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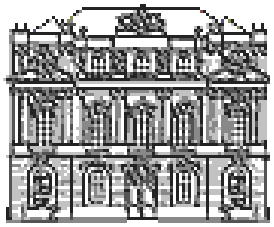

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1. Introduction

Faced with national minority movements that threaten their integrity, Western European states (Spain, Belgium, Italy and Britain)[1] have generally opted for territorial devolution.[2] The re-established or newly formed states of Central and Eastern Europe tend to reject this solution, arguing that their minorities would use it as a stepping-stone towards secession.[3] At the same time, the official conception of most of these states as mono-national ones (with the exception of the Russian federation and Bosnia) has pushed minorities into a position where their cultural rights are precarious and their political loyalty is continuously under doubt. Given these rational fears on both sides of domestic nationality conflicts, some observers have proposed national-cultural autonomy as an alternative approach.[4]

In this view the nastiness of some of these conflicts comes from the nationalist craving for territory. The idea is roughly as follows: The modern state is a territorial monopoly of legitimate violence. Nationalists want to achieve self-government for their own nation. A universal principle of territorial self-determination for nations is a recipe for endless war, because almost any given territory that could form a viable state can be claimed by several different national communities – depending on how far you go back into history. However, if one adopts a 'subjective' definition of nations as communities of individuals who profess a national identity, then these communities' desire for self-government can presumably be satisfied more universally and more peacefully if they rule only over their members rather than over territory that includes people who do not see themselves as belonging to the same nation.

In this context cultural autonomy refers to a devolution of political powers to nationalities formed on a non-territorial basis and through voluntary individual affiliation. Prima facie this is an attractive proposal. It applies to both regionally concentrated and dispersed groups; it protects minorities against coercive assimilation by regionally dominant groups; it also protects individual freedom within groups whose members can exit without having to leave their homes; and it formally acknowledges the multinational character of a state without giving rise to territorial claims.

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[1] In 2000 even France, the prototypical unitary nation-state, has drafted a new autonomy statute for Corsica that gives the provincial assembly of the island substantial legislative powers.

[2] See Keating (1996), Guibernau (1999).

[3] See Kolstø (2001).

[4] "We need to recognize legitimate fears of secession and give support to non-territorial forms of autonomy" (Liebich 1995: 317)

The purpose of my paper is, however, to cast some doubts on the idea that, as a general formula, cultural autonomy is preferable to territorial devolution. But let me start by emphasizing that both solutions share much common ground. They accommodate minority nationalism through federal arrangements while affirming the territorial integrity of multinational states. Before I can discuss the specific merits of cultural and territorial arrangements I must briefly explain some basic features of political autonomy and argue why national conflicts within states should be generally resolved by granting autonomy. The main task is then to compare and evaluate cultural and territorial autonomy as general principles and as solutions in specific contexts.

2. Minority Rights and Political Autonomy

Cultural minorities are different in kind and their political claims and rights differ accordingly. Minorities can be distinguished by cultural markers of identity (such as language, race and ethnicity, religion, sexual orientation or life style) or by their historical relation to the larger political community (indigenous groups, ethno-national minorities or immigrant communities).[5] For my present purposes I want to distinguish three categories of minority rights: cultural liberties, public recognition and political autonomy.[6]

(1) Three categories of minority rights

Cultural liberties are universal human rights that apply equally to all cultural minorities. Article 27 of the International Covenant of Civil and Political Rights states these quite clearly: "In those States in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." Although the right is explicitly formulated as an individual one, the text recognizes that a mere negative liberty would be meaningless. My freedom to speak a language is of no value unless I have somebody else with whom I can communicate. Art. 27 refers therefore to the enjoyment of these cultural rights in community with other members of the group. It creates a corresponding duty for the state to refrain from coercive assimilation or any other policy intended to undermine the existence of a cultural minority.[7]

Public recognition rights involve a stronger collective dimension and positive obligations of public authorities. They require naming the beneficiary groups and they involve mobilizing political or economic resources of the state for minority protection or support. Such rights include specific exemptions for religious minorities from laws that would disallow some of their practices (e.g. the ritual slaughtering of animals or the wearing of headscarves or turbans on the job); anti-discrimination policies (shifting the burden of proof of non-discrimination towards the providers of jobs, housing and services, affirmative action programs to increase minority shares in coveted positions); symbolic recognition (e.g. in national history curricula) or material support (such as subsidies for minority schools). All these rights are group-differentiated. Some of them are still predominantly individual rights because they can be claimed, activated and waived only by individuals (for example the right to optional courses in minority languages in public schools), whereas others are genuinely collective rights (such as topographical inscriptions in a minority

[5] See Kymlicka (1995: 18), Parekh (2000: 3-4).
[6] See Levy (2000, chapter 5) for a more elaborate classification of cultural rights.
[7] See Kälin (2000: 64).

language). I include in this category special representation for minorities in political bodies (legislatures, ministerial cabinets, judicial organs, the civil service).[8]

Political autonomy or self-government rights are a third category. In contrast with public recognition rights they do not serve to integrate the minority into the larger polity but recognize and establish it as a separate political community with its own institutions for making collectively binding decisions. The universal rights of Art. 27 grant all minorities the power to establish their own autonomous associations within civil society. Political autonomy, however, involves a different set of powers that are inherent in modern statehood – amongst others an executive monopoly of legitimate violence and a competence of legislative institutions to define or modify their own competences. National minorities can achieve full territorial sovereignty by forming an independent state. Alternatively, they can realize their aspiration for autonomy in power-sharing arrangements that divide internal sovereignty in such a way that the government of the autonomous polity can make final decisions within devolved policy areas and can initiate changes in the division of powers with the central government.

Liberalism as a political philosophy offers different justifications for the three categories of minority rights. The defence of universal cultural liberties is straightforward. The selective list of minorities included in Art. 27 ICCPR can be explained by the fact that these groups are specifically exposed to homogenizing pressures within modern nation-states. But the content of the right merely affirms the basic freedoms of association and speech that liberal constitutions guarantee for all individuals within their jurisdiction rather than for particular groups.

The second category requires more specific arguments. A defence of public recognition rights must show that members of the groups concerned suffer disadvantages because of their membership.[9] Such disadvantages have, broadly speaking, three sources: historic oppression that still affects the opportunities of present members of the group (e.g. African Americans or ex-Untouchable Hindu castes); intentional or unintentional discrimination in economic markets and in civil society of groups whose members differ visibly or audibly from a dominant majority (e.g. racial discrimination of immigrants in employment and housing); and state support for a dominant majority culture while minorities have to maintain their culture through private efforts (linguistic minorities as well as religious minorities in democracies with established religions).[10] The general purpose of public recognition rights is to create conditions of equal citizenship for minority members without forcing them to assimilate into a majority culture. Liberal democracies must acknowledge the many ways in which the modern state is not, and cannot be, blind to cultural differences and they should respond by creating a more pluralistic public culture that affirms the place of minorities within the political community. Insofar as public recognition rights respond to disadvantages they are meant to be remedial. Some programs, such as affirmative action, are only justified as transitory measures until a disadvantage has been removed. Others, such as exemptions from public laws on religious grounds, respond to cultural differences that must not be resolved through assimilation and are therefore regarded as permanent.

[8] Kymlicka (1995: 26-33) lists special representation rights as a separate category alongside polyethnic rights and self-government.
[9] See Bauböck (1999: 142-4).
[10] See Kymlicka 1989: 188-9).

(2) Three justifications for political autonomy

Political autonomy claims are raised by a much narrower category of groups. They distinguish national minorities from ethnic and other kinds of cultural communities. Defining national groups in terms of a collective desire for self-government (rather than by some objective criterion such as common language, historical continuity or geographic concentration) does not yet provide us with a justification for such claims. One possible strategy is to turn to history by arguing that national minorities had been self-governing before being either voluntarily or coercively incorporated into the state in whose territory they now find themselves.[11] In the first case, there will be explicit contracts or implicit agreements to respect the political autonomy of the minority in question, in the second case the injustice of coercive incorporation should be corrected by offering similar assurances today. This argument is only convincing if the present generation still has the same aspirations as their forebears. There is, however, often little continuity between the ancient ethnic groups and the modern national minorities that bear their names. And the desire of a minority for self-government has not always preceded the process of nation-building by the majority but has instead often been its consequence.[12] Minority nationalism is mostly the offspring of majority nationalism whom it resists and emulates.

A second line of argument is that a national culture is of great value for its individual members because "it's only through having a rich and secure cultural structure that people can become aware, in a vivid way, of the options available to them..." (Kymlicka 1989: 165). Political autonomy for national minorities may then be justified instrumentally (rather than historically) as a necessary means to maintain a vibrant cultural structure that provides a "context of choice" (Kymlicka) for individual autonomy. Assimilation into a dominant majority is generally no substitute for secure membership in a minority culture because it deprives individuals of the resources of the culture in which they have grown up and devalues deeply ingrained identities. It is, however, not obvious why minorities need *political* autonomy in order to avoid this kind of degradation. Public recognition rights and the internal pluralization of a dominant national culture allow minorities to participate in a wider cultural structure that gives them a wider range of options without forcing them to deny their origins. In a multilingual and multireligious public culture minorities can thrive without political autonomy. Immigrants in liberal democracies have a claim to such 'polyethnic rights' but not to self-government. Why should this be different for national minorities?[13]

Political autonomy may, however, be necessary in order to preserve a minority language. Cultural autonomy allows the minority to make it the language of instruction in institutions of public education; territorial autonomy creates even more extensive powers to establish it as the language of public life in a whole region. But should such powers be granted in order to preserve a threatened language? In Kymlicka's view, what needs to be protected is a cultural structure rather

[11] See Kymlicka 1995: 116-20).

[12] Kymlicka has recently conceded that "[i]n some cases, the sense of national distinctiveness arose concurrently with the development of the larger federation, rather than preceding it…. What matters, however, is not historical reality, but present-day perceptions" (Kymlicka 2001a: n. 36 at 114). Nevertheless, historical reality matters normatively if we think that present claims to self-government are *justified* because a group has been historically incorporated into a larger polity.

[13] Kymlicka argues that "[i]n deciding to uproot themselves, immigrants voluntarily relinquish some of the rights that go along with their original national membership" (Kymlicka 1995: 96). For critiques of this argument see, among others, Carens (2000, chap. 3), Parekh (2000: 99-109), Bauböck (2001: 336-45).

than the specific character or practices of a cultural community.[14] Minority as well as majority languages always evolve through interaction with a wider environment. The Irish or Scots have retained a distinct cultural structure although English has swallowed up their Gaelic languages. There are many reasons to regret the irreversible process of language extinction that results from the operations of market economies and bureaucratic states. Minorities have a claim to public support and recognition because they are specifically disadvantaged in their efforts to maintain their languages. However, it is difficult for liberals to endorse paternalistic policies that would force minorities to retain a language that their members abandon voluntarily. Although political autonomy may be an effective instrument for minority language preservation this goal itself needs separate justification.

It is also not plausible that national minorities value political autonomy only because it enables them to preserve their culture. For indigenous minorities gaining political autonomy may actually accelerate the extinction of their traditional cultures. Exercising modern state powers requires transforming a broad variety of oral languages into standardized written idioms.[15] Conversely, for many national minorities (Scots and Northern Irish Catholics in the UK, Serbs and Croats in Bosnia) linguistic differences are clearly of secondary importance. Instead of political autonomy serving as an instrument for preserving a minority culture, the affirmation or construction of cultural difference is often instrumental for claims to self-government. Serbs and Croats have separated their common language into two in order to reinforce the ethnic demarcation line. For Catalans and Québecois preserving the language boundary is necessary to assert their special powers as distinct societies within asymmetric federations.

I propose then that for national minorities political autonomy has not only historical and instrumental value, but also intrinsic value. This alone is obviously no sufficient justification from an impartial perspective. Yet if self-government is also a fundamental right then the burden of argument should be shifted towards those who are accused of denying it. Instead of asking what special reason a minority has for demanding autonomy, we should ask what reasons liberal democracies have for rejecting such claims.[16] One relevant objection is that the autonomous government of the minority is likely to be less liberal and democratic than that of the central state authorities, a second one is that granting autonomy may jeopardize the territorial integrity of the state. There are cases where both objections will be irrelevant, for instance if a minority territory has been colonized or recently annexed. In other instances, they suffice to reject the claim. A religious minority whose declared goal is to establish a theocratic regime, may, for example, be denied political autonomy because this would violate a liberal commitment to secular political authority.[17] This first objection can, however, not be raised against national minority demands for exercising, within the constraints of a liberal constitution, devolved powers that have until now

[14] See Kymlicka (1989: 167).

[15] Current efforts to create written varieties of Romani languages in Europe illustrate this dilemma. See www-gewi.kfunigranz.ac.at/romani/.

[16] "[T]he burden of proof surely rests on those who would deny national minorities the same powers of nation-building as those which the national majority take for granted" (Kymlicka 2001a: 29).

[17] The commitment to secularism does, however, not rule out the formation of autonomous jurisdictions for religious minorities, as long as local authorities are willing to respect liberal constitutional principles. In countries where religious conflicts have been pervasive, there may be good reasons for forming territorial units that turn a religious minority into a regional majority. In India the state of Jammu and Kashmir, which is the only province with a Muslim majority, enjoys special status under Article 370 of the Constitution. However, this autonomy has been greatly eroded through centralization policies and more recently through military responses to violent secession campaigns (Hewitt 1999:54).

been concentrated in a central government. As I will explain later, cultural autonomy for national minorities creates incentives for illiberal government. This is an argument for preferring certain institutional arrangements to others. It does not show that national minority self-government is incompatible with liberal democracy. The record of Québecois, Catalan or Scottish autonomy also does not support such accusations.

The second objection is prima facie more plausible. Territorial integrity is a value that liberal democracies are entitled to defend against secessionist movements whose claims are not justified by oppression. Stable democracy needs stable borders. A permissive right to unilateral secession would undermine the integrity of the democratic process by creating veto and exit options against legitimate majority decisions.[18] It would also erode solidarity among citizens that is nourished by long-term expectations and intergenerational continuity of membership. Some liberal nationalists have argued that homogenous nation-states are more conducive to liberal democracy.[19] Even if this were true, the desire for such homogeneity is no sufficient justification for partitioning heterogeneous and multinational democracies. Once the goal of increasing homogeneity has been accepted as a guideline for redrawing borders between states, then the same principle will be invoked to push out minorities before partition and to assimilate or exclude them from full citizenship in the newly formed states. These are strong objections against a right of national self-determination that includes the power of national minorities to determine their own international status and borders. Do they also apply to demands for political autonomy?

From a liberal perspective, territorial integrity is a functional precondition for democracy that cannot be trumped by the mere desire of a minority to have its own state or by presumed advantages of homogenous societies. It is, however, not a special privilege of existing states or dominant national majorities. In a conservative interpretation of international law territorial integrity is a right of the present members of the international community against future contenders for membership. This view finds no support in liberal conceptions of justice. It is a doctrine of 'might makes right' that sanctifies ex post the violent oppression of minorities, which has accompanied the formation of nearly all modern nation-states. The implication is that central governments or national majorities cannot be regarded as exclusive holders of a right to territorial integrity. This right can therefore not be invoked against minority demands for autonomy that divide internal sovereignty without jeopardizing the stability of international borders. I will discuss below concerns that territorial forms of autonomy are more likely to lead to secession than cultural ones. These are, once again, valid considerations about institutional choices and their contextual consequences. Given the historical record of long-term territorial stability in nearly all multinational democracies, such concerns do not amount to a consequentialist objection to minority self-government.

I conclude then that national minority claims for political autonomy do not per se pose a threat to liberal democracy and territorial integrity, but merely challenge unitary nationalist conceptions of the polity that cannot be supported by liberal reasons.

3. Models of Territorial and Cultural Autonomy

[18] See Buchanan (1991, 1997). For a contrary view see Beran (1984, 1998).
[19] See Mill (1972: 392), Miller (1995).

Political autonomy for national minorities can be realized in two different ways: either by subdividing the territory in such ways that state-wide minorities are turned into regional majorities, or by subdividing the population into mutually exclusive national communities and establishing these as corporations of public law.[20] The territorial or corporate units are then endowed with separate institutions of government and powers of political autonomy. These powers are stronger than those of merely decentralized government, which have been delegated and can be unilaterally retracted by central authorities.[21]

(1) Federal arrangements

Territorial autonomy (from now on TA) is a basic feature of federal polities whose provinces, regions or constitutive states have their own governments and are represented in federal institutions through a second chamber of parliament or have reserved seats in federal executive or judicial institution. In multinational federations the borders of one or several constitutive units reflect the cleavage between national communities. In these countries the general constitutional architecture of the entire polity becomes an instrument for accommodating the demands of minorities for political autonomy.[22] This attempt is fraught with the difficult problem of federal asymmetry, which is particularly acute in Canada or Spain. The idea of a federal contract between equal partners supports the claim that all constitutive units should have the same status and powers. National minorities, however, strive for special powers that compensate for their disadvantage and reflect their status as a founding nation.

This problem suggests another solution that does not require symmetry and for which Daniel Elazar has coined the term federacy: "[A] larger power and a smaller polity are linked asymmetrically in a federal relationship whereby the latter has greater autonomy than other segments of the former and, in return, has a smaller role in the governance of the larger power" (Elazar 1987: 7). Federacy arrangements avoid the difficulty of fitting special demands for self-government into the constitutional architecture of the larger polity. They can be tailored to special circumstances and may be adopted by both unitary and federal states. Elazar's definition of federacies could in principle also apply to non-territorial arrangements, but the concept is meant to cover various kinds of special territorial status such as for Indian tribal reservations in the US and Canada or for island polities like the US Commonwealths of Puerto Rico and the Northern Marianas, the British Isle of Man and Channel Islands, the Finnish Åland islands, and the Portuguese islands of Madeira and the Azores (ibid.: 55-58).

Federacies have the comparative advantage of allowing for more flexibility, but this comes at the price of a lower level of integration. The minority with special status does not only enjoy special autonomy, but loses also some rights of representation within the larger state. For example, Puerto Rico is exempted from paying federal taxes but its citizens are largely deprived of federal representation.[23] It may still be tempting to regard federacies as possible solutions for a

[20] Some authors distinguish therefore between territorial and corporate federalism (Lijphart 1984: 183-5), Friedrich 1968: 124).
[21] See Elazar (1987: 34-5) who distinguishes decentralized from non-centralized federal government. As I have pointed out above, political autonomy implies final decision-making authority with regard to core tasks of modern state government and the possibility to initiate modifications in the division of powers.
[22] See Kymlicka (2001a, chapter 5).
[23] Puerto Ricans living on their island have no voting rights in US presidential elections and in Congress, where they are represented by a non-voting resident commissioner. See Lapidoth (1996: 130-43).

protracted struggle within a multinational federation that paralyses the democratic process. However, as the Puerto Rican case illustrates, a federacy status can be a rather unstable equilibrium that leaves the alternative options of independence or full federal integration on the political agenda. "Upgrading" a federacy towards federation is easier than "downgrading" the status of a constitutive unit of a federation to that of a more loosely associated "commonwealth". Federacies are also usually the product of particular historical circumstances, often of colonial relations. It would be quite odd to transform a province that is presently enjoying full federal status into a federacy. In most multinational federations or states involved in a process of federalization (such as the UK or Spain) there seems to be no feasible or desirable alternative to muddling through by searching for a balance between federal standards of equality and the recognition of asymmetry.[24]

Consociational democracies represent a third type of response to deep cleavages in society.[25] In these models the emphasis is on power-*sharing* at the level of central government institutions between political elites representing different segments of society rather than on devolution, which creates a vertical *division* of powers between state authorities and autonomous communities. While federacies emphasize autonomy more than integration, consociations emphasize integration more than autonomy. Consociational democracy has worked well as a transitional arrangement in the Netherlands or Austria where the major divide was between religious or political-ideological camps. It has also been a feature of Swiss democracy where linguistic communities are not constituted as distinct nations. However, the consociational formula is no adequate response to nationality conflicts. This is illustrated by the case of Belgium, which has moved from consociational democracy to multinational federation. The reason is that for national groups political autonomy is the primary goal. The integration of minority political elites into central government institutions is important for them in order to defend and expand their autonomous powers and it is important for the cohesion of the larger polity. But national minorities are generally not willing to trade off their autonomy for stronger involvement in central government. Yet the success of consociational democracy depends on just this kind of trade-off. The goal of consociational arrangements is ultimately to overcome the desire for political autonomy among the different segments of society, not to affirm it as a permanent feature of a federal constitution.

Whereas federation and federacy are predominantly conceived as territorial arrangements, the organized segments of consociational democracy are generally non-territorial. The question is then whether non-territorial solutions could also respond to national minority demands for political autonomy. This is what cultural autonomy approaches (from now on CA) hope to achieve: the nation enjoys collective political powers as a corporation of persons regardless of their place of residence.

(2) Models of cultural autonomy

[24] The Spanish constitution of 1978 provides an interesting and rather successful model for this. Instead of defining a priori the powers of all autonomous regions, it allowed the provincial governments to negotiate different extents of autonomy. This flexible form of "self-determination" of the extent of self-government permitted the national minority provinces of Catalonia, the Basque Country and Galicia to achieve a higher degree of autonomy than other regions. The drawback of this model is that it is tied to a process of devolution that has not yet transformed Spain into a formal federation with a federal chamber of parliament (Agranoff 1994, Requejo 2001). Once further steps towards full federation are taken, the problems of asymmetry will arise with new urgency.

[25] See Lijphart (1977).

A first question about CA is how to determine individual membership. There are three possible ways of doing this: the state authorities may classify citizens into national categories according to some "objective" criterion such as descent or mother tongue, the representatives of the community in question may determine who is a member, or individuals themselves may be free to decide with which community they affiliate themselves. The latter principle, which has been called 'personal autonomy', is obviously preferable for both pragmatic and moral reasons[26] and has been endorsed by most proposals and implemented models of CA.

Like territorial solutions to national conflict, CA can be either modeled as a federal principle for the larger polity or as a special solution for particular minorities. I know of no historical case in which a whole state has actually been organized as a non-territorial federation of nations. The most ambitious and systematic argument for CA was made by the Austrian socialists Karl Renner (1902, 1918) and Otto Bauer (1907) who proposed a transformation of the late Habsburg monarchy into such a federation of nations. The core features of this model are: (1) All citizens have to declare their affiliation to one of the state's constitutive nations for a nationality register.[27] (2) Each nation elects a separate national council and has its own national government. These institutions have the power to legislate in matters of cultural policy and education and to tax their co-nationals in order to finance separate schools, universities, theatres and museums. (3) The nationality register serves also as a data base for creating new municipalities with a maximum number of mononational units and a residual number of binational ones. In the binational units public institutions are bilingual and the regional councils of each nation must agree on policy decisions concerning both communities. In a mononational unit the language of the majority is the only language of public institutions, but the linguistic minority has the right to legal aid from its national council. (4) Alongside the institutions of national government there are parallel territorial institutions with their own distinct powers at the level of provinces and of the central state. The separation of powers between state and nations leaves for the representatives of the latter only a consultative role with the prime minister or a limited number of seats in a second chamber of parliament.

Historical examples of CA[28] include the Moravian compromise of 1905, and shorter-lived schemes in Bukovina (1910) and Galicia (1914), as well as post World War I legislation in the Ukraine and the Baltic States. In the period before and after WWI the Jewish socialist Bund propagated CA as an alternative to Zionism. Among contemporary arrangements that include elements of CA we can mention the 1993 re-introduction of the Estonian law of 1925, the Hungarian ethnic minority law of the same year and the June 1996 National-Cultural Autonomy Act in the Russian Federation.[29] Certain features of CA can also be seen in the Maori electoral option in New Zealand[30] and in the regime of ethnic proportionality in South Tyrol[31]. At first sight, the 1993 Belgian constitution appears to come closest to Renner's original idea. The Belgian polity is subdivided into three territorial regions (Flanders, Wallonia and Brussels) and

[26] See Lijphart (1995).
[27] Those who fail to do so will nevertheless be assigned to one of the registered nationalities (see Bauer 1907: 308).
[28] For comparative overviews see Coakley (1994), Pierré-Caps (1995), Plasseraud (2000).
[29] On the Hungarian minority law see Pierré-Caps (1995: 278-80), Krizsán (2000), on the Russian Act see Codagnone and Filippov (2000).
[30] See Coakley (1994: 309).
[31] See Lapidoth (1996: 100-112).

into three language communities (Flemish, French and German).[32] These two federal structures overlap without being congruent. Brussels is a region with equal official status for both Flemish and French, whereas the small German-speaking minority is recognized as a cultural community, but not as a constitutive region of the federation. In the Belgian case the dominant solution is, however, clearly a territorial one with certain features of CA being added as a supplementary approach only in the Brussels region.[33] I will briefly examine the Belgian and South Tyrolean models in section 7 of this paper.

My discussion so far should already have made it clear that the choice between TA and CA is not one between mutually exclusive alternatives. In fact, every model of TA that responds to nationality conflicts will include certain elements of CA. Multinational federations create stable regional majorities for national minorities. Their internal division of territory refers therefore to a prior division of the population along national-cultural lines. If the territory were divided differently without regard for national minorities or with the intention of dividing them, they would become purely regional federations like the US, Germany, Austria, Australia or Brazil.[34] Just as there are purely territorial federations, there are also pure forms of cultural autonomy. As I have explained above, the cultural rights of Art. 27 ICCPR create a space of associational autonomy for cultural communities within civil society. These rights do, however, not amount to political autonomy. Every model of CA that creates substantive political autonomy for national minorities will therefore have a territorial dimension. The territorial element of CA is explicit in Renner's scheme where the borders of local self-government are designed to create a maximum number of nationally homogeneous units. More generally, where non-territorial minorities have sufficient concentration at the local level the powers of municipal self-government will add to those they enjoy under CA. And where dispersed minorities cannot cross this threshold CA will mostly boil down to public recognition rights.

The fact that the two approaches cannot be neatly separated from each other does not mean that we cannot choose between them or that the choice is not an important one. As I hope to show in the rest of this paper, we can evaluate TA and CA as alternative approaches both at the level of liberal and democratic principles and as solutions in particular contexts. This exercise may lead to one of three possible conclusions. We may find that TA should be generally preferred. In this case we would advocate a right to TA where there is a legitimate demand for it and where it is feasible. This will still allow for considering CA as a transitional solution or as a special status for non-territorial minorities. Or we may conclude that CA should generally be preferred. This implies that national minorities should be offered CA instead of TA even in cases where they are sufficiently concentrated to form a regional majority in a viable autonomous territorial unit. Or, finally, we may come to think that the preference between the two arrangements is entirely contextual and does not involve any matters of principle. If this is our view, then we will probably agree that TA is an appropriate solution in Western states where it has already been implemented but not in Central and Eastern Europe where governments are more than reluctant to endorse reforms along these lines.

[32] See Peeters (1994), Fitzmaurice (1999), Jacobs (2000), Bousetta (2000).
[33] Belgium is "not really a combination of territorial and non-territorial devolution… since the language communities have defined and immovable boundaries." (Keating 2001: 35).
[34] See Kymlicka (1995: 28-9).

When political philosophers evaluate political institutions they often start from some fundamental principle or value, and then ask whether the institution would be endorsed by the principle or would help to realize the value. I tend to think, however, that it is often misleading to assess complex constitutional arrangements such as territorial and cultural autonomy in this way. Before we can make meaningful normative judgments we first need to know how these institutions tend to operate in modern societies and what their impact on individuals and social relations might be. And assessing the consequences of institutional choices will involve partially competing values, such as individual autonomy, social justice and democratic self-government. I will therefore organize the following discussion of general properties of CA and TA by examining how both arrangements are likely to affect (1) relations between different autonomous groups in a polity, (2) relations within groups between a core and a fringe of dissenters and individuals with ambiguous membership, and (3) relations between autonomous groups and the larger polity. In my view the controversy is not so much about the right balance of values for assessing the two arrangements but about their presumed impacts on these three types of relations. Illiberal nationalist and liberal democratic values can be invoked for both sides in this debate. Merely asserting the latter against the former as the relevant yardstick will not help us determine which arrangement is to be preferred.

4. Intergroup Relations

When examining relations between groups there are three types of questions to be asked. We can, first, look at them *separately* and compare how they are treated under some proposed scheme. Next, we can consider how this arrangement reflects the *relative* positions of groups within a larger society and responds to changes in their size and composition. Finally, we can study how it affects the *interaction* between groups and their direct impact on each other through the inclusion or exclusion of members of other groups.

(1) Equal treatment of groups

The first question starts from a list of possible candidate groups for political autonomy and examines whether under one of the two arrangements certain groups would be excluded or treated unequally without proper justification. TA is prima facie more selective because it applies only to geographically concentrated groups in a contiguous territory. These appear to be historically contingent and morally arbitrary factors for determining which groups ought to be granted autonomy. A major virtue of CA seems then that it can apply to dispersed as well as to concentrated groups. CA permits also to blur the distinction between ethnic and national groups that I have suggested above. Ethnic and religious minorities that share an imagined common descent but have no claim to a specific territory or comprehensive self-government can be organized as political units on a personal basis alongside national minorities.

Yet if this broader applicability amounts to similar treatment of dissimilar claims it is not necessarily an argument in favour of CA. Groups whose internal cohesion is based on a myth of common descent or a set of religious beliefs may not need a territorial basis for reproducing themselves over generations. National minorities, however, whose markers of collective identity are a regional language or a tradition of distinct legal and political institutions will be often unable to maintain these without TA. It is rather obvious that, for example, the difference between Scottish and English legal traditions can only be institutionalized on a territorial basis. The same argument applies more indirectly to regional minority languages. Comparative research

has shown that territorial establishment is frequently the only means to stop a process of language extinction.[35] Québecois nationalists were rightly suspicious of Pierre Trudeau's plans for Canadian bilingualism from coast to coast and opted instead for establishing French as the dominant language in Quebec[36] (abandoning thereby Francophone minorities in other provinces).[37]

Territorial concentration is not only often a precondition for preserving minority languages, but contributes also directly to the emergence of a collective desire for self-government among linguistic minorities. A minority language will acquire different functions in contexts where its speakers are territorially dispersed or concentrated. In the former case, it is likely to be reduced to the role of a 'private language' for communicating within the family or over long distances with friends and relatives elsewhere. The minority language may have a certain relevance in public communications, but it will mainly serve as a medium used in translations that facilitate communication with the institutions of mainstream society. This makes it implausible that the speakers of this language would come to think of themselves as a distinct political community that ought be self-governing within the larger polity. In contrast, a minority language that is spoken by the great majority of a regional population will serve as medium for communication for a much larger set of social roles.[38] In a democratic regime the personnel of local political authorities are more likely to be drawn from the local population than from elsewhere in the country where a different language is spoken. A regional language will therefore also serve as a medium for communication within public institutions and between the citizens and public administrations even if it is not formally established as the language of government business. There is a much higher probability that the demand for such establishment and for more comprehensive powers of self-government will emerge in these contexts compared to those of dispersed identity groups. These arguments do not rule out that territorially dispersed groups may have a capacity and a claim to exercise political autonomy, but they show that territorial concentration is not an arbitrary criterion.

So far we have only considered whether CA and TA would treat different *minorities* unequally. The more important question is, however, whether both schemes would apply to minorities as well as to dominant *majorities*. Here the answer is that in most historical manifestations CA has been used as a special status for minorities only, while the institutions of territorial political authority have operated in majority languages and supported majority traditions. Renner's model is exceptional because it makes CA a principle that applies equally to all national communities. However, even if the majority and the minority both have their separate public schools and universities this still does not resolve the question which language will be spoken in the army or which group will have better access to the civil service. In a society where weak national minorities face a dominant majority CA for all communities will secure for the minority merely a separate public space for reproducing its culture, while leaving the majority in control of territorial political power.

[35] See Laponce (1987), Laitin (2001).
[36] See MacIver (1999: 246-7).
[37] This does not answer the question why minority languages should be preserved in the first place. However, if my argument in the previous section is accepted, policies of language maintenance may be legitimate as instruments for preserving the capacity of self-government.
[38] See Laponce (1987: 3-4, 34).

CA will also reproduce inequalities of resources between national groups. Each community has to finance its own cultural institutions by taxing its own members. Economically weak groups will then be unable to afford a good education system. For them CA may be insufficient to stop a trend of assimilation into an economically prosperous majority.[39] But could not the same objection be raised against TA as well? Political self-government of all kinds creates conditions for redistribution within the autonomous group while inhibiting redistribution across group boundaries. In multinational states with large regional disparities, TA will be used by wealthier communities to block redistribution within the larger polity. The Basque, Catalan, Scottish, Flemish and South Tyrolian[40] cases illustrate this point. However, justice in regional redistribution cannot presuppose that central state authorities have exclusive control over all natural resources and all public income from taxation. National minorities have little reason to trust that centralized redistribution will be fair and depriving autonomous communities of all fiscal powers would turn self-government into a rather symbolic exercise. While it seems to me extremely difficult to specify a substantive criterion for redistributive justice across self-governing communities within a polity, we can say that much: Any redistributive scheme should combine a dimension of social citizenship at the level of the larger polity with a stake of each autonomous community in its own economic and social development. Social citizenship should go beyond covering basic needs[41] and satisfy some interpretation of Rawls' difference principle.[42] The procedural requirement for achieving a satisfactory balance between these competing claims is a representation of autonomous communities in central government so that they are not only responsible for the welfare of their own population but participate in negotiating federal schemes of redistribution. TA within a multinational federation satisfies this condition (whereas territorial federacy generally does not). One possible outcome with regard to public education could be that provinces are autonomous with regard to school curricula but that all public schools are financed from federal taxes. CA, however, creates a division of powers that leaves central state authorities fully in charge of redistributive policies while forcing all communities to rely on their own resources for their cultural agenda.[43]

(2) Relative size and representation of groups

One apparently strong argument in favour of CA is that it is insensitive towards the effects of territorial mobility within the country. Because the autonomous jurisdiction is a corporation of persons rather than a territorial entity, individual members of an autonomous group do not lose their cultural protection when they move from an area where they had formed a local majority to one where they are a small minority. They will cast their votes for their group's national

[39] Otto Bauer acknowledged this objection to cultural autonomy. In the Czech lands of the Habsburg monarchy CA would have given a greater advantage to the wealthier German nation. Bauer's reply was that this was not the fault of cultural autonomy but of social inequality in a capitalist society (Bauer 1907: 318).

[40] For example, under the current autonomy statute, the wealthy province of South Tyrol retrieves 90% of the taxes collected in the province, a privilege that is the source of much envy in other Italian regions (Magliana 2000: 52, 60).

[41] A basic minimum standard may, however, be adequate for redistributive justice across the borders of independent states.

[42] The difference principle requires that "social and economic inequalities are to be arranged so that they are … to the greatest benefit of the least advantaged" (Rawls 1972: 83).

[43] In Belgium the language communities have powers in 'personal matters', which include not only cultural and educational policies, but also health and welfare programmes. This creates primarily regional disparities in social citizenship between Flanders and Wallonie that are similar to those in other federations. In Brussels, where the language communities have non-territorial jurisdiction, there is, however, a concern about different social standards for the two language groups within the region.

assembly as before and they will be able to draw on the support of their community's government when trying to set up local schools and cultural institutions in their new municipalities. Conversely, a regional cultural majority does not lose its autonomous powers when they are outnumbered by immigrants from other groups within the state, because these immigrants do not enter their cultural jurisdiction. Finally, because the boundaries of jurisdictions are self-defined through individual declaration of membership, CA gives central state authorities no means to reduce the representation and powers of a minority through gerrymandering its constituency borders. Changes in the relative size of groups depend only on their internal development: birth and death rates, intermarriages and assimilation into other groups. It seems that, from a liberal perspective, the size and representation of jurisdictions should reflect these demographic and cultural developments, but should be insensitive towards geographic mobility and border revisions.

TA does not merely give these latter factors a decisive impact, it also makes the loss of autonomy sudden and complete. Members and representatives of demographically shrinking minorities have time to develop adaptation strategies by either resisting the change or seeking individual exit solutions through assimilation. But where autonomy is based on regional majorities, being outnumbered by immigration or by merger into a larger jurisdiction is a 'tipping phenomenon'. Once the group falls below the 50% threshold it will lose most of the political powers it had enjoyed so far.

This objection is, however, ultimately not convincing. Gerrymandering of jurisdictions that deprives a national minority of its regional majority is excluded by the very definition of multinational federalism. If a regime has that kind of power then it is not a federation in which the various national groups enjoy constitutive status.[44] In a democratic federation there must be strong constitutional guarantees that prevent internal border changes against the will of the affected provinces.[45]

Preventing changes through immigration is a more difficult matter because free internal movement within a state territory is a basic human right and a major benefit of federal citizenship. Yet even this right is not absolute and may have to be restricted in specific cases in order to preserve the capacity of a group to exercise self-government within its own territory. I believe that indigenous minorities can often claim such exemptions.[46] For other national minorities the historical record shows that, once they enjoy comprehensive TA, they no longer need illiberal restrictions on free movement in order to stabilize their regional majorities. Let me illustrate this point with the South Tyrolean example. After 1948 South Tyrol enjoyed little autonomy because most powers were devolved to the larger region of Trentino that has an overall Italian majority.[47] Immigration into the province was promoted through subsidized public housing programmes. This increased the share of Italian speakers in the originally almost

[44] The Soviet Union was a pseudo-federation of this sort that permitted central authorities not just to revise internal borders by upgrading or downgrading territorial units but also to organize mass deportations of ethnic and national minorities. See Duncan (1999: 65-71).

[45] Art. 29 of the German Basic Law provides for a complicated procedure for changing the borders between two Länder that requires separate majorities in a referendum in the territory that is to be shifted and in the affected Länder in their present borders, except if a two-thirds majority in one Land is in favour of the change and no two-thirds majority in the other Land opposes it.

[46] See Bauböck (2000: 386).

[47] See Lapidoth (1996: 102-3).

exclusively German speaking population to 34% in 1971. In 1972 many political powers, including responsibility for public housing, were transferred from the region to the province. Public housing has since been allocated proportionally to the three language groups (German, Italian and Ladin); labour exchange is supervised by the province and preference is given to citizens resident in the province; a bilingualism requirement has been introduced for employment in the civil service.[48] These policies led to a gradual reduction and stabilization of the Italian population at a level of 27% without any overt restrictions of free movement within Italy or the European Union.

The lesson is that TA gives national minorities sufficient powers to secure their regional majority. The mere establishment of a minority language as a regionally dominant one will deter much immigration from other parts of the country (without being per se any more illiberal than a similar establishment of a majority language in the rest of the state).[49] Had German-speakers in South Tyrol been offered CA instead of TA, they would have had no means of reducing immigration levels into the province. While apparently protecting minorities from the threat of being outnumbered, CA in fact leaves them fully exposed to the cultural assimilation pressures that result from territorial mobility and without any means to prevent the tipping of regional majorities within territorial jurisdictions.

(3) Inclusion and exclusion of other groups

As a third aspect of intergroup relations we must consider how communities impact on each other through inclusion and exclusion. There is, once again, a strong prima facie case for CA and against TA. Personal autonomy in determining membership in a national corporation guarantees that nobody is coercively included into the jurisdiction of the autonomous community. TA in liberal democracies will, however, always create internal minorities (some of them members of national majorities) who do not belong to the regionally dominant group and may suffer from discrimination under its regime. This is so because territorial and cultural boundaries rarely coincide and contemporary liberalism does not support the means needed for making them more congruent, be they population transfers, coercive assimilation or an endless subdivision of the territory with ever smaller units and ever more enclaves. Even if there were at one point in time nationally homogenous territories free movement and intermarriage across boundaries would quickly undermine such congruity. The status of internal minorities is therefore indeed a test case for TA while the question does not even arise under CA arrangements.

Once we abandon the idea that liberal politics should attempt to create nationally homogeneous jurisdictions, the real question is, however, no longer whether a certain arrangement creates internal minorities, but how these minorities will be treated. In a territorial federation, every member of the polity is both a federal citizen and a citizen of the province where he or she lives. The devolution of powers to the representatives of a national minority within the region where they form a majority is tied to a requirement that within their jurisdiction they will treat internal minorities as equal citizens of 'their' province. If a provincial government violates this condition

[48] See Lapidoth (1996: 106). There is a similar requirement for civil servants employed by the 19 municipalities of the Brussels region. In Brussels this has strengthened the position of the Flemish minority, while in South Tyrol it has opened the civil service for the regional German-speaking majority. In both cases bilingualism exams have worked to the advantage of the historically subordinate group that is more likely to be bilingual than the historically dominant one.

[49] See Carens (1994).

internal minorities can use their rights as federal citizens to claim protection by federal administrations or courts. Apart from making provincial governments accountable to federal authorities for their treatment of internal minorities, democratic federations create also incentives for respecting minority rights. For example, a national minority government in a province may be interested in securing similar rights for its own external minorities in other parts of the country or they may want to preempt a secessionist challenge by alienated internal minorities who could demand that their regions be joined to a neighbouring province.

For liberal critics the record of minority nationalism in western democracies on this question raises a puzzle. There are two criteria for distinguishing moderate from radical nationalists. First, moderates will tend to accept political autonomy solutions while radicals campaign for secession; second, moderates will embrace civic nationalism that respects equal citizenship and minority rights within the national territory while radicals will endorse ethnic criteria in order to exclude internal minorities. The puzzle is that in Quebec or Scotland secessionist nationalism has been generally civic rather than ethnic. The most plausible explanation is that in the institutional environment of a liberal democratic federation TA offers strong incentives for nationalist leaderships to strengthen their political home base by attempting to include internal minorities in their vision of the nation. This is a rational strategy even for secessionists because it emphasizes the unity of the autonomous territory and of its population and weakens the objection that an independent nation-state would be oppressive or would trigger a series of further secessions. There are certainly counter-examples, such as Protestant unionism in Northern Ireland or Basque nationalism in Spain,[50] where such incentives appear to have failed so far. These cases can often be traced to a history of violence and systematic discrimination that undermines trust in democratic institutions.

Sceptics will point out that even if internal minorities are treated as equal citizens they are still treated unequally unless they enjoy the same comprehensive autonomy as the regional majority. Wouldn't a consistent application of TA in a society where national and geographic borders do not coincide require that internal minorities can also enjoy territorial autonomy within a province? If Québecois conceive of Canada as a binational territorial federation of Anglophones and Francophones, can English speakers in Quebec claim that the same principle should also apply within their province? TA would then generate ever more levels of autonomy with a resulting loss of governability. Yet such fears are greatly exaggerated. While a right to unilateral secession could indeed generate a chain reaction of border revisions, the federal architecture of common citizenship inhibits a similar proliferation of autonomy claims. Anglophones in Quebec have little reason to construct themselves as a separate nation inside the national minority. As long as Quebec remains a part of Canada they are not external minorities.[51] Their aspirations to be recognized as members of a self-governing political community can be satisfied both at the level of the Canadian federation, where they are part of a dominant majority, and at the provincial level, where they are regarded as a minority within the Québecois nation. Claims to further devolution may, however, be plausible for dual minorities (at federal and provincial levels) with a

[50] The two cases are of course quite different. While Basques suffered from oppression under the Franco regime, 'Protestant ascendancy' in Northern Ireland was maintained by systematic discrimination of the Catholic minority in the province.

[51] This would change if Quebec became independent. Demands for Anglophone autonomy within Quebec would then become rather persuasive.

strong aspiration for territorial self-government. TA for indigenous peoples in Canada is therefore rightly regarded as an additional layer of self-government.[52]

While it is true that non-territorial jurisdictions formed on the basis of personal autonomy, by definition, have no internal minorities belonging to other national communities, CA arrangements still have to face the problem of external protection for dispersed members. Territorial concentration matters also under CA schemes. In order to open a school or to have public services provided in their own languages, local minorities must pass certain numerical thresholds. More generally, the spatial structuration of modern civil society and modern state administrations inevitably diminishes the opportunities of isolated members of minorities to live in a cultural environment where their languages and traditions are dominant. CA enables them to be fully represented in the non-territorial institutions of their own group and provides them with access to services such as public media or a university system in their language. However, the main benefits of CA for dispersed minorities depend on the power of their autonomous institutions to protect them against local majorities in their place of residence.

Groups who would be classified as internal minorities under TA are often the same as those regarded as dispersed external minorities under CA. Francophone communities in Flanders are internal minorities in the region and at the same time external minorities of the French language community.[53] Yet there is an important difference between the sources of protection for them available under the two arrangements. TA assigns responsibility for protection to representatives of the regional majority who have to accept that the minority is internal not only in a geographic sense, but also because they are equal citizens of the autonomous polity. In CA, however, the local national majority has its own separate cultural institutions and need not accommodate the minority, let alone treat them as equals. Responsibility for guaranteeing the minority's general citizenship rights will then rest with the state's institutions of territorial jurisdiction, while responsibility for their local cultural protection lies entirely with institutions of their national community that have no roots in the area where they live.

We can illustrate this difference by drawing an analogy with the rights of international migrants. These can be seen as internal rights within the receiving society that derive from their residential membership in the society and from the expectation that they will eventually join the political community as full citizens. Alternatively, migrants can be regarded as citizens of their countries of origin whose rights in the receiving society consist in diplomatic protection by these foreign governments and in universal human rights guaranteed under international law.[54] For migrants these internal and external sources of rights are not mutually exclusive, but can be combined. A liberal conception of democracy will, however, give priority to internal protection and will incorporate human rights into domestic law.

A general preference for TA rests on the same kind of argument. The danger of CA is that its reliance on external protection will reinforce the political alienation between communities. This

[52] See MacIver (1999: 260).

[53] Apart from the special case of Brussels, the Belgian federation adopts the territorial solution. Some municipalities within the Flanders and Walloon regions have semi-bilingual status, which means that in spite of official monolingualism in each region, citizens are allowed to address public authorities in the language of the other community. However, these internal minorities are not under the external jurisdiction and protection of their language community. See Jacobs and Swyngedouw (2001).

[54] See Goodin (1988) who suggests a cosmopolitan argument for preferring these external sources of protection.

can be seen by considering a simple combined model suggested by Uri Ra'anan (1991). Imagine a country consisting of two national communities with a clear territorial boundary between them but with internal (or external) minorities in each other's territory. Each community enjoys TA in one part of the country and CA in the other part. The main difficulty with this model (which is not pointed out by Ra'anan) is that the protection provided under CA would be experienced as interference into the internal affairs of a self-governing community by authorities based outside its territory. This will not only breed resentment against the interfering political agencies (which is a common reaction among territorial minorities in Canada or Spain), but it will strengthen the perception that internal minorities don't belong to the community in whose midst they live. The same fatal dynamic that undermined the League of Nations' system of Minority Treaties[55] with its strong reliance on external protections could be unleashed within a multinational polity by such a combination of TA and CA.[56]

This brings me to a final critique of CA's impact on intergroup relations. Avoiding the problem of internal minorities comes at the price of legitimating cultural exclusion. CA and TA both create incentives for the assimilation of non-members, which strengthens the community's numbers and power-base. However, CA makes it quite irrational to provide others with access to a language or cultural tradition that they do not want to fully adopt as their own. Somebody who learns a second or third language or studies a religious tradition without intention to convert is not likely to change his or her community affiliation at the next national census. Public schools run by culturally autonomous communities will be generally closed to members of other groups. Each community will try to create a monocultural environment in which its members learn *about* the other cultures rather than a multicultural one in which there is direct *exchange* between the different groups. This separation is not only to be regretted because it leaves each community culturally impoverished, but also because of its direct impact on individual opportunities. Members of a national minority who learn a majority language in a school environment without native speakers of that idiom will face more obstacles when they try to move to other parts of the country. And national majorities who do not need to learn minority languages in order to improve their opportunities will have no reason to make their separate schools attractive for minorities (e.g. by offering tuition in their mother tongues). Paradoxically, it is geographically dispersed minorities, whom CA is meant to emancipate, who may be worst off under CA. They will either have to attend majority schools where their cultural traditions are ignored or will have to rely on support from their larger national community to build their own educational institution. What they learn in these separate schools will be of little cultural value in their local environment.

5. Intragroup Relations

So far I have implicitly supposed that self-governing communities are homogeneous and neatly separated in terms of membership. This is an assumption we must drop when we look at the impact of CA and TA on relations within groups. All regimes of political autonomy require a criterion of membership and construct a collective identity shared by the self-governing group. Such identities can be thick or thin, ascriptive or elective. Local self-government in highly urbanized modern societies, for example, tends to create fairly thin and elective political

[55] See Hannum (1990: 51-6).

[56] This shows also that it is not sufficient to assert a priority for TA in a mixed system, which Ra'anan's model does. All depends on what role CA is given. The problem indeed only arises because it is a mixed system. If it were possible to fully deterritorialize national autonomy, then there would be no more external minorities either. This is, however, either a utopian idea or it amounts to downscaling CA to recognition rights.

identities. Whoever settles in the city will thereby become a member of the urban polity and the local identity acquired in this way refers to a common public space, in which a diversity of groups interact, rather than a single culture that unites them all. National identities are considerably thicker and membership is generally attributed at birth. Mere physical presence is not enough for acquiring a new affiliation. Admission through the gates of national communities requires (at least implicitly) individual commitment of those who arrive and collective consent among those whom they join.

Liberals who believe that legitimate political authority must protect individual freedom are rightly worried when self-governing political communities are defined in terms of thick and ascriptive identities. Yet there are considerable differences between ethnic and civic manifestations of nationalism. And whether a certain nationalism assumes more ethnic or more civic features is not predetermined by inherent features of certain cultural traditions, but is largely the result of circumstances. These may be difficult to change when they are profoundly shaped by historical trajectories or by a lack of resources for nation-building. A nation in exile, for example, can only define its membership in ascriptive ethnic terms. However, in more favourable contexts the orientation of nationalist ideologies will depend on institutional arrangements that can be designed or modified. A collective desire for self-government is a very persistent characteristic of national minorities that liberal democracies should accommodate rather than attempt to overcome. But political choices can influence the way in which such groups construct their identity, define their membership and exercise their autonomy.

A critical evaluation of the impact of CA and TA on intragroup relations will then focus on what Steven Lukes has called the 'deviant problem'. How will 'non-, ex-, trans- and anti-identifiers' fare under the two arrangements?[57] I will discuss three aspects of this problem: (1) individual exit options, (2) the demarcation of membership, and (3) internal cultural pluralism.

(1) Individual exit options

Democratic advocates of CA have been aware that granting political autonomy to culturally defined communities creates a considerable potential for internal repression. Their reply is that CA allows to minimize this danger through, on the one hand, limiting the devolved powers to those needed for cultural reproduction and, on the other hand, determining individual affiliation through the principle of 'personal autonomy', i.e. a free declaration of membership. I will discuss the former issue in the following section and shall focus on the latter here. Personal autonomy deprives both state and group authorities of control over exit as well as entry. It is in this aspect an even more radically individualistic principle than that of voluntary association in civil society, which entails a right of groups to limit admissions but not departures. Theoretically, personal autonomy permits declarations of membership by individuals who have no affiliation to the group whatsoever and it is therefore open to strategic abuse.[58] Given that CA needs some mechanism for calculating the size of groups, individual declarations are, however, certainly a

[57] See Lukes (1993: 25).

[58] In 1976 a special census was held in Austria in order to determine the membership of native linguistic minorities. The minorities rejected this policy because they saw it as an attempt to undermine their territorially defined rights to bilingual education and topographical inscriptions. While Slovenes in Carinthia generally boycotted the census, many native German speakers in other parts of the country (including the author of this paper) falsely stated to be speakers of minority languages. The effect was that more members of linguistic minorities appeared to live in Vienna than in their traditional areas of settlement. This outcome subverted the plans for reform.

better option than any alternative method (declaration by group representatives or 'objective' determination by state authorities). The possibility of false declarations does not diminish the crucial liberal feature of this model, which is that it permits free individual exit.

This appears to be a decisive advantage over TA. Of course, in a liberal territorial federation individuals who want to leave the jurisdiction of an autonomous community have exit options, too. However, the costs they bear for leaving are considerable: they have to move their households, give up their jobs and may lose many of their friends. By contrast, a person who declares a national affiliation that differs from the one for which she registered in the last census only has to bear what Brian Barry calls 'intrinsic and associative costs'. These costs are either an unavoidable consequence of her decision or they are costs that others must be free to impose on her in a liberal society.[59] She may, for example, have to forgo the benefits of cultural services provided by the community and she may be shunned by members of the group with whom she had previously been on good terms. If CA is available as an alternative solution for organizing the political autonomy of territorially concentrated groups, then the costs attached to emigration into another part of the country seem to be external ones, i.e. costs a liberal state both can and should reduce. If CA were introduced instead of TA individuals could opt out of the cultural jurisdiction of their community without moving into another territory. They would simply cease to pay taxes to their previous community and would no longer receive its public services.

The exit costs associated with emigration from a territorial jurisdiction can, however, not always be regarded as external and avoidable ones. Liberal states need not permit their citizens to expatriate themselves as long as they continue to reside in the national territory.[60] Even if they are allowed to renounce their citizenship without leaving the country they will, as foreign nationals, remain subject to the laws of the land. They will lose political representation but will be unable to avoid the obligation to pay taxes. If emigration abroad is an acceptable or even necessary price for changing one's citizenship and exiting from its obligations then it is not obvious that the considerably lower costs of leaving an autonomous territorial jurisdiction by moving from one part of the country to another (while retaining one's citizenship) should count as a strong argument against TA.

(2) Demarcation of boundaries

While personal autonomy makes it easy to leave a non-territorial jurisdiction, the need to state one's national identity has some unappealing consequences. What is voluntary about this principle is the freedom to choose one among a given list of affiliations, but the requirement of individual declaration and the exclusion of alternative choices are coercive and illiberal features of CA.

Personal declarations are used not merely for statistical purposes but to determine membership in national communities that enjoy political autonomy and are regarded as constitutive within the wider polity. In consociational democracies, where emphasis is on power-sharing rather than on self-government of autonomous segments, electoral systems of proportional representation provide a simple mechanism for the self-definition of communities.[61] The number of seats for

[59] See Barry (2001: 150).
[60] See Bauböck (1994: 129-37) for arguments supporting constraints on expatriation within the territory.
[61] See Lijphart (1995: 281-2).

political parties in the legislature indicates the relative size of the segments they represent. Electoral affiliations can then also serve to determine the representation of these segments in coalition governments and in the allocation of public resources and positions in the civil service. However, once the segments exercise political powers of self-government the indirect demarcation of boundaries through electoral preferences is no longer sufficient. Individual affiliations must then be registered.

This means, first, that the list of optional affiliations must be limited and rather short. Immigrants and others who may want to declare their national affiliation as "none of the above" will either not be counted at all or will be added to a group for which they have not opted. Second, and more importantly, multiple identities cannot be represented. Political autonomy and federal representation of constitutive communities requires that their jurisdictions do not overlap. If personal autonomy were only intended as a survey of national identities, then persons of mixed descent and those who have half assimilated into a group different from the one into which they were born should be given the option to tick more than one box. However, the point of the exercise is the demarcation of boundaries of political community with exclusive rights and obligations for its members. If a person where counted twice in two different cultural jurisdictions she would pay taxes twice and her voice would be counted twice in elections for a federal chamber. Third, for the same reason the declaration cannot be anonymous in a fully developed scheme of CA. For purposes of allocating reserved seats in federal institutions or redistributing federal funds it would be sufficient to include a nationality question in an anonymous census in order to determine the relative size of national communities. But for exercising the powers associated with political autonomy, national authorities must be able to identify their citizens. A nationality register must therefore operate much like a taxpayer or voter roll or like the infamous internal passports in the Soviet Union that included a national identity statement.[62]

These features make national communities very dissimilar from voluntary associations in civil society. Liberty in civil society does not only imply my freedom to leave any association of which I am a member, it depends also on an open-ended list of associations that I might join or initiate, on my freedom to combine multiple memberships[63] and on my right to keep my affiliations anonymous. This does not yet settle the question whether TA is a more liberal regime. If we see the jurisdictions of TA as territorial associations the very same constraints apply: Citizens cannot join together freely to create a new province, they do not have multiple votes in several provinces and they are registered with territorial tax authorities. The argument in favour of TA is therefore not that such political boundaries are per se illiberal – they are not – but that TA allows national boundaries to become more like those of associations in civil society, while CA forces them to become more like those of territorial jurisdictions.

Under TA the jurisdiction is primarily territorial and is national only insofar as its boundaries are drawn to yield stable majorities for specific communities. For this purpose group affiliations do

[62] In South Tyrol the linguistic declaration used for allocating resources and positions according to ethnic proportionality was not anonymous until 1991. It is today, but persons to whom the three categories (German, Italian and Ladin) do not apply are nevertheless classified into one of them (information provided by the provincial government at: http://www.provinz.bz.it/english/ST_Themen99/Volkszaehlung_e.htm).

[63] Associations like football clubs or religious communities may refuse to have me as a member if I simultaneously belong to a competing association. This possible constraint on multiple membership is, however, not a general feature of civil society, but a power of the individual association that some may use while others don't.

not have to be individually registered. Nothing more is needed than a rough estimate of numerical relations between groups. If the question which group has a majority or plurality is disputed, an anonymous census (with an option to state multiple affiliations, no affiliation or other affiliations) will generally settle the issue. Even if TA is supplemented with minority rights to special representation within the province such a statistical basis will be sufficient to compute the relevant shares.

(3) Pluralistic public culture

TA permits then combining the territorial establishment of a particular community's language and history as a public culture with the freedom of individuals to associate with, or dissociate from, national communities as they please. Moreover, in a liberal federation it creates also incentives for transforming an established national culture by opening it for dissenting voices from inside and for the diversity of other cultural traditions in the territorial society. While CA tends to segregate civil society into different national compartments, TA makes it more likely that pluralism in civil society will also be reflected within established national cultures.

The public culture of a national community is shaped (and to a certain extent even constructed) by its cultural and political elites. Whether a national culture is open and pluralistic or closed and monolithic partly depends on which orientation will increase the elite's prestige and power. Under CA the primary source of this power is the numbers and commitment of affiliated individuals. Nationalist leaders are involved in a zero-sum game for individual declarations of allegiance. For national minority elites the main danger is that their members will assimilate into a dominant majority. Under such conditions they will rationally adopt defensive strategies and focus on preventing their members from defecting. Given that the personal autonomy principle excludes direct coercion or bribery, what they can do to achieve this goal is to inculcate in their members a belief that membership is beyond the reach of individual choice. This is the case when national membership is racialized and when it is moralized. Racialization involves the belief that the nation is a distinct community of descent from which exit is impossible; moralization supports the belief that exit is possible but is an act of treason. Although combining these two ideas is incoherent nationalist ideologies often do exactly this. Under CA national elites exercise control over cultural and educational institutions and this provides them with powerful instruments for instilling such beliefs among their community members. We have already seen that the mechanics of CA exclude trans- and non-identifiers from being counted and represented. We can now add that CA creates also incentives for minority leaderships to target ex- and anti-identifiers, i.e. the dissenters within their own community, and generates a vested interest of elites in the separation between groups. Cultural pluralism is unlikely to flourish under these conditions.

The incentive structure of TA is different only under conditions of territorial stability. If regional borders can be easily changed and regional majorities easily overturned, then minority nationalist elites will fortify the personal boundaries of their communities to mobilize resistance. When territorial self-government comes under threat national unity will be emphasized at the expense of pluralism. As long as TA is reasonably secure, however, community leaders can expand their power base by promoting a more open and inclusive national identity. As I have already explained above, TA does not merely constrain their attempts to oppress or assimilate minorities in their territories through guarantees of federal citizenship but may even induce them to 'internalize' such minorities through broadening their conception of national community. While

CA orients the efforts of nationalist leaders towards retaining the loyalty of their external minorities, TA pushes them towards gaining the loyalty of their internal minorities. The former strategy requires an ethnic conception of nationhood while the latter promotes a civic and pluralistic one.[64]

6. Group-state relations

I have suggested in section 2 above that territorial integrity is a functional requirement for liberal democratic states. We should then evaluate the two forms of political autonomy not only by considering how they will affect relations between and within national communities, but also by their impact on the political integration of the larger polity and the danger that it may break apart into its constitutive communities. I will, once again, subdivide this issue into three questions: (1) How do CA and TA constrain the functional division of powers between central and constitutive unit governments? (2) What kind of representation and participation will the units have in federal government? (3) Would cultural subdivisions avoid the danger of secession that appears to be inherent in territorial subdivisions?

(1) Division of powers

Karl Renner and Otto Bauer saw CA as a device for de-escalating national conflicts through a separation of powers that would allow different kinds of interests to be pursued without interfering with each other. In their view, the main source of conflict and instability in multinational states was the lack of separation between cultural interests of national communities, class interests expressed by political parties and state interests shared by all citizens.[65] Once national interests were satisfied through a non-territorial form of autonomy, then the territorial institutions of parliamentary democracy would be dominated by class conflict and a socialist party would have a chance to mobilize a state-wide majority of voters. As a constitutional lawyer Renner was equally concerned about the way national goals interfered with state interests. His plan emphasized that federal government should – as a far as possible – be independent from the institutions of national autonomy.[66] This institutional separation of interests requires a corresponding division of functional powers. Most importantly, federal competencies in public education would be fully transferred to the parliaments and governments of the autonomous nationalities.[67]

The assumption that such a constitutional arrangement will actually have the effect of de-escalating national conflicts depends on the view that national interests are fundamentally those in reproducing a distinct cultural community and that political autonomy is valued only

[64] TA incentives for minority elites to adopt civic nationalism are attached to their access to positions of political authority. These incentives will be weaker for permanent opposition parties who will be often promoting a more exclusivist and intransigent nationalism. Within a competitive democratic system TA offers therefore hardly any guarantees that ethnic nationalism will be absent from the political scene but it diminishes its chances to dominate the established public culture.

[65] Contrary to the Marxist orthodoxy of his time, Bauer (1907) thought that nationalism was not a transitory phenomenon linked to the capitalist stage of economic development. Nations would thrive under socialism when the oppressed classes could finally gain full access to the highest cultural achievements of their community. Bauer's advocacy of CA was therefore not merely motivated by his concern to unite the socialist party and to preserve the geographic shape of the Habsburg Empire but also by his support for cultural nationalism.

[66] See Renner (1918: 273-4).

[67] See Renner (1918: 257).

instrumentally as a means to achieve this end. I have already challenged this idea in section 2 above. If national aspirations derive their mobilizing force from a desire for self-government that extends to all the attributes of modern state power then CA will not suffice to accommodate national minorities. We can add to this that CA may even fail to achieve the goal of cultural maintenance if territorial establishment is an essential condition for preserving a minority language.

Even if CA satisfied the cultural aspirations of national communities, it would not respond to most other minority grievances in multinational states. These are about discrimination in public employment and services, about police brutality and biased judges, about economic exploitation of wealthy minority regions and administrative neglect of poor ones. Protection from such discrimination requires territorial and economic powers that are not included in CA. Some of these complaints can also be addressed through public recognition rights and state-wide anti-discrimination policies. There will be, however, a trade-off. While CA is certainly compatible with federal protection of equal individual rights of citizenship it is more difficult to combine with special recognition rights. Such a combination of state protection with autonomy would considerably blur the desired separation of national agendas from class and state interests. Moreover, there are some grievances, such as those about economic discrimination of minority regions, that can only be addressed by combining TA with federal representation.

While CA requires a clear-cut functional division of powers, territorial federalism tends to generate overlapping powers of federal and constitutive unit governments. The two basic approaches have been labeled dual vs. cooperative federalism and are exemplified by the early US and the present German models respectively. Federal dualism creates parallel tasks and agencies on both levels of government with each level operating independently of the other, whereas cooperative federalism involves their joint performance of executive tasks.[68] Dual federalism is plagued by notorious problems of inefficiency through duplication of tasks and cooperative federalism suffers from diminished transparency and accountability. Both approaches have, however, the advantage that vertical divisions of powers are malleable. This flexibility generates a broad diversity of solutions across different federal systems and allows for internal experimentation and revision that adjusts a division of power to the particular circumstances and current needs of a society. For multinational federations this means that there is no general principle dictating which powers can only be exercised by a central government and which only by constitutive national communities. There are federations where even foreign policy or immigration control have become partially devolved to provincial governments.[69] An overlapping division of powers means that national minorities will not enjoy exclusive control over cultural and educational policies but will have to coordinate these with federal agencies. Conversely, federal governments must share their general executive powers with provincial governments dominated by national minorities. Such a flexible division of powers has three advantages for multinational federations. First, especially with a cooperative form of federalism, it is likely to have overall integrative effects. Second, TA allows providing national minorities with a broad range of powers within their autonomous jurisdiction that respond to all the

[68] See Friedrich (1968: 17).

[69] For example, in Canada the provinces have concurrent power with the federal government over immigration and the Canada-Quebec Accord gives the Francophone province special authority to administer immigration laws (Jackson 2001). In the European Union the Committee of the Regions has provided a platform for autonomous regions like Catalonia to actively promote its own interests abroad partly in defiance of the Spanish state's sovereignty in matters of foreign policy (Gibbons 1999:282-3).

common grievances I have listed above. Third, TA is also fully compatible with additional federal protection for non-autonomous groups. The claims of Francophones in Ontario to minority rights are not in any way diminished by Quebec's provincial autonomy because these minorities are not included in Quebec's jurisdiction – as they would be under CA.

(2) Participation in federal government

Federations combine autonomy for constitutive units with their collective representation in central government. The latter element is essential for federal integration. It generates incentives for the federal units to maintain the federation because and insofar as they can realize some of their interests better via influencing the government of the larger polity than through their autonomous self-government. Such concerns that bind a constitutive unit to the federation are often economic ones or security interests against external threats, but even career and cultural interests can sometimes reinforce federal ties. A disproportionately large number of Canadian prime ministers and federal politicians after WWII have been of Québecois origin. And sovereignty for Quebec would hardly enhance the already dominant status of French in the province, while French language communities outside Quebec will be better protected as long as the province stays with Canada. I have pointed out above that diminished federal representation in federacy arrangements leads to lower levels of integration and makes these solutions unattractive as a general response to national minority demands. The objection against CA is even stronger on this account because it combines a lower level of representation with weaker powers of autonomy.

Offering moderate nationalists positions of power in federal institutions has often been a promising strategy for containing national conflict.[70] CA is, however, more difficult to combine with representation of minorities in federal government because the two types of government are structurally dissimilar – the self-government of nations is non-territorial, while the federal government of the larger state is territorial – and because their powers have been separated rather than merely divided. It is not generally impossible to give non-territorial communities a share in the territorial government of a state. Consociationalism is an arrangement that achieves exactly this. The difficulty lies in combining strong forms of non-territorial *autonomy* with representation in territorial federal government. The trade-off becomes evident in Renner's scheme that provides for strong cultural autonomy but only very weak participation of the national councils in federal government.[71] Suppose a state tried to adopt a different model with a second chamber of parliament composed of delegates of national-cultural communities and endowed with strong powers in all areas of federal legislation. In territorial federations the checks and balances of bicameralism will not block decision-making capacities as long as there are sufficiently strong common interests that allow for cross-regional party formation or alliances. But what kind of common interests would generate cross-national majorities in a non-territorial chamber whose members share no involvement in territorial government and whose legislative activities affect

[70] "[T]o contain nationalist conflict, local leaders should be offered meaningful substantial careers in the central government" (Hechter 2000: 141, referring to Laitin 1998).

[71] Renner proposed that members of national councils should be barred from holding seats in the federal legislature (Renner 1918: 276). If a second chamber were needed at all, national councils should only fill one third of the seats there, with the other seats being held by representatives of the territorial units and members freely appointed by the head of state (ibid.: 280). The federal government would be only responsible to the federal parliament and not to the national councils. Delegates of the national councils could form an advisory council with the prime minister (ibid.: 285).

only their separate communities? How could the sort of elite consensus emerge that is crucial for consociational integration?

(3) Territorial separation

All the arguments discussed so far appear to be rather weak when they are confronted with a final objection that in multinational states territorial devolution paves the way for secession.[72] TA appears to facilitate secession through creating the requisite territorial units and powers for independence and through political incentives for nationalist elites to adopt this as their political programme.

TA produces, first, internal territorial borders that can easily be turned into external ones of independent states. There is no need for drawing new borders or moving present ones. All that is involved is a change in the international status of a given territory. This will facilitate a legitimation of secession by democratic plebiscite. As many critics of self-determination have pointed out, before the people can be asked in a referendum about the future of their region it is first necessary to define the constituency within which votes will be counted.[73] And this prior choice of constituency borders will often predetermine the outcome of the vote. TA settles this problem in favour of secessionists by creating territorial units with a guaranteed majority for a national minority. Separatists must then only mobilize majorities within their own ethnic constituency but need not fear to be outnumbered by unionist votes from other groups of the population.

Second, TA weakens objections against separation. If a provincial government can responsibly exercise a broad range of political powers beyond cultural matters, then doubts about the viability or the liberal character of an independent state will lose much of their force. For a nationalist elite in control of a provincial government the best strategy is then to demonstrate their capacity to run an independent state by claiming maximum powers within the federation. Such brinkmanship will accelerate a process of federal disintegration to the point where disgruntled federal majorities may eventually be glad to get rid of the troublemakers.

Third, TA may even whet the appetite of minority elites for more than autonomy. As long as their province stays within the federation they will remain small fish in a big pond. By exchanging autonomy for full sovereignty they become big fish in a small pond. This is how Donald Horowitz explains the relative attraction of secessionism compared with the status quo or with irredentism, which wants to merge a national minority region with a neighbouring state.[74]

For these three reasons it is indeed unlikely that granting TA could remove a secessionist threat from the political agenda.[75] Once secession has become an option in the political game, there will be actors who can benefit from playing this card. And as long as they campaign for their goal with peaceful means, liberal democracies have no excuse for excluding them from the game

[72] "…the most serious danger inherent in federalism is the potential of creating fissiparous tendencies by giving territorially concentrated ethnic groups a base from which to withdraw or even secede from the common polity." (Sisk 1996: 50-1).
[73] The classical statement of the problem is Ivor Jenning's: Letting the people decide "was in fact ridiculous because the people cannot decide until someone decides who are the people" (Jennings 1956: 56).
[74] See Horowitz (1997: 424-5).
[75] See Kymlicka (2001a: 93, 112-6).

altogether. Would it then not be wiser to remove the secession card from the deck by granting national minorities only CA but not TA?

A first response to this challenge is that it is wrong to consider territorial integrity merely as a question of state interest and not also as a question of justice. Even if it were true that TA cannot provide any institutional guarantees or incentives that national minorities *will* respect the territorial integrity of multinational states that offer them fair terms of federation it is still important that they *ought* to respect it. Will Kymlicka and others have developed sophisticated arguments why for liberal regimes granting minority rights is not primarily a matter of prudence and enlightened self-interest but is required by their conception of justice. Kymlicka, however, seems to shy away from the implication that democratic states that treat their minorities fairly have a similar fairness-based claim that their territorial integrity will be respected. If the burden of argument for denying political autonomy to national minorities lies with the representatives of a dominant majority, then the burden of proof that secession is legitimate must surely rest on the representatives of the minority. While liberal democracies will have to tolerate secessionist political agitation they do not have to grant national minorities a right to independence. Such a normative argument cannot resolve the dilemma how to respond politically to a secession threat, but it does support constraints on unilateral secession in international law and in the domestic constitutions of multinational democracies.

My second response is that territorial instability is not an inherent feature of TA, but depends on prevailing conceptions of national identity. By its very nature dividing territory appears to be a zero-sum game – what one side gains, the other loses. But this is a superficial view. What counts is not the sheer quantity of territory but the associated political power and its stability over time. The zero-sum view of territorial divisions applies only if we conceive of power as sovereignty. Territorial sovereignty produces indeed a world in which only zero-sum games can be played. The landmass of the globe is divided into non-overlapping spaces assigned to separate states. However, unlike territory itself, territorially based power can be simultaneously aggregated at different levels. Federal divisions of territory yield a positive-sum outcome if they satisfy the aspirations of all relevant groups to self-government, while at the same time binding them together into a larger and equally self-governing federation.

This explains why the danger of secession hardly ever arises in regional federations such as the USA or Germany, although the powers of their constitutive states are not smaller than those of Canadian, Spanish or Belgian provinces and regions. What makes multinational federations less stable is the prevalence of nationalist ideologies that militate against a nested conception of multilevel self-government. Nationalists view nations not only as self-governing but also as self-contained so that they are neither parts of larger self-governing communities nor overlap horizontally with other nations. This resistance against overlapping and nested identities has a further implication: conflicts between national communities over their boundaries are not only zero-sum, but winner-takes-all games. Nationalists regard their homeland as indivisible.[76] Their willingness to compromise and be satisfied with a part of the whole is often only the outcome of a conflict in which they have been defeated. At the individual level, too, there is little room left for ambiguity. National identity codes are binary; you either belong to our nation or to a foreign one, and if you do belong to ours it is for an entire lifetime. This is very different in a territorial

[76] "Perhaps the preeminent example of seemingly irreconcilable claims to territory in the modern world is Jerusalem (Sisk 1996: 18).

federation where there is a free flow of persons across internal borders and where individuals are citizens of constitutive units as wqell as of the larger federation.

Stability in multinational federations depends then on weakening the appeal of nationalist ideologies and strengthening the attractions of federal citizenship. I have argued above that TA will promote the emergence of civic conceptions of nationhood while CA reinforces ethnic ones. Ethnic nationalism and federal citizenship rely on structurally incompatible conceptions of membership; they can coexist only if state and nation are kept apart, which implies a very restricted form of autonomy. Civic conceptions can, on the one hand, be more easily reconciled with territorially based democratic citizenship. On the other hand, civic minority nationalism is quite compatible with claiming supremacy for national identity over federal citizenship and fighting for independence. Transforming ethnic into civic nationalism is therefore not sufficient. Long-term stability in multinational federations will only be achieved when minorities regard federal citizenship as adding something important to their national affiliation. There is no need that they should rank their membership in the larger polity higher than their national identities. This would only be necessary if the two are seen as inherently conflicting values. If, however, both memberships are compatible then their values add to each other. Under this condition minority members will prefer federal integration to independence if the added value of federal citizenship surpasses the aggrandizement of national identity through independence.

This seems to me a realistic target. Assuming that a multinational federation satisfies the basic aspiration of a national minority for self-government there is in most cases little that the great majority of members would gain from independence and much they would lose. While their leaders may hope to become bigger fish in a smaller pond, their followers remain small fish and will lose access to the bigger pond. Under conditions of competitive and democratic elections such a discrepancy of interests between political elites and the general electorate will create sufficient opportunities for secessionists to mobilize the votes of dissatisfied groups of citizens but better chances for moderates to win overall majorities. And even if a majority votes for a secessionist party because they see it as more effective in wrestling concessions from a federal government, they may still refuse to endorse independence once the question is put to them in a plebiscite. This is what happened in the Quebec referendums of 1980 and 1995. Prospects are quite different when political elites can act without too much regard for the interests of their voters. The separation of Czechoslovakia was brought about in 1992 by the intransigent attitudes of both the Meciar government in Bratislava and the Klaus government in Prague. It was formally ratified by parliament without a popular vote.[77]

Economic benefits of access to a larger federal market are probably in most cases not enough to create a stable preference for federation, especially if they can also be realized within looser supranational associations between independent states such as the EU or NAFTA. In addition to its instrumental benefits federal citizenship must carry some identity value. The task is to transform national identities of both minorities and majorities so that they can both affirm the nested character of federal citizenship. In order to achieve this it is not necessary that they

[77] "The country was thus divided into two at the end of the year [1992], without even the endorsement of a referendum. Neither party actually had an electoral mandate to divide the country" (Henderson 1999: 119). "Virtually all opinion polls (before and even some after separation) showed that a majority of ordinary citizens – both Czech and Slovak – did not want two separate states. An even larger majority felt that a decision on this issue should be made by the people in a referendum, and not by politicians…" (ibid: 122).

converge on a single interpretation of the federation. While national minorities will regard the larger polity as a multinational one formed by an agreement of self-governing nations, majorities may instead see the federation itself as a historic nation containing various other 'nationalities' within it.[78] The Canadian, Spanish and British experiences show how the asymmetry between these two conceptions makes it difficult to achieve a final settlement of claims. However, as long as dominant conceptions of nationhood on both sides remain compatible with a nested view of identities, these never-ending debates on the nature of a federal project in multinational states are no reason for pessimism about their territorial cohesion.

7. Contextual arguments for cultural autonomy

I have argued for a general preference for TA on grounds of justice between groups, individual liberty within groups and political integration of multinational polities. The reasons I have given are sufficiently strong to reject attempts to substitute CA for TA in contexts where TA is feasible or already well-established, but they do not entail that we should dismiss all contextual justifications for introducing certain elements of CA. In the short space of this paper it is impossible to discuss and evaluate any of the historical or contemporary situations in which CA has been tried or suggested. I will instead propose a heuristic typology of residual, supplementary and transitional arrangements and illustrate these with selected examples.

(1) Residual CA

I would characterize most present laws on cultural autonomy in Central and Eastern European states as residual forms of CA. This includes the Hungarian, Estonian and Russian legislations. They apply to groups that are geographically dispersed within or across territorial units and that are regarded as cultural minorities rather than constitutive peoples of the states where they live. CA is in these cases little more than a combination of the freedom of association and cultural practice with public recognition and support for historic minorities. Insofar as they enjoy any substantive political autonomy this comes as a result of local self-government in municipalities where they form a majority and is thus territorially based. National councils formed by these minorities are consultative bodies for lobbying the government more than legislative institutions for the members of an autonomous polity.[79] From a liberal perspective there is nothing wrong with such minority rights, except if they serve as an excuse for denying members of the 'autonomous minorities' equal citizenship rights within the territorial units.

(2) Supplementary CA

Elements of CA are sometimes introduced within an overall framework of TA in order to maintain a balance between constitutive communities in mixed regions. When the province of South Tyrol gained TA in 1972 there was a dual problem of, on the one hand, creating conditions for self-government by gradually reducing the strong dominance of Italian speakers in the public administration and, on the other hand, giving the Italian population in the province guarantees that they would not be discriminated against. The solution adopted is a regime of 'ethnic

[78] David Miller (1995:94-96) implicitly endorses the majority perspective when he suggests that multinational federations can only be stable as long as the larger polity is also conceived as a nation.

[79] For example, the Russian National-Cultural Autonomy Act creates a state-regulated form of ethnic associations that is financed from voluntary contributions of members and state grants or tax exemptions. "The influence of such communities on ethnic politics in Russia is… minimal" (Cogagnone and Filippov 1999: 283).

proportionality', which regulates access to public housing, the civil service and separate public education for the three language groups and is based on a personal declaration of linguistic affiliation in the census.

A similar difficulty arose in the Brussels region when Belgium was transformed into a territorial federation in 1993. Historically the city had been Flemish but since Belgian independence it had been governed by a Francophone political elite. Today French is the dominant language among the city population. In order to maintain the balance between the two major Belgian language communities it was essential to make Brussels a separate and officially bilingual region. However, given the historical record and the present skewed demographic balance, the Flemish community wanted stronger assurances, which led to creating the unique dual federalism of regions and language communities. The Flemish linguistic community has no jurisdiction inside the Walloon region and the French linguistic community has none in Flanders, but both have formal jurisdiction in cultural and educational matters in the Brussels region. For regional elections in the capital parties have to declare their linguistic affiliation. Members of the Brussels regional parliament elected on a Francophone or Flemish party ticket will then join the parliament of the Walloon and Flanders regions respectively to form the federal community parliaments.[80] In order not to undermine the equal status of both language communities census questions on ethnolinguistic identity (which would show an increasing French majority) have been forbidden since 1961. Although authorities avoid counting ethnic affiliations, they still need to register them for administrative purposes in matters under the jurisdiction the communities. This is done by issuing identity cards in either French or Flemish. At this point citizens can choose which language community they want to affiliate with.[81]

In both South Tyrol and Brussels non-territorial arrangements refer primarily to political representation and public services for linguistic communities rather than to autonomous political powers of community governments over their own members.[82] Nevertheless, the elements of CA that have been introduced illustrate some of the illiberal features discussed in section 5, especially the need for other ethnic minorities to affiliate with one of the constitutive communities and a strong segregation between communities that undermines the political integration of the region. Looking at the two cases in a static and ahistoric way there seems to be no specific need or justification for CA. As the example of several Swiss cantons illustrates it is perfectly possible to create territorially autonomous units with more than one officially established language without subdividing the population into separate political communities. The reasons why this was not enough in Brussels and in South Tyrol have to do with shifting demographic balances and historically strained relations between constitutive groups. This means that even as a supplementary arrangement CA should not be regarded as permanently entrenched in a constitutional agreement, but should be re-examined and revised from time to time.

(3) Transitional CA

The integrative and liberal features of TA presuppose a stable democratic regime and stable external and internal borders. Where these conditions are absent TA may indeed serve as a

[80] See Jacobs (2000).
[81] Personal communication by Dirk Jacobs and Hassan Bousetta.
[82] There is, for example, no separate taxation of language communities in South Tyrol. In Belgium, only regions have extensive taxation powers. Communities collect certain fees for their services (e.g. for their public TV) (Personal communication by Hassan Bousetta).

stepping stone towards secession. This brings me back to the initial question posed at the beginning of this paper. Wouldn't it have been unwise to introduce TA during the processes of democratic transition and consolidation in Central and Eastern Europe? The collapse of communist regimes in the Soviet Union, in Yugoslavia and Czechoslovakia turned the formal TA enjoyed by the federal republics into very real autonomous powers. In all three cases political elites grasped these powers to form independent states. "The political authorities in the successor states seem to be saying: since we misused TA, we cannot give TA to you, the current minorities" (Kolstø 2001). This is of course a morally suspicious double standard, but given the recent history of these states, it seems a realistic fear that TA may lead to further disintegration of several postcommunist states.

Consider the case of Macedonia. There is a strong Albanian minority of about 25% of the population territorially concentrated in the northern areas that border on Serbia, Kosovo and Albania. The minority is represented in a coalition government, but parts of its territory is under control of the paramilitary UÇK, whose leaders are accused of fighting for a greater Kosovo or even a greater Albania that includes northern Macedonia. Ethnic Albanian political parties in Macedonia have consistently demanded not to be treated as an ethnic minority but as a constitutive people in a binational federation. The ethnic Macedonian leaders, on the other hand, have insisted that the republic should be seen as the nation-state of the Macedonian people. For a long time they even argued that cultural demands, such as public recognition for an Albanian language university in the capital Skopje, pose a threat to territorial integrity. In August 2001 EU mediator François Léotard negotiated the Lake Ohrid agreement that was adopted by the Macedonian parliament on September 6. The agreement rejects territorial autonomy in the strongest possible terms, equating it with a demand for secession: "Macedonia's sovereignty and territorial integrity, and the unitary character of the State are inviolable and must be preserved. There are no territorial solutions to ethnic issues" (Art. 1.2).[83]

While the representatives of the Albanian minority have accepted the terms of the agreement (which gives them considerable rights to local self-government and representation in public bodies) I believe that the categorical principle on which it builds is fatally flawed and might prove a source of conflict in the long run. It may be unwise to introduce TA during a period of transition to democracy or of violent challenges to the territorial integrity of a state. In Macedonia today it could amount to handing over state power to secessionist military forces. The rule of law and an effective common citizenship are basic preconditions for TA, in the absence of which it would be only a prelude to the dissolution of the state. As Juan Linz has argued democratic transition in multinational states should follow a sequence of first establishing the rule of law and an effective common citizenship throughout the state territory before powers are devolved to national minority regions.[84] However, gaining the necessary loyalty of minorities for the first steps may also require early agreement about the final goal.[85] Negotiating a settlement that includes TA could then be a condition for successful democratic consolidation.[86] If the multinational character of some successor states had been affirmed from the very beginning of

[83] For the full text of the agreement see: http://www.president.gov.mk/eng/info/dogovor.htm.
[84] "Multinational federalism presumes the existence of a working state, a *Rechtsstaat*, the introduction of democracy, and then the solution of the multinational conflicts by democratic federalism. If that sequence is reversed, the prospects are very different" (Linz 1997: 47).
[85] This argument has been suggested by Will Kymlicka (2001b).
[86] This has been, for example the Spanish experience where the principle of territorial autonomy was introduced very early after the fall of the Franco regime.

democratization it would have been possible to make the actual introduction of TA conditional not only upon a cessation of hostilities but also upon the willingness of the minority leaders to guarantee within their territories federal citizenship rights and the execution of federal laws. CA could then play a role as a transitional arrangement in processes of democratic consolidation, when devolution starts with matters of cultural and educational policy and is gradually expanded to more comprehensive and territorial powers.

8. Conclusions

During the forty years between WWII and the collapse of communism in Eastern Europe the idea of national-cultural autonomy had been dead and buried deep in the ground. There are two main reasons for its recent revival and increasing popularity. One is a pragmatic attitude that sees CA as a means for deescalating national conflicts and stabilizing borders, the other is a postmodern celebration of deterritorialized communities that transcend the iron cage of state power. These two motives are somewhat at odds with each other. The first one wants to protect the territorial integrity of existing states against the threat of secessionist movements; the second one seeks to liberate cultural communities from state control. They converge on a principle of separating state and nation.[87] Religious toleration needed a separation between church and state. A peaceful coexistence of nations may then also require their separation from state power. If CA is one leg of this project, the other one must be a neutralization of state institutions so that they are no longer associated with particular nations and their cultural traditions.

I have started this paper with an argument that casts doubt on this admirable project. National minorities value political autonomy for its own sake and not merely as a means to protect their culture. The conflict between national minorities and nation-states is not primarily about culture, but about a division of state power and the boundaries of political community. Liberal democratic governments cannot respond to this challenge by insisting that their states form a single political community of equal individual citizens that cannot be subdivided. The question is rather how to organize multinational polities so that several projects of political community can coexist with each other and integrate into a larger one. Is it possible or even preferable to satisfy demands for autonomy by subdividing populations according to their national identity instead of subdividing the territory so that minorities form regional majorities?

I have examined how both solutions affect the relation between autonomous communities, the position of individuals within these communities, and their integration into the larger polity. On all three dimensions there are prima facie arguments to prefer CA. Non-territorial arrangements seem to avoid arbitrary discrimination between geographically concentrated and dispersed minorities; they enable individuals to leave their group's jurisdiction without moving their homes; and they provide no basis for challenging the territorial integrity of the state.

Nevertheless, the case for TA is, on balance, stronger. In the framework of liberal states we tend to think that territorial boundaries are hard and cultural ones are soft. This is grounded in the experience that, contrary to the moving territorial borders of empires, those of democratic states have been remarkably stable. At the same time, liberal democracy creates an internal space for civil society whose voluntary associations have multiple and shifting memberships. However, soft borders are not those that can be easily moved, but those that allow for free movement of

[87] See Pierré-Caps (1995: 289-94).

persons and flexible divisions of power across units. In this sense, internal territorial boundaries within liberal states are generally stable but soft. Boundaries of membership, on the other hand, can be quite hard if they are mutually exclusive and ascriptive rather than chosen.[88] The trouble with CA is that it will harden the boundaries of national communities. Political jurisdictions cannot be broadly overlapping. If national corporations become separate jurisdictions they need hard boundaries of identity. In contrast, territorial federations, whose internal borders are designed to satisfy the aspirations of national minorities for self-government, permit a relatively relaxed stance on identity issues. A territorially nested citizenship provides legal guarantees for internal minorities within self-governing regions and political incentives for their authorities to promote civic conceptions of nationhood and a pluralistic public culture.

The most important critique of TA is that subdividing the territory into autonomous units prepares the ground for secession. This is no relevant objection for liberal nationalists, who favour the creation of more homogeneous states,[89] and for libertarians, who derive a right of secession from the principles of voluntary association.[90] Others regard the permanent danger of territorial separation as a regrettable but inevitable consequence of multinational federalism.[91] I believe, however, that there are normative reasons to defend the territorial integrity of multinational democracies and grounds for cautious optimism about their potential for cohesion. The members of national minorities are morally bound to respect the territorial integrity of states that have enabled them to realize their aspirations for self-government. And, in contrast with their political leaders, they have generally also self-interested reasons for preferring the additional benefits of federal citizenship to independence for their national community. This positive outcome depends, however, on overcoming nationalist ideologies among federal minorities as well as majorities that block the emergence of nested identities in a multilevel polity.

A general preference for territorial solutions does not rule out residual, supplementary and transitional forms of non-territorial autonomy in specific historic contexts. However, these are exceptions that confirm the rule: “the irreducibly spatial nature of any coherent, comprehensive project for a political community” (van Parijs 2000: 243).

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[88] See van Parijs (2000: 243).
[89] See Miller (1995, chapter 4).
[90] See Beran (1984, 1998; Gauthier 1994).
[91] See Kymlicka (1995, chapter 9; 2001a, chapter 5).

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