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## Political Boundaries in a Multilevel Democracy

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**Abstract**

*The international state system is, on the one hand, a real political order, in which states endowed with very different economic, military and political power generally define and pursue their respective interests independently of each other. On the other hand, this system contains also a normative order within which states recognize each other as equal and sovereign legal entities representing independent societies. Mainstream liberal theory has accepted this normative order as a quasi-natural background. It is time to move beyond this model by developing a normative theory of political boundaries that reflects the growing interdependence between political communities. The paper discusses and compares challenges to the normative boundary structure of the international system that emerge from national minority claims to self-government, from transnational migrants' claims to multiple citizenship and from supranational integration in Europe. A pluralistic global normative order should be conceived as a multilevel system in which state sovereignty is delegated upward towards supranational polities, downward towards constituent units in multinational polities, and overlaps laterally between states linked to each other through migration flows. In such a system political boundaries will not become irrelevant, but will increasingly be embedded in nested and overlapping constellations.*

## 1. The international state system as a background for liberal political theory

The international state system is, on the one hand, a real political order, in which states endowed with very different economic, military and political power generally define and pursue their respective interests independently of each other. On the other hand, this system contains also a normative order within which states recognize each other as equal and sovereign legal entities. The normative validity of international law is derived from treaties voluntarily concluded between states and from customary law emerging from general patterns of state practices in international relations and from a consensus in juridical opinion.

In contemporary liberal philosophy this normative order is often regarded as a barrier to the effective solution of global problems. This is most obviously so with regard to questions of global distributive justice. Economic resources, individual security, opportunities and liberties are distributed extremely unevenly across states. From a liberal perspective, it is hard to justify that the arbitrary fact of being born in a particular state determines to a large extent individual well-being and autonomy (Carens 1987). A global political order of sovereign states is also an obstacle for addressing problems that affect populations across state borders, including environmental dangers such as the depletion of the ozone layer, global epidemics such as AIDS, or refugee movements. With regard to all these problems a constellation of states that legitimately act to maximize their interests independently of each other

leads into prisoners' dilemmas. The outcome is that cooperative solutions that would be rationally preferred by all players cannot be achieved.

While these problems suggest cosmopolitical solutions with some kind of global political authority, other liberal theorists have defended the international state system as a guarantee for global political pluralism.[1] Its normative order prohibits, at least since World War Two, foreign rule of states outside their legitimate territory (permanent military occupation, annexation and colonialism). State sovereignty does not ensure, but seems to be a precondition for, comprehensive self-rule of populations living under a common political authority. Political institutions and decision-making can then be shaped by particular traditions and be better adapted to specific circumstances. A shared membership in an autonomous polity provides also a basis for stronger forms of solidarity and more demanding standards of social justice than can be reasonably applied on a global scale. While a global ethics will focus on securing basic human needs or capabilities (Shue 1980, Sen 1984, Nussbaum 2000), a political community is an ongoing scheme of cooperation in which social justice requires some redistribution of the collectively created wealth so that everybody benefits from the common enterprise (Rawls 1971). A pluralism of sovereign states allows, moreover, for peaceful competition and mutual learning between different constitutional traditions, political cultures and paths of development. It contributes also to individual liberty through the possibility of emigration and change of citizenship and by preventing the accumulation of uncontrollable political power in global political institutions. All these are strong arguments that a world state would be no desirable alternative to the state system.

John Rawls, too, presupposes a normative world order of this kind for his theory of justice. He develops first principles of justice that are meant to apply within a liberal state conceived as a "closed society". As members of such a polity "we have no prior identities before being in society" and are seen "as being born into society where we will live a complete life" (Rawls 1993: 41). On a second stage of his theory, Rawls argues for a short list of universal human rights as a basis for relations within the "society of well-ordered peoples", which includes liberal as well as nonliberal "decent hierarchical societies" (Rawls 1999). Rawls acknowledges that migration between societies must be taken into account within a law of peoples (1993: 136, n.4) and defends at this stage a right to emigration but also a qualified right of states to limit immigration (1999: 39, n.48, 74, 108), which mirrors the current consensus in international law.

Rawls conceives of peoples also as internally homogenous in the sense that they are not subdivided into distinct self-governing polities. His political liberalism focuses on the unavoidable diversity of religious and moral views in liberal society and aims to show that this need not prevent an overlapping consensus on political principles of justice. However, nowhere does Rawls consider the problem of how to resolve conflicts that are not about different conceptions of the good, but about political

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[1] See, for example, Arendt (1970: 81-2; 1958: 257), Walzer (2000).

boundaries between self-governing polities. In this respect, too, Rawls' theory follows the established conception in international law that regards legitimate governments as "representing the whole people belonging to the territory without distinction as to race, creed or colour" (Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the UN, GA Resolution 2625 (XXV), 24 October 1970).

Rawls departs from the traditional international conception in distinguishing his "law of peoples" from international law as it prevailed for three hundred years after the Thirty Years' War until the end of World War Two. In his view, this conception of sovereignty includes "the right to go to war in pursuit of state policies" and "a certain [state] autonomy in dealing with its own people" (Rawls 1999: 25-6), which ought to be rejected. In other respects, however, his model of a society of peoples remains attached to the normative order of the state system – peoples are conceived as internally homogenous and externally independent, and they enjoy equal standing in the global normative order.

There are good reasons for accepting the state system as a pervasive background and starting point for theories of justice and political legitimacy. Normative models of political order can never be derived solely from general properties of human nature or characteristics of human societies, since they address problems of collective decision-making that differ fundamentally between different historical eras. Relations between individuals and institutions of political rule, as well as the rights and obligations that can be derived from these relations, are not the same in nomadic, agrarian and industrial societies. This inescapable historical relativity of political theory has been ignored in classical social contract philosophies (Benhabib 2002: 42-7, see also Bauböck 1994: 239-43), which grounded normative ideals that had only recently emerged from the economic and political conditions of their own historical era on ahistorical assumptions about the nature of human beings and society. Historical relativism applies not only to normative thought about the domestic order of political communities, but also to their external relations with each other. The so-called Westphalian state system with its sovereign and equal states and stable borders between them is of relatively recent historical origin. (1648 is a significant landmark on the timeline of its prehistory but is probably not its birth date.) For some time before and even after the French and American revolutions political maps of the world showed a pattern very different from the Westphalian one: political entities nested within larger ones and overlapping jurisdictions with relatively unstable boundaries. If sovereignty is a concept that can at all be applied to these earlier worlds, it must be regarded as divisible both horizontally and vertically.

The Westphalian order mirrors the conditions of political modernity, the era of democratic revolutions and of nationalism. This is not only true for its real order, the anarchical society of states (Bull 2002), which in their external relations pursue their interests without recognizing any higher instance, but also for its normative order. Even attempts to restrain this anarchy through international law and institutions remain still locked within the confines imposed by the architecture of the state system. In contrast to the Roman ius gentium and the natural law tradition until the late 18th century, which still

allowed for recognizing indigenous peoples as subjects of international law (Anaya 1996), contemporary international law is essential interstate law. It does not know any other collectives capable of being autonomous subjects of its legal order.

The human rights revolution after 1945 has not fundamentally changed this. Introducing human rights, which had before been enshrined only in the domestic constitutions of liberal states, into international declarations and conventions has turned individuals into subjects of international law alongside states. This move was facilitated by liberal conceptions that suggest a structural analogy between individuals and states who are both regarded as autonomous and equal. Groups or associations at intermediate levels between individuals and states have no firm place in this order. Even the cultural minority rights of Article 27 of the International Covenant for Civil and Political Rights from 1966 are not formulated as group rights, but as rights of individual persons to enjoy "in community with the other members of their group, […] their own culture, to profess and practice their own religion, or to use their own language." Moreover, the positions of individuals and states remain asymmetric within international law insofar as individuals are merely bearers of rights but not authors of law. Human rights norms are negotiated and adopted by the governments of sovereign states, including those who are not legitimated by democratic representation of their citizens. Even the adjudication of human rights in the UN system (in contrast to the more advanced European system) does not allow individuals to appeal directly to an international court against their governments.

This state-centered conception informs also the interpretation of the only strong collective right in international law, the self-determination of peoples, which has been given a prominent place in article 1 of the UN Charter of 1945 and of both human rights covenants adopted in 1966 although it is missing in the Universal Declaration of 1948. According to prevailing juridical opinion, the term "peoples" refers primarily to the entire population of existing states and of colonies within the borders drawn by colonial powers (Cassese 1993). A claim of provinces such as Quebec, Flanders or Scotland to self-determination finds no support in contemporary international law.

The statist conception raises a problem for liberal political philosophy: in contrast to individuals, states have no intrinsic moral value. Their monopoly in international law is therefore in need of justification. Three arguments can be offered in response. First, states can be conceived as associations of their citizens. All associations that individuals form in exercise of their fundamental liberties can be attributed some moral value that derives from the basic value of individual autonomy. This justifies, for example protecting such associations against intrusive state policies. The problem with this idea is that, apart from naturalizing immigrants, nobody becomes voluntarily a member of a state. The mere right to emigration is hardly sufficient to describe even liberal democracies as voluntary associations of their citizens (Rawls 1993: 136, n.4, Bauböck 1994: 152-177). Moreover, this argument cannot ground any general priority of states over voluntary associations in civil society. Some libertarian theorists have been consistent in drawing the implication that a liberal polity is nothing else but an association of the free associations of its citizens (Kukathas 1997). In this view, state competencies are

narrowly circumscribed by veto and exit rights of sub-state communities, which would effectively undermine the moral status and right to integrity attributed to states in international law.

A second liberal argument grounds the moral value of state sovereignty in its functional necessity for individual autonomy and well-being in complex modern societies. Individual liberties and claims to basic social rights can only be guaranteed within legal orders created and maintained by states, and only states can offer their citizens domestic security and effective protection against aggression from outside.

A third argument emerges from the republican tradition, for which membership in a self-governing political community is not only instrumentally important for securing individual freedom, security and well-being but is also an intrinsic value. The inherent value of self-government shows, for example, in the illegitimacy of foreign and authoritarian rule even if it were exercised in an enlightened way and secured all the negative and positive liberties of its subjects that may be invoked in support of the second argument. Liberal republicanism provides also a plausible account for the value of competitive pluralism in the state system, i.e. of an international order with a multiplicity of self-governing polities none of which is capable of dominating all others.

None of these three arguments is sufficient to support the normative bases of the Westphalian order. The first leads to strange anarchic utopia that is far removed from the conditions of modern societies, while the second and third fail to explain why states should be the only building blocks of a normative global political order. Why should political communities that are not established as sovereign states be unable to realize the instrumental and intrinsic values of self-government?

## 2. Nested and overlapping political boundaries

Before sketching a few ideas about an alternative architecture for a global political order let me begin with a cautionary note. In contrast with libertarian approaches I believe that such normative models should not merely be consistent with basic philosophical principles but should also offer chances for practical solutions to problems that our current order is incapable of resolving. This requires that such models should be "minimally realistic" (Buchanan 1997)[2] in the sense that they reflect and build upon contemporary developments that are already transforming the existing state system. This demand for "realism" is different from the realist paradigm in international relations, whose postulates merely theorize past characteristics of the Westphalian order. It is instead meant to remind us that our prescriptive ideas should keep pace with developments in the real world and ought to respond to fundamental changes in institutional arrangements and normative understandings. The most important developments can be summarized under three headings: first, globalization, i.e. a strong increase in transborder mobility of money, goods, services, information and people and in general

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[2] Buchanan (1997: 42) defines minimal realism somewhat more narrowly as a significant prospect for norms of being adopted in the forseeable future through the process by which international law is actually made.

interdependency between societies organized as independent states; second, monopolarity in the state system since the end of the cold war due to the singular military power of the USA; and, third, the increasing prominence of nongovernmental actors in the international political arena.

An important aspect of an alternative global order that responds to these conditions would be the simultaneous strengthening and democratization of international political organizations. *Strengthening* is necessary in response to two questions: How can political solutions to global problems be coordinated between sovereign states? How can the global hyperpower USA be integrated into an international legal order in such a way that its foreign and security policies are not exclusively determined by its perceived national interests? *Democratization* is the answer to the question how an enhanced power of international organizations can be legitimated through representation and constrained through accountability and a division of powers. In such an order, pluralism would still be guaranteed primarily through equal representation of independent states, but it could be broadened through involving international civil society, by giving NGOs a role in global forums similar to the one they already enjoy in domestic politics of liberal democracies. Democracy is strengthened in both arenas if civil society organizations do not replace democratic legislative mandates but are systematically involved in agenda-setting and deliberative stages before binding decisions are taken. In the 1990s several authors have presented projects for institutional reform of the UN system along these lines (Archibugi and Held 1995, Höffe 1999).[3]

A second task, which has so far found less attention, is extending the global normative order through including political communities from below and above the state. Thomas Pogge has suggested that the concentration of sovereignty at one level of the global political system is no longer defensible:[4]

> "Rather, the proposal is that government authority – or sovereignty – be widely dispersed in the vertical dimension. What we need is both centralization and decentralization, a kind of second-order decentralization away from the now dominant level of the state" (Pogge 1992: 58).

This would overcome the current conceptual dichotomy of individuals and states by introducing other types of autonomous political collectivities and would replace the current two-level conception of domestic and international law with a multilevel model. Such a move has far greater implications than merely a further multiplication of the numbers of collective subjects in international law, which has anyway occurred as a result of the dramatic increase of the number of independent states from 50 founding members of the United Nations to 191 in 2001. In a multilevel system there is no longer a single species of political communities, whose members are sovereign states that compete for survival, but several species that form a complex environment for each other. In such a system, it is no longer possible to maintain the general assumption of normative equality of status and powers for all political

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[3] Andrew Hurrell (2003: 278-287) describes such ideas as the „Law of a Transnational Society" in contrast with the pluralist statist model of traditional international law and the moderate alternative of solidaristic statism in the framework of the post 1945 UN order.

[4] However, Pogge's model includes not only a devolution of state competencies towards levels above and below the state, but also wide ranging possibilities for redrawing the borders of political communities through unilateral secession (Pogge 1992: 70). In my view, this would undermine the emergence of stable multilevel polities and would instead promote the mere splintering of existing states through the formation of smaller ones, who are more than likely to support absolute sovereignty once they have achieved it.

entities. In contrast with the horizontal normative equality of states in the Westphalian order, the governments of political communities that are vertically aligned so that larger entities encompass several smaller ones must have different competencies. We can see this in all federal states where powers are divided vertically between provincial and federal governments.

Another source of complexity, alongside the multiplication of levels of self-government, emerges from the dual nature of political boundaries, which demarcate jurisdictions over territories or persons. In the Westphalian model these two kinds of boundaries are assumed to coincide or, if they don't, their incongruence is considered a merely temporary anomaly that states will strive to correct. In a revised model, however, incongruence may be unavoidable, permanent and in need of accommodation.

Theoretically, there are two possible mismatches between territorial and membership boundaries: political communities can be distinct and separate with regard to their membership, while their territorial jurisdictions overlap or, conversely, polities may have territorially separate jurisdictions while their membership overlaps. The former incongruence is illustrated by models of personal-cultural autonomy for religious or national minorities, such as the Ottoman millet system or the constitutional scheme developed by the Austrian socialists Karl Renner and Otto Bauer for the territorially dispersed language groups of the late Habsburg monarchy (Nimni 1999). In these arrangements, communities defined by objectively determined or subjectively declared membership enjoy significant self-government powers over members wherever they live within a state territory.

In the context of modern liberal states, this kind of discrepancy is rather rare and there are also normative reasons why it may not provide an adequate solution for most national minorities' desire for political autonomy (Bauböck 2004a). Much more relevant in contemporary societies is the second type of incongruence. It results mainly from international migration, which generates for many states large numbers of foreign nationals in the country and of citizens abroad. This is due to the relative rigidity of membership affiliations at the level of independent states that do not automatically change as a result of crossing borders or establishing residence. Moreover, states are not only sovereign within their territories and can therefore subject foreigners to their laws, but apart from a few constraints under international law they are also sovereign in determining the personal boundaries of the polity through rules for the acquisition and loss of nationality.[5] States can therefore, on the one hand, exclude permanent resident immigrants by denying them naturalization and, on the other hand, include emigrant communities by creating obstacles for expatriation and by allowing them to pass an external nationality on to their children and grandchildren. There are international conventions that aim at avoiding statelessness and multiple nationality, but there are no generally binding norms of international law that require that states of immigration must admit foreign nationals to their citizenship or that states of emigration must limit the intergenerational transfer of their external

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[5] According to article 1 of the 1930 The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws it is for each State to determine under its own law who are its nationals. In the Nottebohm case (Liechtenstein v. Guatemala, 1955, I.C.J. 4, 22-23) the International Court of Justice has constrained this sovereign power only insofar as it requires that naturalization of foreigners should be based on a "genuine connection" between the individual and the state concerned.

nationality.

This discrepancy between residence and membership is a specific problem of international boundary norms that does not exist at substate le vels of political community. In internal migration within liberal democracies provincial or urban citizenship is acquired or lost automatically with taking up permanent residence or moving to another part of the country.[6] The supranational citizenship of the European Union is also acquired automatically, but it is derived from member state nationality rather than from residence. In the EU polity, the lack of harmonization between the nationality laws of member states duplicates therefore the discrepancy at this level. There are not only third country nationals who are permanently excluded from Union citizenship and external citizens of the Union who have never lived in Europe, but there are also very unequal conditions for the acquisition and loss of this status in different parts of the Union.

So we find that, paradoxically, the state sovereignty over membership rules tends to generate within the Westphalian system overlaps between political communities that subvert this very norm. An alternative model of global political order would instead recognize nested, shifting and overlapping domains of political authority as possible and in some cases also as permissible or even required. So far I have mainly described these as empirically significant phenomena, but have not yet argued why they are normatively relevant for a transformation of international law towards a global political order that provides an alternative to the Westphalian model of closed, independent and equal states.

Consider first claims of national minorities to political autonomy. It is important to understand that the coexistence of several national communities within a single state is very different from the coexistence of independent states within the international system. In the latter context there is a basic normative symmetry of relations between sovereign and separate entities, while in the former the different communities are involved in what I suggest to call interlocking nation-building projects. In such a multinational constellation the equal claim of all citizens to be recognized as members of self-governing political communities can only be realized through political autonomy for the minority, i.e. by drawing an internal political boundary and devolving political powers to government institutions that will be controlled by the minority. The alternative solutions are assimilation or secession of the minority. Coercive assimilation means simply the realization of the majority's nation-building project at the expense of the minority's. Questions of national identity are, however, not legitimately settled by majority decision. Assimilating the minority against its will is therefore incompatible with equal respect for all citizens. Secession is problematic for several reasons. In an interlocking constellation it will create new minorities so that the original problem is likely to be reproduced with a reversal of positions between groups, or to be "resolved" by genocidal means, such as population transfer, ethnic cleansing, or physical extermination. Even if unilateral secession is peaceful and creates liberal

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[6] Authoritarian states have often severely restricted the internal freedom of movement of their subjects. The Soviet system of internal passports was used for regulating access to the big cities, and for allocating benefits and burdens on the basis of individual affiliation to a particular nationality.

postsecession states, it is normatively problematic for the same reason as assimilation: It realizes one historic nation-building project – in this case the minority's – at the expense of the other. In the multinational constellation the historically dominant project generally includes the territory and the members of the minority as integral parts of the polity. This inclusion is normatively defensible if the minority is recognized as a constituent partner in multinational federal arrangements. Devolution combined with power-sharing arrangements at the level of the wider polity is therefore the only solution that treats the members of rival projects of self-government as equal citizens.[7]

This normative argument from the domestic perspective of equal citizenship can be extended to international law, whose primary concern has been the disruptive potential of national minority claims for peaceful relations between states. Replacing the current morally arbitrary and inconsistent right to self-determination with a general right to self-government would maintain the legitimate concern for the territorial integrity of states while allowing national minorities to appeal to international institutions for a protection of their autonomy rights. Such recognition of sub-state communities as relevant political and legal entities and bearers of rights to self-government would signal a paradigm change in international law comparable to the human rights revolution after World War Two (Bauböck 2004b).

International migration is the second source of irritation for Westphalian boundaries. It raises a parallel set of questions with regard to overlapping affiliations of individuals to independent states. Why do they deserve normative recognition and why should this recognition be grounded in international law?

My general suggestion is that migrants must be able to combine residential citizenship in the receiving country with external citizenship in the sending country. This implies also a toleration of formal dual nationality by both states. "Transnational citizenship" is the term that I have proposed for this emerging norm (Bauböck 1994). From the perspective of an alternative liberal order the dual affiliation of migrants to countries of origin and destination would not be regarded as an irregularity but as a fact that ought to be recognized and regulated on the basis of a stakeholder principle. According to this norm, providing safeguards for the enjoyment of individual rights is the responsibility of those states in whose territory the interests protected by the respective right are anchored and exercised. A more extensive claim to full membership arises when the social conditions and circumstances an individual finds herself in, or has chosen to live in, link her individual interests to the collective ones of the common good of a particular political community (Bauböck and Volf 2001: 21-24). Birth or long-term settlement in a state's territory indicate a relevant social tie of this kind that gives an individual a stake in the polity. Similarly, birth or close family links and life plans that include a return option substantiate a claim to retain the citizenship of a country of emigration

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[7] This multinational constellation is to be distinguished from a unilateral colonization or annexation of foreign territory by another state or a group of settlers. In such cases the oppressed native population enjoys a right to self-determination that includes the right to restore or to newly establish an independent state.

(Bauböck 2003b).

Why should this norm be anchored in international law? As I have argued above, the Westphalian principle of state sovereignty in nationality law generates inevitably conflicts between the rules applied by different states, as well as legal insecurity or even statelessness for individuals. Stronger international norms are imperative also from a traditional perspective, since in a migration context the nationality and alien laws of one state impact directly on other states. This is obvious with regard to the avoidance of statelessness or of conflicting obligations in case of multiple nationality (e.g. concerning military service). The argument I have suggested goes, however, beyond negative reasons of reducing interstate conflict and securing migrants' human rights. Establishing transnational citizenship in international law would mean recognizing that migration generates not only social, cultural and economic links between societies, but also overlapping political communities between territorially separate states.

## 3. Cultural versus political conceptions of minority rights

The solutions of federal autonomy for national minorities and transnational citizenship for migrants that I have defended satisfy the requirement of normative realism. They are not utopian but build upon existing trends in liberal democracies. There is, however, no linear progress in these matters. Both tendencies towards novel conceptions of political community meet strong nationalist resistance. The outcome of political conflicts over redefining political boundaries is not determined by historical laws. All the more important is it to formulate normative reasons that may convince citizens within democratic deliberations where all participants have to recognize each other as equals.

My account of the claims raised by national minorities and transnational migrants still leaves a question to be answered. If we compare their rights, how can we explain and justify that they seem to be so different? While the latter enjoy self-government, the former are only granted access to citizenship and "polyethnic" rights of cultural accommodation. Will Kymlicka's answer is that most migrants have chosen to leave their own culture and can therefore only expect to renegotiate the terms of their integration in the host society, but not to establish their original culture as a self-governing nation (Kymlicka 1995: 95-8). While I concur with his conclusions, I disagree with the premise from which they are derived.

Kymlicka's argument obviously does not apply to refugees or to second generations born abroad (as he concedes). Moreover, his theory's emphasis on the fundamental value of unchosen membership in one's culture of origin makes it implausible that people who have moved abroad voluntarily for economic reasons no longer have a fundamental interest in belonging to this culture or that emigration should be interpreted as waiving the right to live and work in this culture. Kymlicka also does not consider that migrants may in fact retain significant links to their countries of origin and even participate in its political decisions. Chaim Gans has recently suggested an additional argument that

addresses this latter deficit in Kymlicka's approach. The denial of self-government rights for immigrants may be justified because their polyethnic rights allow them to adhere to their culture of origin within the host society, while their long-term interests in the preservation of their nation's culture over many generations are taken into account in their country of origin if this nation is self-governing in its historic homeland (Gans 2003: 167) and if its national diasporas are granted priority admission when they wish to participate in nation-building in their homeland (ibid: ch.5).

Kymlicka and Gans defend a liberal version of cultural nationalism. Statist nationalists believe that "in order for states to realize political values such as democracy, economic welfare and distributive justice, the citizenries of states must share a homogenous national culture" (Gans 2003: 7). For liberal cultural nationalists, however, control of government is not the aim, but merely a means for the preservation of national cultures, which in turn provides a necessary background for individual autonomy or for individuals' desire that their endeavors should be remembered by later generations. This interpretation does not sufficiently recognize that for nationalist movements political self-determination is the primary goal and the specific difference that distinguishes groups mobilized as nations from ethnic, religious and purely linguistic identity groups. For this primary goal the preservation of a specific cultural tradition or language will often be important as a means to mark the boundaries of the community that strives to be recognized as a polity. Instead of promoting cultural preservation policies, nationalist elites are therefore generally eager to homogenize their languages and transform traditional ways of life so that their claim that these originally quite diverse cultural practices constitute a shared identity for all members of the nation becomes more plausible.

As an alternative to both statist and culturalist nationalism I propose a political conception that starts from the intrinsic value of self-government and people's fundamental interests in being recognized as members of self-governing polities. This interest is fundamental because individual autonomy, well-being and security can only be achieved through membership in a political community and because political power that is not derived from self-government of those over whom it is exercised cannot provide these basic goods in a stable manner. Membership in a bounded polity is in this respect more important for autonomy than membership in a particular culture. The human capacity for intercultural communication and transcultural hybridity makes it possible for individuals to flourish in a culturally diverse society without being firmly attached to any single of the distinct cultures in their social environment. Cultural rootlessness is a more viable option for some, although certainly not for all, individuals in our world than living without attachment to any political community that assumes responsibility for providing basic liberties and protection.

This may still seem like an instrumental account of the value of political membership. However, I believe there is some truth to the claim made by political philosophers ever since Aristotle that human beings have always lived in bounded communities with structures of political authority and collective decision-making just as they have always created specific cultures. Both the political and the cultural should be recognized as essential elements of the human condition. If membership in self-governing

political communities were merely of instrumental rather than intrinsic value, then it should be possible to generate all its benefits either in anarchical free market societies without any political authority or through subjection to enlightened foreign and authoritarian rule. If, however, human beings have a general disposition and desire to be members of comprehensively self-governing communities, then these alternatives should be discarded as violating a fundamental human interest.

My argument is still a modest one compared to the much more demanding claims of civic republicans who derive the intrinsic value of political membership from the idea that political activity is a necessary part of the good life. This idea can easily lead to denying recognition as equal citizens to those individuals who are either incapable or unwilling to engage in political activity (Bauböck 1994: 59-63).[8] The view that self-government can only be sustained if most members develop strong civic virtues of active participation was entirely plausible in an ancient Greek or late medieval Italian city republic, but is no longer so in modern representative democracies. In our societies, the intrinsic value of membership is indeed attached to membership as such and while active engagement should still be promoted and regarded as virtuous it is no longer a condition attached to enjoying the status and value of citizenship.

This political conception need not deny the fundamental value of cultural affiliations for most people, nor should it ignore the fact that every self-governing polity requires a shared public culture within which its government can operate and its citizens can communicate (Bauböck 2003b). It merely rejects the nationalist idea that each individual belongs fundamentally to one and only one such culture and that political arrangements should be tailored to protect and preserve homogeneous national cultures.

Instead of deriving self-government rights from the need for cultural protection, cultural minority rights should be derived from individual autonomy, equal respect for all citizens and from the conditions for self-government. First, a liberal commitment to individual autonomy does not justify the promotion of national culture but, on the contrary, supports the cultural liberties of Art. 27 ICCPR that prohibit coercive assimilation and state interference with cultural diversity in civil society and allow individuals to choose and combine cultural identities. Although these rights are defined as those of individuals belonging to minorities, they are universal ones that apply to majority populations as well.

Second, specific cultural minority rights can be based on the principle of equal respect for all citizens in a liberal polity. This requires that wherever a dominant public culture creates disadvantages for legitimate cultural minority practices public policies ought to accommodate and compensate minorities (e.g. through optional education in minority languages in public schools or through special exemptions from animal protection laws for Islamic and Jewish practices of ritual slaughtering).[9]

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[8] See Kymlicka (2001b, chapter 7) for a general critique of civic republicanism from a liberal perspective.

[9] Toleration of cultural practices in civil society as well as special accommodation and recognition in public law and institutions need not extend to practices that violate basic human rights or create strong negative externalities for others.

Third, self-governing minorities will enjoy specific rights to establish their languages and historical traditions as a dominant public culture within their jurisdiction in much the same way that national majorities do, and with much the same requirements for tolerating diversity and compensating internal minorities within their territory (Kymlicka 2001a: 47-53). Territorial establishment of a regional minority language of public life can be justified either as a legitimate outcome of self-government, i.e. as a power that should be included in the devolved competencies of a provincial government, or as a means to preserve the group's capacity for self-government by preventing its linguistic assimilation into the majority (and the possible disintegration and dispersal that might result from it). None of these arguments for cultural minority rights relies upon problematic assumptions about the value of societal cultures that provide their members "with meaningful ways of life across the full range of human activities" (Kymlicka 1995: 67).

A political conception allows also for a more straightforward defense of the distinction between national and migrant minorities. The former have the same claims to self-government rights in their historic homelands as a national majority whose nation-building project has shaped the territorial borders and the public culture of an independent state. Immigrants' fundamental interests in self-government are satisfied if they enjoy access to full citizenship in the host state as well as a right to retain the citizenship of their country of origin (which implies a right to return). Since self-governing polities need relatively stable territorial borders, the right to political autonomy cannot be simply carried elsewhere. Migrants who want to realize their nation-building projects abroad turn into colonial settlers who deprive the native population of its right to self-government. Such aspirations can only be justified in the most exceptional circumstances (such as an empty territory for immigration or genocidal persecution that can only be overcome through nation-building elsewhere).

Just as migrants who are offered fair terms of integration cannot expect receiving states to grant them political autonomy, so national minorities who are granted political autonomy have no primary right to a transnational citizenship that would link them to an external national homeland.[10] Historic ethnonational minorities may have a claim to external protection by an ethnic kin state in two kinds of circumstances. One is when they have chosen to define themselves as a diaspora that does not strive for political autonomy but instead wants to eventually "return" to their external homeland. This homeland may allow them to enter the territory and may give them immediate or facilitated access to citizenship after they have entered. Such policies of ethnic preference immigration are in need of special justification since they may amount to ethnic discrimination of immigrants from other origins or may have adverse impacts on national minorities in this state by outnumbering them in traditional areas of settlement. The strongest justification is when diaspora groups are persecuted in the states where they reside. If their oppression also entails restrictions of their freedom to emigrate, then

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[10] Thomas Franck is more sanguine about this combination. "Dual nationality, in effect, has become one way to establish special status and group rights for minorities within a state, especially in instances where the minority's realistic fears can best be allayed by allowing them to retain a citizenship link with an external 'protector' in addition to citizenship of their state of domicile" (Franck 1999: 72).

providing them with the citizenship of their destination already before they leave may help them to escape.

The other circumstance is where they struggle to establish or regain political autonomy that has been denied to them by the government of the state whose citizens they are. A national minority that is not granted an adequate form of self-government may turn to an external homeland state for protection of its rights through bilateral agreement. This has, for example, been the case in South Tyrol-Alto Adige, where Austria acted as a guarantor for the 1946 autonomy agreement until it was fully implemented in 1992. It is important to regard such arrangements as merely temporary ones, and it is preferable that such external protection be directly provided or at least supervised by international organizations. For these reasons external protection of minority autonomy should not involve turning the minority into citizens of the protector state, since this can hardly be understood as a temporary arrangement. Citizenship has no preset expiry date, but is about long-term membership in an intergenerational political community for an indefinite future.

The most important difference between dual citizenship for migrants and for national minorities is that in the latter case it may amount to extending a project of nation-building beyond the territory of the state in which this nation is already dominant. Such claims are part of the political rhetoric among nationalists on both sides in contexts of migration, too. US nativists fear that Mexican immigration may eventually lead to reclaiming territories in the South-East that were once part of Mexico (Huntington 2004), and some Mexican organizations have whipped up these anxieties by propagating the building of a global Mexican nation through emigration. A sober analysis will, however, quickly find out that these are purely ideological discourses. Immigrants in western democracies lack incentives as well as institutional bases for raising a serious territorial challenge (Bauböck 2003a). This is different with historic national minorities that control autonomous political institutions. If such a minority also enjoys external citizenship in an ethnic kin state, then fears among the majority that its autonomous institutions may be manipulated by that state are not irrational. Dual citizenship itself may not provide the external government with a formal legal title to engage in remote control of the external minority's autonomous institutions.[11] Yet in a broader sense citizenship signifies membership in self-governing political communities. A minority's claim to autonomy is compatible with the self-government of a larger multinational polity in which it forms a constitutive community and participates in federal power-sharing. It is not compatible with being simultaneously involved in the self-government of this nation in another state's territory. Dual citizenship indirectly acknowledges this latter claim and undermines thereby the integrity of nested self-government in the multinational polity.

There are exceptions that confirm this rule. These are cases where a territory's inclusion in a particular state is at the core of the dispute so that the conflict cannot be resolved through autonomy arrangements within that state. This is probably true, although in very different ways, for Northern

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[11] Thanks to Julius Horvath for raising this objection.

Ireland and for the status of Jerusalem within a two-state solution to the Israeli-Palestinian conflict. The Geneva Accord of October 2003, which contains a blueprint for a peace agreement on the conflict over Palestinian self-determination, suggests that the Old City of Jerusalem should become a territory over which Israel and a newly established Palestinian state exercise joint sovereignty. The provisions of the April 1998 Good Friday Agreement for Northern Ireland combine autonomy and power-sharing arrangements in the province with an all-Irish dimension that involves the Dublin government and an all-British Isles dimension that guarantees British influence even in case a majority in the province would eventually decide to reunite it with the Irish Republic. Moreover, Britain and Ireland have long-standing relations where citizens of both countries have reciprocal rights of free movement and the full franchise in the other state.

To sum up the argument: The political conception I am proposing as an alternative to statist and culturalist versions of liberal nationalism starts from a fundamental individual right to membership in self-governing communities which entails a correlative collective right to self-government. In a liberal perspective, these rights are self-constraining in the same way as other basic rights: they must not be exercised in a way that undermines legitimate claims of others to the same rights. For this reason, defensible solutions in boundary conflicts between different polities or projects for self-government must make these projects compatible with each other and must not establish one at the expense of another. In nested as well as in overlapping constellations of political communities such arrangements should allow for dual membership that permits individuals to participate simultaneously in two self-governing polities.

Solutions that can satisfy the requirement of equal respect and mutual compatibility for various projects of self-government will, however, be quite different for, on the one hand, multinational constellations involving distinct political communities nested within each other inside an independent state and, on the other hand, for immigrant and diaspora communities with an external attachment to a state of origin. In multinational constellations mutual compatibility requires abandoning a primary right of self-determination that would allow certain groups (whom international law identifies as 'peoples'), but not others that have developed equally strong aspirations to self-government, to unilaterally determine their own political status and boundaries. Such a right to self-determination (which includes the possibility of secession) can be justified only as a last remedy when a primary right to self-government has been persistently violated and when there is no more hope for restoring self-government within a larger polity that encompasses the competing projects. As I have argued above, arrangements combining political autonomy for constituent national minorities, power-sharing in a federal government and a common overarching citizenship can be regarded as an equilibrium solution that equally respects the political identities and projects of national majorities and minorities.

In the alternative constellation where boundaries of self-governing polities are overlapping rather than nested within each other the same requirements of equal respect and mutual compatibility lead to a quite different solution. Immigrants or diaspora minorities who wish to retain an option to return to an

external country of origin must not be excluded from access to full citizenship in their country of residence since doing so amounts to a native population's tyranny over a permanently disenfranchised minority (Walzer 1983: 62). At the same time, migrants have a claim to external affiliation to, and protection by, a "homeland" to which they are linked by present ties or future life plans. They cannot, however, expect to combine such external citizenship with establishing themselves as an autonomous polity in the state of residence since this would undermine the native population's claims to self-government. Importing a nation-building project into another polity's territory amounts to colonial settlement and is different from a native minority's resistance to a dominant group's nation-building policies.

This general incompatibility between internal autonomy and external citizenship suggests also that the protection of national minorities by a kin state requires a remedial justification, just as a minority's threat with secession does. Transnational citizenship should therefore not be regarded as a permanent arrangement that involves another independent state in the nested self-government of a multinational democracy.

Solutions for the self-government claims of the two kinds of minorities are different because they respond to different kinds of "misplacement" in a Westphalian nation-state system. Accepting their claims as justified will profoundly transform this system. However, even an alternative normative order cannot remove the trade-off between internal political autonomy and external political protection. Extending political autonomy to migrant groups and transnational citizenship to national minorities would have profoundly unsettling effects within any system that combines a horizontal pluralism of independent polities with vertically nested self-government.

## 4. Supranational political integration in Europe

The transformation of the Westphalian normative order into a complex multilevel system is not only due to the recognition of political autonomy for sub-state communities and of horizontally overlapping citizenships, it also shows in the formation of a new supranational polity in Europe. Other unions between sovereign states have been built as security alliances, free trade zones or more comprehensive agreements on political cooperation and free movement as between the Benelux and the Nordic Union countries. The European Union is so far, however, the only project of supranational union that is not a priori constrained by a rigid list of competencies for the institutions of joint government but proclaims instead an open-ended agenda for political integration. With the Maastricht Treaty of 1992 the EU has, moreover, taken formal steps to move from an economic towards a political union. The citizenship of the Union introduced in Maastricht is substantially little more than a formal title for privileges most of which the states of the Community had already granted each other's nationals under the previous version of the EC Treaty. However, the symbolic importance of this move is that it has established a new normative discourse about legitimacy and representation, in which the institutions of the Union are seen as accountable not merely to the governments of member states, but also directly to European

citizens.

The political conception of nested self-government that I have outlined in the previous section can support this emerging supranational citizenship in a similar manner as the claims of national minorities to autonomy and those of migrants to transnational citizenship. In contrast, most statist and culturalist versions of liberal nationalism tend to be skeptical or hostile towards this development. This is most obviously true for statist nationalists who regard the European Union as lacking the required sense of common nationality that is necessary for solidarity among citizens. For this reason, David Miller regards "Europe as an association of states for mutual support rather than as a genuine community each of whose members acknowledges a responsibility for the welfare of the rest" (Miller 1995: 161). Cultural nationalists emphasize likewise that public discourses in the EU remain broadly national ones and remain skeptical about any meaningful form of supranational citizenship and democracy. "[C]itizens in each country want to debate amongst themselves, in their vernacular, what the position of their governments should be on EU issues (Kymlicka 2001b: 314).

The EU's significance for a new normative international order can indeed be challenged in several ways. First, many observers defend the view that the Union is still primarily an international organization whose moves towards political integration are dictated, as well as constrained, by the interests of its member states (Taylor 1982, Moravczik 1998). Second, some take the opposite perspective by arguing that the present union is merely a transitory stage towards a large federal state (Puntscher-Riekmann 1998, Laitin 2001). Third, one can accept the genuinely supranational character of the EU and regard it as a polity *sui generis*, which is neither a federal state nor a confederation of states (Schmitter 2000). This last view emphasizes the singularity of the phenomenon, which is unlikely to be replicated in any other world region.

There is empirical evidence and there are plausible arguments for each of these contrasting hypotheses. However, they fail (in descending degrees) to account for emerging normative discourses on a European level that focus on external enlargement, internal integration and a kind of European mission in the world. First, the inclusion of candidate states for membership is not only regarded as their own free decision but also as a duty of the present members who must assist the candidates in meeting the required standards. Second, the goal of "ever closer union among the peoples of Europe", formulated already in 1957 in the preamble of the Treaty of Rome, is invoked in these discourses against national governments who block further transfers of state sovereignty that have been agreed upon by other member states. Finally, the European way of integration is presented as a model to be emulated by other troubled regions with a history of inter-state war and authoritarian regimes, while at the same time arguing for a common European foreign and security policy that provides a counterweight to US-American dominance in the present world order.

Of course, all these political imperatives are highly contested within European debates. However, given the persistent controversies, it is rather amazing that until now these processes of integration and

enlargement have only experienced periods of stalemate, but no real reversals. This can be taken as an indicator that the underlying norms are somehow already embedded in the institutional arrangements themselves so that it has become difficult to uproot them through political counter-mobilization. If this is true, then normative realism encourages us to address the question: Are there normative reasons beyond particular state interests of present and future members to endorse further political integration and enlargement of the Union?

Jürgen Habermas (2001) has listed a number of such reasons, emphasizing especially the need to preserve a European model of the welfare state in a context of pressures emerging from economic globalization. But this, too, is an argument that must face the charge of defending merely a particularistic interest. Doing so may be legitimate but it does not really show why the rest of the world should also welcome European integration. [12]

A global political perspective may provide stronger normative arguments for supporting European unification. First, European states have learned from their history that problems of securing peace and prosperity on their continent can only be solved through cooperation that involves a partial transfer of sovereignty to supranational institutions. Second, the EU has undertaken the so far unique attempt to tame and to legitimate supranational power by democratic procedures and to construct a union of states also as a union of European citizens. These endeavors have so far not led to really satisfactory results, but they have at least formulated new normative standards for supranational political institutions. In both respects, Europe may serve as a laboratory for testing new forms of political organization and solutions for cooperation problems and this could also be relevant for global dilemmas that cannot be resolved within a Westphalian order.

This should not be misunderstood as a call to expand the EU to the whole world or to transform the U.N. into a global European Union. The EU can hardly be interpreted as a realization of the Kantian idea of an ever-growing confederation of free republics (Kant 1795/1995). It is instead a regional union with a much stronger potential for political integration and common citizenship, but for this very reason also with constraints on its capacity for enlargement. These (as yet undefined) geographic limits should not be regarded as limitations of the global relevance of the EU model. In a pluralistic multilevel system the difference between global political institutions and regional unions is crucial and must be preserved both with regard to the division of competencies and normative boundary structures. The significance of the European experiment lies rather in the experience that partial renunciation of sovereignty and democratization of international organizations can yield considerable benefits for the states involved and for their citizens.

A third reason merits special emphasis in the current global political constellation. The European path contrasts with the American one. In the U.S., the dogma of national sovereignty is so strong that it has

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[12] This problem is most obvious if one considers European agrarian subsidies, which involve much more supranational redistribution than any other policy program and are rightly seen by other countries as a protectionism that hurts primarily developing countries.

blocked the country's full integration into the normative order of international law that the American government itself has helped to create after World War Two. The refusal to ratify the treaty establishing the International Criminal Court is not surprising if one considers that the U.S. has not signed some of the most important human rights conventions. This reluctance is not grounded in a rejection of the human rights listed in these treaties but rather in a tradition of liberal constitutionalism that derives these rights exclusively from the domestic constitution that the American people has given to itself and that regards therefore claims of international norms to universal validity and legal superiority as undermining the foundations of popular sovereignty.

The failure of American liberal constitutionalism to provide internal reasons for the strongest world power to accept a global normative order in which its relations to other states will be constrained by international law provides a final argument for a post-Westphalian conception. Most liberal theorists have assumed that human rights norms are grounded in universal values that imply specific obligations in relations between individuals and states. All liberal constitutions affirm these values. Even if they are endorsed, universal values are likely to be interpreted differently in various historical and local contexts, so that the human rights that we find in liberal constitutions are not likely to converge towards a single list. This is what we may call the local context constraint on international human rights. Because liberal democratic constitutions also endorse the idea of popular sovereignty they are unlikely to provide internal reasons for accepting an international list of human rights as legally binding, nor is it obvious why they should do so if their constitutional tradition yields an adequate domestic conception of human rights. Let me call this the popular sovereignty constraint. Both constraints on domestic constitutional justification lead to the conclusion that external reasons are required to make a compelling case for human rights as part of binding international law.

These external reasons can be found in the evidence of growing interdependence between states that justifies constraining their sovereignty through international law and institutions. In his essay on Perpetual Peace Kant emphasizes this much more than metaphysical assumptions about human nature and universal values. He argues that global citizenship is no longer a fantastic or ludicrous idea because community between the earth's peoples have developed so far that the violation of rights in one place is felt in all places (Kant 1795/1995: 300). Seyla Benhabib makes a similar argument for ethical universalism grounded in the idea of a global "community of conversation" that includes all humanity "not because one has to invoke some philosophically essentialist theory of human nature, but because the condition of planetary interdependence has created a situation of worldwide reciprocal exchange, influence, and interaction" (Benhabib 2002: 36). Global economic, political and cultural interdependence has strongly increased since Kant's days and it provides the general argument why constraining national sovereignty is not only legitimate but imperative.

A supranational integration of states that accept each other as equal partners and retain strong powers for their internal self-government will not produce a global superpower. The apparent political and military weakness of the European Union as a non-state does not allow it to create a new global

balance of powers that substitutes for that of the Cold War. However, this was not a particularly attractive constellation anyhow. The kind of political institutions that would respond to the most urgent global problems are not likely to emerge from either a monopolar or a bipolar order of sovereign states. A multi*level* order, however, with an intermediary layer of government between independent states and global political institutions might be the best possible environment for strengthening the latter. At least this is what the European experience seems to suggest.

## 5. Conclusions

A pluralistic global normative order should therefore be conceived as a multilevel system in which state sovereignty is delegated both upwards and downwards. This order ought to enable historic communities that have been united by a desire for self-government to exercise political autonomy and it should encourage independent states to integrate into supranational polities. In such a system most individuals will be simultaneously citizens of several nested polities. In response to international migration, this order would also allow for horizontally overlapping citizenship. Migrants, too, will be simultaneously citizens of several polities, although of territorially separate ones which have no claims to interfere with each other's self-government.

The number of levels and the types of polities will not be the same in all countries and regions. Sub-state local and provincial autonomy and supra-state regional integration are desirable for all large and powerful states, but autonomy arrangements will differ in mononational and multinational states, and regional integration will not generate everywhere a supranational polity with its own democratic citizenship. The multiplicity of forms of self-government would, however, be normatively constrained in such an alternative order through requirements of mutual compatibility. Moreover, this order would even more urgently need a set of global legal norms and institutions that can promote and ultimately enforce the rule of law in relations between self-governing polities. A major difference in this regard with the Westphalian order is that international law would not merely apply to independent states but would become instead a law of peoples that provides the general norms for self-government at all levels of political community.

Compared with the present state system the normative superiority of this model is that it can much better accommodate legitimate claims and equal rights for those individuals that are misaligned in the Westphalian order because of their national origins. Secondly, the suggested modification of this order would not endanger the strong horizontal pluralism that characterizes the present state system, but would instead extend it towards a pluralism of several types of political community and of multiple individual affiliations to them. Finally, this model offers at least a chance for strengthening global institutions and reducing the outrageous discrepancy between the normative equality of sovereign states and drastic inequality in the current global distribution of power and resources.

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