality* between all the political communities, although of course this also achieves the

desired end, at least if we suppose that the equality is equality above a basic level (not equally poor, equally desperate political communities). Rather, it requires a level of development and resources to ensure that each political community is *sufficiently* independent and wealthy to make decisions over their own affairs without undue influence or coercion from more powerful political actors.

Here I echo in part Rousseau's (1974, p. 45) sentiment in *The Social Contract* that political self-determination (of individuals) is jeopardized if the rich can buy the poor or the poor must sell themselves. Economic deprivation threatens a political community's right to self-determination because it renders that right impossible to realize. Of course, being above the level of deprivation does not *guarantee* that a country will think and develop independently; it only ensures that they have the capacity to do so. If country X wants something that country Y has, then this makes X vulnerable to the demands of Y. This is unproblematic, indeed part of what we expect in the course of normal trade, as long as X has sufficient material resources and alternatives so that it is exercising a preference and not under compulsion.

In his study, Tan considers whether the reiterative right to self-determination entails a commitment to equality (of nations) or a commitment to a threshold level of material resources, above the level of deprivation, which permits political communities to make choices and thereby be collectively self-determining. Tan argues that it is not a lack of material resources that undermines self-determination, as I have been arguing, but inequality itself; and he (2004, p. 117) justifies this by claiming that wealth is 'to a large extent a relative factor rather than an absolute one in a shared economic space; the richer some are, the weaker the purchasing power of others, thus resulting in the different vulnerabilities of each with respect to the other'. However, although it is true that there is a complex interrelationship between political communities, this does not show, *pace* Tan, that equality is required. At best it shows that even the idea of basic needs, or threshold levels of deprivation, are more dynamic than is often thought, because the relative power of others may alter where the line is drawn between deprivation and non-deprivation, insufficient and sufficient material resources, *et cetera*.

12.3.2 Universal constraints on political associations

As argued above, political communities are valuable associations that can give rise to independent moral duties, but this does not mean that there are no constraints or limits on what can be done in their name.

It seems to me obvious that any duty that arises from participation in, or membership of, a partial relationship has to be brought into relation with the rest of morality in an overall conception of what we should do, and these limits meet at the foundational level, at least for negative duties. Any credible theory about the value of particular associations sets limits on what can be done on behalf of the association or associates.

To see this, consider the example discussed earlier of concern for one's family members. In one sense, we might think that I care about my child more than I care about someone else's child, even though I also recognize that, objectively, my child is no more valuable than this other child. I give priority to my own child in the sense that I think caring, feeding, clothing, addressing emotional needs, and keeping her safe are all responsibilities that I have, which fall on me precisely because she is *my* child. These are duties I have which are traceable to my relationship to her as her mother; they are not derived from some utilitarian argument about achieving the greater good, but are genuinely associative duties. But the proper way to think about this is not a concentric circles model, where I give priority to her needs first and only when these have been met do I consider the needs of others at greater (geographical or emotional) distance from me. Nor is it a model of duties which are underived in the sense that there is no element of conditionality in the value of the relationship or the duties. On the contrary, what is permissible to do on behalf of my child is always constrained by the limits of morality. I cannot exploit others, if doing so would further her education, even if I am responsible for her education. I cannot kill another person to harvest her kidneys, even if my child is dying and desperately needs a kidney. Thus, any plausible thesis of associative duties must make the duties themselves conditional on the permissibility of the action in question.

The same is true of our duties that arise within particularistic associations and, in particular, political associations. These duties might be derived from membership in the political association, as I suggested earlier, but there are still limits on what we can do on behalf of our political community, and limits on what political communities can do in their own interests. In line with the general view that we cannot murder, torture, steal, or harm others, regardless of whether they are in political community with me, the state, acting on behalf of its members, cannot wrongly coerce, torture, exploit, or deal unfairly with non-members. There are strict limits on what the state can do, and these limits are clearly defined by negative duties: duties not to harm, exploit, cheat, wrongfully coerce, or enslave. These duties constrain the exercise of collective self-determination in a globally just order.

12.4 Luck egalitarianism at the global level

The moral demands to facilitate the right of self-determination and to uphold universal constraints reveal strong links between domestic and global justice. More contentiously, it might also be argued that in addition to the negative duties listed above, and positive duties of justice to ensure that political communities themselves have the capacity to realize justice within their territorial domain, we have duties of egalitarian justice that stem from a luck egalitarian theory of global justice. The idea here is that justice at the domestic level can only apply fully if it is set against a background global theory of justice. What I wish to dispute here is not the need for a theory of background justice, but rather to question whether this background justice should be interpreted in luck egalitarian terms.

A dominant strain of argument in the cosmopolitan global justice literature, luck egalitarianism contends that there is something unjust when people's life chances are unequal as a result not of their choices but of brute bad luck. The core luck egalitarian intuition is that it is unfair if some people are worse off than others due to factors beyond their control, and that justice therefore demands that the effects of bad luck should be mitigated by institutions designed to ensure equality. This idea has a natural global reach for two reasons. First, it specifies a fundamental principle that not only governs the operation of principles but is also pre-institutional in the sense that it requires setting up institutions to meet the demands of equality. The equality demand in luck egalitarianism does not depend on the existence of institutions; instead, it requires setting up and organizing institutions to meet the demands of justice (Tan, 2004). It requires us to establish equality of circumstances regardless of the empirical extent and role of institutions, or whether they constitute a global basic structure. Obviously, this makes the luck egalitarian position particularly relevant to the global sphere, where strong institutions of governance are lacking.

Second, luck egalitarian theory seems particularly relevant to global justice in the sense that one of our core intuitions is that it is unfair that some people are simply born into poorer societies than others, and, through no fault of their own, fare worse than others. As Richard Arneson (2008, p. 103) has argued in defence of the luck egalitarian distributive ideal:

The concern of distributive justice is to compensate individuals for misfortune. Some people are blessed with good luck, some are cursed with bad luck, and it is the responsibility of society – all of

us regarded collectively – to alter the distribution of goods and evils that arise from the jumble of lotteries that constitutes human life as we know it.

It is but a short step from this view about the way in which our lives are affected by good and bad luck to seeing the *very* society one is born into as a matter of luck. Following Thomas Nagel (2005, p. 119), the ‘accident of being born in a poor rather than a rich country is as arbitrary a determinant of one’s fate as the accident of being born into a poor rather than a rich family in the same country’.

Not surprisingly, luck egalitarian arguments are appealed to in many prominent versions of cosmopolitanism. In addition to his emphasis on the extent of global interaction and the concomitant argument that the globe constitutes a single ‘basic structure’, Pogge (1989, p. 247) offers as a reason for extending Rawls’s principles globally that ‘nationality is just one further deep contingency (like genetic endowment, race, gender and social class) ... [representing] one more potential basis of institutional inequalities that are inescapable and present from birth’. Beitz (1999), differently, examines the unequal distribution of natural resources across the globe in an argument that is extensionally equivalent to a luck egalitarian one to suggest, independently of the success of his global interdependence arguments, that there are reasons to redistribute the wealth created by unequal natural endowments and resources. Similarly, Tan emphasizes the fundamental individualism of justice theorizing – that individuals are the basic units of moral concern – to argue that individuals have a right to equal consideration and this right to equal consideration entails, among other things, a direct concern with distributive equality among persons. By ‘distributive equality among persons’, he (2004, p. 54) means removing arbitrary and unchosen sources of disadvantage and ensuring that people are situated equally, at least with respect to the background conditions of the choices they make. Tan adopts a luck egalitarian reading of Rawls, according to which all morally arbitrary or contingent features are eliminated, and applies this luck egalitarian ideal to the background global structure. Finally, Simon Caney (2002) appeals to both the universalist scope of justice and the luck egalitarian intuition that there is something unjust about faring poorly for reasons beyond one’s control, to argue in favour of a global equality of opportunity principle. Indeed, crucial to his argument is the claim that any feature that limits the universal scope of justice is arbitrary from the moral point of view, thereby echoing the luck egalitarian conception of responsibility.

There is much that can be said about this ideal, but here I will limit myself to the general point that this theory gives such a strong and foundational role to equality that it is hard to see how it is consistent with giving any kind of autonomy or value to political communities as themselves sites of justice. This, as we shall see, is even true of Tan's careful endorsement of luck egalitarianism, which professes to give due recognition to the moral value of political communities.

The first worry about global luck egalitarianism, then, is a fairly general one about the strong foundational role equality would play at the global level and, relatedly, the attenuated idea of responsibility or agency that the theory entails. This problematic notion of equality is in all versions of luck egalitarianism, but it is revealed particularly clearly when the theory is shifted to the global level. The basic idea behind the theory is a distinction, stemming from the notion of individual agency, between brute luck and option luck. Luck egalitarianism is characterized by the view that people can legitimately differ from one another so long as such differences are objects of choice, but not if they are based on something beyond the person's control. On the face of it, this intuition reflects a strong commitment to individual agency. But, in another way, agency is not factored in properly in the theory insofar as it does not seem to matter, from the point of view of *assigning* responsibility, whether the person is *in fact* responsible (in a backward looking way) for the state of affairs in question.

Consider two cases. In case A, a person is disadvantaged due to the unjust operation of institutions; in case B, a person is disadvantaged because he or she is struck by a tsunami. The source of the disadvantage is then considered by luck egalitarians: they are concerned with whether it is within the (disadvantaged) person's own control. As Dworkin (2000, p. 287) writes, individuals 'should be relieved of consequential responsibility for those unfortunate features of their situation that are brute bad luck, but not from those that should be seen as flowing from their own choices'. But this fails to differentiate among sources of disadvantages that are *not* subject to the person's own control. In case A, the disadvantage (or inequality) can be directly traceable to the effects of social institutions in privileging one set of individuals over others. This is clearly an injustice insofar as it is based on the effects of discrimination – for example, ethnic or gender stereotyping. In the second case, the source of the inequality is similarly arbitrary from the point of view of the victim of the tsunami, but it does not seem an *injustice*, since the source of the disadvantage is an act of nature. We might think the person was unfortunate or unlucky or even that the

situation was tragic, but we might not necessarily think that there is an injustice here.

Luck egalitarianism is committed to equalizing both situations because both kinds of disadvantages are arbitrary, a matter of brute bad luck, from the point of view of the person suffering it. While it seems right in the first kind of case, it is less clear that we should require people to compensate others for the second kind of disadvantage. The reason for the differing intuitions between the two cases is that one involves injustice and the other does not. We tend to think that there is something fundamentally wrong when a society perpetuates oppression and disadvantage through individual actions and unfair social institutions, whereas the second case is not an issue of fundamental justice and does not seem to give rise to feelings of indignation or anger.

The failure to distinguish properly between justice-related bad luck and other kinds of bad luck has important implications for the basic notions of agency and responsibility from which luck egalitarianism draws. Specifically, the theory fails to capture our intuitive sense of what is required of people as *duty-bearers* and, indeed, to appropriately track our sense of ourselves as authors of lives who make choices and decisions within determinate contexts. This is so because luck egalitarianism effectively disregards individual agency by forcing the duty-bearer in case B to compensate people for events that she had no role in causing and could not have chosen to cause. Ironically, then, luck egalitarianism abstracts from agency and from patterns of interaction and responsibility, at least as it applies to the duty to correct inequalities. The effect of confusing cosmic ‘injustices’ with injustices *tout court* is that, if we label such things injustices and we think that there is a general duty to help secure justice, we have duties to others irrespective of whether we exploited or harmed them in some way – not just duties of assistance to move them past some threshold (above deprivation), but duties of justice to secure equality. These duties are extremely demanding – perhaps impossibly demanding – and under-argued insofar as they rest upon an implausible view of the ambit of justice, which illegitimately includes natural disasters.

The problem outlined earlier is a general problem with luck egalitarianism, but it is particularly apposite in the global setting, where it is compounded by a third difficulty – that the global frame is enormously complicated and, from that perspective, most of how we fare is connected to brute luck. This raises the concern about the extent to which people can be held responsible for their choices. This point is a variant of Elizabeth Anderson (1999) and Jonathan Wolff’s (1998) shared criticism

of luck egalitarianism, namely, that it relies on an implausible metaphysics of the person where we cannot clearly distinguish the choices that people make from the circumstances in which they find themselves, particularly since people tend to make choices against the background of their own understanding of their talents and circumstances.

There are many factors that determine how each of us fares, and this is relevant not only to the distinction between brute luck and option luck but also to the entire enterprise of ensuring that people are held responsible for their decisions. Even cases which seem to be obviously instances of brute bad luck – for example, being hit by a tsunami and suffering irreversible damage due to prolonged suffocation under water – might, from another perspective, be viewed as bad option luck. The person in question could have been gambling that a tsunami of that magnitude would not hit, and therefore irresponsibly failed to invest in an early earthquake warning system or higher barriers against the ocean, and so on. It is difficult to know whether to view this as bad brute luck or bad option luck. On the one hand, it is possible to conceive of the existence of tsunamis as a constant threat, so that failure to take appropriate action is then viewed as an assumption of risk (bad option luck). On the other hand, one could view tsunamis as brute bad luck, since in the normal course of events one is not struck by tsunamis, lightning, or other acts of nature. At fundamental issue here is the baseline against which we measure what is to be regarded as ‘normal’, for it is against that standard that we deploy the distinction between brute luck and option luck.

In the global context, it is even more difficult to determine the baseline against which what is ‘normal’ should be conceived; indeed, in that more complicated setting, it seems that how well we do is dependent upon brute luck, given the extent to which our welfare is based on structural conditions for which we are not responsible. From the perspective of the global background conditions against which we make choices, most processes that influence our lives are not fully susceptible to individual decisions and actions. This tends to render many things instances of brute bad or good luck, viewed from the point of view of the individual. Consider, for example, the standpoint of individuals who engage in responsible choices over their lives and try to invest in the opportunities that they have so that further opportunities accrue to them. Even in this case, it is clear that the overall wealth of their society, which is a matter of brute luck, is a crucial component of their well-being, including the opportunity sets that are initially available. Just as, in high tide, all ships rise, so in wealthy societies people tend

to be much better off, enjoying higher levels of health, well-being, literacy, numeracy, and life expectancy. In impoverished societies, the vast majority tend to be worse off in all these respects. The larger global perspective renders almost everything a matter of luck simply because the brute fact of the society into which we are born is absolutely fundamental to our life chances in the first place.

Of course, this gives the luck egalitarian ideal a particularly radical edge in global justice theory: once we realize that the background structure against which many of our choices are made falls outside our control, it is hard to see our relative wealth or poverty, high or low levels of well-being, as something over which we have control. Indeed, when one takes a sufficiently global perspective on how people fare, it becomes clear that luck egalitarianism would result in massive equalization of conditions, for our fates are inextricably related to the opportunity sets in our various societies for which we are not individually responsible. Luck egalitarianism, which started out as a theory that takes responsibility and agency seriously, ends up not only abstracting from the question of agency as it applies to the source of inequality and to the assignment of duties, but also concludes by regarding agency as operating only within a context dominated by the great good or bad fortune of being born into a society of a certain kind. While this is the reason why the appeal to luck egalitarianism has important consequences in the global sphere, it might also be regarded as deeply problematic insofar as it collapses the very distinction between luck and choices, between being responsible and having things happen to us, that is foundational to the approach as a whole. The structural dimension of global justice tends to negate the importance of individual agency not only for the duty-bearers but also for everyone, since none can be said to deserve the society, wealthy or not, into which they are born. Yet, if this is so, it is unclear whether luck egalitarianism represents a defensible theory of global justice at all.

This general point emerges, revealingly, at crucial points in Kok-Chor Tan's argument, which purports to be a reconciliation of global justice and the value that people accord their political communities. Tan argues that the principles of cosmopolitan justice, which he understands in luck egalitarian terms where all morally arbitrary features are eliminated, should apply at the global level. Patriotic attachments and political communities are potentially valuable, but this does not affect the validity of the background framework of egalitarian global justice. Against David Miller's (1995, p. 108) claim that political self-determination implies communal responsibility and that such

is in tension with proposed egalitarian redistributions of wealth and resources, Tan (2004, p. 101) argues that:

the 'liberal' part of the liberal nationalist equation limits the ways in which national self-determination may be expressed. More precisely, if we begin from an egalitarian conception of liberalism and want to marry that understanding of liberalism to nationalism, then the liberal nationalism we get has to be an *egalitarian* liberal nationalism. And as egalitarian liberals begin from the basic idea that there are no principled differences between individuals on the basis of contingencies or what Rawls (1971, p. 15) has called factors that are 'arbitrary from a moral point of view', so too must egalitarian liberal nationalism discount morally arbitrary facts about persons when it comes to determining their just global entitlements. And one arbitrary factor here would be people's national membership.

There are two things to be said about this. One is that the 'reconciliation' is here revealed, not as a reconciliation, but as national partiality being legitimate only to the degree that it is constrained by an extreme luck egalitarian conception of global justice. It might be true that the two are in tension, as far as it goes, but this could just as well count against Tan's version of cosmopolitanism, because it reduces nationalism to an arbitrary feature, in demanding our particularist attachments be subordinate to an overarching egalitarianism that, as we saw above, is questionable on other grounds.

The second point relates to the status of particularist attachments as viewed by the people possessing such attachments. Tan recognizes that it must be jarring to call 'national membership' an 'arbitrary feature'. He (2004, p. 101) writes that it may 'seem odd that liberal nationalists, if they are egalitarian liberals, must consider nationality a morally irrelevant factor when determining the terms of global distributive justice. What does it mean to be a nationalist in this case?' But he insists this 'oddity dissipates once we are clear about the circumscribed place of nationality in liberal nationalist theories'. What is questionable here is whether nationalists (even of the liberal variety), or indeed any person trying to find room for particularist relationships, could consider nationality to be an irrelevant factor from the moral point of view.

To see this, we have to distinguish the various ways in which a relationship or an association could be conceived as arbitrary, and specifically, we need to distinguish *descriptively* arbitrary from *morally* arbitrary. My particular race, ethnicity, culture, community, gender, and talents are

all descriptively arbitrary features of me, in the sense that it is a matter of pure random (good or bad) luck that I possess these features. It could have been very different if that particular sperm had not come into contact with that particular egg at the very moment I was conceived, if my nutritional needs *in utero* had been met differently (either more or less well), if my mother had not immigrated to Canada in the first place, and so forth. Many features about us are descriptively arbitrary in the sense that there is a large degree of contingency about our possession of them. We can easily imagine scenarios in which it could have been otherwise, scenarios where we would be quite different people (or even non-existent). It does not follow, however, that these features are morally arbitrary. Various descriptively arbitrary facts about my person may well be relevant to moral arguments, or to sound moral judgements, if they are pertinent to the claims being made. For example, it might be descriptively arbitrary that X is female, physically challenged, or intellectually gifted, but these facts are likely to be very relevant to the moral case at hand if we are considering how to arrange institutional practices and norms, how to treat that person fairly, *et cetera*.

Although it is true that the particular political communities to which we are attached are often descriptively arbitrary, in the sense that we can easily imagine being born in one political community rather than another, it does not follow that they are morally arbitrary. Indeed, I have already given one argument why the rules of justice that particular communities arrive at should be regarded as relevant morally. They are not conceptions of the good which are then subject to the arbitration of global rules of justice, but are instead particular brands or visions of justice articulated by distinct political communities, which have to be brought into relation with other political communities, which also pursue their own particular brands of justice.

12.5 Conclusion

In this chapter I have suggested two ways in which the tension between valuing political communities and global justice can be bridged. More specifically, I have argued that if we value political communities as sites of justice, then we must be committed to the conditions necessary for the actualization of the universal right to self-determination, and that these conditions include provision of positive material goods, above the level of deprivation, so that communities are in a position to realize justice for themselves. We also have negative duties of non-exploitation and non-harm, which serve as universal constraints on the type of

actions that political communities can pursue on their own behalf. Finally, I accepted the general view that political communities as sites of justice have to operate within a background just framework, but I rejected the luck egalitarian version of that framework, since it fails to strike the right sort of balance between the two levels of justice. At the heart of my approach is the view that a plausible theory of global justice has to make room for political communities, and should conceive of such communities as valuable because they are genuine sites of justice. This does not cohere with luck egalitarianism, which views the political communities into which we are born as a matter of good or bad luck, arbitrary from the moral point of view. Of course, if one does not accept my view that political communities are sites in which their members seek to realize justice, the arguments of this chapter do not follow. But in that case there is no attempt to strike a balance or reconciliation between two different levels of justice.

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13

Global Egalitarianism or National Self-Determination?

Chris Armstrong

This chapter examines the challenge that claims for global justice have been said to pose for the nation, and the value of national self-determination in particular. A debate has arisen between defenders of global justice and defenders of national self-determination, with the latter camp sometimes arguing that although some forms of global justice are valuable, the call for global equality, if realized, would seriously endanger any meaningful form of self-determination (and as such, global egalitarianism must of necessity be 'postnational' in form). The first section sets out the apparent opposition between the two positions. The second section looks a little more closely at the arguments of defenders of self-determination and examines just why, in their view, their concerns rule out global egalitarianism as a theory of global justice. The third section shows why the view that a concern for national self-determination rules out global egalitarianism as an account of global justice is mistaken for a number of reasons, as I have argued in more detail elsewhere (Armstrong, 2010). Actually, global egalitarians are able to carve out space for self-determination in a variety of ways. The fourth section concludes by asking whether they should. It is claimed here that there are good reasons to reserve room for legitimate forms of self-determination. But my argument will give limited relief to nationalists, because the forms of self-determination that are likely to be valuable to individuals worldwide are likely only partly to overlap with national forms of government.

13.1 The challenge of global inequality

We live in a massively unequal world in which the gulfs in access to resources, health care, and educational opportunities *between* nations

outstrip those applying *within* even the most unequal of nations (World Bank, 2006). Partly as a response to that fact, recent years have seen the emergence of a sophisticated literature on issues of global distributive justice, which has debated the justice of international trade, the distribution of natural resources, and the justice of climate change, as well as the distribution of responsibility for responding to poverty and 'underdevelopment'. Not surprisingly, one of the liveliest debates within 'international' or 'global political theory' concerns the normative significance of the nation, or of the nation-state. But here opinion is sometimes sharply divided. On the one hand, some global egalitarians or cosmopolitans have suggested that we should not suffer inferior life chances – and possibly a life of desperate poverty – simply because of the 'brute luck' of being born in Angola rather than Australia. For the most thoroughgoing cosmopolitans all principles of distributive justice are universal in scope, and it appears difficult on this position to carve out any space for national variation, given that such variation will impact unequally on the life chances of individuals born into such nations in the future. If national membership in the contemporary world operates a lot like feudal status in the 'pre-modern' world, admitting some to a modern nobility and consigning others to a modern form of serfdom, we might be expected to object to this modern hierarchy just as strongly as we rejected the earlier one (Carens, 1992). The challenge to the autonomy of nations appears – at first sight at least – robust. At the extreme, global egalitarian justice might then leave no room for national self-determination at all; it might be of necessity postnational.

On the other hand, we find in the literature on global justice a number of dissenting voices which claim that our membership of nations (and sometimes nation-states) has a good deal of normative significance (for example, Miller, 1995). Perhaps nations are 'ethical communities' with an intrinsic value that cosmopolitans or global egalitarians have failed to recognize. Perhaps nations make social justice and democracy possible, with the implication being that these goals will be mere chimeras in the absence of the ties of solidarity that bind fellow nationals together. Perhaps it is the very specific affective or institutional ties between co-citizens or co-nationals which render egalitarian justice appropriate in the first place, rather than any simple appeal to shared humanity – in which case the demand for global equality simply does not arise. Defenders of self-determination have also gone on the offensive, alleging that global egalitarian justice would require powerful global institutions – and possibly even a world state – and that its strictures

would be incompatible with national autonomy or with global cultural diversity more broadly. Indeed, some critics have reprised Kant's argument that a world state would either lead to despotism or descend into civil war, and argued that this provides a reason for real caution over the claims of global equality (see, for instance, Rawls, 1999, p. 36).

In the debate about global justice, then, global egalitarians have been charged with failing to recognize, or accommodate, the importance of communities' right to make their own collective decisions. David Miller has labelled his own distinctive approach to global justice a 'political' as opposed to a 'cosmopolitan' one, and clearly means by this distinction to suggest precisely that the cosmopolitan or egalitarian account pays far too little attention to the fact that individuals are born into national communities that have meaning for them and that have a plausible claim for political self-determination (Miller, 2008a, p. 383; a slightly different distinction between the two approaches is also put forward by Nagel, 2005). The cosmopolitan focus on principles of distributive justice means that it is somewhat denuded when it shifts its gaze onto a world where citizens of particular communities both do, and should be able to, make collective decisions that shape their collective futures (see also Walzer, 2004, pp. 131–40). Recent years have also witnessed an increased emphasis on the importance of national responsibility, accompanied by the claim that global equality would be unattainable if we took seriously the idea that nation-states can properly be held responsible for their own choices (Rawls, 1999; Miller, 2007). But this argument for national responsibility in turn depends upon a more fundamental argument, the one that I am really interested in here: the argument that national communities have a right to economic and political self-determination, and that this itself places serious limits on the scope for global distributive justice. For Moore (2006, p. 657) this means that 'political communities [such as nations] cannot be regarded as simply an obstacle to the achievement of global justice'; to the contrary, 'any valid theory of global justice should be developed in a way that can give appropriate due to the moral value of political communities'.

The suspicion that securing global equality would require us to seriously limit the self-determination of independent 'peoples' was also prominent in John Rawls's last book. Instead of principles of global egalitarian justice, Rawls endorsed a much less demanding 'duty of assistance', which he still believed sufficient to secure the conditions for political autonomy, enabling peoples 'to be able to determine the path of their own future for themselves' (Rawls, 1999, p. 118; though see

Armstrong, 2009a). Some critics of global equality believe that our only obligations towards non-nationals are humanitarian or charitable ones, whereas others believe we have rather stronger duties of justice towards the world's poor. But they all agree that the objective of such duties cannot be the attainment of global equality, and a primary reason for their reticence is the concern to defend national self-determination. The choice between the 'distributive' view of the global egalitarians and the 'political' view of defenders of the nation-state on this perspective appears rather stark (Owen, forthcoming). The task of this chapter is to assess just how stark the opposition really needs to be. Must we take the concerns of Miller, Moore, Rawls, and so on at face value, or is the apparent conflict between 'distributive' justice and national 'politics' in fact rather more complex?

13.2 Global equality versus self-determination?

The leading contemporary defences of national self-determination emphasize the way in which membership in national communities provides 'an anchor for self-identification' (Margalit and Raz, 1990, p. 448). Our identities and also our moral horizons are bound up with the national community we belong to. In one important sense national cultures can be said to secure the conditions for individual autonomy; they do so by providing a background against which the individual can make choices about her life. In fact 'the autonomous ideal of a self-choosing, self-forming being presupposes some conception of value according to which the life is constituted, and this conception of value is provided by a national or societal culture' (Moore, 2006, p. 639). Individual well-being depends upon worthwhile goals and relationships, which are themselves largely determined within the context of 'encompassing groups', such as national communities (Margalit and Raz, 1990, p. 448; see also Miller, 1995). Whereas theories of distributive justice rightly emphasize individuals' opportunities to pursue valuable goals, they should also pay due attention to the role of national cultures in defining those goals and providing a background of shared values by which individuals can orient their lives in an otherwise complex and unpredictable world.

The special ties between fellow members of a nation are also said to make possible a number of key political projects which would be impossible – or at least much more difficult – in their absence. For one thing, participation in a common national culture may be 'essential for generating solidarity' within modern welfarist states and getting people

to accept the sacrifices required of them. For another, ‘some sense of commonality or shared identity may be required to sustain a deliberative or participatory democracy’ (Kymlicka, 2001, pp. 265, 268; see also Miller, 2000, pp. 81–96), perhaps by encouraging the development and exercise of citizenly orientation towards the common good. In that sense, although global egalitarians have bemoaned the restriction of social justice to the nation-state, they have failed to understand just how important the bonds of nationality are to making it a reality. If we are moving into a ‘postnational’ world, then we must accept that we may be moving into a world where equality and social justice, too, are consigned to history (Miller, 1999, pp. 260–1).

If national self-determination is important, the next step is to show that it conflicts with the demands of global egalitarianism. Here its defenders have shown great certainty. On the one hand, Moore (2007, p. 258) argues that global egalitarianism ‘fails to protect the collective and cultural dimensions of life, which people often value’. But if national culture is so important – perhaps because of its connection to identity, autonomy, or social justice – it must be permissible for individuals to take actions to preserve it (Miller, 2009). On the other hand, if we accept the need for self-determination, we must also accept the consequences: as soon as we grant countries some measure of economic self-determination, ‘we are conceding the possibility of their adopting different policies and goals that will inevitably result in potentially significant inequalities’ (Mandle, 2006, p. 622). For these critics we should embrace, instead, an account of global justice in which ‘there is no fundamental challenge to the idea of state autonomy, and no attempt to achieve global uniformity, in the sense of people everywhere enjoying the same bundle of rights, resources, and opportunities’ (Miller, 2007, p. 21).

13.3 Against a simple opposition

Despite the certainty of its defenders, any assumption that a respect for national self-determination rules out a commitment to global egalitarianism must be rejected, for three reasons. The first is that global egalitarians are able to compromise on their values without abandoning them; the second is that in many cases they will be able to accommodate some self-determination without even compromising on their values (see also Armstrong, 2010); the third, finally, reminds us that in a world in which nation-states appear to be a durable reality, in many instances the two commitments will be served by the same kinds of policies or institutions.

13.3.1 Balancing values?

First, then, global egalitarians do not categorically cease to be global egalitarians once they place any independent value on national self-determination. Rather obviously, being an egalitarian does not require someone to deny that any other ideals have value; it merely demands that we believe that one distribution being more egalitarian than another provides one argument in favour of it. So, a global egalitarian need not endorse equal distributive outcomes; she need only claim that 'the value of global equality exerts some moral pressure toward limiting the range of outcomes that may be produced by national self-determination' (Wenar, 2008, p. 409). The suggestion that we might face a choice between *either* equalizing life chances *or* securing self-determination should not disguise the fact that many shades of both will be simultaneously achievable; and accepting some such shade does not imply the abandonment of egalitarianism. After all, we do not cease to be egalitarians at the domestic level the instant we admit that there are other important values – such as the autonomy of family life – that might need balancing with our egalitarian commitments; nor should egalitarians face a choice between renouncing their egalitarianism and embracing some degree of self-determination.

Unsurprisingly, global egalitarians themselves have been rather divided on the question as to whether some national distributive variation – the inevitable outcome of according nations self-determination – is permissible. The general strategy of Tan (2004) has been to draw out the compatibility between 'general' duties to all of humankind and 'special' duties towards our fellow nationals, and his answer is cautiously affirmative. Moellendorf (2006a, pp. 316–7) has also stressed that his aim is to set out the demands of global equality, not to deny that these will need to be traded off against the value of self-determination in many cases. Others have been less willing to allow such constraints on their egalitarian principles. Thus, Caney (2005) has admitted that there is some purely instrumental utility to a degree of self-determination, in the sense that the institutions of the nation-state may be necessary to achieve egalitarian ends. But when the values run into conflict, the position appears to be that our egalitarianism should trump any instrumental commitment to self-determination. While Caney is right that the nation is likely to be instrumentally useful in pursuing egalitarian goals, the final section of this chapter inquires whether this goes quite far enough, or whether it gives too thin an account of the utility of self-determination.

13.3.2 Compatible values?

Furthermore, some forms of global egalitarianism will be compatible with some degree of national self-determination, and insofar as this is true, no compromise between the two values is necessary. Global egalitarianism is a heterogeneous school of thought, and identification with it does not preclude disagreement over a range of important issues (Armstrong, 2009b). It does seem fair to say that a very demanding global egalitarian account, such as global luck egalitarianism (which condemns any and all inequalities arising from 'brute luck' factors such as nationality, and accepts only those inequalities arising from individual choice), will leave precious little room for national self-determination (though see Fabre, 2007). But that is a quite distinctive position; it applies a very single-minded egalitarian principle to a very broad range of goods or relations, and as such would hardly be compatible (without trade-offs) with any local autonomy even *within* nation-states. But many other egalitarian principles will leave conceptual space for national variation; I will briefly set out two ways in which this might be so.

For one thing, some egalitarian principles leave more room for variation in outcomes than others. It is worth pointing out that the most robust criticisms levelled at global egalitarianism by Miller, Moore, and others, relate to strong notions of equality of opportunity, such as the views of Moellendorf (2002) or Caney (2001), and probably apply to global luck egalitarianism too (see Moore in this volume). But these are not the only options on the table. Mason (2006) distinguishes between 'neutralization' and 'mitigation' conceptions of equality. Whereas a neutralizing conception of equality of opportunity, for example, would seek to eradicate the influence of 'brute luck' factors such as nationality on distribution (and hence will be highly egalitarian), a mitigating conception might only seek to lessen the impact of such factors by securing broadly commensurable (but not fully equal) opportunities for all. Here it seems certain that a 'mitigation' view would leave considerably more room for national variation in distribution than a neutralization one (see also Brock, 2008, p. 434).

Furthermore, while we should be clear that to qualify as a global egalitarian one should adhere to the view that some egalitarian principles have global scope (Armstrong, 2009b), this does not rule out other egalitarian principles having more limited scope. A global egalitarian might argue, then, that the theories of distributive equality we have become so fond of should simply be globalized, without any regard for national boundaries (see, for instance, Caney, 2008), but she might

also argue that some variety of egalitarianism is appropriate at the level of communities such as nation-states, and a further, distinct variety is appropriate globally. As an example of this, Darrel Moellendorf (2006b) suggests that global economic ties call for the egalitarian distribution of one set of goods (including education, health care, housing, and so on), whereas the distinctive political ties inherent at the level of individual nation-states calls for equality in the distribution of another, discrete set of goods (perhaps including income and wealth). In that second set of goods, the scope for national self-determination would presumably be relatively unrestricted.

Perhaps because of this diversity, Miller's statement (2007, pp. 74–5) that a concern for national self-determination means that global justice cannot be egalitarian is much too sweeping. He has more recently weakened this claim somewhat. Conceding that 'weaker' principles of equality are more compatible with national responsibility and self-determination than he had earlier suggested, he nevertheless maintains that 'global egalitarianism rests on a mistake – essentially the mistake of failing to understand properly the social context that gives equality its value within political communities' (Miller, 2008b, pp. 562, 566). But it is uncertain whether such a position can be defended. Miller's argument requires us to specify some normatively important relation which applies within nations, but not outside of them. Coercion, reciprocity, and shared identity have all been suggested as possible candidates, but it has been shown in each case that these relations do not neatly coincide with the borders of nation-states (see, for example, Armstrong, 2009c; Caney, 2008). If so, the claims of equality will at the very least spill over national boundaries.

13.3.3 Compatible policies?

The final point to make is that there will be many policies or institutions which might simultaneously advance the goals of global egalitarianism and national self-determination. For instance, those interested in self-determination might be expected to show support for some forms of global equality. It may very well be that greater equality would assist poorer nations in becoming genuinely self-determining, assuming that severe inequalities will expose them to exploitation within the global economy and marginalization within global institutions. In *The Law of Peoples* (1999), Rawls argued that once wealthier peoples discharge their duty to help poorer societies establish functioning socio-political institutions, the basis for autonomy is secured and any remaining international inequalities need not trouble us. But I (Armstrong, 2009a) have

argued to the contrary that great economic inequalities will frequently and predictably undermine the ability of poorer societies to maintain such institutions; the flow of health-care professionals from poor societies to richer ones, at the cost of the ability of the former to maintain functioning healthcare systems, provides just one example of this. It seems implausible to draw a line between global inequalities and the autonomy of nation-states, and to operate as if the former will not continually impinge upon the latter. Perhaps Rawls's vision provides a set of principles for a 'vanished Westphalian world' in which nations were economically autonomous in ways in which they no longer are (Buchanan, 2000). However, it seems much less pertinent in the contemporary world.

Much of Thomas Pogge's work (for example, Pogge, 2002) has been devoted to showing how the institutional architecture of our world has been shaped to meet the interests of more powerful states, who have set terms of cooperation for poorer societies that provide many of them with vastly inferior opportunities. Miller has also shown appropriate interest in the way in which global economic inequalities convert into inequalities of power, thus skewing the terms of international cooperation. But in an argument reminiscent of Michael Walzer (1983), he rejoins that we might deal with this by either blocking the conversion of economic inequality into political inequality or by removing the economic inequalities themselves (Miller, 2007, pp. 76–7). And, somewhat implausibly, he appears to believe that the first strategy is sufficient. While suggestions for how we might help poorer societies overcome their weak bargaining position – or vulnerability to exploitation – have certainly been made (for instance, by bolstering their presence in World Trade Organization talks, or providing funding for expert representation there), it is hard to imagine them being entirely successful given the size and durability of the economic inequalities involved. Instead, it is likely, on Miller's formulation, that a direct attack on economic inequalities is inescapable. For all of the concern shown by Rawls, Miller, and Moore for protecting the ability of nations to choose their own *internal* distributive arrangements, otherwise diverse communities might *for that very reason* prefer a global order whose institutions allowed them a more equal chance to meet the needs of their own citizens on their own terms, rather than leaving them at the whim of more powerful actors.

Among the most pressing objectives of many global egalitarians is the securing of a situation where structural conditions, such as trade rules and property regimes, are fair, and unjust disparities in bargaining positions are removed. These do not in fact require great inroads into

self-determination, but might actually secure it rather better than our current hierarchical world. It is not, after all, the claim of the defenders of self-determination I have been discussing that a given nation should be able to act in any way it likes; rather, the claim is that self-determination is equally important to all nations. As such, one nation's self-determination should be extended in such a way that it is compatible with all others' equal enjoyment of self-determination. This is what Miller calls an 'iterative' conception of self-determination (Miller, 1995, p. 190), and it might be served rather well by various moves towards greater equality. We might say, for instance, that the negotiation of a more balanced agreement on trade would allow developing countries much greater access to markets in the developed world; the economic progress that could be made might then facilitate the further development of state infrastructure. For Miller and Rawls, such moves would not represent a concession to global egalitarianism, but a concern to establish fair terms of cooperation which is unconnected to, and uninformed by, standards of distributive justice. On their understanding such concerns essentially operate outside egalitarian theory, and are not determined by it. Global egalitarians find this less plausible, since they see the securing of fair background conditions (which will be less likely to give rise to exploitation in the first place) as a key part of what egalitarians are after in the global context. Part of what divides supporters and critics of global equality here may, therefore, turn out to be terminology.

We have already considered the argument that defenders of self-determination might be expected to show an interest in greater global equality. The argument that the goal of self-determination for nations might be advanced by the pursuit of greater economic equality at the global level is definitely plausible, and should give us pause for thought when considering arguments that suggest the first concern actually rules out the second. But the reverse might also be true: defenders of global equality might be expected to show some interest in national self-determination, at least in a world where nation-states look likely to be an enduring feature of political life. Certainly it is worth inquiring whether global egalitarians may have more need for the institutions of the nation-state than we might otherwise think. As it turns out, no major global egalitarians have argued in favour of a world state; they tend to be 'moral' but not 'institutional' cosmopolitans in that sense (Beitz, 1999), and have also been rather lukewarm towards the grander arguments in favour of global citizenship. Although many of them have argued for a dispersal of sovereignty both upwards to the global level

and downwards to subnational communities (see, for example, Pogge, 2002), such visions tend to retain some role for the nation-state. Weak states are in many cases themselves an obstacle to equality: witness the case of the Somali fishermen whose fish stocks have been damaged by foreign nations dumping waste in their waters; the Somali state has been unable to prevent this, or indeed prevent some of the now-unemployed fishermen turning to piracy. Much more strongly, one cosmopolitan has recently argued that the nation-state provides the *only* institutional setting in which cosmopolitan goals will be achievable in the foreseeable future, and that the success of cosmopolitan goals will continue to depend on the mutual sympathies provided within national communities. After all, 'one can share with cosmopolitanism the concern for universal obligations and still insist that we need particular communities to get a motivational grip on people' (Ypi, 2008, p. 55). On this view the nation-state, with its ability to inspire compliance and sacrifice, would be a necessary component of building global distributive justice.

In this section I have shown that there is no simple opposition between global equality and national self-determination. There will be cases where a choice between them is necessary, but there will also be cases where the two goals are complementary, or at least not opposed. This renders any suggestion that we must make some grand choice between the two commitments insupportable. While choices do have to be made between competing values, this is not a novel development for egalitarians, and certainly does not mean that they cease to *be* egalitarians. Quite how much space global egalitarians *should* clear for national self-determination is a harder question; in the following I consider this in more detail.

13.4 Self-determination reconsidered

The argument so far has shown that global egalitarians – with few exceptions – can make space for a degree of national self-determination. But how much room should they make for it? The answer depends on whether egalitarians are prepared for distributive outcomes (and hence opportunities for future citizens) to vary according to nationality. Borrowing a distinction from Caney (2002), there are 'mild' and 'radical' approaches to this issue. Whereas the mild approach makes space for forms of distributive justice particular to individual nation-states, the radical version refuses to do so.

What we could call a 'mild' form of global egalitarianism maintains that there are some global egalitarian principles, but accepts that there

may also be specifically national principles of distributive justice or equality, perhaps because co-nationals have special obligations to each other or because they stand in a certain kind of institutional relationship with one another. As such, it is important to clear space for certain kinds of national-level distribution, by way of which co-nationals can pursue their own distinctive projects, in a way suitably circumscribed by the global framework of justice. Thus, Tan (2004) accepts that we can have special duties to our fellow nationals that we do not have to outsiders, and merely aims to show that these duties are circumscribed by the general duties we have to everyone. Darrel Moellendorf (2006b), too, argues that we have both global principles of equality because of the economic connections across the globe *and* distinctively national egalitarian principles because of the political connections between citizens of particular nation-states. Both would qualify, therefore, as mild global egalitarians (but see Moore in this volume). This approach can happily accommodate the nation-state, and accord it some autonomy. The approach will also, of course, face its own criticisms, including from defenders of the radical approach. For example, it will face the question whether there are any genuinely good reasons for why fellow nationals (or citizens) should have such obligations of justice to each other. The kind of reasons that have been advanced recently – for instance, that fellow citizens engage in distinctive forms of reciprocity, or are jointly subject to coercive institutions – do not seem capable of discriminating adequately between citizens and non-citizens, or nationals and non-nationals. After all, relations of reciprocity, as well as coercive institutions, span the borders of nation-states (Armstrong, 2009c). There are also pertinent questions about the compatibility of the two levels of distribution. Tan argues that global principles simply make space for national partiality, and thereby suggests that they will not conflict. But this may be too confident an appraisal.

What we could call a ‘radical’ form of global egalitarianism maintains that all egalitarian principles are global in scope and denies that there are any special obligations between fellow nationals. As such, when it clears any space at all for national self-determination it does so not because the bonds between fellow nationals have any intrinsic significance, but because the institutions of the nation-state can be useful for delivering on the goals of global egalitarian justice. The defence of self-determination, such as it exists at all, is purely instrumental (self-determination can be supported precisely insofar as it serves global justice, and no further), and is likely to be pretty thin. For Simon Caney (2008, pp. 510–11), any duties a given Swede might have towards

his fellow Swedes are only one component part of his general duties towards all humans, and there is nothing particularly distinctive about them. This does leave space for patriotism, but it is of an unusual form. Patriotism, on this view, could only consist in pride in one's nation-state's contribution to the attainment of global justice. Caney accepts that individual well-being is advanced by national membership, since, as its defenders say, nations provide a context of choice, a rich and varied culture by way of which individuals can orientate their lives. National self-determination in turn may be necessary to promote national cultures, as Miller suggests. But in the main Caney (2005, pp. 178–9) grants it only a 'considerably restricted place in institutional design', and wants it to serve the goals of his cosmopolitan egalitarianism alone. The quandary the radical account seems to face is this. Even Caney's very cautious argument for some self-determination will face the problem that as soon as *any* room for self-determination is provided, inequalities will result which impinge upon individuals' life chances. How would Caney respond to such inequalities? He (2005, p. 180) declares that the pursuit of national self-determination should be 'combined' with other considerations, 'like the pursuit of human rights and global principles of distributive justice', but that is a little loose as a formulation. If we mean by 'combining' that the two claims are somehow weighed against each other, then we have accepted that global egalitarianism is in some instances defeasible. If, however, we mean that principles of global distributive justice place an absolute constraint on self-determination, then it is worth asking what space has in fact been reserved for national self-determination at all.

In the end, an assertion that individuals' interest in political self-determination will not conflict with the distributive goals of global egalitarians would be much too optimistic. It is reasonable to suggest that individuals have an interest both in securing the material bases of their well-being (a goal advanced by the global egalitarians), and in collective self-government (with a plausible normative criterion here being the claim that individuals should be able to recognize themselves as joint authors of the institutional schemes that affect them, perhaps). But it may be that the reasons why we should support a degree of self-determination – at least in the non-ideal world – take us some way beyond instrumentally serving the aims of global distributive egalitarianism. Some good contenders are supplied by Andreas Føllesdal (2001, pp. 248–9), who suggests that political autonomy may reduce the risk of domination by other territorial units, may provide increased responsiveness of institutions to individuals' distinctive interests, and may reduce

the burdens of sharing responsibilities between large populations. None of these import any intrinsic significance to the communities we are members of (and, as such, are wholly compatible with moral cosmopolitanism), but they do reflect a concern with the likely effectiveness, and dangers, of concentrating power at particular levels. These are important considerations, but they are not readily reducible to serving the goals of distributive justice. Indeed, they seem to name important goals which may sometimes *conflict* with the goals of global distributive justice. If we accept Føllesdal's arguments for self-determination, then he (2001, p. 238) suggests we must also accept some differential outcomes: all things considered, 'the ... poor may benefit from such subunit autonomy even at some economic cost'.

If this is right, we will need sometimes to balance global equality and self-determination for reasons which cosmopolitans themselves should be prepared to take seriously. About this much the critics of global egalitarianism are right. But they are wrong to suggest that this defeats global egalitarianism as a theory of global justice. Furthermore, we should also note that arguments for self-determination do not all point in the direction of autonomy for nation-states, or any mere defence of the status quo. Even if we grant an interest in collective self-government, there are good grounds in the contemporary world for reconceptualizing self-determination along the lines of various levels of democratic self-government (and, notably, in Føllesdal's argument the considerations mentioned above are taken to count in favour of a form of federalism, and not a world of autonomous nation-states). The problem, as Gould (2006, p. 46) has put it, is that the regime of nation-states 'fails to represent people's transnational or international interests adequately, particularly concerning environmental and economic cooperation or regulation, and has no way of reflecting the multitude of actual ties and associations that are springing up across borders'. And the claim that nation-states might protect us from domination comes with a large dose of historical irony.

So even if we grant independent value to self-determination, the credentials of the nation as a vehicle for such self-determination are open to question. The purported connection between the nation and both democracy and social justice is also less than settled. There is much more to be said about the instrumental claims of Miller, Kymlicka, and so on regarding the usefulness of nations for securing justice and democracy, an issue I have been unable to examine here. However, Owen (forthcoming) rightly claims that, in the accounts of defenders of the contemporary nation I have been examining, a great deal of weight

is placed on 'a wager on what the empirical conditions of maintaining social democratic states turn out to be'. While justice and democracy at the transnational level may presently be very thin and unsatisfactory, establishing this is not the same as establishing that those concepts must be bounded within the nation-state. For the time being global egalitarians may have need of the nation-state, but their particular belief – and hope – is that the claim that the pursuit of equality and social justice must be restricted to its borders will turn out to be a false one. The boundaries of the nation-state in no wise determine the contours of the future.

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