Liberal nationalism and the sovereign territorial ideal

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ABSTRACT. Even if most liberals nowadays recognise that liberalism depends on some nationalist justification of popular sovereignty and state boundaries, they still underestimate the consequences of the fact that the sovereign territorial ideal is at the heart of the modern state. Therefore, their normative stance either oscillates between fairness and stability requirements (Kymlicka) or is built on a distinction between self-rule and self-determination that contradicts the normative import of the modern idea of the nation (Tamir). However, there exist counter-traditions that may be helpful in challenging the assumption on behalf of the sovereign territorial state. National cultural autonomy is one of these; it is used here to show how starting from different premises, one may escape the ‘statist assumption’ and work out a political framework which would be fairer to minorities.

The problems associated with nationalism lie more with the state and with statism than with the nation . . . The principle of national self-determination becomes morally and practically problematic because (or when) it is coupled to the concept of doctrine of the absolutely sovereign state (MacCormick 1999: 190).

Political theorists have contributed in various ways, in the last two decades, to the reworking of the model of the nation-state. A first significant wave was characterised by the critique of the assumption of a coincidence between the political (public) culture and a majoritarian culture. The paradigm of the multinational state is built upon such a critique (Kymlicka 1989 and 1995). Then, in the context of a tighter integration in Western Europe, people such as J. Habermas and J.-M. Ferry have argued for a constitutional patriotism that could overlap with the various national cultures and constitute the core of a European citizenship (Habermas 2000; Ferry 2000). A third major trend relates to debates on cosmopolitanism; those debates mainly focus on the relationship between democracy and the (liberal) state (see for example Held 1995).

The aim of this article is not to review those theories, but to highlight the weight of the sovereign territorial ideal in contemporary liberalism. Most contemporary liberals have now recognised that liberalism depends upon some nationalist justification of popular sovereignty and state boundaries. Yet, they still underestimate the consequences of the fact that the sovereign territorial ideal is at the heart of the modern state. This is true as much of liberal nationalists (as D. Miller, for example) as of proponents of the...
multinational state paradigm (W. Kymlicka, for instance). The former believe that political units should coincide with national boundaries, since egalitarian justice requires a strong sense of a common identity (Miller 1989 and 1995; Gans 2003: 35; Kymlicka 1995: 72–3). The latter often oscillate between the requirements of fairness, on the one hand, and considerations of stability, on the other one, thus allowing for two classes of national groups (those which have been fortunate enough to have a state of their own, and the unfortunate others). In fact, those liberals have been unable to challenge what Brenner (1999) has labelled the ‘territorialist epistemology’. Trapped in the sovereign territorial ideal, they are ultimately unable to escape the assumption that the state and some form of the nation will coincide through the principle of territoriality (the ‘statist assumption’).

Overcoming that assumption is a challenging task, since the modern idea of the nation has played a fundamental role in promoting the identification and mobilisation of citizens (Habermas 1996; Tamir 1993). However, it is of basic necessity, for at least two reasons. On the one hand, the contingency and relativity of peculiar institutional forms are often blurred by the assumption that the state and the nation shall coincide. One may thus want to distinguish between a normative argument about the significance of the nation and a functionalist argument about the utility of the state as a regulatory regime. On the other hand, the privileging of the model of the nation-state has gone hand in hand with the forced assimilation of minorities. It thus raises fundamental issues of justice that cannot be considered to have been satisfactorily settled if minorities remain politically subordinated because they are minorities.

The first section of the article recalls the close relationship between citizenship, nationality and sovereignty in the prevailing modern conception of the political. The second section argues that since most contemporary liberals remain trapped in the ideal of the territorialised sovereign state, their normative stance towards national minorities either puts national minorities at a disadvantage in issues of self-determination, or conveys a dissociation of culture and politics that contradicts the very essence of the modern idea of the nation. In the third and final section, I will put forward the idea that there exist other political traditions that may be helpful in challenging the statist assumption. The model of national-cultural autonomy (NCA) developed by the Austro-Marxist K. Renner is one of those alternatives. Renner precisely challenged the necessity of binding the nation to the territorial principle conveyed by the sovereign territorial ideal. He thus pointed to ways of empowering nations that were not parasitic to the state, while recognising that the national question is one of self-government (Keating 2005: 181).

1. Citizenship, nationality, sovereignty

In the model of the national state, citizenship is usually granted on the basis of the territorial principle. Political identity is dependent on residence in some
specific territorial space, within which institutions can be organised along different lines (for example, following a federal or a unitary model). Thus, in the West, citizenship generally involves a constitutionally based relationship between individuals *qua* citizens and a sovereign territorial state (Delanty 1997). Priority goes to the political allegiance to the consolidated central state. In Western political thought, the territorial principle has been closely identified with modernity and with more inclusive conceptions of the political community. The personality principle has rather been identified with ethnicist conceptions of the nation-state, non-liberal systems of tolerance (such as the millet system of the Ottoman empire) and institutionalised systems of discrimination (such as apartheid) (Coakley 1994).

Sovereignty became a constitutive principle of the European system of states with the Treaties of Westphalia (1648). It is sustained by territory. In fact, as Agnew stresses, it is precisely ‘the tight connection between sovereignty and territory that has underwritten the conceptual bounding of political power to statehood’ (Agnew 1999: 513). It is useful at this point to recall the significance of Hobbes’ and Bodin’s doctrines relative to the modern concept of sovereignty. According to Bodin, the ruler has full, absolute authority over his realm. Sovereignty means the power to command and constrain without being commanded and constrained by anyone on earth; it cannot be shared (Hueglin 1999: 46, 76, 95). According to Hobbes, when individuals agree to the social contract they transfer all their rights and freedoms to the sovereign. As Skinner explains, Hobbes and Bodin did not understand the powers of the government as merely reflecting those of the people: according to them, political power rather requires popular sovereignty to be entirely transferred to the state (Skinner 1989: 117). With Bodin, sovereign power became a distinctive attribute of the state. Hobbes clearly severed the state’s authority from the consent underlying the social contract. Thus, there actually seems to be an independent justification for the state’s sovereignty.

Hence, it is manifestly wrong (both theoretically and empirically) to deny the existence of states’ sovereignty as Pierre-Caps does (Pierre-Caps 1998: 37). However, it nonetheless seems right to suggest that ‘only some mystification of the state’s sovereignty can explain the absolute equivalence of the nation and the state’, an equivalence which became a fiction (Pierre-Caps 1998: 37). Such a ‘mystification’ must be challenged, since it cuts off sovereignty from the body politic. It reached a peak with the advent of the nation-state, ‘since in the nation-state, the state wants to merge with the body politic, as far as it claims to personify the nation’ (Pierre-Caps 1998: 41, translation is mine). In short,

The classic modern conception, whether liberal or republican, assumes that the people is embodied in the nation, that the nation is the people *en corps*, and that the state is its legal personality as well as the component part of its political will, action and responsibility, allowing the nation to be recognised in the interstate system (Ferry 2000: 116, translation is mine).
The assumption that the people is embodied in the nation is conveyed by the modern doctrine of popular sovereignty. The latter ‘invests final authority in an imagined community, all of a territory’s inhabitants imagined as a collective body’ (Yack 2001: 519). The people is that community that precedes the establishment and survives the dissolution of political authority. But ‘if the people precede the establishment and survive the dissolution of political authority, then they must share something beyond a relationship to that authority’ (Yack 2001: 524). When it comes to identify that common ('prepolitical') characteristic, however, defenders of popular sovereignty have no consistent answer. This ‘opens the door to the identification of political with national community, of the people with the nation’ (Yack 2001: 524). The doctrine of popular sovereignty ‘positively invites the nationalisation or culturalisation of politics by the way in which it transforms our image of political community’ (Yack 2001: 525). In fact, it both nationalises our image of the political community and politicises our image of the national community (Yack 2001: 523–6).

The modern idea of the nation hence played a fundamental part in the consolidation of modern Western states. It provided them with the social and cultural basis of integration to political identity. And it filled in for the fact that ‘From a normative point of view, the territorial and social boundaries of a constitutional state are contingent’, since they usually result from wars and power politics (Habermas 1996: 131–132). Hence, Modern states have, therefore, chosen to adopt national self-determination as their justifying principle, even when their members do not constitute a nation. This serves two purposes: It provides them with a principle of demarcation, and it strengthens the claim that members of the state share something more than coordinating institutions, something that evokes in them feelings of solidarity and fraternity (Tamir 1993: 124).

I do not want to suggest that since territorial boundaries mainly result from power politics, any justification of the basis of social solidarity invoking the idea of the nation has to be a utilitarian or a second-level justificatory argument. The value of belonging to a national community is surely not instrumental (see for instance Gans 2003). I rather want to argue that the value of national belonging could, and in fact should, be dissociated from the sovereign territorial ideal, if we intend to renew the reflection on fair institutional frameworks.10 Such a reflection must include normative arguments on relationships between peoples, on the way minorities are dealt with and the issue of their appropriate recognition, etc. Amongst other things, when state consolidation has gone hand in hand with non-recognition, exclusion or genocide,11 state historiographies and histories (including social and political representations) must be reconsidered in order to democratise relationships between peoples, to redress harms and to build a common world, or, at least, ‘places’ for dialogue. Those challenges, however, can hardly be met if one subordinates them to the statist assumption.
2. Liberalism, national minorities and the state

As I stressed earlier, contemporary liberals have made major contributions to the critique of the model of the homogenous state. They also shed light on the close relationship between liberalism and nationalism. Some of them established powerful moral justifications for the rights of national minorities. However, significant pieces of contemporary liberal thought remain trapped in the sovereign territorial ideal, thus keeping national minorities morally subordinated to it. Tamir’s and Kymlicka’s work are particularly revealing in this respect. Their normative stance either condemns national minorities to political inferiority, by oscillating between stability and fairness requirements (Kymlicka), or is built on a dissociation of culture and politics that both contributes to such a subordination and contradicts the very essence of the modern idea of the nation (Tamir). This is so because their work is built on an a priori assumption on behalf of the sovereign territorial ideal embodied in the modern state. The a priori assumption on behalf of the sovereign territorial ideal results in a corresponding presumption on behalf of majoritarian (state) nationalism.

Tamir shows that liberalism implicitly relies on nationalist assumptions. She argues that we may alleviate some of the problems raised by multi-nationalism by distinguishing a public sphere in which a nation’s culture is expressed (nationality) from the political institutions in which all citizens participate (citizenship). States cannot be nationally or culturally neutral, since cultural differences are not private matters. Thus, minorities get alienated from the public sphere. Although we cannot provide each nation with its own state, we can nonetheless guarantee each nation a public sphere in which they constitute the majority (Tamir 1993: 150).12 The political sphere (where individuals govern their lives and participate in a free and democratic political process) and the cultural sphere (a public sphere in which the national culture is expressed) must be dissociated.

Hence, Tamir advocates a distinction between nationality and citizenship, on the ground of a distinction between the rights of citizens to self-rule (a liberal democratic ideal) and the right to national self-determination (which characterises nationalist thought). She argues that struggles for national self-determination differ from ‘the liberal democratic struggle for civil rights and political participation’ (Tamir 1993: 71). The right to national self-determination is to be understood as ‘the right to preserve the existence of a nation as a distinct cultural entity’ (Tamir 1993: 57).13 According to her, the right to national self-determination belongs to the larger category of rights granted to cultural groups.14 This means that the ideal of the nation-state has to be given up.15

However, she also justifies the particularisation of justice within states. She argues that individuals have some obligations to the state to which they belong (provided that state is reasonably just) because of the nature of political obligations. Political obligations to the state must be understood ‘in
the light of their nature as associative commitments, whose moral importance is derived from the notion of membership rather than from general moral duties’ (Tamir 1993: 134). Being a member of a community implies a sense of belonging and identification with this community. It is such a feeling that grounds the assumption of associative obligations: ‘individuals assume such [political] obligations because they see the state as their state, its laws as their laws, and its government as their government’ (Tamir 1993: 135). Liberal claims of distributive justice are dependent on its particularisation, which itself depends on a notion of communal ties and loyalties. Hence, ‘the community-like nature of the nation-state is particularly well-suited, and perhaps even necessary, to the notion of the liberal welfare state’ (Tamir 1993: 121).

Gans is thus right to argue that Tamir’s arguments commit her sometimes to cultural nationalism, sometimes to statist nationalism. An underlying commitment to the sovereign territorial ideal of the modern state subordinates the claims of national minorities to requirements of stability in the consolidated state and to the consequences of combining majoritarian rule with the presence of a majority nation on a state territory. Minority nations cannot claim self-rule, but only self-determination. Hence, cutting off politics from culture does not settle the fairness issues raised by the a priori assumption on behalf of the sovereign territorial ideal. Moreover, the very distinction between self-rule and self-determination seems to contradict the modern idea of the nation and its normative import. The modern idea of the nation infuses politics with culture. Nationalism makes culture a political resource used either to legitimate the consolidated state (majoritarian nationalism) or to dispute it (as do minority nationalisms).

Kymlicka developed an approach about the differentiated group rights that can be justified within a liberal democracy. He argues that group-differentiated rights for ethnic and national minorities can fit within a larger theory of liberal justice (Kymlicka 1995: 76). People have an interest in culture as a component of their identity and a prerequisite for their freedom, since culture is the ‘context of choice’ within which they can act as autonomous beings (Kymlicka 1989 and 1995; Gans 2003):

For meaningful individual choice to be possible, individuals need not only access to information, the capacity to reflectively evaluate it, and freedom of expression and association. They also need access to a societal culture. Group-differentiated measures that secure and promote this access may, therefore, have a legitimate role to play in a liberal theory of justice (Kymlicka 1995: 84).

Hence, some forms of cultural difference ‘can only be accommodated through special legal or constitutional measures, above and beyond the common rights of citizenship’ (Kymlicka 1995: 26). Those measures may be defended through an argument about equality (since from a Rawlsian perspective, justice requires compensating for undeserved disadvantages), through historical arguments (e.g. about the way national minorities have been incorporated in a larger state), or through an argument about the value of cultural diversity
(an argument, however, which should not bear much weight, according to him) (Kymlicka 1995: 107–23). Kymlicka identifies three types of such special measures: self-government rights (which are particularly relevant for the purposes of this paper), polyethnic rights and special representation rights.

Kymlicka does not defend a statist nationalism (Gans 2003). He even suggests that liberals should be more willing to consider secession, since ‘liberalism is fundamentally concerned, not with the fate of states, but with the freedom and well-being of individuals, and secession need not harm individual rights’ (Kymlicka 1995: 186). Yet, he is very much concerned with the practical problems raised by secession:

\[\ldots\] secession is not always possible or desirable. Some national minorities, particularly indigenous peoples, would have trouble forming viable independent states. In other cases, competing claims over land and resources would make peaceful secession virtually impossible. In general, there are more nations in the world than possible states, and since we cannot simply wish national consciousness away, we need to find some way to keep multination states together (Kymlicka 1995: 186).\]

Self-government rights ‘typically take the form of devolving political power to a political unit substantially controlled by the members of the national minority, and substantially corresponding to their historical homeland or territory’ (Kymlicka 1995: 30, emphasis added). People’s cultural membership should be protected because societal cultures provide the context for individual choice. But this very commitment sometimes justifies existing (liberal) states, and sometimes justifies group-differentiated rights within the state. Although both are to be justified on the same normative ground (Kymlicka 1995: 124–25), they produce very different results depending on whether one is a member of the majority or of a minority.\]

Moreover, Kymlicka specifies that:

It is not enough (\ldots) to show that minority rights are consistent in principle with freedom and justice. We also need to determine whether they are compatible with the long-term requirements of a stable liberal democracy, including the requirement of a shared civic identity that can sustain the level of mutual concern, accommodation, and sacrifice that democracies require (Kymlicka 1995: 173–4).\]

He worries about the potentially destabilising effect of self-government rights, saying that ‘Since claims to self-government are here to stay, we have no choice but to try to accommodate them’ (Kymlicka 1995: 185). So, even if he does not defend a statist nationalism, his argument nonetheless faces at least one of the criticisms that Gans addresses to statist nationalism: it creates two classes of national groups, and thus introduces a moral distinction on the basis of majority/minority membership.\] He does so because he oscillates between stability and fairness requirements, whereas the former (in the modern state system) depend on the import of the state model underwritten by the sovereign territorial ideal.
3. Overcoming the statist assumption: the usefulness of counter-traditions

Gans’s argument for a sub- and inter-statist conception of self-determination shows how a liberal perspective may integrate the awareness of the consequences of the statist assumption for national minorities. He argues that ‘If the interests in self-determination were to be protected in all (such) cases by entities that are less than nation-states, there would be no differences in normative status between the majority and minority groups, either domestically or globally’ (Gans 2003: 77). However interesting Gans’s work is, I will rather focus in this last section on an underestimated ‘counter-tradition’ that seems to me to embody fruitful insights concerning the overcoming of the statist assumption and the requirements of a fairer framework for the coexistence of nations: national cultural autonomy (NCA). Before turning to it, let me notice three points. First, the aim of this article is not to discuss NCA in any detailed way; it is to point to a fundamental assumption of the state model whose consequences are still to be addressed by major trends in contemporary liberalism, but that has been addressed by proponents of NCA. Second, NCA seems to have been inspired by a conception of sovereignty that bears the hallmark of Althusius rather than Bodin; it must also be situated in a tradition of administrative (rather than legislative) federalism. Third, I certainly do not consider NCA as a panacea, however helpful it may be.

NCA has been worked out in the context of debates within the Austrian Socialist Party on the threat of ethnic and national disintegration of the Austro-Hungarian Empire (Nimni 2000: xix). Karl Renner (one of its main proponents, together with Otto Bauer) held the nation-state model as largely liable for the persistent struggles between national groups and the assimilation of minorities. That is why he challenged the conception of sovereignty as unitarian and indivisible, with territory as its functional support, and suggested rather mixing personal and territorial federalism. According to Renner, the organisational framework that allows a direct, unmediated relationship between the individual qua citizen and the state jeopardises the peaceful coexistence of the nations within the state. The state territory is conceived as a horizontal space within which other social spaces are deprived of any political meaning. According to Bauer and Renner, organising national self-determination on the basis of the territorial principle compels the nations to struggle against each other to get more power in the state. Those struggles amount to a zero-sum game and jeopardise national minorities in the areas where national majorities are concentrated. Even if the state is a federal one, a minority nation constantly risks remaining a minority in the decision-making process.

The principle of personality that is at the heart of the model makes the nation an association of individuals, rather than a territorial corporation. National belonging is an individual right, based on a dissociation of a territory from its administration. Nationality is to be granted through a free, individual and extra-territorial declaration of nationality. It is this right
which grounds the subjective public rights of the nation and which empowers
the nation as a corporation under public law mediating between the individual
and the state. The nation therefore is a distinct legal subject (Pierré-Caps

Nations participate in public administration: competences are to be shared
between the state and the nations as public law corporations. Nations would
be in charge of cultural matters such as schools, theatres, libraries and legal
assistance for fellow nationals when they are dealing with state authorities. In
order to fulfil its responsibilities, the nation would have the power to levy
taxes. And the inviolability of the areas of competence of national corpora-
tions must be legally sanctioned (Nimni 2000: xviii), ensuring that those
competencies are not merely delegations that can be repealed by the central
state as it wishes. The state of the nationalities worked out by Renner is a
federation of nationalities as public law corporations, where powers and
sovereignty are shared between the state and the nations. Renner considered
the nations’ participation in public administration as a basic guarantee of the
right to self-determination. Bauer believed that such a framework might
overcome the very notion of majorities and minorities.

Bauer and Renner understood, quite correctly I think, that the model of the
modern, territorialised state plays a significant part in the struggles between
nations and in the assimilation of minorities. They challenged the way the
relationship between individuals and the state is conceptualised and institu-
tionalised, as well as the will of nations to claim exclusive rule over a territory.
Their model may thus be helpful in understanding the limits of contemporary
liberalism: whereas many contemporary liberals seem unable to work
outside the organisational framework of the unified state (a framework that
makes the power relationships within the state a zero-sum game), Renner
precisely based his model on a critique of the foundations of the national
territorialised state.

But is NCA really more helpful than liberal models, Tamir’s one, for
instance? The latter is also intended to defuse the intense conflicts that arise
when people want their states to express both political power and a single
cultural identity. However, there are significant differences with NCA, two of
which are fraught with important consequences for minorities. First, Renner
recognises that the national question is one of self-government. He conceived
of the right to self-determination as grounding nations’ legal powers. He
emphasised that the nations as corporate bodies must share in public
administration. He thus did not conceive of self-determination as cut off
from self-rule. This is a significant difference with regard to the political status
of minorities: in Tamir’s model, there is no guarantee that they would get the
competences they need to allow for the expression of their culture, since they
are not provided any participation in public administration. The devolution
of some powers is deemed to remain arbitrary and dependent on the results
of struggles for power within the state. The second significant difference
between Tamir and Renner is that the latter did not use the national ideal
of self-determination to justify the particularisation of justice. Renner retained the conventional definition of the state, of which the territory is a constitutive component. But his critique of the territorial principle as the functional lever of self-determination could also be used to ground a powerful critique of the state. Moreover, since he conceived the state mainly as a space of economic governance, he may have challenged it as well, in the current context.

Conclusion

One may rightfully object that Renner’s model has been elaborated to prevent the collapse of the dual monarchy, and that therefore he was as much preoccupied with the territorial integrity of the state as Kymlicka and Tamir are. But more significant, in my view, is the fact that he worked out his model starting from different premises. Since he escaped the search for a conjunction between some form of the nation and the sovereign territorial ideal (a search I have characterised in this article as the statist assumption) and provided for a constitutionally guaranteed sharing of competences which makes the nations unavoidable partners in public administration, fundamental differences stand out concerning the status of minorities. I do not want to suggest that we should adhere to the whole ideological and theoretical framework underlying Renner’s thought. But the points on which I have focused in the preceding section shed light on what seems to remain a dead angle of liberalism when it comes to the relationships between majority and minority nations. I have argued that it is the assumption on behalf of the sovereign territorial ideal that keeps national minorities politically subordinated in significant pieces of contemporary liberal thought.

Yet, even if one is willing to build a new framework starting from those insights, a challenging issue remains. The modern idea of the nation has played a fundamental role in sustaining solidarity and cooperation in contemporary liberal democracies, and in justifying the legitimacy of states’ institutions. The modern doctrines of popular sovereignty have made it the source of legitimacy within the state, thus linking the principle of democratic legitimacy to the community of the citizens as a nation. If one agrees that nations are to cooperate in wider regulatory regimes (states or otherwise), political theory must reconsider the doctrine of popular sovereignty in order to find new grounds for democratic legitimacy. To do so, however, one may have to look for more ‘counter-traditions’.

Notes

1 The author wishes to thank the anonymous referees of this journal and Ephraim Nimni for their helpful comments. She is also grateful to the Fonds québécois de recherche sur la société et la culture for research funding.
2 Such an epistemology naturalises the organisational form of the unified state. Therefore, it conceals the power relationships that structure the control of some territory as a material and symbolic resource.

3 In the remainder of this article, I will refer to this stance as the ‘statist assumption’. I use this shorter expression for convenience’ sake, meaning by it that even when they recognise the multinational character of most states and justify some rights for minority nations, many liberals actually believe that there must be some kind of overarching ‘national’ identity within a sovereign state (in this model, the connection between sovereignty and territory underwrites the bounding of political power to statehood).

4 Although Renner was not a liberal, his model was democratic. Amongst other things, he did not challenge the idea of equal rights for individuals as citizens. He held universal franchise and a proportional system to be basic prerequisites of the ‘state of the nationalities’.

5 Since most contemporary states are not nation-states, it is more accurate to talk of ‘national states’, namely ‘relatively centralized, differentiated, and autonomous organizations successfully claiming priority in the use of force within large, contiguous, and clearly bounded territories’ (Tilly 1990: 43). Most of them promote an overarching ‘national’ identity in order to strengthen citizens’ identification and allegiance, as well as social solidarity (some use more coercive and homogenising ways to do so than others). But there are very few cases where the state’s borders neatly coincide with a nation. By ‘nation’ I mean a group of people sharing some cultural characteristics and united by the consciousness of belonging to a distinct community possessing a right to self-determination. I thus agree with Keating that ‘self-determination is part of the normative content of nationality’ (Keating 2001: 4), and that nations are socio-political entities (Keating 2001: 5). Although nations need not be territorial, nor territorially integrated, they generally can claim some homeland. ‘Citizenship’ is the legal-constitutional relationship bounding individuals to the state to which they belong. ‘Nationality’ relates to belonging to a nation.

6 Fardella stresses that ‘With Bodin, sovereignty becomes the main notion of the doctrine of the state. In the Six Books of the Republic, the sovereign power is the distinctive attribute of the state. That power is, by definition, absolute and perpetual, it is indivisible, it is inherent and it expresses itself mainly through the legislative function’ (Fardella 1997: 117, translation is mine). Moggach (1999: 180) explains that Bodin’s conception conveys an idea of sovereignty as a power which imparts form to relatively amorphous matter, ‘which would otherwise be incapable of sustained unity’.

7 Hobbes did not conceive of the state’s sovereignty as a delegation of the people’s power, and in that respect diverged sharply from the republican tradition that developed in Italy as early as the twelfth century.

8 This is why one can actually challenge the equivalence of the state and the nation, and rather ground ‘the whole issue of legitimacy and sovereignty in abstracto on its proper human substance, namely, the nation as a body politics legally instituted by the constitution’ (Pierré-Caps 1998: 43, translation is mine). Hence, as Fardella suggests, ‘it becomes impossible to link sovereignty to the personality of the legal state once one assumes that the inherent character of supremitas must be invoked in the name of the national community rather than in the name of the state’ (Fardella 1997: 123, translation is mine). However, it would still mean that the people is embodied in the nation, an assumption that should be qualified.

9 In the model of the nation-state, it is the idea of the nation that justifies the right to a state. The model depends on the argument that the nation is the holder of political freedom; thus, ‘To each nation, its own state: such a political alchemy combines the right of nations to self-determination, the modern version of the nationalities principle . . . , and the no less inviolable principle of the unity of the state’ (Pierré-Caps 1994: 423, translation is mine). See also Tamir (1993: 62). M. Seymour stressed to me that it could be possible (on the basis of compelling moral justifications legitimating the right to external self-determination in specific circumstances) to create a nation-state without invoking the nationalities principle and to get a democratic nation-state in which popular sovereignty would not be confiscated by the state. The argument outlined in this article is of course not intended to dismiss nations’ claims to external self-determination under specific
circumstances; in the current state system, this would be suicidal for some nations. My argument is rather that the nation need not be parasitic on the state.

10 I do not want to tackle here the debate between perennialism and modernism. Neither has peculiar normative consequences on issues relating to the institutional frameworks embodying majoritarian nationalism and its relationships with minorities (issues one cannot avoid). Even if modernists are right to stress the close historical relationship between state-building and the modern idea of the nation, this does not mean that the conceptual and empirical history of the nation is necessarily dependent upon the state model.

11 Recall for instance how Locke used the distinction between the state of nature and political societies to justify the appropriation of American lands and the wars against aboriginal peoples in North America (Tully 1995). M. Shapiro denounces the ‘genealogy of forgetfulness’ that accompanies the self-understandings built into the narrative identities of contemporary nation-states. ‘It is particularly applicable to the way that violent confrontations used by dominant groups to territorialize their controls and practices have been replaced by evolutionary stories in which vanquished and marginalized segments have lost their significance’ (Shapiro 1994: 489).

12 She defends the appropriateness of such a distinction in the current context along the following lines: ‘Only by replacing the aspiration of an independent state for each nation with more modest solutions such as local autonomies, federative or confederative arrangements, could all nations come to enjoy an equal scheme of national rights. Ensuring the ability of all nations to implement their right to national self-determination would then lead to a world in which traditional nation-states wither away, surrendering their power to make economic, strategic, and ecological decisions to regional organisations and their power to structure cultural policies to local national communities’ (Tamir 1993: 151).

13 Since the purpose of the right to self-rule is to allow individuals to participate in the making of those decisions that have a major influence on their lives, ‘self-rule implies that individuals should affect all levels of the decision-making process’ (Tamir 1993: 151). Since the purpose of the right to self-determination is to allow for the expression of national culture, the right to national self-determination is restricted to members of the nation (ibid.).

14 ‘There are two main advantages to a cultural interpretation of the right to national self-determination. First, it places this right in the general context of rights granted to different cultural groups, such as ethnic minorities and indigenous peoples. Second, it seems better suited to the present world, which is experiencing a tension between the clear advantages of transnational economic, strategic, and ecological cooperation on the one hand, and the increasing concern with the preservation of national and cultural uniqueness, leading to demands for partition and the establishment of autonomous national entities, on the other’ (Tamir 1993: 58).

15 She may thus be read as arguing ‘that a non-state-seeking form of nationalism is more compatible with the liberal point of view than a state-seeking form of nationalism’ (Gans 2003: 33). However, some of her arguments also express a commitment to statist nationalism: she seems to subscribe to the nationalist assumptions, which according to her are part of liberal political morality, and ‘justifies the prevailing practices in liberal states regarding political obligations and membership’ (Gans 2003: 33). I will focus on the latter, since this is what put minorities at a disadvantage, in her work.

16 Associative obligations are obligations ‘rooted in feelings of membership in a particular association’ (Tamir 1993: 130). National obligations belong to that category (Tamir 1993: 130). Tamir defines a political obligation as ‘a requirement to support and maintain political institutions, obey the laws, participate in the political process, defend one’s country, and the like’ (Tamir 1993: 131). In Tamir’s view, states and nations are neither communities of fate nor voluntary associations. In particular, ‘Membership in a state differs in two major respects from membership in voluntary associations . . . [F]irst, the allocation of rights and services in the modern world depends on membership in a state, turning the latter into a necessity. Second, . . . new states are not so easily established’ (Tamir 1993: 126). States are communities trying to preserve their unique character. According to her, ‘the only way of justifying a central role for political obligations in liberal philosophy is to adopt the description of the liberal state as a
community that generates a particular type of associative obligations, namely political obligations' (Tamir 1993: 130).

17 Gans distinguishes statist from cultural nationalism. The former ‘focuses on the contribution that national cultures can make towards the realization of political values that are neither derived from nor directed at the protection of particular national cultures’ (Gans 2003: 1–2). The latter is a type of nationalism according to which ‘members of groups sharing a common history and societal culture have a fundamental, morally significant interest in adhering to their culture and in sustaining it across generations. This interest warrants the protection of states’ (Gans 2003: 7). In the former, national culture is the means, whereas the values of the state are the aims; the reverse is true of the latter.

18 Gans’s argument that we are dealing with two distinct ideologies with different normative concerns should be qualified.

19 See also pp. 116–17: ‘United Nations declarations state that all “peoples” are entitled to “self-determination” – i.e. an independent state. Obviously this principle is not reflected in existing boundaries, and it would be destabilizing, and indeed impossible, to fulfil’.

20 ‘Liberals implicitly assume that people are members of societal cultures, that these cultures provide the context of individual choice, and that one of the functions of having separate states is to recognize the fact that people belong to separate cultures. . . . Once we make these assumptions explicit . . . it is clear that, in multination states, some people’s cultural membership can only be recognized and protected by endorsing group-differentiated rights within the state. Liberal theorists invariably limit citizenship to the members of a particular group, rather than all persons who desire it. The most plausible reason for this – namely, to recognize and protect our membership in distinct cultures – is also a reason for allowing group-differentiated citizenship within a state’ (Kymlicka 1995: 125).

21 He agrees with Miller that liberal justice requires a sense of common purpose and mutual solidarity, and wonders what could be ‘the basis of social unity in a multination state’ (Kymlicka 1995: 187). He is well aware that in multination states, ‘People from different national groups will only share an allegiance to the larger polity if they see it as the context within which their national identity is nurtured, rather than subordinated’ (Kymlicka 1995: 189).

22 ‘Some authors who are aware of the fact that many national groups do not have exclusive or majority presence within a territory in which a state could be formed ignore this problem [of domestic and international injustice] completely by defining it mainly as a problem of stability and not one of justice. They seem to be concerned with what they call the “Balkanization effect” that might result if the right to national self-determination is interpreted as a right to independent statehood. They conclude therefore that national self-determination, though it may sometimes have the form of independent statehood, need not always have this form. They seem to be unconcerned with the injustice inherent in this position’ (Gans 2003: 74). I do not mean that we should dismiss considerations of stability. However, national minorities are still denied a right monopolized by majority nations for the sole reason that historically the latter have been able to impact more effectively on the consolidation process. Keating rightly stresses that ‘any status quo embodies a power structure, which allocates influence and resources in more or less unequal ways, and to subject the minorities to the test of universal norms while exempting the majority is itself a violation of universal values’ (Keating 2001: 2).

23 For a detailed presentation of it as well as discussions on its contemporary relevance, see Nimni (2005). I have described Renner’s model in Nootens (2003).

24 On some significant problems faced by the model, see amongst others Nootens (2005).

25 It is very important to stress that Renner did not rule out territorial federalism in cases where national communities are relatively well specified on distinct territories. However, when national communities are mingled on a single territory, the state must deal with the nations as associations of persons, and no nation should be granted exclusive hegemony on a region (Weill 1987: 94; Coakley 1994: 300; Haupt et al. 1974: 209). Territorial autonomy may be more appropriate for minorities that are territorially concentrated, whereas personal autonomy may apply to groups that are not (or not mainly) territorially concentrated but nonetheless claim some degree of
self-determination. Yet, the territorial principle mainly plays a role as an organisational principle (rather than as a constitutive one), in Renner’s model. See note 26.

26 Renner’s conception of the personality principle may not be the conventional one. I do not intend to discuss here the various conceptions of that principle. I merely want to stress the possible contribution of NCA to an exit from the territorial trap. Hence, I won’t discuss the comparative worth of Renner’s definition. Let us merely notice that Renner contrasted it with the territorial principle characteristic of the modern state, according to which ‘if you live in my territory you are subjected to my domination, my law and my language’ (Nimni 2005: 11). Renner explains that ‘the personality rather than the territorial principle should form the basis of regulation; the nations should be constituted not as territorial entities but as personal associations, not as states but as peoples’ (Renner 2005[1899]: 29). National affiliation is a feature of the legal status of the individual (ibid.: 27). He wrote that ‘Of course, no people exist without territory, and internal reconstruction cannot be independent of the geographical stratification of the population. If the personal principle forms the constitutive principle which brings about the separation of the nationalities and the union of the individuals, then the territorial principle will have a significant role to play as an organizational principle’ (ibid.).

27 In Renner’s view, the territory is still a constitutive component of the state, but not of the nation.

28 E. Nimni stressed to me that the Austro-Marxists did not privilege the individual as an historical subject, and that the association is not the product of the free will of free-standing reasonable individuals but the choice of societatised (not socialised) individuals. He also stressed that for Renner and Bauer the nation is a community of fate that is neither individual nor collective, but rather the intersection between the two. For the Austro-Marxists, individuals reflect in their subjective inclinations the historicity of the community.

29 On how the spheres of competence are to be shared, see Renner 2005[1899].

30 Such a participation in public administration is precisely where the analogy with the separation of church and state stops. ‘[Renner]’s system does not represent the pure application of the personality principle. This is possible in the case of the legal regulation of the religious communities, but the national cultural community has an incomparably stronger hold on the modern individual than do the ties of religion. For this reason the religious communities appear to the citizenry to be amply protected once the independent administration of their affairs without any intrusion by the public administrative apparatus has been guaranteed. Such a guarantee does not suffice for the national associations. They require autonomous administration; but it is only when public administration is also based on this self-administration that the nations are protected from the state. Only then is state power founded just as firmly on the power of the nations as the power of the states is on the instruments of the power of the state’ (Bauer 2000: 285).

31 Gans’ sub- and inter-statist conception of self-determination gets close to overcoming ‘the very notion of majorities and minorities’.

32 I nonetheless consider that the dismissal of NCA has not really been justified since recently. It had been discredited mainly by a bias according to which the territoriality principle partakes of the very essence of modernity. It has also been discredited by the myth of ethno-cultural neutrality (which blinded most liberal democracies), by the rise of fascism, by the failures of the League of Nations, and by raison d’État. A major contribution to the discussion of the NCA model is the volume edited by Nimni (2005).

References


