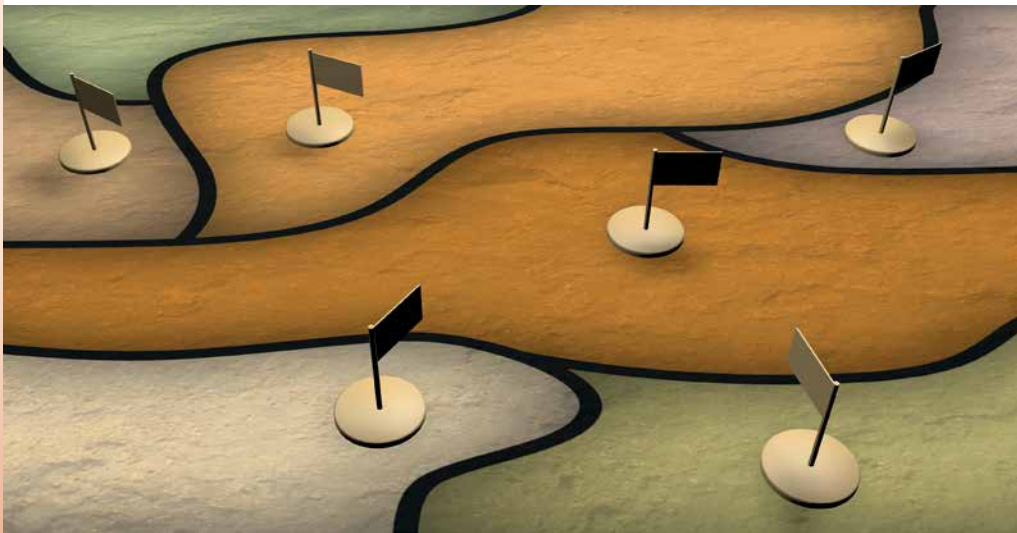




Vittorio Hösle
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Stefano Zamagni *Editors*

Nation, State, Nation-State



The Proceedings of the 22nd Plenary Session
1-3 May 2019

Nation, State, Nation-State

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*The Proceedings
of the 22nd Plenary Session*

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Edited by
Vittorio Hösle
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The opinions expressed with absolute freedom during the presentation of the papers of this meeting, although published by the Academy, represent only the points of view of the participants and not those of the Academy.

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“Saint Thomas had a beautiful idea of what a people is: ‘The river Seine is not *this* river because of *this* water flowing down it, but because of *this* source and *this* river bed; so it’s always regarded as the same river in spite of different water flowing down it. And it’s like this for a population: it’s the same population, not because of any sameness of soul or of persons, but because of the same dwelling place; or, even more, because of the same laws and the the same style of living, as Aristotle explained in book 3 of his *Politics*’ (*On Spiritual Creatures*, a. 9, ad 10). The Church has always encouraged love of one’s people, of country; respect for the value of various cultural expressions, uses and customs and for the just ways of living rooted in peoples. At the same time, the Church has admonished individuals, peoples and governments regarding deviations from this attachment when focused on exclusion and hatred of others, when it becomes hostile, wall-building nationalism, or even racism or anti-Semitism. The Church observes with concern the re-emergence, somewhat throughout the world, of aggressive tendencies toward foreigners, types of migrants, as well as that growing nationalism that disregards the common good. This risks compromising previously consolidated forms of international cooperation, threatens the aims of International Organizations as spaces for dialogue and encounter for all countries on a level of mutual respect, and prevents the achievement of the Sustainable Development Goals unanimously approved by the United Nations General Assembly on 25 September 2015”.

Address of His Holiness Pope Francis to Participants in the Plenary Session of the Pontifical Academy of Social Sciences, Vatican City, Clementine Hall, Thursday, 2 May 2019







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Address of His Holiness Pope Francis to Participants in the Plenary Session of the Pontifical Academy of Social Sciences

Clementine Hall

Thursday, 2 May 2019

Dear Sisters and Brothers,

I welcome you and I thank your President, Prof. Stefano Zamagni, for his courteous words and for having agreed to preside over the Pontifical Academy of Social Sciences. This year too, you have chosen to address an ever current topic. Unfortunately we have before our eyes situations in which certain nation-states conduct their relations in a spirit more of opposition than of cooperation. Moreover, it should be recognized that State borders do not always coincide with the demarcations of homogeneous populations and that much tension arises from excessive claims of sovereignty on the part of States, often in the very areas where they are no longer able to act efficiently to protect the common good.

Both in the Encyclical *Laudato Si'* and in this year's Address to Members of the Diplomatic Corps, I drew attention to the challenges, of an international nature, that humanity must address, such as integral development, peace, care for our common home, climate change, poverty, wars, migration, human trafficking, organ trafficking, protection of the common good, the new forms of slavery.

Saint Thomas had a beautiful idea of what a people is: "The river Seine is not *this* river because of *this* water flowing down it, but because of *this* source and *this* river bed; so it's always regarded as the same river in spite of different water flowing down it. And it's like this for a population: it's the same population, not because of any sameness of soul or of persons, but because of the same dwelling place; or, even more, because of the same laws and the the same style of living, as Aristotle explained in book 3 of his *Politics*" (*On Spiritual Creatures*, a. 9, ad 10). The Church has always encouraged love of one's people, of country; respect for the value of various cultural expressions, uses and customs and for the just ways of living rooted in peoples. At the same time, the Church has admonished individuals, peoples and governments regarding deviations from this

attachment when focused on exclusion and hatred of others, when it becomes hostile, wall-building nationalism, or even racism or anti-Semitism. The Church observes with concern the re-emergence, somewhat throughout the world, of aggressive tendencies toward foreigners, types of migrants, as well as that growing nationalism that disregards the common good. This risks compromising previously consolidated forms of international cooperation, threatens the aims of International Organizations as spaces for dialogue and encounter for all countries on a level of mutual respect, and prevents the achievement of the Sustainable Development Goals unanimously approved by the United Nations General Assembly on 25 September 2015.

It is a common doctrine that the State is at the service of the person and of natural groupings of people such as the family, the cultural group, the nation as an expression of the will and customs inherent in a people, the common good and peace. Too often, however, States are subjugated to the interests of a dominant group, largely for motives of economic profit, which oppress, among others, ethnic, linguistic or religious minorities who are in their territory.

In this perspective, for example, the way in which a nation welcomes migrants reveals its vision of human dignity and of its relationship with humanity. Every human being is a member of humanity and has the same dignity. When a person or a family is compelled to leave their homeland they must be welcomed with humanity. I have said many times that our duty to migrants can be articulated around four verbs: *welcome*, *protect*, *promote* and *integrate*. Migrants are not a threat to the culture, customs and values of a receiving nation. They too have a duty, that of being integrated into the nation that receives them. Integrating does not mean assimilating, but sharing the way of life of their new homeland, while they themselves remain as individuals, with their own biographical history. In this way, migrants can present themselves and be recognized as an opportunity to enrich the people that integrates them. It is the task of public authorities to protect migrants and to regulate migratory flows with the virtue of prudence, as well as to promote welcome so that the local populations may be formed and encouraged to consciously take part in the integrative process of the migrants who are to be received.

The migratory issue too, which is a permanent fact of human history, revives reflection on the nature of the nation state. All nations are the result of integration of consecutive waves of migrating individuals or groups, and tend to be images of the diversity of humanity while being united by val-

ues, common cultural resources and healthy customs. A State that arouses in its people nationalistic sentiments against other nations or groups of people would fail in its own mission. We know from history where similar deviations have led; I am thinking of Europe in the last century.

The nation-state cannot be considered as an absolute, as an island with respect to the surrounding circumstances. In the current situation of globalization not just of the economy but also of technological and cultural exchanges, the nation-state is no longer able to procure on its own the common good of its populations. The common good has become global and nations must affiliate themselves for their own benefit. When a supra-natural common good is clearly identified, it necessitates a specific, legally and concordantly constituted authority capable of facilitating its fulfilment. Let us consider the great contemporary challenges of climate change, of the new forms of slavery and of peace.

While, according to the principle of subsidiarity, the power of individual nations to work for whatever they can achieve must be recognized, on the other hand, groups of neighbouring nations – as is already the case – can strengthen their own cooperation by conceding the exercise of certain functions and services to the intergovernmental institutions that manage their common interests. It is to be hoped, for example, that awareness of the benefits produced by this approach and harmony among peoples undertaken in this post-World War II period not be lost in Europe. Meanwhile, in Latin America, Simón Bolívar urged the leaders of his time to forge the dream of a Great Homeland, which knows how and is able to welcome, respect, embrace and develop the richness of every people. This vision of cooperation among nations can advance the narrative by upholding multilateralism, opposing both new nationalistic impulses and hegemonic policies.

Humanity would thus escape the threat of resorting to armed conflict every time a dispute between nation-states arose, and would likewise exclude the danger of economic and ideological colonization by superpowers. Thus, it would avoid the subjugation of the strongest over the weakest, being attentive to the global dimension without losing sight of the local, national and regional dimension. Before the design of a globalization imagined as “spherical”, which levels differences and suffocates localization, it is easy for both nationalism and hegemonic policies to re-emerge. In order for globalization to be beneficial for all, a “polihedral” form must be considered, supporting a healthy struggle for mutual recognition between the collective identity of each people and nation and globalization itself,

according to the principle that the whole first comes from the parts, so as to arrive at a general state of peace and harmony.

Multilateral petitions have been drawn up in the hope of being able to replace the logic of revenge, the logic of dominion, of subjugation and of conflict with that of dialogue, of mediation, of compromise, of harmony and awareness of belonging to the same humanity in the common home. Of course, it is imperative that such organizations assure that the states be effectively represented, with equal rights and obligations, so as to avoid the growing hegemony of powers and interest groups that impose their own visions and ideas, as well as new forms of ideological colonization, not rarely disrespectful of the identity, of uses and customs, of the dignity and sensitivity of the concerned peoples. The emergence of these tendencies is weakening the multilateral system, resulting in insufficient credibility in international policies and in the progressive marginalization of the weakest members of the family of nations.

I encourage you to persevere in seeking appropriate processes to overcome what divides nations and to propose new paths of cooperation, especially in regard to the new challenges of climate change and new forms of slavery, as well as that exalted social good which is peace. Unfortunately, today the season of multilateral nuclear disarmament seems to have been superseded and no longer moves the political conscience of the nations that possess atomic weapons. Instead, a new season of disturbing nuclear confrontation seems to have appeared, as the progress of the recent past is cancelled out and the risk of war increased, also due to the potential malfunctioning of technologies that are highly advanced but always subject to the naturally and humanly imponderable. Now, if offensive and defensive nuclear arms are placed not only on earth but also in space, the so-called technological new frontier will raise and not lower the danger of nuclear holocaust.

The state is called therefore, to a greater responsibility. While maintaining the characteristics of independence and sovereignty, and continuing to seek the good of its own population, today it is its task to participate in the edification of the common good of humanity, a necessary and essential element for global balance. This universal common good, in its turn, must acquire a heightened legal significance at the international level. Of course, I am not thinking of a universalism or a generic internationalism that disregards the identity of individual peoples: this, indeed, must be appreciated as a unique and indispensable contribution in the largest harmonious plan.

Dear friends, as inhabitants of our time, Christians and scholars of the Pontifical Academy of Social Sciences, I ask you to cooperate with me in spreading this awareness of renewed international solidarity with respect for human dignity, the common good, with respect for the planet and the supreme good of peace.

I bless all of you; I bless your work and your initiatives. I accompany you with my prayers, and you too, please, do not forget to pray for me. Thank you!

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Address of President Stefano Zamagni to the Holy Father Pope Francis

Holy Father,

Our Academy, which celebrates its Jubilee this year – 1994 was, in fact, the year that your predecessor, St. John Paul II, chose to establish it – is particularly grateful to you for this audience that we have all looked forward to with great joy.

During your address to us on 20 October 2017 you urged us to focus on the new problems posed by the radical *res novae* of the current historical phase to the relationship between nation and nation-state, including how to apply the principle of sovereignty in an increasingly interconnected and interdependent world. Well, this is now the topic of the 22nd PASS Plenary Session.

The crisis of contemporary democracy is at the centre of the current public debate. Nevertheless, the symptoms of this crisis, and particularly its causes, have neither been envisaged, nor taken into sufficient consideration in the last quarter century. Of course, if we limit ourselves to internal developments in national policies, we will never be able to understand the factors that have triggered this crisis. It is only by standing at the intersection between the nation-state and the global context that we can grasp the reasons for the ongoing trends that are pushing us towards nationalism and authoritarian populism.

Global politics is at a crossroads. The institutions of the post-war period, created to ensure a peaceful world order and guarantee inclusive prosperity, are showing signs of wear (think of the UN Security Council, for example). Moreover, transnational institutions established in the same period with sometimes contradictory mandates, ended up creating a confusing fragmentation of authority. As Pope Benedict XVI pointed out in the final chapter of *Caritas in Veritate* (2009), we can no longer postpone the search for a new institutional model to govern the growing interdependencies and interconnections within and between societies. Otherwise it will be impossible to avoid dangerous consequences, the most serious of which is the desperate movement of peoples who are deluded into seeking a way out of their difficulties in sovereignty and in the unilateral defence of their respective interests. We cannot sacrifice the nation on the altar of sover-

eignty. At the same time, however, it would be unwise to accept the model of post-national democracy in the name of a cosmopolitan citizenship that considers the concept of nation to be outdated. National sentiment can still go hand in hand with democracy, as long as the latter does not regress towards forms of illiberal democracy.

Evangelii Gaudium and *Laudato Si'* contain heartfelt appeals to look beyond – without denying it – the notion of responsibility as imputability, which means being accountable and giving a reason for what an autonomous and free subject brings into being. This notion, although postulating the ability of a subject to be the cause of his or her actions, leaves in the shadow what it means to be responsible. As you continue to remind us, responsibility (from the Latin *res-pondus*) means, above all, to carry “the weight of things”, that is, to care for the Other, and to do so regardless of any faults of the agent. It is too simplistic to limit ourselves not to harm others in a season like the current one, in which the vulnerability and fragility of human beings are increasingly due not so much to perverse individual behaviour, but to what St. John Paul II first called “structures of sin”, taking up St. Paul VI’s idea. We are responsible not only for what we do, but also and above all for what we omit to do.

I would like to express our heartfelt thanks, Holy Father, for the gift of this meeting and for the confidence you have always placed in us. We now prepare to listen to Your word with intense participation and to welcome Your blessing with joy.

Word of Welcome

Good morning, everybody. It is my real pleasure to welcome all of you to the 22nd Plenary Session of our Academy, the Pontifical Academy of Social Sciences. I would really like to thank you for having accepted to share your time and your knowledge to unravel one of the most intriguing problems of present times.

As you know, Charles Colton wrote some time ago that “No metaphysician ever felt the deficiency of language so much as the grateful”. These words perfectly describe my mood today. I really owe a lot to many people, first of all to Pope Francis, for having appointed me, much to my surprise, to the Presidency of this prestigious Academy. I hope to be able to deserve the trust he put in me. Second, I would like to express my sincere gratitude to my predecessor, Professor Margaret Archer, for the great impulse she has been able to give to the Academy, extending its visibility and reputation. She is not with us on this occasion, since the British Home Office has organised a court hearing about one of the trafficked women in her charity. However, in a couple of weeks, Professor Archer will co-chair the joint workshop of the two Academies on *Robotics and Artificial Intelligence*.

A similar sign of gratitude goes to all the members of the Council of this Academy for their generous cooperative attitude, and to the members of the Secretariat for their kindness and efficiency.

Based on a proposal first advanced by Monsignor Roland Minnerath, who is with us, and then thoroughly elaborated by Vittorio Höfle, we are now ready to start our three-day workshop specifically devoted to study the multifarious relationship between nation, state and nation-state. The purpose is both to understand the main causes of the recent resurgence of nationalism and to suggest what can possibly be done to cope with present-day major challenges related to the problem of sovereignty.

The crisis of contemporary democracy has become a major subject of political commentary. However, what is often forgotten is the distinction between the two main types of systemic crises: one dialectic, and the other entropic. The former type of crisis, the dialectic one, is one that originates from a radical conflict of interest that society is incapable to cope with using traditional modes of resolution. Such a crisis, however, contains in itself the seeds to overcome it. On the other hand, an entropic crisis is one that leads to the collapse of the system through implosion, without changing it. This is what happens when a society loses the sense – in other words – the

direction of its moving forward. Why is this distinction important to me? Because the remedies to solve the two types of crises are quite different. An entropic crisis is not overcome by technical adjustment or by regulatory measures, albeit necessary, but by directly facing the problem of sense – which is what the recent teaching by our Pope Francis often reminds us of. A system might stagger from one crisis to another but never recognise the underlying mechanism that subverts its logic. We may never even get to the end of this story, but so long as the inner aporias are not named, the story will always be one of cyclical failure.

This workshop is about entropic crises: democracy, capitalism, nation-state politics, modern culture and education; all of them are experiencing an entropic crisis. All of them are grounded in illusions and contradictions, whether it be the simultaneous increase of global income and social inequalities or the symbiosis of oligarchy and majoritarianism in modern democracy or the mixture of nationalist rhetoric and globalistic economic homogenisation on the chaotic stage of international relations.

Now, modern democracy was supported by the post-World War 2 institutional setup that provided the momentum for the case of geopolitical stability, economic growth and globalisation. However, what worked then does not work now, as the politics of compromise and accommodation gives way to populism and authoritarianism.

The Thirties saw the rise of xenophobia and nationalism in the context of a prolonged economic strife, the lingering impact of World War 1, weak international institutions and the desperate search for scapegoats – in those years, the Jews. The 2010s, this decade, show notable parallels: the protracted fallout of the financial crisis which started in the year 2007/2008, the clamour for protectionism, ineffective regional and international institutions and the growing xenophobic discourse that places virtually all blame, for every problem, on migrants. In the Thirties, the politics of accommodation gave way to the politics of dehumanisation, war and slaughter.

In these years we are taking the *mutatis mutandis* steps down a dangerous similar path. Can we choose a different route? I believe, we believe that a different route does exist. We have to find it. My hope, which I share with all the other members of the Academy, is that this workshop might help us find a way out.

STEFANO ZAMAGNI
*President of the Pontifical
Academy of Social Sciences*

Preface

The topic chosen for the 22nd assembly of the Pontifical Academy of Social Sciences has proved to be not only challenging but also – as somebody stated – prophetic. It brings us to the heart of current debates across nearly all cultures. The challenge is to find a point of balance both in individual feelings and in collective mentalities between what a person or a human group deems to be his or her specific identity and the fact that we all belong to a common humanity, which means accepting the specificity of the other.

It is no accident that such a search largely echoes the social teaching of the Catholic Church. This teaching is not the product of a particular nation or civilization, it is anchored in principles and values that can be shared by anybody who makes good use of reason. This teaching does not require religious commitment or an adhesion of faith. It supposes that all human beings share a common humanity which prevails over systems, ideologies and powers. At the very core of this approach is the human person with his or her needs to be satisfied and freedom to be respected. The social doctrine of the Church sees the human person as a given reality, on which all forms of society are built. The family emerges in the first circle as a natural unit on which further social groupings are built, be they a tribe, a city, a people. The wider the organization of society spreads, the more it involves accidental features.

The doctrine of the Church rests on principles. Two principles inspired by the biblical vision of creation set the broader framework, namely the principle of the unity of humanity and the principle of the common destiny of the goods of creation. All human beings belong to a family, a people, a nation, a civilization and to the whole of humanity. We say that each level of authority in society serves a common good. The common good is what meets the needs of individuals and their community: freedom, truth, solidarity, and justice. Some goods cannot be achieved at a local or national level, such as security, defence, environment, climate change, or peace. So the common good is not limited by political or cultural borders. Human beings should be able to cooperate at all levels where their common good must be secured. This becomes more obvious in an age of globalization, economic and cultural exchanges, and common responsibility in the face of environmental challenges.

Each level of societal organization takes into account the realization of a common good. Families, industries, educational organizations, cities, regions have their own span of responsibilities and should be able to achieve their respective goal in an autonomous way. When the common good reaches a higher level of complexity, appropriate forms of decision-making and implementation are at stake.

We still face the following unresolved situations:

- Some nations still expect to become independent in the form of a sovereign state
- Some nation-states tend to ignore the claims of their regional minorities by denying them any kind of cultural autonomy
- Disputes between states about borders threaten peace in many parts of the world
- States use nationalistic propaganda in order to increase feelings of hostility between nations
- Imperialism, even in the form of economic hegemonic claims, is generally based on the assumption that a more powerful state should exploit weaker national communities

A careful distinction between nation and state helps us navigate the conflictual landscape of permanent competition and mutual exclusion of one another. The Pontifical Academy of Social Sciences examined the variety of definitions of people, nation, and nation-state, and admitted that there is no unique definition of “nation”. An ethnic group can be considered a “people”. Peoples mix by incorporating elements coming from other groups or peoples. A “nation” emerges when peoples sharing a common history decide to pool their resources and adopt common institutions, often as opposed to neighbouring, emerging nations. The feeling of belonging to a people is natural, just like belonging to a family. The feeling of belonging to a nation is more a voluntary adhesion to a common destiny. Nations may invoke the given data of their peoples’ cultural features or their will to build a constitutional order.

The issue of the nation-state must be revisited precisely because we observe all over the world a hardening of local and national identities, a growing withdrawal into nationalism, a revitalized discourse of exclusion and even hatred of the other, of the one who belongs to another culture, religion or nation.

A “nation” may tend to constitute itself as a state. The state is the legal power by which the nation expresses its wish to become independent from other peoples or nations. The modern state claims “sovereignty”, a concept

that encompasses all aspects of life. Often states legitimate their political programs as a defence or promotion of the nation. States may even create artificial national claims.

The existing organization of regional and world cooperation among nation-states is based on the consent of sovereign entities. Even bound by international conventions, nation-states are all too often the last horizon of legal decision-making. International cooperation has not yet preserved humanity from the explosion of wars and hostility among nations. Daily examples of national competition ending in sharp opposition threaten world peace.

The key concept is sovereignty. When sovereignty means exclusion, it leads to confrontation. When sovereignty is exercised according to subsidiarity, it creates better conditions of mutual acceptance. Sovereignty should not be concentrated only in the higher level of organization. When cultural or national minorities are living under the roof of the same state, subsidiarity means that a share of sovereignty may be exercised by minorities in the framework of appropriate autonomies.

When a single nation-state is no longer in a position to accomplish all its duties towards its population, the common good is to be provided by supra-national decision-making processes and implementation. This means sharing sovereignty between nation-states. In doing so a nation does not give up its independence. Rather, it tries to defend its very survival by creating alliances with neighbouring nation-states. When the economic system and the institutional framework are able to integrate more nation-states, the state's pretension to absolute sovereignty fades, and the nation as such is saved. Subsidiarity preserves nations from assimilation into anonymous and artificial super-states. Subsidiarity preserves what matters: people's dignity and their cultural heritage. At the same time, it leaves the process open to integration of new inputs and better mutual acceptance of differences.

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NATION, STATE, NATION-STATE. AN OVERVIEW

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The worldwide resurgence of nationalist ideas is one of the most striking features of the last five years. It is not easy to understand, for at least two reasons. First, the nation state is a late result of political history – it began in the late Middle Ages and reached its apogee in the 19th and early 20th centuries. This in itself does not prove that it is not a natural structure, for the true telos of an organism or an institution may come out late in its development. But as much as it is imperative to understand why the national state became an important vehicle of statehood in a crucial phase of humankind's political history, one ought not to forget that the concept of state as such does not presuppose a nation as its basis. Secondly, after the Second World War there was a relatively wide consensus to overcome those moments in nationalist ideology that were considered to have strongly contributed to the catastrophes of the two World Wars. Their recent re-emergence is thus a legitimate source of concern.

What is a state? Since Georg Jellinek, its three crucial elements are considered to be a state territory, a state population, and a state power which enforces a common legal order.¹ An important proper subset of state population is citizenry, to which, for example, alien residents do not belong; analogously, enfranchised citizenry is a proper subset of citizenry, for it consists only of those elements of the citizenry who enjoy political rights (even in democracies, children, for example, are not enfranchised). Conceptually, the 'nation state' is a species of the genus 'state', namely that state in which state population consists in a nation. The state itself should be subsumed under 'political ruling corporate group', at least if we accept Max Weber's famous definition of the state as that political corporate group whose "administrative staff successfully upholds a claim to the *monopoly* of the *legitimate* use of physical force in the enforcement of its order".² Most premodern political groups never claimed a monopoly on the legitimate

¹ Georg Jellinek, *Allgemeine Staatslehre*, Berlin 3rd ed. 1922, 394 ff.

² Max Weber, *Economy and Society*, translated by A.R. Henderson and T. Parsons, London 1947, 154.

use of force even though they carried out the enforcement of their order “continually within a given *territorial* area by the use and threat of physical force on the part of the administrative staff”.³ But besides their use of force, other uses of force, such as feuds, were considered legitimate – in the Holy Roman Empire they were forbidden only in the Imperial reform of 1495.

Pre-modern states were even less based on the idea of national unity. In ancient history, large multinational empires like the Chinese, Persian, and Roman ones, and city-states like the Greek ones, sometimes joined together in loose confederacies, were the main political units. Political unification of the city-states speaking the various Greek dialects became reality only thanks to conquest by a foreign power – it was not the commitment to a national idea that achieved it. The dynastic principle of the political order characteristic of the pre-1789 Ancien Régime (in the broad sense of the term, including other European monarchies besides France) was not based on national ideas either – most monarchs ruled over people of differing ethnic background. And people of the same ethnic background were often separated by political borders and did not hesitate to go to war against one other if ordered to do so by their monarchs. Even if already in the Hundred Years’ War between France and England some political demarcations began to be inspired by the criterion of belonging to the same nation, it is only at the end of the 18th century with the French Revolution that nationalism became a full-fledged ideology. Nationalism first went hand in hand with secularization – it sometimes even offered an immanentist religion aimed at replacing traditional religious bonds to a transcendent moral principle with a feeling of cohesion within a national group. In this context, it sometimes even turned against universalist ideals like truth and justice, which had inspired humanity since the Axial Age.⁴ Secondly, it was rooted in a new form of egalitarianism, which revolted against the privileges of aristocracy and clergy and, in due course, evolved toward democratic ideals. Third, the Industrial Revolution strongly fostered nationalist ideals. Industrial capitalism presupposed mobility of labor; thus, regional differences within the same nation disappeared, and people began to identify themselves through their affiliation to their nation rather than to their region of origin or their rank in society. The monopolisation of the legitimate use of force was not the only new task accruing to the modern state. With the Industrial Revolution and the ensuing destruction of pre-modern, mainly

³ *Economy and Society*, 151.

⁴ See the classic criticism by Julien Benda, *La trahison des clercs*, Paris 1927.

agrarian life forms, the state had to assume new responsibilities, such as general education, public health, and welfare, which went far beyond its traditional domain. These new tasks were much facilitated by the use of a common language, which had to be spoken by every citizen, and the fostering of national solidarity transcending class divisions. Fourth, despite its radical novelty, nationalism had to bolster its agenda of social transformation by appealing to purported deep continuities with the past, which supposedly separated one's own nation from time immemorial from other nations and created a national essence which the nationalist state claimed to render only more explicit. A sincere interest in the earlier history of one's nation went hand in hand with historical misrepresentations and sometimes even outright forgeries (suffice it to mention the *Dvůr Králové* and *Zelená Hora* manuscripts). As Ernest Gellner aptly put it: "Nationalism ... preaches and defends continuity, but owes everything to a decisive and unutterably profound break in human history. ... Its self-image and its true nature are inversely related".⁵

Nationalism, in other words, was a very powerful and probably indispensable tool in the process of successful modernization. Its spread all over the world after its genesis in Europe – a spread that legitimized decolonization – shows that it indeed fulfilled a need. Why, then, is its resurgence troublesome? In order to answer this question, one has first to define nationalism. Nationalism teaches that state and nation ought to be correlated. (If it is historically well informed, it cannot maintain that the two always are; but its normative claim is not defeated by the recognition of deviating historical facts). First and foremost, nationalism claims that each successful state's citizenry should be one nation. Second, nationalism can also support the converse idea that each nation should have its own state. But what is a nation?⁶ A nation is, according to one type of definition, an ethnic group (a people) with an explicit consciousness of belonging together and a desire to forge a common political will. While an ethnic group may not be aware of forming an ethnic group, self-awareness is a crucial element of nationhood. Some authors, however, define "nation" only through the will to act as a political community; thus there can be nations not built on a dominant ethnic group but sharing a common political will. The USA is the classical example, even though for a long time its elites were white, Anglo-Saxon and Protestant.

⁵ Ernest Gellner, *Nations and Nationalisms*, Oxford 1983, 125.

⁶ See my more detailed analyses in: *Morals and Politics*, Notre Dame 2004, 476 ff.

But what is an ethnic group, a concept used in the definiens of nation? This question is very hard to answer (and so is the one concerning the meaning of “nation”), first of all because the various criteria used for defining an ethnic group are often vague and, second, do not necessarily overlap. They range from the crudely naturalistic to the utterly subjective element, from the supposed biological fact of a common ancestry to the mere *We*-feeling that may have no basis in any objective fact. Between these two extremes, a common language, common mores and values, sometimes interpreted as the emanation of a specific “*Volkgeist*”, a common historical background, for example in warding off attacks by enemies, and a rational commitment to a common future due to common interests are intermediate factors that are used to define an ethnic group. These criteria do not overlap, for a group of people may share the same language, but not the same religion, and vice versa; and history shows that sometimes the first, sometimes the second criterion is considered more relevant in defining a people. And neither criterion is precise: Linguists at least can confirm that there is no sharp demarcation between language and dialect; indeed, it is often the political will that declares an idiom a dialect, if its speakers are to be included in the group, or a different language, if its speakers want to declare themselves independent.

This is one of the reasons why the principle of the self-determination of nations, so forcefully expressed by Woodrow Wilson in his Fourteen Points on January 8, 1918, is much more difficult to realize than to preach. The collapse of three great multicultural empires in 1918 led to the creation of a multitude of new states, which, while realizing some aspirations of national self-determination of peoples that had been ruled within multi-ethnic empires, at the same time almost inevitably violated the desires of self-determination of ethnic minorities within their own new territories. The preference for the dominant ethnic group of the new nation state often led to the denial of the rights of minorities to local autonomy, since these rights were perceived as endangering the newly gained national homogeneity. This proved a source of instability, which could even be exploited by the old imperial powers desiring to reannex the new states. As long as there are no clear criteria for demarcating ethnic groups, the appeal to the nation as ultimate basis of a state leads to lack of clarity concerning the political demands that ought to be supported.

But even where there is a widespread agreement that a group of people constitutes a nation, the principle of national self-determination may well challenge two basic pillars of international law, namely, the ideas of sover-

eignty and territorial integrity of states. For in the name of nationalism, the annexation of territories of other states largely populated by members of the nation of one's own state becomes morally permissible – and analogously so is the secession of areas that are populated by an ethnic group that considers itself unlike the people constituting the majority of the state to which these areas belong. It is true that a nationalist may argue that such aims, while reasonable, should be achieved only by peaceful means; and it is of course true that the many wars of humankind before the rise of nationalism sufficiently prove that bellicosity is not due to nationalism alone. But the experience of the two World Wars teaches that nationalist ideologies increased the preparedness to go to war and added further reason for conflict. It is also undeniable that the collapse of the two multiethnic states, Soviet Union and Yugoslavia, in 1991, itself the result of laudable democratic ideals, which are easier to be implemented within a homogeneous population, led to considerable bloodshed (in the case of Yugoslavia immediately, in the case of the Soviet Union much later). For even when the collapsing states are federal states, the distribution of the population according to ethnic criteria rarely coincides with the borders of the member states. Conflict is thus quite natural, even if certainly not inevitable (think of the splitting of Czechoslovakia); at the very least it can be stoked quite easily.

It was certainly a matter of progress that in the Atlantic Charter of August 14, 1941, Franklin Delano Roosevelt and Winston Churchill committed themselves to “the right of all peoples to choose the form of government under which they will live”, while at the same time desiring “to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labor standards, economic advancement and social security”. Since the concept of people was not defined, the Charter left open which ambitions to have an own state should be fulfilled beyond the restoration of the sovereignty of the states occupied by Nazi Germany. The word “people” is so vague that it may refer to the state population of any state; in this case, the sentence only states that the population must have a say in its constitutional arrangements, leaving it open whether the population should be a nation or not. Furthermore, the Charter explicitly pleaded for international cooperation aiming at economic growth and social security for all humans.

This plaidoyer became political reality: the United Nations, the Bretton Woods Institutions (the International Monetary Fund and the World Bank), the General Agreement on Tariffs and Trade and the World Trade

Organization, and supranational organizations like the European Communities (later the European Union) or the Organisation of African Unity (later the African Union) were all established to promote international cooperation in security, development, and trade. The new international system inspired by the principles of liberalism contributed both to extraordinary economic growth worldwide and to the reduction of violence – despite many local wars, at least after 1945 it became possible to avoid a new World War, which would have unimaginable catastrophic consequences due to the likely use of new weapons of mass extinction. Besides the areas of security and economic cooperation, increasing ecological problems are another field in which only international cooperation promises to be effective – the depletion of the ozone layer or climate change do not stop at states' borders. The 2016 Paris agreement within the United Nations Framework Convention on Climate Change dealing with greenhouse gas emissions showed, however, that crucial ecological challenges are much more difficult to tackle than economic cooperation – certainly because they ask for reductions instead of growth. But the rejection of international cooperation will render the ecological problem, difficult as it is to solve even with cooperation, completely intractable. Climate change will result in more migration, which is another area that can only be tackled equitably by international cooperation.

There is little doubt that the revolt against supranational organizations and multilateralism that has become more and more visible in the last four years is, to a large amount, motivated by the frustration and resentment of those people who did not benefit from globalization.⁷ As much as globalization succeeded in diminishing global inequality by pushing hundreds of millions of people out of poverty into the middle class, particularly in China, it did increase inequality within countries, both developing and developed ones. The enormous gains in wealth due to globalization did not pass on to many of the poorer people in the rich countries, also because automatization rendered many of the traditional industrial jobs obsolete. The belief that the elites of globalization, like a plutocratic equivalent of the old aristocracies, are more connected to their counterparts abroad than to the poorer classes belonging to the same nation created a vast reservoir of wrath, which can be tapped by ambitious politicians desirous to bypass the ruling elites and catapult themselves to power. Since the increase in

⁷ See my detailed analyses in: *Globale Fliehkräfte. Eine geschichtsphilosophische Kartierung der Gegenwart*, Freiburg/Munich 2018.

migration is perceived to contribute to the economic decline of the working class, anti-migrant rhetoric proves to be a successful tool for populist politicians that support an agenda of delegitimizing the United Nations, dismantling supranational organization like the European Union, reducing free trade, and limiting multilateralism, for example in ecological matters. The refusal to renew disarmament treaties considerably increases the risk that the new nationalism may usher in a new great war.

One should not deny the great achievements of the national state, particularly in mobilizing solidarity beyond classes. Patriotism, a love for one's own political community, is a great source of altruism that can even lead to the willingness to sacrifice one's life in a just war. Certainly, patriotism's reach is, by its very nature, limited and not universal – but limited altruism is still better than the universalized egoism of economic actors who think exclusively of their own private interests, though on a global scale. Respecting patriotic feelings and channeling them in the right direction is certainly much better than neglecting them, both for intrinsic reasons, but also because such neglect will hand over the legitimate need for patriotism to nationalists who turn explicitly against other nations and international cooperation. No reasonable person can deny that an institution has a primary responsibility toward its members. Politicians take an oath to foster the good of the country that has elected them, not that of other countries. But this does not mean that they are only committed to the good of their own country. First, just as the CEO of a company has to respect the law in interacting with other companies, the administration of a country must also uphold international law in dealing with other countries. "My country first" must not mean that states are not bound by the international legal order when dealing with others. Wars of aggression, for example, remain crimes even if they benefit the attacking country. Second, it cannot mean either that multilateral cooperation should be limited. For, on the one hand, there are many forms of cooperation that are in the interest of all cooperating states. But, on the other hand, even those forms of cooperation that mainly or only benefit one's partner but compensate for a moral wrong not yet codified in international law are morally mandatory. The countries that produce the most greenhouse gases have a moral duty to pay for the environmental damages they are causing and, for example, to accept climate refugees, who are the result of their policies. Third, internal policies based on the principle of "my nation first" are similarly unacceptable when the predominant ethnic group, be it defined by its religion or its language, oppresses minorities in its own country, in some cases even depriving them

of their citizenship. If one calls such policies nationalistic, one may well say with Emmanuel Macron, in his speech for the centenary of the November 11, 1918 armistice, that nationalism is the betrayal of patriotism.⁸

Catholic Social Doctrine is by its nature universalistic and at the same time committed to the principle of subsidiarity. This means that it defends a hierarchy of social institutions, from the family to local communities, states, and supranational organizations (the most comprehensive one being the United Nations). Each level has its rights and deserves respect and support, but it must not turn against institutions on a lower or a higher level. The Church does recognize the duty of obedience of citizens to their legitimate political authority, which can forfeit its claim only through massive violations of basic rights and of the common good. Constitutional safeguards that protect the rights of individuals and of ethnic minorities are much better than dismantling existing states through secession in the name of nationalism. States are often obliged even by international law to guarantee basic rights to minority ethnic groups and must avoid giving the impression that the majority is oppressing the ethnic minorities. Discrimination based on race, ethnic background and religion cannot be permitted, for example, as far as access to public offices is concerned, and there must be ample space for the preservation of minority cultures, in particular as regards language and religion, for example through statutes of autonomy. A federal state is often the best way to guarantee these rights, but it is not always feasible, be it for historical or geographical reasons. A federal state may be advisable even in the case of a culturally homogenous state, because it adds a vertical separation of powers to the more traditional horizontal one, and nothing is a better bulwark against the abuse of political power than mechanisms of separation of powers.

One should not deny that a citizenry must share some crucial elements – mainly the respect for the legal system that they obey, a rejection of violence, and a comparable capacity to contribute to the common good. Not all random combinations of people can be the basis of a stable state. It is also obvious that a democracy presupposes an even higher degree of homogeneity than an empire; for its citizens must not only live peacefully together, they must also be able to forge a common political will. This is the ultimate reason why the push toward democratization often destroyed the large multiethnic empires of the past. Still, large multiethnic democra-

⁸ <http://www.leparisien.fr/politique/11-novembre-le-nationalisme-est-l-exact-contre-patriotisme-rappelle-macron-11-11-2018-7939908.php>

cies like the USA and India, and smaller ones like Switzerland, are possible. A single national language is not a necessary condition for a functioning democracy, even if a common lingua franca clearly is useful; religious homogeneity is even less indispensable, as Europe learned during the painful experience of the religious wars of the 16th and 17th centuries. But it is true that the stability of a state presupposes some feeling of belonging shared by most citizens. But this may well be their own constitution, and people may take pride in its granting autonomy to local communities, preserving a plurality of national languages, and respecting religious freedom. Constitutional patriotism, to use a term coined by Dolf Sternberger,⁹ avoids the tendencies of nationalism to privilege a specific ethnic group.

Concerning institutions more comprehensive than the national state, the principle of subsidiarity justifies their support whenever they address those issues that transcend the possibilities of the national state, such as international trade, climate change, migration, and collective security. No doubt, several of these institutions lack effectiveness and efficiency. But they should be improved, not abrogated. Despite all its limits, the European Union remains a great example of how a continent torn by wars for many centuries has been able to avoid military conflict and spread prosperity over its various regions after 1945. And despite all its deficiencies, the United Nations has rendered the world less bellicose than it otherwise would be. Its success depends to a large extent on the willingness of the member states to delegate tasks they cannot solve on their own to the international community; and this willingness relies on the trust that the sovereign states have in each other. Trust is fostered by the insight that an agreed upon behavior is in the mutual interest (perhaps even more than economic advantages, its pacifying effects are the strongest argument for international trade); but since interest constellations can shift, it is even better when it can rely on the knowledge that one shares common moral values. Religions are built on the recognition by a community of basic values that bind one's will even when they demand a sacrifice of one's own interests; thus sharing a common religion can strengthen trust. However, since there exist a plurality of religions, religion can also be a divisive factor, both within and between countries; and interreligious dialogue must aim at elaborating those values shared by different religions that can allow humankind to build up that trust that alone renders cooperation durable.

⁹ Dolf Sternberger, *Verfassungspatriotismus*, Frankfurt 1990. For the more recent debate, see Jan-Werner Müller, *Constitutional Patriotism*, Princeton 2007

The choice of topic of the 2019 Plenary Session of the Pontifical Academy of Social Sciences was motivated by the perception of a worldwide increase in nationalism. The papers that are published in this volume fall into three groups. The first deals with general principles of political and juridical thought concerning the concepts of nation and state and connects them partly with the Social Doctrine of the Catholic Church, partly with issues external to the single state, such as economic globalization and war. The second part offers case studies of the development of nationalism in different areas of the world (mainly Asia, Africa, and Europe). The third group discusses recent events, such as Brexit. Given its explosive nature, the possibility of a secession within a member state of the European Union, namely of Catalonia from Spain, is dealt with in two different papers with particular care.

The first paper of the conference, by His Eminence Cardinal Walter Kasper, offers a synthesis of the political philosophy of Catholicism. The starting point is the dignity of all human beings, which itself is a consequence of humans having been created in the image of God. The plurality of human beings renders necessary a normative standard for their interactions, justice. According to Aquinas, natural law predates all positive law. Even if the theory of human rights was explicitly articulated with the American and the French Revolutions at the end of the 18th century, Kasper sees its beginning in the teachings of Francisco de Vitoria and Bartolomé de Las Casas, while at the same time recognizing that the Catholic Church embraced the modern doctrine of human rights only later, namely with John XXIII and the Second Vatican Council. He regrets this and connects the rejection of the right to religious freedom by Gregory XVI and Pius IX to the terror with which the French Revolution had ended. The concrete historical nature of human beings nurtures a special bond to the place where one is born and lives; but the modern national state is a late result of history, connected to the process of secularization. This process enforced a revision of the Catholic doctrine of obedience to traditional political authorities. The Catholic Church today leaves the choice of their constitutional form to citizens; more important than the formal structure is the principle that governments serve the common good and respect the principles of subsidiarity and solidarity. The Church supports separation of powers, freedom of public opinion, regular elections of political office-holders, and in extreme cases a right to resistance. The erosion of the religious-metaphysical presuppositions of the constitutional state based on the rule of law, the ascent of nationalism that functions as a secular ersatz

to religion, the decreasing intelligibility of complex political decisions, and an increase in the gap between rich and poor countries are challenges that can only be met by the four pillars of just peace: respect for human rights (including minorities' rights), promotion of the democratic state with rule of law, international cooperation aiming at inclusive development, and supranational organizations with judicial solutions of international conflicts.

His Excellency Archbishop Roland Minnerath's paper on "Nation, State, Nation-State and the Social Doctrine of the Church" begins by accepting the reality of various peoples, while acknowledging that they are not static or closed realities. A nation, on the other hand, is the result of the will of a people to live together. Such a will can also unite individuals from different ethnic backgrounds – successful multiethnic states consist in his terminology of different *nationalities* that forge one *nation*. States may even predate nations – in Africa or the Middle East, decolonization created states that did not have a dominant ethnic group or whose dominant ethnic group was spread over several states. Modern nationalism consists in replacing the sovereignty of the monarch – first the individual one, then the permanent one – by that of the people. In connection with the rise of nationalism, Romanticism led to an idealization of one's nation's past, often combined with a denigration of the deeds of other nations. The state's sovereignty, however, has to be limited by the recognition of the rights both of individual citizens and the web of duties in relation to other states. Minnerath insists on the universalist spirit of the early Church, which transcended the boundaries between pagans and Jews, and recognizes in the huge extension of the Roman Empire something congenial to the Christian spirit, while the Christian churches of smaller kingdoms like Armenia, Georgia, and Ethiopia showed strong national characteristics from the beginning. The moral principles that the Social Doctrine of the Church supports are respect for the maintenance of a nation's cultural heritage (which does not always include the right to one's own state), subsidiarity, local and regional autonomy within states, and supra-national institutions like the European Union that share sovereignty. An important corollary is openness toward immigrants, which will be greater when a state defines itself through political unity rather than cultural identity.

Paolo Carozza's essay on "National and Transnational Constitutionalism, and the Protection of Fundamental Human Rights" studies the tension between the idea that states based on national self-determination are the best way to protect human rights, an idea prevailing in the late 18th and 19th century and still in the process of decolonization, and the uni-

versalist conception that human rights transcend nation states. This latter conception, while having its roots in the Enlightenment thought, became powerful in the second half of the 20th century, certainly as a reaction to the abuse of state power in totalitarian nationalism. By conceiving human rights as an area of international concern, the ideal of the sovereignty of states was inevitably limited. Still, the implementation of human rights has to rely on states. This has led to an insistence on national ways of interpreting human rights, for example in the debate on Asian values. Carozza explicitly ignores national authoritarianism and sham constitutionalism and focuses on national constitutionalism, as exemplified by the USA throughout its history – a commitment to human rights combined with a strong affirmation of national identity. The refusal to accept, for example, the jurisdiction of international courts is not simply rooted in American exceptionalism but has partly to do with peculiarities of the American constitution (which is very difficult to amend), such as its federalism. Not only are there distinctively American approaches to fundamental rights, which are interpreted in a substantively different way; Americans tend to believe, somehow in a Burkean manner, that the interpretation of rights by a concrete nation alone gives them “reality” (even if there is also a universalist discourse on self-evident rights from Jefferson and Paine on). Human rights scholars from other countries, on the other hand, often aver that it is transnational processes that ultimately validate these rights. Tocqueville already considered a combination of a commitment to rights and a taste for local freedom as characteristic of the USA and considered the maintenance of democracy an art. Rights, Carozza continues, can serve two purposes: they can represent an objective order, or they can constitute the participatory aspects of democracy. The first sense is often perceived not only as being antidemocratic, insofar as it limits the choices of the majority, but even as antipolitical, because it removes rights from the sphere of political processes. But Carozza insists that the two dimensions are intertwined: Self-determination is an objective good; substantial and procedural rights reinforce each other; communities are jurisgenerative. Still, continental European tradition is closer to the conception of rights as objective order than the USA and the United Kingdom. Carozza himself favors a balance between both approaches based on the idea of subsidiarity, which indeed also inspired European jurisprudence (think of the margin of appreciation doctrine developed by the European Court of Human Rights). But Carozza perceives today an atrophy of the respect for structures of self-government, which is dangerous because the validity of norms must

ultimately rely on social practices. A mere foundation of human rights in positive law – a consequence of far-reaching skepticism concerning the metaethical nature of statements about human rights – is too thin. For laws have to be applied to cultural contexts and at the same time be rooted in them in order to influence behavior. Otherwise formalist bureaucracies will step in, and under the guise of the same language, strong disagreements on the meaning of legal terms will continue.

The concept of subsidiarity, already mentioned several times, is the focus of Gérard-François Dumont's study on "The nation state and the principle of subsidiarity". He wittily remarks that, like Monsieur Jourdain in Molière's *Le bourgeois gentilhomme* (*The Bourgeois Gentleman*), who spoke in prose all his life before becoming familiar with the concept, humankind practiced subsidiarity long before the term was coined. Among the theoretical precursors of the theorists of subsidiarity, Dumont mentions Aristotle, who in the first book of *Politics* distinguishes three basic institutions (the household, the village, and the city-state), Aquinas, Althusius, the great critic of Bodin's concept of sovereignty, Locke, Mill, Tocqueville, and Proudhon. But the term itself first appears in authoritative texts of the Catholic Church in the 19th century, such as the encyclicals *Rerum novarum* and *Quadragesimo anno*. The ultimate justification of the principle lies in the respect for individual freedom, which is analogously extended to smaller social units. In the history of real institutions, Dumont points to the Federal Charter of 1291 between Uri, Schwyz, and Unterwalden, the Magna Carta Libertatum of 1215, the foundation of universities, communal charters, and institutions like the Hanseatic League as examples of subsidiarity experienced in the Middle Ages. The rise of the national state in early modernity was still necessary, partly for geopolitical reasons, but Dumont praises federal states like Switzerland and the Federal Republic of Germany for granting the cantons and the *Länder* respectively all the powers that are not explicitly delegated to the federal government by the constitution. The suppression and oppression of subordinate units, and thus the violation of the principle of subsidiarity, is characteristic of some nationalist states, which may even be democratically organized. But at the same time, nations are indispensable – and supranational organizations like the European Union would undermine subsidiarity if they dreamt of replacing the national state.

Juan J. Llach's "Economic Globalization and Nation States" sees the origins of globalization in colonization, which at the beginning led to an enormous increase in economic wealth in developed countries, thus dra-

matically increasing inequality between developed and developing countries. From 1500 to 1973, the gross domestic product at purchasing power parity per capita increased 2.2 times in Asia (without Japan), and 41.7 times in the USA. But in the last thirty years the divergence between developed and developing countries has diminished radically. Still, the convergence is much stronger in Asia than in Africa and Latin America, including the Caribbean countries. Connected with decolonization is the increase in the number of sovereign states – from about forty in the late 19th century to almost 200 now. Perhaps connected with this increase in states is the decrease in wars between great powers and in death toll in armed conflicts. Centrifugal forces manifest themselves not only in the increase in states when big empires such as the Soviet Union and Yugoslavia fall apart or regions secede, but also in the growing demand for autonomous decision-making without full sovereignty, which led to citizens having greater decision-making power on issues such as health and education. At the same time, supranational associations – the most ambitious one being the European Union – and free trade agreements work as centripetal forces. Globalization, however, has recently provoked a populist revolt, which claims that the interests of the people are not sufficiently taken into account by the globalized elites, who often support economic policies that deliver short-term benefits while being detrimental in the long term. Often these movements turn against migrants. Among the causes of nationalist rise are frustration with economic problems, such as the increase in economic inequality in many countries, a new quest for global hegemony, and demographic growth in developing countries, which increases migration pressures into richer countries. Llach sees two trilemmas at work in the contemporary world, even if only two of the three alternatives can be simultaneously fulfilled. On the one hand, there is the trilemma of wanting fewer children, no immigrants and high pensions, and on the other, the trilemma, analysed by Dani Rodrik, of wanting economic integration, nation-state, and democratic policies. Despite its shortcomings, globalization can only be improved, not jettisoned. The decline in world trade before the rise of fascism and World War II should caution us against following populist recipes. Llach suggests pronatalist policies in developed countries, a concept of growth that is friendlier to the environment, fairer trade, progressive taxation, and a closer scrutiny of new technologies as avenues to pursue further.

The topic of migration is at the center of Marcelo M. Suárez-Orozco's paper on "Immigration and the State". It begins with the statement that

the number of migrants has grown considerably since the last turn of the century. This refers to all migrants, domestic as well as international. The family proves to be the basic unit of migration. Globalized markets, global media and information technologies, modern mass transportation, demographic and environmental factors as well as the results of wars contribute to this increase. Not only did the two World Wars generate very high numbers of refugees; the USA started its guest worker program for Mexican *braceros* in 1942, when many US-American men were involved in the war effort. Decolonization, the disintegration of states (such as the Soviet Union), and the incapacity of failed states to protect citizens from rampant criminality also raised and raise the number of migrants. Concerning environmental refugees, the countries most impacted by ecological disasters, which may soon become the main cause of migration, are low and lower-middle income countries, and the international community is far from having mechanisms in place to take care of these people who mostly do not bear any responsibility for the catastrophes that befall them. The burden connected to refugees is mostly carried by neighboring countries, which are rarely much wealthier, while the contribution of rich countries to solving refugees' problems is modest. The lack of prospects in refugee camps and the hostility with which refugees, particularly illegal ones, are met in many countries make their lot particularly harsh.

The topic of the state cannot be disentangled from the topic of war. Gregory M. Reichberg's essay on "The Nation-State as Locus for War-Making Authority" begins by insisting on the importance of Aquinas and his commentator Cajetan in the formulation of just war theory. One crucial requisite for the justice of war is that only a public authority – not the prince as a private person – may start a war. But does this not lead only to the replacement of private vendettas, which are now abrogated, by conflicts between states, which will be less frequent but bloodier, since more people are involved? This objection has encouraged increasing doubts on the traditional Catholic doctrine of just war (a term in fact no longer used in papal documents), not only in the present, but already in the time between the two World Wars. Luigi Sturzo, among others, considered war as something to be replaced in the course of history by other tools for settling legal disputes between sovereign states. Reichberg, however, shows that scholastic theologians (unlike medieval jurists like Raphael Fulgosisus) never taught that war is a mechanism of solving disputes and creating rights. War already presupposes a right and is the mechanism to enforce this right. By his criticism of some modern arguments against the traditional

doctrine of just war, Reichberg does not want to re-pristiniate the whole doctrine. He rejects its punitive account of war, which is to be replaced by a liabilist one, and he goes considerably beyond the Second Scholastic, which rejected wars for the conversion of pagans, but still allowed them for various religious purposes, such as maintaining the Catholic identity of a polity. Reichberg sees in current anti-Islamic rhetoric with religious undertones a continuation of this line of thought, which has to be expunged if the doctrine of just war is to be resuscitated.

Allen D. Hertzke's essay on "State Failure and International Response: The Lessons of South Sudan", somehow bridges the first two parts of this volume because, while devoted to a specific country, it uses it as a starting-point for general reflections. It starts with the observation that many refugees today flee from failed states and tries to explain why the world's youngest state, South Sudan, created only in 2011, became such a massive failure. As an answer to earlier genocides, in 2005 virtually all members of the United Nations endorsed the Responsibility to Protect, a global commitment to protect populations from genocide, war crimes, crimes against humanity, and ethnic cleansing. This responsibility, however, rests primarily with the sovereign state in which the population lives; and while other states may assist it, collective action against the state can only be undertaken in accordance with the UN Charter. Hertzke also discusses the institution of trusteeship, particularly in the recent form of transitional authority for post-conflict societies. They have often failed because of the post-Westphalian assumption of sovereign rights of states – which must now be supplemented by a doctrine of sovereign obligations, to use a term by Richard Haass. South Sudan became independent after two bloody civil wars in Sudan (1955–1972 and 1983–2005). The Comprehensive Peace Agreement of 2005 was due to mediation by the USA, strongly supported by Christian churches, African American leaders and human rights activists. However, the independent country proved unable to solve its problems, despite oil revenues and international aid, which disappeared due to corruption. The failure of the new government to deliver the infrastructure the country needed naturally led to a resurgence of tribalism, for where the state is weak, the only social unit on which people can rely is the tribe. The high credibility of the various Christian churches, the most reliable institutions of the new country's civil society, was left untapped by politicians. A civil war, this time within South Sudan, erupted again in 2013 between the President and the Vice-President, who belonged to different ethnic groups (both were Christians). Personal and tribal conflicts

led to enormous bloodshed, which might have been avoided if a trusteeship solution had been implemented together with independence. But the sovereignty assumption of modern international law today requires the legal rulers' consent for such a solution, even if South Sudan is no longer a functioning state.

The second part of the volume begins with Paulus Zulu on "Nation, State, and Nation-State: The African State: Development and the Common Good". Even if statehood in Africa is much more varied than it seems at first glance (in Northern Africa, for example, there is a strong Arab influence), the tension between traditional political cultures, colonial rule, and ideological contestation during the Cold War affected most African states, of which only two, Liberia and Ethiopia, avoided longer periods of colonization. While nationalist ideology had distinctly European roots, it was appropriated by the new African political leaders in the struggle for decolonization, even if the new states lacked nations in the European sense. The colonial powers themselves had distinguished between races and ethnicities – the people not belonging to the indigenous race were citizens enjoying rights in the modern sense, while the local population was subject to the different customary laws valid in the various tribes. Colonialism did not invent ethnicity but formalized and legalized it (sometimes with the intent of ruling by dividing), thus contributing to its endurance after the newly gained independence. The limited distributive capacity of the state, as well as ethnic and gender inequalities, are the main causes of the economic disparities within African countries. The high number of either successful or failed coups d'état after independence proved a strong impediment to development (the politically more stable countries usually have a higher position in the Human Development Index). Zulu points out that the integration of the population allows the state to focus on its main tasks; where integration is weak, the state cannot deliver what it is supposed to, and this diminishes the level of integration since people turn away from the state. While most African cultures in pre-colonial times had structures of political rule that were inevitably hierarchical and non-egalitarian, the colonial powers' division of Africa cut across traditional kingdoms and ethnic lines. The colonial rulers did not teach indigenous populations democratic participation; neither did it belong to their traditions. Mainly, indigenous elites resented their exclusion from power; but they wanted to replace colonial rulers, not transform power structures as such. And while European nations were forged in the context of industrialization, the new African nations were artificially contrived and lacked the economic base

of modern nationhood. Pluralism was rejected under the pretext that it would cause divisiveness; instead, authoritarianism fostered nepotism and clientelism. With the end of the Cold War, the West imposed liberal ideas on the political system and the economy; but the retrenchment of the state did not lead to democratic accountability, also because African politicians felt entitled to the same lifestyle as their Western counterparts. This led to increasing apathy and cynicism among citizens and made the creation of “nations” difficult. Still, the low number of secessions shows that there is mostly allegiance to existing states – even in a country as multicultural as South Africa, which is the focus of Zulu’s last section. Despite being the country with the highest social inequality, with class differences having been added to racial differences, citizens identify with the constitution and the program of the multicultural “rainbow nation”, as also expressed by the four languages of the national anthem. But a poor public service, a divisive Black Economic Empowerment program, which benefits only the black elites, the lack of the emotional bonds that come from a long common history, and the rampant corruption of the elites make nationhood fragile.

Kuan Hsin-chi’s essay on “China’s Perspectives – Imperialism, Nationalism, or Global Sharing” points out that the concept of nation in China is very recent, namely, a 19th century creation. The concept of state, on the other hand, seems to go back to the Shang dynasty and presupposes the three elements of territory, military defense, and government. In the Chinese self-interpretation, Confucian culture and an exam-based meritocratic administration made China a civilized state instead of a barbaric one, even if it did not mean that China stopped forcefully asserting its interests in the international arena. Its self-definition as “state at the center of the world” implied geopolitical ambitions, even if a tributary system in relation to its neighbors only developed in the Ming and Ching dynasties. In the last few decades China has considerably extended its range of action, among other things through the Belt and Road Initiative. Chinese nationalism rose in the 19th century as a response to Western encroachment: Learning from foreigners (including, but not limited to, industrialization) became indispensable in order to avoid further humiliating defeats. In this sense, nationalism predated the nation even in China. Sun Yat Sen’s three principles (nationalism, democracy, people’s welfare) and the five-color striped national flag – which stands for the five main ethnic groups – express the new nationalist ideology. At the same time, an important difference between Chinese nationalism and the nationalism of other developing countries in the 20th century was that combining modernization and

traditional practices was far more difficult in China, where modernizing forces were often disrespectful of China's own tradition, while nationalist forces rejected the imitation of the West. (This is presumably connected to the fact that China had its own very important culture). The Chinese Communist Party, the intelligentsia, and the common people often had quite different views. Under Deng Xiaoping and his successors, China opened to the West; and Xi Jinping pursues a strategy of "rejuvenation of the Chinese nation", which includes increasing economic and geopolitical dominance, even if Xi claims to want to avoid the "Thucydides trap" in the contest with its main global competitor, the USA, by focusing on win-win-situations. China's trade partners, such as Indonesia, Malaysia, and Pakistan, however, are becoming increasingly aware that Chinese investments in their country also create new dependencies that are not always in their national interest.

Wilfrido V. Villacorta's "Colonial Legacy in the Development of Nation-States in Southeast Asia" continues the study of nationalism in Asia by focusing on the working mechanisms of the Association of Southeast Asian Nations (ASEAN), which was founded in 1967 to resolve conflicts between Indonesia, Malaysia, and the Philippines. Part of the colonial legacy in the region are the current borders and a mistrust against the state, which people had experienced as exploitative. Since states that had just reasserted their autonomy against colonial encroachments viewed the nationalism that led to their liberation positively, ASEAN never aspired to become a supranational organization. Unlike the member states of the European Union, ASEAN countries cannot rely on a common religious heritage, nor are their political systems similar: one is a sultanate, two are presidential democracies, two are parliamentary democracies, two are constitutional monarchies, two are socialist republics, and one is still partly in the grip of a military junta. Therefore, ASEAN does not have a regional parliament, administration, or judiciary; nor is it a military alliance. Still, its achievements are remarkable – since its inception there has been no war among its member states, which earlier had been plagued by wars. Villacorta focuses particularly on nationalism in the Philippines. (He distinguishes nationalism from patriotism by its concern for social justice and equality, while patriotism can be satisfied with a country's independence). The country's greatest hero in the process of liberation from Spain was José Rizal (who, in fact, also inspired the Indonesian struggle for independence). After independence, however, the struggle for national self-determination within the country went on, particularly for the Muslim Moro population liv-

ing mainly in Mindanao. The Philippine Constitution and the Indigenous Peoples Rights Act of 1997 supported such self-determination but no secession. The Bangsamoro Organic Law of 2018 can be considered as a relatively far-reaching granting of the autonomy that the Moros had fought for for a long time.

Niraja Gopal Jayal's paper on "India's Journey from Civic to Cultural Nationalism. A New Political Imaginary?" studies the specific form that atavistic nationalism has taken in India in recent years. It is a worldwide phenomenon – populists use the xenophobic reaction against people outside of one's own group (be they migrants or minorities living in the country) to dismantle liberalism and build up a democracy, defined solely by the rule of the majority, which is disrespectful of minorities. The population of India is characterized by crosscutting rather than reinforcing identities of region, language, religion, sect, caste, and tribe. The Constitution of 1950 recognized that mere democracy would not empower traditionally neglected minorities and thus granted them special guarantees of access to education and public employment. On the whole, the Constitution of India was rooted in a secular nationalism based on civic, not cultural, identity and universalist political values. On the other hand, the ideology of Hindutva, developed by an admirer of Giuseppe Mazzini, Vinayak Damodar Savarkar (1883–1966), supported by the Rashtriya Swayamsewak Sangh, and inspiring the now ruling Bharatiya Janata Party, is explicitly anti-universalist and thrives on islamophobic discourse directed against the 14% of the population that are Muslims (only Indonesia and Pakistan have a higher number of Muslims). Jayal studies the consequences of the new political orientation in three areas. First, in citizenship law, *jus soli* is being replaced by *jus sanguinis* – birth on Indian territory is no longer sufficient in order to become an Indian citizen. However, Hindu immigrants from Pakistan are treated completely differently from Muslim immigrants from Bangladesh, because Hindu identity has become the default identity of Indian citizens – in flagrant violation of the religion-neutral conception of citizenship in the Constitution. While this is justified with the pretext of concern for religious minorities persecuted abroad, there is no offer of hospitality for Ahmadi or Rohingya Muslims, who are also persecuted. The newly required compilation of the National Register of Citizens in Assam, however, surprisingly led to the exclusion of a large number of Hindus because documentation in the villages is scanty. Many people are now detained for deportation, even if Bangladesh does not show any intention of accepting the deportees. Second, the new hyper-nationalism intimidates

minorities and limits freedom of speech; it has led to political murders and vigilante violence against Dalits and religious minorities, particularly when they try to date Hindu women. Violence is sometimes exerted by Gau Rakshak Dals (Cow Protection Groups), who blackmail and kill people involved in the slaughter of cows, mostly with impunity. Third, widespread discontent with representative liberal democracy has allowed populist leaders to spread a conception of democracy in which opposition is virtually eliminated and the majority can impose its will on minorities without any legal limits. This majoritarian supremacy based on a nationalist ideology is the opposite of the vision that inspired India's first Nobel laureate, the great poet Rabindranath Tagore.

Andrey Zubov's "The Resurgence of Imperialism and Nationalism in the Russian Society after 1990" begins with the reflection that nationalism and imperialism were dominant characteristics in all of Europe for the first part of the 20th century. They contributed considerably to the catastrophes of the two World Wars. The Soviet Union, too, was an imperialist country, and with Stalin even nationalism became fashionable again, as visible, among many other things, in the replacement of the Latin, Arab, and Mongolian alphabets by the Cyrillic one. The fact that the USA and Western Europe after World War II gave up imperialism and embraced the idea of working together in supranational organizations had two roots: The first was meant to avoid the deleterious errors after World War I, such as reparations and changes of borders. They were even willing to help former enemies, for example through the Marshall plan. Secondly, such a behavior was rooted in the Christian value system that inspired Christian democratic parties after the war. In the Soviet Union, however, Christian values had been eliminated and imperialism dominated the real mode of thinking, even if the ideological façade was anti-imperialistic. With the collapse of the Soviet Union it seemed that all of Eastern Europe, including the Soviet Union, would follow the Western model – something that seduced Francis Fukuyama to expect the end of history. But the benefits of the system change in Russia only materialized for a small group of intellectuals and business people, not for the masses, who early on began to resent the loss of Soviet territory. Putin was able to appeal to their frustration with the annexation and occupation of Ukrainian territory in 2014. But the harm that the economic sanctions of the West inflicted on the Russian economy after the resurgence of imperialist behavior may well alienate the Russian people from its leadership. As a liberal politician, Zubov encourages the West to maintain the sanctions until Russia gives up its imperialist behavior.

Herbert Schambeck's lecture on "Nation and Nationalities Using the Example of Austria both in the Past and in the Present" studies the history of Austria, which in a double sense is not a typical national state. Until 1918, it was a multiethnic empire; afterwards it was characterized by sharing the same language as its neighbor Germany, by which it was forcefully annexed from 1938 to 1945. With the dissolution of the Holy Roman Empire in 1806, the Austrian monarchy too had to make concessions to the new nationalist ideas. While many monarchies ruled over several nationalities, probably no other purely European empire was as multiethnic as Austria. The constitutional transformation into the double monarchy of Austria-Hungary in 1867 tried to render justice to some national aspirations but neglected those of the Slavic populations. With the collapse of the monarchy, Austria shrunk to a much smaller territory. But despite the change in state form and territory, the 1867 law on the general rights of the citizens was received by the 1920 constitution, thus providing some continuity. The person of Hans Kelsen, who advised both the last emperor Charles I and the first chancellor of the First Austrian Republic, Karl Renner, was also an important element of continuity. The influence of the German Weimar constitution on the new Austrian constitution was great, but Austria was forbidden to unite with Germany by the Treaty of Saint-Germain (in violation of the principle of self-determination of nations). Nevertheless, after liberation from Nazi rule, a strong Austrian national consciousness developed in opposition to Germany, despite the identity of the language; Austria sees its distinctive mission now in a mediation between Western and Eastern Europe.

Theo Waigel, the former German Minister of Finance and one of the fathers of the Euro (he was the one who suggested the name for the new currency), devotes his paper to "The Future of Europe". While crises recur at regular intervals in the history of the European project, he is confident that the European identity – which is not the identity of a national state – will continue to animate the peace and democracy project that the European Union represents. Like Zubov he insists on the Christian roots of the European idea, which was meant to stop internecine European wars. But beside this negative motive, there are crucial positive reasons for it: In a world dominated by large superpowers, only a union of European countries has a chance to make its voice heard. Furthermore, internal security, ecological and migration problems prove untractable at the nation-state level; and the process of globalization demands a common political response, for example in the form of a common currency.

The member states of the European Union do not simply share a cultural heritage, but common values, such as commitment to the rule of law, inviolable human rights, democracy, and a social market economy. From the removal of customs tariffs to the creation of the European Parliament, the European Monetary System, the common currency, and the abolition of border controls, great progress has been achieved, which even went hand in hand with a massive eastward expansion in 2004. Waigel rejects any talk about a Euro crisis – for the value of the currency has remained constantly high – and speaks instead of a debt crisis in some Euro countries, which cannot be allowed, since it violates principles of intergenerational justice. The Euro has become an important reserve currency – with 26% of the currency reserves in the world, it occupies the second place after the dollar, with the Renminbi in third place. Serious EU problems are the threat of centralism in Brussels and the lack of democratic legitimacy at the European level. Solidarity among member states must be accompanied by subsidiarity, that is, an appeal to a member state's own responsibility. The Brexit referendum certainly represented a break in the history of the EU – Waigel predicts serious problems for the British economy. But the EU will also have to change in several respects. As much as the EU shaped the positive developments in Eastern Europe simply by offering a model that proved attractive beyond the Iron Curtain, it must now assume concrete responsibility in the outside world and develop a common refugee policy, among other things. This will only happen if those members who want to strengthen the Union cooperate with one other, even if other member states do not want to participate, as in fact had already happened with both the Euro and the Schengen agreement.

Janne Haaland Matlary's essay on "The Nation-State Between the Scylla of Populism and the Charybdis of Identity Politics" offers a much more pessimistic view of the current state of the European Union, which does not seem capable of addressing the crises of Russian revisionism, uncontrolled mass migration, and terrorism. It was the USA that organized the trip-wire deterrence force in the Baltics after Russia's annexation of Crimea; the European Union has not been able to agree on a refugee policy, thus fomenting populist revolt, and has even outsourced border control to undemocratic countries; it is doubtful whether the European Union is prepared to respond to terrorist threats. The preparedness to die for one's own country has faded away in many European countries, which refuse to increase their defense budget. A globalized, well-educated elite is increasingly alienated from the working class, who did not benefit from the

economic gains of globalization and feels threatened by migrants. Matlary understands populism as a strategy to simplify political issues by opposing ordinary people to elites that are declared corrupt, often relying on conspiracy theories. Such a strategy can be found both on the right and on the left. It is, however, misleading to call all appeals to the people, such as the use of referendums, “populist” – it may well be democratic. And the existence of populist demagogues does not mean that the issues they raise are not legitimate – mainstream politicians must take them seriously if they do not want populism to grow. Matlary insists on the nation as a natural and cultural unity that precedes the state and should not be artificially created by it. However, since there are thousands of nations and less than 200 states, most states are inevitably multinational, even if they often have a predominant language and culture. Modern democracy, which in its appreciation of individuality and equality has ultimately Christian roots, presupposes a feeling of belonging together, which can be best delivered by the nation. Saying this is not yet nationalism, Matlary rejects it but does not deem it a danger in the Europe of our time. Rather, she considers identity politics – rooted in the idea that one can choose one’s own identity and obsess over past wrongs – as undermining the unity that the state inevitably presupposes. Several examples show how a subjectivist conception of truth, which destroys any academic rigor, ends up even limiting freedom of discourse because it politicizes truth and imports the category of representativity into academia, although it is only appropriate in politics, where, too, it is highly selective (for not all categories can be represented). Out of cowardice most give in to an obsession with diversity, and a new tribalism arises that replaces meritocracy and overlooks the fact that too much diversity renders a group unable to function. Matlary sharply distinguishes between the old, legitimate feminism that insisted on equality, and group politics that highlight differences. This itself is rooted in an absurd epistemology that has given up the idea of common and objective standards.

Fr. Piotr Mazurkiewicz’s essay on “Between Patriotism and Nationalism. Seen from the Perspective of Central Europe” begins by noting a homonymy in the word “state” – it sometimes refers only to the modern state, sometimes even to pre-modern political corporate groups. Analogously, the word “nation” can refer to an ethnic group or to a political construct, the citizenry of a successful state. In the first sense, there are very few pure national states; in the second sense every successful state, even a multiethnic federal state, is a nation state. Mazurkiewicz rejects the idea that the importance of international organizations has diminished in the

last few decades but grants that the number of sovereign states, often with an ethnically more homogeneous population, has increased with the fall of big multinational empires like Yugoslavia and the Soviet Union. From Aquinas to Pope John Paul II, patriotism played a relevant role in Catholic Social Doctrine, theologically justified by the Fourth Commandment and the connections between parents and fatherland. Mazurkiewicz then points to the strongly multiethnic character of most Central European countries before new borders were drawn in Yalta and reminds the reader of the unparalleled religious freedom granted by the Warsaw Confederation of 1573. (One could also mention the Statute of Kalisz of 1264, which granted Jews many more rights than in the rest of Europe). One of the reasons for the wide-ranging tolerance of Poland was that, in the fight against the Teutonic Order, Poland needed pagan Lithuanians and Muslim Tatars. On a theoretical level, Paulus Vladimiri (Paweł Włodkowic), in his *Tractatus de potestate papae et imperatoris respectu infidelium* of 1414, more than a century before Francisco de Vitoria, denied the right to wage wars of conquest in order to convert pagans. This explains why the country attracted so many Jews from all over Europe – here they enjoyed a large amount of self-government. Despite these achievements, many central Europeans, who belonged to the Western forms of Christianity and were convinced that the real division in Europe was between them and Russia, felt that the West treated them condescendingly even after 1989 – not to mention the time of their partition between the great powers. The term “small power” does not so much refer to the size of a country but to the ratio of its size to that of its neighbors – in this sense even an otherwise large country such as Poland is small when compared to Russia and Germany. (One might add Korea, located as it is between Russia, China, and Japan). Such nations could only survive thanks to a strong cultural identity, and so Mazurkiewicz proposes a third concept of nation besides the ethnic and the political one. Cultural homogeneity is less likely to generate internal conflicts. He proposes the elaboration of a list of rights of nations but recognizes that it cannot always include a right to sovereignty. He clarifies the difference between patriotism and nationalism by applying Vladimir Solovyov’s distinction between self-love and egoism. Self-love and its political analogue, patriotism, are justified if we recognize the values of others and are willing to acknowledge our own weaknesses. Christians must always know that beyond the national community there is the universal Church and a transcendent realm, heaven, which limits our allegiance to the human laws of our fatherland when they contradict divine laws.

The last three papers, which constitute the third section of the volume, deal with two contemporary challenges in Europe – the Brexit referendum, through which for the first time in history a member state has decided to leave the European Union, and the failed attempts of Catalonia to leave an EU member state, Spain. John McEldowney’s paper on “The United Kingdom: National Sovereignty and Nationhood in a Post-Brexit World” begins by sketching the development of the English nation. An ethnic mixture of Celtic, Roman, and West Germanic elements, England developed a special legal system, the common-law tradition, which is a crucial part of its national identity. Sovereignty rests with the Parliament (not with the people, as it does in other countries). The Westminster legislature proved an extraordinarily enduring institution of political legitimacy and was exported to many Commonwealth countries. The Empire, among whose merits was the facilitation of world trade and the spread of the English language and education, was unsustainable, also for demographic reasons; its relatively long duration is ultimately more surprising than its final collapse. It bequeathed to the United Kingdom a contradiction between a liberal society and a populist goal of making one’s own nation great at the expense of other countries. Even if the United Kingdom consists of England, Wales, Scotland, and Northern Ireland, federalism was rejected as a constitutional solution, despite its success in the USA and its introduction in the dominions of the Union of South Africa and Canada. Connected to the maintenance of national identity were laws limiting immigration and organizing the deportation of aliens, which were accompanied by criminalization. Yet for a long time British citizenship was not a precise legal category. After World War II, the British Nationality Act 1948 created the new category of “citizen of the United Kingdom and colonies”, which allowed entry to the citizens of the former colonies. Later, however, limitations were introduced in order to limit the number of migrants – since 1962 not all CUKCs have right of abode in the UK. Thus a two-tier system of citizenship developed, and within it certain Commonwealth countries were targeted when immigration from them was not welcome. With the joining of the EU, EU citizens received a privileged right to enter the UK (even if the UK opted out of the Schengen agreements), and this led to a limitation of *jus soli* in the British Nationality Act 1981 – it was no longer sufficient to be born in the UK to become a British citizen. Furthermore, legal measures were enacted to enable denaturalization and the removal of one’s passport; the rights of asylum-seekers were not always respected. Crucial factors in the Brexit vote, which was influenced by many emotions not

based on facts, were the fear of uncontrolled immigration from EU countries (even if most migrants came from non-EU countries), an influx that would increase job insecurity, the feeling that globalized elites had betrayed their weaker fellow citizens, and a general desire “to take back control”. The conditions for continued residence of EU citizens in the country after Brexit are complex and not easy to understand. Some of the problems connected to the Brexit referendum, which is legally only advisory, were the following: The lack of a written constitution leaves what to do when the majority of the members of Parliament does not agree with the result of a referendum undetermined; the legislation process granted the Executive too much power; the different outcomes of the referendum in the four countries of the UK endanger its unity; the new border between Northern Ireland and Ireland may once again trigger conflicts on the island that had been mitigated through common membership in the EU. McEldowney does not reject nationalism in general – it can foster patriotism and does not have to lead to populism. But nationalism without liberalism and with a decreasing acceptance of parliamentarism may easily lead to xenophobia and become morbid.

Ana Marta González begins her study on “Nations, emotions, and identities in a late-modern world: Reflections on the Catalan quest for independence” with the observation that in the last few decades, with the exception of the war in Yugoslavia, the future seemed to be characterized by economic globalization and the construction of ever more international political organizations. However, both the financial crisis of 2008 and the increasing fear of uncontrolled migration since 2015 have led to a resurgence of nationalism. But what are the specific causes of the Catalan independence movement beyond this general atmosphere? González distinguishes political attitudes according to whether political reason precedes sentiment or vice versa. Within the European Union, national sentiment sometimes converges with an already constituted state; sometimes it is not compatible with existing political forms. Needless to say, every person has multiple identities; not only it is logically possible, but it is factually still so that many people, for example, feel both Catalan and Spanish. Sometimes, however, the Catalan identity is conceived in such a way that it excludes the Spanish one. Catalan nationalism and independentism do not always go hand in hand: There is a non-independence Catalan nationalism, and there are pro-independence forces that use fiscal and economic arguments exclusively without any appeal to the category of nation. Finally, some people support the independence movement for purely emotional rea-

sons, without any argument whatsoever. Some supporters of independence only accept legal means to achieve their end; others, frustrated by Madrid's veto, appeal to a "democratic" resistance of the Catalan people against constitutional rules, thus highlighting the conflict between a "liberal" and "democratic" understanding of the state. At the same time, the neglect of culture proves limiting to the liberal conception of the state, based as it is only on formal rules. Historically, Catalan independentism goes back to the fact that Spain was never as strongly unified as France, for example. Catalan language was revived in the 19th century, differences in local laws survived even after the promulgation of the Civil Code in 1889, and the contrast between industrial Catalonia and the rural rest of Spain created different class interests. The 1978 Constitution allowed certain regions to develop partial autonomy: a right used not only by Catalonia, the Basque country, and Galicia, but later also by Andalusia, which does not have its own language. The Statutes of Autonomy derive their legitimacy from the Constitution and do not create sovereignty. In 2004, the Catalan Parliament began a reform of its Statute of Autonomy, which in 2006 was accepted in a referendum (with a voter turnout of less than 50%) after Madrid had agreed to the Statute. But in 2010, the Constitutional Court of Spain declared 14 articles unconstitutional and subjected 27 more to the Court's interpretation. This led to the outrage of many Catalans, since there is no consensus among jurists on whether Statutes of Autonomy are also subject to review by the Constitutional Court (in the case of organic laws this is uncontroversial). In 2014 and 2017 a consultation and a referendum on independence were respectively held in Catalonia, which the Constitutional Court declared unconstitutional. Concerning fiscal issues, they are connected with regional balancing and are complex, and reforms are certainly reasonable. But the Autonomous Communities' taxing power is at present, after important reforms, similar to that of the German *Länder*, even if it is not based on a constitutional pact, since Spain is not a federal state. The desire for independence is thus more emotionally than rationally motivated and has its social base in people who did not benefit from globalization, feel humiliated, and claim sovereignty as a way to compensate for their losses. The level of polarization is such that a rational dialogue on a possible solution (such as a federal transformation of the country) is not likely to occur.

José T. Raga's paper on "Nationalism *versus* Solidarity. A Necessary Conflict?" distinguishes nationalism as identification with a nation and nationalism as the ideology of a people that aspires to organize its nation as

a state. The Spanish people cannot be defined by a specific ethnic origin or by a religion; many different ethnic groups have lived on Spanish territory, and Christians, Jews, and Muslims have interacted in Spain's complex history, which must not be ignored. Even if some regions have different languages, most of them developed out of Latin, which remained the language of high culture for a long time, and there is no justification of positive discrimination in favor of the native local language. Nonetheless, there is a Spanish tradition of rebellious individualism, which also inspires current populism. Only in the 16th century does Catalonia appear as a political unity – before, there is only the Catalonia of the Counts. Raga denies that Catalonia was ever really independent from Spain (so that there is no independence to reclaim today), neither in the late Middle Ages, nor under the Habsburgs (despite the revolt in the Reapers' War, the declaration of independence in 1641 by Pau Claris i Casademunt and the short rule by France), nor under the Bourbons, who limited the rights of Catalonia after their victory in the War of the Spanish Succession in the Nueva Planta decrees, nor during the First and Second Republics, when Francesc Macià declared an independent Catalan State in 1931, which lasted only three days, and Lluís Companys tried the same in 1934. The Spanish Constitution of 1978 was accepted by popular referendum, which in Catalonia even had a slightly higher turnout and approval than in Spain at large – so that the constitution was not imposed on Catalonia. The consultation of 2014 and the referendum of 2017, in which the Catalan population was asked to express itself concerning independence, took place despite a prohibition by the Constitutional Court. On October 10, 2017, the President of the Government of Catalonia Carles Puigdemont declared the independence of the country but immediately afterwards suggested suspending the effects of this declaration, which in fact was not recognized by any country in the world. The Spanish government reacted by applying Art. 155 of the Constitution and dismissed the Government of Catalonia. After new elections, the Catalan Parliament was able to install a new government only on its fifth attempt, because in the earlier ones the Supreme Court had blocked the proposed candidates, who had fled the country or had been imprisoned. Raga ends his essay with reflections on the inevitably social nature of human beings, who can achieve virtues and the common good only in a social context and therefore are called to live in solidarity. Governments betray their duties when they appeal to historical falsehoods to justify separatism. And even the idea that the Catalans can decide on their own about their independence is unacceptable, because their actions affect Spain as a

whole, which therefore has to agree. Shortlived democratical results cannot override the decisions of courts and the frame of the Constitution. Furthermore, the refusal by Catalan separatists to discuss a federal solution for the whole of Spain is based on an illegitimate overrating of their own particularity, the so-called “differential fact”. Such attitudes are immoral and run the risk of destabilizing the European peace order constructed after 1945.

The various perspectives on so many facets of the problem of nationalism may, I hope, render this volume useful for both political scientists, ecclesiastical leaders, and politicians who face the phenomenon in theory and life. That this volume, written by many non-native speakers, is highly readable is due to the careful and thorough editing work of Gabriella Clare Marino, whom I thank most cordially for her dedication to the Pontifical Academies.

PEACE – THE FRUIT OF JUSTICE. THEOLOGICAL REFLECTIONS ON PEACE BETWEEN INDIVIDUALS, PEOPLES AND NATIONS

CARDINAL WALTER KASPER

Addressing the issue of people, nation and state from a theological perspective has turned out to be much more complex than I initially thought, because there is no agreement on any of these concepts. For this reason, it seems to me appropriate to clarify some fundamental concepts, above all those of dignity of the person and social justice, and then illustrate the concept of state and nation and the idea of peace as the fruit of justice.

I. Starting point and foundation: the dignity of the human person

The Bible begins with a double revolution in the story of creation in the first Book of Moses. The point is not *how* God created the world, whether in six days or as an evolutionary process lasting millions of years. The revolutionary message for the multi-ethnic and multi-national world, both then and today, is that God created the whole world for all of humanity. Monotheism is not exclusive, but inclusive. God is God and Father of all men and women. The world belongs to everyone and we all make up humanity.

The second revolution is that the apex of the story of creation is the creation of man in the image of God (Gn 1,27). The image of God was for the men of the ancient East the prerogative of kings. This royal prerogative is democratized in the Bible. Adam is representative of all men. Therefore, everyone has the same royal dignity: men and women, regardless of descent and origin, people and culture, race and social class, skin color or religion. Paul reiterated this statement: “There is neither Jew nor Greek, there is neither slave nor free person, there is not male and female” (Gal 3:28; 1 Cor 12:13; Col 3:11).

The concept of the human being as a person thus developed from this story through a long process of encounter with Greek philosophy.¹

¹ HWPB 5 (1980) 1059-1105; 7 (1989) 269-338; LThK 8 (1999) 42-52; W. Panzenberg, Person und Subjekt, in: *Grundfragen systematischer Theologie*. Ges. Aufsätze, Bd. 2, Göttingen 1980, 80-95.

According to the latter, man's sovereignty *imago dei* consists in the fact that each person is in command of his or her own actions, and is free and responsible for himself. Through reason, he or she is not enclosed in a restricted environment, but open to the fullness of reality. He or she is unique and ultimately unavailable. The faces of every man and woman therefore shine with divine greatness. In modern times, therefore, we speak of human dignity in this sense. According to Kant, every man is an end in himself and must never be used only as a means for other purposes.² This is the foundation on which all ancient Western culture is based; after the horrifying experience of the Second World War, and especially the Shoah, it merged into the Preamble of the United Nations *Universal Declaration of Human Rights* of 1948, which deals with individual rights, which nevertheless imply the recognition of the rights of all other human beings.

II. Justice – the fundamental measure of the interpersonal dimension

The human being does not exist in the singular, but exists only in plurality. Man, as ancient philosophy claimed, is a social being.³ Nobody can face life alone; no one can do everything, everyone depends on others.

Hence the origin of conflicts and conflicting interests. The original conflict is manifested in the story of Cain and Abel (Gn 4). Cain feels put aside and gets rid of his brother. God asks Cain: "Where is your brother?"; God does not only want freedom and equality between men and women; mere equality can lead to indifference. God wants us to be present for one another, to take responsibility for one another, and has called on us to be the guardians of our brothers and sisters. Freedom and equality also mean brotherhood.⁴

This brotherhood is expressed in the Golden Rule (Lv 19,18; Tb 4,14; Sir 31,15 LXX), which is found in all religions and cultures known to us. Jesus expressly confirmed it by summarising it as "Law and Prophets" in the Sermon on the Mount: "Whatever you wish that men would do to you, do so to them" (Mt 7,12; 22,40).⁵ In the Old Testament, the Golden Rule was fundamental for coexistence with pagans; in the New Testament for coexistence between Christians and Jews (Rev 15.19 s. 29.21.25) and subsequently for coexistence between Christians and pagans. From this

² I. Kant, *Kritik der praktischen Vernunft* BA 66 f.

³ Aristotle, *Pol I* 1253 a 1; Thomas, *De regimine principum* I, 1.

⁴ See A.M. Baccio, *La sfida della fraternità*, in *Oss. Rom.* 16/1/2019, p. 4 f.

⁵ TRE 24 (1994) 582-587; HWPH 8 (1992) 450-464; LThK. 4 (1995) 821-823.

derived the law of nations (*ius gentium*), a law that applies to all nations and represents the fundamental norm of all civilised humanity.

The *Decretum Gratiani*, which was fundamental for Scholasticism, defines the Golden Rule as natural law.⁶ Natural law or law of nature is not a code of individual rules. Rather, it states that everyone is required to do to the other what they wish for themselves; each is required not to do to the other what he does not want done to him. Thus, natural law is the law of humanity and brotherhood between men and as such, the fundamental order of peace between human beings.

In the Middle Ages, natural law was developed in the wake of Aristotle through the concept of justice.⁷ The starting point is the definition of Ulpian (Roman jurist, 170–228 AD): The basic principles of law are: to live honorably, not to harm any other person, to render each his own, *suum cuique*. The question is: what is *suum*? What is yours and what is mine? Is it one's assets? Is it one's work? Or is it what I or the other need to live a dignified life? Thomas Aquinas replies that justice stems from what applies to everyone, therefore from international law. From his point of view, *iustitia legalis* does not derive from a positive human law, but from the law of nature. One's work or assets do not count; rather, it is what we need to lead a truly human life. The fundamental law of humanity, the Golden Rule, the law of brotherhood is what applies.

Justice means recognizing the other person's life and freedom, the other person's right to be treated with humanity. Injustice, on the contrary, is the deprivation of life or freedom, murder (even abortion) and slavery.⁸ Because they possess personal dignity, men and women must never be reified, trafficked, made the object of political and economic interests and calculations, nor can they be treated as mere workforce or sexual objects (abuse), nor can they be reduced with contempt to mere prototypes of certain groups (Jews, negroes, gypsies, etc.) or simply marginalized. Language too, through denigration and derision, can kill someone socially and push them to their death because of a *shitstorm*.

⁶ Graziano, *Concordia discordantium canonum* (1140) I dist. 1. ed. Friedberg, Leipzig 1879.

⁷ HWPB 3 (1974) 329–338; LThK 4 (1995) 498–507; dalla prospettiva tomistica: J. Pieper, *Das Viergespann*, München 1964, 65–161; recent discussion: J. Rawls, *Eine Theorie der Gerechtigkeit*, Frankfurt a. M. 1979.

⁸ The path to reach this vision has been long: Aristotle, *Pol I*, 6 and to a limited extent also St. Thomas, *S.th.* II/II 57,3 ad 2 tried to justify slavery from the point of view of natural law as *ius gentium*.

Human rights were born from these points of view. They were not born from the French Revolution, but already 250 years earlier through the Dominican theologians of the Salamanca School, in particular Francisco de Vitoria (1438-1546).⁹ The discovery of the New World posed the question of whether natives were people and had the right to be treated as such. Francisco de Vitoria advocated the right to the self-determination of peoples and human dignity also for the indigenous populations. For Bartolomé de Las Casas (1484-1566) this was the foundation of his commitment to the rights of the indigenous. In a letter to the Council of the Indies in 1552 he spoke of the “principles of human rights”.

The idea of human rights was first formulated in the tradition of the American Pilgrim Fathers in their Declaration of Independence (1776): “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness”. With the French Revolution (1789), only 25 years later came the *Déclaration des Droits de l’Homme et du Citoyen*. In the latter case, it was not about human rights but civil rights. No one in the Age of Enlightenment had had the idea of also applying them to the colonies.

The French Revolution ended in the Reign of Terror of the guillotine, of which numerous priests and religious representatives also fell victims. In this way it is possible to understand, to a certain extent (!), why Popes such as Gregory XVI and Pius IX refused human rights and freedom of religion and conscience. Unfortunately, it was necessary to wait until John XXIII (*Pacem in terris*, 1963) and the Second Vatican Council (*Gaudium et spes* and *Dignitatis humanae*) to discover that human rights are an integral part of Europe’s Christian heritage. For John Paul II, human rights represented the spearhead of the confrontation with the communist regimes; for Pope Francis brotherhood has become the foundation of dialogue with Islam.¹⁰

III. Tangible man – tangible justice

The Bible does not know man as an abstract being, and humanity is not the sum of individual men and women; it is unity in the plurality of populations and peoples. According to the Bible, after the construction of

⁹ J. Höffner, *Christentum und Menschenwürde. Das Anliegen der spanischen Kolonialethik im Goldenen Zeitalter*, Trier 1947; B. Tierney, *The Idea of Natural Rights. Studies on Natural Rights, Natural Law and Church Law. 1150-1625*, Cambridge 1997.

¹⁰ Document on human brotherhood, in *Oss. Rom.* 4-5 February 2019, 6 f.

the tower of Babel, linguistic chaos and dispersion over the whole earth ensued (11,1.7-9; Dt 32,8; Ap 14,16 f.). Different languages imply different cultures, different ways of understanding reality, different ways of communicating with one other. For the New Testament, family, in the sense of domestic community (*oikos, oikia*)¹¹ is the basic order and school of humanity. It comes before the state and therefore benefits of its own laws, and it is the duty of the state to protect and promote it (GS 52).¹²

According to the Bible, man, gifted with a body and a soul, is a historical being with his own place in space and time. Today we know that man's full humanity is only achieved through the so-called second socio-cultural birth.¹³ One's nation (from the Latin *nasci*, 'to be born') is the place where one was born, the homeland, the country of my paternal home where I was born and raised, which is familiar to me, where I feel at home, where people and things belong to me and I to them. When these familiar places are missing or dissolve, when family life crumbles, when there is no longer any tradition or culture of everyday life, when everything becomes simply functional and technical, the human world is no longer a place you would want to inhabit.¹⁴ Justice is therefore justice due to a real, tangible human being. The principles of human dignity conferred by God certainly apply always and everywhere; they apply to everyone in all circumstances. But it was the wise vision of Aristotle and Thomas Aquinas that indicated how the application of universal principles cannot be determined in a logical and deductive way. Tangible application takes place from their point of view thanks to the virtue of practical intelligence, that is, wisdom, or prudence, which applies generic law to a specific situation.¹⁵ A merely abstract application would lead to the *summum ius summa iniuria* instead.¹⁶

¹¹ ThWNT 5 (1954) 122-124. 132 f.

¹² As already Aristotle, *Nik. Ethik* VII 1162 (*Nicomachean Ethics*) Cr. G. Augustin/R. Kirchdörfer (Hg), *Familie. Auslaufmodell oder Garant unserer Zukunft*, Freiburg i. Br. 2014.

¹³ See *Philosophische Anthropologie* by A. Portmann, A. Gehlen, H. Plessner, F.J. Buytendijk, W. Pannenberg, *Anthropologie in theologischer Perspektive*, Göttingen 1983.

¹⁴ John Paul II, *Laborem exercens*, 1981, 10.3. On the cultural dimension GS 53-62. See also the Argentine theology of the people.

¹⁵ Aristotle, *St. Thomas S.th.* II/II 47,1 f.; J. Pieper, *Das Viergespann*, 13-64. On the hermeneutics of application: W. Gadamer, *Wahrheit und Methode*, Tübingen 2 1965, 290-323.

¹⁶ Aristotle, *Nik. Ethik* V 1138a (*Nicomachean Ethics*); Cicero, *De officiis*, I, 10,33.

This tangible justice flows in a certain sense into mercy; it is real justice for man in a real situation of need and it is, therefore, the highest form of the Golden Rule. Thomas Aquinas said: “mercy without justice is the mother of dissolution, while justice without mercy is cruelty”.¹⁷ From this point of view, John Paul II (*Dives in misericordia*, 1980) spoke of mercy as true justice. According to Benedict XVI, justice is the minimum of love and love is the maximum of justice (*Caritas in veritate*, 2009). With his call to mercy (*Misericordia et misera*, 2016), Pope Francis therefore continues a great tradition.

IV. The modern nation state

So far we have talked about the primordial order of humanity in the family, peoples and cultures born of history. We have not yet encountered the concept of state for a simple reason: the concepts of state connected to nation are only found in the modern European era, starting from the end of the eighteenth century.¹⁸

Modern states evolved after the Protestant Reformation and subsequent religious wars, particularly the Thirty Years War. That was when the religious unity of the medieval *corpus christianum* was broken. The Peace of Westphalia (1648) was made possible only by decreeing religion as a private affair and the political order as founded no longer on religion but on reason, common to all. Later, temporal authority withdrew from the religious sphere, then from science, economics and culture. This led to a distinction between state and civil society. The existing authority therefore lost its competence in all matters and the pluralist liberal state was no longer a *societas perfecta* in the medieval sense of the term.

When the early European order shattered during the Napoleonic wars following the French Revolution, people had to take fate into their own hands and give themselves a new order of peace based on the late medieval idea of popular sovereignty. The state was no longer an authority imposed by God, and citizens were no longer subordinates. In this context the concept of nation took on a political connotation; from a cultural nation it became a national state, and from belonging to a people to the citizenship of a state. The characteristics of a national state include: a sovereign people, a demarcated state territory and an organised state authority which claims

¹⁷ Commentary on the Gospel of Matthew 5,2; see *Die Deutsche Thomas-Ausgabe*, Bd. 13, 734.

¹⁸ On what follows StL (1995) 133-157; LThK 9 (2000) 890-898.

the monopoly of power. In essence, a modern national state is not a natural event, it is not a historically matured cultural state and it is certainly not a metaphysical entity (Fichte, Hegel).¹⁹ It is linked to a specific historical era and it is historically sought and evolved. This development led to a change in the Christian concept of state.

V. Updating the Christian concept of state

Christianity approves secular authority. The prophet Jeremiah writes to those who were taken captive to Babylon: “Promote the welfare of the city to which I have exiled you; pray for it to the Lord, for upon its welfare depends your own.” (Jer 29.5–7). The decisive word belongs to Jesus: “Repay to Caesar what belongs to Caesar and to God what belongs to God” (Mt 22,21). Jesus does not claim any political power for himself (Jn 18:36); however, he recognises the authority of Pilate, conferred on him from above (Jn 19:11).

Paul writes to the Romans: “Let every person be subject to the governing authorities, for there is no authority except that which God has established”. It is at God’s service for your own good; not in vain does it carry the sword. A Christian is therefore held to obedience not only because of punishment, but out of conscience (Rom 13.1–5; similarly 1 Pt 2.13–17). Only when it comes to faith and the moral order given by God is it necessary to obey him before men (Acts 5:29).

The surprising thing about this statement is the fact that already at that time Christians knew that Jesus had been condemned to die as an innocent man on the cross by the hand of a superior authority and that the disciples themselves had already experienced persecutions. The Bible’s response to persecutions is therefore not an incitement to rebellion or resistance, but an exhortation to pray for the rulers (1 Tim 2:1 f.; 1 Clem 60,4–61,2). Defense in persecutions against Christians is: we Christians do not worship the emperor but we pray for him. Yes, we rely on his protection.²⁰ Thus Paul with some pride could define himself before the tribunal as a *civis romanus* by appealing to the emperor and placing himself under his tutelage (Acts 21.39; 22.25–29; 23.27).

¹⁹ Hegel, *Grundlinien der Philosophie der Rechts*: “Der Staat ist göttlicher Wille als gegenwärtiger, sich zur wirklichen Gestalt und Organisation einer Welt entfaltender Geist” (§ 270; ed. Hoffmeister, 222) (*Outlines of the Philosophy of Right*).

²⁰ Theophilus, *Apol. to Autolykum*, I, 11 (*Apology to Autolykus*). See already 1 Pt 2,17.

The question is: how do we relate to these texts today?²¹ In today's exegesis the prevailing idea is that in Rom 13 these statements are conditioned by the situation at that particular time, and should not be carried directly to the present, because the authority referred to in the Bible no longer exists in today's democratic state. Rulers today are elected by the sovereign people and respond to the people; thanks to the division of powers, they no longer hold the sword in their own hands, but are also subject to an independent judicial authority.

The Second Vatican Council took this into account. On the one hand, it noted that political community and public authority are founded on human nature; however, the order established by God leaves the determination of the form of government and the choice of rulers to the free will of the citizens. Church doctrine does not prescribe any specific form of state, but leaves it to the people's free choice (GS 74). The Council therefore complies with the social order founded in human nature, but the concrete form is left to our free will. In this way, unlike the social contract promoted by Rousseau, the free will of the people is not constitutive of the essence but of its practical application.²²

It follows that the evaluation of a state does not take place on the basis of the criterion of the practical form of its constitution, but rather assessing whether it is capable of achieving its objective and essential purpose. The state is not an end in itself, it is at the service of men and women and at the service of justice among them. In this sense, it must not only protect the freedom of the individual. It also has the task of operating in the service of the common good. The common good is defined as the totality of premises that allow and promote a free life for individuals, families and social groups (GS 74). This includes the two well-known principles of subsidiarity and solidarity. The state should not decide by itself; rather, it is the smaller units that stand before the state that must do their best; however, everyone should consider the good of the whole, especially of its weaker members.

The idea of justice for the common good refers to the ancient teaching of distributive justice, that is, the fair distribution of natural goods that commonly belong to everyone. Fair distribution, as Thomas Aquinas says, must take place in order to achieve the citizen's goals.²³ Distributive justice

²¹ It is not possible to elaborate here; see LThK 10 (2001) 1139–42.

²² StL 5 (1985) 160.

²³ St. Thomas, *S.th.* II/II 61, 1 ad 3. Thomas advocates a mixed form of monarchy,

is therefore not only a top-down process; it also requires accepting a bottom-up one. When social justice is seriously damaged and state authority becomes tyrannical, there is a right of resistance because the citizen is also sovereign.²⁴

This is the advantage of the democratic rule of law which includes, from the beginning, forms of peaceful resistance: regularly held free elections, division of powers, the right to express a public opinion, the right to demonstrate and strike. All this gives the democratic rule of law a considerable capacity for adaptation and integration. It is, therefore, the best of the worst possibilities (Winston Churchill). So far, humanity has been unable to find anything better. Nevertheless, since it is born of history, the democratic rule of law does not guarantee its existence for eternity. Today it is facing great challenges.

VI. Current challenges of the nation state

I would like to start with the fundamental challenge. There is a famous quote that says: “The liberal, secularised state lives from preconditions it itself cannot guarantee”.²⁵ This implies that the majority of citizens recognises the dignity, freedom and rights of all others, acts in a peaceful and tolerant way, is capable of consensus and compromise, and respects the decisions of the majority. However, it cannot guarantee these premises with the means of legal coercion if it does not want to become an authoritarian or even totalitarian state.

The democratic rule of law founded on these assumptions arose, not exclusively but substantially, from a Christian basis. However, fundamental Christian beliefs are currently being eroded in Europe, while in the non-Western world they are still completely lacking. Most non-Western countries have adopted the formal structures of the democratic state; however, indigenous cultural values are emerging in Africa and Asia following a spiritual and cultural decolonisation. The problem is acutely felt with the integration of Islam, whether or not this can guarantee true religious free-

aristocracy and democracy; he therefore already knows, unlike Luther's doctrine on authority, the meaning of the democratic element. See *S.th.* I/II 95.4; 105.1.

²⁴ StL 5 (1989) 989-993; LThK 19 (2001) 1139-1142.

²⁵ E.W. Böckenförde, *Staat Gesellschaft Freiheit. Studien zur Staatstheorie und zum Verfassungsrecht*, Frankfurt a. M. 1976, 60; J. Habermas, *Vorpolitische Grundlagen des demokratischen Rechtsstaates?* In: *Zwischen Naturalismus und Religion*, Frankfurt a. M. 2005, 106-118.

dom. We Europeans have taken a long time to obtain it and we too have often betrayed and trampled on human dignity.

The second challenge is the following: in the last century we saw how the approval of the nation can turn into ideological nationalism and replace religion. Nationalism has caused immeasurable pain in Europe and the world in the two World Wars. Supranational institutions (UN, European integration, etc.) were created in the second half of the 20th century precisely to avoid this danger. Various forms of bilateral and multilateral interconnection have also arisen in the globalised world. Today a nation state alone is no longer able to carry out its tasks in an autarchic way; it is dependent on international and multilateral cooperation.

In this transition from independence to the interdependence of states, citizens are increasingly moving further away from the decision-making process. Decisions become so complex that ordinary citizens can no longer understand them. This creates insecurity and fear for the future, and this is what neo-nationalist populist ideologies exploit with their xenophobic slogans and claims for ethnic and cultural homogeneity. Instead of an identity open to dialogue and cooperation, a closed and withdrawn identity emerges behind the walls of isolation and marginalisation. Neo-nationalism needs an enemy to ensure its identity and to hide its weaknesses. This calls into question the good achievements of modernity and leads to a split in society, as well as to new, dangerous international conflicts.

A third problem arises from the asymmetrical economic development between rich and poor nations. Global capitalism has borne some fruit through world trade and the plan to extend development: nevertheless, the gap between the many poor and the wealthy few is hardly bearable and the distribution of the planet's resources is extremely unfair. This is why peace in the world today has become a question of justice for the common good and the fair distribution of creaturely goods on a global level. Pope Paul VI wrote in *Populorum progressio* (1967): "Development is the new name for peace" and appealed for a fair balance between developed and developing countries. Pope Francis in turn expanded this global approach and in *Laudato si'* (2015) recognised the care of creation as a social problem and a matter of world peace.

VII. Christian ethics of peace in today's world

The Christian ethics of peace has undergone a turning point in recent decades, moving from the theory of just war to the question of just peace.²⁶ In this sense it can refer to the prophetic tradition of the eschatological pilgrimage of peoples (Is 2,1-5; Mic 4,1-3). "Peace is the fruit of justice" (Is 32.17). "Justice and peace will kiss each other" (Ps 85.11). The biblical idea of peace (*shalom*) is not just the absence of war, but rather the integrity, healing and salvation of all reality, life in harmony with God, with oneself, with other men and women, within one's own people, among peoples and with nature.²⁷ During his sermon in Sarajevo on June 5, 2015, Pope Francis said: "Peace is God's dream, his plan for humanity, for history, for all creation."

Ultimately, the vision of a just peace goes back to Saint Augustine: "Remove justice, and what are kingdoms but gangs of criminals on a large scale? What are criminal gangs but petty kingdoms? A gang is a group of men under the command of a leader, bound by a compact of association, in which the plunder is divided according to an agreed convention".²⁸

Today it is believed that the ethics of peace is based on four pillars. The first is the global protection of fundamental human rights, which also includes the protection of the human dignity of minorities. The second is the promotion of democracy and the building of the rule of law with its structures, which allows forms of participation and decision-making for all. The third is peacekeeping through scientific cooperation, global trade, promoting development and fighting poverty. The fourth pillar is the maintenance of peace through the expansion of interstate and supra-state relations and mandatory international arbitration.

I think this is important, but not sufficient. The past century has shown us that the utopia of unstoppable progress has failed.²⁹ We had to painfully understand that there may also be a risk of a degeneration of civilisation into the worst brutality. Democracy and the rule of law can also be in danger and fail. They are grounded not only on economic assumptions, but also and above all on spiritual ones. There is no economic globalisation

²⁶ E. Schockenhoff, *Kein Ende der Gewalt? Friedensethik für eine globalisierte Welt*, Freiburg i. Br. 2018.

²⁷ ThWNT 2 (1935) 398-416; LThK 4 (1995) 137-141.

²⁸ Augustine, *De civitate Dei* 4,4.

²⁹ M. Horkheimer/Th. W. Adorno, *Dialektik der Aufklärung*, Frankfurt a. M. 1969; J. Habermas/J. Ratzinger, *Dialektik der Säkularisierung. Über Vernunft und Religion*, Freiburg i. Br. 2005.

without spiritual globalisation. Herein lies the importance of ecumenism not only in the confessional sense, but also in the interreligious sense and in the dialogue with all men and women of good will. This is the vision of the Second Vatican Council, which to date is only half accomplished. This is the primary contribution that the Church and all the Christians can give for peace in the world, which is the fruit of justice for all.

NATION, STATE, NATION-STATE AND THE SOCIAL DOCTRINE OF THE CHURCH

ARCHBISHOP ROLAND MINNERATH

Conflicts between nations are as old as historical records. An in-depth inquiry into the reasons why nations are enemies in principle is therefore necessary.

There is no commonly accepted definition of a “nation”. The United Nations is made up of 197 independent states, 193 of which are member states (but not always recognized as such by all other member states) with 4 non-members. Unofficial statistics claim that there are 324 national entities based on cultural identity. The criterion of an independent territory does not take into account the claims of these self-conscious nations which seek independence, since they are living under the rule of a dominant state.

Nations cannot be apprehended only through the legal category of the state. So it seems correct to admit that nations and states do not necessarily overlap, even though the current language merges both into “nation-states”.

A people as a given reality

For a correct analysis it seems proper to start from the emergence of human groups that distinguished themselves from other groups. In the 5th century B.C. Herodotus inquired into about one hundred *ethnè* in the Ancient World. An *ethnos* can be described as a people. A people is a natural grouping of human beings characterized by common features: religion, customs, language, an economic and political system, a territory and a mythical narrative of their origin. So peoples are a given reality. Peoples could be constituted in tribes like the Germans and the Celts (*gène*) or organized in cities like the Greeks. We could rely on Herodotus’ assumption that a people tends to be autonomous and to govern itself, as distinct from other peoples. Today, indigenous populations can count on the UN Declaration of 2007 to protect their identity. They represent the ethnic conception of a people.

The Romans considered themselves a *populus*, a political body with a constitution, whereas the surrounding peoples were natural ethnic peoples. The Roman *populus* was made up of various neighbouring peoples. The

city is a *res publica* shared by all citizens. The Roman Empire grew by integrating conquered peoples into Roman citizenship. At the end of the 18th century the American and the French Revolutions picked up this political notion of people as opposed to the natural ethnic meaning of people.

The other well-known example is Israel in the Old Testament. The chosen people called themselves *ham*, *laos*, as distinct from the *goim*, *ethnè*, the nations. When the Bible speaks of the event of Babel, it mentions the division of humanity into 70 “*ethnè* or nations” (Gn 10, 32), each one with its own language.

A people is not a static, closed reality. Over the years a people formed on an ethnic basis may integrate individuals or groups from other origins that are willing to share the saga of the adopted people. Throughout history some peoples have disappeared, while others have imposed their domination by assimilating the oppressed. As early as the 4th century BC, Isocrates said that being a Greek no longer meant a common ethnic origin but a common culture, *paideia*. So being a people entails the vision of a trans-ethnic community.

When is a nation born?

When does a people become a nation? Or are peoples always synonymous with nations? The word “nation” refers to the place where you were born. It is also a given reality. A nation is the result of the willingness of a people to live together, to share the same institutions, to refer to common roots in history. So a nation may be made up of various peoples, or of members coming from various peoples. In modern times we have an example with the USA. Most nations are composed of peoples with different origins. So what characterizes a nation is the voluntary moral bond of citizens who wish to share a common destiny.

It is important to note how foreigners are perceived by self-conscious nations. A well-known example is Ancient Greece, where the surrounding peoples were seen as “barbarians”, which means people speaking incomprehensible languages. Current hostility between nations is still fuelled with irrational feelings of contempt and fear of others.

Criteria such as language, religion, way of life and culture are not conclusive to make up a nation. Around 6000 languages exist in the world. Pakistan was created on a criterion of religion. Indonesia has hundreds of ethnic groups and languages. The Russian Federation claims to be a multinational state. Bolivia is a multinational state with 37 official languages. The Kurds are a divided nation under the domination of four neighbour-

ing states. China recognizes 56 nationalities, all belonging to the Chinese nation, with the Han people as a majority, shaping Chinese identity.

The native land

The concept of fatherland, *patria*, evokes the land of one's ancestors, where one feels at home. It can also mean the place where one has chosen to live as a new "homeland". A homeland is always a territory. A feeling of belonging forges deep links with one's fatherland. This feeling may take on gradual degrees of belongingness to the village, the region, the nation as a whole. Cicero said he had two *patrias*, his home city of Tusculum and his great Roman *patria*. The first was contained in the latter.¹ At the end of the Roman Empire a poet worshipped Rome as having brought many nations together into a single fatherland.²

The state

The state is the organized legal structure of a people, a nation or, in some cases, of several nations. The state is an abstract entity. Up to the 16th century the abstract concept of the state was not used. Political power was seen as identified with the person of the ruler. In modern times the state appeared as the bearer of sovereignty in a specific territory. In political science, the notion of *societas* preceded the notion of the state. A *societas* is an ordered human group with recognized institutions, laws and administrative structure. Luigi Taparelli d'Azeglio (+1862) elaborated the concept of "primary legal order" which is not derived from a higher legal order and is not subject to another organized society.³ These "perfect societies" that live according to their own original juridical institutions are sovereign societies. This means that they have achieved the category of a state, but not necessarily of a territorial state.

History witnesses a large number of types of states: states covering a single people are rare. Most states are constituted by either voluntary nations or even by several nations enjoying a large autonomy, such as the Austrian-Hungarian Empire in the 19th century. I know at least one state without a people or a nation. This is the Vatican City State.

¹ Cicero, *De legibus* I, 24: "haec in ea continentur".

² Rutilius Namatianus, *De reditu* I, 52, 63–66: "Fecisti patriam diversis gentibus unam".

³ Luigi Taparelli d'Azeglio, *Saggio teoretico di diritto naturale appoggiato sul fatto*, Palermo, Muratori, 1840–43.

States may pre-exist nations, as in Africa or the Middle East, where colonial powers artificially delimited territories, cutting off tribes and combining populations with different traditions and languages. States tried to create nations, at the expense of neighbouring states, which used the same divided nations to build up their own sense of belonging.

All states are constructs, not given realities. Very often states include national minorities coming from immigrant groups who do not belong to the main national group. They may either be assimilated, integrated or kept apart (apartheid).

The monarchical absolute sovereign state

The crucial concept is the concept of sovereignty. Sovereignty is paramount in understanding the relation between nation and state. Until modern times the ruler was considered as endowed with *maiestas* or *imperium*. His power was generally considered to originate in a divine mandate, which means it was inscribed in a natural order, even by devolution through the people. According to medieval thought, God, who is the source of all authority, does not promote any specific mode of exercise of it. Political power had to be regulated by reason.

In modern times the bearer of political power shifted from the individual monarch to the permanent monarch, according to the distinction of the two bodies of the king, illustrated by Kantorovich. So the state was born as an abstract expression of the permanent supreme authority regulating a community.

The modern state was born in the context of monarchical absolutism, not as a request of the nation. According to Machiavelli (1527) the absolute monarch was gradually disconnected from the order in which he had to play his role. He became absolute in himself. Sovereignty rested in his person. So sovereignty became the attribute of the permanent monarch, of the state.

However two doctrines of sovereignty appeared which are still relevant today. The first was expounded by Jean-Baptiste Bodin (+1596). Sovereignty means the highest level of power whatsoever. It is conceived as “unique and indivisible”, virtually unlimited and affecting all aspects of life. Peoples and nations are not bearers of sovereignty. Sovereignty is exercised over them, even without seeking their consent. Sovereignty became strictly associated with a territory. Bodin theorized the centralized monarchical state, which could only have competitive relations with other sovereign states.

In the Protestant area, the German Johannes Althusius (+1637) devel-

oped another concept of sovereignty starting from below, from the consent of the people, and giving local and regional communities a share in sovereignty according to the principle of subsidiarity. He fostered the idea of federalism instead of centralization, and not without a reference to the Holy Roman Empire of his time.

From the Westphalia treaties (1648) to the creation of the Society of Nations (1920), Europe would have only independent sovereign states. In the meantime, the bearer of sovereignty shifted from the monarch to the nation. This new step brings us to the present understanding of the nation and nation-state.

The nation as an expression of the people's sovereignty

After the monarchical absolute sovereign state came the sovereign nation-state. The American and the French Revolutions imposed the idea of the nation as resulting from the conquest of sovereignty by the people. "We the People" says the Constitution of the United States. The French Revolution transferred to the "nation" the sovereignty exercised by the monarch. In the official discourse, the "nation" liberated itself from the former regime. The nation thus appears as a unity not of different peoples but of individuals enjoying equal rights and claiming political independence. The nation is a voluntary community of citizens sharing the same institutions, like the *populus romanus* of ancient times.

It is interesting to note that the first French constitution of 1791 indicates that "sovereignty belongs to the Nation". In the constitution of 1793 it is said that "sovereignty rests with the French people". In the constitution of 1795 "sovereignty resides in the universality of citizens". So the Nation was in danger of forming a conceptual entity in itself, without a precise connection to real people in their diversity. This vision of a nation was associated with state sovereignty. It can even be said that the state played the major role in defining the nation. The state used the idea of the nation as a legitimization of its claim for sovereignty inside its territory and towards neighbour states. The liberal nation identified itself with the Republican state. Locke and Rousseau were its theorists.

The second conception of the nation was linked with the emerging national feeling in Europe. It started in the 18th century in the form of a strong revival of ancestral cultures as a reaction against the French-speaking elites. So the Celts discovered the roots of their peoples prior to the Roman conquest as did the Slavic peoples prior to German or Turkish domination. Languages and national epics were literally invented. The Germans,

who were always divided into many states, considered themselves united by their language.

After the Napoleonic wars, national feeling was boosted by the Romanticism movement and a strong desire for nations to gain back more autonomy within multinational empires like Austria, Russia or the Ottoman Empire. The nation was viewed as an organic body, with given elements like the same language, the same culture, and the same shared history. This position was defended in the German arena by poets and philosophers like Herder, Fichte, and Schleiermacher around the concept of *Volk*, evoking the idea of a culturally homogeneous people.

The two visions had many things on common, in particular the idealization of one's own nation. So historians like Michelet and Lavissee wrote histories of France which were taught in school somewhat like a national romance, in which the nation appeared as a collective entity existing prior to its members and which went from victory to victory, with a clear negative appraisal of the deeds of other nations. The nation as political body and the nation-Volk both tended to consider themselves as the ultimate horizon of collective life.

Today the nation is the only legitimation of the sovereign state. Yet the association of the sovereign and the nation-state is a construct of post-Westphalian, post-1848 Revolution times. It is remarkable that Taparelli d'Aze-glio's theory of perfect societies stressed that the Catholic Church fulfils the criteria of an independent sovereign society endowed with a primary original legal system called canon law. In the concordats signed between the Holy See and many states in the last thirty years, the "sovereignty, independence and autonomy" of both the Church and the State are strongly stressed. The sovereignty of the Church refers to the sphere of her own competence. So there can be a form of sovereignty that goes beyond the sphere of territorial states.

The state under the rule of law

The nation became the only legitimate reference for creating new independent states. The end of the multinational empires, after World War I, resulted in the creation of new state borders that did not always coincide with their people's territories.

With the United Nations (1945) and the *Universal Declaration of Human Rights* (1946) a new concept of the national state emerged as being governed by the rule of law. This was the end of the absolute state closed in on itself. On the one hand, the state limited itself by recognising the rights and

freedoms of its citizens and, on the other hand, by its involvement in a web of rights and duties in relations with other nation-states. New perspectives were opened up with respect to the distinction between the nation and the state. Sovereignty does not only rest with the state. Each person enjoys a sphere of freedom from state intervention. Human groups within the state also have a native right to live according to their cultural standards.

The Social Doctrine of the Church (SDC)

Where the Church draws her inspiration

The SDC takes its inspiration from the Christian faith which opens up new horizons of meaning. So, in terms of peoples, nations and states, the New Testament brings something radically new. Pentecost is the exact counterpart to Babel. Humanity was divided and dispersed as a result of its pretention to equal God. Now, a process of return to the lost unity is launched. The Church constitutes a universal community of believers transcending national, cultural and state borders into something totally new and unknown elsewhere.

The Christian Church rapidly grew in the framework of a multinational empire. The Fathers of the Church praised the coincidence of a world empire which brought settled peace to rival peoples and nations and a world religion organizing itself on a transnational basis.⁴ The spread of the new faith meant the end of city-based religions and ethnic religions. A new bond could unite individuals without distinction of social condition, ethnic origin or cultural background. The Christian Church enjoyed the benefits of dealing with the Roman Empire, which was also potentially universal.

At the same time, Christianity was adopted very early as a national religion by Armenia, the kingdom of Osroene, Georgia, and Ethiopia. In these contexts, Christianity took on strong national features. It seems obvious that the evaluation of the nation and the nation-state will be different from the point of view of a national Church or a universal Church.

Our postmodern society no longer has “great narratives” as there were in Romantic times, supplying individuals and nations with a deep sense of belonging, and seeking to place the history of one’s nation in accord-

⁴ Origen, *Against Celsus* II, 30; Hippolytus of Rome, *On Daniel* IV 9, 2-3; Eusebius of Caesarea, *Demonstratio evangelica* III 7, 30-33.35.

ance with the history of the world. In the Church we have such a “great narrative”, namely the history of salvation. In a word: the Church has the duty to recompose the unity of all humanity. The final goal of history is to bring back “tribes, tongues and nations” into the alliance with God. Christ in his body “has broken down the dividing wall” between the *laos* and the *ethnè*, between the *ham* and the *goim*. “He might create of the two a single new humanity” (Ep 2 14-15). So the Church is the new universal people in which all discrimination is abolished, as an invitation to all nations to overcome enmity and develop an awareness of fundamental unity.

Christ disrupted the wall of iniquity which separated Israel and the “nations”. The Church is called to anticipate the reconciliation of all by putting an end to the discrimination “between Greeks and Jews, slaves and freemen, men and women”.⁵

Why ethical principles are needed

The present situation can be sketched as follows:

- Conflicts between competing nation-states continue to threaten world peace.
- There is dissatisfaction within nation-states as to the rights and duties of minorities.
- International cooperation does not meet all the requirements for a safe and well-ordered coexistence of nation-states.
- Nationalism fuelled by populism is playing an increasing role in many nations, attributing all problems to multilateralism and propagating a hostile image of others.

The Social Doctrine of the Church builds its vision on the human person as a member of a people, a nation and a state. This vision inspires her discourse on these topics, a discourse based on rational thinking to be shared with all. Along with the priority of the human person as the centre of the whole social construction, the SDC calls on two other principles, namely the fundamental unity of humanity and subsidiarity.

a) A people as a given reality and the state as a construct

The teaching of St John Paul II developed the concept of the nation on the basis of its natural given elements: language, history, and “ethnical and cultural group”. He expressed the wish for a charter of the rights of nations to be adopted. For him the Second World War was a violation of the rights

⁵ Cfr. Ga 3,28; 1 Co 12, 13; Rm 10, 12; Col 3,11.

of weaker nations. After the war the rights of nations were not respected within their borders, due to the imposition of a foreign totalitarian power and absorption into the Soviet Empire. But nations are not always demographically homogeneous. St John Paul II recognized that a nation cannot always claim state sovereignty. He spoke of the sovereignty of the nation as a right to keep its language and culture, even in the form of regional autonomy or as a federal member state. He was thinking of Poland, which survived as a nation despite three partitions in the 18th century and its disappearance as a state until 1918. All nations have a right to live according to their customs and have duties of solidarity to others. Pope John Paul II praised patriotism and condemned nationalism. His message is: a nation is sovereign by its culture.

St John Paul II's teaching reflects the situation of Poland, a nation-state which became more homogeneous with the reshaping of its borders after WW2. Recently a French philosopher, François Jullien, challenged this view, maintaining that there is no such thing as cultural identity. The concept of identity, which is static, should be replaced by the idea of cultural resources (mutual enrichment) and the difference between cultures by a gap, which means the possibility of interaction and dialogue. So the need to preserve humanity's rich cultural diversity does not mean freezing differences and fostering closed communitarianism, but searching for the universal values which link people together. Culture means openness to the universal. Nobody lives only from what they have received from their nation. Knowledge has no borders. And what is true is true everywhere.

The SDC observes that the natural process of building a nation has often been interfered with through political ambition, the result of wars or international treaties, where winners imposed state borders on losers. When a nation becomes a state or when a state uses a nation to cover its policy, we enter into an area of potential conflict with other nation-states. The SDC relies on the principle of subsidiarity as for the inner organization of a nation-state and for its relation to other states.

b) Subsidiarity

The principle of subsidiarity respects the human person in all its dimensions: as a member of a family, a city, a cultural group, a nation. The juridical shaping of the state must take these consistent dimensions into account. Destruction of cultural minorities by the main group should not be accepted. A minority group may be as loyal to the nation as the dominant group if its specificity is recognized.

Nation-states are not absolute entities. Human persons belong to humanity, even if they also keep a strong sense of belonging to their respective nations. Beyond the nation we belong to the human species. In many cases nation-states are no longer in a position to be truly sovereign. Economic and social systems are intertwined. Nation-states are interdependent even for their own survival. This is particularly the case in Europe. By joining the European Union, nation-states do not put aside their identity but try to adapt themselves to the real conditions of international competition.

c) Local and regional autonomies inside nation-states

The international system is based on the assumption that all nations enjoy equal state sovereignty. International conventions bind nations according to commonly agreed rules. This system may appear as rather unrealistic. In fact, superpowers and big economic organizations impose their views on the weakest nation-states. Most nations have become interdependent.

International cooperation may eventually lead to supranational cooperation, which was first explored as early as the 16th century by jurists like Vitoria, Suarez or Grotius, who founded the “law of nations”, the *ius gentium*, as a reaction to the self-sufficient absolute state. The idea was centred on the notion of a universal common good. The *ius gentium* is a reference to natural law as inherent to all social groups searching for their common good. So Humanity as such has needs to be fulfilled. At any level where a common good is to be reached, a corresponding authority must be able to take action in view of this goal. The Catholic Church on many occasions has stressed the need for the United Nations to find appropriate ways to set up such an authority to be in charge of providing goods, such as fair trade rules, that isolated nations can no longer provide for their citizens.

The central state that imposes restrictions on the free expression of local and regional specificities does not act subsidiarily. Centralization, which eliminates inner cultural and historic data and is not ready to share a part of its sovereignty with others, does not move realistically towards the future. The nation-state that is closed in on itself belongs to the past. We need responsible people who understand that by putting aside nationalism and sharing sovereignty they prepare a better future for all.

d) Supra-nationality

Supra-nationality is increasingly sought as a means both for preserving national identity and for safeguarding sovereignty. Supra-nationality means shared sovereignty with partner states. The European Union is one example.

From the very beginning the SDC encouraged the transfer of sovereignty to decision-making bodies on specific items. Thus came the Coal and Steel Community, where the six European founder states abandoned their sovereignty in favour of a commission making decisions by majority votes.

The European Union shows that the nation-state can no longer be considered as the final authority for promoting the common good. The reason is that a European common good has clearly emerged over the last fifty years. In the European treaties the competence of the Union is clearly settled according to the principle of subsidiarity. The Union should take care of those competences which the single nation-states are no longer in a position to defend alone: defence and security, regulation of economic and financial policy, the environment, migrations, and foreign policy.

The principle of subsidiarity is not a threat but a guarantee for the survival of nation-states. Closed in on themselves, they would be helpless in the face of new world powers. United in what is necessary, they will be able to make their voice heard. Subsidiarity means that a higher level of organization does not deprive a lower one of its autonomy, but only intervenes when the latter can no longer help itself. Subsidiarity means democratic participation. When a higher constitutional authority is needed, it does not annihilate the given reality of a historic nation. The nation is not what is jeopardized, but rather the unrealistic idea of state sovereignty. Where the exercise of real sovereignty is no longer possible, shared sovereignty plays the same role of safeguarding a nation's culture and specificity. Federal states observe the principle of subsidiarity with respect to their member states, provinces or regions. So nation-states may join a federal structure according to the same principle.

The question of immigration

The crucial question of immigration has to do with our understanding of the nation and the state. When immigrants from different cultural backgrounds and traditions flow into a constituted nation, in a sense they modify the self-understanding of this nation. Immigration is a permanent phenomenon. No people remain exempt from foreign input. Old nations will try to integrate their immigrants and, in the long run, will assimilate them to the dominant culture. In the New World, nations were created by massive successive flows of immigrants. They were integrated in reference to the same institutions and by adopting a common language. Nations which insist on their political unity will be less reluctant to accept immigrants than nations which insist on their cultural identity. In each case the

question remains open whether immigrants are willing to adapt to the cultural patterns of their new homeland or whether they will strongly defend their customs. Complying with state laws must not jeopardize the respect due to cultural rights within a multicultural nation.

State and nation as distinct

In his masterwork of 1923, *Pan-Europa*, Coudenhove-Kalergi called for a separation between state and nation, on the model of the separation between Church and state. It seems that the distinction between the nation as a historical fact and the territorial sovereign state leads to interesting perspectives.

Human beings are members of the human family. They enjoy the same dignity and the same rights and duties proclaimed by the Universal Declaration of Human Rights. So no state is absolute any longer. All states are at the service of the human person and cannot take measures alienating these universal rights. Human persons tend to find a dimension for their identity in the people into which they were born or in the nation they have elected as their homeland.

It is impossible to change the current self-understanding of people as nations. A nation-state would be reluctant to recognize specific cultural groups in its realm as “nations”. We may think of Catalonia or Corsica which claim to be recognized as “nations” inside Spain and France, respectively, but have been refused this title. Nation-states which adopt a decentralized form of government may grant more autonomy to regions which claim recognition for their specific cultural and legal traditions. Catalonia, like other Spanish provinces, enjoys large political and cultural “autonomy” with regional assemblies. The Spanish constitution mentions the “peoples of Spain” and includes 17 autonomous communities. A people exists through its culture, whether it enjoys territorial sovereignty or not. This should meet the demand for recognition.

According to the principle of subsidiarity, nation-states should strive to meet the legitimate demands for regional autonomy when requested. The concept of sovereignty can no longer be restricted to the nation-state. It should be associated with all levels where a responsible authority is needed to regulate processes which are common to several nations. So the concept of the state gradually becomes disconnected from the concept of exclusive territorial sovereignty.

To avoid clashes of civilizations and clashes of cultures, a double movement should be fostered:

- Where requested, more autonomy should be given to regional or provincial entities inside nation-states.
- Forms of sovereignty should be recognized to regional bodies or historic cultural groups according to specific needs and regarding specific items.
- Nation-states which are no longer able to meet the needs for their common good should cooperate in shared sovereignty in those tasks which they are no longer able to fulfil alone.
- Education worldwide should instil the rejection of nationalism and populism as a mortal deviation of the legitimate love of one's own fatherland.
- Nations should be invited to give up the spirit of hegemony which prevails in our times and find their self-realisation in creative cooperation with others.

NATIONAL AND TRANSNATIONAL CONSTITUTIONALISM, AND THE PROTECTION OF FUNDAMENTAL HUMAN RIGHTS

PAOLO G. CAROZZA

In this paper I would like to explore the complicated and ambiguous relationship between the idea of universal human rights and the idea of a nation state with its own particular identity, history, and culture. I will do so from the disciplinary perspective of law, in particular comparative constitutional law and international human rights law, by examining the basis of claims of what I will call “national constitutionalism”, focusing on the constitutional tradition of the United States, and comparing that perspective with what I will identify as a more “transnational constitutionalism”.

Historically, the emergence of human rights as a coherent and powerful political idea was strongly associated with the formation, independence, and self-rule of nation states. Whether in terms of the guarantees of the “rights of Englishmen”, or in the liberal unification of nations like Italy in the 19th century, or in the push for widespread national self-determination in the global politics of the early 20th century, or even in the movements of decolonization after the Second World War,¹ one consistent and deeply rooted strand of political practice and political theory has seen the realization of human rights as best served by attending precisely to the idea of autonomous and self-governing nations, each one providing its people with the capacity to chart their own course, frame their own values and priorities, and affirm their own collective identity. Constitutionalism (including its implicit requirement of democracy) has been the principal vehicle for effectively realizing in tandem *both* national aspirations to establish collective identity and *also* the rule of law and the protection of rights.

Yet, at the same time, from the beginning the modern idea of human rights, and its claims framed in terms of abstract universal values, has also been infused with a universalism that transcends the specific and contingent cultural or historical contexts and the particularities of national identity. Human rights, from this perspective, claim to stand outside of, and at

¹ See Steven L.B. Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (Cambridge University Press, 2017).

times even against, the nation and the state. While this was already clearly true in the thought of the 18th century proponents of the rights of man, it became the dominant mode of conceptualizing human rights in the latter half of the 20th century, with the advent of the global project of universal human rights. Precisely in order to advance that aspiration of global acceptance, human rights in the post-1945 world order were articulated and instantiated in law in forms that separated them from the distinctiveness of any particular national identities or traditions of law and constitutionalism.² The historical reasons for that emphasis are fairly obvious, and center on an interpretation of Germany's aggression and genocide as being the products of a virulent strain of nationalism rooted in an ideology of racial supremacy. Human rights in the post-war era were supposed to serve as the checks on those impulses, by fixing certain universal principles on the inviolable dignity of the human person. Once human rights in this form were situated in the constellation of areas of international concern, in consequence they became pitted against the nation-state in other ways as well. By raising each state's internal affairs to a common level of international concern, the global recognition of universal human rights disrupted and conditioned state sovereignty, diminishing it from the near-absolute status it had in the 19th century positivist vision of the state. "Universality" in this vision consistently tends to be seen as a requirement of "uniformity" with respect to the protection of rights, thus flattening the differences between nations across the many areas touching on fundamental values and principles.

The need for strong and effective *states* in the post-1945 order has remained clear and obvious notwithstanding those developments. The international human rights system depends on them in many ways for the implementation and protection of rights. At a theoretical level, this has been recognized in different ways by various philosophers of law and politics. For example Hannah Arendt argued that the "right to have rights" entailed the necessity of an individual belonging to a specific political community in order to have her rights recognized and protected.³ Jürgen Habermas, theorizing from very different premises and arguing for a full constitutionalization of the global community, nevertheless coincides in his judgment

² See Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (Random House, 2002).

³ Hannah Arendt, *The Origins of Totalitarianism*, Chapter 9 (Harcourt, Brace, and Co., 1951). See also Alastair Hunt, *The Right to Have Rights* (Verso, 2018).

about the necessity of states as the constituent units of that order.⁴ In this he strongly echoes Kant, whose Perpetual Peace, although understood today as a manifesto of cosmopolitanism, is based on the idea of a federation of independent republican states.⁵ Beyond theory, in practice weak and distant international human rights institutions rely on states as the primary guarantors of the human rights of individuals and local communities.⁶ In short, universal human rights legitimate and justify states even while relativizing their national sovereignty.

The *national* state, however, is a different and more problematic matter. Insofar as it implies an affirmation of the particularity of the nation and its identity, the nation state seems to be inevitably in tension with the dominant vision of human rights in the post-1945. Yet the triumph of abstract formulations of universal human rights as the common currency of global ethical discourse has not eliminated the persistence of claims of national identity. Indeed, arguably the hegemony of the ideology of human rights has sometimes provoked more reactions from a wide variety of nations seeking to affirm the particularity of their identities and traditions in the face of, sometimes even against, global human rights norms. We saw this in the 1980s and 1990s, for example, in the debates over so-called “Asian values” and international human rights.⁷ African nations have periodically insisted on the recognition of their unique cultural “fingerprint” with respect to human rights and have resisted, for example, the demands of the International Criminal Court in part by affirming their preference for national approaches to criminal justice, peace, and reconciliation.⁸ Most recently, we increasingly see examples of political leaders and even domestic legal institutions, from Buenos Aires to Brunei, resisting the demands of the global human rights regime and giving priority to national constitutional particularity over global standards, often invoking the distinctiveness of

⁴ Jürgen Habermas, “The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society”, *Constellations*, Vol. 15, No. 4 (2008).

⁵ Kant, I., “Toward Perpetual Peace: A philosophical sketch”, in Kleingeld, P., *Toward perpetual peace and other writings on politics, peace, and history* (Yale University Press, 2006).

⁶ Paolo G. Carozza, “Subsidiarity as a Structural Principle of International Human Rights Law”, *American Journal of International Law*, Vol. 97, p. 38 (2003).

⁷ See, e.g., Damien Kingsbury and Leena Avonius, eds., *Human Rights in Asia: A Reassessment of the Asian Values Debate* (Palgrave Macmillan, 2008).

⁸ See e.g., Seth D. Kaplan, Chapter 9: *Human Rights in Thick and Thin Societies: Universality without Uniformity* (Cambridge University Press 2018).

national characteristics and identity. One could even speculate reasonably that as the pressure of universal human rights increases, it proportionately provokes a certain opposite reaction of nationalism.

In an era of new and resurgent nationalisms around the world in general, it would be useful to understand better the relationship between the protection of human rights as universal values and the idea of nation states as the locus of expression of national distinctiveness and particularity. Is there in fact an irreducible conflict between them, or is there a way to reconcile and harmonize the two?

Given that aim, I will not here treat the many examples of states whose resistance to international human rights norms, processes, and institutions is obviously a pretext merely for evading accountability and for justifying authoritarian rule. Nor am I concerned with “sham constitutionalism” – a recently coined label for the very old phenomenon of constitutions enshrining rights (and other constitutionalist traits like a separation of powers) without any actual attempt to make them effective in legal and political reality.⁹ Nationalist authoritarianism and sham constitutionalism are certainly serious problems, but they are different problems than the one I am trying to examine here. For this purpose, the cases of more importance are those where a sincere (however inconsistent and imperfect) commitment to the protection of fundamental rights seems to coexist with a relatively strong affirmation of national identity and distinctiveness. I will unsystematically call this “national constitutionalism”, because of the importance and priority that it accords to national history, political culture, legal norms, and institutional structures in determining and legitimating claims of fundamental rights. We can distinguish this national constitutionalism from a different emphasis that I will call “transnational constitutionalism” because it accords higher priority and legitimacy to global norms and institutions of human rights than to the national ones

The constitutional tradition of the United States has been one of the most enduring examples of democracy in the world, and a constitutional order founded on the idea of individual (natural) rights. And yet, for the last 70 years it has also been one of the most paradigmatic examples of a constitutional tradition that to a certain and consistent degree prioritizes national constitutionalism and resists some of the core premises of transna-

⁹ David S. Law and Mila Versteeg, “Sham Constitutions”, *California Law Review*, Vol. 101, p. 863 (2013).

tional constitutionalism.¹⁰ Can we, by delving a little more deeply into the US example, begin to arrive at an understanding of both universal human rights and nation states that is more nuanced and constructive rather than only oppositional and reactive? Is there something useful that we can learn more generally from the US example for how to reconcile the competing goods of the universal recognition of human dignity and human rights, on the one hand, and nationalist claims of self-determination, self-government, and identity in a nation state, on the other?

Before proceeding further, allow me first to make very clear the scope and limits of my focus on the U.S. constitutional tradition in order to try to avoid misunderstanding. In focusing on the United States, in no way do I intend to suggest that its constitutional system is categorically exemplary or superior, or that it does not in some ways merit serious reproach and criticism. On the contrary, as I hope will be clear, there are various aspects of the U.S. approach that I believe can be quite problematic. And it is common knowledge that in its historical practice the United States, like many complex and dynamic political communities, has had a constitutional identity that is full of contradictions and failures to abide by its own ideals. None of that, however, prevents us from asking whether we can nevertheless extract from this example of an enduring, generally rights-protecting, constitutional democracy some insight into the relationship between national identity and human rights to help us navigate contemporary forms of constitutionalism.

The American difference

It is a commonplace to note that the United States is one of the most persistently resistant countries to the subjection of its laws and practices to the supervision and control of international human rights treaties and institutions (at least in any strong sense). This is not at all something new introduced by the Trump era's "America First" style of nationalism, but has in fact been more or less consistently true across the entire 70-year history of the global human rights project, and with a core continuity across the various U.S. Presidential administrations. The United States has ratified very few of the international human rights treaties, and refused to accept

¹⁰ The charge of the U.S. State Department's recently created Commission on Unalienable Rights (of which the author is a member) is paradigmatic of both the historical commitment to rights in the United States and also of its prioritization of national constitutionalism. See <https://www.state.gov/commission-on-unalienable-rights>

the jurisdiction of the one available regional tribunal (the Inter-American Court of Human Rights) that could otherwise have authority to supervise U.S. human rights obligations. When it does ratify human rights treaties, the United States has typically done so with various reservations designed to immunize its constitutional system from any major substantive changes. And in those bodies where it does participate (like the Human Rights Committee or the Inter-American Commission on Human Rights), the United States frequently enters discussions over human rights controversies with a restrictive view of the scope of authority of these bodies and with vigorous defenses of its home-grown, national law and practice.

Most observers, activist and political as well as scholarly, tend to ascribe this resistance (either explicitly or tacitly) more or less entirely to the long American history of exceptionalism and isolationism with respect to the world, sometimes suggesting also arrogance, self-righteousness, and even a substantive opposition to human rights as such.¹¹ I do not wish to contest that the charge of insularity and even hostility is true in certain important ways, and that its sources are multiple. Whether in the form of the proposed Bricker amendments in earlier decades (which would have prohibited the ratification of international human rights treaties)¹² or certain hyperbolic public statements about the illegitimacy of international human rights bodies today, stronger forms of American hostility toward the international have undeniably been present. But pointing to that alone begs further questions about the sources and scope of American difference, and it fails to take into account other factors that make the picture more complex, from the structural characteristics of the United States constitu-

¹¹ Among innumerable other examples, see, e.g., Johan D. Van der Vyver, "American Exceptionalism: Human Rights, International Criminal Justice, and National Self-Righteousness", *Emory Law Journal* Vol. 50, p. 775 (2001); Cherie Booth and Max DuPlessis, "Home Alone? The U.S. Supreme Court and International and Transnational Judicial Learning", *European Human Rights Law Review*, Vol. 2, p. 127 (2005); Steven G. Calabresi, "A Shining City On a Hill": American Exceptionalism and the Supreme Court's Practice of Relying on Foreign Law", *Boston University Law Review*, Vol. 86, p. 1335 (2006). This is not to say that there are not also observers of American difference who take sophisticated and contextually informed (whether by history, institutional arrangements, constitutional culture, or other factors) views of the sources of that distinctiveness. For instance, one of the best collections of essays on American exceptionalism, all of them worth reading and many of them extremely insightful, is found in Michael Ignatieff, ed., *American Exceptionalism and Human Rights* (Princeton University Press, 2005).

¹² Louis Henkin, "U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker", *American Journal of International Law*, Vol. 89, p. 341 (1995).

tional system to the centuries-old and pervasive American obsession with “rights talk” and the decisive role that the United States played in the creation of the post-war international human rights framework.

For instance, a fuller account of American postures with regard to international human rights would need to factor in the difficulty of ratifying treaties in the United States, relative to many other countries,¹³ as well as the near-impossibility of amending the U.S. Constitution, which some other countries do more easily in order to conform to internationally-developed standards. It would recognize that U.S. federal legislation is deliberately made substantially more difficult to adopt in the United States, compared to national legislation in many other constitutional systems (especially those with parliamentary systems), as a way of helping to control and limit the power of the federal government. Perhaps most importantly, it would have to grapple with the peculiar but central dynamics of federalism in the United States, which has a massive bearing on this question (as it does with almost any matter of comparative public law between the U.S. and other jurisdictions).¹⁴ Moreover, these structural features of the U.S. constitutional system are not mere historical or proceduralist curiosities, but reflect a serious set of normative ideals and aspirations.

Aside from such structural questions, one could point to the many examples in which comparative study has revealed distinctively American approaches to a broad range of specific fundamental rights, including freedom of speech,¹⁵ freedom of religion,¹⁶ privacy,¹⁷ and criminal process and punishment,¹⁸ to name just a few. Such substantive differences in under-

¹³ See generally Monroe Leigh and Merritt R. Blakeslee, eds., *National Treaty Law and Practice: France, Germany, India, Switzerland, Thailand, United Kingdom*, pp. 1–41 (American Society of International Law, 1995).

¹⁴ See the very interesting and illuminating exploration of federalism’s complex relationship to the migration of human rights in Judith Resnick, “Law’s Migration: American Exceptionalism, Silent Dialogues, and Federalism’s Multiple Ports of Entry”, 115 *Yale Law Journal*, Vol. 115, p. 1564 (2006).

¹⁵ Frederick Schauer, “The Exceptional First Amendment”, in *American Exceptionalism and Human Rights*, supra note 11, at p. 29.

¹⁶ W. Cole Durham, Jr. and David Kirkham, “États-Unis”, in *Dictionnaire du droit des religions*, Francis Messner (Ed.), (Editions du CNRS, 2010).

¹⁷ James Q. Whitman, “The Two Western Cultures of Privacy: Dignity versus Liberty”, *Yale Law Journal*, Vol. 13, p. 1151 (2004).

¹⁸ James Q. Whitman, “Harsh Justice: Criminal Punishment and the Widening Divide Between America and Europe” (Oxford University Press, 2005); Carol S. Steiker, “Capital Punishment and American Exceptionalism”, *Oregon Law Review*, Vol. 81, p. 97 (2002).

standings of rights are not themselves the focus of my interest here, but they begin to approach the underlying factor that I seek to isolate and explore. The observation that different understandings of the content and scope of human rights norms are one of the important factors in explaining the divergent American attitude toward international human rights is interesting not only in a direct way – that is, because of the substance of the difference in some particular area or other of positive law – but also because it implies to at least a degree the conviction that American understandings should be (in general, as a default, at least) preferred exactly *because* they originate distinctively in American historical, cultural, political, and social sources – that is, in the traditions, practices, and identity of the American people as a self-governing democratic nation. The understandings of international bodies or the “international community” as such are seen to be less important, less authoritative, than those understandings of rights that are “American”, precisely by virtue of their being “international” and “American”, respectively. This is not to deny the presence and importance in the American tradition of the idea of “self-evident” rights, in the sense that Jefferson and Paine trumpeted them. Intermingled with that universalist Enlightenment sentiment, however, there has always been also the notion championed by Edmund Burke (in reaction to the ideology of the French Revolution) that rights are “real rights” only when, like “the ancient rights of Englishmen”, they are concretely grounded in and emerge from a distinctive national history and social fabric.

This finally brings into focus the main object of this section. We can say that a critical part of what is at issue, when we examine American attitudes and policies regarding international human rights, is a particular understanding of the relationship between a nation and its rights, its democracy, and its national identity.¹⁹ One influential American tradition of law and politics,

¹⁹ The “constitutional culture” or “rights culture” argument that I am presenting in the following paragraphs should not be misunderstood to imply that I regard it as an exhaustive or even the primary explanation of American exceptionalism. I agree with Andrew Moravcsik that discussions of exceptionalism that rely exclusively on differences of legal and political culture are too vague and empirically suspect to provide comprehensive explanations of the phenomenon. Cf. Andrew Moravcsik, “The Paradox of U.S. Human Rights Policy”, in *American Exceptionalism and Human Rights*, supra note 11, p. 147. That does not mean that they are not present, however, or that identifying their presence and contours cannot be helpful in articulating what we can learn from differences in legal traditions. More importantly, my goal here is not really to provide an explanation or justification for American exceptionalism as such, but to identify one

at least, is more likely to regard “rights” as acquiring their significance (in both senses: meaning and importance) in the crucible of the national legal and political sphere, than through supranational processes or transnational consensus. Accordingly, international or foreign understandings of rights are less likely to carry weight, especially any weight that rests on the authority putatively derived merely from the fact of their “transnationality”. For many players in the international milieu, and particularly among human rights activists and scholars, the exact opposite is true. That is, insofar as rights are drafted, determined, defined, and developed at a transnational level or through supranational institutions, they are by virtue of the fact of transnationality alone thought to be more authoritative and more legitimate, and they are less likely to be contested. This difference represents distinct ways of conceptualizing the relationship between rights, nation, and communal identity. It captures a little more concretely what I tried to indicate earlier as the basic difference between national and transnational constitutionalism. But we need to take still another step to identify more clearly what sources and commitments underlie these different postures.

A Tocquevillian perspective

This attitude about the relationship between nation and rights that I am trying to tease out of the knot of the American tradition of law and society goes back to the earliest days of the republic, and so it is not surprising Alexis de Tocqueville should have perceived it with his unparalleled acuity of observation about democracy in America. Tocqueville was rather clear about the centrality of the idea of rights to the fledgling American nation, and its connection to American democracy. “No man can be great without virtue, nor any nation great without respect for rights”, he wrote.²⁰ In a democracy, the virtue of the individual and respect for rights go together, because “Democratic government makes the idea of political rights penetrate right down to the least of citizens”.²¹ There is nothing remarkable about these affirmations, especially given Tocqueville’s preoccupation with the passage from aristocracy to democracy and his attentiveness for those

important thread of ideas within the American tradition of difference that I believe to be important and helpful for a better understanding of the meaning of nationalism and the flourishing of human rights in general.

²⁰ Alexis de Tocqueville, *Democracy in America*, p. 238 (trans. George Lawrence, ed. J.P. Mayer, Anchor Books, 1969).

²¹ *Ibid.* p. 239.

qualities that keep the vices of democracy in check. More interesting, however, are two other little nuggets that Tocqueville drops into his exposition almost casually.

First, Tocqueville uses an evocative phrase in describing the Americans' commitment to rights: he remarks that "The American destiny is unusual" insofar as it has succeeded in maintaining both "the idea of individual rights and a *taste for local freedom*".²² The latter, the "taste" – the word itself is redolent with a particular sort of pleasure, very human, very elemental, and highly variable among persons and cultures – for local freedom, indicates Tocqueville's fascination with the decentralization of social ordering in the young American democracy, which is indeed one of the main themes of his entire study. As John McGinnis has commented:

In contrast to the centralization of France's ancient regime and the French Revolution's democratic centralism, Tocqueville observed that the vibrancy, innovation, and beneficence of American society did not come from its rulers but bubbled up from below. The secular associations of public-spirited citizens and churches and synagogues of spiritually oriented citizens were the underlying reason for the self-regulating order of our society.²³

Tocqueville's reference to America's "unusual" combination of rights and local freedom connotes a tension between this dynamic social ordering from below and the idea of individual rights. The idea is not fully developed in Tocqueville, but the outlines of the problem are not hard to identify from his narrative: rights suggest fixity against the instabilities and volatility of the love of local freedom; they are points of ordering not subject to the vagaries and vicissitudes of norms and practices that "bubble up from below". So, they provide stable coordinates of a social-political space within which freedom can be exercised, thus simultaneously making freedom both constrained and possible. In the tension between rights and self-government, in short, we face the paradox of what US Supreme Court Justice Benjamin Cardozo referred to as the rights that form "the very essence of a scheme of ordered liberty" in the U.S. constitutional system.²⁴

How then is that internal tension of ordered liberty maintained? Tocqueville's whole work is largely an extended examination of that question.

²² Ibid. p. 676 (emphasis added).

²³ John O. McGinnis, "Reviving Tocqueville's America: The Rehnquist Court's Jurisprudence of Social Discovery", 90 *California Law Review*, Vol. 90, pp. 485, 491 (2002).

²⁴ *Palko v. Connecticut*, 302 U.S. 319, 325 (1937).

Here we can introduce one small part of it through a second suggestive term that Tocqueville uses. His general discussion of rights is situated in the context of an overall examination of the question of “how, then, do the American republics maintain themselves”? The maintenance and success of democracy, its viability over time and the tempering of its vices, is in Tocqueville’s vision not a science or a technique but an “art”. It is not a “science”, as in something that can be intellectually systematized or reduced to a set of abstractions through speculative rationality; nor is it a “technique”, as in a mechanical exercise that can be implemented without the need for creativity and distinctiveness, through merely an instrumental sort of rationality (*techne*).²⁵ As an “art” it is a matter also of the indeterminate exercise of human freedom, and the particularities of preference – one might even say, again, of *taste*.

Drawing inspiration from Tocqueville, then, we might put it this way: national democratic political life in this vision is the practical art of mediating between the social freedom of the local and the order of rights, and between concrete particularity and abstract universals. Taking this enduring point beyond the distinctive idiom of Tocqueville and his time, we might say that the value of democracy rests on the interrelationship between the importance of self-government, on the one hand, and the need for an objective order of values, on the other.

Self-government and an objective order of values

What one determines to be the meaning and purposes of rights in a democratic polity depends in large degree on certain contestable and contested premises. But from the perspective of many of the different theories of democracy,²⁶ it is common to observe that fundamental rights can often serve two distinct purposes. On the one hand, they are substantive principles specifying (partially, at least) the content of basic requirements of justice and the common good.²⁷ In this sense they serve as restraints on the exercise of the authority of the majority, without which democracy

²⁵ See the very interesting discussion of these differences in modes of reasoning in Joseph Dunne, *Back To The Rough Ground: Practical Judgment And The Lure Of Technique* (University of Notre Dame Press, 1997).

²⁶ A good overview of many of these theories’ relationships to human rights can be found in Carol C. Gould, *Globalizing Democracy and Human Rights* (Cambridge University Press, 2004).

²⁷ Cf. John Finnis, *Natural Law and Natural Rights* (2nd ed., Oxford University Press 2011).

can become majoritarian tyranny. On the other hand, rights serve as mechanisms to protect the capacity of the people to govern themselves; they enhance self-government through the protection of liberties necessary to genuine representation and participation in the determination of the good of the community. The first purpose leads to a conception of rights that is more oriented toward objective values, toward the recognition and protection of basic human goods, and are often said to be “dignitarian” in orientation.²⁸ The second tend to be more process-oriented, thinner in their expression of basic human goods, but constitutive of the participatory and deliberative aspects of democracy. They guarantee freedom and the rule of law, and are commonly thought of as more “libertarian” in orientation.

It is apparent that these two purposes of rights – ensuring self-government and providing the objective value orientations of the body politic – can sometimes be in tension with one another.²⁹ Where rights are used to circumscribe the boundaries of legitimate political choices by reference to objective values, by definition they constitute a certain limitation on the freedom of self-government (of the majority, to be sure) – using Dworkin’s terms, they are “trumps” against societal choices that don’t accord adequate respect for the moral worth of every individual.³⁰ There is nothing particularly new or insightful in making such an observation, but it is interesting to note how this countermajoritarian thrust of appeals to fundamental rights is not just anti-*democratic* – after all, that is exactly what fundamen-

²⁸ I intend the word “objective” here not in an epistemological sense but in the way it is used in German constitutional law. In Michel Rosenfeld’s articulation of the idea, “‘Objective order’ ... refers to the obligation imposed on those responsible for the development of the legal order to shape it according to constitutional values and to orient it in such a way as to extend and complement constitutional rights and obligations”. Michel Rosenfeld, “Constitutional Adjudication in Europe and the United States”, *International Journal of Constitutional Law*, Vol. 4, pp. 633, 640 n. 25 (2004). See also Donald Kommers, *The Constitutional Jurisprudence of the Federal Republic of Germany* (Duke University Press, 3rd ed. 2012).

²⁹ See the taxonomy of different relationships between, problems of, and structural approaches to, majoritarianism and individual rights, in Jon Elster, “Majority Rule and Individual Rights”, in Obrad Savić, ed., *The Politics of Human Rights*, p. 120 (Verso, 1999).

³⁰ E.g., Ronald Dworkin, “Constitutionalism and Democracy”, *European Journal of Philosophy*, Vol. 2, p. 2 (1995). In distinction to Dworkin it is helpful in this discussion to note that this is not just a conflict between rights and democratic majoritarianism but between two different roles and functions of rights in a democratic polity; they are in an important sense *both* rights-based arguments. See Jeremy Waldron, “A Rights-Based Critique of Constitutional Rights”, 13 *Oxford Journal of Legal Studies*, Vol. 13, p. 18 (1993).

tal rights are supposed to be, in recognition of the need for majoritarian democracy to be oriented in substance toward basic principles of justice and the common good – but in some degree it is even anti-*political*.³¹ It is premised on the perceived need to remove the basic values represented by rights from the sphere of politics altogether. In other words, from this perspective the protection of human rights entails the withdrawal of certain basic questions of social life from the potential dilution and corruption of values by political actors, including but not limited to majorities within nation states. This is one of the principal driving forces behind the judicialization of rights: the removal of those areas of common life staked out by rights that are deemed to be fundamental to the (supposedly) apolitical, principled institutions of the courts of law.³²

One problem with that dichotomy, however, is that it ignores certain ways in which the two dimensions of rights in modern democracy are not entirely distinct and divisible. They are interconnected in at least four different ways. First, political participation is not a merely procedural or instrumental good but can have intrinsic value and thus is not necessarily distinguishable from the substantive, dignity-oriented human goods. On the contrary, an integral part of the substance of a flourishing human life is to participate in the determination of one's own and the community's basic decisions about the goods of their lives, both as individuals and as members of the community – practical reasonableness as itself a basic good, to use John Finnis' language,³³ or more recognizably in the rhetoric of Enlightenment liberal revolutionary politics, the right to the “pursuit of happiness”.³⁴

³¹ One of the most interesting observers and sharp critics of this phenomenon of depoliticization is Pierre Manent. See e.g., *A World Beyond Politics: A Defense of the Nation-State* (Princeton University Press, 2006). See also Daniel J. Mahoney, “Humanitarian Democracy and the Postpolitical Temptation”, *Orbis*, Vol. 48, pp. 609–624 (2004). However, it is worth emphasizing that the criticism of human rights as antipolitical is sometimes as strong or stronger on the intellectual left. See, e.g., David Kennedy, “The International Human Rights Regime: Still Part of the Problem?” in *Examining Critical Perspectives on Human Rights*, p. 19–34 (Cambridge University Press, 2012), as well as the various essays in that volume responding to Kennedy.

³² See Ran Hirschl, *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism* (Harvard University Press, 2004). Of course, as Hirschl himself shows convincingly, this is often a deeply political move as well, in the sense that it corresponds to the self-interest of certain segments of the society in question.

³³ John Finnis, *Natural Law and Natural Rights*, supra note 27.

³⁴ United States Declaration of Independence.

The two dimensions are also connected in a more functional way, where each is necessary to the realization of the other. As Habermas has put it, in his discussion of the legitimacy of popular sovereignty: “The desired internal relation between human rights and popular sovereignty consists in this: human rights institutionalize the communicative conditions for a reasonable political will formation. Rights, which make the exercise of popular sovereignty *possible*, cannot be imposed on this practice like external constraints”.³⁵ Amartya Sen has made a similar point in a more specific context and without the freighted philosophical categories, in his discussion of the relationship between political rights and economic needs: “our conceptualization of economic needs”, and, one could add, other requirements of human dignity, “depends on open public debates and discussions, and the guaranteeing of those debates and those discussions requires insistence on political rights”.³⁶ But the converse is also true: how one exercises one’s rights to self-government – whom we vote for, what proposals of law and policy we support, etc. – will obviously be shaped in significant degree by the recognition and acceptance of other substantive, dignity-rights, for oneself and others in community with us.

Thirdly, sometimes public arguments for substantive, dignity-based rights can serve to unsettle and open up an otherwise constrained political environment, bringing dynamism to public discourse and the mobilization of interests, and enhancing the political participation of a broader range of members of the political community in decisions that may be captured and controlled by narrower factions.

Finally, and closely linked to our preceding reflections on certain strands of constitutional thought, at least in the context of the founding of the United States, rights protecting rights and enhancing self-government were deemed inseparable because the “rights of the people” were considered (in Lockean fashion) to be prepolitical, grounded in the history, practice, and material social life of the community. This means that rights that serve to guarantee self-government are necessary means to ensure the protection of the full range of substantive rights of the people that existed outside of, and prior to, the Constitution.

In these multiple connections between the two dimensions of rights, we can hear again the echo of Tocqueville, emphasizing that the rich social

³⁵ Jürgen Habermas, “Remarks on Legitimation Through Human Rights”, *Philosophy & Social Criticism*, Vol. 24, p. 160 (1998).

³⁶ Amartya Sen, *Development as Freedom*, p. 148 (Anchor Books, 2000).

life that he observed at local levels generates those mores that sustain democracy. In the art of democracy, the political and the social are as deeply intertwined as the idea of individual rights and the taste for local freedom. The idea of “self-government” as related to rights, therefore, is not merely the affirmation of a substantively empty, or purely procedural, political autonomy. It represents the respect, protection, and promotion of the *juris-generative*³⁷ politics and communities which can give life to the virtues that sustain liberty, equality, the rule of law, and democracy.

Given these multifaceted relationships between a distinctively *national* politics and fundamental rights, it is to be expected that specific constitutional systems can take quite divergent forms in seeking to realize both the stable protection of certain objective universal values and also the virtues of self-government. While the U.S. constitutional tradition has tended frequently to privilege the latter, in the post-1945 era most continental European constitutional systems have balanced the equation more in favor of the objective order of values that remove fundamental questions from political self-rule and from the expression of national identity. Indeed, it may be reasonable to interpret one (among others, to be sure) of the causes of the backlash against European regional institutions in places like the United Kingdom to be a perception that the “Europe of rights” has excessively intruded upon and displaced the vital importance of national self-determination. This observation highlights the link between self-government and the political expression of the idea of nation more generally. The self-rule orientation of rights represents the means by which a people will deliberate, choose, and express their fundamental value orientations and priorities, and their collective identity as a nation. So it will tend to be more aligned with a nationalist reading and implementation of constitutional order. Conversely the objective order of values that are to be fixed and removed from political vicissitudes will often be perceived as constraints – legitimate constraints, perhaps, but constraints nevertheless – on the ability to make those same value choices expressive of national identity. They will therefore tend to be in greater tension with the idea of national constitutionalism and more consonant with a transnational constitutionalism more abstracted from and less expressive of national particularity and identity.

All of this in turn suggests a further working hypothesis about rights and the nation state: a disproportionate or unbalanced emphasis on objec-

³⁷ I borrow the term and concept from Seyla Benhabib. See, e.g., *The Rights of Others: Aliens, Residents and Citizens* (Cambridge University Press, 2004).

tive universal values at the expense of self-government may pose a problem for the full realization of human rights and for the resolution of certain problems of law and justice. To see how this might be so, we can turn now from the comparative constitutional context to that of the contemporary law and practice of international law of human rights.

Subsidiarity vs. dis-integration of the idea of human rights

I have argued at length elsewhere that the principle of subsidiarity should be understood to be a structural principle of contemporary international law of human rights. It is deeply consonant with the idea of human rights represented by the Universal Declaration of Human Rights and other foundational instruments, and corresponds well with the understanding of the requirements of dignity, justice and freedom of socially-situated human beings that those documents express. Subsidiarity also describes remarkably well many of the structural and doctrinal features of human rights law and institutions, providing a helpful analytical tool to understand why it bears some of the peculiar features that characterize it, and how it works in practice. Most importantly, however, I have argued that subsidiarity should be preferred as an evaluative principle of the human rights system (and especially as an alternative to the concept of sovereignty), in particular because of the way that it unites a concern for the universal common good with a profound attention to the freedom of local communities to determine and realize their ends for themselves. “The principal advantage of subsidiarity as a structural principle of international human rights law is that it integrates international, domestic, and subnational levels of social order on the basis of a substantive vision of human dignity and freedom, while encouraging and protecting pluralism among them”. I will not rehearse again the arguments behind those conclusions. Here, I wish only to point out that to the extent that such a reading and analysis of the relationship between the principle of subsidiarity and human rights is correct, a subsidiarity-oriented approach to human rights law will seek to integrate both dimensions of rights that we have been exploring: the guarantee of structures of self-governance and the protection of objective values of justice and human dignity. In fact, however, many of the predominant ways of thinking about international human rights and putting them into practice do not reflect that balance well, and instead undervalue the self-governance aspects of human rights. That is not to say that the idea of self-governance is absent from international human rights law. On the contrary, it is present in a number of important ways. Gen-

erally, structural doctrines such as the requirement of exhaustion of local remedies and the margin of appreciation (in Europe) are good examples of self-government-reinforcing features of the international human rights system. Similarly, institutional relationships limiting international tribunals' direct control over domestic legislation and judicial decisions, or requiring domestic actors to incorporate and execute the international norms and decisions, also can strengthen self-governance. Moreover, important parts of the substantive law of human rights do affirm the importance of democracy, which may be understood at least in some cases as reinforcing self-governance (although arguably the Strasbourg Court's endorsement of "militant democracy" is really a decision applying objective values limiting self-governance).³⁸

Still, the appreciation for self-governance has never been the stronger partner in the development of human rights ideas, probably in significant part because the international system of protection was born out of the original sin of failed and criminal domestic political institutions. What tenuous interest there has been in the ideal of self-governance has weakened even further with the passing of time. For instance, the doctrine of the margin of appreciation – never accepted outside of Europe in any event – has been in substantial decline at least since the great expansion of the Council of Europe to Eastern and Central Europe.³⁹ The supranational human rights courts in the Americas and in Europe have been experimenting more and more with remedies and forms of supervision that exercise much stronger internal control over domestic politics and institutions.⁴⁰ Even the substantive law has tended to diminish the importance of the value of self-government. For instance, international human rights law is essentially incapable of distinguishing between the illegitimacy of a military regime's self-amnesty for grave violations of human rights and a negotiated, democratically accepted amnesty which in some cases allows societies to move away from conflict and toward reconciliation. Overall this shift increasingly away from the value of national self-determination

³⁸ See, e.g., *Refah Partisi v. Turkey*, European Court of Human Rights (Grand Chamber), Judgment of 13 February 2003.

³⁹ See generally Andrew Legg, *The Margin of Appreciation in International Human Rights Law: Deference and Proportionality* (Oxford University Press, 2012).

⁴⁰ See, e.g., Pablo González-Domínguez, *The Doctrine of Conventionality Control: Between Uniformity and Legal Pluralism in the Inter-American Human Rights System* (Intersentia Press, 2018).

is supported very strongly by the dominant mentality of activists and institutional actors (this I can say purely from my personal experience in the field as a member of the Inter-American Commission on Human Rights in the past, and a member of the European Commission for Democracy Through Law, a.k.a. the Venice Commission, at present), who often seem untroubled by the systematic transfer of domestic politics and law to international levels. And finally, much of the most influential scholarly work on international human rights has set aside any real interest in or engagement with the value of self-governance. Even those theories that have been on their surface oriented toward the strengthening of domestic democracy seem in the end to focus more either on the thick normative content of that democratic order (for instance, Carlos Nino's deeply influential and important *Constitution of Deliberative Democracy*)⁴¹ or on a systematic effort to enhance domestic institutions' capacity to do simply what international law mandates that they do (for instance, Anne-Marie Slaughter's proposals for adopting what she revealingly calls "The European Way of Law").⁴² They are hardly concerned with structures of self-government that begin in the capillaries of society, the starting points for Tocqueville's appreciation of democracy and rights.

The consequence of an atrophied attention to structures of self-government is a correspondingly stronger focus only on the objective order of values that human rights norms represent. In the international sphere, above all, this can have some highly problematic consequences in the long run.

To understand why, we need to begin by restating two familiar premises of the international human rights project. First, at a conceptual level, "human rights" is not a single coherent idea, but represents the intersection of a variety of different traditions of thought, many of which in various degrees have mutually incompatible premises – especially premises about the nature of the human person and the source of his or her rights. This was recognized to be true from the first stirrings of the effort to articulate common standards of human rights at the international level.⁴³ Second, in order to circumvent the obstacle of this theoretical pluralism, those who

⁴¹ Carlos Santiago Nino, *The Constitution of Deliberative Democracy* (Yale University Press, 1996).

⁴² Anne-Marie Slaughter and William Burke-White, "The Future of International Law Is Domestic (or, The European Way of Law)", *Harvard International Law Journal*, Vol. 47, p. 327 (2006).

⁴³ Mary Ann Glendon, *A World Made New*, supra note 2.

set out to forge the first global declaration of rights based their effort on a deliberate abstention from debate, let alone agreement, about the theoretical foundations of human rights. The focus of their agreement was on practical principles alone.⁴⁴ To this day, it remains a pervasive and persistent characteristic of international human rights that its fundamental principles are based on a very thin, if any, consensus about where they come from. These two premises together ensure that principles of fundamental rights in law are inherently underdetermined, and necessarily subject to further specification through interpretation and legislation.

To compensate for this precarious state, human rights lawyers and political actors have spent decades dedicating themselves to building up the positive law of international human rights through multiple treaties, institutions and processes designed to “translate” the soft underlying principles into hard norms of positive law with widespread global acceptance. Once “constitutionalized” in this way, the hope is that the validity of the norms becomes separated from their social or philosophical basis, like Hart’s rule of recognition or Kelsen’s *grundnorm*, thus obviating the need (and perhaps even the possibility) to inquire into, or shore up, their originally multivalent ethical starting point.

We should not minimize the tremendous successes that this effort has achieved in the last 70 years. It is a noble and valuable labor on behalf of justice and the universal common good of the peoples of the world. Nevertheless, it would be unrealistic and disingenuous to ignore the limitations, and even dangers, of building the edifice of global human rights law merely on a positive law that has nothing but a very thin practical consensus beneath it.

Let me highlight four interrelated clusters of difficulties with such an arrangement. First, generally speaking there is often a widespread gap between international norms and instruments of human rights law and the local social, political and cultural contexts in which they are supposed to be operative in practice. Someone trained primarily as a comparatist like myself cannot help noticing the structural similarity between this aspect of international human rights law and patterns of law in colonial societies or pluralistic legal systems. To put it another way, law that is constructed without attentiveness to the underlying cultural context tends toward abstraction that separates it from the society that it purports to regulate. It

⁴⁴ *Idem.*

thus often becomes a bare and unobserved formality. Or, alternatively, the formal and abstract law would have to be maintained through the use of considerable coercive force, which with respect to human rights law would indeed be an intolerable self-contradiction.

That the first problem is not as evident in the European constitutional space (although it certainly is in some of the newer member states of the Council of Europe) is certainly not due to the “positivization” of the principles, but rather to the fact that the underlying social and cultural commitments and values necessary to sustain the positive law are in fact present, unlike in many other regions of the world. But that observation actually leads us to the second problem area. The thinness of the cultural basis of human rights law becomes even more of a difficulty insofar as we recognize that law and rights do not by themselves *generate* the conditions and commitments necessary to sustain the prepolitical values needed to make the law effective. Even Habermas – he of “constitutional patriotism” and the self-sufficiency of the liberal legal state – has acknowledged that “An abstract solidarity, mediated by the law, arises among citizens only when the principles of justice have penetrated more deeply into the complex of ethical orientations in a given culture”.⁴⁵ In short, the thin practical consensus of human rights alone is not self-sustaining; it depends on other extra-legal sources of value and commitment.

Without the nourishment of a genuine connection between the abstract human rights norms and the cultures that can sustain them and that are subject to them, a third set of problems arises. The mediation between the law and the social basis from which it arises and toward which it is directed would, in the focal case of a law-governed community, normally occur through the political life of the community, by the practical “art” of reasoning together and persuading one another about the goods of the community and how to realize them. Instead, the vacuum existing between positive law and the meaning-bearing contexts in which people actually live their lives tends to get filled with an exaggerated role of bureaucratic institutions and political elites. As Philip Allot memorably put it, human rights in the international legal order have been “swept up into the maw of an international bureaucracy. The reality of human rights has been degraded... [T]hey were turned into bureaucratic small-change [and] became

⁴⁵ Jürgen Habermas, Pope Benedict XVI, and Florian Schuller, *Dialectics of Secularization: On Reason and Religion* p. 34 (Ignatius Press, 2006).

a plaything of governments and lawyers”.⁴⁶ Accompanying this reality is an emphasis on procedures; endless process is the fog that fills the abyss of substantive discord. In short, the risk is of a reduction of political life and its substitution by a weak legalism and formalism. It should be no wonder that most international adjudicative bodies in the human rights sector are notorious for their weak legal reasoning and loose conceptualization of the requirements of human rights in their jurisprudence.

Finally, the thinness of the foundations of human rights and the resultant bureaucratic proceduralism only masks the deeper differences among cultures that in fact persist. The arrangement merely defers disagreement on fundamental questions. Under the veneer of authoritative process, there continues to be controversy over the interpretation and application of even the most basic of rights, like life, and over the relationship between fundamental rights and the most elemental forms of social life, like the family. The divergent understandings are even more pronounced as one gets further away from the protection of the “hard” core of human rights like life and physical integrity, and more into the difficult weighing of competing goods characteristic of constitutional claims generally. This will only be more true as we continue to see deeply contested moral questions all become processed as juridified human rights claims, and as the challenges of new technologies and new threats to human existence continue to make themselves felt.

Someone will undoubtedly object that I have overstated the vices of contemporary human rights here, so I will stress again that this is an isolated description of certain risks and tendencies, all of which I see present in various degrees in the reality of contemporary human rights practice, even if none of it describes the totality of the human rights field. As I already emphasized, the positive achievements have also been great. Fixing a slightly more nationalist gaze for a few moments only on the potential problems that arise out of transnational constitutionalism’s de-emphasis on national self-government, however, allows us to see why an attentiveness to the local communities in which human rights acquire meaning and have force, and the protection of structures of self-government which allow those communities to pursue their good, is so vital to fulfilling the promise of the human rights ideal in its integrated whole.

⁴⁶ Philip Allott, *Eunomia: New Order for a New World*, p. 288 (Oxford University Press, 2001).

Conclusion

In conclusion I can finally try to pull together the disparate threads of argument here and link them to the broad themes of nation and nation-state. First, drawing on the historical example of the United States I have tried to demonstrate that one important factor in explaining a greater emphasis on national constitutionalism, and the corresponding resistance to the transnational constitutionalism of international human rights law, is the persistence of concern for the importance of self-government, for the art of democracy as a mediator between a commitment to universal individual rights and the taste for local freedom. Next I offered a critical assessment of the international sphere of human rights to highlight the dangers of an atrophied attentiveness to those same questions of local freedom and national self-governance. Can we then draw some conclusions that may be useful for thinking constructively about the nation state and human rights in this era of rising nationalism globally?

First, this line of thought suggests that we have to take seriously the desire of national communities to retain meaningful degrees of self-governance. If not, it is only likely that more extreme and exclusionary forms of nationalism will be fed by their rhetorical and political opposition to the idea of human rights as recognized and protected by international norms, and they will provoke hostile reactions to the idea of universal human rights as a whole.

But at the same time I do not suggest that we seek to replace the currently skewed way of thinking about and using rights in more transnationally-oriented constitutional systems with an equally reductive concern only for national self-government and localism. Indeed, if this were a paper about the limitations of the American constitutional disposition, I would be critical of the excessively exclusive emphasis there on self-governance with respect to fundamental rights and international law. Instead, therefore, it is necessary to seek means to bring the two forms together in a way that takes both seriously, that keeps them in dialectical tension without either destroying the other. The ways of doing so could include, for example, a more comprehensive application of the principle of subsidiarity, one that would open up a greater degree of pluralism in the nationally-specific definition and application of the rights while it would at the same time recognize their status as part of the universal common good.

Efforts to integrate commitments to universal rights with stronger orientations toward national identity, self-government, and localism could help us to reach a more adequate equilibrium regarding fundamental rights and democracy in both international and in national constitutional systems.

Such an integration would, to begin with, bring about a greater unity of the abstract idea of fundamental rights with concrete social life, a unity necessary if the common good is to be more a tangible reality than pious words. The vast and diffuse recent body of legal scholarship on social norms in a variety of areas from criminology to urban planning has shown us how vital that integration is to the realization of the humanistic ends of law. Greater integration of local freedom and individual rights can also lead to a richer form of democracy, because it fosters and supports the mediating institutions of civil society, those jurigenerative communities (including religious ones) that are capable of giving rise to the democratic values and commitments to freedom necessary to justify and sustain pluralistic democracies. Democratic politics itself then becomes the vehicle for mediating between what the political philosopher Michael Walzer calls “thin” and “thick” moral arguments,⁴⁷ between purely abstract expressions of universal values and the articulated, plural, substantive form that those values acquire through the strong forms of belonging that we experience, such as the nation. That vision of democracy creates a greater space for vibrant and pluralistic political life than can be realized in a constitutional order based exclusively on a conception of rights as expressing an objective order of values, because there is a continuous need to debate, discuss, and decide how to reconcile the diverse aspects of the good of the community. It therefore entails, ultimately, a broadening of the need to rely on reason in politics, on the prudence and persuasion that the “art” of democracy requires.

In sum, the aim, I believe, is not to aim exclusively at a form of either “nationalist constitutionalism” or “transnational constitutionalism,” but rather to conceive of the relationship between the nation state and fundamental rights as constituting a locus of dialogue. I do not mean “dialogue” in a weak sense, a merely procedural form of discourse and deliberation, but a commitment to truth and to charity – that is, to a reasonable adherence to reality on the one hand, and an acceptance of the good of another as one’s own, on the other. In such a dialogue, the good of the “taste for local freedom” and self-determination that is at the heart of national constitutionalism, and the commitment to the recognition of human dignity and the protection of human rights as universal values that underlies transnational constitutionalism, are not in contradiction, but become necessary complements of one another.

⁴⁷ Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (University of Notre Dame Press, 1994).

THE NATION STATE AND THE PRINCIPLE OF SUBSIDIARITY

GÉRARD-FRANÇOIS DUMONT

How and why the principle of subsidiarity was so long in the making

Though the term “subsidiarity” is recent, it is rooted in Antiquity and has been used over the centuries by great authors in connection with an ongoing question: how to organise relations between individuals, their communities (at family, village, regional and higher levels) and public authorities. In other words, the dilemma lies in a complex and recurrent question: “how are the actions of individuals, groups and public authorities to be articulated within society and, above all, the State”.¹

Considering “the art of governing free men”, Aristotle² addressed the question of methods of governance. He contended that the household or family was society’s basic cell; above this came the village; then, one step up again, the City-State. The village should refrain from interfering in issues for which the household was competent. Likewise, the City-State should not get involved in issues that could be solved at village level. Aristotle set out the principle of non-interference whereby higher instances should only involve themselves when this was justified. Thus he defined the primacy of the individual and rejected the possibility of an omnipotent higher level.

In the Middle Ages, St Thomas Aquinas considered the theological foundations of the relationship between State and individuals. The latter, he argued, were social beings who, by definition, lived with other individuals forming a community, sharing concerns that formed a “common good”, more than just the sum of individual interests. The quest for this common good was the basis of all social and political organisation. In this perspective, the individual was not to be treated as a subject, but considered as a contributor to the quest. Power must be exercised within the compass of the Latin precept *quod omnes tangit, ab omnibus tractori et approbari debet*, “that which concerns all must be discussed and approved by all”, enunci-

¹ Millon-Delsol, Chantal, *Le principe de subsidiarité*, Paris, PUF, 1993, p. 13.

² See notably, Pellissier-Tanon, Arnaud, “L’ordre hiérarchique des divers groupements – Une note sur les fondements aristotéliens du principe de subsidiarité”, in: Bichot, Jacques, P. Coulange, Pierre et Largillier, Bernard, et al., *La subsidiarité*, Aix, Presses universitaires d’Aix-Marseille, 2014, pp. 15-22.

ated in the Civil Law of Ancient Rome. Any individual concerned by a decision must be able to take part in the process. Consequently, individuals should not, for the sake of efficiency, offload necessary decision-making processes, in which they should be involved, to higher instances.

Another author³ who contributed to the debate on subsidiarity was the Protestant Johannes Althusius (1557–1638), Syndic of the German city of Emden. Setting out the principle of the distribution of powers encompassing the individual – family, guilds, city, province and, finally State, this precursor of the doctrine of federalism – anticipated the future concept of a subsidiary State. Whereas, in the theory of sovereignty formulated by Jean Bodin (1529–1596), the absolute, perpetual and indivisible competence to command was crystallized in the hands of the sovereign,⁴ Althusius upheld that the ineluctable consequence of this theory would be that society would be shorn of its dynamism by becoming intrinsically dependent on power. He thus undertook to reverse this logic by entrusting the rights of sovereignty to the organised people.⁵

Meanwhile, in England, John Locke (1632–1704), one of the founders of the Rule of Law concept, deplored the absolutism being deployed in France but which failed to prevail in England. He proposed a social contract between the State and individuals, a contract that must ensure that the latter conserve some of their freedoms. Delegation of sovereignty by the people to those who govern is subject to a condition: the people only accepts to abandon sovereignty in exchange for guarantees of its basic rights and individual freedoms.

In the 19th century the liberal thinker John Stuart Mill (1806–1873), who notably championed freedom of expression, considered that only a small part of public business could be satisfactorily and safely attended to by central authorities. It was down to the Frenchman Alexis de Tocqueville (1805–1859) to be the first to implicitly invoke subsidiarity in terms of political organisation when he launched a broadside against centralization. He considered questions of local autonomy and, thus, the distribution of

³ Cf. Millon-Delsol, Chantal, *L'Etat subsidiaire. Ingérence et non-ingérence de l'Etat : le principe de subsidiarité aux fondements de l'histoire européenne*, Paris, PUF, 1991.

⁴ Bodin, Jean, *Les six livres de la République*, Paris, Fayard, 1986, 6 volumes.

⁵ Cf. Demelemestre, Gaëlle, *Introduction à la Política methodice de Johannes Althusius*, Paris, Éditions du Cerf, 2012. According to Althusius, a people was not just the sum of its individuals, but a corporate, legal and political person. Society was made up of nested groups, each working to address needs that cannot be satisfied at the immediately lower level, thus delivering not just greater utility, but also a higher quality of being.

powers between the State and its component parts, a question not yet discussed in terms of “decentralization⁶” or “devolution”.⁷ Their contemporary, Pierre-Joseph Proudhon (1809–1865) set out the goal of a federative State organisation, a solution that he argued would guarantee the individual’s participation in the power of the State.

Thus all the aforementioned authors developed a general idea: that of “subsidiarity”, without employing the term itself nor, *a fortiori*, offering a conceptualized definition. The term in fact appeared in the 19th century in texts published by the Roman Catholic Church and designed to clarify the latter’s social doctrine,⁸ by providing it with an anthropological foundation.⁹ More precisely, the concept of subsidiarity appeared as a constant theme of the encyclical *Rerum Novarum* published on May 15, 1891 by Pope Leo XIII. The text, addressing social issues, above all the condition of the working class, urged the State to fulfil a role of social regulator and servant of the common interest. The key text, however, is Pope Pius XI’s encyclical *Quadragesimo anno* published on May 15, 1931, subtitled “On the reconstruction of the social order”.

§ 87 contains the following: “For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them”. § 88 then defines the principle: “The supreme authority of the State ought, therefore, to let subordinate groups handle matters and concerns of lesser importance, which would otherwise dissipate its efforts greatly. Thereby the State will more freely, powerfully, and effectively do all those things that belong to it alone because it alone can do them: directing, watching, urging, restraining, as occasion requires and necessity demands. Therefore, those in power should be sure that the more perfectly a graduated order is kept among the various associations, in observance of the principle of ‘subsidiary function’, the stronger social authority and effectiveness will be the happier and more prosperous the condition of the State”.¹⁰

⁶ E.g. Aubelle, Vincent, Kada, Nicolas (direction), *Les grandes figures de la décentralisation*, Paris, Berger-Levrault, 2019.

⁷ Term used in the United Kingdom.

⁸ For a recent analysis, see, for example, Naudet, Jean-Yves, “Société civile et subsidiarité : l’apport de Benoît XVI”, in Bichot, Jacques, P. Coulange, Pierre et Largillier, Bernard, et al., *La subsidiarité*, Presses universitaires d’Aix-Marseille, 2014, pp. 23–36.

⁹ Cf. Delsol, Chantal, “Les fondements anthropologiques du principe de subsidiarité”, May 4, 2011, available at: <http://www.chantaldelsol.fr>

¹⁰ The theologian priest George Desbuquois, in the first French translation of the 1931 encyclical used the adjective *supplétif* (an adjective that places greater emphasis on

This papal teaching of the “principle of the subsidiary function of any collective body” postulates that the State must restrict itself to a subsidiary role. This makes the State into an auxiliary, an aid, and a recourse when problems cannot be solved by “subordinate organizations”. As § 86 of the encyclical points out: “As history abundantly proves, it is true that on account of changed conditions many things which were done by small associations in former times cannot be done now save by large associations. Still, that most weighty principle, which cannot be set aside or changed, remains fixed and unshaken in social philosophy: Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do”.¹¹

The true meaning of the principle of subsidiarity is a call for human freedoms and responsibility, each individual having a right to self-determination, to personally sort out whatever issues fall within the compass of household, immediate circle, and at the first level the best equipped to solve the problems concerned: family, association, commune. Higher level organizations are to be solicited only when no solution can be found at a lower level.

However, though we had to wait till 1931 for a clear definition of the principle of subsidiarity, its application was nothing new.

Subsidiarity goes back centuries

Throughout history humanity has always been made up of local communities, be they sedentary or nomadic. For thousands of years, these communities have often been very localized. Even nomadic communities have moved from place to place according to their needs and as dictated by the transportation conditions which, historically, offered no alternative to what we now call “short supply chains”. These communities unwittingly created circular economies, each one governing itself according to its own cultural traditions or specific balance of power, both of which have changed over time.

the role of “auxiliary” or “back-up” and less on the connotation of rank), while more recent translations have opted for the more explicit “subsidiarity”. The four official versions, published on May 15, 1931 in Italian, English, Spanish, and Latin and in neither German nor French, make no use of the noun form “subsidiarity”, using only the adjective form.

¹¹ Encyclical *Quadragesimo anno*, May 15, 1931.

Yet these local communities often understood that among the difficulties they encountered, for example in terms of security, the solutions could only come from a higher level capable of addressing concerns that could not be satisfactorily met at a lower level. In many territories, lower level communities accepted the authority of rulers who organised resources that could ensure the security of a territory, providing facilities such as fortified castles that could afford refuge. Forms of feudalism could thus be propitious. In other cases, this high-level community was purpose-built. An example was embodied in the Federal Charter or “Eternal Alliance” signed in 1291 by Uri, Schwyz and Unterwald, three Swiss cantons in the central Alps, the first step in the construction of the Swiss Confederation. The model,¹² an alternative to feudalism and monarchy, would not go unnoticed by other Europeans who discovered it as they travelled the Alpine passes. The legend of William Tell, icon of a model designed to safeguard freedoms in the face of bigger powers, would even nourish the ideology underpinning the French Revolution.¹³

Furthermore, the concern for subsidiarity, before the term was actually coined, underlay widespread implementations in Europe. In England, the idea that the king was not entitled to decide everything and that governance must therefore be subsidiary led, in 1215, to the celebrated *Magna Carta*. In this way England implemented an answer to the difficult quest for a balance between the power of the monarch and individual freedom.

It was in the Middle Ages too that the logic of subsidiarity was deployed, especially on the intellectual and geographical levels. Though power centres were often behind the creation of the new universities,¹⁴ they did not insist on controlling them. At the end of the 12th and 13th centuries, the first Universities – Bologna in Italy, Salamanca in Spain, Coimbra in Portugal, Oxford in England, Paris in France – innovated by founding institutions of a new type governed no longer by higher-ranking bodies, but by corporations of masters and students, with their own statutes and regulations.¹⁵

¹² The template for a Germanic civilisation of freedom is outlined in: Zurfluh, Anselm, *Un monde contre le changement, une culture au cœur des Alpes, Uri en Suisse*, Paris, Economica, 1993.

¹³ See: Bergier Jean-François, *Guillaume Tell*, Paris, Fayard, 1988.

¹⁴ It is worth remembering that the term “university” comes from a Medieval Latin word meaning “community”.

¹⁵ Including some quite tasty rules. For example in the 1366 “Reform of the Statutes of the University of Paris”, students are instructed to “sit on the floor in front of

Other examples of subsidiarity stem more from balance of power, especially in territories seeking to enjoy some level of self-determination. In the Middle Ages and in Europe, common law, i.e. the opportunity for territories to acquire some independence of governance, was obtained by sometimes tough negotiations, or prized away by conflict from the higher authorities of local rulers or princes. The acknowledgement of common law was generally embodied in a “communal charter”, regulating the relations between the community and the suzerain. This charter set out the rights and what were called at the time the “commune’s liberties” including competency in matters of justice and customs that the suzerain undertook to respect. The communes acquired the freedom to reform their customs, regulate their economic life, manage communal property and the city’s revenues generated above all by “rights of justice” and direct and indirect taxation such as land tax (*taille*) and *octroi*. Via the communal charter, the suzerain undertook not only to respect the rights granted to the commune, but also to protect it: for example, in the 1127 charter of the commune of Saint-Omer, the Count of Flanders wrote: “First that to every man I will show peace, and I will protect and defend them with good will just as I do my other men”. In return, the commune owed homage to the suzerain, swore an oath of allegiance and undertook to provide resources, notably soldiers. The commune’s rights were often embodied in the seal and the belfry that housed the *bancloque*, a great bell that summoned the population to communal meetings, and thus symbolized the right to self-administration.

According to Max Weber,¹⁶ these practices of subsidiarity (universities, communes) appear to have been specific to Europe with no real equivalent on other continents. Why then did so many European cities so precociously acquire a significant and autonomous political role? The phenomenon appears to be partly linked to the relatively dense population in Europe that favoured agricultural productivity, leading to technical progress that in turn required the development of activities more differentiated than agriculture.

The Hanseatic League illustrates two aspects of subsidiarity embodied in the commune’s rights, as discussed above, namely a top-down logic that had to be safeguarded, and a bottom-up logic. On the one hand the foundation of the League in 1241 via the Treaty between Hamburg and

their masters and not on benches... to preserve youth from any opportunity for pride”; see Carpentier, Jean, Lebrun, François (direction), *Histoire de l’Europe*, Paris, Seuil, 1990.

¹⁶ Weber, Max, *La ville*, 1921, Paris, trad. Aubier-Montaigne, 1982.

Lubeck was designed to safeguard the freedoms acquired from the suzerains, notably in the event of issues raised by succession. On the other hand, the purpose was to create a higher-ranking organisation that could more effectively protect trade against pirates in the Baltic Sea (“Hansen” is from Old German meaning “to associate”). Each city provided the League with a military contingent and funds, while the League drew up a specific maritime law.

The advent of the nation state as a necessity

As the centuries unfolded, a higher-level community appeared: the State, successor to what Fernand Braudel called “the unfinished State, [...] unable to exercise all its rights unaided, nor fulfil all its tasks [...] and obliged to turn to others, to its own detriment”.¹⁷

The nation state, as we know it in the 21st century, and as it is recognised, for example, in the name “United Nations Organisation”, which is an assembly of States referred to as nations, can be considered as having stemmed from historical, geographical or societal realities. This political innovation is the result of several converging factors. On the one hand, geopolitical factors rooted in a desire for a power to be exerted over broader territory. The histories of France or China come to mind. Charles Tilly illustrates the case of France, pointing out that Louis XIII “probably demolished more fortresses [perfect symbols of local self-determination] than he actually built in his whole reign; but he built fortresses on the frontiers and destroyed them in the heartland”.¹⁸ Thus forces are concentrated at “national” level, reinforcing royal power to the detriment of local autonomy.¹⁹ In some cases, the birth of a State may be the result of a choice, as in the example of Switzerland, or when countries seized independence, as in the USA, Ireland, Norway and numerous Southern Hemisphere nations.

In other cases, the population of a territory has not felt big enough to ensure adequate autonomy. Examples were Geneva, which asked to join the Swiss Confederation,²⁰ a number of North American states that joined

¹⁷ Braudel Fernand, *Civilisation matérielle, économie et capitalisme, XVe-XVIIIe siècle. Les jeux de l'échange* (Tome III), Paris, Librairie Armand Colin, 1979, p. 661. Our translation.

¹⁸ Tilly Charles, *Contrainte et capital dans la formation de l'Europe, 990-1990*, Paris, Aubier, 1992, pp. 122-123.

¹⁹ Anderson, *Lineage of the absolutist state*, New York, Verso, 1996, p. 19.

²⁰ Dumont, Gérard-François, *Démographie politique, Les lois de la géopolitique des populations*, Paris, Ellipses, 2007.

the United States of America, initially only made up of thirteen members, and also the creation of the United Arab Emirates.

These examples comply with the principle of subsidiarity: in each case competency is transferred to a higher level by a lower level that is short on capacity. The lower level nonetheless conserves its right to participate in decisions taken notably through representative democracy or a federative system. Geographical factors come into play too when state frontiers are geographical limits, be they, of course, coastlines as in the case of island states, but also watersheds, separating France and Spain, or Sweden and Norway, and river borders between Bulgaria and Romania,²¹ French Guyana and Surinam, the USA and Mexico.

Put simply, any State may, however, evolve in two different ways.

One way is to take responsibility for functions that cannot be handed down, setting up mechanisms that comply with the principle of subsidiarity, notably in constitutional texts. To take a first example, Article 3 of the Swiss Constitution of 1874 spells out a subsidiary logic: “The Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution. They exercise all rights that are not vested in the Confederation”.²² This means that the federal power only has competency when it can assume it better than the canton. In particular, Article 2 sets out the goals and therefore the legitimacy of the higher level that is the Swiss Confederation which “protects the freedom and rights of the people and insures the independence and security of the country”. Consequently, Swiss subsidiarity is worded as follows:²³ “What communes can do, the canton should not do; what cantons can do, the Confederation should not do”.

The second example is provided by Germany. Article 30 of the Basic Law of Bonn 1949 – the equivalent of a constitution – sets out the following: “The exercise of the powers of the state and the performance of state functions shall be the concern of the Laender, insofar as this Basic Law does not otherwise prescribe or permit”. The intention of distributing power between the different levels is thus clarified and then confirmed in Article 70 on the “The division of competence between the Federation

²¹ On river and other natural borders in Europe, cf.: Dumont, Gérard-François, Verluise, Pierre, *Géopolitique de l'Europe : de l'Atlantique à l'Oural*, Paris, PUF, 2016.

²² Wording kept in the December 18, 1998 Federal Decree pertaining to the new updated version of the Federal Constitution.

²³ Bernard, Élise, “La Confédération suisse comme modèle de l'intégration européenne”, *Uvo u pravo Svajcarske*, Belgrade, 2018.

and the Laender”, the first paragraph of which indicates that: “the Laender shall have the right of legislation insofar as this Basic Law does not accord legislative powers to the Federation”. Further, it is worth noting that the Laender exert significant influence on federal legislation especially via the second assembly, the Bundesrat, representing not the voters, like the Bundestag, but the governments elected by the Laender.

Though we did say that we would not be discussing the European Union, it does appear important to mention an incident that predates the inclusion of the term “subsidiarity” in European treaties, namely the draft directive on lawnmowers submitted to the President of the Commission, Lord Jenkins, for signature in 1978. He refused to sign, not seeing fit to enforce a single uniform regulation on the use of lawnmowers in all member nations of the European Economic Community (EEC), considering that this constituted an unnecessary interference in the life of each commune in the EEC and demonstrating a totally unjustified omnipotence of red tape. Without actually using the word, he applied the principle of subsidiarity.

Notwithstanding the examples above, it is true that in all cases, the State enjoys a position of superiority defined by Carré de Malberg in these terms: the State is “a human community, established on its own territory and endowed with an organisation that yields for the group, envisaged in its relationships with its members, a superior power of action, command and coercion”.²⁴ Consequently, the State often has a tendency to concentrate a greater number of decisions, all the more readily as it enjoys territorial sovereignty, a phenomenon exemplified 1204 when the king, at the time King of the Franks, i.e. one of the peoples then living in the kingdom, decided to style himself King of France,²⁵ thereby demonstrating that the monarchical power now had a territorial basis.

As a result, many States develop a centralized administration. Hence they create nationwide vertical links, with no intermediaries, between the power

²⁴ *Contribution à la théorie générale de l'Etat*, 1920, t. 1, p 7. Our translation.

²⁵ As for the birth of the State in France, it can be dated to 1190: “King Philippe II, prior to setting out on a crusade, issued an ordinance setting out how the kingdom was to be organised during his absence. This became known as the ‘testament’, as nobody could be sure of returning from a crusade! The document establishes a centralized and hierarchical organization spanning the whole of the kingdom’s territory. The king became the sovereign of the land and this sovereignty was legitimated by being in the ‘public interest’. The decree opens with the following proclamation: ‘The office of king consists of providing by all means for the needs of his subjects, and of placing public interest before personal interest’”; Giltard, Daniel, *L'idée d'État*, *id.* Our translation.

of the sovereign and the population. This engenders a real risk of the State tending towards a spirit of domination, analysed as follows: “The State has become the power over powers. It is the superior power, overarching the other powers, in a position of exteriority and superiority in relation to society, dominating it, and based on the idea of unconditioned power”.²⁶

Yet this primacy of the State can derail, leading to internal or external conflicts that are detrimental to the common good. The idea of national unity that has a tendency to neglect the reality of lower-level groups, prevails over the idea whereby the nation is a union. In these scenarios, “it is considered that the individual’s supreme loyalty must go to the nation state”.²⁷ Yet this supreme loyalty is often expressed integrally, meaning that it must exclude any additional loyalty to groups of inferior rank, deemed liable to damage the supreme loyalty. To legitimate this undivided loyalty, the nation state predicates that it would otherwise be exposed to a twofold threat: from separatist pressure within and from external domination by other powers.

Whence the excesses of nationalism sometimes based on the myth of the nation-race exemplified by National-Socialist Germany with its insistence on a common language, the geography of *lebensraum* and the idea of a German race, superior to the others.²⁸

State can also be side-tracked by religious nationalism, a key to understanding the Armenian genocide or Egypt’s policy of expulsion in 1956. In religious nationalism Nation is defined by membership of a religious community. This legitimates the exclusion of all non-members.²⁹

Yet, over and above the dramatic risk of nationalist hyperbola riding roughshod over the principle of subsidiarity, the risk, temporary or enduring, is real, even in countries that are self-styled democracies.

²⁶ Giltard, Daniel, “L’idée d’État”, *Zbornik radova Pravnog fakulteta u Splitu*, god. 56, 1/2019. Our translation.

²⁷ Hans Kohn, *The idea of nationalism. A study in its origin and background*, New York, 1944; *Nationalism: its meaning and history*, Princeton, 1955, p. 9.

²⁸ Cf. Chapoutot, Johann, *La Révolution culturelle nazie*, Paris, Gallimard, 2017. Central to the Nazi system was the supreme value of the concept of nature, and, consequently of race, instinct, primitiveness, antiquity, blood and soil. In the racist conception of history the body social can be defined as a racial body and “the culture of the Northern race as an expression of its blood” (p. 140).

²⁹ Da Lage, Olivier, *L’essor des nationalismes religieux*, Paris, Demopolis, 2018. See also Maalouf, Amin, *Les identités meurtrières*, Paris, Grasset, 1998. Why does the affirmation of self so often go hand in hand with the negation of the other?

The risk of self-styled democratic States trampling the principle of subsidiarity

True, in democracies and even in undemocratic States, the State itself is generally uncontested in the execution of tasks falling within its “sovereign powers”, namely, essentially, justice, internal security (police and justice) and external security (the army). Yet as we have already seen, any State, given the sovereignty that it exercises over a territory, has a tendency to extend the scope of its authority, even when limited by constitutional principles. In Germany, for example, a federal nation, responsibility for higher education lies with the Laender. Yet, in 2018, the federal State proposed to specifically fund universities with the proviso that it would have the power to monitor how the money was used. Several Laender preferred to reject the subsidies that undermined their competency and appeared contrary to the principle of subsidiarity. Even in the USA, States or cities periodically undertake legal proceedings in situations where they consider that the President has overstepped the mark. Examples are the safe haven cities that consider that they have the right to welcome and protect immigrants deemed at federal level to be in an irregular situation. In France and other democratic nations, the parliamentary opposition periodically refers bills to the *Conseil constitutionnel* (watchdog on matters of constitutionality) on the grounds that they may be an abuse of power.

There are a variety of ways in which a State, even when it has styled itself as democratic, can waive subsidiarity. One is to vote laws and regulations that significantly bridle and indeed, asphyxiate the freedom of intermediary levels, such as local and regional authorities.³⁰ Another tactic is to penalize a lower-level organisation by creating an environment that reduces its options and makes its life difficult. For example, in any State the family contributes to the education of children and teenagers. If the State, via regulatory, finan-

³⁰ For example, in 2015, the French State, which regularly presents itself as Rule of Law State, had no hesitation in using force to flout an international treaty, the European Charter of Local Self-Government, to merge its regions. Article 5 of this treaty sets out that “Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute”. The European Council’s Congress of Local and Regional Authorities ultimately denounced the violation in its report “Local and regional democracy in France”, March 2016, point 208. Cf. Dumont, Gérard-François, “Géopolitique des territoires français : décentralisation versus recentralisation”, *Diploweb.com, La revue géopolitique*, September 15, 2018; “Devoluzione addio! Lo Stato francese riaccetra”, *Limes, rivista italiana di geopolitica*, Rome, 2018, n° 3.

cial decisions or tax policy... increases the burden on family life, it restricts families' freedom to have children³¹ and access education.

Applying the principle of subsidiarity

In the hope of finding a way of countering the rules – some of which are inevitably restrictive – that States set for their nationals, risking the excesses of centralized States, some prone the replacement of States by a cosmopolitanism in which all individuals should be considered solely in terms of their identity as “citizens of the world”. Thus, in the pipedream of an undiluted cosmopolitanism the concept of State is made obsolete, all the more so as it is held responsible for conflicts and for limiting the sharing of ideas, information and for preventing the freedom of movement of individuals.

Yet, according to Francis Wolff,³² it is impossible to be a citizen of the world if that implies being a citizen of nowhere, reneging on all origins and on each individual's sense of belonging. We should note here that an individual may only be a citizen of the European Union when he or she is a citizen of one of the EU's member states. The cosmopolitan idea implies that individuals agree to forfeit the different facets of their identity, making all humans into interchangeable beings. It therefore becomes incoherent as soon as it has to be applied to real individuals, because “all authentic identity is plural”.³³ Elsewhere, Georges Burdeau³⁴ writes: “Nobody has ever seen the State. Yet who can deny that it is a reality”. The author however points out that there can be no State without territory, population or commanding authority.

The existence of a rank corresponding to the State should therefore not be dispensed with, provided that it is always based on rules of law. Indeed, without law, there is no State worthy of the name. As St Augustine of Hippo pointed out: “Justice being taken away, then, what are kingdoms but great robberies?”³⁵

The existence of the State is more generally legitimated by its duties, clearly detailed by Pope Benedict XVI in *Freeing Freedom: Faith and Pol-*

³¹ France also illustrates this trend: cf. Dumont, Gérard-François, “France : comment expliquer quatre années de baisse de la fécondité ?”, *Population & Avenir*, n° 742, March-April 2019.

³² Wolff, Francis, *Trois utopies contemporaines*, Paris, Fayard, 2017.

³³ Dumont, Gérard-François, *Médiavenir*, special issue #2, spring 2004.

³⁴ Burdeau, Georges, *L'Etat*, Paris, Editions du Seuil, 2009; preface by Philippe Braud.

³⁵ Cité de Dieu, IV, 4, 1.

itics in the Third Millennium “The duty of the State is to maintain order in the human community, to create a balance between property and freedom such that individuals may each live a life worthy of their humanity [...] The State guarantees law as a condition for freedom and common well-being [...] However, it is not the role of the State to fulfil the happiness of humanity; nor is it to create new men. Neither is its role to transform the world into Paradise; of this it is indeed incapable. If, despite all this, it tries, it posits itself as absolute and oversteps its remit”.³⁶

True, nation states do not all reference the same ideal values, be they those of democracy or individual freedoms. Yet, in the 21st century, they are not an obsolete structure that we should be in a rush to jettison. A well-conceived nation state remains a space for democracy and solidarity, as well as a player which, by nature, can continue to strive to achieve real international cooperation.

In other words, the nation state, while it may assume various guises in different times and places, is a tangible reality that will continue to have considerable importance in the lives of mankind. As for nationalism, in the view of Gil Delannoi, it has nothing innately malevolent. Good and bad use may be made of it.³⁷ Delannoi argues that in the 21st century, the nation remains the indispensable arena for democratic experience; it is even the best rampart against enduring and resurgent forms of nationalism.³⁸

The nation is all the more a reality in that it is obviously rooted in a geographical base to which it attaches crucial importance as testified by countless ongoing border disputes. It is true that the International Court of Justice (ICJ), founded by Article 92 of the United Nations Charter, does periodically settle some of these disputes from its head office in the Peace Palace at The Hague (Netherlands).

However, given the admittedly wide-ranging means available to a State, and its sovereignty over both domestic and foreign affairs,³⁹ there is an

³⁶ Ratzinger, Joseph/Benoît XVI, *Libérer la Liberté, Foi et politique*, Paris, Parole et Silence, 2018, p. 122.

³⁷ Delannoi, Gil, *La nation contre le nationalisme, ou la résistance des nations*, Paris, PUF, 2018.

³⁸ See the analysis by Joshua Mitchell, Professor of Political Theory at the University of Georgetown. A specialist in the work of Alexis de Tocqueville, he considers that “Westerners alone feel guilty about their nations”. If the nation state makes way, identities re-emerge at the expense of citizenship. Cf. Figarovox, 19 July 2019.

³⁹ On the importance of the State in the exercise of its external sovereignty, Article 32 of the Basic Law of Germany provides us with an example: “Insofar as the Laender

inevitable risk that its rulers may develop, in the name of the principle of unity, a strong-arm nationalism liable to engender external and internal conflict against opponents, or gain ever more power. As was pointed out by the British politician John Emerich Edward Dalberg-Lord Acton (1934–1902): “Power corrupts; absolute power corrupts absolutely”.

One way to eliminate these risks, not only through a concern for individual freedoms, is to implement the principle of subsidiarity whereby the State agrees to intervene only when the beneficial effects of its action are a clear improvement on the measures taken at intermediary, regional or local levels.⁴⁰

Because, as Alexis de Tocqueville argued in advocating territorial subsidiarity, the building of democracy was a bottom-up process:⁴¹ “The strength of free peoples resides in the town. Town institutions are to liberty what primary schools are to knowledge; they put it within the grasp of the people; they give them a taste of its peaceful practice and accustom them to its use. Without town institutions, a nation can pretend to have a free government, but it does not possess the spirit of liberty. Temporary passions, momentary interests, the chance of circumstances can give it the external forms of independence; but despotism, driven back into the interior of the social body, reappears sooner or later at the surface”.⁴²

have power to legislate, they may conclude treaties with foreign states with the consent of the Federal Government”.

⁴⁰ We should note that what ideally tends towards regional subsidiarity takes very different forms from one European country to another; cf. Dumont, Gérard-François, “Les régions d’Europe : une extrême diversité institutionnelle”, *Diploweb.com, La revue géopolitique*, January 11, 2014.

⁴¹ Dumont, Gérard-François, “La démocratie se construit par le bas”, *Ensemble, inventions la commune du XXIe siècle*, Paris, Association des Maires de France (AMF), 2016.

⁴² *De la démocratie en Amérique*, Pagnerre, 1848, Vol. 1.

ECONOMIC GLOBALIZATION AND NATION STATES

JUAN J. LLACH

I would like to start by congratulating those who, long ago, decided to devote a Plenary Session of our Academy to the subject of the Nation, the State and the Nation-States. The concern for a more just and peaceful world has not stopped growing since then.

This paper comprises three parts. The first one briefly outlines the historical origins of the current relationships between globalization and nation-states, some of which are very remote. Globalization trends have cyclically accompanied humanity, since *Homo sapiens* onwards. Although the aim of the paper is the current global wave, it is relevant to point out that its background goes as far as European expansion in the 15th century. Its consequences are still relevant to understand the relationships between globalization and nation-states nowadays. Then, this paper presents a brief analysis of globalization after the Second World War, emphasizing the stage started around 1990. Three features stand out. First, there is a remarkable economic growth of many emerging countries, almost all of them colonized during the previously mentioned European expansion, in contrast with the slower economic growth of most developed countries – some of them even reaching stagnation. Secondly, either with fast or slow economic growth, a process of increasing inequality in income and wealth distribution has been taking place in many countries, particularly the Anglo-Saxons ones. Thirdly, there has been a remarkable proliferation of nation-states, which has become a common type of political entity throughout the world.

The second part of this paper analyzes some of the political, social and economic consequences of, or reactions to, the current phase of globalization. The focus here is the resurgence of populism¹ and nationalism in

¹ There are almost as many definitions of populism as authors who have written about it. Our approach emphasizes two of its features. The first feature is the evocation of a social and political subject, the “people”, which expresses the “general will” and its traditional values, and opposes the “elites”. The second is the sustainability of public policy proposals that aim to maximize present welfare, without worrying about the costs it may have for future generations. Most of the time “the people” alluded to

many countries, frequently accompanied by growing mistrust in constitutional democracy as a form of government.²

The paper ends with a third section devoted to the challenges posed by the new stage of globalization (perhaps less global), the resurgence of populism and nationalism, and eventual ways out.

I. BACKGROUND

1. Two crucial stages of economic globalization

1.1. *European expansion and rivalries among colonizers (15th-late 20th centuries)*

For many millennia conflicts or wars among different tribes, peoples, nations, empires and any other kind of political entity were the normal condition of the inhabited world. The first conflicts and wars that were really global and very relevant to our issue were perhaps those involved in the expansion of many European countries,³ which took place from the conquest of Ceuta by Portugal (1415) onwards. Most parts of the other four continents – Africa, America, Asia and Oceania – were conquered or occupied by the aforementioned countries.⁴ The hegemonic power or powers changed frequently, many times through wars, at least until the long Pax Britannica (1815–1914). However, from the late 18th century onwards, successful independence movements began taking place in America, continuing in other continents, and finishing in most African countries, well into the 20th century.

1.2. *The renaissance of emerging countries: a march towards convergence? (Late 20th and 21st centuries)*

European colonial expansion took place with a long and intense divergence process between the living standards of European countries and

are of the same nationality, in such a way that populism and nationalism frequently go together.

² M. Piore et al. (2017) have called this “reactionary populism”.

³ Mainly Portugal, Spain, France, Russia, Great Britain and the Netherlands. Germany and Italy would join much later. The same happened in Asia with Japan, reaching a big size, comparable to some of the big empires in the West.

⁴ See note 3.

their so-called Western offshoots in North America and Oceania and those of the four most colonized continents. In round numbers – based on audacious estimates by Maddison (2001) – the quotient between GDP pc of developed and developing – now emerging – countries until the year 1000 BC was 1 and, until 1500, increased to just 1.1. With colonial expansion, it jumped to 2.0 in 1820, 3.5 in 1913, 3.8 in 1950 and 4.4 in 1973. In Table 1 it is possible to appreciate the big differences in growth between today's developed and emerging countries, as well as within both groups.

	1500-1973
NOW DEVELOPED	
United States	41.7
Other Western Offshoots	33.4
Japan	22.9
Western Europe	14.9
NOW EMERGING	
Latin America	10.9
Eastern Europe	10.8
Africa	3.4
Asia, without Japan	2.2

Table 1. The great divergence. Times of GDP PPP pc increase, 1500-1973. Source: Author's elaboration of Maddison (2001) and Maddison Project data.

With a different method (and more reliable data), the IMF estimates that the same quotient was 7.6 in 1990, before falling to 4.1 in 2018. In spite of the differences and imprecisions, it is clear that there was huge divergence for nearly five centuries, whereas rapid convergence began in the last thirty years or so (Table 2).

It is yet far from clear whether colonial expansion was a relevant cause for the great divergence in living standards. Nevertheless, it almost certainly played a significant role as it opened new development opportunities for many Western European countries and their main offshoots in North America and Oceania. On the other hand, most countries in the other four continents delayed the start of their economic development because of different causes, including at least the different forms of colonization processes.

Things have changed dramatically in the latest wave of globalization. However, convergence has not yet reached every economic region or every country. In Table 2 we can see that it has been astonishing in developing Asia and significant in developing Europe. On the other hand, Sub Saharan Africa only experienced a bit of unstable convergence in the 21st century, and Latin America and the Caribbean had the worst result, as they slightly diverged.

	1990	2000	2010	2018
Developed	19.8	29.5	40.3	51.6
Developing	2.6	4.3	8.3	12.5
Developing Asia	1.3	2.8	6.9	12.5
Developing Europe	7.2	10.1	17.4	27.3
LATAM & Caribbean	6.5	9.1	13.5	16.3
Sub Saharan Africa	1.7	2	3.3	4.1
Convergence / divergence to developed countries (times of GDP pc PPP)				
DC/Developing	7.6	6.9	4.9	4.1
DC/Developing Asia	15.2	10.5	5.8	4.1
DC/Developing Europe	2.8	2.9	2.3	1.9
DC/LATAM & Caribbean	3.0	3.2	3.0	3.2
DC/Sub Saharan Africa	11.6	14.8	12.3	12.6
LATAM & C./Dev. Asia	5.0	3.3	2.0	1.3

Table 2. GDP in US\$ PPP pc. Latest wave of globalization: 1990-2018. Source: Author's elaboration on IMF World Economic Outlook, October 2018. Note: GDP PPP pc is the Gross Domestic Product per capita in comparable or Purchasing Power Parity U.S. dollars.

The trend towards the convergence of many – perhaps most – emerging countries will most likely continue. Among the hundred countries that have grown the most in the twentieth century, only ten are developed, and they are mostly the “non-traditional” ones.⁵ It is also likely that not all emerging countries will converge from here on. Greater growth selectivity is already evident in the second decade of this century. While almost all Asian and Eastern European countries are converging, half are doing so in Africa and only one third or less in Latin America and the Caribbean.

⁵ Ordered by their growth rate, they are Estonia, Slovenia, Ireland, S. Korea, Malta, Singapore, the Czech Republic, Slovenia, Iceland and New Zealand.

2. Centrifugal and centripetal political forces

2.1. The increase in the number of nation-states or similar political regimes

At the beginning of the European expansion, from the 15th century onwards, nation-states, as we define them now, were just a few. On the eve of the 19th century, there were only about forty nation-states. They jumped to sixty by the date of the Versailles Treaty, and to eighty at the end of the Second World War.⁶ The most impressive change took place later, when they reached almost two hundred, through processes of decolonization or due to nations that formed their own state after belonging to another.

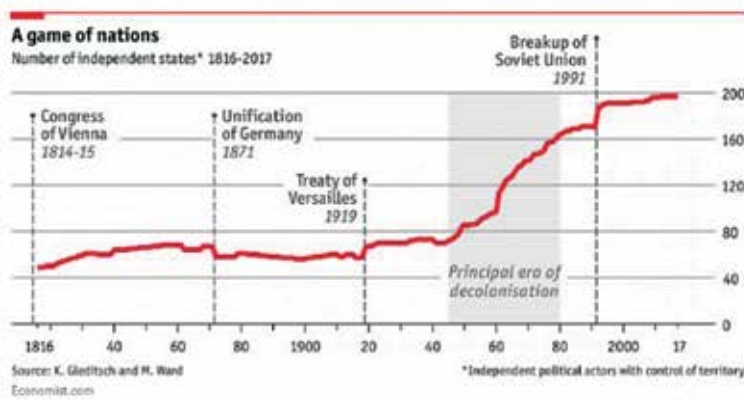


Figure 1. Number of Nation-States, 1816-2017. Source: *The Economist*, Christmas Issue, 2017.

Without the implication of a causal relationship, what is relevant and very different from what happened in the past is the fact that the increase in the number of nation-states coincided not only with fewer wars between “Great Powers” (Figure 2), but also with fewer deaths in battles in any kind of war (Figure 3).⁷

⁶ Just fifty nations signed the Charter at the United Nations Conference in San Francisco, on 26 June 1945. Poland, not represented at the conference, signed it on 15 October 1945.

⁷ It is relevant to note in this context that many of the violent conflicts and wars in Africa were influenced by the Cold War. In fact, their drastic reduction is striking since the fall of the Berlin Wall and the dissolution of the Soviet Union.

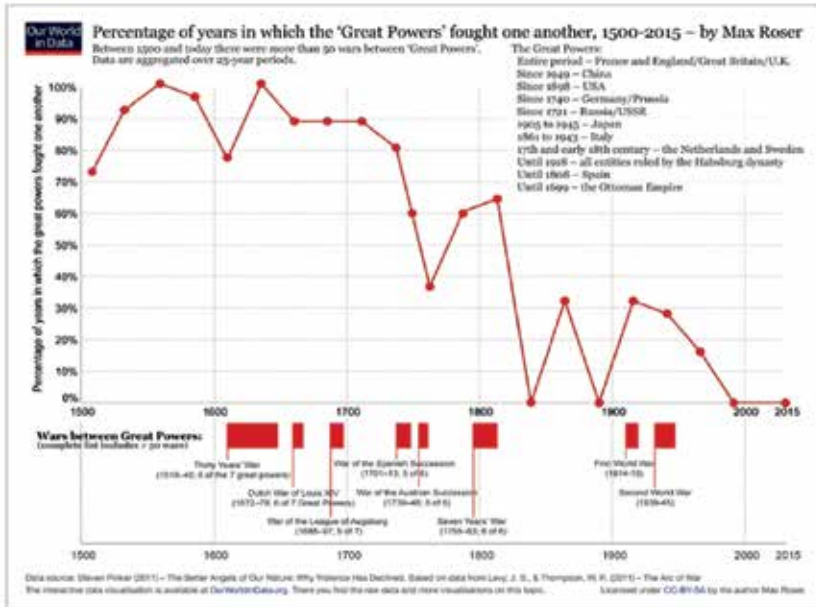


Figure 2. Percentage of years with wars between the “Great Powers”, 1500-2015. Source: *Our world in data* (<https://ourworldindata.org/war-and-peace>).

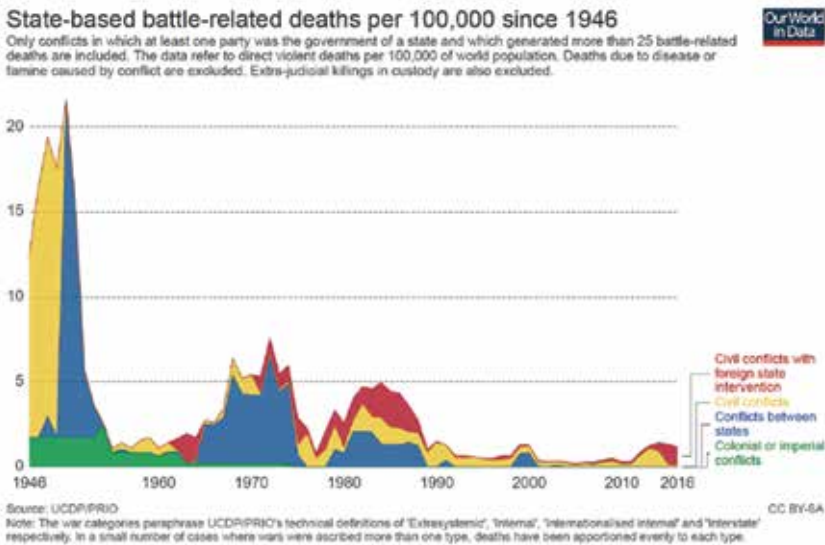


Figure 3. State-based battle-related deaths per 100.000 people since 1946. Source: *Our world in data* (<https://ourworldindata.org/war-and-peace>).

The very impressive and welcome decrease in deaths in wars and other armed conflicts in the 21st century does not imply that the current stage of globalization is peaceful. It is very evident that numerous and dramatic conflicts based on political, racial or religious issues still remain (Heidelberg, 2017). However, it is essential not to lose the historical perspective when keeping in mind the magnitudes of the human tragedies of 20th century. According to White's estimates,⁸ about 123 million people died in all wars of the 20th Century, including 37 million military deaths, 27 million collateral civilian deaths, 41 million victims of "democide" (genocide and other mass murder) and 18 million victims of non-democide famine.

2.2. Decentralization and devolution: another growing centrifugal force

The proliferation of nation-states acted like a centrifugal force, as it resulted mainly from the dismembering of formal or *de facto* empires. However, this has not meant – and perhaps will not mean – the end of deep changes in political geography. Another growing centrifugal force appeared. It was the decentralization of power within new or old nation-states, which resulted in a growing autonomy of provincial, local and other forms of sub-nation-state governments. Very seldom did it take the form of a new federation. Much more common were either *devolution*⁹ or, even more often, administrative and bureaucratic processes of decentralization.

Only certain cases have been the result of national, political, cultural or religious conflicts in the same nation-state. Some very noteworthy cases were the USSR's partition in fifteen very different nation-states,¹⁰ South Sudan's separation from Sudan, Eritrea's separation from Ethiopia and Timor-Leste's independence from Indonesia. The most fragmented case was the partition of Yugoslavia into seven nation-states: Bosnia-Herzegovina (itself a federal republic), Croatia, Kosovo, Montenegro, Northern Macedonia, Serbia and Slovenia. As regards unsolved conflicts of this kind, the most dramatic nowadays is perhaps Catalonia's. There are national tensions in the United Kingdom too, mainly with Scotland and, to a lesser ex-

⁸ In <http://necrometrics.com/index.htm>

⁹ The term "devolution" is as widely applied as it is imprecise. Contrary to simple decentralization, it has some historical roots. Its main difference with federalism is that it could be legally or *de facto* reverted by the central government.

¹⁰ Only nine of the nations that were part of the USSR are now plenary members of the Commonwealth of Independent States (CIS), as Turkmenistan is just an observer, and Estonia, Georgia, Latvia and Lithuania are not members.

tent, with Wales and Northern Ireland. The final definition of Brexit could be influential on the future of those claims. Other chronic and noteworthy independence claims are the ones of Tibet and the Uighurs in China, Flanders and Wallonia in Belgium and Taiwan in the China area. Some subnational states are also subject to international conflicts, like Arunachal-Pradesh, in conflict between India and China, and Kashmir, between India and Pakistan. Finally, a case worth mentioning is that of Bolivia – partially imitated by Mexico – which constitutionally decided to create a multinational state (*Estado Plurinacional de Bolivia*), giving more decision powers to original peoples (*pueblos originarios*), not necessarily living in their own separate region.

Much more commonly, and almost everywhere, decentralization was, and still is, pushed by a growing demand of autonomous decision-making, without the claim of full sovereignty. The development of the two previously mentioned centrifugal forces, especially after the Second World War, has allowed citizens to have greater decision-making power on issues like education, health or personal security. This is very common outside the metropolitan areas, but it also happens inside them, via the creation of communes and other forms of micro-local government.

2.3. Supranational associations, a new centripetal force?

The centrifugal forces mentioned in 2.1 and 2.2 coincided with a centripetal one, i.e., the arising or strengthening of supra-national associations, mainly focused on commercial issues, but with political components too. These associations vary a lot in their geographical scope, although they mainly encompass countries of the same continent.¹¹ Beyond any doubt, the most ambitious and, in part successful, has been the European Union.¹² In Latin America and the Caribbean, there are many different supra-national associations. They are the Mercosur, the UNASUR and the Andean Community in South America; in Central America and the Caribbean, there are the Central American Common Market and the Caribbean Community. Mixing the subcontinents, we find the Pacific Alliance (Chile, Colombia,

¹¹ In the following paragraphs, we mention the most relevant ones. The complete list is much longer and complex, mainly because many of them include associations of associations.

¹² Many authors agree on its main motivation, i.e., improving the chances of long-lasting peace. Most of its critics mention, instead, the euro as a problem because of its precocious creation in a too diverse continent.

Mexico and Peru), and the more politically oriented Bolivarian Alliance for America (ALBA). In North America, a softer treaty¹³ replaced the North American Free Trade Agreement (NAFTA). Finally, but very promisingly, a Continental Free Trade Area (CFTA) is being created in Africa.

The last impulse of trade agreements has been partnership initiatives known as “mega agreements”. In 2010 the United States made progress on a proposal to undertake a Trans-Pacific agreement (TPP), composed of countries with coasts along that ocean, both in the Americas and in Asia and Oceania.¹⁴ At the same time, in 2013, talks between the United States and the EU began to build a transatlantic partnership (TTIP),¹⁵ a phenomenon that, due to its magnitude and scope, was unprecedented in the history of international economic relations.¹⁶

As an alternative to the TPP, in 2012 China promoted an initiative – the Regional Comprehensive Economic Partnership (RCEP) – that, in 2018, would take the form of a free trade area project between the Association of Southeast Asian Countries (ASEAN) and the countries with agreements with it, namely, Australia, China, South Korea, India, Japan and New Zealand.

The negotiating impulse of mega agreements ceased with the assumption of President Trump in the United States. Thus, the TPP, which after 20 rounds of negotiations had signed the Constitutive Agreement in February 2016, lost its main American partner in January 2017. Concerning the TTIP, after 15 rounds of negotiations between 2013 and the end of 2016, the U.S. withdrew from round table discussions.

Nevertheless, in 2018 there were several positive developments in supra-national agreements, confirming them as the connection channel chosen by most of the countries of the world, even in a context where international trade and investment were slowing down. Thus, in March 2018, all

¹³ Named United States–Mexico–Canada Agreement (USMCA) – according to the United States – or Canada–United States–Mexico Agreement (CUSMA) – according to Canada’s government.

¹⁴ In addition to the U.S., part of this initiative were Canada, Mexico, Peru and Chile, on the American side, and Australia, Brunei, Japan, Malaysia, New Zealand and Vietnam on the other side of the Pacific.

¹⁵ Transatlantic Trade and Investment Partnership.

¹⁶ The common feature of these two initiatives was that none of them involved China. In this way – and in particular in the TTIP – beyond the trade liberalization, the incentive of the parties could have been related to the possibility of advancing in regulations and commercial disciplines (difficult to achieve with China inside), to then try to introduce them within the WTO framework. Canada also signed an agreement with the EU (Canada–EU Comprehensive Economic and Trade Agreement) (CETA).

the countries that had been negotiating the TPP¹⁷ signed the basic treaty, with the exception of the United States. In that same month, forty-nine of the fifty-four African countries agreed to create a free trade zone of the African continent (AfCFTA).¹⁸ In July, the European Union signed an Economic Partnership Agreement with Japan and, as said, the RCEP took shape. Finally, in October, the United States, Canada and Mexico agreed on the new conditions of their new free trade association.¹⁹ For its part, China has continued to expand its Belt and Road initiative, which aims to facilitate and increase exchange, as well as the flow of capital, information and people.²⁰

Underlying the issues dealt with is the rivalry for the hegemony of the world's economic and political order. Although China and the USA have stood out there lately, Russia still tries to participate in the competition. It is notable, however, that while Russia's power is much more military than economic, the U.S. and China have both kinds of power.

II. CURRENT STATE OF AFFAIRS

The 21st century, particularly since the Great Recession, has witnessed the resurgence of nationalist and populist ideas and movements in many, very diverse cultural and geographic contexts. It is like a global trend whose core traits are the open or veiled questionings to both globalization and constitutional democracy, opposing to them the idea of “the people”, damaged by the first and, perhaps, not properly represented by the second. In most, but not all cases, these movements also include anti-immigrant ideas or proposals and, in the economy area, they question capitalism and propose or put in practice policies that tend to maximize present welfare without caring for the future. This last trait used to be more frequent in Africa and Latin America, compared to Europe and Asia, but it now appears in North America and Europe too. Another relevant novelty is that many

¹⁷ Renamed as Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

¹⁸ Africa Continental Free Trade Area.

¹⁹ Formerly NAFTA, renamed as USMCA or CUSMA.

²⁰ As is well known, it is an ambitious initiative of China, with the format of a development strategy, including infrastructure and investments in 152 countries (sic), in Africa, Latin America, Asia, Europe and the Middle East, and also involving international organizations.

of these movements have appeared and have come into power, in some cases, in advanced countries and, in a sort of role reversal of their plenty, in developing countries at the time of the Cold War.

It is not easy to analyze these nationalist-populist movements, given their broad agenda which includes not only political, economic and social issues, but also cultural ones, such as family or age and sexual roles. Here we shall limit ourselves to the first three topics, which are the ones most linked to the title of the paper.

The most prominent case is that of the United States, starting with the election of President Trump, but what is happening in Putin's Russia is also very relevant. Although the situation is different, Brexit has both nationalist and populist roots too. Apart from such renowned cases, similar cases also abound in other parts of Europe, as in France with its yellow jackets, in Hungary, Italy and Poland and, most recently, in Nordic countries and Spain. Outside the developed world, we can find cases in Eurasia, where Erdogan's Turkey stands out with an additional complicated religious component.²¹ In Latin America we find extreme and opposing poles like Venezuela's – the most dramatic case – and, on the other hand, Bolsonaro's Brazil. These cases are also found in Morales' Bolivia, in Ortega's Nicaragua, during the presidencies of Néstor and Cristina Kirchner in Argentina or in El Salvador, with the recently elected president Nayib Bukele. The case of López Obrador in Mexico has been less clear so far. In Asia there are manifestations of nationalism, more or less populist, in the China of Xi Jinping, in the India of Narendra Modi, in almost every country of Central Asia, and in Bangladesh, the Philippines, Malaysia and Thailand too. In the Middle East and North Africa, nationalist or populist movements existed even before the national states were established and have clear religious roots, and Benjamin Netanyahu in Israel has a clear nationalist-populist profile.

This panoramic would not be complete without mentioning some centered and anti-nationalist-populist leaderships in power. Some of them are in trouble, like that of Emmanuel Macron in France. Curiously, Latin America, which was once one of the regions most prone to populist nationalism, today has several countries with different leaderships. Such are the cases of Argentina – with relevant problems and presidential elections this year – Chile, Colombia, Peru, Uruguay and, partly, Ecuador and Par-

²¹ Although the government got 52% of the votes, last March's municipal elections showed that many Turks – particularly in big cities like Ankara and Istanbul – don't like their country's course.

aguay. In Central America the leadership of Thelma Aldana, an anti-corruption leader who could become president of Guatemala, is promising. Finally, in Eastern Europe, one of today's most nationalist-populist regions, President Zuzana Caputova was elected in Slovakia, defeating the candidate of the Visegrad Group.²²

Most of the previously mentioned movements challenge, to a varying degree, depending on the country, current ideas and practices of globalization, which had been more accepted until the Great Recession.

1. The nationalist dimension

As we shall argue in this and in the following sections, it is not easy to separate the nationalistic and the populist dimensions of these movements.

1.1. Origins

Nationalist movements have different origins. For example, those which promoted the independence wars and waves of dozens of countries, first in America, and then in Asia and Africa, were a more or less late response to the great European expansion mentioned in section I.1.1. The European nationalistic movements that played a major role in the two World Wars expressed complaints because of the late arrival of capitalist development or "colonial distribution". Finally, in the movements that nowadays arise in developed countries, criticisms of the current phase of globalization prevail, sometimes overtly addressed to China – and, to a lesser extent, to other countries in Asia – for commercial reasons, investments or plain and simple questions of power.

1.2. Nationalism and current globalization: emerging countries convergence and the quest for world hegemony

What are the aspects of globalization that may be giving rise to the resurgence of nationalism? The first one is the lower economic growth of the developed countries – and, in a few cases, like Italy, a long-term GDP fall – compared to the growth of the emerging ones (as seen in Table 2).

Another relevant dimension of nationalism resurgence is renewed competition for global hegemony. Since 1989 and the collapse of the Soviet Union, the United States has seemed to achieve a lasting, unipolar hegemony. However, now China clearly challenges this unilateralism, because of

²² Composed by Czech Republic, Hungary, Poland, and Slovakia.

its size, of course, but also because of its military power, its very rapid economic development and its growing achievements in education, science and technology.²³

Nationalistic and populist movements, particularly in Europe, have reached the point of increasing racist attacks. As the recent tragedies in New Zealand and in other places show, these attacks are not addressed to specific ethnicities or religions, but to many of them. It is not the first time this happens, but it is convenient to be alert to the return of racism in many of its forms, including the recently renewed White Supremacy. Figure 4 illustrates this point clearly.

1.3. Demography and international migrations

A third source of nationalism is growing migration towards developed countries. According to the International Organization of Migration, five million foreign immigrants entered OECD countries in 2016 only.²⁴ At the base of this question is the impressive demographic dynamics in place (Table 3).

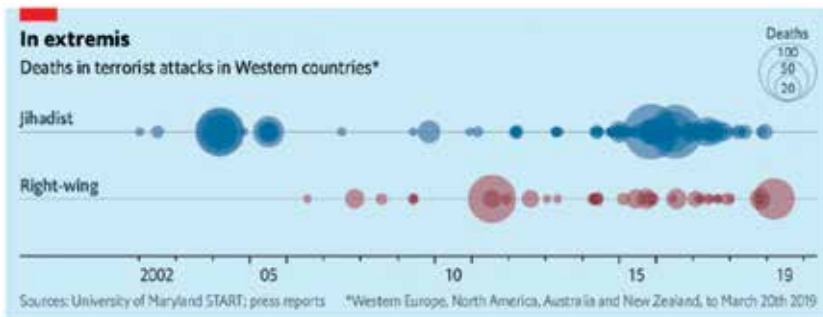


Figure 4. Deaths in terrorist attacks in Western countries, 21st century. Source: *The Economist*, 23/3/2019.

²³ On the part of U.S., the quest for hegemony goes as far as Steve Bannon's intentions to globalize – beginning with Europe – his nationalist and populist ideas. See, Bannon, Steve (on him).

²⁴ Because of its frequently illegal nature, statistics on international migration are scarce and unreliable.

World population growth, developed and emerging, 2010-2040 (UNPD-UN)					
	2010	2040	Increase	% Distribution	
	Million	Million	2010-2040	of the increase	
World	6958	9210	2252	100.0	
Developed countries	1235	1297	62	2.8	
Emerging countries	5723	7913	2190	97.2	
- <i>China</i>	1360	1417	57	2.5	
- <i>India</i>	1231	1605	374	16.6	
- EC without China, India	3132	4891	1759	78.1	
World population growth, continents, UNPD, UN, 2010-2040					
Asia	4194	5154	960	42.6	
- <i>Without, Japan, Corea</i>	4016	4986	971	43.1	
Africa	1049	2100	1051	46.7	
Latin America and Carib.	598	757	159	7.1	
North America, non Latin	343	417	74	3.3	
Europe	737	729	-8	-0.4	
- <i>Western</i>	442	460	18	0.8	
- <i>Eastern</i>	295	269	-26	-1.2	
Oceania	37	53	16	0.7	
Western World	1420	1687	267	11.9	
Non Western World	5538	7523	1985	88.1	
Western World %	20.4	15.4	13.5	...	

Table 3. World, continents and regions population projections, 2010-2040. Source: Author's elaboration on United Nations Population Division.

Almost 98% of the projected world population increase, between 2010 and 2040, will take place in emerging countries. Even without China and India, the emerging world will contribute with 78.1% of the total increase, and Africa will increase by 1051 million people, 46.7% of the new world population. Faced with such a demographic growth, and in spite of its rapid economic growth on average, it is unlikely that emerging countries can give jobs to all new job seekers. This could be, now and in the future, the main driver of international migrations, particularly for African peoples. Differences among countries and continents in their population growth are enormous. Sub-Saharan Africa's population will grow up to 3% or more and the Middle East will grow around 2%. In contrast, Latin America and Asia populations – except China – will grow 1.5% and, in sharp contrast, Western Offshoots will grow 1% and Europeans between 0.5% and -0.5%.

For some purposes, it could be relevant to think about this question from the point of view of cultures or, *à la* Huntington, of civilizations.

Western countries will contribute with just 11.6% to world population growth between 2010 and 2040. What is going on is, for the first time in recorded human history, something like a “demographic suicide” in many Western countries, Eastern Europe and Japan. What helps to understand this is to see fertility rates by country (Figure 5).²⁵



Figure 5. Total fertility rate by countries. Source: <https://www.indexmundi.com/map/?v=31>

²⁵ Being a childfree American adult was very unusual in the 1950s. However, the proportion of childless adults in the population has increased significantly since then. The proportion of childlessness among women aged 40–44 was 10% in 1976, reached a height of 20% in 2005, declining then to 15% in 2014. In Europe, childlessness among women aged 40–44 is most common in Austria, Spain and the United Kingdom and less common across Eastern Europe, although one-child families are very common there. In the U.S., the fertility rate is declining to the lowest in history, and child-free-ness rose across all racial and ethnic groups to about 1 in 5 versus 1 in 10 in the 1970s (Pew Research Center). Fertility rate was 122.9 births per 1000 women in 1957 and fell to 59.8 in 2016. Even taking the falling fertility rate into account, the U.S. Census Bureau still projected that the U.S. population would increase from 319 million (2014) to 400 million by 2051, in a relevant part explained by immigration (CDC). The National Center of Health Statistics confirms that the percentage of American women of child-bearing age who define themselves as childfree (or voluntarily childless) rose sharply, from 2.4% in 1982 to 4.3% in 1990 and to 6.6% in 1995 (Wikipedia).

1.4. Protectionism

Before the resurgence of nationalism and populism, the 2005 Doha round of the World Trade Organization²⁶ stalled on the advances to freer trade; with Trump's assumption of the presidency, protectionism is reborn as public policy, with a vigor unknown since the thirties of last century.

We have already mentioned, for example, how the U.S. began withdrawing from international agreements or reformulating them, as was the case with NAFTA. Although the most important conflict for the world is that of China vs. the U.S., protectionist disputes have also surfaced between the European Union and the U.S., for the treatment of technology companies from the U.S. and for growing disputes over Airbus versus Boeing.

In this context, we can find a clear example of the inconsistency of anti-immigrant plus protectionist policies in the United States. Largely, what made it possible in the U.S. to have, at the same time, economic growth and very low unemployment – at records of less than 4% – was very low inflation, without long exceeding 2% per year, the implicit goal of the Federal Reserve. This was possible, in turn, because unit labor cost remained very low, for which the supply of active immigrant workers was essential. Furthermore, in the medium and long term, that would be impossible with the increased protectionism aimed at by Trump's administration, because it would add additional inflation pressure.

2. The populist dimension

Populism has been and perhaps will be with us forever. However, the big question is what kind of populism will it be? Will it be an affirmation of the values of each people–nation or another, more aggressive kind, with the possible outcome of an open class struggle or conflict against other people–nations? Will it allow for economic development, and be able to bring about the reforms needed to reduce poverty and inequality? Will it lead countries towards new, dangerous frustrations or will it be capable of overcoming the evident problems of the present? The idea that current populism is different from the past – or, even worse, similar to a very bad past – could be sustained in its aspiration to become an international movement.²⁷

²⁶ See https://en.wikipedia.org/wiki/Doha_Development_Round

²⁷ *The Economist* (2019 a).

2.1. Two “impossible trilemmas”

Many people, in many countries, both developed and emerging ones, seem to have ideals that are impossible to achieve together.

- I) People in developed countries, especially in Europe and Japan, are trying to solve an impossible trilemma, i.e., to have very few children, no immigrants and a good retirement. This is at the core of populist thinking and implies wanting to live well now, without worrying about the future, and particularly about the future of others, i.e., the new generations.
- II) Going further, Dani Rodrik (2007) talked about “the inescapable trilemma of the world economy”. He thinks that, in a globalized world, a country can have economic integration, the nation-state and/or democratic politics, but not all three together. A country can choose integration and the nation-state, but giving up democratic control to technocratic and supranational institutions. It can choose integration and democracy, but giving up the nation-state and disappearing into supranational government. Finally, it can choose the nation-state and democracy, but at the cost of embracing impoverished autarky (*The Economist*, 27/10/2018). Dani Rodrik applies this mostly to the European Union but, at the same time, thinks the trilemma has a “universal destiny”.

What these two trilemmas have in common, implicitly, is the scarcity principle. The first one refers to what economists call “intertemporal preferences”. In this case, the present consumption preferences of people at retirement age are inconsistent with the future if the pension system does not have enough savings or if it is not able to generate enough income in the future. The second one transcends the economy, including political and social issues, but refers to conflicts among agent goals, too. It also refers to the three very difficult “solutions”, which are a supranational technocracy, the old dream of a supranational government – probably desirable, but very difficult – and, worst of all, an impoverished autarky. As aforementioned, these trilemmas help us understand the serious difficulties to overcome current challenges.

2.2. A more unequal world

In spite of some controversies, it is clear that in the last wave of globalization, income distribution in many countries has become more unequal (Figures 6 and 7). There are big differences both in the inequality level and in its recent increase. Europe shows advantages in both of them, with the lowest and slowest increase in inequality. The case of India is just the opposite, as it has one of the highest inequalities and, at the same time, its most rapid increase.

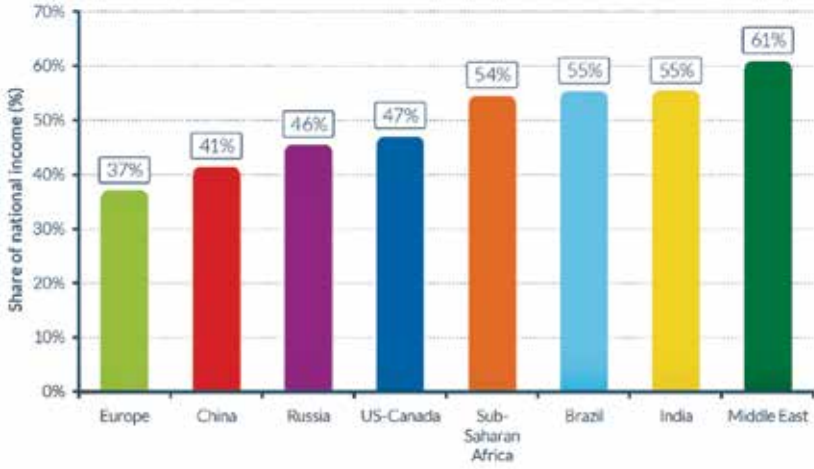


Figure 6. Top 10% national income share across the world 2016. Source: F. Alvaredo et al. (2018). *World Inequality Report 2018*.

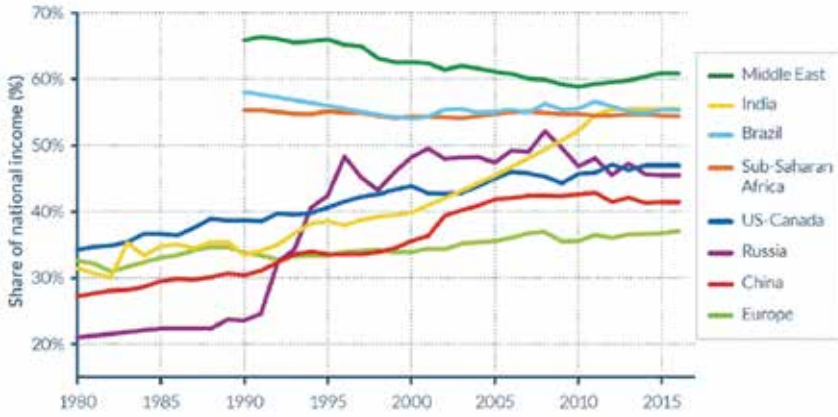


Figure 7. Top 10% shares across the world, 1980/1990-2016. Source: F. Alvaredo et al. (2018). *World Inequality Report 2018*.

On the positive side, it is good news that three very unequal regions or countries, i.e., Africa, the Middle East and Brazil, can show falls, albeit small ones, in income inequality. Moreover, in spite of their not brilliant and very different economic growth performances, many other countries in LATAM, in addition to Brazil, experienced inequality decreases this century.²⁸ Not only is income distribution more unequal now than before the last wave of globalization, but wealth distribution has also worsened, and much more in the U.S. than in any other country (Zucman, 2019).

As regards the causes of income distribution concentration, the concentration of firms in many markets is an important hypothesis. More than that, Hopenhayn et al. (2018) argue that the decrease in population growth reduces the increase in number of firms, which results in a firm-age distribution skewed towards older firms and, through it, to a concentration of employment in large firms, which partially explains the decline in labor's share of GDP.²⁹ With a similar approach, K. Rogoff (2019) advocates for regulations on high-tech sector concentration.³⁰ Another relevant source of increase in income and wealth inequality is that many multinational companies transfer their profits to tax havens or countries with low taxation on profits (Benhabib et al., 2018 and Zucman, 2018). This could be one of the explanations for more income inequality, and probably for wealth inequality too, in countries with statistically "normal" income taxation.

²⁸ Shifter et al. (2019).

²⁹ In the IMF Blog, in a paper by F Diez et al. (2019), it is argued that the negative effects of firm concentration on income distribution are pretty small, but that it is dangerous and is good policy to keep corporate power in check. Warren's proposals amount to a total rethink of the United States' exceptionally permissive merger and acquisition policy over the past four decades.

³⁰ He says that Senator Elizabeth Warren's proposals amount to a total rethink of the United States' exceptionally permissive merger and acquisition policy over the past four decades.

III. CHALLENGES AND POSSIBLE ANSWERS

“The truth, I have come to realize, is that God does not have favorites, but that anyone, of any nationality, who fears God and does what is right, is acceptable to him”.
Acts, 10:34.

“Another enemy of peace is the ideology that exploits social unrest in order to foment contempt and hate, and views others as enemies to be eliminated. Sadly, new ideologies constantly appear on the horizon of humanity. Under the guise of promising great benefits, they instead leave a trail of poverty, division, social tensions, suffering and, not infrequently, death. Peace, on the other hand, triumphs through solidarity. It generates the desire for dialogue and cooperation, which finds an essential instrument in diplomacy. Mercy and solidarity inspire the convinced efforts of the Holy See and the Catholic Church to avert conflicts and to accompany processes of peace, reconciliation and the search for negotiated solutions.”

Pope Francis to the members of the Diplomatic Corps, Jan. 1, 2017.

“Our times call for a new readiness to assist our neighbors in need... Concern for our neighbor transcends the confines of national communities and has increasingly broadened its horizon to the whole world”.

Pope Benedict XVI, *Deus Caritas Est*, 2005.

“Globalization needs to be inserted into the larger context of a political and Economic program that seeks the authentic progress of all human humankind. In this way, it will serve the whole human family no longer longing benefit merely to a privileged few but advancing the common good of all.”

Pope John Paul II, Address to the Pontifical Academy of Social Sciences, May 2, 2003.

The present public scene, including the media and social networks, appears overwhelmed by pessimism and anger. This seems to derive from the contrast between the promise of permanent welfare of the globalized economic growth and the emerging disenchantment, especially after the Great Recession of 2008–2009. Complaints abound, but proposals do not. This is an almost ideal breeding ground for populism and/or nationalism.

According to these rampant ideologies and movements, the world’s current problems could be eliminated just by having less international migration, less trade and the reaffirmation of traditional values. It might be true that reviving the latter, such as family values, could help improve demographic growth and eventually, with the help of an initially faster economic growth coming from a more closed economy, could help to somewhat alleviate international migratory flows. The problem with these ideologies is that their claims have many weak assumptions. The main one is believing that a closed economy, with an important welfare state, could generate faster

sustainable economic growth, ignoring, for instance, inflationary pressures. Another problem of national-populist ideologies is their tendency to define themselves as integral, which makes it very difficult, if not impossible, to take only a part of them.³¹ The result is that national-populism offers so much ideological content but almost no effective way to solve – at the same time – challenges such as high inequality and too many immigrants.

1. Missing what globalization?

The Pontifical Academy of Social Sciences has devoted many Plenary Sessions and workshops to the issue of globalization.³² These meetings not only generated analyses, but also a number of appeals about the risks run and proposals to avoid or, at least, to limit. We wrote in 2008 (eleven years ago), “The globalized world we live in has too much poverty, too many walls, too many weapons and wars and a lack of respect for the Creation. We need to build a world without (extreme) poverty, with more respect for the Creation, more peace, fewer weapons and plenty of dialogue to build a civilization of love principle of the universal destination of all the goods of the Creation. Confronted with such unprecedented challenges, discussion normally held on policies to mend some of the sources of injustice and lack of charity proliferating all around the world sound almost pathetic. They can surely help to solve specific questions here and there, some of them relevant to improving the lives of many people. However, giving proper answers to these challenges seems to be something completely different. The process of domestication of a civilization-wide change to improve the effectiveness of charity and justice might only be dealt with sounder, cultural answers. These must be centered in concrete gestures of cultural change, as unprecedented as the change we confront”.³³

There are many hypotheses that try to explain the ideological, political and social revolt that is being experienced in much of the world. They are guided by old nationalist and populist ideas, which do not look to the future but to the past. In my opinion, that is not the way, because what we need is fresh, renewed and forwards looking proposals.

Proposals must start by admitting that the current phase of globalization has important flaws, in urgent need of correction. The source of tensions and conflicts between developed and non-developed countries continues

³¹ This is a worrisome trait, because it brings those ideologies closer to totalitarian forms.

³² A summary of them is in *op. cit.* (J.J. Llach, editor, 2008).

³³ *Op. cit.* (J.J. Llach, editor, 2008), pages 89-90.

to subsist. However, they are less intense than before, because, for the first time since the great European expansion began in the 15th century, they have found a solution path, quite accelerated in much of Asia, although partly relegated to Oceania and, even more, in Africa and Latin America. Nevertheless, we can identify recent positive trends even in these three regions. In Africa there is a significant reduction in coups and violent racial conflicts. Despite widespread poverty, these political changes have allowed several African countries to begin the path of development for the first time since their recent independence. In Latin America several countries have abandoned the nationalist-populist paths that had blinded their development for many decades.³⁴

Surprising as it may be, the newest source of economic, social and political disruption has its epicenter in many developed countries. One of the engines is the rapid economic growth of emerging countries, with the clear leadership of China, supported by a rapid growth in international trade that challenged the capabilities of many developed countries to compete. The trade dispute between China and the U.S. is the clearest – and symbolic – indication of the tensions between the growth of emerging and developed countries. Nevertheless, the phenomenon affects other developed countries too. Its main indicator is the growing inequality of income and wealth distribution, much more noteworthy in the U.S. The negative effects of the growth gap between developed and emerging countries were enhanced by a similar gap in demographic growth, which was responsible for international migrations into developed countries.

Another probable source of discomfort is the rapid advance of new technologies and production methods. Opinions diverge regarding their effect on the general level of employment. In fact, four of the most technologically advanced countries have low unemployment rates: Germany, 3.3%; Japan, 2.4%; South Korea, 4.9% and the U.S., 3.8%. For this reason, a hypothesis of negative effects of new technologies on equity rather than on open unemployment seems worthier.

Finally, the heart of the debate is whether the solution lies in abandoning globalization – something impossible, anyway – or improving it. Looking at the experience of the twentieth century – with the two world wars

³⁴ In South America, the clearest cases are those of the Pacific Alliance, i.e., Chile, Colombia and Peru. With other political ideologies, Bolivia, Ecuador, Paraguay and Uruguay have also left economic populism behind. In Central America, Costa Rica, Dominican Republic and Panama are successfully on the same path.

and the Great Crisis of 1929 that followed the end of the *belle époque* – it should be clear that abandoning globalization is the worst way. Nevertheless, there is no shortage of people who embrace national-populism and advocate abandoning, or at least limiting, globalization.

2. What to do

It is likely that the rise of these old – and often destructive – ideas have also emerged due to the lack of attractive alternative voices. This is where actors like the Pontifical Academy of Social Sciences have a role to play. Perhaps we have devoted too much time to diagnosing, and very little to thinking about attractive alternative paths.³⁵ Maybe it is time to revise the allocation of our time. It will not be an easy task, because we will need to fight against a new enemy: post-truth politics that appeals much more to emotions than to reason.³⁶

The task of providing solutions must be collective. Nevertheless, in order to conclude positively, I will suggest some of the lines of action that seem more promising.

2.1. Promotion of the family and births

Humanity faces dilemmas of difficult solution. The rapid aging of the population, in more advanced countries, increasingly makes the standard of living of older adults more difficult. Both immigration and an increase in birth rate would help to reduce aging and to finance pensions. However, the two of them confront cultural barriers. Therefore, proposals capable of bringing solutions across these barriers are as necessary as desirable.

2.2. Growth or environment?

The conflict between economic growth and the protection of the environment remains serious, despite calls and contributions to the contrary

³⁵ See, however, *Summary on Globalization. Main Outcomes of the Work of the PASS on Globalization*, Pontifical Academy of Social Sciences, ed. J.J. Llach, *Extra Series 12*, Vatican City, 2008, pages 89-93. Available online <http://www.pass.va/content/scienz-esociali/en/publications/extraseries/summaryglobalization.html>

³⁶ A possible approach to post-truth politics is as follows. It is a political culture in which debate is framed largely by appeals to emotion, disconnected from the details of policies, and by the repeated assertion of talking points to which factual rebuttals are ignored. Post-truth differs from traditional contesting and falsifying of facts by relegating facts and expert opinions to be of secondary importance relative to appeal to emotion (https://en.wikipedia.org/wiki/Post-truth_politics).

from the world of science and from the Social Doctrine of the Church, among other sources.³⁷ The ratification of the Paris Agreement by 185 countries was not enough to prevent political difficulties, the main one of which was the withdrawal of the USA in 2017. To solve this crucial issue, it will be necessary to work more and better on growth models which are friendly enough to the environment.

2.3. *Fairer trade*

Although not all literature agrees, the current organization of world trade is likely to be generating problems worthy of attention, especially in several developed countries, and it is true that labor regimes in many emerging countries do not respect logical standards of decent work. The way seems to be avoiding increased protectionism – negative for the great majority of countries and for the global economy – and it requires a complex multilateral negotiation.

2.4. *Progressive taxation*

In both emerging and developed countries there is a tendency to less discrimination towards tax reductions. Taxes directly levied on investment or production can contribute to further growth. But to a lesser extent, the trend works on the taxation on profits and wealth of individuals too. Whatever its foundations and effects, the latter is a tendency that seriously jeopardizes equity, and it must be corrected. Although it is very difficult in the current context, this issue should also be discussed in international forums, trying to reach agreements. In this context, global coordination against organized crime, and tax evasion through “tax havens” would also be very important to deal with.³⁸

Finally, better proposals about universal minimum income policies (or negative income tax) should also be studied, including their possible negative effects on the propensity to participate in the labor market.

³⁷ Modern science has made many relevant contributions to this issue. Among them, the Pontifical Academy of Sciences has been extremely active, devoting three plenary sessions and many workshops to the issue (see <http://www.pas.va/content/accademia/en/publications/acta.html>). The most relevant and recent contribution of the Social Doctrine of the Church to this issue is, of course, Pope Francis’ encyclical *Laudato si’* (May 24th, 2015).

³⁸ See, for instance, *The Economist* (2019 b).

2.5. *New technologies*

The debate on the social and political effects of the adoption of technologies and new methods of production remains without clear conclusions. As stated before, these technologies and methods are more likely to have a negative influence on equity than on the absolute level of employment. Nevertheless, we must add better diagnoses and proposals on this subject to the list of pending tasks.

2.6. *A new social contract?*

At the top of all these reflections there should be a discussion about the need for a new social contract. This contract should be different, yes, from neoliberal or socialist proposals, but also in keeping with the participation in and of civil society, making maternity and paternity more compatible with work and, finally, with the development of capabilities to undertake challenges on one's own – i.e., entrepreneurship – and thus generating more alternatives to depending either on the State or on big capitals.

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IMMIGRATION AND THE STATE

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Migration is an ancient human adaptation.¹ Viewed anthropologically migration is written in our genome and encoded in our bipedalism, in our stereoscopic vision, in our nervous system.² Modern humans are the children of immigration.³ Migration is constitutive of the human experience. While human migrations antecede nations and states by millennia⁴ in a number of modern states – Argentina, Australia, Canada, New Zealand, the United States, *inter alia* – immigration is at the center of the narrative of how the nation came to be in its present form.⁵

In the modern era migrations are complex, multi-determined and elude vulgar mechanistic models of causality. Migrations unfold in complex ecologies involving broad features of the state *qua* sovereignty – borders, demography, economy, and society. Furthermore, historical relationships,

¹ “According to the genetic and paleontological record, we only started to leave Africa between 60,000 and 70,000 years ago. What set this [migration] in motion is uncertain, but we think it has something to do with major climatic shifts that were happening around that time – a sudden cooling in the Earth’s climate driven by the onset of one of the worst parts of the last Ice Age”. When humans first migrated “out of Africa[,] they left genetic footprints still visible today” (*National Geographic*, n.d.).

² <https://www.youtube.com/watch?v=CJdT6QcSbQ0>

³ “Diverse species have emerged over the course of human evolution, and a suite of adaptations have accumulated over time, including upright walking, the capacity to make tools, enlargement of the brain, prolonged maturation, the emergence of complex mental and social behavior, and dependence on technology to alter the surroundings” (“Climate Effects on Human Evolution” 2016). Indeed, migration is a precursor of modern humans, “the open-country suite of features inferred for *Homo erectus* had evolved together and provided the adaptations for dispersal beyond Africa. These features foreshadowed those of more recent *Homo sapiens* and included large linear bodies, elongated legs, large brain sizes, reduced sexual dimorphism, increased carnivory, and unique life history traits (e.g., extended ontogeny and longevity) as well as tool-making and increased social cooperation” (Antón, Potts, and Aiello 2014).

⁴ <https://bit.ly/2YBudcd>

⁵ “By the early 1600s, communities of European immigrants dotted the Eastern seaboard, including the Spanish in Florida, the British in New England and Virginia, the Dutch in New York, and the Swedes in Delaware. Some, including the Pilgrims and Puritans, came for religious freedom. Many sought greater economic opportunities. Still others, including hundreds of thousands of enslaved Africans, arrived in America against their will” (See <https://bit.ly/2UdBdwx> and Appendix).

cultural affinities, political interests, and the environment itself (McLeman 2014; Forman and Ramanathan, 2019) continue to carve the pathways of the great human migrations in the new millennium.

All continents are involved in human migrations – as areas of immigration, emigration, transit, and return – and often as all four at once. In the twenty-first century, mass migration is the human face of globalization – the sounds, colors, and aromas of a miniaturized, interconnected, and ever-fragile world. Migration is indeed “a shared condition of all humanity” (Pontifical Academy of Sciences, 2017, 1).

In this essay, I first introduce the most up to date relevant data on human migration and examine the broad features of a conceptual model framing migration and the state in the current phase of globalization. Second, I turn to a new cartography of mass migrations flowing from unchecked climate change, environmental degradation, war and terror. Finally, I offer a humanitarian reflection on responses to the defining existential crisis of our times.⁶

Homo sapiens mobilis: data points

International migration has grown rapidly since the turn of the millennium. According to the most recent United Nations data, the number of international migrants worldwide reached “258 million in 2017, up from 220 million in 2010 and 173 million in 2000” (United Nations 2017, p. vi, <https://bit.ly/2TJx4B6>). In 2017 two thirds (67 percent) of all international migrants were living in just twenty countries. The largest number of international migrants (approximately 45 million) resided in the United States of America. Saudi Arabia, Germany and the Russian Federation hosted the second, third and fourth largest numbers of migrants worldwide (around 12 million each), followed by the United Kingdom of Great Britain and Northern Ireland (nearly 9 million)” (Ibid.). Today women “comprise slightly less than half of all international migrants. Female migrants outnumber male migrants in Europe” (Ibid.).

The largest corridors of international migration are in Asia, Europe, and the Americas.⁷ In terms of emigrants in 2017, “India was the largest coun-

⁶ I will generally focus on US data. The US today has four times more immigrants than the second largest country of immigration. In the US immigration is at the heart of how the country came to be in its present form.

⁷ According to the most recent UN data, “over 60 per cent of all international migrants live in Asia (80 million) or Europe (78 million). Northern America hosted

try of origin of international migrants (17 million), followed by Mexico (13 million). Other countries of origin with large migrant populations include the Russian Federation (11 million), China (10 million), Bangladesh (7 million), Syrian Arab Republic (7 million) and Pakistan and Ukraine (6 million each)” (United Nations 2017, p. vii, <https://bit.ly/2TJx4B6>).

Migration involves change in residency and change in community. Scholarly research has specialized in two broad types of large-scale migration: *internal* migration (within the confines of a nation-state) and *international* migration (across international borders). Although the large-scale movement of people within the nation-state is a phenomenon of a separate order from mass migrations across international borders, internal migrants share many characteristics with international migrants: most move from rural villages to urban centers, many experience linguistic and cultural dislocations, racialization, and face isomorphic bureaucratic and legal restrictions. Much scholarly and policy attention has been focused on international migration. Yet most migrants are internal migrants staying within the confines of their nation-states.

Internal migration is on the rise: “The estimated number of internal migrants (migrants inside of their country of origin) is 763 million” (International Organization for Migration, 2018 – <https://bit.ly/2OB5CQh>). The largest chains of internal migration occur in Asia: by 2015 China had an estimated 280 million internal migrant workers,⁸ and in India well over 320 million people – over a quarter of the country’s population – were internal migrants between 2007 and 2008 (UNICEF 2016). The number of international and internal migrants today “is more than a billion people – every seventh person in the world is a migrant” (International Organization for Migration, 2018 – <https://bit.ly/2OB5CQh>).

While in pure numbers more people are now on the move than ever before, the rate of international migration has remained stable over the last fifty years, with roughly 2.5 to 3.3 percent of the world’s population living beyond their country of birth.

Globalization’s three M’s – Markets, their integration and disintegration; Media, the new communication, information, and social media technologies; and Migration, the mass movement of people on a planetary scale, challenge the deep structures of the nation state and interrupt the taken

the third largest number of international migrants (58 million), followed by Africa (25 million), Latin America and the Caribbean (10 million) and Oceania (8 million)”.

⁸ See <http://www.clb.org.hk/content/migrant-workers-and-their-children>

for granted Herderian ideals and longings for alignment and coherence *qua* language, identity, region and *das volksgeist*.⁹ Globalization increases inequality (Picketty 2014) and emerges as a multiplier of migration in a variety of ways. First, the integration and disintegration of markets stimulate migration because where capital flows immigrants will follow (Sassen 1988, Massey et al. 2002). Second, new information, communication, and media technologies enable the post-nationalization of production and stimulate migration by producing new structures of desire, tastes, and consumption practices (Suarez-Orozco & Qin-Hilliard 2004). Third, globally integrated economies, especially in high- and middle-income countries, are structured around a predilection for foreign workers – both in the knowledge-intensive sectors and in the least desirable sectors of the economy (Piore 1980, Cornelius 1998, Saxenian 1999). Fourth, the affordability of mass transportation puts the option of migration within the reach of millions who, heretofore, could not do so. Fifth, globalization has stimulated new migration because it has produced uneven results – wage differentials, when controlled for cost of living differences, continue to grow in many of the best-traveled South-North migration corridors. Globalization weakens the traditional structures and strictures of the nation state. Demographic and environmental factors, examined below, also play a decisive role in mass migrations today and moving forward.

In the aftermath of World War II, well-worn migration corridors came to connect historically linked countries of origin with specific destinations in new societies.¹⁰ That is the story of Latin American migrations to the United States;¹¹ Mediterranean, African, and Middle Eastern migrations

⁹ Von Herder, “developed the concept of romantic or organic nationalism, a form of ethnic nationalism in which the state derives its political legitimacy from historic cultural or hereditary groups. The underlying assumption is that every ethnicity should be politically distinct. Herder’s ideas on the subject were expressed in his theory of the *Volksgeist* (Hamilton 2019 <https://bit.ly/2WORxl2>)”.

¹⁰ The migration corridors of the post-World War II era have much older origins – in the age of European exploration, wars of conquest and of empire that began in 1492. War and conquest created the unstable foundations of what would be called the “New World”. They destroyed civilizations, induced demographic collapse, and caused massive displacement of indigenous populations and their livelihood. The expanding European powers systematically linked the Atlantic, Pacific, and Indian Oceans, creating the largest trading systems ever seen in history. The trade routes became the great corridors for global migration during the last five centuries.

¹¹ Latin Americans are the largest immigrant group in the United States. The US has approximately four times more immigrants than the second-largest country of im-

into Northern Europe; Ukrainian and Uzbek migrations to Russia; and Indian, Bangladeshi, and Filipino migrations into East Asia and the Middle East. As the number of international migrants increased, a new research cartography was drawn. It endeavored to define, measure, theorize, and interpret the myriad of push-and-pull factors behind mass migration – above all the labor markets, demographics, wage differentials, social networks, and cultural practices defining and giving momentum to human movement. During the last three generations researchers came to depict in broad terms how labor migrations begat family reunification, which in turn begat the rise of the second generation now transforming Europe, North America, and Australia alike.¹² With the rise of the second generation, statecraft *qua* migration takes on a domestic flavor.¹³ As we note below, with the rapid rise of catastrophic migrations a new focus on controls and security has come to the fore.

There are disparate motivations and pathways for migration yet large-scale migration is not random. It is ignited and then gathers momentum along predictable corridors. At the proximate level, migration is a strategy of the household (Foner 2009; Massey and España 1987). Distinct patterns of kinship, household, and social organization carve the pathways for worldwide migratory journeys. The fundamental unit of migration is the family – variously defined and structured by distinct, culturally coded religious, legislative, economic, reproductive, and symbolic forms. At the distal level, immigration is multiply-determined by policy choices, labor markets, wage differentials, demographic imbalances, technological change, and environmental factors. However, up-close it is the family that makes migration work. Immigration typically starts with the family, and family bonds sustain it. In the United States, we can say that immigrants bring their children to the US and their children then bring the US to their parents. That is to say, immigration profoundly changes families (Foner 2009; C. Suárez-Orozco and M. Suárez-Orozco 2012). “Love and work”, Freud’s eternal words on the well-lived life, are useful to think about migration as an adaptation of and for the family.

migration.

¹² I subsume under labor migration the categories “sojourners”, “target earners”, and so-called “guest workers”.

¹³ The Cuban diaspora in the US have made Cuba’s foreign policy and migration policy a domestic matter in US politics. There are many other cases from around the world.

But migration for “love and work” tells only part of the story. Historically, the clash of powerful nation-states has been the main driver of the sudden, involuntary, and massive displacement of populations. Over the last century two world wars, the wars of colonial liberation,¹⁴ and the Cold War pushed millions to seek shelter in safer lands. During World War I, millions of Russians, Germans, Serbians, Armenians, Belgians, Poles, Latvians, Lithuanians, Ukrainians, Jews, and others were forced from home:

In August 1914 the Russian occupation of East Prussia caused around one million Germans to flee their homes. Before long, Germany’s occupation of Belgium and northern France, Poland[,] and Lithuania provoked a mass movement of refugees. Austria’s invasion of Serbia resulted in a humanitarian catastrophe as soldiers and civilians sought to escape the occupation regime. In the Russian Empire, non-Russian minorities such as Poles, Latvians, Lithuanians, Ukrainians[,] and Jews were disproportionately concentrated in the western borderlands and thus particularly vulnerable when Germany and Austria invaded. In addition, Tsarist military commanders accused these minorities – falsely – of aiding and abetting the enemy and deported them to the Russian interior.

In the Ottoman Empire, meanwhile, Turkish troops uprooted Armenians who had lived side by side with their Turkish and Kurdish neighbors for generations but who were now regarded as the enemy within. As Talat Pasha, a leading official, put it in a coded telegram in April 1915: “The objective that the government expects to achieve by the expelling of the Armenians from the areas in which they live and their transportation to other appointed areas is to ensure that this community will no longer be able to undertake initiatives and actions against the government, and that they will be brought to a state in which they will be unable to pursue their national aspirations related to advocating a government of Armenia” (Gatrell 2014a, 1).

¹⁴ The colonial struggles of independence in the Americas (in Haiti in 1791); Africa (from the Maghreb to South Africa); and Asia, including the end of the British Raj in India and the subsequent partition of the subcontinent (in 1947) would be punctuated by cycles of “hot wars” such as those in Indochina (1947–54), Algeria (1954–62), and Vietnam (1959–75); “cold wars” such as those in Hungary, Czechoslovakia, and Cuba; and “dirty wars” such as those in Guatemala and El Salvador, resulting in massive movements of people.

By the cessation of hostilities, perhaps more than ten million people had been displaced internally or internationally. The refugee crisis was deep and lasting. According to British historian Peter Gatrell, “during the First World War the refugee emerged as a liminal figure who threatened social stability partly by virtue of the sheer number of displaced persons, but also because the refugee was difficult to accommodate within conventional classification such as assigned people to a specific social class. Other kinds of disorder were also at stake”.

War World II produced more than forty million refugees – then the largest number in recorded history. World War II had other significant indirect long-term effects on migration’s new cartography. In a crystal-clear example of statecraft moving the levers of international migration, the United States’ entrance into the war led to the creation of a guest worker program to recruit temporary Mexican braceros to labor in US fields. That temporary program led to the largest flow of immigrants into the United States in history (Massey et al. 1987). Likewise, the various temporary guest worker programs in Europe immediately following World War II ended up delivering permanent immigrant communities now visible in Berlin, Brussels, Rotterdam, and elsewhere.

Decolonization and the wars of national liberation generated their own routes of massive movement, sending Congolese to Belgium, Pied Noirs to France, and Indonesians to the Netherlands. The end of British India, the partition of the British Raj, and the subsequent independence of India and Pakistan (and then Bangladesh) resulted in the largest population exchange in recorded history. Approximately seven million Hindus and Sikhs from Bangladesh and Pakistan moved to India, and approximately seven million Muslims from India migrated to Pakistan.

The United States-Soviet Union Cold War and the proxy wars it engendered in Africa, the Americas, and Asia, created massive displacements. In Angola (1975–2002), four million were displaced internally, and another half million fled as refugees. At the height of the Cold War, the best predictor of who would arrive as a refugee in the West was someone escaping a communist regime: from 1975 until 1995 more than two million Southeast Asians fleeing Vietnam, Laos, and Cambodia were settled in the West, the majority in the United States but also some in the European Union, Canada, Australia, and New Zealand. Those fleeing the Soviet Union followed Southeast Asians as the second largest number of refugees arriving in the West, including more than a million in the United States and almost two million in Israel. Likewise, more than a million Cubans fleeing the Castro

regime in various waves were favored refugees in the United States.¹⁵ Least favored were the casualties of the proxy wars in Central America. Escaping barbaric anticommunist regimes in Guatemala, Nicaragua, and El Salvador, millions of folks arrived in North America in search of refuge. Few became formal refugees, yet over time they came to give birth to the new “recombinant migrations” of the recent era (see Suro, 2019).

After holding for three quarters of a century, the map tracing the major global migration corridors of the post-World War II era has become increasingly blurred. Three disparate formations laid the foundations for an emerging new cartography. First, the dismemberment of the Soviet Union (early 1990s) and the end of the Cold War significantly impacted the acceleration of human migrations. Second, the worldwide economic crisis of 2008¹⁶ and the antigovernment uprisings in North Africa and the Middle East beginning in 2010 – the so-called Arab spring – signaled yet another turn. Third, President Trump’s moves to make good on his campaign promises that elected him – rapidly stepping up deportations of unauthorized immigrants in the United States, building a 2,000-mile concrete wall along the Mexican border, and halting Syrian and other refugees from entering the United States – marked a brusque turning point in the global migration landscape. In the same vein, BREXIT, along with the concurrent rise of nationalist, anti-immigrant movements in the European Union and elsewhere, marks the beginning an entirely new cartography of mass migration.

Globalization and massive migrations are changing the ways citizens experience national identities and cultural belonging. The unmaking of the Herderian ideal upsets the symbolic order of the nation, interrupts social practices, reshapes political processes, engenders new cultural identities, and channels the new anxieties of long-term citizens. Dystopic immigration processes are generating new oppositions, dualities, and hybrids that nation states at this point in history have difficulty managing.

Migration in the age of dystopia: a new map

Mass migrations are increasingly defined by the slow-motion disintegration of failing states with feeble institutions, unchecked climate change, envi-

¹⁵ At the end of the Obama administration (in early 2017) US policy *qua* Cuban arrivals finally became aligned with the reception of other asylum seekers.

¹⁶ The collapse of Lehman Brothers in September 2008 and the ensuing global recession began a significant downturn in patterns of migration – especially irregular, unauthorized migration.

ronmental degradation, war and terror, and demographic imbalances (Global Report on Internal Displacement 2019. See also McLeman 2014). Symbiotically, these forces are the drivers of the catastrophic migrations of the twenty-first century (Betts 2010; Suro, chapter 2 in Suárez-Orozco 2019).

In the first quarter of the twenty-first century, the world is witnessing the largest number of forcibly displaced human beings in history: while precise numbers are both elusive and changing (See “Data on Movements of Refugees and Migrants are Flawed” 2017, <https://go.nature.com/2D-1VqLU>), UN data suggest that more than seventy million people – the equivalent of every man, woman, and child in Lagos, Sao Paulo, Seoul, London, Lima, New York, and Guadalajara – are escaping home into the unknown (UNHCR 2019).

The majority of those seeking shelter are internally displaced persons (IDPs), not formal refugees across international borders (International Migration Organization n.d.). In addition, approximately nine in ten international forcibly displaced will remain in a neighboring country.

While migration is normative, it is increasingly catastrophic: “The majority of new displacements in 2016 took place in environments characterized by a high exposure to natural and human-made hazards, high levels of socioeconomic vulnerability, and low coping capacity of both institutions and infrastructure” (Global Report on Internal Displacement 2017, 9). By 2017 there were 30.6 million new displacements associated with conflict and disasters across 143 countries and territories and by 2018 there were 28 million forcibly displaced.

Internal displacement associated with war and terror has been growing since the beginning of the millennium. In 2017 “The number of new internal displacements associated with conflict and violence almost doubled, from 6.9 million in 2016 to over 11 million”. Syria, the Democratic Republic of the Congo (DRC) and Iraq accounted for more than half of the figure” (Global Report on Internal Displacement 2018). By the end of 2018 “Sub-Saharan Africa and the Middle East were disproportionately affected by displacement associated with conflict and violence ... and new waves were also recorded in South Asia. Displacement associated with disasters mainly affected East Asia and Pacific and South Asia, both regions with high levels of population exposure and vulnerability to hazards” (<https://bit.ly/30cps9E>). By then a total of “41.3 million people were estimated to be living in internal displacement as a result of conflict and violence as of the end of 2018, the highest figure ever recorded. Three-quarters, or 30.9 million people, are located in only ten countries, including Syria, Colom-

bia and the DRC. An unknown number of people remain displaced as a result of disasters that occurred in 2018” (Ibid.).

The number of internally displaced persons is significantly larger than the number of refugees – there are 25.9 million refugees under UNHCR terms in the world (UNHCR 2019, 1, <https://bit.ly/2OS89Wv>).

Unchecked climate change & environmental dystopia

Homo sapiens sapiens has become a geologic force. Forman and Ramanathan (chapter 1 in Suárez-Orozco 2019) argue that unchecked climate change and geophysical hazards increase morbidity and mortality, disrupt production, decrease agricultural yields, decimate livestock, and forcefully displace millions the world over (See also McLeman 2014).

With unchecked climate change and air pollution, the very fabric of life on Earth, is at grave risk. We human beings are creating a new and dangerous phase of Earth’s history that has been termed the Anthropocene. The term refers to the immense effects of human activity on all aspects of the Earth’s physical systems and on life on the planet. We are dangerously warming the planet, leaving behind the climate in which civilization developed. With accelerating climate change, we put ourselves at risk of massive crop failures, new and re-emerging infectious diseases, heat extremes, droughts, mega-storms, floods and sharply rising sea levels. The economic activities that contribute to global warming are also wreaking other profound damages, including air and water pollution, deforestation, and massive land degradation, causing a rate of species extinction unprecedented for the past 65 million years, and a dire threat to human health through increases in heart disease, stroke, pulmonary disease, mental health, infections and cancer. Climate change threatens to exacerbate the current unprecedented flow of displacement of people and add to human misery by stoking violence and conflict. The poorest of the planet, who are still relying on 19th century technologies to meet basic needs such as cooking and heating, are bearing a heavy brunt of the damages caused by the economic activities of the rich (Pontifical Academy of Sciences 2017, 1).

According to the Global Report on Internal Displacement over “the past eight years, 203.4 million displacements have been recorded, an average of 25.4 million each year” (Global Report on Internal Displacement 2016, 8). The majority of new displacements unfold in “low- and lower-middle-income countries and as a result of large-scale weather events, and predomi-

nantly in South and East Asia. While China, the Philippines and India have the highest absolute numbers, small island states suffer disproportionately once population size is taken into account. Slow-onset disasters, existing vulnerabilities[,] and conflict also continue to converge into explosive tipping points for displacement” (Global Report on Internal Displacement 2017, 8).

Floods, storms, cyclones, monsoons, hurricanes, earthquakes, volcanic eruptions, wildfires, landslides, and extreme temperatures continue to displace millions of people the world over (Ramanathan and Forman, chapter 1 in Suárez-Orozco 2019). In Central America, millions have been affected by environmental factors (Durham 1979; Suro, chapter 2 in Suárez-Orozco 2019). There are many reasons for the rapid kinetic expansion of migrants fleeing from the Northern Triangle – El Salvador, Guatemala, and Honduras – into the United States. In Guatemala, unchecked climate change, environmental malfeasance and land tenure clashes in the west are pushing folk into the migration stream north.

In 2014 a group of agronomists and scientists, working on an initiative called Climate, Nature, and Communities of Guatemala, produced a report that cautioned lawmakers about the region’s susceptibility to a new threat. The highlands, they wrote, ‘was the most vulnerable area in the country to climate change’.

In the years before the report was published, three hurricanes had caused damage that cost more than the previous four decades’ worth of public and private investment in the national economy. Extreme-weather events were just the most obvious climate-related calamities. There were increasingly wide fluctuations in temperature – unexpected surges in heat followed by morning frosts – and unpredictable rainfall. Almost half a year’s worth of precipitation might fall in a single week, which would flood the soil and destroy crops. Grain and vegetable harvests that once produced enough food to feed a family for close to a year now lasted less than five months (Jonathan Blitzer, 2019, <https://bit.ly/2uIbMVB>).

Furthermore, depressed prices in global markets for Guatemalan commodities are pushing farmers northward. Climate change and severe drought in El Salvador has resulted in food insecurity for millions, while deforestation has left Honduras more vulnerable to Hurricanes.

By 2017 the world witnessed ferocious hurricanes in the Atlantic that devastated entire regions of the Caribbean, including Antigua and Barbuda. According to Prime Minister Gaston Alphonso Browne, after the largest storm ever in the Atlantic Ocean in September 2017, “the island of Bar-

buda [was] decimated[,] its entire population left homeless[,] and its buildings reduced to empty shells” (UN News Centre 2017). The entire island of Puerto Rico was left without power. A month earlier (August 2017), devastating monsoons in South Asia killed more than 1,200 people; forced millions from their homes in India, Nepal, and Bangladesh; and shut 1.8 million children out of school.

Indeed, who suffers Most from Extreme Weather Events? The Global Climate Risk Index for 2019 estimates the impacts of weather-related loss events (storms, floods, heat waves etc.) by region. The data over a period of two decades reveal that Puerto Rico, Honduras and Myanmar were the most impacted countries in the world by extreme weather patterns. More broadly, of the ten most impacted regions for the 1997–2016 period, nine were low income or lower-middle income countries. “Altogether, more than 524,000 people died as a direct result of more than 11,000 extreme weather events; and losses between 1997 and 2016 amounted to around US\$ 3.16 trillion (in Purchasing Power Parities)” (Global Climate Risk Index, 2019).

The UNHCR predicts that climate change will likely become the biggest driver of population displacements, both inside and across national borders. Though there is general consensus that quantitative estimates are presently unreliable, Forman and Ramanathan (chapter 1 in Suárez-Orozco 2019) make a plea for an ethical global policy response to the emerging climate-migration crisis. They argue that we simply cannot await reliable metrics. International cooperation on climate mitigation is more urgent than ever as the United States under President Trump’s leadership is moving toward an ever more retrograde agenda on climate issues. Establishing international protocols that outline the rights of climate refugees and the responsibilities of industrialized nations toward them cannot wait.

Jeffrey Sachs (2017) has claimed that in addition to the physical environment, demography itself is a main driver of mass migrations. Africa and the Middle East are a case in point. In the 1950s Europe had twice the combined populations of the Middle East and all of Africa. So migration to Europe was not a problématique of significance – with labor shortages and the need to rebuild after the war, immigration was a solution, not a problem.

In an epic reversal, the Middle East and Africa now have twice the population of Europe. Europe now has about 740 million people. The Middle East and Africa combined have about 1.4 billion people. Furthermore, according to UN forecasts, Europe’s population will

be level because of aging and low fertility rates, whereas the population of the Middle East and Africa combined is on its way to 4 billion people by 2100 (Sachs 2017, 5).

Rachitic states / war and terror / uncontrolled criminality

War and terror and uncontrolled criminality are pushing millions of human beings from home. In the aftermath of antigovernment uprisings beginning in 2010, the Middle East and North Africa had the largest number of war-and-terror-displaced human beings. But by the end of 2016 sub-Saharan Africa led the way with the Democratic Republic of the Congo (DRC) overtaking Syria in the top ranking “with most new displacements by conflict and violence”. In Syria an estimated 12 million people have fled their homes since 2011. By 2016 more than half of the Syrian population lived in displacement either across borders or within their own country.

Now, in the sixth year of war, 13.5 million are in need of humanitarian assistance within the country. Among those escaping the conflict, the majority have sought refuge in neighboring countries or within Syria itself. According to the United Nations High Commissioner for Refugees, 4.8 million have fled to Turkey, Lebanon, Jordan, Egypt, and Iraq, and 6.6 million are internally displaced within Syria. Meanwhile, about one million have requested asylum to Europe. Germany, with more than 300,000 accumulated applications, and Sweden with 100,000 are the EU’s top receiving countries (UNHCR 2017c).

Protracted conflicts in Syria, Afghanistan, Iraq, Yemen, South Sudan account for huge numbers of both internally and internationally displaced migrants. In 2018 more than half of all international refugees under UNHCR mandate originated in four states: Syria (approximately 6.3 million), Afghanistan (2.6 million), South Sudan (2.4 million) with Somalia following (<https://bit.ly/2OS89Wv>). The conflicts in these countries are disparate and incommensurable in nature. Yet they share a chronic, protracted quality. Syria’s descent into a Dantesque inferno has been seven years in the making; the Afghanistan conflict has gone on for almost twenty years. In Somalia, “more than two million Somalis are currently displaced by a conflict that has lasted over two decades. An estimated 1.5 million people are internally displaced in Somalia[,] and nearly 900,000 are refugees in the near region, including some 308,700 in Kenya, 255,600 in Yemen[,] and 246,700 in Ethiopia” (UNHCR 2017b, 7). In the Sudan, war and

terror displaced almost a million folks in 2016 alone. These conflicts have endured longer than World War I and World War II. In each case, environmental dystopia and extreme weather patterns antecede and accentuate the catastrophic movement of people.

Syria continues to represent “the world’s largest refugee crisis” (UNHCR n.d.). In its collapse, Syria also embodies the noxious synergies among the environment, war and terror, and mass human displacement. According to NASA data, Syria’s current drought is “the driest on record”. NASA scientists found that “estimating uncertainties using a resampling approach[, they could] conclude that there is an 89 percent likelihood that this drought is drier than any comparable period of the last 900 years and a 98 percent likelihood that it is drier than the last 500 years” (Cook et al. 2016, 1). According to UN data, the drought caused “75 percent of Syria’s farms to fail and 85 percent of livestock to die between 2006 and 2011. The collapse in crop yields forced as many as 1.5 million Syrians to migrate to urban centers like Homs and Damascus” (Stokes 2016, 2).

Long-term conflicts, unchecked climate change, extreme weather patterns, and environmental degradation in Africa are generating massive forced migrations. “Four countries in Africa – Nigeria, the Democratic Republic of the Congo, the Central African Republic, and South Sudan – were among the top ten globally for new violence-induced internal displacements. ... In total, more than 12 million people have been internally displaced by conflict and violence within Africa – more than twice the number of African refugees” (UNICEF 2016, 58).

In South Sudan, “some 1.9 million people [have been] displaced internally, while outside the country there are now 1.6 million South Sudanese refugees [who have been] uprooted, mainly in Ethiopia, Sudan, and Uganda” (UNHCR 2017a, 7). Again the environment looms large: “Drought and environmental degradation, and a food crisis that became a famine because of government neglect and changing regional demographics” were behind the collapse in the Sudan (Global Report on Internal Displacement 2016, 4). According to the UN, “a famine produced by the vicious combination of fighting and drought is now driving the world’s fastest growing refugee crisis. ... The rate of new displacement is alarming, representing an impossible burden on a region that is significantly poorer [than other African regions] and which is fast running short of resources to cope. Refugees from South Sudan are crossing the borders to the neighboring countries. The majority of them go to Uganda[,] where new arrivals spiked from 2,000 per day to 6,000 per day in February [2017],

and currently average more than 2,800 people per day” (UNHCR News Centre 2017a, 8). The UN World Food Program estimates that by 2017, 4.9 million people (40 percent of South Sudan’s population) were facing famine (UNHCR News Centre 2017b, 1).

Famine lurks as a macabre specter:

In all, more than 20 million people in Nigeria, South Sudan, Somalia[,] and Yemen are experiencing famine or are at risk. The regions in which these countries sit, including the Lake Chad basin, Great Lakes, East, Horn of Africa[,] and Yemen[,] together host well over 4 million refugees and asylum seekers. Consecutive harvests have failed, conflict in South Sudan coupled with drought is leading to famine and outflows of refugees, insecurity in Somalia is leading to rising internal displacement, and rates of malnutrition are high, especially among children and lactating mothers. In the Dollo Ado area of southeast Ethiopia[,] for example, acute malnutrition rates among newly arriving Somali refugee children aged between six months and five years are now running at between 50 [and] 79 percent (UNHCR News Centre 2017b, 1).

By 2018 new displacement in “Ethiopia, the Democratic Republic of the Congo (DRC) and Syria accounted for more than half of the global figure” (<https://bit.ly/30cps9E>).

By large margins, African asylum seekers stay on the continent: “Some 86 percent ... find asylum in other African countries. Five of the largest refugee populations in the world are hosted in Africa, led by Ethiopia, Kenya, and Uganda. The protracted nature of crises in sending countries means that some of these host countries have shouldered responsibilities for more than two decades. Generations of displaced children have been born in some of the longest standing camps” (Dryden-Peterson, chapter 10 in Suárez-Orozco 2019).

In the Americas, a new migration map is also taking form. First, by 2015, Mexican migration to the United States, the largest flow of international migration in US history, was at its lowest in over a quarter of a century. Second, for the first time in recent history, more Mexicans were returning (voluntarily and involuntarily) to their country than were migrating to the United States. According to data analyzed by the Pew Hispanic Center,

[M]ore Mexican immigrants have returned to Mexico from the [United States] than have migrated here since the end of the Great Recession ... The same data sources also show the overall flow of Mexican immigrants between the two countries is at its smallest

since the 1990s, mostly due to a drop in the number of Mexican immigrants coming to the [United States].

From 2009 to 2014, one million Mexicans and their families (including US-born children) left the [United States] for Mexico, according to data from the 2014 Mexican National Survey of Demographic Dynamics (ENADID 2014).

Third, as Mexican migration decreases, uncontrolled criminality (Suro, chapter 2 in Suárez-Orozco 2019), terror, and environmental dystopia put Central Americans at the center of the new map. Indeed, the Americas gave the new immigration map a new nomenclature: mass unauthorized immigration (Pew Research Center 2016), unaccompanied minors, children forcibly separated from their parents.

The sources of the current forced movements of people in Central America have complex histories, finding their more immediate distal origins in the Cold War, inequality, uncontrolled criminality, and environmental malfeasance. In the case of Honduras, 1998 begins a new cycle of catastrophic migrations. That is the year Hurricane Mitch hit Honduras and the rest of the region. Hurricane Mitch was the second-deadliest Atlantic hurricane on record, causing over 11,000 fatalities in Central America, with over 7,000 occurring in Honduras alone due to the catastrophic flooding it wrought, due to the slow motion of the storm. The hurricane left severe environmental and psychosocial scars. Data from the School of Medicine of Brown University, estimated that of the total of 3.3 million adults (15 years of age or older) inhabitants of Honduras, more than 49,000 have suffered PTSD (post-traumatic stress disorder). The deforestation of Honduras left a country with weak institutional capacity extremely vulnerable to devastation in the wake of the hurricanes. Hondurans then began an ecological exodus North.

A generation before, *La guerra del fútbol*, the so-called Soccer War of 1969 between El Salvador and Honduras, had more to do with environmental factors flowing from extraordinary inequality in land holdings, than with the region's beloved game. Running out of cultivable land some 300,000 Salvadoreans picked up and migrated over the border to Honduras. The ensuing war lasted 100 hours and forecasted the noxious synergies between environmental malfeasance, war and terror and mass migrations (Durham 1979).

In sum, catastrophic migrations unfold at the interstices of war and terror, inequality, "fossil fuel use, the pollution of the atmosphere and the oceans, climate change, public health, the health of ecosystems and sustainability" (Pontifical Academy of Sciences 2017).

In the aftermath of World War II, the United States and its allies developed a set of policies for refugees based on the assumption that whatever caused them to feel their homes would be resolved eventually. Civilized nations could promise “non-refoulement”, the right not to be returned to a place of violence or persecution, because the promise was only temporary.

Protracted turmoil in the Middle East, Sub-Saharan Africa and Central America sends million fleeing with no expectation of return. We are in the age of what Alexander Betts, director of the Refugee Studies Center at Oxford, has called “survival migration”. Millions are fleeing existential threats but do not meet the standard requirements for refugee status. Millions of people linger in camps far away from the wealthy cities of Asia, Europe, North America, and Australia. Indeed, the world is witnessing what Sánchez Terán (2017) calls the great out-of-sight “forced confinement crisis” of our era. The majority of forcibly displaced persons remain within the confines of their states or spill over to neighboring states – Africans stay in Africa, Asians in Asia, Americans in the Americas. Only one in ten folks seeking asylum will ever make to a safe high- or middle-income country. Betwixt and between the structures of the nation-state, millions have been internally displaced, millions are awaiting asylum, and millions more are living in the shadow of the law as irregular or unauthorized immigrants. Dryden-Peterson found that in thirty-three conflicts globally, the average length of exile was twenty-five years (Dryden-Peterson, chapter 10 in Suárez-Orozco 2019). For a Syrian child in a Turkish camp today the odds are she will spend her entire childhood, adolescence, and emerging adulthood in displacement.

Summary and reflections

In this essay, first we examined the relevant data on global migrations. We established that States in all continents are experiencing migration as sending, receiving, transit and return sites. The largest international corridors of human migration are unfolding in Asia, Europe, and the Americas. In 2019 the United States had the largest number of migrants (approximately 45 million) with Saudi Arabia, Germany and the Russian Federation hosting the second, third and fourth largest numbers of migrants worldwide (around 12 million each), followed by the United Kingdom of Great Britain and Northern Ireland (nearly 9 million). The countries with the largest numbers of emigrants included India (17 million), Mexico (13 million), and the Russian Federation (11 million).

We further established that internal migration within nation-states is also on the rise with an estimated 763 million internal migrants worldwide

(International Organization for Migration, 2018, <https://bit.ly/2OB5C-Qh>). Asia leads the way: by 2015 China had an estimated 280 million internal migrant workers,¹⁷ and in India well over 320 million people – over a quarter of the country’s population – were internal migrants between 2007 and 2008 (UNICEF 2016). Combined, the number of international and internal migrants today “is more than a billion people – every seventh person in the world is a migrant” (International Organization for Migration, 2018, <https://bit.ly/2OB5C-Qh>). The entry of China and India into the global system of production, distribution and consumption of good and services led to the largest movement of people in recorded history. We outlined in detail the features of globalization most implicated in massive migrations.

Second, we outlined the new drivers of mass migration in the 21st century. We examined how unchecked climate change and environmental malfeasance are creating new synergies with war and terror and uncontrolled criminality in weak states with rachitic infrastructures and feeble governance to forcibly push millions from home.

Mass migration and demographic change are, under the best of circumstances, destabilizing and generate disequilibrium in receiving, transit, and sending nation-states. Catastrophic migrations produce multiple additional layers of distress. The forcefully displaced undergo violent separations and carry the wounds of trauma (Mollica, chapter 5 in Suárez-Orozco 2019). Millions of human beings are caught in permanent limbo living in re-traumatizing zones of confinement – where “humiliation is re-created in the camp environment when individuals are not allowed to work, grow food, or make money” (Mollica, *Ibid.*).

The outright rejection of unwanted refugees, asylum seekers, and unauthorized immigrants compounds trauma. In many countries of immigration de facto and de jure policies are forcing millions of immigrant and refugee families to live in the shadow of the law. In the United States, the country with the largest number of immigrants, millions are separated, millions are deported, millions are incarcerated, and millions more inhabit a subterranean world of illegality (C. Suárez-Orozco, chapter 4, in M. Suárez-Orozco 2019).

When immigrants and refugees manage to settle in new nation-states, they bring new kinship systems, cultural sensibilities (including racial, lin-

¹⁷ See <http://www.clb.org.hk/content/migrant-workers-and-their-children>

guistic, and religious), and identities to the forefront. These may misalign with (and even contravene) taken-for-granted cultural schemas and social practices in receiving nation-states. The world over, immigrants and refugees are arousing distrust, fear, and xenophobia. Immigration is the frontier pushing against the limits of cosmopolitan tolerance in the modernist nation-state. Immigration intensifies the general crisis of connection and flight from the pursuit of our inherent humanitarian obligations concerning the welfare of others (Noguera, chapter 14, in Suárez-Orozco 2019).

In the 21st century global migration is broadly challenging nation-states the world over. States endeavor to manage migration with the architectures of sovereignty and the legitimate use of violence:¹⁸ borders, visas, issuance of permanent residency, naturalization, bi-national agreements – such as temporary guest worker and sojourn-worker programs, and international obligations – such as the Geneva conventions. States also endeavor to manage the transition of new arrivals with disparate tools of integration: schooling for immigrants, labor, and a variety of social welfare protections.

Reimagining the narrative of belonging, reclaiming the humanitarian call, and recalibrating the institutions of the nation-state are a sine qua non to move beyond the current immigration malaise the world over. In the long term, we must retrain hearts and minds, especially younger ones, for democracy in the context of demographic change and superdiversity. We need to convert a dread of the unfamiliar “Other” into empathy, solidarity, and a democratizing desire for cultural difference. In this book we endeavor to cultivate the humanistic ideal to find oneself “in Another” (Ricoeur [1992] 1995) in the refugee, in the asylum seeker, and in the forcefully displaced.

¹⁸ Max Weber argued that the defining feature of the State is the monopoly over the legitimate use of physical force (see Max Weber, *Politics as a Vocation*, 1919). Weber claims that the state “lays claim to the monopoly on the legitimated use of physical force. However, this monopoly is limited to a certain geographical area, and in fact this limitation to a particular area is one of the things that defines a state”. The State holds the right to use, threaten, or authorize physical force against residents of its territory. Such a monopoly, according to Weber, must occur via a process of legitimation (<https://bit.ly/2sCkk0B>).

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THE NATION-STATE AS LOCUS FOR WAR-MAKING AUTHORITY

GREGORY M. REICHBERG

War-making authority is not peripheral to the emergence of the nation-state. In discussing this topic my presentation is mainly historical. It proceeds as follows. *First*, I say a few words about the connection between sovereignty and war-making authority as it was formulated by Thomas Aquinas and his commentator Cajetan. *Second*, I present an objection that has been raised against this conception and indicate how this objection accounts for the reluctance of contemporary popes, from Pius XII onwards, to speak in terms of “just war”. *Third*, I indicate how the objection in question is misplaced. *Fourth*, I wrap up with a comment on aspects of traditional just war theory that stand in need of reformulation.

I

Despite claims that are often made about the originality of Bodin and Hobbes, the establishment of a connection between sovereignty and war-making authority was not an invention of early modernity. Such a connection was asserted as early as the thirteenth century by, inter alia, Thomas Aquinas. Only those princes who have no superior may exercise “full power of coercion” (*plenam potestatem coercendi*), he wrote (ca 1270);¹ it is by their decision alone that war can rightly be waged (*cuius mandato bellum est gerendum*).² And lest one think that Aquinas was operating with a feudal conception whereby sovereignty was thought to reside solely in the person of the lord or prince, he makes clear that “having no superior” (within one’s own order) is first and foremost a function of the body politic. Insofar as war touches on the well-being of the whole polity it will be waged solely by “authority of the public power” (*auctoritate publicae potestatis*).³ On this account, an individual prince declares war insofar as he is a public person (*persona publica*); and in so doing he serves as a vice-regent of the people and in view of the common good.

¹ *Summa Theologiae* II-II, q. 67, a. 1, ad 2.

² *Ibid.*, q. 40, a. 1.

³ *Ibid.*

Some two hundred and fifty years later, commenting ca. 1517 on Aquinas's account of the authority condition needed for a just war (in *Summa theologiae* II-II, q. 40, a. 1), Cardinal Cajetan reframed this requirement by reference to the Aristotelian notion of a "perfect community", namely a community that provides for "a complete and self-sufficing life".⁴ A polity would not be "sufficient unto itself", Cajetan writes, unless it be possessed of the power to declare war, for it is through war that the polity avenges injuries done to itself or its members. War-making authority is thus presented as a necessary trait of the "perfect community", or, to cite the term employed by Cajetan, "a perfect polity" (*respublica perfecta*).⁵ We are here not at all far from the modern notion of sovereignty.

II

It is on this precise point that an objection has been directed against the Catholic tradition of just war that springs from Aquinas (and of course Augustine before him): Insofar as this tradition erects legitimate authority as the primary condition of a just war, and this condition is itself founded on the nation-state as the self-sufficient community, we are led into a blind alley whereby the world will perpetually be the theater of inter-state conflict. Another way to put this point is to say that the cure (eliminate private warfare by establishing a monopoly in matters of war on the part of princes) proposed by Aquinas and other thinkers of the period is in sum worse than the original illness. At first, relatively small groups of individuals were engaged in warfare against each other – vendettas of private lords and the like. To eliminate this condition of endemic warfare, which came to be viewed as standing outside the rule of law, a system was devised whereby war was concentrated among even stronger parties, namely sovereign states. What's worse, this warfare was rendered lawful, so that even though warfare was narrowed as to its frequency, the scope of its pernicious effects was enormously widened; adding insult to injury, these effects were granted a sheen of legitimacy simply by virtue of their resulting from the action of sovereign states.

Nowadays in Catholic and Protestant circles, this objection is often articulated under the heading of "just peace".⁶ It is presented as an option

⁴ Aristotle, *Politics* III, chap. 9, 1280b, 34–35.

⁵ Translation of the relevant passage from Cajetan's commentary may be found in Reichberg, Syse, and Begby 2006, 241–245.

⁶ See Valerie Morkevicius, "A Just Peace Critique of Just War", in *Nova et Vetera*

more in keeping with Christian values, (especially under the conditions of post-Hiroshima modernity) than the alternative tradition of “just war”. To this effect, a gathering was held here at the Vatican in April 2016 on “Non-Violence and Just Peace: Contributing to the Catholic Understanding of and Commitment to Non-Violence”. A press report noted afterwards how “at an unprecedented conference at the Vatican last week attendees urged the pope to issue an encyclical urging non-violence and reject the just war theory”.⁷

It must be said, however, that the conference in question was not entirely unprecedented. A call for revision of the Church’s traditional teaching on just war was made some eighty-five years prior when a multi-national group of Catholic theologians assembled in the Swiss city of Fribourg to issue a consensus statement reassessing the legitimacy of war.⁸ Published in 1932 under the title “le problème de la moralité de la guerre”, the stated goal was to arrive at a “doctrinal position of the problem” as “it is posed today before one’s conscience” (Charrière et al., 1932, 33).

The fruit of three years of meetings by French, German, and Swiss Catholic theologians, the impetus for the Fribourg Declaration, as it came to be called, appears to have been twofold. First, there was a perceived need to provide a Catholic endorsement of the “condemnation of war” as had been declared by the Kellogg-Briand Pact (August 27, 1928). Second, one of the eventual signers, the German Dominican Franziskus Stratmann, had created much controversy by his public statements in support of pacifism. In a meeting with the Lyonnaise abbé Laurent Remillieux, Stratmann had asked “to what point am I, a Catholic, entitled to be a pacifist?” This in turn led Remillieux to seek out an answer from the nuncio in Berlin, Eugenio Pacelli (later Pope Pius XII). Responding that it was not the Magisterium’s role to decide such a question, Pacelli encouraged Remillieux to create a high-level study group that would examine the question. After further

(English edition) 10.4 (2012): 1115–1140.

⁷ See https://nonviolencejustpeacedotnet.files.wordpress.com/2016/05/official_cst_on_gospel_nonviolence.pdf Indeed, in a statement issued by Pax Christi in the name of the conference attendees, we find it affirmed that “there is no ‘just war’. Too often the ‘just war theory’ has been used to endorse rather than prevent or limit war. Suggesting that a ‘just war’ is possible also undermines the moral imperative to develop tools and capacities for nonviolent transformation of conflict” <https://www.paxchristi.net/news/appeal-catholic-church-recommit-centrality-gospel-nonviolence/5855#st-hash.gBLNmWLZ.zYb0joKY.dpbs>

⁸ This part of my paper draws from Reichberg, 2018a.

discussion with the nuncio in Paris, it was decided that the group would assemble in Fribourg, with the support of its bishop Marius Besson.⁹

The goal of the Fribourg Declaration was to show how Catholic doctrine should be reformulated, based on the premise that the traditional just war doctrine had been superseded by developments in international law. In so doing its authors drew heavily on the work of the Italian priest-sociologist-politician Luigi Sturzo, who had mounted the argument a few years prior that the just war doctrine, long a mainstay within the Church, had become obsolete. Much like the contemporary proponents of “just peace”, Sturzo and the Conventus signers who followed him objected to the supposed centrality of the nation-state within the just war doctrine. In their understanding, just war is part and parcel of a conception whereby each state is supreme in its own order, and in this condition of international anarchy, war becomes a settlement procedure by which to resolve disputes for which no higher, adjudicating authority exists. This is the famous *right of war* of which states can avail themselves when seeking redress for their violated rights.

Thus understood, war is a recognized social institution that confers on states a status akin to that of moral persons; it is a means by which this distinctive sort of moral person is entitled to enforce its rights. The signers of the Fribourg Declaration thus operated with a very precise definition of the right under examination. This right can only be exercised by a particular kind of agent – a sovereign state – within a determinate social context in which the different members of the community reciprocally recognize the sovereignty of the others. Within such a community, resort to war is a socially recognized (hence legitimate) procedure by which disputes are resolved in such fashion that new legal facts are created. War is a dispute-resolution method, akin to the decision of an international adjudicative body. As Joseph Delos (a French Dominican, who, with Albert Valensin, served as co-drafter of the Declaration) later put the point, under conditions of anarchical international society, war serves “a procedure of legislative substitution”¹⁰ by which intractable disagreements between states are resolved.

⁹ Based on the historical account given in Droulers 1981, 329–31.

¹⁰ “War ... is the *ultima ratio* of a legislative procedure. Due to the lack of qualified organs to make law, [in un-organized international society] social need manifests itself in a *conflict* which brings to grips the states most directly interested, and the war which will resolve the conflict is a procedure of legislative substitution” (Delos 1959a, 322); see also Delos 1953.

In other words, by virtue of the mutual consent of states, the outcomes of war establish new rights.

Against this conception of war as creative of right, Sturzo and the signers of the Declaration mounted two arguments:

First, they maintained that qua social institution war is not a permanent feature of our human condition; in other words, it does not pertain to *ius naturale*. Rather, it is a tacit convention, a *jus legale* that is characteristic of one phase of historical development. They emphasized that international society need not be organized in this way; states are fully capable of existing without it. Indeed, our natural sociability, by its very telos, moves us toward the renunciation of war. Thus, Sturzo wrote that “War ... as a legal institution may disappear if the other conditions rendering it still effectual and actual can be changed – that is, if the social environment, by its development in accordance with the historical process, deprives war of its *raison d’être* as a legal institution” (Sturzo 1929, 225).

Second, in alluding to the possibility of achieving a future condition of interstate organization in which the right of war would be eliminated, Sturzo and the signers of the Declaration were not claiming that this condition would be equivalent to the cessation of all interstate violence. Their argumentation was directed rather at showing how the *right* to wage war on the part of individual states, can, and indeed should, be eliminated. In this vision, individual states should eventually renounce their right to resort to war. This would not however be equivalent to pacifism, because in Sturzo’s understanding “armed forces will [still] be needed exclusively as police, in particular for work on frontiers, on the sea, and in the air” (Sturzo 1929, 240). In this connection Sturzo advocated for “the internationalization of the use of force for police work” (Sturzo 1929, 240), and to this he added that “the more such functions develop the more the necessity for States to keep their own armaments will diminish, in relation to the lessening probability of war” (Sturzo 1929, 241).

Both Sturzo and the signers of the Conventus took for axiomatic that the juridical outcomes sought by war could *always*, under the international legal regime that was then theirs, be achieved by means other than war. Because these other means also exist, appeals to “necessity” are ultimately baseless, and now that war is banned as a procedure to solve inter-state disputes, such appeals were henceforth morally wrong. The much-vaunted criterion of last resort thereby loses its applicability. Alternatives to war can always be found; none should ever be deemed “last” or “final”.

To wrap up this summary of the Sturzo/Fribourg Declaration objection against state-centric war-making authority, I will note that the objection is reflected in papal statements, from Pius XII onwards, on the permissibility of waging war. For one thing, in line with the Fribourg Declaration, the Roman Magisterium hardly, if ever, speaks of “just war”,¹¹ favoring instead the language of “legitimate (or “lawful”) defense”, “armed force” and related terms. The absence of reference to “just war” is far too pervasive to be counted as non-intentional, although to my knowledge no reason for this silence is expressly given in the papal texts. True, the term does appear in the *Catechism of the Catholic Church* (1992), but it is placed in quote marks to describe how the older tradition had framed the conditions of legitimate defense (“the traditional elements enumerated in what is called the ‘just war’ doctrine” – section 2309). In this way it is implied that although the term “just war” no longer reflects the usage of the Magisterium, the substance of the older teaching endures within the current teaching.

I will note parenthetically that popes do not always acknowledge the secondary sources that have been used in preparing their documents; thus, such attributions must ordinarily be made on circumstantial evidence. We have already noted how Pope Pius XII was not unaware of the Fribourg Declaration, as the idea of carrying out a theological consultation on the moral problem of war was due to his earlier intervention as nuncio in Germany. In this connection it can also be noted that from October 1944 to 1968 Joseph Delos resided in Rome, where he served as legal advisor (*conseiller ecclésiastique*) at the French embassy to the Holy See (see Monnet 2016). From this position, he may very well have exerted an influence on papal writing – from Pius XII to Paul VI – on matters relating to war and peace. During these two decades Delos argued for a very restrictive account of armed force as used by individual states. He maintained a version of what today is termed “reductive individualism”, namely the idea that the defensive employment of force by states must be regulated by the same norms as are applicable to private individuals in circumstances of self-defense (Lazar 2018). Only on-the-spot repelling of violence may be allowed; no wider more proactive measures can be admitted. In this respect Delos

¹¹ “Just war” is employed in the Fribourg Declaration as a label to describe the project that animated the traditional doctrine as was advanced by Vitoria, Suarez, et al. When describing their own account of the justifiable uses and limits of armed force, the term does not appear.

understood that he was departing from the earlier just war teaching of, for instance, Francisco Suarez.

Returning now to my main line of argumentation, allow me to emphasize how the side-lining of “just war” semantics in papal teaching derives from the special meaning that both Sturzo and the authors of the Fribourg Declaration attached to the word “war”. War, in their understanding, is an institution by which states resort to force for the settlement of their disputes. Such a practice, they had maintained, is longer applicable under international law. Taken as a subjective (“claim”) right of individual states, “war” has thus ceased to enjoy the legitimacy it once had. This contractualist/positivist sense of “war” has been assumed into numerous papal texts. To cite from perhaps the most famous instance, in 1965 Pope Paul VI declared at the United Nations “Never again war, war never again!” As is made clear later in the same speech, he did not mean to say that a time would come when violent strife would entirely cease on the face of the earth: “So long as man remains the weak, changeable, and even wicked being that he often shows himself to be, defensive arms, will, alas! be necessary”. Nor did he mean to say that all resort to force should henceforth be excluded on moral grounds, for in his 1968 World Day of Peace Message he affirmed that “peace is not pacifism”. The sense of his UN declaration was rather to rule out war as a method for resolving disputes. To cite from the 1944 Christmas message of his predecessor Pius XII, “the idea of war as an apt and proportionate means of solving international conflicts is now out of date”.¹² Implied therein is a rejection of the (positivist or “contractualist”) notion that war can function as a consensual decision-procedure by which a new legal status quo (one assured by military victory) can be established. When “war” is conceived of in this way it is unsurprising that the very notion of “just war” would appear contradictory.

III

The conception of war that I have thus described – war understood as “decisionary mechanism”,¹³ the function of which is to resolve an intractable inter-state dispute – was conflated by Sturzo and later Delos with the traditional just war doctrine of the scholastics. No wonder then that they

¹² Reproduction of the full passages and the relevant references to these papal texts may be found in Reichberg and Syse, 2014, chap. 2, “Catholic Christianity, Part II: Contemporary Sources”, pp. 103–163.

¹³ Schwartz 2019, 167.

considered this doctrine as obsolete and in need of replacement. A similar dynamic is operative, I suspect, in our present-day claims made about “just peace” as a needed replacement for just war.

However, in conflating the traditional just war with a decisionary mechanism the authors in question erred.¹⁴ The theory as it had been developed by Aquinas and his successors was not designed to function in this way. These traditional theorists conceptualized just war as an enforcement mechanism that is employed to support a pre-existing right. Just war in no way creates a right. Suarez made this abundantly clear (circa 1620) when he argued in a famous passage that

it is impossible that the Author of nature should have left human affairs ... in such a critical condition that all disputes between ... states should be decided only by war; for such a condition would be ... contrary to justice. Furthermore, if this condition prevailed, these persons would as a rule possess the greater rights who were the most powerful; and thus such rights would have to be measured by arms, which is manifestly a barbarous and absurd supposition.¹⁵

The idea that war is a social arrangement whereby disputes between sovereign states are resolved, derives not from the just war tradition of Aquinas and his successors, but rather from the competing tradition of “regular war” that had been voiced by Raphaël Fulgosius and other medieval civil lawyers. Despairing over the possibility of any objective determination of just cause in concrete cases, Fulgosius had introduced in its place the “war-contract”, namely a consensual agreement between states to settle their differences by dint of arms.¹⁶ This, not the just war theory, was the source of the subjective right of war that led in modernity to the idea that war could serve as a means to adjudicate conflicts.¹⁷ It was this that contemporary popes, from Pius XII

¹⁴ The conflation of just war with an overly permissive decisionary mechanism derives from Gabriel Vazquez’s critique of Vitoria, Molina, and Suarez, a critique later promoted by Alfred Vanderpol. See Haggemacher 1983, 212-221, Schwartz 2019, 170-178, and Reichberg 2018b, 67-70.

¹⁵ *Disputatio de bello*, section 6, translation in Reichberg, Syse, and Begby 2006, 358.

¹⁶ For a translation of the relevant text, see “Raphaël Fulgosius (1367-1427): Just War Reduced to Public War”, in Reichberg, Syse, and Begby 2006, 227-29.

¹⁷ Stephen Neff sums up this difference well: “According to just-war theory, there was never any pretense that a war actually *resolved* a legal dispute. A just war was purely a remedial or enforcement measure, which might be successful or not as the material fortunes of the struggle dictated. It did not *create* any legal rights for the winning side that the party had not possessed previously. Only the law itself could create or extinguish rights. The contractual theory of war parted company with just-war theory on

onward have sought to reject under the heading of “war”. Speaking of war in this specific sense it is no wonder that they would refrain from reference to just war. In issuing their many condemnations of “war” there is no indication that the popes intended to target the *jus ad bellum* as it had earlier been conceptualized by the scholastics. It was rather “war” in the positivist/contractualist sense of the term that was the target of exclusion. This oscillation between two different senses of “war”, the one as equivalent for a decisionary mechanism (regular war), the other as an enforcement of justice (just war) is visible in Pope Francis’s message to the non-violence and just peace conference that I mentioned at the outset.

[T]he ultimate and most deeply worthy goal of human beings and of the human community is the abolition of war. In this vein, we recall that the only explicit condemnation issued by the Second Vatican Council was against war [*Gaudium et spes*, nn. 77–82] although the Council recognized that, since war has not been eradicated from the human condition, “governments cannot be denied the right to legitimate defense...”¹⁸

In this passage, the call for “abolition” signifies “war” in the decisionary sense, while the “right to self-defense” signifies “war” in the just-war sense, although, in keeping with standard papal usage, “war” is omitted to exclude verbal equivocation. In so doing, the goal is, I believe, to track the language of international law, which, at least since the UN Charter of 1945, has assiduously avoided reference to “war”, except in the condemnatory sense (the Preamble thus speaks of saving “succeeding generations from the scourge of war”). Positive affirmations about the use of armed force employ the euphemistic phraseology of “enforcement action”, “exercise of individual and collective self-defense”, “preventive action”, and other such terms that the scholastics would earlier have placed under the *jus ad bellum*. Documents of the Magisterium, similarly, speak of “legitimate defense”, the “strong arm of force”, “the responsibility to protect”, “concrete measures to disarm the aggressor”, etc.¹⁹

this important point. The essence of the war contract was that the winner of the duel would acquire full legal title to the *res* that was being fought over, without regard to how strong or weak its legal claim might have been beforehand. . . . In the strictest sense of the word, then, might made right according to the contractual perspective . . . something that had never been accepted in tradition just-war doctrine” (Neff 2005, 139–40).

¹⁸ http://w2.vatican.va/content/francesco/en/messages/pont-messages/2016/documents/papa-francesco_20160406_messaggio-non-violenza-pace-giusta.html

¹⁹ See Reichberg 2017a, 269–70 for reference to specific papal texts.

More could be said about other, related, confluences of just war with alien viewpoints. Just peace critics assume, for instance, that from its inception the just war viewpoint was centered on the nation-state, such that the higher good of international community was either neglected or subordinated to the interests of individual states. This too, I believe is a mis-construal that results from conflating the modern regular war doctrines of Wolff and Vattel with the scholastic tradition of Aquinas, who had taken care to prioritize the peace which exists between nations as the horizon for decision-making about war.²⁰ Another confusion emerges from the claim that the just war tradition takes war to be the default position whenever a serious conflict arises. If all you have is a hammer, every problem will be treated as though it were a nail. But this objection presupposes that just war was, for the scholastics, a freestanding doctrine that was intended to operate independently from wider political and social theory, and the evangelical concerns of the Church. But this too is a misconception, – a straw man – which, as Jacques Maritain showed in a seminal essay from 1933 (“The Purification of Means”, in *Du régime temporel et de la liberté*), explains how just war will have proper application only when it is coordinated with, and indeed subordinated to, non-violent forms of temporal activity.²¹

IV

I shall note, in conclusion, that to my mind not all aspects of the traditional just war doctrine are applicable today. Whether the doctrine was overly permissive is open to debate,²² but I do think that some of the rationales that were admitted in the past must be excluded in the present age. For instance, one line of just war made much of the Augustinian focus on punishment. Thus, for thinkers such as Cajetan, war itself was viewed as a sanction that should be brought to bear on recalcitrant wrongdoers. Another strand of just war theory, represented by Vitoria and Molina, rejected the penal account of just war and substituted a liabilist account instead.²³ This is the approach that should be followed today.²⁴

²⁰ See Reichberg 2017a, 4 and 22-27.

²¹ See Reichberg 2017b.

²² See Reichberg 2017a, chap. 11, subsection “Balancing Empowerment and Restraint”, pp. 273-275.

²³ See Reichberg 2017a, chap. 7, “War and Punishment”, 142-72.

²⁴ Nonetheless, among some contemporary Christian just war thinkers, Protestants for the most part, the punitive conception of just war is being revived in line with Romans 13:4. See Bigger 2013 for advocacy of this view.

Another area in need of reformulation are the specifically religious rationales for war that had been recognized in varying degrees by all just war theorists from Aquinas to Vitoria, Molina and Suarez.

It is sometimes said that just war theory was disentangled from religion during the Second Scholastic of the sixteenth and seventeenth centuries, when writers such as Francisco de Vitoria denied that difference of religion could be a justifiable ground for war. It remains however that assertions such as these were construed by the authors of the period very narrowly, and in principle only excluded force directed at the conversion of pagans. Other religiously inspired employments of force were allowed and often even encouraged. These crystalized around several rationales: (i) the idea of a Catholic polity premised on faith – thereby justifying resort to force against persons (or communities) who imperil that unity by their espousal of a different creed or of atheism; (ii) the configuring of Islam as inherently antagonistic to Catholicism, such that force must be used against Muslims to counter the threat they represent (crusade) (iii) that baptism carries with it a set of obligations that cannot be broken without incurring penalties. All three of these rationales have been operative at different times and places until quite recently. Appeals made by Nationalist theologians during the Spanish Civil War would provide a case in point. For instance, at that time a book was written with the title *Holy War, A Catholic Viewpoint on the Spanish War* (Albarrán 1938); it was prefaced by Cardinal Gomá, the then primate of Spain, who had no difficulty affirming that this war was at bottom about preserving the Catholic identity of the Spanish nation.²⁵

It has been argued, convincingly I think, that the nation-state emerged within the late Middle Ages in an explicitly religious context, when national communities formed around vernacular translations of the Bible (Hastings 1997). For these communities, stories about the chosen people of God provided a blueprint of what a nation could be. Far from being an anomaly, religiously-based nationalism provided the seedbed for the modern idea of a nation and we should not be surprised at its revival today.

From affirmations of the nation's religious character to assertions about the holiness of war to protect the nation, there is a short step as numerous examples throughout history, including the Spanish case just mentioned, could attest. Twenty years ago, this point would have seemed of historical

²⁵ See Reichberg 2015.

significance only. But since then religious forms of nationalism have been on the rise. Within the Catholic orbit, alongside the official channels that discourage nationalistic fervor, other voices have actively encouraged it, with manifestos and related statements being posted on the internet by far-right groups operating in Austria, Bavaria, France, Italy, Poland, the US and elsewhere. Characteristic of these manifestos is a revival of crusading language in discussions about the supposed existential threat posed by Muslim migration to Europe. A literature vilifying Islam as “inherently violent” and thus in need of containment, has proliferated in Catholic settings (e.g., Schall 2018, issued by Ignatius Press, a major US Catholic publisher). In 2014 Steve Bannon gave an address to a group assembled here at the Vatican and among other things he asserted that a “major war is brewing” to defend the “Judeo-Christian West” against Islam (Feder 2016). From the context it is made clear that this is not “war” in a metaphorical sense only. Other writers have similarly proposed that a fifth crusade be initiated in the Middle East to protect Christians from Islamists (Kilpatrick 2014).

These trends are likely to intensify in response to attacks against Christian targets such as the recent suicide bombings in Sri Lanka. Already, for instance, Vice-President Pence has described these as an “attack against Christianity” (Foust 2019). If the logic of history is a guide, it will not be long before a forcible response to these attacks will itself be described in Christian terms, with an attendant revival of crusading and similar tropes. Far be it from me to deny that being targeted with harm by reason of one’s faith may have deep religious meaning for the individuals concerned, their families, and indeed the whole Christian community. Martyrdom is still revered within Catholicism and ought to be. But from this it does not follow that a forcible response to such attacks, a response that can indeed be necessary, should itself be described religiously. The religious framing of conflict must be resisted.²⁶ To that end we need a re-conceptualization of the Catholic tradition of just war so that past associations of faith and violence are critically assessed and purged from our present deliberations about the use of armed force.

²⁶ See Reichberg 2018c.

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STATE FAILURE AND INTERNATIONAL RESPONSE: THE LESSONS OF SOUTH SUDAN*

ALLEN D. HERTZKE

What responsibility and/or capacity does the international community have for failed, fractured, or fragile states? This question goes to the heart of humanitarian and governing challenges in the 21st century. The world is awash with refugees fleeing civil wars, violence, lawlessness, and state breakdown. As of mid-2019, there are over 70 million forcibly displaced people worldwide – 41 million internally displaced and 26 million refugees.¹ Nations and international institutions seem ill equipped or unwilling to deal with the origins of a crisis that is destabilizing modern and developing societies alike. This massive crisis stems from a growing list of failed states, fractured states, oppressive states, and societies wracked by violence, exploitive justice systems, and rampant corruption. Intolerable conditions lead millions of people to take the enormous risk of fleeing toward a perilous, uncertain future.

This reality reveals the challenges inherent in a Westphalian international system of sovereign nation-states, still the organizing feature of global governance. Transnational institutions of global order that do exist – international covenants and treaties, the United Nations, the World Trade Organization, the International Monetary Fund, the European Union, NATO, and other regional bodies – remain inadequate for the current crisis. Moreover, such institutions strain under the weight of rising nationalist resistance, driven in part by refugee and immigrant flows that spark clashes over national identity and provoke soul-searching questions over the capacity of wealthier societies to absorb so many people from other lands and cultures.

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¹ “Figures at a Glance”, UNHCR, 2019: <https://www.unhcr.org/en-us/figures-at-a-glance.html> accessed 7-23-19.

The response of religious leaders, particularly the Holy Father, has been to call upon wealthier peoples and nations to open their hearts and borders to the refugees. While this is a commendable and trenchant theological precept, it does not address the origin of the problem – state failure. A generation ago, Samuel Huntington defined the great question of developing societies as the capacity of states to provide minimal order for progress. According to Huntington, *political order* is the prime task of governance and the prerequisite for economic development and democratic consolidation.² The breakdown of order in the first decades of the 21st century, which fuels the refugee crisis, shows how this challenge of state capacity has re-emerged with a vengeance in our own age.

My examination of the fracture of South Sudan – the world’s newest nation – will illuminate the inadequacy of current structures for addressing state failure. South Sudan also presents an especially poignant illustration of the gulf between moral responsibility and international capacity. Born out of transnational advocacy, its declaration of independence from Sudan in 2011 carried the hopes of an African people shattered by a previous genocidal war. Its descent into civil war turned it into one of the world’s most fragile states.³ As a report by the Council on Foreign Relations concluded, South Sudan “is a country in name only”.⁴ Riven by ethnic divisions, unreconciled wounds, and pervasive government corruption, it is unable to perform the most basic function of governance: to provide a modicum of order and economic infrastructure. Though sustained by vast international aid and heroic civil society actors (especially indigenous churches), as a truly functioning nation it was virtually stillborn.⁵

As background, I have conducted periodic research on South Sudan for two decades now. I documented the movement of transnational advocacy

² Samuel Huntington, *Political Order in Changing Societies* (New Haven, CT: Yale University Press, 1968).

³ World Population Review, “Fragile State Index 2019”: <http://worldpopulationreview.com/countries/fragile-states-index/>

⁴ Kate Almquist Knopf, “Ending South Sudan’s Civil War”, *Council on Foreign Relations*, Council Special Report No.77, November 2016. The quote is from the Forward by Richard Haas, President of the Council.

⁵ This conclusion is underscored by two recent books: Peter Martell, *First Raise A Flag: How South Sudan Won the Longest War But Lost the Peace* (New York: Oxford University Press, 2019); Zach Vertin, *A Rope From the Sky: The Making and Unmaking of the World’s Newest State* (New York: Pegasus Books, 2019).

that led to its creation,⁶ conducted field research during its fragile independence,⁷ monitored developments as it descended into civil war, and remain in contact with seasoned experts, diplomatic officials, religious leaders, and NGO advocates on the ground who struggle to contain the chaos.⁸

The crisis of South Sudan reflects the legacy of centuries of marginalization, decades of civil war, bereft development, and the curse of tribalism, which is exacerbated and manipulated by ruling elites. More proximate causes of the tragedy include the naivety of western advocates, mistakes by international actors, blunders by South Sudanese leaders, and greed, compounded by bad luck.

There is an even simpler explanation: South Sudan was unprepared for independence, and once the new nation descended into civil war and state failure, existing international and regional institutions lacked the means and political will to impose order and provide effective governance.

What lessons does the tragic example of South Sudan offer to other cases of state fracture or failure? Can we strengthen or restructure international institutions to intervene when states fail? What are the minimal requirements for the success of a nation-state? Finally, what responsibility do those of us in advanced societies owe to the suffering people of South Sudan, and how can that responsibility play out? These vital questions underlay my investigation of the world's newest nation.

The responsibility to protect, trusteeship, and sovereignty

The central global framework for protecting populations from genocide, war crimes, ethnic cleansing, or crimes against humanity is the *Responsibility to Protect*, which emerged out of a global normative commitment to

⁶ Allen D. Hertzke, *Freeing God's Children: The Unlikely Alliance for Global Human Rights* (Lanham, MD: Rowman & Littlefield, 2004, Chapter 7).

⁷ Field research in South Sudan, conducted in August of 2013, was supported by a grant from the John Templeton Foundation to the Religious Freedom Project at the Berkley Center for Religion, Peace & World Affairs at Georgetown University.

⁸ I especially benefited from the insights of the following individuals with on-the-ground expertise: Casie Copeland (Carter Center referendum observer, PACT representative, International Crisis Group expert, now with the World Food Program); Susan Page (UN Negotiator and first U.S. Ambassador to South Sudan); John Ashworth (long timer leader of South Sudan church associations); Tom Purekal (Catholic Relief Services former country director); Deborah Fikes (Midland Ministerial Alliance and World Evangelical Alliance); John O'Brien (current country director for Catholic Relief Services), and Bishop Paride Taban (co-founder of the New Sudan Council of Churches and the peace village).

prevent such mass atrocities.⁹ Inaugurated in 2001 by the International Commission on Intervention and State Sovereignty (ICISS) and headed by Canada, it was endorsed in the UN World Summit Document and published in 2005.¹⁰ Signed by virtually all members of the UN, this document established Responsibility to Protect as an organizing global principle. The Responsibility to Protect has become a global catchphrase of sorts, with the commonly invoked abbreviation of R2P.

In January 2009, UN Secretary-General Ban Ki-moon expressed his commitment to take R2P as a framework and apply it to concrete policy by issuing the report, *Implementing the Responsibility to Protect*.¹¹ In the report, R2P refers to the obligation of states to populations at risk of genocide and other mass atrocities. It enunciates three pillars of responsibility:

- The first pillar pronounces every state’s responsibility to protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing. While recognizing state sovereignty, this pillar articulates a global norm for every state to protect the population within its border, both citizens and non-citizens alike. The government of South Sudan has failed to fulfill this fundamental responsibility.
- The second pillar places responsibility on the international community to encourage and assist individual states in meeting the individual Responsibility to Protect. This entails capacity building to prevent outbreaks of atrocities by building legal institutions and supporting peaceful and economically viable societies. In the case of South Sudan, international aid agencies, NGOs, and the United Nations have invested billions in development and undertaken peacemaking initiatives, both before and after the outbreak of civil war.
- The Third Pillar articulates that if a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action in a timely and decisive manner, in accord-

⁹ Global Centre for the Responsibility to Protect: <http://www.globalr2p.org/>; Fred Dews, “What is the ‘Responsibility to Protect?’”, Brookings, July 24, 2013.

¹⁰ “The Responsibility to Protect”, Report of the International Commission on Intervention and Sovereignty, December 2001; “2005 World Summit Outcome”, Resolution Adopted by the General Assembly on 16 September 2005, General Assembly, United Nations, October 24, 2005: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf

¹¹ “Implementing the Responsibility to Protect”, Report of the Secretary-General, United Nations General Assembly, January 12, 2009.

ance with the UN Charter. Such collective action should be calibrated, and only as a last resort would it entail some form of coercive military action. The UN report stipulated that such action would need to be authorized by the Security Council, but it recognized the vital role of regional bodies, such as the African Union, whose charter, embracing the idea of responsibility to protect, moved from “Non-Interference” to “Non-Indifference” as its guiding principle.¹²

Each nation, under R2P, has a responsibility to uphold its norms, and the international community then has a corresponding responsibility to intervene if states fail to do so. South Sudan, sadly, meets this latter criterion, as atrocities, ethnic cleansing, and attendant depredations from all sides of the conflict have swept through the country. The international response, restricted to humanitarian aid, diplomatic pressure, and some peacekeeping forces, fell short of the vision of R2P. International actors lacked sufficient leverage over the antagonists while regional neighbors sometimes fueled the crisis.¹³

R2P has exploded the literature on international law. Critics observe, however, that it remains a bit vaguely defined – a broad framework without clear, actionable policies. In a sense, it is an effort at norm creating, with good ideas and rhetoric, but thin on concrete requirements and structures. Moreover, R2P remains anchored in the idea of sovereign nations and lacks an organizing mechanism to deal with failed states. The third pillar’s “appropriate collective action” assumes UN Security Council ruling, but in the current environment of skepticism about humanitarian intervention and retrenchment by leading nations, that requires herculean initiative and leadership.¹⁴ Moreover, it is not clear what “appropriate collective action” actually means.

A related but distinct modality is the idea of *Trusteeship*. As Lake and Fariss observe, “Trustees are sets of states that take direct responsibility for

¹² International Refugee Right Initiative, September 6, 2017. While the AU officially embraced responsibility, it does not have clear mechanisms to act on it.

¹³ Former U.S. Ambassador Susan Page noted this problem. “If we had withdrawn humanitarian assistance, we wouldn’t have been hurting the government, we would have been hurting the people that needed it most. The leadership in the United States struggled with ‘what is our leverage?’” “Sudan & South Sudan with Amb. Susan D. Page Part 3”, *On Africa Podcast*, Podcast audio, Dec. 31, 2018 <https://podtail.com/en/podcast/on-africa/sudan-south-sudan-w-amb-susan-d-page-part-3/> As to regional actors, Uganda at one point sent troops to help Salva Kiir stay in power.

¹⁴ Interview with Eric Heinze, Associate Professor of International Relations, University of Oklahoma, April 2019.

exercising authority in another state on a *temporary* basis. The trustee is commonly delegated this responsibility by an international organization”.¹⁵ As initially conceived by the United Nations in the wake of World War II, Trusteeship entailed the “moral responsibility” of powerful nations, under UN auspices, to administer dependent territories, especially colonies, on their way to independence.¹⁶ Such paternalistic trusteeships envisioned “a formal recognition of the moral obligation to administer dependent territories with justice and a sense of responsibility towards the inhabitants themselves and the world at large”.¹⁷

Powerful colonial legacies and economic interests often undermined this vision.¹⁸ Ironically, one of the most effective UN-authorized trusteeships arose from the vast array of Pacific islands liberated from Japanese occupation by the U.S. Navy during WWII. By virtue of its strategic interest and power, the United States was granted trusteeship by the UN for what became Micronesia. During its administration from 1947-1994, the United States helped Micronesia develop democratic political structures and functioning independent courts.¹⁹

Modern trusteeships, often termed neo-trusteeships, involve UN or other multilateral-sponsored *transitional authority* for post-conflict societies.²⁰ In contrast to earlier trusteeships designed for subject peoples, recent trusteeships have arisen from formerly sovereign but failed or fractured states and often involve UN peacekeeping forces. These include:

- The United Nations Transitional Authority in Cambodia (1992-1993). Following a peace accord signed in Paris in 1991 to end factional conflict, the UN Security Council established a transitional authority with

¹⁵ David A. Lake and Christopher J. Fariss, “Why International Trusteeship Fails: The Politics of External Authority in Areas of Limited Statehood”, *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 27, No 4, 2014, p. 571: <https://onlinelibrary.wiley.com/doi/10.1111/gove.12066>

¹⁶ A.H. McDonald, editor, *Trusteeship in the Pacific* (Sydney: Angus and Robertson, 1949). This is the definition provided: “Trusteeship marks a formal recognition of the moral obligation to administer dependent territories with justice and a sense of responsibility towards the inhabitants themselves and the world at large”, p. vii.

¹⁷ A.H. McDonald, *Trusteeship in the Pacific* “Introduction”, vii.

¹⁸ Witness the fraught legacy of the Mandate system that assigned vast areas of the Middle East to major European powers.

¹⁹ My thanks for the insights of fellow Academy member Paolo Carozza, who served as Judicial Clerk for the Chief Justice for the Federated States of Micronesia in final stages of U.S. trust authority.

²⁰ Lake and Fariss, “Why International Trusteeship Fails”, 2014.

the responsibility of shepherding a new constitution and unified government.

- United Nations Transitional Administration in East Timor 1999–2002. In the wake of mass violence following the independence of East Timor from Indonesia, the UN authorized transitional governance, law, social services, and peacekeeping forces for the fledgling country.
- United Nations Interim Administration Mission in Kosovo 1999–2008. In the wake of the Balkan wars, the UN Security Council authorized an international security authority for Kosovo, which was so weakened by war that it could not perform basic governing tasks. The mission involved both a large UN budget for civilian administration and peacekeeping forces.

Beyond these UN transitional authorities, *de facto* trusteeships were created by coalitions of nations, as in Bosnia and Herzegovina after the 1995 Dayton Peace Agreement, or by occupying powers, as in Iraq and Afghanistan in the 2000s. Another interesting example occurred in Liberia, where widespread corruption provoked donors from the European Union and the United States to employ their leverage to force the transitional government to submit to financial oversight, which was backed by the African Union. In this case the trust relationship was limited to financial auditing and oversight. Given the systematic corruption in South Sudan, such oversight would be welcomed by many in the country.

As Lake and Fariss document, modern trusteeships tend to fall short of their aims, or frequently fail. Why? In part because state-building is so difficult, requiring years of commitment and development. Another reason is clashing interests. Trustee authorities may not always have the interests of the average citizens of the territory at heart, nor may local leaders who are often motivated by political survival or greed. Successful trusteeships thus occur in those rare cases “when the interest of the trustee and the average citizen coincide”. This was the case in East Timor, “where Australia played the role of neutral arbiter as leader of international peacekeeping missions”.²¹

Finally, the reigning principle of Westphalian sovereignty “limits the ability of others to intervene in the internal affairs of states – even failed ones”.²² This dynamic certainly shaped the destiny of South Sudan, as former rebel commanders who were incapable of governing the new nation nonetheless asserted their sovereign legitimacy to rule.

²¹ Lake and Fariss, p. 11.

²² Lake and Fariss, p. 2.

An endemic problem of multilateral administrations involves the behavior of foreign soldiers brought in to provide security for extremely vulnerable populations rent by recent violence and depredation. In Cambodia, Kosovo, and elsewhere such troops fueled a sex trafficking industry.²³ This suggests the need for additional measures to ensure tight discipline and close international scrutiny, including monitoring by respected NGOs, when transitional administrations involve peacekeeping forces.

Because no current mechanism is adequate for the challenges of state failure in the 21st century, scholars and policy makers are groping for new international norms and mechanisms. Richard Haass, as president of the U.S. Council of Foreign Relations, proposes a framework he terms “World Order 2.0”. In his book, *A World in Disarray*, Haass documents how a form of world order operated after the Second World War – an “operating system 1.0” led by the United States that included the UN, security alliances, global trade accords, international covenants, cooperative regional bodies, and balances of power. As that system is breaking down, he views such frameworks as R2P as insufficient in a globalized world of transnational problems – climate crisis, resource depletion, infectious diseases, global crime syndicates, cyber threats, massive migrations, weapons proliferation, international terrorist networks, civil wars, and failed states. The challenge is rooted in the disjunction between a Westphalian assumption of states with sovereign rights and the wide global fallout from state misconduct, weakness, and failure. What happens *inside* states ripples far beyond their borders. In our interconnected age, therefore, a new “world order 2.0” must operate with the doctrine that states have *Sovereign Obligations* in addition to sovereign rights.²⁴

In a way, we see intimations of this normative understanding in the considerable international response to the fracture of South Sudan. The “Troika” of the United States, the United Kingdom, and Norway worked to apply serious diplomatic pressure on the leading antagonists in the South Sudan civil conflict (President Salva Kiir, former Vice-President Riek Machar, and others), employing a variety of carrots and sticks to produce ceasefires and accords. The Intergovernmental Authority on Development

²³ Joseph Loconte, “The U.N. Sex Scandal”, *The Weekly Standard*, January 3, 2005; Owen Bowcott, “Report Reveals Shame of UN Peacekeepers”, *The Guardian*, March 24, 2005: <https://www.theguardian.com/world/2005/mar/25/unitednations>

²⁴ Richard Haass, *A World in Disarray: American Foreign Policy and the Crisis of the Old Order* (New York: Penguin Random House, 2017).

(IGAD, a cooperative program of the six countries on the Horn of Africa) hosted numerous rounds of peace talks between the parties and applied additional diplomatic pressure. The United Nations Mission in South Sudan (UNMISS) provided blue helmet troops to protect nearly 200,000 civilians sheltered in its bases all over the country. Under threat of government and rebel troops, this unheralded program represents a tremendous and heroic act by the UN,²⁵ though thousands of other refugees have been sheltered in church compounds. Finally, international NGOs work through local church networks to provide desperately needed services to traumatized and hungry people.

In another way, however, the international response also reflects the enduring assumption of state sovereignty, in this case treating the major antagonists in South Sudan as legitimate potential leaders of a functioning state, when they operate more as ethnic militia commanders or warlords. This illuminates the need to instantiate the idea of *Sovereign Obligations* in concrete mechanisms. Such instantiation requires forward-looking international leadership, which, with American retrenchment, seems increasingly absent on the global stage.²⁶

Overview of the South Sudan crisis

South Sudan represents the stunning case of a new nation born out of transnational advocacy. As recounted in *Freeing God's Children*, in the late 1990s Christian solidarity activists and allies in the West mounted a formidable international movement on behalf of the African peoples of southern Sudan, who were engulfed in a brutal civil war of resistance to the dominant Islamist government in Khartoum.²⁷ The Sudanese regime's use of scorched earth tactics, forced Islamization, and slavery mobilized passionate and creative advocacy by the movement, which mounted increasingly intense pressure on the Khartoum regime to end its war on the South. This culminated in the signing of the Comprehensive Peace Agreement (CPA) between Khartoum and rebel groups in 2005. Through a provision of the

²⁵ This information provided by a veteran NGO representative.

²⁶ Haass puts the issue bluntly: "The cold truth is that the alternative to a U.S.-led international order is less international order". Richard Haass, "Afterword to the Paper Edition", *A World in Disarray*, p. 321. Unfortunately, not only has the Trump administration accelerated American retrenchment, it has contributed to the unraveling of existing mechanisms of order.

²⁷ Hertzke, *Freeing God's Children*, Chapter 7.

CPA, leaders in the South pushed for a referendum of independence. After an overwhelming vote in favor (near 99%), and with much jubilation, South Sudan was declared an independent state in July of 2011.

International NGOs invested heavily in the new nation, and local Christian leaders engaged in heroic efforts to consolidate and weave the nation together. But the country – afflicted by decades of devastation, bereft of infrastructure, beset by tribal and ethnic divisions, and sapped by poor governing capacity – proved too fragile to hold. Tragically, in December of 2013 a power struggle in the capital city of Juba between President Salva Kiir and former Vice-President and opposition leader Riek Machar erupted into ethnic conflict and civil war, sparking a round of massive displacement, disease, and looming famine.

A Hobbesian nightmare of warlords leading ethnic militias in atrocities and reprisals haunts the once hopeful land. Over the past five years, conflict and anarchy killed nearly 400,000 people, uprooted a third of the country's twelve million people (2 million internally displaced and 2½ million refugees), left more than half the population food insecure, and at one point put 1.5 million on the brink of starvation.²⁸ South Sudan is now among the top three countries in refugee displacement in the world (along with Syria and Afghanistan) and is Africa's worst refugee crisis since the Rwanda genocide.²⁹ As of 2018 it had the world's highest proportion of out-of-school children (over 2 million or 70%).³⁰ A tentative peace accord signed in September of 2018 has stabilized the country somewhat, but continuing flare-ups and lagging implementation threaten a return to fratricidal conflict.

Historical background to the creation of South Sudan

The current crisis in South Sudan owes its origin to a wider historic division in Sudan. For centuries uneasy relations festered between the dominant Arabic-speaking people of northern Sudan and the ethnically-distinct

²⁸ Daniel Sullivan, "Displaced Nation: The Dangerous Implications of Rushed Returns in South Sudan", Refugees International, November 29, 2018: <https://www.refugeesinternational.org/reports/2018/11/29/displaced-nation-the-dangerous-implications-of-rushed-returns-in-south-sudan>; "South Sudan Peace Deal 'Fatally Flawed', Country's Bishops Warn", *The Irish Catholic*, March 7, 2019.

²⁹ "Figures at a Glance", UNHCR, <https://www.unhcr.org/en-us/figures-at-a-glance.html>; "Refugees", United Nations, <https://www.un.org/en/sections/issues-depth/refugees/> accessed 10/28/19.

³⁰ USAID, "South Sudan: Education", <https://www.usaid.gov/south-sudan/education>

and often marginalized Africans of the South.³¹ The roots of this fraught relationship trace as far back as the 16th century, when Muslims advancing from Arabia defeated the Christian kingdoms of Nubia, pushing the Africans southward where they were shielded for a time by a vast geography of swamps called the Sudd.³² By the 19th century, however, Ottoman and Arabic rulers from Khartoum breached the Sudd and opened huge slave raiding operations that trafficked thousands of Africans from the South to the North and beyond. This legacy of exploitation endured into the 20th Century and propelled marginalization of the African south.³³

Among the African tribes in the south are some 60 ethnic groups, with Dinka as the largest (at nearly 36%), and Nuer as the next (at 16%).³⁴ Religiously, the Africans are a blend of traditional religionists and Christians, the latter including Catholics, Anglicans, Presbyterians, Pentecostals, and others. Simmering tensions between the Arabic North and the African South have erupted into two civil wars since Sudanese independence, 1955–1972 and 1983–2005. The latter intensified after a 1989 coup by Omar al-Bashir brought a militant Islamist regime to power in Khartoum. That regime – the same one that gave refuge to Osama Bin Laden – launched a campaign of forced Islamization of the African populations of the South.

Guided by an ideology of racial and religious superiority, the regime waged its self-declared jihad in scorched earth fashion, burning villages and crops, slaughtering livestock, indiscriminately killing civilians, and abducting women and children into chattel slavery, which often involved concubinage and forced conversions. This conflict claimed the lives of some two million Africans, displaced another five million, and enslaved thousands more. Because Christianity provided the cultural glue for the peoples of the South – just as churches form the core institutions of civil society today and were the means by which South Sudanese were educated and prepared

³¹ Roland Werner, William Anderson, and Andrew Wheeler, *Day of Devastation Day of Contentment: The History of the Sudanese Church Across 2000 Years* (Nairobi, Kenya: Paulines Publications Africa, 2000).

³² Martell, *First Raise A Flag*; Walid A. Phares, “Christian Minorities in the Middle East: Statehood or Assimilation”, a paper delivered to the Religion and Politics panel at the 1994 Annual Meeting of the American Political Science Association.

³³ Martell, *First Raise a Flag*, Chapter 2.

³⁴ Both the *CIA Factbook* and the *World Atlas* report these estimates. https://www.cia.gov/library/publications/the-world-factbook/geos/print_od.html <https://www.worldatlas.com/articles/ethnic-groups-of-south-sudan.html>

for leadership³⁵ – the Khartoum regime sought to eradicate its presence by destroying churches, religious schools, and clinics. This combination of massive killing, manufactured famine, and forced conversions aimed at the destruction of a distinct people led international monitors to depict the regime’s campaign as genocidal.³⁶ It also sparked a broad rebellion of the southern Sudanese population. Rebels coalesced in several, sometimes competing groups, the most prominent being the Sudan People’s Liberation Army (SPLA), founded and led by John Garang until his untimely death in 2005 in a helicopter accident.

For over a decade this conflict remained “Africa’s Forgotten War”, but it was plucked from the backwaters of international concern through global Christian advocacy networks. Courageous local pastors and bishops in southern Sudan long championed the cause of their communities – providing succor, documenting atrocities, and even mediating ethnic clashes and violence between factions of the SPLA.³⁷ As the crisis deepened they formed the New Sudan Council of Churches, which became instrumental in fostering transnational relationships between local Christian congregations and international NGOs and solidarity groups. With unique on-the-ground access to the remotest regions of this sprawling land, indigenous Christian leaders conveyed vital information on the crisis to a growing international human rights and Christian solidarity network. Because of their global denominational linkages, southern Sudanese Catholic and Anglican bishops became especially influential voices for their besieged flocks. They traveled abroad, testified before policy makers, and were feted at congregations and advocacy gatherings in the United States and Europe. Churches and aid agencies in the United States and Europe also provided haven for Sudanese refugees and escaped slaves, who became powerful voices for the cause.³⁸

³⁵ Andrew Natsios, *Sudan, South Sudan, and Darfur: What Everyone Needs to Know* (New York: Oxford University Press, 2012).

³⁶ U.S. Committee on Refugees, “A Working Document: Quantifying Genocide in the Southern Sudan 1983–1993”, October 1993, and “Working Document II: Quantifying Genocide in Southern Sudan and the Nuba Mountains, 1993–1998”, December 1998; The Committee of Conscience, Holocaust Museum, “Genocide alert”, issued in October 2000.

³⁷ Werner, Anderson, and Wheeler, *Day of Devastation Day of Contentment*, especially Chapter 14, “Death Has Come to Reveal the Faith: The Church in the South 1983–2000”.

³⁸ Hertzke, *Freeing God’s Children*, Chapter 7.

Here we note the crucial role of the United States in bringing an end to the civil war. The remarkable coalition of Christian churches, African American leaders, Jewish activists, and human rights champions moved members of Congress to pass the Sudan Peace Act in 2002, which propelled high level diplomatic engagement to broker a peace agreement between the Khartoum regime and the SPLA. The Bush Administration put its weight behind a peace deal by appointing former senator John Danforth as special envoy to Sudan. More significantly, an American diplomat with extensive African expertise, Susan Page, was detailed by the State Department to serve as full time UN representative for the peace negotiations. From 2002–2005 Page engaged in “hard negotiations” with representatives of the SPLA, the government of Sudan, and regional African nations to end the conflict.³⁹ In addition, American religious activists, in a striking exercise of citizen diplomacy, pressed both sides to come to an agreement.⁴⁰ These efforts culminated in the Comprehensive Peace Agreement (CPA), signed in 2005 by John Garang as Chairman of the SPLA and Ali Osman Mohamed Taha, First Vice President of the Republic of the Sudan, ending Africa’s longest civil war.⁴¹

In hindsight, Western advocates for the besieged people of southern Sudan operated with some naivety about the nature of the SPLA and its capacity to govern an independent functioning state. Abuses by the SPLA and the autocratic tendencies of Garang were well known, as were deep fissures in the movement and the existence of southern militias that never were a part of Garang’s army.⁴² To grasp the current crisis, we must contend with this complicated legacy.

³⁹ The negotiations were hosted by the UN and IGAD in Kenya. Susan Page received commendations from the State Department for her pivotal work in producing the CPA. Sources: “Sudan and South Sudan with Amb. Susan Page”, *On Africa Podcast*, Dec. 19, 26, 31, 2018. <https://podtail.com/en/podcast/on-africa/sudan-south-sudan-w-amb-susan-d-page/> <https://podtail.com/en/podcast/on-africa/sudan-south-sudan-w-amb-susan-d-page-part-2/> <https://podtail.com/en/podcast/on-africa/sudan-south-sudan-w-amb-susan-d-page-part-3/>; Phone interview, 6-27-19.

⁴⁰ As head of the Ministerial Alliance in Midland, Texas (Bush’s hometown), Deborah Fikes developed personal relationships with John Garang and the Sudanese Envoy in Washington DC. She and others engaged in intense personal communications with the two sides and remonstrating and chiding when negotiations threatened to break down. See *Freeing God’s Children*, Chapter 7. Phone interview with Deborah Fikes, 7-25-19.

⁴¹ The CPA was an extremely complex and lengthy document, over 200 pages, suggesting the thorny issues that had to be ironed out.

⁴² John Young, *The Fate of Sudan: The Origins and Consequences of a Failed Peace Process* (London: Zed Books, 2012); Vertin, *A Rope From the Sky*; Martell, *First Raise a Flag*.

John Garang was born in 1945 into the Dinka ethnic community in southern Sudan. In 1962, at the age of 17, he attempted to join the rebel resistance in the first civil war but was urged to complete his secondary education in Tanzania away from the fighting. He went on to earn a bachelor's degree in 1969 in economics from Grinnell College in Iowa (U.S.) and studied agricultural economics at the University of Dar es Salaam in Tanzania. When the first Sudanese civil war ended in 1972, Garang, like other rebels, was absorbed into the Sudanese military. Over the next decade, he became a colonel and even took advanced military training at Fort Benning, Georgia. Taking leave from the military, he earned a master's degree in agricultural economics and a PhD in economics from Iowa State University. He continued to serve in high levels in the Sudanese military, but like other Africans from the South increasingly chafed at Arab and Islamist dominance. Sent to quell an uprising, he instead led a mutiny of his unit and combined it with other rebels to create the SPLA in 1983, which sparked the second civil war.⁴³

Garang, who led the SPLA from 1983 until his death in 2005, was a complex figure. On the one hand, he articulated a vision of a secular and multi-ethnic new Sudan, which he termed "Sudanism". He spoke of transcending Arab-ness or African-ness, of building bonds between Christianity and Islam – a bold if unrealistic vision of unity and transformation. Seeking greater autonomy for South Sudan but not full independence, he viewed the struggle by the southern Sudanese people as the catalyst for a transformation of Sudan itself.⁴⁴ On the other hand, Garang received early support and arms from the Marxist Mengistu regime in Ethiopia and Kaddafi's Libya. Neither supported an independent southern Sudan, and Garang ruthlessly suppressed rivals in the SPLA who supported secession.⁴⁵ By building his powerbase among fellow Dinka, he also generated grievances among the Nuer and other marginalized ethnic groups.⁴⁶

⁴³<https://www.britannica.com/biography/John-Garang-de-Mabior>; Matthew J. Delaney, "John Garang and Sudanism: A Peculiar and Resilient Nationalism", Senior Project, California Polytechnic State University, San Luis Obispo, June 2010.

⁴⁴ Delaney, "John Garang and Sudanism: A Peculiar and Resilient Nationalism", 2010.

⁴⁵ Martell, *First Raise a Flag*, Chapter 7.

⁴⁶ Zach Vertin, *A Rope From the Sky*, 2019; David Blair, "Negotiator for Peace in South is Killed in Air Crash", *The Telegraph*, UK, August 2, 2005; <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/sudan/1495370/Negotiator-for-peace-in-Sudan-is-killed-in-air-crash.html>; "John Garang", *The Telegraph*, August 3, 2000, <https://www.telegraph.co.uk/news/obituaries/1495379/John-Garang.html>

As for the SPLA itself, it was “riven by factional and ethnic rivalries”,⁴⁷ the most significant of which was when Riek Machar, one of Garang’s lieutenants, broke with Garang in 1992. Like Garang, Machar was highly educated. Trained as an engineer at Khartoum University, he obtained a PhD in Mechanical Engineering from the University of Bradford, UK. Machar disagreed with Garang’s vision of a united democratic Sudan, pressing instead for complete independence for South Sudan. Equally important, Machar represented the second largest ethnic tribe in South Sudan, the Nuer. Machar formed his own SPLA faction, which was involved in the infamous Bor Massacre, where more than 2000 civilians (mostly Dinka) were killed by Nuer militias in the city of Bor and surrounding countryside and tens of thousands of others died in famine afterwards. A Machiavellian figure, Machar was calling for independence while receiving support from the Khartoum regime, which apparently saw an opportunity to sow discord in the ranks of the SPLA. He even switched sides several times, and at one point he even negotiated a separate pact with Bashir.⁴⁸

Church leaders in southern Sudan operated with a more sober appraisal of the SPLA because they suffered from its infighting and sought to keep a proper distance from military operations. On the one hand, many in their Christian flocks were soldiers in the SPLA, and pastors often served as chaplains to lead worship services among units of the army. On the other hand, prominent bishops criticized abuses by rebel troops and condemned bloodshed between SPLA factions. The legendary Catholic Bishop Paride Taban, as co-founder and leader of the New Sudan Council of Churches (NSCC), pursued high-level mediation between Machar and Garang, even to the point of engaging the presidents of Uganda and Kenya.⁴⁹

Given the record of inter-tribal violence and reprisals among SPLA factions, church authorities intuitively grasped the profound need for reconciliation among the diverse peoples of South Sudan. To facilitate an end to fighting among the SPLA factions, ecumenical leaders of the NSCC created a people-to-people reconciliation process. In the late 1990s they brought together elders and chiefs of the Dinka and Nuer communities, along with clan leaders and women’s representatives, for a sustained process of trust building, truth telling, and forgiveness. With a mixture of tradi-

⁴⁷ Blair, “Negotiator for Peace”, 2005.

⁴⁸ Delaney, “John Garang and Sudanism”, 2010.

⁴⁹ Alberto J. Eisman, *Peace Deserves a Chance: Bishop Paride Taban, A Sudanese Shepherd* (Nairobi: Paulines Publications Africa, 2011), Chapter Eighteen.

tional African conflict-resolution rituals and Christian rites of confession and forgiveness, the process remarkably mirrored that recommended by scholars of reconciliation.⁵⁰

Building on the momentum of this process and drawing upon their moral authority, church leaders then challenged SPLA factions to join in the mediation process. Speaking directly to Garang and Machar their message was forceful: “We have made peace, but it is our sons who continue to encourage conflict”. Ultimately, “Dr. John and Dr. Riek” (as they were called) signed a peace agreement in 2002, which reunited the SPLA factions, at least tactically.⁵¹ This occurred just as international pressure on Khartoum intensified to end its war on the South, leading to the signing of the CPA in 2005. The agreement granted greater autonomy to the South (with Garang as its regional president), but in a nod to Garang’s vision of a unified country he was also named First Vice President of Sudan itself (second to Omar al-Bashir). It also included provisions for an independence vote in 2011. The remarkable transformation of Sudan in 2019, with the ouster of the dictator Bashir and an agreement between pro-democracy protestors and the military council paving the way for civilian rule, leaves us to ponder an alternative fate of southern Sudanese society if some form of Garang’s federalist solution had held, rather than secession.⁵² We will never know. On the other hand, the revolution in Khartoum could pave the way for rapprochement between North and South, which might have positive ramifications in the long run for the stability of South Sudan.⁵³

The end of the civil war between the Khartoum regime and southern rebels left in its wake the enormous challenges of rebuilding the shattered fabric of the war-torn land. Absent of basic infrastructure, bereft of governing experience, and beset by widespread illiteracy, trauma, and exhaustion, the people of South Sudan needed time and help to prepare for self-government. Unfortunately, civil society actors, especially church leaders, were

⁵⁰ Daniel Philpott, *Just and Unjust Peace: An Ethic of Political Reconciliation* (New York: Oxford University Press, 2012). For an account of the NSCC reconciliation process from 1998–2000 see John Ashworth, “The People-to-People Peace Process”, The Zambakari Advisory, Spring 2019: https://www.zambakari.org/uploads/8/4/8/9/84899028/14_the-people-to-people-peace-process.pdf

⁵¹ Ashworth, “The People-to-People Process”.

⁵² Nada Rashwan, “Sudan Factions Sign Agreement Paving the Way for Civilian Rule”, *The New York Times*, August 4, 2019.

⁵³ Mohamed Aboelfadl, “Can Sudan Be Put Back Together Again?” *The Arab Weekly*, September 9, 2019: <https://theArabweekly.com/can-sudan-be-put-back-together-again>

largely shut out of peace negotiations and underutilized in state-building initiatives. Most agreed, for example, on the need for a process of reconciliation to heal the wounds of ethnic conflicts that erupted during the long conflict with the Khartoum regime, and especially to build trust among the Dinka, Nuer, Murle, Shilluk, and other ethnic communities. Church leaders remonstrated with the government to establish a truth and reconciliation commission, and were ready to participate or lead, but delays and political infighting forestalled its realization.

These parlous circumstances rendered the transition to self-government precarious, but bad luck also played a role. Less than a month after the CPA was signed in 2005 John Garang was killed in a helicopter accident. Though autocratic and divisive, Garang enjoyed unique stature internationally and in Sudan. When he was sworn in as First Vice-President of Sudan, “up to a million well-wishers flooded Khartoum” to celebrate “a move that marked a turning point in Sudan’s troubled history since independence in 1956”.⁵⁴ The most educated and experienced of the South’s political leaders, he might have been able to form the rudiments of a functioning government. Moreover, because he maintained close relationships with American political and religious leaders, he may have been more open to advice and accountability than those who took his place.⁵⁵

Garang’s successor, Salva Kiir, who ultimately became president of the new nation, evinced less sophistication. With only a military education, Kiir’s entire experience had been as an SPLA commander. He did play important roles in the field, such as his support and provision of security for the 1998 peace process. But he was also described as out of his depth as president and dominated by aids, especially the powerful Dinka council.⁵⁶ Others noticed the increasingly erratic and corrupt tendencies of SPLA leadership in general.⁵⁷

⁵⁴ Blair, “Negotiator for Peace”, 2005.

⁵⁵ Deborah Fikes, formerly head of the Midland Ministerial Alliance, knew Garang personally and prayed with him when he visited Midland (Phone Interview, 7-29-2019); former Ambassador Susan Page, who worked closely with Garang during peace negotiations with Khartoum, also saw his potential.

⁵⁶ This was the assessment of a British consultant for the Troika but was echoed in different ways by a variety of observers, including in Vertin’s account.

⁵⁷ When Susan Page challenged a rash government decision to shut off oil flows in a dispute with Khartoum, which imposed hardship on the people, southern officials were dismissive of their own citizens. She found SPLM officials increasingly resistant to reasonable advice. “Sudan and South Sudan”, *On Africa Podcast*, Dec. 19, 26, 31, 2018.

Nonetheless, from the signing of the CPA in 2005 through the fall of 2013 the land enjoyed its first respite from widespread war in a generation (though serious ethnic violence continued to flare up). With a modicum of stability, the agriculturally rich land provided increasing food security (though a large humanitarian operation continued through this period), and global NGOs invested heavily in the new nation by partnering with local churches to provide essential services. My field research in August of 2013, on the eve of the December breakdown, revealed the prominence of such Christian groups as Catholic Relief Services, World Vision, Adventist Relief and Development Agency, Caritas International, and Samaritans Purse, as well as a host of secular NGOs. These groups, working through indigenous church networks and in cooperation with the USAID and the UN, provided a substantial share of the education, health services, and emergency relief that the fledgling government did not provide through its substantial oil revenue. Though aid can create problems, I was struck by the humanitarian cooperation of UN and U.S. aid operations, international NGOs, and indigenous Christian pastors, bishops, and local congregations that formed the heart of nascent civil society.

But the absence of adequate infrastructure and a functioning state were also evident. The capital city of Juba is a jumble of mostly rutted muddy streets and hovels, with no central electrical or water service but with large walled government compounds and mansions for leaders (with pilfered millions) largely unconnected to the people. With few miles of paved roads in a country the size of France, much of the land is inaccessible for months during the rainy season. When I asked one bishop what the country needed most, he replied simply, “roads”. Poverty is massive.

Here the failure of post-independence leadership became most glaring, as rampant corruption and ineptitude by government officials – mostly former SPLA commanders with no governing expertise – siphoned away billions in oil revenue and aid money to enrich themselves and families. As a key account summarized it, “Corruption nearly devoured the state before it was born”.⁵⁸ In addition to substantial aid money, from 2005–2011 oil revenues amounted to an estimated \$12 billion, which in a country of

<https://podtail.com/en/podcast/on-africa/sudan-south-sudan-w-amb-susan-d-page/>
<https://podtail.com/en/podcast/on-africa/sudan-south-sudan-w-amb-susan-d-page-part-2/> <https://podtail.com/en/podcast/on-africa/sudan-south-sudan-w-amb-susan-d-page-part-3/>; Susan Page, Phone interview, 6–27–19.

⁵⁸Vertin, *A Rope From the Sky*, 2019, p. 166.

13 million people would have greatly contributed to roads, schools, agricultural projects, health clinics, electricity, and other public utilities. Instead, South Sudan became a kleptocratic land of vast inequality – of suitcases full of cash, private jets, villas, and prep schools for the SPLA elite, and no schools, roads, electricity, or running water for the rest.⁵⁹ Early in his administration the situation got so embarrassing that President Salva Kiir lamely issued a letter to some 75 recipients asking them to give back \$4 billion in unaccounted funds. It was ignored, but it exacerbated political tensions.⁶⁰ In 2012 the country’s top Catholic and Episcopal bishops issued a joint statement which “sharply criticized the culture of corruption in high ranking officials”.⁶¹

From independence in 2011 to 2013, when the state collapsed into civil war, Kiir’s popularity, not surprisingly, “suffered from a perceived failure to end high poverty rates, lack of infrastructure, internal repression, and widespread official corruption”.⁶² His lack of political acumen came out as the power struggle with Riek Machar intensified. Ambitious and cunning, Machar was positioning himself to defeat Kiir for the presidency, and Kiir was losing support. Faced with that threat, Kiir violated one of Machiavelli’s famous rules for governing a new state: “keep your friends close and your enemies closer”. Instead, Kiir fired Machar and his entire cabinet in the summer of 2013, which effectively split the SPLM and pushed Machar into an independent position. Even some SPLA leaders who were close to Garang (but felt marginalized by Kiir) allied with Machar and set the stage for confrontation. Because Kiir never integrated the armed forces across ethnic groups, and the Nuer felt marginalized by his government, Machar commanded his own Nuer militia, people who were loyal to him and not the government.⁶³

⁵⁹ Vertin, *A Rope From the Sky*, 2019, Chapter 10. Vertin’s account merely underscored what others on the ground, such as Casie Copeland and Susan Page, observed.

⁶⁰ Vertin, *A Rope From the Sky*, 2019, p. 185.

⁶¹ The statement was issued by Roman Catholic Metropolitan Bishop of Juba, Paulino Lukudu Loro, and Archbishop Primate of the Episcopal Church, Daniel Deng Bul, July 9, 2012. Catholic News Service, “Religious leaders challenge South Sudanese officials to end corruption”, *The Catholic Sun*, July 9, 2012 <https://www.catholicsun.org/2012/07/09/religious-leaders-challenge-south-sudanese-officials-to-end-corruption/>

⁶² Simon Tisdall, “South Sudan President Sacks Cabinet in Power Struggle”, *The Guardian*, July 24, 2013.

⁶³ Martell, *First Raise A Flag*; “Riek Machar: South Sudan Warlord and Peacemaker?” *BBC News*, June 21, 2018: <https://www.bbc.com/news/world-africa-25402865>

Outbreak of civil war

“The cancer of Africa is tribalism” – Bishop Emeritus Max Gassis.⁶⁴

It is not surprising that the political conflict between Kiir and Machar devolved into tribal war. When a state is absent or dysfunctional, as was the case in South Sudan, people fall back on clan and tribe for support. Kiir’s action in the summer of 2013 created a political crisis, which heightened ethnic tensions, fears, and outbreaks of violence. Just before the war erupted, one NGO official noticed that, amidst the increasingly fragile political environment, soldiers in the barracks of security forces were distinctly separated into Nuer and Dinka groups. At that point she knew it was going to explode.⁶⁵ On December 15 a fistfight and then a firefight erupted in military barracks in Juba between Dinka and Nuer soldiers. The next day President Kiir, claiming without evidence that Machar was planning a coup,⁶⁶ unleashed his guard in a campaign of ethnic cleansing planned well in advance.⁶⁷ Dinka forces swept through Juba, systematically killing Nuer men, assaulting women and children, and destroying property in Nuer neighborhoods. Refugees, numbering 16,000, nearly all Nuer, flooded into UN compounds within 24 hours of the outbreak.⁶⁸ Ultimately this campaign of ethnic cleansing was so extensive that Juba today “is a Dinka town”, which seriously complicates the task of national unification and reconciliation.⁶⁹

Riek Machar escaped the crackdown and fled north to Bor, the site of the infamous massacre. There the Nuer White Army, which had reconstituted itself in response to the atrocities in Juba, joined Machar and began its own scorched earth assault on Dinka communities. The widening conflict thus took on a powerful ethnic character, with atrocities on all sides. The SPLA operated as a de facto Dinka force while Machar’s faction, SPLA-In Opposition (SPLA-IO) mobilized Nuer. Government forces often used scorched

⁶⁴ Bishop Emeritus Macram Max Gassis of Diocese of El Obeid, as quoted in “Report on a Briefing on Sudan and South Sudan”, Africa Faith & Justice Network, July 11, 2018.

⁶⁵ Casie Copeland, working with the NGO PACT, was visiting security forces when she noticed the tribal divisions. Interview, May 24, 2019.

⁶⁶ Vertin, *A Rope From the Sky*, Chapter 16. Vertin’s account demolishes Kiir’s argument of a coup attempt, and Ambassador Page confirmed that she didn’t believe it at the time.

⁶⁷ Under a pretext of cleaning the streets of Juba, Kiir’s guard systematically demarcated Nuer areas for assault. Martell, *First Raise A Flag*, Chapter 12.

⁶⁸ Vertin, *A Rope From the Sky*, provides an hour by hour, day by day account of the outbreak of the civil war, Chapter 16.

⁶⁹ This was how former U.S. Ambassador Susan Page described the situation.

earth tactics, which resulted in massive ethnic cleansing in Nuer areas, and NGO representatives I spoke with talked of schools and clinics destroyed and tanks running over houses.⁷⁰ With so many other ethnic communities in the land, the conflict sparked multiple vortices, not just two sides. Marauding militias do not fight as armies, but they assault communities, producing a nightmare of pillaging, massacres, rapes, child soldiers, and famine.

In these conditions, starvation became a tool of armed combatants.⁷¹ As a major report documented, “both government and opposition forces used starvation tactics, causing hunger, disease, social breakdown and heightened mortality”. Famine now stalks a land that “possesses some of the most agriculturally productive land anywhere in the world”, in which the people rarely experience hunger in times of peace and stability.⁷²

As the conflagration spread, the economy virtually collapsed, making people dependent on international aid to survive. Indeed, the UN reported a need of \$1.5 billion annually in aid to support people inside the country and another \$2.7 billion for its refugees.⁷³

When the civil war erupted, some western advocates seemed intent on picking sides with Kiir as the leader of the legitimate government against a nefarious Machar.⁷⁴ But the government itself quickly “ethnicized”.⁷⁵ Reports by the Commission on Human Rights in South Sudan paint a picture of widespread atrocities and ethnic cleansing on all sides, including “rapes, gang rapes, sexual mutilation, abductions into sexual slavery”, use of child soldiers, and indiscriminate killings. Indeed, the Commission documented a catalogue of violations by government forces that amount to war crimes. In one example, more than 8,000 young men recruited by

⁷⁰ Interviews with a Sudan expert for the International Crisis Group and a consultant for the Troika, May 2015.

⁷¹ Report of the Commission on Human Rights in South Sudan, to the UN Human Rights Council, Geneva, March 12, 2019.

⁷² “Accountability for Starvation Crimes: South Sudan”, Policy Brief No. 2 World Peace Foundation, June 2019.

⁷³ Peter Beaumont, “South Sudan’s War: A Relentless Litany of Almost Unimaginable Horrors”, *The Guardian*, February 28, 2019.

⁷⁴ Marcus Riley, “Acrimonious Acronym: South Sudan’s SPLA Used to Mean Hope Against Sharia Law. Now Rebels Twist It”, *PJ Media*, March 3, 2018, <https://pjmedia.com/trending/acrimonious-acronym-south-sudans-spla-used-to-mean-hope-against-sharia-law-now-rebels-twist-it/> One American advocate described the Kiir regime as the “legitimate, sovereign government” of South Sudan (e-mail March 16, 2018).

⁷⁵ This was the term used by an NGO leader on the ground when the civil war erupted (Interview, 2015).

government security forces were given free rein with the invitation “to rape beautiful women”, loot properties, and seek revenge against a civilian population in Leer.⁷⁶ The Commission also documented how Kiir exacerbated ethnic tensions by splitting ten states into thirty in 2015, creating a Dinka gerrymander, which further marginalized the Nuer and strengthened Machar’s hand.⁷⁷ The sad irony is that the two antagonists are professing Christians – Kiir is Catholic and Machar a Presbyterian. Tribal passions, financial interests, power stakes, and fear seem to overwhelm Christian convictions, creating a situation of “zero trust”.⁷⁸

This fratricidal conflict has been “punctuated by multiple rounds of mediation followed by renewed bloodshed”.⁷⁹ International and regional actors have repeatedly pressed the parties to negotiations and ceasefires. A peace treaty signed in 2015 provided brief respite but it collapsed early in 2016. The most recent accord signed in September in 2018 has reduced the violence, but it remains fragile and flawed, as it shut out key civil society actors and has postponed benchmarks, particularly the thorny problem of providing security guarantees for contending troops.⁸⁰

One reason for the fragility of negotiated settlements is that antagonists are insulated from the consequences of the strife they produce; indeed, perverse incentives operate. With international organizations spending millions of dollars on negotiations, large delegations of opposing parties fly into Addis Ababa, Arusha, or Nairobi, where they are feted in luxurious fashion. One NGO official observed in 2015 how delegations enjoy “highlife” in “five-star hotels”, sometimes spending money on prostitutes and often joining each other for sumptuous meals and drinks, completely disconnected to the violence and pillaging their troops commit. Disgusted church leaders have called for less elevated treatment.⁸¹

⁷⁶Report of the Commission on Human Rights in South Sudan, to the UN Human Rights Council, Geneva, March 12, 2019; “South Sudan: Government Troops and Militias Given Free Rein to Commit New Atrocities”, Amnesty International News, September 19, 2018; Commission on Human Rights in South Sudan: Statement to the Media, Nairobi, February 20, 2019.

⁷⁷ “Report of the Commission on Human Rights in South Sudan, to the UN Human Rights Council”, Geneva, March 12, 2019.

⁷⁸ “Report of the Commission on Human Rights in South Sudan”, 2019, paragraph 19.

⁷⁹ Philip Pullella, “Pope reactivates plans for South Sudan trip”, Euronews, Reuters, March 16, 2019.

⁸⁰ International Crisis Group, “Salvaging South Sudan’s Fragile Peace Deal”, 13 March 2019.

⁸¹ Phone conversation with country representative for a large Christian NGO, July 2015.

The role and potential future of churches in South Sudan

In contrast to the failure of the violent conflict between political rivals, Christian churches in South Sudan form the nucleus of a potential peaceful civil society.⁸² During the conflict with Khartoum, when Christian congregations became cut off from their northern counterparts, leaders saw the need to create a broad ecumenical body, which they called the New Sudan Council of Churches. Co-founded by Catholic Bishop Paride Taban and Anglican Bishop Nathaniel Garang, it included all major church bodies – Catholic, Episcopal, Presbyterian, Pentecostal, Orthodox, and other associations. It reunited with northern branches during the interim period – from the end of the war in 2005 to independence in 2011. After South Sudan's independence, its name changed to South Sudan Council of Churches (SSCC). What makes the body unique is that it maintains an affiliation with the World Council of Churches, which otherwise does not have Catholic members. Though fragile, it represents the foundation, of civil society, reconciliation, and development, as recognized by the work of Catholic Relief Services to anchor its peacemaking work with the SSCC.⁸³

The ecumenical cooperation in the SSCC extends beyond fellow Christians, as Christian leaders maintain good relations among the Muslims, and often (though not always) show respect for traditional African religious practices. But the government of South Sudan did not provide a big enough role for such civil society actors.

That potential is represented in the figure of Bishop Paride Taban, who saw how a whole generation lost the opportunity for education during the war with Khartoum, and how the turmoil often exacerbated tensions between ethnic groups and delayed economic progress. As he recounted, because many Africans of South Sudan are a pastoral people, wealth and endowments are often measured by cattle. Ancient tribal practices, such as cattle rustling, might operate in a relatively benign way in times past – like counting coups among the Plains Indians in America – but, with the infusion of guns into the country, became untenably destructive. So, Bishop Taban envisioned a demonstration program – a peace village – where the people from diverse tribes would learn modern agricultural to move the

⁸² Werner et al., *Day of Devastation, Day of Contentment*, 2000; Elijah M. Brown, *The Road to Peace: The Role of the Southern Sudanese Church in Communal Stabilization and National Reconciliation*, Doctoral Dissertation, University of Edinburgh, 2008.

⁸³ Stephen Hilbert, U.S. Conference of Catholic Bishops foreign policy advisor, Washington DC, Phone conversation, April 29, 2019.

economy beyond cattle farming, where children would receive a quality education, and where reconciliation practices were woven throughout. This Kuran Peace Village stands out as an island in the chaos of the surrounding countryside.⁸⁴

Time and again, however, the failure of political leaders undermined this potential resource.

One of the things that makes indigenous churches effective is their links to western NGOs, whose staff work in some of the most parlous circumstances on earth. I observed the heroic work of these NGOs, building schools and universities, health clinics, agricultural projects, and micro-enterprise cooperatives. Catholic Relief Services, for example, currently has 700 staff across the sprawling country, working on food security, conflict early warning, schools, sanitation, reconciliation, and peacemaking. But the “Locust Effect” – in which predatory violence can wipe out years of development work – is an ever-present danger.⁸⁵

As clashes between government troops and insurgents plunged the country into chaos, local bishops and pastors have provided singular moral voices, chastising the contesting political and tribal factions, striving to mediate the dispute, and offering their help in the long and painful process toward reconciliation and recovery. Andrew Natsios, former US-AID administrator and special envoy to Sudan, described churches as “the most functional indigenous institutions”, going so far as to say they will determine South Sudan’s future.⁸⁶ Another observer concluded that “the churches are the only players left standing on the South Sudan stage who have any moral credibility and national recognition”.⁸⁷ A survey of South Sudanese people by the U.S. Institute of Peace found that over 80% of respondents considered religious actors and institutions “very important” to bringing peace in the country.⁸⁸ While decades of war have weakened

⁸⁴ Eisman, *Peace Deserves a Chance: Bishop Paride Taban, A Sudanese Shepherd*, 2011.

⁸⁵ Gary Haugen, *The Locust Effect: Why the End of Poverty Requires the End of Violence* (New York: 2014). South Sudan is a vivid example of how predatory violence wipes out development initiatives.

⁸⁶ Andrew S. Natsios, *Sudan, South Sudan, & Darfur: What Everyone Needs to Know* (New York: Oxford University Press, 2012).

⁸⁷ James Jeffrey, “How Christian Churches Are Trying to Save South Sudan”, *The American Conservative*, Aug. 20, 2018, <https://www.theamericanconservative.com/articles/how-christian-churches-are-trying-to-save-south-sudan/>

⁸⁸ Jacqueline Wilson, “The Religious Landscape in South Sudan: Challenges and Opportunities for Engagement”, United States Institute of Peace, 148, June 2019, p.

church structures, strengthening and empowering this vital sector of civil society is imperative.

Pope Francis and Vatican diplomacy

The crisis in South Sudan has become a pressing concern for Pope Francis, who has engaged in personal mediation to help end the conflict. This culminated dramatically in a spring 2019 meeting at the Vatican with Salva Kiir, Riek Machar, and leaders of other factions, personally hosted by Pope Francis and Justin Welby, Archbishop of Canterbury. With pivotal facilitation by the South Sudan Council of Churches, the “spiritual retreat for peace” at the Vatican focused on implementing the September 2018 peace accord, which called for a subsequent power-sharing government.⁸⁹ In a dramatic gesture, Pope Francis, on the eve of Holy Week, knelt and kissed the feet of each of the antagonists. As he pleaded with the leaders to work toward a unity government, he said, “I am asking you as a brother to stay in peace. I am asking you with my heart, let us go forward. There will be many problems, but they will not overcome us. Resolve your problems”.⁹⁰ This stunning example of Papal diplomacy may have spurred, or shamed, the antagonists to continue negotiations toward a power sharing pact. Salva Kiir said he “trembled” when the Holy Father kissed his feet.⁹¹ The Pontiff kept pressure on the rivals to form a transitional unity government with an extraordinary 2019 Christmas day appeal.⁹² These efforts helped propel a separate peace pact on January 13, 2020 between the government of South Sudan and opposition groups not party to the 2018 accord, clearing away that hurdle to the proposed power-sharing government.⁹³

11. Citation provided by R. Drew Smith, “Amidst Political Foot-Dragging, Religious Leaders Pursue Alliances Toward Peace in South Sudan”, Unpublished paper, 2019.

⁸⁹ Carol Glatz, Catholic News Service, “South Sudan Leaders Will Head to Vatican Meetings, Retreat”, *American Magazine*, April 3, 2019: <https://www.americamagazine.org/politics-society/2019/04/03/south-sudans-leaders-will-head-vatican-meetings-retreat>

⁹⁰ “Pope Kisses Feet of South Sudan Leaders, Urges Them to Keep Peace”, *Reuters*, April 13, 2019.

⁹¹ Garang Malaak, “‘I Trembled’, Kiir’s Spiritual Retreat Experience in Rome”, *Eye Radio*, <https://eyeradio.org/i-trembled-kiirs-spiritual-retreat-experience-in-rome/>

⁹² Philip Pullella, “Pope, Religious Leaders, Send South Sudan Rivals Christmas Peace Appeal”, *Reuters*, December 25, 2019, <https://www.reuters.com/article/us-southsudan-politics-pope-christmas/pope-religious-leaders-send-south-sudan-rivals-christmas-peace-appeal-idUSKBN1YT0BD>. The appeal was co-signed by Anglican Archbishop Weldon and Rev. John Chalmers, former moderator of the Church of Scotland.

⁹³ The agreement between the government of South Sudan and the country’s Op-

As of this writing, halting progress has been made toward this power-sharing arrangement.⁹⁴ Given the lack of trust, the mutual grievances, and the intense pressures to defend their ethnic bases of support, it remains unclear whether the principal antagonists (Kiir and Machar) possess the capacity to run a genuine unity government. But in the short term, international actors may need to invest in the fiction that these men are potential leaders of the country, to prevent renewed civil war. This illustrates the theme of this chapter: that a world order framed around sovereign states needs new norms and mechanisms for dealing effectively with failed states or local leaders without genuine legitimacy.

Going forward

In a major report to the Council on Foreign Relations, Kate Almquist Knopf, formerly of World Vision, called for a “clean break” from the current leaders, antagonists, and power structures of South Sudan. Her proposal envisioned an *international transition administration* to govern the country and build capacity for eventual self-rule.⁹⁵ Only the most extreme cases of state failure warrant such a choice, but because South Sudan “is a country in name only” an international transitional administration “remains the only viable option”, according to the report. Such a transition would require a negotiated exit for both Kiir and Machar, because neither of the major antagonists has the capacity or legitimacy to govern long-term.⁹⁶

A key challenge of this option lies in the sovereignty premise of the international system: there is no way to force parties to accept such a trusteeship. After the signing of the CPA in 2005 and then after independence in 2011, former Ambassador Susan Page observed how SPLM leaders, deploying their “sovereign authority”, would not even listen to modest recommendations for how to create a financial system or a functioning state, with devastating results.⁹⁷ Having a trusteeship at the very beginning, she

position Movements (SSOMA) was brokered by the Saint Egidio Community and signed in Rome on January 13, 2020. Linda Bordoni, “South Sudan Leaders: ‘How can we not bring peace if the Pope pushes us to do so’”, Vatican News, January 14, 2020: <https://www.vaticannews.va/en/world/news/2020-01/south-sudan-rome-declaration-pope-saint-egidio.html>

⁹⁴ “South Sudan Rivals Agree to Meet Unity Government Deadline”, *The New York Times*, January 17, 2020.

⁹⁵ Knopf, “Ending South Sudan’s Civil War”.

⁹⁶ Knopf, “Ending South Sudan’s Civil War”, p. 18.

⁹⁷ *On Africa Podcast*, Part 3, Interview with Susan Page.

observed, might have ensured the proper development of South Sudan. Oil revenue, for example, could have been placed in a trust to build infrastructure.⁹⁸

Other actors question the viability or practicality of a trusteeship or transitional authority in the case of South Sudan, particularly at this point. As noted earlier, multilateral transitional administrations are fraught with difficulties, and delicate relationships must align just right to work. Moreover, the sheer geographic size and ethnic diversity of the land, not to mention the deep wounds of division produced by the civil war, present formidable challenges to the best administration.⁹⁹

Experienced observers, however, do agree with the *premise* of the trusteeship recommendation: the ultimate need for a clean slate to allow new leadership to emerge. Ambassador Susan Page mused that it might be best for both Salva Kiir and Riek Machar to step down, since neither leader seems to have the desire, or capacity, to implement the power-sharing agreement.¹⁰⁰ John Ashworth, who has worked in church communities in South Sudan for over three decades, similarly observed that while Kiir and Riek Machar cling to power, “they have little influence on what actually happens on the ground in the bush”. Kiir is dependent on his advisers and a powerful Dinka Elders Council, who “pull the strings and make sure they control the important positions in the country”. Meanwhile, Riek Machar “is merely a representative of his Nuer people and doesn’t represent the entire opposition as a whole. There are countless opposition groups who do not want to be governed by either the Dinka or Nuer”. It will take time, however, to develop a new generation of leaders prepared to take their place.¹⁰¹ The international sovereignty assumption, however, hamstrings efforts to prepare for this transition.

⁹⁸ *On Africa Podcast*, Part 2. Interview with Susan Page.

⁹⁹ I am indebted to Academy member Paolo Carozza for pointing out the problems of multilateral trusteeships. Casie Copeland commented on the logistical challenges of such a transitional authority in South Sudan.

¹⁰⁰ In Part 3 of the *On Africa Podcast*, Susan Page said she wishes they would both step down.

¹⁰¹ John Ashworth, “Interview with a Catholic Missionary in South Sudan”, May 28, 2019, <https://docs.google.com/viewer?a=v&pid=forums&srcid=MDAxODM4NzI0NjU3MTQxNjA3OTIBMTgyMzQ0NDg1NjY2OTYzMDcyNzEBaEpWMW-doZC1BUUFKATAuMQEBdjI&authuser=0> In commenting on a draft of this paper, Ashworth noted that no second tier of leaders is prepared to take over right now. However, John O’Brien, country director for Catholic Relief Services remarked that there is a new crop of leaders waiting in the wings (Interview, May 9, 2019).

The tragedy of South Sudan: a living lesson

In human history we have seen iterations of international order created in the wake of violent conflict and strife. After the 30 Years War, exhausted European leaders agreed at the Peace of Westphalia to create a system based on sovereign nations. At the end of the Second World War the United States helped to create and lead a new international world order based on international covenants, treaties, security guarantees, and trade. That system is breaking down, and no robust international system is in place to impose order or governance on a failed state, or to enforce responsibility on the part of advanced nations. R2P is not strong enough, trusteeship is too fraught, and the UN is structurally inadequate. The world clearly needs a new order not based solely on sovereign independence but also rooted in sovereign obligations. What that might be in full is beyond the scope of this paper. But the tragedy of South Sudan underscores the inadequacy of current international institutions and hints at some possible lineaments of a new system.

First, national and international leaders must explore better forms of trusteeship, matching nations with capacity to the interests of local people. The laudable principles of R2P and the idea of Sovereign Obligations also must be instantiated in real institutions with teeth. One example would be a much tougher and more transparent international regime against money laundering to prevent powerful outside actors – “tycoons, brokers, and multinational corporations” – from plundering the wealth of vulnerable nations with weak institutions, as occurred with South Sudan.¹⁰²

In addition to these long-term goals, a broad consensus is emerging on the need to invest in fragile states.¹⁰³ Akin to the capacity-building prong of R2P, this aim seeks to prevent societies from descending into crisis by increasing international investment in the poorest and most fragile societies. Strengthening such societies requires changes in development strategies that

¹⁰² “The Taking of South Sudan: The Tycoons, Brokers, and Multinational Corporations Complicit in the Hijacking the World’s Newest Nation”, *The Sentry*, September, 2019, <https://thesentry.org/reports/taking-south-sudan/>

¹⁰³ United Nations and World Bank, “Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict” (Washington DC: World Bank, 2008); United States Institute of Peace, “Beyond the Homeland: Protecting America from Extremism in Fragile States”, September 2018; Testimony by Archbishop Timothy P. Broglio, Chairman, Committee on International Justice and Peace, United States Conference of Bishops, House Appropriations Committee on State, Foreign Operations and Related Programs, March 12, 2019; and United States Conference of Catholic Bishops, “Framework for Foreign Assistance Reform”, May 14, 2009.

emphasize governing capacity, conflict mitigation, civil society empowerment, and uplift for the poor. The World Bank, for example, emphasizes inclusive decision-making to foster participation of women and young people, “creating incentives for peaceful and cooperative behavior”, and “addressing structures that feed grievance”.¹⁰⁴ The U.S. Institute of Peace recommends helping fragile societies build resilience through increased funding for financial transparency, human rights, freedom of press and religion, and other democracy-building activities.¹⁰⁵ Finally, The U.S. Catholic Bishops are pressing for more robust diplomatic and development-centered engagement that emphasizes reducing poverty, strengthening civil society actors, and mitigating climate change. With respect to the most fragile and conflict-prone states, the Bishops also recommend developing an “expeditionary development approach that is more rapid, nimble, and risk-tolerant”.¹⁰⁶

Unfortunately, the rise of nationalist populism renders nations less amenable or able to develop and coordinate such approaches.

But just because current international mechanisms are inadequate to address state failure does not mean that we should abandon the people of South Sudan. It does suggest a hard-eyed acceptance that no ideal solution to the current tragedy is on the horizon. Ameliorating the situation will take patience and sustained engagement, perhaps for years, doing what is possible and biding time for when windows open to new governing arrangements – to a new generation of leaders not compromised by corruption and atrocity.

Such international engagement must build upon the fragile peace accord of 2018, which has brought some respite for aid and development. Parts of the country have stabilized, allowing select local governments to function, NGO operations to resume, and some schools to reopen. The UN World Food Program has creatively negotiated with factional leaders to improve humanitarian access and food security.¹⁰⁷ The massive public appetite for peace is a positive resource.¹⁰⁸

¹⁰⁴ World Bank, “Pathways for Peace”, 2018.

¹⁰⁵ United States Institute of Peace, “Beyond the Homeland”, 2018.

¹⁰⁶ Testimony by Archbishop Timothy P. Broglio, 2019; and United States Conference of Catholic Bishops, “Framework for Foreign Assistance Reform”, 2009.

¹⁰⁷ Carol Van Dam, “WFP Executive Director Hopeful of ‘New Day’ in Sudan”, *Voice of America*, October 28, 2019. Casie Copeland, long-term champion for the people of South Sudan, now works for the UN World Food Program, whose director, David Beasley, has undertaken creative initiatives to deliver relief aid to remote areas of the country.

¹⁰⁸ John O’Brien, Interview, May 2019.

Because deadlines for the formation of a unity government continue to be pushed out,¹⁰⁹ international pressure on the antagonists must be maintained. A true unity government must reckon with, and check, Dinka domination of Salva Kiir.¹¹⁰ Efforts to locate and freeze ill-gotten money must be intensified and arms shipments stopped. International actors, from the Troika to the African Union to IGAD and the UN, must continue to invest in stabilizing the country and providing security guarantees central to the peace accord (like cantoning rival troops, bringing them in from the bush where they are more amenable to discipline). Helping to expand areas of relative stability depends on such security guarantees.

Finally, religious and civil society leaders agree that sustainable peace hinges on “a robust reconciliation process” to heal divisions and restore trust among the people. Repeated religious initiatives at reconciliation, however, have been stymied by the “intensity of ethnic antagonisms” and a lack of will among political rivals, but also by “inadequate institutional and financial resources”.¹¹¹ Sadly, in 2019 the United States government suspended its funding of reconciliation initiatives of the South Sudan Council of Churches.¹¹² Such initiatives must be rekindled.

If there is a *responsibility to protect*, a *sovereign obligation*, it certainly belongs to the United States. Given its pivotal role in the birth of South Sudan, the U.S. bears a responsibility to do what it can to help stabilize this broken land and heal its shattered people. But this responsibility also belongs to

¹⁰⁹ Antagonists pushed their previous November 12, 2019 deadline forward 100 days, into February of 2020, and on January 16, 2020 took steps to meet that deadline. Benjamin Takpiny, “President, Opposition to Extend Talks in South Sudan”, Anadolu Agency, November 7, 2019, <https://www.aa.com.tr/en/africa/president-opposition-agree-to-extend-talks-in-ssudan/1638835>; “South Sudan Rivals Agree to Meet Unity Government Deadline”, *The New York Times*, January 17, 2020.

¹¹⁰ Dr. Francis Mading Deng, distinguished scholar and first ambassador the United Nations for South Sudan, observed that in the “polarizing conflict perceptions can overshadow reality”, so that “Dinka are being seen as having replaced the Arabs as the rulers of an ethnically unjust system”, which paradoxically leads the Dinka to see themselves as targeted by others for “a genocidal onslaught”, <https://paanluelwel.com/2019/09/06/national-dialogue-final-communicues-from-three-regional-conferences-upper-nile-equatoria-and-bahr-el-ghazal/>

¹¹¹ Lucy Poni Modi, Elias O. Opongo, and R. Drew Smith, “South Sudan’s Costly Conflict and the Urgent Role of Religious Leaders”, *The Review of Faith & International Affairs*, Vol. 17, Summer 2019. This study is based on dozens of interviews with South Sudanese religious and civil society leaders conducted in 2018.

¹¹² Stephen Hilbert, U.S. Conference of Catholic Bishops foreign policy advisor, Washington DC, Phone conversation, April 29, 2019.

those of us in the West (especially the United States) who were involved in the advocacy campaign that led to independence. Subdued responses to the complexities of internecine conflict must be replaced by vigorous, if sober, activism to press advanced nations and international agencies to help the people of South Sudan rescue their fledgling nation.¹¹³

The pleas of one insider, echoed in numerous ways by many others, underscore this responsibility: “Don’t abandon the people of South Sudan... Don’t turn your backs... Don’t make the people suffer for the failure of the leaders...”.

¹¹³ An example is American scholar R. Drew Smith, who has been helping facilitate peace initiatives in South Sudan by the African ecumenical group, African Council of Religious Leaders-Religions for Peace. Smith, “Amidst Political Foot-Dragging, Religious Leaders Pursue Alliances Toward Peace in South Sudan”, 2019.

THE AFRICAN STATE: DEVELOPMENT AND THE COMMON GOOD

PAULUS ZULU¹

Introduction

The formation and character of modern African states present more complexities and nuances when compared to states in other parts of the world. The shape and character of the state derive from diverse influences, the colonial heritage, ancestral political traditions and ideological contestations internal and external, particularly of the Cold War, all of which have tampered with the evolutionary processes causing fractured histories and contradictory trajectories. Secondly, while certain commonalities, for instance, “developing, underdeveloped and poor states; or for that matter, failed states” occur with such rapidity in Africa that it becomes almost axiomatic to refer to an African state, huge differences exist. There are variations between Sub-Saharan and North African states in ecological, historical and religious experiences. For instance, while North Africa has a Mediterranean culture and a strong Arab influence, Sub-Saharan Africa does not. What dominates in Sub-Saharan Africa is a post-colonial culture intermingled with traditional cultures, where the colonial dominates in terms of the economy, religion, statehood and governance. However, one common denominator, colonisation, exists in almost all African states. With the exception of Liberia and Ethiopia, all African states or nation-states, whichever the case may be, have experienced colonialism for considerable varying periods, the last being between 1884 and 1957. This gave rise to a specific brand of nationalism almost common among all post-colonial states.

The brand of African nationalism that led to the emancipation of African states from their European colonisers did not create nations, although it succeeded in attaining “liberation”. Therefore, the legitimacy of the nation and the legitimacy of the state were not necessarily coterminous.² Amira Kheir contends that the ideology of a nation as the sole natural political formation upon which states are built set the nation-state as the ideal. The African nation-state was thus a creation of contrived national identi-

¹ Maurice Webb Race Relations Unit, University of Kwa Zulu Natal.

² Amira Kheir: 2010: “Why Nation and State is Wrong in Africa”, Pambazuka News.

ties first on the European model of states, and secondly upon a contrived nationalism deriving from the nationalism of independence movements. These two processes result from the colonial experience and exclude the precolonial conception of the state. Kheir, therefore, maintains that the post colony represents “arrested development of internal political formations” by colonial powers in the belief that this represented “a model of statehood and political and economic development of post-enlightenment thought”. The result was interference with the natural progression leading to the hindrance of unitary formation of identities creating disparate and competing claims to nationhood.³

Mamdani goes beyond the political economy model and historicises the African post-colonial state, particularly the reproduction of racial and ethnic identities through the bifurcated conception of citizen and subject. “The colonial state divided the population into two: races and ethnicities. Each lived in a different legal universe”, with races constituting civil society while ethnics were subjects under customary law. While colonists and other non-natives were citizens and enjoyed rights albeit unequally, natives as subjects of customary law were subjects of “non-circumscribed” power for “custom was enforced”. Besides, “each ethnic group had to have its own law”. By drawing a fundamental distinction between indigenous and non-indigenous persons, and subjecting indigenous persons to customary law, colonial law reinvented ethnicity. This was simply because “In the indirectly-ruled state, there was never a single customary law for all natives. For customary law was not racially specific. It made a horizontal distinction in law, between different ethnic groups. This was not a cultural but a legal distinction”. Above this, rights belonged to non-natives. Therefore, “Nationalism was a struggle of natives to be recognised as a trans-ethnic identity, as a race, as ‘African’, and thus – as a race – to gain admission to the world of rights to civil society which was a short form for civilised society”.⁴ This clearly locates the dilemma that the African nation-state was to encounter post-independence, and has continued to the present. Thus, while colonialism did not invent ethnicity, as Bellucci maintains,⁵ the formalisation and further, legalisation of ethnicity rendered ethnic sen-

³ Kheir: Op. Cit. 2.

⁴ Mahmood Mamdani: 2005: “Political Identity, Citizenship and Ethnicity in Post-Colonial Africa”. Columbia University. Page 6.

⁵ Beluce Bellucci: 2010: “The State in Africa”. *The Perspective of the World Review*: Volume 2 Number 3 December.

timents more salient thus entrenching new identities which were to create problems for the independent nation-states. The consequence is that most African states still experience challenges experienced by pre-state formations, ethnicity, religious conflicts, social and political strife arising from inequalities and inequity in the distribution of resources across regions and social strata within the state.

There is almost consensus that the *raison d'être* for European colonialism in Africa was to exploit the vast natural resources that Africa as a continent possessed. However, despite the much-vaunted natural resources, more states in Africa rely on donor funding, or loans from the World Bank and the International Monetary Fund (IMF), than is the case with those considered socially and economically independent. Economically emasculated, and politically compromised, the African state plunged into political and economic demise especially in the face of economic progress in the contemporary international or global economy. For instance, as reflected in the Human Development Index (HDI), the most advanced state in Africa, the Seychelles, has an HDI of 0,797 and occupies the 62nd position in the world, while the least developed, Niger, lies at position 189 in the world with an HDI of 0,354. Of the 53 states in Africa, 19 reflect an HDI of under .50 while only 13 have an HDI above 60.⁶

On top of this are claims that besides experiencing some of the healthiest annual growth rates following the great depression of 2008, “Sub-Saharan Africa remains one of the most unequal regions globally”.⁷ The publication lists “the limited distributive capacity of the state, which often manifests in the ‘natural resource curse’ the urban bias of public policy, and ethnic and gender inequalities among the three basic drivers of inequality”.⁸ Fonchingong cites Edigheji as attributing Africa’s development predicament to “the institutional nature and institutional perspective of the African state since independence that account for the continent’s poor social and economic performance”.⁹

Since independence, starting from the early 1960s the African nation-state has experienced vicious cycles of instability, poverty and sustained underdevelopment, rendering analysts to refer to the African na-

⁶ UNDP Report: 2018.

⁷ UNDP Regional Bureau for Africa 2018.

⁸ Ibid.

⁹ Fonchingong: 2008: “The State and development in Africa”. *African Journal of International Affairs*. Vol. 8, Nos 1&2, pp. 1-21. Page 2.

tion-state as a fragile construction. Commenting on the political fragility of African states, Barka and Ncube attest that the period between 1960 and 2012 witnessed over 200 military coups d'état with 45% of them being successful and resulting in a change of government. They aver that, "Of the 51 African states selected in our sample, only 10 countries have never experienced a coup d'état".¹⁰ Remarkably, all the non-fragile states by this measure are in the top 20 positions in Africa with regard to the Human Development Index with six – Mauritius, Tunisia, Botswana, South Africa, Egypt and Morocco, in that order – sitting in the top ten positions. Only Malawi, n. 36 and Eritrea, n. 43 have HDI indices of below .50. The authors proceed to state that in the past 52 years 80% of African states have experienced at least one coup or failed coup attempt, and 61% have suffered several military coups ranging from two to ten in number".¹¹ This locates the African state in a very tenuous position regarding development, an attribute axiomatic in attaining universal destination of the goods of the earth. Admittedly, the African state in the context of modern nation-states is of recent origin. However, notwithstanding its maturity, the position calls for a close look at the conditions that militate against peace and stability and development in the African nation-state.

Theoretical framework

This paper examines the role of the African state, and particularly the nation-state in development, where the level of development is functional to the state's capacity to effect universal access to the common good. The paper makes a distinction between the state and the nation-state maintaining that only a politico-legal requirement is necessary for the formation of the state, whereas in the nation-state, affective feelings of identity with and belongingness to the legal entity are a precondition for its sustainability. A homogeneous political culture, at least, with regard to the political system and the state's capacity to deliver services to its constituencies, is necessary to avoid citizen alienation from the state and its programmes. On the contrary, contending institutional cultures and the state's performance may militate against the sharing of a common vision of the state, what Sandel calls "an animating vision of the good society and the shared values of citizenship".

¹⁰ Habiba Ben Barka and Mthuli Ncube: 2012: Political Fragility In Africa: Are Military Coups d'Etat a Never-Ending Phenomenon? African Development Bank.

¹¹ Ibid.

The theoretical position taken in this paper is that the state's ability to deliver the common good is a function of its organizational integration or social cohesiveness. Added to this is the level of socio economic development in the state. Integration reduces the number of competing demands on the state thus enabling the state to focus on the key issues facing government as the principal allocator and distributor of goods and services that constitute the national wellness of citizens. Numerous competing demands arising from the diverse elements constituting the state, where diversity evokes negative or competing conceptions of the other, impede social and economic development in the state, thus depriving the state of the very requirement for effective performance. This constitutes a vicious cycle, which in turn increases the state's dependence or sectional forces. Thus, racial, ethnic and religious competitiveness to name a few, have consistently weakened the state's capacity as the various segments vie for hegemony.

Historical perspective

The African nation-state has undergone a radical metamorphosis shaped by changes in the mode of production from a subsistence non-monetary precolonial economy with limited trade in some regions to a commercial internationalised economy, and finally to a global capitalist economy. The greatest catalyst to these changes was European expansion culminating in the creation of new state boundaries, encompassing new polities and a new state administration predicated on the European system. The evolution of the African nation-state took phases, each determined by changes in political relations between the indigenous system and the colonial power and later by the resulting politico-economic positions within the states themselves. The predicament of the African state in development falls within these evolutionary forces.

The pre-colonial state

While there are contending versions of African nation-states pre-colonialism, what appears to be the common narrative is that despite differences in form and magnitude, the organizational and social relations were hierarchical, hence, "they acknowledged social divisions" and "were aware of the mechanisms of domination and exploitation".¹² While 'patriotic' au-

¹² Bellucci: 2010: Op. Cit. page 15.

thors paint a picture of communal egalitarianism mainly because of the social system that encouraged exchanges of gifts, this paper concurs with Bellucci in observing that “In gift economies of segmented, little stratified societies, the giver assumes superiority in relation to the receiver”.¹³ The Nguni society in South Africa is a case in point, where it was common practice for relatively well-to-do individuals to provide economic support to the poor to create own wealth through the practice of stock sharing (*ukusisela*), where a cow was availed as a loan to a stockless person. This was to enable the poor to raise their own stock, on a provision that every alternative calf born to the cow becomes the recipient’s property. While the benefactor demanded no fealty, relations between benefactor and beneficiary were never those of equals. Social and political organisation in pre-colonial states was, therefore, hardly expressive of an egalitarian society.

Religious symbolism and mythology were principal instruments of controlling and maintaining social organisation, and so was ritual. Similar to most agrarian or land-dependent pre-industrial societies, rulers believed in their divine ordainment, and wielded inordinate power over their communities. It was no surprise, therefore, that colonialism exploited both military superiority and elite collaboration to effect its mission. The view that Africans had no state formation but rather lived as loosely organised collectivities of clans and tribes is a misplaced observation. Bellucci, quoting Dizon, maintains that, “If we were to make a distinction between one type or another, the number of African states that have a separate political organisation {the empires, kingdoms, city states, chieftainships, or sultanates} would certainly be greater than that of societies considered to be without a state”.¹⁴

The exploitative colonial state

Explaining the problematique of the nation-state in Africa, Lloyd Sachikonye asserts “In the African context, the nation-state with a few exceptions derives a great deal of its territorial integrity from the colonial boundaries carved out arbitrarily in the 19th century”.¹⁵ European colonial powers decided, based on their economic interests, to allocate unto themselves chunks of African territory at the Treaty of Berlin in 1884. Thus, on the stroke of the pen, new geo-political entities came into existence, with

¹³ Bellucci: 2010: Op. Cit. page 14.

¹⁴ Bellucci: 2010: Op. Cit. page 15.

¹⁵ Sacikonye: 1996 in Olukoshi and Laakso: Op. Cit. page 137.

boundaries that took little account of the social, political and economic relationships of the indigenous nations that they were to colonise. In some instances, some populations were split across two or more territorial states. The modern African state is, therefore, both artificial and culturally diverse. Above all, economic and not socio-cultural imperatives predicated the geo-political and legal arrangements.

The articulation of the means of production and consequently the social wellness of colonial subjects contradicted the logic of the common good, with two production systems: the subsistence form for the indigenous people, and the capitalist form for the colonists. This arrangement ensured that the subsistence form subsidised the capitalist form for the benefit of the metropolitan power, where wage labour for the native populations became the operational norm. Bellucci articulates this position very aptly, "Access to a cheap labour force means that capitalism, through maintenance of domestic society, has at hand mechanisms of extracting a maximum from workers while paying wages below their real value. This is because the labour force, when not employed, 'productively' by capital, assumes tasks within domestic society".¹⁶

Because accountability in the colonial state was to the metropolitan power and not to the local populace, a culture of democratic accommodation of the native populations did not exist. However, because of the hierarchical organisation of the pre-colonial state itself, this absence of accountability affected the indigenous elites more than it did affect the ordinary populace who remained subjects as before, without the existential experiences of citizenship. Admittedly, the system of production in the pre-colonial era had masked the power relations as, by nature, subsistence production is devoid of relations of exploitation. Further, in the absence of a monetary economy, occasional services to the indigenous elites operated more as ritual within a culture of the divine right of rulers than as 'forced' labour. Partly, this historical existential experience accounted for mass acquiescence in the oppressive and exploitative culture of the colonial state. On the contrary, the elite resented exclusion from the benefits of colonial exploitation, hence early resistance to the colonial state found expression in elite-led liberation movements seeking elite inclusion into the colonial state rather than agitating for the transformation of the entire system. The elite did not seek a change to or a destruction of the boundaries of the

¹⁶ Bellucci: Op. Cit. page 19.

colonial state; they sought inclusion into state power. It was only after the Second World War, and essentially the promulgation of the Atlantic Charter of 1941, that the demand for self-determination gained traction.

The colonial state was, therefore, an enigma with contradictory trajectories on the political psyche of colonial subjects, particularly the elite. On the one hand, “the territorial and state frameworks established, notwithstanding their arbitrary nature, were of undeniable symbolic efficacy, and were accepted by the colonised population. Thus, isolated nationalities – Angolan, Senegalese, Mozambicans, and Malinese etc. – became references of identity for those peoples and for others”.¹⁷ On the other, the emergence of African nationalism within colonial boundaries was the unintended consequence of the administrative juridical system created by the same colonial state. The emergent nationalisms transcended the original groupings and organised themselves along the lines of the *administrative ethnographic* state. Besides the contradictory political trajectories, the developmental trajectory was equally problematic. Economists contend that investment in African colonies, by metropolitan colonial powers, especially Britain, France and Belgium, grew after the Second World War. However, political economists such as Bellucci, Cogneau, Dupraz and Mesple-Somps¹⁸ maintain that this sponsored development facilitated the sale of more goods from the metropolitan markets, thus turning African colonies into consumers of goods from European markets while the exploitative relations remained intact. Thus, when the colonial state ended, in a wave of independence by African states at the beginning of the 1960s, the fundamental contradictions were still in existence, and most were to remain. The western legal framework co-existed simultaneously with traditional cultural norms. Furthermore, the hierarchical system remained intact with indigenous elites replacing their erstwhile colonial counterparts, making the post-colonial state not less authoritarian than its predecessor had been.

The independent developmental state

It is axiomatic that the modern African nation-state takes its logic from the European nation-state mode of a geo-political legal entity predicated on the notion of a common allegiance to the constitution existing simultaneously with affective feelings of belongingness. Olukoshi and Laakso articulate this construction aptly, “At independence African governments set

¹⁷ Bellucci: Op. Cit. page 21.

¹⁸ Cogneau, Dupraz and Mesple-Somps.

themselves the task of undertaking a vigorous process of nation-building with the aim of welding their multi-ethnic, multi-lingual, multi-cultural, and multi-religious countries into one nation”.¹⁹ Naturally, driven from one cultural model, the emergent nation-state could only assume a unitary nature. Whereas, the economic logic of the industrial revolution brought about the evolution of the nation-state in Europe, the African nation-state was to rely on the political logic to integrate the diverse elements that constituted it. Subsequent developments were to demonstrate the problematic of forging together diverse nationalities based on a contrived citizenship construed by outsiders whose sole purpose was to extract resources for their benefits, and cobbled together by indigenous elites whose appetite for modern grandeur had been whetted in the process.

The liberation honeymoon, together with the unifying ideologies from the top – *Ujamaa* socialism in Tanzania, *authenticité* from the Congo, *Haramble* in Kenya, and variants of socialism in Ghana and Guinea to name a few – together with the economic boom following liberation kept the nation-state intact for some time during the 1960s to the beginning of the 1970s. Further, leaders of the liberation honeymoon commanded reverence among the masses grateful for uhuru. In pursuing the nation-state project, the post-independent elite sought an equivalent of the European industrial revolution as catalyst, and embarked upon a vigorous social and economic “modernisation’ programme to ‘secularise’ society”.²⁰ The hope was that the programme would weaken ethnic sentiments and generate new identities and new affiliations. One of the most vexing questions on the integrity of the African state has been how to maintain the balance between imposed colonial boundaries that defied the empirical logic of nationalism on the one hand and depend on the erstwhile coloniser on the other, and simultaneously embark on a decolonisation programme. Practically, the ruling elite changed names, maintained the constitutional legal status quo, including the social relations between rulers and the governed, and attempted to drive a developmental project predicated on either the capitalist or socialist model.

All these demanded strong governments, in the words of Bellucci, “led by a single party or in thrall of a great leader with the capacity to conduct large-scale projects funded by English, French, Belgian, Italian, Soviet and

¹⁹ Olukoshi, A and Laakso, L: 1996: *Challenges to the Nation State in Africa*. Nordiska Afrikainstitutet. Page 13.

²⁰ Olukoshi and Laakso: Op. Cit.

Chinese resources among others.²¹ At the social level, leaders of the newly formed nation-states resorted to nationalism, discouraging ethnic sentiments and yet relying on ethnic manoeuvres to maintain power, in a sense ‘recycling and reinventing’ societies within their colonial contexts” (Ibid). This was the modernisation thrust deemed as a catalyst to nation building, yet the reality could not have been more contradictory. Modernisation brought about a crisis inherent in the nature of colonial or ex colonial society precipitating the collapse of the developmental state. Internally, the states had scant capacity to sustain developmental projects, inability to manage the technologies applied, corruption in government and heavy reliance on foreign models, while externally global economic conditions imposed themselves on dependant immature economies. Further, articulating the subsistence economic model into a capitalist model imposed its own limitations.

Consequences of these developments were that the new states started to reverse the gains made at independence, with the result that the multi-party political framework collapsed, giving in to one party domination and the rise of authoritarianism. Socially, nepotism, clientelism, and corruption rose on the pretext that political pluralism encouraged cultural divisiveness and was, therefore, anti-nation-state. The consequence was that the legitimacy of the state started to diminish creating a vacuum, which further encouraged authoritarianism, in turn inviting more challenges to the state. With authoritarianism came fragility in the state followed by instability. For instance, of the coups d’état alluded to at the beginning of this paper, 67 successful and 74 attempted fell in the period 1960 to 1990. Besides capacity problems, which weighed on the state’s capability to deliver the requisite goods and services, the quality of governance, economic performance, the standards of living, respect for human rights and the degree of liberalisation and integration within the region, deteriorated. Ideological influences arising from competitive positions in the Cold War aggravated the situation. African states became pawns of both superpowers in the political divide. “The bipolar struggle between competing ideologies during the Cold War era heightened political tensions and scaled up military conflicts in newly independent African states”.²²

Particularly, the economic collapse triggered by sharp downward price fluctuations in raw materials leading to diminishing terms of trade in Afri-

²¹ Bellucci: Op. Cit. page 26.

²² Barka and Ncube: 2012: Op. Cit. page 7.

can primary commodity exports, a rise in substitute products particularly affecting African minerals, the oil shocks of the 1970s – all of these leading to a balance of payment deficits – finally precipitated the debt crisis. Internationally, an ideological decline in Keynesian welfarism, together with the globalisation of the economy, led to a change in the policies of the World Bank and the International Monetary Fund. A new ideology of market and political liberalisation gained sway, leading to the imposition of structural adjustment programmes as a precondition to foreign aid and access to financial assistance by the two institutions. The failure of the socialist experiment in the Soviet Union and the Eastern Bloc countries strengthened the use of aid as leverage to liberalise African and other developing states both economically and politically.

A liberalised state

Dominant thinking in the World Bank and the International Monetary Fund was that economic and political liberalisation would facilitate the emergence and growth of an African bourgeoisie disciplined to the ways of the market and thus to genuine development. Laakso and Olukoshi refer to this as the “retrenchment” of the state.²³ Laakso contends that the Cold War had a great impact on the retrenchment of the African state. “Those who favoured liberal democracy paid little theoretical attention to the state because for them ‘the less the state the better’ was an ideologically given premise, and ‘the left assumed that the state was an instrument of oppression that had ultimately to be done away with’”.²⁴ This conversion of thinking together with the inherent fear of diversity, particularly ethnocentrism inherent in the colonial cobbling of the African nation-state, led to superficial research projects on the nation-state, and a failure to recognise that the crisis of the nation-state project lay in the constitution of the project itself.²⁵ The liberalisation of the African nation-state has not had the envisaged success beyond the holding of multi-party elections. Not much development has been realised as evidenced in the Human Development Indices of a majority of African countries, together with the Gini Coefficient, almost thirty years from inception of the Structural Adjustment Programmes.

Democratic accountability, the cornerstone of democracy, still lags far behind in a majority of African nation-states, and further, the nation-state

²³ Olukoshi and Laakso: 2012: Op. Cit.

²⁴ Lisa Laakso in Olukoshi and Laakso: 2012: Op. Cit. page 40.

²⁵ Ibid.

has not materialised except in very few instances such as in Botswana and Swaziland, both of which are, incidentally, mono-ethnic. Even in these cases, Swaziland is an authoritarian monarchy with hardly an enjoyment of civil liberties by its citizenry. In a number of states – Zimbabwe, Kenya, Côte d’Ivoire, Uganda, to name just a few – local opposition to the governing elite has been brutally suppressed, despite holding so-called “free and fair” elections. Even within countries that subscribe to the constitutionality of the state, as is the case in South Africa, Botswana and Namibia, for instance, there are glaring shortcomings in political accountability, as ruling political parties and leaders in government behave more like traditional monarchies than the elected officials they are meant to be. Conspicuous consumption by the political elite defies the liberation logic, and as the appetite grows with the eating so does corruption in the state, in turn exacerbating the deprivation among the poor, as resources intended for social upliftment end in the illegal coffers of the ruling elite and their associates.

The African nation-state and development

Development is, by its very nature, an evolutionary process that may take even centuries to mature. It entails not only development in the economy leading to the acquisition of material artefacts, but also includes a maturity in spiritual, intellectual, social and political culture leading to value consensus on the essence of humanity. The rapid globalisation of the world is probably Africa’s demise regarding problems that confront the African nation-state, particularly the psychological dimension. Developmental problems confronting the African nation-state, for instance, are not very different from those confronting developing Latin American or South East Asian nation-states. However, the social factors, including the experiences in the three regions, have not been identical. The “contemporary factor”, i.e. the simultaneous co-existence of universal elites in power, impresses on African elites, especially governing elites, that, as equals to their contemporaries in developed states, they are entitled to the same material trappings. As fellow president, the president of an African state feels materially equal to the presidents of an American or European state despite the inequalities in the material bases. State power thus becomes the avenue to material possessions, whereupon elites exploit any possible power base to prop them up to state power. Therefore, whatever problems African states have, the politics of incumbency mars the situation and thus exacerbates them.

To remain in power, incumbent African political elites have exploited pre-liberation sentiments such as ethnicity, regionalism and religion, the

very sentiments they had sought to eradicate in the nation-state project, prompting labels such as nepotistic, clientelist, and other sectionalist references to accompany descriptions of the African state. The result of these mechanisms has been large-scale elite corruption, which has militated strongly against development, because corrupt regimes cannot deliver on the social contract. While such strategies keep the elite in power, they become mechanisms of social closure and are massively divisive. They hardly promote sentiments of belongingness among the outsiders and are anti-nation-state building. However, political incumbents do not only manipulate pre-liberation sentiments, they also use the power of incumbency to frustrate opposition to their quest for longevity. Olukoshi and Laakso refer to the tendency by African political incumbents to manipulate or postpone the entire political transition and refer to countries such as Cote d'Ivoire, Gabon, Chad, Cameroon, Zimbabwe, Zaire and Zambia where incumbent politicians did everything to frustrate or manipulate the holding of multi-party elections. They continue, "Not surprisingly, cynicism and apathy on the part of the voters has become a major dilemma confronting the political elite".²⁶ Further, because of poor education and overall underdevelopment in the electorate, political constituencies are vulnerable to exploitation by political entrepreneurs.

Earlier we alluded to the multi-ethnic and multi-religious base of the African state. Add to this the uneven pace of colonialism among the various ethnic segments within the cobbled nation-state. We can thus conclude that while Africa has political legal geographical entities as states, a vast majority of these are not nation-states. What exists are diverse multi-cultural and multi-ethnic aggregates sharing a common geographical space, united by a recent common history and paying allegiance to a political legal entity called the state. Components of these aggregates may share some or all elements of belongingness depending upon circumstance. For instance, some may share a common language, a common religion or for that matter, a common descent from some far-placed ancestry. Whatever the case may be, strong affective bonds exist among the membership. This is not to say that these attributes are dysfunctional to the nation-state, but rather to say that they represent the existential, and if appropriated discerningly, they constitute the building blocks of the nation-state. Hence Olukoshi and Laakso assert that, "ethnic identity and religious consciousness can, and do

²⁶ Olukoshi and Laakso: 2012: Op. Cit.

many times, carry important mental and aesthetic loads which give dignity to people and communities and that need a public space in which to be expressed in a context where space was previously denied”.²⁷

The politicisation of identities has its roots in the belief by earlier protagonists of African nationalism that colonial powers had created ethnic and religious differences in an effort to divide and rule. Bellucci suggests, “The Europeans did not create ethnicity, though they did invent certain tribes and names that had not formerly existed”, and maintains that this created “an administrative and ethnographic state which gave its name and character to the native population”.²⁸ Paradoxically, ambitious African political elites utilise the same constructions as bases of support in order to attain their entrepreneurial objectives. The consequences of both actors, European colonisers and African political elites have had devastating effects on the populations such as, for instance, was the case with the Tutsis and the Hutus.

Reconstituting the nation-state project

There is a recognition, especially among the intellectual elite in Africa, and to a less extent among the political elite as well, that Africa’s problems of development, and by inference, the unity of humankind and the universal destination of the goods of the earth, lie in the refusal by successive African regimes to embrace human diversity. Mandela’s conception of South Africa as a rainbow nation was an acknowledgement of union in diversity although it was short-lived, as the paragraphs below will demonstrate. Bellucci posits, “There are substantial characteristics of the African States ... which, though at the root of their weaknesses, belie the idea that they are artificial constructs. Such historical experiences explain why, to date, neither secessionist movements nor the creation of new States have prospered”. Despite historical weaknesses since independence, maintains Bellucci, “the nation-state, however configured, has not been eclipsed”.²⁹ Such a recognition points to the tenacity of the African nation-state as presently constituted in spite of the problems it faces. This brings in the problematique in this paper. Is the nation-state a precondition for the common good and if so, what central attributes should it possess? Perhaps an answer to this question lies in an appraisal of the South African “nation-state” which

²⁷ Olukoshi and Laakso: 2012: Op. Cit.

²⁸ Bellucci: 2010: Op. Cit. pages 21 and 22.

²⁹ Ibid.

is one of the most unchallenged in terms of composition, despite the diversity in its constituent parts. Among African states, South Africa, Botswana, Seychelles, Namibia and Mauritius are acknowledged democracies that have delivered, some however moderately, on the social contract. The choice of South Africa is that among others, it is the most multi-cultural and has a complex history that renders the formation of a nation-state very problematic.

The case of South Africa

South Africa, despite its colonial span lasting for over three centuries, was the last African state to gain independence from an internal colonial power whose origins lay in Europe. South Africa attained its independence in 1994 when the African National Congress (ANC), the oldest African liberation movement, came into power and has continuously governed the country since then. South Africa's demographics reflect a cultural mosaic of 56 million people with four major population groupings comprising 79.2% indigenous Africans, 8.92% Coloureds, 8.86% Whites and 2.49% Indians.³⁰ The racial classification is significant in understanding and explaining the national question and the political-cultural configurations regarding the nature and dynamics of the nation-state. Secondly, racial classification does not necessarily imply social cohesion within race as further segmentation, for instance ethnicity and language, exists within race. For instance, within the White race are the English and the Afrikaners as the main language groupings, while Africans have two main language groups, the Nguni and the Sotho, and two minor variants, the Tsonga and the Venda. Nor are Indian and Coloured groupings monolithic, as they too have a number of constituent variants. The Nguni have four major sub-groupings, while the Sotho have three. This is what makes South Africa a multicultural state. There is definitely a common allegiance to a politico-legal entity judging by the fact that neither have there been challenges to the state nor attempts at secession.

At the political level, the Constitution, anchored around a Bill of Rights, and a number of institutional checks and balances, appears to be the rallying point around which a common South Africanism exists, while socially the various segments, ethnic and racial, are very salient. Parallel to this, material circumstances have created economic segments rendering South Africa a

³⁰ South African Household Survey 2018.

class society with a Gini Coefficient varying between 0,67 and 0,70, making it the most unequal society in the world. Recognising the disparate constituents that comprise the South African state, Mandela created an ideological rallying point, the “Rainbow Nation”, reflecting unity in diversity. Leading personally and morally by example and in the spirit of creating an egalitarian society, and consequently a common citizenry, Mandela, for instance, even intervened when members of the national legislature did dare to raise issues of an increase in the salaries of parliamentarians. His rationale was that there was much poverty in the population to warrant showing restraint from wanting increased payments by the political elite. Such was the determination to create a nation-state that the national anthem had to reflect this unity in diversity. The anthem is multilingual, with the first section in the Nguni language drawn from the original hymn, which the ANC had adopted as an anthem long before liberation, and the second section in the Sotho language. The third is in Afrikaans drawn from the previous anthem, which the National Party government had adopted as the South African anthem on breaking away from the British Commonwealth; and the final section is in English. The new nation-state adopted eleven official languages, nine indigenous and two representing the former dominant white languages. However, English has become the most commonly used language of communication and in education across all sections of the population, mainly because of its universal applicability.

Despite the pretensions of a rainbow nation, the allegiance to the Constitution, a common economy and the use of the English language across all sectors of the population, and a relatively healthy educational attainment (94.4% described as literate by age 15), South Africa remains socially and economically a deeply divided society, and hardly a nation. Residentially, over 80% of rural residents are of indigenous African descent, and a majority of them are poor. Racial residential separation is also the norm among the urban population, with townships and shack settlements entirely black and poorly endowed with resources and amenities, while urban suburbs present the opposite picture. Subsequent to liberation in 1994, well-to-do Africans, mostly professionals and businesspersons, moved out of the townships to formerly white suburbs. This triggered a movement by wealthy whites into newly built expensive suburbs further from the Central Business District. However, with the legal abolition of separate residential areas, wealthy Africans followed into the newly created expensive suburbs thereby introducing a strong class character on top of race into suburban sociology. Massive shopping malls grew around the new wealthy

suburbs, and although the poor are not barred from patronising them, the economics of consumption excludes them from these new endowments.

On top of the hierarchical residential configurations, social services are equally hierarchical. For instance, despite pretensions of universal education, school organisation is along race and class lines. Private schools and upper-class state schools are in suburbs or distant boarding schools and inordinately expensive, rendering education an exclusive class commodity. Well-to-do Africans have moved their children away from township and rural schools into city or town suburbs to Model C schools (formerly used by white children). Discrepancies in performance are glaring, with private and upper-class state schools demonstrating the superior qualities of an exclusive education while township and rural schools linger in the administrative and resource limbo, as well as a poor work ethic from teachers. Privatisation of opportunity does not end with education. Despite a universal health policy, performance of health institutions predicated upon economic capacity has privatised the provision of health. Unionism has aggravated the position as in an attempt to demonstrate the freedom of organisation, the South African constitution entrenched the right of workers to organise. South Africa has a very poor service ethos, and trade unions have taken advantage of this, demanding shorter working hours, breaks at work and using worker power to intimidate management. The result is a very poor work ethic in the public sector. Poor service in state health institutions has driven better-off South Africans into private health care. Endowed with medical aid services, better-off segments of the population patronise private health care services leaving the poor to endure challenging services in state health institutions. Literally, what makes South Africans less restive if not non-revolutionary is the privatisation of life that wealth purchases, and the illusion of freedom following the demise of apartheid.

While South Africa displays stability in government and shows no challenges to the integrity of the state, in its legal form, there are serious problems of accountability of the government to the electorate. The hubris of the African National Congress as the party in government has exacerbated the situation. Political and government systems are rife with corruption, nepotism and cronyism, resulting in poor delivery of services as corruption and ineptitude syphon much-needed funds for development and improvement in the quality of lives of the citizenry. So rife is corruption that presently a Judicial Commission of Enquiry into State Capture (a term that arose from attempts to reposition state-owned enterprises to benefit individuals in the ruling party), chaired by the Deputy Chief Justice, is

conducting hearings into the malady. Simultaneously, two other judicial commissions have been created, one probing corruption in use of the Public Pension Fund, and the other investigating the suitability of two senior employees of the National Prosecuting Authority, the South African equivalent of the Attorney General, to continue occupying their positions, despite accusations of political partisanship in carrying out their legal duties.

The South African nation-state project contains contradictions showing both positives and negatives. Indeed a generalised feeling of South Africanism exists across all strata of the population. Yet, clear divisions exist across race and class and are visible in residential patterns, education, health, and a huge Gini co-efficient despite a strong state security system, which has alleviated poverty and created a sense of dignity among the poor. Inequity is pervasive across race and class lines in spite of policies such as Black Economic Empowerment, a version of mainstream nationalism, if white capitalism was not part of its conception, which equates economic indigenisation with emancipation, co-opting a segment of the African elite through preferential treatment when tendering for services to the state. Even the private sector has to observe the Black Economic Empowerment Code when purchasing services from private bidders or employing individuals into senior positions in their enterprises. In this way, it hopes to bridge the historical economic gap between the races. Mamdani alludes to the resolve by mainstream African nationalists to “reproduce the customary as the authentic tradition of Africa” in the hope to privilege indigenous over nonindigenous citizens.³¹ Black Economic Empowerment was a product of thinking by white capital encouraged by this streak of African nationalism. This, however, brought in a twist that generated serious contradictions in the post-apartheid state and created conflicting identities.

Captured by the ambitious elites, Black Economic Empowerment has alienated both black and white citizens: the blacks because it has empowered the connected political elite; the whites because they regard it as reverse racism. Further, Black Economic Empowerment has alienated black from black, for instance indigenous Africans from Indians, because they believe that Indians have exploited their classification as black during apartheid and have, therefore, capitalised on the limited advantages accruing from apartheid’s preferential treatment of Indians against indigenous Africans. All this has not only widened the economic chasm between rich and

³¹ Mamdani: 2005: Op. Cit.

poor blacks, it has also further divided the previously disadvantaged, creating further social stratifications. The question is: what sustains the South African nation-state project?

The transition to democracy ushered in a new political culture in the population, encouraged by a general psychological relaxation, which derived from civil liberties, an effective and democratic judicial system, respect for the rule of law and the hope that participatory democracy would usher in improvements in the quality of lives of citizens. The legal opening up of the system from the closed apartheid system was a great achievement that gave semblance to a nascent nationalism at least at the level of state institutions, while social life showed very little changes. Political affiliations in a multi-party democracy remained expressed in racial cliques as demonstrated in voting patterns at elections, but that was the only recognisable negative as ethnicity had never been a real threat to the politics of opposition, which had assumed power in the transition. United by the desire to co-exist within one state, both blacks and whites, at least, accommodated one another peacefully. There has not been a threat of civil war along race or ethnic lines in the post-apartheid transition.

Proponents of multi-culturalism in the nation-state project posit the creation of a framework to enable free participation by the electorate in decisions affecting their lives, addressing issues like federalism, the promotion of local administration, cultural autonomy, and proportional representation as building blocks of a nation-state. South Africa has all of these with the exception of addressing issues of federalism, which does not appear to be posing any threat to the creation of a nation-state. South Africa has even developed a civic identity expressed in an entitlement culture where citizens believe that the state has the duty to deliver the requisite goods and services befitting citizens. All this augurs well for the acceptance of the nation-state. Notwithstanding these positive affirmations, the South African state is engulfed in protest action such that the media has duped it the protest capital of the world. While protest reflects the democratic right of citizens, the problem lies in the expression. South African protests are notorious for their destructive violence. Protesting groups have burned buildings, including libraries, community halls and even schools; they have gone into hospital wards, overturned incubators in nurseries and ripped intravenous drips off patients' limbs, and into operating theatres chasing away staff in attendance while patients are under anaesthesia. It is as if a nihilistic culture has overtaken the yearning for democracy before liberation. How to explain these contradictions is a quandary to both psychologists and political scientists.

Conclusion

The final question to address is the very existence of the nation-state project. Discussions around the nation-state are not only around sovereignty, they encompass the belief that the nation-state is better positioned to usher in the common good, whereas the state as only a legal entity is not capable of performing at the same level. Reflecting on Africa, the nation-state has been both able and unable to achieve this feat. The general view by most scholars on the African state is that it has failed to achieve the liberation dream of a democratic egalitarian society with civil liberties for all, and that structured inequalities and inequities still prevail. The result is that the African state is conflict-ridden. Hence, Olukoshi and Laakso attest that “these occurrences of violence and conflict derive from racial, religious and ethnic sources and a majority of them are intra- as opposed to inter-state in nature”.³²

While this is the dominant view, there has been progress, albeit unsatisfactory, in a number of African states, as demonstrated in the above pages. Countries such as Botswana, Mauritius, Namibia, the Seychelles, South Africa, and lately Rwanda have fared relatively better in democracy, eradicating poverty, attaining universal education and affording social security to citizens. These are no mean achievements given where these states come from. Admittedly, there are serious structural inequalities and inequities in the distribution of resources, and therefore in social justice. Where these successes have been realised, the ills cited by Olukoshi and Laakso are either absent or do not exist to threaten the integrity of the state. A vibrant nationalism may not exist in some, or even in all of them, but a tolerance towards multi-culturalism or an acceptance of diversity, as is the case in South Africa, has kept the peace. Indeed, the vision of a shared society and the values of citizenship are still far-fetched in almost all African states, and only exist in name.

Most, if not all, African states have experienced fractured evolutions in the absence of binding natural catalysts, including what Mamdani calls the “politicisation of indigeneity”. The latter, in particular, has emboldened the ruling elite in its nonchalant usurpation of state resources at the expense of the citizenry. That statehood is recent in Africa is a truism, but that the state in its current form is an imposition from outside and not a natural process of evolution is an over-rationalisation. All states in the world are imposi-

³² Olukoshi and Laakso: 2012: Op. Cit. page 7.

tions at some historical epoch or another. What renders the African state fragile is, first, that it has not developed the requisite apparatus to generate emotional integrity, because it does not possess the requisite history and, secondly, it has compromised the capacity to deliver the requisite goods and services. The second shortcoming is because the ruling elite, in quest of traditional monarchic tendencies, engages in corruption and authoritarian behaviour to maintain positions of power in the state apparatus. As Mamdani maintains, “Democracy is not just about who governs and how they are chosen. More important it is about how they govern, the institutions through which they govern, and the institutional identities by and through which they organise different categories of citizens”.³³

Notwithstanding the dominant view of ailing states, the relative quiescence of the masses, especially in the period after the contrived democratisation following the structural adjustment programmes, partly explains the ambiguous position of the African state. The citizenry has not contested the state: what is at issue is how the state administers civil liberties and citizen entitlements. African nationalism was, in essence, a nationalism of the elite, with the masses supporting the leadership as they had always supported the traditional elite. Stated precisely, the absence of revolutionary attempts on the part of the general citizenry to destroy the state is a function of both psychological sentiments and an acknowledgement of the pragmatic role of the state. The nation-state project thus constitutes the hope and promises the dream that tomorrow might, most likely, bring in the promised cargo.

³³ Mamdani: 2005: Op. Cit. page 16.

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CHINA'S PERSPECTIVES – IMPERIALISM, NATIONALISM, OR GLOBAL SHARING

KUAN HSIN-CHI

My point of departure is that nationality, or, as one might prefer to put it in view of that word's multiple significations, nation-ness, as well as nationalism, are cultural artefacts of a particular kind. To understand them properly we need to consider carefully how they have come into historical being, in what ways their meanings have changed over time, and why, today, they command such profound emotional legitimacy.

Benedict Anderson¹

Nationalism under the leadership of Xi Jinping

Nationalism under Xi is multifaceted because there are many factors that have shaped the leadership and foreign policy of Xi: (1) two hundred years of trying to “stand up” to the West to overcome a grand humiliation since the Opium War (also call the Anglo-Chinese War, 4 September 1839 – 29 August 1842), (2) a haphazard process of two decades of turning outward again, (3) the contingency of Xi's personality and biographical particulars that have moulded him as a strong and decisive leader and (4) the changed and changing domestic and international contexts.

The first factor listed above is deeply grounded in the history of China engaging with imperialism from the West. Until then, China had neither a concept of nation 民族, nor the term China 中國, or Chinese (中國人). In the old days, political entities were organized as lineage based dynasties, such as Xia (華夏 2146–1675 B.C.) situated in Shanxi, Han (漢 late nineteenth century) in Northwest China, and Tang 唐 in Southeast China, and so on. The last dynasty is Qing 清 that lost the Opium War and signed the peace treaty of Nanking with Britain in the name 大清國 (The Great Qing State), not China. In daily conversation, along with the general expression of Chinese (*zhongguoren* 中國人), we often call ourselves *huaren* 華人, *hanren* 漢人, or *tangren* 唐人.

¹ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, Revised Ed. London, N.Y.:Verso 1991.

Without the concept of nation, there was no concept of a nation-state or nationalism.²

Birth of Chinese nationalism as reaction against Western imperialism

The encroachment of imperialism upon the Qing dynasty gave rise to a discourse on causes of the defeat in the Opium War and ways to stand up again. The wish to stand up again is expressed emotionally as nationalism, a natural reaction to the humiliating defeat at the gun of a foreign country. In the search for salvation, the need to industrialization that is related to the advancement of military power was initially recognized. A movement was thus ushered to learn from the foreign practices (*yangwu yundong*). Later, they discovered that the strength of the Western countries lies far beyond industrial and military hardware. Therefore, modernization broadly understood was deemed indispensable too. It is with this second approach that the concept of “nation (*guomin*)” emerged as a hot subject of discourse among young intellectuals of the day. They assumed that the nation-state had become the modern structure of political power, and recognized that China’s independency in the larger world required the formation of a new identity. People began to consider or, in B. Anderson’s keyword, “imagine”

² Martin Jacques, *When China rules the world: the end of the Eastern world and the birth of a new global order*, 2nd ed.; on the issue of state-building, it is useful to read Francis Fukuyama’s page-turning book *The Origin of Political Order*, especially chapter 7, “War and rise of the Chinese state”. He presents there a deep analysis of the state as a modern political institution. How different are state-level societies from tribal ones? The answer lies in the basic ingredients of “the state” as consisting of “First, ... a centralized source of authority, ... Second that source of authority is backed by a monopoly of the legitimate means of coercion, ... Third, the authority of the state is territorial rather than kin based, ... Finally, states are legitimated by much more elaborated forms of religious belief”. The follow-up question is how did the Chinese state arise? Chapter 7 provides the answer. In a snapshot, “genuine states” began to coalesce during the Eastern Zhou Dynasty (770–256 B.C.). They established standing armies, created bureaucracies for taxation, law-making etc., mandated weights and measures and built infrastructure like roads, canals, irrigation systems. The kingdom of Qin even democratized the army by bypassing the warrior aristocrats and directly conscripting masses of peasants, and promoted social mobility by undermining the power and prestige of the hereditary nobility. What has transpired in the above is a snapshot of the evolving concept of the state as consisting of the following elements: territory, military defence and a top governor. The historical formation of “nation-state” started first as a European phenomenon after the 1500s, whereas a Chinese nation-state dates back only about 150 years, as argued by Martin Jacques in his book *When China rules the world: the end of the Eastern world and the birth of a new global order*, 2nd edition, London: Penguin 2012.

who they were in a world of many nations. As a result, they found that the nation-state was a natural representation. The learning from foreign practices movement gave way in 1911 to a political revolution led by Dr. Sun Yat Sen. After the fall of the incompetent Qing dynasty, Dr. Sun established a nation-state in the form of a republic and presented a three-pronged blueprint for the task of nation-state building. What has transpired from these lines of history tracing is a theoretical alignment with Professor Hobsbawm's insight on political development in the modern time that nationalism comes before nations. China is no exception. Key political leaders in modern China, from Dr. Sun Yat Sen, Mao Zedong, Deng Xiaoping and Xi Jinping are nationalist first before they reflect upon (imagine) who the Chinese are, by tracing China's miserable encounter with foreign powers. It is the nationalist emotion plus the desire to rise that has defined the craft of nation- and state-building in the late twentieth century.

A republican type of nationalism with a Democratic option

Dr. Sun Yat Sen's three principles of the people were first formulated as slogans for the 1911 Republican Revolution. They were further elaborated in form of public lectures and subsequently consolidated as formal party ideology. The first principle defined nationalism in terms of opposition to imperialism and self-determination for the Chinese people. The second principle defined the political rights of the people as a foundation for the development of democracy. The third principle touches on people's livelihood, especially equalization of land ownership. Behind these three principles of the people was a formulation of who counts as "the people" The five colors national flag of the Republic of China symbolizes the republican efforts to forge a new nation of "*zhonghua minzu*" which includes people from five major ethnicities living in the land, i.e. the Han, Manchurian, Mongolian, Uighur and Tibetan.

History was not on the side of Dr. Sun though. His revolutionary ideas remained arguments on paper after his death, as his successor Chiang Kai-shek turned them into dogmas for strengthening his power as Director-General/Chairman of the Kuomintang (National Party of the People). Later, after the defeat in the civil war with the Chinese Communist Party, he used Dr. Sun's ideas to buttress authoritarian rule over Taiwan. The issues of the concept of nation, its implications for the legitimacy of who rules whom and their ultimate resolution, the processes of haphazard installation of democracy and its consolidation is a fascinating story that is beyond the coverage of this paper.

Nation, nationalism and state-building in the People's Republic of China from Mao Zedong to Hu Jin-Tao

Given its big size, long history, wide differences in terms of ethnicities, identity politics and socio-political ideologies, the issues of “nation” and “nationalism” are complex matters that resist any comprehensive conclusion. What is commonly known as *han* nationalism refers to a political culture of people living in the Central Plain of China, i.e. Shanxi.

The founder of the People's Republic of China, Mao Zedong, admitted when he was 27 years old that he was a naïve nationalist. Being so naïve, he did not envisage building a state out of the nation, but rather preferred to see every Chinese province become an independent state. Well, all this must be credited to his monkey-like temperament as a youth. With age and experience, including all the hardships he endured and witnessed during the “Long March”,³ he realized that China as a nation was a weak group in the world. He then quickly became a tiger, realistically aggressive, believing that guns could produce a regime and chaos bring changes, with the final ingredient being the *minzuhun* (soul of a nation) with which China would stand up again. With the above script, Mao spared no effort to conduct rounds of revolution and the like by means of mass movements/campaigns to facilitate the building of a new nation-state. Key events include:

- a. “Anti-corruption, Anti-wastage and Anti-bureaucratism” campaign (1951-52)
- b. “Hundred flowers” campaign (1956-57)
- c. “Anti-Rightist” campaign (1957-58)
- d. “Great Leap Forward” campaign (1958-61)
- e. “Destruction of ‘the four old’ i.e. old ideas, old culture, old customs, old habits” campaign (1966-76)
- f. “The Great Proletarian Cultural Revolution” (1966-76).

Apart from human deaths, the great proletarian revolution brought stagnation in agriculture and industry, and damage to different kinds of infrastructure required for modernization.

As the successor of the skeptical Mao who embraced a closed-door strategy vis-à-vis the Western world, Deng Xiaoping introduced an open-mind-

³ The Long March by the Chinese Communist Party as an escape from the persecution of the Guomindang took place from 1934 to 1935, covering 10,000 km, which resulted in the relocation of the communist revolutionary base from southeastern to northwestern China and in the emergence of Mao Zedong as the undisputed party leader.

ed policy of opening and reform, willing to learn from the West and committing serious efforts to promote “the four modernizations” in areas of industry, agriculture, national defense and science and technology. In terms of setting the priority, Deng’s attention clearly focused on domestic affairs. When it comes to foreign policy, he was cautiously reserved, following a strategy of defensive realism with the slogan of *biding time* (韜光養晦) and avoiding any engagement with international organizations. After Deng had brought China back from chaos to growth, Jiang Zemin was able to take a bold step to engage the world by acquiring membership in the World Trade Organization, believing that such a connection would end China’s exclusion from the world club and upgrade the status of the Chinese nation in global governance. Compared to Deng’s “biding the time” posture, Jiang’s mottos for his nationalist foreign policy were “observe calmly, respond with composure, grasp any opportunity and follow the trend to benefit”.

The trend remained beneficial to Hu Jintao, who became the new leader of China in November 2002. Against the background of 9/11 attacks on the World Trade Center in New York City and the US-Iraqi war, on 20 March 2003 the Chinese government, under the new leadership of Hu Jintao, attempted to develop a new strategy of “the responsible state”, as a complement to his theory of *heping jueqi* (peaceful rise [on the world stage]). A statistic speaks volumes about Hu’s change of strategy. China had, under the pretext of “non-intervention in the domestic affairs of other countries”, abstained, in its capacity as one of the five permanent members of the Council, from voting in the Security Council of the United Nation 29 times. And China never vetoed any resolution from 1990 to 1996. Then, on 24 May 2004, China instead took the initiative to amend the US draft about the way of ending the Iraq war by proposing a different motion, that “The united army of US and UK must definitely leave Iraq on the day of electing the new government, a date that may be amended only upon the agreement of both the Security Council and the Iraq government”. Such a move was taken by the top leadership in Beijing as an expression of responsibility and respect towards the United Nations. It also reflects China’s growing confidence as a heavy stakeholder in the system of global governance.

Aggressive nation- and state-building under Xi Jinping

On 12 November 2012 Xi Jinping was elected at the Congress of the Chinese Communist Party as its new General Secretary, thereby completing the once a decade transfer of power to a new generation of leaders. Vice-President and heir-apparent Xi Jinping took over as party chief and

assumed the presidency on 14 March 2013. What is in store for China then? Let us first take a quick look at Xi's growing up as a politician.

“Xi was born a princeling, the son of Xi Zhongxun, a former Director of the Propaganda Department of the Communist Party. His childhood was an asset because of his acquaintance with other princelings and understanding of political life within Zhongnanhai. At the age of 16, Xi spent seven formative years of hard labor in dusty Northwest China as a victim of the Great Proletariat Cultural Revolution when his father was charged and imprisoned for being a member of the anti-Party clique. The suffering turned out to be a blessing, for he gained a deep understanding of the countryside and the peasants, so much so that he once described himself as ‘always a son of the Yellow Earth’. Xi's fortune turned around at the end of the Cultural Revolution. In 1974 he was admitted to the CCP as a member. The next year, he was admitted to Qinghua University, with only credentials of primary education. Upon graduation, he became the personal secretary (a confidential post) to Geng Biao, General Secretary of the Central Military Commission, and a member of the CCP's Politburo and Vice Premier. Three years later he started a long career at the grassroots level (1982–2006), first as Party secretary of Beiding county in Hebei, later moving to Party and government leadership positions at municipal and provincial levels (Xiamen, Fuzhou, Zhejiang, Fujian), and ending up as Party Secretary of Shanghai. At the 17th Party Congress in 2007 when he was merely a member of the Central Committee, Xi was elected directly into the Standing Committee of the Politburo, without first going through the Politburo membership. Key posts quickly followed in 2010 when he became President of the Central Party School, Vice-Chairman of the PRC and Vice-Chairman of the Central Military Commission. Summing up his “professional” career of 25 years, from 1982 to 2012, when he was elected to become the General Secretary of the Party, he held 17 posts, i.e. less than 2 years in each on average. He must therefore have mastered the political tricks necessary to move forward in good and opportune times”.⁴

Modernization, nationalism and the new world order

Before we continue with the analysis of Xi's effort to rejuvenise the Chinese nation, it is in order to discuss the historical context under which China was introduced to Western civilization in 1583 (the 11th year of the Ming

⁴ This long paragraph is copied from Hsin-chi Kuan, “*China Under the New Leadership*”, Maryland Series in Contemporary Asian Studies, Number 2, 2013 (213).

Dynasty) when a Jesuit father, Matteo Ricci, came to China, bringing with him Christianity and Western knowledge of astronomy, geography, science and technology. He was warmly received by Chinese scholars who called him a 泰西賢士 (Western Confucianist). In contrast, the British Opium war against China in 1842 ushered in a completely different reaction. What Chinese experienced then was humiliation. What followed were different kinds of reflections and movements. The once strong and admired China of the Ching dynasty collapsed as a combined result of bad harvests, warfare, rebellions, overpopulation, economic disasters, and foreign imperialism.

The origin of a new political order for China

In his page-turning book *The Origins of Political Order: From Prehuman Times to the French Revolution*, Francis Fukuyama presents a deep analysis of the state as a modern political institution. How different are state-level societies from tribal ones? He defines “the state” as consisting of “First, they possess a centralized source of authority... Second, that source of authority is backed by a monopoly of the legitimate means of coercion... Third, the authority of the state is territorial rather than kin based... and finally, states are legitimated by much more elaborate forms of religious belief”. The follow-up question is how did the Chinese state arise? Chapter 7 provides the answer. In a snapshot, “genuine states” began to coalesce during the Eastern Zhou Dynasty (770–256 B.C.). They established standing armies, created bureaucracies for taxation, law-making etc., mandated weights and measures and built infrastructure like roads, canals, irrigation systems. The kingdom of Qin even democratized the army by bypassing the warrior aristocrats and directly conscripting masses of peasants, and promoted social mobility by undermining the power and prestige of the hereditary nobility.⁵

What has transpired in the above is a snapshot of the evolving concept of the state as consisting of the following elements: territory, military defense and a top governor. The idea of “nation” or “nation-state” was not involved in the historical process of state formation.⁶ As argued by Martin Jacques, China as a “nation-state” dates back only about 150 years.⁷

⁵ Francis Fukuyama, *The Origins of Political Order: from prehuman times to the French revolution*, London: Profile Books, 2011, pp. 80–81 and chapter 7, “War and the rise of the Chinese state”.

⁶ The historical formation of “nation-state” started first as a European phenomenon after the 1500s.

⁷ Martin Jacques, *When China rules the world: the end of the Eastern world and the birth of a new global order*, 2nd ed. London: Penguin 2012.

China as a “civilization state” and its implications

To invoke civilization is history tracing. It is first a vague and sometimes ideology-loaded concept of social-cultural progression from savagery, barbarism, maturity and eventually superiority. The concept itself has been popularized by Zhang Weiwei of Fudan University, China. In his book published in 2012,⁸ Professor Zhang argues that the rise of China is due to her adhesion to a developmental strategy based on the Confucian culture and exam-based meritocracy.

Confucian culture (or Confucianism) as an ethical practice is grounded in the following elements: *xiu shen* (cultivation of one's self), before climbing up the ladder of *qi jia* (keeping your family in good order), *zhi guo* (governing your state well), and *ping tianxia* (bringing peace to the world), with the emphasis put on the family, and the state as foundationally anchored in the family, so much so that the word “state” is sometimes spelled in Chinese as *guo-jia*.

When Confucianism is relied on as a political tool, the resultant governance becomes feudal, patriarchal and authoritarian, as attested to by several millennia of dynastic rule in China. In other words, China is prepared and equipped to threaten other states if needed, notwithstanding its status as a “civilization state”. On the other hand, material preparedness does not necessarily lead to an actual outbreak of war. The outbreak of warfare depends on a host of factors. Among them, four stand out: culture, interest, geo-political strategy and, particularly, leadership that translate the other three into belligerent actions. Starting with the issue of culture, two strategic traditions stand out – Confucian teaching on peace & harmony on the one hand, and *parabellum*⁹ based on realist belief on the other. In the former case, Confucian teaching on peace & great harmony (大同 *datong*) applies. China could be less assertive and more others-regarding; according to realism however, China can be an assertive status quo power, as attested to by Alastair Iain Johnson.¹⁰ A prominent example is evident in East and Southeast Asia where a kind of Chinese Monroe doctrine applies. In the same realist vein, it goes without saying that if China is weak, it can't afford to be assertive, not to speak of aggressive. It could then be a self-inflicted

⁸ *The China Wave: Rise of a Civilizational State*, Hackensack, N.J.: World Century, 2012.

⁹ The Latin word “Parabellum” mean “If you want peace, you should prepare for war”.

¹⁰ Alastair Iain Johnston, ‘Realism(s) and Chinese Security Policy in the Post-Cold War Period’ in E.B. Kapstein and M. Mastanduno, eds, *Unipolar Politics: Realism and State Strategies After the Cold War* (New York: Columbia University Press, 1999), pp. 261–318.

isolationist. I'll come to speak about the different positionings by different leaders in different periods.

Today, Confucianism is highly revered by the Chinese government as a hallmark of a civilized state. In addition, it is appreciated as a humanist advocacy about the common destiny of humankind and logically deemed desirable to be promoted overseas. On 24 September 2014 China's president Xi Jinping addressed an academic conference to commemorate the 2565 birthday of Confucius with the following words:¹¹

Maintaining world peace and promoting common development require a multi-pronged approach. The most important one is to establish the concept of peaceful development in peoples' minds, exactly like what is carved in the front stone of the UNESCO Headquarters. It goes as follows: "The war originated from the thoughts of people, so it is necessary to build a barrier as a defense of peace in the minds of men. ... The Chinese nation has always been a peace-loving nation, and peace-loving has deep roots in Confucianism. ... Peace-loving ideas are deeply embedded in the spiritual world of the Chinese nation. *Today, peace-loving is still the basic concept of China's handling of international relations*".

China as an arrogant state

While China was presented in the above as a civilized state, from another perspective it can be said to have been "imperialist" from its very beginning¹² or at least "arrogant" as suggested by several ideological expressions. In 1046 BCE when the Zhou kingdom was established, its emperor created the concept of the mandate of heaven (*tianming*) to justify its replacement of the Shang and, at the same time, establish itself as the only legitimate ruler of the universe (*tiandi, tianxia*), with the blessings of Heaven (*tian*). Such a string of ideas suggests an arrogant state at the centre of a theoretically unlimited territory. The term "China" in Chinese (*Zhong guo* 中國)¹³ carries an arrogant connotation: "a state in the centre of the

¹¹ President Xi Jinping addressed an academic conference to commemorate the 2565 birthday of Confucius <http://cpc.people.com.cn/n/2014/0925/c64094-25729647-4.html>

¹² Otherwise how could we explain why China's territory has expanded far beyond its original base of the "central plain"?

¹³ The same goes with some synonyms, like: Zhongtu 中土, zhongyuan 中原, zhongchow 中州, zhongxia 中夏, zhonghua 中華.

world”. It then goes without saying that the state of China is expansionist, if not outright “imperialist”, defined as “a practice of outright acquisition of territory and extension of dominion by military force”.

A caveat is however in order. No doubt China has had both strong and weak dynasties, but all of them shared a common trait: that is the reach of the state has been weak. If this is true for domestic affairs, China’s foreign relations in the old days must also have been quite shallow. Only since the Ming or even the middle Qing dynasties (roughly late-18th century) did a loose network of international trade relations start to develop between China and its neighbouring countries, leading to the evolution of a loose set of expectations and precedents that scholars refer to as a “tributary system”, under which symbolic obeisance and offer of tributes were exchanged with assurance of peace, investiture, and trading opportunities. Examples include Japan, Korea, Vietnam, and the Ryukyu Kingdom.

China as a nation-state with growing power and the China threat thesis

To accurately understand and effectively respond to the rise of China, Michael D. Swaine and Ashley J. Tellis of Rand Corporation argued that we must recognize China’s grand strategy as grounded in its historical experience, its political interests, and its geostrategic environment. In their views, this grand strategy is keyed to the attainment of three interrelated objectives: “first and foremost, the preservation of domestic order and well-being in the face of different forms of social strife; second, the defence against persistent external threats to national sovereignty and territory; and third, the attainment and maintenance of geopolitical influence as a major, and perhaps primary, state”.¹⁴

China as a growing power cannot help stir up some fear of its ultimate intention. As early as 23 April 1992 the US National Security Council already touted the idea of “China threat” in its National Planning Guidance (DPG) report and called for concerted efforts to prevent the rise of China as a military competitor to the US.¹⁵ This fear is a modern form of the old “Yellow Peril” metaphor captured in a Wikipedia article as follows.¹⁶

¹⁴ *Interpreting China’s Grand Strategy: Past, Present, and Future*, Project AIR FORCE | RAND, 2000.

¹⁵ <https://www.archives.gov/files/declassification/iscap/pdf/2008-003-docs1-12.pdf>

¹⁶ https://en.wikipedia.org/wiki/Yellow_Peril



Figure 1.¹⁷

The China threat thesis is certainly one of the hottest topics on the Internet and no one has attracted as much attention in the US as Tucker (Swanson McNear) Carlson,¹⁸ a conservative political commentator on Fox News since 2016.¹⁹

Besides, there are material underpinnings to the “China Threat Thesis”, including China’s rate of economic growth²⁰ in the three and a half decades since Deng Xiaoping’s “Reform and Opening” policy of development was launched in 1978. China boasted GDP growth rates of between 9.5% to 11.5% per year. During this period, the year 2008 ushered in a dif-

¹⁷ The picture’s caption reads: “*The Yellow Terror in all His Glory* (1899) is a rebellious Qing Dynasty (1636–1912) Chinese man, armed to the teeth, who stands astride a fallen white woman representing Western European colonialism”.

¹⁸ https://en.wikipedia.org/wiki/Tucker_Carson

¹⁹ Here are a few selected commentaries by T. Carlson on the China threat: Tucker Carlson Tonight – The China Threat – YouTube 5/10/2018 <https://www.youtube.com/watch?v=7uyjtW-xcRg>; Tucker Carlson Lawmakers USE Russia To Ignore ACTUAL China THREAT 7/24/2018 <https://www.youtube.com/watch?v=ByUyXe-EppA>; Rubio on how to combat China’s threat 5/4/2018 <https://youtu.be/lqWl7lC8hv8>; Russia or China? Which is America’s greatest threat? 2/24/2018 <https://youtu.be/E9lZEnlK1cg>

²⁰ BBC News, “Quick guide: China’s Economic Reform” 3 November 2006, <http://news.bbc.co.uk/2/hi/asia-pacific/5237748.stm>

difficult period of natural disasters,²¹ recession, crises, a record-breaking stock market crash,²² and uneven recovery. After 2008 China's strategy shifted to reducing debt risk and boosting aggregate demand while employing massive economic stimuli to encourage domestic consumption and investment, thereby decreasing its vulnerability to external shocks. It was at this time that China began to invest in infrastructure, building nearly 30,000 kilometres of high-speed railway to increase connectivity, facilitate closer regional economic ties as to propel urbanization. All in all, the goal is to advance political, cultural, military and scientific-technical might.

The accepted projection is thus that China is destined to become a superpower in competition for global hegemony with the United States as an established power. Graham Allison, author of the celebrated best-selling book "Essence of Decision" that deals with the Cuban Missile Crisis in 1962 even goes so far as to warn that the two big powers will be locked in the "Thucydides trap" leading eventually to war.²³

Writing on the webpage of London School of Economics Emerging Power Forum on the belt and road initiative of China, John Raji offers a more balanced account.²⁴ The initiative is a huge enterprise. Its flagship project, the 62 billion USD project of China-Pakistan Economic Corridor (CPEC), together with the Bangladesh-China-India-Myanmar Corridor (BCIMC) will span one third of global trade in terms of GDP and more than 60% of the world's population. Given the magnitude of the initiative, it is no wonder there are some negative perceptions.

Another alternative query about the worth of China's One Belt One Road (henceforth OBOR) Initiative is to examine where the benefits go. According to the Borgen Project,²⁵ both China and the recipient countries benefit from the OBOR project. It enables China to play a greater role in the world and distribute its wealth along a China-dominated trading network. Apart from the Chinese state, individual Chinese companies and workers are direct beneficiaries of the OBOR project in terms of jobs and occasional parallel trading. On the other hand, China's initiative helps the

²¹ The big earthquake in Wenchuan, Sichuan on 12 May 2008 killed 70,000 people.

²² The market plunged from a 2007 high of 6,124 to 1,664 in October 2008.

²³ See "Thucydides trap", <https://foreignpolicy.com/2017/06/09/the-thucydides-trap/>

²⁴ John Raji, "Chinese Imperialism – The belt and road initiative", <http://www.lseemf.com/chinese-imperialism-belt-road-initiative/>

²⁵ The Borgen Project is a nonprofit organization that is addressing poverty and hunger and working towards ending them. <https://borgenproject.org/about-us/>

recipients – developing countries – to improve their transportation, energy production and trade.²⁶ So, what evidence can be presented to justify the “China Threat Thesis”?

Efforts of the Chinese governments to construct a new nation-state after the First World War

The encroachment of imperialism upon the Qing dynasty gave rise to a discourse on the causes of defeat in the war and ways to stand up again. The wish to stand up again is expressed emotionally as nationalism, a natural reaction to the humiliating defeat at the gun of a foreign country. In the search for salvation, the need for industrialization that is related to the advancement of military power was initially recognized. A movement was thus ushered in to learn from foreign practices (*yangwu yundong*). Later on they discovered that the strength of the Western countries lay far beyond industrial and military hardware. Therefore, modernization broadly understood was deemed indispensable too. It is in this second approach that the concept of nation (*guomin*) emerged as a hot subject of discourse among young intellectuals of the day. They assumed that the nation-state had become the modern structure of political power, recognized that China's independence in the larger world required the formation of a new identity and found that the nation-state was a natural representation. The learning from foreigners movement gave way in 1911 to a political revolution led by Dr. Sun Yat Sen. After the fall of the incompetent Qing dynasty, Dr. Sun established a nation-state in the form of a republic and presented a three-pronged blueprint for the task of nation-state building. What has transpired from these lines of history tracing is a theoretical alignment with Professor Hobsbawm's insight on political development in the modern time, that nationalism comes before nations. China is no exception. Key political leaders in Modern China, from Dr. Sun Yat Sen, Mao Zedong, Deng Xiaoping and Xi Jinping are nationalists first before they reflect upon who the Chinese are by tracing China's miserable encounter with foreign powers. It is the nationalist emotion plus the desire to rise up that has defined the craft of nation- and state-building in the late twentieth century.

²⁶ Judy Lu, “How OBOR Benefits Developing Countries”, <https://borgenproject.org/one-belt-one-road-benefits/>

A Maoist type of nationalism with a theory of constant revolutions

Mao Zedong, on the other hand, could boast that under him China had ‘stood up’, but for what? Mao had in fact two faces. He embraced the Marxist-Leninist brand of internationalism but relied on Chinese nationalism to win the civil war.

In the early 1990s when Marxism-Leninism-Mao Zedong Thought in China started to erode as a part of the worldwide crisis of communism, state legitimacy experienced an acute crisis. The expectation was that nationalism would have to fill the void created by the ‘crisis of confidence’ and by the collapse of the myth of socialism as a magic wand for development. Yet, the road was hard to tread, as argued by Lucian Pye, an astute observer of Chinese culture in evolution. He wrote in 1993 that “the relationship between nationalism and modernization has taken a form in China that is different from what occurred anywhere else”. To him, the essence of modernization is a blending of parochial cultural values and the universal norms associated with world culture, defined as international standards, universalistic knowledge, such as science and technology, and the values and practices appropriate for advanced contemporary societies, while nationalism involves only those sentiments and attitudes basic to orientations toward the nation-state. Above all it is important to distinguish Chinese nationalism from all the powerful sentiments associated with Chinese cultural and ethnic identity. To understand the likely direction of Chinese historical development we also need to have a clear sense of the more specific ideals, myths, heroes, and symbols that can inspire Chinese nationalism as the Chinese seek the goals of modernization. Elsewhere in the post-colonial world nationalism and modernization were reinforcing forces, but in China they have been essentially antagonistic forces. Elsewhere the articulators of nationalism were the most modernized people in the country. Westernized intellectuals were the people who gave voice to the new ideals of independence and nationalism. The anti-colonial leaders of South and Southeast Asia and of Africa were people like Nehru and Gandhi, Nkrumah and Sukarno who were at home in both the modern world and their respective traditional cultures. They had out of their own life experiences a vivid sense of the challenge of combining modern and traditional practices. In contrast, in China political power was never firmly in the hands of the best-educated or the most modernized people. Those who have held supreme political power in Mainland China have reflected mainly the cultures of the interior of China, and few have experienced a deep immersion in the modern

world or even spoken a foreign language. ... Thus, from the Boxer rebellion to the latest 'anti-spiritual pollution' campaign, the Chinese political class has routinely treated modern, Western-educated Chinese as being tainted, flawed people, unworthy of being leaders of Chinese nationalism. Unlike in other countries, many Chinese intellectuals have at times adopted a totally hostile view towards their own great traditional culture, calling for the complete rejection of the past and a boundless adoption of Western culture. There have also been times when other leaders, and particularly some intellectuals, have gone to the opposite extreme and tried to idealize Chinese traditions. But what was idealized were not the realities of living Chinese mass culture; it was indeed an abstraction of a romanticized past. Thus, between the two extremes of either nihilistically denouncing Chinese civilization or romanticizing it, most Chinese intellectuals and political leaders have consistently failed to do what their counterparts in the rest of the developing world have tried to do, which was to create a new sense of nationalism that would combine elements of tradition with appropriate features of the modern world culture. Their dream was how to build up a strong state, not so much a democratic state of the people, by the people and for the people. Given the collectivistic goal and the elitist orientation, it was easy for the movement to end up with the monopolistic rule of the Party, be it the National People's Party in Taiwan or the Chinese Communist Party. The above analysis of Chinese nationalism is confined to the level of elites, political or otherwise. What about the men on the street? There have always been press reports about nationalist outbursts from time to time. But serious study is almost void,²⁷ until the publication of the book *Deconstructing the Chinese Dream: The Dynamics of Chinese Nationalism and Sino-American Relations (1999-2014)*²⁸ authored by Simon Shen. Shen argues that nationalism in China is multi-faceted depending on three interrelated levels of analysis (A. the Chinese Communist Party, the government and the military; B. the general intelligentsia, scholars or reporters specialized in international relations;

²⁷ Duan Xiaolin laments over the lack of rigorous analysis of Chinese nationalism and its foreign policy implications, see her "Unanswered Questions: Why We may be Wrong about Chinese Nationalism and its Foreign Policy Implications", in *Journal of Contemporary China*. Vol. 26, No. 108, 886-900.

²⁸ The English edition was published in 2007 and the paper relies on its Chinese edition translated by Simon Shen, Liu Yongyan, and Judy Lee and published by *Border-town Thinker Series* (邊城思想系列 [biancheng xixiang xilie]).

C. the common people, including the mass media) and other not easily classifiable platforms of expression (e.g. “diplomatic” dialogues among states or societies, occasions of cultural exchanges, festivals, and tomb-stoning in honor of martyrs, heroes etc.). On the part of government, experienced deployment is always ready to guide, control and sometime follow the public mood and thereby reconfirms the steering power of the state, sometimes facilitates its bargaining power in diplomatic struggles, and ultimately stabilizes political and social stability too.

The China dream of the Chinese communist leaders is more concrete and contextualized. It has moved from a more reserved and introvert mode through stages up to the pursuit of a super-power status. Mao Zedong’s dream was quite conservative, i.e. just to enable China to stand up in a hostile world. Deng Xiaoping adopted a positive posture towards the outside world, deciding to learn the best practices of the West, and eventually accepted capitalism as the right course for China’s reforms, especially in economy. The catch word adopted was “to let China get rich while keeping a low profile in its foreign relations (韬光養晦 [taoguangyanghui])”. Compared to his predecessor, Jiang Zemin was a leader who wanted to show off his talents. He produced a theory of three representatives,²⁹ to specify what the Chinese Communist Party stood for in terms of making the state strong and the Party more representative and hence legitimate as the ruler of China. Thanks to his extrovert orientation, China became a member of the World Trade Organization. Jiang’s successor Hu Jintao turned out to be a controversial figure. On the positive side, China’s economic growth registered more than 8 percent each year during his reign. His timely and strong fiscal stimulus managed to save the country from devastation during the world financial crisis in 2007–2008. His legacy must be praised with a long list of accomplishments beyond material progresses. Under his supervision, Beijing successfully staged the Summer Olympics in 2008 and pushed through space exploration with the launch of a manned spacecraft and space station. He also exhibited a strong stride with a diplomatic reach to Africa. By 2005 the total Sino-African trade had reached US\$39.7 billion before it jumped to US\$55 billion in 2006, making China the second largest trading partner of Africa after the United States, which had trade worth US\$91 billion with African nations.

²⁹ There are: “Represents advanced social productive forces”, “Represents the progressive course of China’s advanced culture” and “Represents the fundamental interests of the majority”.

At the same time, China's influence also grew in South America and the Caribbean. The most eye-catching deal played by Hu Jintao during his visit to Brazil, Argentina, Chile, and Cuba in November 2004, was a sum of US\$100 billion worth of investment over the next decade. In one instance, China encroached upon the interest of the United States by taking up the modernization of Cuba's transportation system. Finally, China was also stepping up its military-to-military contact in the region and, by the way, offered military training at the US' expense too. In the Caribbean, the increasing presence of China in terms of trade, credits, and investments represent a way for local countries to reduce their over-dependence on the United States. Improvement of relations between China and the European Union also took place during the era of Hu Jintao. In November 2005 the General Secretary visited the UK, Germany and Spain, with a clear message of a strong eagerness to enter greater political and economic cooperation with European countries.

On the negative side of the balance sheet, he is charged by outside observers as being obsessed with stability, thereby leaving aside several important problems, for instance, environmental degradation and widening income inequality. Furthermore, by pushing China's interest in the East China Sea too hard, he pushed Japan, South Korea, Vietnam, and the Philippines further in the USA camp.³⁰

China has since 14 March 2013 entered a new era, with Xi Jinping elected to be the General Secretary of the Chinese Communist Party. Xi is an extraordinary man who regards himself as on par with Mao Zedong and Deng Xiaoping. It is useful to review him as a person, before discussing his ideology and political deeds. Let me start with a quote from a recently published book about Xi: "If you were to write a work of fiction on how to have a perfect presidency, you couldn't do better: no opposition, a strong economy and an American President who seems to be a bigger fan of Xi Jinping than Xi Jinping is himself".³¹

Xi was elected directly onto the Standing Committee of the Politburo, without having to go through Politburo membership first. Key posts soon fell into his hands in the same year. In 2010 he became the President of the Central Party School, Vice-Chairman of the People's Repub-

³⁰ This information is taken from Matt Schiavenza, "Was Hu Jintao a Failure?", *The Atlantic*.

³¹ Kerry Brown, director of the Lau China Institute at London's King's College and the author of *CEO, China: The Rise of Xi Jinping*.

lic of China and Vice-Chairman of the Central Military Commission. Summing up his “professional” career of 25 years, from 1982 to 2012, when he was elected to become the General Secretary of the Party, he has held 17 posts, i.e. less than 2 years in each on average. He must have mastered the political trick to move forward both in good times and in bad. What such a personal profile portrays is a personality of perseverance, restraint, circumspection, and low-keyness, at least in the early years of his colourful career. Initially, he certainly got to know the time of the day, namely to “follow the established rules [蕭規曹隨(xiaoguicaosui)]”, in order to consolidate his power. About five years later, he has finished with the project of getting rid of his competitors, reorganizing Party as well as state organizations, and putting them all in his own hands.³² Last year (2018) the National People’s Congress voted 2,958 in favor, two opposed and three abstaining to pass an amendment to the Constitution abolishing presidential term limits. The decision is seen as an epitome of his political craft. Such a speed of power consolidation has not been seen since the era of Mao Zedong. His political craft does not end within the political hierarchy, but also in dealing with the society. After his political power had been secured, he managed to have several comprehensive, harsh laws passed, to cleanse, in the name of national security, undesirable material or ideational developments in the recent past, such as advocacy for human rights, freedom of speech, civil society and contentious political actions. “National security” has now become the imperial sword of the Big Brother Xi.³³

Xi Jinping on the Chinese nation and its rejuvenation

Having dealt primarily with Xi Jinping as a person in an authoritarian state, it is time to turn to his political ideas and enterprises. In regard of political ideals, Xi is a staunch nationalist. He gave a speech during his visit to an exhibition on “The Road to Rejuvenation” on 18 November 2012, in which he declared: “I believe that realizing the great rejuvenation of the Chinese nation is the greatest dream of the Chinese nation in modern time”.³⁴ “The great rejuvenation of the Chinese nation” has become a frequent topic in Xi’s speeches elsewhere. Yet, what does this national

³² List of leadership positions in key organizations.

³³ In the name of national security, the high degree of autonomy enjoyed by the Hong Kong Special Administrative Region of Hong Kong shall not apply in certain cases.

³⁴ See http://www.xinhuanet.com//politics/2012-11/29/c_113852724.htm

rejuvenation mean? While he has never given any further and systematic elaboration, there are occasional comments he has made in speeches that may shed more light on our query. In one speech to the youth, he regarded young people as having the pivotal role in realizing this dream of national rejuvenation. In another comment, he referred to the endowment of the Chinese nation. It reads as follow: “Innovation is the soul of national progress, an inexhaustible source of national prosperity, but also the deepest national endowment of the Chinese nation”. On yet another occasion, he commented about with “the Chinese nation’s self-improvement spirit of struggle” as the cause for the effect that “China has transformed from poverty and weakness to today’s development and prosperity”³⁵ Yet, what do all these comments have in common? It is about a destiny not yet fully realized. The aspiration or dream of national rejuvenation or revitalization (*fixing*) is a theme not unique to Xi. It is inherited from the grand theme of reform discourse in the past decades.

What is indeed the benchmark for Xi’s “national rejuvenation?” The image in his mind is probably the Tang, Song and perhaps even Yuan dynasty when China’s power, both hard and soft, could project very far. Therefore, Xi’s ambition does not stop with rejuvenation only, but extends to secure a respectable place under the sun. This aspiration has not been laid bare for the time being. China has, as a status-quo stakeholder, membership in all major international organizations such as the United Nations, World Trade Organization, World Health Organization, International Monetary Fund, etc., China not only plays an active and supportive role in all of them, but additionally uses them to promote, aggressively, its development of global power status. Initially, as an authority-seeking stakeholder, Xi seems to focus on measured competition with the US. In this framework, Xi advanced a theory of “a new mode of relations between big powers”.³⁶ It is, firstly, a modest overture appealing to his American counterpart that the two countries should respect each other, endeavor to cooperate on a friendly, win-win basis, and to resort to peaceful negotiations for resolving differences and conflicts.³⁷ This

³⁵ A quick way is to search through published compilations of Xi Jinping’s quotes. See for example *xijinpings yulu* <https://big5.baiyunpiaopiao.com/html/fanwen/yulu/22177.shtml>

³⁶ Zhimin Lin, “Xi Jinping’s ‘Major Country Diplomacy’: The Impacts of China’s Growing Capacity”, *Journal of Contemporary China*, Vol. 28, No. 115, 31-46.

³⁷ The concept of “a new type of international relations between big states” was

overture should ensure that the two powers prevent their rivalry from spiraling out of control. Furthermore, it envisages that the two big powers practically reach a reconciliation by carving the world into spheres of influence. This theory is based on his optimistic assessment of China's development in international relations as on course from periphery or semi-periphery to the center, or closer to the centre of the global stage while not yet quite on par with the US, but certainly closer than ever to fulfilling the Chinese dream of national renewal. This movement to the centre of the world is to Xi irreversible despite disputes with president D. Trump on issues of trade, South China Sea and Taiwan. Therefore, China should henceforth behave like a big power in all international dimensions. In this connection, President Xi proposed, on 28 September 2015 to the United Nations a common goal for all member states to “forge a new partnership of win-win cooperation and create a community of shared future for mankind”.³⁸ *The grand plan of Xi is to bravely reform the world system and grasp the leadership in global governance in the name of global sharing, thus making China a revisionist stakeholder.* Such an intention is unambiguously articulated in his November 2012 speech, with the key message of a need for steadfast reform of the current international economic and financial systems, and global governance mechanisms. To prepare China for both eventualities, Xi has helped establish several new international institutions.³⁹ Beyond all these, the most important initiative recently launched refers to the OBOR Project that serves several purposes.⁴⁰ The chief purpose is to project China's influence all the way

introduced first at the Central Conference on Work Relating to Foreign Affairs held in November 2014. It was later elaborated into “the new type of big state diplomacy with Chinese characteristics” meaning that China desires to avoid the “Thucydides’ trap” and instead to pursue, with reference to the Chinese traditional ‘pragmatic kingcraft’, developing together with other countries a “community of common destiny for all mankind in all fields of the life-world”. The idea of ‘pragmatic kingcraft’ is derived from the different strategic teachings of Mencius and Hsun-Tsu, that were observed by the Han, Tang and early Qing rulers.

³⁸ See the text of his speech via https://gadebate.un.org/sites/default/files/gastate-ments/70/70_ZH_en.pdf

³⁹ Prominent examples include the BRICS Development Bank, the proposed Regional Comprehensive Economic Partnership trade agreement (RCEP), and most prominently the Asian Infrastructure Investment Bank (AIIB).

⁴⁰ The other purposes include mainly the following: 1. The export of excess industrial production capability, 2. Offer of employment opportunities for the excess labour force, 3. Investment as well as market outlets for Chinese merchants, 4. Strategic land

westwards up to the South Atlantic world. The attraction of the project for the host countries is the construction of infrastructure such as roads, railroads and ports. The reality is that the project does not always meet the local people's expectations. Suffice it to cite a few prominent examples. First, China defeated Japan in the International Jakarta Bandung high-speed railway project that is estimated to cost US\$5.5 billion. China Development Bank has committed to fund 75 percent of the project costs with loan terms of 40 years for the loan – with an initial grace period of 10 years – with a fixed loan rate. The contract was signed on 16 October 2015 but as of now nothing at all has been done despite the long elapse of the construction commencement date.

A second remarkable case happened in Malaysia, where a double-track East Coast Rail Link (ECRL) is supposed to be built connecting Port Klang on the Straits of Malacca to Kota Bharu in northeast Peninsular Malaysia, connecting the East Coast Economic Region states of Pahang, Terengganu and Kelantan to one another and to Peninsular Malaysia's west coast and Central Region e.g. Negeri Sembilan. Construction began in August 2017 but was suspended on 3 July 2018, only to be recommenced after Malaysia Rail Link Sdn Bhd (MRL) and China Communications Construction Company (CCCC) agreed to sign a supplementary protocol in April 2019 on the revised construction cost and southern alignment of the rail link. In the midst of this deplorable process, Mahathir Mohamad, prime minister of Malaysia, said after meeting his Chinese counterpart Li Keqiang in July 2018 that "we don't wish a situation to arise when a new version of colonialism emerges because poor countries cannot compete with the rich ones". The background is that after winning the recent general election, he had second thoughts about the development costs of the railway project (about US\$197.5 to be divided into construction and financing costs). Further dissatisfaction with the Malaysia-China deal has to do firstly with the high cost of Chinese loans, secondly, the propensity of Chinese contractors to engage Chinese labourers only, thirdly, the fact that all construction materials must be imported from China and, finally, that all talks and negotiations about the project were conducted in China. Construction was therefore called to be suspended indefinitely on 4 July 2018. On 26 January 2019 both

and maritime bases for the Chinese military, 5. More efficient transportation connections between China and key posts in Southeast Asia, Western Asia and the Middle East, and the African continent.

sides announced the cancellation of the speed railway plan. For whatever reasons unknown to this author, the project was rescued after the construction costs were revised downward and the southern part of the rail link reopened in April 2019.⁴¹

The third case, Pakistan, is the most glaring example of local frustration with China's OBOR initiative. It is known that China-Pakistan relations are the closest and friendliest of all China's neighboring countries. Given its geopolitical strategic importance, Pakistan serves as the key state for China's projection of economic, political and military power in the region. All in all, Xi's OBOR project must have been received as a big gift by the Pakistanis. The reality turned out to be otherwise. "The China-Pakistan Economic Corridor"⁴² is intended as the flagship of Xi's OBOR programme and has received praise from political leaders from both countries. Yet, after five years in construction, the project invited a host of reproach and worries: the debt trap, increase in trade deficit, real benefits generated from the project and fairness of the deal,⁴³ instability caused by attacks,⁴⁴ etc. From the viewpoint of Pakistan, the most important value of Xi's project is to stimulate its industrial modernization.

Conclusion

1. China is nationalistic, performing, authoritarian, and revisionist in the sense that it accepts the basic, liberal rules of the world order but is dissatisfied with its status in the hierarchy.
2. Authoritarian governance combined with capitalist economics has elevated China to the status of an emerging super-power in the world.
3. President Xi believes that China's model of modernization is successful and should be recommended to other developing states.⁴⁵

⁴¹ A possible explanation may be the credible threat on the Malaysian side to look for alternative contractors from other countries.

⁴² The Corridor is expected to have a 3,200 km belt for trade and transportation of energy resources. It will also connect Kashar city, Xinjiang of China via Pakistan's Balochistan province all the way to the Arabic Sea.

⁴³ The people of Pakistan ask whether it is fair for China to reap 90% of the income from Gwadar Port.

⁴⁴ Chinese workers were murdered, China's consulate in Karachi was attacked, and regional instability started getting worse.

⁴⁵ On 4 December 2018 Xi announced 10 major plans to boost cooperation with all African countries except Eswatini (which recognizes Taiwan) in the coming three years. The package features US\$60 billion of funding support and covers the areas of industrialization, agricultural modernization, infrastructure, financial services, green de-

4. According to a worldwide public opinion survey undertaken by PEW, “the United States and China now compete to be the more favored world power”, and both of them “engender the same level of goodwill”.⁴⁶

velopment and investment facilitation, poverty reduction and public welfare, public health, people-to-people exchanges, and peace and security. http://www.chinadaily.com.cn/world/XiattendsParisclimateconference/2015-12/04/content_22631225.htm

⁴⁶ <http://www.pewresearch.org/fact-tank/2017/08/23/in-global-popularity-contest-u-s-and-china-not-russia-vie-for-first/>

COLONIAL LEGACY IN THE DEVELOPMENT OF NATION-STATES IN SOUTHEAST ASIA

WILFRIDO V. VILLACORTA

The adoption in Southeast Asia of the nation-state framework is based on colonial and post-colonial experiences. Westerners can best understand the worldview of the ten Member States of the Association of Southeast Asian Nations (ASEAN) in the context of foreign domination suffered by these states. It is the reason behind their strong resistance to any external interference in their domestic affairs.

Peace, prosperity and stability have been the aspiration of ASEAN. Its formation was the result of efforts to resolve the conflict among Indonesia, Malaysia and the Philippines during the late sixties. After the Cold War, the countries which were on the other side of the ideological camp joined ASEAN.

This article will examine whether the Western nation-state paradigm still meets the needs of humanity. How do we, present-day Catholics, respond to the complex challenges posed by globalization using the social teachings of the Church?

What is a nation?

Benedict Anderson proposes an unconventional definition of the nation as “an imagined political community – and imagined as both inherently limited and sovereign. It is *imagined* because the members of even the smallest nation will never know, meet them, or hear of them, yet in the minds of each lives the image of their communion” (Anderson 2017: 6). Furthermore, “the nation is imagined as limited because even the largest of them... has finite, if elastic boundaries, beyond which lie other nations. No nation imagines itself coterminous with mankind” (Ibid.: 7).

In Southeast Asia and most of the non-Western countries, the framework of the “imagined nation” applies, given that the colonial masters imposed artificial boundaries among vanquished native tribes and kingdoms.

As we know, former colonies borrowed the concept of “nation-state” from the West. The principalities and monarchies of Europe adopted in 1648 the said concept when they signed the series of treaties in the Peace

of Westphalia. State sovereignty became the prime source of legitimacy, and the state's interest, the foundation of national pride and independence.¹

It is for this reason that the founding fathers of ASEAN, composed of ten member-states, did not aspire for a supranational organization, unlike their European Union counterparts. Most ASEAN member-states are developing nations, as opposed to those European countries which benefited from the fruits of colonialism and had reached material development much earlier. It was likewise easier for EU member-states to welcome globalization, having become more equipped for economic and political integration among themselves. Their development as a regional community was facilitated by the common Judeo-Christian, Greco-Roman tradition held by the majority population. Furthermore, the presence of democratic institutions and a free-enterprise economy were requirements for EU membership.

On the other hand, ASEAN is a bloc of ten member-states with different political systems and religious/ideological backgrounds. Brunei Darussalam is a sultanate, Indonesia and the Philippines are presidential republics, Singapore and Malaysia are parliamentary republics, Thailand and Cambodia are parliamentary constitutional monarchies, Laos and Viet Nam are socialist republics, and Myanmar is a military-affiliated parliamentary republic.

As opposed to the practice of the European Union, ASEAN has to maintain the consensus approach in arriving at its regional policies. This is because they are not yet ready to establish a regional parliament and judiciary, and a strong executive branch such as the European Commission or other supranational institution that could enforce the collective decisions of the member-states. Moreover, ASEAN does not have a Common Foreign and Security Policy like that of the EU. Nor is ASEAN a military organization like North Atlantic Treaty Organization (NATO). It is not mandated to solve territorial disputes, but to prevent the use of force in resolving conflict among its member-states and dialogue partners. Throughout its fifty-one years of history, there has not been any war among its member-states unlike during pre-colonial times and before they joined the regional organization.

The grouping adopted instruments that call for non-violent means of resolving conflict: Zone of Peace, Freedom and Neutrality (ZOPFAN), the Southeast Asia Nuclear Weapons Free Zone (SEANWFZ), the Treaty

¹ As explained by Brunet-Jailly (2005), the Treaty of Westphalia of 1648 did not only demarcate the "territorial possessions of England, France, Dutch lands, German prince-domains, the Muscovy, Poland, Turkey, Spain and Sweden". It also "marked the beginning of the era of the nation-state and nationalism".

of Amity and Cooperation in Southeast Asia (TAC), the ASEAN Regional Forum (ARF), and the Declaration of Conduct among Parties to the South China Sea (DOC). The ASEAN foreign ministers have adopted the Framework for the Code of Conduct in the South China Sea (COC).

‘Nationalism’ and ‘patriotism’ in a globalizing world

On the recent 100th anniversary of the end of World War I, French Prime Minister Macron said, “Nationalism is a betrayal of Patriotism”. This statement evoked shock in the non-Western world where nationalist feelings are a popular sentiment used as a protective shield against foreign domination and exploitation. Many developing nations in countries in Asia, Africa and Latin America equate nationalism with populism and anti-imperialism.

On the other hand, among former colonizers, like Japan, Germany, France and the US, nationalism denotes the perpetuation of neo-colonialism, militarism, racism and authoritarianism. The fear of peoples of these countries, especially the young, is that the resurgence of such tendencies might lead to bigotry and a repetition of the excesses wrought by domination of weaker countries. In the US, however, President Donald Trump found nothing objectionable about invoking “White nationalism” and an “America First” policy.

The Philippines is an example of a nation where nationalism is a positive value. It involves a policy of independent foreign policy and resistance to foreign dictates on their domestic affairs and policies. Nationalism was the main vehicle for gaining national independence from the colonial hegemonies of Spain in 1898 and that of the United States in 1946. It is also responsible for the constitutionally mandated phaseout of foreign troops and bases in Philippine territory (Constitution of the Republic of the Philippines 1987: Article XVIII, Section 25).

Theoreticians distinguish nationalism from patriotism, the latter being the assertion and consciousness of one’s identity, i.e. respect for the flag, anthem and other symbols of the national independence and sovereignty; distinctive national culture and language; pride in one’s national achievements; and defense of national territory, as well as promotion of national and international image. Nationalism, for its part, goes beyond identity and requires love and service for the people, concern for common interest, and social justice and equality. There are inevitable overlaps between nationalism and patriotism, but in multi-ethnic, multilingual countries, less citizens are mindful of these differences,

Colonial impact on the character of present governance

The extent of influence by former colonizers on the practice of governance in Southeast Asia varies from country to country. Milton Osborne elaborates: “The European powers became, at the most fundamental level, the paramount powers of the region. This political development was accompanied by one of the most important features of the European advance into Southeast Asia: the creation by the colonial powers of the borders that, with minor exceptions, have become those of the modern states of Southeast Asia. At the same time, the Western advance called into question old values and ways of conducting government, since the success of the European powers in gaining control served as a testimony to the inadequacies of past systems” (Osborne 2010: 72–73).

He emphasized that “just as the Dutch in Indonesia moved much more slowly than is often recognized to establish control over the whole of the modern Indonesian state, so was the Spanish achievement of control in the Philippines a slow affair... Although Spanish power was able to dominate most of the lowland areas of the northern Philippines by the middle of the eighteenth century, the highland areas remained regions apart. Moreover, the southern Muslim areas of the Philippines never came under real Spanish control. Repeated Spanish attempts to dominate the fiercely independent sultanates of the Southern regions failed. Spanish control was achieved in some major southern ports such as Zamboanga, but the Sultan of Sulu and his less powerful counterparts never submitted to Spanish rule. The seeds of contemporary Muslim separatism in the southern Philippines were sown long ago” (Ibid.: 90–91).

The cultural impact of Spain on the Philippines was deepened by the length of colonial rule (333 years) and the religious conversion of most of the population in the northern islands of Luzon and Visayas regions. The imposition of forced labor and the feudal economy dominated by big landlords had conditioned the subservience and impoverishment of the natives and had reinforced their disempowerment. The oppression of the ruling colonial elite shaped an intransigent and rebellious attitude on the part of the colonized majority. Resistance to and lack of trust in any government – whether overt or suppressed – pervade to this day.²

The Dutch, British, French and US colonizers had their share of misrule in the region.³ Thailand was spared from direct colonial subjugation but lost much of its territory to France and Britain.⁴

² See Corpus (1957).

³ See Chapter 5: “The European Advance and Challenge” in Osborne (2010: 70–92).

⁴ See *ibid.*, 82–83; Reid (2015: 214–219);

Independence movements

Charismatic icons left a lasting legacy to the peoples of the region. The Philippines was the pioneer among former Asian colonies in awakening the sense of nationalism. José Rizal's writings – foremost of which were *Noli Me Tangere* and *El Filibusterismo* – ignited the first anti-colonial revolution in Asia led in 1896 by Andrés Bonifacio and Emilio Aguinaldo (Agoncillo 2017: 5-67; 195). This revolution led to the founding of the first Asian republic in 1898 and later, the Filipino-American War in 1899-1902. After the US occupied the Philippines, Manuel Quezon worked for the Philippine Autonomy Act in 1909 and secured the passage of the Tydings-McDuffie Act in 1934, which provided the grant of independence to the Philippines after a ten-year transition period. He was elected President of the Philippine Commonwealth in 1935.

The return of Philippine independence after World War II was followed by the birth of new nation-states in the region and the emergence of future nationalist leaders of the “Third World” bloc of developing nations. Sukarno led the movement in Indonesia, Lee Kuan Yew in Singapore, Tunjku Abdul Rahman in Malaysia, Sihanouk in Cambodia, Ho Chi Minh in Viet Nam, General Aung San and U Nu in Burma (Myanmar).

The right to self-determination

According to the Philippine Statistics Authority (PSA), Islam is the second largest religion in Mindanao. It has a total of 6,064,744 followers or 6.01% of Philippines' total population, based on the result of the 2015 Census of Population (PSA 2017).

Ninety-three percent of the entire Islamic population resides in Mindanao. Of the island's 24,135,775 population, Muslims comprise about 23.39% of its entire population. In the Autonomous Region in Muslim Mindanao (ARMM) alone, where majority of the Muslims reside, 9 out of 10 of the regions' population are followers of Islam.

Bangsa means “nation”. It was Nur Misuari, founder of the Moro National Liberation Front (MNLF), who formally pursued the right to self-determination of the Moro peoples. Misuari redefined the term “Moro” (Spanish word for Moor), from a derogatory term used by the Spanish colonizers, into a symbol of unity against the Philippine state. In addition, he also asserted the inclusion of non-Moro communities in the struggle for self-determination by collectively identifying the Moros and non-Muslim indigenous peoples (*Lumad*) as the ‘Bangsamoro’ peoples.

In a 1972 publication by Mahardika, the official paper of MNLF, they declared: “From this very moment there shall be no stressing the fact that one is a Tausug, a Samal, a Yakan, a Subanon, a Kalagan, a Maguindanao, a Maranao, or a Badjao. He is only Moro. Indeed, even those of other faith who have long established residence in the Bangsa Moro homeland and whose goodwill and sympathy are with the Bangsa Moro Revolution shall, for purposes of national identification, be considered Moros. In other words, the term *Moro* is a national concept that must be understood as all-embracing for all Bangsa Moro people within the length and breadth of our national boundaries” (quoted in Gowing, 1975).

According to the United Nations Development Program (2013), there are an estimated 14 to 17 million Indigenous Peoples (IP) belonging to 110 different ethno-linguistic groups in the country. Most of the said groups are concentrated in Mindanao (61%), Northern Luzon, particularly in the Cordillera Administrative Region (33%), and some in the Visayas Area. The Philippine Constitution and the Indigenous Peoples’ Rights Act of 1997 recognized and mandated their right to self-determination. The resolve of the Muslim Filipinos reaped successes only during the past few years.

The Moro Islamic Liberation Front (MILF) emerged as a splinter group of the Moro National Liberation Front (MNLF). Hashim Salamat, an MNLF co-founder, had ideological and political disagreements with Nur Misuari.

Former President Benigno Aquino III found it easier to conduct peace talks with the MILF. Hashim was open to give up his separatist aspirations, realizing that it is peaceful means that would bring a better life for his Muslims brethren. He crafted a long-term development plan that would actively involve both the Muslim and non-Muslim populations in Mindanao.

In 2015 President Aquino convened the Citizens’ Peace Council on the Bangsamoro Basic Law (BBL) (Casauay 2015). With the cooperation of the Office of the Presidential Peace Adviser on the Peace Process (OPAPP), led by Secretary Teresita Quintos-Deles, the Council agreed to divide their work and focus on four topics based on BBL provisions:

- Constitutionality and forms and powers of government
- Justice, including social justice and human development
- Economy and patrimony
- Human Security

The original five members were: Manila Archbishop Luis Antonio Cardinal Tagle, former Chief Justice Hilario Davide Jr, businessman Jaime Augusto Zobel de Ayala, former Philippine Ambassador to the Holy See and

Malta Howard Dee, and founder of Teach Peace, Build Peace Movement Bai Rohaniza Sumndad-USman.

Additional members came from various sectors, notably from the Catholic Church:

- Archbishop Socrates Villegas
- Fr Joel Tabora, president of Ateneo de Davao University
- Bishop Pablo David
- Philippine Center for Islam and Democracy president Amina Rasul
- Lawyer Christian Monsod, member of the 1986 Constitutional Commission
- Ambassador Wilfrido Villacorta, member of the 1986 Constitutional Commission
- Archbishop Antonio Ledesma
- Makati Business Club chairman Ramon del Rosario
- Former NEDA director-general and professor Cielito Habito
- Ateneo de Manila Law School Dean Sedfrey Candelaria
- University of the Philippines College of Law Dean Danilo Concepcion
- Professor Moner Bajunaid
- CODE-NGO chairperson Pat Sarenas
- Lawyer Nasser Marohomsalic
- Businessman John Perrine
- Bishop Efraim Tendero
- Lawyer Marlon Manuel

After thorough discussions and hearings, the Peace Council submitted the draft BBL to the President and Congress. Unfortunately, many lawmakers found the bill disruptive to their political interests and questioned its constitutionality. They failed to reach a consensus.

When he was elected to office, President Rodrigo Duterte, who hails from Mindanao, facilitated the passage by Congress of the Bangsamoro Organic Law, a revised version of the BBL. He signed it into law in August 2018.

2.8 million registered for the first Bangsamoro plebiscite held last 21 January 2019, with 2.17 million in provinces and cities covered by the polls. The majority of residents in the Autonomous Region in Muslim Mindanao (ARMM) and Cotabato City voted in favor of the law creating the enlarged Bangsamoro Autonomous Region of Muslim Mindanao (BARMM).

After the BOL's ratification, the second plebiscite was held last 6th February, this time to consult municipalities which are in the area of the newly

expanded BARMM, namely the province of Lanao del Norte, except Iligan City; and the municipalities of Aleosan, Carmen, Kabacan, Midsayap, Pikit, and Pigkawayan in the province of North Cotabato. Also added to the coverage of the plebiscite were 28 areas contiguous to any of the Bangsamoro core areas, where either the local government of such area, by way of a resolution, or at least 10 percent of the registered voters in a local government unit, by way of a petition, asked for inclusion in the plebiscite.

As it turned out, the entire province of Lanao del Norte voted against the inclusion of its six municipalities in the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM). On the other hand, 61 villages in the seven towns in North Cotabato voted to be part of the BARMM.

The BOL replaces the former Autonomous Region in Muslim Mindanao with a more empowered political entity that provides for wider self-rule and more resources and opportunities for development.

President Duterte appointed the 80 members of the Bangsamoro Transition Authority (BTA) which will be tasked to oversee the interim government of BARMM. The creation of the BTA is provided for under the Comprehensive Agreement on the Bangsamoro signed on March 27, 2014 between the government and the MILF.

Re-examining the Western model of nation-state

It used to be that the challenges to democracy faced mainly the newly independent countries in the developing world. The choices available to them were between individual freedom and social equality. Now, it is the world's first modern democracies – Britain, United States and France – that are under siege. Recent events demonstrate the inevitable perils of pairing off liberal ideology and capitalism. They show the incapacity of traditional democracy to temper the excesses of capitalism and their consequences: financial and moral corruption, mass poverty, widening social inequality, lack of social discipline, trade wars, intensified arms race and untrammelled sales of weapons of mass destruction, enhancing the probability of nuclear war; unmitigated climate change, terrorism, pandemics and drug abuse, massive South-North migration, and breakdown in solidarity and law and order.

Pope Francis, in *Laudato Si'*, laments that “the economy accepts every advance in technology with a view to profit, without concern for its potentially negative impact on human beings. Finance overwhelms the real economy ... Some circles maintain that current economics and technology will solve all environmental problems, and argue, in popular and

non-technical terms, that the problems of global hunger and poverty will be resolved simply by market growth. They are less concerned with certain economic theories which today scarcely anybody dares defend, than with their actual operation in the functioning of the economy. They may not affirm such theories with words, but nonetheless support them with their deeds by showing no interest in more balanced levels of production, a better distribution of wealth, concern for the environment and the rights of future generations” (Pope Francis 2015: #109).

Instead of addressing these urgent concerns, the superpowers are competing for military dominance in space. President Donald J. Trump has announced that he is working to form a Space Force as a sixth branch of the Armed Forces. Its mission will be “to organize, train, and equip combat space forces” (White House Briefing 2018).

Are the Goliaths of the world intent on leading humanity to self-destruction?

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INDIA'S JOURNEY FROM CIVIC TO CULTURAL NATIONALISM. A NEW POLITICAL IMAGINARY?

NIRAJA GOPAL JAYAL

1. Nationalism, populism and democracy

The revival of atavistic forms of nationalism in the contemporary moment is commonly attributed to a backlash against globalization, especially in relation to the movement of people across borders. This kind of exclusionary nationalism has also been associated with the emergence of radical right-wing populism and its rejection of cultural diversity. Wherever immigration has made previously mono-ethnic societies multi-ethnic, dominant ethnic groups have, encouraged by populist leaders, succumbed to demographic anxieties and shown a palpable animosity towards pluralism.

While nationalism is not a feature of *all* forms of populism,¹ most of the current manifestations of populist politics mobilize and deploy nationalist and sometimes even xenophobic sentiments. Right-wing populist leaders and parties across the world today – from Trump to Modi, from Netanyahu to Bolsonaro and from the Freedom Party of Austria to the National Front of France – exemplify this tendency. There is a particular way in which such populist leaders and parties mobilize and define “the people” such that they become the repository of national identity, or some in-group identity based on ethnicity, religion, race or class. This places them in opposition to, on the one hand, migrants/outsideers who do not belong to the national community and, on the other hand, the elite which could be ethnic co-nationals and yet be despised for their corruption and complicity in the production of inequality.

In India, such elites are reviled simply for their espousal of alien liberal political values, of ideas like freedom of speech or of minority rights. As Yascha Mounk has argued, citizens of consolidated democracies (like the US or the UK) are now dissatisfied, not just with their governments, but with democracy itself (Mounk, 2018: Ch. 3). It is the decoupling of liberalism and democracy that is, in his view, responsible for this unravelling.

¹ It has been argued that nationalism is usually a political project whose realisation has been thwarted or impeded, and, like populism, builds up an ‘us’ and ‘them’ distinction (Bowman, 2005: 119).

The detachment of liberalism (standing for individual rights and liberties and the rule of law) from democracy (defined as a set of electoral institutions through which popular preferences are translated into policy) yields variants like illiberal or purely electoral democracy, where the rights of minorities or the right to dissent, hallmarks of a liberal society, may not be respected (ibid: 40-41).

It could be argued that the enthusiasm for populism represents popular disillusionment, not so much with democracy per se, but with *representative* democracy and its enduring inability to channel popular preferences into policy. It is, in a sense, the *representativeness* of representative democracy, embodied in the institutional form of elected legislatures, that is being called into question – both where it has been formally successful for a couple of centuries, as also in places where it has yet to strike deep roots. Just a couple of decades ago, dissatisfaction with representative democracy had resulted in greater faith being invested in participatory democracy and in civil society,² rather than political parties, as agents of change. That earlier optimism about democratising democracy has now been replaced by cynicism and despondency about the future of democracy itself, finding expression in (among other things) the familiar anxieties about national identity, citizenship, borders and immigration.

It is therefore unsurprising that a major cross-country dataset, *Varieties of Democracy* (V-Dem) has, in its 2018 report, identified “disquieting trends” and a tendency towards “autocratization” in countries such as Brazil, India, Poland, Russia, Turkey and the United States (V-Dem, 2018: 5). India and the United States have been signalled India as first-time backsliders, manifesting “significant declines in liberal democracy” (ibid: 16). All these countries have populist leaders who unabashedly exploit nationalist sentiments to consolidate their hold on the citizen body.

In this paper, I propose to explore the impact of the current phase of right-wing populism and its association with exclusionary nationalism, on India, once seen as a fairly successful case of multiculturalism within a democratic framework. By way of providing the context, I will briefly map the multiple forms of cultural diversity that have historically existed in India, and then track India’s social and political journey from a ‘national-civic’ conception of citizenship identity to a ‘national-ethnic’ form (Beiner, 1995: 8).

² Cf. Neera Chandhoke (2005).

2. India: a crucible of diversity

India's cultural diversity is a product of complex and crosscutting affiliations based on the multiple and overlapping identities of region, language, religion, sect, caste and tribe. According to the Census of 2011, India has over a hundred 'dominant languages', 22 of which (excluding English) are spoken by 96% of India's population; and close to 1400 other languages. It has six major religions (not including Judaism and Zoroastrianism), which variously converge with and diverge from language groups, such that co-religionists of different language groups could have less in common with each other than they might with other members of the same linguistic, but different religious, community. A Malayalam-speaking Christian in the southern coastal state of Kerala, for instance, may not be able to communicate with a Christian in the north-eastern states of Nagaland or Mizoram, and may have more in common with a non-Christian Malayalam-speaker in her own state. The two could also conceivably belong to very different denominations and both would differ from the Goan Catholics in terms of the different personal laws that govern them. Social cleavages in India are thus crosscutting rather than reinforcing.

It is challenging, if not impossible, to describe, with any degree of accuracy, what is arguably the defining characteristic of Indian society, caste. India has anywhere between 2000-3000 castes/sub-castes (*jatis*), arranged hierarchically in the fourfold ritual *varna* order, from which Dalits (the former untouchable castes, officially known as the Schedule Castes, are traditionally excluded). Originating in Hindu society, the institution of caste has nevertheless penetrated the practices of Christianity and Islam in India. This has resulted in confusing policies of affirmative action, with Dalit Christians and Dalit Muslims not being entitled to quotas, on the empirically flawed grounds that having left the Hindu fold they are no longer victims of discrimination. However, the so-called Backward Caste Muslims are entitled to quotas because that quota is based on social and educational backwardness, and does not make any distinction on the basis of religion. The Schedule Tribes, finally, practise a variety of religions – Hinduism, Islam, Christianity as well as folk religions – and belong to many different language groups.³

As this very synoptic account suggests, social cleavages in India are extremely complex. The social universe of most Indians is a mosaic of mul-

³ For a detailed account of India's diversities and their political implications, see Niraja Gopal Jayal (2005).

ti-layered identities that encompass language, region, caste, and religion, apart from the more 'modern' secular identities of gender, location (urban or rural) and class. Over and above these, there are the overlaps between cultural and material inequalities. Traditional and historical forms of social inequality, such as the inherited symbolic or cultural disadvantages of caste or religious identity, are found to co-exist with and even be reinforced by inequalities arising out of the sphere of economic activity. For instance, the Scheduled Castes, the Scheduled Tribes and the Muslims together account for close to 38% of India's population. On every economic and human development indicator, members of these groups are worse off than others, their economic impoverishment mirroring their social marginalisation.

Some of these inequalities were sought to be addressed by the Constitution of 1950, which privileged the conception of universal citizenship, but simultaneously sought to accommodate the claims of minorities and disadvantaged groups. Recognising that the democratic principle of equality was an insufficient guarantee for minorities who, in the presence of a dominant majority, could be insecure in the enjoyment of their cultural rights, the Constitution guaranteed a set of rights including the right to follow religious personal law in civil matters, the protection of minority religious and educational institutions, the freedom of religious worship and religious instruction. It was also acknowledged that equality of opportunity would be effectively denied to historically disadvantaged groups like the Scheduled Castes and Scheduled Tribes because, given their histories of marginalization, they could not be expected to compete on fully equal terms, and hence required special guarantees of access to education and public employment as enabling background conditions of equality. Provision was also made for such reservations to be made for socially and educationally backward groups, leading to their extension, in 1990, to caste groups designated as *Other Backward Classes*. Finally, in what is perhaps one of the more successful experiments of institutional engineering in India, the organization of the Indian polity as a federation based on linguistic states settled the issue of linguistic diversity. Thus, different institutional mechanisms were devised to deal with different types of "differences" within the overarching framework of a liberal-democratic polity of the parliamentary type, with a multi-party system.

All of these provisions were fiercely debated in the Constituent Assembly that drafted the Constitution. The secular nationalist vision, based on an understanding of India's diverse and composite culture, won the day, but the endurance of contestations over some of these differences indicates a

still unsettled consensus. Nevertheless, it would be accurate to claim that the progressive and inclusive Constitution that came into being in 1950 gave India a form of secular nationalism that was grounded in civic identity rather than any cultural identity; and in universalist political values rather than particularistic ones. In subsequent years, there were contestations over identity, based on language, region, tribe and caste. Despite the rise of regional parties and caste parties, none of these fundamentally threatened the civic consensus.

In recent years, we have witnessed a resurgence of some of the contesting ideas of the late-colonial period, making India's civic nationalist project appear fragile and vulnerable. Religious nationalism, in the form of the Rashtriya Swayamsewak Sangh (the ideological parent of the ruling Bharatiya Janata Party whose self-description is of a social and cultural organization) was founded in 1925, but there were also strands of Hindu nationalism that were accommodated within the Indian National Congress itself. The RSS was banned by the Indian government in 1948, when one of its former members assassinated Mahatma Gandhi. As the BJP grew in strength from the 1990s onwards, the societal footprint of the RSS also expanded. In recent years, it has seen an extraordinary resurgence, with its membership presently standing at 5 million. It also enjoys unparalleled power over the government, whose cabinet ministers make regular presentations of its achievement to the leadership of the RSS.

The years since independence were years in which the Congress Party enjoyed an unprecedented hegemony over national affairs, and its historical slogan of *Unity in Diversity* held sway. Apart from occasional – invariably politically motivated – conflagrations of Hindu-Muslim violence, these were not decades in which society at large was affected by the ideological virus of communal sentiment. Prime Minister Indira Gandhi flirted with communal politics, taking political cues from clerics, even encouraging revivalist religious movements to settle scores with political rivals, ironically paying the price of this with her own life. Her son, Prime Minister Rajiv Gandhi, proved weak in defending secular practice, failing to prevent the violence against Sikhs that was led by his own partymen following the assassination of his mother, and caving into the most conservative elements in religious leadership as on the question of the rights of Muslim women divorcees to maintenance or the opening of the locks on the disputed Babri Masjid that was in 1992 physically destroyed by the BJP.

The majoritarian project that animates the BJP is qualitatively different from this. India got a foretaste of it during the violence against Muslims

in the state of Gujarat in 2002, on the watch of the then Chief Minister of the state, Narendra Modi. This project of majoritarian nationalism seeks a political consolidation of a Hindu identity, which is forged by resort to hyper-nationalist slogans and symbols. It is common knowledge that, given the varieties of sects and forms of worship, there is no such thing as a singular Hindu identity. This is emphatically a modern political project of the early twentieth century – one of its ideological founders, Savarkar, drew great inspiration from Mazzini⁴ – and, in its contemporary manifestation, taps into Islamophobic discourse driven by the fear of terror from the western world to further its political purpose. India has the world's third largest Muslim population, with Muslims accounting for 14 per cent of its population. This tiny minority is demonised and often equated with the 'enemy' nation of Pakistan, created by the divided legacy of the British Empire. The next section explores the new political imaginary of Indian nationalism.

3. Majoritarian religious nationalism: a new political imaginary

India's independence from British rule in 1947 was the product of a popular movement for freedom that began three-quarters of a century earlier. This movement was led by the Indian National Congress which, under the charismatic leadership of Mahatma Gandhi, mobilized fourteen million people in one of the most remarkable movements for self-determination in human history. The idea of nationalism that fuelled it was an encompassing, secular and inclusive one that sought, to provide for group-differentiated citizenship within the overarching framework of a universalist conception of citizenship well before before this issue became the subject of an animated theoretical debate between liberalism and communitarianism in political theory.

In the following sections, I will explore the contours of the form of exclusionary nationalism that has come to dominate Indian political discourse in recent years, in three dimensions: the move to undermine the constitutional design of civic universalism through amendments to the law of citizenship; the encouragement provided by hyper-nationalism to societal practices of the systematic 'othering' of, and vigilante violence against, vulnerable minorities; and the implications of such hyper-nationalism for

⁴ The ideology of the RSS has drawn inspiration from the tradition of romantic nationalism in post-Enlightenment thought. Savarkar was inspired by Mazzini and even wrote a book called *Mazzini Charitra* in 1906 (Sharma, 2003: 153–54).

democracy and the exercise of citizens' constitutional rights to the freedoms of speech and expression, of association, and of religious practice.

3.1. *Citizenship: the introduction of religion-based difference*

India has, for the last three decades, been witnessing a subtle shift from the inclusive principle of legal citizenship articulated in the Constitution to a less inclusive conception; from a *jus soli* or birth-based to an increasingly, if covertly, *jus sanguinis* or descent-based principle. This has become less subtle and more pronounced over the last five years.

Although India adopted *jus soli* as the basis of citizenship, the tension between the two rival principles of *jus soli* and *jus sanguinis* has been present (if dormant) since the founding of the republic. The articles on citizenship in the Constitution dealt only with the extraordinary aftermath of the population exchange in the wake of the Partition, leaving it to Parliament to formulate the law on citizenship. The *jus soli* conception of Indian citizenship adopted in both the Constitution and the Citizenship Act of 1955 was universal and equal, with no differentiation on the basis of religion or indeed any other identity.⁵

It is from the 1980s onwards, in response to political developments that the legal and constitutional conception of the Indian citizen started to undergo a subtle transformation, through amendments to the Citizenship Act. The first of these amendments, in 1985, amended the provisions pertaining to naturalisation. The immediate provocation for this was unrest in the eastern state of Assam which had witnessed in-migration over a long period, and especially in the wake of the creation of Bangladesh in 1971. A nativist student movement here had been agitating against the shrinking of employment opportunities due to the immigration of Bengalis (including those from the Indian state of West Bengal), as also against the enfranchisement of migrants from Bangladesh which was perceived as distorting democracy by giving the vote to non-citizens. The Government of India entered into an accord with these groups and put in place measures for the 'detection' of foreigners and their deletion from the electoral rolls. It also amended the Citizenship Act to allay anxieties about migrants who had come in from Bangladesh after the 1971 war. Categories of eligibility for citizenship were created, based on the year in which a person had migrated to India. All those who came before 1966 were declared citizens; those

⁵ A detailed account of this may be found in Jayal (2013: Chapter 3).

who came between 1966–1971 were struck off the electoral rolls and asked to wait ten years before applying for citizenship; and those who came after 1971 were simply deemed to be illegal immigrants.

In a more decisive move towards *jus sanguinis* a further amendment to the Citizenship Act in 2004 provided that, even if born on Indian soil, a person who had one parent who was an illegal migrant at the time of her or his birth, would not be eligible for citizenship by birth. Since the majority of the migrants from Bangladesh were Muslims, this covertly introduced a religion-based exception to the principle of citizenship by birth, undermining the principle of *jus soli*. Though these provisions were a response to the political situation in one state – where the anti-migrant sentiment was at a fever pitch – they already contained the seeds of the politicisation and incipient communalisation of the issue of citizenship.

Also in 2004, there was another modification of the law at its margins. On the western border of India, the presence of another set of refugees – low caste but Hindu – from Pakistan⁶ triggered the formulation of rules (appended to the Citizenship Act) that make explicit mention of their religious identity, and also make it possible for the law, and the administration of it, to adopt a more benign approach toward them, precisely because they are seen as members of a vulnerable minority in the country of their origin. Till 2004, the religious identity of these migrants had only been implicitly signalled in the Citizenship Act, but was never explicitly mentioned. The 2004 amendment to the Citizenship Rules dispensed with this coyness. The language of “illegal migrants” was dropped for these migrants who were now officially described as “minority Hindus with Pakistan citizenship”. These “minority Hindus with Pakistani citizenship” came to be excluded from the definition of illegal immigrants. What is striking is that, even as the government has inscribed their religious identity into the rules, their own understanding of what citizenship is for is quite devoid of arguments of blood and belonging. My fieldwork amongst these communities in the state of Rajasthan in western India showed that their understanding of citizenship had little to do with identity or affect; it was entirely about the social rights to which, in their view, citizenship holds

⁶ There have been waves of such migrations, especially during times of conflict between India and Pakistan, but most substantially since the mid-1990s. There are large numbers of Hindu migrants from Pakistan, living in the border districts of Rajasthan (apart from a few other states) who overstayed their visas and did not return due to religious persecution and insecurity (for a detailed discussion, see Jayal, 2013: Chapter 3).

the key: from electricity connections to admission in government schools, from caste certificates to access to subsidized food. Today, the proposed incorporation of groups like these is being framed solely in terms of their religious identity.

This is exactly what is sought to be accomplished by the Citizenship (Amendment) Bill, introduced in Parliament in July 2016. This legislation represents the culmination of the BJP project of enshrining Hindu identity as the default identity of the Indian citizen by, on the one hand, excluding “illegal migrants” (read Muslims) and, on the other, destigmatising Hindu migrants, by removing the label of illegality. Energetically sponsored by the first Modi government, the bill passed easily in the popularly elected lower house of parliament where the government enjoyed a majority, but its legislation was stalled in the upper house of Parliament where the opposition prevailed. Its return to office with an even larger majority in the elections of 2019 means that the amendment now has greater prospects of being legislated. The issue has been the subject of electoral and political mobilization in the states of Assam and Bengal by the ruling party, but in the election campaign of 2019, the passage of this bill was a central focus of the party. In the words of one commentator, “this time, there is less dog whistle, more foghorn” (Desai, 2019). Both the Prime Minister and the president of the ruling party highlighted the issue of ‘illegal migrants’ in their campaign speeches, with the party President referring to immigrants as “vermin”, and pledging to ‘throw out’ all ‘infiltrators’ except those who are Hindus and Buddhists.

This amendment signifies nothing less than a radical reversal of the religion-neutral conception of citizenship contained in the constitution and the law. While some elements of religious difference have, as mentioned above, been covertly smuggled in earlier, this Bill does so overtly. It provides that Hindus, Sikhs, Buddhists, Jains, Parsis (Zoroastrians) and Christians from Afghanistan, Bangladesh and Pakistan, deemed to be “persons belonging to minority communities”, “shall not be treated as illegal migrants for purposes of this Act” and, as such, will be eligible for citizenship after five years of residence in India as opposed to the earlier requirement of eleven years. In other words, persons belonging to six religions from three countries are no longer to be described as illegal migrants and are therefore candidates for fast-tracked citizenship. The silent implication is that Muslims from these countries would continue to be treated as illegal immigrants and would not therefore be eligible for the same relaxation. The ostensible reason for the exclusion of Muslims is that they are not

minorities in the specified countries. Notwithstanding the official concern about religious persecution, similar hospitality is not on offer for the Ahmadiyas or Rohingya Muslims, persecuted sects in Pakistan and Myanmar respectively, or indeed for Hindu migrants from Sri Lanka.

The tectonic quality of this shift in the Indian conception of citizenship lies in the fact that it introduces a religion-based difference in the presently religion-neutral law on citizenship, and entrenches a majoritarian and exclusionary conception of citizenship, replacing the existing, albeit already weakened, pluralist and inclusive conception. It would in effect create two categories of citizens: those professing the Hindu and other 'acceptable' faiths; and those who profess Islam. While the Bill includes followers of Christianity, Judaism and Zoroastrianism in its ambit of privilege, there was some ambivalence towards practitioners of these faiths in the campaign speeches of the BJP President who explicitly specified only Hindu and Buddhist migrants as deserving of full citizenship.

Initially, the move angered many in Assam, including the BJP's own political allies, who viewed the amendment as a violation of the Assam Accord, which had treated all those (regardless of their religious identity) who entered the state after 1971 as illegal immigrants. They were unwilling to accept the transformation of even Hindu (Bengali speaking) migrants into legitimate citizens for fear of more in-migration and more claims on diminishing employment opportunities. The Joint Parliamentary Committee, which visited Assam in May 2018, was petitioned by hundreds of organizations agitating against the Bill, expressing not only the secular constitutionalist objection of introducing religion-based citizenship provisions, but also the fear of both Assamese-speakers as well as indigenous tribal communities, of becoming minorities in their own land. For them, the difference of linguistic identity trumped shared religious identity.

Simultaneously, the state government of Assam was tasked by the Supreme Court with the compilation of the National Register of Citizens⁷ in

⁷ In the eastern state of Assam, bordering what is now Bangladesh but was then East Pakistan, the first National Register of Citizens was compiled in 1951 (alongside the Census of that year), also conveying an implicit distinction between Hindu 'refugees' and Muslim 'immigrants'. However, except for being used by people facing deportation to establish their citizenship since the 1960s, it remained dormant until political considerations gave it a new life in the last decade or so. The process of updating the NRC was decided upon at a tripartite meeting chaired by the then Prime Minister Manmohan Singh in 2005. It began in 2015 under the direction of the Supreme Court, with the declared aim of identifying the "illegal immigrants" who had come into Assam

that state, to record all those who have documentary proof of being Indian, and of them or their ancestors having been in India before midnight on March 24 1971. The electoral pledge of the Prime Minister and the BJP Party President, who is now the Home Minister of the country, had been that all those whose applications were rejected would be faced with deportation.

For the first round of this exercise that ended in July 2018, 32.9 million people applied, 28.9 million were authenticated, and 4 million were excluded, many of them Hindus. Rural women who had moved from one village to another upon marriage found it especially difficult to prove their citizenship, especially after a ruling from the Guwahati High Court in 2017 that certificates given by *gram panchayats* (elected local governments at the village level), and being used to establish pre-1971 ancestry, were not valid documents to support their claims. More than four million people dependent on these certificates were left out of NRC draft published in July 2018.

Fresh claims for inclusion were filed by 3.6 million people, who were called for hearings (including what were called family tree hearings). At the end of this process, in August 2019, those left out included people who had served in the Indian Army or the Border Security Force for decades, the nephew of a former Indian president, and even the only woman chief minister Assam ever had. Ironically, a former anti-immigration activist and even a local BJP leader found themselves excluded. In some cases, children's documents were found to have been accepted but not those of their fathers.

In a society historically as undocumented as India, there are naturally many people who cannot produce documents to establish their ancestry, so that ironically those who actually came in from outside may have documents⁸ while those who are native inhabitants for generations do not. For its sponsors, the outcome of the NRC was unexpected. The percentage of exclusions were larger in areas inhabited by indigenous people, and lower in border areas where the illegal migrants have settled. The state government was discomfited by the large numbers of Hindus excluded from the NRC and are hoping that they would be reinstated as citizens via the pending amendment to the Citizenship Act. As the factual outcomes of the

at the time of the war with Pakistan in 1971 that resulted in the creation of Bangladesh.

⁸ Cf. Kamal Sadiq's *Paper Citizens: How Illegal Migrants Acquire Citizenship in Developing Countries* shows how 'illegal' immigrants have, through what he calls networks of kinship and networks of profit, acquired a 'documentary' citizenship based on voting cards, ration cards, etc.

process turned out to contradict the political assumptions of the enthusiasts of this exercise, the political messaging has sought to assuage fears by affirming that no Hindus would be deported.

Meanwhile, 1145 people have already been placed in six detention centres in Assam, living in sub-human conditions; 335 of these have spent 3 years in camps; and 25 persons declared 'foreigners' have already died in the detention camps, in addition to the eight persons driven to suicide by the fear of not possessing papers. The detention centres are populated by those excluded from the NRC as well as those who have appealed to the Foreigners' Tribunals and deemed to be foreigners by them. Although, in response to a public interest litigation, the Supreme Court has passed orders for the improvement of the conditions in these centres, these remain inhumane spaces that are at odds with India's constitutional values and more generally with the idea of human rights. Despite all the talk of deportation, it is clear that this cannot be done without the specific agreement of Bangladesh, a scenario which is quite unlikely. There is a very real fear that millions of people could be rendered stateless and rights-less, perhaps populating detention centres for long periods of time. The construction of a large detention camp, with a capacity of 3000 detainees is presently underway, with ten others planned to fit a thousand people each.

Meanwhile, there is talk of extending the NRC exercise to the entire country, and of setting up detention centres all over the country. In states ruled by Opposition parties that avow a secular agenda, this is being resisted; but in states ruled by the BJP, it is clearly motivated by the idea of creating a two-tier citizenship based on religion.⁹ The ostensible purpose is to enable the sifting of genuine citizens from fake or undocumented migrants, but the political discourse makes it unambiguously clear that the intention is to 'sort' and then deprive people of citizenship based on their religious identity. The curious thing is that migrants may actually have paper or documentary citizenship while the original inhabitants may simply lack any documentation at all.

Reading the experience of the National Register of Citizens alongside the Citizenship Amendment Bill is instructive as to the new conception of citizenship that is being produced. It is a conception of citizenship that is based on the idea of religious majoritarianism, the idea that only Hindus

⁹ The NRC idea has already caught the imagination of a few governments in north-east India where the division is not between religious communities but between indigenous inhabitants and outsiders.

are the normal and natural citizens of India, that everyone else is here on sufferance, and should be removed as expeditiously as possible.

The potential for long-term damage lies in its contravention of constitutional provisions. The right to equality in Article 14 of the Indian Constitution, for instance, is available even to foreigners who happen to be within the territory of India, and differential treatment to individuals on the basis of their religious faith contravenes this. More egregiously, the construction of Hindus as the natural and normal citizens of India is not just a debasement of the idea of India that joined 14 million people together in their struggle against imperial rule, it is also a transgression of the universalist and inclusive conception of citizenship contained in the Indian Constitution. This legislation seeks to introduce into the law on citizenship an invidious distinction based exclusively on religion; it openly undermines the *jus soli* principle which has thus far provided the legal but also the ideologically inclusive foundation of Indian citizenship; and hardens and consolidates the movement towards a *jus sanguinis* regime.

In a symbolic sense, this shift is also reflected in the ever more assiduous courting of the Indian diaspora, especially in the US, the UK and Australia. India does not recognise dual citizenship, but successive Indian governments, and the present government more than its predecessors, have been keen to incorporate the wealthy Indian diaspora in the west as members of the extended 'national' community, even if they have voluntarily opted for citizenship in their countries of adoption. Members of this diaspora have been involved in raising funds for, and even canvassing in, election campaigns for the ruling party.

3.2. Majoritarian nationalism: everyday exclusion and the normalization of violence

The hegemonic hyper-nationalism of the present is a form of Hindu nationalism that has, in the rather short span of five years, normalised everyday exclusion and discrimination as forms of exclusionary majoritarian assertion. This is expressed in many ways, some of which – like the discrimination against Muslims in the housing market – have a longer history in Indian society but are now finding a new and more forceful articulation. Cow protection laws have similarly been on the statute books in many states for several decades, often legislated by past Congress governments, but now provide a convenient handle for vigilante violence.

A substantively hollow, and impliedly Hindu, idea of nationalism is deployed to intimidate minorities by, for instance, subjecting them to tests of

national loyalty, such as the requirement that all, but especially Muslims, chant the slogan of *Bharat Mata ki Jai* (Victory to Mother India) or sing *Vande Mataram* (a nationalist song from the early twentieth century replete with Hindu references). A Supreme Court judge handed down a verdict making it compulsory for the national anthem to be played at the start of every film screening in a cinema, and for the audience to stand. The verdict was subsequently retracted, but the practice has continued, presumably for fear of drawing the hostile attention of vigilante groups to its discontinuation.

The citizens who have been especially targeted in recent years are students, intellectuals and activists, who have come to be labelled as ‘anti-national’, some of them even arrested for or charged with sedition, simply for exercising their rights of free speech or expressing dissent against the government’s policies. The denial of academic freedom has become routinised (Jayal, 2018). The assassination of rationalist intellectuals by avowedly Hindu nationalist organisations is a phenomenon that predates the BJP government, though one of the most horrifying such incidents – the murder of the outspoken journalist and editor Gauri Lankesh – occurred during its tenure. Artists and intellectuals who have protested constraints on free speech through the symbolic gesture of returning state awards were mocked on social media and ignored by the government. Activists and lawyers working with the poor and dispossessed have been thrown into jail on fabricated charges that frame them as enemies of national security. The meaningless term ‘anti-national’ was minted to describe anyone avowing liberal values like dissent or minority rights. All dissenters became, by definition, anti-national, anti-Hindu or pro-Muslim or Pakistan sympathisers, not fit to belong to the BJP’s conception of the Hindu nation.

More alarming is the dramatic increase, over the last five years, in the incidence of hate crimes. Between 2014–19, there were 260 hate crimes as compared to 22 in the previous five-year period from 2009–13. For the period 2009–19, a classification of the entire set of 282 victims by their religious affiliation shows that 57% of these were Muslims, 15% were Christians and 13% were Hindus. The religion of the perpetrators, correspondingly, was 56% Hindus and 12% Muslims, the remaining being unknown.¹⁰ Incidents of vigilante violence against Dalits have also been rising steadily, going up 44 percent since 2014, according to official statistics. The impunity from the law that is effectively enjoyed by the perpetrators of violence

¹⁰ <https://p.factchecker.in> Accessed on April 13, 2019.

against all these groups signifies a systematic political and ideological attempt to render them second-class citizens.

In 2014, before the proliferation of these incidents of violence, two campaigns were launched in north Indian society: *Love Jihad* and *Ghar Wapsi* (Homecoming). The first was the label used to describe any inter-faith marriage between a Muslim man and a Hindu woman, the insinuation being that Muslim men make false professions of love to Hindu women when their real intention is to convert them to Islam and thereby increase the numbers of Muslims. Some Muslim men, charged with this, were assaulted or killed. The second, which petered out after an aggressive start in 2014, took the form of organisations like the RSS and the VHP organising events at which Muslims and Christians could be ‘converted’ to Hinduism, to reverse their presumed involuntary conversion to the faiths they practised. Between July and December 2014 it was claimed that 8000 people in two southern states had undergone conversion. In subsequent years, this continued, though in two digit numbers, such as when 53 Christian families in Jharkhand were converted to Hinduism in April 2017, as part of the RSS’s “Christianity-free” block (a small administrative unit) campaign.¹¹

The social groups that have been particularly vulnerable to vigilante violence are Muslims and Dalits. Two incidents have become powerful symbols of hate crimes against these groups. In September 2015, in a small town in the northern state of Uttar Pradesh, an ironsmith called Mohammad Akhlaq was attacked and killed by a lynch mob on suspicion of killing and consuming a cow. His attackers were his Hindu neighbours in a town where his family had lived amicably for four generations. Public attention was sought to be deflected from this barbaric murder by ruling party legislators who began baying for the blood of Akhlaq’s family and demanding their prosecution for harbouring beef. The question of who killed Akhlaq became the casualty of political amnesia, as attention was turned to the question of what he and his family were eating. A police case was filed against Akhlaq’s wife and mother for slaughtering a cow, and the dead victim thus stood reinvented as the aggressor.

In another equally horrifying incident in July 2016, four young Dalit men in Una town in the state of Gujarat were stripped, paraded on the streets, and beaten up by a group of Gau Rakshaks (Cow Protectors) for

¹¹ <https://www.indiatoday.in/fyi/story/rss-53-families-converted-hindus-jharkhand-christianity-free-970803-2017-04-11> Accessed on April 13, 2019.

skinning a dead cow. Social media was soon afire with a video of the victims, some of them tied to a car, being attacked with iron rods and sticks. Dalit groups alleged police complicity in the act, and the chilling incident provoked a popular outcry. Possibly the most significant challenge – described by some as India's Rosa Parks moment – thrown by the protestors was to boycott the collection of carcasses of fallen cows, an occupation traditionally associated with Dalit castes.¹²

Over time, and especially in states ruled by the BJP, there has been a proliferation of hundreds of Gau Rakshak Dals (Cow Protection Groups). Their modus operandi is to extort money from the owners of cattle or, on the pretext of 'saving' or 'rescuing' the cows from slaughter, to kill them. These vigilante groups target people whose occupations have to do with cattle, cattle skin and its by-products, such as textiles and tennis racquet strings. Such vigilantism typically takes the form of bands of young men either intercepting trucks that are transporting cattle or else raiding slaughterhouses, and punishing the legitimate owners of the cattle with extortion and/or death. They then proceed to post on social media photographs of themselves, posing with guns and bloodied limbs, and the corpses of animals as trophies. Bribes are even extorted from the owners and transporters of buffaloes – animals which are neither sacred nor covered by laws on cow slaughter – who are intimidated, citing laws against cruelty to animals.

Under cover of the symbolism of the Hindu reverence for the cow, the real aim of such vigilantism appears to be the economic disenfranchisement of Dalits and Muslims. India exports leather and leather goods worth approximately US\$ 6 billion, and has been the largest exporter of beef (including buffalo meat) in the world. The skinning of cows to produce leather is traditionally done by Dalits, working in large numbers in slaughterhouses, leather factories and tanneries even though these generally have upper caste owners. The business of beef production and export is dominated by Muslims. Vigilantism has resulted in a drop of about US\$ 700 million in this business as a result of a sharp drop in cow prices and a

¹² "So we decided to stop doing it to teach them a lesson. The gau rakshaks beat us because they think the cow is their mother. Well, then, they should take care of her and pick up her carcass when she dies" (<https://scroll.in/article/812329/your-mother-you-take-care-of-it-meet-the-dalits-behind-gujarats-stirring-cow-carcass-protests> Accessed on April 16, 2019) Violence against Dalits has been rising steadily, going up 44 percent since 2014, according to official statistics.

substantial decline in buffalo meat export from India. Apart from the damage to the economy, the livelihoods of both these groups have also been adversely affected.

Increasing violence against Muslims and Dalits does not always have a bovine connection. There was no provocation for the barbaric lynching on a train, in 2017, of the teenager Junaid Khan, who was returning home after shopping for Eid in Delhi. Only a few months later, a migrant worker from Bengal was hacked to death and then set on fire by a man in Rajasthan who he suspected was in a relationship with a Hindu woman. The murderer videotaped the killing, as well as his own speech justifying it, and circulated both on the social media. Perhaps the greatest horror of all was the gang rape, repeatedly over a week, followed by the murder of a little Muslim girl in Kathua in Kashmir. In the most recent hate crime, a Muslim youth in Jharkhand was beaten for hours and forced to chant Hindu slogans. When he succumbed to his injuries two days later, the cause of death was reported as cardiac arrest.

These incidents demonstrate a pattern of violence targeted against particular groups – Muslims, Dalits, and women belonging to these groups – that is increasingly getting normalised. Vigilante violence by lynch mobs is being systematically visited on particular groups that are vulnerable on account of multiple, often intersecting inequalities – of class, caste, religion, tribe, gender. That such mobs enjoy impunity is indicated by official figures and suggestive of state protection. The spate of lynchings across the country led the Supreme Court of India to condemn these as “horrendous acts of mobocracy... which cannot be allowed to become ‘the new normal’”. It is worrying that these are often acts whose perpetrators go unpunished, and on occasion even feted by politicians. National Crime Records Bureau data for 2018 tell us that although violence against Dalits is up 44 percent since 2014, a 90 percent charge-sheeting rate yields a conviction rate of barely 20 percent.

Majoritarian nationalism, whose ideological foundation comprises only a shallow and visceral hatred for minorities, has thus facilitated a normalization of patterned violence, and encouraged societal practices of systematically ‘othering’ citizens belonging to minority communities. Violence – both physical as well as discursive – has disquietingly become the norm, justified by a manufactured idea of hyper-nationalism that feeds off hostility towards an internal minority by externalising it to a hostile neighbouring state. The normalisation of prejudice, whether or not it finds expression in violence, is also indicated in recent surveys of citizen attitudes, which show strong public support for majoritarian nationalism, and demonstrate

the weakness of bonds of personal friendship across castes and religious communities that could potentially transcend these differences.¹³

3.3. From representative democracy to populism

The contemporary dissatisfaction of people with their governments is arguably an expression of a more fundamental discontent with representative democracy as a form of government that fails to enact popular preferences into policy and instead accords legitimacy to the rule of corrupt elites who only advance their own interests. Across the world, we have seen how populism has stepped into the breach, encouraging anti-politics, on the one hand, and charismatic, even authoritarian, leadership on the other. Populism appropriates and ostensibly retains the idea of democracy, but transforms it into something suspiciously non-democratic. India too, like many other countries, has witnessed the rise of right-wing populist leadership that retains the shell of electoral democracy while turning its back on the liberal core of the democratic ideal.

The BJP campaign in the election of 2014 projected Narendra Modi as the 'outsider' who would be the most authentic people's representative, waging their battle against the corrupt and entitled elites of the previous regime. Over the next few years, and especially on social media, this fabricated image of the elite came to encompass all individuals espousing liberal opinions and advocating individualistic values like free speech over organic and collective values like nationalism and patriotism. Democracy was already hollowed out and unmoored from its anchorage in liberal ideals.

Take the idea of freedom which arguably lies at the core of liberal democracy. Conceptually, nationalism and freedom are distinct concepts; in India, they were closely associated historically, as freedom from colonial rule was the object of nationalism. This is perhaps why, in phrases describing India's movement for freedom from the British Empire, the two have been used interchangeably, as in the national movement/the freedom movement or the nationalist struggle/the freedom struggle. Today, however, the idea of nationalism is being politically mobilised as a weapon to not merely suppress basic civic freedoms, but to question their very legitimacy and worth as political values. The exercise of the simple citizenly prerogative of ask-

¹³ A recent survey reported the disturbing finding that over half the respondents in four large states expressed a preference for dictatorship over democracy. Liberal constitutionalism in India, based on an inclusionary universalistic conception of citizenship, is facing a mortal crisis (Centre for the Study of Developing Societies, 2017).

ing questions of government becomes an ‘anti-national’ act rather than an assertion of the citizen’s freedom. Widespread intolerance and chauvinism pose a challenge to the very infrastructure of Indian democracy, not only denying citizens their constitutional right to freedom of expression, but also violating values that are fundamental to a democracy – difference of opinion, dissent against established norms, and persuasion through dialogue and discussion. The Global State of Democracy initiative of the International IDEA records that India’s score on media integrity and civil liberties fell in 2017 to somewhere between the global average and that of the Asia-Pacific; it also noted the shrinking space for freedom of association and assembly and civil society participation (International IDEA, 2017).

Even where there appears to be a popular commitment to democracy, this is not an idea of democracy that is likely to satisfy a normative political theorist. It is an idea, firstly, that can cohabit quite easily with the choice of a populist leader, even a strongman who promises effective action. Secondly, it is an idea that can also cohabit quite easily with a weak commitment to freedom and liberty, to free speech; to an inclusive society; to the freedom to eat, pray and love as you like. It is an idea, finally, that can cohabit quite easily with a majoritarianism that translates the idea of democracy as majority rule, as democracy as the rule of a fixed ethnic or religious majority. All of these ‘disfigurements’ of democracy, to use Nadia Urbinati’s (2014) term, find instantiation in the Indian context.

The democratic principle has also been substantively de-normativised and reconfigured to reinforce majoritarianism. Democracy in this form means nothing more than the supremacy of sheer numbers, leading to the elision between the majority as a procedure for producing a government, and the majority as a fixed hegemonic group. Because the Hindu religious majority is numerically dominant, it is assumed that it is consistent with democracy that its interests should be privileged. This distortion in the idea of democracy – as the rule of numbers – provides ready support for the legitimacy of majoritarian supremacy and the accompanying denial of minority rights. It is truly a feat of populist political rhetoric that a majority of 80 percent of the population can be made to feel besieged and threatened, especially when the minority comprises people who are much worse off on all social and economic indicators, including education and employment.

The obsession with electoral democracy reflects nothing more than the desire to acquire political power at any cost. This was quite candidly acknowledged in the BJP President’s call, in 2014, for a Congress-free India (*Congress-Mukt Bharat*). In 2017, this was rephrased as the call for an

Opposition-free India (*Vipaksh-mukt Bharat*)!¹⁴ The only way in which this hunger could be satiated was through electoral victory in every state where elections were held, and the party was largely successful in achieving this, though often allegedly through brokering deals. The appetite for acquiring power *qua* power was altogether devoid of any reference to the idea that the exercise of political power needs to fulfil a representative popular mandate, much less of the moral purpose or public good to which the exercise of political power is a means. The imperative to secure electoral victory at all costs repudiates the institutional principle of the value of an opposition in a democracy.

Since 2014, India has journeyed from its founding constitutional vision of civic nationalism to a new political imaginary of cultural nationalism. The constitutional fabric, although somewhat frayed, appears to be intact at this moment. However, the majoritarianism and hyper-nationalism of recent years have definitely damaged, possibly even ruptured, the delicate social fabric of India's diverse society in which different communities have historically lived together, separately but peacefully. If India's organically consensual social fabric concern comes to be damaged beyond repair or retrieval, this would certainly be a blow to one of the world's most unique experiments in multicultural democracy.

It is ironical that the poet Nobel laureate Rabindranath Tagore who gave India its national anthem was also an inveterate critic of nationalism which he saw as a petty and limiting idea. This was in the early twentieth century, at a time when the most massive anti-colonial movement in human history was taking place, with a powerful appeal across classes. But, swimming against the dominant current of the time, Tagore questioned the very idea of the nation with what he called its "paraphernalia of power and prosperity, flags and pious hymns and patriotic bragging" (Tagore, [1917] 2017). These were anathema to him for nationalism was an idea that did not sit well with his desire to live in a world that had not, as he wrote in *Gitanjali*, "been broken up into fragments by narrow domestic walls" (Tagore, [1910] 2011: 347).

Tagore's forebodings about nationalism may have seemed misplaced a hundred years ago, but resound with meaning today as petty and counterfeit but dangerously exclusionary nationalisms abound.

¹⁴ https://www.business-standard.com/article/current-affairs/vipaksh-mukt-bharat-how-modi-shah-want-to-herald-the-golden-age-of-bjp-117051100217_1.html Accessed on April 16, 2019.

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THE RESURGENCE OF IMPERIALISM AND NATIONALISM IN THE RUSSIAN SOCIETY AFTER 1990

ANDREY ZUBOV

The terrible increase in nationalism, imperialism, and aggression now expressing itself, which radiated from Russia, shocked both you in Europe and us Russians who understand the reality in Russia. For me, for example, the invasion of Georgia in 2008 and the annexation of Crimea are terrible things. I tried to do my best to explain to our people that it was an awful solution of Mr. Putin and his circle, but the majority of the Russian population greatly supported these events in 2014 and the world was shocked. Mrs Merkel wrote to Mr Putin at the time that he had lost connection with reality.

For today's European world, this form of political activity was something absolutely obsolete, something abnormal in principle. But we ought to remember that a century ago these politics were absolutely normal and the politics of imperialism and nationalism were the main reason for the First World War. All great powers, from the Central Powers to the Entente Cordiale and even rather small countries, such as Serbia or Greece, were in favour of an imperialistic existence of their states, for ethnical struggle and ethnical predominance. Suffice it to remember these ideas of Pan-Germanism, Pan-Slavism, Pan-Turkism etc. At that time, the British Empire possessed one quarter of the world, the Russian Empire one-sixth of the world, the French Empire, the Republican Empire, about one eighth of the world. So, at that time, the situation was imperialistic in its pure sense and nationalistic. It is necessary to remember the mood of the main nations of Europe at the beginning of the First World War: French people hated Germans, Slavic people hated Germans, Germans hated Russians and called them *Untermenschen* in World War II. We ought to remember that after the First World War both principles – the new principle of a world without imperialism and the old principle of imperial domination – were interconnected. On 13 April 1919, in Amritsar in Jallianwala Bagh (India), the British forces killed about a thousand of peaceful Indians, and it is interesting that General Dyer, who was the commander of these British troops, received absolutely different criticism. Mr Churchill said that it was

one of the most awful deeds of the British Empire, but the House of Lords supported General Dyer at the time.

When President Woodrow Wilson produced his 14 principles on 8 January 1918, the European powers, Great Britain and France, were not very glad to read them because their idea was to enlarge their empires in the Middle East and to annex some territories of the Ottoman Empire. The growth of Nazi Germany, the annexation of Austria, and the Munich Agreement of 1938 were the result of imperialist politics, not only by Nazi Germany but also by liberal European countries, Britain and France, since both Chamberlain and Daladier supported Mr Hitler in Munich and agreed with the principle of the unification of the German nation which he proclaimed at that time.

And if we speak about the Soviet Union between the two world wars, it had the same but even more sophisticated position: communists proclaimed the idea of internationalism, rejected nationalism and supported anti-colonialist policies, but in practice the Soviet communists were nationalists – and terrible nationalists – and when Stalin changed his politics in approximately 1933–1934 after the 17th Congress of the Communist Party, he followed Hitler's example in building a national, ethnic-oriented Russian state. Even the alphabets of non-Russian people were changed at that time to Cyrillic from the Latin, Arab, or Mongol alphabet (in Buryat). Since Stalin himself was Georgian, he did not change the Georgian alphabet and the Armenian one, but they were the only two nations that succeeded in preserving traditional graphical systems.

This imperial mood of course was much deeper than the problem of alphabets, because one of the tools of communist politics was the Communist International, and the Comintern produced terrorist acts when it tried to organize a revolution or spread pro-communist movements all around the world. It was an imperialistic politics too. "Yes", said Stalin, "we are for peace, but peace will be stable if all the world becomes Communist". If you look at the coat of arms of the Soviet state, you will see that there is a globe with the symbols of communist rule, so the Soviet political idea was of a worldwide communist Empire – let us call things by their right name.

So the Russian people, I mean not only the ethnically Russians but the people who lived in the Soviet Union, lived with this idea of war, of imperial increasing of their state, and this principle of war, of aggression, of nationalism, was very strong.

After the Second World War, West European nations, shocked by two terrible wars, by Hiroshima, by the Holocaust, changed their view of real-

ity; they understood that the imperial cause and the nationalistic cause are terrible and suicidal, and they started absolutely different politics. The main principle of these new politics was a Christian one, and the organizers of the new Europe were Christian politicians, like Alcide de Gasperi, Robert Schuman, Konrad Adenauer, and others.

But in the part of Europe which turned out to be communist-occupied, I mean the Eastern part of Europe and the Soviet Union, this new mood did not develop. It did not develop because of a very simple reason: Christian ideas were prohibited, or were a peripheral thought, and communist ideology dominated. And that is why from the end of the Second World War, we see in Europe two different attitudes to reality. For example, the attitudes of former aggressors and losers – Germany and Italy – and former states who won the war – I mean Great Britain and France – were absolutely different after the Second World War compared to the situation after the First World War: no reparations, no changes of borders, new aid plans for Germany, for Italy and for other European states – think of the “Marshall Plan” (European Recovery program). On the other hand, changes of borders, terrible reparations, and transfers of population occurred in the Eastern part. Because of the Soviet Union and Stalin, Eastern Europe continued to live in this paradigm of pre-First World War situation. And, of course, ordinary people who lived in Russia were used to understanding reality according to this value system. It was not easy to change the value system in Western Europe either – the process of denazification was completed only at the end of the 1980s with the unification of Germany. The discussion of historians in Germany about the Nazi past took place in 1986 (Ernst Nolte vs. Jürgen Habermas). The search for the new non-imperialist and non-nationalist understanding of political reality was a difficult process, and in the Eastern part of Europe this process never even started before 1990. It is necessary to understand this. So we were rather similar in the understanding of reality before 1945, and to say it frankly, it was an absolutely non-Christian, maybe Nietzschean understanding of reality.

But after the Second World War we had an absolutely different understanding of reality: a formerly aggressive, nationalistic state of mind turned out to be marginal in Western Europe and continued to be the dominant principle in the Eastern part of Europe and the Soviet Union.

After the decline of communism at the end of the 1980s, it was of course a mistake, an illusion that the world would begin anew, that, as Fukuyama wrote, history was over. We see that Hegel was wrong again, history is not over, but this idea was popular at the time. All post-communist

nations, both in the Soviet Union and in Eastern Europe, were very deeply inclined to become West European nations with a West European standard of living, with prosperity, with personal freedom to move, to read, to access information and many other (sometimes very simple) things which they wanted to access, and that's why they forgot about nationalism and were in search of a new reality. East European countries hated Russian communism and tried to do what they could to be with Europe and that's why they accepted all European values as a necessary element to be accepted themselves into Europe and NATO.

For the Soviet Union and its successor, the Russian Federation, at first glance it seemed clear that people would forget about nationalism, communism, and imperialism, but it was misleading. Social investigations, even in the 90s, demonstrate a different picture. Perhaps Gorbachev stopped being a communist-nationalist and proclaimed that human values exceeded class ones. Maybe Yeltsin shared this paradigm, since he was against imperialism, against the reconstruction of the Soviet Union, etc. But the majority of the population was *in favour of* it. Only 27% of the Russian population in 1997 was ready to agree with the borders of the Russian Federation. Almost three quarters of the population had different attitudes. Some wanted unification with Ukraine, some with Byelorussia, and about one third of respondents wanted the total reunification of the whole Soviet Union. And many people still say that it was a major mistake to give independence to East European countries without payments, though we know that there were some payments at the time, not for independence, of course, but from the German government and from the United States to Russia. Ordinary people say we should have sold these countries to the West.

Just a week ago I had a seminar in Moscow, and Russia's Vice Minister of Foreign Affairs again said the same thing. So we saw in the 90s that the Communist Party of the Russian Federation totally accepted this nationalistic and imperialistic direction. They accepted Stalin more than Lenin, though Lenin also was an imperialist, but most people don't know that now. Stalin was an openly imperialistic-thinking person and today about 70% of the Russian population supports Stalin, considering that his rule was a good period in Russian history rather than a bad one. It's awful but it's a fact.

We must now ask why. Were there any mistakes that resulted in this situation? When Putin annexed Crimea and started the war in eastern Ukraine, he understood very well that he would increase his popularity by these steps, and so it was. Before 2014 support for Putin had continuously

declined. After 2014 it increased, and about 87% supported the annexation of Crimea. The situation has now changed rather rapidly.

Why are nationalism and imperialism so strong in Russia? I think that in some way this is inevitable, because, even if we had known this post-Second World War refreshing of attitudes in Western Europe, our reformers at the time mistakenly assumed that it was not necessary to show ordinary, unsophisticated people that a new democratic and pro-European course would give them some benefits. For intellectuals these benefits were evident, namely the possibility to receive information, to publish their ideas, to go abroad, but the majority of the Russian population never goes abroad and does not write philosophical treatises, so it would have been necessary to give them something very material, namely, a restitution of property rights. In all East European countries there was a restitution of property rights, in one form or another. Poland adopted one form, and the Czech Republic another. Communists confiscated all property: post-communist regimes returned property to those whose ancestors possessed it. Nothing like this was done in Russia. Never. Not a single person received the property of his or her father, confiscated by the Bolsheviks: not one peasant, not one merchant, not the gentry, nobody. A small circle of people took all communist property as their private property – in the form of privatization – but the absolute majority of people obtained nothing material from de-communisation, democratisation, and liberalism after 1991. It was the first and greatest mistake of Russia's post-communist government. Nobody wanted to change anything, and that's why these imperial and nationalistic ideas turned out to be a compensation for the population's frustration, because people lost their traditional way of life and found themselves living worse than before, without any real positive reliable perspective.

Now we are seeing this situation improve somewhat, not because of some wise politicians but because of life itself and, in some way, because of the strong opposition of Europe and NATO to Putin's aggressive politics. If Europe accepts the annexation of Crimea and war in Ukraine, Europeans will see an absolutely different world than present Europe. The situation in Russia has started to change: economic difficulties due to sanctions and the absolute incapability of the KGB elite to rule the country (they ruled it as their private property and, of course, this was very hard and unpleasant for the people), produced a situation of real poverty and degradation of people's day-to-day life. Russia's economic degradation is now terrible: Russia is one of the world's richest states in natural resources, maybe the richest, but the population's standard of living, not only as regards

money but also in all systems of social parameters, is terribly low. Safety of people from crime is awfully low, medical care is dismal, and people begin to understand that the annexation of Crimea and somehow of Eastern Ukraine, and this whole imperialistic and nationalistic approach which was so clearly presented by Putin in 2014–2015 has given them nothing positive. We thus see that support for Putin is slowly declining, last year and then again this year. But it is very interesting that this decline is not a decline in favour of some other leader. I think that the most brilliant result of this development is that Russians no longer want a leader; they want to rule their country themselves, by self-government. At the beginning of this millennium, for example, most businessmen were completely ignorant about the communist past, “Communist past is lost! Now we are building a new country”. Today everybody understands that the communist system, not ideologically but in its totalitarian practices, has re-emerged and they want to demolish it. That’s why I think ethnical imperialism and nationalism are now declining in Russia. They are regressing. And if both of us continue to be active in this approach, you in Europe with your strong opposition to any acceptance of the fruits of aggression, and we in Russia, where we keep trying to explain the real situation to people and what is necessary to do in the future to become a normal state – not strong, not great, but normal, a place comfortable for people to live in – we will soon see Russia, in some five to seven years, as part of a common Europe and part of a common civilized world. This is our hope and our political goal.

NATIONS AND NATIONALITIES USING THE EXAMPLE OF AUSTRIA, BOTH IN THE PAST AND IN THE PRESENT

HERBERT SCHAMBECK

People's mutual commitment to one another and their interaction with one another is determined on an intellectual, territorial and imperial level; it leads to spiritual community in an area that is defined by an order which establishes the state. The latter is the autonomous sovereign entity that prevails over the individual and the community and fulfils the supreme function.

Based upon this mutual commitment to one another and interaction with one another, the awareness for a certain individuality that is typical of a people is developed and receives its character in the respective underlying rationale which creates a nation – a term which, in its meaning, goes back to the Latin word *nasci*, i.e. “being born”.¹

I

The term “nation” expressed a dynamic resolve, which has developed into a guiding force in public life and shaped the character of the state. In the 17th century after the Thirty Year's War, it was the driving force in politics; it accompanied the community of peoples and in the order of states it also found its expression in the term “nation state”.

These nation states were characterised and established based on the different concepts of a nation. Culture, religion, language and territories were determining factors for the individual nation. The term was thus understood both in the broader and in the narrower sense. It was understood in broader terms in the concept of the Holy Roman Empire of the German Nation, which encompassed many states and territories and also created a legally normative foundation for nation states. When the Habsburg Em-

¹ *Der neue Brockhaus, Lexikon und Wörterbuch*, third volume, Wiesbaden 1971, p. 616; see also Die historischen Entwicklungen des Begriffes Nation (The Historic Developments of the Term Nation) in: Michael Metzeltin, *Nationalstaatlichkeit und Identität*, Vienna 2000, p. 111 ff and Georg Jellinek, *Allgemeine Staatslehre*, third edition, Darmstadt 1959, p. 116 ff.

peror Francis II renounced the German imperial crown this concept dissolved in 1806, and a new order of nation states evolved especially after the 1815 Congress of Vienna. Following Napoleon's reign, a common feature of these nation states was then the struggle for liberation from foreign rule and the quest for sovereign statehood.

This quest for sovereign statehood was accompanied, in Austria, most noticeably around the middle of the 19th century² and as of 1848 by the quest for democratic policy-forming and decision-making in the state and respect for the rule of law. Democratic, legislative, constitutional, imperial and territorial principles were thus combined with people's mutual commitment to one another and their interaction with one another; earlier pluralisms of state order dissolved. In his paper "Von der Französischen Revolution zum Wiener Kongress: Die Umwälzung und Neuordnung Europas und die Entstehung der 'Nation' als politischer Leitbegriff",³ Wolfram Siemann noted that in contrast to the outdated empires, "the type of united nation state encompassed ... the clearly defined territory of the state ..., the internal focus of law, administration, economy, education and language, rather than multi-nationality ... the homogeneity of the nation, instead of composed statehood ... the bureaucratic institution state which is organised from top to bottom in a hierarchical and rational manner as well as instead of occasional long-term creation ... the modern nation state of the 19th century as the result of a major collective effort in war". Siemann notes a "composite statehood" expressed in "symbolism of power we find very difficult to decipher".⁴

This type of rule was the monarchic system of state and thus represented by monarchs. This is particularly well reflected by the Habsburg monarchy that lasted 640 years and dated back to the 13th century, as well as by the German Empire. The Final Act of the Congress of Vienna signed in 1815 paved the way, provided guidance and was at the same time fateful for the respective state orders of the 19th and early 20th century, as the rulers of Germany, Emperor Wilhelm II, and of Austria, Kaiser Franz Joseph I, in the controversy with Russia, with the Western Powers and later Italy too, led

² See Hagen Schulze, *Staat und Nation in der europäischen Geschichte*, Munich 1994, p. 209 f.

³ Wolfram Siemann, "Von der Französischen Revolution zum Wiener Kongress: Die Umwälzung und Neuordnung Europas und die Entstehung der 'Nation' als politischer Leitbegriff" zur Debatte, Themen der katholischen Akademie in Bayern B 215 75F 1/2016, p. 2 f.

⁴ Siemann, loc. cit., p. 3.

their states in 1914 into the conflict of the First World War that claimed so many lives. Nations that were based on different constitutional law systems also found themselves in confrontation with these states.

II

The states that formed in the 19th century and especially after 1848 were not only characterised by one, but frequently by a number of ethnic communities. As Dieter Langewiesche stated, “in the vast majority of cases these so-called national states were in reality nationality states, since the alleged nation state encompasses several ethnicities, which in turn see themselves as nations”.⁵ Such differences may also lead to disparities, as was the case in the Habsburg Empire⁶ under Emperor Francis Joseph I when they led to disparities between Austria and Hungary during and within the Dual Monarchy, or to those between Austria and the Lands of Hungary of the Crown of St. Stephen but, however, not the Lands of the Crown of St. Wenceslas of what was later to become Czechoslovakia. In 1867 the developments brought about the Austro-Hungarian Compromise and a dualism in the context of which Hungary referred to territorial boundaries transcending current Slovakia as Upper Hungary.

Crossing borders, this Magyarisation spread into what was to become Romania and Yugoslavia; it contributed to the conflict that led to the First World War and subsequently, based on the Treaty of Trianon in 1919, led to the loss of a third of the then Hungarian territory.

III

The multi-ethnic state of the Austro-Hungarian monarchy was composed of Germans, Czechs, Slovaks, Romanians, Croats, Slovenians, Serbs, Magyars, Poles, Ruthenians (Ukrainians) and Italians. Between 1848 and 1916 they were all represented by Francis Joseph I as Emperor of Austria and King of Hungary. This monarch integrated and represented two states with a multitude of nations, whose dissimilarities led to contrarities: those with the Serbs also played a decisive role in the start of the First World War. After losing the First World War, this multi-ethnic state with its monarchic form of government disintegrated in 1918. Out of the Austrian part of this

⁵ Dieter Langewiesche, *Nation, Nationalismus, Nationalstaat in Deutschland und Europa*, Munich 2000, p. 226.

⁶ Note *Die Habsburgermonarchie 1848-1918*, first partial volume 1, part 2, ed. by Helmut Rumpler, Vienna 2016, and Ernst Bruckmüller, *Nation Österreich, sozialhistorische Aspekte ihrer Entwicklung*, Vienna – Cologne – Graz 1984.

multi-ethnic state, “the kingdoms and countries represented in the Imperial Council”,⁷ and following a change of the form of state and a diminution of its territory, arose the Republic of German-Austria⁸ with nine federal provinces that originated from the former Crown Lands.

During this period of change of both the form of government and the national territory, a continuity of constitutional law arose in one area of law, namely that of fundamental rights, inasmuch as the Basic Law of 1867 on the General Rights of Nationals in the Kingdoms and Länder (Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger), Imperial Legal Gazette (RGBl.) No. 142 that formed part of the December Constitution – which, with its five basic laws⁹ (Staatsgrundgesetze) had been in force for the Austrian part of the dual monarchy since 1867 – was incorporated into the constitutional law of the Republic of Austria under Article 149 of the 1920 Federal Constitutional Law of the Republic of Austria (Bundes-Verf. Ges.).

There was a caesura between the Austrian part of the monarchy and the Republic of Austria, which ultimately led to the founding of a new state, which found its basis in the Federal Constitutional Law (Bundesverfassungsgesetz) of 1 October 1920.¹⁰ Although the form of government and the constitutional order of Austria had changed, fundamental rights¹¹ were an expression of the continuity and identity of the constitution in the formal and material sense.

IV

In contrast to the previous state, this Republic of Austria, which had evolved after 1918, was not characterised by multi-nationalities, but rather by a German-speaking nationality, alongside which there were recognised Slovenian and Croatian minorities.

In the Republic of Austria, Article 8 of the Federal Constitutional Law stipulates that the official language is German, and that Slovenes and Croats have a legal claim to the use of their language¹² and are thus protected as minorities.

⁷ See *Die österreichischen Verfassungsgesetze*, ed. by Edmund Bernatzik, Vienna 1911.

⁸ State Law Gazette (StGBI) 1918, 5.

⁹ Imperial Legal Gazette 1867, 141, 142, 143, 144 and 145.

¹⁰ Federal Law Gazette 1920, I.

¹¹ See Johannes Hengstschläger, David Leeb, *Grundrechte*, Wien 2013, p. 10.

¹² Art. 19 Basic Law, Art. 66 para. 3 and 4 of the State Treaty of St. Germain 1919 and Art. 7 Z. 3 State Treaty of Vienna 1955.

Today's German-speaking population in Austria dates back to what remained of the Holy Roman Empire of the German Nation, and the federal provinces of this republic to claims to power as well as to Crown lands of the Habsburg Empire; the federal province of Tyrol, for instance, dates back to the princely counts of Tyrol.

There was no such direct connection between the later Czech nation and the subsequent states of Czechoslovakia, since Hungary did not tolerate such national sovereignty. The initiative for the establishment of this nation-state was already launched in confrontation with the Austrian Empire by Tomáš Garrigue Masaryk and later by Eduard Benes, who also became heads of state of the Czechoslovak Republic in the interwar period of the 20th century. As individuals, they had thus become personal representatives of this nation.¹³ The extent to which the nation's concept shaped the Austrian multi-ethnic state became apparent on 16 October 1918 when Emperor Charles I called on the national political groups of the Imperial Council (i.e. the deputies that each nation had sent to the Imperial Council) to form national councils;¹⁴ an idea suggested by Hans Kelsen;¹⁵ this did, however, not occur since Austria's monarchic form of government ended and the republic began.¹⁶ In this Republic of Austria, the term National Council (Nationalrat) has been used to the present day for the representation of the people in parliament.¹⁷

Similarly, a term from the time of the monarchy is still used today, namely that of Hofrat (Court Councillor). Court Council was the designation for the central state administration for the Austrian hereditary lands up to the time of Empress Maria Theresa;¹⁸ later and up until the present time, this term has been used as a title for senior civil servants in the Austrian jurisdiction and administration.

¹³ For more specific information see Herbert Schambeck, The 100th Anniversary of Austria and Czechoslovakia, *Der Präsident im demokratischen Verfassungsstaat*, *The Lawyer Quarterly*, International Journal for Legal Research, Prague 2, p. 89 ff.

¹⁴ For more specific information see Ernst C. Hellbling, *Österreichische Verfassungs- und Verwaltungsgeschichte*, 2nd edition, Vienna-New York, 1974, p. 401.

¹⁵ See *Hans Kelsen im Selbstzeugnis*, ed. by Matthias Jestaedt, Tübingen 2006, p. 52.

¹⁶ Decision by the Provisional National Assembly of the Republic of German-Austria of October 1918, State Gazette no. 1.

¹⁷ Art. 24 ff. Federal Constitutional Act 1920.

¹⁸ Hellbling, loc. cit., p. 240 f.

V

This imperial manifesto of Emperor Charles I of 16 October 1918 successfully addressed only the German-speaking nation. While the other ethnic groups of the monarchic Austro-Hungarian multi-ethnic state moved towards independence and formed twelve separate states, the remaining German-speaking part moved towards establishing the new state of the Republic of German-Austria, in which context the Assembly of German-Austrian Deputies in the Lower Austrian House of Parliament (Niederösterreichisches Landhaus) in Vienna on 21 October 1918 and the resolution it adopted marked a ground-breaking move.¹⁹ The provisional constitution and the appointment of the State Council as the new government under State Chancellor Dr. Karl Renner on 30 October 1918 are also based on this assembly. In his Abdication Proclamation of 11 October 1918, Emperor Charles I relinquished all participation in the administration of the State, and on 12 November 1918 Austria was declared a democratic republic in the Law on the Form of State and Government (Gesetz über die Staats- und Regierungsform) (State Gazette 1918/5).

The year 1918 was marked on the one hand by a normative caesura as it witnessed the change in the form of state from monarchy to republic, while on the other hand it was characterised by a continuity in terms of the people who played a role, insofar as the Vienna professor of public law Dr. Hans Kelsen, who later became world-famous for his Theory of Law (Rechtslehre), was legal advisor to Emperor Charles Karl I at the end of the monarchy and legal advisor to Chancellor Dr. Karl Renner at the beginning of the republic. With its German-speaking population, this republic strove for an independent awareness of the state, which proved fateful for the interwar period in Austria.

At the beginning, this interwar period in Austria was affected and influenced by the Weimar Republic, which was formed with a new constitutionalism in Germany after the First World War: this influence on the constitutional law development of Austria was so strong that the Viennese public law professor Prof. Dr. Adolf Merkl, who contributed to developing the fundamental norm of Austria's new state order, namely the Federal Constitutional Law of 1 October 1920 (Bundesverfassungsgesetz, B-VG),²⁰

¹⁹ Gottfried Franz Litschauer, *Kleine österreichische Geschichte*, Vienna 1946, p. 297 ff.

²⁰ Federal Law Gazette 1920, 1; and Die Bundesverfassung vom 1. Oktober 1920, ed. in cooperation with Georg Fröhlich and Adolf Merkl by Hans Kelsen, with a foreword and introduction by Robert Walter; Vienna 2003, p. 5 ff. and page 1 ff.

which established the Republic of Austria as a federal state, and who even described it as an ‘offer to the Weimar Republic not accepted under public law’, which was, however, never accepted and could indeed not be accepted since the State Treaty of St. Germain that was signed on 10 September 1919 and became effective on 16 July 1920,²¹ declared the independence of Austria inalienable in Article 88 after the name “German-Austria” too had been changed to “Republic of Austria”.²² This Republic of Austria of the interwar period was characterized in its development by a democratisation of political life by parties with ideological principles and views of the world. This political plurality in Austria ended on 13 March 1939 with the occupation of Austria by Nazi-led Germany, which led to the Anschluss of Austria that claimed so many victims.²³

After the end of the occupation of Austria in the wake of losing the Second World War in 1945, an awareness of Austria’s comprehensive state responsibility developed in all nine federal provinces, which experienced a confrontation through the four occupying powers of France, Great Britain, Russia and the USA, giving rise to a new sense of national consciousness and identity throughout the entire territory of Austria, which was not directed against any other state or nation but was the expression of an attachment to one’s home country that was accompanied by peace efforts, which has led to social peace at domestic policy level through the representation of the social partners’ organised interests at the level of both employers and employees starting in 1945, and with the declaration of Austria’s permanent neutrality, the country has at foreign policy level sought to make a contribution to peace in the international community since 1955.

Understanding its history and its responsibility in the present has led today’s Austria to assume a mediating function between the West and the East in Europe, which has not given rise to geopolitical egoism but rather created an awareness of responsibility in solidarity, in line with Saint Augustine’s insight, “Pax est ordinata Concordia”: peace is a well-ordered concord.²⁴

In the international community of states, this well-ordered peace enables states to coexist and interact, recognising and understanding each other and each other’s values based on the law.

²¹ Federal Law Gazette 1920, 303.

²² See Litschauer, loc. cit., p. 295 ff and Hellbig loc. cit., p. 426 ff.

²³ Note Hellbig, loc. cit.

²⁴ Aurelius Augustinus, *De civitate Dei* XIX, 11-12,14.

THE FUTURE OF EUROPE

THEO WAIGEL

Introduction

The process of European cooperation and unification seems at regular intervals to run into crisis. And yet the European Economic Community (EEC) and its successor institutions have so far withstood all critical tensions. The Treaties of Rome were signed on 25 March 1957. That was the starting signal for a unique historic development towards a federation of states, or – in other words – a union of independent nation-states. The question arises of what holds the whole thing together.

The question of identity

Considering what holds Europe together means posing the question of identity in terms of political science. National identity is usually used to describe the ties which bind together the citizens of a state. Today, national identity again means the ties which come from a common language, common history and common culture. Love of one's country or patriotism must not be confused with nationalism.

European identity?

At the level of the European Community or Union, an identity in that sense does not exist at all, or it exists at best in an early form. Jürgen Habermas wrote in that regard: "The question is not whether a European identity exists, but whether the national arenas can be opened to one another in such a way that the intrinsic dynamic of common political beliefs and intentions on European matters can develop across borders". An alliance of autonomous nation-states cannot, of course, develop a national identity. And yet this alliance has become a successful Union. For 70 years it has become, to a large extent, a continent of peace and freedom, literally an area without borders for people, goods and ideas, and a practical understanding between peoples. A historically unique interweaving of economy and culture was created. One can describe it as the most successful peace and democracy movement in recent history. The signing of the Treaties of Rome on 25 March 1957 was at the time a revolutionary act. The following questions arise in this context:

- How did this Union come about?
- What fuels the ties between members of the Union?
- How far has this Union come?

The foundations of European unity

Europe's founding fathers learnt their lessons from history. If the old continent wanted to preserve its political-historical weight, then it had to move from confrontation to cooperation. The future of Europe depends irrevocably on the acceptance of shared responsibility. This acceptance characterised the political actions of important figures such as Jean Monnet, Robert Schuman, Alcide de Gasperi and Konrad Adenauer – who were all Christian democrats. Winston Churchill went so far as to call the construction “United States of Europe”.

This meant an insight into the boundaries of the nation-state. In the course of European reconstruction, the limits of national freedom of action became increasingly evident. A nation-state cannot by itself guarantee its external security – only great powers can do that. Cross-border problems drastically increase. Examples are transport, environmental protection or immigration, internal security and terrorism. Smaller nation-states can only survive as part of a supranational structure. Finally, the development of the EEC in the course of globalisation became an important pillar of European cooperation. Maastricht and the single economic space were a response to globalisation. The European common currency forms a monetary roof over the economic space.

The intellectual superstructure of European unity

Europe as community of values: today's Europe is the product of a common historical heritage. As a community of values, Europe is characterised by Christianity and enlightenment. It consists of the formation of democracy as a system of government and the development of the rule of law as the basis of civil society. The state guarantees inviolable human rights and freedoms. The community of values is characterised by the democratic state, pluralist society and social market economy.

From Rome to Lisbon

The development began with the European Coal and Steel Community (Montanunion), which first culminated in the founding of the EEC. At the core of the common market lay the removal of customs tariffs, the establishment of a free-trade area and the introduction of the common

market in agriculture. Further stages were the expansion of the Community and the establishment of the European Parliament. Helmut Schmidt and Giscard d'Estaing endeavoured to coordinate the currency initially to the European Monetary System. Kohl and Mitterrand advocated the creation of the internal market, which finally led to the Maastricht Treaty. The Maastricht Treaty, signed on February 7th, 1992, was the foundation of a political union with a single economic area and a common currency. The European finance ministers agreed to my proposal to name the currency "Euro" instead of "ECU". I had a good argument against conservative Catholics in Germany who opposed the new currency because the Vatican had also introduced it. The Euro was the monetary superstructure of the Union and an irreversible event in the process of further unification. Under the Schengen Treaty, the last remaining border controls disappeared. The treaties of Amsterdam and Nice were further steps towards deepening the Union. The great eastward expansion of the Union took place in 2004. The Treaty of Lisbon provided a provisional conclusion.

Europe in crisis

At present, contemporary critics see the European Union in a state of crisis. There are concerns about the threat of centralism and bureaucracy in Brussels. National representatives criticise unclear decision-making and a lack of democratic legitimacy in decisions taken at the European level. The rights of the European Parliament have been strengthened. Local authorities are represented in the Committee of the Regions. The Principle of Subsidiarity is enshrined in the treaties.

The Euro and the sovereign-debt crisis

The "interim balance", *so to speak*, of the European Monetary Union has been extremely positive. Indisputable advantages have been achieved through the removal of transaction costs, planning security in external economy, and, last but not least, an ever-closer approximation of the financial markets. Talk of an alleged euro-crisis is completely without foundation. Throughout the whole economic and financial crisis and since the beginning of the crisis in Greece, the external value of the Euro remained above the rate on its introduction. At just about 1.5 at the beginning of May, the Euro achieved a value against the US Dollar close to the all-time high of the Deutsche Mark against the Dollar. The Euro has proven to be an anchor in recent crises of the world financial system. Without the Euro, national currencies would have been subject to significant revaluation

pressure in the global recession. What we were seeing was not a Euro-crisis, but a debt crisis in some of the Euro-countries. Thanks to the constitutional “debt brake”, savings measures and the increase in income as a result of economic conditions, the debt ratio is again falling.

European solidarity

The sovereign-debt crisis has, no doubt, caused serious tensions across the whole EU. The solution to existential tensions requires a minimum level of solidarity among member states. Solidarity must, of course, be linked with subsidiarity, so that states in crisis can contribute to a solution through tough consolidation measures. The earlier EMS could only be maintained through massive intervention by the central banks (300 Billion Dollars in 1992 and 1993). A return to the pre-Maastricht situation would have fatal consequences – for example: interest rates in Italy would increase (the benefit of low interest rates in Italy amounts to more than 30 Billion Euro).

There is not only bad news in Europe. Positive results are coming from recovery programs in Ireland, Portugal, Spain, and Cyprus which have successfully finished their reform package and are able to access financial markets.

Greece is now trying to come back. For the first time they have a surplus in their budget. Growth in Portugal, Spain and Ireland is higher than average in Europe.

Brexit and its consequences

1945 – Churchill lost the elections to the House of Commons. As leader of the opposition in 1945 Churchill made a passionate plea for a common Europe with GB as a leading nation.

1946 – he gave a great speech in Zürich with the demand to establish the United States of Europe. Later on he added: naturally without the UK.

1963 – De Gaulle vetoed against the entry of the UK into the European Union.

1972 – nearly 10 years later George Pompidou was ready for the accession of the UK with PM Edward Heath.

1974 – 2/3 of British Voters voted pro EU.

The UK was part of the European Monetary system from 1990-1992. In 1992 the Pound got under pressure in the markets. The UK had to leave the system. That was a trauma for the UK. In the Maastricht Treaty the

UK required an exemption clause not to join the common currency. They did not want to take part and Tony Blair claimed to have a say in the Euro Group but this was not possible. I do not share the hope of some observers that there could be a reversing from the referendum. Such a constellation or a great political figure is not on the horizon. The UK faces dramatic consequences in financial services and products. For financial operations you need a “European Financial Passport” to use the passporting regime of the EU to conduct business in any other EU country. Until now London was a hub for the entire European banking market. A licence in one EU country is entirely sufficient in every EU country responding to supervision. You can work Fly In-Fly Out without establishing subsidiaries. Similar instructions can be found for insurances, payment service providers and bonds.

Jean Claude Juncker

“Towards a better Europe – A Europe that Protects, Empowers and Defends”:

- A Europe that protects;
- A Europe that preserves the European way of life;
- A Europe that empowers our citizens;
- A Europe that defends at home and abroad; and
- A Europe that takes responsibility.

“What about the Dollar?”

Alan Greenspan’s answer to my question: “It’s my currency and your problem”. The answer today is different. The world currency system has changed. The Dollar remains the most important currency. But we now have a multilateral situation. The Euro is in second place with 23% of the world’s currency reserves. The Renminbi will become the third important currency. China has decided to make its currency convertible.

Europe as a historic opportunity

Project Europe extends far beyond markets and currencies. The European Union must be seen primarily as a historic and political project. The attraction of this community made a decisive contribution to the tearing down of the Iron Curtain. Europe is now a model of peaceful cooperation between “tamed nation-states”. Europe today is facing new challenges. Europeans must now demonstrate a sense of responsibility to the outside world as well as solidarity among themselves. Europe has to make decisions, sometimes with a measure of countries. Decisions should be made

faster, if necessary, with those countries that are willing to cooperate. In the age of globalisation, Europeans must develop their own social model. Europeans must initiate dialogue between the great cultures.

Pope Benedict XVI, as cardinal at a conference of the Catholic Academy in Bavaria on April 1979, expressed deep thoughts: "Only if the term *Europe* is a synthesis of political reality and moral idealism can it become a formative force for the future". Cardinal Ratzinger emphasized the need for supranational political, economic and legal institutions, which, however, cannot mean building a super-nation, but on the contrary should increasingly give back to the individual regions of Europe their own face and weight. Crucial for Ratzinger is the unconditionality with which human dignity and human rights stand as a value that precedes any state regulation. These superordinate values, the validity of human dignity preceding all political actions, ultimately refer to the Creator. In this respect, essential Christian heritage is here codified in its particular kind of validity. "That there are values that cannot be manipulated by anyone is the true guarantee of our freedom and human greatness". So, this sentence protects an essential element of Europe's Christian identity in a formulation that is understandable even to the unbelievers. With this, Ratzinger builds a bridge to the agnostics in the European constitutional debate and tries to create a common ground between Christians and nonbelieving humanists.

A similar idea was developed by Cardinal Jean Marie Lustiger on June 3, 1992 in the Catholic Academy in Munich. Europe is Christian, in Lustiger's opinion, as long as it always tries to self-criticise and self-create. Christians do not claim a monopoly of the European idea. The freedom that the Church demands of the communities and states for herself and for her members, she also requires for every human being. This is positive tolerance. It teaches openness to others and dialogue as a testimony to the truth.

What does Europe need? Ideas, perspectives, concepts

1. The goal is "The United States in Europe".
2. Politically and legally, this Europe consists of concentric circles: the innermost circle forms the Economic and Monetary Union with its members. In the next circle are the members of the European Union. EU candidate countries are located in the third circle and the outermost circle is formed by partner states such as Turkey and Russia. The focus is on the United States in Europe, which is more than a confederation of states but not a federal state of former times.

3. The principle of subsidiarity must finally be brought to life.
4. The consolidation of households in all countries is in line with the principle of sustainability. It depends on friendship between generations and must be made a constitutional goal nationally and supranationally.
5. There are important and approvable projects such as better education of young people and the resolute fight against youth unemployment in some countries.
6. Only Europe is able to curb tax evasion and tax avoidance.
7. Europe needs a common refugee policy, especially a development policy for Africa to solve wars and the refugee situation.
8. The European idea needs renewal. For this purpose, an “Alliance for Europe” should be created, with churches, businesses, trade unions, farmers, youth, cultural workers and foundations, cities, communities. They should form a constructive network for the irreversible path to a common Europe.

THE NATION-STATE BETWEEN THE SCYLLA OF POPULISM AND THE CHARYBDIS OF IDENTITY POLITICS

JANNE HAALAND MATLARY

“When I use a word”, Humpty Dumpty said in rather a scornful tone, “it means just what I choose it to mean – neither more nor less”.
“The question is”, said Alice, “whether you can make words mean so many different things”.
“The question is”, said Humpty Dumpty, “which is to be master – that’s all”.

Through the Looking-Glass, Lewis Carroll

Introduction: deep political polarization in European states

European politics is in an unstable state. External shocks make an impact on the continent – Russian revisionism, uncontrolled mass migration, and terrorism.¹ At a time when Europe is facing a distinct need to defend and control its borders and its liberal-democratic system of government it seems unable to agree on anything, let alone on how to counter the *Realpolitik* of the near abroad. Instead of acting strategically, Europe undergoes all manner of self-inflicted conflict these days.

My study of how European governments and the EU tackled the three crises mentioned above shows that Russian revisionism in Crimea and elsewhere was acted on by the US as the prime actor, European states following. The US initiated sanctions against Russia and designed the ‘trip-wire’ deterrence force in the Baltics. When European national security was affected, it was the US that led. This is not good, 74 years after WWII – why can’t the European continent lead itself in defending itself?

With regard to the migration shock in 2015 where more than 1.5 million migrants entered Europe illegally, there was of course no role for the US in this matter, but the Europeans did not know what to do. Neither could or would they control their outer Schengen border, but as they simply had to stop the mass influx when too many had arrived, the EU

¹ J.H. Matlary, *Hard Power in Hard Times: Can Europe Act Strategically?* Palgrave Macmillan, 2018.

led by Germany ended up outsourcing border control to undemocratic, autocratic Turkey and to the much worse regime(s) in Libya where migrants cannot count on civilized conditions. This move was one of desperation, incurring vital dependency on regimes and thugs that one would not normally deal with. The experience of being powerless at controlling one's state's borders led to permanent distrust between ordinary voters and their governments, especially boosting support for populist parties. Kirchick writes that "the rise of right-wing populism, at least in Europe, is in large part attributable to the nearly two million mostly Muslim, mostly male migrants and refugees who entered the continent over the course of 2015-2016 and to the perceived inability of European governments to handle the influx".² He adds that this fuels populist parties and that mainstream parties only belatedly start to tackle this issue, creating dangerous political space for populism.

Thus, illegal migration has become the key political issue for voters across the European continent by now, much like it is in the US.³ Whatever the realities about migration, it triggers conflict along all lines: national identity, jobs, welfare state expenses, the preeminent role of Christianity in European states, and security. It is the most divisive issue in Europe today, and there is recognition that there is need for major policy reform of the refugee system, which Betts and Collier term "broken", and also controlling migration.⁴

Terrorism, the third external shock, is external insofar as its actors are being trained somewhere in the MENA⁵ region, therefore involving border crossings. Terrorism is right-wing extremist, as in New Zealand and in Norway; but by far the most attacks are carried out by Islamists, *in casu* the recent attacks in Sri Lanka on Catholics and tourists on Easter Day. Terrorism of this kind leads to securitization of normal politics and even to the declaration of a state of emergency, as was the case in France for more than

² Kirchick, "The Future of Liberalism", *The American Interest*, 6 March 2019, p. 2.

³ See various statistics cited by James Kirchick, *op. cit.*, such as the 2018 *Eurobarometer* poll that shows that immigration and terrorism are the two items cited on top as problems in Europe, the 2017 Chatham House survey which shows that in 8 of 10 European states majorities oppose further Muslim immigration, including 53% of Germans, and British data that shows that between 2000 and 2016 the percentage that views immigration as a major problem rose from 7 to 49%.

⁴ Alexander Betts and Paul Collier, *Refuge. Transforming a Broken Refugee System*, Allen Lane, UK, and Penguin, US, 2017.

⁵ Middle East North Africa.

two years after the Bataclan attacks. So far terrorist attacks have not led to major destabilization of any European state, but we must expect more attacks like the ones in Sri Lanka now that Daesch has been eradicated in terms of its territorial headquarters. The response will be highly organized with professional attacks against the West and against Jews and Christians in particular in an attempt to foment religious ‘wars’. This means that European open, liberal democracies must be vigilant in ways hitherto unnecessary and that security measures will play a greater role in everyday life. A successful, massive attack can destabilize democracy.

In sum, Europe today faces old-fashioned power revisionism from Russia (and possibly China), probably new waves of mass migration from Africa – a well-organised and very lucrative business – as well as continued terrorist attacks. All these challenges demand that European *nation-states are strong, well-organised, can control their borders and defend themselves*. In other words, this is a time for the virtue of patriotism – willingness to defence one’s homeland and its people.

Nation-states needed. Apply within

In light of this *Realpolitik* world⁶ in which we rapidly find ourselves, is Europe able to rise to the occasion? Does it defend itself, rally around the flag, exhibit patriotic virtue? Patriotism means love of *Vaterland*/mother country, and is as old as political community itself. Horace coined the famous phrase *dulce et decorum est pro patria mori*.

The answer is not given; some states have a strong national identity and strategic culture, others are more postmodern. In defence, Europe does not do its share; the US carries the burden even more than before. In this matter president Trump is right: Europe shies away from its own promises of 2% of GDP for defence, despite this pledge being made solemnly at the Nato summit in 2014 in Cardiff. Defence is not taken very seriously in most European states, with the exception of France, the UK, Denmark, Poland, the Baltics, Norway, and the Netherlands – the states that do war-fighting. The US is still expected to do the heavy lifting when the going gets rough.

⁶ See e.g. John J. Mearsheimer’s analysis in *The Great Delusion: Liberal Dreams and International Realities*, Yale University Press, 2018, for a discussion of the dynamics of current international politics. Although one may take issue with his conclusions about the possibilities of liberal order, his delineation of realism and liberalism as empirical realities in international affairs is very good.

Defence only makes sense as a serious issue if there is a clear love of country – patriotism – and patriotism is only possible if there is a national community, a clear national identity. Dying for King and country is the traditional conception, and one that cannot make sense to a postmodern person. Thus, defence spending is in many ways an empirical indicator of what kind of state and nation we deal with. If the nation-state is seen as an anachronism, a political form of a by-gone era, defending it is not on the agenda.

Yet today Europe faces the need to deter Russia militarily and in all other ways, and of controlling and possibly closing its own borders, as well as knowing who enters the country in the interest of combatting terrorism. Borders, territory, nation and security are again high on the political agenda. The political agenda of borderless globalization and ‘win-win’ solutions in international organisations has been replaced by a traditional agenda where the state matters much more than at any time since the end of the Cold War.

At this time we should expect Europe to put priority on common problems and challenges, setting aside differences. Yet the opposite happens: there are deep divisions in almost all European states today. So-called populists stand up against the so-called elites, as if in a dialectical relationship where both live off each other – the elites scorn voters who are called populist, in some cases even ‘deplorables’ as Hillary Clinton put it. Migration fuels populist parties and *Brexit* has led to three years of emotional reactions across the Channel and even less to the ‘win-win’ solution both sides need. The Visegrad states along with Italy and Austria gear up for a ‘coup’ at the European parliament elections this month, a protest vote against the EU. In France, the country is so divided that president Macron must hold ‘national dialogue’ session across the country and even promise to abolish the elite school ENA, something that sounds like a desperate move, to put it mildly. Macron, whose election had a mere 43% turnout and whose movement *En marche!* was populist in the sense that the traditional party structure was obliterated by it, now faces a country so divided that the political system has stopped working altogether. The streets demand change, and the streets get it. Where are representative structures in this mess? The rules are gone, if not a bygone.

Andrew Michta describes the problem thus:

The real trouble for the West...is what has been happening *within* our societies...the real problem is...the progressive civilizational fracturing and decomposition, fed by the growing disconnect be-

tween political and cultural elites and the publics. Alongside this is an even more insidious trend of fragmenting national cultures and the concomitant debasement of the idea of citizenship, the latter being defined almost exclusively in terms of rights...the larger national identity, which was historically tied to the overarching Western heritage, has been subsumed under ethnic and religious group identities.⁷ (my emphasis).

But not only are traditional party systems fracturing, also citizenship is 'deconstructed' into tribal groups that claims rights for themselves. The anthropological basis for the very notion of citizenship is challenged by subjectivism and group identities, thereby further eroding democracy.

Most often the current polarization is talked about as 'elites vs populism', but this is superficial. As we shall see, the issues on which populist parties mobilise are real issues for the voters – such as controlling migration and getting jobs under globalization, and importantly, keeping democracy so that supranational power can be recalled and controlled. *Brexit* represents a demand for national control of political power, despite its often populist political 'wrapping'. Referenda are by definition the people's own choice, a rare occurrence, and one that should be rare – but democratic nonetheless.

Migration into Europe is what most voters across Europe name as the most important issue, even now that migration is largely controlled. There can be no doubt that voters do not want uncontrolled migration, or for that matter much migration at all. Research shows very clearly that ordinary voters are very concerned about keeping national identity and the national political community, whereas so-called elites do not care much about national identity and typically talk about global citizenship and a multicultural model where national identity is something of the past.

It is very true that populism is a real democratic problem, but elitism, or elites that no longer see themselves as part of the national political community but as somehow removed from the nation-state, also constitute a major democratic problem. This is because we are citizens of a specific nation-state and its specific democracy, and only at the state level and below can democracy exist. There is not supranational democracy anywhere, and typically democracy thrives in small societies where citizens can have public debate and a close-knit society.

⁷ Michta, Andrew, "The Sources of the West's Decline", *The American Interest*, 22 February 2019, p. 2-3.

Globalisation has benefitted well-educated urban people. In the knowledge economy traditional working-class production jobs are lost to low-cost countries like China, to the internal labour market of the EU, or to technological innovation like robotics and AI. In their study of income inequality, Hope and Martelli found that income inequality has risen sharply in all Western countries, most of all in the US and the UK.⁸ J. Stiglitz has documented how US working class buying power stagnated already from the 70s onwards. In addition to the transition from manufacturing to the knowledge economy comes the integration of the EU with its internal labour market which benefits all consumers and leads to economic growth, but where national plumbers and carpenters are out-competed by their counterparts from East-Central Europe.

The protests by *les gilets jaunes* started as a general protest against the loss of status and income by the French working class, especially those living in what the French name *le périphérique*. Also, voting for *Brexit* was motivated by working class dissatisfaction with job loss and competition, as analyses of voting patterns shows: “the divide between winners and losers of globalization was a key driver of the vote”, concludes Hobolt’s empirical study.⁹ She finds that “both the EU’s effect on the economy and migration are highly correlated with the vote choice” (p. 7), and she also cautions against believing that Britain is an outlier: “the sentiments that led a majority of voters to opt for *Brexit* are gaining strength across the continent” (p. 9), concluding that Britain is now a “a deeply divided country, not only along class, education and generational lines, but also in terms of geography” (ibid).

This is also the case in France and in several other European states – there is no doubt that there is widespread dissatisfaction with governments and the EU, and the reasons for this are both economic (relative poverty and income inequality) as well as suspicion that the EU tries to maintain a right to migration and to make a supranational migration policy. Thus, control with political power and re-nationalisation of such power become key.

What are the political dynamics in Europe? How are we to analyse them? To what extent is democracy threatened by them?

⁸ D. Hope and A. Martelli, “The Transition to the Knowledge Economy, labour market institutions, and income inequality in advanced democracies”, *World Politics*, 1, 53, downloaded from King’s College, 16 March 2019.

⁹ Sara Hobolt, “The *Brexit* Vote: a divided nation, a divided continent”, *Journal of European Public Policy*, vol 23, issue 9, 2016.

Let's start by sorting out some key terms like populism, nation, nation-state, and democracy for the purposes of clarity of analysis.

Populism: real people vs corrupt elites

Populism is one of those terms – like elitism – that functions as labelling. It is today a completely negative term, although populism only means ‘by the people’, people’s rule, and as such, sounds like democracy itself. Some scholars use the term synonymously with rule by the people.¹⁰ But today the term is defined more akin to *demagoguery*: a simplification of the complexity of politics, a politician or party that claims to speak for the people against an elite that is arrogant, corrupt, or uninterested in ordinary folk, and a direct form of politics that shuns traditional parties and indirect democracy. Cas Mudde, perhaps the foremost expert on populism, writes that “Most scholars use populism as a set of ideas focused on an opposition between the people (good) and the elite (bad)”.¹¹ Apart from this it is difficult to define populism – it is not an ideology, rather a ‘method’, one that uses demagogic tools of the political trade. Müller makes the point that populists are hardly a majority, but a ‘very loud minority’ in many European states where such parties have been growing in importance.¹² His advice is that mainstream parties must deal with the issues that voters are concerned about and that are seized only by populist parties, such as migration and border control supra-nationality in the EU, and working class job loss. This point is also strongly underlined in David Frum’s essay with the clear title “If liberals won’t enforce borders, fascists will”.¹³ The resurgence of populism in Europe is above all tied to the issue of migration and border control, and mainstream parties have more often than not shied away from addressing this difficult problem. Yet populist parties’ success forces them to do so; and even Social-democratic parties, like the Danish one, now ‘compete’ with right-wing parties at home in having ‘strict’ immigration policies. In the fall of 2015 the issue was defined by those that wanted open borders; now it is defined by the opposite. There has been a U-turn politically in Europe on this issue.

¹⁰ See Walter Ullmann, *A History of Political Thought: The Middle Ages*, Penguin Books, 1978, UK.

¹¹ Cas Mudde, “How populism became the concept that defines our age”, *The Guardian*, 22 Nov. 2018. He has authored many scholarly works on the theme, among them *Populism: A very short Introduction*, Oxford University Press, 2017.

¹² Müller, Jan-Werner, “False Flags: the Myth of Nationalist Resurgence”, *Foreign Affairs*, 12 February 2019.

¹³ David Frum, same title, *The Atlantic*, 18 March 2019.

It is important to note that populist politicians and parties are found on both left and right of the political spectrum – from Hugo Chavez to Nigel Farage and Donald Trump. Populist leaders will typically take to the street, make direct campaigns and ask the people directly about their view. This is both democratic, such as using referenda, but over-reliance on such methods is unwise: one cannot expect voters to know about every issue and they are not well informed about many issues. However, it is not possible to label use of referenda as populist; most states use this direct method in important matters, so when e.g. PM Orban of Hungary asks the people to vote on whether to have immigration, it is not a populist move, but a deeply democratic one, for it is up to the individual state to decide on how its nation is to develop, and migration has always been a key national prerogative. Thus, the widespread denunciation of asking voters on this matter is not fair. Migration is, as said, the key issue for most voters across all of Europe, and migration policy is a national prerogative.

But when the issue is misrepresented in the recent poster-campaign where Commission President Juncker is portrayed, along with Gyorgy Soros, as two who conspire to bring in mass migration to Europe, this is demagogic, and therefore populist. There is no concerted policy to do so, although the EU does not control the Schengen border and therefore outsources border control to Maghreb states and Turkey (thereby having reduced migration into Europe by 90% since the peak in 2015). It is factually wrong to paint a picture of open border policy on the part of the EU, yet factually right to accuse the Commission of forging a supranational migration and refugee policy by majority voting. But the poster campaign is still grossly misrepresenting the facts, and even if Soros favours migration and spends money on this cause, he alone clearly does not effect mass migration into Europe.

Thus, oversimplification and often conspiracy accompany the populist. President Trump comes to mind as a very good example of a populist politician, communicating directly with the people through social media, shunning the established media and parties, catching on the theme of the ‘forgotten’ working class and launching simple solutions to job loss, such as protectionism. The voters who chose him were concerned about the economy and job loss, migration and American society, and he addresses these themes, but in very demagogic ways. All complexity and nuance is lost, there is no political debate, only slogans. But the issues that moved the voters were real enough.

In Europe we see this ‘style’ in parties in almost every country, but it is important to be careful about what we try to analyse: is it the policy ‘style’

of populist politicians, or it is the political issues that they benefit from and which are of real concern to voters, such as control of migration, keeping national identity, and controlling supranational political power?

As said, populism is a very negative label, and it is therefore very difficult to use the term meaningfully as an analytical term. It is frequently used to dismiss and marginalize voters that the educated, global voter dislikes. *The Economist* makes this mistake in describing the Tory party, which it claims “has transformed into a party of populist nationalism”.¹⁴ The *Brexit* ‘debate’ abounds in examples of such labelling, originating in Brussels as well as in London. The lack of respect for the outcome of the *Brexit* referendum is one of the most surprising and disconcerting aspects of this event. Hillary Clinton’s derogatory remark about ‘the deplorables’ that voted for Trump is also a very good example of this type of labelling. No voters in a democracy are deplorable, because the suffrage belongs to every citizen. Were we to demand a certain IQ or education level in order to vote, we would be back to John Stuart Mill’s *On Liberty* from 1859 where he frets over this issue: can those without property have the vote? Those without education? Women? All three groups were in doubt at the time – were they rational and independent enough? If we need to qualify for the vote and have private property, we speak for aristocracy. In my hometown in Norway a local writer wanted the vote so much back in 1846 that he bought some skerries that were covered by water at high tide in order to possess property – as was demanded to get the suffrage. These small islands were what he could afford, useless as they were to anyone. The locals said of him that “Åsmund Olavsson Vinje has the vote at low tide”.

Better to classify parties and politicians according to their methods if populism is to make sense – do they replace parties by movements, often personalized as expressions of their own leadership? Here we may include *En marche* and president Macron whose electoral process wiped out the traditional French party structure – do they speak for ‘the people’ against ‘elites’? Here Macron does not fit in, but most others that we usually call populist do. Are they against the EU? This is not an indicator, of course, as it is fully legitimate to be for or against the EU. All the parties in Europe today that are often called populist accept the democratic method and do not want violent upheaval, like Communists or Nazis. They are not extremist. And it is not racist to be against migration, as some seem to think.

¹⁴ Bagehot, “Metamorphosis”, *The Economist*, 6 April 2019, p. 30.

We have a problem of populist methods in Europe today, but the issues which fuel populism are real ones for voters – primarily fear of job loss, of uncontrolled migration and of being ruled by international regimes and beyond the nation-state. There is a democratically sound demand for re-patriation of political power, or at least for democratic control of such power. The EU can hold another treaty conference to discuss reform along these lines, as it has done several times before. It is fully rational to discuss whether to amend the internal market's freedom of movement or whether to abolish the EP. It is also fully rational to demand border controls and no immigration in times of terrorism and job loss in Europe. Knowing who enters one's territory is essential to security policy, now as before.

The democratic challenge of populism rather lies in its method, its demagoguery. In Norwegian we talk about a 'folkefører', a 'seducer of the people', which is a politician who abhors reasoned and nuanced debate and lives by simple slogans. Tweets are a perfect medium for such statements, perhaps containing a grain of truth, but awful simplifications. In this time of social media and 'echo chambers' the democratic citizen ideal is really under threat from conspiracy theories, 'alternative facts', etc. Again using Trump as the best example of a successful populist politician, he retains his following and addresses it directly, and that is what counts. All else – the common good of the *res publica* – is secondary to this direct leader-people link, and his people believe his demagoguery.

Democracy presupposes state and nation

A key theme of European politics today is the nation-state and the nation. The problem is not related to traditional nationalism which advocates that one's own nation is superior, however. This is not like the run-up to WWI. Current concern about one's own nation is rather about the *lack* of it, not the excess of it.

Nation refers to where one was born, one's mother country or *Vaterland*, one's *Heimat*.¹⁵ The term is derived from the Latin *natio*. Nations are found in all human societies, but have been developed in relation to the state and to democratic political theory in the West, in Europe in particular. As such, the nation is a political community, as the basis for citizenship and democracy, but in and of itself the nation is a *cultural* community, bound together by language, history, and habitat – a natural community, like the

¹⁵ See e.g. Steven Crosby, "Nationality", *Nation, State, and Empire*, ed. By Kurt Almquist, Ax:son Johnson Foundation, Stockholm, 2018, pp. 33–40.

family. As we have seen in various papers at this plenary, Catholic social teaching reaffirms the naturalness of the nation, like that of the family, and nations have a right to exist. From St Augustine to St John Paul II, the nation is a natural community that one owes allegiance to and which one loves. It is also the basis for patriotism, as the latter emphasized.

The nation is not made by the state and should not be, although many states have tried to instrumentalize nations for their own purposes. Communists have always tried to abolish nation and family and many rulers have tried to forge the nation as belligerent in order to serve their purposes. Nation-building of the kind that we see in Russia and China today are examples of the latter, and in the Cold War Central Europeans were very constricted in their cultural expressions – everything was political. In China we currently witness shockingly aggressive nation-building – an app called “Study the Great Nation” has been developed by the party which controls that subjects use it as much as possible – there are points given for reading propagandistic material, for seeing films, for answering questions. Employers are tasked with controlling how many points workers get. The internet age had indeed improved the totalitarian regimes’ controlling ability. Chinese military build-up happens alongside this aggressive nation-building – an old recipe for dangerous nationalism.¹⁶

There are many thousand nations on the planet and less than 200 states. This means that most states are multi-national, as they are multi-lingual and multi-religious. However, there is usually one predominant language, religion, and culture in a state, making other nations in it minorities. The Habsburg monarchy is a very good example of this multi-national polity, and it was the first regime to introduce freedom of religion in 1645 in Transylvania. Yet this is far from modern identity politics, to be discussed below. The ontology of traditional nations is that members of the nation can be identified by objective criteria, such as language and common culture, as nations have evolved over centuries and more. This is *natural* community, not one chosen subjectively. Unlike postmodern ideas of shifting, chosen identities, the concept usually refers to something as permanent as to be seen as just that, natural. The constructivist critique¹⁷ that nations are ‘imagined communities’ is not important, for nations are necessarily

¹⁶ *New York Times*, front page, “The Hottest App in China Teaches Citizens About Their Leader – and, Yes, There’s a Test”, 7 April 2019.

¹⁷ See Benedict Anderson, (1991). *Imagined communities: reflections on the origin and spread of nationalism* London: Verso.

‘imagined’ in the sense that they are not tangible, but part of one’s identity from childhood years. They are constructed in the sense of not being material and empirically tangible, but they are so strong that people die for them. I prefer to speak about naturalness in the sense of spontaneous evolution – nations develop and change in many small and greater ways, but this is a bottom-up process, and not a political one if it is to count as natural.

National identity is thus natural and cultural, not imposed by the state if it is real. This is a very important point. Communists and other totalitarians have always tried to misuse national identity to their own control purposes – new Soviet man was never a success, nor was the imposed ‘Yugoslav’ identity there.

East-Central Europe is full of examples of attempts to use nationality politically. Even today one can experience large numbers of Rumanian flags planted in all-Hungarian villages in Transylvania – contrasting sharply with the natural Hungarian culture and community in this part of old Hungary. The evolution of 700 years of Hungarian nationality is visible in the way people there have lived for centuries, it is their way of life, their folklore; a natural way of living. When political agents plant flags in these villages in order to underline that they belong to Rumania, it is a shocking imposition because one sees the contrast between natural life and artificial, political manipulation so clearly.

History abounds in examples of such political uses of the nation. This is nationalism; when nations are used by political rulers: “when defensiveness becomes fanatical, dividing mankind into two warring camps... we have the ideology of nationalism”.¹⁸ Nationalism is always negative, a political (mis)use of national identity and patriotism, which is the natural love of one’s home country and nation.

Thus, nations are prior to states, which in their modern form develop after the Thirty Years’ War in Europe. There are city-states in ancient Greece, and, in the 13th century, small units in the north of Italy, called by the same name.

Siedentorp makes the important point that the ‘idea of the West’ is the claim that the *individual* and not the family, the group, tribe or clan is the fundamental unit of politics.¹⁹ He points out that Christianity played a decisive role in this: “Christian belief in the equality of souls in the eyes of God challenged the inherited meaning of society, introducing a universal-

¹⁸ Grosby, *op. cit.*, p. 35.

¹⁹ Siedentorp, Larry, “The Idea of the State”, in Almquist, *op. cit.* pp. 65–73.

ity which undercut traditional inequalities of status”.²⁰ In ancient Greece there was no such equality; on the contrary, citizenship was reserved for the *patres*, the elite. Slaves and women were excluded. The assumption of natural inequality was the rule. The *pater familias* had all power, including political power. With Christianity, however, there is a revolution in anthropology – one that ends in democracy in modern times.

This idea of natural equality slowly makes its way into political thought as well as civil law: women and men are equal in marriage under Christianity and emperors like Charlemagne asks subjects to swear loyalty to his empire, not to local lords only. What Walter Ullmann calls the ‘ascending theory of government’ gains traction.²¹ In the new religious orders of the 12th century, the Franciscans and Dominicans, we find democratic constitutions and elections. In the conciliar movement during the time of the Avignon popes there is a movement to make papal ‘monarchy’ impossible. Canon law represented an entirely novel legal conception of equality: “canon law and the system of law administering it were creating a new world. The assumption of moral equality underlying canon law was generating the idea of basic or individual rights”.²² Something as important as marriage could now be entered into validly only by a man and woman who both consented to it – without mutual consent it was not valid, but it did not require the father of the bride’s consent.

This conception of the individual makes the state possible, for it has authority over all citizens on an equal basis, and all citizens are of equal importance through the suffrage. There is *equal submission* to the rule of the state, which in turn is based on a social contract. The state is not the rule of a feudal prince who has authority over subjects, but state sovereignty “introduces an authority which can limit the claims of family, tribe or caste if it so chooses”.²³ The very concept of the state based on a social contract is therefore presuming *equality* of citizens, i.e. equality of human dignity for all persons.

Democracy therefore not only presupposes the state, but also a *community of citizens*. The nation is not based on clan, tribe or family, but on equality among its members, and it is a community that goes beyond abstract rights. There is equality among all human beings in their having the same human

²⁰ Ibid., p. 68.

²¹ Ullmann, *op. cit.*

²² Siedentop, *op. cit.*, p. 71.

²³ Ibid., p. 72.

rights, but they are citizens of the same state. The nation is based on rights, but it is a community of history, language and above all, culture, tied to its homeland. It is this close-knit character that enables it to extract taxes and impose conscription.

Is there nationalism in Europe today? Hardly – there is no danger of war between European states today, and little if any evidence of political uses of the nation in order to create animosity between states. *The fear that nationalism is on the rise in Europe today is unfounded. What is on the rise is the yearning for national identity and the fear that globalization erodes the nation, that migration undermines it, and perhaps that the EU intends the same.* This is a natural democratic reaction, because the nation-state is the very basis of all democracy.

Identity politics undermines citizenship

The natural nation has evolved, bottom-up, and changes only slowly. Multi-nationality is not based on subjectivism or ‘a la carte’ nationality. One may be Polish-American, one is Polish and American, and the two are different and can be delineated – and not least, inter-subjectively communicated. Likewise, one is a Christian, precluding being Jewish or Muslim, atheist or agnostic. One cannot be a little of each – or can one? The latter position is held by those for whom reality is socially constructed and whose identities are mere subjective preferences. I introduce this section of the paper thus in order to underline the abyss that exists between a traditional understanding of nation and religion – two major groups of life – and the current phenomenon called ‘identity politics’. The two are not similar in any ways whatsoever, for they differ completely in terms of ontology and epistemology, something which has major implications for democracy.

As a university professor I cannot fail to notice that the tyranny of the perpetually insulted and discriminated against has also reached our own institution. I have no personal experience of this, perhaps because I do most of my academic work in the “hard” field of defence and strategic studies, explicitly relating to accountable facts and clear actor imperatives. Here we also rely on rational theories of interest-based action and strategic interaction, and most students and practitioners in this area share a mindset characterised by mental robustness and a keen interest in national security issues and realism.

However, claims of subjective feelings of discrimination abound, and group identity politics as a basis for quotas in all sorts of societal and professional settings is now commonly seen. Typically, some group will claim

historical discrimination and “under-representation”, and thereby assert its right to be equitably represented by means of a quota. These claims are seldom if ever established factually but simply invoked, and, even if justified, it does not follow from historical injustice that this can be rectified through granting jobs, study places or the like to members of these self-established groups. Moreover, this logic becomes even more problematic when school and university curricula are changed and rewritten to reflect the interests of these groups. This form of manipulation and politicisation is reminiscent of how totalitarian regimes seek to rewrite the past and thereby change it.

Here I wish to examine the premises of the group identity phenomenon and especially the major problem of the extreme subjectivism that forms its basis. First, I present some cases of this new politicisation, arguing that the dynamics are the same in these various examples: there is no tolerance of opposing viewpoints; those that refuse the group identity logic are even vilified. The group in question will invoke discrimination, self-defined, but also claim that quota representation is a force for good, bringing diversity to a societal field. Since those that oppose this are discriminatory on this logic, they are not to be tolerated.

The new intolerance: examples

We have all noticed an increasing number of cases of ‘non-platforming’ and ‘dis-invitations’ – these inelegant new words have also entered common parlance. The Canadian professor of psychology Jordan Peterson who argues for traditional virtues and character formation in what seems extremely commonsensical ways was recently ‘dis-invited’ to the School of Divinity at Cambridge University because of student protests that he did not “represent” their views. This is really troubling, because a scholar is not at all going to be “representative” of his or her students, but is of interest to others because of his or her scholarship. “Representativeness” is a political concept relevant in political bodies, not in the university.

A similar case is that of Sir Roger Scruton, one of Britain’s most renowned political philosophers, who was presented as an Islamophobe in an interview in the *New Statesman*²⁴ and therefore lost his job with the

²⁴ The *New Statesman* Interview was published on 7 April, and the publication also published the transcript of the conversation on which it was based. The controversial part was this:

Georg Eaton: One of the things which people jumped on was your description of Islamophobia as a propaganda word. Would you defend that now?

British government. His point was that when a person claims discrimination based on anti-Semitism or Islamophobia, this can be used to stop all critical discussion. If I as a Christian were to claim that I am offended or discriminated against if someone criticizes Christianity, I have a powerful weapon that can effectively stop all democratic, open debate.

This brings me to the core of the argument about group rights and epistemology: we must not accept that a claim is valid just because it is made – we must be able to discern whether it is true and reasonable. Making a claim does of course not make it true, such claims can be used *ad infinitum* in order to destroy an opponent or advance one's own interest. The point is that the group cannot validate its own claims by itself. But today this is very often the case: just making a claim or an accusation is enough. This undermines both rule of law and the presumption of innocence, as well as the very basis for democracy – the equality among human beings as the basis for citizenship and therefore, for law.

Let me illustrate this dangerous and destructive logic of subjectivism: in Norwegian schools there is a curious debate about *krenkning*, or being insulted, when corrected by a teacher. One such teacher, Simon Malkenes, gained national attention when airing his frustrations and concerns on a radio programme, in which he quoted from his notes – “K walks about, L talks aloud, S leaves the classroom” – to illustrate the everyday reality for a Norwegian schoolteacher. This caused an uproar among his pupils – they were insulted and produced a formal complaint, citing the school's rules that no student must be insulted (*krenket*) by a teacher. Malkenes received a formal reprimand from his superiors and all hell broke loose in a very public debate. Under Norwegian school regulations, a teacher can be removed from his post simply by being charged with insulting or offending a student, on purely subjective grounds. This has turned things completely on their head and cleared the way for the practice of witch-hunts: who would dare give a poor grade to a student deserving of such, given these rules? The student may take it personally, feel insulted and launch a formal complaint.

The problem here is the issue of subjectivism, with students failing to distinguish between their own feelings of anger, disappointment, and low self-esteem because of poor results or bad behaviour, and the objective facts of poor performance and/or bad behaviour. They are guilty of taking

Roger Scruton: Absolutely. It was invented by the Muslim Brotherhood in order to stop discussion of a major issue (which he explains is the role of Islam and peaceful resolution of conflicts in liberal democracy).

correction and criticism personally. Instead of recognising how poor their exam performances were or how unacceptable their behaviour was, they confuse and conflate the professional and the personal. This shows us not only that they lack self-awareness and the capacity for self-criticism, but also that they lack an ability to separate facts from feelings and emotions. If it is a fact that the student made noise in class, it is a fact; and the one with authority to declare it a fact is the teacher. Likewise, if the student insists that two and two make five, it is not a fact, it is simply incorrect – in this case an error that is easy to point out. But in many academic disciplines, facts are of course not so clear-cut. Epistemological theories are often called constructivist, arguing that there are no other facts than the ones I have constructed – or others have constructed. If reality is socially constructed, how can it be studied scientifically? Isn't a fact and my view of the former one and the same? Can there be any facts beyond subjectivism?

The Malkenes example concerns two major issues for any school, university and democracy: *authority* and *knowledge*. The two are related – the teacher has authority because he has expert knowledge in a particular field. The professor professes because he has superior knowledge, to be taught to students. If there is nothing *objectively important called knowledge*, then there is no need for a teacher or a professor, nor for pupils or students. This is extremely elementary, yet it needs to be stressed at this time of confusion about whether a teacher has any authority in the classroom and whether knowledge exists apart from subjective views of it.

The more subjectivist knowledge is argued to be, the more politicised it can be rendered. If only the proletariat can know how capitalism really works because they belong to the working class, no professor of economics can do so. Moreover, this knowledge about capitalism is not value-free or disinterested, but a tool of revolution. Knowledge, on Marxist analysis, is always political. Likewise, if I share reality with other women because we construct or understand the world *qua* women, we should study the world through women's eyes. If only women can understand how women see the world we need gender studies departments and “gendered” history classes. History cannot then be studied in a disinterested, scholarly manner, because it is always political: when old, white men study it, it is through their perspective only, no more correct than a feminist or anti-colonial perspective, in fact intolerable because old, white men are deemed to “represent” colonialism or imperialism.

It soon follows from this that there must be syllabi where female authors are the subject of a quota, such as the 40 per cent female component

on the International Relations course at the London School of Economics. The difference between a disinterested, scholarly approach to the study of history and the perspective described above is an abyss. If all knowledge is viewed as interpretation from a group perspective, aimed at social and political change, then knowledge is political and subjective because every human being is assumed to *represent his or her group*.

Representation is of course what politics is about – we have political parties and elected representatives who are political actors on our behalf. But representation is a foreign concept in scholarship.

It follows logically from this that groups must be represented in the university in the form of quotas for, say, female or black students, professorships, and in syllabi. If the point of knowledge is to represent various groups' views of it, then a representative structure follows, and the objective of the whole exercise is to promote the views of the various groups. If the case for discrimination can be made – e.g. that female composers are seldom played in concert halls, then female composers must have their due compensation, even if the paucity of such has to do with the fact that, (1) few women choose to become composers, and (2) their work, like that of most male composers, may have been of insufficient quality to be performed. If such objections are heard, they are dismissed, certainly if they come from white middle-aged men (who make up the majority of both composers and musicians...).

This kind of 'representation' may sound utterly silly, devoid of substance, but the fact is that this idea – that there must be some kind of representation of black people, women, native Americans etc., in each and every sphere of societal activity – is now real policy, creating a "diversity dictatorship" as it has been called. The BBC's shortlist for top jobs now has to contain diversity in the form of ethnic minorities and women, and the writer Lionel Shriver lost her column in a newspaper when she criticised diversity policy of this kind. The feeble intellectual foundation for diversity has not stopped it from becoming a key criterion for almost every type of activity that was hitherto based on merit.

Moreover, this is a highly selective diversity – why not demand that every job, government, or board has 10 per cent aged over 80, another 10 per cent aged over 70, 25 per cent handicapped, 25 per cent poor, etc.? These groups are rarely much catered for, and the elderly are truly discriminated against in both the workplace and in politics. If discrimination is to be compensated for through quotas, those groups who are truly affected by it should surely be included.

The argument in favour of quotas is, of course, nothing new, and the logic is the same as in the old Marxist argument that there is no objective study or interpretation of society, only what a class sees. With regard to race, black people or Afro-Americans have been active in their attacks not only on Civil War monuments in the United States, but, further afield, for instance, on the statue of Sir Cecil Rhodes at Oriel College, Oxford, demanding that it be pulled down. History, especially Western European history, is taught from the angle of colonial oppression and imperialism can hardly be talked about in a disinterested, apolitical, and scholarly manner. Perhaps colonialism brought some benefits in terms of schooling, administrative organisation, and social institutions? Perish not only the thought, but anyone suggesting it.

Similar examples abound, also in academia and business – criticism of an employee becomes a “reputation loss” for the employer who distances himself from the employee instead of defending him. Such a case is often based on someone’s subjective feelings or accusations of racism, homophobia, discrimination of women, or the like. This naturally creates a *culture of fear* – everyone must avoid triggering such reactions and therefore conform to whatever new dogma is launched. As in the Malkenes case, the employer – the Oslo School Board – defended the pupils rather than the teacher. Fortunately, this case led to major debate and uproar, and therefore to a full examination of the facts of the case in public debate. But this is far from always the norm.

The danger lies in the subjective element: being accused of something and having a campaign conducted against oneself on social media amounts to extremely heavy pressure, and many employers are cowards, not daring to stand up for the basic justice criterion of objective scrutiny of the facts of the case. In addition to cowardice, the strong inducement to protect the reputation of the employer is at work, especially in business. In a university it should be natural that criticism is welcome and praiseworthy, but that does not always hold true, especially when one depends on tuition-paying students.

If power then is what defines scholarship or knowledge, we have this dynamic: a group defines a dogma about some subject, claiming that collective historical injustice or discrimination should lead to changes in the teaching of the subject, even that group representatives only can teach the subject. This is exactly like the situation in a communist society where curricula in schools and universities were changed to conform to Marxist ideology. Contemporary dogma has to do with identity politics and ‘group

think', but the power dynamics are exactly the same as in Marxist ideology – (1) the group interprets what should count as knowledge, (2) everyone must accept this lest they be punished, (3) knowledge is not separable from politics, fact from value, the subjective from the objective.

Ontology: tribalism

The present climate of public debate and ideas is marked by group identity politics – the premise that what Aristotle calls “accidentals” (such as sex, race, etc.) are of such importance that they constitute the definition of human nature and therefore give rise to collective or group rights. On this logic, women are profoundly different from men, so different that they are entitled to specific rights *qua* women – not the right to be equal, as that presupposes a universal, common human nature for both sexes against which one measures equality, but the right to be different, possessing unique qualifications in professional, political, and scholarly life. Thus, being a woman in and of itself may entail a qualification to be a professor, to be included in university curricula, to be employed on boards and in professional jobs (there are usually no calls for quotas in the service sector, e.g. female quotas for garbage collectors or road construction workers).

The justification for quotas is two-fold: it is a right claimed in order to ameliorate alleged historical and contemporary discrimination of the group, and it is held as a general good for professions and for society at large. The latter is often invoked as an argument against male predominance in company boardrooms, business, the military, etc. – women provide diversity. Diversity is a positive term, who can be against it? Perhaps only in the military can one argue meaningfully for uniformity, hence the uniform and drills.

The premise of this kind of group think is that men and women are essentially different, and this difference is argued to be so profoundly important that it entitles women to a 50-50 gender balance in all sorts of professions, politics, and other areas of life. Professional qualifications are sometimes reduced in importance in order to achieve this balance.

But not only does this argument lack substance, no real attempt is made to substantiate it. Are women so very different from men that they can be lumped together into a distinct category of human beings? Isn't there profound variation among women, as there is also among men? Do women really have much more in common with each other across age, nationality, educational level and so on, than do young people with other youngsters, doctors with other doctors, Norwegians with other Norwegians etc.?

Those who advance sex-based quotas as the provider of diversity carry the burden of the proof, but have hitherto failed to provide it. The fact that group interaction in a milieu of only men is different from situations with mixed sex components does not constitute proof of such profound difference. The flaws in the argument that women represent diversity *qua* women are obvious, but nonetheless this argument is the very basis for quota policy. The general underlying premise seems to be that a group consisting of both sexes, many races, many nationalities, young and old, is a diverse group, but such diversity is superficial. Real diversity exists among people of different religions, cultures, philosophies, and social classes. *If people in a group have very little in common, it is truly a diverse group.* If I sit on a business board with Taliban members we really are a diverse group. But such a group would probably not function at all – the more real the diversity, the less synergy is likely to be generated, leading to the very opposite of the argument that diversity is good for business. True diversity may be very beneficial, but this requires that the members of, say, a company board have professional knowledge of the business field in addition to different perspectives and experiences. This does not result from being black or female. White middle-aged men may naturally make for a very diverse group if their knowledge and experience vary.

Also, sex-based diversity is trumped by professional identity; when the two sexes are mixed in army dormitories in Norway, the soldiers cease to see each other as men and women and start to identify as teams, focused on the job at hand. This suggests that sex is greatly overrated in general importance and that professional identity is much more important. Modern society is, as Max Weber wrote, based on meritocracy, i.e. on professionalism, not on tribal identity. Yet the modern campaign for group identity constitutes a return to pre-modern tribalism.

The old feminism of the 1970s was logical and just, insofar as it argued for equality with men in terms of *equal opportunity*: women should rightly have access to the same jobs and education as men do. There should be no discrimination based on sex. Note that this is logical because it is premised on one common human nature and therefore that “accidents” like sex should not matter to human freedom and self-realisation. Here the ontological premise is correct: there is one human nature for both sexes, irrespective of race, ethnicity and whatever else that may differ among human beings.

“Old” or “equality” feminism simply argued for *equal treatment for all human beings* because they share in the same human nature, they are equal before the law, as citizens, professionals, etc. Group identity feminism, on

the contrary, demands quotas for women because they are argued to be *ontologically different* from men, to such an extent that this warrants up to 50 per cent female representation in all sorts of professional jobs, student programs, company boards etc., regardless of formal qualifications.

Group identity politics works on the same logic as Marxism: if you disagree, you are *entfremdet* (alienated) and in need of consciousness-raising. Men can never have any say in group identity feminism because they are men; the *bourgeoisie* can never have any say in class struggle because they are unable to, given their class. By this logic, there is no common human nature that is the basis for equality among humans, only the group or the class, defined by the group or the class. If this logic is allowed to permeate the university there will no longer be the ability to speak truth unto power in the academy, but the opposite.

In light of this it is frightening that politics today aims at an almost mathematical 50-50% ‘representation’ of men and women in government – at least this is now a strong norm in the Nordic states – and other groups, like various national and religious groups, increasingly argue for ‘representation’. But political representation is not tribal, religious, or sex-based, but based on equality of citizenship, regardless of ethnicity, religion, and sex – that was the whole point of revolutions that fought to achieve equality! And representation is about ideology, one represents a party one has chosen because of its ideology, and one represents a geographical place and all its citizens of that ideological orientation. One is not elected to represent groups in society, that was the old anti-democratic society of estates that democracy replaced.

As states above, Western civilization is the only one where human beings are equal; and this remarkable equality is largely due to its Christian ideas. This equality is and remains the precondition for democracy, and democracy is completely alien to ‘group representation’. The latter is a corporation society where permanent groups have representation in the state.

Epistemology: extreme subjectivism

I have so far but alluded to the importance of epistemology in passing. I have argued that “old” feminism (and by logical implication, the fight for racial anti-discrimination and other types of discrimination) is ontologically sound, being based on the idea of a common human nature.

Now, this ontological position is no longer shared by group feminism/identity politics. The ontological premise here is the group or tribe: women make up a group that has nothing much in common with men, black people have nothing much in common with whites, and the attributes that

form the group or the tribe make up an endless list. The tribe becomes the basis for claiming group rights, often in retribution for alleged discrimination. The individual no longer counts, only the group – as is typical of any tribe. Moreover, the attribute that defines the group is so fundamental that one must be born in the tribe to be part of it.

If it is only the group that can define what it is and what its rights are, there is no longer any measure of what is true or false, just or unjust. There is no longer any inter-subjective understanding of facts simply because there is no *common standard of humanity to refer to*. Anthropology – what a human being is, what human nature is – is therefore of central importance to academic and political debate and inquiry. Here the grave problem of constructivism as an extreme form of subjectivism enters. Popular in academia but probably too obscure to catch attention in the political debate, constructivism postulates, like Marxism, that there can be no inter-subjective, objective knowledge. What exists, exists for me, from my vantage-point, in my interpretation of the world. In my own field of political science, extreme constructivism would imply that war can be abolished if we start to think about peace. There is an element of subjective construction of reality that can be deconstructed by information, discussion, and persuasion, but there is also an objective reality that consists of hard power and weapon systems. The point here is not that subjective views of things are not real, but that they must ultimately be checked against reality, and that this is what a university is tasked to do. If I think that the world is flat because all that I can observe indicates this to be so, such a thesis must be exposed to inter-subjective testing. *It is never enough to claim something to be true. Facts and reasoning must be presented and scrutinised.*

In sum, knowledge can only be had according to certain rules of logic and by an attitude of courtesy and open-mindedness in debate. All knowledge must pass the test of inter-subjectivity, especially in the university. Arguments must be presented in an apolitical, disinterested manner where personal interest should play no role. When students take academic criticism personally, they show that they are unable to distinguish between these fundamental elements. If I say that I am uninterested in the student's pigmentation, sex, race, weight and political preferences, I exhibit the correct attitude as a scholar: it is not the student per se that matters, but his academic arguments and writings.

The same logic should apply in politics. Democracy should be open to debate and tolerant of views that oppose the mainstream. The problem of majority tyranny is well-known. Minority tyranny is no less dangerous.

Francis Fukuyama's recent book *Identity: The Demand for Dignity and the Politics of Resentment*²⁵ provides a profound analysis of the political implications of group rights and subjectivism. He points to the rise of democracy as a system whereby elites were replaced by inherently equal people. He also recounts how feminism and the civil rights movement were struggles for equality, not for difference. The turn came when "the left began to embrace multiculturalism" because it was hard to fight changes to the liberal market-economic paradigm.²⁶ He finds that this new 'tribalism' has now pervaded democratic politics and threatens it: "the left's identity politics poses a threat free speech and to the kind of rational discourse needed to sustain a democracy...the fact that an assertion is offensive to someone's sense of self-worth is often seen as grounds for silencing...the individual who made it".²⁷ This he calls 'political correctness', and attributes the left with promoting it.²⁸ The absurdity of this is seen in one example he mentions – when using 'she' and 'he' offends the ones that identify as transgender.

Fukuyama also discusses the need to integrate people in a dominant national identity. He even uses the term 'assimilation' about this process, and calls on European states to become much stricter in this regard: "European states should impose stringent requirements on the naturalisation of new citizens, something the US has done for many years. In the US,... new citizens are expected to be able to read, write, and speak basic English, have an understanding of US history and government, be of good moral character (i.e. have no criminal record), and demonstrate an attachment to the principles and ideals of the US Constitution by swearing an oath of allegiance to the United States. European countries should expect the same from their new citizens".²⁹

Conclusion

This analysis has shown how the European nation-state, and by implication, European democracy, is threatened by polarization through populism and identity politics alike. The former simplifies politics by reducing it to a

²⁵ Farrar, Strauss, and Giroux, NY, 2018.

²⁶ *Foreign Affairs*, 14 August 2018, "The new Tribalism and the Crisis of Democracy", F. Fukuyama, p. 5.

²⁷ *Ibid.*

²⁸ See also Ronald Dworkin, "America's Permanent Mobs: identity politics tactics echo those of both Lenin and Torquemada", *The American Interest*, 24 Oct. 2019 and M. Bröning, "Karl Marx war auch nu rein alter weisser mann", *Zeit Online*, 25 March 2019.

²⁹ Fukuyama, p. 9.

struggle between the 'real people' and the bad 'elites', and uses demagoguery as its preferred method. The latter undermines rational public debate by denying the common human nature on which citizenship is based and silences discussion by repressive marginalization.

BETWEEN PATRIOTISM AND NATIONALISM. SEEN FROM THE PERSPECTIVE OF CENTRAL EUROPE

FR. PIOTR MAZURKIEWICZ

1. Two different meanings of the term “state”

The French like to repeat after Albert Camus: “Mal nommer les choses, c’est ajouter aux malheurs du monde”.¹ Stimulated by this saying, I would like to slightly clear the foreground of our discussion on nation-state and nationalism.

First of all, it is about the meaning of the term “nation-state”, which sometimes is erroneously identified with the “state of one nation”. The experience of everyday life prompts us to say that the state is a natural creation, or, in other words, that man is naturally created for life in the state. Aristotle already expressed this by describing man as a *zoon politikon*, political animal, or – more accurately – created for life in the *polis*. We encounter terminological difficulties here: can the word *polis* be replaced in this formula by the term “state”? In fact, the Stagirite had in mind a relatively small and autarkic political community. Only such a community, in his opinion, could be sustainable, effective in governance and able to fulfil its mainly ethical tasks towards citizens. In English, *polis* is usually translated as “city-state”, though Cicero gave its meaning through the Latin *civitas*.

The problem is not outdated as we have difficulty using the same term “state” in the context of various political entities such as the Principality of Monaco, Vatican City, the Roman Empire, the Union of Soviet Socialist Republics or the United States of America, especially since the very names of the last two appear to suggest that the “state” is only a part of them. When will the dynamically changing European Union stop being called an international organisation and be called a state?

¹ “Mal nommer un objet c’est ajouter au malheur de ce monde, car le mensonge est justement la grande misère humaine, c’est pourquoi la grande tâche humaine correspondante sera de ne pas servir le mensonge” (A. Camus, *Sur une philosophie de l’expression, compte rendu de l’ouvrage de Brice Parain, Recherches sur la nature et la fonction du langage*, Gallimard, Poésie 44, n° 17, p. 22).

In Western languages we generally use terms derived from the Latin *status*, such as: *l'état*, *lo stato*, *der Staat*, *the state*. Although the term *status* belongs to classical Latin, the current meaning of these words is relatively new and was formed only during the Renaissance debate held in the northern Italian republics.² The Latin *status* means, among other things, attitude, condition, position, meaning, location, circumstances, a state of affairs or lifestyle.³ The person of the King was entitled to a special, higher status (*status regis*), royal dignity, which in itself was seen as a force organising public life and ensuring government efficiency. The good state (condition) of the king and his kingdom was also often prayed for. After all, the task of the king and his officials was to care for the *optimum statum rei publicae*. Finally, the term *status* appears to describe the various political forms described by Aristotle (*status unius*, *status paucorum*, *status popularis*). Niccolò Machiavelli in *Il Principe*⁴ uses the word in this sense when he affirms that: *Tutti gli stati, tutti è dominii che hanno avuto e hanno imperio sopra gli uomini, sono stati e sono o repubbliche o principati*.

Lo stato in Machiavelli also means territories under the prince's authority, whose state he should maintain in its entirety, possibly joining new states. The prince should also control all the authorities and institutions existing in the *regnum* or *civitas*, and thus the apparatus of governance, which in time is also referred to as *stato*. Finally, *lo stato* is the state itself as an independent political community, and Machiavelli also applies this term to ancient Sparta or Rome. The author of *The Prince* therefore uses this concept in his work in both a traditional and a new meaning, somewhat invented by himself. In some languages, the old sense has survived in phrases such as, for example, "reason of state", "state of possession" or "third state". A new meaning was adopted in the language of political philosophy very quickly, and, in the mid-eighteenth century, the independent political formations worthy of it were commonly defined states.⁵

Terminological changes were closely related to the transformation that political institutions underwent at that time. Absolutist tendencies resulted in a centralisation of power, and thus the abolition of local centres of au-

² See: Q. Skinner, *The State*, in: R.E. Goodin, P. Pettit (ed.), *Contemporary political philosophy. An anthology*, Blackwell Publishers Ltd, Oxford – Massachusetts 1997, p. 3.

³ Quentin Skinner claims that its presence in fourteenth-century discourse was associated with the development of studies of Roman law and recalls in this context a fragment from Justinian's Digest *De statu hominum* (See: Q. Skinner, *The State*, p. 3).

⁴ N. Machiavelli, *Il Principe*, I, <https://letteritaliana.weebly.com/lincipit-del-principe.html> (09.04.2019).

⁵ See: Q. Skinner, *The State*, p. 3–8. 17–20.

thority derived from the feudal system of complex loyalty, under which, for example, the king of one kingdom could be, as a prince, a subject of the monarch of another kingdom. The concept of sovereignty operating under the theory of absolutism did not allow any division of power (Jean Bodin). Only one centre of power could exist on one territory.⁶ This was accompanied by the formation of a bureaucratic apparatus – efficient, hierarchical, impersonal, based on formal neutrality, subordinated to instrumental rationality, but also having its own interests. With time, heads of states also became part of it, reduced to the role of hired officials on a state salary, whose task was to implement the will of the nation (the sovereign) expressed in the law. Separation of the ruler from the state institutions took place, including the ruler's property and the state treasury. A state army and police were formed. A new perception of the role of the ruler in the state put the question about the subjectivity of people living in a given territory: were they subjects of the king or citizens of the state? The issue of loyalty followed: should they obey the king or the crown? In the negative aspect, this is about treason: is it treason on the part of citizens if they act against the interests of the ruler or against the interests of the state? There is also the issue of the secularity of the state and law, which we used to associate with the John Locke concept of tolerance. Quentin Skinner, however, draws these ideas from the tradition of a secular absolutism, which is associated with Thomas Hobbes. Secular absolutism, according to him, not only was not able to tolerate competing centres of secular power, it did not tolerate religious power either.⁷ In a way, this was also required by Machiavelli's separation of politics and morality. Finally, the private and public spheres of life were separated.

As a result of the whole process, nowadays in political science the term “state” has two different meanings:

1. Broad – we call “state” everything that meets the requirements of a threefold definition containing the necessary coincidence of three components: people, territory and power (Georg Jellinek). In this

⁶ Max Weber claims that “the modern state is a compulsory association which organizes domination. It has been successful in seeking to monopolize the legitimate use of physical force as a means of domination within a territory. To this end, the state has combined the material means of organization in the hands of its leaders, and it has expropriated all autonomous functionaries of estates who formerly controlled these means in their own right. The state has taken their positions and now stands in the top place” (M. Weber, *Politics as a Vocation*, Oxford University Press, New York 1946, p. 8).

⁷ See: Q. Skinner, *The State*, p. 17.

sense, this term only defines a form capable of accommodating various political creations, with different variations of territory, people and the power related to them.

2. Narrow – we link the definition of state (*lo stato*) with a form of political organisation that has developed in modern times. According to this approach, the earlier ways of organising collective life deserve at most the name “pre-state” (Gianfranco Poggi).

According to the first *usus*, in translations of classical works such as Plato’s Πολιτεία, Cicero’s *De re publica* or St Augustine’s *De civitate Dei*, in some European languages (not in English) we encounter the word “state”, which may suggest to the reader that the subject matter of the considerations contained in those works is not πόλις, *res publica* or *civitas*, but a modern state. Other terms, such as *imperium* or *regnum*, often disappear in translations. The second *usus* associates a certain degree of the structuring of society with the term “state”, finding its expression in the form of specific features and institutions whose presence is considered a *sine qua non* condition of the existence of the state.⁸ These institutions are subjected to very dynamic metamorphoses, which can be interpreted that only the “latest generation” products deserve the name of state in the above sense, while those that do not keep up with the changes are denied the name of state.

We use the term “state” in two different ways: broad and narrow. We certainly deal with the first when we use this term in relation to political pre-Renaissance forms, and with the second when we think of a modern state along with its extensive state apparatus. Undoubtedly, such a state is national when it is inhabited only by one nation. On the other hand, we also give a double meaning to the concept of nation. At one time, we understand the nation as a historical reality, while at another, as a political and ideological construct. In the first meaning, we tie it in some way with ethnicity, while in the second, this relationship is almost completely dissolved. This way, a paradox occurs: if we adopt the ethnic definition of a nation, then in fact nation states do not exist in the “pure” sense. There is no totally homogenous society. If we accept the political definition of a nation, then every state is a nation state. I propose to follow this second trail, i.e. to apply the term “nation-state” to the modern way of organising the political community, and therefore whenever we speak about a state in a narrower sense, adding the adjective “nation” does not change anything.

⁸ See: A. Weber, *Die Krise des modernen Staatsgedanken in Europa*, Berlin 1925, p. 12.

This is common practice. After all, every political creation which fulfils the three-part definition, but which is not an international organisation, is currently called a (nation-) state, regardless of how many nations or ethnic groups inhabit it. Moreover, if the European Union is transformed from an international organisation into a federal state one day, it would have to become a federal nation-state, only if it does not become an empire, as Ulrich Beck points out (*Germany has created an accidental Empire*)⁹...

2. The post-Cold-War world

The second issue that requires clarification concerns the accuracy of the belief that once – i.e. after the Second World War – international organisations were more significant actors in international relations than today. It seems to me that the role of global and regional international organisations has never been greater than today. After the Second World War, we had a concert of powers, whose permanent consequence is the current construction of the UN Security Council. On the one hand, we had the United States and two colonial empires: France and Great Britain; on the other, the Soviet Union and the People's Republic of China. However, the main actors in international relations, i.e. the ones making real decisions, were nation-states, using the Security Council merely as a forum for formal talks. The main purpose of this international forum was to prevent the third world war. This system resulted from the totally unfair Yalta agreements, i.e. the division of the world at the expense of the Central and Eastern European nations. Since then there has been a process of decolonisation and the collapse of one of the communist empires. Many nation-states were created and a tendency to engage in internal conflicts appeared whenever their borders did not coincide with the borders of ethnic or religious communities. Part of this process was the reunification of Germany. In Western Europe, the process of European integration took place at that time. The assessment of these phenomena seems positive in general, although, as a result, the number of nation-states and of UN members increased at the same time from 51 to 193, and, in the case of the European Communities, from 6 to 28 (now 27). We have to leave for another occasion the answer to the question of whether the role of the UN and the EU has increased or diminished in the meantime. This does not change the fact that nation-states continue to be the main actors in international

⁹ See: U. Beck, *Germany has created an accidental Empire*, 25.03.2013, <https://www.socialeurope.eu/germany-has-created-an-accidental-empire> (05.04.2019).

relations, and the French reaction to the German proposal to give up its seat in the Security Council for the EU is symbolic proof of it.¹⁰

From the Central and Eastern European perspective, regarding the process of disintegration of supranational states such as the Soviet Union and Yugoslavia, one would like to repeat the words that Pope Benedict XV expressed during the First World War. The Pope reminded all those who took part in the war that “nations do not die”, and called on the struggling parties to consider “with serene mind the rights and lawful aspirations of the peoples”.¹¹ It is worth noting that the process of creating nation-states in Eastern Europe had already begun in 1987, and thus still during the Soviet Union, and this beginning was marked by the war between Armenia and Azerbaijan on Nagorno-Karabakh. The Armenians recognised that due to the demographic processes, this was the very last moment to prevent this region from being definitively dominated by the Azerbaijani people. As a result of the collapse of communism, more than 20 new nation-states were created. Today, it would be difficult to persuade Lithuanians, Latvians, Estonians, Ukrainians, Moldovans, Armenians, Georgians, Serbs, Croats, Slovenians, Slovaks or Czechs to give up their own statehood, because they are “ethnically too homogeneous”. On the other hand, it is also difficult to totally deny reasons for Basque, Catalan, Flemish or Scottish aspirations. Nevertheless, whoever recognises these aspirations should keep in mind that dividing the nation-states existing in Europe could end in war.

¹⁰ *France rejects German wish for EU seat at UN Security Council*, <https://www.dw.com/en/france-rejects-german-wish-for-eu-seat-at-un-security-council/a-46513931> (09.04.2019).

¹¹ “Nor let it be said that the immense conflict cannot be settled without the violence of war. Lay aside your mutual purpose of destruction; remember that Nations do not die; humbled and oppressed, they chafe under the yoke imposed upon them, preparing a renewal of the combat, and passing down from generation to generation a mournful heritage of hatred and revenge. Why not from this moment weigh with serene mind the rights and lawful aspirations of the peoples? Why not initiate with a good will an exchange of views, directly or indirectly, with the object of holding in due account, within the limits of possibility, those rights and aspirations, and thus succeed in putting an end to the monstrous struggle, as has been done under other similar circumstances? Blessed be he who will first raise the olive-branch, and hold out his right hand to the enemy with an offer of reasonable terms of peace. The equilibrium of the world, and the prosperity and assured tranquility of Nations rest upon mutual benevolence and respect for the rights and the dignity of others, much more than upon hosts of armed men and the ring of formidable fortresses” (Benedict XV, *To the peoples now at war and to their rulers*, 28.07.1915, http://w2.vatican.va/content/benedict-xv/en/apost_exhortations/documents/hf_ben-xv_exh_19150728_fummo-chiamati.html (05.04.2019).

3. Patriotism in Catholic social teaching

Another issue is the question of Catholic teaching on patriotism. It is relatively common to hear that patriotism belongs to the past and does not deserve any serious reflection. It is like an embarrassing remnant of the former model of social organisation, which one must abandon if one does not want to be considered a backward person. A mature man should reject religious superstitions, pompous patriotism and short pants. Even St John Paul II seems to confirm this view, saying that Western countries are at a post-identity stage.¹² People asked about their own identity, nowadays much less often than before, give answers in purely national categories. The world seems to be inevitably heading towards a global melting pot in which one day all cultures, languages and religions merge into one global cultural cocktail. It is no coincidence that the construction of the House of One, a single temple for three monotheistic religions, was recently launched in Berlin.¹³ The authors of the Compendium of the Church's social doctrine seem to understand this tendency well, and one will not find terms such as "patriotism" or "homeland" in it, even if much is still said about nations and their rights in Church documents.

It is enough to pick up the Catechism of the Catholic Church to realise that the matter is not so simple. In the context of the fourth commandment of the Decalogue, not only is the homeland mentioned, but the Catechism also underlines the duty of love of the fatherland: *Amor et servitium patriae ex officio oriuntur gratitudinis et ex ordine caritatis* (2239).¹⁴ It would also be a mistake to stop reading the book *Memory and Identity* after the above-mentioned sentence. There is an entire chapter devoted to the matter of the fatherland, nation and patriotism. St John Paul II stresses in it a direct connection between the concept of the fatherland and fatherhood. "The native land (or fatherland) can in some ways be identified with patrimony – that is, the totality of goods bequeathed to us by our forefathers".¹⁵ However, he also points out the role of mothers in transferring cultural heritage from one generation to the other. The internal connection of the concept of the fatherland with fatherhood and motherhood explains the moral value of patriotism. "If we ask where patriotism appears in the

¹² John Paul II, *Memory and Identity*, Random House Incorporated, 2005, Chapter 15, (Polish edition: p. 91).

¹³ See: <https://house-of-one.org/en> (06.04.2019).

¹⁴ In the English version there is no word similar to *patria*.

¹⁵ John Paul II, *Memory and Identity*, Chapter 11, p. 60.

Decalogue, the reply comes without hesitation: it is covered by the Fourth Commandment, which obliges us to honour our father and mother”.¹⁶ This is the kind of reference that in the Latin language is expressed by the term *pietas* – says the Pope – stressing the religious dimension that lies in respect and reverence to our parents. We are to honour our parents because they represent God the Creator. Patriotism contains such an internal attitude in relation to the fatherland and the spiritual heritage, which our country gives us. It reaches us through our father and mother and puts us under the obligation of that *pietas*. Already St Thomas Aquinas taught that one and the same virtue of *pietas* manages the relationship of man to both his parents and his homeland. In the order of love, according to St Thomas, “in the second place, the principles of our being and government are our parents and our country, that have given us birth and nourishment. Consequently, man is a debtor chiefly to his parents and his country, after God (*maxime est homo debitor parentibus et patriae*)”.¹⁷

4. Central European identity – Polish case study

Sometimes Europe is defined as a very diverse community of nations living on a small territory – maximum diversity in a minimum amount of space.¹⁸ Central Europe, which has been providing shelter for refugees and vagabonds from Western Europe and Asia for centuries, is, in a way, Europe in a nutshell. If the diverse Greek *poleis* scattered in the Mediterranean are sometimes called a “laboratory of political systems”, Central Europe can be described as a “laboratory of cultural diversity”. Cultural diversity, which we associate with North America or the modern metropolises of Western Europe inhabited by significant groups of immigrants, was a permanent component of the history of this part of the continent. As Urs Altermatt writes: “Around 1900, Vienna, Budapest, Prague and other Central European cities became prototypes of multicultural societies that today, towards the end of the twentieth century, exist in cities such as London, New York, Paris, Berlin and Zurich. More than any other place, these cities of Central

¹⁶ Ibidem, Chapter 12, (Polish edition: p. 71).

¹⁷ *Secundario vero nostri esse et gubernationis principium sunt parentes et patria, a quibus et in qua et nati et nutriti sumus. Et ideo post Deum, maxime est homo debitor parentibus et patriae* (St. Thomas Aquinas, *Summa theologiae*, 2-2 q. 101 a. 1).

¹⁸ See: O. Halecki, *The Limits and Divisions of European History*, London and New York, Sheed & Ward 1950 (Polish edition: p. 29).

Europe were multicultural laboratories of modern times”.¹⁹ It is worth adding cities of the Polish Commonwealth to this list, such as Vilnius or Lwów.²⁰ Poland, which today is a synonym of a homogeneous Catholic country, was a multinational, multi-confessional state for a significant part of its history. This tradition was violated only as a result of the Second World War and the Yalta Agreements. Western Europe consistently strived to implement the principle of one faith in one state (*cuius regio eius religio*). In Poland, in contrast, before the advent of the Reformation, a far-reaching religious pluralism prevailed, one of the manifestations of cultural pluralism. In the sixteenth century almost all of the Polish-Lithuanian people (joined from 1386 by personal union) confessed their own specific faith: Poles and some Lithuanians – Catholicism, Ruthenians – Orthodoxy, Germans – Lutheranism and Calvinism, Armenians – monophysitism, Jews – Judaism, Tartars – Islam. At a time when religious persecution was commonplace in western Europe, there was almost total, legally guaranteed, religious freedom in the Polish-Lithuanian Commonwealth.²¹ It found confirmation in the Act of the Warsaw Confederation from January 28, 1573, which granted the entire nobility the right to freely choose their faith, and prohibited state authorities from any denominational discrimination

¹⁹ U. Altermatt, *Multiculturalism, Nation State and Ethnicity: Political Models for Multi-Ethnic States*, in: H. Kriesi, K. Armingeon, H. Siegrist, A. Wimmer (ed.), *Nation and National Identity. The European Experience in Perspective*, Verlag Rüegger, Chur – Zürich 1999, p. 19.

²⁰ The symbol of the Central European tradition of multiculturalism may be the tombstone in the Evangelical church in Lublin. The Cyrillic text informs us that Friedrich Marianowicz Dreiman is buried there, who in Lublin found his small homeland, where he lived, worked and dreamed. The name of the deceased indicates cultural interactions in his family. The Protestant congregation and the name of Friedrich testify to German influence. “Marianowicz”, derived from his father’s name, as well as the use of Cyrillic – to Russian influences. Dreiman, however, was the name of the Lublin Jews. Other symbol of local tolerance are two pulpits in the Lublin Dominican church. When heretics were hunted down in Western Europe and piles were prepared for them, in Lublin they were invited to participate in public discussions, implementing the Jagiellonian principle *Plus ratio quam vis*. See: J. Życiński, *Rola kultury polskiej w doświadczeniu procesów integracyjnych* (*The role of Polish culture in integration processes*), <http://www.opoka.org.pl/biblioteka/X/XU/zyc.html> (25.09.02).

²¹ Until the mid-17th century, ten to twelve Lutherans and Calvinists were killed in religious conflicts in the Polish Commonwealth, and the same number of Catholics who died at the hands of Protestants defending themselves, or as a result of a trial in which they were found guilty of looting and robbery. See: J. Tazbir, *Silva rerum historicarum*, Wydawnictwo Iskry, Warszawa 2002, p. 150-152.

in the distribution of offices, landed estates or leases owned by the ruler. The Warsaw Confederation was not an act of grace but – as it is clearly visible in the text – a grassroots and voluntary settlement of the nobility, which was each time confirmed by the newly elected king of Poland.²² In the Confederation Act we read:

And whereas in our Commonwealth there are considerable differences in the Christian religion, these have not caused disorders among people, as detrimental as have begun in other kingdoms that we have clearly seen, we promise to one another, for ourselves and for our descendants, for all time, pledging our faith, honour and conscience, we swear, that we who are divided by faith, will keep peace among ourselves, and not shed blood on account of differences in faith or church, nor will we allow punishment by the confiscation of goods, deprivation of honour, imprisonment or exile, nor will we in any fashion aid any sovereign or agency in such undertakings. And certainly, should someone desire to spill blood on such account we all shall be obliged to prevent it, even if the person uses some decree as pretext or cites some legal decision.²³

Later, all but one Catholic bishop refused to sign this act. However, despite this opposition, the Confederation's resolutions became a permanent constitutional principle of the Commonwealth. As a result, the Commonwealth became – according to the expression by Cardinal Hozjusz – “a place of shelter for heretics”.²⁴

The reasons for establishing the practice of religious tolerance in the Commonwealth were manifold. If we look at the map of medieval Europe – writes Janusz Tazbir – we will notice that the boundaries dividing the pagan world from the Christian world ran through two countries – Spain and Poland. However, while in the Iberian Peninsula, Catholicism served the cause of uniting the country by liberating it from the hands of Muslim Moors, the Teutonic Order operating under the auspices of the Papacy and

²² A fifteen-member committee working on this document was headed by Catholic bishop Stanisław Karnkowski.

²³ *The Confederation of Warsaw of 28 January 1573: Religious tolerance guaranteed*, <http://www.unesco.org/new/en/communication-and-information/flagship-project-activities/memory-of-the-world/register/full-list-of-registered-heritage/registered-heritage-page-8/the-confederation-of-warsaw-of-28th-of-january-1573-religious-tolerance-guaranteed/> (09.04.2019); See: M.B. Biskupski & James I. Pula, *Polish Democratic Thought from the Renaissance to the Great Emigration*. Columbia University Press, 1990.

²⁴ *Ibidem*.

Empire constituted a deadly threat to the existence of the Polish state. In the fight against the Teutonic Knights, Poland benefited from the help of pagan (up to a certain time) Lithuania, and from Tatar support. No wonder that some of the Polish theologians, in the years of the hottest battles with the Order, at the turn of the 14th and 15th centuries developed a doctrine condemning the forced spreading of faith and stressing that “‘unfaithful’ are our fellows who are subject to the principles expressed in the Gospel”.²⁵ This was accompanied by the belief that any war or religious disagreement could lead to a breakup of a multiethnic Commonwealth, which was inhabited by people with different historical and political traditions, customs and languages.

Tolerance in the Polish-Lithuanian Commonwealth (since 1569) was not only a necessity, but also had earlier theoretical justification. The Council of Constance (1414-1418), which sentenced Jan Hus to death, is associated in Polish memory primarily with the speech of the Rector of the Krakow Academy, Paulus Vladimiri (1370-1435) on the power of the Pope and the Emperor over non-believers (*Tractatus de potestate papae et imperatoris respectu infidelium*). In the historical context of constant clashes with the Teutonic Order, which was devoting more time to fighting Catholic Poland than converting pagans, he condemned the Crusades as contrary to the will of God. At the same time, he presented one of the earliest lectures on the concept of natural rights of pagans (almost one hundred years before Francisco de Vitoria [1492-1546], the founder of the Salamanca School), according to which faith should be spread with persuasion, not sword. On the other hand, he gives a negative answer to the question if the things gained in an unjust war become the property of the invader. Thus, he acknowledges that regardless of baptism, people have the right to property under natural law and that by confiscating pagan property the Teutonic Knights became thieves. To illustrate the effectiveness of the road chosen by Poland, he took with him a group of several dozen voluntarily converted Lithuanians as witnesses.

Another argument in favour of tolerance was the strength of privileges of the nobility aware that an attempt to limit the freedom of any part of them constituted a threat to the whole group. The words of the Hetman and the Chancellor of the Commonwealth, Jan Zamoyski, addressed to the Protestants explain this perfectly: “I would give to cut my hand to convert

²⁵ J. Tazbir, *Reformacja – kontrreformacja – tolerancja (Reformation – counterreformation – tolerance)*, Wydawnictwo Dolnośląskie, Wrocław 1997, p. 58.

you, but I would give the other in your defence if you were to be persecuted for faith".²⁶

The history of the Polish-Lithuanian Commonwealth was completely different in this respect than, for example, the history of France, which was deeply marked by religious conflict. In fact, even a legation with the *postulata polonica* was sent to France, in which Polish deputies demanded the establishment of religious peace in that country.²⁷ The tradition of tolerance is mentioned by St John Paul II in his book *Memory and Identity*: "It is difficult not to recall one more historical fact: in the period when Western Europe was plunged into religious wars after the Reformation, which were attempted to be prevented, adopting an incorrect principle: *Cuius regio eius religio*, the last of the Jagiellons, Zygmunt August solemnly stated: 'I am not the king of your consciences'. Indeed, there were no religious wars in Poland. There was, however, a tendency towards agreements and unions: on the one hand, in politics, union with Lithuania, and on the other, in church life, the Brest union concluded at the end of the sixteenth century between the Catholic Church and the Christians of the Eastern rite".²⁸

The Polish-Lithuanian Commonwealth was also extremely hospitable to Jews who, as exiles, came here from all over Europe. Because of religious tolerance, Poland was called *Paradisus Iudaeorum*. In Hebrew, two words were used to describe Poland: *Polánia* and *Polín*. The Hebrew transliteration of the first name, *Polánia*, can be broken down into three Hebrew words: *po* (here), *lan* (dwells), *ya* (God), while the second name *Polín* into two words: *po* (here) *lin* ([you should] dwell). The message was clear in both cases: Poland is a good place for Jews. In later centuries, up to 80% of the Jewish world population lived in Poland. Unfortunately, this was also

²⁶ See: F. Koneczny, *Prawa dziejowe (The laws of history)*, Wydawnictwo Antyk, Komorów 1997, p. 444.

²⁷ These are the postulates put forward by Polish MPs to Charles IX, the King of France, in which they demanded that he announce a general amnesty for the Huguenots, grant religious freedoms to their confession, restore to the descendants of the Calvinists killed in August 1572 their dignities, offices and goods, and finally that he indicate in each province a city where they could freely practice religious services. The fulfilment of these requirements was the pre-condition of the possibility to the election of his brother, Henri de Valois, as Polish king. *Et nunc nisi id fecersi, Rex in Polonia non eris* – said one of the Polish deputies. See: J. Tazbir, *Reformation – counterreformation – tolerance*, p. 93, 188–189; J. Bérenger, *Tolérance ou paix de religion en Europe centrale (1415-1792)*, Honoré Champion, Paris 2000 (Polish edition: p. 71).

²⁸ John Paul II, *Memory and Identity*, Chapter 23, (Polish edition: p. 143).

the reason why the Germans during the Second World War decided to exterminate the Jewish people in the territory of the Polish Commonwealth.

Jews constituted a separate legal group in Poland. They had their own local government and judiciary. They enjoyed location privilege, which made it possible to establish a synagogue, cemetery and communal institutions, such as the board, commissions, and brotherhoods. *Kahals* (Hebrew *kehilot*) formed lands (Hebrew *aracot*). Four lands were established: Greater Poland, Lesser Poland, Volhynian and Ruthenian. Land representatives met at Jewish regional councils. In the years 1580-1764 the Polish-Lithuanian Commonwealth included the Sejm (Parliament) of the Four Lands (Hebrew *Waad Arba Aracot*), a central institution of the Jewish self-government representing the interests of all Jewish communes in the territory of the Commonwealth. The Jewish Sejm was the highest authority in legal and court matters, regulating all areas of Jewish communities' lives. Simultaneously with the Sejm of the Four Lands, the High Court of the supreme Jewish self-government was established, modelled on the Crown Tribunal. The Jewish Tribunal chose its own marshal, usually a rabbi, and deliberated during parliamentary congresses. The Sejm's congresses lasted a few days, usually in Lublin or Jarosław. They began on Sunday, simultaneously with the so-called Feast of Our Lady of Candlemas (February 2). From 1623 there were two Jewish Sejms: the first, covering the lands of the Crown (*Waad Arba Arcot*), and the second for Jews living in Lithuania (*Waad Medinat Lita*). These institutions were originally established to facilitate the collection of poll tax from Jews. However, the Sejm also dealt with issues of religion, Jewish law and culture. It intervened with state authorities when unjustified attacks on Jews appeared, e.g. as a result of accusations of ritual murders or desecration of the Host. It also settled disputes between Jewish communities and landowners. It was the only local government institution of this type in Europe. The Jewish Sejm was dissolved in 1764 by the decision of the Polish Sejm, which decided that it did not fulfil its basic task of collecting Jewish taxes.²⁹

²⁹ See: *Sejm Czterech Ziem. Źródła (The Sejm of Four Lands. Sources)*, Kaźmierczyk, A., Goldberg J. (eds), Wydawnictwo Sejmowe, Warszawa 2011, POLIN Museum of the History of Polish Jews, *Sejm Żydowski, Waad Arba Arcot*, <https://sztetl.org.pl/pl/slownik/sejm-zydowski-waad-arba-arcot> (14.09.2019); POLIN Museum of the History of Polish Jews, *Sejm Czterech Ziem (The Sejm of Four Lands)*, <https://pojlin.blogspot.com/2013/04/sejm-czterech-ziem.html> (14.09.2019); Jewish Historical Institute, *Sejm Żydów Polskich (The Sejm of the Polish Jews)*, http://www.jhi.pl/psj/Sejm_Zydow_Polskich (14.09.2019).

According to José Casanova, thanks to the uniqueness of the Polish experience, conflicts typical of the Western world were avoided in nineteenth-century Poland. There were no fights between the Catholic Church and the secular, liberal state; between the Church and the laity, referring to humanism, anti-clerical intelligence; finally, between the Church and the socialist workers' movement, which was first anti-clerical and then aggressively atheistic. Of course, on the one hand, this is a very selective presentation of Polish history, but on the other, as in the history of any other nation, any idealisation would not be legitimate.³⁰ Nevertheless, the singularity of this Central European tradition deserves to be emphasised.

5. The borders of Central Europe

It is relatively easy to indicate the border between Eastern and Western Europe. It is rooted somewhere in the division of the Roman Empire into East and West. In subsequent centuries this meant belonging to the Latin or Greek world, to Western or Eastern Christianity. This border is clearly visible even today, both when it comes to the use of the Latin or Greek alphabet, the dominance of Eastern or Western Christianity, or in architecture. For example, the border between Gothic and Neo-Gothic overlaps with the former eastern border of the Polish-Lithuanian Commonwealth (Dnieper line).

However, where is Central Europe and where are its borders? In short, Central Europe is the land and nations that lie between Russia and Germany. This statement is true only from the time when Russia shaped itself as a state that could threaten its Western neighbours. A special overtone took place due to the partitions of the Polish-Lithuanian Commonwealth at the end of the 18th century. Central Europe is generally defined as non-East or even anti-East. This negation refers to two anti-European wedges embedded in the continent: Tartar-Muscovy and Turkey.³¹ Russia, like Turkey, is treated here as anti-West.

Some point out that the Asian lands conquered by Russia in its colonial expansion in just a few decades never became part of Europe, even though

³⁰ See: J. Casanova, *Catholic Poland in Post-Christian Europe*, *Tr@nsit. Europäische Revue* 25, p. 8, <http://www.iwm.at/read-listen-watch/transit-online/catholic-poland-in-post-christian-europe/> (06-09-2014).

³¹ See: R. Zenderowski, Europa Środkowa jako "ucieczka przed Wschodem" czy "pomost" między Wschodem i Zachodem? (Central Europe as "escape from the East" or "bridge" between East and West?), in: idem (ed.), *Europa Środkowa: wspólnota czy zbiorowość?* (*Central Europe: community or collectivity?*), Ossolineum, Wrocław 2004, p. 40-41.

they were not overseas territories but a not very distant neighbourhood. Even when the Russian Empire occupied the leading political position in Europe, the European and the Asian Russia were clearly distinguished. This is in spite of the fact that the division back then did not overlap exactly with what is nowadays seen as a border between the continents. Asian territories have never been demographically dominated either by Russians or by the Slavs in general, nor by Christianity. Therefore, they are for Russia a kind of a colony, very much the same as overseas territories of Western countries. If the Russia of today is therefore treated as a unity, it does not belong either to Europe or to Asia. It is something in-between, something defined as Eurasia.³² If we separate the two parts of Russia, then one of them should be called Eastern Europe, but even then, the problem of the borderline between these two parts remains open.

The nations of Central Europe for whom Russia was a constant threat, and which were forced to become thoroughly acquainted with it, never had any good opinion about it. They were always astonished at the fascination with Russia in the West. As Kundera writes: “Russia isn’t my subject and I don’t want to wander into its immense complexities, about which I’m not especially knowledgeable. I simply want to make this point once more: on the eastern border of the West – more than anywhere else – Russia is seen not just as one more European power but as a singular civilization, an other civilization”.³³

Czeslaw Milosz, when presenting the cultural relationship between Poland and Russia in the 16th and the 17th centuries, writes the following: “Muscovy was Barbarians with whom wars were fought on the peripheries, like with Tartars, and people were not particularly interested in them. In this period of void in the East, the Poles developed their view on Russia as something located outside, outside the orbit of the world”.³⁴ Marquês de Custine, who had also had a chance to get to know Russia from the inside, observed: “Whenever your son is discontented in France, I have a simple remedy: tell him to go to Russia. The journey is beneficial for any foreigner, for whoever has properly experienced that country will be hap-

³² See: O. Halecki, *The Limits and Divisions of European History*, p. 87-103.

³³ M. Kundera, *The Tragedy of Central Europe*, in: *New York Review of Books*, Volume 31, Number 7, April 26, 1984, p. 4, <http://parevo.eu/1parevo/images/PDF/05.%20Kundera%20The%20Tragedy%20of%20Central%20Europe.pdf> (10.02.2020).

³⁴ C. Milosz, *Rodzinnia Europa (Native Europe)*, Czytelnik, Warszawa 1990, p. 135-136.

py to live anywhere else”.³⁵ To what extent are such opinions prompted by the ill-will towards an eternal enemy, or are a result of adopting negative stereotypes, and to what extent are they the fruit of better, direct comprehension of the neighbour? Nevertheless, the negative opinion about Russia as a country still exists in Central Europe and, on the other hand, never prevented people like Miłosz from having Russian friends.

The concept of Central Europe in German political thought was promoted during the First World War by Friedrich Naumann.³⁶ Originally, he sought to establish Germany’s hegemony in a global policy based on the colonies, alongside with Great Britain, Russia and the United States. The naval blockade caused Naumann to change his mind about the role of the overseas colonies, turning his attention to Central Europe, and more specifically to the cooperation between the German Empire and Austro-Hungary. The unification of the territories of the two states would lead to the creation of a “purely German” area, using the “universal German language” as a language of communication. In practice, this would mean compulsory Germanisation of all nations living between Germany and Russia. In the interwar period, the concept of Central Europe was replaced in Germany by the term *Zwischeneuropa*. This was an expression of peculiar “embarrassment” in the emergence of independent states in this area, which were considered to be only temporary. *Zwischen* since the mid-1930s meant between Stalin’s Soviet Union and Hitler’s Nazi Germany.³⁷ Today, although there is no sense of threat in Central Europe of invasion by Germany and we have witnessed a marvellous process of reconciliation, fear of German economic and political domination can still be felt. Historical memory also makes the ear of the inhabitants of this part of the continent susceptible to slips of language, such as what Angela Merkel said during her visit to Japan in February 2019: *Im Grunde sind wir fast Nachbarn. Wir liegen weit auseinander, aber im Kern ist nur einmal Russland dazwischen* (We are almost neighbours, we are far away from each other, but only Russia is between us).³⁸ Is it really true? The Russian aggression against Georgia and Ukraine led in turn to the pursuit of a stronger NATO presence in the region.

³⁵ A. Custine, Marquis de, *Letters from Russia*, Robin Buss translation, Penguin Classics, London 2014.

³⁶ See: K. Ziemer, Europa Środkowa – niemiecka perspektywa (Central Europe – German perspective), in: R. Zenderowski (ed.), *Central Europe: community or collectivity?*, p. 94.

³⁷ See: *ibidem* p. 95.

³⁸ See: *T. Vitzthum*, Im Grunde sind wir fast Nachbarn, <https://www.welt.de/print/>

Kundera begins his essay on “The Tragedy of Central Europe” with the recollection of Hungarian events approximately sixty years ago. “In November 1956, the director of the Hungarian News Agency, shortly before his office was flattened by artillery fire, sent a telex to the entire world with a desperate message announcing that the Russian attack against Budapest had begun. The dispatch ended with these words: ‘We are going to die for Hungary and for Europe’”.³⁹ In defending the case of Central Europe against Russia, Kundera underscored that in their opposition against communism, Poles, Hungarians and Czechs stood up not only against a political system but also stood up for Europe and the European system of values. To die for one’s own home country and for Europe, in his view, was the idea which inspired the dissidents of Warsaw, Prague or Budapest, an idea that was totally unthinkable in Moscow or Leningrad. When the bloodless “Solidarity” revolution began in Poland to smite the Berlin Wall and to facilitate the reunification of two parts of the continent separated by violence, the nations who were conscious of being the bulwark of Christianity and Europe’s Eastern trench suddenly found out, to their surprise, that in the West nobody looked forward to meet them. Instead, they were treated as “second class” Europeans, poor relatives who would first need some more refinement before they were allowed in European parlours. And in the meantime, they should stay a little longer in the waiting room.⁴⁰ This was more or less the meaning of a fairly popular stock phrase suggesting their “entry into

welt_kompakt/print_politik/article188329067/Im-Grunde-sind-wir-fast-Nachbarn.html (09.04.2019).

³⁹ M. Kundera, *The Tragedy of Central Europe*, p. 1.

⁴⁰ Jaroslaw Rymkiewicz, a well-known Polish writer, explained in one of his interviews this inclination to transform the Poles by the influence that the generation of 1968 exerted in the West in the 1980s. “They (the 1968 generation) had a recipe for Poland where the basic communist idea of transforming a man would be further continued. This was a notion rooted in the ideals of the 19th century’s socialism. The people who revised communism were always accompanied by the thinking that the Poles are a dangerous nation of uneducated xenophobic peasants. In other words, a nation which needs to be transformed into some other nation: preferably more enlightened, liberal and European [...] I do not want to be transformed into someone else. If I wish to, I will transform myself and I will not let anyone else, any communist, transform me into a different kind of Pole than I am. This is now the most fundamental Polish question: will the Poles let other people to transform them into some other nation, or will they continue to live the way they want to, the way they always did here”. *Dlaczego jestem taki wściekły? Wywiad z Jaroslawem Markiem Rymkiewiczem (Why am I mad? An interview with Jaroslaw Marek Rymkiewicz)*, *Zycie Warszawy*, May 17, 1993.

Europe”. Finding this phrase insulting, St John Paul II spoke to his countrymen: “We do not have enter Europe because we are in it [...], we have always been and we are in Europe. We do not have to enter it because we created it and continue to create it with much more effort than those who are given the credit or who give themselves the credit of being European. [...] European culture was formed by the martyrs of the first three centuries, the martyrs east of us in recent decades and the martyrs among us in most recent decades. Father Jerzy (Popieluszko) also contributed to this culture. He is the holy patron of our presence in Europe at the price of his life, just like Christ”.⁴¹ From that time, a certain kind of resentment towards Western Europe becomes relatively widespread among the inhabitants of Central Europe. It is often based on the conviction that Europe, for which they were ready to give their lives, the Europe of universal Christian values, has since died. This way, “backward” Central Europe has become the most European part of the Old Continent.⁴² One can say that this is megalomania and perhaps it is right, but these people expect much more from the European Union than they received from the Soviet one.

But what is Central Europe? This is an area of small nations lying – as we said – between Germany and Russia. Kundera puts a very strong emphasis on the word “small”, although not about the size of the population, but about the fact that none of them had a chance in a simultaneous confrontation with Germany and Russia. Recently, this fate met Poland in 1939 due to the Molotov-Ribbentrop Pact. “The small nation is one whose very existence may be put in question at any moment; a small nation can disappear and it knows it. A French, a Russian, or an English man is not used to asking questions about the very survival of his nation. His anthems speak only of grandeur and eternity. The Polish anthem, however, starts with the verse: ‘Poland has not yet perished...’”,⁴³ even if Poles form quite an important nation in the demographical or geographical sense. Central Europe, therefore, is a community of small nations which are not yet dead, but which live under a constant threat. They are distrustful of history. Hegel’s or Marx’s history is Reason incorporated. It is a history

⁴¹ John Paul II, *Homily during the Holy Mass*, Włocławek, June 7, 1991, http://www.vatican.va/content/john-paul-ii/it/homilies/1991/documents/hf_jp-ii_hom_19910607_fedeli-wloclawek.html (12.04.2019).

⁴² See: W. Roszkowski, *Roztrzaskane lustro. Upadek cywilizacji zachodniej (A shattered mirror. The fall of Western civilization)*, Biały Kruk, Kraków 2019.

⁴³ M. Kundera, *The Tragedy of Central Europe*, p. 9.

seen with the eyes of victors. The nations of Central Europe, and Poland for the last 200 years, are a reverse side of this history, they are its victims. Sandwiched between two powers, they know they must survive. It is worth recalling that in 2018 most Central European countries celebrated a century of gaining or regaining independence, and for that hundred years, there were 50 years of German or Soviet occupation.

Small nations must somehow cope with history and violence. There may be different ways and means adopted. Constant conspiracy, uprisings, evasion of unjust law, underground circulation of culture, inward emigration, escape into irony or feigned idiocy, the way the good soldier Schweik adopted. In a nutshell, everything that allows one to cherish some hope even though one has been betrayed and sold in captivity. Everything that allows one to enjoy freedom under external servitude.

And yet, the nations of Central Europe bear in them some extra-European significance. Small communities which are not yet dead unveil Europe's fragility. In the era of globalisation, now more frequently called glocalisation, all nations may fear that they will be reduced to small local communities and will be doomed the same way. In that sense, as Kundera underscores, the plight of Central Europe seems to augur the plight of Europe as a whole, and the culture developed in Central Europe becomes more valid. Small nations which are not yet dead convey in their memories a message which is very important for integrating Europe: they managed to survive through the centuries, even deprived of their statehood. The fact was recalled by St John Paul II during his address at the UNESCO headquarters: "I am the son of a Nation which has lived the greatest experience of history, which its neighbours have condemned to death several times, but which has survived and remained itself. It has kept its identity, and it has kept, in spite of partitions and foreign occupations, its national sovereignty, not by relying on the resources of physical power, but solely *by relying on its culture*. This culture turned out, in the circumstances, to be more powerful than all other forces".⁴⁴

6. Nation as a "product" of culture

The discussion on the future of Europe seeks a new definition of state sovereignty and new guarantees for the duration of national communities. The nations of Central Europe have their own, very valuable experience

⁴⁴ John Paul II, *Address at the UNESCO*, Paris, June 2, 1980, http://w2.vatican.va/content/john-paul-ii/fr/speeches/1980/june/documents/hf_jp-ii_spe_19800602_unesco.html (10.04.2019).

in this area. We mentioned two concepts of nation: ethno-cultural and political. The Polish-Lithuanian Commonwealth developed a third concept of nation, different from that in the West. It is defined not in ethnic or political terms, but as a cultural community. The separation of the ethnic (biological) element from the cultural one is crucial here. "The Nation is (...) the great community of men who are united by various ties, but above all, precisely by culture".⁴⁵ The cultural concept of nation, in a certain sense an invention of Central Europe, widely recognised today, makes the nation an open community. Culture is not only inherited, but it is also the subject of free choice. Moreover, within this concept, the nation and its spiritual sovereignty are distinguished from the state and its material sovereignty. The sovereignty that expresses itself in the culture of the nation is of greater fundamental importance to society. At the same time, it is a guarantee of the individual's sovereignty.⁴⁶ According to this view, nations, on the basis of free decisions, can create a variety of political-type communities without losing any of their basic cultural sovereignty.

Since St Augustine, in Catholic teaching, the nation is treated as a spiritual community. The content of the national bond is love, which means that it is subjective, dependent on human reason and will. Bringing the spiritual element to the forefront makes groundless accusations that the concept of nation is based on a mistaken belief in a common biological origin or that there exists an inevitable relationship of patriotism with racism and xenophobia. The nation is first and foremost a creation of culture. Its essence is the cultural bond between people.⁴⁷ This approach to the problem of the nation was presented by St John Paul II in the previously mentioned speech at the UNESCO: "The Nation exists '*through*' culture and '*for*' culture".⁴⁸

The sense of national identity plays a significant role in human life. For the nation (the society in mature form) "is not only the great 'educator' of every man, even though an indirect one (because each individual absorbs within the family the contents and values that go to make up the culture of a given nation); it is also a great historical and social incarnation of the work of all generations. All of this brings it about that man combines

⁴⁵ Ibidem.

⁴⁶ See: Ibidem.

⁴⁷ See: J. Majka, *Etyka społeczna i polityczna (Social and political ethics)*, Warszawa 1993, p. 133.

⁴⁸ John Paul II, *Address at the UNESCO*, Paris, June 2, 1980.

his deepest human identity with membership of a nation, and intends his work to also increase the common good developed together with his compatriots”.⁴⁹ Belonging to a particular tradition and culture is the foundation of spiritual sovereignty. It expresses the human need to identify oneself and survive in his/her otherness, in confrontation with currents aimed at cultural and social uniformity. “This tension between the particular and the universal can be considered immanent in human beings”.⁵⁰ The nation, as a large, well-integrated group of people, separated from other populations, convinced of the common destiny is – as emphasised by the representatives of the historical school – the reason for one’s self-esteem, for determination of individual identity, giving one the feeling of being at home, in a community of people who understand and speak the same language.⁵¹

Catholic social teaching – writes St John Paul II – considers both the family and the nation as natural communities, and therefore not the fruit of an ordinary contract. For this reason, it cannot be replaced by anything in the history of mankind. Neither by the state, although the nation naturally wants to exist as a state, nor by so-called democratic society, because it is about two different orders, although binding with each other.⁵² In the social teaching, attention is paid to the right of nations to self-determine and to the equality of nations in front of the law. The conviction about the inferiority of some nations or cultures was, especially in our century, the cause of many crimes committed in the name of deadly doctrines,⁵³ and lack of recognition of their right to self-determination is the cause of constant anxiety in the world, because – let us recall the words of Benedict XV – “nations do not die”.⁵⁴

It seems worth paying attention to the concept of *societal security* or *ontological security*, which was developed by a mostly Danish group of researchers in the context of accession of this country to the European

⁴⁹ John Paul II, *Laborem exercens*, n. 10, http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens.html (10.04.2019).

⁵⁰ See: John Paul II, *Address to the UN General Assembly*, New York, 05.10.1995, n. 7, http://w2.vatican.va/content/john-paul-ii/en/speeches/1995/october/documents/hf_jp-ii_spe_05101995_address-to-uno.html (10.04.2019).

⁵¹ See: G. van Wissen, *Państwo i naród* (The State and the nation), in: *Naród – Wolańść – Liberalizm, Kolekcja Communio* n. 9, Poznań 1994, p. 84.

⁵² See: John Paul II, *Memory and Identity*, Chapter 13, (Polish edition: p. 74-75).

⁵³ See: John Paul II, *Address to the UN General Assembly*, New York, 05.10.1995, n. 5.

⁵⁴ Benedict XV, *Do walczących ludów i ich przywódców*, 28 lipca 1915 r.

Communities.⁵⁵ Its residents were concerned about the loss of national identity in a kind of European melting pot. They distinguish the security of the state from the security of society. At the same time, they draw attention to the fact that the existing integration policy focused on state institutions, while the source of future conflicts may be a sense of threat of EU societies experienced as a result of migration and cultural changes. According to scholars from the Copenhagen school, multinational states are much more likely to generate internal conflicts than single-nation homogenous societies. Therefore, in the future integration policy, much more attention should be paid to protecting the cultural identity of nations, because ensuring the security of the Member States (their sovereignty) does not guarantee that societies also feel safe.⁵⁶ In his book *After Europe*, Ivan Krastev argues that the waves of refugees heading for Europe have stimulated a kind of “demographic panic” in many European countries. Conscious of the demographic crisis and massive emigration of Bulgarian youth to the West, he asks: “Is there going to be anyone left to read Bulgarian poetry in one hundred years?”⁵⁷ The answer that in a hundred years no one will ask such questions any more will certainly not help solve the panic.

St John Paul II even talked about the need for an international agreement, similar to the Universal Declaration of Human Rights, devoted only to the rights of nations. While sketching the outline of these laws, he mentions the right to exist (no one is ever authorised to state that a particular nation does not deserve to exist), which does not necessarily entail the right to state sovereignty, the right to their own language and culture, their own traditions, their own future provided by appropriate education, and respect for their own cultural identity. In addition to rights, nations also have duties resulting from the need for universality. The first of them is the commitment to live in a spirit of peace, respect and solidarity with other nations.⁵⁸

⁵⁵ B. Buzan, *People, States and Fear: The National Security Problem in International Relations*, 1983; Other Nordic members of the group were: Jaap de Wilde, Ole Wæver, Morten Kelstrup.

⁵⁶ See: M.G. Bartoszewicz, *Festung Europa*, Ośrodek Myśli Politycznej, Kraków 2018, p. 24–32.

⁵⁷ I. Krastev, *After Europe*, University of Pennsylvania Press, Philadelphia 2017, (Italian edition: p. 63).

⁵⁸ See: John Paul II, *Address to the UN General Assembly*, New York, 05.10.1995, n. 8.

7. Patriotism and nationalism

As a result of Polish history, we can see two different way of understanding patriotism in Polish culture and society. The first, which is common with other cultures and countries, is rooted in the first centuries of the Polish statehood, when Poles formed an ethnical community called a Piast, after the first Polish dynasty. The second is specific for the Polish Commonwealth, when Poles (understood as citizens) formed a multinational and multireligious community, called a Jagiellonian, after the second one.⁵⁹ The Polish Bishops' Conference refers to this double tradition in a social letter on patriotism.⁶⁰

Giovanni Reale, in a commentary on Karol Wojtyła's writings, notes that patriotism and nationalism are often confused with each other. Sometimes this is done deliberately. Reale polemicalizes with Zygmunt Bauman's thesis that the difference between these concepts is only formal and rhetorical, not substantive. Bauman claims: "Patriotism is described (...) by negating the least pleasant and the most shameful features of nationalism. (...) The difference lies in the words and is above all rhetorical in character, so it does not concern the essence of the phenomena discussed, but the ways of speaking about feelings and passions, which, in principle, do not differ from each other".⁶¹ Referring to the texts of St John Paul II, Reale states that nationalism is a "pathological exaggeration of the nation", and properly understood patriotism is the "antithesis of nationalism".⁶² "It is characteristic of nationalism that it recognises only the good of its own nation and only strives towards it, without taking into account the rights of others. Patriotism, on the other hand, as the love of the fatherland, grants all other nations the same rights as their own, and thus is the way to orderly social love".⁶³ This idea is taken by the Polish Episcopate in the Letter of 2017, presenting nationalism as a kind of "national egoism", cultivating the sense of self-superiority and closing itself to other national communities.

⁵⁹ See: John Paul II, *Memory and Identity*, (Polish edition: p. 91-92).

⁶⁰ See: Polish Bishops' Conference, *Chrześcijański kształt patriotyzmu (The Christian shape of patriotism)*, Biblos, Warszawa 2017, p. 14-15.

⁶¹ Z. Bauman, *Płynna nowoczesność (Liquid modernity)*, Kraków 2006, p. 269-270, after: G. Reale, *Karol Wojtyła. Pielgrzym Absolutu (Karol Wojtyła. Pilgrim of the Absolute)*, Centrum Myśli Jana Pawła II, Warszawa 2008, p. 155-156.

⁶² G. Reale, *Karol Wojtyła. Pilgrim of the Absolute*, p. 156-157.

⁶³ John Paul II, *Memory and Identity*, p. 73; See: Paul VI, *Populorum progressio*, 62, http://w2.vatican.va/content/paul-vi/en/encyclicals/documents/hf_p-vi_enc_26031967_populorum.html (14.09.2019).

Like individual selfishness, it deserves moral stigma, especially when it tries to elevate its own nation to the rank of absolute, which is idolatry.⁶⁴ Patriotism, meanwhile, combines the love of one's nation with a deep respect for what constitutes the value of other nations. "It requires recognition of all goodness outside us and readiness to improve ourselves, based also on the achievements and experience of other nations".⁶⁵

It seems that, by recalling Vladimir Solovyov's explanation concerning the difference between self-love and egoism, the difference between patriotism and nationalism can be better understood. He states that a man noticing his exceptional and irreplaceable value is absolutely right. Not to notice, however, his "absolute meaning" in the world would be denying human dignity. Selfishness begins when, "rightly ascribing absolute importance to himself, man wrongly denies others the same value",⁶⁶ similarly, to a certain extent, with nationalism. It is an erroneous view, not only when one elevates one's own nation to the rank of absolute, and one's attitude towards it becomes some kind of religious *Ersatz*. We also deal with adulteration when, recognising our own nation as unique, we forget that every nation is unique, and everyone has the same rights. St John Paul II explains: "The love of the fatherland is a value that must be cultivated, 'but without spiritual narrowness', at the same time, loving the entire human family and avoiding the pathological attitudes that manifest themselves when the sense of belonging leads to being above other people and to reject everything that is different, taking the form of nationalism, racism and xenophobia".⁶⁷

However, if patriotism is to be a moral virtue, it cannot simply be about the approval of everything national, regardless of the ethical value of the proposed content. You cannot agree on the formula: my country, right or wrong. "Every person of good will must ask himself about the basic ethical principles that shape the cultural experience of a given community. Cultures, like the human being who is their maker, are permeated by *mysterium iniquitatis* – the 'mystery of ungodliness' that works in the history of mankind, and therefore they also need purification and salvation".⁶⁸ "The love

⁶⁴ See: Polish Bishops' Conference, *The Christian shape of patriotism*, p. 8-9.

⁶⁵ See: *ibidem*, p. 9.

⁶⁶ V. Solovyov, *Sens miłości (The meaning of love)*, Wydawnictwo Antyk, Kęty 2002, p. 17.

⁶⁷ John Paul II, *Dialogue between cultures for a civilization of love and peace. Message for the celebration of the World Day of Peace*, 01.01.2001, n. 6, http://w2.vatican.va/content/john-paul-ii/en/messages/peace/documents/hf_jp-ii_mes_20001208_xxxiv-world-day-for-peace.html (12.04.2019).

⁶⁸ *Ibidem*, n. 8.

of the fatherland, writes Jacek Salij, demands that we strive for our moral integrity. The above answer is based on the distinction between ethics and art. Ethics is about making our actions internally good, whereas in art, it is about the good of our product. Thus, an immoral person can create outstanding works of art, because the most important are talent and experience. An immoral man can even greatly serve his homeland thanks to his economic, organisational or military skills. However, patriotism in the strict sense is not a work of art, but a virtue, and therefore its foundation must be moral at least at the elementary level”.⁶⁹

Karl Jaspers, considering the problem of German guilt in the context of the crimes of World War II, speaks about a certain weakness of German culture, which is the readiness to “subordinate to a leader of a certain kind”.⁷⁰

We all are complicit for the fact that in the spiritual premises of German life there was the possibility of such a regime. This does not mean, however, that we must admit that “the world of German thought”, “old German thought” is simply a source of immoral actions of national socialism. But this means that in our national tradition there are powerful and dangerous forces that have brought us moral destruction.⁷¹

Personal moral integrity also allows us to respond to the ethical value that comes to us from the past of national memory. St John Paul II – in the context of the examination of the conscience of the Church on the occasion of the Jubilee Year – pointed out that not everything that happened in a given community’s past is a source of pride and deserves to be continued. He pointed to the need for the “purification of memory”, which “calls everyone to make an act of courage and humility in recognizing the wrongs done by those who have borne or bear the name of Christian”.⁷² The “purification of memory” means “eliminating from personal and collective conscience all forms of resentment or violence left by the inheritance of the past, on the basis of a new and rigorous historical-theological

⁶⁹ J. Salij, *Patriotyzm dzisiaj (Patriotism today)*, W drodze, Poznań 2005, p. 18.

⁷⁰ K. Jaspers, *Problem winy. O politycznej odpowiedzialności Niemiec (The problem of guilt. On the political responsibility of Germany)*, Narodowe Centrum Kultury, Warszawa 2018, p. 88.

⁷¹ Ibidem, p. 89.

⁷² John Paul II, *Incarnationis misterium*, n. 11, http://www.vatican.va/jubilee_2000/docs/documents/hf_jp-ii_doc_30111998_bolla-jubilee_en.html (12.04.2019).

judgement, which becomes the foundation for a renewed moral way of acting”.⁷³ The past is captured in the possibilities it opens to modify the present. By giving past historical acts a new meaning in the life of communities, their new qualitative influence is assumed on the present relations between these communities. Instead of dividing them, they are supposed to connect communities in the truth about the past and in a common ethical assessment of it. “The memory of division and opposition is purified and substituted by a reconciled memory”.⁷⁴ Patriotism, understood as a responsibility for the moral value of the community, also requires watching over the common memory and moral quality of the heritage that is passed on to future generations.

Concern for the moral quality of heritage, which is still being created, sometimes requires opposition to initiatives of current, legal power that do not respect elementary ethical principles.⁷⁵ “Wherefore – wrote Leo XIII – to love both countries, that of earth below and that of heaven above, yet in such mode that the love of our heavenly surpass the love of our earthly home, and that human laws be never set above the divine law, is the essential duty of Christians, and the fountainhead, so to say, from which all other duties spring”.⁷⁶

8. Our fatherland is in heaven

The word “homeland” also has a metaphysical meaning. Leo XIII in *Sapientiae Christianae* writes provocatively: “Now, if the natural law enjoins us to love devotedly and to defend the country in which we had birth, and in which we were brought up, so that every good citizen hesitates not to face death for his native land, very much more is it the urgent duty of Christians to be ever quickened by like feelings toward the Church. For the Church is the holy City of the living God, born of God Himself, and by Him built up and established. Upon this earth, indeed, she accomplishes her pilgrimage, but by instructing and guiding men she summons them to

⁷³ International Theological Commission, *Memory and Reconciliation: The Church and the Faults of the Past*, 5.1, http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20000307_memory-reconc-itc_pl.html (12.04.2019).

⁷⁴ *Ibidem*.

⁷⁵ See: Congregation for the Doctrine of the Faith, *Doctrinal note on some questions regarding the participation of Catholics in political life*, 4, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20021124_politica_en.html (12.04.2019).

⁷⁶ Leo XIII, *Sapientiae Christianae*, n. 11, http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_10011890_sapientiae-christianae.html (12.04.2019).

eternal happiness. We are bound, then, to love dearly the country whence we have received the means of enjoyment this mortal life affords, but we have a much more urgent obligation to love, with ardent love, the Church to which we owe the life of the soul, a life that will endure forever”.⁷⁷ Leo XIII immediately adds that these two loves, the supernatural love for the Church and the natural love of our own country, are not in conflict because they both proceed from the same God.⁷⁸

The very statement that the Church needs to be loved more than the homeland, relativizes the value of patriotism in a dual sense. On the one hand, it reminds us again that the homeland is not an absolute value. On the other hand, it opens patriotism to the world, as the Church is a universal community. “Here there is not a Greek and Jew, circumcision and uncircumcision, barbarian, Scythian, slave, free; but Christ is all and in all” (Col 3:11). Faith creates a much deeper community between people than national bonds. It does not cancel them, because the Church is not a community abstracted from the conditions of this world, but a community of communities rooted in their locality. Participation in these gatherings also makes us aware that our, however important, local problems are not always the most important from the point of view of the universal community. It also helps us to understand that often those who seem to be the poorest and need the most help, often have the most to offer. I am thinking here especially on the testimony of contemporary Christian martyrs, to whom we owe so much and from whom we can learn so much. Their lives help us to better understand the sense of ancient texts like “The Letter to Diognetus”, in which an anonymous author from the second century explains what it means to be “in the world”, but “distinct from the world”.⁷⁹

Homeland in the metaphysical sense, however, is not only the Church in its visible, earthly dimension. St. Paul writes: “But our citizenship is in heaven, and from it we also await a saviour, the Lord Jesus Christ. He will change our lowly body to conform with his glorified body by the power that enables him also to bring all things into subjection to himself” (Phil 3:20–21). “The Gospel – says St John Paul II – gave new meaning to the concept of the homeland. The homeland in its original sense means what we inherited from our earthly fathers and mothers. The fatherhood

⁷⁷ Ibidem, n. 5.

⁷⁸ See: ibidem, n. 6.

⁷⁹ See: *The letter to Diognetus*, 5, <http://www.earlychristianwritings.com/text/diognetus-roberts.html> (12.04.2019).

which we owe to Christ directs what belongs to the heritage of human homelands and human cultures towards the eternal homeland. Christ says: 'I came from the Father and have come into the world. Now I am leaving the world and going back to the Father' (Jn 16:28). This departure of Christ to the Father means the beginning of a new homeland in the history of all homelands and all people. It is sometimes said: 'the heavenly homeland', the 'eternal homeland'. These are expressions which point precisely to what has happened in the history of man and nation through the coming of Christ into the world and his departure from this world to the Father".⁸⁰ You can find exactly the same idea in the letter of the Polish Bishops: "For the Christian, the service to the earthly homeland, like the love of his own family, is always a stage on the way to the heavenly homeland, which, thanks to the infinite love of God, embraces all peoples and nations of the earth".⁸¹

⁸⁰ John Paul II, *Memory and Identity*, (Polish edition: p. 68-69).

⁸¹ Polish Bishops' Conference, *The Christian shape of patriotism*, p. 7.

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THE UNITED KINGDOM: NATIONAL SOVEREIGNTY AND NATIONHOOD IN A POST-BREXIT WORLD

JOHN F. McELDOWNEY

The paper traces the evolution of the United Kingdom from the 17th century to its imperial ascendancy in the nineteenth century and the growth of Empire. The English nation-state defined the constitutional architecture of the United Kingdom, partly, in attempts to assimilate Celtic nationalities, the Scots and Welsh as well as the Irish. Differences were reconciled through a single juristic concept of sovereignty driven by English dominance. Interconnected with the constitutional architecture, were religious and cultural affiliations, including property rights, that were overpowering. Underlying the success of an all-embracing doctrine of sovereignty, the British Empire managed to export its ideals of nationhood throughout the common law world. The English language and culture, as well as forms of government, law and administration were common features of English imperialism as well as imagination. A single Imperial sovereignty linked to development and nation building applied throughout the world. It did not endure. The loss of Empire and the creation of a Commonwealth consisting of ex-colonial nations, signalled an adaptation of imperial nationhood into a democratic and self-governing form, that helped reinforce UK sovereignty, while granting autonomy to the colonies. The UK's membership of the European Union and the decision to leave has questioned the extent to which the nation-state can be reborn in a traditional form that is a return to the imperial power of the past. This is a new phase in national sovereignty. The paper highlights the dangers of a return to a form of English nationalistic aspiration that may endanger the rule of law and diversity in society on the pretext of building a nation-state when the reality is more complex.

Introduction

The paper begins by tracing the origins of the English nation, the growth of the United Kingdom in the seventeenth century and the pursuit of Empire. This reveals an emerging English nationalism, defined through national identity and immigration policy that is increasingly “hostile” to

outsiders. Brexit and its consequences are considered, as part of a reflection on the future of the United Kingdom after Brexit. Uncertainty over relations between the United Kingdom and the European Union abounds, with domestic party politics struggling to adapt to change, as ancient institutions, struggle to cope with ongoing divisions over the European Union. This leaves a bitterly divided nation, fragmented party politics and no certainty that compromises will be found to unify the country.

The origins of the English nation

It is hard to be precise as to when the English nation began, but as A.L. Poole in his magisterial work on the *Oxford History of England* series suggested:

The hundred and thirty years which separate Domesday Book and Magna Carta witness the growth of a nation.¹

One surprising suggestion is from the historian Robert Tombs, that Pope Gregory the Great, around 580, copied the idea from “Procopius (c 500–565), who described the people of ‘Brittia’ as the ‘Angiloi’, Pope Gregory noticed that many fair-haired slaves were for sale and was told they were ‘Angles’”.² Tombs has traced the historical records for more clues as to a “true” English identity and finding evidence of early Christianity in England. The venerable Bede, a monk from Northamptonshire, in his *Ecclesiastical History of the English People*, written around 731, defined a distinctive Christian identity of the English people. Their special status of conversion to Christianity came from the time of 597 and Augustine’s arrival in Kent; it also brought the King and several thousand supporters into baptismal unity with the Church. St Augustine founded a Cathedral around 598 and an adjoining King’s School, thus establishing a public school that is one of the oldest institutions of the nation. The Church owned about a quarter of all of the cultivated land, at this time, giving it great economic power and influence, especially in the missionaries sent to Europe, with particular success in northern Germany.

It is less clear that the origins and ethnicity of the English were any more distinctive than any other European nation. The intermingling between Celtic tribes, Roman occupation and an Anglo-Saxon identity are often conflicted by differing accounts – some myth, and some more re-

¹ A.L. Poole, *From Domesday Book to Magna Carta 1087-1216*. Oxford: Clarendon Press, 1951, p. 1.

² Robert Tombs, *The English and their History*. Allen Lane, Penguin, 2014, p. 24.

liably based on historical records and artefacts. Historical archaeology has become more reliable as technology such as carbon dating has improved. As with many nations, defined by the external world of trade, war and conquest, assimilation and a diaspora of settlements that contain many common elements, it is more likely that archaeological evidence, rather than historical claims of uniqueness or superiority, provides the best evidence of nationhood.³ Whatever the truth about the “Angles”, it is clear that in the post Roman period, two main versions of the Celtic language were spoken, and it is from these that the “modern Celtic languages of Britain and Ireland were spoken”.⁴ It is equally clear that while there were many differences between Britain and Gaul in pre-Roman times, these were perhaps “more of a degree than of kind”.⁵

Defining the distinctive parts of nationhood is not only to do with culture and society; agriculture, towns and villages,⁶ but law, also, has a specific and influential role to play. The Middle Ages⁷ tells us about how law was conceived but the retention of the monarchy and the failure to establish a system of government beyond the Crown after Cromwell, the restoration of the Monarchy in 1660, left Britain with a distinctive form of constitutional continuity that, uniquely, among long-established nations, remains in place today. Underpinning this development is sovereignty. The philosopher, Thomas Hobbes (1588–1679) encapsulated the essence of sovereignty “a body of men whose commands are laws”, as defining the nation.

It may be questioned why nation-states were formed in the first place and, out of their formation, why nationalism emerged as an integral part of their conception.⁸ Nation-states facilitated trade and commerce, created a common identity and allowed cultural development as well as a common language, religion and aspirations. Art and architecture helped contribute to the sense of common belonging and a national consciousness. Education

³ See for example: Faith Thompson, *Magna Carta. Its role in the making of the English Constitution 1300-1629*. London 1968.

⁴ Peter Salway, *Roman Britain. The Oxford History of England*. Oxford: Clarendon Press, 1981, p. 17.

⁵ *Ibid.* p. 19.

⁶ H.C. Darby, *An Historical Geography of England Before AD 1800*. Cambridge: Cambridge University Press, 1936.

⁷ Lloyd Laing, *The Archaeology of Late Celtic Britain and Ireland*. London: Methuen and Company, 1975.

⁸ John Judis, *The Nationalist Revival: Trade, Immigration and the Revolt Against Globalisation*. Columbia Global Reports 2019.

and training as well as sport helped forge the bonds of identity and common causes.⁹ Legal structures are also formative of a nation-state, and are fundamental to law and political science. The most distinctive part of the United Kingdom is the common law tradition of judge-made law, rather than the continental model of written codified law under a Constitution.¹⁰

A nation-state claims legitimacy for its status as well as powers and responsibilities for its activities. This is often bound together in a collective doctrine of self-determination.¹¹ The doctrine of self-determination is a normative principle that allows states to determine their own affairs. The birth of many older states occurred at a time when the nation-state was at its height. Consequently, strong traditions of independence and authority were bound up with the ideas of statehood. The creation of new boundaries for new states had to be asserted through identity and recognition of their legal status. This self-consciousness, recognising the state's existence, is combined with self-determination and the right to negotiate the constitutional arrangements of the state itself. At the heart of the construction of the state lies the doctrine of legal sovereignty. Legal scholars often discuss sovereignty in preference to the state. Indeed, the United Kingdom claims a number of personifications of what it meant to be the state or nation. The Crown is often used¹² as the prerogative powers of the Executive to make Treaties, as well as the statement that it is Her Majesty's Government or official opposition. This extends to her Majesty's Judges and the Queen in Parliament, as strictly speaking the UK does not have a rigid separation of powers doctrine. Despite this symbolic unity, tensions have arisen between state sovereignty and the capacity of a state to be self-governing and act independently when subject to global forces including alignment such as NATO and global trade, defence, with influence from the World Trade Organisation, the North American Free Trade Area (NAFTA) and the European Union. The latter is the main focus of this paper in the context of Brexit. There are concerns that the state may lack the capacity to make

⁹ Yoram Hazony, *The Virtue of Nationalism*. Basic Books, 2019. Also see: Janet McLean, *Searching for the State in British Legal Thought*. Cambridge: Cambridge University Press, 2012.

¹⁰ J.F. McEldowney, "Hybridization: A Study in Comparative Constitutional Law" (2010). *Penn State International Law Review*. Vol 28, pps 327-355.

¹¹ Michael Keating, "Nationalism after the State" in S. Tierney, ed., *Nationalism and Globalisation*. London: Hart Publishing, 2018, pps 35-51.

¹² Janet McLean, *Searching for the State in British Legal Thought*. Cambridge: Cambridge University Press, 2012.

decisions and may eventually lose its own autonomy. Responses vary to the problems of globalised forms of sovereignty. Technically it may be possible to withdraw from international agreements; this is often more complex than it may seem. It might be possible to recognise that sovereignty is no longer indivisible but may be shared and jointly held. There are reactions to these developments such as locating sovereignty¹³ in a form of unitary populism that seeks to unite popular forces as a form of *demos*.

In the case of the United Kingdom, the seventeenth century is the appropriate starting point in tracing the evolution of the United Kingdom, as it is from this period that the state is composed of England, Wales, and Ireland.¹⁴ The starting point is the nation-state, as this is an appropriate and fundamental concept that is recognised in both political science and law. Exact definitions are hard to find. A nation is the “people” or *demos* that underpins democracy. In some countries, sovereignty rests with the people, for example this is the case in Japan under the 1947 Japanese Constitution. In others authority is to be found in Parliament, such as in the United Kingdom. Thus, for all the exactitude expected of a simple term, there is no exact definition. Indeed, in its social construction the state is often contested. Allied to the nation-state is the highly normative concept of sovereignty with the implication that national governments and

¹³ A. Osiander, *The State System of Europe 1640-1990. Peacemaking and the Conditions of International Sustainability*. Oxford: Clarendon, 1994. See examples such as the Peace of Westphalia.

¹⁴ J.F. McEldowney, “Federalism” in J. Jowell, D. Oliver and C. O’Cinneide eds., *The Changing Constitution*. 9th edition. Oxford: Oxford University Press, 2019. Wheare, *Modern Constitutions*. 2nd edition. Oxford: Oxford University Press, 1966 p. 19. Useful background material is to be found in Michael Burgess, *The British Tradition of Federalism* London. Leicester University Press, 1995. David Marquand, “Federalism and the British: Anatomy of a Neurosis” (2006), 77 *Political Quarterly* 175–83. D. Elazar, *Federal Systems of the World: A Handbook of Federal, Conferral and Autonomy Arrangements*, 2nd ed. Harlow, Longman 1994. *The Royal Commission on the Constitution 1969-1973, Vol. 1 Report Cmnd.*, 5460, vol 1 chapter 13, pps 152-161. See: Robert Schütze and Stephen Tierney, *The United Kingdom and the Federal Idea*. Oxford: Hart, 2018. See: Michael Gordon, *Parliamentary Sovereignty in the UK Constitution*. Oxford: Hart, 2017, Ming-Sung Kuo, “Administration or Federation? Constitutional Self-Image and the World Political Order in which the EU finds Itself”, *Perspectives on Federalism*, Vol. 9, issue 2 (2017), pps 216–239. P. Gillespie, *Scotland’s Vote on Independence: the Implications for Ireland*. Dublin: Institute of International and European Affairs, 2014. House of Lords Select Committee on the Constitution, *The Union and Devolution*, 10th Report of Session 2015–16, HL Paper 149 (25th Many 2016), pps 3–4. B.P. Levack, *The Formation of the British State: England, Scotland and the Union 1603-1707*. Oxford: Clarendon Press, 1987.

parliaments may govern. The Peace of Westphalia is often cited to suggest that national statehood was recognisable, but in fact there was alignment between national secular rule and the ecclesiastical. The French revolution popularised the idea of citizenship and gained popularity in the form of an undivided authority between the citizen and the state. The geography of a nation or state is used to define jurisdiction, authority and law. The Oxford historian Niall Fergusson lists a number of attributes that he ascribes to a British governed state namely, the English language, English forms of land tenure, Scottish and English banking, the common law, Protestantism, team sports, the limited or “night watchman state”, representative assemblies and the idea of liberty.¹⁵

Achieving Empire

“Pax Britannica” or belief that God conversed in English and the spread of English speaking in the world gave Britain a self-belief of its place in the world. One factor was the evident success of the public life and political culture that defined the United Kingdom and the British Empire. Added to that success was the role of law and constitution. The Cambridge historian David Cannadine places domestic institutions as one of the factors that contributed to Britain’s “greatness”:

The Westminster legislature was, with all its faults, drawbacks and limitations, to which the reformers and radicals often drew attention, a uniquely enduring institution of political authority, government legitimacy, popular sovereignty and national identity – in ways unmatched in Spain or France (where there were absolute monarchs, revolutions and republics), the United States (its democracy ruptured by civil war and attempted Southern secession), Austria-Hungary (both nations Parliaments only established on 1868), Italy or Germany (neither country unified until 1871), Japan (without a constitution before 1889), Russia (without a Dumas until 1905), and China (without a constitution before 1913).¹⁶

Unquestionably the “Westminster” model of government may be found today in many Commonwealth countries and constitutions that also share

¹⁵ N. Fergusson, *Empire: How Britain Made the Modern World*. London: Allan Lane, Penguin, 2003, p. xxii. Robert Tombs, *The English and their History*, Allen Lane, Penguin, 2014.

¹⁶ David Cannadine, *Victorious Century: The United Kingdom 1800-1906*. London: Allen Lane, Penguin 2017, pps 2-3.

some of the attributes of a common law system.¹⁷ Britain's relative stability compared to other European governments with the continuity of its Parliament and politics, its belief in the rule of law and a sense of "fair play" and independent judiciary were attractive values to help establish the legitimacy of newly independent countries. Cannadine also attributes Britain's stability and good fortune as due to "avoiding foreign invasion, enemy occupation and forced loss of lands".¹⁸ However good the institutions may have been, it was the acquisition of Empire that established and maintained Britain's economic wealth and power. This was achieved during the eighteenth and early nineteenth centuries through a period of unprecedented good fortune and opportunism. In this period economic and military resources combined in the first truly industrialised country when Britain had few major rivals.

In 1750 Patrick Colquhoun's *Treatise of the Wealth, Power and Resources of the British Empire* calculated that the population of Britain's dominions had reached 12.5 million; even with the loss of America it was over 61 million by 1815. An estimated one fifth of the world's inhabitants came under British authority, largely achieved through a successful use of military forces including the Royal Navy. The fall of Napoleon and the defeat of France removed any real threat to British dominance. The span of the British Empire extended from the northern waters of the Baltic, the North Sea and Atlantic Ocean to the Mediterranean, replacing Spanish, French and Venetian power in the West, and threatening the Ottoman supremacy in the East. The Persian Gulf was also overseen by naval power across the Indian Ocean and into the Red Sea. Pacific Ocean islands were also within Royal Naval reach.

Empire significantly contributed to free trade with global consequences. Niall Ferguson estimates that importance:

There would certainly not have been so much free trade between the 1840s and the 1930s had it not been for the British Empire. Relinquishing Britain's colonies in the second half of the nineteenth century would have led to higher tariffs in their markets and perhaps other forms of trade discrimination.¹⁹

¹⁷ H. Patrick Glenn, *Legal Traditions of the World*. Oxford: Oxford University Press, 2000.

¹⁸ Ibid.

¹⁹ Niall Ferguson, *Empire How Britain Made the Modern World*. London: Allen Lane, Penguin Press, 2003, p. 359.

Economic order was not the only major contribution. Education and training²⁰ as well as law and literature gave Britain an important influence that is too often overlooked “soft power”. Reflecting on the legacy of Empire, it is possible to see the impact of Britain’s elite schools, universities, civil service, military and the parliamentary system of government as well as the spread of the English language. Taken together this is nation-state endowed with sovereign rights of its peoples.²¹

Empire was rapidly attained, but its loss was inevitable, as it proved to be unsustainable. Industrialisation and urbanisation of other countries soon challenged British invention and innovation. What kept Empire alive and became a lasting legacy was a form of jingoism, built on the victories of Trafalgar and Waterloo. This fuelled national consciousness and helped both to define the nation and extoll its virtues, both moral and civic. To this day it remains a powerful influence in defining the national polity. The two world wars, culminating in the realignment of power to the United States, created a new world order where Britain had a voice but no more the final say. David Cannadine admits that the surprise was not in the loss of Empire but that it survived for so long:

This meant that for a relatively brief span of time a relatively small European nation came to wield an influence over the affairs and the peoples of the world out of all proportion to its size, population and resources. But once other countries caught up economically, and once aggressive nationalism asserted or reasserted itself in many parts of the world, the writing was on the wall for Britain as a global hegemon.²²

As we shall see, the influence of nationalism²³ defined relations within the UK and dominated the concept of an indivisible sovereign Parliament at Westminster. This continues to influence the United Kingdom in its present-day configuration. It wrestles with the contradiction of a liberal society and the populism of patriotism. Making a country great is often at the expense of other countries and citizens. Populism may encourage alle-

²⁰ Jonathan Gathorne-Hardy, *The Public School Phenomenon, 597-1977*. London: Hodder and Stroughton, 1977.

²¹ Boyd Hamilton, *A Mad, Bad and Dangerous People? England 1783-1846*. Oxford: Oxford University Press, 2006.

²² See: David Cannadine, *Victorious Century: The United Kingdom 1800-1906*. London: Allen Lane, Penguin, 2017, p. 526.

²³ John Breuilly, “The Globalisation of Nationalism and the Law” in S. Tierney eds., *Nationalism and Globalisation*. Oxford: Hart Publishing, 2015, pps 19-34.

giance and patriotic support but it may also erase the rights of minorities and be manipulated for popular causes and ideologies.

Nationalism as a means of articulating sovereignty – the UK example

The United Kingdom²⁴ has a long history that defines the four nations that it comprises, England, Wales, N. Ireland and Scotland. As a unitary state the United Kingdom opposed federalism because it feared that federalism might dilute allegiance to the state and upset a unitary form of Parliamentary power. This rested on a juridical form of unitary state defined by the Union. Indivisible sovereignty, as it can be called, gained acceptance and avoided any diminution of powers from UK's Parliament.²⁵ Defining the Union²⁶ began when James VI of Scotland became James I of England on the death of Elizabeth in 1603. Unifying the Crown made good practical and economic sense as well as causing a strategic alliance based on the same language with similar religion and culture. The ambition of Union was not as easily realised as first thought and questions over national identity and how power might be best identified were revealed. The Union stood for many things: A unified Parliament that required equal representation; separate Parliaments might be needed to reflect national identity; autonomy within borders might recognise national sovereignty but also distinct legal traditions and rules.

Opposition to any form of federalism²⁷ or written constitution helped define the union state, which has remained virtually intact. The option of a federal system for the four nations was strongly opposed and this opposition was underpinned by a defence of an indivisible sovereignty. Federal, however, lacked a precise meaning. It was ambiguously worded to suggest a loose covenant or compact between nations and not a legally binding constitutional structure with legal powers.²⁸ The vagueness of any union might also have been deliberate as pragmatic necessity dominated any theoretical influence. The Cromwellian period did not bring clarity, rather a workable military administration for England, Wales, Scotland and Ireland.

²⁴ Ibid.

²⁵ A.V. Dicey, "Federal Government" (1885), 1. *Law Quarterly Review* 80.

²⁶ Peter Furtado, *Histories of Nations*. Thames and Hudson, 2017.

²⁷ This section is taken from the paper where a fuller analysis is to be found in: J.F. McEldowney, "Federalism" in J. Jowell, D. Oliver and C. O'Conneide eds., *The Changing Constitution*. 9th edition, Oxford: Oxford University Press, 2019.

²⁸ Ibid.

The debate between a federal or incorporated union emerged but with divided opinions: Scotland preferred a federal structure and England an incorporated one. The precise detail of each was never clearly articulated. Pamphleteers and propagandists focused on arguments that accentuated their cause. The 1688 settlement of the sovereignty of the English Parliament at Westminster threatened any ambition for Scotland to realise its own destiny through their own autonomous Parliament. The debate on the form the union would take was constrained by issues such as free trade and commerce, largely ignoring national aspirations in Scotland.

The eighteenth century further consolidated the Union. English power was London-based and English regionalism was highly dispersed and lacked economic cohesion so could not forge its own identity to rival London. Wales was successfully incorporated into the English state and from the Act of Union 1707, Scotland's identity was submerged into the state of the British Isles. The economic and political stability engendered was seen in preference to European instability and uncertainty of the time. At the end of the eighteenth century, strong and independent colonies raised the question of the extent to which a single concept of sovereignty was compatible with what many colonists saw was a divided sovereignty between colony and the sovereign power. What was at stake at the heart of colonialism was not easily reconcilable. However, achieving close contact with the mother country and autonomy at the level of colonial government was attainable. Federalism in different forms began to be debated as an answer to a colonial world. The US constitution in the 1780s showed what was possible – the sovereignty of the people and the division of sovereignty at federal and state level. American federalism became a model for future discussions of federalism, but this was outside Britain's influence. Perhaps the adoption of a written constitution proved decisive and off-putting to the English pragmatic approach to government. While many commentators such as John Locke had been influential in America, intellectual debate in Britain or even commentary was largely absent. Significantly, there was a strong reaction against the French Revolution and English Jacobinism formed into what Boyd Hilton defined as an age of atonement. This was a period of fusion between religious and economic thinking that formed an intellectual core defined in many evangelical causes. Anglicanism was strong in certain parts of the country notably south of England and the Midlands. Outside these areas, such as the North of England, Scotland and Wales and the Welsh borders, it was weakest. In areas of population growth there had been a spread of nonconformists, predominantly Methodists,

persuaded by chapel on Sunday and Sunday Schools. It is estimated that over 2.5 million followed Methodism, that thrived under the intense pressure of industrialisation and urbanisation.²⁹

Events in Britain moved rapidly with the Act of Union with Ireland in 1800 favouring strong centralization of the state and a London model of government that formed the basis of British rule in Ireland by Dublin Castle. Many writers in the UK, perfectly aware of the federal nature of constitutional building, were tied to the union and an indivisible form of sovereignty, and did not adopt a federal model for the way forward. In fact, an incorporating union under an indivisible sovereign Parliament proved sustainable; a divided sovereignty under a federal union unattractive. Dicey and Freeman³⁰ were particularly resistant to any adoption of a federal model for the UK and objected to any form of divided powers and, in their minds, a weakening of unitary sovereignty. Objections to federalism came in detailed polemical treatises from Dicey who became preoccupied with and against Irish Home Rule. Dicey, influenced by the American version of federalism, reasoned that federalism represented a weaker form of government than a unitary state.³¹ He devoted an entire chapter in *Law of the Constitution*³² to arguing against federalism and was condemnatory of attempts by 1911 to address Irish Home Rule through a federal construction of an Imperial Parliament.³³ He raised problems such as the complexity of arrangements for the division of state powers between the regions, the problems of financial arrangements and also concerns that friction between the different parts of the federal arrangement would generally weaken the United Kingdom. Each region, also, was developing at its own pace so it was difficult to ensure economic alignment.³⁴ The main response to such difficulties was to argue for a greater centralisation of the state under the banner of a sovereign Parliament so that change might be accommo-

²⁹ Robert Tombs, *The English and their History*. Allen Lane, Penguin, 2014, pps 460–61.

³⁰ J. Kelly, “The origins of the Act of Union: an examination of unionist opinion in Britain and Ireland 1650–1800” (1987). *Irish Historical Studies* 236.

³¹ A.V. Dicey, “Federal Government” (1885). *Law Quarterly Review* 1, pps 80–99 (January 1885). See: R.A. Cosgrove, *The Rule of Law: Albert Venn Dicey, Victorian Jurist*. London: Macmillan, 1980, pps 35, 103–4 and 235–6.

³² A.V. Dicey, *Law of the Constitution*. London: Macmillan, 1893 chapter 3.

³³ A.V. Dicey, *A Leap in the Dark*. 2nd edition. London: 1893.

³⁴ A.V. Dicey and R.S. Rait, *Thoughts on the Union between England and Scotland*. London: Macmillan, 1920.

dated but equally more easily controlled or at least risk from nationalistic tendencies.³⁵

The long running debate over Irish Home Rule, which divided opinion, tended to distract from any mainstream debate on federalism. Vast amounts of Parliamentary time were spent on the subject of how to govern Ireland. The debates were not helped by the fact that versions of federalism were confused with devolution or local government. The absence of any uniformity in approach to federalism made the arguments in favour hard to discern. Politically federalism had no single party support and this further exacerbated the absence of clarity and coherence.

The Government of Ireland Act 1920 was an attempt to secure the Union but at the same time find a way to manage nationalist expectation. It was not federalism but devolution – a fudge that enabled sovereignty to be preserved but, at the same time, powers granted to the Northern Ireland Parliament enabled a fully functional government. The 1920 Act was modelled on the British North American Act, although little was made of this connection by the politics of the time. Constitutional reality and legal interpretation of the 1920 Act became apparent in making the governing of Northern Ireland a reality. Acknowledgement that Northern Ireland was a subordinate legislature and therefore the sovereignty of the UK Parliament was upheld, left little guidance on how to interpret the width and breadth of powers devolved to the Northern Ireland Parliament. The solution according to Lord Denning was to uphold the legality of government powers unless there was “proof of abuse of power, if not of bad faith”.³⁶ Following this presumption of legality brought the UK and Northern Ireland courts into close alignment with the case law of Canada and the USA in terms of doctrines and interpretations.³⁷

Interest in Federalism emerged from South Africa, and Canada through various study groups and informal organisations. Ironically what was rejected as unsuitable for the United Kingdom was perfectly acceptable for colonial arrangements separated from the geography of Britain. As early as the 1830s and 1840s ideas about federalism were adopted, culminating in

³⁵ See: W. Molyneux, *The Case of Ireland being bound by Acts of Parliament in England*, Pamphlet Dublin, 1688.

³⁶ *McCann v Attorney general for N. Ireland* [1961] N.I. 102 at p. 133.

³⁷ See: *R (Lynn) v Gallagher* [1937] 3 All ER 598, *O.D. Cars Ltd. V Belfast Corporation* [1959] N.I. 62 see Lord Sankey LC in *Edwards v Attorney General for Canada* [1930] AC 124 at p. 136. *Macleod v Attorney General for New South Wales* in *Lynn v Gallagher* above.

the 1860s in the British North America Act. The result was to unite Nova Scotia, New Brunswick, Quebec and Ontario. Additional provinces were added: Manitoba (1870), British Columbia (1871) and Prince Edward Island (1873). This model of federation set the scene for the future. There was support for some form of Imperial Federalism emerging in the UK, illustrated by the commonwealth of Australia 1901, and the four South African colonies in the Union of South Africa in 1910. The Round Table Movement was formed in 1910 out of interested groups throughout the dominions. The Movement was aimed to advance the cause of federalism. The benefits of federalism remained convincing for many wishing to maintain a link with the United Kingdom. The influential members of the group extended their debate through English statesmen.³⁸ However, the primary aim of the Movement was the maintenance of the organic union of the Empire. This proved to give the movement insufficient cohesion and this left the interpretation of federalism to mean different ideas to different people.

There were so many diverse examples of federalism such as in Brazil and Yugoslavia and the West German Federation. Many African³⁹ countries found a federal solution attractive as a unitary state was unsuitable to represent different ethnic groups. Its strength was the flexibility it offered of dividing powers and recognising the power of self-government to advance good standards of living, while ensuring appropriate controls that reflected the size of small territories. The formation of a Commonwealth was achievable through the “creation of small political entities, technically independent, but in reality, isolated and feeble” through new principles and methods of association and integration.⁴⁰ Federalism in a colonial setting did not advance the cause of federalism within the United Kingdom. The sharing of sovereignty in the colonies helped to reinforce the authority and influence of the UK. In a domestic setting it meant the opposite, a diminution of British authority and a violation of the inviolable nature of legal sovereignty. N. Ireland, the only experience of domestic sharing of powers, became mired in the religious and sectarian conflict that dominated its politics from the 1970s, hardly offered a lesson of quasi-federal power that

³⁸ See: John Kendle, *Federal Britain*. London: Routledge, 1997, chapter 5, pps 95-6, Herbert Smith, Professor of International Law at the University of London.

³⁹ Trinidad, Nigeria, British Guiana, Malaya, Southern Rhodesia and East Africa, Eden and South Arabian Protectorate.

⁴⁰ Clement Atlee, Minutes of meeting 19th January 1949, Cabinet Commonwealth Affairs Committee Cab (49) 1st meeting Cab. 134/56 PRO.

might be emulated elsewhere. It was also inextricably tied up with competing unionist and nationalist claims over the legitimacy of the state.

National identity and immigration policy

National identity is one of the most prominent influences when it comes to immigration policy and its application. In the case of the UK it is most revealing of how the state defines itself and its relationship with other nations. UK Immigration is partly a reflection of its colonial past and its geographical position, but also of its intense interest in defining “Britishness” and Empire.⁴¹ The latter helps to explain Britain’s historic legacy, ambitions about the future and attitudes to other countries, as well as its self-centred notion of its own superiority. This may be a product of education and travel as much as military ambition and relations with other nations when it governed a “quarter of the world’s population”.⁴² In sharp contrast, “alien” expresses the sense of being an outsider as a means of exclusion for people that do not belong. It defines national identity as well as the targeting of the “undesirable”. Anna Aliverti, a legal academic specialising in criminal law and the regulation of immigration,⁴³ explains the main underlying principles of the immigration system. Aliverti begins her analysis by considering the historical background to immigration controls, including the use of the criminal law. Aliverti’s analysis may be summarised in this section of the paper as follows: One of the first responses to an influx of French emigres from the French revolution and subsequent “terror” was the Aliens Act 1793, allowing executive expulsion of foreigners and their exclusion during peace time. Sanctions were also applied to ensure compliance with the regulation of entry and residence in the country. The 1793 Act was controversial and extended until 1826, when it was repealed, but it enabled the criminalisation of the status of alien in a way that set a pattern for future attitudes to immigration and asylum-seeking that remains today. The justification for such wide use of executive powers, subject to little accountability or scrutiny, was in the national interest and the protection of the state. Linking criminal acts with the protection of nationality helped define nation status as well as relations with outsid-

⁴¹ N. Ferguson, *Empire: How Britain Made the Modern World*. London: Allan Lane, Penguin, 2003.

⁴² *Ibid.*, p. xii.

⁴³ See Anna Aliverti, *Crimes of Mobility: Criminal Law and the Regulation of Immigration*. London: Routledge 2013, chapter 2, pps 12–36. Hereinafter, Aliverti.

ers.⁴⁴ A series of successive Aliens Acts followed in 1814, 1826 and 1848. The latter included “forced removal” of aliens, if necessary for peace and tranquillity. The nineteenth century was a period where fundamental attitudes as well as laws were being shaped. Not all laws were enforced and at times attitudes to foreigners changed according to economic circumstances. Examples of reacting to foreign policy changes abound. Restrictions on foreign arrival and settlement were introduced under the Aliens Act 1905 with concurrent criminal penalties for unauthorized landing or immigration. Administrative controls operated along a twin track of criminal penalties, including detection and investigation. The rationale for such an approach came from diverse justifications including housing, employment, and competition for scarce skilled jobs.⁴⁵ As Aliverti points out, public services and their application to foreigners provided another justification for the jurisdiction of the state. Contravention of landing obligations was set in high moral language under the designation “rogue and vagabond” and the penalty for such infraction was harsh.⁴⁶

Regulatory responses were part of the many administrative devices employed. An Aliens Inspectorate was established and scrutiny of inbound passengers in ships was undertaken, although with mixed effectiveness. Liability extended to the Masters of Ships if they failed to check on passengers, and included the cost of repatriation. The use of permits became common during the First World War under the Aliens Restriction Act 1914. This provided powers to the Home Secretary to control the movements of foreigners and deportation when they were regarded as posing a risk. The justification came from the war time period and the 1914 Act was continually extended to include detention powers for those denied entry. The 1953 Aliens Order introduced work permits for foreigners wishing to work in Britain. The continued use of criminal sanctions was accompanied by tougher controls over immigration status and its regulation. There were limited rights of appeal and refusal of entry and deportation were subject to little oversight. This largely remained the case until the Immigration Act 1971.

Defining what is a citizen or how a citizen should be treated was not easily achieved or understood. British citizenship was not a precise legal category and it often depended on the period of time and the context in which it was used. The 1834 Aliens Act introduced an administrative sys-

⁴⁴ Aliverti, *op. cit.*, pps 12–15.

⁴⁵ Aliverti, pps 13–16.

⁴⁶ *Ibid.*

tem of naturalisation overseen by the Home Office. It replaced the use of individual Parliamentary petition and the use of private Acts of Parliament. In 1870 the Naturalisation Act streamlined the application process and attempted to rationalise distinction between naturalised citizens and ordinary citizens. This pragmatic approach mainly reflected employment needs and economic factors.⁴⁷ It was largely opportunistic, varying with changes in Europe and attitudes, which ranged from indifference to major moral panics. German immigrants in the period 1905 to 1910 led to anti-German feelings and anguish; about 150,000 Jewish immigrants from 1881-1914 led to similar reactions. Concerns about the residence of foreigners in Britain as well as those who wished to enter were met by a dual-use system of poor law relief based on residence qualifications and immigration controls based on employment through work permits. This approach was typical of an inconsistent approach to nationality, largely determined by economics and political expediency. Attitudes to commonwealth citizens, whose entry was largely uncontrolled, is an example of this in practice. In the 1950s as numbers steadily increased, their status as British subjects had to be modified to take account of the concerns about their entry. This is indicative of a shifting alignment between national self-interest and pre-existing status. Citizens of the British Empire and Great Britain were entitled to British citizenship. As many colonial countries became independent, they sought to identify as citizens of their independent country. The British Nationality Act 1948 created a new category of citizens of the United Kingdom and Colonies, without altering the previous entitlement to British citizenship. The justification for this pragmatic and possible liberal attitude to migration status of many commonwealth citizens was the need, after the Second World War, to find new workers to rebuild Britain. Immigration had also seen many Irish come to Britain to rebuild houses and roads devastated by the war. New Commonwealth countries willingly encouraged migration to Britain. The West Indies, India and the subcontinent became a ready source of employees, ranging from semi-skilled to skilled workers. By 1971 the numbers had tripled from the ten years previously to 1.2 million. The size of immigration as well as the extent to which such newly formed communities harmonised with British society was a cause of concern and dissatisfaction. Party political considerations became uppermost in the 1950s, especially when the rights of Commonwealth

⁴⁷ See Rieko Karatani, *Defining British Citizenship: Empire, Commonwealth and Modern Britain*. London: Frank Cass, 2003.

citizens could be identified, adjusted and changed to meet new economic and changing political circumstances.

One example that has come to light in recent months is the SS Empire Windrush which arrived over 70 years ago with large numbers of passengers from the Caribbean, often without documentation or accreditation but accepted at that time for the welcome solution to an acute labour shortage. The Immigration Act 1971 gave foreign nationals, ordinarily resident in the UK on 1st January 1973, indefinite leave to remain. Regrettably many Windrush migrants were not given the rights that they were entitled to and under a recent new “hostile environment” policy found themselves subject to deportation and deprived of their rights to work or receive social security benefits.⁴⁸ This is subject to a compensation scheme, set up in March 2019, to restore the rights of those that were so wrongly treated and deprived of their right to work or residence in the UK.⁴⁹

Aliverti⁵⁰ shows how various proposals were made in the 1960s to tackle the immigration problem. Controlling number became a political game of throwing the dice to see what might work or not. There was little consensus in Parliament and public opinion was often ill informed and easily manipulated by the popular press. Uppermost was the concern that social cohesion would be lost in Britain and racial issues became dominant in housing and employment. Economic problems resulted in a downturn in the job market and this increased the pressure on immigration controls. Immigration, seen as a positive achievement, became an ever-present threat to the stability of the UK. The Commonwealth Immigrants Act 1962 and 1968 introduced immigration controls to British Subjects (except those born in the UK or with UK Passports) and restricted the right to entry and settlement to certain British subjects. This did not alter citizenship; it simply restricted what citizenship might mean for many Commonwealth nationals. This created a two-tier system of citizenship which had dangerous overtones of what was at stake – namely country or origin. Commonwealth citizens were subject to controls over employment and some who were convicted of criminal offences could be deported. Illegal entry was

⁴⁸ House of Commons Briefing Papers, *Windrush Generation*, Debate Pack Number CDP-2018-0111 (1st May 2018) Debate in the Commons Chamber Wednesday 22nd May 2018.

⁴⁹ Hansard Urgent Question 3rd April 2019, Apology of the Secretary of State for Home Affairs on Windrush and details of the compensation scheme.

⁵⁰ Aliverti, pps 22-26.

subject to criminal penalties and this extended to those that assisted or harboured illegal entry. Many of the changes masked a disturbing disregard of what it was to be “British” with suspicions raised by the ethnicity of the person rather than any concept of equality or equal treatment.

As Aliverti has explained,⁵¹ once the boundary was passed of rejecting common rights and a single concept of British Citizenship in favour of differential rights, it was inevitable that governments might be persuaded to target certain commonwealth countries where immigration was expected to rise. The Commonwealth Immigrants Act 1968 was passed to address the problems of immigration from Kenya, Uganda and Tanzania. While recognising British citizenship of British Asians from Africa, it qualified their right to settlement and despite the issuing of British passports by authorities in their country of origin, they were no longer exempt from immigration controls. The only exception was that at least one of their parents or grandparents was born, adopted or naturalised as a British citizen in the UK. Miscellaneous offences proliferated such as landing at the port of entry and not being subject to proper examination by an immigration officer. The period of such examination could be up to 28 days – a form of detention pending decision – allowing time to investigate each case. Deterrence was also employed as a means of putting off any immigrant in the first place. It also allowed deportation as a means of control. Immigration authorities enjoyed wide discretion with few judicial checks or balances on their decisions.

Recognising that citizenship and national identity were not the same, the Immigration Act 1971 went further to produce an administrative system for immigration control. Its main aim was to create a single-tier system of control equating non-nationals and Commonwealth citizens as the same. The latter retained their British status, but their immigration rights were highly restricted. Only those with British parents or grandparents and those who had been “ordinarily resident for five years” before the entry into force of the Act could claim the right of abode and thus could be granted indefinite leave to enter and remain. The consequences were clear for all to see; not only were there foreigners but non-white Commonwealth citizens struggled to gain the right to abode given the requirements of the Act. Their position was further undermined as the entry of the UK into the European Community (now European Union), allowed the potential of

⁵¹ Aliverti, *op. cit.* pps 24–26.

free entry to EU citizens that was preferential to Commonwealth “British” Citizens. The British Nationality Act 1981 was an inevitable consequence, namely the single concept of British citizenship applied to only those born from British parents, or grandparents or who were naturalised. Thus only this category of British citizen enjoyed the rights of right to remain, live and employment. All non-British citizens were subject to immigration laws and subject to tight regulatory controls and conditions, including visas and potential criminal law sanctions. So for example the Immigration Act 1988 penalised any visa overstayers and any breaches of their conditions of leave were severely penalised.⁵²

Setting boundaries on entry through citizenship controls is only one aspect of the discussion on defining sovereignty and territory. One outcome is that controls are moved away from administrative officials to the private sector and individuals. The Immigration (Carrier Liability) Act 1987 imposes liability on ships, aircrafts that transport passengers to check on their travel documents and visas. Such controls applied widely to anyone who assisted any person, including airline officials an illegal immigrant. Ensuring visa conditions and the right to work are handed to employers to check that there is compliance, subject to criminal sanctions where appropriate.

As Aliverti has pointed out,⁵³ merging categories of wrongdoing also addressed a further concern – namely that the category of illegal immigrants might also be applied to asylum seekers when it was appropriate to do so. The latter was often poorly understood by the public and the number of asylum seekers increased as a proportion of immigrants as a result of the end of the cold war and the movement of people out of the former Communist countries, many who were fearful of remaining. It was convenient to place together the categories of immigrant and asylum seeking in the Asylum and Immigration Appeals Act 1993 and the Asylum and Immigration Act 1996. The latter reduced housing allowances and increased the powers of immigration officers to arrest and search. Criminal powers, having been extended, left little opportunity to disaggregate the economic and social from the political problems of each applicant. In sharp contrast the approach to non-European immigration, immigration within the EU was largely *laissez faire*, although the UK opted out of the Schen-

⁵² House of Commons Library: Briefing Paper Number CBP0 3186 (21st November 2018) *Constituency casework: immigration, nationality and asylum*.

⁵³ Aliverti, *op. cit.*, pps 31–33. See: Gina Clayton, *Immigration and Asylum Law*. Oxford: Oxford University Press, 2016.

gen arrangements,⁵⁴ preferring to maintain borders between EU countries and the UK. The operation of criminal controls is remarkable as is the spread of criminal approaches evident in the European Union and in other countries.

The sense of boundaries of the nation are often believed to be a fortress of protection that is reinforced by another factor, namely the use of denaturalization powers, applicable to those that are deemed unsuitable to remain within its borders. The powers to revoke naturalization status were established in the United States under the Naturalization Act 1906 and similar enactments in France in 1915 and 1927. The United Kingdom adopted the Nationality and Status of Aliens Act in 1914 and 1918. The powers of denaturalization have been retained, although they are not frequently used.⁵⁵ The Home Secretary may revoke citizenship, often as a response to public concerns about perceived threats to society. It is also aimed at foreign-born residents at times of enhanced concerns about security and public safety. During the 1914 and 1918 war time period, more than 32,000 Germans, Austrian and Hungarians were interned in Britain. Following the end of the war, a large number of deportations took place reducing the German population by a sizeable amount. This was encouraged by newspaper and media campaigns. The operation of the legislation mirrored changes in immigration law and practice, especially as we have seen over the definition of citizenship and the rights that might accrue. One check on the use of such powers was the operation of a Judicial Committee to oversee the working of the legislation. The Judicial Committee was independent of the Government and presided over by a judge who had attained judicial office. The Committee's recommendations were technically advisory but they proved to be very influential with the Home Secretary of the day. The British Nationality Act 1918 allowed the Committee extended powers of review and oversight with the composition of the Committee of senior judges giving it weight and authority. The British Nationality Act 1948 further entrenched the work of the Committee and allowed it to continue to provide authoritative accounts of the law and its practical application to applicants. Due largely to the Committee's actions the worst excesses were avoided and despite the breadth of powers of de-

⁵⁴ The Treaty of Amsterdam 1997.

⁵⁵ Patrick Weil and Nicholas Handler, "Revocation of Citizenship and Rule of Law: How Judicial Review Defeated Britain's First Denaturalization Regime". May 2018, *Law and History Review*, Vol. 36 No. 2. pps 295-354.

naturalisation including disloyalty, the use of such powers decreased and was limited. In 1961 Britain signed the United Nations Convention on the reduction of Statelessness and made amendments to the 1948 Act to repeal the provision of a criminal conviction and in 1981 the system was strengthened under section 40 of the British Nationality Act 1981. This brought the various types of British Citizenship under the same category of being capable to being deprived. The Nationality, Immigration and Asylum Act 2002 extended the powers of deprivation to British citizenship by birth. This represented an extension of power, not a reduction, as the Home Secretary's powers included denaturalisation where there was evidence of fraud or false representation or where there was concealment of material fact. In addition there were grounds where it was shown that the Secretary of State believed there was a determination that the revocation of citizenship was conducive to the public good. The 2002 Act extended such powers to apply to native-born British as well as to nationalised citizens. In 2014 this was further strengthened to include a power to revoke citizenship where "the person has done anything prejudicial to the vital interests of the UK or its overseas territories". Significantly the old Committee system was replaced by the Special Immigration Appeals Commission, which was given controversial powers to hold hearings in secret and the use of Closed Material Procedures involving only defence lawyers appointed for the purpose and not the accused's own selected lawyer. The changes have been transformative. Between 2006 and 2016, 81 decisions had been made involving 373 individual Britons, who have had their citizenship removed, with very few successful appeals. One of the largest removals was in 2013 due to British citizens travelling to fight in Syria.

A further consideration, underlying the sovereign role of the State, is the use of the prerogative powers for passport applications and the award of a passport. In April 2013 the government embarked on a policy of removing passports and this was undertaken in part through the use of the Royal Prerogative. There is no right to a passport, and section 147 and Schedule 8 of the Anti-Social Behaviour, Crime and Policing Act 2014 allows the state-wide powers to search and retain passports or other travel documents. The use of such powers is at the discretion of the Home Secretary and not dependant on any state of emergency or anti-terror legislation.⁵⁶ There are rights of appeal, but the consequences of having citizenship removed and a

⁵⁶ *R (On the application of XH) v Secretary of State for the Home Department* [2017] EWCA Civ 41.

passport withdrawn are considerable. There is loss of the right of abode, the possible risk of deportation or exclusion and the possibility of immigration detention. This has implications in the external effect on the interests of other states and also touches on the UK's international obligations.⁵⁷

Denaturalisation and the removal of passports represent some of the most significant ways to define a state and the rights of those citizens that are entitled to remain within its boundaries. Tensions emerge between protecting rights and popular causes. Invariably, moral panics that escalate into political issues are easily created through public pressure, media attention and high-profile cases. This has dangers for evidence-based policymaking and exerts pressure on ministerial powers to apply legal authority with a broad discretion, largely immune from challenge.

Brexit and the nation-state⁵⁸

One of the claims made to justify leaving the EU was the need to assert and bring back “control”.⁵⁹ The implications are clear that EU membership had put at risk the UK as a nation-state, undermined its sovereignty and impacted on the day-to-day life of many citizens, leaving them less free and able to make decisions on their own behalf. Underpinning these claims was the accusation that the “elite” in society had conspired to exploit the underprivileged and weaker members of society. Underpinning many of the concerns about the EU is the question of immigration and its control. Paradoxically, the perception of “hordes” of EU migrants is not supported by the actual figures, provided by the House of Commons Library. The origin of migrants coming into the UK in 2017 was 13% were British Nationals, 38% nationals of other EU Countries and 50% were nationals of other non-EU countries. More significantly, it means that at least 50% of all migrants were subject to immigration controls.⁶⁰ Perceptions appear to matter more than reality and in many crucial areas of the Brexit decision, communities believed that they were being over crowded by unwanted

⁵⁷ House of Commons Library Briefing Paper, *Deprivation of British Citizenship and withdrawal of passport facilities*. Number 06820 (9th June 2017).

⁵⁸ See: The Observer Review, 30th March-1st April 2019. Paths from the Past: Historians make sense of today's political turmoil.

⁵⁹ See: J.F. McEldowney, “The Constitution and the Financial Crisis in the UK: Historical and Contemporary Lessons” in Xenophon Contiades, *Constitutions in the Global Financial Crisis*. London Ashgate, 2013. pp. 167-194.

⁶⁰ House of Commons Library Briefing papers, Migration Statistics SN06077 (11th December 2018).

and uncontrollable EU citizens. Job insecurity and poverty relative to the wealth of many southern towns and cities reiterated the sense of being forgotten and overlooked. There are additional reasons for concern about immigrants. The influential *Institute for Fiscal Studies* has shown that in the UK, between 1981 and 2006, there are gaps between immigrant and native employment. A key finding is that “Immigrants from Africa, Asia and the Middle East, Central and Southern America and the A10 countries in the main suffer larger employment and earnings penalties, which are reduced as their length of stay increases”.⁶¹ Disparities often lead to conflict and economic well being easily encourages animosity from the less well off.

An illustration of some of the forthcoming problems is the impact on the rights of EU residents in Britain after Brexit. In June 2017 the UK government made clear that residence under the existing EU directive 2004/38/EC would have to be adopted to fit into a new category of “settled status”. Providing evidence of what is “settled status” may appear relatively easy for those that can show regular employment over five years. However, complicated employment histories will find it easy to fall though the gaps. Childcare responsibilities for example will be hard to fill and many women will be vulnerable, especially if looking after relatives or disabled members of their family. Part-time or casual workers will also face problems in providing evidence. There are related issues covering record keeping and covering temporary gaps that need to be explained. Applications are online and require a degree of IT skills that may not be easy for the disabled or for those that do not have access to a computer. The poorest and those with a criminal record or a fear of officials or the state will struggle to recognise the system or even wish to be part of an official process. Children have no rights and few economic records of employment to support their claims. The history of the right to reside is riddled with examples where children do not gain any entitlement. There are also problems with parental status and links with parents might not exist or be easily established.

There are also problems of definition over the meaning of work, continuity and self-sufficiency that require to be addressed in the application process. Aside from the technical language, the decision-making process is hard to understand and will be burdened with many cases. This will mean

⁶¹ Sara Lemos, “The Employment and Earnings Gaps between Natives and Immigrants in the UK between 1981 and 2006”, *Institute for Fiscal Studies* (2018), Vol 39 number 3, pps 455–487.

that there are likely to be mistakes and it will be hard for applicants to collate the paperwork and provide an adequate explanation for any inadequacies. Also troubling is the category of EU citizen who has been in the UK for less than five years and is the category of “pre-settled” status. This is unclear in terms of how such citizens may be treated. There are also many uncertainties arising from social security payments and entitlements.⁶²

Making sense of the constitutional crisis that the UK is facing over Brexit is not easy.⁶³ Despite the passage of time, a binary choice of leave or remain offered at the referendum in 2016 has not, to date, resulted in clarifying the kind of relationship the UK might have with the EU after Brexit that will be acceptable to the UK Parliament. It will be remembered that the referendum in 2016 was won by a narrow majority, 51.89% to 48.11%. The differences in preferences in each devolved nation highlight the significance of devolution and the existence of a wide spectrum of opinion across the United Kingdom. The referendum also underpinned the primacy of England, the largest of the four nations, and the UK’s national sovereignty. Brexiters championed their cause as “taking back control”, with echoes of a re-affirmation of an old pre-colonial form of sovereignty. Remainers were branded as an elite and “enemies of the people”. Evidence from economists and lawyers on the technical and legal aspects and economics of EU membership was highly contested, subjected to ridicule and often treated as partisan and unreliable. Conspiracies were rumoured to exist between different “elites” in society against the popular vote of ordinary people. Characterising the debate about EU membership in such terms has not facilitated interpreting the results of the referendum. It has also shown the difficulty for MPs, who serve their own electorate and constituency, to interpret the referendum result and give it effect in the kind of future relationship between the UK and the EU that is legally possible. Currently views are polarised as to the kind of leaving the EU that is in the national interest. The paradox is that membership of the Customs Union and the Single Market is sought by some, even though the UK is leaving the EU. The current Withdrawal Agreement is unpopular and rejected by MPs and there are even some who support leaving the EU with no agreement whatsoever. The rancour and distrust has reached

⁶² House of Commons Briefing Papers Number 08397. *What if there's no Brexit deal?* (28th December 2018).

⁶³ See J.F. McEldowney, Brexit: A very English problem: <http://blog.juspoliticum.com/2019/02/05/brexit-a-very-english-problem-par-john-mceldowney/>

new levels of unedifying behaviour around Westminster. There are serious difficulties of accommodating arrangements with N. Ireland and Ireland in terms of upholding a “frictionless border”, that is an inherent part of the Withdrawal Agreement.

The economic context is important to consider. Many economists warn of the dangers of leaving the EU without a credible withdrawal agreement, at the very least because of the many uncertainties that arise. Calculating the economic and social implications is proving difficult, because the future trading relationship with the EU is uncertain, as will be the ability of the UK to enter into trade agreements within the WTO framework.⁶⁴ The context of UK productivity performance being stubbornly weak over the past years further complicates analysis. As Nick Crafts comments: “Areas of concern include underspending on infrastructure, a badly designed tax system, very restrictive land-use planning rules, schools that deliver low-quality education and innovation policies that result in low levels of R and D”.⁶⁵ Reforming existing policies was always within the terms of the current EU membership but it is unclear how reform might be accommodated once the UK leaves the EU. This will depend on the future relationship with the EU and at the time of writing this is hard to assess. It is clear that this will be complicated and probably involve the forging of industrial policy through an independent agency rather than for the government of the day to attempt this within the scale of a five-year Parliament.

As *The Economist* laments before Brexit, “Britain had a reputation not just for pragmatism but for sound administration and a predictably sensible legislature”.⁶⁶ This does not appear to be the case anymore. Conflict between the referendum results and elected politicians has the potential to destroy political party unity and also political consensus. The dangers are clearly apparent. The fragility of a long-standing belief in Parliamentary democracy and the rule of law are being exposed for all to see, as both are vulnerable to popular ideology and the strength of media hype and populism. Evidence-based policy making has given way to over-simplistic sound bites and populism. Binary choices made at a single moment in time are not easy to implement when the arguments are so complex and related

⁶⁴ See: IFS, *Special Issue On Brexit: New Evidence and Policy Perspectives Fiscal Studies*. Vol. 39 number 4 December 2018.

⁶⁵ N. Crofts “Industrial Policy in the context of Brexit”, IFS, *Special Issue on Brexit: New Evidence and Policy Perspectives Fiscal Studies*. Vol. 39, number 4. December 2018, p. 695.

⁶⁶ *The Economist*, 19th January 2019, p. 29.

to a myriad of variables that suggest the necessity of a continuing engagement with policy making and a pragmatic approach for future planning.

Politically there is growing evidence that the party system is in danger of collapse or, at the very least, having to be re-booted to take account of new allegiances and discourse. There are dire warnings that the Conservative Party, as the government of the day, will haemorrhage support and may even decline. The Labour party as the main opposition party is similarly fractured. More worrying still are the signs that the constitutional framework of the UK is not in union with Scotland and N. Ireland (who voted to remain); in particular, they may pull away from union with England as disillusionment over the Brexit process intensifies.

A weak Executive has had, however, to give way to a growing restiveness in Parliament. A number of amendments were made to the EU (Withdrawal) Act 2018, most notably requiring a “meaningful vote” in Parliament on the Withdrawal Agreement. The House of Commons rejected the Withdrawal Agreement on 15th January 2019, the cornerstone of Government policy, by an unprecedented 432 votes to 202, after five days of intense debate. Many MPs in the Government’s own party voted against the Withdrawal Agreement and the vote against curiously united both pro Brexit and remain MPs and left the Prime Minister in considerable difficulties as to how to proceed – not least of how to leave the EU with an acceptable arrangement that will pass Parliamentary scrutiny. The PM did not resign, a normal conventional response to such a defeat. Instead, her government won a vote of confidence the next day when Conservative MPs and Democratic Unionists united to keep the Government in Office. There are a number of constitutional implications that flow from the UK’s Brexit experience, most of them difficult to accept and hard to reconcile with the current debates and assertions over Brexit.

The UK’s unwritten constitution is not adept at handling a referendum victory for one side while the majority of MPs are in favour of the side that lost. Re-running a close referendum result is not unpalatable in written constitutions, such as Switzerland or Ireland and where the government of the day may respond within the constitutional arrangements and re-run a result it is unhappy with. However, in the UK, there is little experience of this. The underlying problem is that leaving the EU is more complex and technical than at first thought and public opinion was easily garnered towards an outcome that was not well explained or understood, as to the potential economic consequences. Simplification of what EU membership entails was not well communicated as was the full consequences of leaving

or the procedures that might entail. The process of leaving the EU was represented as a single event and moment, whereas in reality it is a continuous process that will take many years and involve difficult legislation to pass and interpret.

The major problem for MPs is that the tradition of MPs elected by their constituents to make decisions on their behalf is at odds with the referendum outcome where the voters claim strong “democratic” credentials and a higher order of authority over MPs. The reality is more complicated. The UK’s sovereign parliament is vested in the MPs in the Commons and Peers in the Lords. The referendum result is legally only advisory, and at odds with many MPs views. It is possible for MPs and electors to be reconciled, but this has yet to be seriously attempted. The consequences of such a rift are likely to resonate for years to come, even after the Brexit issue is resolved.

There are also some worrying aspects of how the Brexit legislation, the EU (Withdrawal) Act 2018, has resulted in increasing delegated powers to the government of the day. This extension of powers to allow Ministers to amend primary legislation through the use of ministerial powers is alarming because it has the potential to give unfettered powers to the Executive. The House of Lords *Select Committee on the Constitution* warned about the departure from the normal progression of legislative scrutiny to “lighter-touch processes of secondary legislation, other than in exceptional circumstances”.⁶⁷ The Select Committee also identified other trends such as the use of skeleton Bills which contain widely defined delegated power in the absence of any substantive policy. This has a bad effect on the role of Parliamentary scrutiny. More generally there is concern about some short-circuiting the normal way Bills are drafted. Instead of containing the main details and substantive clauses setting out what the Bill hopes to achieve, there is a tendency for the Bill to give only general principles and little detail. This may not facilitate the scrutiny such Bills deserve and may leave the details to be addressed through secondary legislation. The outcome is to give the Executive too much power over the law with little transparency or detail revealed in the actual legislation.

What is the way ahead? Political choices include the option of a general election or a new referendum. There is much unease about the possibility of a no-deal Brexit with considerable uncertainty and market volatility at

⁶⁷ House of Lords, *Select Committee on the Constitution*, 16th Report of Session 2017-19. *The Legislative Process: The Delegation of Powers*. HL Paper 225 para. 2.

risk. Delaying Article 50 is another option, but this requires all the Member States to agree and there are pending May elections for MEPs to the EU Parliament that has to be considered. This may mean that the UK has to elect new MEPs, a great irony as it is about to leave the EU. An easier possibility is to revoke Article 50; according to the European Court of Justice this can be done unilaterally by the UK but it would require Parliamentary approval.

Parliamentary options include MPs taking an active and hitherto unprecedented step of controlling the Business of the House of Commons away from the choices determined exclusively by the Government. There is also the possibility of holding free votes on various options that might encourage MPs to select the one that is most likely to command the widest possible support. Negotiating any new Withdrawal Agreement will take time and seems unlikely in the period up to 23rd May 2019, with the need for a longer extension.

The constitutional reform debate has also been re-ignited by Brexit. One possibility is to take the opportunity of dissatisfaction over Brexit to reform Parliamentary procedures and/or to consider the merits of a written constitution. The latter is advanced as a means of clarifying the role and function of each element – the legislature, the executive and the judiciary.⁶⁸ This is a highly ambitious project and is likely to excite controversy as the interpretation of a written constitution is likely to require judicial oversight. This is highly problematical for many who see that judicial power is in the form of an unelected verdict on matters that are best resolved by the politics of the day and the choices of an elected Government. It is hard to see how a written constitution will address many of the issues specifically raised by Brexit, that is about policy choices and their implementation.

It is easy to describe the UK as having a “Constitutional moment” or even to characterise events in terms of a “crisis”. It is possible to look historically and see parallels with the Corn Laws, Irish Home Rule, and votes for women. No matter how strong are the historical parallels, there is little doubt that in recent times Brexit has set new boundaries for debate and discussion. In essence, the question is how do MPs serve their constituents and electorate while at the same time take forward the outcome of a referendum? That answer may not be easy to find within the existing UK constitutional arrangements.

⁶⁸ Vernon Bogdanor, *Beyond Brexit: The British Constitution*. London: Hart Publishing, 2019.

There is, however, a more troubling problem. Negotiations to date between the UK and the EU have exposed an underlying problem about British identity. Robin Renwick,⁶⁹ a UK retired career diplomat, observes how UK negotiations have not showcased the UK at its best. This may highlight an underlying problem arising from differences between common law and civil law traditions, education and training. It may underline problems when there is a degree of cultural isolation, built on a strong national identity.

Nation and nationalism: some current issues and dilemmas

Having knowledge and certainty over one's identity through citizenship is an essential part of allegiance to the State. We have seen that the UK has been astute in defining and at times re-calibrating the status and rights of its citizens. The acquisition of a large Empire in the 18th and 19th centuries gave rise to an almost simultaneous effort to dismantle the Empire and recalibrate recently acquired relationships. Yet the set of immigration and asylum controls in place had elements of racial and ethnic identity that sat uncomfortably with public opinion and community values. Driven by many moral panics about "swarms" and "invasions", the categorisation of aliens and foreigners as unfriendly and a real and present threat has driven policy making over decades. By the same reasoning responsibility for poor education, overcrowding and insufficiency in employment opportunities as well as crime stigmatised foreigners and made them "enemies" from within who abused hospitality, claimed and defrauded the welfare system, especially when cultural differences were laid bare. Differences in religion and culture were easily exploited to create fear and prejudice. Underpinning much of the immigration and asylum system was the ever-present use of the criminal law that reinforced punishment, retribution and deterrence. Political life in Britain found the art of defining Britishness was often easier in terms of what it was not and who it opposed or what it regarded as unwelcome. This became as an attractive and ultimately convincing narrative and as compelling as any sense of belonging or historical identity, because it attested to the superiority of natural-born British citizens. This remains so today and, if anything, has been reinforced by the referendum on Brexit. Britain's immigration laws fashioned and directed against outsiders – aliens, immigrants, foreigners – gained purchase as an effective way to define

⁶⁹ Robin Renwick, *Not Quite a Diplomat*. London: Biteback Publishers, 2019.

the benefits of membership of the UK rather than as rights to be enjoyed by everyone. The restrictive use of immigration rules and procedures has found it hard to cope with human trafficking, or asylum seekers who may unwittingly be caught up in the single formula of outsiders and therefore be unwelcome. Fairness too easily gives way to the need for efficiency and the continued pressure to “reduce immigration” that is poorly supported by evidenced-based policy making. The shadow of illegality is sufficiently powerful to conceal legitimate claims and rights as with the example of the Windrush generation, wrongly deported in some cases, with little voice and few enforceable rights. None of this would be possible without an over-centralised control system in Whitehall directed by Ministers that transcended any devolution settlement to the other nations of the United Kingdom.

Conclusions

The United Kingdom offers a rich history of a nation that charts the ebbs and flows of Empire, its re-connection through the Commonwealth and the amalgam of four nations into a United Kingdom, vesting primary sovereignty to the UK Parliament. De Gaulle was aware that England had always had a sense of global connectedness which was different from continental nations.⁷⁰ As Robert Tombs observes,⁷¹ “there was never any possibility – and not much of an ambition either – of making this maritime empire into a global federation, and it proved ephemeral”. Still further, that the end of Empire helped to weaken the union between England, Scotland and Wales, as well as Ireland. Resistance to English rule in many parts of the Empire, from Ireland to India, found common cause in various forms of nationalism. This did little to ameliorate rivalries from France and Germany. Tombs also observes that at one time in 1956 forming a political union with France was seriously raised but to no outcome!

In the UK, addressing nationalism in Scotland and Wales has resulted in rapidly expanding forms of devolution that have been fitted into the existing status of UK unitary sovereignty. The decision to leave the European Union has proved particularly challenging for N. Ireland and Scotland. There is an abundance of evidence that the indivisible form of sovereignty offered as the guiding principle of a single sovereign union is a political rather than a legal fact. This is surely giving way to a form of constitutional

⁷⁰ Robert Tombs, *The English and their History*. Allen Lane, Penguin, 2014, p. 877.

⁷¹ *Ibid.*, p. 876.

pluralism that may allow greater flexibility and speaks to the future rather than the past. Such flexibility is likely to be a long time in delivering much needed change and it is also likely to be a painful process. Tombs, writing in 2014, notes that “Euroscepticism is certainly one characteristic facet of English consciousness today, even if comparable feelings are now present across Europe”.⁷² Even if outside the European Union, it could be suggested that this will remain so for some time to come.

David Cannadine summarised one of the paradoxes of the British experience of nationhood and nationality. Britons believed “and with some good cause that they belonged to the most advanced country and the finest civilization on the globe. And all the while, they were anxious, uncertain, doubting and insecure – about themselves and their society, their economy, their religion, their nation and their empire – and with equally good reason”.⁷³ Such a paradox remains and in many ways is being underpinned by Brexit with implications for the unity of the United Kingdom as well as external relations with Europe and the rest of the world. If only the British could see themselves as others may see them, much might be achieved. Nevertheless there are some common themes. Nationalism based around an idea of nation-state does not necessarily imply populism. In the British form much of the formation of the state was top down and maintained by the fiction of an indivisible form of sovereignty that ignored historical precedent and rested on assumptions about an imperial past that no longer represented a normality. It is also instructive of how the state (more accurately the Crown) may use nationalism as a means of achieving patriotism, allegiance and citizen engagement. Examples abound as to how nationalism might be productive of collective agreements. In early nationhood it may endow a country with the necessary means to define its constitution and create a new beginning.

The English nation is also the scene for prolonged religious conflict. The Glorious Revolution can be characterised as the pursuit of religious tolerance but this did not settle religious differences. Anglicanism and different forms of non-conformism became a binary choice that took on economic, political and geographical shape to allegiances.

One outcome of religious differences was the intensity of belief in various social causes. Quakers and Unitarian Christians, often the religion of

⁷² Tombs, *op. cit.*, p. 877.

⁷³ David Cannadine, *Victorious Century: The United Kingdom 1800-1906*. London: Allen Lane, Penguin 2017, p. 9.

urban and business,⁷⁴ helped to campaign for environmental rights, against child labour and for improvements in the social conditions of factories as well as better educational opportunities and the abolition of slavery. Temperance societies campaigned against alcohol. The rule of law was championed as an inherent quality of justice and inseparable from the law itself.⁷⁵

If nations and nation are examined, the United Kingdom offers some interesting lessons. First, the eclectic but also hierarchical approach to what is defined by nationality or citizenship. David Kynaston notes⁷⁶ the class structure was fixed; jobs were usually for life and most lives were narrowly confined geographies. The 1960s represented unprecedented change and the beginning of de-industrialisation, the growth of jobs for women and immigration that was on an unprecedented level, as well as a newly professionalised political class. Sinister undertones burst onto public life in April 1968 with Enoch Powell's "rivers of blood" speech complaining about immigration. Fortunately this was exposed as extremist and civil society managed to re-calibrate and move forward. As economic and political circumstances changed, so did the rights enjoyed by different categories of citizen. The status and rights of citizens changed. Second, the use of the criminal law and sanctions employed in parallel with administrative processes and systems blurred the boundaries between political judgements and policy decisions and resulted in a binary choice between legal or illegal that tends to oversimplify. In its oversimplified form, emigration policy has been taken forward with inadequate discussion and less informed evidenced-based evaluations.

In tracing the United Kingdom as a nation, it is English nationalism that emerges as a dominant outcome. Its survival is remarkable against the trends of consumerism and globalisation. It has eclipsed established religions and become an "article of faith" of the true believers. Brexit has catapulted into public view the private nurturing of many believers in a rekindling of a glorious period of English history, Empire and beyond, that triumphs the English nation over all other and claims endless possibilities outside the European Union. This is far from reality. The uncertainties that pervade the future relationship with the UK and the EU remain unad-

⁷⁴ Many business families were associated such, including well-known names – Barclay, Rowntree, Cadbury – that have become household names.

⁷⁵ Tom Bingham, *The Rule of Law*. Allen Lane, Penguin, 2010.

⁷⁶ David Kynaston and Francis Green, *Engines of Privilege*. London: Bloomsbury, 2019.

dressed and are likely to lack clarity and predictability for some time to come. The underlying trends are also concerning. *The Hansard Society*, an independent English Charity and think-tank, in its annual democratic audit, 2019, notes a public despairing in confidence in the political system, with a majority in favour of a more authoritarian approach to governing as well as lack of faith in the parliamentary system.⁷⁷ The combination of scepticism and the rejection of the parliamentary system is dangerous.

Yael Tamir⁷⁸ reminds us that nationalism without the constraining power of democracy and liberalism would have turned “nasty” and “morbid”. Modern states, she believes, need to create a form of untidy compromise between liberalism and nationalism. The sense of belonging and being pulled together is an essential quality of nationalism; its more undesirable traits are to create separation and isolationism which can lead to xenophobia.

There is no roadmap for post Brexit Britain, just as there was none for Brexit. There is much uncertainty that is uncomfortably bereft of ideas or new thinking. In contrast to a previous period of crisis in the UK’s Constitution around 1688,⁷⁹ when new ideas helped establish Parliament’s supremacy in English government, there are remarkably few suggestions today for improvements in the future. Instead, with religious fervour, a fractured and deeply divided nation ultimately will have to find a formulation for its future.

⁷⁷ Hansard Society, *Annual Democratic Audit 2019*. London: Hansard Society, 2019.

⁷⁸ Yael Tamir, *Why Nationalism*. Princeton Press, 2018.

⁷⁹ Margaret Judson, *The Crisis of the Constitution*. Rutgers. University Press, New Brunswick: 1949.

NATIONS, EMOTIONS, AND IDENTITIES IN A LATE-MODERN WORLD: REFLECTIONS ON THE CATALONIAN QUEST FOR INDEPENDENCE

ANA MARTA GONZÁLEZ¹

“A fatal vote is cast everyday in the ineffable secret of hearts that decide if a nation can really continue to go on... A nation is ultimately a huge community of individuals and groups that rely on each other. This relying on one’s neighbor does not necessarily imply having sympathy for him”.
(José Ortega y Gasset, *La España invertebrada*, 1921)

“Catalans’ competent administrative capacity was subjugated by a false conception of the State considered as a foreign phenomenon, which entailed, in some circles, accepting narrowly defined pragmatism and, in others, developing a kind of mysticism around direct action. And this dualism is one of the main reasons for the political and social sub-versions present in Catalonia... We mobilize en masse, in a social chain reaction. At that moment, we start to get angry collectively. All the selfishness that makes us surly and sullen infiltrates our love for the noblest ideals. We draw strength from weakness and make ourselves admired all over the world through the strength of our collective mobilization. And so we continue forward, irresistible, euphoric, and capable of landing on the Moon”.
(Jaume Vicens i Vives, *Notícia de Catalunya*, 1954)

1. Independence in the contemporary context

Until recently, the most appropriate context for speaking about nation-states was a class on nineteenth-century thought and history, or on the decolonization process. In the context of late modernity, marked by

¹ During the past few months, I have had conversations with many people, both inside and outside of Catalonia, who have helped me consider aspects and hues of the Catalan question that are not sufficiently reflected in the available literature. Both previous reading, as well as interviews and informal conversations in Barcelona have helped me better understand the complexity of this issue, which is often distorted and instrumentalized in public opinion. My sincere thanks go to Borja de Riquer i Permanyer, Jose Enrique Ruiz Domènec, Dolors Udina, Margarita Mauri, Eliseo Aja, Marina Subirats, Jordi Sellarés, Juan José Lopez Burniol, Lluís Foix, Josep Ramoneda, Ferrán Requejo, Joan Ridaó, Guillem Lopez Casanova. My thanks also to Beth Udina for her invaluable help in coordinating all of these interviews.

sharp individualization processes and the advance of neoliberal orthodoxy, the use of terms such as nation, state or nation-state, with which modern subjects used to think and project our reality and political aspirations, had been gradually stripped of their reference to problematic collective subjects, coalesced by virtue of race, history, language and culture (Requejo 2005, 110). In the last quarter of the twentieth century, it seemed that the era of the nation-state was coming to an end, replaced by higher-level political structures, such as the European Union, which was gradually absorbing sovereign prerogatives from their member states; these, on the other hand, were giving way to federal structures underneath (Maíz 2003), in principle better equipped to manage local needs. Certainly, the Yugoslav Wars at the end of the last century served as a wake-up call for the persistence of national sentiment beyond decades-long communist structures. Nevertheless, the globalization of markets, the development of international corporations that operate transnationally, and growing mobility, made our societies more mixed and plural; all this seemed to lessen the centrality of the modern nation-state, requiring an update of liberal thought in order to accommodate the reality of a burgeoning cultural pluralism.²

Yet, partly as a consequence of the 2008 financial crisis, and with greater intensity since the 2015 migration crisis – this movement has reversed, and states seem to claim back greater control on many issues. We see this in Europe, where consensus on economic and migratory policies breaks down at times, as well as on a global level, with the United States withdrawing from international pacts and organizations. Nationalist sentiment – *America first, Brexit, Italy first, ...* – has returned and taken to the streets, channeling an ambiguous popular response in which discontent over political management of the economic crisis is mixed with fear that has grown out of threatened cultural identities. Pressured from within by popular demands that in various ways break with the former, liberal consensus, states are less willing to enter into transnational deals that might effectively address problems whose roots are usually global, but whose negative consequences are irremediably experienced locally. The idea that the best foreign policy is domestic policy thrives. From this perspective, appeals to “national identity” and controversies surrounding national symbols (Moreno Luzon

² It astonishes Ferrán Requejo (2002, 16–17) that, “the main political theories of liberal democracy, including many of the intellectually strongest, such as those of J. Rawls and J. Habermas, are so deficient when considering national pluralism” because they assume there can only be one national demos in a democracy.

& Nuñez Seixas 2017) can be explained as more-or-less stalled popular reactions in the face of consequences of globalization that are experienced as negative and substantiated in ongoing economic and migratory crises. In times of uncertainty, human beings seek assurances in the most unlikely of places. Of course, it would be appropriate to ask whether national identity, insofar as it involves raising borders where it might be necessary to build bridges, is what a global, culturally diverse and changing world needs. But that question goes beyond the confines of this particular contribution.

The more limited, but no less complex task entrusted to me involves examining whether the desire for independence from Spain that a considerable part of the Catalan population has expressed can be understood simply as another case of nationalist upsurge in the global context described above, or if it responds to more complex, specific causes.

It is a real challenge to talk about current realities on which events and people make a different mark every day. Here I have tried to distance myself from that immediacy, with the aim of achieving a relatively balanced view. I do not consider it my task to speak about recent events, such as the October 2017 Referendum, or the symbolic – for many frustrating – unilateral declaration of independence, which attracted the interest of international public opinion.³ Concerning these facts,⁴ as well as their legal consequences, political controversy continues. My interest is to understand how we got in this situation and the underlying reasons for some of the claims that could be the subject of a reasonable political dialogue, but which, since the beginning of the process, seem to have lost importance, stuck in an emotional whirlwind whose end point we still cannot make out.

In any case, the desire for independence that approximately half of the Catalan population manifests is not necessarily based on nationalist positioning. Certainly, the term “nationalism”, insofar as it suggests identification with a certain culture and politics, is by definition divisive.⁵ But, as we

³ The December 21, 2017 elections were no exception to the general controversy that arises from the interpretation of electoral results. In principle, voters for non-independence parties outnumbered those in favor of independence, but this depends on how one counts the votes from a hinge party, such as Catalunya en Comú, whose vote does not always follow a univocal path. However, the results are interesting since they registered very high participation levels (81.94% compared to 77.44% in 2015). It is a different matter to examine if the application of current electoral law grants a majority of seats to what has been called the “independence bloc”.

⁴ Josep Ramoneda (2018) offers a particularly helpful reflection on these events.

⁵ Fusi (2006, 38) has addressed the Basque case in a book that is especially interesting

will shortly see, that is not the whole reality of the Catalan independence movement, in which different visions of Catalonia as a nation coexist. The word “nation” is not employed here in its old and medieval sense (Suárez 2016, 15–16), but rather in the sense that it has acquired in the modern age, when it came to replace absolute monarchs as subjects of sovereignty – which, despite a division of powers, was still understood as indivisible. It is precisely in this framework where “national sentiment” came to play a socially unifying function, analogous to religion’s role in modern states with the principle “cuius regio eius religio”. Throughout the nineteenth century, already in full romantic swing, “national sentiment” and its characteristic symbols (Thiesse, 2017, 12) came to be considered an expression of the historically differentiated identity of communities that, for various reasons, had not “acquired” their own political personality, which is why they were still in the process of fulfilling their “historical destiny”. This thought promoted the construction of a collective subject based on the confluence of political reason and sentiment. Although the role of the latter in the configuration of modern political spaces varied depending on whether it was a “state-led” or “state-seeking nation” (Tilly 1994, 133), the nineteenth century became for everyone the century of national histories in search of a national essence. More or less shared stories, built by subjects who wanted to inhabit a world that suited them, flourished.

However, it is not easy to specify the geographic and temporal scope of “national sentiment”. As Henry Kamen (2014, 199) writes, “the problem of trying to define a specific set of feelings (identity) when speaking of a ‘nation’ is that said feelings are by no means exclusive, especially when people have feelings rooted in very different places”. To paraphrase Kant, we could say that sentiment without reason is blind; in particular, a sentiment cannot even be called “national” if it is devoid of political reason. However, in the order of foundation, the relationship between sentiment and political reason can be articulated differently. Namely, when liberal principles prevail, the work of political reason precedes the appeal to sentiment; when sentiment prevails, it indicates a preexisting identity, configured over the course of a history that, assumed in the present by a certain community, is conceived of as legitimizing a constituent process in the political sphere.

Although contemporary processes such as the construction of the European Union, or the political-administrative decentralization of different

given its focus: *Identidades proscritas. El no nacionalismo en las sociedades nacionalistas*. See also Nuñez Seixas (2018).

states, allow us to qualify and question both the indivisibility of sovereignty and the cultural homogeneity of nations, we are currently witnessing a new rewriting of both uses of the term “nation”. In some cases, national sentiment that ideally converges with the state as an already constituted political-administrative structure has reemerged; in other cases, differentiated outbreaks of national sentiment that are not necessarily compatible with the former have emerged within already-constituted nation-states.

It is a fact that Catalan society is currently divided over this issue, whose evolution and outcome also affects the whole of Spanish society. Catalans who feel “they have a composite identity, both Catalan and Spanish at the same time” (Borrell, 2017, 19) coexist in Catalonia today with others who identify themselves as Catalan alone, rejecting their relationship with Spain altogether. However, as noted above, not everything in the Catalan conflict is reduced to a conflict of identity sentiment; at least not in the nineteenth century sense. In this regard, there are three distinctions that may be useful for identifying the elements involved in the recent claim for independence:

- a) First, not all nationalism is pro-independence. In fact, the most characteristic historical product of nineteenth-century Catalonia was a culturally and politically fertile “Catalanism” (Termes 1986),⁶ which, from both traditionalist and conservative positions,⁷ as well as from federalist and republican ones,⁸ proposed autonomy, or, in general, some forms of self-government, without renouncing the possibility of exerting a positive influence on the rest of Spain. Jordi Pujol came to describe this Catalanism as “non-independence nationalism”.⁹ Understanding why a considerable part of it has recently evolved towards pro-independence positions, requires taking into consideration a multiplicity of factors, including cultural, legal, economic, and emotional ones. The specific weight of these factors in the personal preference for independence varies, but, taken together, they constitute a more or less shared story regarding the evolution of the “Catalan question” since the 1978 Consti-

⁶ Francesc de Carreras (2017, 107-192) gives a summary account of how the three most representative figures of the different Catalanism currents – Almirall, Torras i Bages and Prat de la Riba – continue to mark the debate.

⁷ Represented by figures such as Torras i Bages, Prat de la Riba, Cambó and even Pujol.

⁸ From Almirall, Macià, Companys until Maragall.

⁹ On this point, I am particularly indebted to Lluís Foix.

tution and the promulgation of the first Statute of Autonomy in 1979, until the reform of said Statute in 2006 and the Constitutional Court Ruling 31/2010. Enacted in a rarefied political climate, the 2010 ruling, which declared some articles of the 2006 Statute unconstitutional, marked a before and after in the evolution of the Catalan conflict.

- b) *Not all supporters of independence rely on nationalist theses.* There are sectors of the Catalan population that, apart from national sentiment and beyond historical and cultural considerations, support independence mainly for instrumental and pragmatic reasons. They think that statutory and/or constitutional reforms aimed at solving the legal and fiscal tensions with the State administration have failed and that Catalonia “would do better” on its own.¹⁰ While opinion is actually divided on the extent to which an independent Catalonia would be politically and economically viable, this initially minority position won more supporters with the economic crisis, around which time the *Generalitat* President, Artur Mas, also intensified his criticism of the State finance system and its fiscal policies towards Catalonia.
- c) A third sector of the population has joined the independence movement for mostly emotional reasons. While such emotionality may be intermingled with cultural and/or pragmatic motivations, it deserves separate attention because it is formed on the basis of perceptions and emotions aroused by events that many Catalans experience as grievances, whether we agree or not. To the extent that this position is strongly mediated by stereotyped narratives, we could describe this posture as “post-emotional”. A post-emotional society, according to Mestrovic (1997), is marked by reinterpreting past events, in ways that scarcely leave room for a common political space. This post-modern, highly self-referential nationalism, closer to what Kant would call passion than what he would call emotion (González 2015), is generating social division within Catalonia itself, and has contributed to the reappearance of a reactionary Spanish nationalism that tends to accentuate social division not only between Spain and Catalonia, but also within the very heart of Spanish society.

¹⁰ I am grateful to Josep Ramoneda for confirming this point. See Rovira (2008) at https://www.elnacional.cat/es/politica/carod-rovira-no-podemos-continuar-mas-sin-lid-erazgo-ni-estrategia-unitaria_313242_102.html

Subsequently, among supporters of independence, there are some who adhere to the principle of legality and others that, frustrated by the short-term impossibility of a legal path, appeal directly to the democratic principle, putting law and democracy in opposition to one another. In recent months, the latter position has come to speak of a “Slovenian way” for Catalonia – a comparison that provoked immediate response from the Slovenian prime minister, who rejected any resemblance between Slovenia and Catalonia. In any case, the mere suggestion of a unilateral route that appeals to the will of the people could support the initial impression that the Catalan conflict is part of a more general process that involves deconstructing the twentieth-century alliance between liberalism and democracy, not so much as a result of the 90s debate between civic nationalism of a liberal nature¹¹ and another of an organic, ethnic one, but as the emergence of a populist and post-emotional nationalism; yet it is also revealing of one weakness inherent in classical liberalism insofar as it tends to consider itself neutral in terms of culture, or to understand cultural matters as accidental to the political process.

It is clear that they are not accidental; indeed, culture – the way of life that a human group develops over time, of which language is a particularly characteristic expression – is so central to the life of a people that if it is marginalized or shown the door, it will jump back in through the window, and not necessarily in the best of its versions.¹² There are, in effect, both better and worse forms of culture; rigidly identitarian and postmodern forms are certainly not among the better ones. If the political events of the last few years have anything to teach us, it is that, in this oscillation between psychological experiences and reflective mediations, which Simmel (1986, 164) identified as a feature of modern culture, we are missing the characteristic stability of culture that gives nuance to the life of a people, nourishing a common “feeling” that is as far a cry from boring technocratic discourses as it is from more or less ephemeral emotional reactions. Knowing how to interpret that feeling, articulating it with the conditions derived from institutional mediations, and without confusing it with more

¹¹ Liberal nationalism is found in authors like Ignatieff, Finkelkraut, and implicit in Viroli’s republican patriotism or Habermas’s constitutional patriotism (Máiz 2003, 430–431).

¹² Both an aggressive and dialectical use of symbols, as well as a trivial use, characteristic of our consumer societies, seem far from what could be called noble patriotism compatible with universal humanism.

transitory emotional alterations, is part of what political reason is about, insofar as it conceives itself as practical, not just pragmatic or technical reason.

In any case, in order to give a more complete picture of the situation in Spain with regard to Catalonia, it is important to address the different factors in play, be they legal, fiscal or related to the media. Before, however, I will begin with a summary of the historical-cultural context at stake. While I do not intend to endanger political reason by appealing to the presumed inevitability of historical reason, ignoring history prevents us from understanding the complexity that political reason eventually needs to confront.

2. History and politics

Beyond the complexity of the positions involved, a not-at-all-new problem underlines the current Catalan conflict; while this secular problem saw perhaps the beginning of a solution in the 1978 Constitution, for diverse reasons of a legal, cultural, political nature it seems to have reached a dead end. The problem is nothing other than the social and cultural specificity of Catalonia, which – explicitly avoiding the word “identity” – José Enrique Ruiz-Domènec has called “the historical entity” of Catalonia and its conflictive relationship to central power. This latter feature, long ago identified by historian Jaume Vicens i Vives (2012), is revisited by Ruiz-Domènec (2018) in his recent monograph as a key to understand Catalonia’s history. Some have called it the “Catalan problem” (Ortega, Azaña 2005),¹³ although one could likewise speak of the “Spanish problem”.¹⁴

It is not possible, in effect, to properly contextualize the so-called Catalan “problem” without taking into account the center-periphery tensions that characterize the development of the Spanish nation from the early modern age. Perhaps we can better understand this aspect by comparing the formation of the Spanish and the French States. As Tocqueville explains

¹³ That debate has again recently resurfaced in Spanish media: http://cadenaser.com/ser/2017/12/15/politica/1513342612_158817.html

¹⁴ I am not referring here to the debate between Laín Entralgo (“España como problema”) and Calvo Serer (“España sin problema”) during the Franco period, but rather simply to the center-periphery problem, i.e., when we speak of the “Catalan problem” as a conflict between Spain and Catalonia, there is a tendency to identify Spain with Madrid. However, this is problematic not only for Catalonia, but also for Spain in general, which could in fact benefit from a Madrid-Barcelona bipolarity or, eventually, some form of multi-polarity, rather than opening the door to accumulation of political, economic and cultural power in Madrid given that the latter often occurs at the expense of, and by stripping assets from, other capital regions.

in *The Old Regime and the Revolution* (1982), the centralism that the Bourbon dynasty imposed in France, by abolishing local laws and privileges for the benefit of the Court, constituted slow and secular preparation for revolutionary changes and, ultimately, for identification of the French people with their nation. But nothing similar happened in Spain. For reasons that go beyond this contribution, under the ruling of the Habsburg dynasty – thus, until the eighteenth century – Spain followed a model of government inherited from the Catholic Monarchs – Isabel and Fernando – that, at least on paper, was meant to govern by respecting the various historical communities and each territory’s jurisdiction (Perez 2011, 345). Unlike the French monarchs, who, starting from Dagobert I (603–639), were all buried in Saint Denis, the monarchs of the different Spanish kingdoms are buried throughout the territory. It was not in vain that for a long time people spoke of “Las Españas” in plural, including the American viceroyalties (Williamson, 1992). Indeed, the configuration of the modern Spain took place through a process of gradual incorporation, responding to what John Elliot (2009, 3–25) has described as “compound monarchies”. Upon incorporating new territory, the King committed to respecting its privileges and institutions, which obviously limited the King’s power, for example when it came to collecting taxes for military campaigns. Precisely one of the most important modern uprisings in Catalonia, still under the Habsburgs, took place on the occasion of the Union of Arms that the Count Duke of Olivares sought in 1626 during the reign of Felipe IV (Elliot 2004; Hugon 2015). Yet it was with the advent of the Bourbons and Philip V’s promulgation of the Nueva Planta Decree in 1716, that Catalonia lost its privileges. With the new dynasty, the centralizing efforts aimed at achieving more efficient state administration gained momentum (Pérez 2011, 154). In the medium term, these efforts paid off economically: through royal decrees, Charles III liberalized trade with America, and Catalonia became a prosperous region, as well as a motor of enlightenment and progress; yet, there was a cultural price to pay, namely, the imposition of Castilian as the language of the monarchy.¹⁵ Later, under the influence of romanticism, a variety of cultural personalities emerged to defend the Catalan language and

¹⁵ Ortega y Gasset (1951) characterized Charles III’s reign as the most particularist and anti-Spanish of all Spanish monarchs, because after him each group no longer shared the feelings of the rest (46). For Ortega, particularism runs parallel with the disintegration of Spain, understood as a process of incorporating different elements in a forward-looking project (49).

traditions, marking the beginning of the *Renaixença*,¹⁶ which has played a fundamental role in the genesis of nineteenth-century Catalanism.

This was decisive for the formation and cultivation of a Catalan national sentiment differentiated from Spanish national sentiment, which had otherwise also strongly emerged in Catalonia during the war against Napoleon.¹⁷ Insofar as identity requires self-consciousness, it is not inaccurate to say that resistance to Napoleon “created” the nations of Europe because it offered them awareness of themselves as differentiated peoples. However, after this first expression, politically articulated as “national sovereignty” by the Cádiz Cortes in the Constitution of 1812 (Pérez Royo 2015, 11), Spanish national sentiment barely had time to mature; this could explain its apparent weakness against Catalan national sentiment, as Borja de Riquer (1993, 8–15) has argued. His thesis finds support in the 1835 words that Alcalá Galiano directed to Spanish liberals on the necessity “of making the Spanish nation a nation, which it is not, nor has been until now” (Álvarez Junco 1998, 428); Ortega’s considerations at the beginning of the twentieth century reflect the same idea: he believed that localism, rather than national sentiment, thrived and reigned in Spain (Fusi 2000, 230). His words were backed by history: “Between 1808 and 1840 (...) wars of independence, the loss of America, misrule on the part of Ferdinand VII, and a Carlist war left Spain practically stateless. The country lived in real administrative disorder. Precisely, and as a consequence, the great Spanish problem of the nineteenth and twentieth centuries came to be the articulation of the country as a true national state” (Fusi 2006, 22). Yet precisely the course of the confrontations that tore the country apart during those decades, first between traditionalists–Carlists and the liberal–enlightened faction, and later among different liberal factions, revealed two ways of understanding Spain, namely a liberal vision, affiliated with an urban sensibility and centralizing tendencies, versus a more traditional view rooted mainly in rural areas. The fact that Carlism was defeated on the battlefield did not signify its immediate cultural decline. It is not accidental that, from a historical point of view, precisely the territories with the largest Carlist presence – Navarra, the Basque Country, Catalonia – have most insistently defended their idiosyncrasy (Manent 1998, 13). Such idiosyncrasy derived not only from language, but also from public and/or private law that for

¹⁶ Aribau’s 1833 *Renaixença* begins with an “Oda a la patria” (national anthem).

¹⁷ How this sentiment is interpreted is another question (Kamen 2014, 172 ff).

centuries permeated the life and customs of those territories.¹⁸ Nevertheless, it is interesting to note that during the monarchical Restoration that followed the ephemeral first Republic of 1873, it was in Catalonia, more than in the rest of Spain, where a modernizing nationalism of an overall Spanish scope developed (Cacho 1998, 23).

History operates with certain inertias that we cannot simply forget: although the Cádiz Cortes, which led to the first liberal constitution in 1812, drafted a Civil Code developed on the basis of Castilian law, which unified existing laws, several ups and down thwarted its promulgation until 1889; even then it presented carve outs for former provincial territories in matters such as family law and inheritance. From this perspective, José Ortega y Gasset's words from 1910 are understandable: "Since Spain does not exist as a nation, Spanish intellectuals have a duty to build Spain" (De Riquer 2014).¹⁹ Álvarez Junco (1998, 467) notes that this sentiment was common among Spanish intellectuals: Unamuno thought that Spain was "yet to be discovered", and Ortega wrote: "Our first task consists in discovering what Spain is and then, second, inculcating it to the masses". That "the masses" would allow themselves to be nationalized according to the ideas of intellectuals, as if they were nothing more than some amorphous material, devoid of ends and ideas of their own, is another matter entirely.

Plato (2008, 279b) compared politics to the art of weaving. Wisely governing the inherent diversity of the different peoples of Spain, making it compatible with equality before the law, has never been an easy task, to which the effort to write the Civil Code can attest; yet, dodging this task makes politics, understood in the style of the classics as "the art of the possible", superfluous. For politics is the art of taking reality as it is and improving it, not the art of recreating it *ex novo* according to whim, or limiting individual rights and liberties by imposing artificial uniformity where the spontaneous development of social life has unfolded in different languages and customs: different ways of relating and organizing coexistence that are not only perfectly legitimate and respectable, but also deeply enriching for the whole of Spanish society, like the initiatives of so many anonymous Catalans who, starting from the eighteenth century, developed

¹⁸ I am indebted to Lopez Burniol for this observation.

¹⁹ Years later, however, in his article "La nación frente al Estado", Ortega seems to assume the reality of the former when he urges, "expecting everything from ourselves and to fear everything from the State", because "the State and its institutions are a nation's adjectives and nothing more". See (Marichal 1989, 53).

an entrepreneurial spirit in so many regions of Spain²⁰ and in overseas territories.

Although Catalanism developed throughout the nineteenth century mainly as a cultural movement, it did so in a social context marked by growing social conflict that originated with industrialization processes. Perhaps embodying the peculiar position that, according to Vicens i Vives (1961, 24–25), geography and history have given to Catalonia as a “corridor” between Europe and the rest of the Iberian Peninsula, “during the nineteenth century, Catalonia wasted two entire generations on the almost obsessive goal of making Spain something different from what it had been under the baroque structure inherited from the Habsburgs and from adopting the unfavorable marriage between French Jacobinism and Germanic idealism”. However, in the nineteenth century, Catalonia’s desire to contribute to the construction of a prosperous nation was repeatedly met with the reality of deep social differences between an industrial Catalonia and the rest of Spain, then mainly agrarian. The frustration generated by this situation worsened after the loss of Cuba,²¹ where Catalans held many commercial interests.²²

The star that today adorns the pro-independence Catalan flag – the Estelada – comes precisely from Cuba. It has triumphed with supporters of an independent Catalonia among many options that surfaced throughout the twentieth century.²³ While in the rest of the country “regenerationist” intellectuals reflected on the need to rethink Spain and endow it with a project for the future (Serrano 1998), in Barcelona, a sector of Catalanism

²⁰ Contemporary Galician history speaks to “Catalan fomenters”, the first of whom arrived in the mid-eighteenth century and, among other things, started up the seafood conservation businesses that now characterize Galicia (Villares 2014, 212, 221). More than a century later, these fomenters were assimilated into Galician society, families like the Curberas and Massós, and stopped sending remittances to Catalonia (324–5).

²¹ Álvarez Junco (1998, 411–12) offers some interesting reflections in this regard: “Why did the 1980s generation feel so dismayed at Cuban independence when the politicians and intellectuals from Fernando VII’s era barely noticed the decisive events surrounding Hispanic America’s independence? ... For contemporaries of Ferdinand VII, the king had lost some territories... for his grandchildren, we had lost the colonies”.

²² Last names like Partagás, Gener, Bacardí, Güell, etc. speak to the connections between Cuba and Catalonia, possible because of Carlos III’s royal decrees that allowed for free trade with America. Many Catalans settled in Cuba and made their fortunes with sugar, tobacco, rum, banking and the slave trade.

²³ The novelist Joan Sales reflects on confusion about Catalan flags in his novel *Incierta Gloria* (2005, 269 ff).

retreated into itself, preparing a clearly political direction for its aspirations. These were implicit in the words of Father Josep Armengou (1979, 79; Cacho 1998, 82) published clandestinely several decades later in the midst of Franco's dictatorship: "Per nosaltres Catalunya és la tesi, Espanya una hipòtesi, i no pas l'única" (Catalonia is our thesis; Spain is just a hypothesis among others) Outside of independence, the only hypothesis that Catalonia could accept corresponded to a decentralized, plural Spain. This not only affirmed the priority of the Catalan nation over the Spanish one, but also conditioned its union with the Spanish nation on Spain's ability to welcome its specificity. Certainly, what that specificity consists of and whether it would be preserved in an independent scenario remains a disputed question even within Catalonia. Depending on how we narrate history, we could speak either of the realization of a singular historical destiny, foreshadowed in Catalonia's multiple rebellions against centralized power, or about the frustration of its vocation as the "corridor" between Europe and the rest of the Iberian Peninsula, i.e., the unilateral abandonment of a long-standing historical project it shared with the rest of Spain, a project that has taken different forms throughout history, and that, with the advent of democracy in the twentieth century, included the incorporation of Spain into the European Union.

In any case, what is clear in the meantime is that the Catalan conflict does not speak only of Catalonia; it also speaks of two keys for accessing the historical reality of Spain: on the one hand, in a centralized or decentralized key – a perspective that is contaminated by the complicated relationship between centralized power and peripheral nationalisms during the Franco dictatorship – and, on the other, in a self-absorption or universal projection key. Both keys, however, are related; as Elliot, and Ortega before him, has observed, for the Spanish nation, which began organizing around the kingdom of Castile, through successive processes of incorporation, plurality was not an end in itself, but rather the consequence of a project of universal scope to which nations were added inside and outside of the peninsula. This universal project explained and justified internal plurality, and all those incorporated desired to participate equally in it, although that desire was not always satisfied. Certainly, until the reign of Charles III, Catalonia, like the rest of the territories of the former Crown of Aragon, could not fully participate in the Spanish expansion in America. As historian Luis Suárez (2016, 379) has pointed out, no one can deny that, "if America is the result of Castilian expansion, the Mediterranean expansion is a Catalan contribution and is largely responsible for Spanish

culture”. The contribution of Catalonia to the historical reality of Spain is not limited to economic and industrial development. Spain’s dual cultural projection towards America and the Mediterranean would not have been possible without this internal tension between Castile and Catalonia. Forgetting about that tension, drowning it with homogenized²⁴ centralism or breaking it with independence, would mean putting an end to the history of Spain as we have known it in recent centuries, and would inaugurate a different history all together.

3. Law, constitution and statute

Politics, as mentioned, is the art of weaving, as well as the art of the possible, of reaching agreements in circumstances and with interlocutors that are perhaps far from ideal. In both senses, it is not difficult to recognize an authentic political endeavor in the 1978 Constitution, which inaugurated the most fertile period in Spain’s recent history. On the basis of the economic prosperity achieved in the last years of Franco’s dictatorship, and within the limitations imposed by a transition marked by asymmetric forces in terms of power and democratic legitimacy,²⁵ the Fathers of the Constitution tried to weave a modern Spain respectful of individual rights and freedoms, capable of integrating the diversity inherent in its peoples and their languages. The project of a Spain with autonomous communities mirrored this attempt. It not only tried to guarantee a constitutional framework for the development of self-government among different “communities”, but also attempted to structure a simultaneously unitary and diverse State (Pérez Royo 2015, 48).

When drafting the Constitution, these communities were not yet set. For this reason, the Constitution established two formulas for territories to decide the kind of community they wanted to form: a faster and more complete track for territories that in the first democratic elections of June

²⁴ On this matter, the attitude one holds towards language has an importance that is more than symbolic. The policy of linguistic immersion that the Generalitat enacted, in line with the 1983 law of linguistic standardization, was upheld by the Constitutional Court in 1996. However, some have begun to question it again – an indication that part of Spanish society has not yet accepted bilingualism as a natural part of our society.

²⁵ Javier Pérez Royo (2015, 20) speaks of a reciprocal “balance of weaknesses” on which the transition rested, and which made it possible to keep the monarchy intact and compatible with the principle of national sovereignty. De Riquer has described the ambiguity of the negotiations that surrounded the constitutional pact in his unpublished text, “La transición española”.

1977 had shown greater desire for self-government – three quarters of the municipalities in each community had to vote for it, plus a Referendum with an absolute majority had to ratify it – and a slower one for the rest. Among the first were Catalonia, the Basque Country and Galicia, all of which correspond to “historical” communities, or nationalities,²⁶ i.e. communities with their own language that had achieved autonomous status in the Second Republic. In the debates that preceded the Constitution, no other such community was foreseen. However, the reference to a “strong will of self-government” allowed Andalusia to enter in this category, thus diluting the uniqueness of historical communities in a homogenizing solution²⁷ popularly known as “coffee for everyone”, which some have interpreted as a strategy to dilute the Catalan territorial conflict, while others saw it as a step towards the federalization of the State.²⁸ The latter point is contradicted by the fact that the Senate as a chamber of territorial representation still today takes the provinces as its unit, so that the communities as such hardly take part in the country’s political course (Pérez Royo 2015, 125, 129). In any case, Catalonia, the Basque Country, Galicia and Andalusia accepted the reinforced autonomy route. The remaining communities were set up later according to a different procedure.

In the following years, and up to 1983, different Statutes of Autonomy were approved. Understanding the hybrid nature that these statutes have in the Spanish constitutional order reveals one of the catalysts of the current Catalan conflict. Thus, I allow myself the liberty of reproducing here a text that can be accessed on the webpage of the Spanish Congress, which explains Spanish constitutional order, saying that, “the Statute of Autonomy constitutes the norm that links the State and autonomous order in a hybrid formula since, on the one hand, it is, according to article 147.1 of the Constitution, the basic institutional norm of the Community and, on the other, when approved by an organic law, it is part of the state order”. The text continues to specify that the Statute “is not a Constitution in the proper sense of the term because it is not born of an original constituent power, which territories that are constituted as Autonomous Communities lack, but rather owes its existence to its recognition by the State. The Constitutional Court demonstrated this point in Ruling 4/1981, noting

²⁶ A term that Miquel Roca apparently introduced in the text of the Constitution.

²⁷ Attributed to Prof. Manuel Clavero Arévalo.

²⁸ <https://www.lavanguardia.com/opinion/articulos/20110123/54105053431/asi-empezo-el-cafe-para-todos.html>

that the Statute of Autonomy is not an expression of sovereignty, but rather of autonomy, which refers to limited power. In effect, *autonomy is not sovereignty and since each territorial organization endowed with autonomy is a part of the whole, it is impossible for the principle of autonomy to be opposed to that of unity*; indeed, it is precisely within unity that autonomy takes on its true meaning... Therefore, the Statute of Autonomy... is the basic institutional norm within the terms of this Constitution... *Regarding the legal nature of the Statutes of Autonomy, it must be pointed out that this is a complex norm that cannot be confused with the organic law that passes them*".²⁹

Between 1980 and 2003, under Jordi Pujol's Presidency, Catalonia developed self-government in accordance with its specific Statute, and expanded its competences according to the provisions of the Constitution. Some have mentioned that Pujol, president of the Democratic Convergence of Catalonia, deftly maintained the dual soul of traditional Catalanism: on the one hand, a nationalist tendency, but, on the other, the desire to participate in the governance of Spain (Piqué, 2017, 283). He especially expressed the latter desire with the *Majestic Pact* with José María Aznar, President of the Spanish Government between 1996 and 2000, whose Popular Party then had a simple majority in Congress, and therefore needed Catalan support to legislate. Something similar also happened with the previous government, presided over by the socialist Felipe González. But in his second term, from 2000 to 2004, Aznar's party won elections with an absolute majority, which meant that he did not need to work with the Catalans to carry out his initiatives in Congress. This circumstance may explain the policy turn towards greater centralization, which in addition to the concentration of economic power in Madrid (López Burniol 2017, 208), on the rise since the 1980s, was met with some uneasiness in Catalonia. Perhaps here we can locate the start of Pujol's changing discourse towards an openly more nationalist one, something that caught the attention of Henry Kamen.³⁰ In any case, Pujol's retirement from active politics in 2003 gave a new ruling class the keys to his party, which, with Artur Mas at the helm, openly evolved towards pro-independence positions (Piqué, 2017, 286).

²⁹ <http://www.congreso.es/consti/constitucion/indice/sinopsis/sinopsis.jsp?art=147&tipo=2>

³⁰ Kamen contrasts Pujol's praise of Feliu de la Peña in 1983 as a model for everyone "who wants to build a solid and progressive Catalonia" with his stance years later, saying, "he is no longer a reference point for Catalonia", possibly, as Kamen conjectures, because Feliu de la Peña felt both Catalan and Spanish at the same time.

In addition, despite winning the 2004 elections, Artur Mas could not form a government majority on his own, and, instead, accepted a *Generalitat* government formed by a left-leaning coalition and chaired by the socialist Pasqual Maragall.³¹ It was then, at the beginning of 2004, when the Catalan Parliament began the Reform of its Autonomous Statute, a tortuous process, in the course of which political positions were radicalized (De Carreras 2017, 108).

According to Ferrán Requejo, this reform was initiated “in order to obtain three basic objectives: to increase the symbolic and political recognition of Catalonia as a differentiated national reality, to increase and better protect the self-government of Catalan institutions, and to improve the deficient and onerous system of financing for which Catalonia maintained, after inter-territorial transfers, a fiscal deficit of around 7-9% of its GDP” (Requejo 2007, 123-124). Both discussions on the national reality of Catalonia and the calculation of the fiscal deficit quickly turned into heated debates, which, far from ending with the approval of the Statute in 2006, have continued beyond 2010, the year in which a sentence from the Constitutional Court declared fourteen articles and additional dispositions of the Statute unconstitutional, other twenty-seven were submitted to the Court interpretation, and the Preamble was declared without juridical effect. This ruling can be considered, at least in the eyes of public opinion, as a trigger of the recent crisis, which is why we must refer to this question in some detail.

Statute reform and Constitutional Court ruling 31/2010

In principle, any reform of the statutes of the communities that agreed to fast-track autonomy must be initiated and approved in the parliament of the community; then it goes to the Congress of Deputies and, once approved in Congress it is submitted to referendum in the community of origin. The Catalan Parliament initiated the reform of its Statute at the beginning of 2004, with the Socialist Pasquall Maragall as President of the *Generalitat*. A few months later, the socialist party of Jose Luis Rodríguez Zapatero won the 2004 general elections; during his electoral campaign, Zapatero had promised to approve the Statute as it came out of the Catalan Parliament.

³¹ Maragall was appointment president as a result of the “Tinell Pact” between the Socialist Party of Catalonia, Republican Esquerra of Catalonia, and the Catalonia Green Initiative – Esquerra Unida i Alternativa; this pact left CIU president Artur Mas and his government out despite his success in the elections.

“To prepare the text, a broad session was formed, composed of four representatives from each parliamentary group, for a total of 20. After some very confusing initial debates, the Institut d’Estudis Autònoms (IEA) sent them a first partial draft as a basis for discussing reform and the session adopted it...”. According to Professor Eliseo Aja (2014, 74–75), the method was not particularly suitable, and the process lacked necessary political leadership, which resulted in the progressive radicalization of positions conveyed by the parties that fought for the leadership of the Catalan cause – Esquerra Republicana (ERC) and Convergència i Unió (CiU). All this was reflected in the text brought to Parliament: noteworthy for its length and complexity, the text incorporated several new sections, among them a very long one dedicated to regulating the relations of the *Generalitat* with the State, with other Autonomous Communities and with the EU.

From a technical point of view, “the most striking novelty is this fragmentation of competencies to improve their success in a possible power struggle... a technique designed to address conflicts of power before the Constitutional Court, rather than to govern. That’s why we talk about ‘blindaje de competencias’” (Aja 2014, 78). This was one of the points later declared unconstitutional in the Constitutional Court ruling, not so much because of an unwillingness to clarify the competences of the State and Autonomous Communities – an aspect on which there is considerable consensus³² – but because the definition of said competences does not correspond to the Statute, but to the Constitution, which is the higher norm.

Another conflicting section relates to judicial power in Catalonia because the Statute seemed to mandate that the Courts should reform the judicial power’s organic law (Aja, 2014, 79), something that also exceeds its powers. Likewise, Catalonia requested a tax regime similar to the one that the Basque Country has for historical reasons, and that was recognized in the Constitution of 1978.

However, the most striking part is perhaps the philosophy that inspires the Preamble and the preliminary title, in which Catalonia as a nation is understood as the “axis of the Catalonia–Spain relationship”, appealing to historical rights as the basis for developing the different proposed powers.

³² On this point, I refer back to the document prepared by professors of constitutional and administrative law presented in December 2017 at the Royal Academy of Political Science under the title, “Veinte propuestas para la Reforma de la Constitución” (Twenty proposal for Constitutional reform).

Debates took place in the Parliament of Catalonia during July 2005, but the differences between the tripartite in government and *Convergència i Unió* regarding education, local regime, historical rights and financing did not prove viable. On September 19, 2005, President Zapatero met with the leader of CiU, Artur Mas, without whose votes the process could not move forward and, on September 30, 2005, the Statute was approved in the Catalan Parliament, although with votes against it from the Popular Party: its leader in Catalonia, Josep Piqué, considered the new Statute a move to alter the nature of the State and “move Catalonia away from Spain”. This point of view found echo in a January 2006 article written by the historian José Álvarez Junco in *El País* newspaper, with the title “Cataluña vista desde España” (Catalonia seen from Spain.) In it, Álvarez Junco noted that, by speaking of the European Union as Catalonia’s “political and geographical reference space without mentioning Spain even as an intermediate step...”, the Statute “distills a will to ignore Spain, if not certain aversion”, which is why it should not be surprising “that those who have a deep sentimental bond with Spain take this as an affront”.³³ The emotional tone in public opinion rose by the day. Significantly, around the same time, a new political party began to take shape, *Ciutadans*, which some university professors and Catalan professionals promoted, declaring themselves opposed to the “imposition of Catalan nationalism”. In November 2005, the Congress in Madrid admitted the Statute. Conflicting questions immediately surfaced. As Requejo (2007, 125) recalls, Rodríguez Zapatero announced an effort to amend the text so that the PSOE could accept it, “retracting, therefore, the promise he made during the Catalan electoral campaign of 2003”. Public opinion was radicalized. When it seemed impossible to continue the process, on January 21, 2006, Mas and Zapatero reached a new agreement. They resolved to move the term “nation” and mention of historical rights to the Preamble, which lacks juridical enforceability, and to commit a minimum of state funds to Catalonia (Aja 2014, 81).³⁴ However, ERC did

³³ https://elpais.com/diario/2006/01/15/opinion/1137279610_850215.html

³⁴ Requejo (2007, 126–7) details the economic aspects: “Catalonia will receive 50% of its income tax (until then it received 33%), 50% VAT (35%) and 58% of excise taxes on alcohol, fuel and tobacco (40%), but without participating in the corporate tax scheme. It is not clear, however, how much overall financing Catalonia will receive with the new statutory text, since increased percentages will be partially compensated by the reduction or elimination of transfers from the ‘sufficiency fund’, as well as subsequent agreements of a multilateral nature. In order to further alleviate Catalonia’s financing deficit... the State guarantees a volume of investments for seven years that matches the

not adhere to this pact. As a result, it abandoned tripartite government in Catalonia. The June 18 referendum, requesting the people's approval of the Statute, had just a 48.8% participation rate, of which 73.9% voted in favor, 20.7% against, and 5.3% cast a protest vote.

The Statute had been approved, but with reduced participation, and at the expense of losing a partner in the government. President Maragall announced shortly afterwards that he would not run for reelection. Meanwhile, the Popular Party filed an unconstitutionality appeal before the Supreme Court, which was followed by other similar initiatives from other autonomous communities.³⁵ In particular, this appeal was based on the following arguments: 1) The use of the term nation, since the only nation foreseen in the Constitution is Spain; 2) The treatment granted to the Catalan language, conceived of as an obligation imposed on all those living in Catalonia; 3) The establishment of different rights and duties for the citizens of Catalonia; 4) The regulation of a judicial body proper to Catalonia, which fractures the unity of Spain's judicial branch and independence; 5) A distribution of powers between the *Generalitat* and the State that leaves the State as an afterthought within Catalonia; 6) The principle of bilateralism – making it necessary to negotiate with the *Generalitat* the powers that belong to the State; 7) The regulation of Catalonia's own international relations; 8) The financing system, since it opens the possibility of an inter-regional framework that lacks solidarity and that affects the quality, breadth and equality of the benefits to which all Spaniards have the right.³⁶ A ruling from the Constitutional Court took four years. When it came, on June 28, 2010, after a controversial process in which several magistrates had been recused,³⁷ social polarization was clear. In August 2008 Jordi Pujol, whose moral authority was still intact (various corruption cases had not yet come to light), published an article in *La Vanguardia*, entitled “Juicio severo” (A harsh trial), expressing his indignation at facts that, in his opinion, revealed the rest of Spain's resentment and hostility towards Catalonia.³⁸ All this contributed to a fertile space for polarization and confrontation when the

Catalan contribution to the Spanish GDP (18.5%), but it does not establish a calculation system or what we should understand for ‘infrastructures’”.

³⁵ https://elpais.com/diario/2006/08/01/espana/1154383213_850215.html

³⁶ https://elpais.com/elpais/2006/07/31/actualidad/1154333819_850215.html;
https://es.wikipedia.org/wiki/Estatuto_de_Autonom%C3%ADa_de_Catalu%C3%B1a_de_2006#cite_ref-23

³⁷ https://elpais.com/elpais/2010/06/22/actualidad/1277194637_850215.html

³⁸ <https://www.lavanguardia.com/politica/20070801/53381102262/juicio-severo.html>

ruling was issued: “Madrid humiliated Catalonia”. An emotional reading of the events prevailed over its more technical aspects. For anyone interested in the history of Catalonia, it would not have been difficult to predict a new episode of collective *rauxa*.³⁹

Although it is imperative to comply with a court ruling, it can be noted that, from a technical point of view, this ruling had some anomalies and other clearly improvable aspects, not only from formal and practical points of view, but also in terms of its content (Aja, 2014, 92–93). The main anomaly lay in the fact that the Court ruled on a Statute approved by organic law in the Cortes Generales – the highest sovereign body – and already subject to a binding referendum. The anomaly herein derives in part from the aforementioned hybrid character of the Statutes – on the one hand, the result of a pact between the central government and the Spanish Cortes with the autonomous governments and their parliaments and, on the other, approved by an organic law: although organic laws may be subject to review by the Constitutional Court, it is not clear that the same should happen with Statutes, insofar as they are not mere organic laws.⁴⁰ At least this is one ambiguity that, according to qualified jurists,⁴¹ makes reform of the current constitutional order advisable.

The political significance of this apparently technical point is clear if we bear in mind that a few months before the ruling was made public, twelve Catalan newspapers published the same editorial, with the significant title

³⁹ According to Vicens i Vives (2012, 233), “being *arrauxat* means, precisely, lacking in *seny* (common sense), obeying emotional impulses, acting according to rash decisions. In these circumstances, we let ourselves be carried away by passion, without weighing the realities involved or measuring their consequences... *Rauxa* is not a fit of madness... but a foregoing of a measured spirit in the face of limitless fanaticism and passion. *Rauxa* is the psychological basis of an all or nothing mentality, a denial of the ideal of compromise and a pact dictated by the *seny* collective”.

⁴⁰ “It was, in the words of several Spanish constitutionalists, a ‘juridical coup d’etat’ since it granted the Constitutional Court the category of a third chamber that could correct what the Cortes, the highest sovereign authority, had approved. The autonomous statutes are the fruit of a political pact between the central government and the Spanish Cortes with the autonomous governments and their parliaments and are then voted on by the public. They cannot be corrected by the Constitutional Court since they are not in fact organic laws, but rather are of a different nature – a superior political pact. The PP biasedly filled the interpretive gap on this issue in the Constitution itself and the Zapatero government was complicit in the matter”. De Riquer, “La transición española”.

⁴¹ See Document on “Veinte propuestas para reforma de la Constitución”.

“La dignidad de Catalunya”⁴² that warned of how the sentence could affect many Catalans’ attitudes toward Spain. The situation was made worse not so much because articles were declared unconstitutional – in reality very few were – but because of the Preamble’s tone, which offended the nationalist sentiment of many Catalans. With this mood in place, September 11, 2012, the national holiday of Catalonia, became an occasion for demanding independence. From this moment on, political events sped up: on September 20, the then president of the *Generalitat*, Artur Mas, met with Rajoy in order to request a fiscal pact for Catalonia;⁴³ on September 25–27, 2012 the Catalan government announced the end of the legislature and called for elections to Parliament for the month of November; on September 27, the Parliament of Catalonia approved Resolution 742/IX, which affirms “the need for the people of Catalonia to freely and democratically determine their collective future”, urging the government resulting from the impending elections to convene consultations (Ridao 2014). In October, President Mas once again met with President Rajoy to discuss several issues, including the issue of regional financing, but he modified his agenda at the last minute and only addressed one topic, namely the need to hold a referendum on the independence of Catalonia. In the elections held on November 25, Mas’ party lost 12 deputies, but he still got support from ERC for the investiture.

On December 19, both parties signed an “Agreement on national transition and to guarantee the parliamentary stability of the Government of Catalonia”. There, they drew up a road map that was meant to lead to the holding of a vote “so that the people of Catalonia can pronounce itself on the possibility of Catalonia becoming a State within the European framework”. That referendum took place in 2014. Although it had little participation and was deemed unconstitutional, the road map that the nationalist parties – CiU and ERC – agreed upon continued to guide the independence movement until the events of October 2017.

The extent to which this road map was based on a plan developed when Jordi Pujol still held the Presidency of the *Generalitat* goes beyond the scope of this analysis. I am not sure that it adds anything substantial to the explanation of the resurgence of independence, since the *Generalitat’s* educational and cultural policies have always been manifest. Looking back

⁴² https://elpais.com/elpais/2009/11/26/actualidad/1259227017_850215.html

⁴³ <https://www.lavanguardia.com/politica/20120920/54350608838/reunion-rajoy-mas-acaba-sin-acuerdo-pacto-fiscal.html>

it is more perplexing that, during the 1979 negotiations of the first Statute, Catalonia was offered an economic deal similar to the Basque one and rejected it;⁴⁴ it is perplexing because regional funding had always represented one of the most contentious points in the relationship between Catalonia and the State, and was one of the demands that Mas presented to Rajoy on September 20, 2012.

4. Fiscal balance and regional financing

The 1980 Organic Law on the Financing of Autonomous Communities (LOFCA) and the Statute of each Autonomous Community, in coordination with the State Treasury, regulates the regional financing system in Spain in an effort to avoid economic and fiscal privileges, ensure solidarity between regions and sufficient resources for the exercise of regional competences. Certainly, as Lopez Casasnovas (2015, 147–8) points out, this is a source of conflict, since the LOFCA often “overrides statutory provisions with the idea that the Constitution (Article 157.3) calls for an organic law that coordinates regional financing”, thus limiting *de facto* financial autonomy. This did not prevent the law itself, in its additional provisions, from recognizing a special situation for several territories, namely the Basque Country and Navarra, whose tax regime has historical precedents recognized in the 1978 Constitution, and, on the other hand, the Canary Islands, Ceuta and Melilla. With these caveats, the remaining Autonomous Communities, including Catalonia, are financed according to a common system.

For years, the system was characterized by highly decentralized spending⁴⁵ and minimal decentralization of revenue collection: the State was the main revenue collector, which meant that, in practice, the Communities

⁴⁴ https://elpais.com/ccaa/2012/04/17/catalunya/1334691927_720157.html; <https://www.diariocritico.com/noticia/448149/nacional/cuando-pujol-le-dijo-a-garaikoetxea-que-cataluna-no-queria-un-concierto-como-el-vasco-o-el-navarro.html>;

<https://www.elperiodico.com/es/politica/20170507/catalunya-rechazo-concierto-economico-cupo-vasco-1980-6020846>;

<https://www.lavanguardia.com/politica/20170507/422339102883/financiacion-comunidades.html>.

A similar possibility seemed to have surfaced in 83: <https://extraconfidencial.com/noticias/jordi-pujol-se-nego-en-1983-a-negociar-un-concierto-economico-como-el-vasco-el-mismo-que-ahora-le-pide-mas-a-rajoy/>

⁴⁵ In terms of healthcare, which is a fundamental part of autonomous communities’ budgets, decentralization dates back to 1982, with transfers to Catalonia (López Casasnovas, 2015, 136, 141).

were mainly financed through State transfers.⁴⁶ In 2001, reforms took place that increased communities' powers in terms of collection and represented a path toward fiscal co-responsibility, but differences among some communities also came to light, provoking a debate over whether inter-territorial redistribution funds should continue to cover all community expenses equally. Thus, in the 2009 reform, the difference between each community's overall financing needs and their needs associated with essential public services, such as health, education and social services, was introduced for the first time (León 2015, 153). At present, the Autonomous Communities' taxing power is comparable to that of German *Länders*, but the Communities' participation in that tax revenue does not actually respond "to a constitutional pact, but rather to a state law that is modifiable whenever necessary" (López Casanovas 2015, 149).

In fact, the financing system is commonly criticized for its lack of transparency since, beyond the annual quantification of per capita income, the provision of basic public services, etc. that the National Institute of Statistics carries out in coordination with the corresponding bodies in each community, determining each community's needs, is subject to bilateral political negotiation that considers more than just the number of inhab-

⁴⁶ "To calculate the expenditure needs of the regions, their services are split into three (common services, health and social services). For the common services, there is a fixed amount for each CA (39.57 million) and then the distribution of funds is based on the following weighed variables: Population (94%), Surface Area (4.2%), Dispersion (1.2%), Insularity (0.6%). There are additional funds: relative income (for CA with an income under average) and funds to compensate a low population density (Aragon and Extremadura). And finally, a series of modulation rules, which are a series of adjustments and corrections to favour or compensate some CA (those of per capita income under 82% of average) and those of high dispersion (Asturias, Castile-Leon and Galicia). Health funds are distributed according to the protected population and the percentage of population older than 65 years. And finally, the variable to distribute social services funds is based on population older than 65 years. To finance these needs, a simple equation holds: needs=taxes transferred +/- Sufficiency Fund; where the taxes transferred are the capital assets tax, the inheritance and donations tax, the transfer tax, 33% of income tax, 35% of VAT, 40% special taxes (alcohol, oil tobacco), 100% taxes on transport, 100% taxes on electricity. The sufficiency fund is an adjustment mechanism. If the taxes transferred are larger than the needs fixed, the autonomous community has to transfer this fund (the fund is negative), otherwise it is positive and the autonomous community receives a transfer in addition to the taxes. As a result of these mechanisms, the Spanish regional transfer system over-equalizes. Thus, autonomous communities such as Catalonia with more fiscal capacity end up with less expenditure per capita than the majority of autonomous communities" (Paluzie 2010, 357-370, 364-5).

itants: for example, it considers population dispersion or insularity (León 2015, 54).

On the other hand, the existence of a dual tax regime – regional and common – has become a source of controversy over the years because the per capita income of these communities is significantly higher than that of the communities that follow the common regime; in addition, according to widespread opinion, those same regions do not contribute proportionally to inter-territorial redistribution. Although most Spanish parliamentarians do not believe that the regional regime should extend to the rest of the territory, comparison with this regime has motivated request for deeper reform of the system. In this claim, Catalonia has been a forerunner, demanding greater autonomy to collect and manage its own taxes.

The economic crisis exacerbated the situation. In 2011, Artur Mas intensified his criticism of the regional financing model, arguing that his community's contribution to the State coffers and redistribution funds was greater than what Catalonia received from the State to finance its expenses. In April of the same year, the then Eurodeputy for ERC Oriol Junqueras sent a letter to all eurodeputies, asking for help to put pressure on the Spanish State to put an end to the fiscal deficit and economic suffocation in Catalonia (Borrell, & Llorach, 2015, 65–66).

This confused debate on the regional financing model with the need for fiscal balance, two issues that must be distinguished. While the former refers to the income available to regions in their budgets to finance their services, which the central administration transfers, in addition to revenue that regional governments themselves collect (León 2015, 58–59),⁴⁷ fiscal balance is nothing more than an accounting instrument, subject to notable methodological limitations,⁴⁸ designed to measure financial flows. The na-

⁴⁷ According to Sandra León (2015, 240) “even if regional financing were reformed, it would not significantly impact the results of fiscal balance in the communities. Balancing the scales mainly depends on the effect of the Central Administration's redistributive policies in the communities (pensions and unemployment insurance) and, to a lesser extent, on the investments that the central government makes in the autonomous communities (for example, in infrastructures)”.

⁴⁸ “The first methodological difficulty is found in data selection since all and only the income and expenses with regional scope should be taken into consideration, which implies – on the other hand – the capacity to measure this scope. From this perspective, any rigorous analysis... must begin by distinguishing personal capital flows from territorial ones (...) But even geographical distribution of territory-based spending is not always indicative of interregional flows, like when it comes to important items such as education and health expenditures, whose volume does not depend on

ture of fiscal balances lends itself to endless debate unless there is an initial agreement regarding what is to be measured. For this reason, López-Casasnovas⁴⁹ argues that the way fiscal balances are used is matter for a political debate, not for a technical one. Basically, fiscal balance will say one thing if its purpose is to “identify the ultimate recipient of the expenditures and benefits of the State’s sovereign and unique fiscal performance”, as Uriel Jiménez and Barberán Ortí (2007, 17) have it, and it will say another if its purpose is “to assess the fiscal remnant if the expenditure that directly impacts its territory (monetary flows) were to be assumed by Catalonia from a collection established on its own taxable base”. The possibility of raising this question depends, once again, on how we understand the articulation of functions relevant to national sovereignty and autonomous communities on tax matter.⁵⁰

Territorializing fiscal flows, as Catalonia intends, is technically possible; in fact, fiscal calculation presents more difficulties when the balance is understood “in terms of the final incidence of flows that affect the well-being of individuals”. Emphasizing fiscal balance in this way could lead to forgetting that ultimately it is not the territories, but the citizens who contribute to sustain public expenditures according to their economic capacity, and also that they are the first recipients of redistributive policies;⁵¹ nevertheless, it is also true that “plural states contribute to more than one jurisdiction (the one that legitimately represents citizens in said territories)”.⁵²

On this basis, the question that is genuinely relevant from the point of view of the communities – in this case, Catalonia – is whether the collec-

the number of inhabitants in a territory, but rather on the structure and composition of the territory’s population. (...) Another important limitation in this analysis is the need to differentiate the territorial impact of income and expenditure and its territorial occurrence. (...) Incidence does not just depend on the initial impact of income or public spending, but also on the activities developed by those who are affected by it in the first person, activities under which the benefit or burden is transferred to other people who are affected by public financial activity”. Fernández Miranda, Alfonso, unpublished text provided by Eugenio Simón.

⁴⁹ López Casasnovas, https://elpais.com/elpais/2013/06/14/opinion/1371225461_429819.html

⁵⁰ For an excellent summary of this issue see Aja (2014, 266–271).

⁵¹ López Casasnovas (2015, 142–3) highlights the frequent errors that are committed when interpreting data on healthcare expenditures in the different regions as inequitable.

⁵² López Casasnovas, https://elpais.com/elpais/2013/06/14/opinion/1371225461_429819.html

tion of taxes by the State, instead of by the regional government, reduces the responsible and efficient administration of those resources, and, after redistributive transfers, creates a negative balance in the community of origin, violating what is known as the “principle of ordinality”; that is, the community that contributes the most not be harmed in the final redistribution. Thus raised, the problem of intergovernmental financial relations is common to all countries with a federal or semi-federal fiscal structure. Despite its complexity and opacity, the financing system of Spain is not significantly different from that of other countries with a federal regime, both in theory and in practice: “In most countries... the spending needs of regional governments are usually greater than what they collect through taxes” (León 2015, 36).

The inevitable discrepancies and negotiations aimed at solving specific problems or introducing structural reforms in the financing system would not in themselves justify the beginning of a secessionist process without other aspects of a cultural, juridical and, above all, emotional nature, that, instrumentalized politically, have led to the present moment.

5. Emotions and stories

The 2010 ruling on the Statute generated an emotional climate that added to concern about the economic crisis. In this context, the proposal for an independent Catalonia emerged. Sociologist Marina Subirats wondered in a 2014 article why it was this kind of project that seized the Catalan electorate at that time. Subirats’ qualified answer to this question is backed by her monumental work (2012) on the social evolution of Barcelona and its metropolitan area between the first years of democracy and 2006. She considers the confluence of political and sociological factors, including, on the one hand, the problems in the CiU party, which was split on how to reformulate its strategy and “strained by austerity measures in social areas and by the growing shadow looming over the Pujol family”.⁵³ On the other hand, a “new” social class was emerging that was receptive to nationalist ideas, namely a hybrid that came together in the first years of

⁵³ Subirats, M. “El desafío imposible”, November 2017. In this article, Subirats speaks of the “CIU and ERC’s encouragement of two civil society organizations that have led the independence movement during all these years is evident, although the related details have never been made public”, that is, of ANC and Omnium Cultural, which took center stage in Barcelona while 15M grew in prominence in Madrid, redirecting social discontent towards the issue of independence.

democracy made up of people from the old working class, young people from the professional middle class educated in the ideology of the left, as well as of middle class, small business owners motivated more by identity issues than by social convictions. It was a “young, educated class, mostly of Catalan origin” that would have spread the illusion of a “society of the middle classes” throughout the social body and that, with the advent of the crisis, was suddenly confronted “with the reality of the lack of jobs and the frustration of their great expectations, created precisely during a period of economic growth”.

According to Subirats, “this group is, in large part, behind the pro-independence political project and stands as its spokesperson in light of the absence of a national bourgeoisie, which is on its way out and instead has emerged as a transnational corporate class increasingly unaccustomed to strong territorial ties”.⁵⁴ While in other places frustration with the crisis led to a revival of left-leaning utopias, in Catalonia, politicians channeled it towards Catalan independence. In Subirats’ words, it seemed an “available utopia” with “roots in old and new grievances, in defeats, frustrated attempts at regeneration, offenses and misunderstandings. Yet its primary strength is based in a contemporary need for hope. In this sense, the movement is more visceral than doctrinaire, calling upon all to join in; it is not a question of rebuilding an old Mediterranean empire or affirming a national essence, but of jumping out of a drifting ship with the hope that, in a small boat, it will be easier to find the path to Ithaca, or, failing that, directly to Eden”.⁵⁵ From a sociological point of view, it is not surprising that the sectors most present in the independence movement correspond to those that could be considered the losers of globalization, namely “the middle class of local origin and the working class in rural Catalonia”. If the working class is often the biggest loser during great changes in capital, the striking move here is that conservative Catalanism shifted towards nationalist positions. But this is explained because the Catalan bourgeoisie, which had traditionally been the economic engine of Spain and had thus found a way to defend its interests in Madrid, gradually lost its prominence in national politics because of the concentration of political and economic power in the capital, a process that has grown with the advance of globalization: the economic agents that now have the most weight in national politics are no longer linked to any particular territory. In other words, despite its relative

⁵⁴ Subirats, M., “Una utopía disponible”, *La Maleta de Portbou*, julio-agosto, n. 6, 2014.

⁵⁵ Subirats, M., “Una utopía disponible”.

importance, the political and economic weight of Catalonia in Spanish politics has decreased compared with its importance during Franco's time. These identity claims, in this case, are not a simple product of nostalgia; rather, they conceal a loss of power.

All this does not prevent social groups like the local middle class and the working class in rural Catalonia from converging in the emotional sphere for reasons that we neglect at our peril. Subirats (2018) reflects on the available data and concludes that beyond the various motivations that have led some to favor pro-independence political options, "there is a common element, a feeling of humiliation, enormous discontent with the central government and how the PP, as well as the PSOE, have used Catalonia to group their voters and obtain electoral victories. In addition, there is perhaps a more general discontent that comes from the crisis, a lack of progressive perspectives and the social decline that has manifested itself in recent years".

However, these social problems barely took up space in initial Catalan political debate, which has been monopolized by the issue of independence in a way that perplexes the external observer, as if breaking with Spain would bring with it the solution to all problems and has no associated disadvantages of any kind. While reality always presents fissures, which call for the work of a political reason familiar with contingencies, the independence story is presented with the consistency of self-referential ideologies and quasi-metaphysical ambition.

6. Final reflections

It is not easy to constructively conclude analysis of the Catalan independence movement because construction, in this case, is a political matter, and politics requires a plurality of voices. It is additionally difficult because any process of national construction or deconstruction deliberates on the nature of the political subject (Pérez Royo 2015, 14), i.e. it asks what turns a group of people into *a people*. This question, however, cannot find solution in alleged national essences prior to the work of political reason, for this work precisely consists in weaving a space of coexistence in which real people, that is, people with different trajectories and sensibilities and marked by a variety of pre-political ties, can coexist in justice and peace. Territorial diversity should not be an obstacle to this if the people involved exercise sufficient political intelligence and will. That is to say, if they want to live together.

Although there are historical and cultural reasons that support the uniqueness of the Catalan people, it is also true that a large part of that history is unintelligible apart from Spain. Combining both aspects may lend toward proposals for constitutional reform in terms of federalism,⁵⁶ but those prospects are not at all encouraging at the moment. For this, in effect, we need a political class with a national vision that is capable of leading what López Burniol (2017, 255–256) has described as a “transactional dialogue” in which, on the basis of respect for the facts, the law, and the interlocutors involved, “both parties agree to make reciprocal concessions to reach a viable agreement, even if it does not fully satisfy either party. A dialogue of this kind is only possible if both parties avoid negative words, gestures and attitudes. This is not about defeating an enemy because Spain and Catalonia cannot be considered enemies, however much some insist on presenting them as such. Rather, it is about agreeing with a political adversary that one cannot do without”. Even though initiating this dialogue is responsibility of the side with greater authority and resources its culmination is not possible without the help of the people as a whole. Both inside and outside of Catalonia, we must calm our spirits so that reason may flow and we must openly recognize that, if, on the one hand, an independent Catalonia is not viable today, on the other hand, Spain cannot afford a Catalonia in perpetual upheaval.

Regrettably, many people, within and outside of Catalonia, seem to be hoping to take political advantage of this conflict, despite the fact that, in a culturally plural international context, marked by the challenge of managing globalization and its consequences, the true imperative is found in working to create political alliances that are regional rather than state-driven, collaborating to civilize the economy and place it at the service of the people. As long as emotion continues to prevail in public debate, and politicians remain trapped in their own short-term objectives, the words with which the French Hispanist Joseph Pérez closed his book *Entender la historia de España* seem to fit and even connect with Ortega’s words at the beginning of this chapter:

“Something is breaking in Spain. A nation has a past, as well as a will to continue life in common. Yet, nations are not eternal: they are born and die like all living organisms. In the same way that, at the end of the seventeenth century, the Portuguese ceased to feel Spanish, it is possible

⁵⁶ https://cadenaser.com/ser/2013/07/06/espana/1373068224_850215.html

that a day will come when most Catalans and Basques will no longer feel Spanish. Spain would then be separated from territories with which it has had a long common history. It would cease to be the Spain that it has been for centuries, to become another Spain that we cannot yet describe". The same can be said of Catalonia.

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NATIONALISM VERSUS SOLIDARITY. A NECESSARY CONFLICT?

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Humanity, with all the fascination arising from its potential, its achievements and outstanding results through the ages, must, in fairness, acknowledge that its works and the results of these works have occurred, as might be expected, cyclically.

So much so that dazzlingly brilliant cycles in terms of knowledge, scientific and technological breakthroughs, profundity of thinking... have followed periods of obscurity, regression as regards material matters and the inherently human aspect of spirituality, periods which have plunged all this potential, inherent to man, into the depths of sterility, sadness and cowardice in the face of social challenge.

More often than not, an evolutionary interpretation cannot be applied to these cyclical behaviours, but rather that they come about through revolutions which, breaking away from the existing structure, construct a new structure, new limits, new principles, all of these *ad experimentum*: for the better or for the worse of humanity.

1. The scope of the problem

Now that the 20th century has ended and the 21st has begun, in terms of culture, thinking, political and social doctrine, tragic wars have broken out and so too have other conflicts with less physical violence. These new forms of rupture, featuring intellectual violence capable of changing the natural course of events, through the inoculation of ideas, manners and even habits, in fact cause, perhaps without blood, real social transformation; and also, *ad experimentum*.

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All these movements – we are thinking of the rebellion of the “beat” generation, the hippy movement and even the revolution represented by the May 1968 events in France – have had some ingredients with the capacity to charm. The last “pacific” social rebellion movement in Spain is known as the movement of *Los indignados 15-M* (due to the fact that it was created on May 15, 2011), which resulted in mobilisation against the established systems on October 15 of the same year. The overtones of the movement are clearly authoritarian – Marxist, fascist, Nazi, anti-European.

The doctrine of the Church is quite expressive and constant with respect to the dangers of man when he subscribes to an ideology, losing his freedom and, with it, the capacity for discernment. Warnings referring to the dangers of a long list of ideologies – theoretical or practical, doctrinal or factual – which we must bear in mind so as not to find ourselves, consciously or subconsciously, absorbed by their intrinsic political tendency. The dangers are many. It is sufficient to remember those associated with materialism, consumerism, hedonism, agnosticism, nihilism, relativism, laicism, racism, fundamentalism, messianism, totalitarianism, nationalism... on which the Popes have warned because they denigrate and diminish the human person, separating him from the path wished for by God, the path for which he was ultimately created.

Of the aforementioned terms, we shall allow ourselves to isolate one which is worth considering in greater detail, because it constitutes the essential part of this work. We are, naturally, referring to *nationalism*, that in Spain appears and disappears sequentially, in relation with other variables such as, for example, the weakness of central government.

The ambiguity of the term “nationalism”, at least in colloquial language, makes it advisable for us to make some reference to it. The Dictionary of the Royal Spanish Academy (Real Academia Española – RAE) – given that we are referring to Catalan nationalism – defines nationalism as “1. Fervent feeling of belonging to a nation, and identification with its reality and history. 2. Ideology of a people who, affirming their status as a nation, aspire to the constitution of the nation as a State”.¹

The first of the two definitions provided by the Dictionary of the Spanish Language should not generate conflicts with the solidarity of a people, united by this sense of belonging to their nation and engagement with its values and history. Every member, without exception, feels himself to

¹ Real Academia Española *Diccionario de la Lengua Española*. Actualización de 2017 de la vigésimo tercera edición. Real Academia Española. Madrid 2014.

be a part of the nation as such and, regardless of how profound this feeling might be, it does not prevent each of the remaining members of the community from feeling their belonging with identical profundity. Nonetheless, the fundamental question regarding this definition revolves around what determines that identity, which, at a historical point in time, enabled the application of the gentile term with which a people is identified, differentiating it from all other peoples on the globe.

Can a blood group – as suggested by the Basques – determine the elements of belonging to a human community? For others it will be the cultural legacy in abstract form, or continuity of collectively enrooted habits and customs, or simply the place in which one lives or the language in which one expresses oneself. Nonetheless, all this can exist without the members of a community feeling their identity in terms of their being and in the way of being. “A people is built by distinguishing itself from and asserting itself against others; and whether it goes on to acquire historic dimensions depends on its justified pretension to «be more» and not on its adherence to age-old ways of harvesting grain, of invoking the evil eye, or being less or more sober, suffering more or being prouder. It is not just psychological or external circumstances that give shape to a collective life, because what is decisive will always be the way in which the man positions himself in these circumstances, whether they be material or human”.²

It is, therefore, chimerical to speculate, as some historians do,³ on the Greek and Roman origin of the Catalans, given that the Greeks, with a well-documented commercial spirit, set up two ports in the northern Mediterranean of the Iberian Peninsula – Ampurias (*Emporion*) y Rosas (*Rhode*) – around 500 BC, and at the end of the third century BC in the case of the Romans. Current-day Catalans have nothing to do with those Greeks, in the same way that the Spain of today has nothing to do with the Roman Hispania. Hispania was exactly that, i.e., Roman, and, therefore, not Spanish.

In other words, being Spanish, Italian, French or German is not determined by a geographic factor, but rather by the fact of sharing in the first person and consciously forming part of an identified community, in addition to the gentile terms commonly used, due to a desire of belonging that

² Américo Castro *La realidad histórica de España*. Quinta edición renovada. Editorial Porrúa, S.A. México, 1973; p. 28.

³ *Vide*, Ferran Soldevila (text) and Josep Granyer (illustrations) *Història de Catalunya Il·lustrada*. Edicions Proa. Barcelona 1994, pp. 18-20.

is irrefutably supported by the historic lines that define such terms. For this reason, there is neither a Celtic Spain nor an Iberian Spain, in the same way that the Goths and Visigoths were not Spanish either. In the words of Américo Castro, it can be stated that “True Spain has been, what for me is, a splendid combination of humanity, made up of three castes simultaneously, based on the fact of the person being Christian, Moorish or Jewish, and divided... in three faiths, in three ambitious struggles, in a succession of agreements and ruptures”.⁴

This confluence of the three castes, conceived in its origin from the perspective of harmonic co-existence, more due to necessity than civic ideals would, sooner or later, lead to conflict between them. It was obvious that the three castes needed each other, if only due to, long before the term was used in economic doctrine, what much later would become known as division of labour. A division built on an incipient specialisation in the production tasks of towns belonging to each of the three castes. A necessity that would eventually stimulate co-existence rather than conflict. For this reason, what we now call Spain and its people, the Spaniards, are the continuity of those Christians who suffered persecution, marginalisation and humiliation in long-past eras. This and none other would be, with the briefest possible description, the process that would forge the people we now call, because they were and they are, Spanish.

Neither are we far removed from the temptation, very common amongst Spaniards, who prefer to ignore what Spain was, and its determinants in the construction of what Spain is today. Far from sterile grandeur, but also with the responsibility arising from the silences that scorn what many within and outside the nation ponder with enthusiasm, our reflection must focus on where the *raison d'être* of the Spaniard is to be found in its most complete dimension. “To attempt to suppress the past, adopting a head-in-the-sand attitude, is an inane and ineffective activity. To wish to recommence Spanish life starting from now, as if nothing had occurred previously, is another form of «scrambling» that only provides grounds for vain gesticulation...”.⁵

It is fair to acknowledge that, in current times, more than a few Spaniards can be included in this group which tries, at all times, to construct Spain from scratch. Perhaps they are not ignorant of the historical back-

⁴ Américo Castro *La realidad histórica de España*. Quinta edición renovada. Editorial Porrúa, S.A. México, 1973; p. 168.

⁵ Américo Castro *La realidad histórica de España*. Quinta edición renovada. Editorial Porrúa, S.A. México, 1973; p. 171.

ground but they disown it and deliberately ignore it, so as not to be attracted by, and much less be in admiration of, the achievements associated with it. “Spain was not something that possessed a proprietary, fixed existence on which fell the occasional «influence» of Islam, as if it were a «trend» or the result of life in «those times». Christian Spain «was made» while it incorporated and ingrained within its life, that which forced it to create its links with Muslimism and Judaism”.⁶

A struggle which had its origins in a profound recognition of the reality of the life of three peoples, three castes, each with its religious direction, with its transposition of faith to activities of a temporal order, coexisting in a difficult balance of interests which would put an end to the predominance of the Christian world. This is the Spain, and these are the Spaniards, that give sense to that Spanish nationalism, which, in a neutral and descriptive manner, appears in our language.

It is certainly true that if we speak of a *people who affirm their status as a nation*, this should not pose problems either of identity or exclusivity, because the subject is the people, comprehensive of all its members. The situation is quite different when we place ideology as the foremost distinguishing feature of a people, in which case, the ideological identification is the differentiating mark which divides, excluding those who do not belong from those who make up the ideological school or caste. The final expression of the definition is highly clarifying, by establishing the purpose of this national identification, which is none other than the aspiration to the *constitution of a State*, in other words, to segregate itself from the historical framework and the framework of belonging in which it finds itself in order to constitute a new independent State; like it or not.

This type of nationalism, that of the second definition, with special emphasis on the final expression, which, although not general, is by no means exceptional in current times, presents a great diversity of situations. So much so that it is not surprising that countries with a long national tradition are experiencing secessionist nationalism – also known as separatism – in the same way that they would experience it if, a decade previously, they had been absorbed or annexed by another nation of greater power.

In Spain, we are speaking of a nation, and a people, with at least five centuries of common history, language, customs and institutions, although within these there may be appreciable differences which do not contradict

⁶ Américo Castro *La realidad histórica de España*. Quinta edición renovada. Editorial Porrúa, S.A. México, 1973; p. 211.

the sense of community but, on the contrary, reaffirm it. With different levels of aggression and popular enthusiasm, we can speak of the cases, be they patent or latent, of Galicia, the Basque Country/Navarre (Euzkadi), Catalonia, more recently the Balearic Islands and perhaps, only perhaps, and to a lesser degree, Valencia. It may be asked if there is anything common in all these cases. Objectively, in all of these cases, albeit with different historical roots and intensity, there is a native language, in addition to Spanish or Castilian, which is the official language of all Spaniards.

The origin of this linguistic difference is far from being conceived as an instrument of differentiation. It is, rather, the logical result of a decadent evolution of the language that had characterised the culture and was used in the ordinary business of life, with great force and which had its heyday during the first four centuries of our era. Throughout this period, the Iberian Peninsula was an integral part of the Roman Empire. An empire which would undergo great changes with the introduction of Christianity.

From the linguistic perspective, Latin, at one time the undisputed language in both formal relations, as well as in legal and economic institutions, would begin to give rise to other romance languages, in such a way that, in the High Middle Ages – 8th to 11th centuries – “... languages derived from Latin were spoken throughout the Iberian Peninsula... But the cultured language continued to be Arabic or Latin, depending on the religion of the user”.⁷ What in principle should be considered natural wealth, for which God should be thanked, became, many centuries later, an aggressive element of differentiation, capable of annulling the sense of wealth intrinsic to it. A differentiation which is manifested in the desire to prevent the use of the official language of Spain, by all means possible, in order to foster the use of local languages, through what has become known as *positive discrimination* in favour of the native local language.

The enthusiasm that nationalism deposits in this matter gives rise to the creation of a history of the language that is far removed from the patent reality of its use. It is quite true that such languages have been used by the people in their respective geographical territories, but there is an enormous gulf between going from that point to trying to establish that these languages constitute the nucleus on which the history, culture, literature and even the character of the people is based.

⁷ Antonio Ubieto, “VI – Apogeo Medieval del Siglo XIII. Lenguas romances”. In Ubieto, Reglá, Jover, Seco *Introducción a la Historia de España*. Editorial Teide. Barcelona. Decimoséptima edición, 1987; p. 217.

2. History, real or imaginary, the cause or the basis for secessionism

We have not accepted, at least without further comment, the thesis of not a few, who believe they are in a position to state that, in Spain, history is not conceived as a collective work, in which the leading role belongs to the people of Spain themselves. It is, however, true that we find features which, frequently, induce us to contemplate the historical phenomenon in a close cause/effect relationship, with relevant persons who participated in it. We are accustomed to relating historical legacy with specific actors, as if we were dealing with personal, individualised works. The Discovery of the New World (1492), the defeat of the Invincible Spanish Armada at the hands of the British Navy (1588), or the rising of the Spanish people against the Napoleonic forces (1808–1814) – War of Independence – end up being singularised in a few physical persons, with well identified names.

Given this situation, it seems logical to speak of the individualistic character of the Spanish. An individualism that will accept facts that appear acceptable, positive or negative – depending on the person behind them. The same forcefulness that was implemented to repel the Napoleonic army is used to rebel against a law considered to be unfair, with one's personal criteria being used to determine the difference between fair and unfair. "Experience has taught us that in Spain, the observance of pragmatics and reformatory laws lasts a very short time; because any man makes it a matter of personal honour to contravene them, considering it a positive act of nobleness not to adhere to such holy laws, ordered in accordance with the most prudent, most learned and most serious senate in the world".⁸

Américo Castro provides a more precise insight into Spanish individualism, saying that: "When the Spaniard is branded individualistic, we do not normally think in terms of artistic or creative individualism. The Briton who believed in free competition, free trade and division of labour was individualistic. In the case of the Spanish, one thinks more in terms of rebellious rejection of any rules, without attempting to help a different rule to prevail; i.e., one thinks more in terms of a separatism of the person".⁹ Indeed, it should be seen as a form of rebellion and, what is more, sterile

⁸ Pedro Fernández Navarrete *Conservación de monarquías y discursos políticos – sobre la Gran Consulta que el Consejo hizo al Señor Rey Don Phillip Tercero*. Quinta edición. Madrid, en la imprenta de Don Tomás Alban. Año de 1805, Discurso XXXVIII; Texto, núm. 16, p. 287.

⁹ Américo Castro *La realidad histórica de España*. Quinta edición renovada. Editorial Porrúa, S.A. México, 1973; p. 252.

rebellion, due to the lack of proposals. It is more a case of opposing all that does not coincide with oneself, with the concept of oneself being that which corresponds to the here and now. A large portion of the political populisms put forward in Spain, in recent times too, would correspond to this individualist-rebel, and would be represented by the old aphorism “*after me, the deluge*”.¹⁰

Can this egocentrism, this egomania, this separatism of the person be the basis on which to build political secessionism, emulsified with nationalist overtones? It seems impossible not to affirm that the absolutism of a person is, by its very nature, exclusive. Two absolute leaders cannot occupy the same space at the same time; they exclude each other, if we analyse the process of nationalist affirmation, with presupposed secessionism and, what is more, if we focus on the case of Catalonia with respect to Spain, given that it is at this moment the case that requires the most attention, on the part of both Spaniards and Europeans. When and how has Catalonia been independent of any superior power or authority and when did it lose its independence in exchange for subservience?

It would seem that the first reference in writing to Catalonia or what is Catalan was in the 12th century, with initial appellatives in Latin such as “*Dux Catalanensis...*” applied to Ramón Berenguer III, or locating “*In Catalonia...*” the endowments of Alfonso II to his spouse, or the proclamation, in a Peace and Truce Constitution of 1200, that the provisions had been “*Constituit per totam Cataloniam*”. Then, in the 13th century, albeit with different spelling, we find reference to Catalonia and Catalans in expressions such as “and they reached agreement, when they were in Catalonia, on who would feed us, and they all agreed that the Master of the temple in Monzón would provide food...”¹¹ Or, in the same work, but with a different spelling, in texts such as: “And, after that, we entered Aragon and Mr. G. de Moncada would meet us in Cathalunya... And had it not been for the food they brought on the advice of the people from Aragon who were with us, who provided food with the money of the Aragon people in

¹⁰ Corresponding to the quote “*Après moi, le déluge*”, attributed to the King of France, Louis XV.

¹¹ Jacme I *Llibre dels feits del rei en Jacme*. Biblioteca Virtual Joan Lluís Vives (Alacant) y Biblioteca Nacional (Madrid) 2006; p. 5. [Literally: “*Et hagren acort can foren en Catalunya qui nos nudriria e acordarense tots quens nudris lo maestre del temple en Monço...*”]. Freely translated by the author.

Moncada, and the Catalans who brought food from Barcelona, we would have had nothing to eat in three days”.¹²

From what has been said, it can be affirmed that in thirteenth-century Catalonia, Latin continued to be the cultured language, used fundamentally in legal and ecclesiastical documents, while Catalan was the language of vulgar use. There is, therefore, nothing surprising in the fact that James I The Conqueror, King of Aragon, of Mallorca and of Valencia, and Count of Barcelona, of Urgell and Lord of Montpellier, would use the Catalan language to transmit the narratives-chronicles of the outstanding events of his conquests because, despite that fact that he was a person of great culture in his era, it is no less true that he was illiterate, meaning that he required a scribe and was not able to use Latin. Moreover, prior to the *Reconquista*, Catalonia or, more precisely, the old Roman Tarraconensis, suffered a number of vicissitudes, which destroyed – at the hands, for example, of the Muslims – most of what little had been built.

It is reasonable to consider a question, one unlikely to find consensus but crucial in the attempt to determine to what degree *Catalonia*, *Catalunya* or *Cathalunya* had, at that time, the sense of being a unit, with a common destiny, with a common way of being or personality, common customs or behaviours that would identify it as a community with its own life. If, in the opinion of Américo Castro, one cannot speak of Spain until the reign of the Catholic Kings and even until the reign of Emperor Charles I of Spain and V of the Holy Roman Empire, because of the absence of common belonging conscience, it would seem daring, with the same criteria, to invest Catalonia with the status of national unity prior to the *Reconquista*, and also subsequent to that great event.

In fact, only from the reign of Emperor Charles I, who, in 1521, would appoint Don Pedro Folch de Cardona, Archbishop of Tarragona and ecclesiastical representative of the General Council of Catalonia, can it be considered that all the territories that make up the Catalonia of the Counts began to operate and be governed as a harmonious unit, i.e., in more modern language, as a single region, without losing sight of the fact that the

¹² Jacme I *Llibre dels feits del rei en Jacme*. Biblioteca Virtual Joan Lluís Vives (Alacant) y Biblioteca Nacional (Madrid) 2006; p. 10. [Literally: “E passat aço entram nos en Arago e en G. de Munchada feu son aiustament en Cathalunya... E sino fos lo conduyt que trayien de la ost ab consell dels aragonesos qui eren ab nos quils dauen que menjar ab los diners dels aragonesos qui eren en Muncada e los cathalans qui trayien que menjar de barcelona no agueren que menjar a III dies...”]. Freely translated by the author.

Viceroy was appointed by the Emperor and not by a body or institution of inferior rank, meaning that dependence was demonstrated and guaranteed. Until that time, it would be more correct to speak of the Catalonia of the Counts, each with his own government. This is clearer still if we go into the origin of these counties at the end of the 8th century. They were created by the Carolingian Empire for the purpose of halting the advance of the Muslim conquest, which by the year 720 extended throughout a large part of Gaul.

A Carolingian monarch – Charles the Bald – would first appoint Wilfredo el Velloso (Wilfred the Hairy) as Count of Cerdeña and of Urgell (870), and later appoint him Count of Barcelona and Gerona (878); all territories under the monarch's control. It was in the 10th century that these counties would avail of the decline and weakening of the Carolingian Empire, both as a result of civil wars, in order to initiate a process of independence from the Empire of which they formed part. This independence would inevitably lead to a feudal structure of society and power, which would convert the people, agrarian and free up to then, into a community of lords and vassals; a transformation process which could not take place without wars and conflicts.

The main characteristic of this feudal economy, "... is found in the link between jurisdiction and property... the feudal lord is simultaneously the businessman, the administrator of justice and the man who has the cultivation system and the sales system at his disposal. Ultimately, he organises all economic production in the territory under his jurisdiction. The feudal lord acquired with the passing of time the resource of minting coin in his own name, meaning that he could, at any time, deceive his subjects. Even disregarding the ominous moral condition, with the exception of slavery, feudalism has been the greatest hardship known to humanity".¹³

Of all the counties, it was the county of Barcelona which had greatest prevalence, due, on the one hand to royal concessions – the beneficiary of which was Wilfredo el Velloso (Wilfred the Hairy) – and, on the other to the result of matrimonial ties or the violent expansion of domains by means of war and annexation. King Alfonso VII of León and Castile also attempted to imitate this euphoria for feudalism.

Despite the aspiration towards disintegration, an event occurred in the contrary sense with the marriage in 1150 of Petronila – daughter of

¹³ J. Vicens Vives *Manual de Historia Económica de España*. Editorial Teide. Barcelona 1959; pp. 97-98.

Ramiro II of Aragon (the Monk) and Inés de Poitou – to Ramón Berenguer IV, Count of Barcelona, Gerona, Osona and Sardinia – son of Ramón Berenguer III and Douce I of Provence – which served “... to integrate the Crown of Aragon, because the son of the couple, Alfonso II (1162–1196), could become the King of Aragon and Count of Barcelona”.¹⁴ That conquering spirit, dormant during the reign of Alfonso II, would become revitalised with great force under James I, the Conqueror, who, following a long period of sterility and internal conflict, would take the Crown of Aragon (1227) and, with it, all the power, thus commencing his considerable activity in terms of taking over new territories. To what point would the power of James I extend, as King of Aragon, of Mallorca and of Valencia, and, at the same time, Count of Barcelona, of Urgell and Lord of Montpellier?

According to Emilio Suñé, the successors of Ramón Berenguer IV, i.e., “... beginning with Alfonso II (1164), used, in first place, the title King of Aragon, for the simple reason that royal dignity is of higher rank than that of countship; but they never governed in Catalonia as Kings of Aragon, nor would it have been feasible for them to do so. They governed in their capacity as counts, as Count of Barcelona, for example, and with full respect for Catalan political institutions”.¹⁵

What we have just said seems difficult to believe, particularly bearing in mind the decline of the Catalan nobility in the 8th century. To the degree that, in that period, “The nobles of the Crown of Aragon would obtain from Peter III the *General Privilege*, a cause of dissent in the following years, but which would mark the high point of the potential of the nobility of Aragon and Valencia. There was no such case with respect to the Catalan nobility as their social importance was always minimal. The nobility of Aragon and Valencia would oppose the King until Peter IV defeated them in a pitched battle in the middle of the 14th century”.¹⁶ It was very relative independence. And for this reason, if, in the era of Peter IV, the Catalan

¹⁴ Antonio Ubieto, “El afianzamiento de las nacionalidades. Evolución política”. In, Ubieto, Reglá, Jover, Seco *Introducción a la Historia de España*. Editorial Teide. Barcelona. Decimoséptima edición, 1987; p. 179.

¹⁵ Emilio Suñé Llinás *La constitución profunda de Las Españas y la Federación Ibérica – Una visión catalana de la unidad de España en su diversidad*. Servicio de Publicaciones de la Facultad de Derecho de la Universidad Complutense. Madrid 2018; pp. 27–28.

¹⁶ Antonio Ubieto “Apogeo medieval en el siglo XIII. Predominio de la nobleza”. In Ubieto, Reglá, Jover, Seco *Introducción a la Historia de España*. Editorial Teide. Barcelona. Decimoséptima edición, 1987; p. 209.

nobility had, for reasons of securing autonomy and power, opposed the wishes of the King, they would have met the same fate as the nobility of Aragon and Valencia.

If we leap forward to the end of the 15th century, we find a very eloquent testimony to the power of the King with respect to any other social body or class. Ferdinand II of Aragon, known as Ferdinand the Catholic, faced with powerful opposition in the Court of the Kingdoms of the Crown of Aragon, "... imposed his will upon them by legal means, having recourse to the system of sortition for the designation of commissions and even for the constitution of the Permanent Council or Generalitat".¹⁷

Also noteworthy is the presence from the 12th century of the King of Aragon in the enactment of laws in his territories, both in terms of the preamble as in the final sentence. A good example is provided by the text of the Fontaldara Courts of 1173, which begins as follows: "*Constitution peace and truce by King Alfonso I King of Aragon in Fontaldara*. The guardianship of divine and human things corresponds to nobody but the prince, and nothing should be more proprietary of the good and just prince than to condemn injustices, calm wars, organise and sustain peace, and train subjects in order to conserve it so that, by virtue of it, they cannot say and proclaim incongruities... I Alfonso, hereby...to all we order assent and will, to all, both clergymen and laymen, that in my land they will continue to know truce and peace...having them and observing them united together inviolably; and in order to conserve them, I summon those who violated them, by asserting and obliging".¹⁸

Finally, it is worth wondering what can have happened between the 16th and 18th centuries to enable Catalonia to enjoy greater independ-

¹⁷ Joan Reglá, "El Estado. La monarquía autoritaria y sus órganos de gobierno". In Ubieta, Reglá, Jover, Seco *Introducción a la Historia de España*. Editorial Teide. Barcelona. Decimoséptima edición, 1987; p. 280.

¹⁸ "Cortes de Fontaldara en 1173". In *Cortes de los antiguos Reinos de Aragón y de Valencia y Principado de Cataluña*. Published by the Real Academia de la Historia. Tomo I, Primera Parte. Madrid, MDCCCXCVI; Preámbulo, pp. 55-57. [Translation from Latin by J.T. Raga]. The Latin text says: "*Has paces et treguas constituit Rex Alfonsus Primus Rex Aragonum apud fontem daldara. Divinarum et humanarum rerum tuitio ad neminem magis quam ad principem pertinet, nichilque tam proprium debet esse boni ac recti principis quam iniurias propulsare, bella sedare, pacem stabilire et informare, et informatam subditis conservandam trajere, ut de eo non incongrue dici et predicari possit... Eapropter, ego Ildefonsus... Predictorum omnium assensu et voluntate omnibus tam clericis quam laycis, qui in dicta terra mea degere noscuntur, treguam et pacem... tenendam et inviolabiliter observandam injungo; neque ad conservandum et in eos qui eam violaverint vindicandum allego et astringo*".

ence, when the structure of power in Spain was typical of absolute monarchies of the time.

3. The secular loss of independence, cause for grievance

The feeling of independence implies, supposedly, the capacity to decide without requiring the consent of any person or authority. When one wishes to speak of loss of independence, it is necessary to address a prior scenario: that of the *status* of independence. According to current Catalan nationalists/separatists, Catalonia was independent since before it became Catalonia; something which we acknowledge to be truly complex.

This situation continued in the 13th century and well into the 14th century, when, as we have outlined above, the Catalan nobility continued to have very little social importance.¹⁹ Similarly, it is also difficult to accept the pretension of Catalan independence from the time of the Catholic Kings and during the centuries of monarchy of the House of Habsburg, becoming dependent with the arrival in Spain of the House of Bourbon. All of these were, as correspond to the period, absolute monarchies.

More than a few authors,²⁰ given the interest of others in distinguishing between the absolutism of the House of Austria and the House of Bourbon – considering the two great European monarchical houses – only recognise a single dimension: absolutism, and in the opposite extreme, parliamentarianism. I.e., absolute monarchies as opposed to parliamentary monarchies. Perhaps some respect pre-existing structures and institutions more than others, but, in the event of controversy or conflict, the monarch with greatest royal power – the absolute monarch – imposes his will. Given these circumstances, we would dare to state that Catalonia, with its counties, has never been independent, if by independence we mean the intangible faculty of decision-making over the jurisdiction itself.

It is easy to conclude that nationalist movements, which proclaim to be based on the so-called *differential fact*, would never prioritise the points which they establish as differentiation, if such differentiation was to be seen as having a negative value. The *differential fact* is used only to the degree that it can be upheld as positive differentiation. Américo Castro is eloquent in this respect: “My idea of castes, without another world but its consciousness of being so, perhaps explains its, particularly, such a singular history.

¹⁹ *Vide*, footnote no. 16.

²⁰ *Vide*, Perry Anderson *Lineages of the Absolutist State*. Verso books. London & New York, 1979.

The ruling caste believed that it could live alone, clinging to its feeling of being superior; at the same time, they noticed the irredeemable *vacuum* in which they were engulfed, on attempting to emerge from their personal enclosure... As opposed to the principle inherited from Greece that reality «is what it is», the Spaniard maintained that reality was what he felt, believed and imagined...²¹

We believe that in this passage, the historian recreates the ingredients of nationalism, at least in Spanish territories. First of all, the *awareness of belonging to a caste*, to the point of distinguishing between Catalans and those who are not. The reason for being considered Catalan is not the fact of having been born in Catalan territory, or belonging to a multi-secular Catalan lineage, but rather *belonging to the caste*, which, in turn, is defined and acknowledged singularly by the caste itself. Secondly, *the belief and feeling of being superior*, since only this feeling is capable of conforming the core that we call *caste*, the differentiating element of affiliation, owing to superiority, which will be manifested, with notable clarity, in disdain for everything around it. And finally, *the irredeemable vacuum of personal enclosure*, since, nothing exists which can be of interest, except his Nation. It is that affirmation of the condition of being of a higher caste which profiles the nationalist, of the 16th century, and of the 20th and 21st centuries. The examples are clear. The dream of an empire that once was, at least in his imagination, but which will never again exist, has led to the proclamation, four times, of the independence of Catalonia.

3.1. The alleged independence of Catalonia: from the 14th century to the end of the reign of the Catholic Kings

It is quite true that it was Queen María of Castile, lieutenant in the Court of Barcelona of her husband King Alfonso V, the Magnanimous, of Aragon, who first decreed in 1422, in said Court, what can be considered as the first protectionist provisions, prohibiting the importation of all types of foreign textiles, with a view to alleviating the difficult economic situation in Catalonia. The measure, and the Queen consort herself, was deserving of the acquiescence of the most conservative political party, and would gain significant impetus within the structure of an urban economy based on guilds and corporations. Thus, the la Busca party “estimated that protectionism at any cost would save the Catalan economy from disas-

²¹ Américo Castro *La realidad histórica de España*. Quinta edición renovada. Editorial Porrúa, S.A. México, 1973; p. 58.

ter”²², an error that would remain in the political vision of Catalan industry practically until the coming into force of the commitment associated with Spain joining the European Union. Moreover, in addition to this protection, which manifested itself in a ban on the importation of foreign textiles, in 1453 “...obtained from Alfonso the Magnanimous... through the by-laws of 1453... that no goods could board any vessel in any port of Catalonia or any vessel destined for Catalonia if it was not a Catalan vessel, whenever a ship under that flag was docked in the port. The only condition imposed was that of offering the same freight charges as those of foreigners in competition”.²³

The result, however, was not as hoped. Greed and confrontation, would mean that the act of August 24, 1453, would never be applied due to the advent of the devastating effects for Catalonia of the Catalan civil war, which lasted for ten years, from 1462 to 1472. A conflict between the followers of King John II of Aragon and rebels against the King, led by the General Council of Catalonia and the Council of the Principality – *Consell del Principat* –. Ten years of war and chaos, which would end with the triumph of King John II, following the surrender of Barcelona in 1472 and the subsequent Capitulation of Pedralbes. Regardless of what has been said, the signs of Catalan dependence to the Catholic Kings – or if one prefers, to Ferdinand II of Aragon – are more than evident, as are the signs of what was not the case, such as the alleged independence of Catalonia from the monarchs of the House of Habsburg, from Charles I until Charles II.

King Ferdinand the Catholic broadened the scope of paternal generosity to new and wider protectionist measures which put Catalonia, at least in the short term, in conditions of unequal competition with respect to the remaining territories of the Crown of Aragon. Ensuring the pacific enjoyment of the right to property, guaranteeing its social function,²⁴ is vital in order to channel the most sensitive areas of the economic and social system itself. From the time this principle came into effect, King Ferdinand the Catholic, with the agreement of the Court, enacted a Pragmatic Sanction

²² J. Vicens Vives *Manual de Historia Económica de España*. Editorial Teide. Barcelona 1959; p. 221.

²³ J. Vicens Vives *Manual de Historia Económica de España*. Editorial Teide. Barcelona 1959; p. 221.

²⁴ *Vide* particularly St. Basilus the Great “Homily VII”; St. Ambrosius “De Nabuthe” III-11 and XV-53; and St. John Crisostomus “Homily on the passage of the rich Epulon”.

in 1481 setting out the reimbursements that had to be made by those unjustly occupying property.

The aim of the Catholic King was to rectify infringements of the Law, which had been occurring for some time, to the satisfaction of the most powerful and to the detriment of the weak. Although it was an important measure, it was not significant enough to make everybody happy. It was not even seen unanimously by historians, who attribute the decline of Catalonia to the Catholic King. Due to the expressivity of the text, it is not easy to disregard the passage devoted by the historian J. Vicens to the matter and its interpretation by historians. He says: "It has been repeatedly said that the policy of Ferdinand the Catholic caused the collapse of the Catalan economy. This affirmation, made by the Catalan romantic history books, has been passed on in Castilian and foreign books. The truth is absolutely different: in the era of the Catholic Kings, there was economic recovery in Catalonia".²⁵ Doubt cannot be cast on the fact that the monopoly of Catalan textiles in Sardinia, on the one hand, and the tariff protection from this *long protectionist catalogue*, sought to favour the economic growth of Catalonia and would have done so if all the events to hinder this had not occurred.

But the protectionist measures enacted by the Catholic King to defend the Catalan economy did not end in 1481. In 1491, an order was issued to prohibit the entrance of Genoese ships and ships from Nice from entering Catalan ports, meaning that imports were restricted, in fact, not just in terms of restricting the goods imported but also due to the difficulties created in maritime transport by the monopoly of Catalan vessels in Catalan ports. In addition to the aforementioned restrictions, and in order to protect the drapery industry in Catalonia, limits were placed on the export of wools – to the detriment of livestock farming – in order to guarantee the availability of raw materials of sufficient quality and in sufficient quantity. Despite the logical euphoria, in 1511 the King would permit the Catalans to put a tax of fifty percent on any type of non-Catalan product – goods or merchandise – imported. This tax was also applicable in the northern African ports of Bejaia and Oran (both in Algeria) and Tripoli (Libya), following their conquest in the same year. In other words, Catalonia profited from importations of non-Catalan products, in this case, in non-Catalan ports.

²⁵ J. Vicens Vives *Manual de Historia Económica de España*. Editorial Teide. Barcelona 1959; pp. 272-273.

In addition to combating corruption and inefficiency in all related to the issuing and distribution of money, as well as the stability of its value, in 1481, the King established a monetary base, which would enjoy the greatest of support in the international market, in the city of Valencia, then the financial capital of Spain; we are speaking of the *excelente* or *excellent*, the equivalent of the Venetian Ducat. After the creation of the *excelent*, there was no further necessity to create other coins, which would of force circulate in the same markets. Nonetheless, just twelve years later (1493), the King established another monetary base in Catalonia, the *principat*, equivalent to the Valencian *excellent* and, consequently, equivalent also to the Venetian Ducat. We can see no reason for the monetary duplication implied by this concession, except for the envy caused by the *excellent*, given that they were two coins of identical value, issued with the support of the same monarch. These facts impede acceptance of the thesis of Catalan independence and, if there was no independence, it was, therefore, impossible to lose it.

3.2. *The idyll of Catalan Independence: the monarchies of the Habsburgs*

The house of Habsburg – House of Austria – was undoubtedly one of the royal houses with the most power and amongst those which reigned for longest in Europe. Their reign in Spain began with Charles I of Spain and V of Germany in March 1516 and would end with the death, without an heir, of Charles II in November 1700. It is worth remembering that the constitutional framework of the monarchy, which had been created by the Catholic Kings, was in essence maintained during the 16th and 17th centuries. Having said that, it cannot be overlooked that “During the period of the first three Habsburgs, some reforms were introduced with a view to reinforcing monarchical absolutism. These reforms fundamentally consisted of the development of the Polysynodial System or System of the Councils... and in a reduction of the powers of the Courts... With Charles I... a single administrative structure was implemented in the area of the old kingdoms... Above all, since that time, there have been common institutions: a single chancellor, a Council of State, a Council of War, a Governor General”.²⁶

It was evident that the monarchical absolutism that the aforementioned reform sought to reinforce was at every point incompatible with recogni-

²⁶ Juan Reglá “El Estado de los Habsburgo”. In Ubieto, Reglá, Jover, Seco *Introducción a la Historia de España*. Editorial Teide. Barcelona. Decimoséptima edición, 1987; pp. 325-326.

tion of the prior independence of the Spanish kingdoms. Quite another thing was, as a gesture of mutual understanding, to recognise a certain degree of autonomy, provided that this did not enter into conflict with the objectives of the monarchy, and, more importantly still, with the objectives of the empire. Thus, in 1555, the Courts of Valladolid requested that “what is provided for in the Courts can only be revoked in the Courts”, to which Emperor Charles I of Spain and V of the Holy Roman Empire gave the single response that “in this matter, what is best for our service shall be done”.²⁷

It would seem very daring to us to say that “... Catalonia never *belonged* to Spain... We shared the same monarchy; but the institutions of government of the different Kingdoms, Counties, Principalities and Seigniories continued to function separately”.²⁸ If Catalonia did not belong to Spain, to whom did it belong? Catalonia always benefitted from the favours of the King, as we have described previously in the protectionist policy implemented by Ferdinand the Catholic, and would always be present in royal, and non-royal, decisions, throughout a long period of history, which has yet to conclude. To suppose that the Habsburg monarchs had a split personality, very rigid and intolerant with Castile, Leon, Navarre, and with Andalusia... and very tolerant with Portugal, Aragon, Sardinia, Sicily, Naples..., is tantamount to representing them as lacking in criteria and unconcerned about the great objectives of the monarchy of a nation which, indisputably, was united since Charles I.

The same authors who affirm this dual style of government by the Habsburgs, depending on the territory over which they reigned, do not hesitate to affirm, in a matter involving Philip II – related to the arrest of his secretary, Antonio Pérez – “the charters of Aragon suffered from that clash. Philip II reinforced royal authority in Aragon; although he did not at any time adopt a hostile attitude to the charters. He limited his actions to convening the Courts of Aragon in Tarazona, with the troops still present (1592), and pressed for modification of the charters in a manner that would bring them into line with his aims”.²⁹ I do not know of any more hostile

²⁷ Vide Juan Reglá “El Estado de los Habsburgo”. In Ubieta, Reglá, Jover, Seco *Introducción a la Historia de España*. Editorial Teide. Barcelona. Decimoséptima edición, 1987; p. 326.

²⁸ Emilio Suñé Llinás *La constitución profunda de Las Españas y la Federación Ibérica – Una visión catalana de la unidad de España en su diversidad*. Servicio de Publicaciones de la Facultad de Derecho de la Universidad Complutense. Madrid 2018; p. 35.

²⁹ Emilio Suñé Llinás *La constitución profunda de Las Españas y la Federación Ibérica – Una visión catalana de la unidad de España en su diversidad*. Servicio de Publicaciones de la

attitude that can be adopted by a monarch than violating the constitutional order. In 1570, prior to this forced reform, the King had suspended many of the privileges conceded to and enjoyed by the city of Barcelona, in an evident act of absolutist authoritarianism – not one of tolerance. These privileges would remain suspended for almost thirty years, prior to being restored by Philip III in 1599.

After the reigns of Charles I and Philip II, which featured an abundance of wars and conflicts, Philip III, less warlike than his father Philip II, would adopt pacification as an objective. Of lesser importance, if we consider the ferociousness of the fighting, were the wars within Catalonia between lords and vassals. We cannot forget the opinion offered by Vicens Vives on the relationship between the two social classes in the feudal regime prior to the Reconquest: “... feudalism has been the hardest thing, with the exception of slavery, endured by working humanity”.³⁰

In addition to the frequency of the conflicts, the Habsburgs, with the exception of Charles I of Spain and V of the Holy Roman Empire, were truly chaotic for what was placed under their domain and competences: the management of public affairs. The financial history of Spain, from Philip II to Carlos II is one of permanent monetary instability. We are speaking of almost one hundred and fifty years in which, the volume of spending to finance the wars was far in excess of the revenues entering the public coffers. Given this fact, there were only two solutions: one was the bankruptcy of the State and the other was monetary devaluation, caused by inflationary processes. The fact is that during the reign of Philip II, Philip III, Philip IV and, to a lesser degree, Charles II, the Spanish state went bankrupt with unusual frequency. It went bankrupt three times during the reign of Philip II (1557, 1575 and 1597) and every twenty years during the reigns of Philip III and Philip IV (1607, 1627, 1647 and 1656).

With that in mind, it is not foolish to say that the admired Spanish monarchs of the house of Austria, according to Catalan historians and politicians, due to their tolerance and good governance, were, first and foremost, absolute monarchists, who rode roughshod over the statutes in Aragon, for example, obliging the Courts to modify, under pressure, their content in order to satisfy royal objectives; and, with respect to good governance, this can hardly be accepted following what we have just said. Vicens would correctly point out that after the violent deflation of 1664, followed by the

Facultad de Derecho de la Universidad Complutense. Madrid 2018; p. 48.

³⁰ *Vide*, footnote num. 13.

inflation of the seventies and the crisis of 1680, “... the Crown was drifting aimlessly, and by the Crown is meant the circle of courtiers who were only concerned about knowing whether Charles II would leave the legacy of the Spanish empire to France or to Austria”.³¹ Inflation, deflation, crisis... and the crown, in all cases, *drifting aimlessly*, was the most suitable climate to exacerbate Catalan separatism. The reign of Philip IV would not take place in a period of roses either. In fact, his reign began in 1621, three years after the commencement of the Thirty Year’s War (1618). A reign, with a devastated Treasury, a grate number of tax increases and continuous petitions for, so-called donations, which concluded in strong resistance from taxpayers.

Resistance that was especially notable in “... the case of the countries of the Crown of Aragon, whose contribution to the general expenditure was tiny. Royal revenues in Valencia were limited to certain properties and rights, almost all of medieval origin... In Aragon and Catalonia, most of the rights charged for on merchandise were in the power of the cities or private citizens; the Crown had the right to one fifth of taxes, but they had allowed this right to fall into disuse, and when Philip III claimed this right from the city of Barcelona... he met with obstinate refusal...”³²

Especially notable is the rebellion of Catalonia in 1640, which would lead to the first, failed pronouncement of an independent Catalan Republic, which hardly saw the light of day. Its remote origin was in the attempt of the Count-Duke of Olivares – in other words, ultimately the attempt of Philip IV, in this context of such diverse conflicts in territories that were so different, to achieve a *union of arms*, with which to increase defensive capacity. With great doubts and reluctance, Aragon and Valencia accepted the proposal of the monarchy (Courts of 1626), while Catalonia responded, on two occasions, to the petitions of the Crown with adamant refusal, which would lead to the aforementioned rebellion of Catalonia of 1640; known as the Reaper’s War – or *Guerra dels Segadors*.

This is the opinion of, amongst others “modern researchers, such as John Elliot and Reglá [*who*] see in the incidents of 1626 [*Courts of Monzón*] and 1632 [*second failed attempt by the Crown*], the intransigent and condescending attitude of the Catalans and the irritation this caused the King

³¹ J. Vicens Vives *Manual de Historia Económica de España*. Editorial Teide. Barcelona 1959; pp. 422-423.

³² Antonio Domínguez Ortiz *Política y Hacienda de Phillip IV*. Segunda Edición. Ediciones Pegaso. Madrid, 1983; pp. 155-156.

and his Prime Minister, the undoubted precedent for the events of 1640”.³³ A history that ask ourselves if, apart from the logical euphoria of nationalists / separatists for an independent Catalan Republic, is it not economic reasons, and not so much love of the country, that underlies one, and another and another pronouncement, right through to the pronouncement that is currently in the political arena awaiting a legal outcome, which at the time of writing these lines is still *sub judice*.

The Catalan Courts of 1632... also resulted in a failure: “... The course of events is moving quickly: French military pressure and the Leucate campaign of 1637, billets in the Principality and armed revolt of Catalan peasants; from the moderation of the Barcelona oligarchy to the radicalism of the gentlemen and clergy of the mountain – Pau Claris, canon of Urgell, is elected President of the General Court – and a swing in Madrid, where the extremists... accuse Olivares of weakness. From radicalisation to war, there was no more than a step”.³⁴ Those who fought for the cause, each for his own cause, were the radicals of the court of Philip IV and, on the other side, the gentlemen of the mountain who had been rendered bankrupt by the most recent events. The revolt of the latter, in turn, determined the response of third parties, whilst attracting terrorist activity against the high bourgeoisie and the aristocracy, beginning with the *Corpus de Sang* (June 7, 1640 – Corpus Christi – the Reaper’s War began).

In this situation, on January 16, 1641, the General Meeting of Arms of Catalonia accepted the proposal of Pau Clarís and proclaimed the Catalan Republic, according to what is said, in order to put an independent Catalonia under the protection of the King of France, thereby aligning itself with the other party (France) in the war that this country had been fighting against Spain since 1635. Only hatred for what is Spanish could lead to the ratification of an *independence* that consisted of putting Catalonia under the protection of a new French monarch, Louis XIII, of the House of Bourbon. Just one week after this proclamation, on January 23 1641, the States-General once again accepted a proposal from Pau Clarís which went further than what had been agreed days earlier. The new proposal consisted of accepting Louis XIII of France as the new monarch of the

³³ A. Domínguez Ortiz *Política y Hacienda de Phillip I*. Segunda Edición. Ediciones Pegaso. Madrid, 1983; pp. 156–157. [What appears in square brackets is mine].

³⁴ J. Reglá Campistol “La crisis política. Las revoluciones. a) Cataluña”. In, Ubieto, Reglá, Jover, Seco *Introducción a la Historia de España*. Editorial Teide. Barcelona. Decimoseptima edición, 1987; p. 396.

independent Catalan Republic that had been proclaimed seven days previously. The French monarch, owing to this position, would become Count of Barcelona, of Roussillon and of a large part of Sardinia, and the *independent* Catalonia would submit – a strange concept of independence – to the sovereignty of the French monarch.

After the conclusion of the Thirty Years' War (1648), Philip IV had well-trained troops available for the war, enabling him to take up the pending matter with Catalonia again. In this sense, the troops of Philip IV, who in 1649 had advanced in a significant matter on Catalonia, allowed John Joseph of Austria (the Younger) to lay siege to Barcelona (1651), which led to the General Council recognising Philip IV as King and the City of Barcelona to surrender under siege on October 11, 1652 – thereby bringing an end to the Reapers' War. The Treaty of the Pyrenees (November 7, 1659) would finally put an end to a war between France and Spain. As part of the treaty, Catalonia was mutilated, as the territories of Roussillon and part of Sardinia were divided and became part of France. The result could not have been more eloquent: seven days of an independent republic, which required a civil war – realists against separatists –, humiliation before the French, admitting their sovereignty, the Catalan defeat by troops of the Spanish Crown, and the loss of historical territories of the Principality of Catalonia, which would become part of France under Louis XIV – the Sun King. A very high price paid by Spain and also by the Catalan separatist spirit, which should not be forgotten.

The House of Austria's reign ended in Spain with the death, without heirs, of Charles II, son and successor to Philip IV. Charles II reigned in Spain from 1665 to 1700. In our opinion, the death of Charles II the Bewitched is more interesting historically than his actual life. The interest revolves around the fact that, on his death, the War of the Spanish Succession would break out in Spain. This ended up being a war between Spanish territories, although what was being disputed was, simply, the succession to the Crown of Spain. In this case, moreover, in his will, the deceased monarch designated as his heir to the throne of Spain, Philip of Anjou, son of Louis Le Grand Dauphin of France, grandson of Louis XIV and great-grandson of Philip IV of Spain, in preference to Archduke Charles of Austria.

3.3. Catalonia under the Bourbon monarchies: from the Nueva Planta Decrees to current times

In these circumstances, the arrival of Philip V in Spain could initially be described as problematic, to say the least. Not at all surprising, given the

manner in which he had been designated and the controversy between the two royal houses: the House of Habsburg and the House of Bourbon. The attitude of Catalonia was surprising; firstly, due to their initial acceptance of Philip V, although given that he had sworn loyalty and commitment to maintaining the charters, many Catalans found reasons to grant him their vote of confidence. However, very soon, those who had decided to put the Principality under the French sovereignty of King Louis XIII, in 1641, found an authoritarian and centralist monarch from the House of Bourbon to be unacceptable. This opposition would give rise to a radical division of Spanish territories based on acceptance of the Bourbon monarch, Philip V – a very clear decision in favour in the old kingdoms of Castile and Navarre – while, in other cases, such as in the kingdom of Aragon, there was a majority in favour of the enthronement of Archduke Charles.

A new era began, with two clearly differentiated blocks: the victors and the vanquished, with, as might be expected, very different treatment afforded to the two groups. The most evident manifestation of the intentions of the new monarch would be legally reflected in the *Nueva Planta* Decrees, – Aragon and Valencia (June 29, 1707), Mallorca (November 28, 1715) and Catalonia (January 16, 1716) – which abolished historic institutions in these territories. Once again, we had wars for a cause destined to failure. The Duke of Berwick arrived in Barcelona on July 7, 1714 and the instructions he had received from Philip V “... left no room for doubt: «They deserve to be subjected to the maximum rigour in accordance with the law of war, so that this can serve as an example to all my other subjects...». The measures applied included the following: 4th. That they will pay the costs of the war... 6° That... all buildings sited within the limits of this city will be subject to the payment of a perpetuity with an annual census of... 7° That there will be no further talks of privileges or special rights (*usajes*)... Subsequently, he refers, angrily, to «these rebellious people who, in addition to resisting my rule, presented the most vivid petitions in all the foreign courts to create new problems for me and, if it had been possible for them, to incite a war throughout Europe»”.³⁵ It might seem that Philip V was speaking of the Catalonia of the 21st century.

While some considered that these consequences were the logical result of being on the losing side in a war, others, on the boundaries of reality, adopted a rebellious attitude to what they considered the unjust measure

³⁵ Joaquim Albareda Salvadó *La Guerra de Sucesión en España (1700-1714)*. Crítica. Barcelona, 2010; p. 375. [*What appears in brackets is mine*].

adopted by the victors. An attitude that continues to exist today, in the belief that defeat is sufficient in itself without entailing future consequences with respect to self-government. The error ensues from what each person thinks and desires, It may not coincide with what is fair, what is advisable and, on occasion, not even with what is possible.

With respect to this anguish of Bourbon Spain – in the opinion of Catalan neoforalists – there are very opposing opinions, such as that of professor Vicens, when he says that: “The House of Bourbon established itself in Spain in 1700. This fact does not only have implications of a dynastic or political nature, but of a vaster order, because the establishment culminated a period of French influence that began in the middle of the 17th century. The French influx, manifest in intellectuality, fashion, taste, technique and the economy, tends to fill the void left in Spain by the failure of the policy of the House of Austria”.³⁶

It would seem, therefore, that we had before us a new model of Spain, sacrificing old atavisms, but with an aperture to a new world, of a different type and, therefore, with the risk of not being accepted by those for whom any change is change for the worse. The situation was described with foresight by Domínguez Ortiz: “Prior to the 18th century, Spain was a geographic expression without political content. The loss of the European domains outside the Peninsula can be said to have created Spain as a defined political entity; since then, even without abandoning the ostentatious traditional titling, there was a king of Spain... a perfect adaptation was established between the popular and official meaning of the word and, with the addition of the two archipelagos, the map of Spain was established with the features it still preserves. Smaller than the Empire, larger than Castile, Spain, the most exalted of the creations of our 18th century, leaves behind its nebulous status and acquires solid and tangible contours”.³⁷

The 18th century was also replete with conflicts in Spain, some of them with the notable involvement of Catalonia. The century began with the War of Independence (1808-1814) against the Napoleonic armies, in which Spain was supported by its allies, the United Kingdom and Portugal. While it would seem that there were two clearly defined warring factions, the fight

³⁶ J. Vicens Vives *Manual de Historia Económica de España*. Editorial Teide. Barcelona 1959; p. 425.

³⁷ Antonio Domínguez Ortiz *La sociedad española en el siglo XVIII*. Instituto Balmes de Sociología. Departamento de Historia Social. Consejo Superior de Investigaciones Científicas. Madrid, 1955; pp. 40-41.

against France became internalised within the Spanish nation itself, between two groups of Spaniards, the patriots and the Francophiles. In this regard, Catalonia was no different from the rest of the nation. The War of Independence was followed by three Carlist wars, the first from 1833 to 1840, the second from 1846 to 1849 and the third from 1872 to 1876. The three wars revolved around the same conflict, which, like the War of the Spanish Succession, was also a dynastic conflict, in this case involving two pretenders: the Princess of Asturias, who would finally be crowned Queen Isabella II of Spain, and Prince Carlos, Count of Montemolin – known as Charles IV by his followers. The confrontation divided the Spanish into *Elizabethans*, the followers of Isabella II, and *Carlists*, the followers of Prince Carlos, Count of Montemolin. The supporters of one or the other were very unevenly distributed throughout the national territory, with the Carlists mainly concentrated in the Basque provinces, Navarre and the old Crown of Aragon.

Cataluña played a special part in the second war, which, in the principality was given the name *Guerra dels Matiners*, because it took place mainly in Catalonia, with the peculiarity that the popular rising reached very significant levels, much higher than those of the rest of Spain. But once again, Catalonia fought, to put it one way, on the side of the Carlist pretender, which would finally prove to be the losing side.

The 19th century, the second century of Bourbon monarchy, had begun with, apart from wars, a determined swing towards liberty, formalised in the proclamation of the Spanish Constitution of 1812 in Cadiz on March 19. This would have inevitable consequences for economic activity, resulting in the centres of economic power seeking to consolidate their aspirations. If the monarchs of the House of Austria had accentuated the protectionism of the Catholic Kings, this unfortunate policy was maintained and even intensified in the two centuries of Bourbon rule. By the end of the century, it can be affirmed that the origins and ideologies of the subjects were of little importance, because the aim of protecting private economic interests was capable of uniting what ideologies had kept divided in previous times. When an unfavourable scenario emerged, the difficulties began, to the point where “... in this atmosphere was published... the decree of December 31, 1891, ratifying the new tariffs... However... the loss of the colonies obliged Spain to defend itself, and it was not surprising that a decidedly protectionist tariff was imposed on March 3, 1906”.³⁸ A

³⁸ J. Vicens Vives *Manual de Historia Económica de España*. Editorial Teide. Barcelona 1959; pp. 637–638.

tariff which was the frame of reference, the guide for Spanish trade policy, from the beginning of the 20th century until the slight opening up of the economy during the period of Spanish developmentalism – 1960s – and, as a final point – although the affirmation may seem drastic, protectionism did not end until we joined the European Union – June 12, 1985.

At the end of the 19th century, Catalonia would be involved in an event which, although it did not have consequences, could have had quite undesirable results. On this occasion, the Barcelona Provincial Council proclaimed the Catalan State, within the Federal Spanish Republic (March 9, 1873). Moreover, it urged a further three Provincial Councils to form part of the recently proclaimed State, but the concept did not materialise. Despite the frustration, Catalans retained the will to achieve a Catalan State/Republic, whilst Spaniards had the desire to achieve a new Spanish Republic. The latter desire would be achieved through the proclamation of the Second Republic – April 14, 1931 – which would have three Presidents in a period of almost eight years, practically the last three of which (July 18, 1936 to March 31, 1939) would be set against the background of a bloody civil war amongst Spaniards. If the republican idea of Spaniards materialised on April 14 of 1931, with the aforementioned proclamation, the desire amongst Catalans for a Catalan State would find an advocate in Francesc Macià. On the same day as the proclamation of the Spanish Republic in Madrid, Macià, from the balcony of the Catalan parliament building, proclaimed the “Catalan State, which, with all due cordiality, we will seek to integrate in the Federation of Iberian Republics”.

The legal and political manner in which that Catalan State was born lacked any legality or legal basis, for which reason, it was dissolved three days subsequent to its proclamation – April 17, 1931. What the proclamation of the Catalan State by Macià does reveal to us is the opportunism in terms of availing of the weakness of the Spanish government. We had already experienced it in the proclamation of Canon Pau Clarís, which occurred during a difficult period of war with France. The dissolution of the Catalan State, three days after its proclamation, was clearly the most advisable response. Following the death of Macià – December 31, 1933 – Lluís Companys became President of the Catalan Government. Not a year had passed when, on October 6, 1934, he proclaimed – from the balcony of the Palace of the Catalan Parliament – the Catalan State, within the Spanish Federal Republic, which, in itself, implies the first error of the proclamation, because the Spanish Republic had not been constituted as a Federal Republic. It had been constituted as a “Democratic Republic of

workers of all classes, organised in a regime of Liberty and Justice (Article 1-1)". And, moreover, the proclaimed Catalan State did not have a place within the Integral State of the Republic, as is established below: "The Republic constitutes an Integral State, compatible with the autonomy of Municipalities and Regions (Article 1-3)"³⁹ but, surely, incompatible with the sovereign Catalan State aspired to.

Therefore, following the proclamation of the Catalan State on October 6, the President of the Regional Government was arrested the following day – October 7, 1934 – remaining in prison until January 7, 1935, when he was taken to the Model Prison in Madrid to be tried by the Court of Constitutional Guarantees. On June 6, 1935, Lluís Companys and the members of his government were sentenced to imprisonment in conditions of maximum security, and perpetual disqualification from holding public office. On January 2, 1935, the Spanish Parliament had passed an Act suspending the Statute that had created the Catalan State. On February 21, 1936, the government of the Frente Popular (Popular Front)⁴⁰ managed to get the Permanent Council of the Spanish Parliament to pass a decree of amnesty, which was immediately applied, thereby enabling all those convicted to be freed. On January 24, 1939, Companys went into exile in Paris, where he set up a Catalan government in exile. He stayed in Paris until his arrest and extradition to Spain. After being tried, he was sentenced to execution by firing squad, which was carried out on October 15, 1940.

During the period of Francoism, separatism – if it existed – was kept under cover, with manifestations more of a doctrinal nature than a politically active one, and in circles which, if not secret, were, at least, reserved; although these manifestation could, on occasion, take place in monastic environments, in which it was more conflictive for the regime to intervene, even in compliance of the laws.

³⁹ The two quoted texts are taken literally from the first and third paragraphs of article 1 of the Constitution of the Spanish Republic, the text of which was sanctioned by the Constituent Assembly (Cortes Constituyentes), presided over by Julián Besteiro, on December 9, 1931.

⁴⁰ The Government coalition known as the Frente Popular was created on January 15, 1936, and presided over by Manuel Azaña (President of the Government) and the following political parties: Partido Socialista Obrero Español, Izquierda Republicana, Unión Republicana, Partido Comunista de España, Partido Sindicalista, Partido Obrero de Unificación Marxista and Partido Galeguista, made up the Government, on February 21, 1936, date on which the amnesty referred to was decreed.

The democratic period began and was endorsed by the Spanish Constitution of 1978, which came into being through a *Referendum* on December 6 of the same year with a large majority. 67.1% of the electorate voted in the referendum, with 87.9% in favour of the Constitution.

It should be pointed out, bearing in mind what is of interest to us, that if we break down the figures we have just mentioned, with respect to Catalonia, the figures were: a turnout of 67.9% of the electorate – slightly above the average for Spain as a whole – with 90.5% of the votes in favour – 1.2 percentage points above the average for Spain. In other words, the Spanish Constitution of 1978 was in no way whatsoever a constitution imposed upon the nation and, a little further, the theory that it was imposed upon Catalonia is even less acceptable.

In the years between the endorsement of the Spanish Constitution – December 6, 1978 – and the present day, there have been a number of Presidents of the Government of Catalonia, each with their own personal characteristics and political projects, which they have attempted to undertake in the manner believed to represent best the commitment given to the electorate. In general terms, all the Presidents have placed emphasis on the so-called *differential fact* distinguishing Catalonia from the rest of Spain (or from Spain, according to them). Many of them have availed of the *differential fact* to obtain unjustified favourable treatment, more often than not, originating from the weakness of the governments of the Spanish nation. Moreover, the favourable treatment dispensed in the area of public spending, subsidies for investment and protection of economic activity, continues to be dispensed at the present time.

What are the reasons for this favourable treatment? In the opinion of the Governments of Spain, it is to halt separatist eagerness. The real result is the separatist Process, or *Procés* (in Catalan). The process towards independence has its origins in a programme which began in 2006, mainly triggered by the passing in the Spanish Parliament of a new Statute of Autonomy of Catalonia – it was passed by the Senate on May 10, 2006 – the text of which had to be ratified by the Catalan people in a referendum to be convened at an opportune time. The date set for this referendum was June 18, 2006. Along with the logical proclamations of any election campaign, there was abundant populism, promises that were impossible to keep, on the part of political leaders.

One of these promises, due to its importance, is deserving of special consideration. We are referring to the speech, on November 13, 2003, of José Luis Rodríguez Zapatero, candidate for the position of Prime Min-

ister of the Government of Spain for the elections of March 14, 2004, supporting the leader of the PSC – Catalan Socialist Party – José Montilla Aguilera, during a campaign event prior to the Regional elections of November 16, 2003. The phrase he should have avoided was: “I will support the reform of the Statute passed by the Catalan Parliament”, committing himself to and encouraging the separatist objectives of the most visible part of the Catalan people. The Referendum on the Statute of Catalonia was called with this enthusiasm, and was held on June 18, 2006. The results of the referendum were very distant from the expectations of those who had convened it. It is sufficient to summarise them by indicating that the turnout was just 48.85% of the electorate; those who voted in favour represented 36.10% of the electorate.

This notable failure, far from dissipating the idea of separatism, nurtured it and led to demonstrations, all of which revolved around a permanent motto: the right to decide. Literally, the proclamation would be “we are a nation and we have the right to decide” – in Catalan, “*Som una nació i tenim el dret de decidir*”. From that time until the most recent times, the political history of Catalonia and its relations with Spain has been replete with acts of public conflict, violent demonstrations and, also, of legal confrontation. Matters being such, on January 23, 2013, the Catalan Parliament declared Sovereignty; which is tantamount to saying independence. The Spanish Constitutional Court declared a precautionary suspension of the Catalan parliamentary Declaration and its effects. And, on March 14, 2014, the same Court ruled that the aforementioned Declaration of Independence was unconstitutional.

The demonstrations on the streets of Catalonia calling for independence continued and, in this atmosphere, the Parliament of Catalonia would pass the Consultation Act on September 19, 2014. This Act was published in the Official Gazette of the Government of Catalonia on September 27, 2014. Faced with this latest provocation, the Constitutional Court declared the precautionary suspension of the aforementioned Act. Once again, in the Catalan Parliament, the need for a Unilateral Declaration of Independence (DUI) was formulated. On November 4, 2014, the Government of Spain submitted a new appeal before the Constitutional Court, which was admitted and the Court, declared the precautionary suspension of the consultation. However, despite the suspension handed down by the Constitutional Court, the consultation was held five days later – on November 9, 2014 –. In this case, the questions featuring in the consultation did not hide the intentions behind them. There were two questions: “Do you wish Cat-

alonia to be a State?"; if so, "Do you wish this State to be independent?". The turnout was also very low in this case, just 37.02% of the electorate.

The President of the Regional Government decided to call early elections to the Catalan Parliament, thereby converting them into a plebiscite. These elections were held on September 27, 2015, and the 11th Legislature of the Parliament of Catalonia began on October 26, 2015. In its first session, Carmen Forcadell was elected Speaker of the legislative body. One day later (October 27), two parties – Junts pel Sí and la CUP – submitted a proposal to formalise an aspiration to the Register of the Catalan Chamber: "To declare solemnly the commencement of the process of creating the independent Catalan State in the form of a republic". On November 11, 2015, an appeal was submitted to the Constitutional Court, which on December 2, 2015, unanimously declared the proposal to be unconstitutional. This 11th Legislature saw the end of the period of Presidency of the Government of Catalonia of Artur Mas i Gavarró (23.12.2010 to 12.01.2016). He was succeeded in the Presidency by Carles Puigdemont i Casamajó (January 12, 2016 to October 28, 2017). His first work, if we might express it as such, was to begin the preparations for a new referendum, which could be envisaged as equally illegal as the previous consultation.

At the same time, work began on the Act of Legal and Foundational Transience of the Republic, which is nothing more than a class of draft Constitution of the Independent Republic of Catalonia (August–September, 2017). On the same day as this Bill was presented (September 6, 2017), the Catalan parliament passed the Self-determination Referendum Act, which would be binding with respect to the independence of Catalonia. Two days later (September 8, 2017), the Constitutional Court urgently suspended the validity of both the Act and the holding of the referendum. This was accompanied by a warning to public authorities, mayors and public officials that they could not participate in the aforementioned referendum. Finally, the Constitutional Court handed down a ruling on October 17, 2017, declaring the unconstitutionality of the aforementioned Act, which had been suspended *ad cautelam*.

Nonetheless, the decision to hold the referendum was a firm one, and so the multiple actions associated with its preparation continued to be carried out. The day itself was replete with irregularities: polling stations open, as opposed to closed or semi-open polling stations; unverified electoral registers, with the, at least theoretical, possibility that the same voter could vote at more than one polling station; open ballot boxes or ballot boxes without seals, and the absence of monitors to validate the process, meaning

that an evaluation cannot be made, due to the absence of verifiable data.

The referendum of October 1 was immediately declared illegal in Spain, and in the European Union. Despite this, on October 10, Carles Puigdemont declared the independence of Catalonia in the Catalan Parliament, although, moments later, he proposed suspending the effects of this declaration, a pretext to enable continuation of negotiations with the Government of Spain to create a suitable formula for separation. Despite the suspension proposed by the President of the Catalan Government, the parliamentary members of two separatist parties – la CUP and Junts pel Sí – ignored the suspension and signed the Declaration of independence of Catalonia, in a document that bore the title “Declaration of the representatives of Catalonia”. Significant passages are: “To the people of Catalonia and all the peoples of the world... WE MAKE KNOWN to the international community and the authorities of the European Union the constitution of the Catalan Republic... WE APPEAL to States and to international organisations to recognise the Catalan Republic as an independent, sovereign State...”.⁴¹

The Declaration was signed by the separatist majority of the Parliament of Catalonia, in the absence of the remaining political representatives. It is true, as far as we know, that no country or institution has recognised the aspired-to independent republic, at least to date. Finally, on October 27, the Catalan Parliament unilaterally declared independence, following a secret ballot – which generates doubts about the freedom of the voting procedure – which resulted in 70 votes in favour and 10 against, with 2 parliamentary members casting blank ballot papers. The parliamentary members of the three parties considered to be constitutionalist – Partido de los Socialistas de Cataluña, Partido Popular and Ciudadanos – were absent for the vote. This declaration of independence is merely a sample of a process to achieve the long-desired independence that has been ongoing

⁴¹ The original version of the text (using partial direct quotation) says: “DECLARACIÓ DELS REPRESENTANTS DE CATALUNYA. Al poble de Catalunya i a tots els pobles del món... La constitució de la República catalana es fonamenta en la necessitat de protegir la llibertat, la seguretat i la convivència de tots els ciutadans de Catalunya... En virtut de tot... nosaltres, representants democràtics del poble de Catalunya... CONSTITUÏM la República catalana, com a Estat independent i sobirà, de dret, democràtic i social... POSEM EN CONEIXEMENT de la comunitat internacional i les autoritats de la Unió Europea la constitució de la República catalana... APEL·LEM als Estats i a les organitzacions internacionals a reconèixer la República catalana com Estat independent i sobirà...”. [*Text translated by author*].

since the 17th century. We are, in reality, speaking of the fourth proclamation of Catalan independence: Pau Clarís – the first, Francesc Maçà – the second, Lluís Companys – the third and Carles Puigdemont – the fourth, omitting the failed attempt of the Proclamation of the Catalan State by the Barcelona Provincial Council in 1873

The reaction of the Spanish Government was immediate and they sought the application in Catalonia of the provisions of article 155 of the Spanish Constitution. On the same day, October 27, 2017, the Senate, by absolute majority, agreed to give authorisation to the Government for the application of article 155 and the Spanish Cabinet, also on the same day, dismissed Carles Puigdemont and the entire Government of Catalonia from their respective posts. Also on the same day, the Cabinet dissolved the Spanish parliament and convened autonomous elections for December 21, 2017. There was a turnout of 80% of the electorate for the elections, with 47.49% (i.e., 37.99% of the electorate) of the votes being in favour of the separatist parties. Although it is sad to have to remind ourselves of the fact, just after the dismissal of the members of the government, some – the dismissed President and some autonomous ministers – would flee Spanish justice and reside abroad – in Belgium, Switzerland, Scotland/ United Kingdom – while others would be prosecuted for different crimes, in a procedure in which, for those occupying the highest positions, the oral hearing would substantively commence before the Spanish Supreme Court on February 5, 2019.

While the penal process was underway, the new Catalan Parliament was constituted on January 17, 2018, with Roger Torrent being elected Speaker of the Chamber. A *first attempt* was made to propose Carles Puigdemont, who had fled to Belgium, as a candidate for the Presidency of the Catalan Government. The Court warned that for a candidate to be sworn in, the candidate had to be present in the Chamber and the Court further advised that, in the case of Carles Puigdemont, he would require the necessary judicial authorisation. The Speaker complied with the decision of the Constitutional Court and postponed the presidential election in the Chamber. On March 1, 2018, a *second attempt* was made, this time to propose Jordi Sánchez (who was in prison) as a candidate for the Presidency of the Catalan Government. In this case, the judge, Pablo Llarena, of the Supreme Court refused to grant a permit to enable Sánchez to attend the plenary investiture session. The Speaker once again postponed the election of the President. The *third attempt* (March 22, 2018) saw the proposal of Jordi Turull, but the necessary support was not forthcoming.

Meanwhile, Judge Llarena sent Turull, a further three ex-ministers of the Catalan Government and the former Speaker of the Catalan Parliament, Carmen Forcadell, to prison. He also handed down an indictment bill for rebellion against Puigdemont, Junqueras and seven former regional ministers, in addition to Jordi Sánchez, Jordi Cuixart, Camen Forcadell and Marta Rovira. The remaining former regional ministers were prosecuted for crimes of disobedience and misappropriation of public monies; a further seven were prosecuted only for disobedience. The *fourth attempt* was also unsuccessful because the proposed candidate was, once again Jordi Sánchez, who had already been proposed in the *second attempt*. As could not possibly be otherwise, Judge Llarena, once again, refused to grant leave from imprisonment to Sánchez, meaning that the challenge laid down by the Catalan Parliament to the Spanish judiciary was, once again, ineffective. And, finally, at the *fifth attempt*, on May 14, 2018, the Catalan Parliament inaugurated, with a simple majority in favour, Joaquim Torra, a candidate selected by Puigdemont from Berlin, as President of the Government of Catalonia. The swearing in of Torra's new government (June 2, 2018), put an end to the application of article 155 of the Spanish Constitution. Five attempts to inaugurate a President, of which four were nothing more than acts of provocation, on the part of the separatists, against the laws and decisions of the Courts of Justice.

IV. An approach from the perspective of the Social Doctrine of the Church

From all that has been said, and following the historical analysis undertaken, it would appear that there are sufficient reasons to affirm that the question of nationalism, even nationalism based on ideological elements, and violent at several times throughout history, is not a passing, ephemeral social anecdote, but rather something encased in the maximum solidity, even if we simply take into consideration the struggles originating from it.

Although it may be a difficult matter to broach, an unknown factor remains on the table for debate: Can it be guaranteed that, in all the envisaged itinerary, the actors who defended Catalan nationalism/secessionism/separatism, and those who acted in defence of the unity of the kingdoms – first the kingdom of Aragon and later that of Spain – acted in the interests of the common good of the peoples affected, or can attitudes of hate, rancour, hunger for power, or class or group interests be observed? Subsequent to four proclamations of an independent Catalan Republic – the latest of which has still not been clarified – we dare to ask, where is man? Or perhaps, and before anything else, what is man and what is society?

Because, ultimately, without man and without society, it makes no sense to speak of nationalism, that makes demands, or of the supreme undertaking of national unity.

4.1. *Man and society*

The question regarding man had already been asked by St. Augustine. “What is man? A rational soul, having a body... [Previously in the same book XIX, 15, he had said:] soul having body does not make two persons, but one man”.⁴² In the Creation story, when he was about to finish, God said: “Let us make man in our own image, in the likeness of ourselves... God created man in the image of himself, in the image of God he created him, male and female he created them” (*Gn. 126-27*). Therefore, man will be the only one of the beings created privileged to be the image of God and, in consequence, the owner of inalienable dignity, endowed with two gifts not given to other beings: rationality and freedom.

The former implies the capacity to distinguish between good and evil, and the latter manifests itself in the capacity to choose, in its natural state between different forms of good but, even, disowning himself, the capacity to choose evil rather than good, in the same way as he chose rebellion over mandate. When it seemed that all had been finished, the Lord God added: “It is not right that the man should be alone. I shall make him a helper...” (*Gn. 218-19*). Thus, man appears in his social dimension; man as a social and sociable being, from his origin; the man called on to share, called on to give of himself and benefit from the giving of others. Man is born, lives and develops in a community, and although he is the greatest of the created beings, man is also a set of shortcomings, compared to other beings, shortcomings he offsets by means of a life in society.

St. Thomas Aquinas said that “... other animals are endowed with a natural awareness of everything which is useful or harmful to them. For example, the sheep naturally judges the wolf to be an enemy... Man, however, has a natural understanding of the things necessary to his life only in

⁴² St. Augustine “Homilies on the Gospel of John”. In Philip Schaff (Ed.) *Nicene and Post-Nicene Fathers*. Christian Classics Ethereal Library. Grand Rapids, MI; Series I, vol. 7, Tract. XIX, num. 15; p. 207. The original text says: “*Quid est homo? Anima rationalis habens corpus...* [in the same book XIX, 15, he had said:] *Anima habens corpus non facit duas personas sed unum hominem*”. Sancti Aurelii Augustini. “In Iohannis Evangelium” XIX, 15. Corpus Christianorum. Series Latina XXXVI. Turnholti. Typographi Brepols Editores Pontificii. 1954, p. 199, no. marg. 30. [Text in square brackets by author].

a general way, and it is by the use of reason that he passes from universal principles to an understanding of the particular things which are necessary to human life... It is therefore necessary for man to live in a community, so that each man may devote his reason to some particular branch..."⁴³

Likewise, with the Second Vatican Council, it can be said that "For by his innermost nature man is a social being, and unless he relates himself to others he can neither live nor develop his potential".⁴⁴ For this reason, although what we have just said is absolutely true, it is no less true that society does not exist without man. Therefore, while man seeks the community in which he finds shelter and the possibility of perfecting himself, the community would disappear without the human factor that endows it with existence. The diversity of communities which man feels part of, are not contradictory, but rather stronger. From the smallest, the most primary, into which man is born – the family – to the national community in which he lives, right up to the greatest community to which he belongs – the human family – are all different levels at which man has the opportunity to contribute his virtues and practice solidarity.

This, whilst being important, does not permit us to alter the natural order, in which man is the primary being, and cornerstone, of all other social, political, economic... structures, which, as local, national or supranational communities, are posterior and inferior, in essence, to man himself. It is for this reason that man holds the primary responsibility for community endeavours. Pope Leo XIII was prophetic when he said "There is no need to bring in the State. Man precedes the State, and possesses, prior to the formation of any State, the right of providing for the substance of his body".⁴⁵ Therefore, above nations, states, supranational organisations; also regardless of nationalism, sovereignism, separatism and secessionism, the fate of a community, of a society, will be that of the persons of which it is composed.

This society, in that it is an assembly of the men and women who form part of it, has a proprietary objective, which in turn is the objective of each of its members: "... it seems that the end for which a community is brought

⁴³ St. Thomas Aquinas *De Regimine principum* or *De regno*. In 'St. Thomas Aquinas, Political Writings'. Edited and translated by R.W. Dyson. Cambridge University Press. Cambridge (UK) 2004. First published in printed format, 2002. Book I, Chapter I, p. 6.

⁴⁴ Ecumenical Council Vatican II Pastoral constitution *Gaudium et spes*. Rome 07.12.1965) num. 12.

⁴⁵ Leo XIII Encyclical Letter *Rerum novarum*. (Rome, 15.05.1891) num. 7.

together is to live according to virtue; for men come together so that they may live well in a way that would not be possible for each of them living singly. For the good is life according to virtue, and so the end of human association is a virtuous life”.⁴⁶ Another thing is the coming together, perhaps accidental, of people in a group, as a mix of heterogenous magnitudes or elements, with different objectives, which could be classed as a human mass or, if you like, even a social mass, but not as society or community, for it lacks any force that brings it together or makes it coherent.

Pope St. John XXIII left us the legacy of these words: “... we must think of human society as being primarily a spiritual reality. By its means enlightened men can share their knowledge of the truth, can claim their rights and fulfill their duties, receive encouragement in their aspirations for the goods of the spirit, share their enjoyment of all the wholesome pleasures of the world, and strive continually to pass on to others all that is best in themselves and to make their own the spiritual riches of others”.⁴⁷ It is virtue, that reality of spiritual order, upon which the true sense of friendship can be built, friendship so essential for life in society; St. Thomas states to the fifth reason why Aristotle argues that it pertains to ethics to treat friendship, by saying: “...if men are friends there should be no need of justice in the strict sense because they should have all things in common; a friend is another self and there is no justice to oneself. But if men are just they nevertheless need friendship for one another. Likewise perfect justice seems to preserve and restore friendship”.⁴⁸ In other words, justice and friendship feed off each other. They reinforce each other in the task of forming a better society.

Hence, what we should put in doubt is the character of the social project, when at its heart is found the aspiration for power, differentiation, marginalisation due to criteria or opinions that differ from, or are even contrary to, those held or professed by the artifices – instigators of social confrontation – as a project distant from the common good, which is

⁴⁶ St. Thomas Aquinas *De Regimine principum* or *De regno*. In ‘St. Thomas Aquinas, Political Writings’. Edited and translated by R.W. Dyson. Cambridge University Press. Cambridge (UK) 2004. First published in printed format, 2002. Book I, Chapter XV, p. 40.

⁴⁷ St. John XXIII Encyclical Letter *Pacem in terris*. (Rome 11.04.1963) num. 36.

⁴⁸ St. Thomas Aquinas *Commentary on the Nicomachean Ethics*. Translated by C.I. Litzinger, O.P. Henry Regnery Company. Chicago 1964 (2 volumes); Book VIII, Lect. 1, Chap. 1; num. 1543.

nothing other than the good of each and every member of society; i.e., the essential good of man, the good of man as man.

So much so, that, “When man does not recognize in himself and in others the value and grandeur of the human person, he effectively deprives himself of the possibility of benefitting from his humanity and of entering into that relationship of solidarity and communion with others for which God created him”.⁴⁹ Every “I” of necessity requires a “YOU” which joins the “I” to create a “WE”. The absolute “I” can only occur in isolation from the rest of the beings who make up our community. The lack of the “YOU” leads to the absence of the “OTHERS”, as those who belong to the very community. “Thus society becomes a mass of individuals placed side by side, but without any mutual bonds. Each one wishes to assert himself independently of the other and in fact intends to make his own interests prevail... In this way, any reference to common values and to a truth absolutely binding on everyone is lost, and social life ventures on to the shifting sands of complete relativism. At that point, everything is negotiable, everything is open to bargaining...”⁵⁰

A form of solitude of man occurs when man, renouncing his true objective, alienates himself, surrendering himself to passing, material goals, and when he subjects himself to false ideologies and utopias, leading society towards the paths of denial of humanity itself. “Our openness to others, each of whom is a «thou» capable of knowing, loving and entering into dialogue, remains the source of our nobility as human persons”.⁵¹ Transforming what is perishable into what is permanent, converting vanity and arrogance into love and solidarity, is when man is capable of communication and developing a community, a society that is also caring and capable of achieving the common good of all its members.

“As a spiritual being, the human creature is defined through interpersonal relations. The more authentically he or she lives these relations, the more his or her own personal identity matures. It is not by isolation that man establishes his worth, but by placing himself in relation with others and with God. Hence these relations take on fundamental importance”.⁵² And, what we are saying with respect to man and with respect to the human community is also applicable to nations and peoples, considered formally.

⁴⁹ St. John Paul II Encyclical Letter *Centesimus annus*. (Rome 01.05.1991), num. 41.

⁵⁰ St. John Paul II Encyclical Letter *Evangelium Vitae*. (Rome 25.03.1995), num. 20.

⁵¹ Francis Encyclical Letter *Laudato Si'*. (Rome 24.05.2015) num. 119.

⁵² Benedict XVI Encyclical letter *Caritas in Veritate*. (Rome 29.06.2009) num. 53.

This means that, the solidarity that makes man virtuous can also be extended to nations. Does the nationalism / separatism of the “I” have a place in the endeavour of solidarity? “We must regain the conviction that we need one another, that we have a shared responsibility for others and the world, and that being good and decent are worth it. We have had enough of immorality and the mockery of ethics, goodness, faith and honesty. It is time to acknowledge that light-hearted superficiality has done us no good”.⁵³ It is selfishness, the predominance of what is personal, here and now, that closes eyes and mind to considerations of a higher order, surrendering ourselves to illusions presented to us as permanent and decisive in order to have a better life, which, in most cases, will surprise us because it is not even better in the material sense and, it has also impeded our spiritual dimension.

The necessary sociability of men can be extended to peoples; the interdependence we observe between persons, as a framework of solidarity, should also occur between peoples and nations. It is a very distinguishing mark of today’s world, probably more than at any other time in the past. Because, “Every day human interdependence grows more tightly drawn and spreads by degrees over the whole world. As a result the common good, that is, the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment, today takes on an increasingly universal complexion and consequently involves rights and duties with respect to the whole human race. Every social group must take account of the needs and legitimate aspirations of other groups, and even of the general welfare of the entire human family”.⁵⁴

To guarantee the path for the achievement of the common good is the great task of the governing body, and what justifies its very existence. This has its origins in two realities, both of which are natural: firstly, that man is a sociable being, called upon to live in society, meaning that the private good, isolated from the good of the community, lacks sense and may lead to selfishness that damages society. And secondly, that man is a free being and, as such, is capable of choosing between different alternatives of good, which cannot be satisfied effectively in the absence of consent to join intentions for a determined purpose. “... in all cases where things are directed towards some end but it is possible to proceed in more than one way,

⁵³ Francis Encyclical Letter *Laudato Si’*. (Rome 24.05.2015), num. 229.

⁵⁴ Paul VI Pastoral Constitution on the Church in the Modern World *Gaudium et Spes* (Rome 07.12.1965), num. 26.

it is necessary for there to be some guiding principle, so that the due end may be properly achieved”.⁵⁵

From what we have been saying, if it is natural that an authority exists to guide society as a whole towards the common good, also originating from here would be, in accordance with nature, the mission of the authority, the achievement of which would result in its legitimacy and the goodness or evil of its action. Any authority which has knowingly gained access to the function through deceit will lack legitimacy for the mission entrusted to it. To govern is nothing other than to administer, order and coordinate the governed community so that it can achieve its natural objective, which, in the words of St. Thomas, is none other than salvation; and “... the good and wellbeing of a community united in fellowship lies in the preservation of its unity. This is called peace, and when it is removed and the community is divided against itself, social life loses its advantage and instead becomes a burden. It is for this end, therefore, that the ruler of a community ought especially to strive: to procure the unity of peace”.⁵⁶ Therefore, the governor who, for the purpose of remaining in power, even with the pretext of considering himself essential to the wellbeing of society, or any other reason associated with his private interest, governs provoking social confrontations, is failing in his mission and, therefore, is delegitimising himself and should not continue to carry out the function of government.

Indeed, one of the most general features of dictatorial governments, and governments which, although not dictatorial in formal terms, are very close to being so in practice, is that, far from seeking peace in society, or that friendship reigns amongst the governed, they deliberately seek confrontation and conflict, and with it violence, based on the erroneous principle that as long as there is fighting between one party and another in society, it will not be possible to analyse the goodness or badness of the act of governing. The history of the 20th century was replete with events that humiliated the dignity of people.

Let us consider, as Pope Leo XIII reminded us, that man predates any political or social structure. What is more, those political and social struc-

⁵⁵ St. Thomas Aquinas *De Regimine principum* or *De regno*. In ‘St. Thomas Aquinas, Political Writings’. Edited and translated by R.W. Dyson. Cambridge University Press. Cambridge (UK) 2004. First published in printed format, 2002. Book I, Chapter I, p. 5.

⁵⁶ St. Thomas Aquinas *De Regimine principum* or *De regno*. In ‘St. Thomas Aquinas, Political Writings’. Edited and translated by R.W. Dyson. Cambridge University Press. Cambridge (UK) 2004. First published in printed format, 2002. Book I, Chapter III, p. 10.

tures have the single purpose of serving civil society, the human community. “Political authority is an instrument of coordination and direction by means of which the many individuals and intermediate bodies must move towards an order in which relationships, institutions and procedures are put at the service of integral human growth”.⁵⁷ Therein the political community finds its true justification and the determining feature of its legitimacy, not in exacerbating, with historical fantasies and falsehoods, people of good faith, making their presumed belonging an element of differentiation, and causing them to believe that they can use the violence necessary to make this differentiation patent.

That “*I*” that housed a “*YOU*”, of which we spoke in previous pages [section III-a)], capable of creating a “*WE*” will only be possible if the kingdom of love is built amongst men, with the conviction that that nobody is more important than anybody else and that, on the contrary, the smallest shall be considered great in the kingdom of heaven. Terms such as dignity, benevolence, justice, fraternity and solidarity all coalesce in a privileged recipient, in man, a rational, free and responsible creature, created in the image of the Creator. Capable and responsible for, firstly, building a human society where virtue abounds, whose prize, in the words of St. Thomas Aquinas, would be happiness, the desire and quest for which is engraved on the mind of all rational beings; “... everyone, in acting well, is striving to achieve what he most desires, and that is to be happy: something that it is not possible not to wish for [St. Thomas, *Sum. Theo. I-II, q. 1, a. 6-7*]”.⁵⁸

5. By way of corollary

We would like to, in a summarised form, highlight some of the more significant points contained in these pages, once again, not wishing to go into political and social references, available every day in the media, which, could degrade the desired objectivity of the facts and, when possible, the justified interpretation of them. Let us recall that would it be necessary to rewrite history in order to accept that Catalonia was independent from the time of its origins (some situate these origins in Greece) and that, only from the 18th century, with the arrival of King Philip V, it has been en-

⁵⁷ Pontifical Council for Justice and Peace *Compendium of the Social Doctrine of the Church*. Libreria Editrice Vaticana. Città del Vaticano 2005; num. 394.

⁵⁸ St. Thomas Aquinas *De Regimine principum* or *De regno*. In ‘St. Thomas Aquinas, Political Writings’. Edited and translated by R.W. Dyson. Cambridge University Press. Cambridge (UK) 2004. First published in printed format, 2002. Book I, Chap. IX, p. 25.

slaved, meaning that the separatism of today only seeks to recover the lost independence. This scenario, peddled by Catalan separatists, has nothing to do with the crudest reality. In the preceding pages, we have sought to provide evidence of the historical facts that contradict this story.

We have argued, basing our arguments on historical facts, that the Catalonia of which the separatists speak, and that in which many Catalans of good faith believe, has little to do with the real Catalonia. In the interest of historical truth, we fight against opinions and proclamations that are in no way supported by historical data. At the end of the day, the first formal proclamation of an independent Catalan republic, as has been pointed out in previous pages, goes back to 1641 – January 16 – and, since then, the same has been attempted on three occasions, the last on October 10, 2017, when Carles Puigdemont formulated the Declaration of Independence.

We believe that Catalonia, like Spain or any other country, is not substantively identified by a territorial dimension. The territory is no more than accidental, while the basis for the identification of Catalans and Spaniards is the communion of ideas, objectives and, above all history. Not even the language is decisive, although it is the most important vehicle for communication; of affection and disaffection, of affiliations and exclusions. It is not surprising that separatists do not identify Catalans as those who live in Catalonia and speak Catalan. Many who satisfy these two requirements are not welcomed in Catalonia as Catalans, because their social and political commitment does not coincide with those who believe in separatism.

The union of Castile and Aragon, of which so much is written in the history books, was more formal than substantive and real. Isabella and Ferdinand continued to be Queen of Castile and King of Aragon respectively. With Emperor Charles I of Spain and V of the Holy Roman Empire (1516) would come the time at which it is possible to speak, for the first time, of a Spain with the sense of being so. A united Spain, with the same faith, the same ideals and a new Royal House, the House of Austria, which would reign over Spain for almost two centuries, i.e., until the end of the reign of Charles II the Bewitched. The monarchy of the House of Austria, which in the books of Spanish history is identified, as could not be otherwise, with the absolute monarchies, was, in the opinion of the Catalan nationalist movement, a model of tolerance and respect for the territories of which Catalonia was composed, both in terms of the form of government and with respect to its laws, customs and institutions.

Philip II himself would have been surprised to see such an assessment of the personality and governing style of the monarchs of the House of Aus-

tria. Quite another matter is that they were, in general terms, were more focused on conflictive issues – one war was followed by another – and barely had time to concern themselves with the task of government, and leave the institutions to do what they could resolve themselves. When this tolerance, interpreted by Catalan separatists as *independence*, was contrary to the interests of the King, he found means to ensure that his will prevailed.

The monarchies of the House of Habsburg would not be so tolerant of Catalan independence when the first proclamation of the independent Catalan Republic was made, precisely during the reign of a king from the House of Austria – Philip IV – and, what is worse, sought to put Catalonia under the protection of King Louis XIII and subsequently under that of Louis XIV of France – The Sun King – of the House of Bourbon. For Pau Clarís – President of the Government of Catalonia – this was preferable to remaining under the Crown of the House of Austria in Spain. Subsequently, the House of Bourbon would become the greatest enemy of Catalan nationalists and of most of the Crown of Aragon, to the point of leading to the War of the Spanish Succession, due to the refusal to enthrone Philip V as King of Spain. This war would last twelve years and, according to the Catalan nationalists/separatists of today, marks the time of the *loss of independence of Catalonia*. In our judgement, the independence alluded to had never previously existed as such.

We continue to believe that there are other reasons underlying the aspiration to the independence of Catalonia, reasons which would be easier to accept. We are thinking, for example, of the desire to create an independent State, without any further need to rewrite history. With this in mind, Catalans themselves, perhaps forgetting what has occurred, now refer to *it is what Catalans want* and that, the Catalan government of today is simply attempting to fulfil the mandate given to them by the citizens of Catalonia. As if the Spanish people were not affected by the decision.

The last elections to the Catalan Parliament, in a politically stable environment were those held on September 27, 2015. The most interesting results of these elections, which should reflect the will of the people through the exercising of their right to vote for candidates in accordance with their ideals, were as follows: of an electoral register of 5,314,913, separatist parties – at that time JxSí (Juntos por el Sí) and CUP (Candidatura de Unidad Popular) – obtained 1,957,348 votes, i.e., 36.83% of the electorate, from which separatists deduced that the mandate given by Catalans was independence and that there was no margin for not accepting this. Some people, in Spain, suggested that the solution would lie in the structure of a

Federal State – this opinion has been put forward many times by the Partido Socialista Obrero Español (PSOE) – although, from the outset, it is a solution that has not been accepted by Catalonia, because, as they express it very well, their demand is the recognition of the *differential fact*, and not a general solution for all the regions of Spain. In other words, the conviction that they are different, i.e., that they are better than other Spaniards, is what underpins their proposal of an Independent Catalan Republic. Federalism was already an option taken into consideration by constituents and rejected due to the strong opposition of the Catalans.

We are faced with what the historians Reglá and John Elliot summarised as *the intransigent and condescending attitude of the Catalans* as the cause of the conflicts between Catalonia and Spain. The legal-political principles of Catalans today are based on the idea that the will of the people is above any other consideration. This will, as interpreted by the Catalan Government, prevails over the laws – and amongst them, the constitution itself. It prevails over the rulings of Judges and Courts – and also over the Constitutional Court and the Supreme Court – and, of course, the Catalan Government must follow the direction set out, with its only reference being the Catalan parliament.

Does this mean that any decision, taken by any community, even following democratic principles, is equally valid and must be complied with, even if it is contrary to judicial rulings? In that case, what would differentiate a human community from a group of irrational beings, guided by instinct or appetite? The church reminds us that “... the political community and public authority are founded on human nature and hence belong to the order designed by God, even though the choice of a political regime and the appointment of rulers are left to the free will of citizens”.⁵⁹

Would a person who held the position of ruler be worthy of this position if, in representation of the community, with the only pretext being fulfilment of the mandate received as a result of a vote – even a unanimous vote in a Parliament – he were to lead this community to the moral, civic and social abyss, as has occurred so many times in the history of wars, confrontation, discrimination and extermination? Europe continues to have very clear memories of events that have brought shame on humanity, despite being supported by ample majorities in votes. We are not saying that democracy is a danger to humanity, to man; we are simply saying that, de-

⁵⁹ Ecumenical Council Vatican II, Pastoral Constitution *Gaudium et spes*. (Rome 07.12.1965), num. 74.

spite being the best of the known systems, it needs to be subjected to moral judgement. Discernment with respect to ends is essential for any proper government, and the end is man and his mission in this world; the reason for which he was created.

Bearing this in mind, we have to acknowledge that, in current democratic systems, with large quantities of populism, and the Catalan case is no exception, messianism, and its consequence of aspiring to glory, are the great enemies of a government, and therefore, of those who are governed. Saint Thomas warned of this, saying that "... dangerous evils arise from the desire for glory. For many have brought the liberty of their fatherland under the power of an enemy when they have sought immoderate Glory in the commerce of war and have perished along with their army... There is another vice closely related to the desire for glory, namely, dissimulation. For it is difficult to pursue those true virtues... and few manage to do so; but, desiring glory, many pretend to be virtuous".⁶⁰ What is narrated by Saint Thomas has occurred to Catalonia on more than one occasion, if we bear in mind the four independent republics proclaimed.

Glory and personal indulgence obscure "... the enormous inequalities in our midst, whereby we continue to tolerate some considering themselves more worthy than others... In practice, we continue to tolerate that some consider themselves more human than others, as if they had been born with greater rights".⁶¹ How many wars, how many brothers dead, due to the presence amongst men of this sense of superiority, be it singular, ethnic or associated with social class, which separates rather than unites, which discriminates between the chosen and the excluded, between the powerful and the humble, to the point where they annihilate each other, when we all belong to the same human family, that is to say brothers, children of the same Father. A family which feels itself segmented, divided by this sense of superiority, of being better, of distinction, pride and vanity, all guarantors of disdain for everything and everyone around us.

When will we see collaboration – the collaboration of all – in the great work of the Creation? By the will of God, we are all called to the task; each in accordance with his possibilities. When will we see the effectiveness of our commitment to build a more just, more fraternal and more caring society? Are we ready to be accountable?

⁶⁰ St. Thomas Aquinas *De Regimine principum* or *De regno*. In *St. Thomas Aquinas, Political Writings*. Edited and translated by R. W. Dyson. Cambridge University Press. Cambridge (UK) 2004. First published in printed format, 2002. Book I, Chap.VIII, p. 23.

⁶¹ Francis Encyclical Letter *Laudato Si'*. (Rome 24.05.2015) num. 90.

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COMMEMORATION OF A DECEASED ACADEMICIAN

Belisario Betancur (4 February 1923 – 18 December 2018)

Former member of the Pontifical Academy of Social Sciences

In memoriam

Our colleague Belisario Betancur passed away in December 2018. He belonged to the group of scholars appointed by His Holiness John Paul II when he founded the Pontifical Academy of Social Sciences in 1994. He was 95 years old and, for a while, had not been able to attend our plenary sessions due to health problems. That is why many of our colleagues today never had the opportunity to meet him. Those of us who had the good fortune of knowing him were able to enjoy his wisdom, forged especially in the field of politics, where he became President of Colombia between 1982 and 1986. Those who understood his brilliant Spanish enjoyed it the most, because, like several of his compatriots, he had an exceptional command of it.

He was born in Amagá, province of Antioquia, in 1923. After studying law at the Universidad Pontificia Bolivariana de Medellín, he graduated as a Doctor of Law and Economics with a thesis on “Economic public order”. Later he would obtain a Doctorate Honoris Causa in Humanities from the Universities of Colorado and Georgetown. He got married in 1945 with Rosa Helena Álvarez, who died in 1998, with whom he had three children: Beatriz, Diego and María Clara.

That same year, 1945, he began his political career as a member of the Assembly of Antioquia with the Conservative Party, reaching the House of Representatives in 1950. After four years as a member of the National Constituent Assembly (1953–57), he was Minister of Labor and Social Security (1963), Senator and Ambassador to Spain. After being defeated by Julio César Turbay in the 1978 presidential elections, he won them in 1982.

The main focus of his government was the pacification of his country, which at the time, and for a long time, was one of the most violent in Latin America. From the beginning of his government, Belisario Betancur raised the need to initiate a peace process and to execute a political reform that facilitated dialogue with the guerrillas and other illegal groups in order to reach a negotiated solution to the conflict. With this objective, he

promoted an amnesty project before Congress, which became law at the end of 1982. His Peace Process resulted in the signing of the “Acuerdos de la Uribe” peace agreement, signed by a Peace Commission on behalf of the government, and by the General Staff of the FARC-EP guerrillas. On March 28, 1984, the FARC ordered a ceasefire on its 27 guerrilla fronts, while President Betancur ordered the same to all civilian and military authorities in the country. This did not mean the end of secular political violence in Colombia, but it clearly was an initial first step, whose fruits can still be seen, thirty-five years later.

In this endeavor he encountered many difficulties. The main one was in November 1985, when the Palace of Justice was taken by a commando of the M-19 guerrilla movement, allegedly because of a violation of the ceasefire. Betancur refused the demands of the guerrilla group and commanded the recovery of the Palace by the army, with a balance of more than one hundred victims. Incredibly, the Nevado del Ruiz volcano erupted a few days later, producing an avalanche that destroyed the town of Armero, Tolima, killing approximately 31,000 people. Also, under his presidency Colombia became the first and so far the only country to renounce being the host of the Soccer World Cup. President Betancur was convinced that the government he presided had other priorities, linked mainly to the fight against poverty. After his presidency in 1986, he ended his political career.

Betancur was also an active writer and journalist. Among his works it is possible to find stories, poetry and essays on public policies, all in Spanish. Many of the last ones are related to the topics of the Pontifical Academy of Social Sciences. Some examples are *Basis for a national government. Colombia face to face* (1961); *Image of social change in Colombia* (1966); *Despite Poverty* (1967); *From Misery to Hope and Foreign Aid* (1970); *Colombia Awake* (1970); *Populism* (1970); *The Other Colombia* (1975); *Money, Prices and Wages* (1975); *Christ of development* (no date); *The commitment to peace: report to the Congress of Colombia 1982-1986* (1986); and, finally, *Language as an expression of the history of Antioquia* (1991).

Among his last public activities, his designation stands out, on the part of the Secretary General of the United Nations, as a member of the Truth Commission of El Salvador, which he chaired (1993).

Among his other awards, two are particularly significant. One is the Prince of Asturias Award for International Cooperation, because of his commitment to the permanent values of the spirit and culture, to which he devoted his best efforts, embodied in his recognized intellectual work

and, on the other hand, his vigorous and determined public life, constantly directed to the defense of Colombian democratic institutions. The other important prize was the XXI Menéndez Pelayo International Prize, for his contributions to the causes of education and peace. Finally, besides being a member of our Academy, he was also a member of the European Academy of Sciences and Arts; of the Colombian Academies of Language, Jurisprudence and History; and of the Mexican Academy of Language.

In short, perhaps the highlight of his career was his commitment to the task of bringing the ethics and values of Christianity to real public life. It is a hard task, because *errare humanum est*. However, it can be said without a doubt that Belisario Betancur fulfilled it with a broadly favorable result.

JUAN J. LLACH

FINAL STATEMENT

Conflicts between nation-states are all too often fuelled by nationalism and hostile depictions of the other. Overcoming the challenges of world peace demands necessary distinctions based on ethical criteria. The Social Doctrine of the Church provides such a realistic vision.

‘State’ and ‘nation’ are two related but very different concepts. An ethnic group can be considered a people (although in many cases, with a considerable proportion of other peoples) if it shares a language and some form of common descent. A nation is a group of people which shares objective affinities (mainly linguistic and cultural and, to a lesser degree, ethnic and religious) and, particularly, a subjective feeling of belonging together, often rooted in a common history. This group often aspires to a common statehood based on the willingness to share a common destiny. A state is an institution constituted by a community of people located on a given territory and organized according to a common legal system endowed with coercive power, which is independent of other states and, in this sense, sovereign. It was only in the 19th century that states became increasingly committed to the idea that they were the home of a single nation, and nations began to demand a common state for themselves. Multiethnic states abounded during most of human history (as well as city-states beneath the national level). Many such states still exist, especially large territorial ones such as India, China, and Russia. And there are states, many of which in Africa, which lack their own nation but are the result of colonial activities. Their borders usually do not follow the boundaries of ethnic groups and peoples.

Mono-national states are not the only legitimate or even privileged form of statehood – most states are multi-national. Since there are no simple mechanisms for changing state borders and the process is, in most cases, connected with bloodshed (think of former Yugoslavia), even if remarkable exceptions do exist (think of former Czechoslovakia), the secession of a self-declared nation without the consent of the legal government is not morally acceptable unless that does not involve flagrant violations of basic human rights. In this case, the secessionist move may fall under the general right to resist those governments that violate the basic principles of natural law. States are obliged by international law and the rights of nations to guarantee basic rights to minority ethnic groups, which otherwise may be inclined to secede, and must avoid giving the impression that the majority is oppressing the ethnic minorities. Discrimination based on race,

ethnic background and religion cannot be permitted, for example, as far as access to public offices is concerned, and there must be ample space for the preservation of minority cultures, in particular as regards language and religion. A federal state is often a wise constitutional structure to guarantee these rights, but it is not always feasible, be it for historical or geographical reasons. A federal state may be advisable even in the case of a culturally homogenous state, because it adds a vertical separation of powers to the more traditional horizontal one. Disputes over borders, unjust treatment of minorities, nationalistic propaganda against neighboring nations in order to create popular support for the government, and imperialistic ambitions have the potential to threaten world peace.

Even if homogenous nation-states may have the advantage of a more streamlined decision-making process, they should not oppose international cooperation, for example within the family of states represented by the United Nations, or even supranational organizations. The need for international cooperation has increased in the last few decades for at least three reasons. Firstly, economic globalization requires a political structure that is able to come to terms with it. Markets can only function within a legal framework that is not in itself subjected to market forces. Secondly, environmental challenges are – to a large extent – global. Climate change has no borders; only consistent and lasting cooperation among states can mitigate it. Thirdly, international security agreements are more urgent than ever because of new weapons of mass destruction that have the potential of destroying most life on earth. At the same time, the principle of subsidiarity justifies states sovereignty: like families, cities, regions and states must be able to achieve their respective goals autonomously.

When the common good reaches a higher level of complexity, international cooperation becomes necessary. The European Union is a successful example of a partially supranational organization based on the sharing of sovereignty in order to achieve goals precluded at lower levels of organization. Needless to say, all international and supranational organizations are subject to criticism, as should be further developed, and have to increase their effectiveness and efficiency. But they should be improved, not abrogated.

Although in everyday language the words are often used interchangeably, the Social Doctrine of the Church distinguishes between patriotism and nationalism to signal two different attitudes: patriotism – defined as love in one's homeland and the willingness, derived from this love, to contribute to its development and to defend it – is a noble sentiment, since it is the affirmation of a community's legitimate desire for self-determination

and self-government. Its repression is both unjust and counterproductive, since it may provoke negative reactions in the form of aggressive nationalism. Nationalism that is exclusive and imperialistic is a perversion of patriotism. There are three forms of nationalism that should be rejected on moral and political grounds: Nationalism manifested in unjustified secessionist activities; manifested in the oppression of ethnic minority rights; and aggressive nationalism that can lead to armed conflict.

Nationalism can also manifest itself in the international arena by refusing international cooperation, which is necessary in at least the following areas that are relevant for the common good of humankind at large: international trade, migration, human rights, and disarmament treaties. This is particularly true in the case of climate policies, an area that has been irresponsibly left behind so far. In its more dangerous form, nationalism can give rise to an idolatry of one's own state, the rejection of cooperation with other countries, and even the denial of the rights of other states, of the human rights of other people and of migrants. In the worst-case scenario it can cause unjust and illegal wars, i.e. not for self-defense or the defense of allies under attack.

As regards the economy, the heart of the debate is whether the best way lies in abandoning globalization – something perhaps impossible, anyway – or in substantially improving it. Looking at the experience of the twentieth century, it seems clear that abandoning globalization would be the worst way. However, there are not few the ones who embrace national-populism and advocate abandoning or seriously limiting it. Of course, it is very evident that economic globalization needs many relevant improvements as regards social and economic justice and caring for the common human environment. As stressed in *Laudato Si'*, the environment is a global common good, neither a public nor a private global good. That is why it requires a special governance regime.

Global politics is at a crossroads. The institutions of the post-war period, created to ensure a peaceful world order and guarantee inclusive prosperity, are showing signs of wear (think of the UN Security Council, for example). Moreover, transnational institutions established in the same period with sometimes contradictory mandates, ended up creating a confusing fragmentation of authority. As Pope Benedict XVI pointed out in the final part of *Caritas in Veritate* (2009), we can no longer postpone the search for a new institutional setup to govern the growing interdependencies and interconnections within and between societies. Otherwise it will be impossible to avoid dangerous consequences, the most serious of which is

the desperate movement of peoples who are deluded into seeking a way out of their difficulties in sovereignty and in the unilateral defense of their respective interests. At the same time, it would be unwise to accept the model of post-national democracy in the name of a cosmopolitan citizenship that considers the concept of nation to be outdated. National sentiment can still go hand in hand with democracy, as long as the latter does not regress towards forms of illiberal democracy. But the rise of aggressive nationalism, the undermining of international cooperation and supranational institutions, such as the European Union and many others, and the refusal to develop binding international cooperation in economic, climate, and security politics are threats to what is morally and politically necessary. They are certainly not in agreement with the principles that are defended and supported by the Catholic Social Teaching, nor are they in agreement with the prospect of a world of ideal inclusive prosperity.

As Pope Francis suggests, increased and intensified international cooperation is necessary in order to overcome divisiveness among nations, offering new pathways of cooperation and sustainable development, especially vis-à-vis the new challenges of climate change, modern slavery and peace as a supreme good, which today is under attack.

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DECLARACIÓN FINAL

Con demasiada frecuencia, los conflictos entre los Estados-nación son producto del nacionalismo y del retrato hostil del otro. Para superar los desafíos que nos plantea la paz mundial, es fundamental hacer distinciones fundadas en criterios éticos. La Doctrina Social de la Iglesia brinda esta visión realista.

Los conceptos de “Estado” y de “nación” están relacionados, pero son muy diferentes. Un grupo étnico puede ser considerado un pueblo (aunque en muchos casos se nutra considerablemente de otros pueblos) si tiene una lengua en común y comparte algún tipo de ascendencia. Una nación es un grupo de personas que comparten afinidades objetivas (en particular lingüísticas y culturales, y en menor grado, étnicas y religiosas), y especialmente, una sensación subjetiva de pertenencia, a menudo emanada de una historia común. Este colectivo suele aspirar a una condición de Estado compartida, que surge de la voluntad de ser dueños de un destino común. Un Estado es una institución formada por una comunidad de individuos que viven en un territorio dado y que se organizan según un único sistema jurídico, dotado de poder coercitivo. Además, es independiente de otros Estados, y en este sentido, es soberano. Fue recién en el Siglo XIX que los Estados comenzaron a percibirse a sí mismos como moradas de una única nación, y que las naciones comenzaron a exigir un Estado compartido para sí. Los Estados multiétnicos abundaron durante gran parte de la historia humana, y lo mismo ocurrió con las ciudades-Estado que se erigieron por debajo del nivel nacional. Muchos de estos Estados siguen existiendo, especialmente los que ocupan grandes extensiones territoriales, como es el caso de India, China y Rusia. Por otro lado, hay Estados, muchos de ellos africanos, que carecen de una nación propia porque son resultado del colonialismo, con fronteras que no suelen coincidir con la distribución de los diferentes pueblos o grupos étnicos.

Los Estados uninacionales no son los únicos que gozan de una condición de Estado legítima, o incluso privilegiada; casi todos los Estados son multinacionales. Dado que no existen mecanismos sencillos para modificar las fronteras de un Estado, y en la mayoría de los casos, aunque existan notables excepciones (caso de la ex Checoslovaquia), dicho proceso va acompañado del derramamiento de sangre (pensemos en la ex Yugoslavia), la secesión de una nación autodeclarada sin el consentimiento de su legítimo gobierno es moralmente inaceptable a no ser que tal gesto esté libre de toda violación a los derechos humanos. En este caso, el movimiento de secesión bien puede

estar amparado por el derecho general de resistirse a un gobierno que quebranta los principios básicos del derecho natural. Los Estados están obligados por el derecho internacional y los diferentes derechos internos a garantizar el goce de los derechos básicos por parte de las etnias minoritarias – las que, de lo contrario, pueden verse inclinadas a apartarse –, y deben evitar dar la impresión de una opresión de las minorías étnicas a manos de la mayoría. La discriminación por motivos raciales, étnicos y religiosos no debe admitirse en lo relativo al acceso a la función pública, y debe haber un amplio espacio para la conservación de las culturas minoritarias, en particular en materia de lengua y religión. Un Estado federal suele ser una estructura constitucional ecuaníme que garantiza estos derechos, pero tal situación no siempre es factible, por razones históricas o geográficas. Un Estado federal es recomendable incluso en el caso de homogeneidad cultural, pues agrega una división de poderes vertical a la división de poderes horizontal y más tradicional. Los conflictos territoriales, el trato injusto para con las minorías, la propaganda nacionalista contra las naciones vecinas con miras a generar apoyo popular para el gobierno de turno, y las ambiciones imperialistas son potenciales amenazas a la paz mundial.

Aunque los Estados-nación homogéneos quizás tengan la ventaja de un proceso decisorio más eficiente, no deberían oponerse a la cooperación internacional, dentro de, por ejemplo, el colectivo de Estados representado por las Naciones Unidas, o en el seno de las organizaciones supranacionales. La necesidad de la cooperación internacional aumentó en las últimas décadas por al menos tres razones. En primer lugar, la globalización económica exige una estructura política que sirva para atender sus desafíos. Los mercados solo pueden funcionar con un marco jurídico que no esté sometido a las fuerzas del mercado. En segundo lugar, los problemas ambientales son, en gran medida, de naturaleza global. El cambio climático no conoce fronteras: únicamente una cooperación uniforme y duradera entre los Estados puede ayudar a mitigarlo. En tercer lugar, los acuerdos internacionales en materia de seguridad son hoy más urgentes que nunca, debido a las nuevas armas de destrucción masiva, que tienen el poder de arrasar con la mayor parte de la vida en el planeta. Al mismo tiempo, el principio de subsidiaridad justifica la soberanía de los Estados: al igual que las familias, las ciudades, las regiones y también los Estados tienen que poder alcanzar sus respectivos objetivos en forma autónoma.

Cuando el bien común adquiere un mayor nivel de complejidad, la cooperación internacional se vuelve una necesidad. La Unión Europea es un ejemplo exitoso de organización en parte supranacional basada en

una soberanía compartida, la cual tiene por objeto concretar metas que no están al alcance de los estamentos de gobierno inferiores. Claramente todas las organizaciones internacionales y supranacionales son criticables y perfectibles, y todas deben mejorar su eficacia y eficiencia. El objetivo, sin embargo, debe ser su optimización, no su anulación.

Aunque en el lenguaje cotidiano las palabras *patriotismo* y *nacionalismo* se utilizan como sinónimos, la Doctrina Social de la Iglesia distingue entre ambos términos para señalar dos actitudes diferentes. El patriotismo – definido como el amor por la patria y la consiguiente voluntad de defenderla y de contribuir a su desarrollo – es un sentimiento noble, pues constituye la afirmación del legítimo deseo de una comunidad de afirmar su autodeterminación y su autogobierno. Reprimirlo es no solo injusto sino también contraproducente, dado que puede desatar reacciones negativas de nacionalismo extremo. El nacionalismo exclusivo e imperialista es una forma perversa de patriotismo. Existen tres formas de nacionalismo que deberían ser rechazadas por razones morales y políticas: el que se manifiesta a través de las actividades secesionistas injustificadas; el que se pone de relieve en la opresión de los derechos de las minorías étnicas, y el que con su agresividad conducir a un conflicto armado.

El nacionalismo también puede irrumpir en el ámbito internacional cuando se rechaza la cooperación a ese nivel. Dicha cooperación es necesaria en por lo menos las siguientes áreas, que hacen al bien común de la humanidad en su conjunto: el comercio internacional, las migraciones, los derechos humanos y los tratados de desarme. Esto es particularmente cierto en el caso de las políticas climáticas, un área irresponsablemente replegada. En su forma más peligrosa, el nacionalismo puede engendrar la idolatría del propio Estado, la negativa a cooperar con otros países, e incluso la negación de los derechos de otros Estados, de los derechos humanos de otras personas y de los migrantes. En el peor de los casos, puede desatar guerras que, a diferencia de las que se libran para defender el propio territorio o el de países aliados, son injustas e ilegales.

El meollo del debate en materia económica estriba en si la mejor manera de resolver esta problemática es abandonando la globalización – algo que, de todas formas, quizás sea imposible –, o mejorándola mucho. Si tomamos la experiencia del siglo XX, parece claro que dar la espalda a la globalización sería la peor solución. Sin embargo, no son pocos aquellos que enarbolan el nacional-populismo y bogan por renegar de la economía globalizada o limitarla al máximo. Desde luego, está por demás claro que la globalización económica tiene mucho camino por recorrer en materia

de justicia social y económica, y en el cuidado del ambiente que todos los seres humanos compartimos. Como subraya *Laudato si'*, lejos de ser un bien público o privado, el medio ambiente es un bien común global: por eso exige un esquema especial de gobernanza.

A nivel mundial, el quehacer político se encuentra en una encrucijada. Las instituciones de la posguerra, creadas para garantizar un orden mundial pacífico y una prosperidad inclusiva, están poniéndose algo vetustas (pensemos en, por ejemplo, el Consejo de Seguridad de la ONU). Es más, las instituciones transnacionales fundadas en la misma época, con mandatos a veces contradictorios entre sí, han terminado por generar una confusa fragmentación de la autoridad. Como señala Benedicto XVI en la última parte de *Caritas in Veritate* (2009), no podemos postergar más la búsqueda de una nueva configuración institucional, que sirva para regir las crecientes interdependencias e interconexiones entre las sociedades y dentro de ellas. De lo contrario, será imposible evitar consecuencias desastrosas, la más grave de las cuales es el impulso desesperado de algunos pueblos que, engañados, pretenden encontrar la solución a sus vicisitudes en la soberanía y en la defensa unilateral de sus propios intereses. Al mismo tiempo, sería imprudente aceptar el modelo de la democracia posnacional en el nombre de una ciudadanía cosmopolita que ve el concepto de nación como algo perimido. El sentir nacional bien puede ir de la mano de la democracia, siempre y cuando esta última no retroceda y se transforme en una democracia iliberal. No obstante, el surgimiento de los nacionalismos agresivos, el socavamiento de la cooperación internacional y las instituciones supranacionales – como la Unión Europea y muchas otras – y la negativa a desarrollar una cooperación internacional vinculante en materia económica, climática y de seguridad son amenazas contra lo que es moral y políticamente necesario. No cabe duda de que divergen de los principios defendidos por la Doctrina Social de la Iglesia, y no coinciden con una perspectiva de un mundo regido por el ideal de la prosperidad inclusiva.

Como sugiere el Papa Francisco, se necesita una mayor y más intensa cooperación internacional para superar los disensos entre las naciones, ofreciendo nuevas vías de colaboración y desarrollo sostenible, sobre todo en torno a los nuevos desafíos del cambio climático y las formas modernas de esclavitud, y en lo relativo a la paz, bien supremo que hoy día está bajo ataque.

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The volume contains the Proceedings of the 22nd Plenary of the Pontifical Academy of Social Sciences. It discusses both conceptual and historical issues connected with the rise of the modern nation state and supranational institutions, covering, for example, Africa, China, India, Russia, and Western Europe. A special focus is on the recent exit from a supranational institution (the Brexit) and the separatist attempts in Catalonia.

