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Introduction: Indigenous peoples and national self determination

The mainstream concept of National Self Determination (NSD), as officially recorded in international law and enshrined in UN resolutions, and, as normatively argued in mainstream liberal democratic theory, is the principle that nations have the right to freely choose their sovereignty and international political status with no external compulsion or external interference. In this doctrine, nations and sovereignty are inextricably linked, for nations are a constitutive element of sovereignty. It is applied to states and to cultural communities insofar as they can build a sovereign state that does not clashes with a world system of sovereign states.

In this paper it is argued that understood in the manner above, the doctrine of national self determination is not democratic and furthermore, it is insufficient to safeguard the self governance of territorial minorities. It legitimises the national self determination of a minority of nations and thus contradicts the democratic values that laid the original foundation of this principle. This established doctrine of national self-determination is being frontally challenged by the demands of indigenous peoples and in this way, they (indigenous peoples) act as facilitators for an historical paradigm shift taking place on the meaning of national self-determination, and whose importance goes well beyond indigenous demands.

Consider the following: A conservative estimate puts the number of nations in this world to well above 3,000, while with the admission of Montenegro in 2006, there are 192 states represented in the UN. Fewer than 20 states are ethnically homogeneous in the sense that cultural minorities account for less than 5% of the population. Nations that have states are only a very small fraction of all nations, and it is not an exaggeration to say that the term “nation state”—understood as one (cultural) nation in one state—is a complete misnomer. While the overwhelming majority of states represented in the UN are not culturally homogeneous, the configuration of their political institutions often gives the impression

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2 In a dissenting view, Allen Buchanan shows clearly the serious limitations of international law’s line of reasoning when he argues that *International law should recognize a remedial right to secede, but not a general right of self-determination that includes the right to secede for all peoples or nations. From the standpoint of international law, the unilateral right to secede --the right to secede without consent or constitutional authorization -- should be understood as a remedial right only, as a last resort response to serious injustices.* Allen Buchanan, Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law (Oxford Political Theory Series) Oxford university Press, 2004, pp.331 Even if this were the case, for the right to NSD to be exercised in this way it requires a territorial majority exercising territorial sovereignty, thus rendering this principle ineligible for territorial minorities such as indigenous peoples.


4 Trudy Govier, *Social Trust and Human Communities*, McGill-Queen’s University Press, Montréal, Québec, 1997 p. 269 Ch 10, note 1
they are, trapping indigenous peoples and other cultural minorities that have different myths symbols and memories into at best, ambiguity and at worst, alienation, subordination and it worst case scenario, ethnic cleansing. For make no mistake, if the term ethnic cleansing was invented in Europe, indigenous peoples were its most systemic victims.

In liberal democratic theories that attach a normative value to democracy -- the ones that argue that democracy has more than an instrumental value to liberalism -- expansive democracy refers to the effects of institutions in increasing individuals’ control over self governance, self-determination and self-development. But here, either culture has no bearing in political representation, or, individuals are seen as culturally homologous. This renders invisible their community insertion, something that becomes fatally problematic when -- as in the case of indigenous peoples -- that very insertion is the source for the disadvantage that democratic theory wishes to remedy.

The understanding enshrined in both, liberal democratic theory and international law that national self-determination is to be understood as the creation of separate territorial sovereignties (states) for aggrieved or deserving communities is simply unsuitable for the vast majority of indigenous cases. This is because the concept of indivisible sovereignty, as presently understood in international law, sustains that no right of self-determination can be recognised where it clashes with a world of sovereign states. In a dissenting voice, Will Kymlicka argues that autonomous self-government rights, which require collective rights and the delegation of legal powers to national minorities, should be awarded exclusively to groups of indigenous peoples and others who have been incorporated to settler states through conquest or colonialization.

Yet, enigmatically, the normative basis of the model of National Self-Determination -- the emancipation from alien rule -- makes indigenous peoples to uniquely deserve this right. Those who have been conquered and destroyed by settler colonialism and those who have been made marginal minorities in their ancestral lands have a unique normative claim for self governance, cultural recognition and community rights. For this reason, the politics of national self determination is demanded and argued by indigenous peoples in ways that markedly differ from mainstream contemporary liberal democratic theory and even more so, from the way self determination is understood in international law. In this, indigenous peoples are making a unique and creative contribution to a significant paradigm shift that has theoretical and legal implications beyond indigenous cases.

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An interesting example of both, indigenous innovations and their crucial limitations when enacted in the framework of prevailing international principles is the United Nations Declaration on the Rights of Indigenous Peoples\textsuperscript{10}. In sharp difference from the UN Declaration on the Granting of Independence to Colonial Countries and Peoples\textsuperscript{11}, articles 3, 4 and 5 affirm that indigenous peoples have the right to self determination, and contrary to earlier UN decisions this right is defined as a right to autonomy and self-governance in internal affairs while not mentioning external sovereignty. Article 9 mentions the right of indigenous peoples to belong to an indigenous nation. According to the special rapporteur on indigenous peoples, Prof. Rodolfo Stavenhagen, one of the areas that most clearly illustrates the vulnerable nature of indigenous peoples’ human rights is the administration of justice and the failure to recognize customary indigenous law in governance and self-determination\textsuperscript{12}. Faced with a state based alien and violent intrusion into their ancestral homelands—an intrusion that made them scattered minorities in the first place—indigenous peoples demand national autonomy and public recognition of their way of life\textsuperscript{13}.

However, article 46 of the Declaration of the Rights of Indigenous Peoples paraphrases the limitations of article 6 of the 1960 Declaration on Colonial peoples in that: \textit{Nothing in this Declaration may be interpreted as (....)authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States}. Clearly the UN was a club of states in 1960 and in 2007. No meaningful progress will be done in advancing the right of self determination of indigenous peoples and other territorial minorities until the UN abandons the claim that states are the sole monopolisers of sovereignty. In this, the UN is not a union of nations but a union of sovereign states. In this equivocal use of terminology the UN perpetuates the disadvantages of minority and stateless nations. This principle is not only equivocal but antidemocratic, because the vast majority of nations, including almost all indigenous nations, are stateless.

THE TRANSFORMATION OF THE POLITICS OF ETHNICITY AND CULTURE

The equivocations of the UN are not coincidental. We have grown accustomed to understand nations as axiomatically connected with states, and in many cases, particularly in common parlance, we tend to understand the nation as indistinguishable from the state. However, these misleading assumptions have been extensively challenged by events in the last thirty years or so, and the demands of indigenous peoples loom large in the recurrent challenge to the prevailing axiom.

One the one hand, we are experiencing a devaluation of the model of the nation state as a model for national emancipation. Not only because democratic nation states are internally and externally devolving power to regional forms of organisation, but crucially because

\textsuperscript{10} UN General Assembly Resolution 61/295 on 13 September 2007

\textsuperscript{11} UN General Assembly Resolution1514 (XV) 947th plenary meeting, 14 December 1960.


\textsuperscript{13} E, Nimni, \textit{Nationalist Multiculturalism in late Imperial Austria as a critique of Contemporary Liberalism: The case of Bauer and Renner}, \textit{Journal of Political Ideologies}, 1999, 4:3  p.297
many democratic nation states began a process of transferring jurisdictions to devolved regional governments that in many cases represent minority, cultural and indigenous communities.14

On the other hand, we are certainly not experiencing a reduction of nationalist and minority demands for autonomy. On the contrary, we witness an extraordinary expansion of a variety of demands for cultural recognition. These increased demands come in many forms and shapes, including indigenous emancipatory movements, minority nationalisms and the politics of recognition of ethnic and religious minorities. This extraordinary expansion in the politicisation of cultural communities signals in Will Kymlicka’s, words “a veritable revolution” in the relation between states and ethnonational communities.15 The reasons for this are clearly explained by Tony Klug:

Most of the readers of this essay live in pluralist states which have long since become multiethnic and multicultural. "Christian Europe," pace M. Valéry Giscard d'Estaing, is a dead letter; Western civilization today is a patchwork of colours and religions and languages, of Christians, Jews, Muslims, Arabs, Indians, and many others—as any visitor to London or Paris or Geneva will know.16

The most puzzling dimension of this expansion is that it is taking place mostly among cultural communities that have no possibilities or indeed the desire to build separate nation states, such as indigenous communities. We can nevertheless, identify a diminishing number of nationalist movements that steadfastly persist in the aim to build separate states. In these diminishing cases, intractable bloody conflicts fester without perspectives of resolution. Consider the Israeli-Palestinian conflict. But in others, increasingly the majority of demands for ethnonational recognition, when through mechanisms of devolution or national accommodation, ethnonational communities exercise self determination without constituting separate states or by sharing sovereignty, conflicts are defused, become manageable or simply disappear.

In whatever way we look at it, the relationship between nationalism, ethnicity, sovereignty and self-determination is in the process of changing significantly. But enigmatically, this change has not been adequately reflected in changes in the paradigms that dominate both, the study of democracy and the study of nationalism. For example, the two most influential frameworks for the study of nationalism, ethnosymbolism and modernism, as well as the mainstream interpretations of National Self Determination (NSD) in international law and democratic theory, remain by and large oblivious to these momentous changes, and to recent advances in the area of sovereignty and multiple jurisdictions.17 The need for collective rights for indigenous peoples results from the fact that an indigenous community

14 See for example: The Plurinational State of Bolivia (in Quechua: Bulibya Mamallaqta, in Aymara: Waliwa Sayu), Québec, Nunavut, Catalonia, Euzkadi, Galicia, Cymru, Scotland and the binationalist devolution in Northern Ireland, are just but some examples. See also La Paix des Braves (the Peace of the Brave), an agreement between the gouvernement du Québec and the Grand Council of the Cree indigenous nation in Canada. There are many others.


cannot collectively provide for conditions to live according to Indigenous norms if it is subsumed within a democracy whose majority lives by different norms.¹⁸

These new advances decisively overcame the limitations of earlier understandings of national self determination and democratic governance. Consider that for a very long time the dominant conception of nation building was that stable democracies cannot be maintained in the face of cultural diversity¹⁹. The most influential example was John Stuart Mill well known assertion that: Free institutions are next to impossible in a country made up of different nationalities. . . . Among people without fellow-feeling, especially if they speak different languages, the united public opinion, necessary to the working of representative government cannot exist²⁰. From here, the model of a democratically sovereign monocultural state over which one nation exercises its right to self-determination, became the imprint of the modern process of democratic national emancipation. It was used in the colonial settler states of the Americas and Oceania to politically preserve and protect the newly created colonial settler nations in lands unlawfully taken from indigenous peoples. The equally of all citizens became conflated with the equally for all members of the nation, and the concomitant injustice to those different from the dominant nation became hidden under the seductive rhetoric of the discourse of liberal modernisation.

THE RIGHT TO NATIONAL SELF DETERMINATION

In the modernising discourse of rights, the right of nations to self-determination is a normative assertion derived from one of the central canons of democratic theory, that of the legitimate and autonomous self-governance of the demos. From this normative assertion, it is also understood to be the principle in international law that nations should be free to choose their form of governance free from any external control and maintain their free political status with no external compulsion or external interference. This sovereign quality of nations in international law implies that they ought to be the ultimate overseer, or authority, in the decision-making process of the state and in the maintenance of order. Nevertheless, this is seldom the case; in a world of nation states with different degrees of power and influence, and in a world of trans-nation state corporations, it is far from certain that nations, and even more so, most states, are able to put into practice this lofty sovereign assertion of autonomy and freedom from external control. Yet, enigmatically, the glaring disparity between the pragmatic circumstances of the nation or state, and the normative assertion of sovereign power is hidden by a simulated reconciliation between them at the symbolic level. In the narrative of national self determination, the declaration of national freedom and sovereign choice becomes purely symbolic and thus desirable (even if empirically hollow), through the symbolic trappings and paraphernalia of the discourse of exclusive territorial power. Here the exercise of sovereignty is more symbolic than actual, creating a discursive fiction of a sovereign power that does not transcend the mere attachment to emotive, but ultimately empty, symbols of territorial control and freedom from external coercion. Here, the ritual of the sovereign national discourse is at variance with the nation’s pragmatic circumstances. Ominously, in these circumstances, the exercise

¹⁸ Mark Bennett, “Indigeneity” as Self-Determination, Indigenous Law Journal/ 4, Fall 2005 p.93


of national self determination in the modality of constituting sovereign states begins to contradict the democratic matrix from which this very right of self determination emerged.

Only a small minority of nations are able to exercise this symbolic territorial right, often trapping unwilling and unwanted other nations and national minorities and indeed indigenous peoples, whose desire to exercise the same right becomes a mortal threat to the integrity of the few sovereign nation states that appear to exercise this right. In a world of nation states, the sovereign state interpretation of the right of national self determination becomes alienated from the democratic principles that originally inspired it, facing an ineluctable dilemma: either break with democracy or break with its implementation in the form of a sovereign nation state. An exaggerated example is the dilemmas facing contemporary Israel. Should it remain a Jewish or a Democratic state? Israel’s contemporary quandary is that it cannot be both21.

Spearheaded by the demands of indigenous nations, and in a decisive break with this fruitless tradition, a momentous paradigm change over the last twenty years is giving birth to a new, more pluralist and multidimensional understanding of the relationship between national self-determination and democratic governance. A common element across the various versions of the new paradigm is that the dispersal of governance across multiple jurisdictions is both, more efficient than, and normatively superior to, a central state sovereign monopoly22. These new theoretical insights emerged from the day to day practice of indigenous self determination23 and from the area of conflict resolution and multiculturalism. They advocate in a vast array of empirical and comparative cases, a system of governance based on the participation in governance of several democratically organised ethno national communities with multiple jurisdictions. Here the governmental process is not of discrete centralised homogenous units as in the old nation state model (one demos in one state), but one in which governance is understood as a multilayered and multicultural mechanism, with regional and minority devolution and multiple jurisdictions (several demos in one state)24.


22 I. Bache & M. Flinders Multi-level Governance, Oxford University Press, 2005, p. 5

23 Consider the treaty of Waitangi in Aotearoa /New Zealand. The Māori phrase te Kawanatanga katoa (governorship) cannot be translated to the European notion of sovereignty, for it lacks the all encompassing political and philosophical dimension of the latter. Likewise te tino rangatiratanga (highest chieftainship) is not subordinated to the unified sovereign power. We have here a bi-national system of governance and partial asymmetrical multiple jurisdictions, and not a unified sovereignty as it is made explicit in the English version of the treaty and the interpretation of the government of New Zealand.

The development of these new forms of democratic administration emerged precisely because they come to terms with a problem that broke the back of the old versions of national sovereignty and centralised government, which is at the same time, a crucial obstacle for indigenous self-determination. A problem that is simultaneously at the centre of the move for a paradigm change: the crying need to break with the oppressive governance of indigenous peoples and cultural minorities, avoid the pain and wanton destruction that results from the disaffection of these minorities and their demands to build new states, and to find ways to accommodate cultural and national minorities effectively into the democratic arena, in the area of equal rights, governance and political participation, without dismembering existing states.

THE TRANSFORMATION OF DEMOCRATIC THEORY - FROM DEMOS TO DEMOI

Most nineteen and early twentieth century democratic theories take the institution of the nation state for granted as the locus for democratic activity. In contrast to this, many contemporary advocates of cosmopolitanism challenge this blind assertion of early democratic theory. David Held for example, advocates a model of cosmopolitan democracy that transcend the borders of the nation state, one and that assumes the entrenchment of a cluster of rights and obligations, enshrined within the constitutions of parliaments and assemblies, as well as various regional bodies such as the European Union, with a global Parliament and an interconnected legal system. The argument here is for widest possible pluralism within a single fully inclusive demos.

While this approach can be commended for its departure from the tyranny of the nation state formation, it leaves intact the problem of community representation and the recognition of collective democratic subjects, the core of democratic demands of indigenous peoples. As James Bohman argues, a form of radical plural democracy requires deeper transformations of democracy away from the morphology of the nation state. To develop democracy beyond borders it is not sufficient to overcome the nation state while maintaining its version of a democratic configuration intact. Instead of perceiving cosmopolitan democracy as the domain of a single demos, democratic theory must break with this modality of the nation state and understand democracy not as a single body but as a plurality of constituent democracies. Democracy must be organised in more than one unit in order to satisfy demands for recognition that result from the very logic of pluralist democratic governance.

Global democracy cannot be some analogical world of individuals enjoying equal rights which inevitably leads to misrecognition of minorities and the corresponding tyranny of the majority. Instead global democracy must be seen as a plurality of demos (demoi) within a


federal arrangement instead of a state inspired conception of a single demos. In other words, democracy must be implemented in a Commonwealth of Demos, understanding by that a highly interconnected world, where territories are shared between differing demos and territorial polities cannot be the basis for exclusive sovereignties. Pertinent examples can be found in demands and agreements on behalf of indigenous communities, and some these will be briefly and schematically described:

LA PAIX DES BRAVES

A good example of the above is the 2001 agreement between the nation of Québec (la nation Québécoise) and the Cree indigenous nation or La Paix des Braves (‘The Peace of the Braves’, reminiscent of the 1701 peace treaty between the French settlers and the indigenous Iroquois). The agreement recognized the ancestral rights of indigenous peoples to their lands and allowed Hydro-Québec to exploit hydroelectric resources in exchange for a financial settlement to be given to the indigenous Cree Nation. La Paix des Braves brought to the Cree Nation considerable advantages in the fields of development of education, social and sanitary issues, as well as tourism.

The agreement states, inter alia:

2.1 Both the Cree Nation and the Québec Nation agree to place emphasis in their relations on those aspects that unite them as well as on their common desire to continue the development of Northern Québec and the self fulfilment of the Cree Nation. 
2.2 The Cree Nation must continue to benefit from its rich cultural heritage, its language and its traditional way of life in a context of growing modernization. 
2.3 This Agreement marks an important stage in a new nation-to-nation relationship, one that is open, respectful of the other community and that promotes a greater responsibility on the part of the Cree Nation for its own development within the context of greater autonomy. 
2.4 Québec will promote and facilitate the participation of the James Bay Crees in forestry, hydroelectricity and mining development in the territory through partnerships, employment and contracts.

THE PLURINATIONAL STATE OF BOLIVIA

A second interesting and very promising example is the constitutional arrangements in the Plurinational State of Bolivia. Latin American indigenous movements, and in particular, the new constitutional arrangements in Bolivia speak of “plurinationalism” in formulating demands for indigenous communities rights, and for the transformation of state into grating

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28 Ferran Requejo, Value Pluralism and Multinational federalism, in Alain-G. Gagnon, Montserrat Guibernau, Francois Rocher (eds.) The Conditions of Diversity in Multinational Democracies, l'Institut de recherche en politiques publiques-The Institute for Research on Public Policy (IRPP) Montréal , Québec, 2004, p. 26
collective rights to the commonwealth of indigenous communities that inhabit it. The new Bolivian constitution defines the state as “Plurinational and communitarian” because it recognises the collective rights of its indigenous nations. The definition of the Plurinational state implies the recognition of a “commonwealth of demoi” and thus grants indigenous communities collective rights and the status of collective personae. Article 2 of the constitution states that “Given the existence of pre-colonial indigenous nations and peoples and their ancestral connection over its territories, the self determination of these communities is hereby recognized in the framework of the unity of the state”.

The third article of the constitution defines who the people of Bolivia are: “the totality of Bolivians, the indigenous nations and peoples, the intercultural and afro-Bolivian communities which constitute together the Bolivian people” Here we have, a definition of the people which is markedly different from the homogenising view of the traditional nation state. It presents the plurality of rural communities and mixed race urban groups (mestizos), as well as the afro-Bolivian communities. The emphasis is then, the unity of the Bolivian people in the plurality of community representation. The linguistic diversity of the Plurinational state of Bolivia is also an important marker of both, unity and diversity. While the language of the colonisers, (Castilian with the incorporation of words and grammatical constructions from other vernacular languages) remains both, the lingua franca and the language of sections of the elite, Quechua (a relatively recent language, the result of a previous conquest) Aymara and Guarani and other minor indigenous languages remain spoken languages, creating circumstances in which individuals are bilingual and even trilingual. The constitution guarantees in article 5 the rights of all citizens to address the government in any of the above languages as follows:

Article 5.

I. The official languages of the state are Castilian and all the languages of nations and peasant indigenous peoples, which are the Aymara, Araona, Baur, Besir, Canichana, Cavineño, Cayubaba, Chacobo, shaman, that Eja, Guarani, guarasu’we, Guarayu, itonama, leco, machajuyaikallawayaya, machineries, Marapas, Mojeno-Trinitarian Mojeno-Ignatian, More, Mosetén, Movima, pacawara, puquina, Quechua, Siriono, Tacana, tapiete, Toromona, uru-Chipayaya, weenhayek, Yaminawa, yuki, Yuracaré and Zamuco.

II. The Government of multinational and regional governments must use at least two official languages. One of them should be Castilian, the other will be decided taking into account the use, convenience, circumstances, needs and preferences of the population as a whole or the territory in question. Other self-governments should use the languages of their territory, and one of them should be Castilian.

A major challenge facing the new state of Bolivia is how to successfully combine the relationship between participatory and representative democracy, the direct democracy of the indigenous communities with the representative dimension of state institutions. The Bolivian constitution recognizes that multiculturalism is not enough, for it is necessary to

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34 Carlos Romero Bonifaz, *Los Ejes de la Constitución Política del Estado Plurinacional de Bolivia*, International IDEA, Strömsborg, Stockholm, Sweden p. 22 (my own translation from Castilian)

35 Ximena Soruco Sologuren, “Estado plurinacional-pueblo, una construcción inédita en Bolivia” en OSAL. 2009 (Buenos Aires: CLACSO)10, 26, October 2009 (my own translation from Castilian)

give an institutional base to cultural diversity. In this the Bolivian Plurinational model curiously and interestingly resembles the model for national-cultural autonomy advocated by Otto Bauer and Karl Renner in late imperial Austria.

THE SAMI PARLIAMENT IN NORWAY

Another interesting example of this modality of Non-Territorial Self-determination is The Sami Parliament in Norway. The Sami people are one the largest indigenous groups in Europe, inhabiting the north of Sweden, Norway, Finland and Russia. Indigenous disadvantage is prevalent in many parts of the world and this includes not only the settler societies of the American continent and Australasia, but also some parts of Europe.

The Sami, like many other indigenous peoples cannot sustain forms of territorial autonomy because their areas of residence overlap with others. Territorial organisation cannot serve as a means for self-determination without crucially affecting the rights of other inhabitants. The flexible system of Sami villages, *siidas*, has had a fundamentally different approach to territoriality than the states with their fixed boundary conception. For this reason, Norway has adopted a special constitutional provision with regards to the Sami People. Article 110a of the Constitution of Norway states that: *It is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop its language, culture and way of life*. In discharging its obligations towards its indigenous people, the Norwegian Government has implemented a series of measures to advance the education of the Sami people in their vernacular languages. Legislation giving language and cultural rights to Norway’s Sami people was enacted in 1992, however, the use Sami language in primary schools began earlier. Sami is a medium of instruction and taught as a subject in secondary schools. The Sami College is an important institution, offering a model from which other countries might borrow in many aboriginal settings.

The Sámediggi (the Sámi Parliament) in Norway is elected through general elections every four years by all members of the Sámis in the country, normally in conjunction with Norwegian General Elections. The Sámediggi is elected by a non-territorial electoral system

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37 Iván Lanegra Quispe, *Democracia y reforma constitucional en Bolivia: reconocimiento de la diversidad cultural y formación de un Estado Plurinacional*, Publication of Social Sciences Faculty, Department of Politics and Government, Pontificia Universidad Católica del Perú, Lima, Perú, 2009 (my own translation)


that resembles the NCA model of Otto Bauer and Karl Renner. It is an independent political organ and is the highest representative body of the Sámis in Norway. The Sami Parliament’s was inaugurated by King Olav in 1989 and consists of 43 elected representatives from 13 electoral districts. The Sámediggi’s legal base is found in section 12 of the Sámi Act of the Storting (Norwegian Parliament), which states that the Sámis shall have their own National Sámi Parliament elected by and amongst the Sámis in Norway. The establishment of the Sámediggi results from the implementation of Section 110a of the Norwegian Constitution, which was adopted by the Storting on 21 April 1988. The political mandate of the Sámediggi includes all issues that relate to Sámi interests, including language, education and the mass media.

All members of the Sami community of Norway that are registered in the Sami census regardless of area of residence are entitled to vote for the Sámediggi (the Sámi Parliament). The participation is personal and not territorial. The Sámi Act of 1987 defines entitlement for registration in the Sami census on a combination of linguistic and self-definition criteria:

Everyone who declares that they consider themselves to be Sámi, and who either has Sámi as his or her home language, or has or has had a parent, grandparent or great-grandparent with Sámi as his or her home language, or who is a child of someone who is or has been registered in the Sámi census, has the right to be enrolled in the Sámi census in the municipality of residence.

Sami elections are lively and offer a choice to the voters, there are contrasting interpretations of the Sami position in the Norwegian society, which are constructed through encapsulating the repertoire of Sami cultural markers into other issues. This shows that the Norwegian Sámi parliament appears to be a success, as it is a constant among cultural minorities to close ranks and present a united image when the feel threatened, and the opposite to open up for internal debates when they feel that their circumstances are favorable to expressing their cultural identity. The Sámediggi has the formal responsibility for the development and protection of the language, culture and heritage sites. It also took over the Sámi Educational Council’s functions from the Ministry of Education.

NATIONAL SELF DETERMINATION AND A PARADIGM SHIFT

The conceptual discussion above plus the examples presented (there are many more, this is just a small sample) point towards a significant conceptual and empirical shift of paradigms from the way national self-determination and democratic self government was originally conceived since onset of the democratic revolutions of the eighteen century.

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Thomas Kuhn, the seminal philosopher of science, conceptualised the use paradigms in scientific thought. Kuhn argues that a scientific community cannot come into existence without a set of received beliefs and he called them paradigms. A paradigm is a body of knowledge containing commonly accepted views about a subject, a prescription of what direction research should take and how it should be validated. A paradigm sets the practices that describe a scientific discipline at certain point in time. Paradigms are hegemonic because they establish a dominant and an exemplary position in a field of study (or social practice), one that needs to be emulated by younger scholars who wish to progress within their profession. For Kuhn, a paradigm creates exemplary linkages that suppose a logical connection between events and constrains the possibility of scientists to ask questions about the event that is being observed. Paradigms have also according to Kuhn, a disciplinary dimension, for they are by definition conservative, enhance the authority of the establish scientist, and are pedagogical, as they educate a younger generation of researchers and initiate them into professional practice.48 For Kuhn then,

a) Paradigms determine ruling epistemological premises and restrict what he calls “scientific understanding” to what can be explained within the confines of ruling paradigms.

b) A paradigm shifts occur when alternative understandings and practices burst out of the confines previous paradigms to establish new ones.

A paradigm shift occurs when a significant change happens that cannot be explained from within an existing paradigm. These are anomalies that accumulate and leave the observer puzzled, for an explanation cannot be constructed from the prevailing paradigm of knowledge. A paradigm shift is a transformation of the way we perceive events and the relation between them. Kuhn argues that these paradigm shifts can have dramatic effects on the way we live our lives or we see and understand the phenomena we study. He further argues paradigm shifts lead to what he calls a “Scientific revolution” which is “a non cumulative developmental episode in which an older paradigm is replaced in whole or in part by an incompatible new one”49

NATIONS, NATIONAL SOVEREIGNTY AND NATIONAL SELF DETERMINATION: A PARADIGM SHIFT

In the study of National Self determination, a paradigm shift is occurring with the realisation that the nation state model is no longer a feasible solution to the demands of indigenous peoples and stateless nations. Most states are multi-ethnic and multinational, and national communities often inhabit overlapping areas of residency. From an examination of the resolution pattern of recent ethnic conflicts, we witness the slow emergence of a paradigm shift in the form of alternative models for the accommodation of national minorities and majorities in the same territorial area. Consider the devolution of powers to minority nations in the form of federalism or consociationalism.

We must carefully distinguish this argument from “post national” theories that argue that nations and national cultures are no longer important in the contemporary world. I believe this argument to be erroneous. Culture occupies an important position in the formation of human identities. Culture is constitutive of social mores because it informs and helps to

49 Thomas S. Kuhn, op. cit., p. 92
shape individual identities through social relations institutions and indeed symbols. Multi-ethnic and multicultural societies existed since time immemorial and are a reflection of the cultural plurality of human life. Without understanding human cultural diversity and its political implications, the very concept of a core common humanity becomes incomprehensible. The recognition of the collective rights of indigenous peoples cannot mean their assimilation to Western cultural practices or the loss or transformation of their identities, but has to be understood in the strengthening and development of their cultural traditions.

This is a “blind spot” of contemporary majoritarian democratic theories. The exclusive system of one person one vote cements by default the hegemony of the cultural majority, for the equality offered is between individuals and not between cultures. This inbuilt inequality between cultural communities leads at best of the alienation of minority communities and at worst to their marginalization and collective disadvantage. In worst and mercifully few cases, this alienation leads to expulsion and ethnic cleansing. Michael Mann argues that ethnic cleansing is the dark side of democracy: the ideal of rule by the people tends in some cases to convert demos into ethnos, when belonging to the dominant culture is the sole criterion for citizenship, thus generating a culturally organic nationalism that encourages the cleansing of minority cultures.

THE LANDMARKS OF THE NEW PARADIGM

The multilateral acceptance of cultural minority rights, the international acceptance of some kind of power sharing agreements, including the participation of cultural minorities in governance, are central questions for the peaceful accommodation of majorities and minorities in many troubled areas of the world and are of crucial importance for the expansion of indigenous collective rights. The issue here is not only that states should recognise the autonomous rights of their cultural minorities, but that states should participate in the collective effort to internationally implement and enforce standards of cultural minority self governance. In the last few decades a definite change has taken place in the way in which we understand and conceptualise conflicts between cultural minorities and states. Through the struggles of mainly indigenous peoples, linguistic and cultural rights are now seen as an acceptable part of the compromise necessary to reach equitable forms governance.

CULTURAL MINORITIES AND NATIONAL SELF DETERMINATION

In an ideal world the problem of stateless nations could be resolved by the reorganisation of the nation state into multination states with enshrined collective rights for all participant

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50 Anne Kane, Cultural Analysis in Historical Sociology: The Analytic and Concrete Forms of the Autonomy of Culture Sociological Theory, Vol. 9, No. 1, 1991, p 62
53 James Hughes & Gwendolyn Sasse, Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs EU Enlargement and Minority Rights, Journal of Ethnopolitics and Minority Issues in Europe, Issue, 1 .2003, p.3
54 Steven C. Roach, Cultural Autonomy, Minority Rights, and Globalization, Ashgate, Aldershot, 2005, p.27
55 See Will Kymlicka, Part 1, The (Re-)Internationalization of State-minority Relations, in Will Kymlicka, Multicultural Odysseys, Oxford University Press, 2007, pp 3-60
cultural communities. The National Cultural Autonomy (NCA) model and consociationalism use this organisational logic in deeply divided societies when the abode of the constituent cultural communities overlaps. The NCA model has its origins in the twilight of the Habsburg Empire and the attempt of Austrian socialists to convert the decaying Empire from a conglomerate of squabbling cultural communities into a democratic federation of nationalities. In sharp contrast to most other forms of national autonomy, the NCA model rests on the idea that autonomous cultural communities could be organized as autonomous collectives whatever their residential location within a multinational state.

Consociationalism is a better known form of governance that requires collective (group) representation. It presents an alternative to the principles of majoritarian democracy and it is used to manage conflict in deeply divided societies. The term was popularised by Arend Lijphart and was further developed by John McGarry and Brendan O'Leary in a series of seminal works on Conflict Resolution and on Northern Ireland. It is more elite based than the NCA model, and it is based on the principles of a grand coalition across cultural divides, mutual veto on matters vital for the continuity of the minority communities, proportionality in representation and the segmental autonomy of each community. As with NCA, the aim is to make government more responsive to the concerns of minorities and offer alternative outcomes to territorial nationalism and secession. In this way, secessionist demands are neutralised and cultural minorities are encouraged to feel confident of representation and protection for their vital concerns.

Even if the power of the nation state as an institution has diminished in the contemporary world with the development of multilateral institutions such as the European Union, states still remain the principal focus of political power and institutional organization. Instead, the purpose of the paradigm shift is not only to understand better the development of nations, but it is to set standards that facilitate the adoption by nation-states of specific measures that alleviate tensions related to the presence of cultural communities, and, ensure the coherence of their implementation.

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56 See my introduction to the English Reading Audience, in Otto Bauer, The Question of Nationalities and Social Democracy, University of Minnesota Press, Minneapolis, 2001, p. xxi-xxiii


60 I. S. Lustick, D. Miodownik and Roy J. Eidelson, Secessionism in Multicultural States: Does Sharing Power Prevent or Encourage It? The American Political Science Review, Vol. 98, No. 2 (May, 2004), pp. 210-11
In a world of nation states, two remedies are available for cultural minorities that feel alienated by the hegemony of the national majority. The first is secession and the constitution of separate nation states. This route is clouded with difficulties, for it almost always incurs the veto of the dominant nation and, moreover, the abode of different cultural-national communities often overlaps. When cultural grievances become entangled with territorial disputes they become bitter, protracted, bloody and extremely difficult to resolve. Cultural-territorial conflicts are classic zero-sum situations: the gain of one is by definition the loss of the other. It will be impossible in the contemporary world to find sufficient “portions of real estate” to allow for each and every cultural community to have a territorial state of their own. The UN charter offers contradictory advise here, on the one hand it sees the right of self determination as the right to constitute separate states, but on the other it opposes the dismemberment of its members.

The second route is to find solutions to the difficult problems of cultural minorities that are compatible with the system of nation states. For this reason, the proponents of the paradigm shift are proposing specific recommendations that are designed to encourage and facilitate the adoption by states of concrete and specific measures designed to overcome the alienation of minority communities and alleviate the tensions inherent in situations of territorial cohabitation. The recommendations for a plural demoi in the form of cultural minority self-governance are crucial ingredients in this formula, because they not only set standards to provide for a different interpretation, away from secession, towards forms of self-determination that advocate recognition through a plurality of demoi and that do not entail breaking states.

CULTURE AND MULTINATION STATES

In the ethnosymbolist tradition, culture is presented as a kind of essentialised continuum through the idea of the “longue durée”. Culture is seldom interpreted in the same way by all members of a cultural community. It is instead an arena for struggles between different interpretations. Nevertheless, in democratic societies, when individuals cannot find some expression of their culture in the governing institutions, they experience a sense of loss, lack of participation, of social distance. Hence, an examination of the role of culture in the political participation of citizens is not only concerned with minorities, but with the place of culture in a multitude of governance processes, in other words, this concern is an expression of the logic of democratic governance. One cannot discuss minority rights without asking why minorities are politically relevant and this requires in turn a considered theory of the role of culture in political life.

Consequently, an important way of enhancing the integration of cultural minorities is to encourage their participation in governance, through the political representation of minority communities. In places were this is implemented, minority representation strengthens intercultural links, fosters more positive attitudes toward the common government, and

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61 Rare exceptions are Singapore and Slovakia.
62 For the difficult problems that result from minority secession see: Stephane Dion, Why is Secession Difficult in Well-Established Democracies? Lessons from Quebec, British Journal of Political Science, Vol. 26, No. 2 (Apr., 1996), pp. 269-283
64 John Packer, The Origin and nature of the Lund Recommendations on the Effective Participation of national Minorities in Public Life, The Helsinki Monitor, 29, 2000, No. 4, pp. 41-42
65 Bhikhu Parekh, Rethinking Multiculturalism, op. cit., p.346
encourages individual political participation⁶⁶. For the system to work and overcome the alienation of minorities, intercultural recognition has to be based on mutual trust and built through autonomous self-governing participation, this is, a plurality of demoi. In this regard, it is crucial to create a level plain field between majority and minority communities, so that everyone feels that their cultural values and the sense of self imbedded in them are seen as institutionally relevant, appreciated and welcomed. The trust, confidence and resulting sense of belonging that are brought about by these self governing measures go a long way to secure minority integration.

The above requires a significant paradigm shift in contemporary theories of nationalism, and an equally significant shift in the way we conceptualise democracy and self determination, moving away from the morphology of the nation state, eliminating the emphasis on nation state sovereignty to deepen instead democratic values with a plurality of demoi that encourage community participation through the accommodation of cultural diversity. The evolving demands on indigenous communities are spearheading this change whose implications transcend the specificity of the indigenous case. This paradigm shift reinvigorates democracy, democratises self determination and provides impetus and stimuli to the coexistence of different cultural communities in the same territorial space.

FIN

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