Rainer Bauböck

Multinational Federalism: Territorial or Cultural Autonomy?

IMER
INTERNATIONAL MIGRATION
AND ETHNIC RELATIONS

Rainer Bauböck

Multinational Federalism: Territorial or Cultural Autonomy?*

1. Introduction

One of the major tasks for theories of democracy is to reflect on what can be done to prevent conflicts between national and ethnic groups from turning nasty.[1] As Rogers Brubaker (1998) has persuasively argued, in most cases there are no "solutions" for national conflicts, at least not in the sense of stable equilibriums of power or permanent arrangements that can be rationally endorsed by all sides.[2] However, even if national conflicts may be intractable because there is so little common ground between irreconcilable claims, some arrangements may lead to a heating up of nationalist passions while others allow for a cooling down.

Occasionally it has been suggested that the nastiness comes from the nationalist craving for territory. The idea is roughly as follows: The modern state is a territorial monopoly of legitimate violence. Nationalists want to achieve self-government for their own nation. A universal principle of territorial self-determination for nations is a recipe for endless war, because almost any given territory that could form a viable state can be claimed by many different national communities (Gellner (1983:1). However, if one adopts a 'subjective' definition of nations as communities of individuals who subjectively

profess a national identity, then these communities' desire for self-government can presumably be satisfied more universally and more peacefully if they rule only over their members rather than over territory that includes people who do not see themselves as belonging to the same nation. Self-government for non-territorial nations appears to resolve the problems of rival claims, of contiguity and of size. The boundaries of constituencies are unambiguously defined by voluntary declaration of membership; there are no more exclaves and enclaves because membership is no longer connected to territorial residence; and there is no obvious minimum size for viable self-government of groups that exercise no territorial sovereignty.

Most advocates of such non-territorial solutions do not regard them as fully replacing territorially based polities, but envisage instead a dual form of self-governance where individuals would be both citizens of territorial states and members of autonomous non-territorial communities. Nations could thus no longer aspire to sovereignty, which is just as well, because such downgrading of their claims is probably conducive to more peaceful relations between them.

The idea of non-territorial cultural autonomy was first systematically developed by the Austrian socialists Karl Renner (1902) and Otto Bauer (1907) who saw it as a way of overcoming the national and linguistic conflicts within the late Habsburg Empire that paralysed the socialist movement. However, Bauer in particular regarded national identity not only in instrumental terms. Against the orthodox Marxist tradition he affirmed that nations would not vanish but thrive under socialism. In our times, Yael Tamir has provided the most systematic

defence of a similar perspective. She suggests that nations are entitled to self-determination (by which she means a right of individuals to determine their own national identity and a corresponding right to a public sphere where their culture is expressed), but not to comprehensive self-rule (Tamir 1993:69-77). Other authors have occasionally hinted at the desirability of non-territorial solutions as a remedy for endemic violence in nationality conflicts. Gidon Gottlieb (1993:47), for example, suggests a functional approach to territorial disputes that avoids the all-or-nothing features of territorial sovereignty and "involves the demarcation of different layers of lines for different purposes". In a later commentary he goes far beyond this modest proposal by advocating "the eventual extension of the system of states to include alongside it a system of nations and peoples that are not organized territorially into independent states at all" (Gottlieb 1997:167).

The idea of non-territorial solutions to national conflicts is prima facie attractive and plausible. This is why it is worth engaging with it. The purpose of my paper is, however, to cast some doubts on the general desirability and practical feasibility of cultural autonomy as an alternative to territorial arrangements. In contrast with Tamir, I think that all national conflicts are driven by a desire for self-government. While cultural liberties and protection can and should be offered on a non-territorial basis, the desire for self-government has always a territorial component that must not be ignored in the design of institutions and settlements that are meant to prevent the escalation of these conflicts.

2. Two kinds of political boundaries

Boundaries of polities are of two kinds – they define a territory or a group of persons. Independent states always combine both types of boundaries. States establish a political authority within a well-defined territory and for a particular population that is subject to its rule. All modern states distinguish furthermore those whom they regard as their nationals from non-nationals, who are subject to their laws as long as they reside within their territory but are not considered members of the polity. In democratic states, finally, the members are citizens who participate in the self-government of the polity.

For independent states, the two boundaries are normally broadly congruent. It is rather irregular if a majority of nationals live outside the state territory and even morne irregular if a majority of permanent residents in the territory are not nationals. In the former case, most citizens are not subjects, in the latter most subjects are not citizens. Of course, mass migration produces sometimes quite significant incongruity of both kinds. Liberal democracies ought to (and increasingly do) respond to this by terminating the transmission of citizenship through ius sanguinis after the first generation born abroad, by extending most rights of citizens to permanent residents and by facilitating access to citizenship through ius soli, naturalization and the toleration of dual nationality (Bauböck 1994).

Yet it is not at all obvious why polities must combine both kinds of boundaries. Imagine, first, a purely territorial regime. Of course you should not think of an uninhabited territory. All political rule is rule ultimately rule over persons. Think instead of a regime that allows for a free flow of individuals over its borders and treats everyone as a

member of the polity who takes up residence in the territory. Such a polity can be described as purely territorial because it no longer exercises control over its membership. This is not a fancy utopia. The federal provinces and self-governing municipalities within democratic states are polities of this sort.[3] They do not control their own borders and they have to accept immigrants from other parts of the state as local citizens.[4] Independent states control their borders in order to maintain their boundaries of membership. Only nationals have an unconditional right to enter or return. For provinces and municipalities, borders merely define the range the persons who will be subject to the local political authority.

Federalism in its broadest sense is a conception of multilevel governance within nested polities. Even formally unitary states establish institutions of local government and local citizenship. Therefore the experience of being a member of a purely territorial polity is actually shared by nearly all citizens of democratic states. This is generally ignored because of the pervasive (and pernicious) impact of the notion of sovereignty on our views of what defines a political community.

Political communities whose boundaries are purely "personal" are much harder to find. Of course one could suggest that voluntary associations in civil society are self-governing bodies without a territorial boundary. The experience of membership in non-territorial polities would then again be shared by a great majority of citizens in liberal democracies. Yet to call such associations political communities would be similarly misleading as to call an uninhabited territory a state. A political community has a shared political authority with the power to make and enforce laws and the task to provide those under

its rule with essential public goods. We can say that such a community is self-governing if its institutions include a system of political participation or representation that makes the will of those subjected to the laws the ultimate source of political legitimacy. Let me give an illustration: A territorially dispersed linguistic community that collects contributions from its members to establish its own private schools does not thereby become self-governing in the political sense. However, if such a community had the power to tax its members in order to finance a system of compulsory education in its language it could well be regarded as a non-territorial polity. Further below I will show why such polities with purely personal boundaries are quite exceptional. Here I only want to emphasize the general point that self-government is not an exclusive attribute of independent states – both regional units of government and autonomous cultural communities can be regarded as political communities even if the scope of issues on which they can make collectively binding decisions may be rather narrow.

I have suggested to search for more or less pure types of polities with singular rather than double boundaries merely as a way of opening up the field for further investigation without being blinded by dogmas of sovereignty. This distinction is not meant to suggest that at substate levels all polities are of either the one or the other type. In fact, for answering our initial question about national conflicts the more interesting cases are mixed ones such as federal provinces that "belong" to a national minority or culturally defined communities who can exercise collective rights only in regions where they have sufficient numbers.

Such mixed regimes raise the question how the two kinds of boundaries relate to each other. As a hypothesis I want to suggest that there is a trade-off between them. In liberal democracies, a stable and generally acknowledged territorial boundary, which is roughly congruent with the citizens' sense of belonging to a common polity, allows for flexible and low-key boundaries of membership. If independent liberal states have secure territorial borders that are not threatened by other states they can more easily accept a blurring of citizenship boundaries through multiple nationality and equality of rights between citizens and foreign residents. Non-overlapping territorial jurisdictions allow for overlapping boundaries of membership. This is not only true for independent states, but also for federal provinces in multinational states. When a national minority has a secure majority in a province where it exercises control over the government it will have less reason to rally its members against its own internal minorities and against federal majorities. If, however, internal territorial borders are either contested or exposed to frequent revisions, then the membership boundary will become much more relevant for defining the regional polity.

It is therefore a mistake to think of territorial borders as generally hard and non-territorial ones as soft. The borders of sovereign states are hard because, and insofar as, they are used to buttress a membership boundary. Gottlieb (1997:166) advocates soft international border regimes in cases "where ethnic separation cannot occur without dire consequences, where nations are divided by state boundaries, and where two communities lay claim to hegemony in the same tract of land".

We can add to this list the softening of internal borders in the process of forming supranational federations. Within the Schengen area of the European Union geographic movement is more or less unconstrained, although access to citizenship remains under tight control of the member states. Soft borders are thus not those that can be easily moved, but those that allow for free movement and flexible divisions of power across units. In this sense, internal territorial boundaries within liberal states are generally stable but soft. Boundaries of membership, on the other hand, can be quite hard if they are mutually exclusive and ascriptive rather than chosen (van Parijs 2000:243). One task may then be to find political arrangements that allow for self-government of national communities but that avoid a hardening of their boundaries of identity.

3. Territorial arrangements

There are three basic types of territorial solutions to conflicts over national demands for self-government. The first one is to (re)draw or erase international borders inside disputed territories. This may involve consensual partition (as in the case of the CSFR in 1992), unilateral secession leading to an independent state (as in the case of Slovenia in 1991) or to unification with a neighbouring state (as in the case of parts of the Austrian province Burgenland that joined Hungary after a plebiscite in 1921), or consensual unification of two states where there is a sense of common nationhood (as in Germany in 1990).

The second solution is territorial federation if internal borders are drawn in such a way as to allow groups who demand self-government to form regional majorities. This is the defining feature of multinational

federations that distinguishes them from purely regional federations such as Australia, Austria, Brazil, Germany or the USA. In these latter countries internal borders have historical significance and are associated with regional identities, but they are not designed to accommodate the desire for self-government among national minorities. Drawing borders within federal states can even be consciously used to prevent the formation of national-minority/regional-majority polities by dividing their territories, by extending state borders to include a larger national majority population, or by delaying self-government until national majority immigrants form the regional majority as well.[5]

In federal states, all citizens are members of both a regional polity and of the larger federation and all regional polities have similar powers and are equally represented in the institutions of federal government. Standards for what counts as equal representation vary between two poles: one model is equal representation of provinces independently of their size (as in the U.S. Senate), the other model is equal representation of citizens and therefore proportional representation of provinces according to their size (as in the German Bundesrat). Both standards of equality create a problem of asymmetry for multinational federations such as Canada where the Anglophone majority tends to regard the federation as a regional one of ten equal provinces whereas the Québècois see it as a federation of two language groups, which leads them to demand larger powers for the only Francophone province. Asymmetry is endemic in multinational federations, even in cases like Belgium where the two major language groups are of roughly equal size. Stable internal borders and equal powers of constitutive units are a general feature of successful federal

constitutions, but boundaries of national membership and demands for powers of self-government are constantly changing in response to demographic, cultural and political developments.

This problem suggests a third type of solution that does not require symmetry and for which Daniel Elazar (1987:7) has suggested the term federacy: "[A] larger power and a smaller polity are linked asymmetrically in a federal relationship whereby the latter has greater autonomy than other segments of the former and, in return, has a smaller role in the governance of the larger power". Federacy arrangements avoid the difficulty of fitting special demands for self-government into the constitutional architecture of the larger polity. They can be tailored to special circumstances and may be adopted by both unitary and federal states. Elazar's definition of federacies could also apply to non-territorial arrangements, but the concept is meant to cover various kinds of special territorial status such as for Indian tribal reservations in the U.S. and Canada or for island polities like the U.S. Commonwealths of Puerto Rico and the Northern Marianas, the British Isle of Man and Channel Islands, the Finnish Åland islands, and the Portuguese islands of Madeira and the Azores (ibid:55-58).

In order to make the case for non-territorial arrangements initially as strong as possible I will focus here merely on the disadvantages of these territorial solutions. A general difficulty is how to delimit territorial jurisdictions. If one advocates territorial separation, the question is how to define the constituencies within which a plebiscite about secession or partition could be held (Moore 1998:134). If the preferred arrangement is federal devolution in order to form a regional majority for a national minority, the question is whether to make

these autonomous territories as large as possible so as to minimize the number of minority members who live outside the autonomous region, or as small as possible so as to minimize the number of federal majority members who are subjected to the self-government of the minority.

This problem of indeterminacy can be circumvented in two different ways. In many cases it does not arise because borders themselves are not contested, only the political status of the territory is. Borders may be accepted as given for reasons of natural geography (as with small islands) or political history. Nationalists believe that history has determined quasi-natural boundaries of the territory which they claim. They are normally unwilling to make territorial concessions in order to gain numerical majorities. The secessionists of the Parti Québecois would not consider holding a referendum in a territory smaller than the present province in order to secure a majority by excluding Anglophone and indigenous regions.

The second solution is the opposite one. It regards borders as completely contingent and derives them from subjective affiliations of membership. Harry Beran (1984 and 1998) has suggested that would-be secessionists should determine the constituency within which a plebiscite is to be held. In a series of such votes, every group that is willing to change its territorial affiliation and is capable of mustering a regional majority for this goal can change territorial boundaries. The only case where a similar procedure was actually applied is the secession of the Kanton Jura from Bern (Laponce 1987:185-6). This procedure yields, as Beran claims, always determinate results. It opts for minimizing the inclusion of individuals who would rather belong to a different polity. However, it does not necessarily yield stable

borders, which are a requirement for consolidating democratic self-government, and it is hardly conducive to building inclusive and liberal post-secession polities.

In a perspective that regards nationalism as a major source for violent conflict and oppression it is imperative to consider secession as a means of last resort that requires stronger justification than either dubious territorial claims derived from a nationalist reading of history or the mere subjective preferences of regional majorities. I agree therefore with a grievance approach that puts a burden of proof on the shoulders of secessionists (Buchanan 1991 and 1997), which involves showing (a) that they have suffered serious injustices which are unlikely to be corrected within the present polity, and (b) that secession is a suitable remedy that will alleviate such grievances for all concerned rather than lead to protracted conflicts and oppression of other minorities.

If partition and secession are means of last resort, are the other two territorial solutions then means of first resort? I think they are, at least for certain types of conflicts, but it is important to specify conditions under which they may apply, difficulties for implementing them, and constraints that should be respected.

We are unlikely to endorse territorial devolution as a first-best strategy if we regard it merely as a matter of prudence. Devolution may be the only way to maintain cohesion in a polity split by internal national cleavages. Yet governments whose foremost concern is to secure the territorial integrity of the present state are likely to offer devolution only as a grudging concession after other means have failed to appease minority nationalists. If, however, we consider self-

government as a primary right that is not a priori attached to sovereign statehood, but that may be exercised at various levels within nested polities, then the demands for devolution can also be articulated in the language of democratic legitimacy and justice. National minorities whose members have consistently supported claims to their own institutions of government within an area where they form a majority of the population will then have a prima facie right that such demands be met. Central or federal governments should consequently engage in good faith negotiations about arrangements that will satisfy such demands but should also try and secure a sufficient level of integration and self-government for the wider polity.

Transforming unitary states into federal ones responds to both concerns. Federal models combine the devolution of power towards constitutive units with an aggregation of power at federal levels. Integration is achieved through individual rights attached to federal citizenship as well as equal powers and representation of constitutive units in the federal government. Federal devolution is always a more complex solution than territorial partition. It cannot fully avoid the difficulties of boundary-drawing, although it reduces the stakes involved, and it adds the further task of allocating political powers between constitutive units and federal authorities. I have already pointed out the major difficulty with federal arrangements, which is how to fit the asymmetric and constantly shifting relation between national minorities and federal majorities into a federal framework that is meant to be symmetric and stable.

Federacies have the comparative advantage of allowing for more flexibility, but this comes at the price of a lower level of integration.

The citizens of the territory with special status do not only enjoy special autonomy, but lose also some rights of federal citizenship. For example, Puerto Rico is exempted from paying most federal taxes but its citizens are largely deprived of federal representation.[6] It may still be tempting to regard federacies as possible solutions for a protracted struggle within a multinational federation that paralyses the democratic process. However, as the Puerto Rican case illustrates, a federacy status can be a rather unstable equilibrium that leaves the alternative options of independence or full federal integration on the political agenda. "Upgrading" a federacy towards federation is easier than "downgrading" the status of a constitutive unit of a federation to that of a more loosely associated "commonwealth". Federacies are also usually the product of particular historical circumstances, often of colonial relations. It would be quite odd to create such a status for a province that is presently enjoying full federal status. In most cases of multinational federations or states involved in a process of federalization (such as the UK or Spain) there seems to be no feasible or desirable alternative to muddling through by searching for a balance between federal standards of equality and the recognition of asymmetry.[7]

Within liberal democratic regimes, all territorial solutions of a federal type impose certain constraints on local self-government. In order to make federal citizenship meaningful and relevant, citizens of the local unit must enjoy rights against their local government that are protected by federal institutions. Individual rights of federal citizenship must be basically the same throughout a federal state, whereas in federacies there will be sometimes significant exemptions

from federal jurisdiction (as in the case of U.S. Indian tribes and nations). If there is no longer any relevant federal protection, the federacy simply dissolves into an alliance between independent political entities. Of course, from a normative perspective, all legitimate governments must respect the human rights of all subjects under their rule. The necessary institutional guarantee for this is an independent judiciary. In this respect it does not really matter whether a provincial government has to respond to a provincial, federal or international court. However, federal integration is itself a normative value insofar as it responds to legitimate demands for self-government and insofar as the alternatives of unitary government in a multinational society or territorial separation are inherently undesirable.[8] Under such conditions there are good reasons for assigning federal institutions the task of protecting basic liberties and rights of citizens throughout the federation.

An interesting dilemma arises with regard to those rights of federal citizenship whose exercise may subvert the conditions for regional minority self-government. The most important liberty of this sort is free internal movement and settlement with the borders of the larger state. Must national minority governments grant this right unconditionally even if it leads to massive immigration by members of a federal majority that will eventually outnumber the national minority? If they have to accept this, can they then impose restrictions on the free use and public recognition of the majority's language so that the immigrants will be gradually assimilated into the minority? These are hard questions and I will not try to give an answer here. I list them in order to show the complications that territorial solutions

have to cope with.

I consider these to be internal difficulties of federal responses to national conflicts rather than sufficient reasons for abandoning territorial solutions in favour of non-territorial ones. There are two other arguments that could be made why, or in which cases, territorial arrangements cannot work at all. The first is that they increase the danger of a territorial break-up. In this view, devolution is already half a step towards secession. It whets the appetite of nationalist political leaders for more power; it changes the significance of internal borders from administrative devices to markers of political autonomy; it inflates the bureaucracy by introducing additional levels of administration and paralyses the central institutions of government, thereby diminishing the general trust in the viability of the polity not only among minority members, but also among the majority population. These charges may not be implausible in specific circumstances, but they cannot be accepted as a general objection.

First, the contrasting hypothesis has prima facie equal plausibility: demands for secession may just as well be fuelled by repression as by concession. Moreover, repression and concession are not equally legitimate options for a liberal democratic government. And if a liberal government in a society deeply divided by national conflict refrains from repression, it will be nearly impossible to remove the options of devolution or secession from the political agenda. Minority nationalists will remain free to organize and mobilize for their political goals and they will interpret the imposition or maintenance of a unitary government as a grievance that legitimates their demands. Ultimately, the test between the two contrasting hypothesis must then be empirical.

The longevity of democratic multinational federations like Canada despite pervasive pessimism among its citizens, the federalization of Belgium and the trend towards devolution in several Western European unitary states (among others Spain, the UK, Italy and even France) should count in favour of the federal hypothesis. The break-up of the Soviet Union, Czechoslovakia and Yugoslavia, on the other hand, is no counterevidence because these countries broke apart before the consolidation of democracy had been achieved.

Secondly, the argument operates only at the prudential level, whereas the federalist stance combines normative and prudential considerations. Unless the defunct idea that a proper liberal democratic or republican government must be necessarily unitary rather than federal is revived, there is no good reason why one should oppose demands for devolution on grounds of justice.

Of course the opposite statement that all states should be federal makes just as little sense. The argument for devolution on grounds of democratic legitimacy applies only to multinational societies. Whether or not a mononational society should be organized as a regional federation or as a unitary polity is a question to which there is no general answer. Even in multinational societies there are various ways of responding to national minority claims for devolution. Instead of federalizing the polity as a whole, unitary states may retain their basic constitutional architecture and grant the minority special powers of self-government under the terms of a federacy.

The argument for multinational federalism can, however, be seen as an extension of a normative argument suggested by James Madison in the Federalist Papers. In his view, federalism is a system of checks

and balances directed against the danger of faction, which can take the form o f either m inority or m a jority tyranny.[9] By subdividing the polity it becomes more difficult to mobilize a democratic majority that could abolish individual liberties or ignore minority interests. Because national minorities conceive of their interests as rather homogenous and as covering a broad range of policy areas, they are among the groups most likely to be 'permanent minorities' and victims of majority tyranny. National minorities have therefore no good reason to respect the integrity of the polity and the legitimacy of its political authorities unless they enjoy strong institutional guarantees that their interests will be taken into account. Madison's argument for federalism should thus be applied to national minority conflicts by subdividing the polity in such a way that minorities are able to block or annul majority decisions directed against their fundamental and legitimate interests.[10]

Concerns about the legitimacy of multinational federalism can still be raised in a more roundabout way. One could object to such arrangements because they violate norms of equal treatment. Just as it is impossible that every conceivable nation could form an independent state, so no possible subdivision of a federal state will equally satisfy all conceivable claims to territorial self-government. One can then easily construct a reductio ad absurdum by arguing that eventually every small neighbourhood would form a self-governing territory.

This brings me to the second basic objection against territorial solutions, which is that they only apply to groups of sufficient size and territorial concentration. We can refute the claims of neighbourhoods

to federal status because autonomous governments operating at this level could not provide their citizens with those public goods that are the basic justification for establishing coercive powers of government in the first place. I hasten to add that liberal governments may have to tolerate limited autonomy for small religious groups that want to exempt themselves from obligations of citizenship that conflict with their faith (Spinner 1994:chapter 5). These are special cases in which exemptions come at the price of forgoing considerable benefits of federal citizenship. So there is little danger that such concessions will trigger a proliferation of demands for self-government. But what about ethnic or linguistic groups that are sufficiently large but not territorially concentrated? Territorial devolution obviously cannot accommodate the demands of such dispersed groups, at least not if Stalinist policies of resettlement are ruled out.

One answer to this is that territorial concentration is itself a relevant factor in the emergence of a collective desire for self-government. A minority language will acquire different functions in contexts where its speakers are territorially dispersed or concentrated. In the former case, it is likely to be reduced to the role of a "private language" for communicating within the family or over long distances with friends and relatives elsewhere. The minority language may have a certain relevance in public communications, but it will mainly serve as a medium used in translations that facilitate communication with the institutions of mainstream society. This makes it implausible that the speakers of this language would come to think of themselves as a distinct political community that ought be self-governing within the larger polity. In contrast, a minority language that is spoken by the

great majority of a regional population will serve as medium for communication for a much larger set of social roles (Laponce 1987). In a thoroughly democratic regime the personnel of local political authorities are more likely to be drawn from the local population than from elsewhere in the country where a different language is spoken. So a regional language will also serve as a medium for informal communication within public institutions and between the citizens and public administrations even if it is not formally established as the language of government business. The demand for such establishment and for more comprehensive powers of self-government is much more likely to emerge in such contexts than in those of dispersed identity groups.

This answer is not fully sufficient because there are both minorities with sufficient concentration for whom territorial autonomy is not a relevant option and dispersed communities with a strong desire for self-government. The former include some ethnic minorities of immigrant background and native cultural groups that have built a strong regional basis but have no self-conception of forming a political community in that particular territory.

In certain urban districts of large cities like N ew York and London, or in larger areas of Southern California and Southern Florida m a jorities of the population are of recent im m igrant origin; in Toronto estim ates for 2001 are that a m a jority of the total population is foreign-born. Such figures are, however, irrelevant for our concern. They refer to statistical categories rather than to self-conscious and united com m u n ities. Im m igrants from a d iversity of origins are perceived as homogeneous groups m erely because of racial or religious

stigmatization in the wider society. "Arabs" from Morocco, Algeria and Tunisia in France, "Asians" from India, Pakistan and Bangladesh in the UK, or "Hispanics" in the U.S. from Mexico, Cuba, Central America and the Caribbean may share a common language or religion and certain experiences of discrimination, but they are not bound together by a desire for collective self-government. Moreover, even among groups of the same national origin, the desire for self-government is either oriented towards the country of origin, and leads then to engagement in diaspora and homeland politics, or towards the larger receiving society where immigrants and their descendants aspire to full citizenship. The ethnic community in the society of immigration is not regarded as a national group that has a right to self-government in the territory of present settlement. And if a group of immigrants had the specific intention to establish their own government in the receiving society, the state of immigration would be perfectly entitled to deny this demand and to exclude them from settlement in the first place.[11]

Even among the native population not all cultural distinctions that coincide with territorial boundaries give rise to claims for self-government. For example, in Germany, Bavaria has a large Catholic majority while other provinces like Schleswig-Holstein and Brandenburg are solidly Protestant. At the time of Bismarck's Kulturkampf against Catholic forces in the Second German Reich, this religious difference was indeed a relevant aspect of regional autonomy. In today's Germany, which is not only a liberal democracy but also a rather secular society, it would be quite absurd to interpret the internal borders of the federation as a guarantee for the regional

self-government of religious communities.

These considerations show that although the territorial concentration of cultural identities contributes to the emergence of a polity consciousness among a subsection of the citizenry, it is not itself a sufficient cause. Such a consciousness will also depend on the nature of the cultural difference (linguistic ones being generally more relevant than religious ones), and on other factors like a history of past self-government or of exclusion from the political community.

4. Non-territorial arrangements

In order to determine whether there is a need for non-territorial federalism we must consider whether valid claims to self-government can also arise among communities that are territorially divided or dispersed. In section 5, I discuss an empirical categorization of such groups and argue that in most cases, insofar as legitimate demands for self-government are at stake, territorial solutions are at the core of their demands and are also more conducive to conflict prevention. In this section I present a theoretical typology of non-territorial arrangements and consider objections against the feasibility or desirability of the various models.

We can construct three hypothetical non-territorial solutions to ethno-national claims for self-government that parallel the three territorial solutions discussed in the last section: Boundaries of membership could be drawn to create independent polities, constitutive units of a federation, or federacies with special autonomy but only partial citizenship in the wider polity.

Non-territorial polities

Independent polities with purely personal boundaries are difficult to imagine. I can think of three possible interpretations of this idea: territorial states could be abolished altogether; their powers could be minimized; or their citizenship could be deterritorialized.

In the first interpretation non-territorial units would become like sovereign states. Over most of its history humankind has been organized into political entities whose territorial boundaries were derived from membership rather than vice versa. Societies of hunters and gatherers or of nomadic herdsmen as well as most societies engaged in subsistence agriculture were based on extended kinship systems. Even if they occupied a fairly well-defined and limited territory, the basic political unit itself was not conceived in territorial terms. A second relevant feature of many 'early' human societies is what German sociologist Niklas Luhmann describes as 'segmentary differentiation' (Luhmann 1998:634-5). A community that grows too large to sustain its members will split up and create new independent units that are structurally similar to the old one. Conflicts resulting from demographic growth and scarcity of natural resources are thus resolved through drawing new boundaries between non-territorially defined units. This is relevant for our theme because it shows that the territorial organization of political authority is not an anthropological constant. Alternative, non-territorial models cannot be ruled out a priori.

However, in the context of modernity the idea of replacing the system of territorial states with one of non-territorial polities is most certainly a weird fantasy rather than a realistic utopia. Imagine a society where core tasks that are now associated with territorial

legislation of sovereign states, such as external defence, internal security, and the power of taxation, were devolved to national identity groups so that all their members and only their members would be subjected to the collectively binding decisions of the community's political authorities independently of where these members live. The impacts of such a regime are obvious. Solidarity within neighbourhoods and workplaces could only be based on human decency and spontaneous association but no longer on the fact that the same laws apply to all. People living next to each other would contribute to separate tax funds, serve in different armies, be protected by their own police forces. It does not take a lot of imagination to regard such a society as close to a Hobbesian state of nature.

The second interpretation maintains a role for territorial states but conceives of them merely as an institutional framework for the coordination of certain tasks delegated to them by autonomous non-territorial communities. I understand Chandran Kukathas' vision of a multicultural society as a confederation of this kind. In Kukathas' (1998:690) view, the political institutions of territorial government would have no other task than to maintain order and peace, "leaving people free to pursue their own ends, whether separately or in concert with others, under the rule of law". Common citizenship in such a minimal state would have little substantive content. Unity and stability would not result from democratic participation or representation in the institutions of a common government, but from a spontaneous convergence of moral practices among different communities. "The product over time is a commons which acquires the character of a public space without a sovereign power" (Kukathas 1997:84). Different

from the first interpretation, this libertarian utopia retains the state as a territorial monopoly of legitimate violence, but abandons the aspiration for political self-government properly speaking and replaces it with associational self-government of groups in civil society.[12] I do not think that this is a coherent or attractive idea. A common citizenship is not only an essential resource for solidarity and egalitarian politics across cultural divides but also for maintaining a rule of law and checking on the abuses of political power. Liberal political institutions depend upon regarding those who exercise such power as trustees or agents who represent a political community that is the ultimate source of their power. Moreover, if territorial state power is dissociated from political community, then some associations of civil society will grab this footloose and disaggregated power and turn into little states.[13] They will provide essential public goods exclusively for their members, will establish internally coercive regimes and will regard rival associations as potential aggressors.

In the third interpretation the political community is not dissociated from the state through devolution towards internal non-territorial groups, but is instead expanded geographically to reach beyond state borders. This vision of deterritorialized and postnational citizenship does not originate in normative political philosophy, but in sociological and anthropological research on contemporary migration.[14] The empirical evidence that is listed in support of the hypothesis includes: a global human rights discourse that has diminished the importance of national citizenship for access to rights (Soysal 1994, Jacobson 1996); a rapidly growing and increasingly tolerated phenomenon of multiple nationality that for some observers heralds a more

cosmopolitan and less state-centred conception of citizenship in a postnational world (Spiro 1997); and a direct involvement of migrant populations in elections and other political developments in their countries of origin (Basch et. al. 1994).

As I have already pointed out above, international migration generates an increasing incongruity between the territorial and non-territorial boundaries of independent polities. However, it would be wrong to conclude that this mismatch is tantamount to dissociation. The transnational networks of migrants provide no bases for building deterritorialized political communities with their own institutions for making collectively binding decisions. Dual nationals and migrant communities engaged in homeland politics obviously remain tied to the territorially defined communities from where they have originated. Similarly, the extension of rights of foreign nationals in liberal democracies does not mean that citizenship has been replaced by 'personhood' as the universal basis for claiming rights (Soysal 1994). This development shows even a strengthening of a territorial conception of societal membership in which access to rights depends on residence rather than on nationality.

Some of the literature on globalization goes much further in postulating a general decline of political community and citizenship (Ohmae 1991, Guéhenno 1994). I agree rather with those political theorists who advocate an extension of federal models of nested citizenship to supranational and ultimately global levels (Held 1995, Hoeffe 1999).[15] An attractive vision of cosmopolitan citizenship would thus not subvert self-government at the level of states, but would increasingly embed it in additional layers of democratic community.

I find none of the three suggestions for transforming independent territorial polities into non-territorial ones plausible or attractive. Ruling out these ideas about a general deterritorializion of political community helps us to focus again on the initial search for arrangements that respond to national minority claims for self-government within the framework of territorial states.

Mixed federations

Once we exclude the possibility of independent non-territorial polities, we can consider various mixed models. The scheme developed by Karl Renner tries to combine territorial and non-territorial federation in order to create a balance of power between national communities and central state institutions. Its core features are: (1) Nations are constructed as public law corporations on the basis of a nationality register in which individuals declare their affiliation.[16] (2) Nations are represented at the state level in separate national councils elected on the basis of this register. These councils have the power to legislate in matters of cultural policy and education and to tax their co-nationals in order to finance separate schools, universities, theatres and museums. (3) The nationality register serves also for creating new territorial administrative units with a maximum number of mononational units and a residual number of binational ones. In the binational units public institutions are bilingual and the regional councils of each nation must agree on policy decisions concerning both communities. In a mononational unit the language of the majority is the only language of public institutions, but the linguistic minority has the right to legal aid from its national council.

The individual declaration of membership thus determines the shape of territorial units and allows for some representation of geographically dispersed minorities. A peculiar feature of this model is that national communities are autonomous but not really federated. Each national council decides separately for its own community, but there is no common assembly where the delegates of national communities have a say with regard to general legislation. This is different in territorial federations where two chambers of parliament represent the citizens in their capacity as members of the constitutive units and of the wider polity respectively. In the mixed model, integration at the federal level is not achieved through power-sharing but through a division of powers that separates the political agendas of nations and states.[17]

Renner's and Bauer's scheme proposed a whole new federal architecture. A comprehensive model of that kind has never been tested, although several states have experimented with more limited forms of cultural autonomy based on individual declarations of national identity.[18] One can certainly imagine different models of non-territorial federation, but I think they would all suffer from three problems rooted in the core idea. First, structurally dissimilar political communities are difficult to integrate into a stable federal framework; second, far reaching cultural autonomy will lead to a segregated society with little solidarity across group boundaries and, third, identity-based demarcations of constitutive units provide perverse incentives for internal oppression within national communities. Let me call these the problems of dissimilarity, segregation and internal oppression.

The first objection is that a mixed regime will fail to achieve federal integration because the non-territorial communities and the

encompassing territorial polity are different in kind. This dissimilarity problem exacerbates the asymmetry that is endemic in all forms of multinational federalism. In a territorial federation, the structural similarity of the encompassing and the encompassed units allows for a flexible vertical division of powers between levels of government. A few tasks, such as military defence, that have been traditionally associated with sovereignty remain a reserve of federal governments. Most other powers can be devolved to various extents. There are federations where even foreign policy or immigration control have become partially devolved to provincial governments.[19] This flexibility allows for a broad diversity between federal systems as well as for internal experimentation and occasional revision that adjusts a division of power to the particular circumstances and current needs of a society.

In a federation whose constitutive units are non-territorial corporations the vertical division of powers must be narrowly constrained. Assuming that such a state would meet most of the tasks of current liberal democracies, it would need to have a much stronger central government than territorial federations. As I have already pointed out, the core tasks of government are intimately linked to a territorial monopoly of violence and cannot be devolved to non-territorial units without triggering a process of disintegration. This constraint subverts the very idea of federation. Units that cannot conceivably exercise themselves the basic tasks of government are no longer constitutive. A non-territorial federation of this sort cannot be imagined as emerging from a process of integration between previously or potentially independent communities (Norman 1994). The federal dimension of the polity is then a priori reduced to a quite limited form

of devolution in specific policy areas. In such a society the central government would be perceived primarily in its coercive role[20] while the desire for self-government among national communities would be continuously frustrated. Why should national minorities accept such a weak regime of cultural autonomy coupled with strong territorial powers of a government that in their eyes represents the national majority? It is much more likely that they will continue to fight for their own territorial power bases that would eventually allow them to demand much more substantive forms of self-government or to challenge the territorial integrity of the larger federation. A mixed federation would thus pull either towards a unitary state that suppresses the demands of its national minorities or towards a weak confederation that dissolves into warring national factions fighting for territory.

If cultural autonomy offers too little to satisfy nationalist aspirations for self-government, it may often be too much from the perspective of a well-integrated democracy. The second basic objection against non-territorially defined constitutive units is that they are likely to generate an excessive segregation between communities living in the same territory. In the absence of common cultural and educational institutions a sense of shared citizenship in the larger polity can hardly emerge. Civil society would be split into separate public spheres and population segments that are at best indifferent and at worst hostile towards each other. If one considers, with T. H. Marshall (1965) and many contemporary liberal theorists,[21] common school education as an important aspect of democratic citizenship, cultural segregation of this sort in multinational societies should be much less attractive than the difficult task of maintaining a common curriculum and, as far as

possible, mixed classrooms.

Cultural autonomy would also reproduce, rather than reduce, inequalities between identity groups. A wealthy and numerically large group will be able to establish a much more comprehensive system of cultural and educational institutions for its own members at lower rates of taxation while poorer and smaller minorities will have to do without theatres or universities.[22] Compared with an integrated system where minority cultures are present within institutions of the wider society this may well reduce the chances of cultural survival. Furthermore, as Laponce (1987) points out, territorial government offers unique advantages for protecting minority languages. Under a mixed regime, regional majorities will be able to attract minority speakers to their language because it provides them with greater mobility and access to positions. For the minority, cultural autonomy means that its language will gradually lose its value as a tool for communication within a wider social environment and over a full range of social roles.

However, unlike academic linguists, liberal theorists need not be strongly concerned about voluntary language shifts.[23] They care more about the rights and well-being of individuals than the preservation of languages. From a liberal perspective the more disturbing impact of self-government for non-territorially defined nations is that it creates a strong incentive for the emergence of internally illiberal communities. This 'internal oppression problem' is the third basic objection that can be raised against non-territorial federalism. For the political leaders of national communities, the numbers and mobilization of their members is their only power-base. They must be interested in

maintaining a strong social pressure for conformity within the group and adversarial relations with other groups. Individuals of mixed origins, those who want to assimilate into another culture, and dissenters who oppose the national agenda will be exposed as foreign elements or traitors to the cause. The great virtue of territorial systems of representation is that legislators elected on ideological or identity tickets are accountable to citizens who share neither their ideas nor their background. This source of solidarity between citizens and constraint on the abuse of power cannot operate in a purely identity-based system of representation. In mixed federations this effect can be somewhat mitigated. Yet within the nationality-based structure these problems of non-representation or internal oppression of 'misfits' will be unavoidable.

Making membership voluntary so that adults can freely determine and change their own national identity is not sufficient. First, it cannot apply to minor children who would be born into a national community either automatically by rules of descent or through decision of their parents (ius soli being by definition unavailable). Second, consent for adult membership must be mutual. Individuals cannot force their way into national communities who do not accept them.[24] A nationality register in which individuals anonymously state their nationality might make it impossible to control admissions. Widespread abuse of such rules in order to declare a "false nationality" (e.g. by lying about one's mother tongue)[25] would, however, undermine the capacity for self-government of the nationality that is the object of such manipulation. Therefore mutually consensual membership has to be assumed at least as a background norm. Third, and most importantly,

individual choice of membership is necessarily constrained, because only singular affiliations to a limited number of categories can be counted. Constitutive nationalities must be well-defined in order to participate in a stable system of power-sharing. Citizens cannot choose from an open-ended menu of possible identities. Their affiliations can also not overlap. On the one hand, counting mixed origin would give certain individuals dual membership, which violates the principle of one person one vote. On the other hand, including a category such as "other or undefined affiliation" would deprive some citizens of their vote within a constitutive unit. Rather than reflecting freely affirmed identities, a non-territorial scheme of representation would instead press them into the Procrustes beds of nationality-based jurisdictions.

These illiberal features and incentives of an identity-based system of self-government do not depend on whether the cultural basis of representation is language or religion. Generally, liberal theorists agree that governments must be neutral towards religious difference but cannot possibly be neutral with regard to the languages of public life. But the attempt to divide the polity into distinct and self-governing language groups on a non-territorial basis has some of the same implications as the attempt to define constitutive units in religious terms. And if there are, as I will argue below, justifications for such arrangements in exceptional circumstances, then both linguistic and religious demarcations of communities may have to be considered as permissible. The question of politically enforced religious affiliation does not arise within the constitutive communities once they are only made up of (presumably voluntary) adherents of a single faith. The real issue is which powers will be devolved to religious authorities

and to which extent internal legislation and jurisdiction may be based on religious law. In these regards, liberals will have more reservations against multi-religious federations compared to multi-lingual ones. Conversely, the issue of mixed identities is probably less salient in the former than in the latter because most religious systems of belief exclude syncretism or double affiliation. There will be, however, a serious problem of representation of non-believers and religious dissenters.

Models of federation with non-territorial constitutive units face thus objections that focus on the stability of the constitutional architecture, the horizontal integration between communities, and internal liberty within communities respectively. Taken together these three critiques make it very unlikely that non-territorial arrangements for self-government could lead to a cooling down of nationalist passions or a liberal transformation of national identities. I think that these objections are far more devastating than the endemic difficulties of multinational territorial federalism that I have discussed in the previous section.

Non-territorial federacies

The dissimilarity problem can be largely avoided in federacy solutions where the unit that enjoys special status is not defined territorially. Federacy circumvents the need for a general architecture that will allocate equal powers to all units. It allows for ad hoc arrangements that do not set a precedent for other units, which might claim the same powers. Non-territorial federacy can also avoid the difficulty of representing ambiguous identities. There is no need to assign every citizens of the federation to one and only one constitutive unit.

Individuals who want to opt out of the non-territorially defined federacy do not even have to leave their homes; they can simply declare that they want to be full citizens and put themselves under the general political authority. They will thereby automatically gain access to all those rights of federal citizenship from which members of the federacy are excluded. A good example for this is the Maori Electoral Option in New Zealand under which those who have declared to be of Maori descent can choose to be registered either in the general voters' roll or in a separate Maori role, whose voters elect representatives for the reserved Maori seats in parliament.

On the other hand, such federacies will still be plagued by the problems of segregation and internal oppression. The non-territorial power-base of their political authorities provides incentives for excesses of identity politics. They will also struggle with the difficulty of defining a division of powers that satisfies aspirations for self-government while leaving most of the core tasks of government within the territorial structure of political authority. Moreover, general reservations against federacies as violating norms of equal citizenship, which I have discussed in the previous section, apply just as well to their non-territorial variants. These objections are, however, not very strong. Federacies are, almost by definition, exceptional arrangements for special cases. They will therefore have to be assessed contextually. I will discuss cases where non-territorial federacy arrangements may be justified in section 6 below.

5. Divided and dispersed nations

The likelihood of illiberal regimes and of instability should be sufficient reasons for a general preference for territorial federal solutions. In multinational states with territorially concentrated minorities, cultural autonomy should not be used as an excuse for denying demands for territorial devolution. This leaves me with the task of examining divided and dispersed minorities whose special circumstances may still require an additional layer of non-territorial arrangements. I want to discuss five categories: exiled nations, divided nations without state, external national minorities, mixed territories, and territorially dispersed internal minorities. This empirical typology is neither complete (in the sense of exhausting all possible or real cases) nor are the categories mutually exclusive (some minorities combine features of several types). The purpose of this classification is then strictly heuristic. I want to find out which phenomena of territorial division or dispersal would call for non-territorial arrangements.

Exiled nations

In my view all nationalism is territorial in its aspirations. There are nations without a state of their own, like the Catalans, Basques, Scots or Québecois[26] (Keating 1996, Guibernau 1999), but there are no nations without a homeland. Yet there are nations in exile, for whom this homeland is the place from where they believe they have come and to where they aspire to return. A common origin alone, or a shared myth about such an origin, is not sufficient. A Jewish project of nation-building in Palestine emerged only with the Zionist 'ingathering

of the exiles' as a response to racist anti-Semitism. There is no comparable attempt to unite Europe's Roma population, which was a target of genocide, too. Emil Scuka, the President of the International Romani Union has recently stated the goal of his association: "We do not want a state, we want a nation". Yet he immediately reassured European governments that "all members of the Roma nation will continue to be subject to the jurisdiction of states" (Der Standard, 29.1.2001). In my reading, 'nation' is used here rather metaphorically to claim recognition as an ethnic and linguistic minority rather than self-government.

Nations in exile are different from ethnic emigrants whose state of origin recognizes them as citizens and as co-nationals. Even political refugees who have lost the protection of their citizenship normally continue to regard their state of origin as a home country to which they are linked by ties of cultural and national identity. In instances where national communities have been recently driven into exile by foreign occupation of their territory or by ethnic cleansing of mixed regions, the proper response to their plight is obviously territorial: They have a right to return and to rebuild their own institutions of government. Often, however, the clock of history cannot be turned back without causing even more injustice and suffering. For the children of foreign settlers the occupied country will become their own homeland. Arrangements for return cannot only depend on the original injustice of occupation but will have to weigh both the interests of present inhabitants who have not been involved in wrongful occupation and those of the exiled population. After more than one generation has passed much will depend on whether the exiled population is still

a marginalized and distinct group in the receiving country or already well-integrated.

In the case of Palestinian refugees in Arab states, for example, it seems to me that some recognition of a right to return must be an essential element of any comprehensive peace agreement, although this return cannot include a right to Palestinian self-government within the borders of pre-1967 Israel. The claims of the exiled Palestinians could still be honoured by building a sufficiently large and prosperous independent Palestinian state that could accommodate a large number of returnees and by regional cooperation and fairly open borders between Israel and its Arab neighbours. As John Bunzl (2001) puts it, Palestinians must also be able to relate to Haifa and Jaffa as their historical hometowns. Those who have lived there should be offered some option of return although they would have to abandon territorial claims to self-government that includes these cities.

Divided nations without state

The Kurds illustrate a second kind of territorial dispersal. Although large numbers of Kurds have migrated to cities or countries outside their traditional homelands, they still can muster regional majorities in large areas where they have lived for centuries. Yet these territories are split up between several independent states, none of which recognizes them as co-nationals. Today, a territorial solution that would establish an independent Kurdish state could severely destabilize the whole region.[27] However, in my view, any defensible and comprehensive answer to the Kurdish question must establish forms of regional autonomy within Turkey, Iraq and Iran. The division of the people

between states suggests additional "soft border" provisions with free movement and regional councils or assemblies for joint development projects. Such cross-border forms of cooperation, even if they remain limited to economic and cultural policies, require at the minimum friendly relations between the states involves. Given the nature of all regimes involved, proposals like this one are unrealistic under current conditions. However, normatively speaking and in the long run, limited forms of transnational self-governance seem to me the best possible solution in cases like these. The point is, once more, that territorial dispersal across state borders does not necessarily call for non-territorial responses. Of course, the large number of Kurds living outside these areas should enjoy non-territorial rights to freely use the Kurdish language and practice different versions of Islam. But these cultural minority rights are covered by Art. 27 of the International Covenant of Political and Civil Rights and protected by standard liberties in democratic states. They are not connected with claims of self-government.

External minorities

A third category suggests prima facie similar responses. These are national minorities who live in relatively compact areas and are recognized by another state as external co-nationals. Ethnic Germans in Eastern Europe, many Russian minorities outside the Russian Federation and Hungarians in Transylvania are well-known examples.[28] As in the previous case, the complication comes not from territorial dispersal, but from international borders that separate the areas of settlement of people who share a common cultural identity

that can be mobilized as a sense of nationhood. The difference is, however, that transnational governance solutions are much less attractive in these cases. A powerful and well-established nation-state that interferes in the territory of another state by establishing institutions of joint governance with the minority is quite rightly perceived as a threat to the security and territorial integrity of the state where the minority lives. An apparently less offensive arrangement that is considered today in some Eastern European and Central Asian countries is to turn the members of the minority into dual nationals of both their state of residence and their external homeland. This is, however, generally inefficient as a device for protecting the minority against repression, because dual citizens living in a state whose nationals they are cannot avail themselves of the diplomatic protection of their second country of nationality.[29] The main benefit of dual nationality would be the right to be admitted as immigrants in that homeland. This right can, however, be granted without formal entitlement prior to entry. Handing out second passports may also send a fatal signal to the government and majority population in the current state of residence that this minority has chosen exit rather than voice or loyalty.[30] These caveats still leave an important role for the external homeland in supporting minority rights through cooperation with, and if necessary political pressure on, the government in whose state the minority lives. Between 1947 and 1992 the Austrian government assumed the temporary role of an external protector of the rights of the German language group in South Tyrol/Alto Adige until an agreement with Italy had been fully implemented. These forms of external protection can, however, be as well provided by international agencies and they

do not involve claims that the minority and the protecting power form a single political community.

Mixed territories

South Tyrol also provides an example for the fourth category, which refers to regions with a mixed population. In many instances a further dividing of the territory into separate self-governing communities would generate non-contiguous or otherwise unviable units; would merely reproduce the relation between majority and minorities within each new unit; or would in the worst case provoke ethnic cleansing, with persons of mixed identities being forced to take sides and those with the wrong identity being forced to move out. Pre-war Bosnia was a society of this sort. Even after the war had created ethnically fairly homogeneous areas, it is plausible to criticize the Dayton agreement for leaning too far towards territorial solutions. Carving up the territory into exclusive zones of control for each of the three nationalist forces while expecting them to form a joint Bosnian government was probably not the best formula available. However, Bosnia is an exceptional case insofar as political arrangements had to be geared towards reconciliation after a bloody conflict. Long-term integration in mixed regions where political conflict is generally non-violent may require quite different solutions than peace agreements in the aftermath of a war. The inclusive features of territorial federal solutions that I have highlighted cannot possibly unfold in a context where the fight over territory has involved redrawing the boundaries of membership through massive killing and expulsion.

Consider then again South Tyrol/Alto Adige.[31] Regional autonomy within Italy has provided the German speaking population with ample safeguards for maintaining their language, their demographic majority and political hegemony. However, there is also a large Italian-speaking minority living in the region. The internal division of power between language groups is based on a system of "ethnic proportionality". Census results on language use serve as a formula for allocating positions in the public administration and services like kindergartens, schools and public housing between the three linguistic groups, i.e. speakers of German, Italian and Ladin. This system has some attributes of consociational democracy: a high degree of internal autonomy for each segment and proportionality as the standard for representation and for the allocation of public resources and positions. The other two elements of Arend Lijphart's classic definition of consociational democracy – mutual veto power and a grand coalition government are less obviously present in the South Tyrolean case.[32] Ethnic proportionality exhibits many of the undesirable features of non-territorial solutions. For example, although a large and increasing part of the population are bilingual and many are of mixed parentage, there are no census categories or public resources for mixed or other language groups.[33] Overall, however, the combination of territorial autonomy within Italy with ethnic proportionality within the province has been remarkably successful in removing the secessionist option from the mainstream political agenda; in protecting the German language group that had come under strong assimilationist pressure during the Mussolini government; and in securing minority rights for the Italian and Ladin language groups within the region. The relevant

question for my concern in this paper is to what extent ethnic proportionality can be characterized as an instance of non-territorial federalism. A key objection against this interpretation is that the linguistic segments have many separate institutions but are not really self-governing. For example, public schools are strongly segregated but they are not separately financed and governed by the language communities themselves, as they would be under a cultural autonomy regime.[34] Instead of forming autonomous political communities with their own governments, the non-territorially defined language communities participate in the joint government of the province in proportion with their numerical strength. This is similar to other consociational democracies where religious or ideological cleavages are bridged through the integration of political elites at the level of central government rather than through devolution of legislative power towards constitutive units. Using Kymlicka's (1995:26-33) distinction between polyethnic rights, self-government and special representation one could say that the South Tyrolian arrangement combines self-government within Italy with special representation within the province.

Internally dispersed minorities

This brings me to the fifth and final category: minorities that are not divided among states, but dispersed within the territory of a single state so that there is no compact area of settlement where they could establish institutions of self-government. These are the most obvious candidates for cultural autonomy solutions. However, as in the South Tyrolean case, we have to ask first whether and to which extent they conceive of themselves as distinct political communities and strive for

self-government rather than external protection of their culture. Dispersed or small ethnic and linguistic communities certainly can and ought to enjoy non-territorial rights ranging from the self-evident liberties to form their own associations and to practice their culture in community with other members of their group to more demanding forms of protection that involve public recognition and the allocation of public resources. Examples for the stronger kinds of entitlements are the right to use a minority language in communication with government institutions, to topographical inscriptions in this language or to public schools where the language is a medium of instruction. Yet there is still a qualitative difference between the demand for liberty and protection addressed to a majority government and the desire to establish one's own institutions of government that have the power to adopt legislation in these areas without interference by other political authorities. This is, in my view, the defining difference between ethnic and national minorities. It is also the reason why federalism is a possible response to multinational conflicts, but not necessarily to multiethnic ones.

Let me consider two cases of dispersed minorities. In the southern parts of the Austrian provinces of Carinthia and Styria there is a small Slovene minority whose members are all bilingual and who form local majorities only in small rural villages. In a referendum in 1920 the majority of Carinthian Slovenes decided to remain with Austria rather than join the newly formed SHS-state (which later became Yugoslavia). At this point in time they had a solid majority in the border districts and would have qualified as a national minority by any criteria. Today, after long periods of assimilation and exposition to hostility by the

dominant German-speaking majority, Slovenes have become a small ethnic minority and are recognized as such by Austrian law.[35] Their claims are essentially those for external protection and support for their language. These demands for minority rights go along with a strong emphasis that they want to be recognized as an integral part of the Austrian nation. Rather than asking for recognition as a distinct nation or as a part of the larger Slovenian one they complain that German nationalists still accuse them of threatening the territorial integrity of the province. Theirs is a quest for integration somewhat similar to that of ethnic groups of immigrant origins in the sense that Slovenes claim what Kymlicka calls 'polyethnic rights'. However, it is also different in that it includes a demand for the regional establishment of bilingual public institutions and a re-conceptualization of Austrian identity that reflects the minority's historic presence and contributions. The current governor of the province, Jörg Haider, has repeatedly offered the minority some moderate forms of non-territorial autonomy and special institutions of ethnic representation. Although one of the two political organisations representing the Slovene minority has signalled support for these proposals, I think that they are unlikely to promote the interests of the minority in the Austrian context.

A second interesting case is the Swedish minority in Finland that enjoys one of the most generous provisions of minority language protection in Europe. Swedish is one of two official languages in Finland, but the right to public services in the Swedish language is limited to areas where either more than 3000 or more than 8% of the population declare themselves to be Swedish speakers (Laponce 1987:183). This is a remarkable arrangement because it derives

territorial units from a prior determination of membership.[36] In multilingual federations like Canada, Belgium and Switzerland, languages are assigned stable territorial units where regional self-government can adopt policies that will help to protect the language. In Finland, borders of bilingual areas move when the minority members move, or when their linguistic affiliations shift. This contrasts with the federacy arrangement for the Finnish Åland Islands that are situated in the Baltic Sea between Finland and Sweden. Whereas the Swedish population on the islands enjoys substantial autonomy and self-government, this is not the case for the territorially dispersed Swedish minority on the mainland. It would be quite difficult to imagine which institutions of self-government could be built within territorial units whose borders change with every census.

Prima facie both the Austrian Slovenes and the Finnish Swedes are minorities whose national identity relates them to an external homeland where their language and identity is dominant. However, in my interpretation, they have transformed from national to ethnic minorities who no longer aspire to comprehensive self-government. While a neighbouring country, where there language is fully established, can provide them with support for maintaining their cultural identity their national identity no longer separates them from the wider society where they live. 'Nationness', as Brubaker (1998) calls it, does not result from territorial contiguity, shared history or common language alone, but is a contingent outcome of political struggles. Ethnic identities can become national ones when they are politically mobilized for a project of nation-building, but national identities can also be transformed into ethnic ones when autonomy claims are replaced by demands for pluralistic integration.

6. Indigenous peoples and multireligious polities

My discussion of the five categories suggests that insofar as arrangements envisage substantial forms of self-government, they will tend to be territorial, and insofar as they are non-territorial they are unlikely to involve substantial self-government. There are, however, exceptions. Among these I would count some indigenous peoples and certain multireligious polities.

There is a great variety of indigenous peoples and of political arrangements to accommodate their claims. Some features that distinguish them from other kinds of national minorities are relevant for our discussion. First, indigenous peoples claim a right to self-determination under international law even in cases where they neither desire, nor would be able, to establish independent states. Where their relations with the settler society were based on treaties, these did not establish multinational federations but separate polities sharing a territory without a common citizenship.[37] Treaties offered, however, little protection against a vastly asymmetric power relation with the settler societies that eventually led to coercive integration with few remaining areas of territorial and legal autonomy. This history explains why indigenous claims to self-government are not plainly addressed to the governments of the states whose citizens they are but to the international community. Where they are territorially concentrated, federacy arrangements with some external guarantees of their rights under international law seem to be the most adequate solution. However, large numbers of indigenous populations live off-reservation and some are still nomadic. A second general feature of indigenous peoples is their desire to determine their own membership according to their customary laws. This will exclude non-indigenous populations

living in a self-governed indigenous territory from being fully represented in the indigenous institutions of government, and it will often lead to attempts to include members of communities who live outside that area.

Both characteristics make indigenous boundaries of membership much more like those of independent states than those of other ethnic and linguistic minorities. I do not want to make any general statement about how one ought to decide in cases where a conception of indigenous membership conflicts with norms of citizenship in the wider society.[38] But it seems to me that the original construction of indigenous peoples as separate nations inside the territory yet outside the polity and the subsequent history of oppression and coercive integration make for a strong case to respect indigenous constructions of membership as long as they provide for individual exit options. This would imply that non-territorial forms of indigenous self-government may involve stronger powers than for other groups.

A second exception are states like Israel or India, where significant political powers are devolved to religious communities. In both countries, religious norms determine family law with the effect that citizens of different faiths are subject to different legal norms. In Israel these laws are directly applied by religious courts while in India secular courts apply the law of the respective religious community. Family law may seem too insignificant an area of jurisdiction to be called an instance of non-territorial self-government. However, as Ayelet Shachar (2000:204) points out, family law has, apart from its distributive function concerning inheritance and claims to support by parents or spouses, a demarcating function that determines ascriptive membership

in a community through lineage and marriage. In Israel it is, for example, only possible to obtain a divorce from a secular state court if the two marriage partners belong to different religious communities or to none. The Israeli arrangement is more obviously a form of limited non-territorial self-government of religious communities while the Indian accommodation could also count as an external protection of religious minorities by state courts.

Of course there are strong liberal objections against both kinds of arrangements, especially concerning the negative impact of religious laws of divorce, custody and inheritance on equal protection for women. I believe that such devolution is indeed indefensible as a permanent feature of a stable liberal democracy. However, in the spirit of searching for arrangements that will help to prevent a violent breaking apart of multinational societies, liberals should be willing to consider the specific contexts that may justify accommodation. Modern India has emerged in 1947 from the most violent and traumatic process of partitioning along national and religious lines in human history. Given this record, it was absolutely vital to provide the Muslim minority with strong assurances that the secular Indian state would not in fact turn into an instrument of Hindu rule. The history of religious strife since then has not made it any easier to build sufficient trust that neutral laws and state institutions will protect religious freedom for all communities equally. I think that the Israeli arrangement is more difficult to justify even in terms of necessary accommodation. Yet this is, too, a deeply divided society at the centre of an explosive regional conflict. Both its ultraorthodox Jewish community and its Arab minority are not fully citizens, the former because they refuse many of the

obligations of citizenship, the latter because they are not trusted to be loyal to a Jewish state.

In these and similar contexts a case can be made that religious communities should be regarded as constitutive units of a quasi-federation, where certain governmental powers will, for the time being, remain within their autonomous non-territorial communities. As in any federation the constitutive units should be held accountable by federal institutions if their internal government violates federal guarantees of equal citizenship. This will greatly limit the range of self-government that can be exercised by religious communities.[39] However, it is not only the vertical division of power that should be open to challenge and reform in order to strengthen a common federal citizenship. The important contrast with real federations is that the internal boundaries of membership should neither be regarded as identifying all citizens as members of a constitutive unit nor as fixed forever. While a territorial federation needs stable internal borders so that the boundaries of ascriptive membership can lose in political importance over time, a non-territorial federation of this sort will have to take direct precautions that its constitutive units do not imprison their members. An overarching citizenship is then more than a further layer of self-government of a polity that is composed of various religious communities; it provides also an exit option from each of these communities.

7. Conclusions

Even the two exceptions I have discussed confirm "the irreducibly spatial nature of any coherent, comprehensive project for a political community" (van Parijs 2000:243). But they also show that there may be alternative choices between territorial and non-territorial arrangements at the substate level. Let me therefore conclude by once more considering the general properties of both types of responses to conflicts over the boundaries of self-government.

By its very nature dividing territory appears to be a zero-sum game – what one side gains, the other loses. But this is a superficial view. What counts is not one side's sheer quantity of territory but the associated political power and its stability over time. The zero-sum view of territorial divisions applies only if we conceive of power as sovereignty. Territorial sovereignty produces indeed a world in which only zero-sum games can be played. Apart from Antarctica the total landmass of this world is divided into non-overlapping spaces assigned to separate states. However, unlike territory itself, territorially based power can be simultaneously aggregated at different levels. Federal divisions of territory can therefore yield a positive-sum outcome if they satisfy the aspirations of all relevant groups to self-government, while at the same time binding them together into a larger and equally self-governing federation.

Territorial federalism operates with nested entities, but it does not allow for overlapping constitutive units. If Brussels cannot belong to either Wallonia or Flanders without upsetting the federal balance, then it cannot be governed by both but must instead form a separate

region. Prima facie it appears that non-territorial conceptions of federalism should be preferable because they seem to allow for more flexibility. Associations of persons can be both nested and overlapping. A Brussel citizen of mixed origin may have a triple identity as a member of both the Flemish and Francophone language community and the Belgian federal polity. However, this is once more a superficial view if it is taken as an answer to conflicts over self-government. Voluntary associations in civil society can indeed be self-governing even when they are nested and overlapping. Yet this compatibility ends once associations assume vital functions of government. In a regime of warlords people are taxed and drafted by rival 'authorities', who all consider these persons to belong to their respective overlapping 'constituencies'. A system of legitimate government under the rule of law cannot operate unless there is a clear demarcation of jurisdictions. Non-territorial federalism would therefore have to avoid any overlapping between constitutive groups.

This requirement of non-overlapping jurisdictions has much more intrusive consequences for individual liberty if self-government is based on membership rather than territory. Within a liberal democratic federation territorial borders are no barriers for freedom of movement or communication. By contrast, even the most liberal non-territorial federation would have to limit the freedom of individuals who do not fit into one of the constitutive identity groups. As the examples of religious devolution in Israel and of ethnic proportionality in South Tyrol illustrate this is not merely a theoretical speculation. This implication can only be avoided if we think of non-territorial arrangements as similar to federacies, that is, as a special status for

certain communities rather than as an architectonic structure for the polity as a whole.

A second difficulty is that it is much harder to construct nested polities with non-territorial constitutive groups. In any realistic model the encompassing unit will be a territorially based polity and thus different in kind from the self-governing entities of which it is composed. This dissimilarity constrains the vertical division of powers with a strong concentration at the federal level as the most likely outcome. It is rather implausible that under such conditions the members of the non-territorial units will develop a sense of belonging to the wider polity.[40]

Finally, once non-territorial communities are imaged as nations, they are not only constructed as non-overlapping but also as not nested. Nations are conceived as horizontally equal but not as vertically aligned so that one nation can be contained within a larger one. This is what makes it so difficult to restore symmetry in multinational states – it is, for example, difficult to think of Britain as a nested nation composed of English, Scottish, Welsh and Northern Irish nations. Scottish nationalists will deny that they belong to a British nation while the majority population will feel that their national identity is British rather than English.[41] Multinational federations can live with this kind of asymmetry only if they do not attempt to create a strong national identity for the federal polity as a whole.

The nationalist resistance against overlapping and nested identities has a further implication: While conflicts over territorial sovereignty are zero-sum games, conflicts between national communities over the boundaries of membership are often winner-takes-all games.

Nationalists regard homeland territories and peoples as indivisible. Their willingness to compromise and be satisfied with a part of the whole is often only the result of a conflict in which they have been defeated. At the individual level, too, there is little room left for ambiguity. National identity codes are binary; you either belong or you don't, and if you do belong it is for an entire lifetime. This is very different in a territorial federation where there is a free flow across borders. Even multinational federations, whose internal borders are designed to satisfy the aspirations of national minorities for self-government, permit a relatively relaxed stance on identity issues. Members of federal majorities or internal minorities must be treated as equal citizens of the national minority polity. As long as the regional majority is safe it should also be possible to reduce the temptation for the provincial government to deprive them of their status or to engage in aggressive assimilation policies. Regional self-government gives them, for example, the legitimate power to establish a minority language as the dominant one in public life, which is the most effective means available to secure linguistic survival. Going beyond this by suppressing the free use of other languages is not only illiberal but also unjustifiable in terms of the declared goal. Second, federalism combines regional self-government with joint government at the federal level. This creates legitimate powers for federal institutions to secure equal rights of citizenship throughout the federation.

My critique of non-territorial federalism is not aimed at all cultural autonomy arrangements. I have only argued that we should not regard them as an alternative model of federation. Cultural autonomy is compatible with liberal democracy if it is conceived as an extended power of voluntary associations to govern their internal affairs. Such extensions may include special exemptions from general obligations of citizenship, public recognition for minority identity and practices,

Footnotes

[*] A first draft of this paper was presented in the IMER research seminar on 23 January 2001 and at the conference 'Nationalism, Liberalism and Pluralism', organized by Alain Dieckhoff at CERI-Sciences Politiques, Paris on 5 – 6 February 2001.

[1] Jacob Levy (2000) proposes a more general perspective of a "multiculturalism of fear" that would be less concerned with what cultural diversity might contribute to the well-being and autonomy of individuals and more with what harm cultural conflicts can inflict on them. I am inclined to adopt a more specific "multinationalism of fear" that emphasizes the particular threats emerging from nationalism. I believe that both cultural affiliations and self-government can have intrinsic value. This should be reflected in normative theories by moving beyond a perspective of fear. However, the exclusive link between cultural affiliation and self-government that is characteristic for nationalism is inherently problematic from a liberal perspective. This suggests that liberal approaches to nationalism should look for accommodation while avoiding affirmation.

[2] Brubaker warns against what he calls the 'architectonic illusion', that is "the belief that the right 'grand architecture', the right territorial and institutional framework, can satisfy nationalist demands, quench nationalist passions, and thereby resolve national conflicts" (Brubaker 1998:233-4). He argues that "national conflicts are in principle, by their very nature, irresolvable" (ibid:234).

[3] In contrast with contemporary liberal democratic federations, the internal passport system of the formally federal Soviet Union strongly restricted this freedom of internal movement.

[4] Foreign nationals will generally not be regarded as full local citizens. However, the local units have little control over their movements (free internal movement within a state is a universal human right, not a citizens' privilege). And the denial of full rights of local citizenship to foreign residents is not a consequence of the boundaries of local community, but of exclusionary aspects of national citizenship. In Scandinavian countries and the Netherlands, foreign residents are fully enfranchised at the local level although they cannot vote in national elections. I think there is much to be said in favour of such an emancipation of the territorially based local polity from membership constraints imposed by the larger state.

[5] These methods were used in the 19th century U.S. in order to prevent the formation of Hispanic majority states in Florida and the South West (see Kymlicka 1998:137). In our days, the Peoples' Republic of China has pursued a deliberate policy of minoritizing the local population in Tibet and other parts of the country.

[6] Puerto Rico has only a non-voting representative in the U.S. Congress and its citizens cannot vote in U.S. presidential elections.

[7] The Spanish constitution of 1978 provides an interesting and rather successful model for this. Instead of defining a priori the powers of all autonomous regions, it allowed the provincial governments to negotiate different extents of autonomy. This flexible form of "self-determination" of the extent of self-government permitted the national minority provinces of Catalonia, the Basque Country and Galicia to achieve a higher degree of autonomy than other regions. The drawback of this model is that it is tied to a process of devolution that has not yet transformed Spain into a formal federation with a federal chamber of parliament (Agranoff 1994, Requejo 2001). Once further steps towards full federation are taken, the problems of asymmetry will arise with new urgency.

[8] There are certainly cases like those of decolonization or reversal of recent annexation where separation is preferable to federation. These cases are fully covered by a grievance theory of secession as well as by the conservative interpretation of the principle of self-determination under current international law (Cassese 1995).

[9] See Hamilton et al. (1982) especially Federalist Paper No. 10.

[10] Sixty years after the Federalist Papers this implication of a general democratic argument of federalism was developed to somewhat extreme consequences in John Calhoun's theory of 'concurrent majority' (Calhoun 1995).

[11] This observation points to an essential difference between modern labour and refugee migration and earlier settler migration. In their colonies European settlers established their own political institutions that excluded the native population. This pattern of conquest combined with migration is not a peculiar European one. Throughout human history ethnocultural groups have intermixed and spread over the globe in this manner. The other historically dominant type of movement, which is still very much alive today, is forced migration in the forms of slave trade and refugee movements.

[12] In another essay Kukathas (1992) argues that cultural communities should be seen as private associations whose internal powers of self-government are only constrained by their members' right to leave.

[13] Compare Michael Walzer's (1983:38) similar, although in my view less convincing, argument against open borders for immigration: "If states ever become large neighborhoods, it is likely that neighborhoods will become little states. ... Neighborhoods can be open only if countries are at least potentially closed".

[14] For a generally sympathetic discussion of this literature, see Bosniak 2000.

[15] My critique of some these approaches focuses on their penchant to derive a grand architecture of cosmopolitan citizenship from functional imperatives of globalization. I suggest that cosmopolitan democracy must be built from below. Democratizing supranational institutions requires stronger home bases and will be possible only to the extent that 'ordinary people' develop multiple and transnational affiliations to political communities (Bauböck 2000).

[16] Those who fail to do so will nevertheless be assigned to one of the registered nationalities (see Bauer 1907:308).

[17] Renner and Bauer were aware that complete separation would have made the national communities too dependent from state authorities. They therefore suggested a regional devolution of general tasks of public administration, such as collecting state taxes or drafting soldiers, making thereby the central state dependent on cooperation with units formed on the basis of nationality (Bauer 1907:311-2). It is nonetheless significant that this would integrate state and national agendas only at the level of constitutive units, but not within the larger polity.

[18] In 1905 the province of Moravia formed two non-territorial constituencies for the Czech and the German population in provincial parliamentary elections. An Estonian law of 12 February 1925 granted every minority with more than 3000 affiliations the right to local autonomy and to representation by a cultural council at the state level. Some provision of this law were reinstated in 1993. However, it applies only to Estonian citizens, which excludes the largest minority of Russian origin most of whose members still have not been admitted to citizenship. The Hungarian Law No. LXXXVII of 1993 on "The Rights of National and Ethnic Minorities" has similar provisions combining free declaration of minority membership with local autonomy and minority councils at state level. This legislation is less intended for domestic use but is meant to support demands for autonomy of the large Hungarian minorities in Romania and Slovakia (Plasseraud 2000, Pierré-Caps 2001). Both the Estonian and the Hungarian provisions are about minority rights within a nation-state that clearly "belongs" to a dominant language group and are thus fundamentally different from Renner's and Bauer's plans for a multi-national federation. During and after World War I their ideas became also influential among the Jewish socialist movement Bund. Although Otto Bauer explicitly denied that the Jewish population of Central and Eastern Europe was a nation with a right to autonomy, the Bund defended this idea as an alternative to the territorial solution propagated by Zionism and to the assimilationist line of the Social Democratic mainstream.

[19] For example, in Canada the provinces have concurrent power with the federal government over immigration and the Canada-Quebec Accord gives the Francophone province special authority to administer immigration laws (Jackson 2001).

[20] J.S.Mill's fear that "free institution are next to impossible in a country made up of different nationalities" (Mill 1972:392) was partly based on the observation that a multinational army is regarded by each national community as an army of foreigners and therefore as an instrument of repression.

[21] See, for example Gutmann 1987, Callan 1997.

[22] Otto Bauer concedes that in the late Habsburg Empire the main beneficiaries of cultural autonomy arrangements would have been the wealthier but widely dispersed German speaking minorities (Bauer 1907:317-18).

[23] See Patten (2000) for a perceptive discussion why liberals should still care about language recognition and assimilation policies.

[24] This constraint corresponds to what David Gauthier (1994) has called a "weak right of association". In Gauthier's view, political communities ought to be territorially based, but applying the weak right of association (and dissociation) to them leads to a primary right of secession of any regional majority that is willing to secede.

[25] In 1976 a special census was held in Austria in order to determine the membership of native linguistic minorities. The minorities rejected this policy because they saw it as an attempt to undermine their territorially defined rights to bilingual education and topographical inscriptions. While Slovenes in Carinthia generally boycotted the census, many native German speakers in other parts of the country (including the author of this paper) falsely stated to be speakers of minority languages. The effect was that more members of linguistic minorities appeared to live in Vienna than in their traditional areas of settlement. This outcome subverted the plans for reform.

[26] The Quebecois do not regard themselves as part of the French nation, but as a Francophone nation in North America.

[27] After World War I the 1920 Treaty of Sevres promised the Kurds an autonomous homeland, but under pressure from the newly established regime of Atatürk, this was later renounced by the 1923 Treaty of Lausanne.

[28] For a comparative analysis of these cases, see Brubaker 1996.

[29] See The Hague Convention Concerning Certain Questions Relating to the Conflict of Nationality Laws, 1930, art. 4.

[30] These considerations apply only as long as integration of the minority in their current state of residence is still the best option. Once they have already lost their citizenship and become the targets of mass expulsion or extermination policies, assisting individuals to get out becomes a humanitarian obligation. One way of doing this is to put them under the protection of another citizenship. In 1944 the Swedish diplomat Raoul Wallenberg handed out Swedish passports to Jews in Hungary to protect them from the SS.

[31] The Belgium capital Brussels is another interesting case of a mixed region with an elaborate system of proportionality between language groups (Laponce 1987:178-9, van Parijs 2000).

[32] See Lijphart (1977:25). The provincial government reflects the ethnic proportions of the legislative assembly with currently 8 German and 3 Italian ministers. However, SVP, the party of the German language group, has a much stronger position because it holds a virtual monopoly in representing its community, whereas the Italian community is divided along ideological lines.

[33] In the 1991 census, 68% of the province's population were counted as German-speaking, 28% as Italian and 4% as Ladin. In 1991 linguistic declaration was for the first time anonymous. Persons to whom the three categories did not apply were nevertheless classified into one of them (information provided by the provincial government at: http://www.provinz.bz.it/english/ST_Themen99/Volkszaehlung_e.htm).

[34] Children are enrolled into either German or Italian schools, Ladin is offered as an 'assistant language'. German elementary schools provide for teaching of Italian as a second language from grade two onwards and Italian schools do the same with German language courses. Each of the three language groups has an autonomous school board, but all schools are regulated by Italian law and financed from general taxation.

[35] The legal term used in Austria is Volksgruppe.

[36] There are of course other minority rights that depend on numerical thresholds, such as a minimum number of children to open a class for teaching a minority language. What makes the Finnish formula more interesting for our debate is that it links numbers to the definition of territorial units.

[37] U.S. Chief Justice John Marshall invented the term 'domestic dependent nations' (Worcester v. State of Georgia, 31 U.S. 515 (United States 1832); see Levy 2000:172).

[38] See Levy (2000, chapter 6) for suggestions how to incorporate indigenous law when it conflicts with the legal order of the wider polity.

[39] For the specific case of religious family law, Shachar (2000:217-23) suggests a "joint governance" approach in which judicial authority would be divided between the state and the religious communities so that the state controls the distributive implications of family law decisions while religious authorities may decide on issues of membership.

[40] On the importance of a sense of belonging to the polity see Mason 1999.

[41] David Miller (1998:66) thinks that nations can be nested in this way.

References

Agranoff, Robert. 1994. Asymmetrical and Symmetrical Federalism in Spain. In Evaluating Federal Systems, edited by Bertus de Villers. Dordrecht, Boston, London: Martinus Nijhoff. Pp. 61-89.

Basch, Linda, Nina Glick Schiller and Cristina Szanton Blanc. 1994. Nations Unbound. Transnational Projects, Postcolonial Pedicaments and Deterritorialized Nation-States. Amsterdam: Gordon and Breach Publishers.

Bauböck, Rainer. 1999. Liberal Justifications for Ethnic Group Rights. In Multicultural Questions, edited by Christian Joppke and Steven Lukes. Oxford: Oxford University Press. Pp. 133-157.

Bauböck, Rainer. 2000. Political Community Beyond the Sovereign State. Supranational Federalism and Transnational Minorities. Working Paper No. 7. Austrian Academy of Sciences, Research Unit on Institutional Change and European Integration. http://www.iwe.oeaw.ac.at/.

Bauer, Otto. 1907. Die Nationalitätenfrage und die Sozialdemokratie. Wien: Ignaz Brand.

Beran, Harry. 1984. A Liberal Theory of Secession. Political Studies 32:21-31.

Beran, Harry. 1998. A Democratic Theory of Political Self-determination for a New World Order. In Theories of Secession, edited by Percy Lehning. London: Routledge. Pp. 32-59.

Bosniak, Linda. 2000. Citizenship Denationalized. Indiana Journal of Global Legal Studies 7.

Brubaker, Rogers. 1996. Nationalism Reframed. Nationhood and the national question in the New Europe. Cambridge: Cambridge University Press.

Brubaker, Rogers. 1998. Myths and Misconceptions in the Study of Nationalism. In National Self-Determination and Secession, edited by Margaret Moore. Oxford: Oxford University Press.

Buchanan, Allen. 1991. Secession. The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec. Boulder: Westview Press.

Buchanan, Allen. 1997. Theories of Secession. Philosophy and Public Affairs 26:31-61.

Bunzl, John. 2001. Eine andere "Wiedergutmachung". Zur Frage des Rückkehrrechts palästinensischer Flüchtlinge. Der Standard, 20/21 January 2001, p. 38.

Calhoun, John C. 1995. A Disquisition on Government and Selections from the Discourses, edited with an introduction by C. Gordon Post. Indianapolis: Hacket.

Callan, Eamonn. 1997. Creating Citizens. Political Education and Liberal Democracy. Oxford: Oxford University Press.

Cassese, Antonio. 1995- Self-determination of Peoples: A Legal Appraisal. Cambridge: Cambridge University Press.

Danspeckgruber, Wolfgang, ed., with Arthur Watts. 1997. Self-determination and Self-administration. A Sourcebook. Boulder: Lynne Rienner.

Elazar, Daniel J. 1987. Exploring Federalism. Tuscaloosa and London: University of Alabama Press.

Gauthier, David. 1994. Breaking Up: An Essay on Secession. Canadian Journal of Philosophy 24:357-72.

Gellner, Ernest. 1983. Nations and Nationalism. Oxford: Blackwell.

Gottlieb, Gidon. 1993. Nation against State. A New Approach to Ethnic Conflicts, the Decline of Sovereignty, and the Dilemmas of Collective Security. New York: Council on Foreign Relations.

Gottlieb, Gidon. 1997. Commentary. In: Self-determination and Self-administration. A Sourcebook, edited by Wolfgang Danspeckgruber, with Arthur Watts. Boulder: Lynne Rienner. Pp. 165-170.

Guéhenno, Jean-Marie. 1994. Das Ende der Demokratie. München and Zürich: Artemis and Winkler.

Guibernau, Montserrat. 1999. Nations Without States. Political Communities in a Global Age. London: Polity Press.

Gutmann, Amy. 1987. Democratic Education. Princeton: Princeton University Press.

Hamilton, Alexander, James Madison and John Jay. 1982. The Federalist Papers (1787-1788). Toronto: Bantam Books.

Held, David. 1995. Democracy and the International Order. In Cosmopolitan Democracy. An Agenda for a New World Order, edited by Daniele Archibugi and David Held. Cambridge: Polity Press. Pp. 96-120.

Höffe, Otmar. 1999. Demokratie im Zeitalter der Globalisierung. München: Beck.

Jackson, Vicky. 2001. Citizenship and Federalism. In Citizenship Today: Global Perspectives and Practices, edited by Alex Aleinikoff and Doug Klusmeyer. Washington, DC: Carnegie Endowment for International Peace.

Jacobson, David. 1996. Rights Across Borders. Immigration and the Decline of Citizenship. Baltimore: Johns Hopkins University Press.

Keating, Michael. 1996. Nations Against the State. The New Politics of Nationalism in Quebec, Catalonia and Scotland. London: Macmillan.

Kukathas, Chandran. 1992. Are There Any Cultural Rights? Political Theory 20:105-139.

Kukathas, Chandran. 1997. Cultural Toleration. In Ethnicity and Group Rights, edited by Will Kymlicka and Ian Shapiro. Nomos 39, Yearbook of the American Society for Political and Legal Philosophy. New York and London: New York University Press. Pp. 69-104.

Kukathas, Chandran. 1998. Liberalism and Multiculturalism – The Politics of Indifference. Political Theory 26:686-99.

Kymlicka, Will. 1998. Finding Our Way. Rethinking Ethnocultural Relations in Canada. Toronto, Oxford, New York: Oxford University Press.

Laponce, J.A. 1987. Languages and Their Territory. Toronto: University of Toronto Press.

Levy, Jacob T. 2000. The Multiculturalism of Fear. Oxford: Oxford University Press.

Lijphart, Arend. 1977. Democracy in Plural Societies. A Comparative Exploration. New Haven: Yale University Press.

Luhmann, Niklas. 1998. Die Gesellschaft der Gesellschaften. 2 volumes. Frankfurt am Main: Suhrkamp.

Marshall, T.H. 1965. Citizenship and Social Class. In Class, Citizenship, and Social Development. New York: Anchor Books.

Mason, Andrew. 1999. Political Community, Liberal-Nationalism, and the Ethics of Assimilation. Ethics 109:261-286.

Mill, John Stuart. 1972 [1861]. Considerations On Representative Government. In Utilitarianism, Liberty, Representative Government, edited by H. B. Acton. London: Everyman's Library.

Miller, David. 1998. Secession and Principle of Nationality. In Self-determination and Secession, edited by Margaret Moore. Oxford: Oxford University Press. Pp. 62-78.

Norman, Wayne. 1994. Towards a Philosophy of Federalism. In Group Rights, edited by Judith Baker. Toronto: University of Toronto Press. Pp. 79-100.

Ohmae, Kenichi. 1991. The Borderless World. New York: Harper Collins.

Patten, Alan. 2000. Political Theory and Language Policy. Unpublished manuscript. Montreal: University of Montreal.

Pierré-Caps, Stéphane. 2001. Le principe de l'autonomie personnelle: une solution d'avenir? Paper presented at the conference, Nationalism, liberalism and pluralism. CERI-Sciences Politiques, Paris, 5 – 6 February 2001.

Plasseraud, Yves. 2000. L'histoire oubliée de l'autonomie culturell. Le Monde Diplomatique, May 2000, pp. 16-17.

Renner, Karl. 1902. Der Kampf der österreichischen Nationen um den Staat. Leipzig and Vienna. (Published under the pseudonym Rudolf Springer.)

Requejo, Ferran. 2000. Political Liberalism in Plurinational States. The Legitimacy of Plural and Asymmetrical Federalism. In Struggles for Recognition in Multicultural Societies, edited by Alain Gagnon and James Tully. Cambridge: Cambridge University Press.

Shachar, Ayelet. 2000. Should Curch and State be Joined at the Altar? Women's Rights and the Multicultural Dilemma. In Citizenship in Diverse Societies, edited by Will Kymlicka and Wayne Norman. Oxford: Oxford University Press. Pp. 199-223.

Soysal, Yasemin. 1994. The Limits of Citizenship. Migrants and Postnational Membership in Europe. Chicago: University of Chicago Press.

Spiro, Peter J. 1997. Dual Nationality and the Meaning of Citizenship. Emory Law Journal 46.

van Parijs, Philippe. 2000. Must Europe be Belgian? On Democratic Citizenship in Multilingual Polities. In The Demands of Citizenship, edited by McKinnon and Iain Hampsher-Monk. London: Continuum.

Walzer, Michael. 1983. Spheres of Justice. New York: Basic Books.

**Willy Brandt Series of Working Papers
in International Migration and Ethnic Relations**

The Willy Brandt Series of Working Papers in International Migration and Ethnic Relations is published by the School of International Migration and Ethnic Relations (IMER), established in 1997 as a multi- and transdisciplinary academic education and reasearch field at Malmö University.

The Working Paper Series is a forum for research in, and debate about, issues of migration, ethnicity and related topics. It is open for contributions from scholars in various fields of research. The Series is also associated with IMER's guest professorship in memory of Willy Brandt. Thus, the Series will make available original manuscripts by IMER's visiting Willy Brandt professors.

The guest professorship in memory of Willy Brandt is a gift to Malmö University financed by the City of Malmö, and sponsored by MKB Fastighets AB. The Willy Brandt professorship was established to strengthen and develop research in the field of international migration and ethnic relations, and to create close links to international research in this field.

The Willy Brandt Series of Working Papers in International Migration and Ethnic Relations will be published at least four times per year.
It is available in print and online.