

A LIBERAL THEORY OF BORDERS

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Abstract

The thesis investigates normative justifications for any particular division of the world into political units; it investigates the moral considerations which arise when changes to political frontiers are proposed. It is argued that the right of individuals to associate with whom they please is the moral factor which determines the moral legitimacy of political boundaries. Groups of individuals occupying a contiguous territory have a moral right to secede from any existing political unit for any or no reason other than the fact that the majority wishes it, unless it can be demonstrated that such an action would violate someone's rights. Such factors as culture, language, historical accident, etc., are morally irrelevant; they may account for psychological motivations but carry no moral weight.

The argument would countenance the secession of Quebec from Canada, the partition of Quebec, or the expulsion of Quebec from the federation by other Canadians.

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I INTRODUCTION

The world is largely divided into political units separated by recognizable and recognized boundaries or borders. These borders are divisions between sovereign states (however sovereign is defined), and they play an important role in the lives and life prospects of individuals. Whether a child is born on the north side or the south side of the Rio Grande river, for example, has a great deal to do with the opportunities that are available to her throughout her life. All other things being equal (relative class status, genetic characteristics etc.) the child born in the United States will on average be richer, have a longer life expectancy and many more opportunities than the Mexican child. The world at large also concedes a great deal of significance to political boundaries. Although there is no consensus as to the precise meaning or limits of sovereignty, it is generally accepted that international borders separate political units which ultimately exercise it, whether in their own right or on behalf of their citizens. The world community may occasionally intervene in the internal affairs of such units, and such units may often voluntarily transfer certain of their sovereign prerogatives to various supra-national agencies (the European Union, the North Atlantic Treaty Organization etc.), but sovereign states are considered, at least theoretically, to be autonomous, free to manage their own internal affairs including redistributing income and maintaining restrictions on immigration.

In this thesis I investigate possible normative justifications for any particular division of the world into political units and,

conversely, what normative issues arise when it is a question of changes to existing political borders. I argue that the right of individuals to associate with whom they please (subject to certain limitations) is the underlying moral factor which determines the moral legitimacy of political boundaries, if indeed they have any legitimacy at all. Secession is simply one aspect of the more general question of this question of moral legitimacy. Groups of people occupying a contiguous territory, I argue, should have the right to secede from whatever existing political unit they are attached to for any or no reason other than the fact that the majority wishes it unless it can be demonstrated that such an action would violate someone's rights. I maintain, however, that the right is not unlimited; it must take account of something I call the individual's right to be somewhere. In addition, no group has the automatic right to establish an unjust state. It is, I also argue, philosophically illegitimate to privilege existing borders or states simply because they already exist; existing borders and proposed changes to them are subject to the same criteria of moral legitimacy. Such factors as culture, language, historical accident, the desire for national self-determination and other similar factors may explain the origin of the psychological preferences of individuals for particular political arrangements; they provide no independent normative justification of political boundaries. Such justification can only be derived from the expressed consent of the majority of individuals concerned, and not from the underlying factors and/or psychological states which give rise to the desires.

In order to focus specifically on the question of the moral legitimacy of borders, I assume as a given the inherent justifiability of some form or other of just liberal democracy; the argument proceeds largely inside the context of (philosophical) liberal political thought. I do not question the moral primacy of the individual as assumed by the various strands of liberal political thinking. Particular attention is paid to contractual liberalism, the dominant¹ paradigm of modern liberalism.

My thesis is organized as follows. The remainder of this chapter raises the general question of the relationship of the borders of the political unit and democracy. I also stipulate the meaning I give to certain concepts used in developing my arguments. Chapter II reviews the liberal tradition to ascertain the historical attitude of liberals toward the moral foundations of political borders. I conclude that the liberal tradition does not, in general, attribute normative value to particular cultures or languages; nor does the tradition provide any significant support for the claim that culture and language can be used to provide a normative justification for any particular configuration of states and borders. Chapter III reviews the mainstream of modern justice thinking and concludes that the mainstream is either silent or ambiguous regarding the question of borders, or alternatively, justice theorists simply accept existing borders as a privileged given. I also conclude that recent attempts to reinterpret the

¹See Jeremy Waldron, "Theoretical Foundations of Liberalism", Philosophical Quarterly 37, (1986): 127-150 for a discussion of the importance of contractarianism in modern liberal theory.

tradition and/or modern justice theory to give normative importance to culture and language are problematical at best. Chapter IV develops and defends the concept that borders derive their moral legitimacy solely from the expressed preferences of the majority of individuals living within them. I develop positive arguments in favour of this position and provide counter-arguments to the major criticisms of such a position. Chapter V concludes with a brief summary of the implications of my arguments for certain current political issues.

Democracy and The Problem of the Unit

Democratic theory, in general, argues the nature and benefits of democratic government for any particular group of people. But how should boundaries be drawn around "any particular group of people"? It can be argued that the justification and value of democracy depend on how the group to which it is applied is delineated. According to R.A. Dahl:

To the extent that persons composing a political system are combined together in an unjustifiable way, the value of democracy for that system is reduced. If Costa Rica were forcibly annexed by the United States and compelled to become the fifty-first state, why should the people of Costa Rica...value their new federal democracy as highly as their previously independent system.²

In fact, it could be questioned whether or not democracy practiced inside a unit not consented to by the majority of its inhabitants is democracy at all. As Dahl goes on to say:

...the principle of majority rule...presupposes that the unit itself is appropriate for majority rule. To the

²R.A. Dahl, Democracy and Its Critics, (Yale University Press, 1989), 193.

extent that the unit within which majority rule operates is unjustifiable, then majority rule is unjustifiable in that unit.³

The question of the justice of the unit is, therefore, separate from the question of the justice of the internal political practices of the unit. The question I discuss is possible justifications for the boundaries within which a particular set of just practices and principles is to apply.

Concepts and Definitions

Before proceeding it is necessary to discuss the precise meaning I give to certain concepts in this thesis. The following paragraphs discuss the idea of consent as the basis for political legitimacy and the limited manner in which I use it, the idea of sovereignty and how it is (or is not) assumed to be related to the idea of property rights and, finally, the relationship assumed between personal and political morality.

Consent

It is a commonplace that all government involves coercion and that the individual is constantly performing actions which cannot be included in the class of free actions.⁴

This "commonplace" applies equally to the question of political boundaries. No arrangement will satisfy every individual who must live within a given set of borders. Neither can it be assumed that emigration is always a practical possibility if a person is unhappy with the unit in which he lives; even if it were, the material and

³Ibid., 193.

⁴J. P. Plamenatz, Consent, Freedom and Political Obligation, (2nd edition, Oxford Paperbacks, 1968), 144.

emotional costs of such action for most individuals make the mere existence of such a possibility a morally inadequate response to illegitimate political borders. On the other hand, consent theory argues that the basis for political legitimacy is the consent of all individuals governed:

The heart of...[consent theory]...is the claim that no man is obligated to support or comply with any political power unless he has personally consented to its authority over him...that no government is legitimate which governs without the consent of the governed.⁵

Unfortunately, the probability of obtaining unanimous consent about any political matter, including borders, is effectively zero. This leads to the concept of majority consent which seems to offer:

...a way of making governmental legitimacy depend on consent, while avoiding the consequences of requiring unanimous consent.⁶

I argue that the concept of majority consent, applied to the question of boundaries, represents the best tangible expression of how individuals want to exercise their right to freedom of association. I do not address the problems inherent in consent as a general theory of political obligation; these are well known⁷. But the fact remains that "...consent be it tacit or express, may still be the firmest ground of political obligation"⁸. While some⁹

⁵A.J. Simmonds, Moral Principles and Political Obligations, (Princeton University Press, 1979), 57.

⁶Ibid., 72.

⁷Ibid., 57-94.

⁸Ibid., 93.

⁹Ibid., 72.

may think that the use of majority rather than unanimous consent contradicts the premises on which consent theory is based, I accept majority consent as the next best thing to unanimous consent and the only type of consent that is likely to be available--i.e, the best available does not necessarily mean perfect. It can at least be argued that if the majority of the occupants of a given territory objects to the borders within which they live, no consent, of any kind, has been given. Thus the problem can be thought of not as knowing when the boundaries are legitimate, but rather knowing when they are not. I accept a democratically expressed majority vote against a set of borders as proof positive that those borders are not legitimate; a majority vote in favour of a particular set of borders is perhaps a more ambiguous measure of consent, but if negative votes are not concentrated within a geographically contiguous area, it may be the best that can be obtained. (If the negative votes are so concentrated, however, I argue that it constitutes sufficient justification for secession or border changes if this is what the inhabitants wish.) The views of the majority can always be sought through democratically run referenda.

Sovereignty

My thesis is about the division of the world into sovereign states separated by borders; it is not about the nature and theory of sovereignty. I assume a world comprised of just political entities in which the need for intervention by one state in the internal affairs of another state to protect human rights, for

example, does not arise. For the purposes of this thesis, sovereignty may be thought of as the power to redistribute resources within a given territory or to create barriers to entry to the society's territory. More generally:

What sovereignty refers to at this level is the presence, within a governed political community of supreme legal authority--so that such a community can be said to possess sovereignty, or to be sovereign, if it does not look beyond its borders for the ultimate source of its own legitimacy.¹⁰

Whatever is the exact nature of sovereignty, it is not strictly speaking a right by someone or some group to own property in the same way (it is claimed) individuals have that right:

The right to territory might be derived...from the right to property. But the ownership of vast reaches of land is problematical...[regarding Alsace-Lorraine]...There is I think, a prior question having to do with political allegiance, not with legal titles at all.

... Even if we imagine all the inhabitants of Alsace-Lorraine to be tenants of the Prussian king, the king's seizure of his own land would still have been a violation of the territorial integrity...For tenancy determines only where rents should go; the people themselves must decide where their taxes...go.¹¹

I assume the two concepts are separate and different in nature; sovereignty over property can change without property rights being violated, and property rights can be violated without any change of sovereignty. I also accept that a claim to sovereignty by a certain group involves a claim to territory.¹² This point will be

¹⁰A. James, Sovereign Statehood, (Allen & Unwin, 1986), 3.

¹¹Michael Walzer, Just and Unjust Wars, (New York: Basic Books Inc., 1977), 55-56.

¹²See Brilmayer, Lea, "Secession and Self-Determination: A Territorial Interpretation, Yale Journal of International Law 16, (1991): 177-202.

elaborated below in discussing the right of groups to secede. Here it is sufficient to say that I do not consider the possibility that different sovereignties could be co-mingled over a certain territory with different governments exercising sovereignty over individuals occupying more or less the same territory such as, in a modified form, existed in the Ottoman Millet System;¹³ nor will I discuss the concept of federalism.

Personal versus Political Morality

I do not address the question of whether liberalism is a comprehensive moral doctrine, or whether it can be seen strictly as a "political" doctrine applied solely in the political domain.¹⁴ I do assume that, even in a just society, people have the right to have attitudes and to behave in ways which are offensive to liberalism as a personal moral philosophy as long as they do not violate the rights of another person. For example, an individual may have beliefs about the relative moral worth of certain racial groups and have a preference not to associate with people of a given race. From the political perspective, I assume, the individual has the right to such a preference and to act on it in the "private" sphere (however defined), selecting her friends or sexual partners, let's say, on a basis that reflects her biased ideas. It is only if these morally reprehensible preferences are

¹³See Kymlicka, Will, "Two Models of Pluralism" Analyse & Kritik 13 (1992): 35-40 for a brief description of the millet system.

¹⁴Liberalism as a purely political doctrine has been given its most detailed explication in the recent work of John Rawls. See John Rawls, Political Liberalism (Columbia University Press, 1993).

expressed in the public sphere, in the allocation of jobs or public services for example, and violate the legitimate rights of other individuals that these attitudes and ideas become politically relevant. Thus I do not regard it as necessarily a strong argument against a political theory that it could result in a system of borders which might--to some liberals--be repugnant. As long as the result were obtained without violating the justice rights of individuals, and as long as the result were not a violation of such a right, I consider the theory as compatible with the liberal tradition. In particular, it may be that if the world were politically organized on the basis of the right to free association as developed in this thesis, individuals would opt to live in racially or culturally homogeneous units (to the extent this could be achieved without violating individual rights). While I personally would regard this as an unfortunate result, I would not necessarily regard it as a violation of liberal principles.

II THE LIBERAL TRADITION

Chapter III will develop the idea that modern liberal political theories, particularly justice-based theories, do not adequately address the issue of political boundaries. In general they simply presuppose the existence of the political unit within which the principles of political justice are to be worked out. As Dahl argues, however, the appropriateness of the political unit is a question which itself requires a just answer if the just state is to be fully legitimate. I will argue that, apart from accepting a cosmopolitan solution--i.e., a world without borders--two possibilities for a liberal theory of borders present themselves: the derivation of normative value from objective characteristics such as language and/or culture, or the derivation of the moral justifiability of boundaries from the consent of the individuals who live within them. Recent attempts to derive political consequences from language or culture are, I argue, not successful, and liberals should, therefore, adopt the "free association" model of borders.

Modern liberalism is, however, the inheritor of a long and rich intellectual tradition. And while the fact that a given philosophical position is or is not consistent with traditional liberal thinking is not, in itself, conclusive evidence that the position is or is not the best position from the liberal point of view, I believe that arguments for significant deviations from the tradition must bear the burden of proof. Liberal democratic government, which derives its normative underpinnings from the

liberal tradition, is, in my view, the best form of government yet produced by humanity--best from the point of view of human happiness and well-being. That is not to say that such governments cannot be improved; governments as well as traditions are always subject to change and improvement. But major changes should always be regarded with caution. Therefore, in this chapter I discuss the historical attitudes of liberals towards the normative value of language and culture. Contrary to some recent re-readings of the tradition,¹ I argue that the mainstream liberal tradition has never accorded independent moral significance to language, culture or ethnicity. When traditional liberal thinkers considered the question of culture and its relationship to democratic institutions, some argued for the functional value of a common culture for democratic government. When they argued for the value of national self-determination, they were, usually, arguing for the value of free and democratic institutions, not for the normative value of culture or language in themselves. Other significant thinkers specifically argued against cultural homogeneity on the grounds that cultural diversity and size were a form of protection against tyranny.

My reading of the tradition is thematic rather than exhaustive. I attempt to demonstrate that the attribution of normative political value to culture or language is foreign to traditional liberal thought; the liberal tradition is better read

¹Will Kymlicka, Liberalism Community and Culture (Oxford [England], New York: Clarendon Press, 1989), 206-219.

as giving support to the idea that political boundaries derive their normative worth from the consent of the governed, not from culture or language.

The Functional Value of a Common Culture

The view that a common culture was a useful, if not necessary, underpinning for democratic government was argued by John Stuart Mill:

Where the sentiment of nationality exists in any force, there is a prima facie case for uniting all the members of the nationality under the same government, and a government to themselves apart.²

For Mill nationality was a purely subjective phenomenon:

A portion of mankind may be said to constitute a nationality if they are united among themselves by common sympathies which do not exist between them and any others...³

Such common sympathies may owe their psychological origins to a common race, language, religion, or history. Mill, however, assigns no normative significance to nationality or culture in itself. For Mill, the normative weight comes not from the fact that people share a common culture or speak a common language but from the principle of consent--the fact that people who feel themselves a nation want to be united under one government:

One hardly knows what any division of the human race should be free to do if not to determine with which of

²J.S. Mill Considerations on Representative Government in Utilitarianism, On Liberty and Considerations on Representative Government (London: J.M. Dent & Sons Ltd., Everyman's Library, 1971), 392.

³Ibid., 391.

the various collective bodies of human beings they choose to associate themselves.⁴

In addition to people's preferences which provide the normative justification, Mill advances a functional argument in favour of nationality as the basis of the democratic state:

Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow feeling especially if they read and speak different languages the united public opinion necessary to the working of representative government cannot exist.⁵

Far from suggesting that differentiating humans on the basis of nationality has moral legitimacy, Mill indicates that it is to be regretted:

If it be said that so broadly marked a distinction between what is due to a fellow-countryman and what is due merely to a human creature is more worthy of savages than of civilized beings, and ought...to be contended against, no one holds that opinion more strongly than myself. But this object...can never in the present state of civilization be promoted by keeping different nationalities of anything like equivalent strength under the same government.⁶

Nationality and common culture provide a functional but not a moral justification for the boundaries of a political community. Mill:

...assumes not so much that humanity ought to be divided into national sovereign states, as that people who are alike in many things stand a better chance of making a success of representative government.⁷

⁴Ibid., 392.

⁵Ibid., 392.

⁶Ibid., 393.

⁷Kedourie, Elie, Nationalism (London: Hutchinson & Co, 1961), 132.

As will be discussed in Chapter III, Mill's functional arguments for a linguistically homogeneous polity have resurfaced among some modern thinkers but without the caveats he expressed regarding the morality of such justifications.

Mill's emphasis on functional rather than moral considerations when addressing the question of political boundaries is perhaps contradicted by his comments in "A Few Words on Non-Intervention".⁸ In this article, limiting his argument to relations between 'civilized' peoples, Mill does argue that no group of people should be annexed to a political unit without their consent. The "annexation of any civilized people to the dominion of another, unless by their own spontaneous election"⁹ is dismissed as immoral. He goes on, however, to discuss the moral implications of one country intervening in the internal affairs of another in order to support the success of democratic institutions. Here he distinguishes between aiding a people to throw off a foreign yoke as opposed to a people struggling to be free from a domestic tyranny (presumably domestic indicating of the same race or culture):

...the answer will be different, according as the yoke which the people are attempting to throw off is that of a purely native government, or of foreigners.¹⁰

⁸Mill, J.S., "A Few Words on Non-Intervention", in Dissertations and Discussions, Vol.. III, (New York: 1875), 153-178.

⁹Ibid., 171.

¹⁰Ibid., 173.

If the source of oppression is domestic, Mill opposes foreign assistance to the forces of liberty:

When the contest is only with native rulers...the answer I should give to the question of the legitimacy [of intervention] is, as a general rule, No.¹¹

Intervention in such circumstances, he argues is unwise because there can be no assurance that such intervention, "even if successful, would be for the good of the people themselves."¹² In essence, he argues that a people must earn free institutions through their own independent struggle.¹³ If they do not, they will not develop the attitudes and skills necessary to maintain democracy. The struggle itself:

...is a school in which they [the citizens] learn to value their country's interests above their own.¹⁴

When it is a case of foreign tyranny, however, Mill takes the position that outside intervention can be justified:

But the case of a people struggling against a foreign yoke...illustrates the reasons for non-intervention in an opposite way; for in this case the reasons themselves do not exist...To assist a people thus kept down, is not to disturb the balance of forces in which the permanent maintenance of freedom in a country depends, but to redress that balance when it is unfairly and violently disturbed.¹⁵

It is not clear exactly what Mill is driving at in this article, or how it relates to his more general position discussed

¹¹Ibid., 173

¹²Ibid., 173.

¹³Ibid., 173-175.

¹⁴Ibid., 175.

¹⁵Ibid., 176.

above. One possible interpretation is that the struggle for self-determination is instrumentally necessary to obtain and maintain liberty in the same way that it is functionally useful for the state to be composed of people speaking the same language; in neither case is the instrument morally valuable; it is just a means to an end. On the other hand, Mill's position that the moral response differs depending on the nationality of the oppressors does appear to grant some sort of moral status to culturally defined political borders.

The view that a common culture and language were instrumentally essential for the functioning of democratic government led to the extreme view that:

...since a free state must be a nation-state, national minorities must be dealt with by coercive assimilation or the redrawing of political boundaries¹⁶

Liberals of the 19th century had no qualms about making value judgements as to the relative worth of different cultures:

It was commonplace in nineteenth century thought to distinguish the 'great nations' [or cultures], such as France, Italy...etc., from smaller 'nationalities', such as Czechs, Slovaks, Croats...etc. The great nations were seen as civilized, and as the carriers of historical development. The smaller nationalities were primitive and stagnant, and incapable of social or cultural development.¹⁷

Mill clearly takes the view that whether or not a culture should survive depends on its relative level of development:

¹⁶Will Kymlicka, Multicultural Citizenship (Oxford: Clarendon Press, 1995), 52.

¹⁷Ibid., 53.

Experience proves it is possible for one nationality to merge and be absorbed in another: and when it was originally an inferior and more backward portion of the human race the absorption is greatly to its advantage. Nobody can suppose that it is not more beneficial to a Breton...to be brought into the current of the ideas and feelings of a highly civilized and cultivated people--to be a member of the French nationality, admitted on equal terms to all the privileges of French citizenship...than to sulk on his own rocks, the half-savage relic of past times, revolving in his own little mental orbit, without participation or interest in the general movement of the world.¹⁸

However "politically incorrect" such an attitude would be today, it illustrates a significant theme of classical liberal thinking regarding the role of culture: cultures were instrumentally useful but not all cultures were equally so. The idea that any and all cultures, regardless of how limited in scope or sophistication, should be accorded normative or even functional value, and hence used as the basis for a political community, is not one which can be supported by an appeal to Mill's or other 19th century liberals' thought.

E.J. Hobsbawm¹⁹ traces the idea that cultures and nations had to be of a certain size and viability (however defined) to the thinking of the 19th century liberal economists. For Adam Smith, he says,²⁰ the word 'nation' meant simply a territorial state (i.e., it implied nothing about the cultural make-up of the political unit). It was evident that these entities played a major economic

¹⁸Mill, Considerations on Representative Government, 345.

¹⁹E.J. Hobsbawm, Nations and Nationalism Since 1780 (Cambridge [England], New York: Cambridge University Press, 1990).

²⁰Ibid., 24.

role--setting tariffs and monetary policy, building infrastructure, imposing regulations etc., but:

The difficulty for nineteenth-century liberal economists, or liberals who, as might have been expected, accepted the arguments of classical political economy, was that they could only recognize the economic significance of nations in practice but not in theory...Economic theory was...elaborated uniquely on the basis of individual units of enterprise...in a market which had no specific spatial extension. At the limit...the general theory of economic growth...had no place for the nation, or any collectivity larger than the firm...²¹

In reality, the political division of the world was an unavoidable fact.

The German economist Friedrich List, and what later came to be known as the 'historical school':

...clearly formulated a characteristic of the liberal concept of the nation which was usually taken for granted. It had to be of sufficient size to form a viable unit of development. If it fell below this threshold, it had no historical justification.²²

List himself extrapolated the economic inadequacy of small nations into the cultural sphere; a certain minimum size and level of development was essential:

...a large population and an extensive territory endowed with manifold national resources, are essential requirements for the normal nationality...A nation restricted in the number of its population and in territory, especially if it has a separate language, can only possess a crippled literature and crippled institutions for promoting art or science.²³

²¹Ibid., 25-26.

²²Ibid., 30.

²³Friedrick List, The National System of Political Economy (London: 1885), 175-176. Quoted in *ibid.*, 30-31.

It followed that nationality (culture) was only politically relevant--i.e., should be organized into a separate political entity--if the culture was large enough and sufficiently developed to be useful for economic progress; this principle was widely accepted among liberals of the time:

...in the classical period of liberal nationalism nobody would have dreamed of abandoning it. Self-determination for nations applied only to what were considered to be viable nations; culturally, and certainly economically (whatever exactly viability meant).²⁴

It followed from this, argues Hobsbawm²⁵ that the internal cultural make-up of a state was largely considered to be irrelevant. What was relevant was the construction of viable societies:

...the building of nations was seen inevitably as a process of expansion...This was evidently incompatible with definitions of nations as based on ethnicity, language or common history...these were not the decisive criteria of liberal nation-making...[That] nation-states would be heterogeneous was accepted.²⁶

This interpretation appears to differ somewhat from the Millian position that a common language and culture were instrumentally useful for democratic institutions, but it coincides with it to the extent that neither Mill nor the liberal tradition attributed normative worth to, or derived political consequences from, culture as such. People of small underdeveloped cultures were seen as benefiting from the demise of their culture and their integration into larger more 'universal' cultures:

²⁴Hobsbawm, Nations and Nationalism since 1780, Page 32.

²⁵Ibid., 33-41.

²⁶Ibid., 33.

...it seemed clear that small, and especially small and backward nationalities had everything to gain by merging into greater nations...

Once it was accepted that an independent or 'real' nation also had to be a viable nation by the criteria then accepted, it also followed that some of the smaller nationalities and languages were doomed to disappear as such.²⁷

Whatever ideas (if any) liberals may have had at this time regarding the normative justification for the existence of political boundaries, simple possession of a separate culture was not one of them.

The anti-nationalist (or at least anti-small nation) bias of classical liberals was directly related to the liberal belief that certain values--individual freedom, justice, democratic government, economic progress--were universal in scope and application, and to the belief that any particular culture was valuable only as a tool to promote such values. The universal values were, in turn, seen as requiring a cultural framework open to progress and stressing the universal characteristics of humanity rather than cultural particularities. Only cultural frameworks sophisticated enough to promote progress and liberty were deemed instrumentally valuable and perhaps worthy of political support; all others were consigned to the private sphere and, hopefully, to extinction. This is one

²⁷Ibid., 34.

way²⁸ of interpreting the notorious recommendation of another 19th century liberal, Lord Durham, that:

A plan by which it is proposed to ensure the tranquil government of Lower Canada must include in itself the means of putting an end to the agitation of national disputes in the legislature, by settling, at once and for ever, by the national character which must be given to Lower Canada; it must be that of the British Empire, that of the great race which must, in the lapse of no long period of time, be predominant over the whole North American continent.²⁹

Durham based his recommendation partly on the belief that, given the relative size of the English and French populations, the English would ultimately prevail in any case.³⁰ But he also justified it on the (undoubtedly paternalistic, if not racist) view³¹ that it was ultimately in the best interest of the French to be assimilated to the culture of the majority and to participate in the more outward looking life of the linguistic majority.

It is not necessary to accept Durham's view in order to recognize it as the dominant view of 19th century liberal thinking:

The strength of nationalist sentiment can be expected to recede, must recede, as liberalism advances: this is what I call the mainstream position. It does not suppose a

²⁸Argument follows Janet Ajenstat Janet, The Political Thought of Lord Durham (Kingston [Ontario]: McGill-Queen's University Press, 1988), and "Liberalism and Assimilation: Lord Durham Reconsidered" in Political Thought in Canada, ed. S. Brooks (Agincourt [Ontario]: Clarke Irwin, 1984). For a critique of Ajenstat's views which, to my mind, fails to refute her essential point as to the nature of classical liberal thought, see Kymlicka, Liberalism Community and Culture, 217, Note 4.

²⁹Lord Durham, Lord Durham's Report, ed. Gerald M. Craig (Toronto: McClelland and Stewart, 1963), 146.

³⁰Ibid., 148.

³¹Ibid., 149.

dislike of particular ways of life, or hostility to minorities. Rather the proponents of the mainstream argue that without assimilation, members of national minorities will be deprived of liberal benefits, and worse, will be vulnerable to political and economic exploitation of the crudest sort.³²

Durham did not think of the English 'race' as representing a cultural 'particularity', rather he thought of the English 'race':

...as standing for modernity, the universal and homogeneous society of the future...By speaking of the assimilation of the French to the British way of life, Durham...mean[s] to indicate that the French must move from a particular to the universal society.³³

One example often put forward of a "liberal nationalist" who attributes moral significance to nationality and language while retaining a liberal political outlook is Giuseppe Mazzini, the Italian revolutionary. For Mazzini, however, nationality and language were more or less what modern communitarians would call constitutive of the individual. Without a national identity, the individual could not flourish:

Without Country you have neither name, token, voice, nor rights, no admission into the fellowship of the peoples. You are the bastards of Humanity.³⁴

One's country was given to one by God:

Our country is our home, the home which God has given us...our field of labour.³⁵

³²Ajzenstat, The Political Thought of Lord Durham, Page 6.

³³Ibid., 26-27. Ajzenstat attributes the same position regarding assimilation to de Tocqueville whom, she says, could not be accused of anti-French bias.

³⁴Mazzini, G., "The Duties of Man" in The Duties of Man and Other Essays (New York: Everyman's Library, J.M. Dent & Sons Ltd., 1907), 53.

³⁵Ibid., 54.

Mazzini considered the nation as a natural unit in which all speakers of the same language must be united and which cannot be broken up:

Your country is one and indivisible. As the members of a family cannot rejoice at the common table if one of their number is far away, snatched from the affection of his brothers, so you should have no joy or repose as long as a portion of the territory upon which your language is separated from the Nation.³⁶

While a country is composed of "free and equal men" they are "bound together in a brotherly concord of labour towards a single end".³⁷ The ultimate consequences of this line of thought are obviously not consistent with liberal thinking. For Mazzini it was a legitimate role of government to ensure that no views differing from "the consciousness of the ideal" thought should be permitted:

The function of government is to purify that thought from every foreign element, to show the method best calculated to reach to ideal, and initiate the progressive stages that lead to it.³⁸

It is clear that, although Mazzini espoused a practical political program that contained many liberal elements,³⁹ his political thinking had more in common with those who see society as requiring a common plan or project than with traditional liberal thinking:

To one who sees in a Nation something more than an aggregation of individuals born to produce and consume corn, the foundations of its life are, fraternity of

³⁶Ibid., 56.

³⁷Ibid., 56-57.

³⁸Mazzini, G., "To the Italians" in The Duties of Man and Other Essays, 231.

³⁹See Mazzini, "The Duties of Man", 76-82 for Mazzini's views on liberty.

faith, consciousness of a common ideal, and the association of all faculties to work in harmony and with success towards that ideal.⁴⁰

Talk of common ideals and of the Nation as "something more than an aggregation of individuals", in my view, puts Mazzini's political thought outside the liberal tradition.

In summary, those 19th century liberals who considered a common culture or nationality as relevant for establishing the limits of societies viewed the relevance as functional rather than normative. This view was consistent with their belief that small cultures should be assimilated to larger more "universal" cultures. Because culture had no intrinsic moral worth, members of small cultures had nothing valuable to lose and everything to gain by assimilation. Now, it is certainly possible to criticize this point of view, to argue that 19th century liberals were guilty of ethnocentrism, or to attempt to reformulate the premises of liberal thought to accommodate culture as a (or the) moral basis for political community; but it is not, I believe, consistent with the evidence to look for support for the belief that culture or language has independent normative worth in the mainstream of 19th century liberal thinking.

Liberal Opposition to Culture as the Basis of Political Community

Certain liberals explicitly argued that, far from being useful for, or conducive of, a liberal democratic society, homogeneity of any type was dangerous to individual liberty. An early example of an exponent of this point of view was James Madison. Writing in

⁴⁰Mazzini, "To the Italians", 234.

The Federalist (Number 10),⁴¹ Madison described the problem as follows:

When a majority is included in a faction, the form of popular government...enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens.⁴²

The problem is particularly acute in small polities practising direct democracy.⁴³ In addition to representative democracy⁴⁴, Madison also argued that size and diversity were appropriate safeguards against the danger:

The smaller the society...the more frequently will a majority be bound of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will the concert and execute their plans of oppression. Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens...[and]...it will be more difficult for all feel it to discover their own strength and to act in unison with each other.⁴⁵

Madison was writing and acting in a society where the polity was culturally and linguistically homogeneous--white, male and English speaking. His argument was, therefore, primarily directed to the

⁴¹James Madison, The Federalist, ed. Edward Meade Earle (Washington: Robert B. Luce Inc., 1976).

⁴²Ibid., 57.

⁴³Ibid., 58.

⁴⁴Ibid., 59.

⁴⁵Ibid., 60-61.

question of economic factions, although he did explicitly extend the argument to religious factions.⁴⁶

One liberal writer, Lord Acton,⁴⁷ extrapolates Madison's argument in favour of diversity and size to the question of culture and language. He argues that a nationally homogeneous state is more likely to infringe on the civil liberties of its citizens than multi-racial entities:

...diversity in the same state is a firm barrier against the intrusion beyond the political sphere which is common to all into the social department...That intolerance of social freedom which is natural to absolutism is sure to find a corrective in national diversities.⁴⁸

Acton specifically rejects national feelings as having normative value; such feelings are purely instinctual:

The difference between nationality and the State is exhibited in the nature of patriotic attachment. Our connection with the race is merely natural or physical, whilst our duties to the political nation are ethical. One is a community of affections and instincts infinitely important and powerful in savage life but pertaining more to the animal than to civilized man. The other is an authority governing by laws, imposing obligations, and giving a moral sanction and character to the natural relations of society.⁴⁹

⁴⁶See The Mind of the Founder, ed. Marvin Meyers (Hanover [N.H.]: University Press of New England, 1981), Page XXX.

⁴⁷Lord Acton, "Nationality" reprinted in The History of Freedom and Other Essays, eds. John Neville Figgis and Reginald Vere Laurence (Freeport [N.Y.]: Books For Libraries Press Inc., 1967 edition), 270-300.

⁴⁸Ibid., 290.

⁴⁹Ibid., 292-293.

Acton goes on to warn that making nationalism the basis of political legitimacy will make the oppression of minorities within states more likely.⁵⁰

Madison and Acton are representative, therefore, of a second major strain of classical liberal thought. For them, the preservation of individual liberty was the major problem of political thought and practical politics. Thus it was necessary to construct political entities with the danger of tyranny, including popular tyranny, constantly in mind. Anything which served to prevent the formation of factions or groupings likely to oppress dissenting individuals almost by definition was functionally useful and should be encouraged. For Acton explicitly, and for Madison implicitly, this meant large multicultural political entities. Culture provided not even a functional base for political boundaries let alone a normative justification.

Drawing Boundaries By the Consent of the Governed

Support for the idea that boundaries derive their moral status from the consent of individuals can be found in the 19th century French historian Ernest Renan's Qu'est-ce qu'une nation.⁵¹ In this work Renan detaches the basis of nationhood and nationality from language, race or culture and lodges it firmly in the subjective desires of individuals to form a nation or political unit. Race is

⁵⁰Ibid., 297.

⁵¹Ernest Renan, Qu'est-ce qu'une nation? (Paris: Agora, Les Classiques, Presses Pocket, 1992). Translations from the original French are my own.

simply dismissed on the grounds that all nations are effectively mixtures of races:

The truth is that there is no pure race. To base politics on ethnicity is to base it on a 'chimere'⁵²

Language, he argues,⁵³ may serve as an inducement to political unity but it does not force it, witness the disunity of the Spanish speaking countries of South America or, contrarily, the unity of multilingual Switzerland. In man there is:

...something superior to language: it is will. The will of the Swiss to be united, in spite of the variety of their languages, is a much more important fact than a similarity obtained by persecution...Can we not have the same sentiments and the same thoughts and love the same things in different languages?⁵⁴

Religion is dismissed as a possible basis of modern nationality⁵⁵ as is community of interests⁵⁶ and geography.⁵⁷

What then is the underlying basis of the political unit?

Two things, which are really only one,...The one is in the past, the other in the present. The one is the possession, in common, of many memories; the other is the present consent, the desire to live together, the will to continue to valorize and keep united the common heritage.⁵⁸

⁵²Ibid., 46.

⁵³Ibid., 49.

⁵⁴Ibid., 49-50.

⁵⁵Ibid., 51.

⁵⁶Ibid., 52.

⁵⁷Ibid., 52.

⁵⁸Ibid., 54.

Renan effectively says that it is simply the desire of individuals to associate with whom they please which gives a political unit a basis:

Consent, the clearly expressed desire to continue the common life. The existence of the nation is...a daily plebiscite.⁵⁹

He takes this idea to its logical conclusion and, more or less, advocates that all groups living together in contiguous areas should have the right to determine their political status, including the right to secede from existing political units:

A province for us, it is its inhabitants; if anyone in this affair [the determination of which sovereign unit the province should belong to] has the right to be consulted, it is the inhabitants. A nation never has a real interest to annex or retain a country...[against the will of the inhabitants].⁶⁰

The Right to National Self-Determination

Throughout the 19th century, as discussed above, liberal political thinkers gave little or no philosophical recognition to the idea of a right to national self-determination for linguistic or cultural groups. They argued for democratic governments and individual rights, and, like modern liberals, they said very little about the question of how to morally justify any particular political unit. Nor was the concept of national self-determination recognized in international law:

⁵⁹Ibid., 55.

⁶⁰Ibid., 55.

...nations had no status in international law until incorporated into a recognized state.⁶¹

By the latter part of the century, however, the doctrine began both to co-exist and conflict with the liberal idea of democratic government. This new approach differed from the mainstream of classical liberal thought:

First, it abandoned the 'threshold principle' which...was central to nationalism in the Liberal era. Second, and in consequence of this multiplication of potential 'unhistorical' nations, ethnicity and language became the central, increasingly the decisive or even the only criteria of potential nationhood.⁶²

Two separate justifications were used to support arguments favouring a right of national self-determination: the traditional Millian argument that what was morally important was democratic government and national self-government for culturally and linguistically homogeneous groups was simply the best way of achieving this eminently liberal goal or, alternatively, arguments based on the independent importance of language and culture. This latter justification required that:

...the hitherto distinguishable, if not entirely separate, ideas of the cultural nation and the political state moved together in one single idea...tendency to assume the desirability or even the inevitability, of identifying the political state with the cultural nation...⁶³

⁶¹Guyora Binder, "The Case For Self-Determination", Stanford Journal of International Law 29 (1993): 227.

⁶²Hobsbawm, Nations and Nationalism Since 1780, 102.

⁶³Alfred Cobban, The Nation State and National Self-Determination (London: Collins, The Fontana Library, revised edition, 1969), 109.

This, although not necessarily in conflict with the liberal ideal of democratic government, had the distinct potential to take an illiberal turn:

Once the ideal identification of cultural nation and political state has been accepted, the state tends to act as though it were a single and united nation from the cultural point of view, and if in fact it is not this, it must endeavour to make the facts correspond to the ideal, regardless of the rights or liberties of those among its citizens who do not belong to the majority nation. On the other hand, every nation, or fraction of a nation, which is not a national state must seek to become one.⁶⁴

It is clear that mainstream liberal thinkers and politicians were aware of the danger. To the extent national self-determination became a liberal goal, it was justified and supported on the grounds that it contributed to democracy rather than on the inherent belief in the moral justifiability of the identity of the political and cultural nation.

Following the end of World War I, national self-determination was taken up by Woodrow Wilson on the grounds that it contributed to the growth of free institutions:

The key to the understanding of Wilson's conception of self-determination is the fact that for him it was entirely a corollary of democratic theory.

Self-determination was to Wilson almost another word for popular sovereignty.⁶⁵

Others simply accepted the principle as "a principle of statecraft, rather than justice"⁶⁶, and a convenient way for the victors to divide up the territory of the losers--particularly the

⁶⁴Ibid., 110.

⁶⁵Ibid., 63.

⁶⁶Binder, "The Case For Self-Determination", 228.

multinational empires of Ottoman Turkey and Hapsburg Austria-Hungary. No one suggested applying the principle to Africa or Asia, or using it as a justification for separatist movements inside the victorious states themselves. Subsequently, problems with minority rights protection between the two wars served to discredit the principle of giving explicit political recognition to culture or language⁶⁷ while its identification with the excesses of Nazi Germany⁶⁸ further tarnished the moral standing of the argument.

Subsequent to World War II, cultural and national rights took on new prominence in the context of decolonization. In 1960, the United Nations General Assembly first passed resolutions recognizing that all peoples had a right to self-determination.⁶⁹ This was followed in 1966 by the International Covenant on Civil and Political Rights which also attributed the right of self-determination to all peoples, and in 1970, by the General Assembly's passage of the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States. This latter, passed by a consensus including the United States and the remaining colonial powers, defined the right of self-determination; it is generally viewed as an authoritative interpretation of the United Nations Charter.⁷⁰

⁶⁷Kymlicka, Multicultural Citizenship 57.

⁶⁸Binder, "The Case For Self-Determination", 230.

⁶⁹Ibid., 235.

⁷⁰Ibid., 235-236.

At first glance, this recognition of the right of "peoples to self-determination" appears to indicate fairly widespread public, if not philosophical, support for the principle that culture and/or language the moral basis of political boundaries. Practically speaking, however, this universal support was only achieved by restricting the right to the context of decolonization.⁷¹ As interpreted, the principle said absolutely nothing about the right of minorities or "peoples" not separated from their governments by "salt water" to achieve independence. There was also a distinct difference between the type of political unit subject to the principle as set out by the United Nations and those which had benefited from the principle of Woodrow Wilson:

...the peoples involved in the Wilsonian period were ethnic communities, nations or nationalities primarily defined by language and culture, whereas, in the present era of decolonization ethnic identity [culture?] is essentially irrelevant, the decisive, indeed, ordinarily the sole, consideration being the existence of a political entity in the guise of a colonial territory.⁷²

Self-determination of peoples was used to justify political independence in precisely those areas of the world which were not culturally homogeneous. Furthermore, once initial political independence was achieved by a territory, the principle could not be used to justify the secession of sections of the initial unit

⁷¹Ibid., 236. See also Rupert Emerson, "Self-Determination", The American Journal of International Law 65 (1971): 462, for a similar interpretation of the restrictions placed on the principle.

⁷²Emerson, "Self-Determination", 463.

even if the section had a distinct culture and was a minority in the larger political unit.⁷³

It is clear, therefore, that the right of peoples to self-determination was not a principle which derived its moral standing from the idea that peoples' cultures should in some sense find political expression in an independent or autonomous state. If it had, secession of ethnically homogeneous areas from larger states would have been supported by the principle; it was not:

...the Declaration [of Friendly Relations] recognized a right of secession not for peoples at all, but for those territories that happened to be recognized by the United Nations as colonies.⁷⁴

Outside of officially recognized colonies, self-determination was regarded as a 'principle' rather than a right--a principle which referred simply to the universal (liberal) goals of non-discrimination and majority rule. In effect:

By reducing the principle of self-determination of peoples to the political and civil rights of individuals, the Declaration permitted the inference that even decolonization was a right only in so far as it was instrumental in securing individual political or civil rights.⁷⁵

This instrumental view of language and culture is consistent with traditional liberal political thinking.

The rejection of the normative importance in the public sphere of race, culture or ethnicity was strengthened (especially in the

⁷³Ibid., 463-465.

⁷⁴Binder, "The Case For Self-Determination", 238.

⁷⁵Ibid., 239.

United States and countries influenced by American thinking) by the black civil rights struggle:

The modern liberal rejection of minority rights...acquired the mantle of justice when it was linked to racial segregation.⁷⁶

The landmark decision of Brown v. Board of Education, in which the Supreme Court of the United States rejected the doctrine of "separate but equal" seemed to establish a general liberal principle applicable to inter-ethnic and inter-national relations:

According to this principle, injustice is a matter of arbitrary exclusion from the dominant institutions of society, and equality is a matter of non-discrimination and equal opportunity to participate.⁷⁷

The liberal principle, again, was that Justice should be blind to ethnicity and culture; liberals should attribute no moral standing to arbitrary cultural, linguistic or ethnic differences.

Summary

The dominant stream of liberal thought has consistently taken the approach that culture and ethnicity, while perhaps having functional importance, have no independent moral importance. While in some slipstreams or backwaters of the liberal current it may be possible to find exceptions, traditional liberal political thinkers have generally taken the view that the moral values that mattered were universal in scope and application, and a culture was valuable to the extent it facilitated these values; in and of themselves, particular cultures had no normative significance. My

⁷⁶Kymlicka, Multicultural Citizenship, 58.

⁷⁷Ibid., 59.

reading of the tradition, a reading which frankly ignores the undoubtedly racist and chauvinistic assumptions underlying much of 19th century thought, is that classical liberal thinkers considered language and culture on two levels. At one level it clearly a matter of individual preference. The language people spoke at home or their particular cultural practices were of no concern to the state or society at large; hence, no state had the right to either interfere in such matters nor was there any normative importance given to such matters. On the other hand, language and culture were a necessary and important part of the general social structure and had important functional roles to play at that level, particularly in facilitating and encouraging economic and social progress. Some cultures were by their extent or level of sophistication better equipped than others to do this. Such cultures should and would come to dominate the public sphere, but this fact did not in itself have any moral consequences or implications.

While it is true that struggles for national autonomy have often occupied liberal thinkers, this can be interpreted as a reaction to the fact that many oppressive governments, oppressive in the sense of denying individual and democratic liberties, were governments in which one powerful nationality dominated other less powerful nationalities. This was true for the undemocratic multinational empires of the 19th century (Russia, Austria-Hungary, Ottoman, etc.,) and for the colonial empires of the 19th and 20th centuries (Britain, France, Belgium, etc.). In these circumstances,

national self-determination in culturally united states was seen as the best way (functionally and practically speaking) to promote democratic governments and individual rights. This did not imply that culture had, or was seen as having, independent moral standing. In addition, liberal thinkers of the classical period were prepared to make value judgements regarding the relative worth of 'universal and progressive' cultures as compared to 'particular backward' cultures that most modern liberals would not be prepared to accept. This stemmed from their belief that access to the dominant culture was necessary to obtain justice and a fair share of the common benefits of social co-operation and from the belief that an individual's particular language and culture were largely private matters.

Thinkers who stressed national values or the value of nationality in itself tended not to be part of the liberal tradition. Some analysts have identified a type of nationalism called 'civic' nationalism in which national identity is, in effect, defined as liberal and democratic:

English national consciousness was first and foremost the consciousness of one's dignity as an individual. It implied and pushed toward...the principles of individual liberty and political equality...These ideas were in no way peculiarly English and did not originate in England. Yet in England they were able to become the content of the people's identity.⁷⁸

Whether one can legitimately define as nationalism adherence to values such as individual liberty and democracy which are normally

⁷⁸Liah Greenfield, Nationalism (Cambridge [Mass.], London: Harvard University Press, Paperback Edition, 1993), 86.

thought of as universal is, I believe, a very debatable proposition. In historical practice, nationalism has tended to be associated with illiberal practices and ideas. Even a thinker such as Mazzini, a man apparently dedicated to the achievement of democratic government and individual rights, tended to be something less than liberal when expounding the virtues of national identity.

It is clear from my reading of the liberal tradition that any attempt to derive political consequences from the moral worth of culture is a sharp innovation in what liberals have traditionally thought about these matters. While it would be foolish to claim that traditional liberals were culture blind--as opposed to uncritically accepting the superiority of their own culture--no major liberal thinker of whom I am aware attributed normative value to culture or language except as this was reflected in the actual express desires of living individuals.

III Modern Liberalism and Political Boundaries

Chapter II reviewed the traditional liberal view regarding the normative worth of language and culture and what role, if any, these should play in establishing national borders. I concluded that the liberal tradition is almost universally hostile to the concept that a particular culture or language has independent normative worth. Traditional liberal thinkers were, however, the product of their environments, and consequently, their thinking was often strongly ethnocentric if not outright racist. Modern liberals cannot, of course, accept the racist and ethnocentric aspects of their heritage. Justice theories, as will be discussed below, use the device of an "original position" in which individuals are ignorant of their ethnic or cultural position as one way of attempting to base their arguments on principles which avoid the gross ethnocentrism of earlier thinkers. Few, I think, would doubt that the result is in some ways an advance on the thinking of earlier liberals. Nevertheless, where parts of the tradition are to be revised or eliminated, care should be taken to ensure that the valuable elements of earlier thinking are not needlessly distorted or discarded along with the views that we now consider to be unacceptable. Therefore, as I previously indicated, I will assume that the burden of proof rests with those who wish to revise liberalism to accommodate an independent normative role for culture and language

Modern justice theorists have not, in general, addressed the issue of the unit to which their theories apply. Consequently,

they have said very little about possible normative justifications for political boundaries. In this section, I begin by reviewing the arguments of John Rawls regarding the question of political community; I take the work of Rawls as representative of modern contractual liberalism's thinking about justice. This is followed by a discussion of the contradictions to which modern liberal theory is subject because it does not address the problem of the unit. Next, I discuss recent attempts to derive normative political consequences from language and culture and conclude that these attempts are not successful and, even if they were, culture would still be inadequate as a basis for political boundaries. Chapter IV outlines what I call the free association approach to the same question.

Rawls and the Just Political Unit

The publication of A Theory of Justice¹ is often considered to represent a "rebirth" of political philosophy in the English speaking world. Arguing from the point of view that liberalism is both a substantive personal moral theory and a political theory, Rawls developed a theory of justice in which a society is ordered according to certain principles which would be agreed to by a group of individuals called upon to decide such things behind a "veil of ignorance"--i.e., in ignorance of their actual social, sexual, economic, etc., positions in the given society. The principles Rawls argued would be agreed to in such circumstances were:

¹John Rawls, A Theory of Justice (Cambridge [Mass]: The Belknap Press of Harvard University Press, 1971).

First: each person is to have an equal right to the most basic liberty compatible with a similar liberty for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.²

Both principles were meant to apply to the basic structure of society. The second principle required resource and income redistribution within a society such that the only inequalities permitted were those that worked out to the advantage of the most unfortunate representative individual; the whole society should share in the benefits of all the natural talents and abilities of the individuals comprising the society regardless of how these are actually distributed. The required redistribution was to be accomplished through the mechanism of assuring each and every individual a just quantity of "primary goods"--those goods that everyone would want, not for their own sake, but because they were necessary for carrying out any particular life plan.

In subsequent articles, and most recently in Political Liberalism,³ Rawls has revised his derivation of the principles of justice in order to arrive at substantively the same conclusion regarding the ordering of the basic structures of just society but in such a way as to avoid their dependence on liberalism as a comprehensive moral doctrine. The issue of liberalism as a comprehensive doctrine versus political liberalism are not central

²Ibid., 60.

³Rawls, Political Liberalism.

to this thesis and will not be extensively dealt with. What is important is that both approaches lead Rawls to organizational principles which involve the maximization of liberty and the redistribution of material resources within a given society. Rawls deals explicitly with this issue in "The Law of Peoples"⁴ where he provides general arguments to support the view that justice should be worked out within the context of existing national units rather than at the level of humanity as a whole. In essence, he indicates that since the world is already divided into separate societies it makes sense for the political philosopher to start from this existing base and work "outward" towards a separate and less demanding theory of justice amongst peoples.

Thus the principles of justice are to be applied within a given society separated from other societies by political borders, but Rawls says remarkably little about how the boundaries of the society are to be determined--i.e., who is to be inside the boundaries and who is to be outside. The society must, he says, be "well ordered" and stable:

...one designed to advance the good of its members and effectively regulated by a political conception of justice. Thus it is a society in which everyone accepts and knows that others accept the same principles of justice, and the basic social institutions satisfy and are known to satisfy these principles.⁵

⁴John Rawls "The Law of Peoples" in On Human Rights (New York: Basic Books, 1993), eds. Stephen Shute and Susan Hurley, 50 and 65-66.

⁵Rawls, A Theory of Justice, 453.

All other things equal, the more stable system is preferred to the less stable⁶, and such stability depends on the internal make-up of the system:

The relevant systems here, of course, are the basic structures of the well-ordered societies corresponding to the different conceptions of justice. We are concerned with the complex of political, economic, and social institutions when it satisfies, and is publicly known by those engaged in it to satisfy, the appropriate principles of justice. We must try to assess the relative stability of these systems. Now I assume that the boundaries of these schemes are given by the notion of a self-contained national community.⁷

Thus Rawls assumes the national community but provides no moral arguments as to why this should be so. Nor does he provide, in A Theory of Justice, any guidance as to what constitutes a "national community" or how the boundaries are to be decided if there are disagreements.

In the more recent Political Liberalism, Rawls again provides little or no argument as to why the application of the principles of justice should be confined within any particular set of borders, or, if this is to be the case, what justification there is for leaving any particular area out of the society:

A well-ordered democratic society...is to be viewed as a complete and closed social system...complete in that it is self-sufficient...closed...in that entry into it is only by birth and exit from it only by death.⁸

Such a society is definitely not:

⁶Ibid., 454.

⁷Ibid., 457.

⁸Rawls, Political Liberalism, 40-41.

...a society governed by a shared comprehensive religious, philosophical, or moral doctrine...⁹

But once again the appropriate society is simply assumed to be the nation state. This time, however, the nation state appears to be envisaged as having some type of cultural basis, although exactly what this is not specified. After leaving aside the problem of justice among nations, Rawls goes on to say:

...as a first approximation, the problem of social justice concerns the basic structure as a closed background system. To start with the society of nations would seem merely to push one step further back the task of finding a theory of background justice. At some level there must exist a closed background system, and it is this subject for which we want a theory. We are better prepared to take up this problem (illustrated by nations) conceived as a more or less self-sufficient scheme of social cooperation and as possessing a more or less complete culture.¹⁰

Whether or not a "more or less complete culture" indicates a "more or less" homogeneous culture is not clear. Possibly, it simply refers to a society which already has functioning social and political structures. What is clear is that Rawls takes the existence of political boundaries as a given and is prepared to limit the scope of justice to members living within any particular borders.

Rawls is not alone in stressing the importance of a closed political system when discussing the liberal community. Ronald

⁹Ibid., 42.

¹⁰Ibid., 272, footnote 9.

Dworkin, in Law's Empire,¹¹ develops the concept of "political integrity" which treats a political community as if it:

...really were some special kind of entity distinct from the actual people who are its citizens...it attributes moral agency and responsibility to this distinct entity.¹²

The political community is conceived as a moral agent although no metaphysical existence is attributed to it.¹³ Dworkin uses the example of how existing Germans or Americans can feel (and actually have?) moral culpability for the actions of their ancestors towards Jews or Blacks to illustrate how the political community can be thought of as having a continuing moral personality.

But Dworkin, like Rawls, stresses the importance of the boundaries which divide one political community from another:

Integrity holds within political communities, not among them so any opinion we have about the scope of the requirement of coherence makes assumptions about the size and characteristics of these communities.¹⁴

But, like Rawls, Dworkin provides little or no guidance as to better or worse ways to divide the world into such communities other than the subjective desires of the individuals concerned and/or the social practices of particular groups.¹⁵ He regards the

¹¹Ronald Dworkin, Law's Empire (Cambridge [Mass]: The Belknap Press of Harvard University Press, 1986).

¹²Ibid., 168.

¹³Ibid., 171.

¹⁴Ibid., 185.

¹⁵Ibid., 198-202.

question of the unit as in some sense logically prior to the questions of justice, fairness and equality:

We treat community as prior to justice and fairness in the sense that questions of justice and fairness are regarded as questions of what would be fair or just within a particular political group.¹⁶

Justice and the Problem of Boundaries

Borders do, however, play a major, if largely ignored, role in modern liberal theories of justice in that they limit the scope of the application of the principles of justice. It is also (probably) uncontroversial to say that, from the moral perspective, the place of one's birth is arbitrary and that many existing borders (and nation states) have had their genesis from morally arbitrary, if not morally objectionable, events and circumstances. This leads to a contradiction at the heart of justice theories. In general, the underlying assumption of modern (liberal) moral and political theory is impartiality--i.e., whatever one person owes to another is owed regardless of that person's morally arbitrary characteristics. The principle of impartiality does not uncontroversially exclude the possibility that we owe special duties to certain individuals. Robert E. Goodin argues that:

There are some 'general duties' that we have toward other people, merely because they are people. Over and above those, there are also some 'special duties' that we have toward particular individuals because they stand in some special relation to us...our families, our friends...Also among them are standardly supposed to be special duties toward our fellow countrymen.¹⁷

¹⁶Ibid., 208.

¹⁷Robert E. Goodin, "What Is So Special about Our Fellow Countrymen", Ethics 98 (July 1988): 663.

The derivation of a justification for the particular duties owed to our fellow countrymen is, however, a problem:

...respect for universality and impartiality is no mere quirk of currently fashionable moral doctrines. Arguably, at least, these are defining features of morality itself...they arguably must be embodied in any moral code in order for it to count as a moral code at all.¹⁸

According to Samuel Black, the problem is particularly acute for modern contractual liberalism, such as that of Rawls, which may be considered as primarily:

...a theory of justice. It prescribes how material assets and social opportunities should be apportioned among persons...[it is distinguished by]...an egalitarian concern for the individual welfare rights of each member of society.¹⁹

Three theses characterize the approach:²⁰ (1) the concept of distributive justice whereby departures from equality of distribution must be justified, (2) an anti-cosmopolitan bias whereby the scope of justice is explicitly or implicitly restricted to a single bounded nation or 'society', and (3) an individualistic constitutional orientation which stresses a lack of shared conceptions of "the good".

The first thesis, distributive justice, plays a major role in Rawls's theory of justice and is widely shared by modern liberals. Underlying this thesis is the "universal ascription of moral

¹⁸Ibid., 664.

¹⁹Samuel Black, "Individualism at an Impasse", Canadian Journal of Philosophy 21/3 (September 1991): 348.

²⁰Ibid., 349.

personality"²¹ which ascribes a moral personality to each individual:

The basic thought...is that whatever their actual talents or achievements, and whatever their social status or communal affiliations, each individual is endowed with a certain set of morally important capacities, the possession of which entitles them to be counted as an equal in the design of just institutions.²²

All individuals possess the moral requirements to participate equally in the construction of just institutions and thus have the moral right to benefit equally from (whatever)²³ distributional measures are considered (by the relevant societal unit) to be appropriate within the unit's boundaries. Distributive justice is further supported by modern liberalism's contractual strain which:

...holds that institutions shared in common should be justifiable in principle to each reasonable participant...[and which]...can...effectively rule out Nozick-style natural rights theories, for these natural rights of ownership are acquired on a first come, first-served basis. This means that some persons may be condemned to starvation or penury solely on account of the fact that they arrived after all social resources had been parcelled out. It can reasonably be doubted whether this arbitrary way of treating people's vital interests would elicit universal assent.²⁴

The third premise supporting distributive justice is "the principle of redress"²⁵ which argues that people cannot be held responsible

²¹Ibid., 350.

²²Ibid., 350.

²³See Ibid., 351 for a brief discussion of the lack of agreement as to exactly how much redistribution such arguments do imply.

²⁴Black, "Individualism at an Impasse", 351-352.

²⁵Ibid., 353-354.

or take credit for their natural disadvantages or advantages. These are morally arbitrary; and hence any benefits or cost associated with them are subject to redistribution within the society in accordance with the principles of justice.

Thus the first thesis of modern liberalism, distributive justice, provides no rational, either explicit or implicit, for limiting its scope to any particular set of people. As James Faskin argues:

Within this [the revisionist liberal] paradigm, once persons outside the boundary are considered at all, there is no basis for giving them anything less than equal consideration--for anything less looks like ethnocentrism.

The problem is that special obligations...have no foothold for entering at any fundamental level...If we try to bring in special obligations...we are bringing in a factor from outside the paradigm.²⁶

The second major thesis of revisionist liberalism, its anti-cosmopolitan basis, directly contradicts the universalism underlying the distributive justice thesis:

Revisionist liberals hold the view that relations of justice should be limited to the members of ongoing societies...[implies]...that obligations to outsiders are less extensive than those which obtain between its members...the principles of justice are membership sensitive to the frontiers [borders] of existing political communities.²⁷

Clearly, this is the approach taken by Rawls and Dworkin. The question arises, therefore, of how to reconcile the universality of

²⁶James Faskin, "Theories of justice and international relations: the limits of liberal theory", in Ethics and International Relations, ed. Anthony Ellis, (Manchester: Manchester University Press in association with the Fulbright Commission, 1986), 3-4.

²⁷Black, "Individualism at an Impasse", 354-355. My emphasis.

moral personhood which underlies the distributive justice thesis with the inherent parochialism of limiting the principles of justice to a closed political society:

If the grounds for equality of distribution within society lie in certain universally held attributes which its members also happen to share, then the rights people claim should be independent of their status as citizens. But when liberals restrict the scope of justice, the implication is that people's rights are somehow derivative from their position as citizens.²⁸

Given the contradiction between revisionist liberalism's first two premises and the inherent individualism of the third premise which rules out appeals to the independent moral worth of collectivities, what options remain to deal with the problem and still retain the essence of liberalism? One possibility is to accept the cosmopolitan point of view and agree that distributive justice should be applied at the level of humanity at large--i.e., political boundaries should disappear or serve only to identify the particular group which has the specific responsibility to fulfil generally applicable duties in a given area:

A great many general duties point to tasks that...are pursued more effectively if they are subdivided and particular people are assigned special responsibility for particular portions of the task.
...National boundaries...perform much the same function. The duties that states...have vis-a vis their own citizens are not...special...they are merely the general duties that everyone has toward everyone else worldwide.²⁹

²⁸Ibid., 355-356.

²⁹Goodin, "What is So Special about Our Fellow Countrymen", 681.

Presumably, if one accepts this point of view redistribution takes place on a global scale with boundaries denoting the areas in which each government is responsible for managing the redistribution process.

Such a cosmopolitan approach, or some variant of it, for resolving the contradiction between liberal morality's demand for universal impartiality and the existence of boundaries which, at present, limit the scope of redistribution, might be accepted by many liberal theorists. The result would be to achieve the required level of redistribution while leaving existing societies intact. Fewer theorists and, undoubtedly, still fewer ordinary citizens of liberal societies, would accept the idea of borders open to all immigrants even if this were required to achieve the requisite degree of equality broadly defined. Yet one could argue that if equality is to be universalized, it should also include equal opportunity to choose one's place of residence (subject to a "just" level of property rights of whatever type) and that liberal morality requires open borders. After having surveyed the varying strands of modern liberal thinking Timothy King³⁰, for example, concluded that regardless of the particular liberal perspective the:

...critical issue is whether one applies whatever principle one adopts to the internal affairs of the nation-state or to the world as a whole.

The argument for a global view is powerful.

...If a global view is adopted, then considerations of liberty would normally reject restrictions on geographic

³⁰Timothy King, "Immigration from Developing Countries: Some Philosophical Issues", Ethics 93 (April 1983): 525-536.

mobility unless there were some very strong counterarguments.³¹

Some theorists would accept this argument³² and endorse complete freedom of movement across borders for individuals. If completely open borders are combined with income and resource redistribution on a global scale, one arrives at a purely cosmopolitan point of view; borders are irrelevant if not immoral or immoral if not irrelevant. While I believe the cosmopolitan position is coherent and has merit as a moral point of view, I will not discuss its positive merits further but rather look at what could be put forward as "very strong counterarguments" to the cosmopolitan perspective.

Liberal Solutions

In summary, therefore, the question of the appropriate unit and how boundaries are to be drawn is a problem both for democratic theory in general and justice theories in particular. In practice, liberal theory tends to begin by assuming the societal unit as it exists and hence by conceding legitimacy to established liberal states, to the extent they embody the principles of justice, without explicitly addressing the normative considerations which apply to the boundary question. This approach leaves liberal theory without the theoretical resources necessary to deal with the question of secession or similar territorial questions. In

³¹Ibid., 532.

³²See for example James L. Hudson,, "The Philosophy of Immigration", The Journal of Libertarian Studies 8/1 (Winter 1986): 51-62 and Joseph H. Carens, "Aliens and Citizens: The Case for Open Borders", Review of Politics, 49 (1987): 252-273.

addition, a lack of clear discussion and theory regarding the issue leaves liberalism with the appearance at least of hypocritically refusing to accept the logic of its own position and share the wealth and living standards of existing liberal democracies with the rest of the world.

In general, two modern liberal approaches present themselves as possibilities to justify political borders at least as barriers to unlimited immigration, if not as boundaries limiting areas of resource and income redistribution. (For the purposes of this thesis I assume that resource redistribution and migration exhaust the moral significance of borders. As I discussed in the Introduction, the third major question regarding borders, that of interference in other nations' affairs does not arise because I assume a world of just political units. If all political units practice just government, and all borders are justly determined, no just cause can exist for one unit to interfere in the affairs of another unit.) The first possibility is to derive normative consequences from certain empirical features or characteristics of individuals or societies--culture or language for example. To remain within the liberal paradigm, however, the moral significance of such objective features must be grounded in individualistic considerations. This approach, if successful, could provide a rationale for groups of people to control entry and exit to and from their societies as a means of protecting their culture or their language. The second possibility is to justify political community on the right of individuals to associate with whom they

please and the consequent right to democratically decide whom they admit into their territory and whether or not they will practice internal redistribution of resources at a level beyond that which it is their moral duty to practice with the world at large. From this perspective, political boundaries derive their normative weight from the consent of the individuals living within the boundaries. (I do not discuss what level of redistribution, if any, is owed to humanity at large as opposed to one's fellow citizens assuming only that it is possible that the two duties differ. Unless international redistribution calls for absolute equality of individual incomes, some higher internal level of resource redistribution is always possible within national borders.)

The following sections of this chapter review some recent liberal attempts to argue that culture or nationality have independent normative worth and moral implications for political decisions. The concept of free association as a basis for political community is discussed in the following chapter.

Culture as the Basis of Political Community

It is probably the case that the majority of the citizens of liberal societies and their political leaders take it as self-evident that a common culture, nationality or language is the "best" basis or foundation for the democratic state and that borders, to the extent possible, should reflect national cultures. This belief co-exists, somewhat uneasily, with a general preference to maintain existing borders and a general, if unargued,

opposition to changes. Secession in particular, unless the group in question is in one way or another oppressed or the victim of some historical injustice, is regarded as unfortunate or morally illegitimate. It is not self-evident, however, that the approach can be philosophically justified within the context of liberal political theory. First I will argue that the attribution of moral weight to an arbitrary characteristic such as culture or nationality flies in the face of the impartiality criterion of modern moral thinking because such an approach necessarily conveys unjustifiable benefits to some and imposes unjust costs on others. Second, the fact that culturally homogeneous states may be functionally efficient for liberal democratic governments (and this in itself is disputable) does not necessarily lend any particular moral weight to the argument. Slavery was, in some contexts and for some groups, a useful social practice; this usefulness in no way provided a moral basis for the institution. Third, I will claim that it is not clear that culture, nationality or language can be given normative status without leaving one of the basic premises of liberalism--the moral primacy of the individual over the group--behind. And fourth, it is not self-evident that even if culture is accorded special moral weight that it provides viable answers to the border question.

Part of the argument in favour of the cultural nation as the basis for the political state is functionally driven. This argument has been cogently stated by David Miller who states:

...the state may be more viable as an institution--it may be less prone to disruption, less obliged to govern its

subjects by brute force--if the society it regulates is a national community.³³

The increase in viability results from the role that trust plays in generating a viable political community.³⁴ Even if the role of the state is reduced to the bare minimum, the political unit cannot function without a certain level of trust and mutual recognition between citizens who are not personally known to each other:

I take it as virtually self-evident that ties of community are an important source of trust between individuals who are not personally known to one another and who are in no position directly to monitor one another's behaviour.³⁵

Miller's argument is, in many respects, simply a repetition of Mill's functional argument discussed in the previous chapter. There is, however, one crucial difference. Mill, as we saw, specifically deplored the morality of making large distinctions between the treatment of fellow countrymen and others; Miller, on the other hand, does not reject this preference as morally objectionable. The response to Miller's argument, from the normative perspective, can be crudely stated as "so what?" Is the argument not simply another way of saying that white people prefer and trust white people, English speaking people English speaking people, and non-curry eating families non-curry eating families? These may or may not be empirically true statements about people's preferences. To the extent that they are, it is necessary to take

³³David Miller, "The Nation-State: a modest defence" in Political Restructuring in Europe, ed. C. Brown (forthcoming), 4.

³⁴Ibid., 5.

³⁵Ibid., 6.

account of these (morally) deplorable facts in making practical political decisions; it is not necessary, however, or even desirable to raise such empirical facts to the status of moral principles. Individuals presumably have a right to their private psychological preferences; they do not have a right to have them reflected in the public sphere unless this can be done within the context of justice and without violating someone else's rights.

Other arguments, which do attempt to provide normative status to culture, often explicitly give moral status to the group separate and distinct from the moral status of the individuals who comprise the group, or they give expression to a type of perfectionism in which one particular way of life is held to be more valuable (at least for those who "live" it) than other ways of life. Miller, for example, as well as arguing the functional benefits of the nation-state for political viability, claims that:

...nations may be more successful as communities if they are self-governing, they may be better able to satisfy the collective aspirations of their members.³⁶

More successful at what? More successful at "protecting the common culture that the nation embodies".³⁷ But this is to make an answer of the question: the justification for the culturally homogeneous political nation is that it can best protect the cultural homogeneity. What is needed to break the (vicious) circle is an argument as to why the common culture has some morally unique

³⁶Ibid., 5.

³⁷Ibid., 7.

statues requiring or justifying special consideration; Miller provides none.

Often the result of arguing the importance of groups and group membership is to give the cultural group independent moral status in a way which is, in my opinion, inconsistent with the liberal primacy of the individual. In my view, this is the case with Raz and Margalit³⁸ who talk about the value of "encompassing groups" which are particularly important to the well-being of the individual. Such groups are characterized as having a common culture that covers many important aspects of life and marks individuals growing up in it by its character. The prosperity of such a group, they argue, is important for the individual well being of its members. Hence, such groups should be given moral political status and allowed to determine the political character of geographical areas in which group members form a majority.

From the liberal perspective, this approach is problematical. Membership in such a group "is a matter of belonging, not of achievement".³⁹ Attributing such moral importance for something which is not a matter of choice conflicts with the liberal value of autonomy unless it can be argued that it is something which itself is necessary for the existence of that very autonomy. Raz and Margalit acknowledge that people may slowly and with great effort "migrate to other environments, shed their previous culture, and

³⁸A. Margalit and J. Raz, "National Self-Determination", The Journal of Philosophy 87/9 (September 1990): 439-461.

³⁹Ibid., 446.

acquire a new one".⁴⁰ But once this is acknowledged, what is the source of the unique status of an individual's own cultural group? It is not clear why cultural groups should enjoy any particular status as opposed to other groups--religious or class (occupational) for example. Two reasons are advanced:

...membership of such groups is of great importance to individual well-being, for it greatly affects one's opportunities. Secondly, it means that the prosperity of the culture is important to the well-being of its members.⁴¹

But many people would consider the prosperity of their religious group more important to their spiritual well-being and the prosperity of their class, province or region as more important to their material well-being. What then does "well-being" mean in the above citation? Why privilege the cultural group?

Other attempts made to justify the attribution of political significance to culture or nationality are frankly collectivist or communitarian in their orientation⁴² and will not be discussed here. Two recent comprehensive attempts have been made, however, to draw political consequences from language and/or culture while remaining within the liberal paradigm. An analysis of these two approaches will serve to highlight the inherent problem in using culture as a normative justification for political structures and simultaneously

⁴⁰Ibid., 444.

⁴¹Ibid., 449.

⁴²See for example, Ronald R. Garet, "Communitarianism and Existence: The Rights of Groups", Southern California Law Review 56/5: 1001-1075, Guyora Binder, "The Case for Self-Determination", 223-270, or Daniel Bell, Communitarianism and its Critics (Oxford: Clarendon Press, 1977), especially 125-127.

remaining within the liberal paradigm. To the extent that an argument giving language and/or culture a privileged moral status can be made, the argument leaves the moral primacy of the individual behind; to the extent the argument remains within the liberal paradigm, the argument does not succeed in elevating language or culture beyond the level of a simple preference which has no more (or less) moral status than any other individual preference. Its moral value as a preference is in no way enhanced by its "cultural" nature; it is similar to any other preference. Consequently, it may be given political expression to the extent that it does not violate the rights of others.

It should be noted that neither of the philosophical arguments discussed below explicitly deals with the question of borders for sovereign states. The context in which the arguments are developed is that of internal cultural and linguistic policies--questions of national identity--particularly as they apply minorities. Thus it is probably unfair to extrapolate the arguments to the question of borders--an extrapolation not made by the authors--and then criticize the results of the extrapolation. Nevertheless, this is what I do in the following paragraphs. The reason for doing so is that the arguments illustrated the philosophical difficulties for liberalism of attempts to give culture and/or language a normative standing in political theories.

Yael Tamir argues that "the right to national self-determination is merely a particular case of the right to culture".⁴³ She specifically separates the right to national self-determination from the usual nationalist demand for a state,⁴⁴ but she does argue for the particular normative value of national cultures. Tamir first develops the concept of the "contextual individual":

...an autonomous person who can reflect on...his conception of the good, his ends, and his cultural and national affiliations, but is capable of such choices because he is situated in a particular social and cultural environment that offers him evaluative criteria.⁴⁵

As with the communitarian view of the person, cultural affiliation, history and language are "constitutive of this individual".⁴⁶ Tamir proposes several reasons why the desire of the contextual individual to retain her national culture should be respected.⁴⁷ Culture, she argues, is constitutive of personal identity and is instrumental as a means for individuals to exercise their capacity for choice. In addition, respect for an individual's choice of culture is a specific example of respect for individual choices in general; freely choosing one's culture is a part of exercising one's individual autonomy. Tamir distinguishes cultural self-

⁴³Yael Tamir, Liberal Nationalism (Princeton [N.J.]: Princeton University Press, 1993), 73.

⁴⁴Ibid., 58.

⁴⁵Ibid., 33. My emphasis.

⁴⁶Ibid., 33.

⁴⁷Ibid., 35-37.

determination, which is the right of a nation (cultural group) to preserve and give public expression to its cultural particularities, from democratic self-determination which is the right to democratic political institutions.⁴⁸ The latter exists if democratic institutions exist; the former requires particular institutional arrangements which permit the reflection of a particular culture in a public space. In summary, cultural self-determination is "the right of individuals to express their national identity, to protect, preserve, and cultivate the existence of their nation as a distinct entity."⁴⁹

If Tamir's argument for the right of national self-determination is to be extrapolated to the question of determining political boundaries, it fails at two levels. At the practical level, her approach does not address the actual demands of cultural or linguistic nationalists. Most nationalist movements demand the embodiment of their culture, race, language etc., in a sovereign state.⁵⁰ Given that it would be physically impossible for every cultural nation to have its own state, Tamir specifically rejects this conclusion and argues for the explicit recognition of cultural nations within existing states:

⁴⁸Ibid., 70-72.

⁴⁹Ibid., 72.

⁵⁰See, for example, Hans Kohn, The Idea of Nationalism, (New York: The MacMillan Company, 1961), 19, Anthony D. Smith, Nationalism in the Twentieth Century (New York: New York University Press, 1979), 2-4, Ernest Gellner, Nations et nationalism, (Paris: Bibliotheque historique Payot, 1969), 15-16, or more generally, the writings of G. Mazzani.

Were nation-states the only way of realizing the right to national self-determination, its implementation would remain the privilege of only a fortunate few...[her approach]...allows all nations to enjoy it in some form.⁵¹

For most nationalists, however, full sovereign political and economic power are necessary in order to fully protect a culture. Without the accoutrements of a sovereign state it is argued, cultures become little more than folklore. Tamir's approach has nothing to say regarding the location of political boundaries within which particular cultures are to be given public recognition. She seems to consider the boundary question as a functional question--i.e., one which should be decided on the basis of "efficiency".⁵² What her response would be if individuals rejected the "efficient" solution in favour of another outcome is not clear.

At the philosophical level, Tamir fails to adduce arguments to support any special normative role for culture. She does not provide a response to the question why cultural preferences are more deserving of gratification than any other individual preference. Modern liberal theory⁵³ generally interprets equality as a matter of the allocation of certain primary goods or basic resources (including basic rights and liberties as well as control

⁵¹Tamir, Liberal Nationalism, Page 9.

⁵²Ibid., 150-151.

⁵³See Rawls, A Theory of Justice, 433-434, Political Liberalism, 188-189, or Ronald Dworkin, "What is Equality?" Parts I and II, Philosophy & Public Affairs 10/3 and 10/4 (1984): 185-246 and 283-345.

over a certain level of material resources) rather than equality of preference satisfaction. In this context, there is no rationale why one's desire to see one's culture reflected in a public space has a different moral status than any other personal preference nor, for that matter, why one's cultural preferences as opposed to, say, one's economic preferences should count more (or less) in the determination of the shape of the political unit. Tamir gives no arguments for treating culture any differently than other preferences beyond claiming that it is somehow "constitutive" of the individual. Although she argues that some culture or other is necessary as a precondition for choice, she does not succeed in giving one's own culture the status of a Rawlsian primary good. Such arguments as she does advance for the importance of culture to the individual are, I believe, undercut by her acknowledgement that people can freely move between cultures:

...a national culture is not a prison and cultural ties are not shackles...not only should individuals have a right to choose the national group they wish to belong to, but they should also have the right to define the meaning attached to this membership.⁵⁴

Once this eminently liberal conclusion is granted how can cultural preferences have a different moral status from other preferences? If any cultural framework can provide the necessary context of choice, why does any particular culture have a claim to be promoted and/or protected? I conclude, therefore, that Tamir remains within the liberal paradigm of the moral primacy of the autonomous individual, but that she fails to give a philosophical

⁵⁴Tamir, Liberal Nationalism, 37.

justification as to why an individual's culture or cultural preferences should have a different status from her preference for, say, red wine as opposed to white wine.

Will Kymlicka⁵⁵ argues, on the other hand, that one's own culture is, in fact, a primary good in the Rawlsian sense. Such goods are not inherently valuable in themselves but rather are valuable because they are necessary to permit us to select a way of life and/or to change our already existing way of life if we want to; they are the tools or means necessary to promote individual autonomy. Kymlicka argues that our decisions about how to lead our lives are always made within the context of choice provided by our own culture. We do not choose from an infinite range of possibilities but select "what we believe most valuable from the various options available."⁵⁶ Our range of possibilities is determined by our linguistic and historical circumstances:

Our language and history are the media through which we come to the awareness of the options available to us, and their significance.⁵⁷

But the meaning of culture as a "context of choice" is, for me at least, exceedingly difficult to understand. It is different from any of the specific individual characteristics which we normally think of as, in the ensemble, making up a culture:

...cultural membership doesn't involve any necessary connection with the shared ends which characterize the culture at any given moment. The primary good being

⁵⁵Kymlicka, Liberalism, Community and Culture, Chapter 8.

⁵⁶Ibid., 164.

⁵⁷Ibid., 165.

recognized is the cultural community of choice, not the character of the community or its traditional ways of life which people are free to endorse or not.⁵⁸

This is not to say that a given culture can exist without specific characteristics, but rather that no single characteristic or practice--except language--is essential to the survival of the culture. The example used to illustrate this definition of culture is that of Quebec, which prior to 1960, defined itself as French speaking, Catholic, and traditional, but which subsequently developed rapidly into a French speaking, secular, modern society. On Kymlicka's view, this major change in the characteristics of the society did not represent a change or a loss of the original culture (considered as a primary good). Because the majority continued to speak the same language, the culture, as a context of choice, survived. What is not clear, however, is how culture stripped of all its cultural characteristics, except language, differs from the general social structure which provides stability, law and order, etc.

But even if one accepts that somehow culture is separate from its characteristics and distinct from the general societal framework, why is any particular culture the primary good which deserves privileging rather than just any cultural framework that happens to be at hand? According to Kymlicka, it is one's own (native) culture that is a primary good:

⁵⁸Ibid., 172.

People are bound, in an important way to their own cultural community...Cultural membership effects our very sense of personal identity and capacity.⁵⁹

Given that the cultural community to which individuals are bound is somehow separate from the individual characteristics of that culture, Kymlicka defines culture almost entirely as language and perhaps some sort of historical relation. This "culture" is, however:

...crucial not just to the pursuit of our chosen ends, but also to the very sense that we are capable of pursuing them efficiently.⁶⁰

To deprive individuals of this "cultural" structure without any particular essential characteristics, even if it were replaced by another structure could, and probably would, result in stunted development. Hence:

...respecting people's own membership and facilitating their transition to another are not legitimate options. So it seems that we should interpret the primary good of cultural membership as referring to the individual's own cultural community.⁶¹

The argument depends on the status of one's own native culture, thinly defined yet distinct from the general social structure, as a primary good. Obviously, if it were possible to assimilate to another culture without loss of something essential, Kymlicka's argument would fail; as just discussed, I do not think that the peculiarly thin concept of culture Kymlicka develops can carry the

⁵⁹Ibid., 175.

⁶⁰Ibid., 176.

⁶¹Ibid., 176-177.

weight he gives it.⁶² Contrarily, if one "thickens" the definition one very quickly leaves liberalism for some type of communitarianism

Kymlicka does draw political implications from his argument. For example, he proposes that minority indigenous cultures (as opposed to immigrants) situated within majority cultures should have the requisite political power to protect their cultural structures:

...minority cultures in multi-nation states may need protection from the economic or political decisions of the majority culture if they are to provide this context [of choice] for their members...they may need self-governing powers...and may need to limit the mobility of migrants or immigrants into their homelands.⁶³

The argument has moved from the premise of one's own culture as primary good to implications for political boundaries (at least as barriers to the free movement of people if not to participation in the resource redistribution of the larger unit). Kymlicka has supplied the step missing in Tamir's approach--an argument as to why cultural choices are not simply personal preferences and should, therefore, be given a special normative political weight.

There are, however, several problems with the argument, particularly if it is extrapolated to explicitly deal with the question of political boundaries. First, primary goods are those

⁶²For a detailed criticism of Kymlicka's argument in this regard see John R. Danley, "Liberalism, Aboriginal Rights, and Cultural Minorities", Philosophy & Public Affairs 20/2 (1991): 168-185. Danley argues that assimilation or changing cultures is always a possibility; hence, one's own culture cannot be considered as a Rawlsian primary good.

⁶³Kymlicka, Multicultural Citizenship, 126.

goods to which every member of a society has a right. Kymlicka's argument, while granting the right to culture to individuals born into a society, denies it to immigrants on the grounds that they freely chose to give up their cultural structures when they immigrated. But would he be prepared to let "just" states, in effect, barter the right of entry into their territory in return for the waiver of rights to other primary goods such as basic liberties or material support? Could we advertise in the third world for indentured servants for example? Furthermore, Kymlicka provides no argument as to why minority cultures and their territory (for the argument really only applies to cultures which occupy a contiguous territory) should be considered as justly part of the larger political unit in the first place. For example, why should a particular native group be thought of as part of Canada and then negotiate the right to erect political boundaries effective against migrants, but not resource flows, rather than as an independent nation completely outside the larger political unit for all purposes? The assumption seems to be that the minority groups have the right to unilaterally establish the terms of the political relationship. It is not clear to me why a certain group has the right to demand participation in some aspects of the polity but unilaterally opt out of others. Nothing precludes an agreement between the minority and the majority to this effect, but such an agreement requires the consent of both sides.⁶⁴ Kymlicka does

⁶⁴In some ways the claim by native groups to have both native self-government and yet continue to participate in income redistribution programs parallels the objective of some "soft"

advance arguments related to historical agreements, but such arguments, obviously, are different in nature from those that flow from justice and Rawlsian primary goods. In other words, within a justice context, how and why do indigenous cultures occupying a contiguous territory differ in their moral status from (hypothetically speaking) a situation in which Spanish speaking immigrants and/or their descendants formed a majority in Texas?

Second, primary goods are means to ends rather than ends in themselves. Culture seems to have at least some of the characteristics of an end in itself. To the extent that it is more than just the basic social structure, considering it a primary good is a type of perfectionism. Kymlicka tries to avoid this problem by carefully discriminating between culture as a context of choice and the characteristics of a culture. But for this distinction to hold, we are owed an argument about how specifically the cultural context of choice differs from the basic social structure of society. How is the breakdown of a cultural context to be distinguished from the simple breakdown of an existing social structure? Can language alone carry the weight that Kymlicka wants to put on it? The example of Quebec illustrates the issue. If culture is understood to have any substantive meaning at all, it would seem that pre- and post-1960 Quebec are two separate cultures

nationalist Quebecers to retain an economic association with Canada while claiming political independence. For a critique of this approach and the need to differentiate between "insiders" and "outsiders" see Reg Whitaker, "Quebec's Self-determination and Aboriginal Self-government" in Is Quebec Nationalism Just?, ed. Joseph H. Carens (Montreal, Kingston, [etc.]: McGill-Queen's University Press, 1995), 199-202.

united only by a common language. For individuals dependent on the pre-1960 culture for their context of choice, it has largely ceased to exist; only the language remains. Alternatively can one really say that Canada and the United States are one culture because they speak the same language? England and Ireland? Obviously, there is something more required than similarity or difference in language to justify a boundary which, as previously discussed, seems to contradict the basic tenets of liberal morality.

Thirdly, Rawls has provided arguments for the ordering of the priority of primary goods. Basic liberties stand at the head of the list with the rights to resources following.⁶⁵ In other words, basic liberties cannot be traded off against material resources. Where in the hierarchy would we put the right to culture? Almost inevitably, the use of political structures to protect and/or promote cultural values will have a negative impact on individual rights and liberties as well as implications for resource allocation. (The impact on individual liberty is discussed in Chapter IV.) In conclusion, can one really say of culture what Rawls has said of primary goods?

When seen as rights, liberties, and opportunities, and as general all purpose means, primary goods are clearly not anyone's idea of the basic value of human life and must not be so understood, however essential their possession.⁶⁶

Even if the argument that one's own culture, however defined, is a Rawlsian primary good and consequently, one's desire to

⁶⁵Rawls, Political Liberalism, Lecture VIII.

⁶⁶Ibid., 188.

maintain that "cultural context of choice" is something more than a simple preference, the argument does not provide specific answers to the question of political boundaries. Presumably, Kymlicka would argue that boundaries should not be drawn in such a way as to deny individuals the primary good of their own cultural context of choice if an alternative were available which maintained their membership in their native culture. Hence, secession or other border changes would be justified if this were required. The argument, however, carries no moral weight unless the individuals concerned express a preference for a specific change. In the theoretical example of a group of "X" speakers currently living in a contiguous territory that forms part of a country dominated by "Y" speakers but adjacent to a country of "X" speakers, the "X" speakers would have the right to separate from the "Y" speakers if they wanted but would have no obligation or duty to do so. As I will argue in the next chapter, the moral force of a boundary is derived from the fact that the change reflects the will of the majority within the area, and the fact it does not infringe on some legitimate rights of other people. The empirical fact that a group of people share a common culture may account for (be the psychological cause of) their preference to live in their own political unit; the moral force comes from the fact of the preference. Conversely, there is nothing in the claim that culture is a primary good that would argue against permitting boundary questions to be settled uniquely on the basis of the expressed preferences of the residents of a given territory. If a group of

"Y" wished to separate from a "Y" dominated country, nothing in the culture as a primary good argument precludes that such an action be morally legitimate.

The culture as a primary good thesis cannot, logically, provide an answer to the question of political boundaries. The right to a primary good (any primary good) is an inherent part of modern liberal justice theories. But, as I argued above, such theories assume the political unit. Without an answer to the question of the appropriate political unit, justice reasoning cannot get started. Thus if culture is a primary good, it is a primary good within the context of an already established political unit; logically, one cannot use the status of culture as a primary good to establish the boundaries of the just unit. In many ways the argument that culture is a primary good is, as noted above, more relevant to the determination of internal cultural and linguistic policies than it is to the establishment of just political boundaries. And while I would argue that the "cultural rights" that Kymlicka argues for would, necessarily, violate the liberal belief in the neutrality of the state, such an argument is beyond the scope of this thesis.

Summary

To this point I have argued: (1) the question of the unit to which a particular just political system applies is important, (2) Rawls (and other liberal theorists) accept without much argument or discussion that the "nation-state" is the appropriate unit, (3) the result is to make modern liberal theories of justice self-

contradictory in that they use premises based on the universal moral standing of all human beings to derive a normative basis for the basic structure of society which encompasses only a certain group rather than humanity at large, (4)many, if not most, liberals would have problems accepting a cosmopolitan solution to this contradiction especially if it implied a loss of control over potential entrants to the society, (5)one possible solution to the problem is to derive normative value from the existence of a particular language or culture, and hence morally "validate" political frontiers as a means of protecting a culture or language, (6)for culture or language to have such a status in the liberal context, an individual's own native culture must have the characteristics of a Rawlsian primary good, (7)many attempts to raise culture above the level of a simple preference fall to the side of collectivist or communitarian approaches incompatible with the moral primacy of the individual over the group, (8)other arguments are functional in nature; the derivation of normative results from such empirical claims is very problematical, (9)the most comprehensive attempt to elevate native culture to the status of a primary good, while remaining, inside the liberal paradigm, that of Will Kymlicka, has problems and, in my view, does not work. (10)even if culture is accepted as a primary good, it provides no answers to the majority of questions relating to political boundaries.

Chapter IV discusses the free association approach which, I believe, provides answers more in accord with the major premises of

liberal thinking, both current and past, and does not face the same difficulties as culturally based approaches in supplying answers to practical issues concerning boundary determination.

IV FREE ASSOCIATION: A LIBERAL THEORY OF BORDERS

Underlying liberal arguments for culture as a normative foundation for political boundaries is comprehensive liberalism and a specific liberal theory of the person.¹ Such arguments are, therefore, based on a particular view of moral psychology--one believes that autonomy is not just a normative construct to which people have a right if they choose, but rather they have a right to it because it leads to the flourishing of the human personality. It is this empirical claim that there is a link between autonomy and some concept of individual flourishing which presumably separates liberal arguments for the value of culture and group membership from non-liberal arguments--these latter do not require the link because they can argue directly from the independent moral worth of the group or culture. I do not intend to address the validity or invalidity of the comprehensive liberal theory of the person. I would simply point out that the truth of the argument (as an empirical claim) is by no means self-evident. In the first instance, it would certainly be possible to argue that an individual possessing "too much" autonomy would be, at the theoretical extreme, psychologically deranged with no permanent attachments. Furthermore, for many individuals any great amount of choice about life style, personal relationships etc. can lead to acute unease or anxiety--i.e., many individuals are undoubtedly, in their own judgement, happier and better off when not faced by the

¹See Kymlicka, Liberalism, Community and Culture, Chapter 8 and Multicultural Citizenship, Chapter 5 for a discussion of this point.

necessity or even the possibility of rethinking their world views or changing their life plans. For many in the modern world, autonomy probably has more to do with the right to consume one type of product as compared to another than the possibility of reassessing their world views or life projects. Secondly, there is at least a hint of circularity in the argument that autonomy leads to the flourishing of the individual. For this to be a completely non-circular argument, it would be necessary to define flourishing without reference to the concept of autonomy, a not uncomplicated task.

I believe that if a normative claim can be argued independently of a specific empirical view of human nature it is, in that one regard at least, superior to an approach which is premised on a controversial view of the human condition; the fewer the contentious empirical assumptions required to arrive at a normative result the better. To that end, I follow Rawls in regarding moral psychology as:

...a moral psychology drawn from the political conception of justice as fairness. It is not a psychology originating in the science of human nature but rather a scheme of concepts and principles for expressing a certain political conception...²

The acceptability of the premises and the results depend, therefore, not on any particular argument about the nature of humanity or what constitutes a superior idea of the flourishing of the person but:

²Rawls, Political Liberalism, Pages 86-87.

...on whether we can learn and understand it, on whether we can apply and affirm its principles and ideals in political life, and whether we find the political conception of justice to which it belongs acceptable on due reflection.³

I am not, of course, attempting to construct a complete "political conception of justice" but to address the more narrowly focused question of the justice of borders. In this context, I interpret "acceptable" to mean something in the order of: (1) consistent with much of mainstream liberal political theory, (2) requiring fewer (than other possibilities) controversial assumptions and (3) able to deal with practical and theoretical objections.

Free Association -- The Basic Theory

Free Association, as applied to the question of state boundaries is based on the purely normative claim that:

One hardly knows what any division of the human race should be free to do if not to determine with which of the various collective bodies of human beings they choose to associate themselves.⁴

The idea "is not analyzable in terms of some natural basis" nor can one "explain its role and content scientifically".⁵ Rather it starts with the traditional liberal view that individual adults have a right to self-determination which includes the right to choose with whom they want to associate and the right not to associate with those whom they do not want to associate. It is, I believe, not controversial within liberal political thought that

³Ibid., 87.

⁴Mill, Considerations on Representative Government, 392.

⁵Rawls, Political Liberalism, 87-88.

in one form or another individuals have this right. Liberals would not, in general, compel association or force individuals to join or remain members of any particular group or association. This right, like all rights, is not unlimited; it is, in its public expression, subject to the rules of justice and other people's rights. For example, most (although not all) liberals would accept that my right to refuse to associate with some other individual may be limited and subject to anti-discrimination laws when I enter the public sphere as a landlord or employer. Probably more controversial would be the idea that one can be compelled to join a union if one chooses to work in a certain establishment.

The free association approach to political boundaries is an extrapolation of this uncontroversial right of individuals to associate with whom they choose to the level of the political entity; needless to say, the extrapolation is not uncontroversial. Liberal democratic theory has, however, long assumed that in one way or another the moral justification for the joining of individuals together into a state somehow depended on the consent of the individuals to that association;

Different assumptions about human nature, the objectivity of value judgements and other matters, make different claims regarding the basis of political authority appropriate. Within the assumptions of democratic liberalism, however, only the consent of the governed can be appropriate.⁶

The problems with consent as a general theory of political obligation and the circumscribed manner in which I am using it--

⁶Harry Beran, The Consent Theory of Political Obligation (London: Croom Helm, 1987), 35.

majority consent regarding state borders--were discussed in Chapter 1. I argue that in the case of the boundaries of the political state, when the wishes of the majority can be clearly and unambiguously obtained, this majority wish is the sole necessary condition for morally defensible borders (always given my assumption of just political units). "Any territorially concentrated group is a potential candidate"⁷ for statehood or such other political structure as they desire. If the desire includes affiliation in one form or another with another group of people, this other group must also give their consent to the arrangement. Conversely, if a territorially concentrated majority in an existing entity wish to terminate their political ties with another territorially concentrated group in the entity, they have the moral right to so; the majority has, in effect, the right to expel the minority. Unless it can be demonstrated that such actions violate someone's rights, no further justification is required beyond the democratically expressed will of the majority.

Given that the premises of the free association approach are, on first glance at least, derived from, and congruent with, liberal ideals and values⁸, it is perhaps surprising that it is not the generally accepted principle concerning the question with exceptions allowed only for particular circumstances:

⁷Ibid., 40.

⁸See Harry Beran, "A Liberal Theory of Secession", Political Studies 33 (1984), especially 23-29 for a detailed discussion of the congruence between liberal political principles and a "voluntaristic" approach to the question.

The recognition of a right to secede [or make other changes to political boundaries for that matter] would seem to be something to which liberalism is at least *prima facie* committed. Surely a political philosophy that places a preeminent value on liberty and self-determination...and holds that legitimate political authority in some sense rests on the consent of the governed must either acknowledge a right to secede or supply weighty arguments...[against it].⁹

In other words, one would think that some variation of the free association approach would be liberals "going in" position rather than positions which either seek to find normative value in cultural and linguistic differences or simply privilege existing arrangements.

One modern liberal theorist who does, at the theoretical level, accept the approach is Harry Beran. Beran argues that because of the difficulties in deriving a viable definition of "nation" based on objective factors, one is left with the conclusion that "preferences regarding political association are a sufficient sign of sentiments of nationality".¹⁰ Even if cultural preferences were a "privileged type of sentiment in terms of which nations can be defined"¹¹, how would one ascertain these except through some form of voting? If this is so, he argues, the nationalist or cultural approach can be sidestepped and we arrive at the conclusion that:

⁹Allen Buchanan, Secession (Boulder: Westview Press, 1991), 4.

¹⁰Harry, Harry, "Border Disputes and the Right of National Self-Determination", History of European Ideas, 16/4-6 (1993): 483.

¹¹*Ibid.*, 483.

Any group of people who desire political unity...[is]...a nation no matter how culturally heterogeneous they are.¹²

But basing "nationality" on preference appears to violate the normal meaning of the word:

Nations, unlike states, are something which cannot be created or multiplied instantly by preferences expressed through referenda or acts of parliament. Membership in nations is determined by non-voluntary criteria, not present preferences or choices.¹³

Nations and nationalities do not have borders; states do and these may or may not coincide with national divisions. Hence, argues, Beran, basing borders on preferences as a sufficient sign of a sentiment, national or otherwise, to live together in one state, permits one to avoid the problem of defining a nation and to specify the right to political self-determination in voluntaristic terms:

If people's preferences regarding political association have to be used to identify the nations that have the right of self-determination, then it is theoretically simpler and clearer to formulate the right...without reference to nations. Self-determination is the right of every group which (1) has awareness of itself as a distinct group (2) is a majority in a territory, and (3) is viable as an independent political entity."¹⁴

Beran carries his argument to its logical conclusion and would permit secession of any group forming a majority in a given territory:

...on the belief that the group who are wondering whether continuing membership in an existing state or

¹²Ibid., 483.

¹³Ibid., 484.

¹⁴Ibid., 484.

independence would serve their needs better, are the appropriate people to make the choice.¹⁵

From the practical point of view and to give maximum effect to the principle:

...if political unity is to be voluntary and part of a state wishes to secede, then the outcome of a separatist referendum must be determined by the voters in a territory specified by the separatists.¹⁶

If follows from this principle that any group within the new state would have the right to demand a second referendum in a territorial sub-unit as specified by the new group of separatists.

Even Beran, however, perhaps the most radical theorist of secession, places limits on the right to secede in any particular practical case. He suggests six conditions which may justify not allowing secession in any particular instance:

(1) The group which wishes to secede is not sufficiently large to assume the basic responsibilities of an independent state. (2) It is not prepared to permit sub-groups within itself to secede although such secession is morally and practically possible. (3) It wishes to exploit or oppress a sub-group within itself which cannot secede in turn...(4) It occupies an area not on the borders of the existing state so that secession would create an enclave. (5) It occupies an area which is culturally, economically or militarily essential to the existing state. (6) It occupies an area which has a disproportionately high share of the economic resources of the existing state.¹⁷

¹⁵Ibid., 484.

¹⁶Ibid., 484.

¹⁷Beran, "A Liberal Theory of Secession", 30-31.

Thus it appears that Beran in practice is considerably less liberal than Beran in theory.¹⁸ I argue, on the other hand, that, with the exception (perhaps) of the first condition which is necessary to avoid the possibility of states comprised of only one person or a family, etc., the other conditions proposed by Beran are unduly restrictive and unnecessary in a theory of just borders. Conditions two and three are theoretically unnecessary given my assumption that we are discussing a world of just political entities; conditions four, five and six are undue practical/theoretic restrictions on the right of secession and will be discussed below along with other objections to the theory.

In general, two classes of "weighty arguments" against free association as a theory of borders can be distinguished. First arguments against the premises themselves or at least their extrapolation to the level of the state, and second, arguments that accept the underlying premises as consistent with liberal justice, but which do not accept the general conclusion or the conclusion in any particular case. I will address these two categories of objection in turn. My premise will be that if I successfully refute the major arguments against the free association approach, I will, given the weaknesses of cultural or linguistic approaches, have established the theory.

¹⁸See Anthony H. Birch, Anthony H., "Another Liberal Theory of Secession", Political Studies 32 (1984): 596-602 for a discussion of how Beran's theory, with the suggested limitations, would be quite restrictive in practice.

The Right to be Somewhere

One major theoretical objection to the free association approach to political borders is that it implicitly relies too heavily on the comparison between membership in an association and citizenship in a political state--i.e., the extrapolation from the individual right to associate with whom one pleases to the level of the state is illegitimate:

...the state is not like...[ordinary associations]...One does not usually join a state; one is born into it, and one grows into membership. Membership in a particular nation is for most of us, one of the "givens" of our existence...Membership in a voluntary association...is, in contrast, the product of personal taste and choice.¹⁹

Clearly there are differences between a voluntary organization and a state; the prime difference is that the state possesses "sovereignty" over a territory and all the individuals within it. The individuals are subject to this sovereignty whether or not they wish it. Conversely the state must, in the great majority of cases, accept the people who live within its borders as citizens. Voluntary organizations do not possess sovereignty with its coercive power over their members (or if they do it is only with the acquiescence and/or support of the state). Also, such organizations can generally exclude those whom a majority of members do not wish to include.

The state is, therefore, different in important ways from voluntary associations; the key difference is the fact that individuals must live in some state or other, and the state must

¹⁹Karen Johnson, "Political Obligation and the Voluntary Association Model of the State," Ethics 86 (1976): 18.

accept as members those individuals who have a right to membership whether the majority wants it or not (unless, of course, the "undesired" are geographically concentrated and could be expelled from the political unit with their territory intact). Individuals possess a certain "right to be somewhere" which precludes other individuals from using the state to exclude them from the association if they are properly exercising this right; the right of free association must recognize other rights, amongst which the right to be somewhere. This right can be traced back to Hobbes²⁰ who included a right to a place to live in, along with a right to self-defense and the right to the use of fire, water and free air, in the rights retained by the individual and not given up when the social contract was signed:

The right is not...to a particular place, but it is enforceable against the state, which exists to protect it; the state's claim to territorial jurisdiction derives ultimately from this individual right to place.²¹

All recognized liberal rights, I would argue, presuppose the individual's right to be somewhere in order to exercise them. It makes no sense to talk about the right of free speech or the right to practice one's religion unless one has somewhere in which to exercise these rights. The right to be somewhere does not allude to possible claims to decent housing or to assistance in procuring particular buildings or places in which to hold a political rally

²⁰T Hobbes, The Elements of Law, ed. F. Tonnies, 88, quoted and discussed in Michael Walzer, Spheres of Justice (New York: Basic Books, 1983), 43.

²¹Ibid., 43.

or to practice a religion, but rather to a more basic and fundamental right to concretely exist in a specific part of the world. Given that the world is completely divided into political units, an individual's right to be somewhere must necessarily be within the borders of one of these units; in effect, the individual has a right to be subject to some sovereignty. Thus states (or more precisely, the majority of individuals living within a given territory), unlike voluntary associations, do not have the right to refuse full membership in the political society to someone who has the right to be within the geographical area encompassed by the state. To be consistent with democratic theory, therefore, any vote regarding the establishment or change of political boundaries must be the vote of those individuals having the right to be within the territory in question.

Exactly where an individual has this right is a complex question. Walzer, for example, takes the position that individuals, in general, have the right to be where they have lived for an extended period of time.

And the first place to which the inhabitants are entitled is surely the place where they and their families have lived and made a life...Initially, at least, the sphere of membership is given: the men and women who determine what membership means, and who shape the admissions policies of the political community, are simply the men and women who are already there.²²

In practical terms, there appears to be two broad possibilities as to how individuals first acquire a right to be somewhere--birth in a given area or descent from individuals who had the right. A

²²Ibid., 43.

discussion as to which applies--both would seem to attribute a right on the basis of a morally arbitrary characteristic--is beyond the scope of this paper. For my purposes, it is sufficient if the right can be concretely specified in one way or another. For the balance of the discussion I will assume the right derives from birth in a given area. Alternatively, one could acquire the right to be somewhere from the residents of that "somewhere" who already have the right and who have, by extrapolation, the ability to grant it to others. This would be the case with duly accepted immigrants into a territory. Such an acquired right to be somewhere should probably be considered as irrevocable given that in accepting the right in one area, a person may have to relinquish it somewhere else.

Regardless of exactly how an individual comes to have the right to be in a particular place, her right to be there must be taken into account by other legitimate residents of the same territory. No question can arise of excluding individuals possessing the right because they do not share the dominant majority's views, race, language etc. Similarly nothing in the argument would legitimate the establishment of an unjust state. Once the borders of the society are determined, Rawls's arguments for justice apply. Thus, I believe, the incorporation of a citizen's right to be somewhere into the argument for regarding states as variants of a voluntary organization eliminates the theoretical problems that arise from the extrapolation of the right

of free association from the individual level to the level of the political state.

At the practical level, determining who has the right to be where (assuming the right derives from birth or immigration) presents some difficulties. For example, it could be argued that, in the case of Quebec, the decision regarding separation from the rest of Canada belongs not just to Quebecers, as the group having the right to be in Quebec, but to all Canadians on the grounds that all Canadians have, at present, a right to be everywhere in Canada including Quebec, and hence have the right to participate in an independence vote. This argument fails on the grounds that it implies a privileged status for the existing national borders when the question at hand is to establish their legitimacy. The free association approach argues that it is the individuals who have a right to be in a given territory, the shape and extent of which is in question who should determine the ultimate contours of the state, regardless of how existing boundaries divide the world. If it could be argued that all Canadians have the right to decide the future of Quebec, it could also be argued that everyone in North America (or the world) has the right to determine Canada's future. The actual existence of borders cannot be used to justify their morally desirable shape. Following Beran's argument for successive referenda, these must be settled democratically by those having the right to do so. In contractual language, the right of other Canadians to be in Quebec derives from an earlier contract negotiation in which it was agreed that Canada's borders should be

as they currently are. If the inhabitants of Quebec were to express a desire to withdraw from the contract, its provisions regarding borders would no longer apply, and the right to be somewhere would revert to its pre-contractual level as the right to be in one's "normal" territory. The question of withdrawal from an existing contract is discussed below.

A more difficult question arises when it is a question of territories which have undergone changes in their demographic make-up, either on account of naturally occurring population trends or through population movements encouraged or forced by governments. This is the case of the Baltic Republics where the previous Soviet government encouraged migration to such an extent that the existing republics all have Russian minorities which in some instances may approach the level of the indigenous nationality. Similarly, in sparsely inhabited areas of the world where indigenous people are or were in the majority, governments dominated by a different ethnic group have often strongly encouraged migration by members of the dominant group to the sparsely inhabited areas in order to ensure control by the dominant group. Often such territories are rich in resources or have a high level of strategic importance. In these circumstances should such migrants and/or their descendants have the right to participate in decisions regarding the political status of the territory?

My response to this question is that those individuals who are born in a given territory do have the right to be there and hence to participate in any decisions regarding the political status of

the territory. I defend this conclusion by arguing that such individuals have not violated anyone's rights by being born in a particular location. Furthermore, to deny them the right to be in the given territory could result in denying them the right to be anywhere, given that they may have nowhere else to go. These morally blameless individuals cannot be made the present victims of the rectification of a past injustice. The question of original migrants to a territory is more difficult. Clearly, those who willingly move into a territory knowing that such migration is against the will of the majority of the inhabitants of the territory, and that the potential for an independent state exists, have nothing to complain of if they are refused the right to participate in decisions regarding the future of the territory. This is probably the case for many of the original migrants to the Baltic republics or for original migrants sent to territories populated by indigenous peoples. In a case such as that of immigrants to a relatively sophisticated and democratic society as Quebec, on the other hand, the response is probably the opposite. Such immigrants were not knowingly part of any plan to swamp the native inhabitants of the territory. Furthermore, while the potential for an independent Quebec has existed for many years, there has been no organized attempt by people favouring independence to prevent immigration; the democratically elected provincial government has actively participated in encouraging the immigration. Hence, there is no reason why such migrants, who will

have to live in the new political entity in any case, should be denied the right to participate in the decision process.

Between the extremes of the original Russian migrants to the Baltic Republics who were willingly part of a coercive attempt to alter the demographics of the area and immigrants to Quebec who came with the encouragement or at least not with the active discouragement of the inhabitants, undoubtedly lie many cases where the determination of exactly who has the right to be in a specific territory is a problem which has no simple answer. Nevertheless, I would argue that the principle of a democratically conducted vote by the individuals having the right to be in a certain territory is the correct moral principle to apply in determining the political status of any given territory. I would specifically argue that it overrides any historical or national claim to a given territory. The fact that the native Fijians were a majority in Fiji many years ago but are not now due to immigration provides no moral justification for negating the rights of the descendants of the original migrants. These descendants clearly have a right to be there and are, in fact, unable to claim a right to be anywhere else. Similarly, if in the future, Spanish speakers possessing the legitimate right to be in the Southwestern United States should form the majority of the population and should wish to separate from the rest of the United States, the historical claims of the USA to the territory would not, morally speaking, override the wishes of the majority.

The Territorial Question

A different though similar argument against the free association approach is that a consenting group may not possess the right to the specific territory in which they reside. This objection argues that the group must somehow independently establish a claim to the territory:

By choosing secession rather than emigration, secessionists assume a duty of justification that refugees need not bear. Secessionists must somehow establish a claim to the territory on which they would found their new state.²³

If, however, as Buchanan argues "the relationship between the state and its territory is not the same as that between a person and the land which is her private property,"²⁴ (and as discussed in Chapter I, it is not) but rather is a claim to sovereignty, who could possibly have a better claim to sovereignty over a given territory than the individuals who have a right to be there? Buchanan, however, attempts to arrive at a result similar to that which would obtain if property rights and sovereignty were the same by arguing that the existing state (or at least its inhabitants) holds the territory in a type of trust²⁵ for all future citizens; hence, territory cannot be alienated because this would deprive future generations of their rightful heritage. It is philosophically very problematical, however, to explain how existing citizens can claim

²³Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation", Yale Journal of Law 16 (1991): 188.

²⁴Buchanan, Secession, Page 108.

²⁵Ibid., 108-109.

the right to establish the political structures for future generations or, alternatively, how individuals who don't yet exist can have rights. If existing individuals are limited in their political flexibility with regard to boundaries by their duties to non-existing individuals (individuals who in theory at least may never exist), are they limited in other ways? Can they not, for example, change a hereditary constitutional monarch on the grounds that once destroyed it can never be replaced and future generations may regret the loss? Even if this bizarre concept were accepted, it seems more plausible to say that the existing inhabitants of a given territory speak for the future generations of that territory rather than to argue that the inhabitants of some larger territory are the real trustees. If anyone at all today speaks for as yet unborn Quebecers, for example, it is surely existing Quebecers and not people who habitually reside in other parts of Canada. The argument seems to be simply another fashion to privilege existing boundaries.

The Original Contract and Redistribution

The concept of a social contract drafted and agreed to by individuals behind a "veil of ignorance" gives the political theorist, as someone has said, a rather large blank cheque; different theorists can derive very different results from such a theoretical construct. Nevertheless, the idea of a hypothetical contract of some type or other is, as previously noted, the dominant paradigm of modern liberal political thinking. In this section, I address the original position as it bears on the

question of political boundaries. I will first put limits on the size of the cheque that can be drawn to the benefit of other theories and subsequently open up a new large line of theoretical credit for myself.

From the moral perspective, if the basic structure of a society is to have a moral foundation in some type of hypothetical contract, and if existing borders of the society are privileged such that those wanting to democratically change them must supply some overarching rationale other than the expressed preferences of the individuals affected, the original contract must, for some reason, be permanently binding both on those individuals who originally agreed to it and on their descendants who did not exist at the time of the original drafting. Some have taken this position:

I start with the presumption that groups are not entitled to opt out of a democratically governed state unless very special circumstances obtain...

...If groups have assented to the system in the first place it is unreasonable that they should walk out, with all the disruption this would cause, just because some decisions or elections go against them.²⁶

It is, however, very difficult to reconcile this position with other liberal intuitions and beliefs about moral matters. For comprehensive liberals at least, the ability to revise one's fundamental projects is a major, if not the major, tenet of their beliefs. Most liberals would not permit individuals to permanently bind themselves in other ways--to sell themselves into permanent slavery, for example. And they certainly would not permit

²⁶Birch, "Another Liberal Theory of Secession", 598.

individuals to sell their as yet unborn descendants into slavery. Presumably the rationale for not permitting such permanent contracts is that they do not allow for a subsequent change of mind or revision of life projects. Obviously, selling one's descendants into slavery would unjustifiably limit their autonomy. Why then is the original contract any different? Surely it is not unreasonable to think that a group of individuals, having decided to create a governmental unit and having tried it out for a certain period, could then discover that the arrangement was not, for whatever reason, to their liking and hence wish to change it? What is there in the nature of the original contracting position that obliges individuals to give up the right to change their minds? An imperfect example--imperfect because the societies in question were not democratic--would be the unions formed between various Arab countries during the 1960's and 1970's. The arrangements were made and subsequently dissolved. How can it be argued that the subsequent dissolution was somehow unjust or a violation of an original contract?

The argument for permanence has even less weight when applied to the descendants of those who drafted the original contract. (This argument as well as that just given serve to cap the line of credit available to the theorist.) What could one possibly envision in the conditions of the initial position which would permit a social contract to be binding on all future generations? Given that the original position is a hypothetical construct used as a device to establish rules of argument about justice, it would,

of course, be possible to simply set permanence as one of the initial conditions. But surely this does not coincide with our intuitions about such matters. To make this assumption would not survive the test of reflective equilibrium. No liberal would allow one generation to determine the religion or occupation of succeeding generations; similarly there is absolutely no moral justification for permitting one generation to permanently shape the political structure, unchangeably, for future generations. Valid contractarian arguments, for privileging existing borders, to the extent there are any, must therefore be of a practical rather than moral nature.

On the other hand, an "original position" argument can, I believe, be made for the free association approach to political boundaries (and here I am opening a perhaps large theoretical line of credit for myself). As discussed above, Rawls and other modern liberals assume that the decision about who participates in the original position is in some sense already made before the contract negotiations get underway; they simply assume the inhabitants of existing nation states as the parties at the table.²⁷ This need not be so. One could imagine an original position in which all individuals in the world are the participants. Assuming that these individuals were behind the same veil of ignorance as Rawlsian contractors with the same general knowledge, what would they decide about borders?

²⁷See Rawls, "The Law of Peoples", 65-66.

In the first instance they might opt for the cosmopolitan approach. Not knowing in which part of the world or in which society they would end up, they would, if they were risk minimizers, opt for a "just" level of international redistribution of resources in order to ensure some basic level of primary goods for all individuals. It does not necessarily follow that they would redistribute internationally to the same degree that Rawls's pre-contractual individuals agree to redistribute inside a given bounded society; what constitutes "necessities" above the bare subsistence level has long been recognized as a question dependent, to some extent at least, on the standards and practices of the particular society:

A house may be large or small; as long as the surrounding houses are equally small it satisfies all social demands for a dwelling. But let a palace arise beside the little house, and it shrinks from a little house to a hut...however high it may shoot up in the course of civilization, if the neighbouring palace grows to an equal or even greater extent, the occupant of the relatively small house will feel more and more uncomfortable, dissatisfied and cramped within its four walls.²⁸

They might, therefore, agree to consider a just level of redistribution at the world level to be lower than a just level at the national level where local societal norms would apply. With the rapid increase in modern communication such that even the poorest person in a poor country may well have access to images of the luxury of the developed world, and with the assumption of the

²⁸Karl Marx, "Wages Labour and Capital" in Karl Marx: Selected Writings, ed. David McLellan (Oxford: Oxford University Press, 1977), 259, quoted in Great Political Thinkers (New York: Oxford University Press, 1992), 416.

veil of ignorance, it is not clear, however, that this would be the case. Aside from the question of world wide redistribution would they opt to allow the formation of societies enclosed by borders, perhaps practicing a greater level distribution and controlling entry into the society? And if they did opt for this approach, would they choose to follow some form of cultural basis for political borders or the free association approach? The answer to the first question is problematical. Why would one want to have borders? (I mean why would one, behind the veil of ignorance, want to have borders. The (selfish) reasons why western societies at least wish to have borders are more than evident.) Would not the existence of individual states inevitably bring with it the risk of disagreement and hence war? On the other hand, perhaps the concept of one world government would seem too impersonal and bureaucratic. To me, the answer is not clear; as discussed above, the moral arguments for cosmopolitanism are strong.

Assuming, however, that the initial contractors did opt to permit the establishment of separate (just) units, what basis would they choose for determining the location of the borders? Here I believe that the answer is clear--borders would be determined by the freely expressed wishes of the individuals concerned. First, a culturally based approach would constitute a restraint on the liberty of individuals for no particular reason. Nothing in the free association approach precludes individuals associating with others sharing their culture (providing they do not violate the right to be somewhere). Cultural approaches, on the other hand,

rule out some possibilities for no good moral reasons. Why should people share a polity with others of the same culture or language if they don't want to? Or why should people of different cultures not share a political unit if they do want to?

Second a risk minimization strategy would argue for denying normative political value to culture. The attribution of normative political worth to culture and the consequent desire to base government on culture has as its inevitable end the infringement of liberal rights. What is the purpose of declaring English the national language of the United States by constitutional amendment (as opposed to letting usage democratically evolve in the natural course of events) if it is not in one way or another to prevent Hispanics from using their language where and when they wish? The same argument can be made against the declaration of French as the sole official language of Quebec. When, as is usually the case, the official justification for such a policy is the need to promote and/or protect the language of the existing majority (or a minority with historical priority), the result is first, to give a higher implied normative standing to the favoured language and second, to provide a rationale or justification for further restrictions on the use of non-official languages (as in the case of the Quebec sign laws) Even Kymlicka's "liberal" arguments in favour of cultural rights for territorially based national minorities discussed above lead directly to the restriction of individual rights for the greater benefit of the collectivity.

Kymlicka argues that the primary result that flows from his claim is an "external protection" argument--i.e., groups have a right to take exclusionary actions against the dominant group with which they live even though the result may seem to be unequal treatment of individuals if culture is excluded from the equation. Whites, for example, living on aboriginal reserves may have their rights restricted even though in non-cultural terms--in their allotment of primary goods as defined by Rawls--they are no better off than the aboriginal residents.²⁹ Such "external protection" need not, he says, lead to restrictions on the "internal" rights of the minority. Leaving aside the question of the validity of the justification for restrictions on the rights of members of the majority culture, and ignoring the more fundamental question as to why, in these circumstances, the aboriginal reserve should be considered a part of the larger political entity at all (for purposes of redistribution, for example), the distinction between internal and external restrictions on rights is untenable. Any restriction aimed at protecting the community from outsiders must necessarily affect the rights and liberties of individuals inside the community. A restriction on inward mobility, for example, could be used to prevent community members from bringing their partner of choice to live in the community. They would thus have fewer rights in this regard than the individuals living in the larger community (raising again the question of why they should be considered a part of the larger community). A restriction against

²⁹Kymlicka, Liberalism, Community and Culture, 163.

the sale of property to outsiders would prevent community members from dealing with their property on the same basis as everyone else in the larger community. A decision to make the local language the sole language of state-funded education restricts the right of parents who wish to provide their children with the mobility and opportunity that comes from an education in the language of the dominant culture from doing so; it prevents them from giving their children the possibility to assimilate if they wish. Is this not a limit on their autonomy? Can one really use autonomy as an argument to justify policies which could result in children being limited in their future prospects to cultures which may comprise only a few hundred people and little or no connection to the modern world? Needless to say this restriction on rights tells most heavily against the poor; the rich always have the means to ensure that their children receive a cosmopolitan education. The questions of official languages and the language of education are, or course, vexing problems for a truly liberal state. In theory, a state neutral towards ideas of "the good" would have no official policies in these areas justified on the grounds that they promote a particular language or transmit a certain (non-political) culture to future citizens. Decisions regarding the language(s) of education and administration would be made and justified solely on functional considerations. A detailed discussion of these issues is beyond the scope of this thesis--I am concentrating on culture as it applies to decisions regarding external borders; questions regarding internal language policies relate more to a discussion of

the legitimate ways (if any) in which an already established state may engage in the construction of a national identity. But I would argue that a language policy justified on anything other than purely functional considerations violates the required neutrality of a liberal state.

Given that even liberal arguments for the normative political value of culture lead necessarily to restrictions on individual rights, and given that non-liberal arguments for the independent value of culture have historically lead to discrimination, oppression and worse, it seems self-evident that a person in the original position would want, at all costs, to avoid ending up a minority in a culturally based state. Therefore it follows that, if cosmopolitanism were rejected as I assume, free association would be the chosen principle for establishing political boundaries. Adoption of this principle would not, of course, prevent actual states from being founded by groups of individuals who made their choice because of their preference to live and associate with people of their own language and culture. What the free association approach does do is deny the resulting state any moral foundation for subsequent attempts to use the coercive power of the state to protect the "purity" or survival³⁰ of their culture or to impose it on minorities.

³⁰See Charles Taylor, Multiculturalism and "The Politics of Recognition" (Princeton [N.J.]: Princeton University Press, 1992), 40-41, Note 16 for an argument from an indisputably democratic political theorist as to why further restrictions on "nonessential" rights might be justified to ensure cultural survival which is really "what is at stake."

Another argument against allowing any group to determine its political boundaries is that it may permit a group of wealthy individuals to escape from their obligations of justice to the less wealthy in their society³¹ or, in the alternative formulation used by Beran and quoted above, may permit a group to leave which "occupies an area which has a disproportionately high share of the economic resources of the existing state". Now the nature and degree of redistribution practiced within a society is determined by the group in the original position. Thus the argument is without merit for the question under consideration--the justification of the society's borders. It is precisely the question of to whom do the obligations of justice extend that is at issue. One cannot use the argument that a change in existing levels of redistribution is a violation of the obligations of justice before one has determined to whom the obligations apply. Logically, the questions must be addressed sequentially. First the scope of the particular just society is determined; then the obligations of justice for that society are worked out by the individuals included in the scope of the society. The rights and consequent obligations of justice don't apply before the first decision is made. In the real world, which is already divided into societal units, one could argue that the poorer group has grown accustomed to being the beneficiary of redistribution from the wealthier group. But repeated practice does not make a moral argument. For the poorer group to establish a right to a

³¹Buchanan, Secession, 108.

continuing claim on the richer group, they must make an argument that the richer group specifically owes them something in excess of what it owes other poor groups in the world. One possibility would be an argument based on the fact of historical economic and political interaction. Even if the claim were factually true, and nothing says that rich areas within a country have greater economic interaction with poor groups inside their own country than with other poor groups in the world, the fact of past economic and political interaction alone does not establish a moral claim. Arguments, such as those of Buchanan³² that a new state could compensate the remainder state for having deprived them of a "fair" share of the collective wealth or income are invalid. The obligation to share arises only within the context of a just state, and, as I argued above, the decision as to boundaries is logically prior to the question of redistribution; when the boundaries have been justly changed no further special obligation exists to one's former fellow countrymen. (This says nothing, of course, about the division of existing collective assets or liabilities.)

Legitimate Expectations

The final moral argument against the free association approach with its liberal attitude towards secession that I will consider is that by seceding the legitimate expectations of some people will be thwarted without just cause. It is, I must admit, one of the few arguments against free association to which I concede a degree of validity. Regarding Lithuania for example:

³²Ibid., 120-121.

The present reality is that for more than fifty years Lithuania has [had] been part of the Soviet Union. During that time expectations--reasonable expectations--have [had] been generated. Many people, including non-Lithuanian Soviet citizens who had no part in the original injustice, have [had] constructed their lives in accordance with these expectations. Allowing secession would thwart the expectations and thereby disrupt the life-plans of many innocent people.³³

A similar argument could be made that immigrants have for many years come to live in Quebec with the legitimate expectation that in establishing themselves and building their lives in Quebec they were constructing a permanent place for themselves as Canadians in Canada. With secession, they could lose the Canadian aspect of their life, something to which they had and have a legitimate expectation:

The issue is, as Buchanan says:

What counts as a legitimate expectation, and when does a legitimate expectation have sufficient moral right to override a valid claim of right.³⁴

Buchanan, in the case of Lithuania, argues that the legitimate expectations of the migrants cannot override the right of secession which is based on the native Lithuanians' "right of rectification"--i.e., their right to rectify the unjust incorporation of Lithuania into the Soviet Union. Given that the only justification for separation that I accept is the desire of the group in question, Buchanan's argument is not available to me. Nor is the argument relevant to the case of the legitimate expectations of immigrants to Quebec where the argument for secession is (presumably) not

³³Buchanan, Secession, 88.

³⁴Ibid., 88.

based on the rectification of the conquest but rather on the right to self-determination or, as I would have it, on the right of free association.

It is clear that the legitimate expectations of many immigrants to Quebec would be overridden by the separation of Quebec from Canada. But in a democracy, expectations are often overridden by the will of the majority. Justice theories permit this; what they do not permit is the violation of rights. It is difficult, but perhaps not impossible, to argue that the immigrants have a right to maintain unchanged the political structure of the state that they contracted into any more than they have a right to prevent other forms of (not unjust) change desired by the majority. Assuming that the new entity is to be constructed with the rules of justice in mind, and that all citizens having a right to be in it are allowed to participate in the decision process, it does not seem that any legitimate right (as opposed to expectation) would be violated by such a separation.

Practical Objections

In this section I briefly discuss certain arguments against the free association approach which I would characterize as practical. These arguments do not object so much to the premises of the approach as to the possible results of its application. I address the questions of internal stability, external stability (the possibility of anarchy) and miscellaneous issues such as territorial enclaves and the need for military security.

One argument against the free association approach to political community is that it does not provide any basis for internal social stability. Unlike cultural approaches it does not necessarily follow from free association that the majority of a given unit will speak the same language or share the same culture. I would argue, however, that the desire of a group to constitute a political society is the best possible ground for stability. In Political Liberalism, Rawls argues that the goal of political philosophy is an "overlapping consensus" that permits a just society to function in spite of the fact that there is no shared conception of the good life. He argues that one can arrive at the principles of political justice from many different starting points but that political society must be based on an overlapping consensus about political justice rather than agreement about comprehensive views of the world:

...justice as fairness does indeed abandon the ideal of political community if by that ideal is meant a political society united in one (partially or fully) comprehensive religious, philosophical or moral doctrine. That conception of social unity is excluded by the fact of reasonable pluralism...political liberalism conceives of

social unity...as deriving from an overlapping consensus on a political conception of justice suitable for a constitutional regime.³⁵

I would turn the argument around and say that is the overlapping consensus which, given its grounding in the consent of individuals, defines the political community and the appropriate political unit. Political units should occupy as large or small a territory as can be arrived at through an overlapping consensus amongst the inhabitants. If, for example, the inhabitants of Quebec and the rest of Canadians cannot arrive at an overlapping consensus as to what constitutes a just structure for the whole territory which is now Canada, then the territory should be divided in such a way and into as many political units as are necessary to achieve the necessary political consensus in each unit. Whether or not Quebec has a distinct (non-political) culture is irrelevant. If Albertans were to develop political views regarding justice--say the application of universal health care--which could not be brought under the overlapping Canadian consensus, the same conclusion would follow. In any case, it is difficult to see how internal social stability is served by forcing unwilling groups to remain part of a political unit against the will of the majority. A related argument³⁶ against secession at will is that it could impair majority rule or at least disrupt its stability by encouraging strategic bargaining by territorially concentrated minorities. But surely if a minority feels constrained to use such tactics the

³⁵Rawls, Political Liberalism, 201.

³⁶Buchanan, Secession, 98-100.

"social glue" which binds the society together--the overlapping consensus--has already melted and the society's stability has already been destroyed. It is also possible that the acknowledgement of a right to secession at will would inhibit majorities from oppressing minorities; it could, in fact, encourage compromise and not instability or strategic bargaining.

The question of the minimum size of a group and/or territory that can claim the right to an independent state under the principle of free association is related to the question of external stability and the possibility of international anarchy. Some would argue that "If secession is permitted there will be no end to it."³⁷ Generally no specific reasoning is given to support the argument; it is regarded as self-evident. But why should this be so? An empirical argument could be made in support of the opposite position--i.e., that it is the forceable inclusion of unwilling groups in larger political units that leads to the chaos and anarchy that we now see in what used to be Yugoslavia and the former USSR. What we are seeing today is the result of borders having been drawn around sub-units with no regard to the democratically expressed will of the individuals therein followed by the automatic recognition of those boundaries as appropriate for independent states. While it is perhaps true that some form of "anarchy" would result if too many small groups decided to take advantage of the principle, there is no a priori case to believe that this would be the result. Most individuals have a healthy

³⁷Ibid., 102.

regard for their own physical and economic well being which could be expected to cause them to exercise a certain degree of caution before venturing into the world as an independent political entity.

The question of anarchy leads to the question of the minimum size of grouping that should be allowed to have an independent political unit. (The very word "allowed" when discussing a political matter has a decidedly anti-liberal ring to it.) First, we are discussing the right of a group of individuals to claim sovereignty over a given territory and not property rights. It seems self-evident, therefore, that the group should have the minimum size necessary to provide all the normal accoutrements of government--a parliament, some sort of force to preserve internal order and police the borders, etc. In other words, some minimum level of size necessary for viability, however defined. It is not clear that this need be particularly large. Are Monaco and Liechtenstein any less viable than Zaire? In any case, I do not regard this as a philosophical question properly speaking; individuals have the right to organize themselves politically and should be trusted to do so in what they perceive as their own best interests. If and when a group wishing to avail themselves of the right to a political unit could be demonstrated to be imposing costs on other groups (rather than on themselves), a meaningful discussion could perhaps take place; until then, it seems a non-issue.

Similarly the issues raised by Beran and noted above--the fact that a new state would create an enclave in an existing state or

the fact that it occupies an area which is culturally, economically or militarily essential to an existing state--do not seem to me to be valid reasons for limiting the right to secede. With regards to the possibility of creating an enclave, what gives a state the right to demand an area free of such entities? The creation of such entities might be inconvenient for a given state, but it is hard to see how they can be, in any sense, considered as unjust. Existing international law, trade agreements etc., deal with the rights, duties and obligations which prevail amongst international states. If such standards are adhered to, there is no reason why an enclave would create any insurmountable problems; to the extent there is some inconvenience for the larger entity, it is often the case that the rights of one inconvenience another; with regard to the possibility of inconvenience for the enclave itself, if it were their choice, they would have a right to choose inconvenience. If it were not their choice--i.e., they have been refused political association with the surrounding political unit, they could claim no violation of their rights unless one believes that countries have a right not to be surrounded by other countries; I am not aware of such a right.

The question of a seceding area taking a territory which is in some sense essential to the remainder state seems to be another way of privileging existing states and boundaries. In a just world such as I am assuming, military security would, of course, be irrelevant. In the real world, no state has a right to military security if that involves violating the rights of others. That is

not to say that many states don't violate the rights of individuals to enhance their military position; but it is not just. How a given area could be culturally essential to a state is not clear. But the same argument would apply. Cultural security cannot justly be had at the expense of violating others' rights. For example, if Serbia claimed that it had a right to Kosovo province on the grounds that it is their "cultural cradle" (as I believe they claim), but the majority of the individuals living there wish to associate with Albania, there is no self-evident way to reconcile the Serbian claim with the claims of justice.

I believe I have successfully dealt with the major objections which can be brought against the idea of free association as the basis of political community. The concluding chapter will discuss, briefly, the conclusions and implications of the theory.

V Conclusions and Implications

The specific conclusions of this thesis can be stated very briefly. Individuals have the right to arrange the borders of political units in accordance with the will of the majority in a given territory; culture and language are morally irrelevant. This approach--what I have called the free association approach--provides a rationale by which groups of individuals may erect borders around themselves and treat people inside the borders differently from those outside the borders. Given that it is based on the majority consent of the individuals concerned, the approach is consistent with modern liberal thinking about justice. The alternative approach to the question--justifying borders on language and/or culture--is not and (probably) cannot be made consistent with other premises and conclusions of modern liberalism. Culturally based approaches either fail to elevate cultural preferences above the level of an ordinary preference, or they attribute normative worth to culture or language independently of the individuals who are members of the culture. Even if such approaches were successful in attributing normative worth to culture and language, they would not provide many of the necessary answers to questions regarding borders. Free association has the theoretical resources to deal with the major objections to the approach which been put forward. It is, moreover, in direct line with classical modern liberal thinking in not attributing independent normative worth or political consequences to language or culture.

I will not, here, reargue the above conclusions; I believe they were well supported in what I have already said. At a more general level, however, certain other conclusions suggest themselves. First, liberalism is in some quite deep way cosmopolitan. To the extent a genuinely liberal argument could be made against free association as a theory of borders, I believe it would come from the cosmopolitan point of view and not from the point of view of those who wish to give moral value to, and derive normative conclusions from, the morally arbitrary and irrelevant factors of race, culture or language. Although I have assumed a world of just political units and some form of international just redistribution of resources, in reality, the world is not like this. The real world includes many unjust states and very few, if any, fully just ones. In addition, there is very little significant redistribution of resources from societies richly endowed with resources and wealth to those societies less favoured, and practically none at the level of individuals. In such circumstances, any argument for the normative justice of political borders serves to justify the wealthy keeping their wealth and forbidding the entry into their societies of the world's poor. Free association, at least, puts the situation into clear relief. We do not refuse to redistribute wealth and income, nor do we refuse admission to our societies because we are in some way justified in our actions by language or culture; we do these things because we want to, for the most selfish of reasons. We have a privileged life style and we want to keep it, full stop.

A second general conclusion that I would draw is that boundary decisions are political. They do not and cannot reflect any eternal verities or inherent structures of reality such as culture or language such that one scheme is better than another. They are decisions that people make, and hence people are responsible for the outcomes and the justice, or lack thereof, of the results. We are responsible for these decisions and cannot off-load that responsibility onto culture or language; we are responsible for them in the same way that we are responsible for other political decisions--no more and no less.

I would like to close with a brief discussion of the implications of my argument for two current Canadian issues--Quebec separation and self-determination for native people--in order to make precisely clear, in practical terms, what I am arguing for. With regard to Quebec, the principle of free association clearly supports the right of Quebecers to organize a referendum and, in the first instance, to specify the territory covered by the referendum. If the secession option were defeated, nothing would preclude the separatists from specifying the territory differently for another vote--including other areas likely to be favourable or excluding those opposed to the idea. If secession were to achieve majority support in these areas, then these areas would be allowed to separate. Conversely, the free association approach would support the rest of Canada if, tired of the indecision of Quebec with the consequent political and economic instability, it were to hold a referendum on the "separation" of the rest of Canada from

Quebec. If a vote for secession were to achieve majority support in Quebec, the rest of Canada would have no (moral) option but to accept the results and negotiate the details. Sub-regions of Quebec would have an identical right to vote to secede from Quebec as independent entities or affiliated with Canada (or the United States for that matter) if what remained of Canada wished it.

Given that votes on secession (or affiliation) are about sovereignty and not about property rights, none of the possible vote outcomes discussed above would effect the ownership of property. Canadian government property in Quebec would continue to be owned by the Canadian government, and Quebecers would continue to own a pro-rata share of the assets of the government (and more importantly, a full share of the debts). Presumably, a negotiation to rationalize property ownership would follow. Similarly, the government of Quebec would continue to own and operate its hydro-electric assets in northern Quebec, were this area to secede from Quebec.

Now opponents of the free association principle of borders would argue that the possible scenarios sketched above are a recipe for anarchy, but this is not self-evident. Very often the drive for secession is fuelled by a reasonably small proportion of the population who believe in it for non-rational or ideological reasons. This group attempts to convince the remainder of the population that their lives will be improved in one way or another by a change in political arrangements. But the assumption is often that the secessionists will themselves set the terms of the

political divorce. In the case of Quebec, it is clear that secessionists argue that Quebec's frontiers are inviolable, if not "sacred"; this is taken as a given. Is it not a plausible assumption that, if it were clear in advance that other internal areas, populated by groups who might not want to live in a culturally justified political unit, would have an equal right to determine their own political future with the consequent implications for an independent Quebec, ordinary citizens might consult their own best interests and reject the proposal? In other words, they would understand the full cost of their preferences and react accordingly. One could argue that in such circumstances the option of secession would be saved for use in situations where there is genuine oppression or disadvantage and not for situations where the goal is simply to replace a larger, multinational, democratic government with (a democratic) one based on the culture or language of a particular group.

The question of the desire of certain groups of native Canadians for "self-determination" or "self-government" raises a similar set of issues. Supporters of the free association approach to borders must, if they are to be consistent, support the right of native groups occupying specific territories to independence if that is their wish. Nothing, however, requires that the native groups be entitled, on their own, to determine the shape of future political arrangements. The rest of Canada could, if it wished, take the approach that the degree of self-government desired by a particular group is inconsistent with remaining inside Canada and

hence unacceptable. The group would have the choice of the status quo or independence. Such groups would certainly be entitled to their independence if they so desired; they would have, however, no automatic right to continue to participate in wealth and income redistribution with the rest of Canada. They could, perhaps, make an argument for compensation on the grounds of past injustice (theft of their ancestors' lands, violation of duly signed treaties, etc.), but such claims fall outside the scope of theories of justice as they apply to the basic structure of society. In sum, groups are either inside a societal structure and fully participate in such redistribution as is practiced, have such other special arrangement as is mutually satisfactory, or they are outside and subject to the same treatment as any other outside group.

On significant difference does perhaps exist between the example of Quebec secession and that of native self-determination. In the case of Quebec, I argued that the rest of Canada would have the right to effectively expel Quebec from Canada. I do not think the same right necessarily applies with regard to the native groups seeking self-determination. The territorial and population bases of most native groups is, I believe, quite small. Independence for such groups would result in a series of very small enclaves which quite possibly would not have the material resources to support the accoutrements of a modern society. Now if the individuals living in these areas wished to take the risk implied by independence in such circumstances, they (probably) have the right to do so. But

if not infringing on individuals' right to be somewhere is to have any meaning, that "somewhere" must be of a sufficient size and sophistication to ensure a life consistent with the standards of modernity. To expel a group of fifty people living on a territory of a few square miles, for example, would take away their right to be somewhere where a meaningful life can be led. In this respect, perhaps, existing borders are privileged.

The above concludes my discussion of certain practical implications of the possible application of the principle of free association. The discussion was in no sense meant as a meaningful contribution to the discussion of these issues themselves; it was meant to clarify the theoretical position that I have argued.

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