Rights of Identity

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Abstract

A person's identity is their sense of who and what they are, of who stands in significant relations to them, and of what is valuable to them. This is inevitably very broad, an immediate implication of which is that the concept of identity taken alone cannot do significant normative work. In some cases a person's identity is bound up with the evil that they do or wish to do, and cannot thereby give them any right to do it. In other cases very powerful elements of a person's identity – such as their attachment to loved ones – is certainly related to important rights, but it is not entirely clear that one needs the concept of identity to explicate or justify these rights; the deep involvement of their identity is arguably a byproduct of other important values in these cases (such as love), and those values can do the grounding work of the rights by themselves and more simply and clearly.

Nevertheless, when suitably qualified, a person's identity is central to accounting for important political rights. These ranges from rights to participate in cultural practices of one's group, which sometimes implies duties on governments to support minorities threatened with extinction, to – at the outer limit – rights to arrange political administration.

These rights are connected to both autonomy and fairness. Cultural rights are often taken either to be opposed to autonomy, or at best instrumental to personal autonomy (by providing 'options'), but in fact, the ideal of autonomy, expressed by Mill as being the author of one's life, requires that one be in control of significant aspects of one's identity. Significant aspects of one's identity are collectively determined within a culture. Cultures are not static, and their development is particularly affected by political boundaries. A fundamental right of autonomy implies, therefore, that groups be allowed, within reasonable constraints of general feasibility and stability, to arrange political boundaries to enhance their control over their identity. This shows the fundamental link between individual and collective 'self-determination'. The right of collective self-determination is also based on fairness, since cultural majorities in existing states enjoy advantages that minorities frequently lack.

Spelling out the basis of identitarian rights in autonomy contributes to determining both the upper and lower limits of this and other rights of universal

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scope. First, it is important to distinguish between two senses of 'human right'. The first sense is a right that a person has simply in virtue of being a person, or simply by being a human being. A second sense is a right of cosmopolitan scope. Every right in the first sense is a right in the second sense but not vice versa. That is, every right that people have merely in virtue of being people is a right that everyone has. But not every right that everyone has (and should have) is a right that they have merely in virtue of being a human or a person. Some rights that everyone has or should have today people could not have had in the past because institutional, economic, technological or other prerequisites were lacking. Some that everyone has today they may not have in the future because other values will have superseded them in a different institutional, economic, or technological setting.

A person's identity is their sense of who and what they are, of who stands in significant relations to them and of what is valuable to them.[1] This is inevitably very broad, from which feature seem to follow two consequences that appear inconsistent with one another: (1) identity is so important that it must have significant normative political implications, and (2) (it is so broad that) taken alone it can scarcely have any normative implications at all, whereas if taken together with considerations that can ground determinate normative duties those considerations are sufficient to do the justificatory work by themselves. Much political debate seems to gravitate like iron filings around these two poles, with some writers inclining to treat identitarian claims as near-automatic trumps against general policies, while others regard them with general scepticism or utter disdain. One of the keys to exploring a possible reconciliation between these two extreme attitudes is to examine how the autonomy of individuals interacts with collective identities. It will be argued that while identitarian claims generally are of course not trumps, the relation between state institutions as complex power and symbol "containers" and national groups as "encompassing" social entities is such as to justify important rights of self-determination for national or ethnic identities. These in turn, because grounded ultimately in autonomy, are constrained by and integrated into a larger system of human rights.

To repeat, the two polar consequences identified above appear to derive from the broadness of the scope of a person's social identity. The first consequence views aspects of identity as fundamental needs. The

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1. See: Erik Erikson, 1959: 48-50. These three encompass but also go beyond and categorise differently the two essential elements of developmental psychologist Erik Erikson's account of identity: competence in productive social and personal relations, and integrity within a sensible world of meaning.

political argument then proceeds as follows. The basic claim is that it is a requirement of psychological well-being that one be in a certain state with respect to one's identity, say, that one be comfortable with not ashamed of it, perhaps take a certain pride in it. It is then taken as a reasonable major premise that political and social institutions ought to be arranged so that they tend to secure important aspects of humans' well-being, and it follows that all else equal these institutions ought to be arranged so as to tend to secure the psychological requisites of human identities.

The second consequence, the skeptical stance, can be interpreted more moderately as a constraining factor on the first. It stems from the consideration that if identity is so broad then it will, first, be constantly in flux, which could cast doubt on whether political and social arrangements could do much for it, and secondly, be such that virtually any thought, action, or relation that people have, including whatever evil they do, can partly constitute their identity, and surely they do not thereby automatically acquire rights to these. If the identity of Adolf Hitler and his followers is intimately bound up with his wish to incinerate Jews and Gypsies, the appropriate response is: "Change your identity or we'll change it for you". Obviously in a socially interrelated world one person's or group's identity affects others', and this is true for at least two reasons: First, the affirmation of one identity changes the social and physical world in which others can affirm their identities, sometimes altering the distribution of resources and institutional arrangements in which those identities can be affirmed, and second because, as much recent anthropology has explored, groups define their identities often as much in relation and contradistinction to others as on the basis of some positive social or cultural core.

This last point requires some elaboration, as the anti-identitarian camp might be too prone to dismiss such negative identifications as frivolous or even pathological. In what might be called the period of classical anthropology from the early to mid-twentieth century, social and cultural groups tended to be studied in isolation from one another and as having largely static as opposed to dynamic essences. Perhaps the largest watershed in the history of anthropology has been the shift away from this earlier conception of groups as 'natural kinds', to one in which they are regarded as typically in flux and in an interactive field with other groups from which they distinguish themselves. A cornerstone in this turning point has been the 1960s work of Frederik Barth. In a number of seminal pieces Barth argued that ethnic groups often have permeable

boundaries across which people pass while the boundaries of identity remain. Moreover, the role of cultural content in maintaining identity frequently seems secondary to the resolve of members to continually reconstitute anew their distinctiveness via diacritica - symbols which mark them off from others.[1] Barth's principal claim is that while ethnic categories take cultural differences into account, there is "no simple one-to-one relationship between ethnic units and cultural similarities and differences." (Barth, 1969: 14) "The features that are taken into account are not the sum of 'objective' differences, but only those which the actors themselves regard as significant." (Barth, 1969: 9-38)

Barth's precocious (1968) 'post-modernist'-sounding emphasis on the construction of identity at boundaries, rather than in a common culture among the members, has been criticised as exaggerated, but nevertheless seems to hold an important kernel of truth. While cultural differentiation may vary in degrees from one's neighbour, the will to be distinguished and to continue a separate identity with its own history often appears independent and even primary. A good example of such boundary marking via diacritica is the emphasis that English Canadians place on their medicare system as an identity-marker distinguishing them from the United States: the less that culturally distinguishes one nation from another, the more salient other differences are made to become. Black American identity, to cite another example, has relied on a continual reinventing of itself, including in the very shift in self-description to Afro-American. Whatever the normative implications, we see that at least at the explanatory level it is necessary to grasp the extent to which ethnic or cultural groups are both in flux and self-defining in an interactive field with others. (Michael Carrithers, 1992)

Once this point is accepted, one can also see why the institutionalisation of a group's practices, and the elaboration and recognition of symbolic representations of the group are critical to its members' identifications with them. This will require further examination below, but first it is necessary to make one further observation about the skeptical consequence of the broadness of identity. We said that the affirmation of one identity can affect the identity of other people in at least

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1. The seminal statement of Barth is his 'Introduction' to F. Barth,1969:9-38. Contemporary anthropologists of identity speak casually of the "pre-Barthian" and "post-Barthian" anthropology (much as philosophers of science mark time by Kuhn's work); Anglophone philosophers seem unfamiliar with contemporary anthropologists other than Geertz.

two ways. But these are not the only reasons to hold that identities are not trumps. Even when the affirmations of identities are not harmful to the identities of others *per se*, they can still be incompatible with the requirements of justice. Suppose, for instance, that the identities of white South Africans were inextricably bound up with their dominant place in the apartheid system. Now one might object along lines indicated earlier that this will have a negative effect on the identities of South African blacks. But suppose that black South Africans somehow accepted their inferior place as well. One would still want to hold that the resultant unequal distribution of power, prestige, and privilege was unjust, and that the identifications of the groups with their respective places in the system was not a sufficient reason to set aside the demands of justice. Of course one could argue as well that the acceptance of such an inferior identity by blacks would in any case not positively contribute to their psychological well-being; the distortions of identity described by writers of the anti-colonialist movement such as Frantz Fanon illustrate well the negative psychological effects of inequalities of power. But first, these negative effects are themselves a consequence of the fact that the inequalities are unjust, and secondly, whatever the psychological effects of the entrenched unequal distributions of power, the injustice of the distributions constitutes a reason to end the system quite independently of the psychological implications.

For the rest of this paper, then, I wish to focus on one sort of identity, that of ethnic and national groups, and to address the question of the relation between this sort of identity and human rights. This question is important not only because demands of rights of self-determination have had tremendous political significance in the past century, but because they have also formed the basis of claims that rights of universal scope must be severely limited so as not to violate the rights of self-determination, that is, so as not to impose the standards of one culture, "the West", on cultures having other, less individualist, standards.

Before examining this question we require a preliminary distinction. First, it is important to distinguish between two senses of 'human right'. The first sense is a right that a person has simply in virtue of being a person, or simply by being a human being. (These are not quite the same; a human being can have a right not to be tortured irrespective of whether the human being is a person in a philosophico-technical sense.) A second sense is a right of cosmopolitan scope. Every right in the first sense is a right in the second sense but not vice versa. That is, every right that people have merely in virtue of being people is a right that everyone has.

But not every right that everyone has (and should have) is a right that they have merely in virtue of being a human or a person. Some rights that everyone has or should have today people could not have had in the past because institutional, economic, technological or other prerequisites were lacking. Some that everyone has today they may not have in the future because other values will have superseded them in a different institutional, economic, or technological setting.

Rights of political self-determination should be regarded as rights of universal scope, therefore as rights in the second sense, but at least some components cannot be regarded as rights in the first sense. Both the *pro tanto* duties to respect existing political boundaries, and culture-based rights to rearrange political boundaries, are too dependent on the historically contingent existence of a sovereign state system to be fundamental human rights of the first type. Nevertheless, these rights can now be regarded as universal rights in that the means to make them available coupled with the moral considerations to do so are both universally present for the time being. I think the case can also be made, however, that the rights to participate in, preserve, and develop unhindered one's cultural identity is rooted at least in part in the right of personal autonomy, and that some of the limits to this right are derivable from the same basis. Claims to protect cultures that impede the individual autonomy of their members are contradicted by the justification of these claims as rights of self-determination.

Identity-based rights of self-determination

Let us turn to the right of self-determination and see how it has been defended. A judicious and influential account has been put forward by Joseph Raz and Avishai Margalit (R&M). These writers argue that encompassing groups, defined as non-face-to-face communities sharing a pervasive culture, that is, a many-leveled interlocking set of practices, values, and styles, which are constitutive of their members' identities, have special interests in independent statehood. Since the members' identities are bound up with the welfare of the group, independence might be necessary to ensure the members' sense of self-respect.

I regard the view of these writers as compelling, but the role of autonomy in national self-determination tends not to be given either sufficient weight or scope. Advocates of a nationally restricted right of self-determination tend to see the value of belonging to a national (or encompassing) group as stemming from its non-voluntarist criteria of

membership. Precisely because membership is not based on achievement, it has value: it provides a secure sense of home and community in a world where so much else depends on merit and achievement. (Raz and Margalit, 1995: 140) So why line up state borders with borders of the national group? The answer of these writers is that, given the nature of national or encompassing groups, the self-respect and dignity of the members depends on the welfare of the group, and that independent statehood might be necessary to guarantee this self-respect.

But why should it be up to a group whether it should have independence or not? If a certain privation is a necessary condition for a right of self-determination, then this perhaps should be a question for some international legal body to decide. The reply of Raz and Margalit sounds wholly practical:

> members of a group are best placed to judge whether their group's prosperity will be jeopardized if it does not enjoy political independence.... Given the importance of their prosperity and self-respect to the well-being of their members, it seems reasonable to entrust their members with the right to determine whether the groups should be self-governing.... Unfortunately, there simply does not exist any international machinery of enforcement that can be relied upon in preference to the right of self-determination as the right of self-help, nor is there any prospect of one coming into existence in the near future. (Raz and Margalit, 1995: 141-2)

There are four problematic features of this approach: (1) It appears to take the identity of the national or encompassing group as a given. (2) It gives ultimate justificatory weight to self-respect and dignity as aspects of well-being, thereby sidelining autonomy. (3) It views the plebiscite as an expedient justified by group members being the best placed to judge whether their self-respect is jeopardized by lack of independence.[1] (4) The view cannot be institutionalised, since it would allow members to abuse their privilege by claiming they require sovereignty for their self-respect when they perhaps desire sovereignty for other reasons.

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1. This argument is reminiscent of Mill's utilitarian defense of non-interference: "the strongest of all the arguments" against interference "with purely personal conduct is that, when it does interfere, the odds are that it interferes wrongly, and in the wrong place." In other words, people know best what is good for themselves. This is an epistemic argument, distinguishable from the view that people have a fundamental right to decide what is best for themselves, whether they err or not.

The first three of these features, I would like to argue, are problematic in that they give insufficient place to autonomy. We can take the first two together. The identity of a minority group, at least sometimes - Quebecers, the Basques, the Scots - and arguably in the typical case, is in flux. Contemporary discussions tend to construe actual or proposed plebiscites merely as polls of group members bearing an already fixed and static identity on whether they prefer independence (or whether they can acquire more respect through independence, and so forth). While an *aspect* of identity can indeed be regarded as fixed, and as common to pre- and post-independence, referenda are often gauges of a changing identity, not political surveys of people with a constant identity. They are often, as well, exercises in forging identity, and passages to independence are radical transformations of identity.

Thus, when a referendum is held on territory X to secede from territory Y, the Xs are also citizens of Y, and might have tended to regard themselves as Ys as well as Xs. An inescapable part of the meaning of an independence referendum is: Do you want to be exclusive Xs or do you want to continue to be Ys or XYs (or YXs, for those who attribute significance to the order). A referendum is thus often as not an exercise in choosing one's identity. The choice, however, is not made in a vacuum or from an infinite range, but is generally between two or possibly three alternatives that have themselves been fixed by historical development and political possibility.

This first critical point entails the second: that it is not just a contingent fact or pragmatic misfortune that no external agent is able to judge whether a group requires independence; rather, the group, in deliberating over its political status, is deliberating over its identity. In principle, not just practice, no other agent could do the same.

The third problematic feature is the weight given to respect and dignity as opposed to self-governance, the justification in turn of which reposes on individual autonomy. Some national theorists reject self-governing autonomy as a ground because they accept, with liberal anti-secessionists, the argument that one cannot get from the principle of self-governance to a state bounded by a national group's territory. All self-governance can justify, on this liberal argument, is the right of everyone, including minorities, to equal participation in government; it in no way justifies secession or independence, except, again, on strongly remedial grounds, that is, when the group is blocked from participating in government. So these nationalist theorists, accepting this argument, add an independent one from dignity and respect to justify self-determination.

In fact, I shall argue that self-governance and autonomy do ground a right of self-determination for territorial groups with historical-cultural identities, that is, for national groups. Current defenders of nationalist self-determination recognize the need to limit the right to the most plausible candidates, so that it can operate as a claim-right in a climate of minimal stability. But in praising the non-voluntarist aspect of national identity they neglect the way autonomy plays an explanatory role in accounting for the value of a collective choice before independence, and national self-rule after independence. They thus overlook the justificatory role that autonomy plays in a right of self-determination.

Having a right of choice about statehood, and in a different way independence itself, provide members of a national group control over vital aspects of their identity. To see more clearly why this is so, and to show why this is particularly the case for national groups, it is necessary to say something about the nature of states and of national groups.

Sovereign Statehood

Descriptions of sovereign statehood in both international law and the social sciences tend to focus on power. International jurists describe it as "the most extensive form of jurisdiction under international law. In general terms, it denotes full and unchallengeable power over a piece of territory and all the persons from time to time therein." (Dixon, 1996:137) Brownlie calls it "a jurisdiction, *prima facie* exclusive, over a territory and the permanent population living there. (Brownlie, 1996: 287)

Sociologists equally focus on power. "Every state is founded on force", quotes Weber approvingly from Trotsky, adding, "If no social institutions existed which knew the use of violence, then the concept of 'state' would be eliminated, and a condition would emerge that could be designated as 'anarchy'." (Weber, 1970: 78) In a famous formulation, Weber defines a state as "a human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory." (Weber, 1970: 78) Many writers follow Weber in focusing on power over a territory. Anthony Giddens elaborates by defining the nation-state as

> a set of institutional forms of governance maintaining an administrative monopoly over a territory with demarcated boundaries, its rule being sanctioned by law and direct control of the means of internal and external violence

or more succinctly "a bounded power-container." (Giddens, 1985: 120) Boundedness, here, along with power, are the defining features. John

Breuilly calls the state "the most powerful institution ever invented." (Breuilly, 1983)

Theorists of self-determination have tended, not surprisingly, to see the acquisition of power as providing the value of independent statehood for groups. Putting it this way, however, is somewhat misleading. It is not the acquisition of power as such, but the gaining of control of jurisdictions bounded by the territory of the group, which is significant. A group which has seceded may not necessarily have more power *per se* - if sense could be made of that notion at all - than it did in the antecedent arrangement when it shared power but over a larger territory and resource base. Quebec, which has supplied the prime ministers of Canada for over 36 of the last 37 years, and a disproportionate number of cabinet ministers and top civil servants throughout the period, would arguably have 'less' power in an independent Quebec; some argue this even in terms of control over Quebec affairs. (Among the many making this claim, Valskakis and Fournier (Valaskakis Fournier, 1995) and Demers (Demers, 1995).) The late Premier Robert Bourrassa frequently argued that in the sovereignty-association arrangement advocated by the Parti Quebecois, in which Quebec would have a common currency with Canada but no representation in the legislative and monetary institutions controlling fiscal policy, a 'sovereign' Quebec would actually relinquish any control over that policy. (The standard retort by sovereignists is that Quebecers in the federal government or Bank of Canada behave as Canadians not as Quebecers). To the extent that sovereignty implies control over affairs affecting the lives of citizens, it has also been argued that some formally sovereign states in the developing world are really only 'quasi-states' lacking real control over internal policy. (Jackson, 1990) What one really means in speaking of the acquisition of power in independence is that a group would have a different *kind* of power: more exclusive control over a smaller unit bounded by the territory of the group, rather than shared control over a wider unit.

Control over different jurisdictions are of varying importance to different national groups. Control over public education, security, regulation of the media and of the distribution of books, films, and other cultural artifacts would be of obvious interest.[1] While these might have

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1. Because nations are 'imagined political communities' See: Benedict Anderson, 1983:6, that is, communities held together by beliefs, the media of transmission of these beliefs is therefore crucial for the maintenance of the nation. Means of communication are necessary to make collective imagining possible. See: Miller, 1995: 32.

particular importance, it is nevertheless difficult to think of a policy area which has no significance for national identity. Criminal and civil law, public construction, roads, rail air and shipping routes, parks, gardens, labour relations, monetary fiscal and national income policies, industrial incentives, gender policy, and so forth, can all be brought into harmony with the values, goals, and customs of the national group, once it possesses the direct governance over these domains that sovereignty affords. Each of these shape the form of life upon which identity - the sense people have of who they are and who is significantly related to them, including in the past and future - is based.

These are the advantages of independent statehood related to the acquisition of power most noticed by theorists. There are others, however, often overlooked, which are more symbolic, and in part stem from the sheer clustering of identically bounded jurisdictions. They are often unarticulated goals that play subtle roles in the motivations of secessionary movements; I will call them the binding powers of states.[1]

First, the fact that all the jurisdictions are identically bounded has a natural way of creating a sense of community among those within its borders. This occurs both because of the common structure of state institutions - which have been studied by political integration theorists[2] - and by generating a pervasive symbolic representation of nation-state at every level and sphere of society. The common structure creates a common field of meaningful experience, which tends in turn to engender mutual associative sentiments. Thus, a home owner in Halifax, Nova Scotia, can identify with the anxiety of a home owner thousands of miles away in Nanaimo, British Columbia, on hearing that the Bank of Canada has raised its prime interest rate.[3] Such identifications occur in obvious as

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1. I would contend that this is evident in Quebec, where the provincial government already holds most of the relevant jurisdictions, including education, language policy, even immigration, and manpower. To answer the perennial Canadian question, "What does Quebec want?" one must look beyond power and jurisdictions *per se*.

2. Karl Deutsch's theory of 'nation-building' is perhaps the most famous: *Nationalism and Social Communication: An Inquiry into the Foundations of Nationality* (Cambridge, MA and London: MIT Press, 1953, 1966).

3. Marx and Engels famously hoped that a supra-national identity arising from the common experience of class struggle would predominate among proletarians. Instead, what has tended to occur is that the common structure of capitalism is taken for granted by the vast majority of workers, and thus recedes into the background of what seems like a 'natural order', while the policies of particular governments attract attention and sometimes agitation, for or against. A consequence of governments becoming foci of concern is that they also become willy-nilly foci of identity. No doubt part of the reason for this is the massive involvement of governments in the economies of liberal democracies in the past century.

well as subtle ways in a great variety of instances over the course of a lifetime. At the symbolic level, government services and agencies employ identical national symbols to convey official status or authority. Coins, stamps, and other government tokens similarly bear state symbols, which are either borrowed from the existing national heritage or become part of it after adoption. The range of government bureaucracy, including regulating authorities, nationalised firms and agencies is vast in modern states, encompassing everything from telecommunications and weather bureaus to agricultural boards and trade commissions. The sheer extent of government is such as to have a pervasive influence on the private market; enterprises, even multi-nationals, scale and conform their operations to 'national' markets and conditions, and similarly adopt national symbols.[1]

Second, along with this symbolic marking of nationhood in the institutional life of the country, there is a 'deictic' representation of the state as community in the daily discourse of newspapers, official government pronouncements and publications, sportscasts, weather broadcasts, and ordinary conversation. Again, fostered by the fact that every jurisdiction is identically bounded, which brings in its wake markets and authorities sharing the same boundaries, deictic uses of 'we', 'us', 'here', 'the' (as in 'the nation', 'the economy', 'the weather') to indicate the nation-state, become natural ways of speaking and thinking. (Harre,1990:106) This reinforces a sense of community where nation and state merge and become identically bounded. This point and the previous together indicate that states might just as aptly be described as bounded symbol containers (altering Giddens' expression). No doubt some of the lure, and value, of self-determination can be found here. Third, the clustering of identically bounded jurisdictions makes possible the control of the flow of goods and people across 'national' borders. The degree to which this reinforces a common identity within borders cannot be overestimated; in quests for national self-determination it connects up with a crucial feature of group identities that anthropologist Frederick Barth has stressed (see below).

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1. From a hostile 'constructivist' perspective, Michael Billig analyses the daily 'flagging' of nationhood in the institutional life of the country. He wants to draw attention not to flags waved fervently by nationalists regarded as peripheral in liberal states, but to the unwaved flags, those "hanging unobtrusively on government buildings", at service stations, and in sports stadiums which become part of the natural taken-for-granted landscape of nation-states; See: Billig,1995. His attitude toward them notwithstanding, his description of the pervasiveness of these symbols well explains one of the subtle but powerful lures of statehood for national groups.

Fourth, as states are the most important legal persons in international law and as "bounded power containers" the most important actors, participation in the international arena - through membership in the General Assembly and other international organizations, the exchange of ambassadors, and other recognized codes of international behavior - affords the greatest opportunity for achieving recognition and prestige among 'outgroups'. This enhances a sense of identity among 'ingroup' members, by raising their self-esteem, reinforcing their recognition of commonality among themselves, and again making their imagined border between themselves and others more secure.

Fifth, once a stable and protected social and political space in which to express group identity has been secured, innovations henceforth tend automatically to become part of the development of the nation. These can be cultural, technological, scientific, or social, and range from pop music to high culture, from architectural styles to labour organization and industry. They include borrowings from other cultures, but which now take on a different social meaning as they become embedded in a new cultural and institutional structure.[1] Historical-cultural identity groups can thus continue their particular historical narrative in a more relaxed manner, subject of course to the continuing pressures from the international market that all groups face, but against which they may now be better armed.[2] Rather than expend prodigious effort on transmitting their cultures from generation to generation more energy can be directed toward innovation and experimentation, all within an enclosed social space of shared common experience.

It may be worth remarking in this context that no assumption is made here about the degree of continuity versus inventedness much debated by theorists of nationalism. Presumably groups sharing an historical identity and culture both preserve and innovate in varying degrees, whether as minority ethnic groups or majority national groups. (Calhoun, 1997) Similarly, arguments among normative theorists about the degree to which national identities are 'subjective' or 'objective' tend to overlook the ordinary processes by which subjective factors are continually objectified into routinised practices, institutionalized expression and public symbolization.

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1. This is one reason why, *pace* Waldron, mutual borrowings between cultures do not necessarily imply the emergence of or tendency toward a single cosmopolitan culture. See: Waldron, 1995.
2. See: Miller, 1995: 85-88, defends the importance of self-determination for protecting a culture against market forces: "The role of the state should not be to impose some preformed definition of national culture on people who may resist it, but to provide an environment in which the culture can develop spontaneously rather than being eroded by economically self-interested action on the part of particular individuals." Also See: Kymlicka, 1995.

The massive binding power of states is of course not omnipotent; if it were there would be no minorities striving for self-determination against it. Testimony of this power, however, is vast and derives from many contexts. One cannot otherwise explain why so many colonial boundaries that cut arbitrarily across ethnic boundaries survived decolonisation. This is true even in the case of the Arab nation, whose fiercely pan-Arabist ideology of decolonisation did not prevent twenty-one states based largely on colonial boundaries from surviving. And in a completely different context, the same binding power of states explains how a Canadian identity has developed and survived despite no significant cultural differences (in the case of English Canadians) from its powerful southern neighbour (see the epigraph to this chapter).

Cultural Identity Groups

Given these capacities of states, it is not difficult to see why national groups aspire to statehood, and why even extensive political autonomy does not (*pace* many writers) exhaust the advantages such groups might see in outright independence. Territorial groups with distinct historical and cultural identities, because their cultures are multi-leveled or "pervasive" (as R&M describe the cultures of "encompassing groups"), and because their identities are 'imagined' through their members grasp of the whole,[1] require an interlocking complex of institutions, symbolic

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1. This point is stressed by Ross Poole in his helpful correction of Benedict Anderson's oft-repeated distinction between face-to-face communities and others that require 'imagined belonging'. As Poole points out, face-to-face contact is neither necessary nor sufficient for a group's identity requiring an imagination of the whole. "It is after all a hermeneutic truism that *all* social relations - even those between 'primordial' villagers - work through the shared understanding (and misunderstanding) of those involved. 'Face-to-face contact is hardly a substitute for imagination.... *all* social relations work through the reciprocal understandings of those involved. However, *some* social relations require a shared understanding of the social whole - the community - which makes the relationship possible. A representation of the community is a constitutive presence in the relations. These are the relationships which involve the idea of an imagined community." The distinction, then, is not based on size. Market relations are extensive, but do not require conceptions of the whole on the part of individual actors, while, as indicated above, face-to-face groups such as tribes, villages, phratries, even families, are constituted by members' conceptions of the whole; Poole, *Nation and Identity*, London and New York: Routledge, 1999. My review of Poole is in *Philosophical Quarterly* Vol.51, No. 202, January 2001, pp. 133-137.

   For an earlier critique, possibly unknown to Poole, of "The myth of simplicity and the face-to-face community" that had dominated the "Chicago school" of American anthropology (represented by Robert Park, Ernest Burgess, Louis Wirth, Horace Miner, Oscar Lewis, R. Redfield and many others), see Anthony Cohen, *The Symbolic Construction of Community*, London and New York: Routledge, 1985, p. 28.

representation of themselves to themselves, and boundaries between in-group and out-group members. These can be examined in turn.

The institutions of a cultural group are both formal and informal. They include particular styles in diverse facets of social existence, which have sometimes been elaborated over many centuries, other times are relatively new. They include all the routinised practices in a complex web of social activity, and they circumscribe both possible ways of acting, and permissible (legitimate) ones.[1] Liberal philosophers such as Kymlicka, Raz, and Tamir, often speak of cultures as providing "options" to their members. They do not often provide examples of what sorts of options they are thinking of, and subsequent discussions imply that social roles, occupations, and life-plans are the things they have in mind. But the range of these sorts of options tends to converge across different societies according to the mode of production and level of technology. Advanced capitalist societies offer fairly similar ranges of these options (and indeed even advanced communist societies tended structurally to converge with capitalist ones, as 'convergence theorists' of the Cold War liked to stress; it is unlikely, then, that these 'options' can do the work of grounding cultural rights that these philosophers think they do. Cultural differences are more subtle, and affect such things as the way people speak to each other, the social and even physical distances between each other they consider appropriate, the styles and venues of acceptable socializing, and so forth. These are the routinised practices that become fundamental aspects of people's senses of themselves and who they are; they become 'second nature' and link people's senses of themselves to the cultures of their groups.

Social groups with distinct cultures thus have a matrix of practices which are both stable and predictable yet at the same time in flux or process. There is a constant development from routinised practices and unconscious collective habits to institutionalized forms that confer legitimacy on practices. Communities of this sort also require symbolic representation of group membership. That is, a set of rites, ceremonies, badges, codes, styles of dress and other behavior, symbolize to members

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1. The function of routinisation has been analyzed by many social theorists. It creates an environment which appears natural, secure, and predictable, in which people feel 'at home', and are thereby freed to expend effort on deliberation and innovation. (Pierre Bourdieu, *Outline of a Theory of Practice,* Cambridge: CUP, 1977; Peter Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*, London: Penguin 1966. Raz and Margalit make analogous claims about the patterns of what they call 'encompassing groups', in Raz, 1995.

their belonging in a single community (Cohen, 1985). When the group is also a diverse territorial society, this symbolic representation must be fairly complex.

Boundaries between in- and out-group members are of course dependent on the previous two facets, institutionalized practices and recognized symbols. As Frederik Barth has argued, ethnic groups often have permeable boundaries across which people pass while the boundaries remain. Moreover, the role of cultural content in maintaining identity frequently seems secondary to the resolve of members to continually reconstitute anew their distinctiveness via diacritica - symbols which mark them off from others.[1] (F. Barth, 1969: 9-38) This continual reinventing of themselves, again, shows how much ethnic or cultural groups are both in flux, and in an interactive field with other groups from which they distinguish themselves. (Carrithers, 1992) It should come as no surprise, then, that the question of whether or not to become politically independent is for minority groups a fundamental question of identity. That the shift from minority to independent majority involves a significant transformation (as well, of course, of continuation) of identity seems familiar enough to students of nationalism outside of philosophical circles. Indeed, the identity-transformation seems to be a late phase in a typically much longer process of identity-formation. A large collection, *Becoming National*, is devoted to demonstrating the typical transformative processes of nation-formation, at the end of which "the transition to statehood marks a fundamental watershed in the life of a nationalist movement", "immeasurably simplif[ying] the cultural unification of the nation through systems of shared identification." (Eley

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1. Contemporary anthropologists of identity speak casually of the "pre-Barthian" and "post-Barthian" anthropology (much as philosophers of science mark time by Kuhn's work); Anglophone philosophers seem unfamiliar with contemporary anthropologists other than Geertz. Barth's principal claim is that while ethnic categories take cultural differences into account, there is "no simple one-to-one relationship between ethnic units and cultural similarities and differences" (p.14). "The features that are taken into account are not the sum of 'objective' differences, but only those which the actors themselves regard as significant". Barth's precocious (1968) 'post-modernist'-sounding emphasis on the construction of identity at boundaries, rather than in the common culture among the members, has been criticised as exaggerated, but there appears to be an important truth here with implications for self-determination. A good example of such boundary marking via diacritica is the emphasis that English Canadians place on their medicare system as an identity-marker distinguishing them from the United States; thus even a distinct state policy serves diacritically viz a viz an otherwise similar culture to the south.

and Suny, 1996: 19) In his pioneering work Miroslav Hroch noted that up until that point, three "structural phases" of "any given national movement" can be distinguished:

> Phase A, [when] the energies of the activists were above all devoted to scholarly enquiry into and dissemination of an awareness of the linguistic, cultural, social and sometimes historical attributes of the non-dominant group – but without, on the whole, pressing specifically national demands to remedy deficits (some did not even believe their group could develop into a nation). In a second period, or Phase B, a new range of activists emerged, who now sought to win over as many of their ethnic group as possible to the project of creating a future nation, by patriotic agitation to "awaken" national consciousness among them – at first usually without notable success (in one sub-stage), but later (in another sub-stage) finding a growing reception. Once the major part of the population came to set special store by their national identity, a mass movement was formed …. Phase C. It was only during this final phase that a full social structure could come into being, and that the movement differentiated out into conservative-clerical, liberal and democratic wings, each with their own programmes. (Hroch, 1996: 63)

It is perhaps worth dwelling further on this identity flux before going on to discuss other features of cultural identity groups. This is because it is an appropriate place to redeem a promissory note of Chapter 1. It was stated there that the theory of self-determination offered here would not make much, pace writers such as David Miller, of the distinction between an ethnic and national group. This is because there seem to be three plausible distinctions between the two concepts, none of which appear to be of much help in making a normatively significant distinction for purposes of a right of self-determination. The discussion up until this point has emphasized how much ethnicity itself, according to much recent anthropology, is typically very much in flux. There is little agreement on which features are 'essential' constituents of ethnicity (language, dialect, religion, kinship, common behavioral patterns? Are English Canadians ethnically distinct from Americans? Egyptians from Lebanese? Shi'ite Lebanese from Christian? Maronite from Catholic?). If anything, it seems that the most coherent sense of the relation between the two concepts is mutually relative. That is, if some group is thought of

as national as distinct from ethnic, it is because it contains within it subgroups thought to be ethnic as distinct from national. But those ethnic groups themselves might turn out to be only slightly smaller Russian dolls, which when cracked open reveal further ethnic subgroups, relative to which the larger group is 'national'. French Canadians, for instance, have often been regarded as an ethnic group defined mainly by its northern North American dialect of French, and possibly majority adherence to Roman Catholicism (despite generations of Huguenot survivors). But Quebec society, at least, has absorbed many old or newly francophone immigrant and other groups who (unlike the earlier absorbed Irish) have retained some group identity: Haitians, Vietnamese, Native Americans, Italians, Sephardic Jews, recently even bilingual Anglo-Canadian Quebecers. Each of these groups, in turn, has what they regard as ethnic divisions. Indeed, many people today have multiple ethno-national identities, the salience of any one of which varies with context and perspective. As a Russian immigrant to Israel once told me, "In Russia I was a Jew; here [in Israel] I'm a Russian."

When the ethnic/national distinction is not merely relative, a second possible distinction (analogous to its political twin cousin 'ethnic/civic'), appears even less reliable in identifying a pair of social natural kinds apt to ground distinct sets of rights. That is because it then seems to function merely as a distinction between majority and minority, that is, between a group that has attained independent statehood and one that has not. Thus, the French, Germans, and Italians are nationalities, and each of their minorities is virtually by this definition ethnic. Obviously when the distinction functions in this way it is incapable of distinguishing minorities which have rights of secession from those which do not. The deeper point related to the previous discussion is that ethnic groups that form nationalist movements typically undergo a process of "becoming national", which culminates precisely with the attainment of statehood and its concomitant "immeasurabl[e] simplif[ication of] the cultural unification of the nation through systems of shared identification" (as Eley and Suny put it). Thus nationality appears nothing more than ethnicity triumphant. Civic nationalism, in parallel, would seem the luxury of the successful ethnic movement which, once having attained statehood, next attempts to consolidate its hold over the so far unsuccessful nationalist movements within its midst by either acculturating and assimilating them or at best integrating them as mere

'ethnic' minorities ill-meriting 'national' rights, including the right of secession. The unequal positions of the respective groups raises issues of fairness, and is reminiscent of the old socialist slogan (or anti-slogan), "'Long live free enterprise', cried the elephants as they danced among the chickens"; the relevant transposition here would be in the form of a complaint against this taxonomy: "Long live civic nationalism, cried the majorities as they integrated the minorities."

A more promising distinction might seem to be between pervasive cultural groups that have 'national aspirations', that is, political goals such as statehood or autonomy, and those that don't. The problem with this distinction, however, is that it doesn't seem able to do any work, since any plausible theory will allow self-determination only to groups that want it. So, to be sure, not every ethnic group cares enough about its identity to have political goals. But the moment it voices interest in such goals it will automatically have a right to them, since it will instantly have transformed itself on this definition into a nation. As many have observed, virtually every non-immigrant ethnic group with a territorial base (and many even lacking it) has sought to preserve itself in the twentieth century. The urge to preserve one's group identity is a near-universal feature of ethnic cultures bearing normative significance for political rights, while the urge to have political rights seems more like the practice of the art of the possible.

What does seem to be an important feature of cultural identity groups in general is that the identities in question are viewed by their members historically. It seems to be a universal feature of human cultures that they are the bases of identities with historical dimensions. Collective identities are important to people not only because they give them a sense of themselves in relation to those around them, but also in relation to those who came before and will follow them. As Anderson has pointed out, the decline of religious belief, where diachronic identities were given in spiritual terms of Creation and afterlife, gave new impetus to national identities, which seemed now best able to relate existence and identity to a diachronic dimension beyond the life of the individual. (Benedict, 1991) Miller and Gans draw attention to this feature that is overlooked in the account of Raz and Margalit. One might analyse the value of a historical sense as follows. If life is valuable, it is surely in part because of the projects and plans one realises. Some of these are collective, and some of the collective ones have an inevitable historical dimension. Awareness of

one's participation in such historical projects adds a sense of significance to one's life. Possibly not every culture places the same value on intergenerational projects, but it is difficult to imagine a culture which disregarded them completely.

Collective identities are not simply psychological states. They involve psychological states, but unless they are pathological they are dependent for their existence on a form of life: on a web of interlocking institutions and practices embodying values as well as styles.[1] We can see how the above features of cultural identity groups affect their relations to states. All groups live in a world of sovereign states, and all are affected by this world. They can either be minorities or majorities; as with gender, there is no other possibility (though some states lack majorities). Dominant majorities typically enjoy the capacity of the state pervasively to symbolize their identities at diverse levels and in diverse spheres of social life, to consolidate the boundaries between member-citizens and foreigners, and to foster institutions expressive of the group culture.

To be sure, room may be made for the minority identity in various ways. In cases of exclusivist groups (where identity is fused with a religion or race), a corner or edge of a flag, for instance, may include a minority group symbol, such as the white bar on the flag of Pakistan representing the Christian minority. More often, the dominant symbols are themselves said to be inclusive, embracing all members of the 'civic' community, while 'particular' symbols of the minority find space in voluntary associations and regional or local administration. Minorities in such states frequently live with dual identities, where symbols of both minority and majority, deictic references, and cultural influences vie for equal space. Sometimes, when the state has a long multicultural tradition, as in Switzerland, dual identities seem to settle at a stable balance. Other times, relations between identities are shifting and unstable. Many factors, political as well as economic, can affect the relative weights of either identity. The two poles which form the gravitational field of these factors are the constant lure of assimilation, and the temptation to form an independent state.[2]

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1. This point has been made by various writers on national identity, See: Smith, 1991; Billig, 1995; Hall,1999, and Poole,1999.

2. In cases of large territorially concentrated minorities, enjoyment of a vast degree of political autonomy is no guarantee that federal institutions and their symbols will seem unobtrusive. Precisely because in such cases the aspiration toward a singular identity can become very strong, any federal presence might begin to appear as an undesired alien imposition.

Autonomy and Self-Determination

If the ideal of autonomy is to be the author of one's own life[1], shaping one's identity must be a central part of that ideal. While a libertarian right of secession, it was argued in the previous chapter, could not be sustained because of its indeterminacy and potentially destabilizing effects, the value of autonomy it points to does play an important justificatory role in a theory of self-determination. The upshot is that if groups are to control their identities, they require first to be able to decide whether those identities should be dual or singular; secondly, if the latter, to be able to have direct non-dominated control over the jurisdictions governing identity-affecting forms of life; and third, to be able to enjoy the binding power of a cluster of identically bounded jurisdictions, that is, independent statehood. The relation of these to autonomy and freedom can be spelled out as follows:

(1) The change from minority status to independence is a transformation not just continuation of identity. As such, it is a requirement of autonomy that groups decide whether to undergo this change, which at the most basic level signifies a choice between remaining XY's or becoming independent X's. It is also a choice about a radical transformation in the group's form of life - in how it collects taxes and invests in its infrastructure, and so forth. Again, if autonomy implies control over one's identity, it implies that decisions about such transformations be made by those whose identities are directly at stake.[2]

(2) Independent statehood gives a group direct and non-dominated control over the jurisdictions of public life; non-domination is an important aspect of the freedom frequently sought. Phillip Pettit presents the concept of non-domination as a form of freedom distinct from and intermediate between negative and positive liberty. One of his examples is

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1. I use the Millian formula rather than Kantian because it is not tied to any controversial metaphysical claim opposing reason and autonomy to nature. For some defenses of autonomy as an ideal, See: Dworkin, 1988; Benn, 1988; and Kuflik, 1984.

2. This includes everyone on the territory in question, since even minorities within the minority will be immediately affected by these decisions. Their identities are no less dependent on the outcome. I think this is the basis of a reply to David Copp's objection that a national-based right to self-determination cannot account for why minorities within the group should also have a right to vote in a referendum. The holding of a referendum is justified by the larger identity-group's raising a question of independence, but once it is decided to hold the referendum, all members of the territory have an equal right to vote since they will all be affected by the decision. See: Copp, in McKim, Robert, and McMahan, 1997.

of a woman in the nineteenth century who might be negatively free because her husband declines to exercise his legal powers over her, but is dependent on his will to so decline.[1] Thus, even without the interference by the husband that would constitute a violation of negative freedom, one can be unfree because subject to the will of another. Poole observes that Pettit's concept is still an "opportunity-concept", in that it too is measured in terms of options or opportunities simply available to agents, without them having to exercise some privileged activity; it is thus "considerably closer in spirit to the negative than the positive conception."[2] (Taylor, 1985) In fact, I think the clearest account would be an application of MacCullum's triadic notion: the woman is not free from requiring the husband's ongoing leniency or approval to do whatever she might choose but need his approval for. And similarly, minority historical-cultural identity groups normally require the ongoing toleration and benevolence of the majority state to enjoy whatever autonomy they have; this is a lack of freedom not normally experienced by the majority.

The desire for non-domination is arguably a motivation of many secessionist movements, including those otherwise enjoying broad autonomy.[3] Quebec nationalists frequently argue that however benevolent current Canadian federal transfers of power to the province, these can always be taken away at some future point so long as Quebec remains in confederation. Colonized groups have often voiced similar concerns in response to arguments that they have benefited from colonization.

(3) States, as identically bounded clusters of jurisdictions, have binding powers on communities, as described above. These binding powers are not always decisive; if they were, no minorities would ever

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1. See: Pettit, 1997: 123. "The republican will say that, while you may be unlikely to suffer actual interference at the hands of the loving husband, still you are dominated by him, and there is no way of removing that domination without altering the conditions under which women generally relate to men. Freedom as non-domination requires the inaccessiblilty of arbitrary interference to your husband, not just the improbability of his having recourse to such interference." For a discussion of this sense of freedom with relation to national identity, See: Poole 1999: 91.

2. For the claim that Taylor's "exercise-concept" can also be explained in opportunity terms, See: Baldwin, 1984: 125-142 and Poole, 1999: 92.

3. O theorists such as Buchanan seem not to have addressed this issue. A group can be free of discrimination and injustice, but not free of the majority state's capacity to discriminate and be unjust.

seek secession. But a major determinant of identity is the relation of a group to this binding power: if a majority, its identity becomes secure and taken for granted; it then has the luxury of expressing itself in a "civic nationalism" that conceals its particularist core. If a minority, the group frequently must struggle to assert its identity *against* the binding power of the state. Again, this power need not be exerted as a conscious policy; it flows from the concentration of power in unified states, and from the symbolization of this power in state and even private institutions. Members of a minority exercise their autonomy in deciding how they wish to position themselves in relation to this force: either to continue as a minority asserting an 'ethnic' identity against it, or acquiring independence and having this power reinforce its identity.

It may be objected here that states that have adopted multiculturalism as part of their overall identities can accommodate minority identities without the binding powers of states posing any threat. To a large extent this is true, although it is likely that minorities wishing to remain in such a polity will need to live with some measure of dual identity.[1] (Andrew Mason, 1999: 261-286) More importantly, however, their particular minority identity will not have full use of the binding power that they could have under independence. Thus, there is still an autonomy-based reason for them to retain the prerogative of opting for independence or remaining within the larger state.[2]

To return now to theories of secession, national theorists sometimes, in rejecting the voluntarist view, take themselves to be substituting a different, nationalist principle. Raz and Margalit, in fact, consider the possibility of grounding a right of self-determination in

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1. en the European Union, which began as an economic union, has taken steps toward fostering some European-wide identity, which will no doubt grow with the adoption of a single currency and a broadening of jurisdictions in Brussels. Generally, polities having significant concentrations of power generate some degree of common identity; nor would they be able to function very effectively without it. Mason has argued that "stable liberal institutions can be secured in the absence of a shared national identity". But he does think that a shared belonging to a polity is required, and it is difficult to see how this ultimately differs from a moderate "civic nationalism", say, as Swiss citizens seem to share.

2. hether that reason is sufficient to outweigh the costs of secession, including to remainers, is discussed in the next chapter. At this point, however, it is sufficient to point out that there is still some autonomy-based reason - whether or not ultimately overridable - for them to have an option of independence, since this is denied by many remedial theorists.

the "intrinsic value of self-government", but reject it as incapable of supporting a right to independence (or secession): it "does *not* require expression in polities whose boundaries coincide with those of encompassing groups." (Raz, Margalit, 1995: 137-138) The intrinsic argument is helpfully laid out as follows:

> (1) People's membership of encompassing groups is an important aspect of their personality, and their well-being depends on giving it full expression.
>
> (2) Expression of membership essentially includes manifestation of membership in the open, public life of the community.
>
> (3) This requires expressing one's membership in political activities within the community. The political is an essential arena of community life, and consequently of individual well-being.
>
> (4) Therefore, self-government is inherently valuable; it is required to provide the group with a political dimension. (Raz, Margalit, 1995: 136)

As R&M point out, this argument is "based on an extension of individual autonomy or of self-expression", and these in turn are valuable for individual well-being. Self-government is important, therefore, because it enhances individual autonomy, which enhances individual well-being. But this cannot be a basis for a right of secession because "political expression does not require a political organization whose boundaries coincide with those of the group. One may be politically active in a multinational, multicultural polity." (Raz, Margalit, 1995: 137) This is true, they hold, even for the perhaps minority of politically active people who see intrinsic value in fighting for group interests in the political arena: "there is nothing here to suggest that this should be done in a political framework exclusive to one's group or dominated by it."[1] (Raz, Margalit, 1995: 137)

I have argued, however, that the three aspects of autonomy and freedom outlined above *do* suggest that the option of independence be given in a political framework circumscribed by the group's territory.

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1. The authors do not deny the intrinsic value of self-expression in the political arena: "We are not advocating a purely instrumentalist view of politics generally." (p. 138). However, "The intrinsic value to individuals of the political option does not require expression in polities whose boundaries coincide with those of encompassing groups". For this reason, the right of self-determination "is grounded in the wider value of national self-government, which is itself to be only instrumentally justified." (p. 126).

The question is not about the small minority of politically active people who wish to devote their lives to the public arena. Rather, very ordinary citizens tend to be enormously interested in *one* aspect of public activity, namely precisely the one which will determine whether they will be (independent) Xs or continue to be XYs. They need not wish to devote their lives to political activity, but if favourable toward independence, will be happy for others to do so just so long as the new framework reinforces their chosen identity option. R&M's first premise above, therefore, should be read as implying that "full expression" of membership in the identity-community includes determining what the principal political framework of that community will be: independence or continued minority status.

Miller, unlike Raz and Margalit, considers collective autonomy a possible ground of self-determination, though it needs to be qualified by the conditions that it be democratic and that the state not be externally determined by overpowering economic and political forces. He also argues, however, that

> People appear to vary a great deal in the value they attach to collective autonomy, just as they differ in the importance they attach to national identity. For some people it is enough to be in control of their personal lives. The idea of taking part in some collective enterprise which sets its stamp on the world has little appeal." (Miller, 1995: 9-88)

In general there appears to be much truth to this. Many people are doubtless hardly interested in politics at all, and if voting turnout is any indication, in some Western democracies the rate has fallen perilously close to fifty per cent. But according to the same indicator (not the only relevant one, of course), when it comes to the major collective autonomy exercise of determining the political framework itself, people do *not* "appear to vary a great deal" in the concern they show, if participation in independence referenda is anything to go by. Nor does this presume a correlation between participation and favoring independence; referenda in the Basque region and Quebec have had phenomenally high participation rates by the standards of general elections in Western countries, though the independence proposals were in each case rejected.

To sum up the discussion thus far, there is good reason to limit a right of self-determination to national groups, conceived of as having the

features of R & M's "encompassing groups", but with a historical identity as well. As argued in the previous chapter, it is necessary to limit the right to make it determinate and to maintain political stability.[1] But there are good autonomy-based reasons for granting it to national groups: their cultures are pervasive, consequently they are most vulnerable to the way state borders are drawn, given the massive concentration of power in states, and the dependence of those cultures on the social and political landscapes in which they are found. Autonomy is a crucial consideration because collective identities typically undergo vital transformations in acceding to independence, which gives them non-dominated control over the governance of their lives, and because it affords them the powerful binding force of states. A sociological analysis of states and groups indicates the immense capacity of these bounded power and symbol containers to consolidate cultural identities and allow them to flourish. It shows how the pervasive power of a unified state melds at countless contact points with the pervasive culture of a national group, bolstering the sense of identity at each one.

None of this implies that every minority should want such power. Normally, however, a territorial cultural identity group will decline to aspire to independence for only a limited number of reasons. In a sense the simplest is that it also values its second identity, the one it shares with the majority of the state. A second reason is that it believes it has no chance of attaining independence, as it can count on overwhelming opposition from the much more powerful central state. A third reason is that the group considers it to its advantage, usually economic or possibly security, to remain part of the larger state. These three reasons are not mutually exclusive, and often reinforce or merge into one another. If a group fears fierce opposition to its secession by the state majority, it might accept an overlapping identity with that state by adaptive preference. Or it might do so if it doubts its economic viability as a tiny enclave surrounded by the larger state. In cases of large former colonial multiethnic states such as India, various combinations of these reasons can be at play for each minority. The view of secession argued for here may in fact not be applicable at all to

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1. Wayne Norman, Donald Horowitz, and many others believe that a permissive right of secession, even on national lines, will lead to a proliferation of violent conflict. I argued against this in Chapter 1, and attempt to illustrate the point with the case of the former Yugoslavia, the anti-permissivists' most frequently cited example, in "Secession, Rights, Law: the Case of the Former Yugoslavia", *Human Rights Review*, Vol.1, No.2.

such states with many minorities and no majority, given the volatility that any realignment of borders might have. But in countries where one or two cultural identity groups constitute a clear majority, if minorities opt to remain, no matter what the reason, they will likely have to reconcile their identity to their option. Even in cases like Scotland and Quebec, where the groups in question have gone quite far in achieving a social and political landscape marked by their own respective symbols, that symbolization has not, and it is unlikely that it could, become exclusive so long as those peoples remained within the larger states. Because a fundamental question of identity is always at stake in questions of whether a group should become independent or not, that is strong reason, I have tried to argue, to attempt as far as possible within the constraints of feasibility and reasonable stability to let the answer to that question be given by them.

Self-determination among other human rights

If the arguments above are correct, then a central component of an identity-based right of self-determination is that it enhances the autonomy of members of pervasive groups by giving them increased control over their identities. Thus identity and autonomy are interdependent as grounds of rights of self-determination. It follows, however, that there are strong moral constraints on the exercise of self-determination. If the justification of the right is that it enhances the autonomy of its members, this implies that policies that severely limit the autonomy of members in order ostensibly to protect a collective identity cannot be justified simply because the collective identity is thereby strengthened, or more simply because the governing body is exercising "self-determination".

Moreover, policies of the group's government that infringe individual rights cannot be justified simply on the basis of collective self-determination either. The most plausible view that there are duties on others not to interfere with a group's self-governance derives those duties from the fundamental interests of the individuals in the group in autonomy. That is, members of groups wish to develop their public as well as private lives, in accordance with their values, convictions, styles, and tastes. Generally in our world, groups are organised into separate cultures that bind an array of such values, convictions, styles and tastes into identity-forming wholes with their own developmental histories. It is these cultures that individuals are attached to and that have pervasive

influences on their identity.[1] It is the interests of individuals in organising and controlling their public lives in conformity with their cultures that confer normative weight to claims of external non-interference. But if it is the interest of individuals in autonomy, in being "authors of their lives" in John Stuart Mill's celebrated phrase, that grounds duties of external non-interference, it is the same interest of the same individuals which constrains both these duties and the correlative rights of governments to non-interference. If a government systematically abuses the rights of individuals to live without fear of arrest and torture, to pursue their own lifestyles and careers, and to have a say in public decisions affecting their lives, all aspects of a right to autonomy, then the very grounds which justify claims of external non-interference in the first place are vitiated. In fact, the very grounds of a right of self-determination would seem to *require* external interference if it could protect or enhance the autonomy under threat. One might sum up the matter this way: individuals have valid moral claims, stemming from their fundamental interests in autonomy, against anyone else who unduly interferes with the pursuit of these interests. That interference might come from foreign states, and it might come from one's own government. In some cases one looks to one's own government to protect this interest against foreign interference, in other cases one might require foreign governments or agencies to protect that interest against one's own government. There is no *a priori* right of governments to violate the interests of their citizens in autonomy; there is merely a presumption, up to a point, that domestic governments are better able to serve their citizens' interests than alien ones.

One difficulty with this argument is that it might be regarded as having failed to give ample leeway to a majority to impose decisions on a minority. After all, it is too strong a demand on a society that all its decisions be unanimous, and there is a wide range of decisions affecting the public sphere which a majority presumably have the right to make regardless or in the face of a dissenting minority. Of course, were there a clear demarcation between what legitimately belongs in the private and in the public sphere, that could serve as a standard for what the majority may or may not impose. But the boundary between the private and public sphere itself notoriously varies from society to society and from conception to conception – from one set of values to

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1. See: Raz, Margalit, 1995: 137.

another.[1] This point is central to the controversy between east and west over the universality of human rights; the claim of critics is that the concept suits an individualist western culture more than an Asian or African communal one.

Objectors may attempt to draw further sustenance from the last work of the late John Rawls, *The Law of Peoples*, which distinguishes between liberal and merely decent and well-ordered societies. The latter, though not liberal, are deserving of respect as self-determining political units, which implies a duty on other including liberal societies to refrain from interference and even public criticism. A full treatment of these issues cannot be provided here. It is worth noting, however, that for Rawls a decent well-ordered society necessarily includes a respect for human rights as robust as those inferred above to be implied by a right of self-determination: a right to life and liberty, including "to a sufficient measure of liberty of conscience to ensure freedom of religion and thought", freedom of dissent and the right of dissidents to be represented and to have their views aired and considered in reasoned public debate, and so forth. (Rawls, 2000: 62) What is missing from Rawls' account is an explanation of why some rights need to be respected to ground duties of external non-interference, but why other rights implied by the principles of justice of his domestic theory of justice have a lower priority at the international level than self-determination. The previous discussion in this paper suggests that the explanation is to be found in the grounds of self-determination (a discussion of which forms a striking lacuna in Rawls' work.) An important part of the freedom that people generally want is the freedom to shape the public spheres of their society according to their own collectively shared values, and therefore without interference by those with different values. Part of that shaping involves the demarcation of the public sphere itself. In other words, people wish to be able to decide according to their own collectively shared values what areas should be determined by public policy and which should be left to individual choice and voluntary individual and collective action. There is no reason to think that each society normatively ought to come to the same demarcation point. On the other hand, it does not follow that there are no universal constraints on these decisions any more than on those already discussed.

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1. I owe David Miller this way of putting the point.

There is room only briefly to suggest what might do some of the work of determining the appropriate demarcation lines and consequent constraints on the majority. The pressure on the side of universal constraints derives from the fact that "collectively shared" values is just a shorthand for "widely shared" or "shared by a large majority". That is, there are normally some dissenters; otherwise the rest of society would have no need or inclination to use the coercive force of state to imprint its values. The liberal tradition emanating from Mill has made much of what Joel Feinberg has dubbed Mill's "harm principle": the public has no right of interference in a private act that does not cause harm to anyone. The 1957 Wolfenden Report advocating the decriminalisation of homosexuality[1] in Britain invoked principles "strikingly similar to those expounded by Mill in his essay *On Liberty*". The Report distinguished between "what is offensive and injurious" (especially to the young and vulnerable, Para. 13) and "the private lives of citizens", concluding that "It is not… the function of the law to intervene" in the latter or "to enforce any particular pattern of behaviour" beyond that stipulated above (Para. 13). Lord Devlin, by contrast, held that the offensiveness to the standards of the community constitutes a reason to enforce morality, that is, that offensiveness can constitute harm to the society at large. While this issue cannot be pursued here in detail, it is worth noting that the harm principle can provide a standard of demarcation even if one grants for the sake of argument that offensiveness can constitute a sort of harm. It still seems to be the case that depriving someone of the right to live a sexual life according to their sexual preference causes them harm of a nature and scale far more profound than any harm suffered by someone of a different preference from the mere knowledge that the other preference is being indulged. Coupled with a further assumption

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1. The Report of the Committee on Homosexual Offenses and Prostitution (1957), known as the Wolfenden Report, advised the elimination of legal penalties in the UK for homosexual acts between consenting adults. In the wake of the report, a vibrant debate ensued, at the centre of which was Lord Devlin's critique of the report on the grounds that the law ought to enforce morality, private or otherwise, See: Devlin, 1961and H.L.A. Hart's replies, collected in his *Law, Liberty, and Morality*, See: Hart, 1968. Other comments: Dworkin, 1956; Sartorius,1972; Dybikowski, 1975; Louch, 1968; and numerous discussions of Mill's harm principle, including C.L. Ten's *Mill on Liberty* (Oxford: OUP, 1980). Several essays, including that by R. Dworkin above, are collected in Richard Wasserstrom, *Morality and the Law* (Belmont, California: Wadsworth 1971).

which cannot be defended here, that aggregated harms of a significantly lower sort cannot outweigh any amount of harm of significantly higher sort, or significantly higher in a relevant way, then offensiveness cannot override harm of greater sort. This standard may not be entirely satisfactory from the standpoint of one who regards certain behaviour as morally repugnant and further thinks that morally repugnant behaviour should be repressed no matter what. But the standard does, I think, do a surprising amount of work with intuitive appeal, in particular as it allows a certain weight to cultural norms. Consider, for example, the case of the *hejab* traditionally worn by observant Muslim women. The French state, following what it regarded as its secular republican commitments, for some time banned the wearing of the *hejab* in state schools. In Britain, the U.S. and Canada, to name a few countries, no such ban exists and women are free to where the *hejab* not only in state schools but in official capacities of representing the state. In Iran, by contrast, no woman, even a non-Muslim, is permitted *not* to wear the *hejab*. (Contrast this policy with that of the last shah, under whose reign wearing of the *chador* although not the *hejab* was prohibited). Thus we have three policies, one which bans the *hejab* from the public sphere, one which permits free choice in all spheres, and one which enforces wearing the *hejab* in a public sphere construed as encompassing any appearance outside of a private home.[1] From a liberal viewpoint only the second policy can be justified, while the two extremes represented respectively by the French and Iranian states would be unjust. But by the standard suggested previously, perhaps more can be said. It is difficult to view the offensiveness to a secular Frenchmen of seeing a worn veil, even in a state institution, as being more harmful than forcing a girl to act in violation of her deeply held religious convictions. On the other hand, forcing a non-Muslim or secular Muslim woman to wear a *hejab* in public is not necessarily a very great harm, or even one greater than the offensiveness to a devout Muslim of viewing women in public dressed in violation of the prescribed code. At any rate, the weighting is at least debatable, which hardly seems so in the French republican case. On the other hand, if the private space for secular or non-Muslim

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1. In Iran it has also included in various cities at different times gatherings of several people even in private homes.

women becomes so cramped as to become an oppressive burden, then the weighting would now appear reversed, and the Islamic state would find itself in a morally indefensible position. All of these considerations would hold only with the huge proviso that the conditions discussed previously in this paper obtain, namely that there is sufficient freedom of expression and association, along with minority representation, such that one can really know what the majority standards actually are, as opposed, say, to a group of autocratic men claiming to speak for the entire community.

Conclusion

This paper offers a defense of a conception of identitarian rights which justifies both a right of collective political self-determination for cultures as well as its subordination to and integration with other universal human rights. The identities of ethnic and national groups have particular political significance in the current world because these identities are pervasive and thus match up with the pervasiveness of current state institutions. For this reason one cannot ignore the implications for justice that occurs when a cultural identity group forms the majority in a state and is thus able to consolidate and control its identity with the greatest political means possible.

But this implies as well that there are limitations on what a group with these powers may do. First, it must respect the rights of other identity groups, but furthermore it must not use its political power granted to it under "the right of self-determination" to violate the rights of its individual members. If the justification of self-determination is its contribution to the autonomy of its members, respect for the autonomy of its members will always be a constraining factor on the just exercise of self-determination and self-governance. Identity thus forms a crucial component in a right of self-determination and at the same time shows how that right must always be constrained by respect for human rights.

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