CONTEMPORARY LIBERALISM AND THE NATION

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ABSTRACT

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What is the status and legitimacy of the nation within the horizon of liberalism today? Surveying three representative, contrasting, recent works in contemporary political philosophy, I argue that the nation loses its status and legitimacy from every side. John Rawls's allegedly status-quo preserving theory in *The Law of Peoples* (Rawls 1999) defends only the shell of sovereignty and in fact points toward cosmopolitan aspirations. Cosmopolitan liberals, and conservative nationalists, therefore, claim with reason that liberalism is not capable of conferring status and legitimacy on the nation's "arbitrary" restrictions of individual autonomy (Nussbaum and Cohen 1996, MacIntyre 2003). But, in doing so, cosmopolitan liberalism creates a grave problem, for liberalism depends upon citizens to uphold freedom and upon limits to freedom to make freedoms meaningful. One would think to turn toward so-called liberal nationalist theories of liberalism, like David Miller's *On Nationality* (Miller 1995). But these, in turn, defend the nation only by depleting it of any content and rendering the very concept of the nation hollow. Neither of these two possible corrections of liberalism solves its problems with particularity and social unity; each only exacerbates them. My work as a whole therefore shows that contemporary liberalism tends to undermine the nation, on which it nevertheless relies. I demonstrate each part of the argument in separate chapters: two on Rawls's liberalism, one on Nussbaum's cosmopolitanism, and two on David Miller's liberal nationalism. These three perspectives represent a fairly complete spectrum of contemporary liberal thinking about the status of the nation.

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INTRODUCTION

Today's headline is that the U.S. President has, in a tweet of course, suggested that one or more Democratic Party congresswomen, some of them natural-born citizens, should return to their 'native' countries and solve the problems there rather than continue to criticize his enforcement of the national borders. He was jumping into an intra-party feud over whether insufficiently radical Democrats are essentially racists or segregationists, and he drew the Democrats out of this feud long enough to re-direct their anger against himself. One foreign-born congresswoman replied, "I believe, as an immigrant, I probably love this country more than anyone that is naturally born" (Quilantan and Cohen 2019). These are the extremes we are caught between at present: nationalism and cosmopolitanism. Liberalism carries little weight on either side. Only an election or two (or maybe three) ago, liberalism was a common creed. What has happened?

The present dissertation makes a somewhat unusual foray into explaining our contemporary situation, through a survey of academic and philosophic opinion. Of course, I say "explain" somewhat loosely. There are many better explanations available for the behavioral aspects of polarization, for instance (Abramowitz 2013). But *perhaps* philosophy can help to explain some of the ideas and dilemmas that arise in a given culture (Hirschman 1977, Koselleck 1985, Rosanvallon and Moyn 2006, Skinner 2002, Strauss 1957). At any rate, that is what we will hope. Liberalism, which prioritizes security and freedom, or which stems from the idea that individuals have rights prior to duties (Strauss 1950, 182), is both a tradition of philosophic thought and the common idiom of modern democracy (1). If we can say something about what liberalism today implies for nations and their political life, we may hope to shed some light on the discontents that arise (Sandel 1984).

As it happens, academic or philosophic liberalism has kept step with, if not preceded, the current public debates. Since liberalism's revival in the 1970s (Rawls 1971, Dworkin 1977), the critics of liberalism have focused especially on the question of community. The most famous critics came to be known as "communitarians" (Mulhall and Swift 1992), and the most famous new branch of liberals, who took off as early as the late 1970s (Beitz 1979), came to be known as "cosmopolitans" (Brock 2013). Slowly at first, the communitarian family began to include "liberal nationalism" as well (Tamir 1993). Looking back, liberalism had divided into three positions on the status and meaning of nations: cosmopolitanism, status-quo liberalism (or "political liberalism" or "non-cosmopolitanism") (Brock 2013), and liberal nationalism. And yet, as so often happens in academic philosophy, there was some confusion as to whether any of these labels had much meaning. In one reading, at least, "We Are All Cosmopolitans Now" (Blake 2013), and the remaining question is, what is a cosmopolitan liberal to do with all of these nations? In other words, one obtains a very strong sense that the whole liberal party was not discussing any kind of national alternative or corrective to liberalism at all. The question was, rather, how might the unfortunate fact of nations and nationalism best be tamed and employed for liberal ends, for justice as liberalism conceives of it?

As a consequence, the usual thing to do is to undertake an explanation of nationalism or nations from within the liberal horizon, seeking either to debunk or usurp their powers. Bernard Yack's *Nationalism and the Moral Psychology of Community* both criticizes and makes use of this practice (Yack 2012). Other authors offer an argument for one type of liberal cosmopolitanism or another, perhaps explaining why liberals can be cosmopolitans, patriots, and nationalists all at the same time without any serious trouble (Tan 2004). What I want to do is to analyze liberalism's obsession with cosmopolitanism and its dilemma with nationalism, without

taking too much of a side on the issue. My effort is of the genre, "what is liberalism," and my question, "how does liberalism explain nations," is the focusing lens.

Contemporary Liberalism

When I speak of "liberalism" in this dissertation, I invoke only a very narrow range of thought, essentially defined by the work of John Rawls and his return to a kind of Kantian liberalism. Rawls and his associates are, obviously, only one branch of the liberal family tree, so the dissertation leaves open questions of external validity. That is, we can only speculate as to whether liberal thinking as such, in its various historical traditions, has the same problems. Let me spend a little time on this matter to orient ourselves. I will draw our attention to the most salient aspects of the Rawlsian tradition, and then I will consider whether other contemporary and prominent traditions of philosophical liberalism are very distinct.

The liberalism of Rawls depends upon a very novel and idiosyncratic reading of the social contract tradition, especially as formulated by Rousseau and Kant (Rawls 1971, 221). In his reading, the liberal state rests in no part on actual consent. Instead, the contract is "purely hypothetical" in order to ensure that no considerations based on the participants' *actual* identity and characteristics as particular selves will distort their view of justice or give them unfair bargaining power (Rawls 1971, 14). Of particular importance to our present questions, the participants in the social contract ignore "the particular circumstances of their own society" (118). To some extent, I would argue, adopting such a universal point of view is characteristic of liberal theorizing generally (Nozick 1974). Liberals in general will agree with Rawls when he explains, "Thus I believe that a democratic society is not and cannot be a community, where by a community I mean a body of persons united in affirming the same comprehensive, or partially comprehensive, doctrine" (Rawls 2001, 3, Nozick 1974, 322). Liberals generally hold that

individuals without affiliation or doctrinal agreement form a social contract or otherwise agree to affiliate as a political community, one which abstains from scrutinizing their private opinions.

But Rawls goes further when he eliminates the doctrine of actual consent and replaces it with the doctrine of hypothetical consent. Actual consent means free association, which at least *possibly* implies freedom to exclude in some degree. But Rawls asserts, "Again, political society is not, and cannot be, an association. We do not enter it voluntarily. Rather we simply find ourselves in a particular political society at a certain moment of historical time. We might think our presence in it, our being here, is not free" (4). Because we are to understand our membership in society as unfree, we must understand society as essentially coercive. This premise justifies Rawls in demanding that society compensate us adequately for our unchosen fate and, simultaneously, it leads his theory quickly toward the implication that the differences between the fate of citizens and non-citizens have no moral justification (Beitz 1979).

But these two implications of Rawls's theory pull in opposite directions. On the one hand, we demand a society that treats its members with a substantial and not merely procedural regard for their common liberties; i.e., the common liberties require common funding (Rawls 1999, 49). That requirement tends in the direction of mutually responsible, presumably national communities. On the other hand, the reason we deserve this compensation is due to the fact that we are arbitrarily placed in such communities of fate. Does not everyone deserve the common liberties? And is it not unfair that we must abide by the justice that happens to prevail in our particular society? These two questions mirror real policy concerns that have roots in the liberalism of the 1960s. During that time, the liberal administrations increased domestic spending, intervened in the permissible expression of private prejudice, revised immigration policy to express neutrality toward country of origin, and fought a war for hegemony in East

Asia. Rawls's theory of justice could be said to have formalized and offered justification for the emerging liberal welfare-state open to universal humanity.

Liberalism in General

Thus, Rawls's liberalism has particular reasons for suggesting cosmopolitan and national questions, but it more naturally points in the direction of Kant's (somewhat ambiguous) cosmopolitan answers to them (Kant 2006, Rawls 1999, Beitz 1979). Do other varieties of liberalism point in a different direction? The question is immense, so I will consider only the most prominent alternatives: libertarianism and utilitarianism. Robert Nozick, our most famous libertarian, utterly rejects Rawls's interpretation of society in his (nearly) equally famous *Anarchy, State, and Utopia* (Nozick 1974). Nozick largely abstains from the relevant questions (332), but he is clear, "A face-to-face community can exist on land jointly owned by its members, whereas the land of a nation is not so held … the citizens of a nation do not jointly own its land and so cannot … regulate its use" (322). Building from such premises, libertarian philosophers tend to argue against the right to exclude immigrants (Huemer 2010).

For its part, utilitarianism takes the equal moral value of all existing human beings wherever they may be as a first principle. David Miller explains the result well.

> The consistent universalist should regard nationality not as a justifiable source of ethical identity but as a limitation to be overcome … Thus, Sidgwick, representing the utilitarian brand of universalism, contrasted the national ideal with the cosmopolitan ideal. The latter was 'the ideal of the future', but to apply it now 'allows too little for the national and patriotic sentiments which have in any case to be reckoned with as an actually powerful political force, and which appear to be at present indispensable to social well-being. We cannot yet hope to substitute for these sentiments, in sufficient diffusion and intensity, the wider sentiment connected with the conception of our common humanity.' Here is a consistent universalist, not trying *per impossible* to demonstrate the moral worth of nationality, but arguing that practical ethics must, for the foreseeable future, bow to the force of national sentiments (Miller 1995, 64).

And perhaps the time has come for the future ideal; such, at any rate, is the well-known argument of Peter Singer (Singer 1972). More generally, it has been argued that all major liberal traditions, whether deontological or utilitarian, converge at least on the impermissibility of hard borders (Carens 1987). There are, of course, dissenting views (Blake 2015, Nine 2008). But the Rawlsian tradition is not peculiar in suggesting cosmopolitan ideas, even if it is somewhat peculiarly invested in realizing them.

One could also look to older traditions of liberalism, on the ground that contemporary philosophizing has lost sight of liberalism's original aims and nuances. In particular, one might turn to theorists like Montesquieu who, while recognizably liberal in some ways, also tackle questions of particularity and social unity more thematically (Callanan 2014). There are valid and interesting projects available in this direction, but I put them to one side at present for two reasons. First, it is worthwhile to see where liberalism is today, regardless of where it has been. Learning this much would help to focus historical research on the questions that require answers and to avoid blind alleys. Second, while it would be useful to see what resources Montesquieu, Tocqueville, Burke, or others might have to offer, we should not ignore the fact that such thinkers offer corrections to or reinterpretations of the liberal tradition. Their contributions therefore sit ambiguously between the proper interpretation of liberalism and a prudent re-adjustment and moderation of liberalism. In the present work, I leave the thematic study of historical interpretations of liberalism for another occasion and turn to the outline of my argument.

The Thesis

In choosing my subjects of study, and in presenting my analysis of their claims, I avoid as much as possible engaging in technicalities. Some readers may find this a deficiency. The

literature on cosmopolitanism, Rawlsian liberalism, and liberal nationalism are each extremely large and well-developed in themselves, and my investigation will necessarily overlook many nuances. I justify my approach by its results and the special nature of my questions. I am concerned, first and last, with what it means to look at the world from these different points of view. Are we (liberals) possessed of a "proper patriotism" and national "common sympathies," or are we united only by our common commitment to free and equal citizenship and therefore willing to extend our circle of affection ever wider? Are we defenders of our homeland and its borders, or are we eager to build a world "Society of Peoples" through increased aid to foreign countries and even military intervention on behalf of human rights around the globe (Rawls 1999)? Are we "citizens of the world" through and through, owing allegiance to no country but only to the moral community of rational individuals (Nussbaum and Cohen 1996)? Or are we, instead, "deeply attached" to our national community and ready to celebrate our attachment to its particularity (Miller 1995)? By raising each of these questions, I intend to show that liberalism is incapable of defending any of these outlooks coherently. If I am right, we would have to move beyond liberalism, or at least contemporary left-liberalism, to make any coherent sense of who we are.

Chapters 1 and 2: Political Liberalism

John Rawls is possibly the most famous liberal theorist in recent memory. Although his ideas are novel and idiosyncratic in some ways, they have defined and dominated academic discussion of liberalism for decades now. And, for the purposes of this dissertation, Rawls occupies a central position because he seeks a certain middle ground for liberalism between cosmopolitanism and nationalism. His last major theoretical work, *The Law of Peoples*, explains and defends a "realistic utopia," in which "peoples" recognize one another's independence while

working together as a "Society of Peoples" for a world order of justice and peace (Rawls 1999, 6). In this vision, he seeks to combine uncompromising moralism with realistic historicism (6), uncompromising liberalism with generous tolerance for global diversity (59-88), and uncompromising universalism with "proper patriotism" (44, 62). He would deny that liberalism is opposed to political autonomy (118), but he would affirm that liberalism is opposed to political sovereignty (25). Peoples are both independent from one another and subordinate to each other, under the common Law of Peoples (37-8). His liberalism appears to be both cosmopolitan and non-cosmopolitan at the same time.

The manifest ambiguity of Rawls's position on the status of the nation drives his admirers in opposite directions. According to cosmopolitans, Rawls's liberalism is too conservative at the global level (Martin and Reidy 2006). From their point of view, Rawls gives too much weight to states, allowing the autonomy of these corporate entities to thwart a more universal conception of justice (Beitz 2000) and ignoring the enormous influence nations have over one another in the contemporary global world (Pogge 2002). According to liberal nationalists, on the other hand, Rawls gives too little weight to the ties of communities and ignores reasonable interests in national identity (Miller 1995, Tamir 1993, Canovan 1996). Both sides believe that Rawls himself should take their position as most consistent with his own, and neither believes that Rawls's position is quite adequate as it stands. Rawls demonstrates his liberal *bona fides* by disappointing everyone in nearly equal measure, and it is only with reference to his own conception that we can clarify what these disappointments really are.

Though sympathetic to his moderate impulses, I critique Rawls's *The Law of Peoples* from both sides, on the ground that doing so offers the best interpretation of his position and thinking. In Chapter 1, I argue the nationalist case, showing that his conception of national

autonomy is morally empty, inadequately realistic, and dependent upon circularities and unproven ideals. In Chapter 2, I argue the cosmopolitan case, in a sense. I find that Rawls makes real distinctions between the populations of the world, distinctions that he tries to cover over unsuccessfully. Although I do not suggest that cosmopolitanism would solve his problems, I do argue that his back-sliding from cosmopolitanism renders him inconsistent. Thus, I return to the position of Chapter 1: Rawls would do better to take a more serious view of national independence.

Chapter 3: Cosmopolitan Liberalism

Martha Nussbaum will represent cosmopolitan liberalism for us. Given the enormous literature on cosmopolitanism and global justice (Wenar 2006, 106), my reliance on her short essay, "Patriotism and Cosmopolitanism" (Nussbaum and Cohen 1996), requires some defense. A plethora of theories describe how the requirements of global justice should be grounded, defended, and understood (Beitz 1979, Pogge 2002, Tan 2004, Brock 2013). Not all, but most of this interest stems from the revival of Kantian conceptions of liberalism (Rawls 1971), and most of these works cite Kant's cosmopolitan writings in particular (Kant 2006). Why not choose among these? Simply put, focusing on any one of these theories would create serious difficulties for generalization. The intra-liberal debate over the basis for global justice is rich but also technical, and it would be very difficult to consider the merits of every theory at once. Even a single author sometimes presupposes familiarity with Rawlsian concepts (Pogge 1989) and sometimes offers an entirely new approach, based on a disagreement with Rawls's definition of justice (Pogge 2002). Others have changed their views over time as well (Beitz 1979, Beitz 2001). Besides which, despite all of these efforts, "There is a serious question whether we currently have, and indeed whether we can have, a genuine cosmopolitan alternative to Rawls's

theory" (Wenar 2006, 106). To get our bearings, then, we do not need to choose between the various proto-theories of cosmopolitan theories on offer.

What we want is an introduction to the contemporary cosmopolitan spirit and point of view, the view that we can be worldly citizens without patriotism and still be full of civic virtue (Keller 2013). But we want a general argument, one that we can take in with one glance. This Martha Nussbaum provides. In her short essay, she covers a lot of ground, and she helps us to think about what cosmopolitanism means for *us* – how we, here and now, should think of ourselves. She also usefully brings together Kant and the ancient Stoic tradition, which allows us to contrast the differences between these approaches to cosmopolitan thinking. Like Rawls and other cosmopolitans, she builds on Kantian conceptions of the person and advocates the prioritization of reason over sentiment. In short, we can learn a great deal from her essay, while avoiding unnecessary complications.

Nussbaum argues that cosmopolitanism is the rational and liberalism position, and I argue that it is neither. Nussbaum's position is much less rational than she takes it to be and stands on very shaky ground. She purchases a certain kind of consistency for liberalism at the expense of turning liberalism into its opposite. Ironically, her essay reveals cosmopolitan liberalism to be a kind of liberal nationalism.

Chapters 4 and 5: Liberal Nationalism

Chapters 4 and 5 will consider David Miller's *On Nationality* (Miller 1995), a defense of national identity and sentiment to liberals and those further to the left. Miller is certainly one of the most prominent contemporary liberal nationalists, and I find his account particularly worth study. Yael Tamir, another very prominent liberal nationalist, seeks to incorporate nationalism *within* liberalism, by extending liberal rights to include an individual right to national identity

and community (Tamir 1993). I find this conception perplexing, and it leads Tamir to defend multiculturalist claims to special funding and privileges for minority groups within nations, as opposed to defending national unity. She writes, "Satisfying these demands may require the creation of a pluralistic system providing differential services. The system of 'separate but equal services,' despite its notorious reputation, may thereby attain rehabilitation, demonstrating once more that it is crucially important to inquire who desires separate frameworks and why" (Tamir 1993, 55). Tamir's point of view seems to combine nationalist and multi-nationalist conceptions of the state. She is in favor of super-national associations such as the European Union, as umbrellas under which small cultural regions can practice limited forms of autonomy (150-1). In general, her argument seems to be less a defense of the nation than a critique of it. Miller and Yack are interested in the nation-state, as I am, whereas many liberal nationalists are more interested in how existing nation-states should modify their liberalism in order to accommodate the separate rights of smaller ethnic or cultural communities. In this respect, the so-called "liberal nationalists" advocate a multi-ethnic or "multi-national" state, which seems to me to be the opposite of nationalism (Kymlicka 1989, 1990, 232, Tamir 1993).

Two other works deserve mention, both of which are useful guides to the problems of national unity that beset liberal theory. Margaret Canovan's article, "Patriotism Is Not Enough," explains very well why contemporary liberal and cosmopolitan conceptions of 'constitutional patriotism' are too thin to explain national unity and too arbitrarily conceived to be convincing (Canovan 2000). She concludes, "Consciously or not, its supporters are employing the traditional tactics of the rhetorician, such as using familiar terms in altered senses, redescribing the political situation and shifting the battle lines to maximize support for their own position" (432). And, in her own *Nationhood and Political Theory* (Canovan 1996), she details how the nation has

supported liberalism over time by providing liberals with a background of loyalty and legitimacy within which to negotiate (71). Bernard Yack makes many similarly instructive observations on the need for national community and its relationship to liberal and democratic theory in his thoughtful *Nationalism and the Moral Psychology of Community* (Yack 2012). Like Canovan, he criticizes "The Myth of the Civic Nation" that has dominated liberal thinking (23). And Yack offers a particularly insightful account of the manner in which Lockean liberalism seems to presuppose a pre-political "people" in order to critique the state, but without explaining who these people are. The allegedly pre-political people are merely an abstraction from the territorially and legally defined people governed by the actual state (100). Finally, Yack offers an intriguing case for the importance of communal friendship and loyalty as a buffer against dogmatic ideological unity, warning us of the danger that zealotry with respect to justice may be as dangerous to liberalism as any other kind (177-183).

These works are less successful, however, in their positive prescriptions. Indeed, Yack's account of community is fairly weak. Unlike Miller, Yack thinks that community is no obstacle whatsoever to individual freedom (Hearn 2014), and Yack is at least as much concerned with "The Moral Problem with Nationalism" (Yack 2012, 213) and with finding arguments to chasten nationalism (233-304), as he is with defending the nation. Canovan, meanwhile, may be guilty of hand-waving at the crucial moment. As one reviewer writes, "Much of the attempt to clarify the terms involved with nationhood in the end sanitize not only the concepts but make the phenomena seem irrelevant or non-existent. Canovan's investigation of nationhood is important, then, not only for what it tells us about nationhood and the major topics in contemporary political theory but also about the practice of political theory" (Engel 1997). The contemporary, liberal

political theorists who seek to explain the nation do a better job, in general, at explaining why we might need a nation than at explaining what a nation is or in what sense liberals can have one.

Ultimately, I make the same critique of David Miller, but I think the critique is the more powerful for taking on his more extended attempt to do better. Miller defends the nation against both the right and the left. His view "stands in sharp contrast to the politics of identity favoured by radical multiculturalists" (Miller 1995, 152). And, though he seeks to show that he is not obliged to concede any of the conclusions of conservative nationalists, he concedes, "The conservative nationalist moves from a valid premiss – that a well functioning state rests upon a pre-political sense of common nationality" (129). As one of the few liberal nationalists who engages conservative nationalism and libertarianism with any seriousness, Miller deserves special attention. Engaging a broad range of perspectives, his book is especially illuminating.

Miller also remains very close to the Rawlsian tradition, despite or because he builds in part on Michael Sandel's communitarian critique of the same (Miller 1995, 94n). His theory "may be a specific instance of what is frequently now regarded as a more general contest between liberals and communitarians" (193). In my analysis, I take this contest to be intrinsic to Miller's theory. In Chapter 4, I argue that his account of nationality is too thin because it is entirely watered-down by his liberalism. In Chapter 5, I argue that his account of nationality is too strong because it seeks to revolutionize established orders and to impose illiberal restraints on ordinary human beings. In this way, Miller's liberal nationalism mirrors Nussbaum's cosmopolitan liberalism.

These three authors – Rawls, Nussbaum, and Miller – represent fairly well (though of course not exhaustively) the sources and range of the contemporary spectrum of liberal thinking

on the status, legitimacy, and moral weight of nations. Whether or not my critiques are sound, I hope that it will be instructive to obtain a synoptic view.

CHAPTER 1: POLITICAL LIBERALISM UNBOUND

I seek to explain the puzzle of John Rawls's strange mixture of cosmopolitanism and nationalism in *The Law of Peoples* (Rawls 1999). My primary goal is to understand whether Rawls can defend the moral status of nations within the horizon of liberalism. Liberalism, by assuming the free and equal status of individual human beings, universally conceived, assumes a certain cosmopolitan and anti-communitarian spirit in its foundations. Yet liberalism also originated as a theory of state legitimacy, not illegitimacy. Historically, liberalism has been allied with independent states, has supported their legitimacy and autonomy, and has distinguished between citizens and non-citizens. What is Rawls's view? Is patriotism one of the virtues? Are liberals loyal citizens, not simply citizens of the world? Obviously, we expect liberalism not to support militant and martial forms of patriotism or intensely exclusive forms of nationalism. But what exactly *is* the liberal view of the independent polity? Do borders have moral significance? Are nations real? Can liberalism be cosmopolitan and national at the same time?

That combination is precisely what contemporary liberalism, especially cosmopolitan liberalism, seeks to find (Yack 2012, 254). And Rawls's theory appears to seek a similar union between national rights of legitimacy and worldwide duties of justice. In fact, for present purposes, Rawls appears to go straight down the middle. Cosmopolitans will find him disappointingly conservative, and nationalists and realists will find him disappointingly utopian[1] –is that not a liberal success? To carve a middle way, reconciling and disappointing both sides, is a crucial task of political philosophy: for Rawls (Rawls 2001, 3-4), for liberalism, and for

[1] By "utopian," I mean a view that relies upon impossibilities in a manner dangerous for practical guidance. To propose and consider philosophically a utopia is not necessarily to be utopian in this sense. A utopia could be used to critique the actual without implying that utopia is achievable, as Plato perhaps intended in his *Republic* (Strauss 1950, 119). I will call Rawls's view utopian in the sense that he intends it as achievable and worth striving for. He seeks a "realistic utopia" (Rawls 1999, 6).

moderate statesmanship generally. Rawls would recognize and give weight to all of the duties and necessities of political life, ensuring both stability and justice, self-defense and peace, patriotism and global compassion; he would stick to an uncompromising liberalism while tolerating diversity, demand justice for individuals while supporting the political autonomy of states and nations; and, if he could do all of that, he would seem to offer a theory that everyone must recognize as reasonable, realistic, and nearly ideal. The universal disappointment with his theory would be a proof of its value. Like Solon, he would await a posthumous recognition.

With regret, this recognition is not mine to bestow. Instead, in the following two chapters, I will argue that Rawls's synthesis, however promising, does not work out: the utopian and national sides of his view pull apart into two mutually exclusive and incompatible sets of elements. In the light of both chapters, I will say that Rawls is torn between political and utopian perspectives that oppose one another. My overall argument is that these two aspects of liberalism are both necessarily present and incapable of synthesis. But I can only make this argument by presenting each side of his view in isolation, so I must caution the reader in advance that there are two sides to consider. If it is objected that I distort Rawls by failing to study his attempted synthesis all at once, I reply that doing so would prevent my analysis and argument from becoming clear. The justification for my procedure must be its result. If Rawls's position is confused, as I claim it is, then giving him the benefit of the doubt would mean remaining confused ourselves. Like him, we would bounce back and forth from one point of view to the other, and we would risk becoming dizzy: patriots at one minute, cosmopolitans at another, forever uncertain where we really stand.

In this chapter, then, I show that Rawls cannot defend the particularity of nations-states. His patriotism and nationalism, though supposed in his work as premises, wash out in the details

and specifications. Because Rawls is so well-studied, this argument repeats some points that will be familiar to many scholars. For instance, others have already shown ways in which Rawls's defense of nations falls apart from a cosmopolitan point of view (Beitz 2000); and I will rely on, confirm, and extend such criticisms in what follows. But from my point of view, this critique only highlights the utopianism and cosmopolitanism of Rawls's work. That must appear paradoxical, for how can Rawls be read as too cosmopolitan on the grounds that he fails to satisfy cosmopolitans? I say that it is precisely on these grounds that his cosmopolitanism appears clearly. Rawls cannot justify to cosmopolitans his defense of the nation; therefore, he fails to defend the nation. What cosmopolitans fail to see, I allege, is that their critique opens the door to seeing how extremely cosmopolitan Rawls really is. If he were really the conservative that they find so disappointing, they would not have such an easy time showing that he has no right to be.

I begin with a preliminary sketch of *The Law of Peoples,* its ostensible regard for the political autonomy of nation-states, and its actual cosmopolitan intention and implications. I then interpret the forces that drive liberalism into cosmopolitan utopianism, and I develop an account of the interdependence between liberalism and cosmopolitanism. From this basis, I critique Rawls's theory for proposing an unrealistic and idealistic view of political reality, the theory of democratic peace. His theory aims to be more realistic than that, but it actually rests on pure idealism. As a result, it precludes and prevents sensible foreign policy. Furthermore, and finally, it undermines the conditions of political independence and unity. In sum, liberalism seeks a world without nations.

The Cosmopolitan Basis of Rawls's Liberalism

The single most influential Anglo-American theorist of liberalism in recent memory is John Rawls, and his *The Law of Peoples* (Rawls 1999) is one of the most thorough and complete theories of the relationship between liberalism and international relations to have been presented in recent time. As Charles Beitz writes, "this essay ranks among Rawls's most important works in political theory and among the really constructive contributions to international thought of our time" (Beitz 2000, 669-70). Rawls's social contract theories for domestic liberalism, *A Theory of Justice* and *Political Liberalism* (Rawls 1971, 1993), are highly egalitarian and universalistic. As a result, cosmopolitan utopianism seems to be implicit in Rawls's theorizing in an especially strong way. Consider his "main idea" in the ground-breaking *A Theory of Justice:*

> My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant. In order to do this we are not to think of the original contract as one to enter a particular society or to set up a particular form of government. Rather, the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement … The choice which rational men would make in this hypothetical situation of equal liberty … determines the principles of justice (Rawls 1971, 10-11).

The social contract Rawls envisions is more abstract than previous versions. Rather than founding a particular state, his contract founds "the basic structure of society" (ibid). And the parties to this contract are therefore any and all persons involved in this basic structure, wherever it may extend. The basic structure is not that of any "particular society" (ibid), so it is presumably universal in scope. The contract is "purely hypothetical" in order to ensure that no considerations based on the participants' *actual* identity and characteristics as particular selves will distort their view of justice or give them unfair bargaining power (14). The choice situation "prevents the use of the accidents of natural endowment and the contingencies of social circumstance as counters in a quest for political and economic advantage" (ibid). It is described

so as to leave aside "those aspects of the social world that seem arbitrary from a moral point of view" (ibid).

To do so, Rawls famously places the contracting parties under a "veil of ignorance," which ensures, "that the parties do not know certain kinds of particular facts," including their "place in society … class position or social status … natural assets and abilities … intelligence and strength … conception of the good … plan of life … aversion to risk or liability to optimism or pessimism … the particular circumstances of their own society" (118). Thus, Rawls's social contract can be given a Kantian interpretation, for it is designed to mirror Kant's theory of morality (221).

> Kant held, I believe, that a person is acting autonomously when the principles of his action are chosen by him as the most adequate possible expression of his nature as a free and equal rational being. The principles he acts upon are not adopted because of his social position or natural endowments, or in view of the particular kind of society in which he lives or the specific things he happens to want. To act on such principles is to act heteronomously. Now the veil of ignorance deprives the persons in the original position of the knowledge that would enable them to choose heteronomous principles. The parties arrive at their choice together as free and equal rational persons knowing only that those circumstances obtain which give rise to the need for principles of justice (222).

All of these descriptions of the project converge to suggest a universal point of view without reference to particular societies. Unlike, say, Locke's social contract, the universal moral powers of persons are not employed to found a particular society by consensual act;[2] rather, the parties remain in a hypothetical position and directly legislate for the real world what appears just from a moral point of view. Since they are defined only as free and equal, and since they are ignorant of what society they belong to, they seem to be legislating for all persons everywhere in whatever society they belong. Since their decisions govern no particular society or government

[2] The rejection of actual contract and consent as the basis of society is extremely significant for the character of contemporary liberalism. It is equivalent to and necessary for the rejection of libertarianism, but in addition it removes, utterly, the presumptive legitimacy of particular governments.

but rather "the basic structure of society," we are at best uncertain where this basic structure begins or ends.

Readers of Rawls were not long in providing cosmopolitan reinterpretations of his theory of justice, based on the argument that the world today composes a "basic structure" of interaction within which borders impose arbitrary fates on individuals. Charles Beitz drew such conclusions in *Political Theory and International Relations*, and Thomas Pogge drew similar conclusions in *Realizing Rawls* (Pogge 1989, Beitz 1979). As Kok-Chor Tan writes, "Like the domestic basic structure, global institutions define people's various social positions, and consequently their expectations in life (cf. Rawls)" (Tan 2004, 27). In consequence, "A mere accident of birth, such as a person's citizenship (that is made morally salient by the norms regulating citizenship, migration, state sovereignty, global trade, and territorial and resource ownership), can drastically affect her entire life expectations and opportunities" (28). Therefore, "A complete theory of global justice must also transcend national boundaries" (37). Although much ink has been spilled over the definition of the basic structure and its relationship to the current world environment, the cosmopolitan implications of Rawls's theory appear to be far more obvious than the reasons for resisting it.

But Rawls's *The Law of Peoples* does not offer a strictly cosmopolitan deduction of global justice. Rather, "This account of the Law of Peoples conceives of liberal democratic peoples (and decent peoples) as the *actors* in the Society of Peoples, just as citizens are the actors in domestic society" (Rawls 1999, 23).[3] The contrast with the spirit of *A Theory of Justice* was

[3] Rawls uses multiple terms interchangeably to describe the ideal society, and I will follow his lead in this. For Rawls, "a reasonably just constitutional democratic society" can also be "referred to simply as a liberal society" (12). Unless otherwise noted, I also use the terms "democracy," "liberal society," and "constitutional democratic society" without intending any distinction between them; rather, like Rawls, I distinguish only between the ideal form and the historical reality of this single form of government or society. I use "liberalism" or "political liberalism" to describe the theories of Rawls and in no broader sense. Rawls's term of art, "peoples," will be the subject of much of the following discussion.

surprising, "And this produced much consternation and disappointment in many readers who thought they had correctly understood the structure, spirit, and implications of his earlier work" (Martin and Reidy 2006, 7). In *The Law of Peoples,* Rawls employs a conservative premise – the independence and agency of societies as collective actors – when discussing international justice, and cosmopolitans are disappointed by this premise, opposing "the tendency of the Law of Peoples to conceive of domestic societies as moral agents in their own right, with interests of their own and a corporate capacity for exercising responsibility over time" (Beitz 2000, 678). As Wenar puts it, Rawls offers, "a thoroughly statist version of liberal internationalism … it cannot show any direct concern for individuals … it is as if societies were individuals," and this gives *The Law of Peoples* "a bloodless, institutional character" (Wenar 2006, 104). Rawls offers no foothold for cosmopolitan questions of global justice for individuals conceived independently from societies.

Charles Beitz, for instance, faults Rawls for failing to go all the way that his original premises suggest. "Rawls**'**s strategy is to press social liberalism toward its most progressive expression and then to ask what more could reasonably be required. If successful, this approach would disarm cosmopolitan liberalism of its critical thrust by showing that a view with more conservative premises converges with it at the level of policy" (Beitz 2000, 678).[4] The results may converge but, given the fact that Rawls, as a liberal, is bound by commitments to individualism and universality, cosmopolitans find Rawls's position on the independence of societies "opaque, and, where clear, disappointingly conservative" (Wenar 2006, 106). Probably

[4] This description fits Rawls in general. In *A Theory of Justice,* he seemed interested in pushing liberalism towards its most egalitarian expression in order to disarm socialism of its critical thrust and, in *Political Liberalism,* he makes similar approaches to feminism. For Rawls, the challenge to liberalism comes from the left. He would defend liberalism by showing that it can incorporate demands from that direction without becoming radical or losing its central notions. In both previous cases, this meant defending the limits of the political and the autonomy of civil society. In the present case, in *The Law of Peoples,* this means defending the independence and autonomy of political societies with respect to one another, again within limits.

because "it is safe to say that most scholars currently engaged in debates over global justice favor cosmopolitanism" (ibid), it is now usual to speak of "Rawls's conservatism in the international realm" (97). From the thoroughly cosmopolitan perspective, at least, *The Law of Peoples* is a conservative defense of the status quo, or something too like the status quo, in international affairs. Despite the strong cosmopolitan tendencies in Rawls's social liberalism, and despite the convergence of Rawls's international theory and cosmopolitan liberalism, Rawls's theory clings to a conservative presumption in favor of political autonomy.

The first question *The Law of Peoples* raises is, then, why peoples? Why does Rawls feel the need to make a place for political autonomy and collective existence within his global order? Or, rather, not just a place, but a hallowed place. Beitz describes the cosmopolitan alternative to Rawls's "social liberalism" thus:

> Although it is consistent with a conception of the world as a society of domestic societies, the cosmopolitan view, in contrast to social liberalism, accords no moral privilege to domestic societies. At the deepest level, cosmopolitan liberalism regards the social world as composed of persons, not collectivities like societies or peoples, and insists that principles for the relations of societies should be based on a consideration of the fundamental interests of persons (Beitz 2000, 677).

Rawls makes collective political entities the actors and subjects of his international law at a foundational level, and these agents are endowed with a kind of underived legitimacy. No global account of justice for individuals stands behind and underwrites their autonomy. Beitz is puzzled by this, and we too must seek to understand what motivates Rawls to take the independence of domestic societies seriously.

Prudence and the Impossibility of Pure Cosmopolitanism

The puzzle of Rawls's "non-cosmopolitanism" has received more attention than is possible to discuss comprehensively (Brock 2013, Martin and Reidy 2006, Beitz 2000, Tan 2004), yet I hope to make a contribution to its interpretation. The usual question is, *can* Rawls

cling to this conservative premise? In fact, the same cosmopolitan readers of Rawls who dislike his use of this premise are particularly concerned to show that he cannot justify it. Charles Beitz in particular makes a very cogent critique of Rawls's attempt to avoid cosmopolitanism by explaining why Rawls would not be justified in positing the existence of peoples for the sake of prudence or as a practical strategy for obtaining utopia (Beitz 2000). Beitz is quite right, and I will show that, while *The Law of Peoples* posits "peoples," these entities dissolve under closer examination. In this chapter, I show both that Rawls's liberalism requires a cosmopolitan extension and that Rawls cannot defend any form of collective autonomy.

But before I make that argument, I want to indicate the distinction of my approach. For I do not by any means take for granted the superiority of the thoroughly cosmopolitan point of view. While I agree that cosmopolitanism is a consistent reading of moral egalitarianism, I disagree that it is a coherent political theory as it currently stands. Let me briefly indicate why I say that, so that the purpose of my criticisms of Rawls will be clear. Beitz and other cosmopolitans are in something of a bind, for their ideals imply a world-governing state. A coherent political theory of cosmopolitanism is, I would claim, a theory of the illegitimacy of all existing nation-states in the light of the ideal world-state. But contemporary cosmopolitans, like Rawls, "follow Kant's lead in *Perpetual Peace* (1795) in thinking that a world government … would either be a global despotism or else would rule over a fragile empire …" (Rawls 1999, 36, Beitz 1979, 199, 2000, 673, 677). So, if the world state is off the table, domestic societies must exist in some sense; they, and they alone. could work together to produce whatever pattern of global justice the theorist describes. And how can they work together if the ideal that guides their work includes their own illegitimacy?

The result is, as Leif Wenar observes, "There is a serious question whether we currently have, and indeed whether we can have, a genuine cosmopolitan alternative to Rawls's theory" (Wenar 2006, 106). When cosmopolitans demand "radical redistributive principles," they fail to explain how they justify "the most fundamental norms of global stability" (107). Can the globe remain stable enough to carry out their reforms if they deny "norms like 'nations have a right to self-defense' and 'nations should keep their treaties'" (ibid)? They, too, need "a general account of the ideal role of the nation-state in a world that is just to individuals regardless of their nationality – a formidable challenge indeed" (ibid). Rawls's *The Law of Peoples* appears to be the only monograph that even attempts to give such an account. As Beitz himself admits, it will be difficult to compare Rawls's work with a more thorough-going liberal cosmopolitanism, "until we have a cosmopolitan theory comparable in detail to The Law of Peoples" (Beitz 2000, 678). The employment of a conservative premise regarding the initial legitimacy of nation-states seems to be unavoidable for any such theory, however awkwardly that sits with the theory's ambitions.

Thus, Rawls's failure to sustain the premise of independent peoples is especially damaging in the light of the importance of this premise for political prudence. Both my interpretation and critique are unique, or at least distinct from Beitz's interpretation and critique, because I will argue that Rawls is *necessarily* inconsistent about the status of states and nations. Beitz thinks that Rawls confuses ideal theory with the considerations of non-ideal theory, of implementation, realism, or prudence. As Beitz puts it, "considerations of political realism have to do with constraints imposed by the status quo on prospects for change, and thus they pertain to questions about institutional design and reform rather than to those about standards of moral appraisal" (Beitz 2000, 681). If Rawls's theory is meant to be an ideal theory of justice, one

which provides the ultimate aspiration by which all progressive efforts should be judged, it would not be justified in building realism into its foundations. If justice is individual-regarding and global in scope, one should first describe the ideal and the institutions necessary to realize it, which may be more transnational than those that currently exist. Afterwards one can ask what legitimacy should accrue to current institutions, like the nation-state, given present circumstances.

Beitz is quite right, in a sense. If Rawls really takes a cosmopolitan point of view and thinks of institutions as justified from a universal perspective, then he ought to say so; employing the premise of politically independent units without derivation is arbitrary and potentially misleading. Rawls may have employed the premise of peoples at a foundational level because it would be unrealistic, incoherent and/or imprudent to de-legitimatize the only available agents for global social reform and cohesion without calling for the creation of a world-state. Alternatively, he may be confused or have neglected to investigate this premise that he finds readily available in common intuitions about the political world. But it makes little difference. As I see it, *whether or not Rawls is a moral cosmopolitan*, he must offer a political theory that builds upon the presumptive legitimacy of independent political units. There is no actual alternative, so the question of whether Rawls's position is cosmopolitan or not does not depend upon the *fact* that he uses this premise, only on the *manner* in which he uses it.

These are the considerations that make my argument somewhat paradoxical. I will confirm Beitz's critique, in a sense, but I will also rescue Rawls from Beitz's accusation. Rawls ultimately makes no bow to realism and only a very slight bow to moral conservativism, which is precisely why Beitz's critique succeeds. *The Law of Peoples* is idealism masquerading as realism. I do not speculate as to the manner in which Rawls came to his position; I only argue

that his position, the only possible cosmopolitan position that someone would really take, is incoherent. The essence of my argument is that a series of incompatible ideas is bound up in Rawls's conception of independent societies acting internationally, and that only incoherent notions are expressed by his incoherent neologism, "peoples."

Conservative Forms but Progressive Interpretations

Rawls's *The Law of Peoples* gives the impression of a non-cosmopolitan theory in so far as it is couched in the *form* of an international law applying to "peoples," entities that are somehow similar to states. In form, then, *The Law of Peoples* consists of eight "principles of justice" that define an international law to be observed by collective agents.

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense.
6. Peoples are to honor human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime (Rawls 1999, 37).

Since Rawls allows that international law refers to collective agents as actors, and the law includes declarations of political autonomy, Rawls appears to affirm a kind of status-quo view of international affairs. The governments of peoples rightly restrict immigration in keeping with their duty (8-9, see also 38-9). The borders of peoples are to be regarded, in general, as valid "*in perpetuity"* (37). Liberal peoples, at least, "strive to protect their political independence … to guarantee their security, territory, and the well-being of their citizens" (34). And all legitimate peoples have "a certain proper pride and honor; they may be proud of their history and achievements, as a *proper patriotism* allows" (44). Appearing in the Law as permanent,

defensible, independent agents in the world, peoples seem to be much more solid and real than cosmopolitans would allow them to be. Rawls appears to give states, or "peoples," a certain independent moral status.[5]

In other words, Rawls appears to look at the world from the perspective of a citizen. This international law is worked out in a manner analogous to his social contract for individuals in a society but, "differences between the two cases depend importantly on how, in each instance, the parties are understood" (40). Because the parties to the international contract are societies marked by "many different cultures and traditions," they will not even consider taking utilitarian equality as their principle of justice, "since no people organized by its government is prepared to count, *as a first principle*, the benefits for another people as outweighing the hardships imposed on itself" (ibid). The parties are "representatives of peoples (who) want to preserve the equality and independence of their own society" (41). Like good patriots, such representatives will not sacrifice their country's interest to the good of others. The collective interest of each society appears to count for something, and the citizens of each society take the normal and natural attitude that they are citizens of particular societies, with particular loyalties and obligations, not citizens of the world.

But we would be wrong to understand *The Law of Peoples* as part of familiar genres of international law, for this is not its *genre.* Rawls does offer "a particular political conception of right and justice that applies to the principles and norms of international law and practice" (3). But his conception of how to write about such matters is unique.

[5] The use of the term "peoples" is crucial, and we will consider its implications in the next section. As a preview, the concept of peoples assumes, among other things, a group of people in possession of (liberal or decent) state institutions (23). It is the state-like character of peoples that suggests a conservative premise, but Rawls distinguishes peoples from states by the fact that peoples lack sovereignty as traditionally understood (25). This fact will be the clue to the question of whether "peoples" are intelligible as corporate entities.

> This monograph on the Law of Peoples is neither a treatise nor a textbook on international law. Rather, it is a work that focuses strictly on certain questions connected with whether a realistic utopia is possible, and the conditions under which it might obtain. I begin and end with the idea of a realistic utopia. Political philosophy is realistically utopian when it extends what are ordinarily thought of as the limits of practical political possibility (5-6).

How are we to understand what is going here? We must put aside the idea that the *form* of the monograph, which mirrors a treatise on international law, indicates its *genre.* Only the *genre* defines the *content* or *purpose* of the theory. The goal is to show the possibility of a "realistic utopia" (6). On the one hand, by beginning with a conservative premise, the theory takes some notice of "the limits of practical political possibility" (11). On the other hand, because it "extends what are ordinarily thought to be" the practical limits of politics (ibid), the theory may or may not leave these limits as we know them in place.

To get any handle on what *The Law of Peoples* is about, we must derive a clue from the presumed *audience* for the theory. Who are we, the readers? Rawls's theory "reconciles *us* to our political and social condition" (11, my emphasis). We need to see that our historical situation "is not to be regretted" (12). Who is it that regrets our condition, the condition of independent societies? Whom must Rawls reconcile? And how will he reconcile these persons? Answering these questions will provide some insight into the purpose of the monograph as a whole.

The Philosophic Task of Reconciliation

We will have to begin by considering what reconciliation means in general. Rawls defines reconciliation as one of four roles or tasks of political philosophy in *Justice as Fairness* (Rawls 2001). To explain, Rawls writes, "political philosophy may try to calm our frustration and rage against our society and its history by showing us the way in which its institutions, when properly understood from a philosophical point of view, are rational, and developed over time as they did to attain their present, rational form" (Rawls 2001, 3). How does political philosophy do

this? Or, what is the frustration and rage that it must calm? Rawls focuses on the unhappiness we feel due to wishing that we could live in a *community*.

> Thus I believe that a democratic society is not and cannot be a community, where by a community I mean a body of persons united in affirming the same comprehensive, or partially comprehensive, doctrine. The fact of reasonable pluralism which characterizes a society with free institutions makes this impossible. This is the fact of profound and irreconcilable differences in citizens' reasonable comprehensive religious and philosophical conceptions of the world, and in their views of the moral and aesthetic values to be sought in human life. But this fact is not always easy to accept, and political philosophy may try to reconcile us to it by showing us the reason and indeed the political good and benefits of it … The fact of reasonable pluralism limits what is practically possible under the conditions of our social world, as opposed to conditions in other historical ages when people are often said to have been united (though perhaps they never have been) in affirming one comprehensive conception … To show … that it has its very considerable benefits, would be to reconcile us in part to our condition (3-5).

In other words, people perhaps naturally long to live in a community, united with others in shared understandings and practices. It is not easy to accept that we must live, instead, among other people with whom we have "profound and irreconcilable differences" (ibid). Liberalism teaches us to accept this situation in many ways. First, it reminds us that such differences may be reasonable. More strongly, it encourages us to treat such differences as reasonable, to consider every view reasonable to the extent that it too treats other views as reasonable. Second, it reminds us that we cannot do otherwise while maintaining free institutions. Third, it points out that there are benefits to living without community in a spirit of freedom – we ourselves remain free to pursue our own ideas of the good life, and we profit more from the cooperation of others with whom we disagree than their dissent impedes our path. Fourth, it suggests that our longing for community rests on the illusion that community is possible. In fact, it suggests, all alleged communities are based on the unreasonable repression of dissent. Reconciliation to our social world means signing up for liberalism.

But it must be noted, the fourth reason is highly speculative. "Of course, there is a question about how the limits of the practicable are discerned and what the conditions of our social world are; the problem here is that the limits of the possible are not given by the actual, for we can to a greater or lesser extent change political and social institutions, and much else" (Rawls 2001, 5, Rawls 1999, 12). We cannot really know that community is impossible. Its impossibility is a kind of standing hypothesis. The "fact" of reasonable pluralism is more like an assumption of reasonable pluralism, and that is why we cannot ever become devoted fully to it or convinced fully by it, but only "reconciled" to it. As a result, the world is likely to be divided into those who are and those who are not reconciled to the absence of community.

The rejection of community is *the* task of philosophy and *the* heart of liberalism. But more: recall, Rawls's liberalism also rejects the idea that political society is formed by consent. "Again, political society is not, and cannot be, an association. We do not enter it voluntarily. Rather we simply find ourselves in a particular political society at a certain moment of historical time. We might think our presence in it, our being here, is not free" (Rawls 2001, 4). This rejection of the concept of voluntary society is a crucial, novel ingredient in Rawls's conception of the social contract, and is widely shared by both cosmopolitan and nationalist liberals who build upon Rawls (Beitz 1979, Miller 1995). Writing in 2001, after the publication of *The Law of Peoples*, Rawls reaffirms this view and its corollary, so it cannot be the case that he dissents in any way from the cosmopolitan view that membership in a particular society is arbitrary and an obstacle to freedom (Beitz 2000, Nussbaum and Cohen 1996). Rawls's solution to this problem is, "We then try to formulate principles of political justice such that if the basic structure of society – the main political and social institutions and the way they fit together as one scheme of cooperation – satisfies those principles, then we can say without pretense and fakery that citizens

are indeed free and equal" (Rawls 2001, 4). That is a fine solution for *citizens of liberal democracy,* trapped in society but rendered free and equal by its laws in such a way that under no alternative hypothesis could their fortune by improved. But it would have to be applied to all the world on pain of leaving many individuals unfairly trapped within systems not of their choosing that do not render them free and equal. This is *the* cosmopolitan complaint, and at the time of publication for *Justice as Fairness* (2001), Rawls is aware of it. He *must* have thought that *The Law of Peoples* is some kind of reply to their concern.

Who, then, must be reconciled by *The Law of Peoples?* And to what? If reconciliation to liberalism and the absence of community is the task of political philosophy in the situation of domestic society, what is its task in the situation of the world? The context in which Rawls uses this language in *The Law of Peoples* is ambiguous, for he appears to be speaking at the same time to liberals as to those who are not liberals.

> Eventually we want to ask whether reasonable pluralism *within* or *between* peoples is a historical condition to which we should be reconciled. Though we can imagine what we sometimes think would be a happier world – one in which everyone, or all peoples, have the same faith that we do – that is not the question, excluded as it is by the nature and culture of free institutions. To show that reasonable pluralism is not to be regretted, we must show that, given the socially feasible alternatives, the existence of reasonable pluralism allows a society of greater political justice and liberty. To argue this cogently would be to reconcile us to our contemporary political and social condition (12).

Rawls must be speaking to nonliberals, in the first instance, for the task of reconciliation is the task of persuading communitarians to be liberal. For liberals, this task is relatively complete when it comes to affirming reasonable pluralism both within and between peoples. In both cases, liberals will say, the adoption of a common faith or common good is ruled out, and everyone must recognize the reasonableness of those with whom they disagree. To do so is to be sufficiently liberal and reasonable; to do otherwise is unreasonable. For nonliberals, the task begins with showing them that peoples taken as wholes may reasonably disagree on the best

form of society. They must be persuaded that bringing the world into a common faith is not a reasonable foreign policy. If they abandon that goal, they become liberal at the international level, even if they perhaps remain somehow illiberal domestically.

But this means that, in the second instance and far more importantly, Rawls is speaking to liberals. Liberals want everyone to be liberal, which means becoming reconciled to the absence of community and the priority of individual freedom. In their view, this aspiration is *not* a matter of pursuing "a happier world – one in which everyone, or all peoples, have the same faith that we do" (ibid). The liberals would say that they do not ask others to share their *faith,* only their principled toleration of faiths, which they call reasonable. For liberals to be reconciled to "our contemporary political and social condition" (ibid), liberals must be reconciled to the existence of independent political units that claim to be communities and thus reject liberalism. Reconciliation to that situation is somewhat paradoxical. For the liberal must come to see that the legitimate existence of a certain illiberalism "allows a society of greater political justice and liberty" (ibid). Which society does Rawls mean here? The world society or the domestic liberal society? Both, we will assume. There is fundamentally only one society, the human society, for there are no communities. The "contemporary" situation of divided communities, including some illiberal, or not fully liberal, communities, must come to light as a good *historical* situation with respect to the goal of maximizing political justice and liberty; i.e., the goal of eliminating the idea of community.[6]

In a nutshell, *The Law of Peoples* teaches everyone the necessity of world liberalism, or its most realistic analogue, and the historical path by which it may be attained. Thus, "The idea

[6] Rawls derives the idea of reconciliation from "Hegel in his *Philosophy of Right* (1821)" (Rawls 2001, 3). Hegel improves on Kant by focusing on the historical problem of the absolute moral truth of liberty in the context of history. "This fits one of Hegel's well-known sayings: 'When we look at the world rationally, the world looks rationally back'" (ibid).

of realistic utopia reconciles us to our social world by showing us that a reasonably just constitutional democracy existing as a member of a reasonably just Society of Peoples is *possible*" (127). It does not, then, reconcile us simply by showing that there is some obstacle we cannot overcome. For Rawls, "reconciliation" also means that we become rejuvenated and energized, full of hope, having seen that the world we long for can be ours. In this, Rawls follows the modern tradition. "Hobbes's *Leviathan* (1652) – surely the greatest work of political philosophy in English" is the origin of this tradition (Rawls 2001, 1). As Strauss explains Hobbes, "He is the classic and the founder of the specifically modern natural law doctrine. The profound change under consideration can be traced directly to Hobbes's concern with a human *guaranty for the actualization of the right social order or to his 'realistic' intention"* (Strauss 1950, 182). The realism of modern natural right explains "the frequently observed fact that during the modern period natural law became much more of a revolutionary force than it had been in the past" (183). Reconciliation means realistic hope means revolutionary change.

Rawls tells us of Hegel, "He seeks for us reconciliation – *Versohnung* – that is, we are to accept and affirm our social world positively, not merely be resigned to it" (Rawls 2001, 3). Importantly, this attitude is *not* dependent upon or challenged by the question of whether the ideal is achieved. The attitude rather depends upon the coherence of the ideal by itself, in the light of history but apart from future reality.

> While realization is, of course, not unimportant, I believe that the very possibility of such a social order can itself reconcile us to the social world … we can reasonably hope that we or others will someday, somewhere, achieve it; *and we can then do something toward this achievement*. This alone, quite apart from our success or failure, suffices to banish the dangers of resignation and cynicism (128, my emphasis).

The danger is resignation and cynicism, not unbridled hope. I will return to this point at times in what follows, but it is important to have before our minds at once: the "realistic" in "realistic

utopia" does not quite mean utopia modified by realism; it means utopia with minimal modification, and utopia with the courage of its convictions because premised on psychological and political insights that we can count on. It is a utopia that aims to become a topia. Rawls employs realism in order to give utopia strength and meaning and in order to fight off objections. Reconciliation with the world is at least ambiguous between accepting the limits of the world and changing it to suit our ideals.

A Law for Non-Sovereigns

It is important to realize, then, that the Law of Peoples is not status-quo preserving in any sense. I will have to demonstrate the full extent of this claim throughout, but there are two obvious ways in which Rawls's principles are incompatible with a strong view of collective independence. Principle Six says, "Peoples are to honor human rights," and Principle Eight says, "Peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime" (37). These policies point very clearly toward intervention – they are principles that *penetrate* the autonomy of regimes. These principles therefore severely qualify Principle One, "Peoples are free and independent, and their freedom and independence are to be respected by other peoples," and Principle Four, "Peoples are to observe a duty of non-intervention" (ibid). Thus, "A principle such as the fourth – that of non-intervention – will obviously have to be qualified in the general case of outlaw states and grave violations of human rights" (ibid). In general, "We must reformulate the powers of sovereignty in light of a reasonable Law of Peoples and deny to states the traditional rights to war and to unrestricted internal autonomy" (26-7). Rawls's conception "accords with a recent dramatic shift in how many would like international law to be understood" (27), a shift in expectation arising from "the rise and acceptance of constitutional democratic regimes, their

success in World Wars I and II, and the gradual loss of faith in Soviet communism" (27n). The Law of Peoples is not "Rules for a Vanished Westphalian World" (Buchanan 2000); they are more like rules for *The End of History* (Fukuyama 1992).

Presuming its own justice, the Society of Peoples has a mission and sits in judgment. Violators are subject to "condemnation by the world society," and "A people's right to independence and self-determination is no shield from that condemnation, nor even from coercive intervention by other peoples in grave cases" (38). Human rights take precedence over independence and self-determination. The threat of force is on the table and, while it cannot be used in every instance, the independence of peoples is no shield.[7]

These rules are cosmopolitan in principle. Rawls observes, in general, "The right to independence, and equally the right to self-determination, hold only within certain limits, yet to be specified for the general case" (38). In a footnote to this comment, Rawls in fact refers the reader to Charles Beitz's cosmopolitan theory of international justice, noting, "I owe much to his

[7] Rawls is inconsistent on this point. Sometimes he writes, "Well-ordered peoples … go to war only when they sincerely and reasonably believe that their safety and security are seriously endangered by the expansionist policies of outlaw states" (90-1). Officially, "any society that is non-aggressive and that honors human rights has the right of self-defense" (92). And it is supposed that liberal societies, decent societies, and even benevolent absolutisms can meet these two goals sufficiently. A benevolent absolutism does not deserve respect, "Its level of spiritual life and culture may not be high in our eyes," but "it always has the right to defend itself against invasion of its territory" (ibid). Rawls again claims, "well-ordered peoples do not wage war against each other … but only against non-well-ordered states whose expansionist aims threaten the security and free institutions of well-ordered regimes and bring about the war" (94). But these statements at most capture half of the true position. On the same page, in a footnote, Rawls admits that well-ordered peoples do initiate wars when absolutely necessary to protect human rights. "Some states are not well-ordered and violate human rights, but are not aggressive and do not harbor plans to attack their neighbors … They are therefore outlaw states … and they may be subject to some kind of intervention in severe cases" (90n). Even if they are not aggressive and pose no threat because, say, they are "quite weak," Rawls explains, "Certainly there is a prima facie case for intervention of some kind in such cases" (93n). He imagines "a developed society resembling the Aztecs," and he councils first that liberal peoples should persuade them to reform themselves by offering trade on the condition that they do so. But if this fails? "Is there ever a time when forceful intervention might be called for? If the offenses against human rights are egregious and the society does not respond to the imposition of sanctions, such intervention in the defense of human rights would be acceptable and would be called for" (ibid). Liberalism has a mission. It would not exterminate the Aztecs immediately for their infidelity and barbarism, as some people might have done, but it would do so if no other option remained. Meanwhile, a benevolent absolutism "is not a well-ordered society" and not a full and equal member of international society, so its rights to self-defense are not likely to be completely secure, either. Rawls is not war-mongering, of course, but he makes misleading remarks concerning the strength of state independence and inviolability in his theory.

account" (38). If we turn to the pages of *Political Theory and International Relations* that Rawls cites in support, we find Beitz claiming, "the principle of state autonomy – the central element in the morality of states – lacks a coherent moral foundation" (Beitz 121).[8] There is, then, a significant overlap between Rawls's *Law of Peoples* and Beitz's *Political Theory and International Relations.* Charles Beitz's cosmopolitan theory builds on Kant (Beitz 1979, 7, 9, 26). And for Rawls, the "basic idea" in *The Law of Peoples* is "to follow Kant's lead as sketched by him in *Perpetual Peace* (1795) and his idea of a *foedus pacificum*" (10). Both authors are united by Kantian cosmopolitanism in putting justice first and in seeing state borders as morally arbitrary and without sanctity save in support of justice.[9] Like Rawls, Beitz is "Following Kant," and therefore "we might call this a cosmopolitan conception. It is cosmopolitan in the sense that it is concerned with the moral relations of members of a universal community in which state boundaries have a merely derivative significance. There are no reasons of basic principle for exempting the internal affairs of states from external moral scrutiny, and it is possible that members of some states might have obligations of justice with respect to persons elsewhere" (Beitz 181-2). The supposed argument between cosmopolitans and non-cosmopolitans is really between and among cosmopolitans. When it comes to liberalism, "We Are All Cosmopolitans Now" (Blake 2013).

Peoples are neither Communities nor Associations

The key to *The Law of Peoples* is the neologism "peoples." We naturally suppose that, whatever Rawls means by peoples, he is describing really existing entities and the law to which they should conform in the future. But this turns out not to be the case. Thus, the most crucial

[8] Therefore, non-intervention "does not apply equally to all states … and, in fact, other things equal, interference with unjust institutions might be justified when it has a high probability of promoting domestic social justice" (ibid).

thing to notice is that the Law of Peoples is a law for … we know not what. The similarity between "peoples" and more familiar concepts like states and nations must not mislead us. We do not know what peoples are until Rawls defines them. As we saw, Rawls holds that political philosophy teaches us reconciliation to the absence of community and the arbitrariness of association. Rather than positing existing things or familiar conceptions, Rawls is, instead, always describing an ideal entity, which is defined by the fact that it and it alone could be subject to a certain law. Hence, the most important innovation of Rawls's law is that it leaves the *agents* or *subjects* of the law un-specified initially and described later. We have a list of international laws, many of which are familiar, but we cannot take for granted *who* or *what* is the subject of these political principles – we cannot use existing intuitions to fill in the gap where *polity* or *nation* or *state* would otherwise be presupposed. The main thing we know is, "The term 'peoples,' then, is meant to emphasize … peoples as distinct from states, as traditionally conceived" (27). The argument that the law is *possible* depends on the idea that an agent exists that can and will follow this law, and states are not such agents. "A difference between liberal peoples and states is that just liberal peoples limit their basic interests as required by the reasonable" (29). A law for peoples is distinct entirely from "the traditional *ius gentium,"* for, "I do not use the term 'law of peoples' with this meaning, however, but rather to mean the particular political principles for regulating the mutual political relations between peoples, as defined in Section 2*"* (29n). Peoples are defined as entities to which the international law applies because they are uniquely capable of following this law. What it really means to be a citizen of such a people is an open question.

The fundamental position of the Law of Peoples is *not* that peoples are independent; the fundamental position is that peoples have duties to the international community, only by

fulfilling which they remain in good standing. "Peoples Lack Traditional Sovereignty" (25). Peoples are, in principle, violable, and there are only two kinds of societies that have significant rights to independence. "The first is *reasonable liberal peoples;* the second, *decent* peoples" (4). Two additional types of society do not have independence rights. "There are, third, *outlaw states* and, fourth, *societies burdened by unfavorable conditions,"* which deserve intervention. And there are also "*benevolent absolutisms,"* whose status is somewhat murky.[10] Unquestionably, then, Rawls's Law of Peoples presents a *kind* of cosmopolitan aspiration. Rawls "hopes to say how a *world* Society of liberal and decent Peoples might be possible" (6, my emphasis). This world Society must embrace all societies eventually; the goal is for everyone to live in a liberal or decent society. "We take as a basic characteristic of well-ordered peoples that they wish to live in a world in which *all* peoples accept and follow the (ideal of the) Law of Peoples" (89). "The aim of the Law of Peoples would be fully achieved when *all societies* have been able to establish *either a liberal or a decent regime*, however unlikely that may be" (5, my emphasis). If it is a mark of a cosmopolitan theory that it embraces the world, then *The Law of Peoples* is a cosmopolitan theory.

To understand Rawls's concern with political autonomy, then, we must keep the ambiguous status of this right in mind. And, although the permanent independence of liberal and decent societies is affirmed, we cannot assume what this means without examination. The Law of Peoples itself changes shape depending upon what conditions are assumed. Once we reach the ideal situation in which the law fully applies, parts of the law simply fall away. "Some are superfluous in a society of well-ordered peoples, for example, the seventh regarding the conduct of war and the sixth regarding human rights" (37). When human rights are secure and there is no

[10] Rawls offers these last societies protection from forcible intervention but not equal respect; whether they are rightly subject to sanction is unclear (92), but even decent societies just barely escape deserving sanctions (59-62).

possibility of war, *then* the remaining elements of the law are reasonable and realistic. States, or rather peoples, can claim an independent existence *when and only when* all are subject to the same law. At that point, the range of independence and distinction narrows a good deal. Furthermore, the postulated independence of the units is only valid in the light of ideal circumstances in which certain problems disappear. "As a consequence of focusing on the idea of a realistic utopia, many of the immediate problems of contemporary foreign policy that trouble citizens and politicians will be left aside altogether or treated only briefly. I note three important examples: unjust war, immigration, and nuclear and other weapons of mass destruction" (8). With respect to each condition, Rawls argues that the elimination of borders becomes *unnecessary* for the elimination of the problems in question once realistic utopia is achieved. In this sense, the conservative premise of independent polities converges with the cosmopolitan premise of a just and united world. Peoples are permitted to restrict immigration, but only because no one is motivated to migrate anyway.[11]

We must not overstate the independence of "peoples," whatever they are, in the ideal case. Likewise, we need not derive their moral importance from any kind of intrinsically communitarian value. Rawls defends political institutions and well-functioning societies in terms of individual rights. It can appear otherwise. According to Beitz, Rawls and cosmopolitans disagree over the primacy of individuals. And Rawls apparently agrees with this contrast. "The ultimate concern of a cosmopolitan view is the well-being of individuals and not the justice of societies," Rawls advises his readers toward the end of this work (119). And in contrast to "the cosmopolitan view," Rawls writes, "What is important to the Law of Peoples is the justice and

[11] Rawls is clearly assuming a cosmopolitan reader when he explains his reasons for leaving these issues aside, and that is why Beitz thinks Rawls "would disarm cosmopolitan liberalism of its critical thrust by showing that a view with more conservative premises converges with it at the level of policy" (Beitz 2000, 678).

stability for the right reasons of liberal and decent societies, living as members of a Society of well-ordered Peoples" (120). But these remarks must be understood with care. Rawls really defends societies for their effect on individuals, not for their own sake. Rawls's ideal of just society is defined by the rights of individuals. Rawls's liberalism is one of "what we may call 'liberalisms of freedom.' Their three principles guarantee the basic rights and liberties, assign them a special priority, and assure to all citizens sufficient all-purpose means so that their freedoms are not purely formal. In this they stand with Kant, Hegel, and less obviously J.S. Mill" (15). The good for men is liberty, the guaranteed priority of their own pursuits of happiness and sufficient money to have a chance at it. And the evils men suffer all stem from the deprivation of liberty.

> Two main ideas motivate the Law of Peoples. One is that the great evils of human history – unjust wars and oppression, religious persecution and the denial of liberty of conscience, starvation and poverty, not to mention genocide and mass murder – follow from political injustice, with its own cruelties and callousness. (Here the idea of political justice is the same as that discussed by political liberalism, out of which the Law of Peoples is developed). The other main idea, obviously connected with the first, is that, once the gravest forms of political injustice are eliminated by following just (or at least decent) social policies and establishing just (or at least decent) basic institutions, these great evils will eventually disappear (6-7, my emphasis).

Liberalism prioritizes liberty because it focuses on evils; the greatest good (or rather, the most socially urgent good – the one which it is necessary to prioritize in common) is to be free from the greatest evils.

For the world, Rawls puts forward a theory that is likewise based on individual rights. He considers that his theory is "utopian and highly desirable because it joins reasonableness and justice with the conditions *enabling citizens to realize their fundamental interests*" (7, my emphasis). The fundamental interests of individuals is the question for Rawls, and Rawls simply believes that just institutions and political cultures are the cause of human welfare as he

understands it: liberty. This prioritization of liberty (which includes welfare as a derivative good) over other possible meanings of welfare (which prioritize money or other resources) is all Rawls means by his contrast with cosmopolitan theories. His focus on societies and institutions is no less cosmopolitan, only more strictly liberal, than alternatives. It is through societies and institutions that liberty is secured, so it is through the worldwide establishment of liberal (or nearly liberal) societies and institutions that evils might be banished from the world.

Thus Rawls argues, "It does not follow from the fact that boundaries are historically arbitrary that their role in the Law of Peoples cannot be justified. On the contrary, to fix on their arbitrariness is to fix on the wrong thing. In the absence of a world-state, there *must* be boundaries of some kind, which when viewed in isolation will seem arbitrary, and depend to some degree on historical circumstances" (39). Seeing boundaries as arbitrary implies a cosmopolitan point of view. And seeing societies as necessary is in no conflict with this view. "I stress here that the Law of Peoples does not question the legitimacy of government's authority to enforce the rule of democratic law. The supposed alternative to the government's so-called monopoly of power allows private violence for those with the will and the means to execute it" (26n). Liberalism is cosmopolitan, not anarchistic. Government is necessary; sovereign states are not. Liberalism seeks to have responsible, limited government without any strong form of collective autonomy.

The Liberal Ideal's Dependence Upon Peace

Why is liberalism cosmopolitan? The answers are surprisingly clear once we consider the liberal theory of the just society. For Rawls's political liberalism is defined in its core principles by this fact: never the community above the individual. "There is a family of reasonable liberal conceptions of justice, each of which has the following three characteristic principles" (14). Of

these three principles, the second and third of which are particular to his conception of liberalism, and first I would like to draw our attention to the second principle:

> the first enumerates the basic rights and liberties of the kind familiar from a constitutional regime;
> the second assigns these rights, liberties, and opportunities a special priority, especially with respect to the claims of the general good and perfectionism values; and
> the third assures for all citizens the requisite primary goods to enable them to make intelligent and effective use of their freedoms (14, my emphasis).

The claims of the general good are subordinate to the liberties of individuals – that is a fundamental principle of liberalism. And the clearest case in which the general good stands higher than individual liberty is when the good of one society is threatened by another. That is the time when the liberal people must ask each liberal person to sacrifice for the good of the whole. But this request is *never* really justified in liberal theory, for individual liberties forever and always take priority to the claims of the general good. If patriotism is one of the "perfectionism values," it has no standing in disputes over individual liberty.[12]

Of course, liberalism must make *some* place for the duty to defend individual liberties, at least. But it does so without referring to the general good or to patriotic affection. According to the ideal of domestic justice, "Conscription is permissible only if it is demanded for the defense of liberty itself, including here not only the liberties of the society in question, but also of persons in other societies as well" (Rawls 1971, 334). There appears to be no principled difference between fighting for one's country and fighting for liberty everywhere and for everyone, from this point of view. This view is held over in *The Law of Peoples*. For by that law, liberal societies understand, "their defense is … only their first and most urgent task. Their long-run aim is to bring all societies eventually to honor the Law of Peoples and to become full

[12] Patriotic courage is not discussed as a perfection in the relevant section of *A Theory of Justice*, where Rawls argues instead, "we are to encourage certain traits of character, especially a sense of justice" (Rawls 1971, 287).

members in good standing of the society of well-ordered peoples (92-3). The "proper patriotism" that Rawls sometimes attributes to liberal peoples (44, 62), whatever it may mean, does not focus on *patrie.* There is no object of patriotic regard save the universal human good of equal liberty. We have reason, indeed, not to encourage martial characteristics, for, "soldiers are often conscripted and in other ways forced into war; they are coercively indoctrinated in martial virtues" (ibid). And even if they are truly patriotic volunteers, we must be cautious about patriotism because "patriotism is often cruelly exploited" (ibid). Rawls therefore agrees to a great extent with Martha Nussbaum's view of patriotism. As she puts it, "the worthy goals patriotism sets out to serve – for example, the goal of national unity in devotion to worthy ideals of justice and equality…would be better served by…the very old ideal of the cosmopolitan" (Nussbaum and Cohen 1996, 4).[13]

In principle, liberal citizens can be required to defend their country for the sake of their liberties, on the assumption that universal liberty is thereby threatened. But it is not always clear, in the real world, whether threats to the national interest imply that liberty is truly threatened. And this is why states are not safe for liberals. We must keep in mind "the great shortcomings of actual, *allegedly* constitutional democratic regimes" (53, my emphasis). Because an allegedly liberal state has a right and a duty to protect its citizens, "the handy appeal to national security" means that "a democratic government can easily invoke this interest to support covert interventions, even when actually moved by economic interests behind the scenes" (ibid). When the government does this, it tramples on individual liberties unjustly, but it explains its action in

[13] Rawls's attitude toward patriotism is, "soldiers are often conscripted and in other ways forced into war; they are coercively indoctrinated in martial virtues" (ibid). And even if they are truly patriotic volunteers, we must be cautious about patriotism because "patriotism is often cruelly exploited" (ibid). Rawls implicitly agrees to a great extent with Martha Nussbaum's view of patriotism. As she puts it, "the worthy goals patriotism sets out to serve – for example, the goal of national unity in devotion to worthy ideals of justice and equality…would be better served by…the very old ideal of the cosmopolitan" (4). Rawls cites Nussbaum as one of several authors who have taught him that "a liberal account of equal justice for women is viable" (156n).

terms of reasons that would be valid if true. The only way, then, that liberals can hope to escape from (potentially unjust) patriotic duties is to get beyond war. For as long as war persists, cultivation of patriotic vices, and restrictions of liberties beyond what liberals can countenance will continue.

In addition, even the possibility of just wars must cease, for the third principle makes ideal liberalism acutely dependent upon the domestic consumption of state resources. Beyond demanding the priority of individual liberty to the common good, liberal citizens demand, "a decent distribution of wealth and income meeting the third condition of liberalism: all citizens must be assured the all-purpose means necessary for them to take intelligent and effective advantage of their basic freedoms" (50).[14] But the need for armies limits the state's capacity to prioritize economic and distributive choices sufficiently. Guns or butter – that is the general question, and Rawls's preferred conception of liberalism requires so much butter that it must do without guns entirely. The world had *better become* a safe place for so much butter to lie around in. Maximizing the gains of the least advantaged person could not otherwise take priority. In other words, disarmament is *the key* to liberal social policy.[15]

On this matter, as on others, Rawls's reasoning "accords with Kant's idea that a constitutional regime *must* establish an effective Law of Peoples in order to realize fully the freedom of its citizens" (10, my emphasis). If we look at the essays of Kant that Rawls cites in support, we find that this necessity arises from the fact that the need for armies is *the* obstacle to domestic justice as Kant understands it. For instance, Rawls refers us to the Seventh Proposition

[14] Just in case it is not clear, the primary good in question here is "wealth and income" (ibid). Money is a measurable "all-purpose means" for the pursuits of free persons (13n).

[15] My criticism here builds upon Michael Sandel's argument in *Liberalism and the Limits of Justice.* As Sandel makes very clear, principles two and three are in tension with one another. For, if the individuals are prior to the collective good, it makes no sense why they are obliged to sustain one another financially (Sandel 1982, 77-82, 101-103, 173-4, 178).

of Kant's *Idea for a Universal History* (Kant 2006). This proposition states, "The problem of establishing a perfect civil constitution is dependent upon the problem of a law-governed external relation between states and cannot be solved without having first solved the latter" (Kant 2006, 9; Universal History 8:24). And for Kant, too, one of the reasons for this dependence is the demands war places on the resources of the state.

> As long as *states use all their resources* to realize their vain and violent goals of expansion and thereby continue to hinder the slow efforts to cultivate their citizens' minds and even to withhold all support from them in this regard, then nothing of the sort can be expected, because such moral cultivation requires a long internal process in every commonwealth in order to educate its citizens (Kant 2006, 12; Universal History 8:26).

> Human nature seems nowhere less worthy of love than in relations among entire peoples. No state is secure for a moment against another with regard to its independence or its property. The will to subjugate one another or diminish what belongs to the other is always there, and *arming for defense*, which *often makes peace more oppressive and destructive for internal welfare than the war itself*, may never abate. Against this there is *no other expedient possible than an international right* that is founded on public laws that are backed with power and to which every state must subject itself (in accordance with the analogy with civil or constitutional right among individual persons) (Kant 2006, 65; Theory and Practice 8:312-3).

From the liberal point of view, armaments and military training waste money that could be spent relieving the poor and stunt our moral development. Whatever habits help us prepare for war are vices from the liberal point of view. Like Kant before him, Rawls understands that it is not a matter of *extending* a liberalism we now have to the rest of the world; it is a matter of *achieving* a liberalism that is unthinkable without a new world order.

In other words, it is not enough to say that liberals would be dissatisfied if they could achieve liberalism at home only. It is rather the case that liberalism in Rawls's sense *cannot be achieved* at home without peace abroad. "*Our* hope for the future of *our* society rests on the belief that the nature of the social world allows reasonably just constitutions democratic societies existing as members of the Society of Peoples" (6, my emphasis). This is why Rawls seeks

"peace and justice…*both* at home and abroad" (6), why he writes, "I believe the idea of realistic utopia is *essential,"* and why he sincerely believes "great evils will eventually disappear" (6-7, my emphasis). The end of great evils abroad is essential to the kind of justice Rawls hopes to have at home. And this essential connection between world justice and domestic justice makes perfectly clear that Rawls *is* proposing a cosmopolitan theory; in other words, the existing states have no legitimacy. There are no legitimate political communities and will be none until they are reformed in the light of a cosmopolitan ideal, at which time, they will no longer be communities at all.

The Utopian Justification of Liberalism

Rawls's liberalism is without foundations and hangs in midair. In general, Rawls's political liberalism offers "*No Deduction from Practical Reason"* (86). In other words, while Rawls follows Kant, he does not do so by assuming Kant's foundations, i.e. Kant's "transcendental liberalism" (87). Instead, Rawls merely gives "content to an idea of practical reason and three of its component parts, the idea of reasonableness, decency, and rationality" (86-7). This content is "not deduced, but enumerated and characterized in each case" (87). As a result, the only reason that we will approve of this theory is the idea that "the resulting principles and standards of right and justice *will hang together and will be affirmed by us on due reflection*. Yet there can be no guarantee" (87, my emphasis). As Beitz comments, "Finally, given its scope, the monograph makes large demands on its readers—we are asked to accept a good deal without extended argument, as if the coherence of the whole, and its consistency with political liberalism, should be persuasive in itself" (Beitz 2000, 670). In fact, this self-consistency is the core of Rawls's argument, and it is better characterized as a kind of circularity.

One side of this connection will not be disputed, for the *Law of Peoples* explicitly and repeatedly takes for granted the arguments of Rawls's earlier works. As he makes abundantly clear, "it is important to see that the Law of Peoples is developed within political liberalism and is an extension of a liberal conception of justice for a domestic regime to a Society of Peoples" (9). For that reason, "In developing the Law of Peoples *the first step* is to work out the principles of justice for domestic society" (26, my emphasis). Remarks such as these encourage the view that the theory of domestic justice is independently grounded and that *The Law of Peoples* merely considers a possible extension. But this view is not accurate to what Rawls really does, for his domestic theory in fact depends upon a simplifying assumption that amounts to the presumption that *The Law of Peoples* already applies. This point is more contentious, but I do not think it can be denied. The *Law of Peoples* is a crucial component in Rawls's theory of domestic society, which is in fact entirely unintelligible without it. For, if we look into the matter, *A Theory of Justice* presupposes peace and/or the absence of foreign affairs. It explicitly presupposes that no army is necessary. And this can only be the case if peace obtains in the world. Thus the "first step" in the *Law of Peoples* is the theory of liberal justice, but the first step in the *A Theory of Justice* is the assumption that peace exists – presumably, through a Law of Peoples.

> In developing the Law of Peoples *the first step* is to work out the principles of justice for domestic society. Here the original position takes into account only persons contained within such a society, since we are not considering relations with other societies. That position views society as closed: persons enter only by birth, and exit only by death. *There is no need for armed forces,* and the question of the government's right to be prepared militarily does not arise and would be denied if it did … Although domestic principles of justice are consistent with a qualified right to war, they do not of themselves establish that right (26).

The principles of justice for domestic society come first – we must know we are liberals with liberal ideals before we can formulate a foreign policy. But to know that we are domestic

liberals, we *must* presuppose that there is no need for an army or a foreign policy. In order to develop his theory of domestic justice, Rawls presupposes a particular, closed society, yet one which is thoroughly unaware that it is a particular society among others. The members do not know that they are one people among others in the world, and its members would *deny* that they are in any way threatened by the world. The participants in Rawls's original position have no idea, behind that famous veil of ignorance, that beyond the borders lie foreign states, with whom they are at least potentially at war. Either the domestic theory is implicitly a theory of the world state, or its validity hangs on the presupposition of a worldwide utopia achieved.

In Rawls's view, perhaps, it is reasonable to tackle one question at a time. But this assumption is not merely a simplification that can be corrected later; it stays in place and affects everything about the new theory. If one is simplifying a question prior to addressing complications, one modifies the original question in light of new information. In that case, we will have described what a liberal society would look like on the assumption that war is impossible, but we will be obliged to modify our view of this society once we realize that the world is more complex and dangerous. We should begin again, re-thinking what the parties in the original position must discuss. We should return to the original social contract theory, and this time the participants must ask themselves new questions. Let me just briefly sketch what that would mean.

If the parties to the liberal social contract were forced to think about foreign policy and the need for an army at the initial stage, then they would be forced to recognize that the maximization of individual liberty is not always possible. They would be forced, in other words, to revise entirely their conversation and to ask about the extent to which they are willing to sacrifice for one another as compatriots. For, they would have to ask themselves, either we value

the defense of this collective entity as worthwhile for its own sake, or we value it only to the extent that it serves interests and aspirations of our own.[16] To do think that, the citizens would have to ask what unites them in a new way. Their political bond would require some pre-political sense of belonging together. And if they had such a sense, as Michael Sandel has argued, they would not be likely to see liberal justice as their one highest priority (Sandel 1982, 178). Liberal justice is appropriate for strangers, not for friends. But liberal justice is also appropriate only for strangers who wish to practice liberalism *together*. This is why Rawls cannot afford to say either that we are, or that we are not, one people. For liberals must be peoples on their way to a greater world.

If the theory is obliged to become realistic, such questions must arise. But Rawls insists that we may *not* revisit these questions, that the assumption stays in place no matter what. Once the veil is lifted, in *The Law of Peoples,* the worldly ignorance vanishes, and the liberal people see their mistake, but they simply take this to imply a new task. They formulate a Law of Peoples that will produce the external conditions that can guarantee them the peaceful existence on which they had planned. This ideal does require some effort, and perhaps an army for self-defense in the short term, but they are not to deduce the kind of army or foreign policy powers that they need from any realistic view of what lies before them. Instead, they must deduce these things from a law, which they must work out, and which insists from the start that they will not choose to consider their state to be sovereign.

> The basis of that right (to self-defense) depends on the Law of Peoples, still to be worked out. This law, as we shall see, will restrict a state's internal sovereignty or (political) autonomy, its alleged right to do as it wills with people within its own borders … The war powers of governments, whatever they might be, are only those acceptable within a

[16] These individualistic aspirations might be moral aspirations, but their alignment with national allegiance would remain contingent, as it was for both secessionists and abolitionists in the American Civil War, for example. To prioritize Union, as a value at least comparable to getting our way or even the just way to prevail, means that the community is of independent moral worth.

> reasonable Law of Peoples. *Presuming the existence of a government whereby a people is domestically organized with institutions of background justice does not prejudge these questions*. We must reformulate the powers of sovereignty in light of a reasonable Law of Peoples and deny to states the traditional rights to war to unrestricted internal autonomy (26, my emphasis).

Again, the presumption employed in the domestic theory (that it is closed and therefore particular) is *not* to be considered dispositive for the collective rights of this society in international space. We are to know that we are liberal prior to knowing that we are a country and, once we know that we are a country, we are not to presume that our country has any particular rights against other societies or against our liberties. The two questions must be kept distinct for either theory to hold.

But how can they be? The priority of liberty depends upon a hypothetical peace. It is only reasonable to assume a closed society in which liberty is prioritized under one of two conditions: either this society embraces the world, i.e. is a world state or world society; or a world peace obtains. If neither of those assumptions are reasonable, then the domestic theory is not reasonable either. Responding to cosmopolitan critics of Rawls who make a similar point, David Miller argues that Rawls's strategy "is perfectly legitimate in so far as the audience are assumed to be citizens of a reasonably well functioning nation-state; it becomes illegitimate when the argument is developed in such a way as to undermine this very assumption" (185). But Rawls himself undermines this very assumption in this very way. In order to be citizens of the liberal nation, there must be no nation, in any strong sense of the term. Either the nation is the world, or it is at least entirely at peace with a world of liberal nations. For the latter to make sense, *The Law of Peoples* must be in place before *A Theory of Justice* can begin.

But that is not possible, either. As we noted at the start, the Law of Peoples is a law for liberal peoples, first and foremost and (as we will see) to the end. It depends upon a "second

original position," in which "the idea of the original position is used again, but this time *to extend a liberal conception* to the Law of Peoples" (32, my emphasis). The only way to specify the Law of Peoples correctly is to ask what liberal peoples want their foreign policy goal to be. "As members of societies well-ordered *by liberal conceptions of justice,* we conjecture that these features model what we would accept as fair – you and I, here and now – in specifying the basic terms of cooperation among peoples who, *as liberal peoples,* see themselves as free and equal" (33, my emphasis). *A Theory of Justice* or *Political Liberalism* must be presupposed before *The Law of Peoples* can begin. Each theory presupposes the other. Rawls's foreign policy presupposes that we have a thoroughly liberal domestic policy. But his liberal domestic policy presupposes that we have a thoroughly liberal world, as created by his foreign policy.

Rawls's theory of liberalism is circular, clearly, and perhaps damagingly so: when we raise the question of how a liberal people should act in the world, we presuppose that a liberal people exists, but it can only exist if we have already answered our question. We must know how the liberal people should act in the world before asking how they should act. To explain why the "Society of well-ordered Peoples is *realistic*," we must invoke the liberal people. "The idea of peoples rather than states is crucial at this point: it enables us to attribute moral motives – an allegiance to the principles of the Law of Peoples, which, for instance, permits wars only of self-defense – to peoples (as actors), which we cannot do for states" (17). First there must be a morally liberal people, with its moral powers guaranteed by its internal liberty. If the liberal state does not restrict itself by the demands of unbridled domestic liberty, its conformity to The Law of Peoples cannot be guaranteed. But this internal liberty is only thinkable because we have already assumed, arbitrarily, that a Society of Peoples is realistic. That is, conversely, when we raise the question of how a people should govern itself, we presuppose that a peacefully liberal

world exists, but it can only exist if we have already answered that peoples should be liberal. They have no business being fully liberal in Rawls's sense – that decision is not realistic of them – unless they know that they live in a Society of Peoples. Proving so after the fact is insufficient because the proof assumes that we have good reason to be liberals independently of utopia's possibility. We do not, and we do not have good reason to behave as though utopia were real.

Peace without a World State

To explain the possibility of international order without a world state or hegemon, the principle of political legitimacy cannot be reduced to one, highly specialized, ideal liberal state. If only one ideal state possesses legitimacy, then the theory announces an imperial project for the state that claims this mantle, which would lead either to chaos or to the world state. There must be at least a family of legitimate nations that can act together. This much most cosmopolitan liberals would grant. Political liberalism, at any rates, assumes, "Given the fact of pluralism, citizens in a liberal society affirm a family of reasonable political conceptions of justice and will differ as to which conception is the most reasonable" (Rawls 1999, 60). Therefore, "democratic societies will differ in the specific doctrines that are influential and active within them – as they differ in the western democracies of Europe, the United States, Israel, and India" (132). At least this family must treat one another as legitimate partners. They cannot work together, or not easily, from the premise that they all deserve reform and eventual integration into superior units, especially if they do not agree on the ideal form of the liberal state. The existing liberal family must demonstrate its capacity to form a coalition for peace. If Rawls can show that democratic societies are inherently peaceful with one another, then one can imagine a world at peace; moreover, one has a basis for arguing that democracy should prevail everywhere. No cosmopolitan who denies the supreme legitimacy of the world state could do better than this.

But we have now seen, Rawls will demonstrate his conception by reference to ideals alone. The implication of the previous section is that Rawls is not guilty of the charges leveled against him by cosmopolitans. He is discussing twin ideals, suspended together above reality, and not bowing to realism as he seems to be. In principle, every existing democracy is in fact illegitimate. He is guilty of Beitz's fallacy, not of Beitz's accusation. Not only is a purely cosmopolitan theory politically impossible, even an impurely cosmopolitan theory is politically impossible. Rawls seeks to provide the latter, but he is only able to do so by purifying his theory of realistic elements. As a result, when he explains the possibility of democratic peace, he tacitly presupposes the *illegitimacy* of the existing democracies. His case holds only for democracies purified of statehood. This is tantamount to deriving the legitimacy of existing institutions from a cosmopolitan point of view, from the premise of their subordination to global justice for individuals.

The Ideal Theory of Democratic Peace

To support his vision for cosmopolitanism without a world state, Rawls relies on democratic peace theory, the theory that "constitutional democracies do not go to war with each other" (8). The Law of Peoples holds, in the first instance, under conditions in which every state is a reasonably just constitutional democracy. These democracies are the primary example of independent peoples (46). But what Rawls means by this is that states have disappeared – the entities that remain are "peoples," not states. If the international order is defined by states, then these will claim larger powers of sovereignty than the Law allows. States, Rawls reminds us, "are often seen as rational, anxiously concerned with their power … and always guided by their basic interests" (28). But if not states, Rawls must explain the nature of the agents who will

function as legitimate members of utopia, the legitimate "peoples," and why this nature excludes the possibility of war.

Thus, when Rawls explains "why peoples and not states," he defines liberal peoples from the perspective of political liberalism, i.e. an ideal society which, as such, possesses "a moral nature" (23). Because peoples must follow the Law of Peoples, the crucial characteristic of peoples is their moral nature, as a people. "As reasonable citizens in domestic society offer to cooperate on fair terms with other citizens, so (reasonable) liberal (or decent) peoples offer fair terms of cooperation to other peoples. A people will honor these terms when assured that other peoples will do so as well. This leads us to the principles of justice in the first case and the Law of Peoples in the other" (25). Persons in liberal societies "mutually respect one another and recognize equality among peoples as consistent with that respect" (48). Peoples have a moral nature; they respect as equals those who respect others as equals in turn, by the "criterion of *reciprocity"* (7). The language Rawls employs suggests that liberal peoples, at least, are collective moral agents with robust claims to independence from others. Peoples are supposed to have a moral nature in something like the same way that citizens are understood to have a moral nature, as individuals.

But, unlike individuals, peoples must live up to their moral nature and mutual respect *without fail*. Under the Law of Peoples, there is no war. If there were any threat of war, i.e. unjust war, the peoples would have to arm themselves and behave as states. Now, Rawls believes that individuals can be moral to some extent. Rawls believes that individuals can learn to affirm justice "and act to make sure their social world endures" (7). But he is not so utopian as to think that individuals can be *trusted* to live up to their sense of justice at all times. The moral powers we assume individuals to possess do not save them from requiring the coercive mechanisms of

the state to render them peaceful (26n). Societies require a police. But, for democratic peace to hold, it must be the case that independent democracies achieve peace without a superior coercive power. In the absence of such a power, we cannot rely on the moral powers of citizens to perpetuate international peace any more than we can rely on these powers to prevent murders and other forms of private war. Rawls is blurring two meanings of moral agency in this comparison. Ideal liberal democracies will not fight each other but, "This is not because the citizenry of such societies is peculiarly just and good, but more simply because they have no cause to go to war with one another" (8). Peoples exist and follow the Law of Peoples because peoples, being democracies, are *structurally* peaceful. "The crucial fact of peace among democracies rests on the *internal* structure of democratic societies, which are not tempted to go to war except in self-defense or in grave cases of intervention in unjust societies to protect human rights" (8). Without a structural theory of democratic peace, the cosmopolitan ideal would require a world state after all.

To argue that this is possible, Rawls denies what realists assert, "that international relations have not changed since Thucydides' day and that they continue to be an ongoing struggle for wealth and power" (46). Rawls argues that things have changed and can change and describes "the idea of a liberal democratic peace" (ibid). This theory stems from the idea of human progress. Rawls comments, "This idea led to the movement toward democracy in the eighteenth century. As Saint-Just said, 'The idea of happiness is new in Europe.' What he meant was that the social order was no longer viewed as fixed: political and social institutions could be revised and reformed for the purpose of making peoples happier and more satisfied" (ibid). Second, one supposes, the liberated peoples will develop "the *moeurs douces* of Montesquieu," engaging sweetly in money-making, thinking only how they might acquire "more easily and

cheaply by trade" what they might have pursued by war (ibid). Having disestablished the prideful "nobility," and having put profit before God, one might say, they "would not be moved to try to convert other people to a state religion or other ruling comprehensive doctrine," so "liberal peoples have nothing to go to war about" (47). Liberal peace is "peace by satisfaction," in Raymond Aron's phrase.

But such speculations are merely hypothetical. The real basis of the expectation is nothing other than Rawls's ideal society. The just society, the ideal liberal society, is by definition peaceful, for it cannot justly use its citizens for state, i.e. collective, ends. "Indeed, a liberal society cannot *justly* require its citizens to fight in order to gain economic wealth or to acquire natural resources, much less to win power and empire" (91, my emphasis). The theory of democratic peace owes much to this theory of justice. It owes little or nothing to "the great shortcomings of actual, allegedly constitutional democratic regimes," such as the United States (53). Really existing, so-called liberal societies possibly do unjust things, to their citizens and to foreigners. However, the *just* liberal society, in its ideal form, can gain wealth and resources only through peaceful trade and the extension of commerce. Its citizens are free individuals, pursuing their own interests, not that of their state; they cannot be required to fight for the state that is required to serve them. Again, we are speaking of Rawls's ideals of liberalism here, not what so-called liberal democracies actually do, or have done, with respect to war and conscription. But we saw above that the ideal democracy only exists on the assumption that the world is already peaceful. Since the world is not yet in this shape, why should we believe that ideal democracy can be achieved? What evidence is there to support any of these ideal conceptions?

The Pure Idealism of Democratic Peace

Rawls is concerned to provide a political philosophy that is "realistically utopian" (6). But, by "realistic utopia," Rawls does not mean that utopia must compromise with realism in the sense of bowing to the permanent likelihood of war. Rawls is aware that, in hoping for a world beyond war and advancing a theory of foreign policy in the light of that ideal, he falls subject to the charge of immoderation or imprudence. *"The Law of Peoples* hopes to say how a world Society of liberal and decent Peoples might be possible. Of course, many would say that it is not possible, and that utopian elements may be a serious defect in a society's political culture" (6). It is not realistic, one might say, to build a liberal cosmopolis by first destroying the moral right of liberal (or otherwise decent) states to exist and defend themselves in a hostile world.

The possibility depends upon the ideal of a democratic society. But we must understand, Rawls's description of the liberal people does not invoke any really existing entity, only a hypothesized one. A truly liberal people always follows the Law of Peoples, by definition. But does any really existing people conform to this ideal? And if not, what is the status of the theory? Rawls considers the theory of democratic peace a "conjecture. Yet plainly, this … conjecture needs to be confirmed by what happens historically" (45). It must be confirmed, or it will be merely a theory about an ideal and imaginary actor – we do not know whether such an actor even *could* exist. To rebut that concern, Rawls argues that the theory of democratic peace is confirmed historically, but unconvincingly. As Audard puts it, "Rawls seems to confuse facts and values and to treat historical facts as the embodiment of universal norms. This mistake is typical of universalism. Instead of remaining consistently at the level of norms and regulative ideals, Rawls is tempted to prove that facts agree with him, that 'democratic peace' has not only a moral justification but also a historical basis, which he examines in detail, in spite of the fact that many

historians still discuss this factual connection" (Audard 2006, 65). Rawls's real argument is only that, *if* his ideal for the shape of democratic society would be met, so would his ideal for its external behavior. His own description of the historical basis of democratic peace shows that he cannot do more.

Relying on some of the relevant studies, Rawls argues, "The absence of war between major established democracies is as close as anything we know to a simple empirical regularity in relations among societies" (52-3). However, "as close as" should remind us that the field of international relations is, generally speaking, very far from finding any simple empirical regularity on which theory can be built, and Rawls is fully aware of the state of debate. "As Michael Doyle has noted … an enumeration of favorable historical cases is hardly sufficient, since the idea of democratic peace sometimes fails" (53). Rawls would have us believe, "Though liberal democratic societies have often engaged in war against nondemocratic states, *since 1800* firmly established liberal societies have not fought one another" (51, my emphasis). But to believe that we must exclude, for instance, "the Napoleonic wars, Bismarck's war, and the American Civil War," on the ground that these wars "were not between liberal democratic people" (52). Rawls means, for example, that the American South was not a liberal democratic people. But we would not rightly treat the antebellum United States *as a whole* as a liberal democratic state, for it included the American South. Any wars fought or not fought by the United States *prior* to 1860 would also be irrelevant for the theory. Furthermore, "nations that are now established constitutional democracies have in the past engaged in empire building. A number of European nations did so in the eighteenth and nineteenth centuries and … before World War I" (54-5). So, the theory is not in very good shape until at least the twentieth century, probably beginning around 1939. But, even more recently, "the United States overturned the

democracies of Allende in Chile, Arbenz in Guatemala, Mossadegh in Iran, and, some would say, the Sandinistas in Nicaragua" (53). So, starting at what point might we say that the empirical regularity holds?

The simple fact is, the regularity only holds in theory, even in Rawls's view. There are endless outliers, and, to explain them away, Rawls invokes "the great shortcomings of actual, allegedly constitutional democratic regimes," including the United States (53). There are no democracies, only "allegedly" democratic states, which often disappoint. We perhaps have a *why* democratic peace ought to hold, but no truly firm evidence *that* it holds. In other words, historical evidence aside, we have a theory about an ideal situation. The democratic peace theory, in Rawls's version of it, requires political liberalism to reach its perfection. The ideal liberal people of the future will act as specified by the ideal liberal order of the future:

> Thus, whether Kant's hypothesis of a *foedus pacificum* is met depends on how far the conditions of a family of constitutional regimes *attain the ideal* of such regimes with their supporting elements. If the hypothesis is correct, armed conflict between democratic peoples will tend to disappear *as they approach that ideal*, and they will engage in war only as allies in self-defense against outlaw states. I believe this hypothesis is correct and think it underwrites the Law of Peoples as a realistic utopia (54, second emphasis mine).

The Law of Peoples is dependent upon a hypothesis about what will happen between liberal democracies. But not about what will happen or has happened between these entities *as they are.* As they are, they sometimes defy the hypothesis. Now, this could be because "democratic peoples … do defend their security interest," and doing so *can* involve warring against other democracies. But Rawls thinks it is rather because "a democratic *government* can easily invoke this interest to support covert interventions, even when actually moved by economic interests behind the scenes" (53). So, his hypothesis is dependent upon the assumption that we could create a democratic government that would never invoke the justified interest in security inappropriately, and that this interest is never truly served by making war on another democracy.

What we have so far are *states*, for clearly the existing democratic governments claim to exercise and do exercise a certain sovereign right to pursue their interests and a certain autonomy relative to their own people.

Rawls's invention of these ideal entities, "peoples," shows that he is not adopting the premise of collective moral agency out of prudence or realism. He has not allowed prudence or realism to interfere with ideal theory, as Beitz fears. His theory of peoples is not the result of "constraints imposed by the status quo on prospects for change" (Beitz 681). In fact, just the opposite is the case. In Beitz's view, it is as though *The Law of Peoples* illicitly takes for granted that the Law of Peoples must realistically consider how it will apply to the states and the world that we know. And Rawls must, on some level, believe that this is what he was doing. But in fact the Law of Peoples is *itself* a demand for new entities. The Law calls new entities into being; it is a demand for domestic reforms. Once the democracies achieve the ideal of being peoples, they will not be collective agents in any meaningful sense of the term. The word "democracies" should be retired in favor of some neologism meant to describe this regime we have never seen.[17]

The Unpatriotic Democracy at War

Another way to examine the hypothesis is to test the actions of existing democracies against the Law of People's rules for the conduct of war. Doing so will confirm, simultaneously, that ideal peoples are not patriotic or in any way concerned with their own community's independence as a first principle. According to the Law, liberal peoples do not defend *themselve*s alone; rather, liberal peoples always fight on behalf "not only of constitutional democracies, but

[17] An important consequence is that Rawls's theory of democratic peace cannot possibly apply to a world society that includes merely decent, hierarchical societies, as he claims. In other words, there can be toleration of decent peoples. Audard focuses on this point. "As a consequence of this confusion, it would seem that if decent peoples are to be part of a peaceful Society of Peoples, and if peace is only secure when institutions are democratic, then clearly the Society of Peoples is entitled to transform the domestic institutions of its members and to put pressure on non-democratic but decent governments to change" (Audard 2006, 66). I will confirm Audard's position in more detail in the following chapter.

of all well-ordered societies" (99). It is not even appropriate for liberals to make their own defense their "first and most urgent task" in most cases (92-3), as is clear from the Law of People's restrictions on acts of war. By the Law, "Peoples are to observe specified restrictions in the conduct of war" (37). These restrictions assume that, in war, all human beings are equal. All in all, there are no peoples whose collective existence matters to the Law of Peoples. Even when fighting an unjust enemy, "well-ordered peoples must carefully distinguish three groups: the outlaw state's leaders and officials, its soldiers, and its civilian population" (94). Individual leaders and officials are potentially "criminals," but the destruction of enemy civilians and even soldiers is wrong in itself. The enemy people are merely individuals, not part of the enemy people. Their rights are sacred no matter with what zeal they attack others and cheer for their side. To be patriotic, as they are in such cases, is to be delusional, the victim of their political cultures. For one, they may be ignorant or deluded by propaganda – they are unwitting accessories. But, in fact, we are to presume their innocence "even if some civilians knew better yet were enthusiastic for war" (95). And the same holds true of soldiers, their patriotism notwithstanding, for "soldiers are often conscripted and in other ways forced into war; they are coercively indoctrinated in martial virtues," and even if they are truly patriotic volunteers, they are not to blame because "patriotism is often cruelly exploited" (ibid). Enemy soldiers, at least, must be killed if they fight for an outlaw state, but the reason is "not that they are responsible for the war, but that well-ordered peoples have no other choice. They cannot defend themselves in any other way, and defend themselves they must" (96). In every case, it makes no difference whether the persons involved were coerced (or ignorant or deluded) or whether they were spontaneously patriotic. The people of a badly ordered and/or aggressive regime are not responsible for its actions whether or not they affirm these actions. For example, the Holocaust

and the Nazi regime are not to be attributed to "a cognitive mind-set peculiar to German political culture … The lesson of the Holocaust is, rather, that a charismatic leader of a powerful totalitarian and militaristic state can, with incessant and rabid propaganda, incite a sufficient number of the population to carry out even enormously and hideously evil plans" (100n). So, even if a substantial portion of the people are willing collaborators in the most heinous crimes, we are to consider them the innocent dupes of their leaders.

As a result, a people is never responsible for its bad actions; it is only a people if it adheres to the Law of Peoples and its restrictions on the conduct of war. But when it does so, it considers all people everywhere to be moral equivalents of its own civilians and soldiers. Therefore, the Law of Peoples is individual-regarding, ultimately. Since the civilians and soldiers of enemy peoples are presumed innocent, the upshot is that whoever is not a liberal society is also *not* a people. The Law amounts to is this: to conduct a war correctly is to value all lives at stake equally, with the possible exception of those few war criminals at the very top of an outlaw regime. If the nation had its own status, if it were a state rather than a people, it would have the right to kill enemy civilians and soldiers for its own collective good. But the nation does not have this status; it earns its right to do what is necessary from its aspiration toward universal law and human rights. And these ideals indicate that all persons are equal. A people only exists when it is not thinking of itself as a people. So, the one people that might be a people, the law-abiding people, is not a people because it has no right to treat itself as such; rather, it must prioritize the individual liberties of its members. In addition, the liberal society must treat its members as equal in worth with the rest of the world, and the liberal society has no right to require its citizens to sacrifice themselves on its own behalf but only for the sake of human liberty. What actions it may take are determined by the Law of Peoples, which wills justice for all. The Law of Peoples

is not a law *for* peoples; to be a people is to follow the law. There are no peoples, only liberal ideals.

The Defects of Utopianism

What all this means is that the Law of Peoples is not entirely appropriate for the world in which we currently live, only the world to come. It is a law that applies to a kind of thing that we have not yet seen: a number of ideal democracies, whose ideal features include never going to war against one another. In the real world, not even democracies should be trusted this far. And, in the real world, democracies may endanger themselves precisely by attempting to do without those patriots who make it somewhat difficult to trust them. The real democracies, as opposed to the ideal peoples, transgress the Law of Peoples in order to defend themselves. This fact raises the question, *could* the really existing democracies survive under the Law of Peoples? *"The Law of Peoples* hopes to say how a world Society of liberal and decent Peoples might be possible. Of course, many would say that it is not possible, and that utopian elements may be a serious defect in a society's political culture" (6). To rebut this charge – that cosmopolitan utopianism is truly utopian and therefore damagingly dangerous, Rawls is concerned to provide a political philosophy that is "realistically utopian" (ibid). It is not realistic, one might say, to build a liberal cosmopolis by first destroying the moral right of liberal (or otherwise decent) states to exist and defend themselves in a hostile world.

Rawls refers in this context to a salient and instructive example of the danger. "I am thinking here of E.H. Carr's *The Twenty Year Crisis, 1919-39: An Introduction to the Study of International Relations* (London: Macmillan, 1951) and his well-known criticism of utopian thought" (6n). Rawls clarifies, "In contradistinction to Carr, my idea of a realistic utopia doesn't settle for a compromise between power and political right and justice, but sets limits to the

reasonable exercise of power" (Rawls 1999, 6n). In other words, Rawls's task is not set by such critics, for he will not compromise justice in any essential way, but he does feel the need to describe the theory according to which utopian peace is possible.

Carr's criticism is, of course, that utopian thinking in the lead up to World War II is responsible for the mishandling of Hitler and some of the greatest evils the world has ever known, a criticism that continues to claim attention (Waltz 2001, 220-1).[18] Liberals of that era, perhaps, were all *too* impressed by the Law of Peoples they had in mind and all *too* faithful in its efficacy. Despite referring to Carr's work, Rawls shows no interest in demonstrating that Carr misinterprets this famous crisis of liberalism. To the question, *"Is Realistic Utopia a Fantasy?"* (19), he merely replies, "I wouldn't deny either the historical uniqueness of the Holocaust, or that it could somewhere be repeated. Yet nowhere, other than German-occupied Europe between 1941 and 1945, has a charismatic dictator controlled the machinery of a powerful state so focused on carrying out the final and complete extermination of a particular people, hitherto regarded as members of society" (19-20). The historical uniqueness of the Nazi regime and program is one part of the problem: its uniqueness testifies to the fact that the future is unpredictable, whatever our hopes and sense of what the tea leaves currently foretell. Since Rawls's theory of democratic peace concerns a future ideal, this unpredictability is troubling. But the historical repetitions of genocidal, ideological and nationalistic slaughter are also problematic. How can Rawls forget Stalin, Pol-Pot, Mao? Even if he published before Darfur, Rwanda, Bosnia, he should know better than to describe the Holocaust as strictly unique. To the general case, he answers, "The fact of the Holocaust and our now knowing that human society admits this demonic possibility, however, should not affect our hopes as expressed by the idea of

[18] Not that Carr did much better, having supported Chamberlain's disastrous policy of appeasement, though on misguided guesses about Hitler's real interests (Miller 1991, 67).

a realistic utopia and Kant's *foedus pacificum.* Dreadful evils have long persisted" (21). My point is simply this: Rawls's hopefulness is not based on a consideration of reality, and Rawls never considers whether utopian fantasies sometimes play an enabling role.[19]

When the worst does happen, on whom can we rely? For democratic peace theory to make sense, Rawls must presuppose a united and patriotic democratic people, for someone must fight when an outlaw state threatens.

> This they do when such a state's policies threaten their security and safety, since they must defend the freedom and independence of their liberal culture and oppose states that strive to subject and dominate them (48).
>
> Add also when they are harshly pressured by a state to accept oppressive terms of accommodation that are so unreasonable that no *self-respecting* liberal people affirming the liberty of its culture could reasonably be expected to accept them (60n, my emphasis).

To have such self-respect, enough self-respect to defend liberalism, citizens must at least have "a certain proper pride and sense of honor; peoples may take a proper pride in their histories and achievements, as what I call a "proper patriotism" allows (62). Can liberals sustain this pride, honor, and patriotism? Will they defend the nation? If they are really a "people," they are unlikely to meet Rawls's ideal for them. Likewise, then, if they really meet the ideal, we must expect that they will fail to see themselves as a people.

To illustrate, notice that Rawls never considers whether World War II was won through British and American (and Russian) *patriotism,* and if so, what such patriotism consisted in. What we need to ask is, could the war have been won by a leadership and citizenry that did not feel patriotically attached to their own countries, such that they would prefer the lives of their own soldiers to the lives of the enemy civilians? It is certainly true that Churchill led the

[19] And he goes on to blame both the Holocaust and the Inquisition on the "persecuting zeal" that has been "the great curse of the Christian religion" (21). All the same, in his discussion of World War II and the ideal statesman, Rawls clarifies that liberalism shares millennial hopes with Christian doctrine (103).

resistance to Hitler in the name of, and perhaps partly for the sake of, "the whole world" (99). But he originally sought to pre-empt that necessity by protesting the dangerous utopianism that encouraged Hitler's rise. He said in 1936, "The whole history of the world is summed up in the fact that when nations are strong they are not always just, and when they wish to be just, they are often no longer strong" (Churchill and Churchill 2013, 108). And, when his words went unheeded, he never tired of reminding his countrymen, "we will never surrender" (Churchill and Churchill 2013, 179). The sacrifices Britain made it no doubt made, in part, for mankind. But how could Britain have resolved to endure such hardship alone without feeling that *Britain* in particular must never surrender? And what if it had? For all we know, the United States and the Soviet Union would have survived despite Britain's fall. Hitler was mad and his genocidal campaign against Russia was maniacal. "When Goebbels and others protested that the war could not be won that way, Hitler refused to listen" (99). This observation is not meant as any attempt to detract from the crucial importance of Britain's brave stand; rather, it is meant to suggest that patriotic sentiment was surely a crucial ingredient in British courage.

The country that did, notoriously and ignominiously, surrender, was France. The "strange defeat" of France in 1940 is the subject of extensive historiography (Bloch 1949). From early on, historians blamed the decline of patriotism and preparedness; in other words, there is a long-standing view that "utopian elements may be a serious defect in a society's political culture" (Rawls 1999, 6) and that pre-War France was so infected. Many recent historians consider such accounts mythical and seek alternative explanations (Porch 2000). Rawls, however, would himself have a difficult time refusing to sign on to the older view, for he attributes much to a society's political culture. When it comes to assigning blame for the failures of Truman and his allies, Rawls writes, "The failure of statesmanship rests in part on and is compounded by the

failure of public political culture – including its military's culture and its doctrines of war – to respect the principles of just war" (102). In that case, if these variables matter, then France's political and military culture is likewise culpable. But France's culture was un-patriotic, defensive, anti-conscription, and defeatist. It had a debauched Popular Front government, a society of deserters, and a military lacking in leadership – that is the cultural explanation for France's collapse. Since Rawls uses such explanations, it is tempting to suggest that a Rawlsian society would, under similar circumstances, collapse, as France did, into a collaborating regime. At any rate, the regimes that *in fact* withstood the Nazis were regimes that were capable of being strong first and just second, not the regimes that insisted on justice at any price. To the extent we can think of this test case as instructive, it tells against democratic peace theory.

Rawls's ideal of "peoples" leaves reality very far behind. Like a thoroughly cosmopolitan theory, it de-legitimates all actually existing regimes. In doing so, it re-enacts the danger of utopianism that prevented former democratic states from preparing themselves for crisis and defending themselves appropriately when it came. This refusal to confront reality is Rawls's greatest weakness, not his refusal to commit more earnestly to imagination. In its utopianism, the Law of Peoples is "similar to … the familiar Christian natural law doctrine of just war … in that both imply that universal peace among nations is possible" (103). The politically prudent statesman should speak to Rawls as Romans spoke to Christians: your theory for how we should behave is not of this world. Liberalism has a traditional right to take the side of experience, prudence, and empiricism against fanaticism and mysticism. Rawls loses hold of this side of the

liberal tradition when he develops a utopian peace that exists only on the basis of a utopian people.[20]

Peoples without Communities

Beyond patriotism, liberal societies cannot afford to lose all sources of internal unity and loyalty. They must feel some kind of ownership and some kind of mutual concern and be willing to think about their collective future in order to take responsible action. For the sake of domestic stability, it is easy to think of reasons why liberal societies would be threatened by a policy of fully open borders and the end of mutual responsibility, as cosmopolitans understand as well.

> Liberal societies depend on a complex combination of institutional loyalty, fellow feeling, and allegiance to recognizably shared political principles to motivate support and sacrifice for their institutions. Indeed, without the nurturance of a common culture, it is hard to imagine how these motivational forces could be sustained and thus how liberal institutions could be stable. People must, therefore, *be encouraged* to see themselves as sharing in a common enterprise, to take pride in their society's identity and accomplishments, and to accept the mutual responsibilities of membership in a cooperative scheme. So it may be that a people should be treated as having special ethical significance because its flourishing as a people is essential to its capacity to manage its human, material, and cultural resources and, thus, to sustain its institutions, for the benefit of present and future members (Beitz 2000, 682, my emphasis).

In other words, as even Beitz can see, societies must *think* of themselves, for now, as having a real and enduring collective existence in order to sustain just institutions and make responsible decisions. Rawls would need, here as well, a theory of why citizens rightly feel bound and loyal to their own countries, part of a particular "people." It would be highly imprudent to explode such feelings as exist and matter today for the sake of unrealistic hopes for world unity.

But can liberals sustain such feelings? Rawls certainly writes as though liberal peoples, at least, are distinct and independent groups with claims to political autonomy and internal

[20] I will amend this view in the following chapter. It is ultimately more simply accurate to say that Rawls is torn between the political and the utopian perspectives. I hope to show the conflict by presenting each side of his view in isolation, but I do not mean to mislead the reader into thinking there is no other side.

cohesion. How so? What makes a liberal people a peculiar people? If we abstract from the liberalism of the liberal people, which consists in individual liberties, what is left over are their "common sympathies," which are the core of J.S. Mill's famous explanation of liberal "nationality" (23n). While using Mill's idea only as an "initial stage" for describing the unity of the liberal people, Rawls quotes Mill to illustrate what he means.

> A portion of mankind *may be said to constitute a Nationality*, if they are united among themselves by common sympathies, which do not exist between them and any others – which make them cooperate with each other more willingly than with other people, desire to be under the same government, and desire that it should be government by themselves, or a portion of themselves, exclusively. *This feeling of nationality* may have been generated by various causes. Sometimes it is the effect of identity of race and descent. Community of language, community of religion, greatly contribute to it. Geographical limits are one of its causes. But the strongest of all is identity of political antecedents; the possession of national history, and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past. None of these circumstances, however, are necessarily sufficient by themselves (23n).

Since I am going to explore a fuller expression of Mill's idea in later chapters of the dissertation, or rather David Miller's recent elaboration of this idea (Miller 2007), I only want to point out a contrast between J.S. Mill's account and that of Rawls.[21] In addition to history, Mill considers race, language, religion, and geography to be salient features of the political landscape. Feeling like a nation is not, for Mill, *totally* arbitrary and subjective. For Rawls, on the other hand, these features are not well-suited to define liberal peoples. "Historical conquests and immigration have caused the intermingling of groups with different cultures and historical memories who now reside within the territory of most contemporary democratic governments" (24). By invoking

[21] The basic point I would and will make is that Mill defines nationality as the *feeling* of nationality. People are a nation (or a "people," in Rawls's case) if they feel they are a people. Obviously, this formulation makes little sense, for they must *be* a people if they are to have feelings *as* a people; otherwise, one can only say that some *individuals* think of themselves in a certain way and others, possibly, do not. Those who do feel the sense of nationality, in that case, would be somewhat misguided in their feelings, for they mistakenly assume that their feelings are shared. The only way around this dilemma is to say that the people simply *do exist*, and that is what Mill avoids saying. For example, there cannot be a "possession of national history" unless there is a nation whose possession it is. What Rawls and Mill – and all liberal nationalisms, I expect – have in common is that each offers reasons for why individuals might *feel* like a people without really being one.

historical conquests, in particular, Rawls again alerts us to the fact that he agrees with cosmopolitans on a crucial point: historical borders, and therefore nations, are arbitrary from a (liberal) moral point of view.

The view Rawls takes is public; it is always likewise the view that liberals take, for liberal peoples are political liberals. For them, as well, borders are arbitrary. On what, then, do they rely to circumscribe themselves? Recall, according to Mill, when it comes to the feeling of nationality, "the strongest of all is identity of political antecedents; the possession of national history, and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past" (23n). The "incidents" to which Mill refers must include the formation of boundaries through conquest and other means. An older type of liberal people might have tried to justify some of these boundaries while disparaging others. At least *liberal* boundaries, they might have said, are not arbitrary if justly and constitutionally formed. But Rawls's liberals are people for whom such boundaries are arbitrary *no matter what.* They therefore cannot look on their national history with anything passing indifference and probably with shame.

Rawls assumes that liberal peoples have common sympathies despite lacking each and all of Mill's identified sources. He simply "starts with the *need* for common sympathies, no matter what their source may be" (24, my emphasis). By invoking such sources of unity at this stage, Rawls is beginning in a "simplified way" (ibid). And he hopes to show some later day that "within a reasonably just liberal (or decent) polity it is possible … to satisfy the reasonable cultural interests and needs of groups with diverse ethnic and national backgrounds" (25). But since Rawls never showed what nationality would mean in such a case, and it is far from clear how he could, he refers the reader to "Yael Tamir's highly instructive *Liberal Nationalism"*

(Rawls 1999, 25n, Tamir 1993). So, if there is anything to the common sympathies Rawls presupposes, we must find it elsewhere.

But Rawls *cannot* rely on liberal nationalism to save the particularity of the people, whether or not liberal nationalism is coherent in itself. The bigger problem for Rawls is that he and liberal nationalism repudiate one another on the question of whether liberal nationalism is necessary. The whole point of political liberalism, in fact, is that we are *not* united – that is why we must use only public reason and stick to purely political conceptions of justice! Rawls is very clear about this point.

> Questions of constitutional essentials and matters of basic justice are to be settled by *a public political conception of justice and its public reason*, though all citizens will also look to their comprehensive doctrines. Given the pluralism of liberal democratic societies – a pluralism which is best seen as the outcome of the exercise of human reason under free institutions – affirming such a political conception as a basis of public justification, along with basic political institutions that realize it, *is the most reasonable and deepest basis of social unity available to us* (122, my emphasis).

The social unity of liberal democratic societies is based, at least for the most part, on a conception of justice and the institutions that express this conception.[22] All such societies share the fundamental premise of free and equal individuals, but they can diverge to some extent over how to interpret this premise.

> Each of these liberalisms endorses the underlying ideas of citizens as free and equal person and of society as a fair system of cooperation over time. Yet since these ideas can be interpreted in various ways, we get different formulations of the principles of justice and different contents of public reason. Political conceptions also differ in how they order, or balance, political principles and values even when they specify the same principles and values as significant (14).

[22] There is a certain puzzling circularity in Rawls's account, for the same conception and institutions also give rise to the pluralism to which they are the solution.

So, if the citizens of any given liberal regime are attached to that *particular* regime, they are at most attached to a particular interpretation of liberalism that prevails there. But why does this particularity prevail?

One answer Rawls offers is that liberal peoples arrive at different liberalisms as a result of their different background cultures. "While democracies will differ in the specific doctrines that are influential and active within them – as they differ in the western democracies of Europe, the United States, Israel, and India – finding a suitable idea of public reason is a concern that faces them all" (132). It is essential to liberalism that it separates state and society, so political liberalism does not seek to influence this background culture. "The idea of public reason does not apply to the background culture with its many forms of non-public reason nor to media of any kind" (134). But the background culture affects the type of public reason that is employed in each democracy. "There are many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions. Of these, justice as fairness, whatever its merits, is but one" (141). Each democracy might, then, be defined by the mixture of existing background culture and the specific, yet reasonable, political conception that dominates as a result.

But all reasonable, i.e. politically liberal, conceptions of justice take citizens to be free and equal and bound by the criterion of reciprocity (132-3). When Rawls says that different liberal societies will have different kinds of pluralism and therefore different interpretations of political justice, he only means that they will differ, at the margins, in how they order or rank specific conflicts that arise between individual liberties (137-8, 141). All of the legitimate forms of political liberalism are more substantially socialist than economic libertarianism, for instance, which is "an impoverished form of liberalism" (49). The range is, therefore, fairly narrow. But

more crucially, nothing about the public reason of any of these democracies can refer to the specific character of the democracy in question. The regime is defined entirely in terms of political justice. So, first of all, one should not speak of England and France, but of whatever words best describe the type of justice established in each territory. And furthermore, in both cases the public conception of justice will exclude all reference to comprehensive doctrines or other aspects of the background culture. The public conception of justice, or the idea of public reason, is influenced by discussions that take place in the background culture, but its essence is to abstract from this background culture (134). As far as public reason is concerned, "we" could be anyone.

After all, the community is *arbitrary*, again by hypothesis. Each of these societies has borders and a history, but such things are now considered arbitrary dispensations of fate. In such a situation, it is difficult to speak of "common sympathies," let alone nationality. The only thing such people have in common is what keeps them disunited – their mutually distinct comprehensive doctrines, their antagonism within civil society. Hence, the liberal nationalist Yael Tamir complains, "Rawls suggests that social unity and the allegiance of citizens to their common institutions are founded on an agreement regarding some guiding principles of justice. But this agreement is too thin, and is insufficient to ensure the continued existence of a closed community in which members care for each other's welfare, as well as for the well-being of future generations" (Tamir 1993, 118). If I would prefer less pluralism, I could try to find a community that supports my comprehensive doctrine. If I love pluralism and liberty, then still, the state exists only for the sake of my liberty, but there is greater liberty elsewhere. Why I am bound to *these* people is radically unclear, and especially unsatisfying, from the liberal point of

view. But, if Rawls indeed needs to presuppose that a given liberal people is united by common sympathies, it is likely to become an obstacle to his theory of liberalism.[23]

Does Rawls even wish to employ this presupposition at the highest level? He gives a fairly standard reason for insisting that human communities must be limited in order to have effective sentimental force. Rawls takes the realistic view that "the affinity among peoples is naturally weaker (as a matter of human psychology) as society-wide institutions include a larger area and cultural distances increase" (112). And he appeals to realism when he writes, "this psychological principle sets limits to what can sensibly be proposed as the content of the Law of Peoples" (ibid). But Rawls certainly does not believe this psychological principle is a matter of justice – he does not anywhere, that I know of, suggest that more is owed to compatriots than to others.[24] And he does not believe that this psychological principle is fixed. As Beitz points out, cogently,

> It is a commonplace that the size of the circle of affinity is historically variable and that, under favorable institutional and cultural circumstances, the range of sympathetic concern can extend well beyond those with whom people share any particular ascriptive characteristics (as Rawls himself observes [p. 113]). The modern multicultural state would be inconceivable if this were not true. But if motivational capacities are variable and subject to change with the development of institutions and cultures, then it gets things backward to assume any particular limitations on these capacities in the structure of a political theory. This is what occurs, perhaps nonobviously, when the primacy of peoples is built into the original position. Alternatively, a theory could treat motivational constraints as variables to which a theory should be sensitive in its application to the nonideal world. But on that approach, the rationale for beginning with peoples would disappear (Beitz 2000, 683).

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[23] And Yael Tamir's conclusions are different as well. In a certain sense, she argues that liberal societies must be more like Rawls's decent societies, for the protection of the various conflicting ethnic and national identities requires the end of treating citizens as free and equal individuals. "Satisfying these demands may require the creation of a pluralistic system providing differential services. The system of "separate but equal services," despite its notorious reputation, may thereby attain rehabilitation, demonstrating once more that it is crucially important to inquire who desires separate frameworks and why" (Tamir 1993, 55)(55). Since Rawls cannot possibly endorse this move, it is radically unclear what he means by calling Tamir's book "highly instructive." In the following chapters I focus on David Miller for this very reason: Miller's liberal nationalism is more in keeping with Rawls's presuppositions and agenda.

[24] Rawls does not, I think, hold that "social cooperation is the root of all social obligations" (Beitz 1979, 140). He holds that social cooperation is the *psychological motive* of learning and acting on social obligations.

As Beitz points out, Rawls himself insists that we *can* and *should* hope to transcend our local attachments someday. For the sake of the future, "it is the task of the statesman to struggle against the potential lack of affinity among different peoples" (ibid). Even within liberal societies, the necessary feelings grow over time.[25] Rawls's view of human sentiments is progressive and constantly strives to transcend the limits of community. On the one hand, the necessary sympathies "cannot be expected even in a society of liberal peoples," for it depends upon "the moral learning of political concepts and principles … in the context of society-wide political and social institutions that are part of their shared daily life" (112). The unity, mutual concern, and support of liberal justice depend for their effectiveness on a process of learning in which it is clear *with whom* one is learning in common. The liberal state is a kind of collective school for justice, in which justice is focused on the *alma mater*.

But the lesson we learn in this school is that all people are equal, everywhere. The better we learn the lessons, the more likely we are to insist that it was at best our unjust privilege to have attended the right school. Rawls, our teacher, knows this and shares this view. The improvement of liberal societies toward their ideal and the improvement of the world are parallel cases of how the principle of justice builds upon and extends the limits of psychological principles. The duties we have to each other, *ideally,* know no boundaries from the perspective of justice, but "the duty of assistance" requires "the motivational support" of "a sense of social cohesion and closeness" (112). Only through the global broadening of such sentiments will justice be done. Only in this way can Rawls propose his eighth principle for our foreign policy,

[25] And, as an aside, this observation helps to explain why liberalism has a history of nationalism. For a long time, nations were the largest units ever yet conceived for republican government, and the idea that their citizens could achieve the necessary sentimental unity was disputed. Liberals were the nation-building party, and continue to be the nation-building party, for as long as necessary to promote the kind of integration they desire. But only because the nation is larger than the alternatives; their eye is always on the world.

the "duty of assistance" (112). Here, too, Rawls is realistic but also optimistic. We *can* and *should* hope to transcend our local attachments someday. The statesman should counteract these "shortsighted tendencies" (ibid). Rawls must be aware, then, that he is implying the possibility of a world-nation or world-state of some form in the barely discernable future. He describes a learning process by which liberalism grows from a doctrine of *modus vivendi* and self-interest properly understood, addressed to an overly-large and heterogeneous mass, into a moral imperative that inspires ideological and sentimental unity. And he stresses that this process is replicable at a higher level.

> What encourages the statesman's work is that *relations of affinity are not a fixed thing*, but may grow continually stronger over time as people come to work together in cooperative institutions they have developed. It is characteristic of liberal and decent peoples that they seek a world in which all peoples have a well-ordered regime. At first, we may suppose this aim is moved by each people's self-interest, for such regimes are not dangerous but peaceful and cooperative. Yet as cooperation between peoples proceeds apace they may come to care about each other, and affinity between them becomes strong. Hence, they are no longer moved simply by self-interest but by mutual concern for each other's way of life and culture, and they become willing to make sacrifices for each other. This mutual caring is the outcome of their fruitful cooperative efforts and common experiences over a considerable period of time. *The relatively narrow circle of mutually caring peoples in the world today may expand over time and must never be viewed as fixed* (113, my emphasis).

So, while it can be a matter of prudence for the statesman to consider when the national bond needs strengthening and when it needs broadening, the current limits of human sentiment are not the ultimate guidepost of either the liberal statesman or the liberal philosopher.

Likewise, Rawls says, even in the ideal case, the governments of peoples rightly restrict immigration in keeping with their duty "to be the representative and effective agent of a people as they take responsibility for their territory and its environmental integrity, as well as for the size of their population" (38-9, see also 8-9). The idea here is that social units must understand themselves as property owners so that they can be mutually responsible.

> Unless a definite agent is given responsibility for maintaining an asset and bears the responsibility and loss for not doing so, that asset tends to deteriorate. On my account the role of property is to prevent this deterioration from occurring. In the present case, the asset is the people's territory and its potential capacity to support them *in perpetuity*. The perpetuity condition is crucial. People must recognize that they cannot make up for failing to regulate their numbers or to care for their land by conquest in war, or by migrating into another people's territory without their consent (8).

These are crucial points. If the Law of Peoples outlaws anything, it outlaws the conquest of territories for resources or colonization. And one strong temptation toward such conquests is the failure to acknowledge the possessions of others and to take responsible care of one's own.[26]

But how can Rawls explain the possession of territories? For, from a properly cosmopolitan perspective, the societies in question do not actually have property rights; these are delegated to them from a universal point of view, on the ground that arbitrary borders are justifiable for the sake of important universal interests in peace and stability. According to Rawls, we must recognize their territorial right "however arbitrary a society's boundaries may appear from a historical point of view" (8-9, see also 38-9). The people's collective right to defend these borders does not, then, imply in any way that the people *really* have a right to their territory. Rawls always takes the view that property is a kind of social fiction established for legitimate purposes; even individuals have no claim to property on their own merits but only in light of larger patterns of social distribution (Rawls 1971, 86-92, 273-7). Likewise, peoples and their governments have a claim to their otherwise arbitrary territories, and only those territories, simply because someone must be responsible for them. "Unless a definite agent is given responsibility for maintaining an asset and bears the responsibility and loss for not doing so, that

[26] Of course, a libertarian could object that such necessities arise only because these liberals demand too much action and responsibility from collectives. That may be, but I think that the result of their own policy would be the utter destruction and depletion of all natural resources – every mountaintop removed for a mine, and every river unfit to swim or fish in. Perhaps there is a reply. I am considering the requirements of liberalism, not libertarianism; I leave these questions aside for now.

asset tends to deteriorate. On my account the role of the institution of property is to prevent this deterioration from occurring" (8). Peoples must understand, then, that they are permitted to act *as if* they owned their homeland because they are caretakers of resources that do not really belong to them. To whom, then? One must suppose, to humanity. Who else gives a people the responsibility to maintain this asset? Rawls's defense of particularity invokes a cosmopolitan point of view. And what humanity giveth, cannot humanity taketh away? Once we say that peoples have defeasible, delegated rights to their lands, we imply that their borders are in no way sacred. For a sufficiently just cause, the claims of political autonomy must fold.

The presuppositions of liberal unity and political autonomy are provisional, at most. The liberal people are united only by what also disunites them and causes them to seek unity with the world. The Law of Peoples is *their* law, but a universal law, the liberal law.

Conclusion

Rawls adopts the premise of independent nations only to vacate and undermine it through the idealization of peoples. At its most conservative, contemporary liberalism is too cosmopolitan for its own good. And I tried to show that this result is inevitable: when liberalism demands the prioritization of individual liberties, it implicitly demands a pacified world. Rawls's theory, like other cosmopolitan theories, expresses an aspiration for a world state and the equality of all human beings. This aspiration has a firm motive in the ideals of liberalism for domestic society; such liberal citizens *need* a world of peace in order to obtain the domestic regime that they demand. And they need this domestic regime in order to hypothesize a world at peace. But the only way to provide the world of peace is to act together as patriotic citizens, and this they consider unjust both to themselves and the world. The way to reach the ideal, they suppose, is to act as if it already obtains. Doing so is highly unrealistic, however, and threatens

their collective security. These dilemmas partly explain why liberalism is torn between the world and the nation. To achieve the ideal, liberals must presuppose the nation, but the nation is undermined by the ideal. In the ideal case, the people are no people. When people are a people, they are not led purely by the light of the ideal.

In the following chapter, I consider the problem from the other side. Given the justificatory bubble of liberalism, plus its need to cover the world, how is it to justify its project to those who disagree? How is it to treat such people? Liberalism claims that all persons *are* free and equal, but it also claims that all persons *must be* free and equal. In this chapter I was accusing Rawls of undermining the premise of national unity that he adopts by necessity. In the following chapter I accuse him of defending the liberal nation more than his ideological premises allow.

CHAPTER 2: POLITICAL LIBERALISM BOUND

The point of the preceding chapter may be put like this: Rawls's *The Law of Peoples* (1999), despite its prudent interest in the conditions of stability and social cohesion, pushes inexorably in a cosmopolitan direction. And, in doing so, it advocates imprudent and unrealistic policies, dissolves the basis of national cohesion and loyalty, and undermines the moral legitimacy of independent polities. In light of such findings, the reader may take me to have argued that Rawls is simply a cosmopolitan in disguise. I must correct that impression now. Unlike some of Rawls's cosmopolitan critics, I do not think that Rawls failed to go the distance with cosmopolitanism simply because realism stood in the way. In fact, it was part of my argument that realism did not stand in his way at crucial moments. That implies that something else held him back, that there remains a puzzle concerning Rawls's continuing nationalism. It remains unclear why, given his foundational individualism, Rawls affirms the moral status of peoples. Does he believe in corporate moral entities or doesn't he? Is the world really divided for him into groups, or does he perceive only equal persons? I would like to spend this chapter trying to show the nature of his confusion on these questions. First, let me set aside some possibilities and build toward a sketch of my thesis.

A number of suggestions have been put forward to explain Rawls's asymmetrical theories of national and international justice. We have already put aside the theory that Rawls simply bows to realism or prudent consideration of the tools available for building utopia, and I will show that these considerations cannot explain other features of his argument either. A rather technical alternative concerns what it means to be implicated in a "basic structure" of cooperation and whether the nation or the global system of trade is more appropriately described as a basic structure today (Scheffler 2001, 33, Pogge 2006, 216-7). The pertinence of this

question depends in part on the nature of moral obligation. We must know whether entanglement in unchosen, existing institutions distinguishes those to whom duties of positive justice (beyond minimal, negative duties not to harm innocent individuals) are owed (Scheffler 2001, 37, Pettit 2006, 50-1). Philip Pettit suggests, "It is because they relate to one another in the dense, structured manner of a well-ordered society that the members of a people owe so much to one another. And it is because they do not relate to the members of another well-ordered society in that manner that they owe them so little" (2006, 51). However, I do not think that we can distinguish "dense, structured" collections of individual rights-bearers from one another without presupposing the premise we are supposed to explain. The question here is why, given the arbitrariness of national borders, such structures are sources of new moral claims, and the answer seems to be, simply, that national borders create (arbitrary and potentially illegitimate) breaks in the density of social relations. If nations are real communities, then one might explain the limits of justice in this way, but Rawls says that "peoples" are neither communities nor associations (Rawls 1985, 3-5).[27]

What we are seeking is a real motive for Rawls to recognize the limits of societies and to look at human beings as divided somewhat naturally into human groups at the global level, a perspective he disdains when considering domestic society. The more promising explanation of this motive is bound to be cultural, and the evidence for it turns up in relation to how Rawls understands his relationship to illiberal societies. In fact, we can see *The Law of Peoples* as structured by this question more than any other. Rawls alerts the reader,

> I emphasize that, in developing the Law of Peoples within a liberal conception of justice, we work out the ideals and principles of the *foreign policy* of a reasonably just *liberal* people. This concern with the foreign policy of a liberal people is implicit throughout. The reason we go on to consider the point of view of decent peoples is not to prescribe principles of justice for *them*, but to assure ourselves that the ideals and principles of the

[27] Possibly Aristotle took the view that justice is thoroughly political in the relevant sense (Strauss 1950, 156-7).

> foreign policy of a liberal people are also reasonable from a decent nonliberal point of view. The need for such assurance is a feature inherent in the liberal conception. The Law of Peoples holds that decent nonliberal points of view exist, and that the question of how far nonliberal peoples are to be tolerated is an essential question of liberal foreign policy (1999, 10).

The clarity with which Rawls announces his awareness of nonliberal points of view and their importance for his purpose is very striking. Liberalism inherently possesses a "need for … assurance" that *some* range of nonliberal points of view can understand liberal foreign policy as reasonable. And, symmetrically, it is an "essential question" for liberalism how far it should tolerate nonliberal points of view in the world. The two issues obviously go together. Since liberalism is concerned with how far to tolerate nonliberals, it is at least potentially concerned with the eradication of nonliberals. *That* policy, or its amendment by toleration of some nonliberal range, is what liberalism would like to assure itself about. *How sure is liberalism that it deserves to rule the world? Is it disturbing for liberalism that nonliberals will object?*

This question has many dimensions, but we can frame it provisionally, with the help of Catherine Audard, as a question about cultural imperialism versus cultural relativism. Standing somewhere in the middle, Rawls's theory is subject to "diametrically opposed criticisms" (Audard 2006, 59). And, as I argue as well, the cosmopolitan character of Rawls's theory makes one of the criticisms stronger than the other and more difficult to excuse.

> For cosmopolitan writers such as B. Barry, C. Beitz, A. Buchanan, T. Pogge, or Kok-Chor Tan, … his criteria for the toleration of non-liberal societies are too relaxed and provide justifications for too many limitations of the scope of full human rights … For cultural relativists such as John Gray or Barry Hindess, on the other hand, [*The Law of People's*] scope is dangerously universalistic, as if the liberal paradigm should apply to the whole world. Because the Law of Peoples advocated by Rawls is an extension of a liberal conception of justice, it cannot escape its origins, and may not be acceptable to non-Western cultures. It is little more, in the end, than an expression of cultural imperialism (Audard 2006, 59-60).

Why is Rawls torn in these two directions? If he really tolerates nonliberalism more than he ought, then the conclusion would have to be that he is not entirely committed to liberalism. I believe I can show that not to be the case. If, then, Audard is correct that Rawls's greater flaw consists in his inability to tolerate nonliberalism, and I think she is correct, then we have the beginnings of an explanation for Rawls's strangely inconsistent conservatism.

By focusing on the problem of avoiding imperialism, Rawls demonstrates "awareness of the fact of pluralism" (Audard 2006, 62). But if, as I suspect, Rawls also believes that liberalism should triumph over this pluralism in the ideal future world, then Rawls is also aware of "the *otherness* of others" in particular way (ibid). In other words, Rawls both does and does not grasp the uniqueness and "parochialism" of political liberalism (ibid). It is not so much that, unlike cosmopolitans, he is overwhelmed by humility about liberalism and the desire to avoid "the arrogance and lack of respect of cosmopolitans for cultural and national identities" (69), not as a first principle. Rather, Rawls is overwhelmed by the sense that otherness exists and should not exist. At his most cosmopolitan, he becomes aware that he stands in judgment over many, many people in the world and cannot avoid thinking them unreasonable and perverse. It must occur to him, in some fashion, that he *does* belong to a nation, and that the other people in the world likewise belong to nations of a very different, and disagreeable, character. In fact, they are unlike him in particular in so far as they believe that they are members of nations and communities. Rawls would like to deny this, but it is whole nations who appear to feel this way, and whole nations who appear to feel as he does. Whole nations of people, then, seem to be misguided and crude. But what kind of thought is that for a liberal? The cosmopolitan ideal assumes that all of these individuals are owed similar things, that they are equal persons, but there they stand as

unequally virtuous, nonliberal and unreasonable dissenters, grouped vaguely by the borders of nations, states, and civilizations. What is a liberal to do?

My argument in this chapter is that this basic problem in the assumptions of universal equality and liberty plague Rawls and that his (partial) awareness of this problem push him back into a (somewhat) nationalist posture. It is my attempt at an explanation for the inconsistent positions he takes on the moral status of communities as opposed to individuals throughout his works. To clarify this argument, I will offer reflections on several related aspects of his theory, all of which concern the relationship between liberal and nonliberal peoples. I proceed in three main sections: on decent peoples, on outlaw and burdened peoples, and, finally, on liberal peoples again.

First, I will retrace my steps so far and describe more adequately the general dilemma of liberalism as it considers its situation in the world. Again, my general claim is that Rawls's problems arise from the combined necessity and difficulty of proving the universal validity of liberalism. I explain both the need for and the obstacles to this proof, and I interpret Rawls's inconsistent accounts of nonliberal peoples as the result of this intractable dilemma. The possible non-universality of liberalism, in combination with the necessity of holding liberalism to be universal, leads to contradictory attitudes about the equality of humanity and the existence of nations. It is the source of Rawls's inconsistency between cosmopolitanism and conservatism.

I begin by describing Rawls's attempt to make room for 'decent' nonliberal peoples. I first show that prudence alone does not explain Rawls's inclusion of decent peoples in his ideal Society of Peoples. Rawls is a committed liberal and must convince the world to become liberal, and I argue that he proposes a hypothetical toleration of decent peoples as a kind of demonstration that liberalism is universal in scope. If he can tolerate and persuade a certain

imaginary group of nonliberal people, the 'decent' peoples, to enter into an international union with liberal people, then he can show that liberalism is neither parochial nor arbitrary. I read his account of decent peoples as thoroughly explained by this attempt to prove the universality of liberalism. But his effort fails, and I show that he can neither tolerate nor persuade such nonliberal peoples. If I read him correctly, then, Rawls is both faithful and hopeless concerning the universal validity of liberalism.

I next consider Rawls's account of outlaw and burdened societies, and I show that Rawls is confused about the division of the world into peoples. He sometimes believes that whole societies are characterized by certain virtues and vices, and he sometimes believes that individuals are fully independent of their societies and all liberals at heart. He observes radical differences of culture and judges his own culture to be superior, but he also imagines that all cultures are compatible with liberal norms and all individuals equally deserving of living in liberal society. I find the source of these confusions in his substitution of the vague idea of institutions for deeper thinking about the sources of ways of life.

This same confusion plagues Rawls's discussion of the right of nations to self-defense. I find that he tacitly assumes the superior right of liberals, *as nations*, to conquer and kill other people when the chips are down. Liberal individuals, therefore, obtain higher moral status than other individuals from their membership within liberal nations. I find that this premise of his is in tension with his prioritization of justice for individuals. Finally, I speculate that Rawls's liberalism is not so purely political as he sometimes claims. For Rawls, I suggest, liberalism takes the place of a spiritual faith, and bonds the otherwise faithless in a quest without end.

The General Dilemma of Liberalism

The general dilemma of liberalism is this: liberalism understands itself as a universally valid theory while knowing itself to be a historically contingent form of society. As we saw in the previous chapter, Rawls holds that no transcendental argument can rescue liberalism from this historical situation. There is only liberalism, with its claims to universality, and a world that denies these claims. Liberals cannot be indifferent to the repudiation of the world, for that repudiation comes from real people; it implies that liberalism is merely a parochial way of life, whereas liberalism understands itself to be the way of humanity. Between ways of life there is at best a *modus vivendi*, and liberalism understands itself as *reasonable* and its enemies as *unreasonable* (Rawls 1999, 178-9). As long as liberalism remains merely a *modus vivendi*, it remains what its enemies name it, not what it believes about itself. And this situation encourages a threat from within. "Unreasonable doctrines are a threat to democratic institutions, since it is impossible for them to abide by a constitutional regime except as a *modus vivendi.* Their existence sets a limit to the aim of fully realizing a reasonable democratic society with its ideal of public reason and the idea of legitimate law" (178-9). Only a world-covering liberalism could dispel this threat, by eradicating the alternatives that unreasonable citizens perceive and the lingering sense that liberalism is not the destiny of mankind or not all of mankind. Those who have such a sense will not be reconciled to liberalism as a permanent condition and aspiration. Or, if they are reconciled or otherwise in favor of liberalism, they will see liberalism as appropriate for *themselves*, and not because they think others necessarily capable or even worthy. Freedom will appear to be the inheritance of a few.

In other words, given the world's fragmented situation, one may be inclined to wonder, why are we liberals to begin with? And Rawls's answer is acutely unsatisfying as it stands.

According to Rawls, the only possible justification for liberalism is that it hangs together for *us*, that it will be affirmed by "us" when we reflect on it (87), and this means that the presupposition of political liberalism is the attitudes of political liberals. And why do we have these attitudes? Rawls considers these attitudes to be the *result* of liberal institutions. "The idea of public reason, as I understand it, belongs to a conception of a well-ordered constitutional democratic society … This is because a basic feature of democracy is the fact of reasonable pluralism – the fact that a plurality of conflicting reasonable comprehensive doctrines, religious, philosophical, and moral, is *the normal result of its culture of free institutions*" (131, my emphasis). Furthermore, this same factual result of the institutions, pluralism, is the presupposition of the argument for political liberalism, the grounds for its reasonableness. As Rawls puts it, "None of what I am arguing here puts in question the description of a political conception of justice as a freestanding view, but it does mean that to explain the rationale of the thick veil of ignorance we must look to the fact of reasonable pluralism and the idea of an overlapping consensus of reasonable comprehensive doctrines" (32). Freestanding or not, the rationale for accepting pluralism is the fact of reasonable pluralism, the fact that such distinct views as exist within society are all (or almost all) characterized by their willingness to accommodate rival views. We can afford to enter a veil of ignorance concerning our own beliefs because willingness to do so is already an intrinsic part of our beliefs and of those with whom we bargain in that ignorance together. And this type of pluralism is "a pluralism which is best seen as the outcome of the exercise of human reason under free institutions" (122). For those who do not live within a pluralist society, for those among whom there exists *community* in the form of widely-shared and intolerant comprehensive doctrines, or who do not believe that their home-grown dissenters are reasonable, there is no argument for why they must affirm the reasonableness of pluralism. For those who do live within

a pluralist society, how much to love it (it is one's own, at any rate) and how much to envy other societies (it is a historical accident, after all) is an open question.

As a result, liberals are only liberal because liberalism prevails for them. They simply believe that the views that they have developed by growing up as liberals are also the views that most suit themselves and everyone as human beings simply. Political liberalism has decidedly historicist, ethnocentric, and imperial dimensions. "As Saint-Just said, 'The idea of happiness is new in Europe'" (46). Now, if an idea has sprung into being in a particular time and place, and if we have no reason for thinking that it is an idea that is necessary to universal human nature, it may be said this idea is *ethnocentric.* But the idea in question, the idea of liberalism, finds its necessary completion in the ideal of a universal order governed by itself. As we saw, the possibility of really extending liberalism in a universal fashion is a necessary presupposition of adopting liberalism at home. The ethnocentricity of liberalism, therefore, would be particularly problematic in light of liberalism's dependence on a cosmopolitan utopia.

This dilemma leaves liberalism in an uncomfortable spot. Liberals must encourage the spread of liberalism, but they have only the worst of possible explanations to offer those whom they seek to reform. It is not merely that their answer is, "because we say so." They also admit, Rawls admits, that they only "say so" because they were born that way, because it is *their* heritage – which they happen to believe is valid for everyone. Furthermore, the reason it might be valid for everyone is that it is open to everyone. Liberals define themselves by their openness to all reasonably open points of view, their affirmation of reasonable pluralism. They could, perhaps, force their views on the world, but doing so would seriously compromise their sense that liberalism is natural to man, so the project would be self-defeating. Liberals would forever suspect that their views really *were* parochial and that their ascendance was an historical

accident. In that case, it could be reversed. Their ascendance should, instead, demonstrate *The End of History* (Fukuyama 1992).

But liberals are not open to *everyone*, of course. They cannot be open to the opposite of openness. "A given society may be characterized by extreme permissiveness, but this very permissiveness is in need of being established and defended, and it necessarily has its limits: a permissive society which permits its members also every sort of permissiveness will soon cease to be permissive; it will vanish from the face of the earth" (Strauss 1964, 48). There may be some illiberals among us, but there many more abroad. So liberal peoples are closed after all, and they are nations, not peoples. Liberalism exists in nations and these nations exclude, condemn, and look down upon the illiberal nations and peoples of the earth. What is wrong with these foreign people? Liberals will be tempted by nationalism, maybe even by the view that some people are not fully human. But that view challenges liberalism at its core, at least if liberalism takes humanity to be naturally or morally free and equal. There are *no* nations, only peoples …

Liberalism cannot avoid a certain schizophrenia when it looks at the world. From one side, it must see only individuals, and from another side, it must see significantly different nations. This general dilemma shows up in every part of Rawls's account of how liberals must interact with nonliberal peoples.

The Purgatory of Liberal Toleration

There are clear reasons of prudence why liberalism should tolerate some nonliberal societies. Even if democratic peace should obtain between liberals, that is not enough in a non-ideal world to guarantee the ideals of liberal society. But, if liberals were to be involved in a world-changing crusade against *all* nonliberal peoples, if that were liberalism's known foreign policy, then the ideal would be held hostage to an unrealistic and overly ambitious agenda.

Nonliberal peoples would resent this agenda, and the liberals' need for armies would surely become very intense. This situation gives political liberalism a strong prudential interest in trying to imagine how to build a stronger coalition and how to encourage liberal reforms. Rawls often advocates tolerance for these reasons, simultaneously casting doubt on whether any "decent societies" really exist that deserve it.

> A further important consideration is the following: if liberal peoples require that all societies be liberal and subject those that are not to politically enforced sanctions, then decent nonliberal peoples – *if there are such* – will be denied a due measure of respect by liberal peoples. This lack of respect may wound the self-respect of decent nonliberal peoples as peoples, as well as their individual members, and may lead to great bitterness and resentment (Rawls 1999, 61, my emphasis).
>
> By recognizing these societies as *bone fide* members of the Society of Peoples, liberals encourage such change. They do not in any case stifle such change, as withholding respect from decent peoples might well do … Liberal peoples must try to encourage decent peoples and not frustrate their vitality by coercively insisting that all societies be liberal (61; emphasis in original).
>
> *Most important is* maintaining mutual respect among peoples. Lapsing into contempt on the one side, and bitterness and resentment on the other, can only cause damage … The Law of Peoples considers this wider background basic structure and the merits of its political climate in *encouraging reforms in a liberal direction* as overriding the lack of liberal justice in decent societies (62, my emphasis).

This much is clear: liberals can hope to *encourage* world liberalism by giving decent people respect, perhaps more than the decent deserve or than the liberals feel.[28]

These are prudent considerations for liberals but, if liberals are cosmopolitan in principle, Rawls is not justified in building up from the (temporarily) necessary toleration of illiberal societies. Rawls's ideal Society of Peoples consists of liberal *and decent* societies; the ideal is

[28] During the ellipsis in the second of the above quotes, Rawls again suggests that he is serious about valuing decent peoples, but again with a caveat. "Leaving aside the deep question of whether some forms of culture and ways of life are good in themselves (as I believe they are), it is surely, *ceteris paribus,* a good for individuals and associations to be attached to their particular culture and to take part in its common public and civic life. In this way political society is expressed and fulfilled" (ibid). Now, is Rawls leaving a deep question aside or answering it? And if he does think some forms of culture and ways of life are good in themselves, what kinds? His consequence in fact suggests that *political participation* is good, which is only possible or best realized where all individuals are free and equally endowed with political liberties.

met when all societies possess "either a liberal or a decent regime" (5). This makes very little sense as a guiding ideal for liberals. Cosmopolitan liberals can agree, "that decent nonliberal points of view exist, and that the question of how far nonliberal peoples are to be tolerated is an essential question of liberal foreign policy" (10). But, again, this foreign policy question could be raised afterwards, in thinking about how liberal ideals for all are best achieved. First the ideal, then implementation. As Beitz puts it, "If there are reasons for toleration, as no doubt there are, it would seem better to articulate them within a theory rather than to presuppose them" (Beitz 2000, 681). As Pogge puts it, "one would need to explain why an equal place should be indefinitely preserved for such societies when Rawls himself deems them morally flawed – 'a decent hierarchical society does not treat its members reasonably or justly as free and equal citizens (*LoP*: 83) – and defends accommodation by claiming that it encourages decent societies to reform themselves in a liberal direction (*LoP*: 61-2)" (Pogge 2006). It is *not theoretically necessary* to presuppose factually independent and nonliberal societies in order to ask what to do about them, including tolerate them. And it is *theoretically arbitrary* to do so if the toleration is insincere, partial, or temporary.

All the same, Beitz and Pogge underestimate how *practically necessary* the presupposition of sincere and principled tolerance is on the assumption that prudence requires it. If cosmopolitans assert, as a first principle, "that all persons are to have the equal liberal rights of citizens of a constitutional democracy" (Audard 2006, 69), they cannot turn around and say, *but we respect those of you who disagree.* And they must (and, of course, do) speak publicly. "Public reasoning aims for public justification … it proceeds correctly from premises *we accept* and think others could reasonably accept to conclusions we think they could also reasonably accept" (155). On such principles, it is not an option to claim to tolerate what one explicitly does not

tolerate. Cosmopolitans can explain to themselves why they should tolerate nonliberals, but of what importance is that? They cannot use this same explanation when practicing this toleration. They cannot say, "I tolerate you because, while I do not tolerate you, I need you to think of me as tolerating you." Cosmopolitan liberalism could exist as a secret society or as an esoteric doctrine, but that is not an option for liberalism, or cosmopolitanism could revert to international imperialism. "The claim here is that 'decent' societies will naturally see liberal democracy as the way forward … an echo of the old colonial 'norm of civilization', which assumed that all non-liberal societies were still 'uncivilized' (Audard 2006, 62). Charles Beitz, with admirable consistency, accepted this imperial consequence in his original theory. Recall that Rawls's theory of hypothetical consent assumes that society is necessarily coercive and obliged to be just on that ground. Building on Rawls's account of political legitimacy, Beitz argued, plausibly, "If government in general need not be based on consent, then colonial rule cannot be opposed simply because it is not based on consent" (Beitz 1979, 96). But if a return to colonialism is not plausible, and if it is therefore necessary to convince nonliberals that liberals really do intend to tolerate them up to some point, that toleration must be offered as a first principle, not as a matter of prudence with other cards up one's (transparent) sleeve.

At the same time, liberalism cannot adopt a relativistic posture toward liberalism. Hence Pogge's notice of Rawls's ambivalence. Most commentators assume that Rawls significantly weakens the scope of human rights by his toleration of decent peoples, and that he does not have a sufficient theoretical reason to do so (Beitz 1979, 687, Tan 2006). As Tan puts it, "the scope of liberal toleration does not and cannot extend to alternatives to liberal justice itself … a liberal must be able to philosophically and not just politically defend liberalism against its enemies (even if, as some critics point out, it is not clear on what grounds the political liberal can do

this)" (Tan 2006, 88). Since these commentators explain themselves by reference to Rawls's own principles, however, I suggest that he is not unaware of the problem on some level. Between liberalism and nonliberalism there is only an impasse, as Rawls stresses.

It is not the case that Rawls is himself a pluralist about pluralism. He is, rather, a committed liberal seeking his way through an impasse. Interspersed among his many attempts to tolerate nonliberal societies, we find remarks meant to assuage and assure cosmopolitans of his full commitment to the objectivity and universality of liberalism.

To repeat, I am *not* saying that a decent hierarchical society is as reasonable and just as a liberal society (Rawls 1999, 83, my emphasis).

> Moreover, *if a liberal constitutional democracy is, in fact, superior to other forms of society, as I believe it to be,* a liberal people should have confidence in their convictions and suppose that a decent society, when offered due respect by liberal peoples, may be more likely, over time, to recognize the advantages of liberal institutions and take steps to becoming more liberal on their own (62, my emphasis).

Rawls is not fundamentally a pluralist in the philosophic sense. He thinks liberalism is the best form of society, and he defines liberalism as a view of justice in which individual liberty is the primary good to which other goods are subordinate and from which the right to all other goods is derived (14). Every other view is unreasonable in his eyes, and his reasons for offering decent societies respect usually refer to the hope that this respect will encourage liberalization. But, as I have argued above, respect must be offered with sincerity. How is that possible for the committed liberal? Rawls writes, "one should allow, I think, a space between the fully unreasonable and the fully reasonable" (74). If liberalism is *Paradiso* and fundamentalism is *Inferno,* Rawls is like Dante in seeking to establish a *Purgatorio* for the redeemably damned (Dante 1971).

This is a difficult task because, in general, liberalism rejects all dissenters as unreasonable. It is characteristic of Rawls's liberalism that there is no purgatory between

righteousness and infidelity, and to infidels he offers neither reason nor accommodation. "Those who reject constitutional democracy with its criterion of reciprocity will of course reject the very idea of public reason. For them the political relation may be friend or foe, to those of a particular religious or secular community or those who are not; or it may be a relentless struggle to win the world for the whole truth. *Political liberalism does not engage those who think this way*" (Rawls 1999, 132, my emphasis). At least barring the allegedly decent societies, Rawls has *nothing to say* to those who are not politically liberal, either domestically or internationally.

> Some may find this fact hard to accept. That is because it is often thought that the task of philosophy is to uncover a form of argument that will always prove convincing against all other arguments. There is, however, no such argument (123).

> There are, however, important limits to reconciliation … Reconciliation requires acknowledging the fact of reasonable pluralism both within liberal and decent societies and in their relations with one another. Moreover, one must also recognize this pluralism as consistent with reasonable comprehensive doctrines, both religious and secular. Yet this last idea is precisely what fundamentalism denies and political liberalism asserts (127).

The reason why liberalism has no universal argument is the same reason why liberalism has limits. Liberalism, as Rawls understands it, has no answer to religion at a fundamental level.

Fundamentalism and liberalism assert reciprocally incompatible views. One says that it is reasonable to cling to the truth and reject dissenters; the other says it is reasonable to moderate one's attachment to truth by the views of dissenters, and also reasonable to reject those who cling to the truth and dissent from this moderation. Fundamentalists are fundamentalists about truth, and liberals are fundamentalists about liberty. They disagree over which value is fundamentally higher and have no argument that the other cannot answer. As we saw before, Rawls offers "No Deduction from Practical Reason" for the reasonableness of liberalism, which he merely defines and describes (86-7). There is a bible of liberalism in Rawls's works, which states, 'Thou shalt

have no other Gods before me,' and one simply thumps this bible when speaking to those who believe in God differently. What more can Rawls do?

The best liberalism can do is to propose a compromise while claiming that this compromise does not impede religion. "This is not to say that religion is somehow 'privatized'; instead, it is not 'politicized' (that is, perverted and diminished for ideological ends). The division of labor between political and social institutions, on the one hand, and civic society with its many and diverse associations (religious and secular), on the other, is fully maintained" (127). In fact, one can add, liberalism's division between state and society is of the essence of liberalism. Liberalism would not even *wish* to eradicate religion, in a certain sense, for it would lose its *raison d'etre* if it did. Liberalism exists to solve the dilemma of pluralism; if pluralism finally dissolves entirely under its gaze, it will become increasingly difficult to explain why the state must abstain from a spiritual or ideological commitment, and therefore why individual liberties are sacred when they detract from these goals. It is not clear whether liberalism could exist in a world that offered it no dissenters or enemies. It pushes inexorably in that direction, yet Rawls's attempt to retain a place for decent societies may be motivated in part by this awareness that *something* different must exist lest liberals lose all sources of unity. But can Rawls offer this same, famous, liberal compromise with religion at the level of independent societies? Probably not, for the decision whether religion is a private matter, or a matter of state, is *the* issue between liberal and nonliberal (but decent) societies.

A Deeper Problem

I have shown that liberalism is torn between its own self-assertion and a prudent regard for its situation in the world, and that this by itself suggests a need for liberalism to discover a *principled* doctrine of toleration, but without eliminating the premise that liberalism is superior

to other forms of society. I now want to advance a somewhat more speculative, but potentially very instructive, theory of Rawls's reasons for seeking a theory of international toleration. My suggestion begins from the idea that liberalism cannot settle for being one way of life among many in the world; liberalism necessarily takes a universal, cosmopolitan view of itself, and it necessarily finds dissent from its paradigm challenging to its own self-conception. In other words, liberalism feels a deep need to demonstrate its universal validity to the dissenting world, but without forcing others to convert and without compromising itself. This situation would give Rawls another, more fundamental incentive to discover a universal Law of Peoples. I cannot *prove* that he was motivated by this incentive, but I can explain why it is plausible. Let me begin by spelling out how the Law of Peoples could perform a justificatory function for liberalism.

Suppose that Rawls must find a way to convince nonliberals to become liberal on some level, while also showing them that they are respected as they are. The only possible path out of this impasse is to find a new argument for why nonliberals must find common ground with liberals. That path is the Law of Peoples. The Law of Peoples brings together liberal and decent societies under one law. If some nonliberal societies can affirm the same Law of Peoples that liberals affirm, these nonliberal societies affirm an important aspect of liberalism.[29] This is, quite possibly, Rawls's most important task in *The Law of Peoples.* The attempt to tolerate nonliberal societies and show that they, in turn, will endorse a world society based on liberal ideas is the alternative to demonstrating the universal righteousness of liberalism from first principles.[30]

[29] I say "nonliberal" rather than "decent" here in order to highlight the dilemma at stake.

[30] Allegedly, even in the end of history, when utopia is here, the Society of Peoples will include "both kinds of societies, liberal and decent" (5). "This is no small thing," Rawls notes, "It argues for preserving significant room for the idea of a people's self-determination and for some kind of loose or confederative form of a Society of Peoples" (61). Conversely, then, if liberalism does not have a theory of why liberal societies must and can work with decent peoples in a system of international equality and common norms, then the case within liberalism for political self-determination falls. In this light, what follows is also an additional argument in support of the preceding chapter.

I tentatively suggest that we read some of Rawls's explanations for the design of his theory in this light. For instance, he writes, "I cannot be sure in advance that this approach to the Law of Peoples will work out, nor do I maintain that other ways of arriving at the Law of Peoples are incorrect. Should there be other ways to arrive at the *same place*, so much the better" (1999, 10, my emphasis). What place, exactly? If Rawls means another, highly similar Law of Peoples, which similarly tolerates decent (illiberal) societies in perpetuity, then his remark is simply an effort at humility. Not many have tried to build such a theory, but Rawls will not presume. But there are other people who do try to arrive at a *similar* place, if the place in question is defined by the universality of liberalism. In particular, there are other cosmopolitans, Rawls's primary readers, and Rawls later explains their strategy and compares it to his own. Rawls's cosmopolitan readers in fact adopt what they took to be the obvious strategy, the one that they learned from Rawls himself. They "imagine a global original position with its veil of ignorance behind which all parties are situated symmetrically … Proceeding in this way would straightaway ground human rights in a political (moral) conception of liberal cosmopolitan justice … it amounts to saying that all persons are to have the equal liberal rights of citizens in a constitutional democracy" (82). Is this the same place and the alternative approach? Why does Rawls reject it? That is, after all, the great puzzle.

Because Rawls claims to tolerate decent societies, we might be meant to read this reply as suggesting that all persons are *not* to have equal liberal rights. But I doubt very much whether Rawls can take that point of view, for I believe the evidence is fairly solid that Rawls *does* affirm the superiority and validity of liberalism for all. Instead, I would suggest, the reader must put the emphasis on "straightaway" – the cosmopolitan deduction relies too immediately on a moral

conception of the person that is not universally shared, and for which there exists no transcendental deduction (as far as Rawls is concerned).

In other words, the cosmopolitan argument, proceeding from a global original position, does nothing to show *nonliberals* that their societies are unacceptable. We at least *might* understand Rawls's proof, such as it is, that liberal peoples can tolerate nonliberal peoples, as simultaneously constituting a proof that nonliberal peoples *are* obliged by reason to become liberal. It is a last-ditch effort to provide liberalism with universal grounds. We rightly assume that Rawls is a committed liberal, so we might infer that Rawls seeks to provide an alternative "approach" to the problem of justifying liberalism to the world. To explain, Rawls comments, "Without trying to work out a reasonable liberal Law of Peoples, we cannot know that nonliberal societies cannot be acceptable. The possibility of a global original position does not show that, and we can't merely assume it" (83). We cannot *assume* this possibility, but that does not mean we (his readers) would not like to justify it. If we assume, as we should, that Rawls *does* believe that nonliberal societies are not truly acceptable, then this comment means that Rawls is talking about the difficulty of proving what he believes.

But it might be objected, I am giving too little weight to Rawls's sincerity in asserting the acceptableness of nonliberal but decent societies. After all, the Law of Peoples is disparaged by cosmopolitans as insufficiently liberal. What would it really prove about liberalism if decent societies could accept this much more minimal set of principles? How do I know that the attempt to tolerate decent peoples is in any way related to the universality of liberalism? My full answer to this question will become clear as we proceed, but I want to give some preview of what I will show. I say that the Law of Peoples asks very much of nonliberals and that this is why Rawls thinks it impressive. In essence, my argument does call into question the sincerity of Rawls's

toleration, though I do not mean that he saw himself as insincere – I assume that he believed all the things he says at the same time, however contradictory. But we may put these contradictions together. So, recall that Rawls does council liberals to hope that toleration of decent societies will encourage reforms toward liberalism. Allegedly, this permissible hope does not amount to a demand, but I will show that it does if thought through. And one way to preview the manner in which Rawls slides between these two positions is to illustrate why he thinks liberals can hope. What is it that they may hope will happen?

The transformation of decent societies into principled liberals, at least when participating in international society, is expected to result simply from their self-interested participation in that society. This participation is expected to have an effect on them that parallels the effect that liberal institutions have had on liberal peoples. Although Rawls does not wish to say that liberalism is historically contingent with respect to truth, he does say that liberalism is historically contingent with respect to practice. Rawls takes a historical view of how liberalism as a moral outlook evolved from liberalism as a way of life, a *modus vivendi,* or a way of getting along with enemies.

> Religious toleration has historically first appeared as a *modus vivendi* between hostile faiths, later becoming a moral principle shared by civilized peoples and recognized by their leading religions. The same is true of the abolition of slavery and serfdom, the rule of law, the right to war only in self-defense, and the guarantee of human rights. *These become ideals and principles of liberal and decent civilizations, and principles of the Law of all civilized peoples* (113, my emphasis).

If Rawls is right, then the practice of getting along on a basis of toleration eventually tends to become a self-subsisting ideal, one which characterizes a "civilization" (ibid). According to Pettit, "Rawls does not think it is accidental that some societies of natural persons come to be more or less well ordered and so to constitute peoples in this sense … He suggests in particular that the emergence of democratic institutions is more or less bound to give rise to what he would

see as a liberal order" (Pettit 2006, 45). The Law of Peoples will govern within essentially democratic institutions of representatives at the international level. So, if the decent peoples can be encouraged to endorse the Law of Peoples, they will learn to speak the language of political liberalism within the Society of Peoples. Their standing within that Society depends upon them adopting the common Law not merely as a peace treaty or a common interest they share with liberal peoples; instead, to be full members, they *must* come to see this Law as articulating their own vision of the world. In short, Rawls hopes that the Law can create the peoples to which it applies, and the final result will be a consistently liberal civilization embracing all the world.

If I am right, much hangs on whether the nonliberal, decent society can affirm the Law of Peoples. In my view, it is crucial to liberalism's self-conception to prove the "*Law of Peoples not Ethnocentric"* (Rawls 1999, 121). For this law comes from and assumes, at least initially, an audience of liberals who affirm liberalism.[31] Rawls admits, "In developing the Law of Peoples I said that liberal societies ask how they are to conduct themselves toward other societies from the point of view of their *own* political conceptions" (121). Is it not a liberal law? "To the objection that to proceed thus is ethnocentric or merely western, the reply is: no, not necessarily" (121). Again, my suggestion is that the liberal origins of the law, combined with the intention to extend it to nonliberal societies, suggests that the law *is* liberal in some fashion and is meant to be. But let us see. How does Rawls hope to show that the Law of Peoples is universal?

> Whether it is so turns on the *content* of the Law of Peoples that liberal societies embrace. The objectivity of that law surely depends not on its time, place, or culture of origin, but on whether it satisfies the criterion of reciprocity and belongs to the public reason of the Society of liberal and decent Peoples … Here it is crucial that the Law of Peoples does not require decent societies to abandon or modify their religious institutions and adopt liberal ones. We have supposed that decent societies would affirm the same Law of Peoples that would hold among just liberal societies. This enabled that law to be

[31] And, I would add, I proved in the last chapter that this Law is *crucial* for liberalism. But since I do not want every argument to hang on every other, I do not insist on it here.

> universal in its reach. It is so because it asks of other societies only what they can reasonably endorse once they are prepared to stand in a relation of fair equality with all other societies. They cannot argue that being in a relation of equality with other people is a western idea! In what other relation can a people and its regime reasonably expect to stand (121-2)?

Can nonliberal societies argue that being in a relation of equality with other people, *as a moral principle,* is indeed a western idea? It sounds reasonable enough on first hearing, but this "relation of equality" is not meant as *modus vivendi* or operating principle. It is meant as a moral attitude to one's international Society of peoples. In other words, we must not be distracted by the fact that equality has an automatic resonance for *us.* What does it really entail for others?

In order to be assured that the Law of Peoples is objective and universal, we need to know both that liberal societies tolerate decent societies and that decent societies embrace the same law. But *the* distinction between liberal and decent societies concerns the political status of religion. Hence, Rawls emphasizes, "Here it is crucial that the Law of Peoples does not require decent societies to abandon or modify their religious institutions and adopt liberal ones" (121). Rawls must show, in particular, that the Law of Peoples does not require decent societies to modify their religious institutions and, reciprocally, that the Law of Peoples does require liberals to tolerate the religious orientation of the decent societies. Neither side of this equation is actually possible. Let us describe the decent society and then ask whether it is such that liberals tolerate it and such that it affirms the Law of Peoples.

The Impossibility of International Toleration

What, then, is a decent society? As with the ideal liberal society, Rawls only speculates about the ideal decent society, describing a kind of society that, *if it existed,* would meet this lower ideal. "This account of decency, like that of reasonableness, is developed by setting out various criteria and explaining their meaning. The reader has to judge whether a decent people,

as given by the two criteria (non-aggression and a system of law that protects basic human rights), is to be tolerated and accepted as a member in good standing of the Society of Peoples" (67). The *possibility* of recognizing and respecting a decent regime is put forward, but the *actuality* of finding such a regime is difficult because the ideal is not altogether low. Or rather, at times the standard appears lower and at times higher, and Rawls never insists that any existing society achieves it.

Rawls gives the example of a people structured hierarchically, not equally, by a "common good idea of justice." The regime does not put the right (liberty) before the good, but it pursues this idea of the human good with some consultation of the people, organized in corporate associations rather than as individuals (71). Within this idea of the good, however, the regime has its own conception of what we call basic human rights (to life, personal liberty and property, and equality before the law), permits dissent, and avoids persecution (65, 72, 74). Its government is based in a comprehensive religious or philosophical doctrine that, while not fully reasonable according to political liberalism (for it is comprehensive), is not "fully unreasonable" (74). In particular, they "allow a measure of liberty of conscience but do not allow it fully" (75). To illustrate, Rawls gives "an example of an imaginary decent hierarchical Muslim people whom I have named 'Kazanistan'" (75). Kazanistan is "an idealized Islamic people. Kazanistan's system of law does not institute the separation of church and state. Islam is the favored religion, and only Muslims can hold the upper positions of political authority and influence the government's main decisions, including foreign affairs" (75). What will liberals make of Kazanistan? Will they be able to tolerate it as it is?

Let us assume for a moment that Kazanistan is real and not liberal. Is it therefore tolerable to liberals? The answer for liberals is no, and that on two grounds. If, like

cosmopolitans, we are interested in liberal justice for all individuals, then Kazanistan is not just enough. Kazanistan permits dissent, but the Law of Peoples does not permit the liberal societies to aid and comfort the dissenters through public action. Thus, for Kok-Chor Tan, "The problem of tolerating decent peoples is that it lets down dissenting individual members in these nonliberal societies," and Tan points out, "The fact of dissent in any society (liberal or nonliberal) is a given, even under the construction of an ideal theory" (Tan 2006, 85). Tan is correct. As we will recall, Rawls's own position is that there are no real communities, that all alleged communities are in fact simply collections of individuals, for there is always dissent. Rawls often defends liberalism by saying, "This fact of reasonable pluralism limits what is practicably possible here and now, whatever may have been the case in other historical ages when, it is often said, people within a domestic society were united (*though perhaps they never really have been)* in affirming one comprehensive doctrine" (Rawls 1999, 12, Rawls 2001, 4, my emphasis). Rawls might reply that it is only *democratic* societies that necessarily contain reasonable pluralism, but he cannot stick to that. For the justification of such societies is either this same supposition, that expecting to build a non-dissenting comprehensive community is unreasonable, or there is no justification. By his own lights, if justice is what he wants, Rawls should join Tan and the other cosmopolitans in refusing to tolerate even Kazanistan.

On the other hand, if Rawls simply wants peace, then he has a different problem. Audard suggests that Rawls does not demand justice for Kazanistan, only peace and basic human rights for world stability. "The question that Rawls asks is whether peace is only guaranteed by democratic justice *within* and *between* peoples or whether it can be the result of agreements between different cultural and political systems. This is the main issue" (Audard 2006, 61). But in that case, how can Rawls hope to succeed? Rawls is committed to the theory of democratic

peace and the establishment of a principled Society of Peoples under a universal moral law. Each suggests impossibilities. If democratic peace theory only applies to democracies, and takes for granted (implausibly, as we have seen) that history bears out the theory, then Kazanistan cannot be trusted to remain peaceful. "As a consequence of this confusion, it would seem that if decent peoples are to be part of a peaceful Society of Peoples, and if peace is only secure when institutions are democratic, then clearly the Society of Peoples is entitled to transform the domestic institutions of its members and to put pressure on non-democratic but decent governments to change" (Audard 2006, 66). Either democratic peace theory is not dependent on democracy, or the toleration of Kazanistan is dependent on its way to becoming a democracy.

Rawls is also committed to the view that the Society of Peoples adopts the Law of Peoples as a matter of moral principle and not as a merely prudential (and therefore contingent) peace treaty. Audard herself believes that Rawls could succeed if he gave a different account of how peace is obtained, if he were willing to accept peace as a *modus vivendi,* "without reaching agreement on first principles" (2006, 64). The rulers of Kazanistan are comprehensively Muslim and apply Islamic law to their domestic affairs as politically just. That being so, the representatives of Kazanistan who deliberate over the Law of Peoples would surely assume that Islam is authoritative for their political views, which would be fatal for the liberal Law of Peoples. Holding a comprehensive doctrine, and not believing that it must be compatible with a pluralism of such doctrines, they would not be politically liberal internationally any more than they are domestically.

Is this wrong? Could the rulers of Kazanistan adopt the liberal Law of Peoples? Rawls hopes that, with practice at associating with liberals, the decent peoples will become imbued with the liberal spirit. Rawls illustrates this point when he describes the adoption of a common

international law in two ways. On the one hand, he says, liberal (and decent) societies find the Law of Peoples (or most of it) to be in their self-interest. They need peace to flourish, and they might even permit some nation-building if that will stabilize their region. If they cooperate, Rawls believes, the cooperation *will* produce the desired result because the Society of Peoples will be a society based in liberal principles, and liberal principles *educate,* involving "moral learning" (Rawls 1999, 44). The decent peoples can potentially understand the need to work with liberal countries as a *modus vivendi*, and they may initially sign up for this reason. But Rawls is never satisfied with such attitudes. He always wants "stability for the right reasons" (13-14), where this means "stability brought about by citizens acting correctly according to the appropriate principles of their sense of justice, which they have acquired by growing up under and participating in just institutions" (13n). And he continues to require this standard for the international law. "A reasonably just Law of Peoples is *utopian* in that it uses political (moral) ideals, principles, and concepts to specify the reasonably right and just political and social arrangements for the Society of Peoples … just and stable (for the right reasons) over time" (17-8). In other words, the nonliberal peoples must adopt the principles of the Society of Peoples for the right reasons, because they are just, and they must therefore learn to respect themselves for adhering to this liberal conception at the international level. But they are, by hypothesis, still not liberals domestically. As Audard wonders, "How is it psychologically possible that non-liberal, but decent peoples, might be ready to switch allegiances and to accept liberal principles, even if at the domestic level they would find them repulsive?" (Audard 2006, 65). This question plagues Rawls's domestic theory of liberalism as well, but at least in that case, the citizens in question are *presumed* to acknowledge their membership in a shared society.

In the international situation, there is no presumption of membership available on which to build. If the decent peoples have any reason to respect the Law of Peoples, it is for self-interest alone. If they perceive that doing so will lead them to transform into liberal societies, they will reject the Law. There is no in-between place in which a decent society, remaining a decent society, fully embraces liberal law. There is no escaping the one-sidedness of the argument. As Audard comments, "It is impossible at the global level to treat political liberalism as a neutral doctrine in relation to non-democratic peoples and practices. At some stage, assertion of its liberal content, especially of its commitment to individual liberty, has to be expressed, creating a tension and ruining the balance that Rawls wants to preserve" (Audard 2006, 65). Quite right. Although the proof is a little complicated, it is worth spelling out adequately.

First of all, "it is important to understand that the Law of Peoples is developed within political liberalism. This beginning point means that the Law of Peoples is an extension of a liberal conception of justice for a *domestic* regime to a *Society of Peoples.* Developing the Law of Peoples within a liberal conception of justice, we work out the ideals and principles of the foreign policy of a reasonably just liberal people" (Rawls 1999, 55). What this means is that the Law of Peoples that is to govern the world of liberal *and* decent peoples is simply the foreign policy of the liberal peoples as a bloc, which the decent peoples are asked to accept as their own foreign policy as well. There is no bargaining or negotiation between the two. Yet once proposed by the liberals, the decent peoples must recognize the fairness of the proposal.

How, then, do the liberals derive their ideal Law, which they propose to the others? They first agree to be liberals domestically, agreeing that, given the pluralism of reasonable comprehensive doctrines held by individuals, they will invoke only free and equal citizenship in their public reasoning (31). Then the liberal peoples ask how they should relate to one another as

free and equal peoples (34). Here the question arises, "Why do we suppose that the representatives of liberal peoples ignore any knowledge of the people's comprehensive conception of the good" (34)? The answer is not parallel to the individual case, as though each society has a different answer about the comprehensive good. That answer would not establish the Law of Peoples, for the fact of such pluralism would not be considered reasonable. Each nation would, rather, stick to its own view. Hence, "The answer is that a liberal society with a constitutional regime does not, *as a liberal society,* have a *comprehensive* conception of the good" (34). On the ground that no nation has a common good ideal for itself, it can treat every other as potentially equal. But the decent society, *as a decent society,* does have a *comprehensive* conception of the good. According to the liberal proposal, all societies are supposed not to have such a conception, on the ground that the members of society are free and equal, and therefore all societies are to deliberate together without reference to comprehensive doctrines. But these suppositions simply fail with respect to decent societies. The decent societies have no reason to endorse this view. When Rawls says, "we can also say that the members of decent hierarchical societies would accept – as you and I would accept – the original position as fair among peoples," (69), it is impossible to say what he means. Even if the decent societies would accept some or even all of the Laws as they are written, they would not accept their justification in the original position, so they could not accept them as based on and interpretable by liberal principles.

In sum, if Kazanistan *really is* not liberal, Rawls cannot offer it toleration. It is neither sufficiently just, nor sufficiently peaceful, nor sufficiently committed to the Law of Peoples. If Kazanistan *does* commit to the Law of Peoples, it becomes liberal by default, or at least over time. This is why I say that Rawls sees the common Law of Peoples as a kind of proof of

liberalism's universality in general, and not merely a proof that liberalism can get along with others. Liberalism in general *may* have other options for working with foreign cultures, as Audard claims, but Rawls's Law of Peoples does not. Whether he seeks justice or merely peace, he has no grounds for tolerating even Kazanistan. His reason for doing so is, rather, a thought experiment in the universality of liberalism.

To make my interpretation a bit clearer, consider how odd it is that Rawls *thinks* he can tolerate Kazanistan, even though he really cannot tolerate existing nonliberal societies. Why does he have this imaginary friend? The answer is that this imagined country is already fantastically liberal. Rawls cannot describe a decent society that he would tolerate without imagining it as transitioning into a liberal society. Despite granting that Kazanistan is comprehensively and politically Muslim, Rawls re-describes Kazanistan's adherence to Islam as highly modified by liberalism, in a manner that has not historically and does not currently obtain in the world, so far as he is aware. "Unlike *most* Muslim rulers, the rulers of Kazanistan have not sought empire and territory. This is in part a result of its theologians' interpreting *jihad* in a spiritual and moral sense, and not in military terms" (76, my emphasis). Thus, the idea that Kazanistan will adhere to the principle of non-aggression externally and tolerate other religions internally depends upon the conjecture that Kazanistan has already liberalized to some extent and developed a tradition of tolerance. "As I imagine it," Rawls writes, "this decent people is marked by its *enlightened* treatment of the various non-Islamic religions and other minorities who have been living in its territory for generations" (76, my emphasis). Their tolerance is enlightened, not merely habitual, and they have discovered or recovered an interpretation of Islam that is closer to Protestantism. Rawls comments, "The doctrine I have attributed to rulers of Kazanistan was similar to one found in Islam *some centuries ago.* This doctrine affirms the worthiness of all decent religions

and provides the essentials of what realistic utopia requires*"* (76n, my emphasis). These rulers have begun to take a liberal view of political association. "The Muslim rulers have long held the view that all members of society naturally want to be loyal members of the country into which they are born; and that, unless they are unfairly treated and discriminated against, they will remain so" (76). Kazanistan could exist if a Muslim regime experienced a kind of Protestant Reformation. Kazanistan therefore exists in a utopian or ideal world yet to come, concerning which we have little evidence. Kazanistan *could* exist, if one imagines an illiberal society that is on the way to becoming liberal.[32]

Recall: to defend the neutrality of the Law of Peoples, Rawls notes, "Here it is crucial that the Law of Peoples does not require decent societies to abandon or modify their religious institutions and adopt liberal ones" (121). But this does not appear to be quite accurate. In the domestic situation, liberalism proposes a compromise with religion while claiming that this compromise does not impede religion. "This is not to say that religion is somehow 'privatized'; instead, it is not 'politicized' (that is, perverted and diminished for ideological ends). The division of labor between political and social institutions, on the one hand, and civic society with its many and diverse associations (religious and secular), on the other, is fully maintained" (127). In fact, one can add, liberalism's division between state and society is of the essence of liberalism. Liberalism would not even *wish* to eradicate religion, in a certain sense, for it would lose its *raison d'etre* if it did. Liberalism exists to solve the dilemma of pluralism; if pluralism finally dissolves entirely under its gaze, it will become increasingly difficult to explain why the state must abstain from a spiritual or ideological commitment, and therefore why individual liberties are sacred when they detract from these goals.

[32] Audard's essay focuses on the question, "How would democratic peace extend to non-democratic but decent and peaceful peoples? Would that not be due to the progress made by liberalism" (Audard 2006, 62). Yes.

Liberalism therefore seeks to tolerate religion, but it goes too far to say that this division of labor "does not require … societies to … *modify* their religious institutions" (121, my emphasis). Let us confirm this point. The Catholic Church was not liberal until 1965 when, "It declared the ethical doctrine of religious freedom resting on the dignity of the human person" (21n). Catholicism eventually found its own way to support liberalism. Prior to that time, liberals simply viewed Catholicism with suspicion, and they had no convincing argument to offer Catholics from their own liberal position. Surely this was a modification of its institutions, *in the eyes of Rawls*, whether or not Catholics see it as a modification or restoration of their true principles (Barrett 2010). To tolerate decent peoples within liberalism is the equivalent of tolerating Catholicism prior to its liberal reform, and Rawls's claim amounts to the idea that liberalism did not require Catholicism to reform its institutions. Since in fact Rawls's liberalism does require such reform, it cannot avoid requiring the same of decent peoples. There is no parallel between toleration within liberal society and toleration between liberal society and nonliberal society. The former presupposes the liberal reform of religion, and if the latter does as well, there is no toleration.

There is no middle way. The reason why Rawls imagines a middle way, I am suggesting, is that he wants to imagine the universal validity of liberalism. He wants to believe that liberalism is not especially dependent upon a contingent, parochial, historical culture, that it applies to the world and that the world will come to see this. Yet he knows that this universalism is merely hypothetical. Since liberalism has no argument for itself, liberalism is not universally valid unless it tolerates decent peoples. But, for the same reason, liberalism is not universally valid if it does tolerate decent peoples. That concession would simply deflate the otherwise

groundless faith. That is why Rawls imagines a compromise in which the decent peoples are liberal and nonliberal at the same time.

My speculative interpretation aside, I draw two conclusions from Rawls's attempt to tolerate decent peoples. On the one hand, once again, we have an ideal people that corresponds to no really existing people. And, in its ideal form, it approaches a liberal people, (which is not a people because it is not a community or an association). But, on the other hand, Rawls's confrontation with the dilemma of decent peoples is indeed a crucial sign that Rawls is aware of the non-universality of liberalism. More than his cosmopolitan critics, Rawls perceives the gap between what liberalism aspires to claim and what it knows to be true. What liberalism knows is that it has developed historically and locally. And, while it feels it can account for some of its enemies around the world by calling them unreasonable, it is aware that there are dissenters who are not simply ridiculous. Liberalism's own commitment to openness and reason force it to recognize difference. Despite defining itself by its culture of pluralism, this culture is homogeneous in contrast to the world. "If a reasonable pluralism of comprehensive doctrines is a basic feature of a constitutional democracy with its free institutions, we may assume that there is an even greater diversity in the comprehensive doctrines affirmed among the members of the Society of Peoples with its many different cultures and traditions" (Rawls 1999, 40). This statement does not mean that the world society is simply broader, however; it means that the world society is divided into collections of comprehensive doctrines that are liberal and collections that are not liberal, or much less so. Liberalism has borders, and it must discriminate between those who are and those who are not of its tribe. In the previous chapter, we saw that Rawls admits as much and then refuses to carry it through. In this chapter, we are seeing that Rawls does as much and then claims not to.

The Moral Status of Outlaw and Burdened Societies

The egalitarian side of Rawls would like to conceive of human beings simply as free and equal. But how can individuals be free and equal yet divided between those who are and those who are not (and do not wish to be) free and equal? Rawls's awareness of radically different cultures is a major obstacle to liberal conceptions of humanity. Religious conformity shall not be a public duty – that, at least, is a dictate of liberalism. The problem of liberalism in the face of the world, as Rawls sees it, is the existence of religions, Islam in particular, that do not affirm the worthiness of other faiths. According to liberalism, it is permissible to be faithful in one's own way, but there are faiths that do not currently or consistently adopt this liberal self-conception. Rawls would like to imagine that all faiths can become liberal, and it is surely an open question. But the paradox is, this means that liberalism does not affirm the worthiness of other faiths, *as they are,* either. In principle, liberalism would like to say, all faiths are permitted, and the permission of all faiths is the necessary policy for everyone. But in practice, the circle of faith is narrower. This insularity puts Rawls in a bind. Aware of vast differences he cannot cross, how should he explain cultural difference? What are its roots? And what are its implications?

In this section, I would like to show that Rawls cannot make up his mind on these matters. Out of egalitarianism or liberalism, he would like to say that individuals have the same rights regardless of their culture or nationality. But, aware of grave differences, he is unwilling to treat the world as equal in rights. The clear sign of this unwillingness is his substitution of the "duty of assistance" for alternative cosmopolitan principles of global distributive justice. This substitution is tantamount to dividing the world by the unequal virtues of cultures as judged by liberalism. As Thomas Pogge accuses, "he falls for what may be the most harmful dogma ever conceived: explanatory nationalism, the idea that the causes of severe poverty and of other

human deprivations are domestic to the societies in which they occur" (Pogge 2006, 217). In other words, illiberal peoples are to blame for their situation, and liberal peoples are rightly proud of their superior success. How could it be otherwise if liberalism is indeed a superior form of society? Rawls would of course dispute that this "dogma" is harmful or false, and I do not see why Pogge thinks it "incredible on its face" (217). Nevertheless, Pogge is right that Rawls "falls" for it, and Pogge is right that this idea is in grave tension with the aspirations of liberalism. Liberalism is not choice worthy if it is not superior but claiming superiority to others at the level of community is anathema to liberalism.[33]

To see the tension, we must separate the two sides of Rawls's self-contradictory view of the world. He both does and does not wish to say that peoples are corporately responsible, for he both does and does not view human individuals as equal. First, let us recall the side of Rawls that sees humans as individuals who are not responsible for their culture. As we have seen from the discussion of decent peoples, Rawls would like us to imagine that institutions are the cause of persons coming to hold the values of liberal political culture. The people are not to blame, their institutions are. This view goes together with what we saw in the previous chapter, that peoples do not really exist, only individuals do. However unjust their regimes, and however much the people support them, the people are not to blame. If they can be given new institutions, they will grow into virtuous liberals. Rawls derives this idea from Rousseau.

[33] I am not an expert on international development, so my opinion on this dispute is not weighty. But, for what it is worth, I do not find Pogge's arguments convincing. On the one hand, he admits, "The causal factors Rawls highlights are surely important," and on the other hand, he insists that global institutions, practices, and patterns of trade and lending hold some countries back (218-9). His argument amounts to shifting the emphasis of blame and responsibility onto the policies of the World Trade Organization and the richer countries. For an analogy, he asks us to consider whether some student performance in a classroom might be assignable not to their native talents but to noise or a teacher's sexism. Shifting blame in this way appears to me as at least as "ideologically charged" as the alternative of holding individuals or nations responsible to common laws or standards. But I do think Pogge is the more consistent cosmopolitan in this ideological sense. Rawls is less consistent, and therefore confused, but my position is that this (probably) shows Rawls to be more reasonable than and partly superior to his own ideology.

> Following Rousseau's opening thought in *The Social Contract* ... I shall assume that his phrase 'men as they are' refers to persons' moral and psychological natures and how that nature works within a framework of political and social institutions; and that his phrase 'laws as they might be' refers to laws as they should, or ought to be. I shall also assume that, if we grow up under a framework of reasonable and just political and social institutions, we shall affirm those institutions when we in our turn come of age, and they will endure over time. In this context, to say that human nature is good is to say that citizens who grow up under reasonable and just institutions … will affirm those institutions and act to make sure their social world endures (Rawls 1999, 7).

Rousseau's idea, as Rawls interprets it at least, is that human nature universally and fundamentally accords with liberal institutions. If only everyone could grow up under such institutions, there would be no cultural differences to speak of.

But what Rawls never considers in such passages is why the principles and institutions of the *modus vivendi,* i.e. the liberal institutions, were adopted in the first place. "As Saint-Just said, 'The idea of happiness is new in Europe'" (46). The idea matters, too, as much as the actual institutions and the ethos they encourage. The word "institution" derives from the Latin verb, "instituere," meaning, "to place … *in* or upon, to establish or initiate," and is related to words like "state" and "standard" (Partridge 1983). Obviously, an actor or actors for this verb are presupposed. So, we cannot simply appeal to institutions, as though they arise on their own. However complicated we suppose the reciprocal effects to be, we must assume that one side of the equation is related to particular individuals and societies with particular ideas in their minds, who were in some way already the product of the legislation and institutions that they had the foresight to create.[34] What really makes a people? Pettit seeks to rescue Rawls's theory by answering, "They must subscribe as a matter of common awareness to certain ideas about how their affairs should be ordered. They must treat these ideas as common reasons that constitute the only currency in which it is ultimately legitimate to justify the way things are done in the

[34] I do not mean to discount divine intervention, *of course.* But institutions established by God are often even more ineluctably local.

collective organizing of their affairs" (Pettit 2006, 44). This people full of ideas may be reinforced by their institutions, but their institutions must also be the result of their ideas.

Rousseau's theory itself has these two sides. It also implies that human nature, while capable of becoming good under the tutelage of just institutions, is not intrinsically and necessarily good in every context and under every condition of moral learning. Thus, "Rousseau also said … 'Base souls do not believe in great men. Vile slaves smile mockingly at the word freedom'" (Rawls 1999, 7n). From this perspective, the possibility of just institutions depends initially on the souls who must build them. Strauss explains that this dependence forces Rousseau to appeal from the people to "the classic notion of the legislator" (Strauss 1950, 288). But this notion stands in tension with the "sovereignty of the people" (ibid). To bring the origins of the righteous law back to the people, "Apart from the civil religion, the equivalent to the action of the early legislator is custom. Custom, too, socializes the wills of the individuals independently of the generalization of the wills which takes place in the act of legislation" (289). Noticing this leads Strauss to offer an explanation of the nationalistic dimension of liberalism, a dimension deriving from Rousseau's radical break with the Enlightenment conception of human nature.

> Law is even preceded by custom. For civil society is preceded by the nation or the tribe, i.e., a group which is kept together by customs arising from the fact that all members of the group are exposed to, and molded by, the same natural influences … The nation is closer to the original state of nature than is civil society, and therefore it is in important respects superior to civil society. Civil society will approximate the state of nature on the level of humanity to a higher degree, or it will be more healthy, if it rests on the almost natural basis of nationality or if it has a national individuality … Hence the past, and especially the early past, of one's own nation tends to become of higher dignity than any cosmopolitan aspirations. If man's humanity is acquired by accidental causation, that humanity will be radically different from nation to nation and from age to age (289-90).

Rawls appeals to Rousseau without acknowledging the profound crisis that Rousseau's thought poses for universality. But Rawls's awareness and conviction of the historical basis of liberalism

leads him to recognize the conclusions implicitly. He cannot be sure that humanity is really a universal concept, or that humanity is not divided by tribe and nation, so he cannot be sure that all human beings are created equal.

What, then, is the real moral status of nonliberal individuals? What is owed to them? On the one hand, Rawls agrees that redistributive justice is owed to the world as it currently stands. He agrees with the basic idea of cosmopolitans like Beitz and Thomas Pogge, asserting, "if a global principle of distributive justice for the Law of Peoples is meant to apply to our world as it is with its extreme injustices, crippling poverty, and inequalities, its appeal is understandable" (Rawls 1999, 117). Rawls does not, then, disagree about the state of the world with respect to justice. He must, then, take the view that human beings as such, universally, are free and equal – only by this premise is the global order unjustly inegalitarian. But if so, why not adopt the cosmopolitan principles of redistribution? In fact, if global justice is not universally egalitarian, why is anything owed to nonliberals at all? As Beitz and Pettit both point out, Rawls does too little to explain the duty of assistance owed to all of humanity by the Law of Peoples.

> He does not offer any argument for the duty of assistance analogous to the argument for a distributive principle in domestic society— there is no suggestion, for example, that the international distribution of natural resources is unfair or that the circumstances of an individual's birth (e.g., whether she was born into a rich or a poor society) are in any ethically significant sense arbitrary. The force of the duty of assistance seems to arise, instead, from the importance for liberal societies of enlarging the Society of Peoples to include, eventually, all the societies of the world (Beitz 2000, 689).

> If there is a weakness in Rawls's schema it shows up, ironically, with the principles on which radical cosmopolitans are likely to agree rather than disagree: namely, that well-ordered peoples should help those who live under oppressive and burdened regimes. For if those in the second original position represent only well-ordered societies, and not individuals across all societies, then it is unclear why they would have a rational motive for endorsing such altruism. But I leave this question open, since it does not bear on our theme (Pettit 2006, 54).

Beitz and Pettit are correct: Rawls cannot explain the cosmopolitan duties of his theory consistently with the assumptions of community independence and liberal rationality. The duty of assistance presumes an egalitarian first principle, but it simultaneously denies this first principle. In order to clarify, I would like to focus on the contrast between Rawls's duty of assistance and Beitz's duty of resource redistribution.[35]

Rawls rejects Beitz's resource redistribution principle because he thinks it simply less effective for the shared goal than his own duty of assistance. For Rawls, the most important variable the duty of assistance must attempt to influence is a society's "political culture" (Rawls 1999, 108-9, 117). As Rawls puts it, Beitz's "resource redistribution principle" would assure resource-poor countries "a fair chance to establish just political institutions and an economy that can fulfill its members' basic needs" (116). Rawls's response to this demand is, "the crucial element in how a country fares is its political culture – its members' political and civic virtues – and not the level of its resources … I therefore feel we need not discuss Beitz's resource redistribution principle" (117). This is the crucial point: Rawls rests his case for the duty of assistance as opposed to the duty of global resource/wealth transfers on the *virtues* of specific societies. That is what Pogge considers "the most harmful dogma ever" and "incredible on its face" (Pogge 2006, 217).

[35] The other cosmopolitan principle on offer recently is straightforward global redistributive justice through taxation. I put this issue aside because the duty of assistance is a "principle of transition," and it makes the same comment as cosmopolitanism on today's problems of global justice. As a result, Rawls is not altogether sure that there is a "difference between global egalitarianism and the duty of assistance" (118). The point is to help all societies become functioning and liberal. Once they are, he would not even go so far as to say that his Law of Peoples is against the proposal for a deeper communion and shared egalitarianism. Two liberal countries might, if it would not harm their foundations, agree to redistribute across their borders or not, and "The Law of Peoples is indifferent between these two distributions" (120). However, since his decision here stands in contrast to his domestic theory of justice, it is said that this argument will "boomerang as an objection to justice as fairness" (Wenar 2006, 99). Possibly so; as it is a very technical issue and well-discussed, I leave it aside. Rawls is far more certain that he objects to the principle of resource redistribution, and his reasons are far more revealing of his point of view.

Harmful or incredible, or hopeful and reasonable, as it may be, Rawls distinguishes between the virtuous and the vicious or less virtuous. And he does not mean merely societies as a whole, for he speaks of a societies' "members' political and civic virtues" (Rawls 1999, 117). The virtues turn out to be the decisive difference between well-ordered and disordered societies. But what are these virtues? Rawls clarifies elsewhere, where he writes, "a commercial society tends to fashion in its citizens certain virtues such as assiduity, industriousness, punctuality, and probity" (46). Again, "the necessary (political) virtues are those of political cooperation, such as a sense of fairness and tolerance and a willingness to meet others halfway" (15). Alternatively, as I have pointed out, one might say that peoples possessed of certain virtues or habits tend to foster commercial societies and republican or liberal political institutions. Either way, the virtues Rawls has in mind are the virtues of liberal, commercial society. One seeks bargains and bargains fairly, ignoring differences of opinion that put comprehensive conceptions of the human good, the highest things, above personal liberty and the most urgent things. Commercial virtue is more rational than other conceptions of virtue. The proof is, in part, that liberal or commercial society produces wealth. The justice of that superior wealth is what is in dispute, yet how could a social order devoted to wealth avoid growing wealthier than those that prioritize other things?

The stability and productivity of liberal society is something Rawls sincerely admires. The liberal and commercial society, unlike the outlaw or burdened society, maximizes wealth and does not have any *need* to spill over its borders. It is worth keeping this in mind when Rawls comments, "People must recognize that they cannot make up for failing to regulate their numbers or to care for their land by conquest in war, or by migrating into another people's territory without their consent" (8). Put together, these statements imply that something more is going on in Rawls's defense of borders than initially appears. Some peoples have the political and civic

virtues, and some do not, and the existence or absence of cultural virtues explains the difference between well-ordered and disordered societies. Well-ordered societies are not to be burdened by the incompetence of burdened societies. The duty of assistance requires us to promote human rights in burdened societies, rather than distribute resources to them, *or* open *our* borders to them.[36]

Satisfied societies do not go to war because their people are full of commercial virtues. Conversely, the cause of war is dissatisfaction and the lack of virtues. "The idea of democratic peace implies that, when liberal peoples do go to war, it is only with unsatisfied societies, or outlaw states (as I have called them)" (48). Such societies are aggressive because they lack the structural elements that define democratic peoples. They fail to perceive or achieve their freedom from social conventions and religious imperatives, and they lack the manners and virtues of commercial peoples.

> The outlaw states of modern Europe in the early modern period – Spain, France, and the Hapsburgs – or, more recently, Germany, all tried at one time to subject much of Europe to their will. They hoped to spread their religion and culture and sought dominion and glory, not to mention wealth and territory. These states were among the most effectively organized and economically advanced societies of their day. Their fault lay in their political traditions and institutions of law, property, and class structure, with their sustaining religious and moral beliefs and underlying culture. It is these things that shape a society's political will; and they are the elements that must change before a society can support a reasonable Law of Peoples (105-6).

[36] And this is connected to the idea that political virtues help population growth to remain stable. "Respecting human rights could also relieve population pressure within a burdened society, relative to what the economy of the society can decently sustain. A decisive factor here appears to be the status of women … The simplest, most effective, most acceptable policy is to establish the elements of equal justice for women … burdened societies would do well to pay particular attention to the fundamental interests of women. The fact that women's status is often founded on religion, or bears a close relation to religious views, is not in itself the cause of their subjection, since other causes are usually present" (109-10). The evils that promote migration, Rawls suggests, arise especially because burdened societies lack human or political rights. "Thus, religious freedom and liberty of conscience, political freedom and constitutional liberties, and equal justice for women are fundamental aspects of sound social policy for a realistic utopia" (ibid). The problem with burdened societies is that their members, as well as their governments, fail to provide and support such norms. It is worth noting, Rawls cannot argue that peace and commerce therefore produce the maximum quantity of *life*. His principle cannot be, as Locke's was, the preservation of the species. For, though war is destructive of life, so is the ideal of zero population growth. The priority here is money and liberties for individuals that are already born.

Outlaw societies deserve forceful intervention, but helping burdened societies is more complicated. The same issues are at stake, however; to help burdened societies, the focus must be on culture for, "the political culture of a burdened society is all-important" (108). When it comes to wealth, Rawls is very clear:

> I believe that the causes of the wealth of people and the forms it takes lie in their political culture and in the religious, philosophical, and moral traditions that support the basic structure of their political and social institutions, as well as in the industriousness and cooperative talents of its members, all supported by their political virtues … Historical examples seem to indicate that resource-poor countries may do very well (e.g., Japan), while resource-rich countries may have serious difficulties (e.g., Argentina). The crucial elements that make the difference are the political culture, the political virtues and civic society of the country, its members' probity and industriousness, their capacity for innovation, and much else (108).

The commercial virtues so peculiar to Europe now exist in some other places, e.g., Japan, but not others, e.g., Argentina.[37] Even more specifically, these virtues arose in the parts of Europe not guilty of outlawry in the early modern age – not France, nor Germany, so England, one must assume. At any rate, Rawls can only explain the duty of assistance, and distinguish it from the cosmopolitan project of global "distributive justice" or resource redistribution (106), by appealing to the native talents and virtues of various countries.[38] "Well-ordered peoples have a *duty* to assist burdened societies," but this duty must take cognizance of the way in which such societies are burdened. In sum, the burdened societies are burdened because their members lack, for now at least, the necessary culture and virtues that political liberalism or political decency requires.

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[37] Does Rawls mean that Japan's pre-War political culture included virtues? Or does he mean that Japan's post-War political culture included virtues? Are liberal virtues available in liberal states, their colonies, and those whom they have conquered in war?

[38] Rawls speaks of "countries" here because burdened societies are not yet sufficiently well-ordered to constitute "peoples." As Pettit explains, "The people that corresponds to an outlaw state or a benevolent absolutism – or indeed a burdened society – scarcely exists as an agent. It will be there to be invoked in envisioning better ways of arranging things on domestic or international fronts but it will not be there as a power with which citizens or other peoples may hope to reason in a relationship of mutual respect" (Pettit 2006, 43-4). But Pettit misses the other side of the issue. Rawls cannot avoid treating these societies as peoples after all.

Rawls's position here is that institutions do not exist in a vacuum; they are sustained by religion, morals, and culture. "Their fault," is Rawls's word here, and though he emphasizes institutions again, he finally admits that "religious and moral beliefs and underlying culture … shape a society's political will" (105-6). Someone creates the institutions, a people, and whether or not this people is democratically organized, it is responsible for its choice of institutions and its fate on some level. The background culture must change if the institutions are to change. Outlaw and burdened societies are obliged to become decent, if not liberal. But liberal and decent politics have cultural preconditions. Before people can deserve equality and freedom, they must become virtuous, and for changing a culture "there is no recipe, certainly no easy recipe" (108). Paradoxically, the equality of man implies the inequality of man.

This paradox explains why it is not clear whether the duty of assistance is a duty. If the burdened societies lack virtue, and their members are unreasonable, this is very close to saying that their members lack full human equality. So why, if they are lacking in virtue, are they owed assistance at all? Rawls could add that enlarging the Society of Peoples to include the burdened societies is the prudent means to prevent unwanted immigration. One way or another, we must protect the liberal people from losing control over their own population growth and their collective power to preserve women's liberty and the gains in income they desire as the product of that liberty. But one could also just close the door or build a wall. Rawls would like to describe the duty of assistance as a moral obligation of justice, and this, given his own assessment of the global situation, he cannot do.

Let us review the paradox. Rawls is stuck because he cannot decide whether or not to blame individuals for their beliefs, talents, and virtues. If they are to blame, then the individuals concerned do not deserve justice in the legal sense, for they would make bad use of it. "A hint as

to what is due to others according to nature is supplied by the generally accepted opinion according to which it is unjust to return a dangerous weapon to its lawful owner if he is insane or bent on the destruction of the city … The just man is he who gives everyone, not what a possibly foolish law prescribes, but what is good for the other, i.e., what is by nature good for the other" (Strauss 1950, 147). Rawls implicitly agrees. Societies can have altogether too *much* of a resource, as some argue is the case with oil in Arab countries (Rawls 1999, 117n). Excessive wealth can serve to prop up an unjust regime and insulate it against reform. The Law of Peoples prescribes assistance to others on the basis of equality, but this assistance must be qualified by what is by nature good for them. Wealth and power are not good for them for as long as they remain illiberal, as these things were not good for the early modern regimes of France and Germany and the Hapsburgs. Poverty and weakness might be what is best for such people. What they need, at any rate, are inducements to industriousness and virtue. Their collective behavior is attributable to their faults; the explanation for their situation is the moral level of their culture.

But this way of looking at justice immediately implies inegalitarianism. "Just as only the physician truly knows what is in each case good for the body, only the wise man truly knows what is in each case good for the soul. This being the case, there cannot be justice, i.e., giving to everyone what is by nature good for him, except in a society in which wise men are in absolute control" (Strauss 1950, ibid). Rawls cannot take this position. By his lights, it must be the case that each individual knows what is by nature good, for each individual deserves "liberty and equality" (Rawls 1999, 49). For that to be true, it must be the case that the citizens or members of outlaw and burdened societies are not to blame for their condition, which has been imposed upon them by unjust institutions. As a result, such persons are also not responsible for their collective behavior. Allow me to remind us of how we know that Rawls also takes this view.

When describing the Law of People's restrictions on the methods of war, Rawls implies that no people, taken as a whole, bears responsibility for its injustice, taken as a whole. The enemy people are merely individuals, not part of the enemy people. Their rights are sacred no matter with what zeal they attack others and cheer for their side. To be patriotic, as they are in such cases, is to be delusional, the *victim* of their political cultures. We are to presume their innocence "even if some civilians knew better yet were enthusiastic for war" (95). And the same holds true of soldiers, their patriotism notwithstanding, for "soldiers are often conscripted and in other ways forced into war; they are coercively indoctrinated in martial virtues," and even if they are truly patriotic volunteers, they are not to blame because "patriotism is often cruelly exploited" (ibid). Enemy soldiers, at least, must be killed if they fight for an outlaw state, but the reason is "not that they are responsible for the war" (96). For example, the Holocaust and the Nazi regime are not to be attributed to "a cognitive mind-set peculiar to German *political culture*" (100n, my emphasis). So, even if a substantial portion of the people are willing collaborators in the most heinous crimes, we are to consider them the innocent dupes of their leaders. Political culture does *not* explain the injustice of outlaw regimes, which we should blame rather on their leaders alone. The people are innocent – that premise holds only according to the belief that they are, by nature, free and equal. If only they were liberated, they would immediately demonstrate their innocence, confirming the duty to treat their lives as equally sacred with those who must fight them. But burdened societies? Political culture explains their burdens, and one cannot help them better than by encouraging liberal reformations of their religions, habits, sentiments, and general spirit, as Montesquieu would say (Callanan 2014).

Rawls is simply inconsistent concerning the significance of political culture. As we see, he ascribes everything to a society's political culture when it comes to explaining early modern

outlaw regimes and contemporary burdened societies. To the extent that he sticks to that analysis, he must say that Germany and Japan are collectively responsible for the war, and the allies collectively responsible for their unjust destruction of innocents. But these two thoughts cannot go together. If societies are collectively responsible, their people are not innocent. But if their people are to be regarded as innocent, then political culture is not the crucial variable for determining state behavior – in that case, Rawls should join Pogge and look for global structural causes for burdened and outlaw societies. Rawls is simply confused, for he cannot decide whether societies do or do not have a collective existence that implicates their members. He argues each side of this paradox in order to combine the contradictory claims of universal individual equality and of the collective political autonomy of societies. The same inconsistency explains his paradoxical attitude toward the superior rights of liberal nations in wartime.

The Superior Rights of the Liberal Nation

We have to have the above dilemma in mind when we consider Rawls's inconsistent attitude to just war theory. As already briefly described, he really both does not and *does* blame the individuals of foreign societies for the actions of their regimes. On the one hand, he thinks, the liberal people must fight as though their cause were identical with that of humanity. Even their enemies are equal people with equal rights that demand respect. It is never, in principle, just to treat the enemy people as a people, to consider them collectively responsible for the war or any of the actions they take on its behalf. On the other hand, the enemy's claim to equal treatment falls before the superior right of the liberal nation to fight and win the war. By the *"Supreme Emergency Exemption,"* we may and must "set aside – in certain special circumstances – the strict status of civilians that normally prevents their being directly attacked in war" (Rawls 1999, 98). The liberal state must do so, "but only if it was sure that the bombing

would have done some substantial good" (ibid). At the crucial moment, however cautiously, Rawls must endorse the destruction of some people for the preservation of others. He cannot let go of patriotism entirely, then.

This fact could be read as a criticism of my argument in the previous chapter that Rawls undermines patriotism too much. Instead, I ascribe Rawls's reluctant, exceptional patriotism to his necessary belief that liberal people are morally superior, *as a group.* My interpretation could be challenged on the grounds that Rawls does not single out the liberal people as particularly justified in expressing a limited patriotic regard for themselves in war. Rawls explicitly claims that peoples have the right to self-defense whether they are fully just or not. "No state has a right to war in the pursuit of its *rational,* as opposed to its *reasonable* interests. The Law of Peoples does, however, assign to all well-ordered peoples (both liberal and decent), and indeed to any society that follows and honors a reasonably just Law of Peoples, the right to war in self-defense" (91). Now, I have argued that decent peoples do not exist, but Rawls claims that even disordered peoples have the right to war in self-defense if they follow the Law of Peoples. That would imply that the bare maintenance of utterly basic human rights is sufficient grounds for self-defense. Can Rawls really stick to that claim? Let us consider an example.

According to Rawls, World War II was a just war. It was fought, "on behalf not only of constitutional democracies, but of all well-ordered societies" (99), as Churchill, a man at least partly embodying "the ideal of the statesman" (97), claimed. Yet Rawls concedes that the allies were not innocent in every respect. In general, "Responsibility for war rarely falls only on one side. Yet responsibility does admit of degrees … To put it another way: some hands are dirtier than others. It is also important to recognize that sometimes a well-ordered people with somewhat dirty hands could still have the right and even the duty to go war to defend itself. This

is clear from World War II" (94n). Is it clear? Not if we think more carefully about the origins of World War II. The "dirty hands" of the democracies presumably refers to their mistreatment of Germany under the League of Nations – history's prime example of how an allegedly neutral and idealistic Society of Peoples can be abused (Miller 1991). Germany first made war on Poland, breaking the terms of that League, but what right to war did this give to the allies by the Law of Peoples? Rawls would perhaps defend England's declaration of war on Germany in 1939 in defense of Poland by reminding us, "The right to war normally includes the right to help and defend one's allies" (Rawls 1999, 91n), but that defense would be arbitrary. Rawls cannot appeal to legal positivism in a monograph that does not derive from "the traditional *ius gentium"* (3). In that case, the right to war normally includes the right to war in pursuit of state interests as well, so Germany would be equally justified. We can say that England and Germany were equally justified sovereigns pursuing their *rational* interests, but we cannot use Germany's attack on Poland to explain England's superior use of *reasonable* interests, and that is what Rawls requires us to do.

To explain why the allies declared war *reasonably,* Rawls argues, "First, Nazism portended incalculable moral and political evil for civilized life everywhere" (99). That may indeed be true, but is that a valid reason for the democracies of the time to declare war on Germany? In retrospect, knowing Hitler's duplicity and immoderation, and the horrors of his regime, we understand the justice of stopping him at great cost. But his character and ambitions and the results of his regime were not known in 1939, at the time when Chamberlain declared war and when Churchill urged England to keep up the fight. According to Rawls, "Churchill really did not exaggerate when he said to the House of Commons on the day France capitulated that, "if we fail [to stand up to Hitler], the whole world including the United States … will sink

into a new Dark Age" (99). However, at the time, it could have appeared to be an exaggeration. The United States, the Soviet Union, and many in France, save de Gaulle and his friends, were unsure and unpersuaded. Rawls is defending the right of the allies to declare war on Germany *prior* to being attacked by Germany, and without assurance that Germany had no rights to self-defense at the time. For all the allies knew, Germany had such rights, as even disordered peoples have rights, let alone decent regimes. Merely discriminating against Jews is consistent with the rights of decent peoples, and the allies did not know that worse was in store.[39]

We must therefore turn to the second reason Rawls offers us. "Second, the nature and history of constitutional democracy and its place in European history were at stake" (99). This is more to the point. It reveals and highlights the fact that Rawls's real justification for the war on Germany is the future of liberalism. We must recall that in this context the "nature" of constitutional democracy means being fully liberal or just in Rawls's sense, but the "history" of constitutional democracy means states that are not fully liberal. What Rawls means, then, is that the existing, "allegedly constitutional democratic regimes" (53), are justified in fighting for themselves in order that the ideal constitutional democracy may come to be. More than that, however, is implied. By appealing to the "place in European history" that the democracies occupied, Rawls implies that destroying the Nazi regime was justified in order that democracy could come out on top, the victor of historical struggle between societies for the right way of life. In the light of that historical struggle, peoples must be considered as actors and agents after all.

[39] Again, Rawls would probably say that Germany became outlaw by violating the Law of Peoples in attacking Poland, but he tacitly admits that this Law was partly unjust at the time. The Law assumes that status-quo borders are just, but Rawls admits that such borders are not always just. He cannot say that Germany is bound by borders imposed on it unjustly, "however arbitrary a society's boundaries may appear from a historical point of view" (8); he cannot insist that peoples must ignore all such grievances despite finding their solidarity in "national history, and consequent community of recollections: collective pride and humiliation, pleasure and regret, connected with these same incidents in the past" (23n). If borders are arbitrary, they are not sacred. If borders are sacred, then peoples have just grievances arising from history.

Liberalism seeks a world without peoples, without borders, fair and just to individuals regardless of their national allegiances. But to build that world it must understand itself as embodied in a society with a high purpose, entitled to defend its own particular existence as the light of the world. It judges the just and the unjust by their nationality. Its citizens are chosen people, and its enemies must fall.[40]

Once Rawls adopts the prudent attitude that one must fight and kill to preserve an unjust regime, though out of hope for its future reform, it is difficult to understand what precisely distinguishes liberal nations from other historical actors with dirty hands and lofty goals. Liberal nations are permitted to define themselves by their ideal image of themselves while making war as they happen to be. In the ideal case, liberal peoples pursue their just goals with the greatest forbearance and wisdom. But really existing liberal democracies have a mixed historical record. Christianity too, historically, was not always peaceful. "Since the time of the Emperor Constantine in the fourth century, Christianity punished heresy and tried to stamp out by persecution and religious wars what it regarded as false doctrine" (21). Liberalism could not be more opposed to anything than to such crusades. "This persecuting zeal has been the great curse of the Christian religion" (ibid). But the ideal conscience of Christianity is not dirty, either, only its hands. What is the difference between a liberal nation and a Christian nation when it comes to making war on those it deems unjust or heathen?

[40] And at the time, the democracies were not vastly superior in culture. As Rawls notes, "While anti-semitism had been present in Germany, it had also been present throughout most of Europe – in France (witness the Dreyfus case in the late nineteenth century) as well as pogroms in Poland and Russia, and it became church policy to isolate Jews in ghettos during the Counter Reformation in the late sixteenth century" (100n). Elsewhere, Rawls reminds us, "In a radio address to the United States on April 4, 1933, the prominent Protestant clergyman Bishop Ott Dibelius defended the new German regime's April 1, 1933, boycott of the Jews (originally scheduled to last five days). In a confidential Easter message to the pastors in his province, he said: '… I have always considered myself an anti-semite. One cannot ignore that Jewry has played a leading role in all the destructive manifestations of modern civilization'" (22n). The countries available to resist and fight Hitler's Germany were at least somewhat torn between thinking Hitler's regime would bring the new Dark Age and thinking that Hitler's regime would help to rescue civilization. It is not the *actually* existing, but only the ideal and future democracies that deserved to prevail.

Giving both sides equal right to present themselves in ideal form, Christianity must be allowed to preach peace with *greater* consistency. On the one hand, the Law of Peoples is "similar to … the familiar Christian natural law doctrine of just war … in that both imply that universal peace among nations is possible" (103). On the other hand, the Christian doctrine rests "on the divine command that the innocent must never be killed" intentionally (104). The Christian doctrine *consistently* takes the position that self-defense never extends to the right to murder. But this is an error, according to political liberalism. "Political liberalism allows the supreme emergency exemption," which means that killing innocents is, sometimes, one of the "duties of the statesman in political liberalism" (105). Political liberalism is political, so it insists, "The statesman must look to the political world, and must, in extreme cases, be able to distinguish between the interests of the well-ordered regime he or she serves and the dictates of the religious, philosophical, or moral doctrine that he or she personally lives by" (ibid). The liberal statesman *must* be willing to kill innocent foreigners for the sake of the regime. What, exactly, is going on in the conscience of a liberal statesman?

The liberal statesman believes in the enemy's innocence and believes in the enemy's guilt. Enemy soldiers, at least, must be killed if they fight for the outlaw state. The reason is "not that they are responsible for the war, but that well-ordered peoples have no other choice. They cannot defend themselves in any other way, and defend themselves they must" (96). And even civilians must be killed as well, if there is no other choice, "in situations of supreme emergency" (97). Britain was justified in "the bombing of German cities" for as long as it faced Germany alone (98-9). Rawls goes on to discuss a number of unjustified attacks on civilians, but there are times when it is permissible to kill those who are taken to be fully innocent of any crime for the greater good. The liberal statesman must believe that all individuals, of whatever country and

regardless of war, are equal in rights and value. These individuals cannot be killed without injustice, even if they seem to collaborate willingly with evil, and there are "certain lines we must not cross" in self-defense (97). On the other hand, this statesman must take his or her bearings from the "regime he or she serves" and cross said lines to preserve this regime. He or she must therefore believe that all lives are *not* of equal value; in principle, the lives of the liberals are worth preserving at the cost of murdering innocents elsewhere. And this is the case even if the liberal regime has its own dirty hands, is not truly or fully liberal, and governs an insufficiently liberal people. The liberal statesman must look "to the next generation" (97). He or she must act in "world-historical ways" – of course, only for the promotion of liberalism and peace (98). The liberal statesman is a partisan of liberalism on the world stage, reluctant to kill because peace is the goal, but willing to kill in order to get there.

To do what is politically necessary, a liberal society must violate its own laws to some extent, maybe even severely. But to kill on behalf of human rights to life and liberty is an inherent contradiction; to kill the innocent for the sake of justice is incoherent. Rawls would say, the kind of threat posed by the Nazis "justifies invoking the supreme emergency exemption, on behalf not only of constitutional democracies, but of all well-ordered societies" (99). But that means that one may be unjust for the sake of justice. As Audard mentions, according to Rawls, "justice is 'the first virtue of social institutions' and cannot become a means to an end" (Audard 2006, 66). Rawls's status-quo account of international justice is stuck in the flow of history and therefore in tension with itself. He wants to insist at the same time that peoples must behave as though they lived in a fully just world and that peoples may do whatever is necessary in order to achieve a fully just world.

Rawls is torn between justice and the common good, and this is why he cannot completely dispel his belief in nations. If it is permissible to kill soldiers in self-defense, this must be because the aggressor bears some responsibility for the aggression. Indoctrinated or not, the enemy soldier must come to sight as morally culpable and therefore of lesser value than the soldier who fights for the (more) just side. If it is permissible to kill even civilians in self-defense, this must be because societies are real and independent units, which potentially distinguish friends and enemies possessing unequal moral claims. But Rawls would like to re-describe these distinctions in terms of universal equality and the arbitrariness of national borders. If he does, however, then these permissions should vanish, as they do in Christian doctrine. His liberalism thus comes to sight as a utopian millennialism that is willing to get its hands dirty. He must think that nations are real and not real at the same time. If he really believed that nations were real, he would defend their interests and their strengths as well as their justice. If he really believed that nations were not real, then he would not require individuals to die in their defense.

Nations *are* real for Rawls, in a peculiar way. He knows that liberalism is not a universal treasure of the human spirit but rather a historical practice available only in certain countries and dependent for its survival on theirs. He knows that some people are not yet suited to liberalism, and he considers these people less equal than others in several ways. He would like to say that all are equal and merely the product of their institutions, but he knows that he must also say that people are responsible for their institutions, for they are bound by duty to support just ones. His attempt to explain the duty of assistance and the supreme emergency exemption as cautious, politically prudent diversions from strict justice simply obscure the tension in his view. All people are not equal in his eyes, for some are virtuous and some are vicious, and that collectively. Liberals are supposed not to be a people in the sense of a community or an

association, bounded against others. But liberalism is just one way of life, divided from the rest. To overcome such divisions and confusions between the individuality of human beings and their existence as morally salient collectives is a matter of faith, and an urgent one, for political liberalism.

Justice as a National Faith

The twilight in which Rawls views nations combines the belief that humans do not require faith to live with the view that a life without faith is empty. In his eyes, justice on earth is a world liberated from faith and communion. But the pursuit of that world is not for the faithless or the faint of heart. It requires an abiding faith in the community of the faithful. Liberalism in fact rests on faith, and it disputes with faith. It has a spiritual life of its own, which replaces and fills the space where other spiritual goals take shape. These conflicts over the spiritual destiny of man are intractable and, in this light, the realism of Rawls deserves some credit for self-awareness. Unlike some, he is fully aware that liberalism has its enemies, and with these enemies there can be no reconciliation. There are two obstacles.

> There are, however, important limits to reconciliation. I mention two. Many persons – call them 'fundamentalists' of various religious or secular doctrines which have been historically dominant – could not be reconciled to a social world as I have described. For them the social world envisaged by political liberalism is a nightmare of social fragmentation and false doctrines, if not positively evil. To be reconciled to a social world, one must be able to see it as both reasonable and rational. Reconciliation requires acknowledging the fact of reasonable pluralism both within liberal and decent societies and in their relations to one another. Moreover, one must also recognize this pluralism as consistent with reasonable comprehensive doctrines, both religious and secular. Yet this last idea is precisely what fundamentalism denies and political liberalism asserts (126-7).

To be a true believer in one's religious or secular conception of man's highest good is incompatible with liberalism. The true believer can possibly see the necessity or urgency of equal freedom, but the believer cannot make the necessary transition to the view that this equal freedom is fundamentally reasonable and rational, that freedom is higher than truth. To be

reconciled to liberalism one *must* believe that man's freedom is more important than man's highest good. For, "Political liberalism is a liberalism of freedom … it upholds … equal freedom … and it looks to ensure … citizens all-purpose means (primary goods) so that they can make intelligent use of their freedom" (127). In other words, political liberalism upholds equal freedom and enough money to pursue one's own good, alone or in voluntary association with others within "civil society" (ibid). It is true that, in doing so, political liberalism "does not dismiss spiritual questions as unimportant," for it protects the free associations of civil society, and possibly individuals may better pursue these questions without coercion. But this possibility is a second-order concern. The most urgent needs of man must be put before his highest needs.[41]

One does not need to be a true believer, however, to find reconciliation difficult. One can also be disturbed by the results. It is entirely possible, Rawls admits, "a realistic utopia … may be a social world many of whose members may suffer considerable misfortune and anguish, and may be distraught by spiritual emptiness. (This is the belief of many fundamentalists.) … Their spiritual well-being, though, is not guaranteed" (ibid). Rawls oscillates, in this passage, between the claim that fundamentalists only will perceive spiritual anguish in liberal society and the claim that such spiritual anguish is an entirely plausible result, as would be obvious to anyone, including Rawls. Rawls acknowledges that spiritual anguish is possible, that political liberalism refuses to prioritize spiritual well-being, and that he cannot or will not explain why. If it so

[41] Strauss comments, "What is most urgent is legitimately preferred to what is less urgent, and the most urgent is in many cases lower in rank than the less urgent. But one cannot make a universal rule that urgency is a higher consideration than rank. For it is our duty to make the highest activity, as much as we can, the most urgent or the most needful thing. And the maximum of effort which can be expected necessarily varies from individual to individual. The only universally valid standard is the hierarchy of ends. This standard is sufficient for passing judgment on the level of nobility of individuals and groups and of actions and institutions. But it is insufficient for guiding our actions" (Strauss 1950, 162-3). I take Strauss to mean that liberalism can be, in world-historical contexts, the most preferred regime, but that this preference does not imply the *universally* valid status of liberalism. The difficult is, the liberal regime is defined, to some extent at least, by its insistence that urgency is the highest consideration. It is difficult, not to say impossible, to defend liberalism while dissenting from its guiding premise.

happens that spiritual emptiness prevails, engulfing the world, and even liberals feel the pain, political liberalism will only blink (Nietzsche and Kaufmann 1995).[42]

But it is not as though political liberalism is willing to allow alternatives to persist indefinitely. If some group of people, anywhere, should resist this tendency too stridently, political liberalism will treat them as outlaws. No argument will or can be given.

> There is … no such argument. Peoples may often have final ends that require them to oppose one another without compromise. And if these ends are regarded as fundamental enough, and if one or more societies should refuse to accept the idea of the politically reasonable and the family of ideas that go with it, an impasse may arise between them, and war comes, as it did between North and South in the American Civil War. (Rawls 1999, 123)[43]

Political liberalism does not mirror fundamentalism in proposing a highest end for man, but it does propose ends that are "fundamental enough," and it demands that everyone everywhere must accept its "family of ideas" (ibid). Political liberalism's fundamental idea is simply the opposite of fundamentalism; it is the view that man's highest end is less fundamental than his liberty. With respect to *that* position, liberalism is a fundamentalism, one that does not even seek to persuade its opponent.

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[42] A fairly non-controversial sign of increasing spiritual anguish is available, one would think, in the extent of psychological therapy and pharmacology on offer, accessed, and abused by liberal people. To replace the opium of the masses, contemporary liberalism offers a very large quantity of very real opium.

[43] As Rawls knows, Lincoln fought for Union, with or without slavery (123n). But according to Rawls, the South was "not a democracy" and so was an outlaw regime (52). Lincoln's argument against Douglas concerned "fundamental political principles about the rights and wrongs of slavery" and was therefore "reasonable (*even if not the most reasonable*)" (174, my emphasis). Rawls comments, "We must hold fast to the idea of the political as a fundamental category and covering political conceptions of justice *as intrinsic moral values"* (174n, my emphasis). Political liberalism may not be a comprehensive doctrine, in a certain sense, but it is certainly a doctrine. In Rawls's view, I take it, Lincoln's position would have been more reasonable if he had been clearer from the start that the South's leaders were right to foresee a revolution, that he did not recognize their constitutional standing, that he was, in fact, a Garrisonian. By a similar logic the European Union could incorporate a member state and retroactively declare this state insufficiently liberal, without legitimacy, and subject to forcible reformation. "Peoples are to observe treaties and undertakings" (37), but not if they come to feel morally superior to those with whom they have contracted. For Rawls, it is not the case that "an honest man keeps his promise to everyone regardless of the worth of him to whom he made the promise" (Strauss 1950, 119).

Liberalism therefore declares a kind of void of the spirit, a set of questions that will never be raised nor answered. What fills this void when the spiritual emptiness causes anxiety? In one view of political liberalism, citizens become happy and satisfied. "As Saint-Just said, 'The idea of happiness is new in Europe.' What he meant was that the social order was no longer viewed as fixed: political and social institutions could be revised and reformed for the purpose of making peoples happier and more satisfied" (46). One might get the impression that these happy, satisfied people will go about their business, rather indifferent to others, or perhaps extending a limited good-will and best wishes for others who might like to do the same. They will develop "the *moeurs douces* of Montesquieu," engaging sweetly in money-making, thinking only how they might acquire "more easily and cheaply by trade" (ibid). They certainly would not "be moved to try to convert other people to a state religion or other ruling comprehensive doctrine" (ibid).

But it seems that we may also feel spiritual emptiness and require "an idea of realistic utopia" that "reconciles us to our social world" (127). Rawls's *Law of Peoples* offers this reconciliation because "the very possibility of such a social order can itself reconcile us" (128). Its task is very important for, by encouraging us to work for that possible world, the realistic utopia supplies a moral task that gives our lives meaning. Realistic utopia redeems us from the void of atomic individualism and moral half-heartedness. That it does so is, perhaps, just as important as that it really come into being.

> By showing how the social world may realize the features of a realistic utopia, political philosophy provides a long-term goal of political endeavor, and in working toward *it gives meaning to what we can do today … If* a reasonably just Society of Peoples whose members subordinate their power to reasonable aims is *not possible*, and human beings are largely amoral, if not incurably cynical and self-centered, *one might ask, with Kant, whether it is worthwhile for human beings to live on the earth* (128, my emphasis).

Justice functions in political liberalism as the reasonable accommodation of the fact of reasonable pluralism – in that sense, it appears to be merely prudential. But the affirmation of this reasonable pluralism must go very deep in order to satisfy Rawls; it is anything but the *modus vivendi* of a particular modern culture. The love of justice is, rather, man's highest end, the thing without which his life has neither meaning nor value. Does not liberalism have a spiritual goal after all – a goal that fills in the emptiness left by putting other goals to one side? Maybe it is important that the goal remain ever just out of reach, so that we always have something to strive for. "The question to ask about … is whether the principle has a target and a cutoff point," Rawls reminds his cosmopolitan friends. One must have a target so that one can aim. But they will say, once we hit this target, what then? We cannot be satisfied – a better world must always be possible. What we know is simply this: "political and social institutions could be revised and reformed for the purpose of making peoples happi*er* and *more* satisfied" (46). Even the innocent must perish, if necessary, to make way for the happiness on earth that may turn out to be no better than universal dissatisfaction.

Conclusion

In this chapter I find that a certain nationalist spirit is present in *The Law of Peoples* after all. But, I argue, its existence need not alter the conclusions of the previous chapter very much. Rawls is torn between his faith in the equality of men and his realistic perception of their inequality by the light of that faith. His liberalism is a closed circle – a nation or set of nations, who refuse membership and recognition to those who do not share the virtues they require for citizenship. In defense of these virtues, such nations would take even the life of innocents if necessary, let alone close their borders. But it is an ever-expanding circle, for liberalism insists that all persons everywhere have such virtues implicitly and naturally and must live up to them.

Liberalism would rule the world and cannot be reconciled to any smaller hope. To relieve its own spiritual anguish, it thinks of the elimination of spiritual claims as its own spiritual crusade. The liberal nation is a nation that cannot be reconciled to being only a nation. Rawls tries to hold both sides of this puzzle together, but I believe my analysis shows that each side wishes to pull away in its own direction. The reason why Rawls's *The Law of Peoples* is such a puzzle, is that political liberalism needs to be two incompatible things at the same time in order to be anything at all. If I am right, liberals will be unable to decide whether liberalism is cosmopolitan or nationalist in spirit. Rawls is the true liberal in this sense, as one might have supposed from the beginning, and neither path away from his paradoxes toward greater consistency will produce a more coherent conception of liberalism.

CHAPTER 3: COSMOPOLITAN LIBERALISM

There seem to be many, many reasons why contemporary liberalism, or at least Rawls's liberalism, pushes in a cosmopolitan direction. Liberalism denies that polities are communities or associations and prioritizes individual liberties above the common good and all comprehensive moral or religious values, and it furthermore requires that these liberties be funded without regard to security concerns. It justifies doing all of this by assuming a world utopia in which such individualism would be safe, and it uses the demand for such a utopia as a reverse argument for achieving a fully liberal society. It portrays all borders as arbitrary and eliminates consent from the considerations of political justice. It redefines nation-states as collections of liberal people and validates the legitimacy of governments and rights of political autonomy with reference to such ideals. It takes for granted that all individuals everywhere deserve liberal rights, and it feels self-doubt to the extent that liberal utopia does not obtain. It bows neither to prudence nor, ultimately, to its own morality, nor to its inability to offer universal justifications for its outlook. The liberal has no country and no one else should either. Justice demands world citizenship, therefore, "*fiat iustitia, pereat mundus* ('let justice reign, even if it may cause all the rogues in the world to perish')" (Kant 2006, 102, 8:379).

Rawls, at least, recoils at last when he discovers that real forms of human difference obtain. But he can barely see these clearly and tries to see past them. It should be little wonder that his disciples insist on a more consistent vision. I have already made some mention of the difficulties these cosmopolitan liberals face in attempting to articulate this vision, but I have not considered their attitude directly. It is an attitude and disposition more than a theory, for liberalism is truly dependent upon its assumption of a well-functioning liberal state (Miller 1995, 185). Incapable of explaining global order without a world state, we may doubt whether any full-

fledged political theory of cosmopolitanism will be forthcoming (Wenar 2006, 106). But the attitude persists – it is surely playing some role as I write, in lead-up to the elections of 2019. It is an attitude worth studying in greater detail, for it has a serious claim to our attention on a moral level, whether or not it has a coherent political form. Should our *thinking* be cosmopolitan, at least? Is cosmopolitan liberalism the *rational* point of view?

I hope to answer these questions in the present chapter, and I hope to show that they must be answered negatively, at least as currently posed. I am not by any means the first to reply to cosmopolitanism, and I cannot fully guarantee that my reply is novel. I build explicitly on many critics who have written before me (Yack 2012, Scuton 2003, MacIntyre 2003, Manent 2007). What I hope to offer is a sustained philosophical and literary analysis of one, small but potent cosmopolitan essay: Martha Nussbaum's "Patriotism and Cosmopolitanism" (Nussbaum and Cohen 1996). Published with replies over two decades ago, it remains a powerful piece; I am not kicking a dead dog. My goal is only partly to critique, for I think the essay worth discussing as a point of analysis. Nussbaum provides a very succinct portrait of the cosmopolitan, and I think we can learn more about this person from her work more easily than we can in any other way.

Nussbaum's argument is "motivated, in part," by her experiences working on questions of world development; however, it is "also motivated" by a wish to respond to and reject a trend toward liberal nationalism among left-leaning liberal philosophers (4). In particular, Nussbaum's essay responds to Richard Rorty's "well-known" op-ed in the *New York Times* (Rorty 1994), in which Rorty "urges Americans, especially the American left, not to disdain patriotism as a value" (Nussbaum and Cohen 1996, 4). Rorty's argument to the left, as Nussbaum sees it, is that patriotism is a crucial support for the national self-criticism and reform that the left demands, and that the only alternative to patriotism is a 'politics of difference,' (i.e., identity politics or

multiculturalism), "based on internal divisions among America's ethnic, racial, religious, and other subgroups" (4). According to Rorty, it seems, the left risks undermining its own projects and the unity of the country by refusing to acknowledge any allegiance to the nation. Nussbaum counters, "He nowhere considers the possibility of a more international basis for political emotion and concern" (4). This reply suggests that Nussbaum is proposing cosmopolitanism as a *substitute* for the politics of difference, an alternative basis for political unity. As she writes just above, "the worthy goals patriotism sets out to serve – for example, the goal of national unity in devotion to worthy ideals of justice and equality…would be better served by…the very old ideal of the cosmopolitan" (4). Nussbaum thus writes in order to reject Rorty's advice to the left, on the ground that the cosmopolitan ideal is an alternative to the divisions of identity politics that achieves unity without making concessions to patriotism or nationalism. But it is not merely an alternative. For the left could embrace patriotism only hypocritically, while holding its nose.

Indeed, whether relativists like Rorty or not, intellectuals on the left are unlikely to see patriotism as *their* virtue, even if they follow Rorty in appealing to it. But how, then, to speak to the masses? One of the virtues of Nussbaum's argument in this work is that it highlights, in very appealing prose, the way in which Americans (and those like them) possess a kind of cosmopolitan attitude *within* their patriotism. To love our country, as Americans, is to point beyond our country in a special way. Nussbaum can be seen, then, as arguing that elite liberals do *not* need to talk down to their fellow citizens in order to explain the rational standards of justice. Sometimes cosmopolitans are attacked for taking such a high road. Yack, for instance, points out, "the Stoic celebration of cosmopolitan citizenship has the ironic effect of dividing the human race into two camps: the few sages, a community of the wise, who can actually live as citizens of the world and the vast majority of people who cannot" (Yack 2012, 253). I do, indeed,

see this issue as productive of a tension in Nussbaum's appeal to Stoic writers. But it is worth noting, as a preliminary, that Nussbaum can claim to be treating "the vast majority" with greater respect than Rorty encourages. Being sincere, she sticks to her principles, and sticking to her principles means sincerely believing that the vast majority is capable of understanding them.

The strong consistency with which Nussbaum at least attempts to stick to her principles is one of her great virtues. As Nussbaum sees it, we believe in equality and we believe in rationality – it is therefore incumbent upon us to be unflinchingly rational about where our commitments lead. To those who say her commitments lead her to a deracinated world of deracinated selves, she replies, so be it. To those who say she asks too much of us, she replies, you are my equals, and you can and must do it. We are not permitted to ask either more or less of ourselves. By flying the flag of equal liberty high, Nussbaum invites attack, but she deserves commendation for her bravery. So, while I do intend to criticize Nussbaum's view, I hope it is not read as an attack so much as a series of reflections and warnings. What I hope to make clear at the outset is that I choose her piece to think about because I find it impressive and revealing. She gets to the core of her position and makes it shine.

Despite the essay's brilliance, however, one could object that I choose too easy of a target. It is a popular piece, very short, and its virtues are also vices from a certain point of view. As I already mentioned, Nussbaum does not offer a foundational philosophy here, appealing instead to our intuitions. I take her to task for that in what follows – am I not guilty of setting up a straw opponent? I would be if there were a much more convenient option, but in fact Rawls himself builds from our intuitions in the same way, ever since deciding his view was "political … not metaphysical or psychological" (Rawls 2001, 19, Rawls 1985). And his disciples take his own theory for granted. There is not, really, a deep foundation for the liberal view as it is held

today, so Nussbaum's view is representative in this respect. Nozick, as is well known, also neglects to ground his theory of rights (Nozick 1974), while utilitarianism and theology would take us somewhat afield. So, I think it is not a *preliminary* objection to studying Nussbaum that she appeals to intuitions; rather, it is a fact the implications of which are worth considering. And to some extent Nussbaum does appeal to deeper possible foundations, both Kantian and Stoic, so we will have the opportunity to consider such foundations briefly. Finally, by appealing to ancient thought, Nussbaum shows us that cosmopolitanism is not *simply* a modern point of view. This broadness is another of her virtues.

The issue of Nussbaum's foundations is the subject of my first five sections. I seek to show how precisely how her appeal to the rationality of cosmopolitanism breaks down into patriotic presuppositions, creates paradoxes, diverges from Stoic cosmopolitanism, and is ultimately inconsistent because she admires the passions after all. Building on this analysis, my second five sections then show that her position is irrationally multiculturalist, illiberally dogmatic, quasi-nationalistic, deracinating, and anti-democratic. The purpose of all of these remarks is not merely to indulge in name-calling, however. What I am really interested in is what drives Nussbaum into these strange positions – as any of us might be driven, I think, to follow her lead. My final section, therefore, attempts to reconsider her motivations, and I do not think that they turn out to be very trivial. The point of showing that her position includes dangers is to raise the question of how they could be avoided. If doing so comes at some cost, then we have some matter for reflection. Here I promise to be disappointing. The purpose of digging through to what I take to be Nussbaum's deepest investment in cosmopolitanism is merely to raise the question, what is a liberal to do?

I offer one last excuse before beginning. The debates over cosmopolitan global justice that stem from Rawls focus a great deal of attention on questions of global economic distribution, and those questions are not the focus of Nussbaum's essay. Again, to some extent those questions have arisen and will arise in other chapters. But, in addition, it is worth noticing that our focus on economics is really subsidiary to the perspective that Nussbaum illustrates. We can focus on how much *stuff* people have only once we assume that property is the most important good to discuss. That assumption is not tangential to our culture or to modern philosophy; it *is* our culture and philosophy. When we say that all that matters are individuals, equally and universally, we are already taking the view that the right is prior to the good, or that we are agnostic about the life that is appropriate to human beings, who are free to choose their paths and their identities (Sandel 1982). It is but a step from there to the view that we must give people opportunities to pursue their private visions in a common currency (Rawls 1971, Nozick 1974). So, we can think more about schemes of wealth distribution later. The primary question, given our liberal intuitions, is Nussbaum's question: *am I citizen of my country, or of the world?*

A Rational Education

What is rational self-knowledge when it comes to our most basic allegiances? Nussbaum raises this question in a very interesting way, by urging her readers to undertake and support the introduction of a cosmopolitan education as the new orientation of civics education (Nussbaum and Cohen 1996, 6, 10). If implemented, this cosmopolitan education would heavily supplement if not replace nationalistic and patriotic education for public school students in liberal democratic countries such as the United States (6, 9, 13). Nussbaum argues that we should adopt such an education for several specific reasons, but her thematic point is that cosmopolitanism is a nobler and more prudent identity, outlook, or attitude to adopt than that of patriotism (6, 8). Patriotism,

she tells us, may appear attractive, but it is in fact without merit and full of moral danger (4). Cosmopolitanism, on the other hand, though challenging in some ways, is truthful and sincere and useful (7, 15). Students who receive a cosmopolitan education and become more cosmopolitan than patriotic will understand themselves better, be better prepared for the challenges they face, and adopt valid and consistent moral perspectives (8). Educated cosmopolitans, as opposed to instinctive patriots, will be enlightened and upstanding citizens, immune to false idols and divisions (4, 14).

Nussbaum wants to show us that the ideal of the cosmopolitan is the most simply rational ideal, or at least a far more rational ideal than one that includes nationalism or patriotism. If her cosmopolitan education is rationally persuasive, that is, if a rational person exposed to this education is necessarily persuaded by its evidence, then it would be folly to teach students anything else. If the truly liberated mind, free of all prejudice and considering only the nature of things, is a cosmopolitan in Nussbaum's sense, then only some kind of irrational prejudice could hold students back. In that case we would not compromise until a program of enlightenment has been tried; just as we would not make our peace with racism merely because it can be difficult to eradicate, so we would not make our peace with nationalism or even patriotism for such reasons. If patriotism is as clearly false and deluded as other forms of prejudice that we, the educated, reject, then it makes perfect sense to advocate a cosmopolitan education in the best of hopes for a united, but anti-patriotic, nation.

So Nussbaum may reason, for, in order to show her reader that the cosmopolitan position is morally superior to patriotic (or nationalistic) commitments, Nussbaum's touchstone assertion is that cosmopolitanism is reasonable and a form of self-knowledge in comparison with the ignorance of patriotism. To see ourselves as citizens of a particular state, she writes, is a form of

blindness, for it requires "self-definition by a morally irrelevant characteristic" (5). The patriot attaches weight to an arbitrary aspect of identity, forgetting that, "The accident of where one is born is just that, an accident; any human being might have been born in any nation" (7). We ought, instead, to see ourselves only as members of a "community of human argument and aspiration" because "that is, fundamentally the source of our moral obligations" (7). Following the Stoics, Nussbaum recommends cosmopolitanism on three rational grounds: first, that this attitude produces self-knowledge; second, that it produces practical prudence; and third, that it produces proper valuation (8, 11-13). The first two are *useful* aspects of the cosmopolitan attitude; this attitude preserves us against blindness to problems we really face and solutions that really exist. The last is "intrinsically valuable, for it recognizes in people what is especially fundamental about them, most worthy of respect and acknowledgment: their aspirations to justice and goodness and their capacities for reasoning in this connection" (8). Cosmopolitanism is useful because it promotes "rational deliberation in politics," prevents "irrationality," allows us "to understand our own history and our choices," and to respond to "fact," and promotes "intelligent deliberation" (11-12). Its intrinsic value, meanwhile, does not require us "to presuppose universalism" but rather rests on "an argument in its favor" (13). In short, Nussbaum proposes to educate us in the precise sense: she will remove our errors and replace them with correct opinions or even knowledge. Naturally her sketch of this education would only need to demonstrate the rationality of the cosmopolitan viewpoint in some provisional or potential form, but we are invited to ask whether the signs are promising. We should be able to judge or at least conjecture, from the material she provides, whether a cosmopolitan education is a matter of cognitive and rational conviction or some other form of persuasion.

In addition to the specific argument that cosmopolitan education promotes a rational outlook on the world, the rhetorical force of the essay depends upon Nussbaum's contrasting descriptions of the rational cosmopolitan and the impassioned (i.e. unreasonable) patriot. She frames the essay with reference to Rabindranath Tagore's *The Home and the World,* a novel set in modern India, in which a wife foolishly falls for the patriotic or nationalist enthusiasm of her husband's friend, preferring his warm political devotion to her husband's coolly cosmopolitan respect for moral ideals alone (3-5). Referring back to this novel's contrasts, as well as to the life of Stoical philosophers, Nussbaum portrays cosmopolitanism as austere but true, a life of "boundless loneliness …bereft of any warmth or security…only reason and the love of humanity" (15). Patriotism, on the other hand, is "full of color and intensity and passion" (15), and nationalism is "a colorful idol" (5). Such idolatry deserves displacement by the truth. Patriotism and nationalism are colorful, and hence distracting, illusions that pervert judgment. Nussbaum warns us of the coldness of the atmosphere to which our cosmopolitan education will expose us because we must anticipate this price for seeing clearly. If cosmopolitanism has "a hard time gripping the imagination," we should take it only as evidence that cosmopolitanism is rational, i.e., not *imaginary.* Many other truths, such as mathematical truths, are hard to imagine because they are neither here nor there but everywhere: eternal, rigorous, reasonable. In short, a cosmopolitan education, like an education in math or modern physics, will liberate us from phantasms and place only the unvarnished truth before our eyes – this is the promise of Nussbaum's essay.

Patriotic Presuppositions

Unfortunately for this promise, Nussbaum never provides a solid ground for the truth of her universalist ideal. Although she refers us to Kant (8, 13), she does not assert that Kant's metaphysics is correct, nor does she or could she possibly mean to endorse all of Kant's conclusions about our duties, many of which are quite restrictive, if it were. Instead, Nussbaum argues at length that her cosmopolitan education is right *for us*, that it begins from, extends, and renders consistent the education in liberalism that American students already receive today. The universalism of Kant's morality she believes "we should" take seriously (13). *We Americans* already teach the "equal basic human rights" of all, and the problem is only that the way in which we do so is not "sufficient" to its end (6). Cosmopolitan education saves us from becoming "a nation of moral hypocrites" by making good the language we already speak, "the language of universalizability" (13). Americans should adopt a conscious commitment to cosmopolitanism because this ideal best expresses the best American values: "the values on which Americans may most justly pride themselves are, in a deep sense, Stoic values" (13). If we "mean what we say," we need to mean it when we say, "that respect should be accorded to humanity as such," and not that our speeches refer only to "Americans as such" (15). In sum, the tendency to take "pride in a specifically American identity" is what cosmopolitan education seeks to correct (3), in part because this tendency is contrary to the ideals included in American identity. Along with most prominent exponents of cosmopolitanism, Nussbaum argues that *we liberals* are bound to join her, that liberalism implies cosmopolitanism.[44]

This commonly made argument is noticeably strange in Nussbaum's essay, where it the value of patriotism is the major target of attack. For how can cosmopolitanism gets its persuasive

[44] Similar claims are made by many cosmopolitan authors (Beitz 1979, Pogge 1989, Tan 2004).

power from the patriotic attitudes and national identity of Americans, only to condemn those very things? Nussbaum herself recognizes an apparent tautology of her third explicit point in favor of cosmopolitanism. We should teach students cosmopolitan attitudes because, in doing so, *"We recognize moral obligations to the rest of the world that are real and that otherwise would go unrecognized"* (12). After explaining, Nussbaum admits, "This point may appear to presuppose universalism, rather than being an argument in its favor" (13).[45] That is, Nussbaum hears herself arguing, cosmopolitan education is good because it teaches the "real" moral values, but the proof that these moral values are real is that they are cosmopolitan. She replies, however, that the point derives force from the fact that cosmopolitanism best teaches "the values on which Americans may most justly pride themselves" (13). Nussbaum argues, "If we really do believe that all human beings are created equal," then we must consider ourselves open to her interpretation of that equality (ibid). But this argument is insufficient on two levels. First, if the reason Americans should be cosmopolitan is that *Americans* value Kantian universalism, then patriotism is the motivating ground of cosmopolitanism. Ironically, at this crucial moment in her argument, Nussbaum is requesting Americans to be *patriotic enough* to endorse cosmopolitanism. Second, by the adjective "justly" Nussbaum reveals that American values as actually held by Americans do not in fact overlap completely with Kantian universalism. At any rate, since "Americans have frequently" been nationalistic or patriotic, their intuitive moral opinions are not cosmopolitan. But she fails to explain the basis of her right to correct our 'common-sense morality,' which would presumably involve judging American values by an

[45] Nussbaum's example is, "the high living standard we enjoy is one that very likely cannot be universalized…without ecological disaster" (12-3). If we are, as universalists, wrong to do what we cannot allow all others to do equally, then we are wrong to maintain our 'unsustainable' standard of living.

objective standard. Hence, if Americans were in fact to be patriotic enough to take the advice seriously, they would likely also question whether the ideal Nussbaum recommends is their own.

There is thus something very puzzling in Nussbaum's articulation of the cosmopolitan, anti-patriotic education, right from the start. On the one hand, Americans are particularly guilty of patriotism. In Nussbaum's opinion, "Americans have frequently supported the principle of *Bande Mataram,"* i.e., a sentiment identical to the Indian- or Hindu-nationalist slogan "Hail Motherland" (3). But even Nussbaum clearly believes that this principle is contrary to the ideals and values that Americans hold, at least in their best moments; she has said so, as we have just seen. Besides, she obviously expects her readers, Americans, to feel disgust at this comparison because their patriotism *as it stands* consists in rejecting that kind of nationalism. If they were not patriotic in precisely this way, justly proud of their Kantian moments, they would not be open to the idea that they are already committed to learning how to avoid being patriotic altogether. For this reason, out of attachment to these ideals and values, Americans have a *special* reason to resist such slogans and adopt a cosmopolitan identity.

To be clear, then, it is peculiarly American to feel patriotic about not over-indulging in patriotism or nationalism. This specifically American form of patriotism is the "specifically American identity and…specifically American citizenship," with its "special power among the motivations to political action" (3-4), to which Nussbaum appeals and against which she cries. Do not Americans have the special feeling that Americans, alone or especially, are universal? Now that we consider it, the American, oddly humble while oddly arrogant, is very well-placed to be torn between Nussbaum and Rorty. Still, if it is true that the cosmopolitan education perfects the American education, and if this is the reason Americans have to see this education as most rational for themselves, then this is because there is something Americans get right, and

which sets Americans apart from at least some others. But if, according to Nussbaum, Americans must learn that they are *not* special, that nothing sets them apart or makes their nation especially worthy of allegiance and concern, then the cosmopolitan education must be a *new* teaching that Americans do not yet know, the moral certitude of which they are not yet convinced, and to which they may or may not aspire.

Nussbaum's dilemma is well-captured by Alasdair MacIntyre's analysis of American patriotism. Believing, like Nussbaum, that "a morality of liberal impersonality and a morality of patriotism must be deeply incompatible," MacIntyre argues that Americans (and other liberals in states such as France) are caught in a peculiar perplexity. For they are taught to believe that, whereas all other societies contain a "customary morality" that is "distinct and often opposed" to rational universal, impersonal…liberal morality," America is a society where the two are identical, "a culture whose *Sittlichkeit* just is its *Moralitat"* (MacIntyre 2003, 300). But that identification is impossible; universal morality cannot define who *we* are in distinction to others. Put in Nussbaum's terms, the very thing that makes American patriotism wholesome makes it impossible and even regrettable. MacIntyre, who assumes that "a large-scale modern polity…has to be able to engage the patriotic regard of enough of its citizens, if it is to continue functioning effectively," concludes, "that we inhabit a kind of polity whose moral order requires systematic incoherence" (ibid). Nussbaum, who assumes that patriotism is unnecessary for social unity, must feel that American patriotism is both a perversion of morality and an empty form of identity.

In sum, in some sense the education Nussbaum proposes really is an extension of principles that Americans embrace. But, in another sense, it must be a new education, and a rather difficult one. For this new education demands that, however much we see that we embrace

a set of principles that others reject, however much we become devoted to a universal view and aware that this view is opposed to particular views, we must never *pride* ourselves on holding this view or see it as distinguishing "us" from others. The challenge of pure universalism is to know itself in a universal way, as not promoting any difference or separation, which would require seeing the truth of the universal way without relying on a sense of what "we believe" as Americans.[46] This challenge appears to be the heart of a cosmopolitan education, but Nussbaum relies a good deal on the "we believe" for someone who also believes that such an education is possible.

Paradoxes of State Cosmopolitanism

Nussbaum's position, if taken at face value, is paradoxical: we are to continue to have a particular, finite state, but one that sponsors an education devoted to cosmopolitan principles, according to which allegiance is owed to no state and deliberation is conducted 'as if' one were governing for the world. The concept suggested is a "cosmopolitan state;" some *state* must become responsible for providing the cosmopolitan education, the education against patriotic love of states. If Nussbaum means that this education should be the policy of "our" state, *we* must decide that our state actively will teach anti-statism, which is to say, teach that there is no *we*. It will be "our" political deliberation, as a particular state, to identify as no particular state.

Not only is this idea paradoxical, it is illiberal; it would not pass muster as a neutral position on the part of the state. Consider the opposite extreme: a truly patriotic education implies a state willing to demand allegiance and partiality to itself from all its members. Such a

[46] Bernard Yack makes a somewhat similar point when he notes that modern cosmopolitans are "humble," in the sense that they are too egalitarian to endorse the elitist attitudes of ancient cosmopolitans, who had no trouble believing that they saw the world more clearly than the mob. The difference is that ancient cosmopolitans had less reason to suppose that the enlightened were geographically or even politically concentrated, which is the arrogance of patriotic Americans (Yack 2012, 254).

state is not impartial between patriotic and unpatriotic citizens, not a neutral umpire between those who do and those who do not spontaneously develop an attachment to the state of their upbringing; rather, the patriotic state demands a certain way life, imposing a particular, nationalist, moral perspective. In contrast, a *neutral* state, if it were possible, would remain indifferent to whether students developed patriotic feelings; it would leave out pledges of allegiance and somehow make the curriculum discretionary or neutral with regard to the type of history and politics studied. Such neutrality may not be practicable, but it is important to notice that Nussbaum's view mirrors the truly patriotic view at the other end of the spectrum. Nussbaum's state is not impartial but rather cultivates a lack of patriotism in its citizens. It must therefore repress any spontaneous feelings of warmth and love for itself that arise.

Considering the extent to which Americans valorize revolution, protest, and change, this might feel like only an extension of our conviction that protest and even civil disobedience can be normalized within some bounds. But it seems one thing for the state to teach that resistance to itself *can* be morally legitimate; it might well be another for the state to teach that such resistance is a basic principle, more basic than any principle that the state in fact enshrines. The position of the anti-state is that of William Garrison elevating his conscience above the Constitution rather than Abraham Lincoln finding the principles of the Declaration enshrined within it. American liberalism seeks, I think, to make some kind of place for Garrisons, but how can Garrison-ism be required by law?

The problem is not so much that the state risks itself in such a process; the problem is more ironical than that. According to Nussbaum's doctrine, "We should give our first allegiance to no mere form of government, no temporal power, but to the moral community made up of all human beings" (Nussbaum and Cohen 1996, 7). But this "We" is, qua educator, the collective

"We the People," disowning itself. If spoken by this educator, the state actively intervenes against itself. But since the state is the teacher, the students will *in fact* be patriotic insofar as they learn its lessons. What will the right attitude be? Cosmopolitan anti-state attitudes will be the patriotic stance of the citizens of the cosmopolitan state. Students and the state will love each other insofar as they adopt the attitude that the state is nothing for them. They will be traitors if they love the state, patriots if they hate the state. But it is the state that tells them these things.

If this sounds hyperbolic, let us consider the tension from a different angle. According to this state, there is no right way to be patriotic. But if patriotism is not a virtue, then sedition is not a vice. The state would have no warrant for objecting to behavior merely on the grounds that it attacks the state. Treason as normally understood could no longer be a crime. If someone attempted to overthrow the state in some way, the court would be obliged to consider whether the intention was to produce a state that was more just according to some accepted egalitarian conception. In fact, the sympathy that exists for "whistleblowers" like Julian Assange and Edward Snowden point in exactly this direction. But if that is right, then the state could also, perhaps, prosecute an individual who protected the state against egalitarian demands. For another contemporary example, it is no longer entirely extreme to use civil cases, violence, or near-violence as methods of intimidating elected officials. It is difficult to see how there can be any law, any norm, where nothing or everything is permitted to be normal.

The paradoxes demonstrate two things. First, they show that Nussbaum, as is common in contemporary cosmopolitanism, advocates against the state from the perspective of a left-liberal who believes in the expansion of the state. In this respect, left-liberal nationalists like Rorty rightly remind cosmopolitans not to attack the power they wish to wield. Second, they show that Nussbaum's agenda is not quite what it appears. She is not quite serious about the anti-state or

anti-patriotic implications of the cosmopolitan position. Nussbaum does not exactly charge the American state with engaging in an excessively patriotic education; in fact, she supports an education that includes students "giving special attention to the history and current situation of their own nation" (6). In other words, Nussbaum's position wishes to find a middle ground between anti-politics and politics, a ground that serves an agenda for a variety of politics, not the eradication of politics. The state will be and not be as needs require. Is there a reasonable, rational account of this position? That is, if the rational basis of the cosmopolitan position does not consist in its intransigent refusal to acknowledge political objects, as merely imaginary or conventional beings, then what is its rational basis? The cosmopolitan state appears to be a political object of a certain kind; what makes it more rational than the patriotic object of esteem?

Ancient Cosmopolitanism

Nussbaum could avoid relying on American presuppositions if she could point to an alternative, objective, foundation for the cosmopolitan view. Of course, such a foundation exists in the form of ancient cosmopolitanism, from which she claims to "recover some excellent arguments that have traditionally supported" her position (6). This strategy requires both that the arguments of the ancients really are excellent, and that these arguments support the same position Nussbaum is advocating. Neither of these requirements are met in full.

Nussbaum begins with Diogenes the Cynic, among whose many, many sayings is recorded "I am a citizen of the world," when asked where he was from.[47] Exiled from his home city, he spent most of his life in Athens, where after studying philosophy he lived in a wine cask and made a practice of flaunting all conventions, disparaging every other way of life (including

[47] As a matter of fact, he was from Sinope, from which he was exiled when either he or his banker father or both of them were caught adulterating the currency, but he repudiated greed and every other vice in his subsequent pursuit of philosophy.

Plato's) as base, and generally playing the intemperate gadfly against insincerity. He was a "Socrates gone mad" (Laertius 1925, 55). However, the extremity his misanthropic attempt to live without respect for any social practices earned him a kind of bemused affection from those around him. Instead of being put on trial for corrupting the young, he was protected by the city from their abuses; we read, "Still he was loved by the Athenians. At all events, when a youngster broke up his tub, they gave the boy a flogging and presented Diogenes with another" (45). Nussbaum says too little and glosses too much when she interprets his 'cosmopolitan' self-identification as "he refused to be defined by his local origins and group memberships, so central to the self-image of the conventional Greek male; instead, he defined himself in terms of more universal aspirations and concerns" (Nussbaum and Cohen 1996, 6-7). Diogenes did not understand himself to be engaged 'self-definition' so much as the pursuit of a life according to nature, which he took to be an objective standard binding on all mankind; it was not a matter of choice for him. In the light of this standard, he refused to be defined by *anything* social, to respect *any* sense of property rights or any duty to work for his subsistence and treated all other humans with scorn (though perhaps wishing to improve them in his way). As Bernard Yack has pointed out, "Diogenes, perhaps the most famous misanthrope in Western history, comes off as a great lover of humanity in Nussbaum's account" (Yack 2012, 254n). Diogenes disdained political conventions along with all conventions as such, earning his nickname, "the hound."[48] This is not to say that either his thought or deeds were necessarily wrong; rather, the point is that, whatever his reasons for being a cosmopolitan, they are not reasons that make obvious sense on first hearing, and whatever he meant by being a cosmopolitan, it is not obviously the same life

[48] "At a feast certain people kept throwing all the bones to him as they would have done to a dog. Thereupon he played a dog's trick and drenched them," and, "Being asked what he had done to be called a hound, he said, "I fawn on those who give me anything, I yelp at those who refuse, and I set my teeth in rascals" (Laertius 1925).

that American students should adopt *en masse*. Diogenes's conception of our "universal aspirations and concerns" has little to do with Nussbaum's proposed cosmopolitan education (7). If we are not prepared to disdain all social ties at every level, then Diogenes's vision fails to prove that, of the various moderately respectable identities and attachments we have, all are subordinate to the most universal level (Yack 2012).

Similarly, Nussbaum selects from Seneca's *De Otio* a passage concerning the two communities in which all of us dwell, which she describes as "the local community of our birth, and the community of human argument and aspiration" (Nussbaum and Cohen 1996, 7). Of the latter, she quotes Seneca that it "is truly great and truly common, in which we look neither to this corner nor to that, but measure the boundaries of our nation by the sun" (7). By beginning her quote mid-sentence, Nussbaum implies that the larger community is of superior dignity, being "truly great," as opposed to a not-truly-great local community. This impression is exaggerated by her choice. To get a different flavor, consider the passage as a whole:

> Let us grasp the fact that there are two republics, one vast and truly "public," which contains alike gods and men, in which we do not take account of this or that nook of land, but make the boundaries of our state reach as far as the rays of the sun: and another to which we have been assigned by the accident of birth. This may be that of the Athenians or Carthaginians, or of any other city *which does not belong to all men but to some especial ones* (Seneca 2003).

First of all, we see that Nussbaum falsely implies that the human community is "truly great" in the sense of possessing true dignity, for Seneca merely describes the truly *vast size* of the human community compared to political communities. Second, he only emphasizes that the human community is truly common, and he even suggests that political communities, those to which we are born accidentally, are not truly common because *they belong to specific persons and not to everyone*. The accidental nature of the political community does not, for Seneca, necessarily prove that the community lacks moral standing. Seneca's *De Otio* is concerned to defend the

compatibility of his decision to pursue a contemplative life with his commitment to Stoicism, which demands a life of active service and virtue to some community, and usually to a particular political community. In the passage under discussion, he is explaining that the contemplative life contributes to the universal community of humankind, in distinction from the active life's contribution to a particular state. He is defending philosophy as a way of life from the point of view of moral action, and he never implies that the man who chooses an active, political, life is required to orient himself by the needs of all humans equally. Truly, science is a universal boon; this does not imply that only the universal boon is worthy of a scientific or rational man.

Nussbaum's third example of an ancient universalist maxim comes from Alexander, who famously treated all alike in his conquest of the world. The problem is, obviously, that his maxims are not necessarily appropriate for a peaceful state like ours intends, at least, to be. Similarly, if we make a political maxim of Seneca's philosophical community, if we pledge to "make the boundaries of our state reach as far as the rays of the sun," we are educating imperialists. We cannot take for granted that these maxims fit our political situation, nor those of the emperor Marcus Aurelius either (Nussbaum and Cohen 1996, 10). If we were truly intent on governing "the cultures of remote and, initially, strange civilizations, such as Parthia and Sarmatia," then we would do well to consider how past governors approached the task (10). If, however, Nussbaum is serious that neither she nor the Stoics propose "the abolition of local and national forms of political organization and the creation of the world state" (7), then American students need an education that also prepares them for a world where divisions and differences remain. There is, indeed, something noble in all of these philosophies, and they would make part

of any good liberal education, but that is not the same thing as defining the purpose of the state-sponsored curriculum of a free, open, but finite and non-imperialistic state.[49][50]

When Nussbaum rehearses part of Diogenes Laertius's biographies of Crates and Hipparchia, cosmopolitan lovers whose lives provide models, if not ideals, for the students of her cosmopolitan education (17), she offers a glimpse of how she imagines the cosmopolitan to live as an adult and relate to others. In Nussbaum's reading, Diogenes's report of them is meant "to show that casting off the symbols of status and nation can sometimes be a way to succeed in love" (16). The kind of romance Nussbaum has in mind feels familiar; Crates and Hipparchia, we suppose, resemble Romeo and Juliet and other couples in the tradition of 'love conquers all.' Of course, Romeo and Juliet end badly. Is Nussbaum recommending a violent passion as compatible with the austere rationality of cosmopolitan respect? And if so, how is such recklessness superior to violent love for a country? But Crates and Hipparchia are a very different model for lovers, so we should look more closely. On what basis did these philosophers affirm the union of cosmopolitanism and love?

Here, as in her other accounts of ancient philosophy, Nussbaum gives an answer that is at odds with the historical record. Her selection from Diogenes's (already quite brief) account of Crates and Hipparchia distorts their relationship and their views in very important ways. Nussbaum's selection focuses entirely on Hipparchia and her apparently great romantic passion

[49] Charles Beitz, another prominent cosmopolitan today, does advocate a revival of 19th-century colonialism in some form: "My account of state autonomy might provide some warrant for interference in another state's affairs when the state's institutions are unjust according to appropriate principles of justice and the interference would promote the development of a just domestic constitution within the state. This position may be like that taken by Kant and, to a lesser extent, by Mill…This position might seem so implausible as to cast doubt on the account of autonomy of which it is a consequence…It does not necessarily follow from the morally objectionable results of recent examples of interventionary diplomacy that all interference in unjust states is morally wrong" (Beitz 1979, 81-3).

[50] For an interesting discussion of how cosmopolitan or multicultural education could serve the ends of a liberal education, see Lorraine Pangle, "Multiculturalism and Civic Education" in *Multiculturalism and Modern Democracy* (Melzer, Weinberger, and Zinman 1998).

for Crates. She begins where Hipparchia "fell in love with Crates' arguments and his way of life and paid no attention to any of her suitors nor to wealth or high birth or good looks" (16). If we focus on the second half of the sentence, we might think Hipparchia was blind to status because she loved Crates so much; however, the important point is that Hipparchia loved *Crates' arguments and his way of life.* It was not a love of Crates's 'personality' or any other subjective or idiosyncratic attribute; rather, she was a convert to his way of thinking. What was this way of thinking?

To make any sense of Hipparchia's love, we would need to know what Crates's arguments and ways of life were, yet Nussbaum neglects to include Laertius's descriptions of either. This is even stranger because Crates did not demonstrate in any way that *he* loved Hipparchia. He is not "any of her suitors," and when asked by her parents to "talk their daughter out of it, *he did all he could*, but in the end he didn't persuade her" (17, my emphasis). Hipparchia's love is not reciprocated, or not until she proves her devotion to a certain way of life, which makes the content of Crates's philosophy all the more crucial for understanding her one-sided interest. And the relationship remains one-sided or at least without proof of romantic devotion. Their willingness to copulate in public, for instance, is proof of their lack of shame or modesty, but not proof of how much they willingly sacrificed for one another (17). Crates's philosophy was, it seems, to remain entirely free; to do as he pleased and respect no conventions or obligations. At any rate, Crates's views on relationships are perfectly expressed by his sayings, which Diogenes quotes, such as, "Hunger stops love, or, if not hunger, Time, or, failing both these means of help, - a halter" (Laertius 1925, 91). "And again he says that what he has gained from philosophy is 'a quart of lupins and to care for no one'" (ibid). To care for no one - we have no choice but to assume that *these* are the arguments and (implied) way of life that

Hipparchia longed for. Crates tells Hipparchia, "make your decision accordingly – for you cannot be my companion unless you undertake the same way of life" (Nussbaum and Cohen 1996, 17). To disdain all status and limits to freedom for Crates's arguments' sake is tautological; Hipparchia loves freedom. Nussbaum's description of their affair as "a way to succeed in love" and her presentation of the story from the point of view of Hipparchia's intense interest in Crates both suggest a wish to interpret their freedom as some sort of mutual enrapture, as though they disdained the world for one another's sake. It would be better to say that they took up with one another for the sake of disdaining the world.

Lest we suppose that Hipparchia is a lover despite all this, that she loves Crates and not merely his arguments against being attached to anyone, we should notice the strange anecdote that concludes her tale, in which she refutes Theodorus the Atheist at a dinner party. Her shocking "sophism" deserves more attention than Nussbaum gives it when, in her footnote, she permits herself to "exempt Hipparchia from criticism, since she was clearly trying to show him (Theodorus) up and she did not endorse the fallacious inference seriously" (17n).[51] In fact, the inference is not simply fallacious. Hipparchia's argument goes as follows: "If it wouldn't be judged wrong (i.e. injustice) for Theodorus to do something, then it wouldn't be judged wrong (i.e. injustice) for Hipparchia to do it either; but Theodorus does no wrong if he beats himself; so Hipparchia too does no wrong if she beats Theodorus" (17). In short, Hipparchia says, justice is justice no matter who does it; one may justly harm oneself; therefore, one may justly harm anyone. The first premise is presumed uncontroversial, merely stating the principle of reciprocity, that the justice of an action is unaffected by the subject who acts. We must assume

[51] Nussbaum offers no argument for her claim that the sophism *does* demonstrate the poverty of Theodorus as Hipparchia's logic teacher while *not* demonstrating the poverty of Hipparchia's logic. Nussbaum's interpretation at this point is surprisingly arbitrary given the importance of the question.

Theodorus to have affirmed the second premise, however, that it is not unjust for a man to beat himself. Plausibly, what Theodorus thinks in saying this is what modern "liberal" authors following Hobbes often think, that consensual acts are always just. Since a man consents to the beating (drug problem, gambling addiction, etc.) he gives himself, he has a right to do so, or he does no wrong in harming himself. The standard liberal permissiveness on self-harm, however, includes a prohibition on harming others. For Hipparchia, a paradox arises because it might not be possible, really, to affirm both things. One tries to do so by supposing that consent transforms an injustice into a just transaction, but the enormous difficulties involved in explaining what consent is and why it does so should give us pause. Ever since Locke insisted that consent under duress is not truly consent, there is an open question: what conditions make consent possible? This problem is so central to our modern philosophical situation that it forms the basis of Rawls's famous theory of justice, for that theory seeks to find such conditions in an "ideal choice situation." Given this testimony to the philosophical (logical) problems with using consent to distinguish right and wrong, Nussbaum should be much more careful with how she criticizes ancient philosophy.

In sum, nothing prevents Hipparchia from making a concise and clever argument to affirm that, if a man justly beats himself, this *does* imply that a man justly beats others as well; i.e., that if each is judge of his or her self, then all things are permitted. If it is permitted to harm Person A, then it makes no difference who does so. Hipparchia is saying, then, that anyone who is committed to the view that an individual can do anything he or she wants to him or herself is also committed to the view that an individual can do anything he or she wants absolutely or to anyone. In other words, individual freedom knows no moral bounds. We should distinguish here, as Nussbaum does not, between our own convictions concerning whether this is a good argument

and the evidence that this is Hipparchia's idea of a good argument and a summary of her own convictions.

Hipparchia is very tough, and we miss her point if we think her merely a cool nudist with a teasing wit. Instead, she demonstrates her willingness to live without moral indignation in what follows: "And when Theodorus could not reply to her argument, he ripped off her cloak. But Hipparchia was not upset or distraught as a woman would normally be" (17). Both Theodorus's substitution of aggression for a reply and Hipparchia's manner of handling it fit with my account of the sophism's meaning. Theodorus's attack is a way of questioning whether Hipparchia can walk the walk: *if* she were to be upset at this symbolic act of rape, she would demonstrate that she considers her own body to be inviolable by others, i.e., that she retains a moral indignation against some form of offense. But because "Hipparchia was not upset or distraught as a woman would normally be," we know that Hipparchia was or at least wished to seem simply indifferent to moral objects, and Nussbaum fails to notice their indifference to morality. It is not true that Hipparchia and Crates are in love with each other in the common-sense meaning of the term; it is also not true that they put "right before country" (17). They put *themselves* before country. Yes, they put "universal reason before the symbols of national belonging," but this is because they put universal reason before *every* symbol and form of belonging. "Humanity" is no more meaningful to them than any "other sources," whether more or less colorful (15, 17).

For Crates and Hipparchia, clarity requires a *total* rejection of human warmth and color; their education culminates in a consistent disregard for all human norms. In response to this intransigence (among other things), Nussbaum assures her reader, "I am not exactly recommending Crates and Hipparchia as the marital ideal…" (17). But why exactly not? If this is

what *clarity* looks like, if this couple presents the results of a proper education, why hesitate? Why insist on resisting colorful illusions arbitrarily rather than consistently?[52]

Nussbaum's arbitrary choices seem to reflect a general liberal tendency; one wishes to proclaim one's freedom to do as one pleases, to acknowledge no restraint and no community, yet one wishes to feel righteous and honorable as one does so. Nussbaum's appropriation of cosmopolitanism attempts to provide the feeling of moral righteousness with which one may cast off the final restraints imposed even by that minimal human community, the liberal state. The claim is that this liberation is performed on behalf of duties owed to an even more divine community, but the implications of such duties is doubtful. Does one who lives for "reason and the love of humanity" live for others or for oneself? Dodging this question, Nussbaum restores the force of Rousseau's critique of cosmopolitans, who "boast of loving all the world, in order to enjoy the privilege of loving no one" (Tan 2004).

Passion Resurrected

Another way in which Nussbaum tries to suggest that cosmopolitanism is rational as compared to patriotism consists of a rhetorical gesture: the thematic contrast in Nussbaum's essay is the color, passion, and irrationality of patriots and nationalists against the as austerity, coolness, and rationality of cosmopolitans. Cosmopolitans live in "a kind of exile – from the comfort of local truths, from the warm, nestling feeling of patriotism" (Nussbaum and Cohen

[52] The most penetrating discussions of ancient political philosophy are to be found in the work of Leo Strauss. The ancients indeed held that the philosopher's life involves "becoming reconciled to the fact that we live in every respect in an unwalled city, in an infinite universe in which nothing that man can love can be eternal," but they held, "The only remedy lies in philosophizing, which alone affords the most solid pleasure. Yet philosophy is repulsive to the people because philosophy requires freedom from attachment to 'our world.' They must therefore continue the wholly unnatural life that is characterized by the co-operation of coercive society and religion. The good life, the life according to nature, is the retired life of the philosopher who lives at the fringes of civil society" (Strauss 1950, 113). It is therefore against the grain of ancient philosophical cosmopolitanism to advocate a *political* cosmopolitanism.

1996, 15). However, this contrast fluctuates once or twice in the essay. Just after the first exercise in such contrasts Nussbaum hastens to assure us, "The Stoics stress that to be a citizen of the world one does not need to give up local identifications, which can be a source of great richness in life" (9). And Nussbaum's last word, just following the description of "exile," is that the cosmopolitan life involves *some* passion after all: "the life of the cosmopolitan, who puts right before country and universal reason before the symbols of national belonging, need not be boring, flat, or lacking in love" (17). It seems we can have our cake and eat it, for even a completely clear-eyed view of the moral equality of all persons without distinction is compatible with passions that, creating strong preferences and distinctions between people, seem to make a particular life worthwhile. This is a surprising comfort because the passion of love might be thought to require illusions at least as much as patriotism. And this reversal is more telling than at first appears, for it reveals an ambiguity that turns out to be present in the rest of the essay as well.

Considered as a whole, Nussbaum's narrative style is not austerely logical. Indeed, it is by no means devoid of colorful descriptions. Introduced and illustrated by an Indian political romance novel, concluded with the telling of Diogenes's story of Hipparchia, and sprinkled with many references to famous Stoics, Nussbaum's essay hardly lacks for color. And she admittedly aims to persuade; as a writer "motivated" to promote the best form of "unity in devotion to worthy moral ideals of justice and equality," Nussbaum hardly lacks for passion. Indeed, Nussbaum argues for cosmopolitanism, which she identifies at one point as a "basis for political *emotion and concern"* (4), with great warmth. Americans are "appallingly ignorant" (11), they are "educating a nation of moral hypocrites" (13), and their self-congratulatory history "is a story that Americans have told for far too long" (15). Why, given her obvious relish for color and

rhetorical device, and her passionate interest in spreading idealism, does Nussbaum portray cosmopolitanism as incapable of competing with patriotism for hearts, though so much superior to open minds?

Nussbaum's first argument that nationalism (or patriotism) is peculiarly associated with passions that are unreasonable and dangerous comes as a gloss on *The Home and the World,* which is "a tragic story of the defeat of a reasonable and principled cosmopolitan by the forces of nationalism and ethnocentrism" (5). Drawing on that tale, Nussbaum suggests that *any* embrace of patriotism provides a slippery slope to fascism. "Once someone has said, I am an Indian first, a citizen of the world second, once he or she has made that morally questionable move of self-definition by a morally irrelevant characteristic, then what, indeed, will stop that person from saying, as Tagore's characters so quickly learn to say, I am a Hindu first, and an Indian second, or I am an upper-caste landlord first, and a Hindu second" (5)? No doubt Nussbaum evokes a valid concern; as even its most strident defender Alasdair MacIntyre has written, patriotism is indeed a "permanent source of moral danger" (MacIntyre 2003, 299). The question remains whether that is all that patriotism is and also whether the character of patriotism really shares so much with the other kinds of identity Nussbaum mentions. Did religious definitions such as Hindu *precede* or *antecede* national definitions such as Indian? For most peoples, our history of becoming nationalists is largely a story of overcoming differences by finding something political in common. Indeed, the concept of the political might, among other things, offer refuge from other forms of identity, as Rorty suggests in his well-known op-ed. Until further investigation, we must keep open the possibility that *political* identity has distinct features of its own.

To draw an equivalence between patriotism and tribalism of the most extreme form, to claim that "nationalism and ethnocentric particularism are not alien to one another, but akin"

(Nussbaum and Cohen 1996, 5) might be something of an equivocation, especially given the peculiarly open quality of *liberal* nationalism. But even more importantly, Nussbaum herself starts to distinguish patriotism and tribalism as she proceeds, rescuing the *local* identifications from the shame to which she puts *national* identifications. Having argued briefly for the rightness of the cosmopolitan attitude, Nussbaum hastens to add that "one does not need to give up local identifications, which can be a source of great richness in life" (9). In other words, Nussbaum employs the concept of the "local" as a fulcrum between patriotism and cosmopolitanism. At first Nussbaum tells us how, in Tagore's novel, the "local or national traditions and identities," that at first move a young wife, "she later comes to see as superficial" in comparison with cosmopolitan ideals (8). In other words, both local and national traditions and identities are, from the rational perspective, superficial. A page later Nussbaum teaches, "We need not give up our special affections and identifications, whether ethnic or gender-based or religious. We need not think of them as *superficial*…" (9, my emphasis). Having rescued the "richness" and color of life, Nussbaum implies that the only "superficial" thing in Tagore's novel is nationalism, as opposed to the localism. To the extent that nationalism or patriotism is permissible, it is permissible as a *weak form* of localism. Thus, students of a cosmopolitan education "may continue to regard themselves as defined partly by their particular loves – their families, their religious, ethnic, or racial communities, *or even* their country" (9, my emphasis). Patriotism, first introduced as the least bad form of, but a gateway toward, ethnocentrism, becomes the least permissible form of ethnocentrism or other tribal identities, which by themselves are valuable. Although Nussbaum might defend this transition as part of her consistent position that we need a *combination* of patriotism and cosmopolitanism, with cosmopolitanism merely the *dominant* element, the transition baits and switches the connotations

of terms to achieve the subordination. If we knew from the start that local identities (Hindu religion, caste, etc.) were permissible and not superficial, then we would no longer have a reason to think nationalism (Indian) was dangerous rather than unifying.

To confirm this analysis a little further, notice that Nussbaum switches the connotations of her terms throughout the essay. When she associates them with nationalism or patriotism, passions and local identities appear to be bad, and their badness as such is meant to demonstrate the badness of the associated political views. But when she associates them with cosmopolitanism, these same things become good, and it is supposed to be a mark in favor of cosmopolitanism that it incorporates these good elements of human life appropriately. Her initially clear distinction between the austere and rational life of the cosmopolitan and the passionate and superficial life of the myth-bound patriot thus dissipates into a murkier combination of elements. We are to be austere and rational, loving only humanity, but also colorful and familiar, loving special friends and identities. The fact that Nussbaum uses the same terms with such vastly distinct connotations makes the contradiction stark, as we can see from side-by-side comparisons.

It is wrong to be eager when "the young wife Bimala, entranced by the patriotic rhetoric…becomes an *eager* devotee" (3, my emphasis). But, "to be a citizen of the world…students must…be *eager* to understand humanity in all its strange guises" (9, my emphasis). We are to prefer "the cosmopolitan stance of the landlord Nikhil – so *boringly flat* in the eyes of his young wife Bimala and his *passionate* nationalist friend Sandip (5, my emphasis). But, later, we are to choose the real passion for, "*what looked like passion* in Sandip (nationalism) was egocentric self-exaltation, and…*what looked like lack of passion* in Nikhil (cosmopolitanism) contained a truly loving perception" (15-6, my emphasis). Ultimately, "the

life of the cosmopolitan…*need not be boring, flat,* or lacking in love" (17, my emphasis). And at first the lesson the heroine Tagore's novel learns is, "*local* or national traditions and *identities*…she later comes to see as *superficial"* (8, my emphasis). But, soon after, Nussbaum's lesson is, "to be a citizen of the world one does not need to give up *local identifications* …We need not think of them as *superficial"* (9, my emphasis).

These equivocations suggest that Nussbaum seeks to rescue and reaffirm the dignity of local identities *as much or even more* than she wishes to establish the universal, cosmopolitan identity that disdains all such distinctions; in other words, her real goal is the affirmation of multiculturalism. Cosmopolitanism is equivalent to multiculturalism, then, and Nussbaum's explicit reply to Rorty is not serious, for she tacitly admits that the real "alternative to a politics based on patriotism and national identity is what he calls a 'politics of difference,' one based on internal divisions among America's ethnic, racial, religious, and other subgroups" (4). The latter is simply equivalent to what she calls "a more international basis for political emotion and concern" (4). And, as she admits here, the politics in question is one of *emotion* and *concern,* not of reason stripped of color. The question of which position is most reasonable seems less pressing here than the question of which emotions should we encourage, given our ends, and which divisions.

But why is tribalism or localism so permissible? Nussbaum's original answer to Rorty was that nationalism is the same as and leads to and so cannot alleviate tribalism. Her position a page later seems to be that, yes, nationalism is distinct from and perhaps alleviates tribalism, *and that is why it is suspect.* Nationalism, not cosmopolitanism, is the enemy of the "great richness" that is identity politics (9). Perhaps cosmopolitanism is superior to patriotism because it provides *more* color and variety, not less? One cannot help wondering whether the right to identify with a

specific ethnicity or culture or religious practice is somehow a right that extends *only* to those who are not from 'our nation.' For it appears characteristic of Americans that they are guilty of "giving the fact of being American a special salience…and pride in a specifically American identity and a specifically American citizenship a special power…" (3-4). But as we have seen, this specific identity is best described as quasi-universalist. If this patriotic or nationalistic identity must crumble before the cosmopolitan ideal, but meanwhile ethnic, religious, and otherwise local or regional cultural identities are entitled to claim *not* to be superficial and *not* to be given up, then is it not mostly immigrants – the not-yet-even-hyphenated immigrants – who have the rights to practice identity politics while the assimilated citizens have the right to be envious of the great richness to which they cannot contribute any longer? Do we have here anything to distinguish Nussbaum's 'cosmopolitanism' from the 'politics of difference' that rules always and only against the universal? Nussbaum's 'cosmopolitanism' begins to look like anti-universalism masquerading as universalism.[53]

Implicit Multiculturalism

To confirm the above interpretation, it will be helpful to analyze the details of what Nussbaum's education consists in. Nussbaum provides some hints as to the curriculum changes that would transform the liberal – but inconsistently universal, because patriotic – education that Americans currently receive into the liberal - and consistently universal, because cosmopolitan - education that they need. For instance, in addition to teaching students the equal rights of all

[53] Simon Keller makes this claim explicitly and goes further, arguing that the "worldly citizen," such as an immigrant, will be a *better* citizen than a patriotic one (Keller 2013). Keller believes the worldly citizen, who sees his or her country of residence entirely in terms of chosen membership and in reference to experiences elsewhere, "will be better able to see what is good and bad about the country" (ibid, p. 248). Far from posing a political disadvantage, "the immigrant's experience…will enable her to reach especially well-informed answers to these (constitutional and/or political) questions. She is likely to have a relatively clear-eyed view of what would happen to Britain as a result of any given change to its present system of government," such as the abolishing of the monarchy (ibid, p. 249). Although he surely thinks of his argument in terms of equality, to argue who is the better citizen in this way only parallels nativism with an anti-nativist, foreign superiority attitude that is just as one-sided.

humans everywhere, the state should supplement and encourage real reflection on this moral premise by devoting time to world issues, such as, "the problems of hunger and pollution in India, and the implications of these problems for the larger issues of global hunger and global ecology" (6). American students today need to learn more about global issues because "the destinies of nations are closely intertwined with respect to basic goods and survival itself" (12). These are plausible suggestions on their own; however, as an argument for eradicating patriotic morality, the assertions are either trivially true or unproven. It is trivially true, i.e. logically true, that nuclear missiles and global resources (including temperature, etc.) make each nation vulnerable to the actions of others. It is unproven, however, that no nation permissibly may take measures for its own security against such threats without the willing help of all the others on a basis of equality. The reality of global problems (an "is") is not sufficient to ground a particular approach to these problems (an "ought"). Even if the nations have reasons to cooperate, a world-government directing "global planning" through "global knowledge" is only one possible solution. There are good reasons to teach the future leaders of our nation the problems they may face, but that is not the same thing as teaching them, what we do not agree on today, that the solution is the abdication of national sovereignty.

In fact, if we examine how much space Nussbaum gives to her four distinct arguments for the cosmopolitan education, it seems clear that this second argument, resting on the importance of solving global problems, for our own self-interest perhaps, is really least important to her point of view, suggesting that her experience in international development is the lesser of her two motivations (4). In comparison to these two short paragraphs on global problems, Nussbaum's allocation of space emphasizes the arguments about the moral blindness and/or hypocrisy of patriotic concerns (arguments 1, 3, and 4). Even in articulating the second argument, in two

paragraphs, Nussbaum devotes only the first paragraph to the existence of global problems in which our national interests are at stake; she devotes the second paragraph to arguing that the solution is to learn "not only of the geography and ecology of other nations…but also a great deal about their people…their traditions and commitments" (12). Somehow, the human cultures, the differences of tradition and commitment, constantly recur as the fundamental lesson.

It makes sense, then, that Nussbaum's first argument, and the only one in which she proposes specific curricula, is, *"Through cosmopolitan education, we learn more about ourselves"* (11, my emphasis). Indeed, not just *more*; rather, "Our nation is appallingly ignorant of most of the rest of the world. I think this means that it is also, in many crucial ways, ignorant of itself" (11). As any good education should, the cosmopolitan education recommends itself primarily as a form of self-knowledge, and it certainly deserves to be judged by that standard. Americans can be counted on to adopt the most enlightening education they can find. How, then, does the cosmopolitan education produce self-understanding?

The cosmopolitan education involves the formation of an attitude reflecting specific opinions about human relatedness. It is a matter of extending and strengthening students' attachment to and interpretation of the equal rights of humanity. Slightly prior to explaining how it does so, Nussbaum lays out this goal, as she distinguishes what students must learn from the ways in which they retain permission to have partial identities and particular preferences:

> In educational terms, this means that students in the United States, for example, may continue to regard themselves as defined partly by their particular loves - their families, their religious, ethnic, or racial communities, or even their country. But *they must also, and centrally*, learn to *recognize humanity* wherever they encounter it, *undeterred by traits* that are strange to them, and *be eager to understand humanity in all its strange guises*. They must learn enough about the different to *recognize common aims, aspirations, and values*, and enough about these common ends to *see how variously they are instantiated* in the many cultures and their histories (9, my emphasis).

The cosmopolitan requirements, as with liberal principles of right, are central and overriding of the partial and self-focused attitudes that they do not fully replace. But beyond the familiar concept that humans everywhere have rights on which they may act if they wish, and in the pursuit of which we might support them, here the fundamental opinion students must develop is that the goals of every human are deeply shared in a manner that overcomes all differences. In other words, whether or not humans in a particular time and place in fact act according to right or in the pursuit of their rights, or especially when they do not, it is important to see that there is still something intelligible and respectable in what they do. However "strange" a culture, practice, belief, or history appears, i.e., however little we initially suspect that it is intelligible in terms of our own aims, aspirations, and values, students must discover that it is in fact intelligible in terms of universally common ends.

If this reading is correct, then Nussbaum means that the new education has as its content the theory that human action is radically valid (at least when it is not nationalistic). To obtain a taste of the curriculum, we must imagine what "strange" traits students might encounter that, without education, might deter them from forming the opinion that these traits were merely instantiations of common human aims, aspirations, or values. Looking back, the European Enlightenment and successive reformers sought to eradicate from our own culture and that of others many traits that now seem strange: belief in magic, superstitions, ignorance of nature, illiteracy; human sacrifice, cannibalism, murder of infants and seclusion of women; religious intolerance, censorship, restrictive sexual mores, patriarchy. In addition, one should probably mention absent things to be provided, such as contracts, courts, and other institutions and schemes for adjudicating between individuals and their properties. In fact, some Enlightenment authors attempted to educate their readers about the rational bases of strange practices or lack of

practices such as these. Montaigne, Montesquieu, Adam Smith and others sought in part to discover the common threads that led from barbarous to civilized times. They did not, however, generally insist that the barbarous was in fact civilized. At most they argued that a given 'unnatural' practice – polygamy or abortion, for example, or trial by combat – might have a rationale within a given geographical or political climate.

Nussbaum never mentions whether "strange" practices such as I have listed are part of the curriculum, but she does indicate that the perspective students should take on strange practices goes beyond merely accounting for their existence. Instead, Nussbaum argues that students should embrace the strangeness with less judgment and more recognition. They should see themselves in others, recognizing through the experience not how the other may have erred but how arbitrarily they themselves have constructed their lives. Questioning all of the ways in which we organize social life differently from the rest of the world is necessary in order to avoid "the unexamined feeling that one's own preferences and ways are neutral and natural" (11). The education proceeds by subjecting consequential social practices to doubt; we must call into question *our* "conceptions of gender and sexuality…work and its divisions…schemes of property holding…treatment of children and the aged" (12). The content of the education is not so much what others do and why as it is what *we* do and why. More specifically, the pedagogical goal is to demonstrate to students that we have very few good reasons for the ways we have arranged social life.

It is worth noting, then, that the content of the cosmopolitan education is not what it appears to be at first glance. As we saw, Nussbaum's first word on the subject is that students may continue to define themselves by their pre-given loves and identities, as long as they learn to embrace or recognize or become eager to understand the equal value of what others love and

identify with. However, the project of self-knowledge that Nussbaum wishes for these students receives its value from the project of self-liberation. Students who enter the curriculum believing there to be something right, good, or natural about the social order they know from birth – the liberal order as it has been so far – will study strange forms of social order for the sake of de-legitimating their preconceptions. Nussbaum gives "just one example" of what she means. If students come in finding something special in the "two-parent nuclear family" (11), they will – they "must" – learn to recognize that this social practice is arbitrary and (quite possibly) incommodious for various ends that all humans share. Through comparative studies of "child-rearing and the structure of the family," students learn that the familiar form is "by no means a pervasive style of child-rearing in today's world" (11). This discovery should be illuminating, for, "Seeing this, we can begin to ask questions – for example, about how much child abuse there is in a family that involves grandparents and other relatives in child-rearing, as compared with the relatively isolated Western-style nuclear family; or about how the different structures of child care support women's work" (11-12). The purpose of the exercise, then, is to consider how our own "choices" (here meaning something like "thoughtless habits") have been poor choices from a certain point of view (11). If we want to have a more "rational deliberation" about family, we need to teach students that the families into which they were born were irrationally constructed.

But is this view toward ourselves rationally justified? There certainly appears something "isolated" about the American nuclear family, so often mobile and uprooted, so often far from the support of relatives, overly dependent upon and suffocating one another, perhaps; still, it is not clear why we should assume that this leads to child abuse – assuming we know what Nussbaum means by "child abuse" (11). If we are talking about any of the obvious measures – physical abuse, sexual abuse, forced labor, early marriage – then global data unambiguously

support (as one would expect) the view that Americans and Westerners are safer by far in their nuclear families than many others are in alternative structures elsewhere. The highest rates of abuse are in Africa and the Middle East, whether or not this is because children there are raised by "the extended family, clusters of families, the village, the women's association," or some other form (11).[54] The manifest absence of any scientifically supportable inference in Nussbaum's insinuation suggests that she has some other concern in mind.

From the point of view of protecting security rights for innocent individuals, students have no basis to conclude that all practices are equal or that Western "choices" are irrational or ill-advised. Nor are they unexamined; some of these customs - schemes of property holding, for example – have long received a great deal of rational scrutiny in liberal society, probably more than equivalent practices have received in some places, where one really does only know what is 'done.' The life of liberal society remains open to further study – one of its defining characteristics, surely, so to call the forms of its life arbitrarily constructed pays too little respect, both to the intention and to the history of practice - what we *do* know. And if practices are worth rethinking, how should we do so? Is the cosmopolitan education somehow a supplement to an education in scientific economics? Nussbaum explains that we must "see what in our practices is local and nonessential, what is more broadly or deeply shared" (11). But why is it a sufficient criticism of a given practice to notice that this practice is not "broadly or deeply shared" around the globe? In fact, many of our practices are well-grounded despite remaining less than universal. The practice of Western medicine, as opposed to faith-healing and other unproven remedies, is not as widely shared as a doctor might hope; nevertheless, this medicine would remain superior at preserving life no matter how isolated – even if it were practiced by only a single city.

[54] See (Esteban 2019).

Why the observation that a given practice is peculiar to the West should prove anything is not clear - unless the point is more that we have no *right* to what cannot be broadly and deeply shared. For instance, Nussbaum speaks of "the unexamined feeling that one's own preferences and ways are *neutral* and natural" (11, my emphasis). This concern points to the ideal of a neutral state as the liberal standard for justice; in some sense, nothing should be 'normal' in a liberal state, as that might suggest an inferiority. But even if neutrality is a value in some contexts, to insist on neutrality here manifestly means *to ignore* the safety of children for the sake of this end. It is not obviously wrong to wonder whether Nussbaum's self-permission to cling to "special affections and identifications, whether ethnic or gender-based or religious" (9), plays some role in her motivations. For Nussbaum's argument makes more sense in terms of how "different structures of child care support women's work" than in terms of how they support children's health (12). Nothing ensures that these goals are simply complementary, so it could become a question whether our society must render itself neutral between, i.e. substantively equal in all opportunities, men and women, no matter what else results, or whether it is permissible to consider the health of the children as well and the stability of reproduction. Somehow *this* question, and the Kantian, intransigent answer that justice always takes priority (for Nussbaum urges us to "take Kantian morality at all seriously") (13), is what is really at stake in this cosmopolitan education. Despite the fact that women in the West are vastly more liberated than anywhere in the world, the cosmopolitan education will teach the West to liberate women yet further by disparaging its own family practices in the light of global practices that may promote *some* values, but not necessarily all the values that traditionally have value for Westerners.

It is of course perfectly reasonable for Nussbaum to be interested in promoting the equality of women; however, it is important to discover that cosmopolitanism is being recommended *because* it might promote the (substantive not formal) equality of women and patriotism discarded *because* it might stand in the way of such reforms. To put the point a little too strongly, Nussbaum again raises suspicions that her argument promotes cosmopolitanism as a stalking horse for a social liberal agenda, that cosmopolitanism is, for her, a *strategic* name for multiculturalism. In the guise of teaching students the moral perspective most appropriate to the world they will face, she claims the right to reform their cultural inheritance in the direction she prefers for them. The more assimilated Americans will find it difficult to claim a right to their cultural inheritance in turn.

However, if the promotion of women's equality is a central purpose of the exercise, it is difficult to see how Nussbaum supposes that the family structures she wishes students to study are the proper institutional supports of female equality. It might be one thing to look at polygamy, for example, as a source of concepts that a feminist theory could use as it develops standards for equal relations, but it is highly implausible that such a family structure should provide a model. If there is, essentially, no place in the world where women are as liberated as in the U.S., how is the study of family structures elsewhere a guide to further female emancipation? Naturally, these questions are not meant to imply that Nussbaum does not have answers. Rather, the *prima facie* implausibility of the exercise merely suggests how thoroughly manipulated the 'study' of these foreign practices will have to be in order to achieve the normative goals at hand. This implausibility is further evidence that the education is very idealized, very divorced from political reality.

The political reality is that not all values are shared, including liberalism especially. If it were a sufficient criticism of an attitude that it is geographically localized, then the liberal attitude, and *a fortiori* the cosmopolitan attitude, would immediately count as local and non-essential. The education recommended here is only possible for liberals, in liberal states, and would begin to appeal only to them. *Something* about these states, then, something local and not widely shared, must be non-contingently associated with the openness that makes such an education possible. If we eliminated everything that is not neutral between this society and all others, we would surely eliminate cosmopolitanism as well. In other words, the education Nussbaum recommends could easily backfire, even or especially with respect to her gender equality goals.

In general, the learning objective is impossible given the existence of non-cosmopolitan cultures. For instance, suppose a student is made to study the culture of ISIS or another fundamentalist religious group: can the teacher insist that the student come away with the opinion that the persons studied simply share the same aims, aspirations, and values? To insist on that conclusion would either mean misrepresenting these things or forcing the student to form new aims, aspirations, and values. If students are to learn "*enough*…to recognize common aims, aspirations, and values," the assumption must be that learning *enough* produces the desired degree of comfort and familiarity, that if we learn enough about a thing, it will no longer appear strange. But in this case, that could only mean becoming a fundamentalist and rejecting the cosmopolitan opinion. The student must either notice that some of the "strangers" do not share the cosmopolitan worldview and conclude that there are important differences, or the student must be blind to the most important difference that separates him or her from others. The latter would be closer to self-forgetting than self-awareness.

To break out of the cognitive dissonance, students will need to discover an identity that can embrace these various moments. Perhaps students are permitted to hold their particular identities under the condition that they see these as contingent and subordinate aspects of themselves, eliminable at any time. Pierre Manent describes this solution as common in liberal states today:

> Since every *significant* collective difference puts human unity in dangers, one must render every difference *insignificant.* Thus, aspects of the most barbarous past become elements of an infinitely respectable 'culture,' since the only truly evil thing today is to think and act according to the idea that one form of life is better than another. To summarize our condition and conviction: the only blameworthy human conduct for us is what used to be called 'conversion.' In this way, our extreme democracy, enjoining absolute respect for 'identities,' joins hands with the fundamentalisms that punish apostasy with death. There is no longer any legitimate transformation or change of mind, because no one preference is more legitimate than any other. Under a flashing neon sign proclaiming 'human unity,' contemporary Europeans would have humanity arrest all intellectual or spiritual movement in order to conduct a continual, interminable liturgy of self-adoration (Manent 2007, 7-8).

Manent here identifies several threads of Nussbaum's education and their problems. First, students learn about world culture in order to learn the insignificance of differences between what otherwise might be considered more and less civilized or respectable forms of culture – though it is not a matter of rational certainty that such learning improves rather than corrupts perception and comprehension. Second, students learn that to take a difference in orientation seriously, to convert to a vision of the good without contingency, is a sin – though this is a strangely hegemonic and inquisitional position for a doctrine of liberation. Third, in order that this hegemony go unchallenged, students must learn that all matters of significance are fully determined in advance - though it is difficult to see why one should speak of "education" in this context as opposed to liturgy or worship.

If the above analysis is at all fair, the education no longer recommends itself as a rational process of self-illumination. If the content of the education is that all human social practices are

of equal value or arbitrarily constructed or ultimately expressive of common ends that are known, then the education involves teaching what is not known scientifically or even rationally. Since none of these theses are demonstrably true, they could at best be insisted on. In a very general and basic sense, the pedagogic goal adopted here is too ideological to be consistent with an education in scientific or rational thinking. Social science being as incomplete as it is, a truly scientific exploration of any significant range of world culture and history cannot be guaranteed to lead students to a particular opinion, especially such a massively general one. If the justification of such a program is rational self-awareness, the curriculum must respond rationally to what can and cannot be proven at a given time. Otherwise we would have indoctrination masquerading as rational education.

For these reasons, it is not likely that students can be taught to "recognize" how similar everyone is without engaging in distortions, obfuscations, or at least tendentious presentations. It is not possible to teach the second learning objective rationally even in principle. This objective is that students "must…be eager to understand humanity in all its strange guises." To teach someone to be eager about a thing requires either persuading them that this thing is instrumentally or intrinsically valuable for them, or that one intends to reward them for how well they accomplish this thing, or it is a matter of "entrancing" them with colorful idols. The last is what Nussbaum blames in patriotism, the antecedent is like dog-training; the former is either ethics or theology, both of which would require a distinct curriculum devoted to the demonstration that God demands, nature rewards, or morality requires such eagerness. Of course, if all Nussbaum means is that the teachers of this curriculum will wish to create enthusiasm just all teachers do, then the eagerness depends simply on whether there is in fact some joy to be had in the discovery proposed. The difficulty here is that one wishes the students to make the same

discovery in every lesson, and it may occur to the brighter ones that the discovery in question is the discovery that the world holds nothing new for them to discover, only their own opinions wherever they look.

Nationalist Indoctrination

One problem with indoctrination is that it is not compatible with liberal politics, which is a strike against Nussbaum's claim (echoed by many cosmopolitans) that cosmopolitan agendas are entailed by liberal commitments. The fact that Nussbaum organizes the curriculum around the discovery of humanity's common ends identified in advance suggests that the curriculum teaches the ends of human life rather than the data available to human observation. This shift is extremely noteworthy since it has been the traditional view of the liberal state that it abstains from proclaiming, and certainly from inculcating, the ends of life, from explicitly teaching its citizens to take a particular view of the human good. If, then, Nussbaum means what she implies here, the education she recommends is not properly described merely as the extension or perfection of liberal practices. If the cosmopolitan education is an education in the human good, with an ordained outcome that replaces whatever values students enter with, then this education is much more like a state religion than anything that the liberal state, or at least the American state, has yet undertaken. To propose such an education is to propose a very great change in the self-understanding of the liberal state and its citizens. It also might seem ironic to call such an education cosmopolitan, at least to the extent that this term stands in contrast with patriotism. For the state that educates its citizens in the human good presumably distinguishes between the educated citizen and the alien more deeply than states that leave such matters to the private sphere. The liberal state as it stands might claim to be cosmopolitan in comparison to the patriotic education Nussbaum proposes here.

In fact, Nussbaum's proposed education sounds very much like the education endorsed by David Miller, a liberal *nationalist.* Miller argues that, after "an explicit public debate," Britain should reach a new "constitutional settlement" that replaces all of its former compromises and institutional ambiguities (Miller 1995, 179). And Britain should then use "civic education as a means of transmitting the redefined and constitutionally embodied national identity to the incoming generation" (ibid). For the content of this education, Miller endorses a proposal to give "central place to the development of freedom and democracy in Britain and…to instil in pupils the attitudes of mind that support such achievements" (181n). These attitudes are, "respect for people of other cultures and from other backgrounds; an informed curiosity about the wider world; an understanding of how rights and liberties develop and how they may be threatened; some comprehension of what individual can do within society and under the rule of law" (ibid). To be fair, Miller's education and Nussbaum's would diverge at some points, with Miller emphasizing the history of the nation's development, but the spirit of both is very much the same. One of the main reasons Britain must create such an education is in order to "adapt to new circumstances, especially to increasing cultural pluralism" (179). And the purpose of making the education requisite and public is so that "schools can act as a counterweight to the cultural environment of the family" (ibid). Cosmopolitanism and liberal nationalism are more alike than distinct in their goals for state education.

Teaching the ends of life while manipulating and distorting or at least tendentiously presenting the empirical data is indoctrination and indoctrinating while claiming to be educating students along the one rational path of thought is a recipe for significant disciplinary issues. What is to be done with students who think of exceptions, who find the argument strained or the evidence uncertain? If my argument is right so far, there is nothing that is not circular or

question-begging to say in reply to them. The arbitrariness of the teaching makes the *enforcement* of the education, or rather indoctrination, a legitimate concern. And if the education is so radical that it distinguishes those who are ignorant of themselves from those who are wise, must it not be imposed on all? The deeper the state education reaches into those it controls, the less it can afford to leave others unexposed. For Nussbaum has promised that the cosmopolitan education can replace the unity Rorty requires from patriotism. But it will be impossible to maintain unity between those who have been educated by the cosmopolitan state and those who, unenlightened as to the moral truth, remain morally blind. Private schooling is not compatible with an education that is so essential to civic life, especially when it is an education that is not self-evident or easily taught, which overturns all other possible moral teachings, and which directly attacks alternative sources of moral authority. The education Nussbaum proposes will have to be both compulsory and learned under compulsion.

Criticism without Limits

The cosmopolitan education may involve encroachments, at least, on traditional liberal separations and limitations on state action, but the question is whether "liberalism" is limited in this way intrinsically, being a theory of government, or not, being a theory of morality whose implications we learn over time. In Nussbaum's view, liberals are committed to the kind of self-examination that her educational plan involves constant interrogation of the given and the traditional and the allegedly 'normal' in the name of the rationally chosen, truly neutral, and equal. In this manner, Nussbaum's analysis of patriotism as an obstacle to perpetual liberation joins hands with that of liberalism's critics. Alasdair MacIntyre agrees that liberalism is incapable of considering patriotism to be a virtue, and for essentially the same reasons:

> The liberal answer is clear: such abstraction and detachment are defensible, because it is a necessary condition of moral freedom, of emancipation from the bondage of the social,

> political, and economic status quo. For unless I can stand back from every and any feature of that status quo…I will be unable to view it critically and to decide for myself what stance it is rational and right for me to adopt towards it…It is of the essence of the morality of liberalism that no limitations are or can be set upon the criticism of the social status quo. No institution, no practice, no loyalty can be immune from being put in question and perhaps rejected. Conversely, the morality of patriotism is one which precisely because it is framed in terms of the membership of some particular social community with some particular social, political, and economic structure, must exempt at least some fundamental structures of that community's life from criticism. Because patriotism has to be a loyalty that is in some respects unconditional, so in just those respects rational criticism is ruled out (MacIntyre 2003, 294).

Compare Nussbaum:

> One of the greatest barriers to rational deliberation in politics is the unexamined feeling that one's preferences and ways are neutral and natural. An education that takes national boundaries as morally salient too often reinforces this kind of irrationality, by lending to what is an accident of history a false air of moral weight and glory…If we want to understand our own history and our choices…we are helped immeasurably by looking around the world…If we do not undertake this kind of educational project, we risk assuming that the options familiar to us are the only ones there are, and that they are somehow 'normal' and 'natural' for all humans. Much the same can be said about conceptions of gender and sexuality, about conceptions of work and its divisions, about schemes of property holding, or about the treatment of children and the aged…any intelligent deliberation about ecology – as, also, about the food supply and population – requires global planning, global knowledge, and the recognition of a shared future (Nussbaum and Cohen 1996, 11-12).

Just as MacIntyre asserts, Nussbaum's standard is the eradication of the unchosen, and she insists on removing barriers that prevent any subject become fixed in such a way that it is considered 'normal' or taken to be 'natural' as opposed to a historical choice that is open to revision. MacIntyre speaks of social, political, and economic structures that tend to ossify into fundamental structures – what Rawls called the 'background structures,' and there find shelter from the full scrutiny of reason. Likewise, Nussbaum speaks of the possibility of new social structures (family, gender, sexuality, children and the aged), economic structures (work, property), and political structures (global planning, global knowledge, a shared future). The educational project *is enabled* to critique these structures by removing "the greatest barriers,"

namely, the idea that "national boundaries are morally salient," or that patriotism is a virtue. The project also *enables* the critique of national boundaries or the idea that patriotism is a virtue. The cosmopolitan education is recommended because it furthers the liberal goal of rendering every piety scrutable to critique.

The problem with infinite impiety, as a society, is that something must continue to hold the society together, and it is not clear that this something is capable of being perfectly rational. This is not so much to say that all social life requires outright *lies,* unless one equates all pieties and etiquette as lying insincerity. Diogenes the Cynic, in fact, was a brutalist in this fashion and refused all pieties, but his behaviors suggest that his concept of sincerity was a bit rigorous for a social life we would in fact choose. For instance, "Behaving indecently in public, he wished 'it were as easy to banish hunger by rubbing the belly'" (Laertius 1925). This is the sort of behavior most women would like less of in the modern world, not more. Assuming that we do require a certain 'status quo' to maintain the harmony of social life, we require some realms to remain unexamined and even veiled.

More to the point, we face here the long-standing question of whether the very critical stance itself requires presuppositions of some kind. If this education ends up removing the principles, whatever they are, that liberals share in distinction from illiberals, whoever *they* are, then we would presumably end up educating students to feel comfortable with practices that may not be compatible with liberal order. For all we know, at any rate, their new attitudes would be indifference to, and therefore subversive of, the preconditions of liberalism and of their new education itself. If we have here the "full liberal theory of the state," Roger Scruton writes, we can expect problems:

> This is not to say that the full liberal theory of the state does not, in some sense, *describe* the society of the future. It prognosticates the death of political order, by its very ability

> to evaporate into abstract nothingness the prejudices upon which society depends. The result of this, I believe, will not be the birth of the liberal polity, but its final extinction. For as prejudice dwindles, tolerance is left unguarded by conviction, and falls prey to the ever-vigilant schemes of the fanatic (Scuton 2003).

It is, Scruton fears, only a kind of pious habit in most citizens that keeps them the protectors of free speech and other "sacred" rights no matter how much they dislike a present use of them.

In other words, the danger of this view is that liberalism in this mode seems to turn against itself. This self-undermining could take an even more radically nihilistic form if thought through by unstable types. If the only way to eradicate patriotism is to eradicate every sense that "we" do something right or well, and if what we do well is cosmopolitanism, why not also eradicate this eradication? Why not erase the eraser? Once educated, the cosmopolitan identity too is an identity, a suspicious heritage, an unexamined practice. Instead of being blank slates at last, we will be peculiar and prejudiced by the fact that we in particular are blank. The opposite opinion must inevitably arise: to destroy the sense that there is something right with our cosmopolitan education, to avoid this last moment of privilege, we must attack it in turn. The student of Nussbaum's student will write, "Beware! You are blinded by cosmopolitanism to the perfectly innocent "way" of patriotism!" To have no ways at all is also a way; what is to be done?

But assuming that such reactionary outbursts will be rare, the problem that remains is whether 'self-examination' can be performed incessantly and intransigently, not by an individual, but by a society, with healthy results. It is to pieties that we turn when partisan flames ignite, patriotic pieties that unite, but the cosmopolitan project seems prepared to cast such extinguishers into the fire. As MacIntyre inquires, "For suppose the bonds of patriotism to be dissolved: would liberal morality be able to provide anything adequately substantial in its place" (MacIntyre 2003, 297)? We must consider what liberals can do "when destructive conflicts of

interest threaten" to undermine the terms of association (298). Other than impose order by force, we can only "appeal to the neutral, impartial, and impersonal standards of liberal morality" (ibid). But what is our motivation to abide by these standards precisely when it is not in our interest to do so, precisely when "appeals to reciprocity in interests has broken down" (ibid)? In the eyes of MacIntyre, "liberal morality is a permanent source of moral danger because of the way it renders our social and moral ties too open to dissolution by rational criticism" (299). The cosmopolitan critique of patriotism poses the danger of a moral extremism that undercuts the motivation to act morally toward anyone in particular, or especially toward those with whom an impartial moral accord is especially necessary. Fellow citizens sometimes disagree; take away the "fellow citizens" and what remains?

Democracies without Peoples

But if we recognize a danger in cosmopolitanism, that it may foster indifference to others in general as well as weaken the social bond, can we can identify reasons why our moral deliberations might take notice of borders? Nussbaum notices, fairly, that it is our practice to deliberate without discrimination domestically as much as possible and then suddenly draw a line at the border, and she asks why:

> In Richard Rorty's and Sheldon Hackney's eloquent appeals to shared values, there is something that makes me very uneasy. They seem to argue effectively when they insist on the centrality to democratic deliberation of certain values that bind all citizens together. But why should these values, which instruct us to join hands across boundaries of ethnicity, class, gender, and race, lose steam when they get to the borders of the nation (Nussbaum and Cohen 1996, 14)?

Nussbaum's point is clear and well-taken; there is a real awkwardness in combining the liberal commitment to overcoming barriers with the maintenance of strong distinctions between us and them. However, the straightforward, if not entirely clear or satisfying, answer is that the act of deliberation is defined by a border: it is only *we* who are deliberating; the deliberation is

performed by and for "us." As Pierre Manent puts it pointedly, forgetting these points "detaches democracy from every real people and constructs a *kratos* without a *demos*" (Manent 2007, 7). We cannot empower local people to make decisions concerning what affects themselves while *completely* denying them the right to decide concerning what "themselves" means. As Montesquieu explains, in a democracy, "it is as important…to regulate how, by whom, for whom, and on what issues votes should be cast, as it is in a monarchy to know the monarch and how he should govern" (Montesquieu et al. 1989, 11). In the absence of clear regulation of these issues, the will of the people remains subject to continuing debate and potentially to manipulation.

At some level, the people who deliberate for themselves must take the moral perspective appropriate to a solo deliberator, aware of being unique. When I deliberate for myself, I also draw a distinction at my border; I consider it my duty not to deliberate too much for anyone else and my right to give special weight to my interests and perspective. My sense of fair political deliberation, as informed by liberal and even Kantian principles, includes a very strong sense that I am not exchangeable with anyone else, that my particular perspective matters. My very ability to transcend that perspective toward impartiality rests on the strong awareness that doing so is not strictly possible. This is not to repeat the anti-rationalist principle that "truth" is oppressive; I am making the opposite, pro-rationalist point. If I believed that it was the case that I could, by myself as a single deliberator, know the true needs and deserts of each person, then I would have no reason to exercise skepticism about my own perspective. Instead of being tolerant, I would be arrogant. It is precisely because liberals believe in the limits of any one person's wisdom, what Rawls called the "burdens of judgment," that liberals seek to preserve plurality and individual freedom (Rawls 1993). The assumption is that, when I deliberate, I must constantly remember

that I see things from a certain point of view, and while I seek the truth, I must make allowances for the possibility that others see things differently.

It is this liberal attitude that gets lost when we fail to recognize the borders of the collective deliberation. If we presume to deliberate as though we were not a specific group, we will merely end up blind to the ways in which our specificity motivates our decisions. Seeing ourselves as representatives of universal humanity, we might take offense and seek revenge in the name of universal humanity; claiming to deliberate for the interests of others, we may pursue our own interests with only greater indifference to their attempts to protest. Nussbaum briefly notes these very points but fails to connect them together. After praising the Stoic conception of the world as a "single body" (Nussbaum and Cohen 1996, 10), she cautions, "The organic model could, of course, be abused – if, for example, it was taken to deny the fundamental importance of the separateness of people and of fundamental personal liberties. Stoics were not always sufficiently attentive to these values and to their political salience; in that sense, their thought is not always a good basis for a scheme of democratic deliberation and education" (10). I am cautioning that this is exactly what has happened in Nussbaum's thought. Just as good democrats must remember the separateness of the citizens in the democracy, so they must also remember their collective separateness from the rest of the world. They are *not* citizens of the world, and the world is not a citizen of them. To claim the right of everyone to decide affairs everywhere globally, limited by "no mere form of government, no temporal power" (7), is no more liberal than to claim a right to decide the affairs of everyone's personal life or to replace Westphalian moderation with a return to imperial religions.

Values without Nations

However, these replies do not get to the heart of Nussbaum's concern, which in fact connects to our original question about the rational basis of her education. To repeat, Nussbaum concedes to Rorty and Sheldon, "They seem to argue effectively when they insist on the centrality to democratic deliberation of certain values that bind all citizens together" (14). In other words, Nussbaum agrees that our political life depends upon the shared values that liberal citizens generally do possess in common. These values, "which instruct us to join hands across boundaries of ethnicity, class, gender, and race," are the values of human equality of course. They are the values by which "we say that respect should be accorded to humanity as such" (15); they are what we affirm, "if we really do believe that all human beings are created equal and endowed with certain inalienable rights" (13). Now that we have seen that Nussbaum's education is focused on the critical and progressive potential of domestic politics rather than, say, international goals, we can see that Nussbaum is worried about the strength of these values and commitments. She is not so much arguing that these values imply cosmopolitanism; she is arguing that cosmopolitanism is going to be a necessary supplement to the support of left-liberalism. What worries Nussbaum about permitting ourselves to acknowledge the moral salience of borders is that doing so calls into question domestic equality. "By conceding that a morally arbitrary boundary such as the boundary of the nation has a deep and formative role in our deliberations, we seem to deprive ourselves of any principled way of persuading citizens that they should *in fact* join hands across these other barriers…I think, in short, that we undercut the very case for multicultural respect *within* a nation by failing to make central to education a broader world respect" (14, my emphasis). The case for multicultural respect within a nation is Nussbaum's primary concern at the end of the day. This case rests on the values listed above,

and we see now that these values are contingent and hypothetically placed in our hearts. *If we really believe* them, then we extend them. Nussbaum is arguing, I think, that we must extend our values in order to convince ourselves that we really believe them. There is, in short, no rational argument for our values, as Rorty has argued in his works (Rorty 1989), so we require an irrational argument, one that proceeds backwards, a rationalization. Like all faiths, the democratic or liberal faith must be tested and proved by our willingness to act on it. If we allow someone to say "patriotism" or "nation," if we display the least suspicion that there are "others" out there who are not like us, then we betray a weakness of faith or even a heresy. The way Nussbaum sees it, "the defense of shared national values (in America) …requires appealing to certain basic features of human personhood that obviously also transcend national boundaries," so if we then turn around and take those boundaries seriously, we undercut the defense (Nussbaum and Cohen 1996, 14-15). If we tell our children to take those boundaries seriously, "we are tacitly giving them the message that we don't really mean what we say" (15). American patriotism is incoherent, in other words. The obvious strategy for 'bringing all Americans together' cannot work because it simultaneously tells Americans that they are really from worlds far apart.

Early on her essay, Nussbaum quotes "the cosmopolitan Hindu landlord Nikhil" from Tagore's novel, who says, "I am willing…to serve my country; but my worship I reserve for Right which is far greater than my country. To worship my country as a god is to bring a curse upon it" (3). And later she recommends to us, in her own name, "to give our first allegiance to what is morally good" (5). It is difficult indeed to refuse this demand or ever to ask the idealist to compromise with evil, and a full defense of when and where one must do so lies beyond the scope of the present inquiry. Traditionally, however, *liberal* politics, as much as or more than

many other forms, requires an even greater moderation. The landlord in this scene is presented as cool and moderate compared to the nationalistic movement around him, and that could easily be the correct comparison in this case, but his assertion that he worships the right above his country is potentially a form of extremism as well. Nussbaum's conception of right, as we have seen, can be read as making an idol of her country as well, or of a tendency in her country's values to idolize the autonomous self. In doing so, she permits her conception to govern all aspects of life, yet it is not so well-grounded in reason that it can count on persuading every rational mind. This is precisely the sort of situation in which liberal politics suggests caution and compromise. It is good that "who we are" is a tolerant and temperate people committed to human rights, but we may risk that tolerance and temperance, and even that commitment, if we insist that we are every and anyone.

Conclusion

Nussbaum offers cosmopolitanism as a pure and rational alternative to either patriotism multiculturalism. In effect, however, her position is a blend of both. She actually depends upon patriotic sentiments, at least of the kind that Americans or liberals feel, in order to motivate her argument. This motivation fails because Americans or liberals are in fact torn, so merely pointing out the contradiction between their universalism and particularism does not show them which way to go. She cannot insist on her direction because she does not really ground her ideals in pure philosophy, whether Kantian or Stoic, but in pre-existing liberal identities. And her critique of patriotism relies on something like a bait-and-switch tactic: at first cosmopolitanism is offered as a serene rejection of all local passions and identities (in the light of which patriotism is bad because it turns into nationalism which turns into ever more local forms of prejudice), and then cosmopolitanism is offered as the warm embrace of all local passions and identities (in the light

of which patriotism is bad because it stands in the way of other forms of group identity). The alleged alternative of cosmopolitanism thus becomes more and more similar to the radical multiculturalism she claims to avoid.

But by asking liberals to be what they are, as she interprets them, Nussbaum makes what is actually a nationalist argument in disguise. Consequently, her compulsory education is like a nationalist education in a certain liberal mythology, rather than a rational education. This national education in anti-patriotism is paradoxical and potentially self-undermining as the required curriculum of a state. Ironically, on closer inspection, her argument is not that Americans must live up to their universalist faith; rather, she seems to believe that only a radical determination to live up to this faith can make the faith take hold. Americans are not obliged to become cosmopolitans because of what they already believe so much as because of what they do not yet believe. The state, which allegedly has no value, must teach them to be indifferent to all ways of life.

If the above criticisms have force, liberals need a defense of patriotism and the nation-state in order to protect liberalism against its own self-annihilating tendencies. However, it remains to be seen whether such a defense is possible. After all, cosmopolitans like Nussbaum and conservatives like MacIntyre *agree* that liberalism tends to rule out patriotic virtues and national allegiances in the name of universalism. In reading Rawls, it appeared that these critics might be correct. Furthermore, we see again that compromising liberalism with nationalism, however prudent in some regards, could force us to make compromises that are truly threatening to liberal ideals. For help, we turn, now, to so-called "liberal nationalists" such as David Miller, who attempt to respond to the cosmopolitan challenge by reconciling universal rights with the special privileges of states and nations. Can Miller explain more clearly how liberals can

reconcile themselves to, or even affirm, their particular political loyalties without sacrificing their moral intuitions?

CHAPTER 4: LIBERAL NATIONS

David Miller has done as much as any English writer in recent years to argue that liberals can and should value national identities and the commitments they encourage. In two book-length treatments, *On Nationality* (Miller 1995) and *National Responsibility and Global Justice* (Miller 2007), he has defended liberalism against cosmopolitanism and radical multiculturalism by defending the ethical value of national obligations.[55] Miller reminds us, "People value the rich cultural inheritance that membership of a nation can bring them…The idea that they should regard their nationality merely as a historic accident, an identity to be sloughed off in favour of humanity at large, carries little appeal" (Miller 1995, 184). But Miller goes further than this, seeking to validate significant distinctions between the justice owed to compatriots and to others. In his view, "In acknowledging a national identity, I am also acknowledging that I owe special obligations to fellow members of my nation which I do not owe to other human beings" (49). In addition to affirming national identity for its own sake, Miller believes liberals should use national loyalties to sustain their commitment to welfarism against the threats of the global economy and to sustain unique cultural identities against the multiculturalist attack on liberal neutrality and the homogeneous 'culture' of the global market. His books have been singularly influential and represent one of the strongest going accounts of liberal nationalism.[56]

It is because Miller intends to take a strong position that he is particularly interesting. For comparison, we might consider Bernard Yack's very thoughtful *Nationalism and the Moral Psychology of Community* (Yack 2012). In an illuminating debate between these two theorists,

[55] I focus almost exclusively on Miller's earlier work *On Nationality* (Miller 1995), in which he presents his view of what nationality consists in..

[56] I do not mean to claim that no other works are equally valuable. There are several impressive liberal nationalists, and it is a matter of convenience to focus on one at a time. See, for example, (Canovan 1996, Tamir 1993, Yack 2012). If the present study succeeds, then we can see whether the results extend to other theories.

Miller comments on Yack's book as follows: "Unlike liberal cosmopolitans, for instance, Yack accept (sic) the value of belonging to a national community…Nevertheless Yack is worried about nationalism…Can one then be both a nationalist and a liberal? …That's the main challenge that Yack's book poses for people like me" (Hearn 2014, 402). I intend to raise the same question, so I focus on Miller's attempt to sustain this synthesis. In Miller's own view, Yack's book "comes close to being an internal critique" of the theory of liberal nationalism (402), and my own criticism may overlap with Yack's in some cases.[57] Their views overlap, indeed, on some issues, but on the point that I find most important, Yack does disagree with Miller. This point concerns the extent to which national identity is a constraint upon individual choice. Yack concedes that he takes a more optimistic view of this opposition.

> The other major point made by Professor Miller focuses on national loyalty and belonging. Here he seems to suggest that I am making things too easy for liberals, rather than too hard. He argues that I am making national belonging too loose, too subject to picking and choosing among the elements that make up the cultural heritage that defines a nation. On this point, we do indeed differ, since I make a considerable effort to show that a sense of national community is not nearly as constraining as it ordinarily is thought to be (409).

In comparison to Yack, then, Miller emerges as the more conservative or nationalist author, the one more persuaded that nationality is a severe challenge for liberals, that this challenge must be faced squarely, and that it can be resolved in full awareness of its difficulties.

[57] To be fair, Yack claims to differ less from Miller than from more even more strident accounts of nationalism. "Miller is certainly right to suggest that my book raises serious questions about many of the most familiar claims made by liberal nationalists. I am not sure, however, that it is as much a challenge to his own version of liberal nationalism as he does" (408). As I explain in the introduction to the dissertation, the liberal nationalists to which Yack refers are closer in spirit to multiculturalism than to the concept of nationalism that Miller, Yack, and I have in mind. Miller and Yack are interested in the nation-state, as I am, whereas many liberal nationalists are more interested in how existing nation-states should modify their liberalism in order to accommodate the separate rights of smaller ethnic or cultural communities. In this respect, the so-called "liberal nationalists" advocate a multi-ethnic or "multi-national" state, which seems to me to be the opposite of nationalism (Kymlicka 1989, 1990, 232, Tamir 1993).

The tension between liberalism and the nation arises because national obligations appear to arise from irrational sentiments and constrain individuals to conform and contribute to a closed and unchosen form of community that excludes outsiders. Liberalism, meanwhile, is committed to personal autonomy, rationality, universality, and equality. Miller is quite sensitive to these problems. And he is even sensitive to multiculturalist demands and hopes to show that his account of the nation can satisfy (moderate) multiculturalists as well. In other words, not only does Miller seek to preserve liberalism, he may even seek to deepen or strengthen the openness and inclusiveness of liberalism as it is practiced within Western states today. If anything, his nationalism stands to the left of liberalism on both economic and cultural dimensions. This fact helps to explain his appeal to nationalism as a supplement to liberalism, but it also makes the distance between his nationalism and more conservative accounts of the nation starker. In other words, Miller's liberal (and socialist and multicultural) goals and his national goals represent potentially competing ambitions.

Given this agenda, the question Miller's work raises, most simply, is whether he can be these two things at once: a liberal and a nationalist. It is crucial to Miller's project that, though his principle of nationality will diverge from liberal theories "over certain practical issues" (Miller 1995, 193), "It does not follow…that nationality is an essentially illiberal idea" (195). The project of Miller's book is to provide a nationalist foundation for liberalism that requires only minor adjustments to liberal theory. "Embracing the principle, we may still want to be liberals (or social democrats, or socialists…) but our assumptions have shifted" (195). So, if he is right, then being nationalists will not force us to cede any significant liberal ground. And we can add, conversely, being liberals will not force us to give up any important part of national ground. In other words, there are two ways of stating his claim, and therefore two ways of assessing it. In

the following two chapters, I will assess his claim from both sides, in the following order. First, in the present chapter, I ask whether the commitment to liberalism permits Miller to give a meaningful account of national identity. In the following chapter, I ask whether the commitment to nationality permits Miller to maintain a full commitment to liberal principles. I will argue that his argument fails from both directions. He is too liberal to make sense of national loyalties, but he is also much more of a nationalist than is safe for liberalism.

In what immediately follows, then, I will argue that Miller's liberalism prevents him from providing any coherent concept of what a nation is – of who belongs to one and why. By making the concept of the nation congenial to liberals, the nation becomes an empty concept that cannot do the ethical work Miller wants it to do. Despite his no doubt sincere belief that nations are valuable, he is forced, by his commitment to liberalism, to thin the concept of nationality to the vanishing point and to loosen the bonds of allegiance until we are left free and equal again. By showing these things, I will also be showing that Miller *does not really believe in nations.* He values them without thinking them real. He is therefore offering a myth about nations and, ultimately, I believe he uses this novel account of national identity strategically, as an alternative method for pursuing cosmopolitan, egalitarian, and multicultural goals. Even in Miller's case, liberal nationalism turns out to be the nationalism of someone for whom nations are worth *pretending* to believe in, but only if everyone agrees that it is only make-believe.

I establish the character of Miller's concept of national identity in three initial sections. These show that he understands nationality as voluntary, individualistic, and mythical. In each case, I spell out the consequences of these conceptions for the type of obligations that he seeks to affirm. I then briefly compare his position to his critique of conservative nationalists who, he alleges, are in the same position. The way he might put the issue, as I see it, is that each side is

offering a certain myth, and he thinks his myth is superior. I therefore examine his grounds for preferring a liberal and progressive national mythology and the consequences of this preference for the stability of nations. Finally, I demonstrate that his overall theory is compromised by his commitment to anti-national agendas.

Voluntary Nationhood

Are nations real and ineluctable? And if not, can they be there for those who want them? The simplest form the nationalist argument could take would be this: nations exist, and their real existence beyond any individual's consent or wish obliges their members and others to recognize certain claims. In particular, a nationalist might say, compatriots have obligations to the nation and so to each other, and foreigners have obligations to recognize the nation's independence of them. There are three propositions, and the first is the ground of the latter two. But Miller warns us that his argument is not really linear in this manner.

> I want to stress that the three propositions I have outlined – about national identity, about bounded duties and about political self-determination – are linked together in such a way that it is difficult to feel the force of any one of them without acknowledging the others. It is not hard to see how a common identity can support both the idea of a nation as an ethical community and the claim to self-determination, but what is more subtle…is the way in which the political claim can reinforce both the claim about identity and the ethical claim…This interlinking of propositions may at times seem circular; and the fact that the case for nationality *cannot* be spelt out in linear form may make us suspicious of it. But I believe that, if we are to understand the power of nationality as an idea in the modern world – the appeal of national identity to the modern self – we must try to understand its inner logic (12, my emphasis).

The argument is circular. On the one hand, we are to give nations institutions of their own because nations really exist and provide their members with special duties to one another. But one of the reasons that we should believe that nations really exist and have special duties is the fact that nations do or could have institutions of their own. We are left without a clear answer as to which is prior. *Do the institutions create the identities and the duties, or do the identities and*

the duties require the institutions? A statist – someone like Rawls, for instance, who derives relevant political duties from existing legitimate institutions – says the former, a nationalist says the latter, and Miller seems to want it both ways.

This circularity renders ambiguous Miller's purpose. He seems to be making a normative argument ("properly," "legitimate," "duties we owe," "a proper account of ethics," "a good claim," "ought to be"), and that is why it must trouble us that the argument has circular foundations. But Miller tries to repair the damage by offering an alternative purpose: "to understand the power of nationality as an idea in the modern world – the appeal of national identity to the modern self" (11, 12). But this alternate purpose suggests that he is a critical interpreter of the "circular…inner logic" of nationality (12). It is one thing to claim that we can understand nationalism better if we see the type of confusion it involves, and it is an entirely different thing to claim that we are "not simply the victim of error" when we think of ourselves as loyal nationalists, that we are saying nothing "irrelevant and bizarre" when we explain our political ideas in terms of such identities, and that we nationalists have "a legitimate way of understanding" (10, 11). By suggesting that he will do both at once, making a "hard" and "more subtle" type of argument (12), Miller suggests that he will defend and critique nationality simultaneously. We are certainly permitted to be "suspicious" of this approach (12). In particular, we should suspect that Miller does not really believe in nations.

And, if we look closely, he never says that he does. What he in fact says is that believing in nations is permissible whether or not they are real.

> The first (proposition) concerns national identity, and claims that it may properly be part of someone's identity that they belong to this or that national grouping. This claim subdivides into two: that nations really exist, i.e., they are not purely fictitious entities, so that someone who believes that they belong to one is not simply the victim of error, and that, in making our nationality an essential part of our identity, we are not doing something that is rationally indefensible… (10-11).

Let us try to get clear what Miller claims. First of all, his claim concerns national identity more than it concerns nations – he puts the emphasis on defending a person who happens to affirm a national identity. But such a person necessarily claims, in that case, that a nation exists. So, one part of the claim is "that nations really exist, i.e., they are not purely fictitious entities" (10). If they were purely fictitious, a person who believed in them would be "the victim of error" and doing something "rationally indefensible" (10). But a nation is bigger than one person, and if it exists, then there are many people who *really are* part of the nation. In that case, if the nation really exists, then it should be "rationally *required"* to acknowledge this fact. Rationality is nothing unless it obliges the mind. Yet Miller says he is not claiming that corollary.

> This proposition is a fairly modest one: it does not say that we are rationally *required* to make our nationality a constitutive part of our personal identity, or that having a national identity excludes having collective identities of other kinds. Nor does it say that a person's national allegiances must always have a single object: it does not exclude a person's identifying herself as both Jamaican and British or (a different case) as both Quebecois and Canadian. It says simply that identifying with a nation, feeling yourself inextricably part of it, is a legitimate way of understanding your place in the world (11).

Nations are real, but it is rational not to believe in them. How is that possible? If two people talk to one another, one saying that the nation exists and both are members, and the other saying that the nation does not exist and neither are members, they cannot both be being rational – can they? Surely *one* of the two is a victim of error. Is not Miller claiming simultaneously that nations exist and that they do not exist?

He is much closer to saying that nations do not exist. The nation is, on his view, is an entirely subjective phenomenon. "It should be obvious right away that nations are not things that exist in the world independently of the beliefs people have about them, in the way that, say, volcanoes and elephants do" (17). We have to define nations at least partly in terms of the claims people make, for "people's own beliefs about their nationhood enter into the definition" (17). But

people can have divergent beliefs about whether they are free individuals or caught up in the same nation, so "this may be controversial inside the group as well as outside it" (17). As a result, "We can imagine two participants arguing about such a claim, one seeing individualism where the other sees co-operation, and we could see that *it would not be easy to decide who is right"* (18, my emphasis). Just as we thought, then, there can be an argument between a cosmopolitan and a nationalist, and Miller wishes to remain agnostic about who is right.

Can this work out? It would be tempting to try to rescue the proposition by making it a private belief. One person will say, "for me, the nation exists," and the other will reply, "how interesting, I do not feel that the nation exists at all." As liberals, we are accustomed to do our best to accommodate both. For one person God exists, and for another there is no God, and neither is *wrong*, we say; they just have different identities. What allows us to accommodate both? Simply this: we say that each belong to something in common (the state) that permits both to flourish. As liberals, we distinguish between state and society, public and private, and we ask these individuals to *privatize* their beliefs and treat political and public matters separately, to the extent they can (find citation). But can the same move be applied to national identity?

In short, no, for nations have no meaning as private beliefs. In Miller's view, "The first noteworthy point, acknowledged very widely among those who have thought seriously about the subject, is that national communities are constituted by belief: *nations exist when* their members recognize one another as compatriots, and believe that they share characteristics of the relevant kind" (22). Unlike potentially private beliefs, nations are "communities whose very existence depends upon mutual recognition" (23). So, for those who disagree on the existence of the nation, their disagreement is fatal to the existence of nations. If nations exist when we recognize

each other, they cease to exist when we do not recognize each other. From an outside perspective, Miller's concept of nation just evaporates.

But Miller intended "to understand nationality from the inside, to say what is involved in thinking of oneself as a member of a national community" (22). So let us ask, "what is involved in thinking of oneself as a member of a national community" (22)? A person who thinks of himself as a member of a nation believes that he recognizes and is recognized by others as a compatriot and also believes that this group of compatriots shares some set of characteristics. Believing both of these things means believing that a nation exists, the members of whom share some kind of common character. "So when I identify myself as belonging to a particular nation, I imply that those whom I include as my co-nationals share my beliefs and reciprocate my commitments" (23). In other words, thinking of oneself as a member of a nation is to be understood as making a *claim* about the beliefs and commitments of others. If I say I have a nationality identity, what I most properly say is that I claim I am not alone in my beliefs. But I could be alone: "The claim I make may be a false one" (23). From this perspective, it follows that my national identity is radically dependent upon the confirmation of others. But worse, there is nothing to confirm. Recall that people who recognize each other as compatriots "believe that they share characteristics of the relevant kind" (22). But in fact, my co-nationals "are *not* aggregates of people distinguished by their physical or cultural traits" (23, my emphasis). That part of my belief is *definitely* an illusion. So, the *only* thing that could make us compatriots is a mutual fiction. If nations only exist through mutual belief, nations do not really exist.

If we were analyzing national sentiments from the outside, we would say that the above reflections show that people who believe in nations are irrational and hold unjustifiable opinions. A moment's reflection, then, will show that no one is capable of thinking of his or her identity in

this manner. That is, surely the view Miller has just described does *not* describe the feelings and beliefs of a person who affirms a national identity. From the inside, the nationalist believes that he or she shares a distinct set of characteristics, of physical or cultural traits. And, unless shown otherwise, the nationalist believes that others do and must recognize the common nationality that is shared. In short, "I may see myself as belonging to a distinct…nation" (23). It cannot, then, be part of my view that "I am simply mistaken" (23). How could I even be open to that view while I remain convinced of my national identity? Either I believe I have a national identity, or I believe that I do not; I cannot believe that I have a national identity *if it pleases others to think so.* And I cannot believe that I share a distinct set of national characteristics while also believing that, in fact, the only thing I share with others is a common fiction about our national characteristics.

Consequences

How could a mutual fiction, from which anyone may dissent, ground ethical duties? Miller is arguing, after all, that national identity *is* and *should be* of public consequence. "There needs to be an explicit public debate about the character of national identity" (179), Miller will argue. Nations inform "people's willingness to give up their lives for their country" as well as establish "obligations to provide welfare" to compatriots (68-9). The nation, he will argue, is "an ethical community" that establishes members' obligations (23), and it also establishes the duty of non-members to recognize the independence of nations (11). But these propositions – Propositions Two and Three – are absurd if we are committed to agnosticism over whether a given nation exists.

Consider Proposition Two, which tells us that the national identity is a source of knowledge about what our duties to compatriots are. Obviously, these mutual obligations cannot be a matter of private beliefs, for they only exist in public – Miller will call them parts of a

public culture. But Miller must now explain who is obliged by this public culture. Can my obligation depend upon my *choice* to identify with and believe in the nation? Miller simply takes for granted that everyone concerned knows they are part of the nation, and he insists that we members are obliged by the national will.

> … although … we cannot derive the obligations of nationality simply from reflection on what it means for a group of people to constitute a nation in the first place, we should not exaggerate the significance of this point. It certainly does not mean that my obligations *qua* member of nation A are merely whatever I take them to be. The culture in question is a public phenomenon: any one individual may interpret it *rightly or wrongly*, and draw *correct or incorrect* conclusions about his obligations to compatriots as a result (69, my emphasis).

But am I a member of nation A? Is the culture in question, however public, of any concern to me? It is of course perfectly valid to insist that we can measure and know something about the structure of public opinion within a state, but in doing so we *presuppose* that we know who "the public" is. For instance, we assume that there is a British public (or nation, if we wish), we study its attitudes, and we can draw correct or incorrect conclusions about these attitudes given those assumptions. If I think of myself as part of this public (or nation), then I will be especially interested in getting the answer right. And if I imagine that the prevailing opinions in this public or nation are *authoritative* for me, then perhaps I will change my opinions by reading opinion polls. Quite possibly many people do just this, but *should* they?

I may equally take the view that Miller also permits us, the view that we do not have a national identity, and then the attitudes that prevail given these assumptions are less interesting. Since Miller "does not say that we are rationally *required* to make our nationality a constitutive part of our personal identity," I am not rationally required to be *correct* about British public opinion, save in so far as I wish to do something about it. From my point of view, it may be that British opinion that is incorrect about some things. Miller is free to assert, "*Because I identify*

with my family, my college, or my local community, I properly acknowledge obligations to members of these groups that are distinct from the obligations I owe to people generally" (65, my emphasis). But is he free to assert, *Because I identify* with these things, you must too? No, for the nation is only real for those who affirm it, according to Miller. The affirmations never transcend the status of private opinions. Surely it is irrational and impolite for one person to attempt to coerce another into accepting national obligations while saying, "By the way, this nation only exists in so far as both you and I identify with it." At least a religious fanatic really believes in the transcendent source of the obligations.

Miller would like to say that he is merely agnostic about the reality of nations, but such agnosticism is impossible. If it is permitted *not* to believe in nations, then the invocation of a nation carries no ethical weight in public discourse. The dissenter can listen but politely disagree. But the dissenter should not even listen. Since it is obligatory to be agnostic about one's nationality unless confirmed by others, the dissenter is right, and the nationalist is wrong, whenever the two disagree – nations becomes fictions, even for those who want them, as soon as anyone dissents. But in fact *everyone* dissents, for the ones who proclaim the nation are also obliged to know that they are invoking a fiction. The believers knowingly proclaim a unity of characteristics that they do not believe in. On this view there are *no* believers in the nation. The nation "constituted by belief" that *knows* it is constituted by belief self-destructs: there is no such nation. Now, I do not see why, on this theory, there would be anyone in the world who believes in nations. So, if there are such people, the theory does not explain them very well. And it appears that Miller's theory fails in this way because he would like to provide a theory of nationality that follows the contours of liberalism.

Nations of Individuals

Do nations have specific identities all the same? To my conclusions so far, Miller might object that I have left out part of his definition. He said, "nations exist when their members recognize one another as compatriots, and *believe that they share characteristics of the relevant kind – which characteristics are relevant will be apparent shortly*" (22). Now, Miller goes on to list and explain four additional elements that go into the identity of a national, but his is mistaken if he thinks the first three contribute any significant information. Miller tells us to think of a nation as having a history, a sense of its own authoritative activity, and an associated territory (23-4). All of that is fine, but each element presupposes that we already know what the nation is. Recall, we are looking for this community of mutual recognition. Now, how shall I recognize my fellow compatriot? Anyone may study a history book, so I will not recognize all consumers of American history as Americans. But Miller means to say that I will recognize those who likewise feel they *share* this history. But anyone can tell a story. There is a Japanese boy right now who feels he shares in American history, I am sure. The key thing is this: people who believe in a history, first of all believe in a nation. We need to know what the nation is before we can tell stories about it.

So, the only element that might offer us a clue to what these particular people have in common is Miller's claim that nations have distinctive characters. If there is something that co-nationals really have in common, then their mutual beliefs are not simply false, and they have reason to remind each other and others of their union. Indeed, despite all of the reservations against construing the nation in terms of "physical or cultural traits" (23), Miller relies on something like cultural traits to supply the unity of nations after all.

> Finally, a national identity requires that the people who share it should have something in common, a set of characteristics that in the past was often referred to as a 'national

> character', but which I prefer to describe as a common public culture. It is incompatible with nationality to think of the members of the nation as people who merely happen to have been thrown together in one place and forced to share a common fate, in the way that the occupants of a lifeboat, say, have been accidentally thrown together. There must be a sense that the people belong together by virtue of the characteristics they share. It is not so easy, however, to pin down precisely what this entails (25).

Despite noticing this necessity, Miller abstains from offering any strictly positive statement about these characteristics. Instead, he requests, "Let me at this stage at least try to guard against certain elementary errors" (25). If, however, the reader thinks that there will be some other stage of the argument in which a more serious effort "to pin down" the reason why certain people belong to one nation, the reader will be disappointed. The stage we are in is *the* chapter on national identity; there is no other place where Miller better explains what type of people belong together.[58]

Miller therefore defines the national identity that people may share only by distinguishing it from three "elementary errors" that someone might commit in explaining national unity. "One is that the shared characteristics must be based on biological descent, that our fellow-nationals must be our 'kith and kin', a view that leads directly to racism" (25).[59] Once we avoid this error, what do we put in its place? To illustrate the way in which a nation can exist without kinship,

[58] To be more precise, Miller says he will "return to look at this issue in some detail in Chapter 5" (26), and there I find a puzzle. On the one hand, Miller there asserts that national identities may well be defined by religious or ethnic ingredients "that are incompatible" with some people (121). On the other hand, Miller argues, "What must happen in general is that existing national identities must be stripped of elements that are repugnant to the self-understanding of one or more component groups, while members of these groups must themselves be willing to embrace an inclusive nationality, and in the process shed elements of *their* values" (142). So, national identities can be defined, as long as they can also be stripped of their definitions. I find this dissatisfying, ultimately, as it suggests to me the eventual erosion of national identities. But I must admit that Miller is indeed willing to defend the existing community's right to uphold its self-definition to *some* extent, at least in the short term.

[59] Miller is actually very inconsistent about avoiding this error, as we will also see below. In Chapter 5, he writes, "Although I have argued (in Chapter 2) against the assimilation of ethnic and national identities, it is important to acknowledge what they have in common. *Like nations*, ethnic groups tend to think of themselves as extended families; indeed, the belief in common descent plays an even stronger role here than it does in most national identities" (121, my emphasis). Miller is reverting to an ethnic view of nationality in this later chapter, it seems, in order to make the case that nationality must be made more inclusive. He wants to insist that nations are not ethnic in nature, in order to argue later that they are, but should cease to be, ethnic in nature.

Miller reminds us of Daniel Defoe's satire of the English nation in *The True-Born Englishman*. As Miller puts it, "Indeed, it is possible to regard ethnic mixing as the source of the nation's distinctive character, as Defoe did in his satirical description of the English" (25). Defoe indeed satirizes the English for being a mixed breed, but what Defoe puts in the place of common descent is classical liberalism, i.e. a universal ethical individualism. In other words, Defoe takes the view that the English are no nation at all prior to their political existence via the social contract.

> The nation's all a Mob, there's no such thing As Lords or Commons, Parliament or King.
> A great promiscuous crowd the hydra lies Till laws revive and mutual contract ties;
> A chaos free to choose for their own share What case of government they please to wear …
> This doctrine has the sanction of assent, From Nature's universal Parliament …
> Nor can this right be less when national; Reason, which governs one, should govern all.
> Whate'er the dialects of courts may tell, He that his right demands can ne'er rebel,
> Which right, if 'tis by governors denied, May be procured by force or foreign aid …
> (Defoe 1701, 207-8).

From Defoe's point of view, then, the English "nation" is a mere mob or agglomeration of individual bearers of rights. Crucially, these rights "may be procured by force *or foreign aid,"* for Defoe wrote the poem in defense of the foreign-born William of Orange's peaceful conquest of England in the Glorious Revolution of 1688. Defoe's poem is thus a supplement to Locke's more prosaic defense of that change, in keeping with similar principles, and similarly ignorant of the view that the nativity of the ruler has any bearing on the legitimacy of the government. Defoe manifestly would not agree with Miller's claim, "rule by foreigners is a form of oppression which may be rightly resisted" (Miller 1995, 30). Defoe is content with a foreign king because he feels that the idea of distinguishing between familiar and foreign is ludicrous, as the English are lucky enough to know.

Even luckier, perhaps, were the Americans, who adopted Defoe's view more completely than their English contemporaries. The Americans and the Australians (both descended from the English, take note) are also good models of how nations can exist without kinship.

> Indeed, it has proven possible in some instances to regard immigration itself as a formative experience, calling forth qualities of resourcefulness and mutual aid that then constitute the national character – I am thinking of the settler cultures of the New World such as the American and the Australian. To arrive with nothing and then to make good in the new society is to show that you are made of the right stuff. As everyone knows, there is nothing more illustrious for an Australian today than to have an ancestor who was carried over in chains by the First Fleet (26).

So, when he portrays nations as not bonded by descent, Miller is portraying national unity as the product of choice; i.e. by invoking liberal conceptions of national unity. The proof that nations do not have an ethnic character or imply a common descent is that English-speakers do not see themselves that way. English-speakers tend, rather, to see themselves as individuals bound only by reason, justice, and valid law; and they sail the seas in search of their pleasure or good fortune.

Consequences

We can speak of such a liberal nation, or a nation of immigrants, but it renders the nation "people who merely happen to have been thrown together in one place and forced to share a common fate, in the way that the occupants of a lifeboat, say, have been accidentally thrown together." If we think of Americans and Australians in terms of voluntary and even involuntary immigration, then the common lifeboat is a more appropriate image than the image of owing each other obligations based on being "born and raised" together. From the immigration perspective, these people do not "belong together by virtue of the characteristics that they share" (25), but because they have been thrown together by fate. They might indeed find that fact informative and even recognize each other as similar for this reason, but the implication they

might be tempted to draw is that they do not owe each other much more than neighborliness. They might prefer people like themselves, drifters, to those more tightly bound, but they remain drifters.[60]

Thus, the liberal view of the nation ruins its ethical character, for, "No one can complain if a life-boater jumps across to the first piece of wreckage that floats by, preferring to take his chances alone, whereas in a national community a case can be made out for *unconditional obligations* to other members that arise simply *by virtue of the fact that one has been born and raised* in that particular community" (42, my emphasis). Not surprisingly, then, Miller elsewhere rejects this very image of the nation, the idea that nations are motley crews of immigrants. "Of course, sometimes people do choose their nationality – for example when they emigrate with the intention of becoming American or British. But we should think of these cases as necessarily being exceptions to the general rule – you could not have national identities in a world where everyone chose their 'nation'" (43). In those times when Miller would like to argue, "states that rest on common national identities (are likely to engage in) redistributive schemes of social justice" (94), he assures us that we are bound to the nation by some terribly strong bond.

But in *those* times, America is a terrible model for his hopes for, "American national identity is strong, but the United States has been singularly reluctant to implement redistributive schemes of social justice" (94). Perhaps because it is so little united as a *nation,* in the "United States … public culture is by common consent unusually individualistic" (94). In addition to eschewing national obligations, such people are incapable of supporting a specific type of culture. Miller wants and expects nations to provide cultural goods at public expense, "to express and reproduce a common culture" (87). But American culture is the obstacle to such national

[60] I make no claim to explain the likely public attitudes prevalent in America or Australia; I am merely pointing out contradictions in Miller's account of nationality.

efforts. “Canada has managed to hold an internal balance between French and English culture, but apparently at the *cost* of allowing a dominant American culture to pervade both” (88). The national identities of some people, if they are to exist, “have to be protected against alien influences by, for instance, overriding their desire to watch American films and television programmes” (186). The sad aspect of global markets is, “The non-elite will have to put up with lowest-common-denominator mass culture exemplified by Disney, McDonalds, and Australian soap operas” (187). Is it merely a coincidence that America and Australia, *the* examples of countries who define themselves in terms of their immigrant and mixed origins, are also the worst producers of the mass culture that challenges properly national culture?

Miller’s account of nationality is torn between using America as the model of national culture and using America as the enemy of national culture. On the one hand, Miller clearly sees America as a kind of model for what national identity can be. It is his first example of a nation in which, “It seems perfectly possible for ethnicity and nationality to co-exist, neither threatening to drive out the other” (21). Its example “is a helpful one because it suggests how a common identity can evolve that is accessible to all cultural groups” (141). In particular, to the extent that British identity is in decline, “older nations like Britain have much to learn from newer nations like the United States, where nation-building as a deliberate practice has a long pedigree and as a result there exists a much clearer sense of what it means to make people into Americans” (178-9). But how could it be plausible to defend national culture, even British national culture, by recommending that Britain should learn from these “newer nations,” its own progeny, who have taken with them everything that Locke and Defoe offered and left the remaining sources of

loyalty to rot? Redefining British national identity more in keeping with the American model of cultural indifference implies the erosion, not the restoration, of British nationality.[61]

We have seen that the commitment to avoid the "error" of confusing nations with communities of descent results in a liberal view of political community in which national obligations are difficult to sustain or even imagine. The suggestion is that we can, instead, belong together because we "share a common public culture" (25), but this culture we share also appears to be a culture of individualism. Miller regards it as yet "another error…to suppose that the common public culture required for a national identity must be monolithic and all-embracing. A public culture may be seen as a set of understandings about how a group of people is to conduct its life together" (26). This is the closest Miller comes to saying what the positive content of a public culture is. What it amounts to is something like a shared ideology, "political principles such as a belief in democracy or the rule of law," plus something extra by which "it reaches more widely than this" (26). Miller offers a couple of examples, but he goes on to argue that it would be "equally wrong," i.e. another error, "to suppose that 'national character' consists in a set of features that everyone who belongs to the nation must display in equal measure" (26). As a result, whatever vague things we add to the ideology of the nation are dispensable for membership and even for thinking about what the nation is. "National identities can *remain unarticulated*, and yet still exercise a pervasive influence on people's behaviour" (27). The fact of the matter is, Miller's vision of national identity is of something that *must* remain unarticulated. It is merely the democratic faith plus an empty place. To articulate this emptiness is to commit error, and the influence the nation is meant to have on us is the direct result of this refusal to articulate it. The national identity *is* the refusal to articulate a national identity. Liberal

[61] Obviously, I am not making a proper theoretical or predictive claim of my own; I am merely demonstrating what Miller's own predictions should be if he is consistent.

national identity is a certain mythology that involves critiquing the national identity for its falsifications while continuing to pretend that it exists, as we will now see in further detail. In other words, it is certain game playing out in an ideological imaginary.

Mythical Nations

Are nations merely stories? And if so, are these stories worth believing? Miller hints several times in the passages we have already considered that nations are mythical, i.e. fake, and he eventually confirms that he takes this view. Following Benedict Anderson's famous thesis that nations are "imagined communities," Miller affirms that nations, being far too large to achieve personal familiarity with the character of co-nationals, are constituted as cultures through mass media, and are therefore "collective acts of imagining" (32). The problem is, Miller notes, that in this light the nation is "intellectually suspect," perhaps "wholly spurious," so that "we have no reason to think that the identity so defined corresponds to anything real in the world" (32). In short, "National identities are, in a strong and destructive sense, mythical" (33). Nations are dependent on "veil-drawing" that falsifies or distorts what we would learn from "dispassionate research," full of "deliberate inventions made to serve a political purpose," and "cannot survive critical reflection," being from the perspective of rationality "fraudulent" (34-5). Even the alleged content of the common public culture, then, is mere imposition or illusion. Not only are our beliefs merely subjective, rebuttable, and lacking in content; they are also false. We are not in fact united by anything, but false beliefs encouraged by partial ambitions. It seems that anyone committed to their own rationality, at least, should take this opportunity to look elsewhere for ethical guidance.

So, Miller reasonably asks, why should we treat falsehoods as providing "ethical and political" commitments (35)? To have just said that anyone who invokes the nation to inspire

duties invokes a fraud to influence others suggests we should not listen. But Miller's answer is once again circular and obscures what he has just admitted. Though the nation is nothing other than a set of myths, he suggests, "we should ask what part these myths play in building and sustaining nations" (36). What can that mean? Clearly, the myths play a very important "part" in this building and sustaining function – they are one and the same thing! The myth that there is a nation is all that there is to sustain; there is no *nation* to sustain because its existence is the myth. There is a myth sustaining a myth, nothing more. But Miller believes the myth is *useful*, "For it may not be rational to discard beliefs, even if they are, strictly speaking, false, when they can be shown to contribute significantly to the support of valuable social relations" (36). Rational? It is not rational to discard false beliefs if they contribute to valuable social relations – but the belief that the social relations in question are valuable *is* the myth! Having given up on demonstrating that welfare-state relations are rationally defensible on their own, Miller has offered to argue that such relations are part of being a nation. But "being a nation" is a myth. All that Miller said about national identity was intentionally an exercise in myth-making. The myth of the nation is the myth that we possess a valuable community, i.e. a nation; we do not, but it is not rational to admit this if we indeed value having – this belief. This is just to say, it is rational to lie to yourself (and to others) if you think it best.

Now, such a position *is* rationally defensible in a certain Platonic sense. If Miller is telling us lies for our own good, lies he does not himself believe, then Miller's position is like Socrates's endorsement of the noble lie from the perspective of wisdom or Sidgwick's endorsement of national myths from the utilitarian point of view of universal benevolence (82n). But Miller refuses to join that company. He thinks it a strike against Sidgwick that he was forced to wonder whether "utilitarians ought to espouse their views openly, or keep them under wraps

lest they should disturb 'the Morality of Common Sense'" (82n). Can Miller mean, then, that we ought to affirm our own lies, knowing that they are lies? He does not say so openly, at any rate. To illustrate the utility of false beliefs, Miller gives the example of "a happy and loving family which is supported by the (false) belief that all the children are the biological offspring of the parents" (36n). But such parents do not have this false belief and the support it provides if they also know, rationally, that the belief is false.[62] All Miller could mean is that the rational observer who knows the belief to be false can justify remaining silent for the sake of the family's happiness. We thinkers might justify leaving others in their twilight, but we cannot refuse to "discard beliefs" that we know to be false. We can only be perplexed whether Miller is stringing us along or deeply confused himself.

Despite laying his cards on the table, Miller tries to return to the language of a believer right away. Nevertheless, the contradictions are stark. Miller alleges that national myths "provide reassurance that the national community of which one now forms a part is solidly based in history, that it embodies *a real continuity* between generations" (36, my emphasis). Yet, only a page earlier, he concluded, "Dispassionate research is likely to reveal considerable *discontinuity*, both in the character of the people who have occupied a given territory, and in their customs and practices" (35, my emphasis). Surely, if he has a consistent view at all, it is that the nation is *not* solidly based in history or reflective of any real continuity, so the myths do provide not *re*-assurance, properly speaking; they tell a lie. In addition, he alleges, the myths "perform a moralizing role, by holding up before us the virtues of our ancestors and encouraging us to live up to them" (35). But these are lies as well, for we know that Miller denies that our national

[62] Of course, people in fact do such things all the time. I am speaking here as a rationalist of some kind.

identity has anything to do with having ancestors in common (25). He illustrates this point very clearly.

Miller's primary example of a "salutary myth" is "the evocation of the 'Dunkirk Spirit' in post-war Britain" (36). The evacuation of British troops from the continent by a flotilla of private boats left myth-makers with two lessons. "It was taken to show, on the one hand, the instinctive solidarity of the British people in the face of a national crisis; on the other hand, it revealed something distinctive about their character: their ability to improvise a solution to a problem without being ordered to do so by some higher-up (in implicit contrast to their German opponents)" (36). Miller draws from Orwell, "This image, of a people whose patriotism was usually dormant but who were capable of pulling together in an improvised way when the need arose" (37).[63] Here we have a perfect illustration of how myths provide a moralizing role.

But Miller does not believe in this myth, he only thinks it "served as a salutary myth in the years that followed" (37). He continues, "Probably a close study of the evacuation of Dunkirk would reveal many aspects – incompetence, cowardice – that the myth overlooks," and he cites a book that performs this critical task (37n). If the truth about Dunkirk is "incompetence, cowardice," then the truth is strictly opposed to Orwell's myth of Britain's capacity for "improvised" order and "patriotism." As we suspected, for Miller, our ancestors did *not* have virtues, so the national myth creates a moral lesson for us out of thin air.

[63] As readers of Orwell will be aware, his 1941 essay, *The Lion and the Unicorn*, made an argument very similar to Miller's. Like Miller, Orwell wrote to the left, urging them to find the future of socialism in the war effort and the commitment to British nationality. He predicted that the war would not be won without socialist reforms and that socialist reforms would be the outcome of the war. In both of these predictions, he may be applauded for some insight. But unlike Miller, Orwell attempted to demonstrate that he truly believed in the special character of the English nation (Orwell 2018).

Disingenuous Nationalists

Does anyone believe in nations? To whom is Miller speaking? Miller clearly believes that there are no nations, only myths about nations, and his argument that we should believe in nations anyway is therefore somewhat disingenuous. This result is very important, for it demonstrates that his pseudo-nationalism cannot ground his ideological commitments; it must be the other way around. As a result, Miller must be seen as pushing a certain mythology against others. In that case, his mythology must be compared with the alternatives, and the main alternative is the conservative nationalist position. And, in fact, Miller critiques the conservative nationalist on these same grounds. For Miller argues, with some justice, that the conservative nationalist is in the same position: there is no tradition to cling to, so the argument is disingenuous. As I would put it, Miller argues that *there are no nationalists*, in any real sense of the term.

We can put the question thus: does *anyone* really believe in nations? For, as Miller points out, modern people of all stripe agree that we are lost in the flux of time.

> Notice to begin with that the modern conservative does not really regard national identity as authoritative in the way that he pretends to do. He is fully alive to the fact that national identities are in constant flux, and that the traditions he wishes to uphold may be of recent invention. So in counselling deference and piety towards these traditions, he cannot help being disingenuous: he is recommending to his readers that they should adopt attitudes that he does not himself share (for instance, to take a British example, that they should be entranced by royal ceremonies which the conservative intellectual himself may recognize as Victorian or Edwardian contrivances). The modern conservative is not in the position of, say, Burke, who seems really to have believed in the antiquity of the constitutional arrangements he wished to defend, and who could therefore appeal wholeheartedly to the authority of tradition to combat the rationalism of liberal reformers. His modern counterpart has to recommend an attitude of deference to 'traditions' which, by his own admission, cannot claim the authority that that label implies (126-7).

This is a powerful critique and could be developed even further. It raises, in principle, the question of how a conservative can manage to be an intellectual or an intellectual a conservative.

Despite Miller's concession, we might reasonably wonder whether Burke himself was able to advise precisely what he really believed or had, rather, to distort either his beliefs or their presentation. But the modern conservative is in even worse shape today, now that Burke has lost the fight and the "liberal reformers" have succeeded in rendering the traditional constitution less and less relevant to the actual practices and goals of government. Since the modern conservative cannot advise a return to the spirit of a lost constitution, he must advise a return to some ad-hoc compromise position that is already deeply informed by liberal rationalism. He is thus even more painfully aware, perhaps, that the object of his deference is not fully worthy of it, being merely the "Victorian or Edwardian" pageantry of a monarchy long since lacking in power.

The basic problem involved here was best captured by Leo Strauss, in his various reflections on the crisis of modernity. In one particularly clear passage, Strauss points out that the idea of history rose to prominence in the nineteenth century due to the same discovery that Miller and Scruton make, that however much we attempt to affirm the freedom of the individual, we find that the individual is in fact born constrained by many things not of his making or choice. As Strauss puts it:

> It became ever more clear that man's freedom is inseparable from a radical dependence. Yet this dependence was understood as itself a product of human freedom, and the name for that is history. The so-called discovery of history consists in the realization, or in the alleged realization, that man's freedom is radically limited by his earlier use of his freedom, and not by his nature or by the whole order of nature or creation (Strauss and Green 1997, 104).

Strauss calls the realization an "alleged" realization because he questions whether it is not in fact nature rather than history upon which man depends. But it was and is the fate of the modern conservative that the appeal to nature or the order of creation is less than fully permissible and carries little weight. Burke will not do; instead, one would need Filmer or someone like him, someone who would give the institutions a *divine* or *natural* pedigree. The temptation for the

conservative, in the absence of such foundings, is to point with greater emphasis to tradition, the weight of the past uses of man's freedom, the authority of history. Similarly, the "progressive" can appeal to the future unfolding of this freedom, as Miller is tempted to do. Unfortunately for either side, the standard of history readily falls apart:

> Once it became clear, however, that historical trends are absolutely ambiguous and therefore cannot serve as a standard, or, in other words, that to jump on the bandwagon or the wave of the future is not more reasonable than to resist those trends, no standard whatever was left. The facts, understood as historical processes, indeed do not teach us anything regarding values, and the consequence of the abandonment of moral principle proper was that value judgments have no objective support whatsoever (101).

Miller is correct, then, that the conservative nationalist who appeals to history does so with a bad conscience and is perhaps even "disingenuous," and he could further add that from the facts of history no proper lesson is possible. But Miller does not add this because he wishes to make his own interpretation and use of history: to describe the *present* dispensation as authoritative for us, but on the ground that this dispensation is the result of some historical process, that it "embodies historical continuity" and therefore is "an ethical community" that establishes our obligations (Miller 1995, 23). But not only is the continuity in question merely mythical, according to Miller, whatever remains of it is spurious and an obstacle to the community that we must become. And if he agrees that both he and Scruton require our allegiance and reference to things of "recent invention," then it is perfectly arbitrary whether we choose the most recently invented thing or something previously invented. Miller's own argument for the authority of the present appeals to and assumes that the past has some kind of authority. If he then argues, against conservatives, that the past does not possess such authority, the authority of the present vanishes as well. So, while this critique is extremely important, and deserves further reflection, it does not serve to establish the position of liberal nationalism. It shows, if anything, that there is no such thing as a nationalist position.

Judging between Myths

Let us see if we now understand the situation. Miller believes that all national identities are fictions endlessly in flux, but he also believes that we should believe in some form of national myth. In its simplest form, the national identity he would impose is precisely this: a people in flux. His myth about the nation is that the nation is a myth. And why should we embrace this myth? Because we are a nation. And we know that we are a nation because we have a myth about being a nation – the fact that there are national histories is the evidence that there exists a nation with a history to tell. But this is actually a little inconvenient for Miller. The national histories that are told are not exclusively the ones that he wants us to tell.

After all, Miller does not want just *any* national myth. As Miller knows well, national myths do not necessarily promote political cultures that liberals value.

> The emotional ties of nationhood can be invoked to persuade people to support leaders and policies that diminish their liberty or exploit them economically. Acts of international aggression are justified by appeal to vital national interests. If we could persuade people to discard ideas of nationality and to regard themselves simply as members of the human race, perhaps with cultural affiliations to a particular group but nothing more than this, the world would be a freer and more peaceful place. This is the internationalist ideal which has been embraced by much progressive opinion in the present century (12-13).

If Miller is going to support national myths while meeting this challenge, he must show that liberal national myths and only liberal national myths deserve to be believed. But our interest here is not limited to *why* Miller thinks his kind of myth is preferable. We need to discuss his preference primarily in order to understand whether it offers a coherent view of a nation.

Miller is fairly explicit, in fact, that he is defending a particular kind of myth against rivals. Having put utterly false national myths to one side, Miller concedes that neither he nor his rivals seriously distort the truth, which they merely spin to their advantage. And he then briefly

alerts the reader that he intends to distinguish between the national myths that are offered *within* liberal nations.

> More often, national myths involve telling stories about events whose occurrence is not in doubt, and *different factions* inside the nation will offer competing interpretations of these events along the lines of the English dispute about the Norman invasion. In this respect the *political disputes* that arise over national identity may not be so different from the disputes that arise between historians themselves whenever they go beyond the simple recording of fact to offer general explanations of the events they are describing (39, my emphasis)

In other words, Miller is primarily interested in the *political debate* within liberal countries, and he sees this debate as mirroring the *historical debate* over interpretations of the national identity. In other words, to be a partisan in liberal political debates is to be at the same time a partisan of one interpretation of the national myths. Or, at least, Miller believes that by supporting one version of the national mythology over another, one contributes to a partisan cause. Since we already know that his work aims to justify social policies concerning redistribution and cultural pluralism, we are not surprised, but we see now that he aims to do so not merely by supporting the value of national myths in general, but by supporting a particular version of the national myth against rivals.

A Nation of Debunkers

What, then, is the standard that judges between rival national myths and tells in favor of Miller's preferred mythology? He explains the nature of this standard twice in close succession. In the first case, he suggests that liberal myths are more likely to be less false than alternatives.

> If this is so, the crucial line of division may lie not between the truth of 'real' history and the falsehood of 'national' history, but between national identities that emerge through open processes of debate and discussion to which everyone is potentially a contributor, and identities that are authoritatively imposed by repression and indoctrination. In the former case the collective sense of national identity may be expected to change over time, and, although at any moment some of its components may be mythical in the sense I have indicated, they are very unlikely indeed to involve the outright denial of historical fact. Identities that are authoritatively imposed, by contrast, serve a narrower range of

> interests, and it may be imperative to falsify the historical record at certain points in a fairly blatant way (39).

There are a number of contrasts here, but I want first to focus on the issue of historical fact. Miller implies that conservative interpretations of history ("authoritatively imposed" is code for conservatism, as we will see more thoroughly in Part Two) "falsify the historical record" (39). As we have seen, Miller thinks that even Orwell's myth about Dunkirk was false in this sense. But Miller also admits in this context, as we saw above, that conservative myths *within* liberal countries are not peculiarly false; the historians with whom he really debates are "telling stories about events whose occurrence is not in doubt" – the dispute centers entirely on "general explanations" of the facts (39). Miller is attempting to tar the conservative historian with the brush of an authoritarian regime with which this historian has little in common.

He does so by introducing these contrasts just after comparing myths told in liberal nations to the myths told in totalitarian nations. Specifically, he compares the way in which modern French historical imagination is mythical to the way in which Soviet history was blatantly obscurantist. In both of these modern regimes, national history tends to obscure facts that careful historians know well.

> Renan remarked, again with characteristic insight, that 'it is of the essence of the nation that all individuals should have much in common, and further that they should all have forgotten much … every French citizen must have forgotten the massacre of St. Bartholemew's and the massacres in the South in the thirteenth century.' … Renan's meaning, I take it, was that no Frenchman could recognize as his forebears those who had carried out the massacres. It is not denied that the events occurred, but they do not form part of the story that the nation tells itself (38).

So, France's "deliberately suppressed" memory of its religious massacres ("the events occurred" – being performed by *someone*) are one thing but, totalitarian regimes do worse. For example, "the obliteration of Trotsky from the historical record of the Bolshevik revolution by Stalin and his successors is likely to signal a nation gripped by a monolithic ideology" (38). In keeping with

this theme, Miller soon contrasts "the emergence of a national identity in eighteenth- and early nineteenth-century Britain, which involved competition between a number of groups … each seeking to establish themselves as citizens … with the Chinese cultural revolution of the 1960s," and he argues, "the *quality* of the myth will be very different in the two cases" (40-1). By these contrasts, Miller hopes to revive the standard of truth a little bit to aid his side. The implication he intends is that conservative national myths are more like authoritarian ones – Soviet and Maoist. These regimes require "repression" of truth, "the outright denial of historical fact," and they "falsify the historical record at certain points in a fairly blatant way" (39). Liberal national myths – French and British – require only "suppression" of delicate memories. The progressive party's myths will be more of this "quality."

But it is entirely misleading of him to suggest that conservative historians in Britain behave like Stalin or Mao. The contrast is even bizarre, for the Communist regimes are devoted to *internationalism,* not nationalism. "The Soviet Union … rather unusually … openly conceded that the peoples it governed were of different nationalities" (19). It was not, precisely speaking, "a *nation* gripped by a monolithic ideology" (38), but rather, "a *regime* whose legitimacy depended upon acceptance of an official ideology" (39).[64] But no matter: let them all be nations. If we reflect for a moment, we will recall that the French were once an ideological and revolutionary nation as well. What the modern French forgot, as Renan noted in the late nineteenth-century, was their history prior to this revolution.

The "activist idea" of the modern nation, which Miller values and conservatives dislike, is a version of the famous "active" conception of the nation, the one born "during the French Revolution" (29). Miller is enthusiastic to remind us, "As the Abbe Sieyes wrote, in his *great*

[64] This contradiction is only one of many ways in which Miller falls prey to "the confusion of nation and state … an elementary error" (19).

revolutionary tract, 'The nation is prior to everything. It is the source of everything. Its will is always legal; indeed it is the law itself'" (Miller 29, my emphasis). By claiming to construct itself out of thin air, revolutionary France created a rupture in history – or at least in historical imagination. Renan makes this very point. In fact, the passage to which Miller appeals when describing national myths continues an earlier reflection on what it is that the French must and have forgotten.

> Unity is ever achieved by brutality. The union of Northern and Southern France was the result of an extermination, and of a reign of terror that lasted for nearly a hundred years. The king of France who was, if I may say so, the ideal type of a secular crystalliser, the king of France who made the most perfect national unity in existence, lost his prestige when seen at too close a distance. The nation that he had formed cursed him; and to-day the knowledge of what he was worth, and what he did, belongs only to the cultured (Renan 1896, 66).

It is not *only* the religious massacres that the modern French forgot; in addition, they forgot the secularizing king who united them. Renan points out that there is a grave tension between accurate history and national myths, *as these are informed by present values*. For Renan, this ignorance is inevitable, and related to modernity in general. So, while Miller refers to the Soviet Union especially, we can say of France as well, "it may be imperative to falsify the historical record at certain points in a fairly blatant way…whenever the current regime's title to rule rests on some alleged historical event such as the abdication of a king of the revolutionary overthrow of the previous regime" (39). This point would seem to apply to revolutionary liberal nations as well as to communist ones. Some nations' sins are further behind us and their falsifications easier now to forget, to "suppress" instead of "repress," but they too were gripped by a monolithic ideology – the very one Miller embraces, the ideology of liberal nationalism. So, if anything, the contrast Miller draws would tell against him.[65]

[65] Perhaps it is the privilege of the British to have entered modernity earliest and most quietly. "Normally the imagined history fills in blanks where no direct evidence is (or even could be) available," Miller observes (37), but

Since the criterion of truth is not very useful for judging between myths, Miller leaves it more to the side when he returns to the question of why liberal myths are superior.

> Let us recall, therefore, that *the aim of this book is* by no means to offer a blanket defense of nationalism, but *to discriminate between defensible and indefensible versions of the principle of nationality*. We have discovered that, when assessing national identities, we need to look not only at what the identity presently consists in – what people believe it means to be Italian or Japanese – but at the process by which it has arisen. *To the extent that the process involves inputs from all sections of the community, with groups openly competing to imprint the common identity with their own particular image, we may justifiably regard the identity that emerges as an authentic one*. No national identity will ever be pristine, but there is still a large difference between those that have evolved more or less *spontaneously,* and those that are mainly the result of *political imposition* (40, my emphasis).

The principle by which we are to discriminate between legitimate and illegitimate myths is not truth but authenticity. What makes one falsehood more "authentic" than another?

If we combine this restatement with the original, leaving aside questions of accuracy, the standards Miller proposes are: 1) the openness and inclusiveness of the process by which a given falsehood arises, in part because, 2) in that case the national identity is more likely to change over time and, 3) the identity will therefore serve an ever broader range of interests. Again, we just want to know what kind of myth Miller has in mind and whether it would be *coherent* as a national myth. Obviously, to the extent that we are disposed to be liberals, we would prefer openness and inclusion to the extent possible; the question, however, is what it means to maximize these demands when speaking of national mythology. Miller suggests that the myth we should choose to believe is the myth that has been *most* openly and competitively constructed.

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for "normally" we might read "in Britain." As he mentions earlier, "A staple of English political thought in the seventeenth century was the idea of an 'ancient constitution' which found the source of the rights and liberties of Englishmen in a common law whose origins lay in the distant past beyond the Norman invasion" (34-5). Who took which side? "Defenders of the status quo against royal absolutism saw an essential continuity between the ancient constitution and the present one; radicals (such as the Levellers) saw the Norman Conquest as introducing a rupture" (35). The privilege the British enjoy would seem to be linked to the fact that the "defenders of the status quo" – Locke et al – won this debate in 1688. But Miller would seem to be on the side of the "radicals."

We are to imagine a national myth that arises and sustains itself without the drawing of any bounds.

Such a national myth is not possible. We should prefer, it seems, identities that change over time – this is the progressive standard: we presume that change is generally for the better. We also should prefer identities that serve broader interests – that is a democratic standard. Progressive democrats, then, have a reason to prefer the suggested process of national identity-formation, regardless of truth. But Progressivism is itself a mythology, in which one believes that the future will always be brighter the more we change. It is not clear why such a myth is intrinsically superior to a myth according to which we do best to change existing things as little as we can. But much more urgently, precisely if we are nationalists, the latter view is safer, for what change in identity could be more progressive than the eradication of nations? "This is the internationalist ideal which has been embraced by much progressive opinion in the present century" (13). And the democratic standard pushes in the same direction. Consider: if Miller leaves it at the desire to form identities "to which everyone is potentially a contributor" and "inputs from all sections of the community," and if he seeks an identity that serves the broadest possible interests, then why stop at the borders of a nation? The myth "we" tell is arbitrarily restricted to some preconception of who "we" are. The community is part of what such myths seek to define. We cannot obtain "input from all sections of the community," for we first must know what the community is before we can know its sections. If not, we need input from everyone, and we must seek to support the broadest possible interests. According to this myth, then, we must take a universal point of view. Taken seriously, by these standards Miller will end up advocating for a cosmopolitan myth, not a national one. The more "authentic" the national myth, the more the nation disappears.

What Miller probably means for us to imagine is that the national myth should correspond well to the nation, receiving input from all its parts. But it is very much the other way around. Remember that it is the nation that persists, not its people. Miller says of nationality, "it is an identity that embodies historical community" (23, my emphasis). The identity can do so because (it is believed) "Nations stretch backwards into the past, and indeed in most cases their origins are conveniently lost in the mists of time" (23). Miller even slips into the language of kinship and descent when he describes the historical nation:

> Because our forebears have toiled and spilt their blood to build and defend the nation, we who are born into it inherit an obligation to continue their work, which we discharge partly towards our contemporaries and partly towards our descendants…if we are going to speak of the nation as an ethical community, we are talking…about a community that, because it stretches back and forward across the generations, is not one that the present generation can renounce (23-4).

Properly understood, the nation is prior to its members. They have no right to demand that the nation resemble themselves; it is they who have duties to resemble the nation – if a nation they have. Perhaps a liberal democrat can demand that the government should represent the present people, but a nationalist cannot demand that the nation should do so; that demand merely makes the nation go away.

In other words, Miller is forgetting here that the nation itself is *the* established institution. The most crucial element of the nation is that it is *ours.* If even its boundaries have no sanctity, then those who propose to abolish it have equal standing with those who defend it. But once that is the case, it is no longer appropriate to ask who we truly are. For the people itself has disappeared into a fog. The cosmopolitans – whether libertarian or liberal – are free to challenge any answer to such questions by appealing to the ways of life and beliefs that exist outside of our borders and that stand as permanent obstacles to any given assertion. If we really do not know who we are, and all voices should be heard, who knows who may speak up? A Korean, for

instance, or a member of ISIS – why not? Anyone can say, "your national identity must include me, too," for the nation is undefined save as self-defining. The "authentic" national myth is a path toward national dissolution.[66]

Consequences

I originally argued that Miller took a harder stance than Yack on the obligation to shield some myths from criticism, but closer investigation shows that Miller also is too sensitive to liberal demands for autonomous self-creation to allow the national identity to become authoritative. For Miller, "The very fluidity of national identities, which, as we have seen, gives rise to the suspicion in some quarters that they are essentially fictitious, also entails that in maintaining them people do not commit themselves rigidly to a particular set of values" (45). Miller here rhetorically distances himself from the view that he himself put forward, that national identities are essentially fictitious myths. But he also takes the fictitiousness of the myth to be part of its value. The fictitious fluidity of national myths is a crucial resource for the liberal nationalist – as long as everyone admits that it's a fiction, the nation is safe for everyone. For those who "want people to be self-reflective and critical," it is no obstacle that national identities are not freely chosen, in the precise sense, for these identities (like all others) are subject to interpretation and weighting against other identities (43-4). The national myth suggests "no

[66] I have not touched on the standard of spontaneity because it is not really relevant to Miller's argument. Miller is not in favor of free-market ideas in general, and, as I will show in Part Two, his myth will be imposed politically, not arrived at through the spontaneous activity of uncoordinated individuals. But, to be clear, spontaneity is not the word for national myths, of any variety. It suggests that the beliefs involved are not imposed, but in fact all it means is that no one is sure where, exactly, the beliefs came from. One does not see the people who create these beliefs very clearly, so one is tempted to think that they are natural or one's own creation. But they might be the result of the regime after all, and even highly constraining. Tocqueville, at least, was not impressed. "I do not know of any country where, in general, less independence of mind and genuine freedom of discussion reign than in America" (Tocqueville, Mansfield, and Winthrop 2000, 244). Free debate is supposed to guarantee that our opinions are spontaneous and not imposed, but as Tocqueville points out, "the majority draws a formidable circle around thought" (244). La Bruyere and Moliere criticized kings and their courts to their faces but, "the power that dominates in the United States does not intend to be made sport of like this" (245). Instead of saying that democratic myths are spontaneous, one might say that the spontaneity of democratic beliefs is part of the myth of democracy.

predetermined outcome" for an individual's interpretation of or commitment to a national identity (44). A given individual's interpretation of his or her national identity "may involve a radical rejection of the political status quo" (44).

Miller celebrates the flexibility inherent in knowing that nations are mythical, including the fact that this flexibility means that national loyalty is not an obligation. At first Miller claims, "We are surely prepared to disapprove of people who desert their country in its hour of need merely in order to enjoy a more comfortable life" (42n)? But exceptions can always be made, for, "Sartre's famous example, of the young man deliberating whether to go off to fight for his country or to stay behind to look after his sick mother" shows us that we do not necessarily affirm "a duty of patriotism" (46). We should approve of Sartre's existentialism on this matter, let alone, "conscientious objectors such as the Mennonites who fled across the border from America rather than violate their religious principles by accepting the draft" (46n). Whether one dodges the draft or fights for one's country is all one, a choice for the individual to make – a radically undetermined choice, in Sartre's case. Joining a nation involves no allegiance to it. "American immigrants take an oath of allegiance requiring them to 'renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state or sovereignty', but they and their descendants have often in practice retained dual loyalties…national identities are not in practice treated as exclusive and overriding by their bearers" (46). For liberal nationalism, loyalty is an empty term, meaningless and hollow, just like the nation.

Similarly, the fluidity and fictitiousness of nations means that liberals should feel free to criticize them endlessly – without ever quite admitting that they criticize a fiction in order to

write a fiction of their own. For instance, *the best part* about Orwell's myth is that it can be shown to be false.

> Very often, where national identities are freely debated, there is a healthy struggle between those who want to hold up a bowdlerized version of the nation's history as an extended moral exemplar in Orwell's sense and those who draw attention to lapses and shortcomings: injustices inflicted on minorities, acts of treachery, acts of cowardice, and so forth. The first group remind us of how we aspire to behave; the second group point to defects in our practices and institutions that have allowed us to fall short (40).

We had been told that myths "perform a moralizing role, by holding up before us the virtues of our ancestors and encouraging us to live up to them" (35). But in fact, the myths perform a moralizing role by criticizing the ancestors for failing to live up to the values today's myth-maker prefers. The value of the myths results from the debunkers of such myths, who "point to defects" that really exist from the point of view of such aspirations. The value of saying that one's nation is good rests simply in the opportunity this offers critics to say that one's nation is bad.[67]

It was good, then, that Orwell was free to propose his myth because his myth suggested an aspiration. Using that same freedom, social critics have the opportunity to argue by means of facts that the aspiration has not been achieved. Richard Rorty made a similar point in his famous op-ed in defense of patriotism, the one to which Martha Nussbaum replied. Rorty tried to persuade reformers on the left to appreciate and celebrate the myths that they criticize, arguing, "a nation cannot reform itself unless it takes pride in itself – unless it has an identity, rejoices in it, reflects upon it and tries to live up to it" (Rorty 1994). Martin Luther King's "(limited)

[67] Orwell, a socialist of a sort, has ever been suspect to the left. To some extent, this is because he was all-too-serious about national loyalty, but his real crime is to have believed sincerely that there was a real value to British institutions and the hypocrisies (as socialists like himself saw them) of liberal justice. Orwell *really believed* that Britain was good in comparison to Soviet tyranny, that there was a relevant difference between more and less open forms of exploitation. See *The Lion and The Unicorn* and Michael Walzer's chapter on Orwell in *In the Company of Critics* (Orwell 2018, Walzer 2002).

success" is a prime example of how America felt compelled to make its reality more like its self-image (ibid). Of course, this approach works best when the nation in question is widely believed to exist through a dedication to principles, especially principles one wants to extend. It works less well for a nation like England.

But I think there is a further problem, even in the idealistic nation's case, if the appeal to the myths by the reformer is disingenuous. If the reformers do *not* believe in the nation's virtues, but only in certain ideals that they desire to see achieved in the future and which they hold somewhat independently of their national identity, then they engage in deliberate manipulation. They tell the nation, "be what you are," but in fact what they mean is, "be what you have never yet been." Consider: if the critics merely claim to interpret what the nation really *is*, and if their critiques show that the nation *is not* what it is said to be, then they are entitled to infer only that the nation is not good. The "healthy debate" would be between patriotic and unpatriotic, but idealistic, citizens. If Miller is defending patriotic mythology just so far as it serves the critique of patriotism, he could end by eroding patriotism altogether.[68]

Miller himself illustrates this necessity by reference to Ernest Renan's famous essay, and we will have an even clearer understanding of this problem if we consult Renan for ourselves. "Forgetfulness, and I shall even say historical error, form an essential factor in the creation of a nation; and thus it is that *the progress of historical studies may often be dangerous to the nationality*. Historical research, in fact, brings back to light the deeds of violence that have taken

[68] In other words, if the critique is carried on indefinitely, nothing will be left of the national myth. Imagine again Miller's example of the family held together by the myth of biological descent. Obviously, we will not be so reckless as to deny that they are kin, but let us suppose that the family operates in part by telling stories about the virtues of its former members. There is an old story that Great-Papa founded the family through an act of magnificent bravery and generosity. Because of his legacy, we strive for these virtues. But today we know that in fact he was a crook. Is his legacy still a reason for us to practice virtue? We must choose. Either, valuing what he produced, we must learn how "not to be good," in Machiavelli's famous phrase; or, repudiating his actions, we must learn to be good whatever it costs our family, as Kant would have us do. The alternative to this stark and uncomfortable choice is, probably, to keep some things under veils.

place at the commencement of all political formations, even of those the consequences of which have been most beneficial" (Renan 1896, 66, my emphasis). If "the progress of historical studies may often be dangerous to the nationality" in general, even in democracies, then the free scientific effort of democratic historians may tend to weaken nationality in democracy.

How far can criticism go without weakening the national bond? As we will recall, Miller sometimes actually shows a much greater appreciation of the sanctity of national myths and the impermissibility of questioning them; for instance, in his debate with Yack (Hearn 2014). Yack's view, we will recall, was that good nationalists can question everything, including the justice of the nation's founding. And against Yack, Miller argues that nations depend upon leaving some issues unquestioned. Renan's point allows us to do justice to both of these perspectives. Yack is quite correct that many American citizens deny the moral authority of their own constitution, and Miller is quite correct that such persons possess national identity in a very odd and problematic way. As "ridiculing the Founding" becomes an increasingly prevalent attitude, we would expect a diminution of nationality to occur. The implication is that increasing liberalism erodes nationality.[69]

Nations for Cosmopolitans

Why, exactly, does Miller advocate the belief in nations? Miller claims to defend nationality against the thin and voluntary character of liberal citizenship. He argues, "at length …

[69] This issue has occasionally received empirical study. Fred I. Greenstein found that American children's references to national heroes fell from over 35 per cent in 1902 to about 10 per cent after 1944, and that "one name – George Washington – seems to account for the entire declining trend in references to national heroes" (Greenstein 1965, 142-3). Greenstein suggests, "It also might be argued that declining identification with national heroes inevitably would lead to declining national loyalty" (149). One follow-up study confirmed this prediction in Great Britain. "On the whole our respondents evidence an indifferent attachment to nation and government. No deeply-rooted sense of system legitimacy exists of the type we were given to expect. The old high patriotism and respect for one's governing institutions appears at present to be fragile" (Dennis 1971, 47). We can reconcile Miller's harder-edged view and Yack's softer one: the twentieth century combined an increasing criticism of the existing nations with a sharply decreasing sense of patriotism and nationality. I hope the reader will kindly alert me whether there are more recent studies that better illustrate, modify, or refute Greenstein's suggestion.

that a shared national identity is the precondition for achieving political aims such as social justice and deliberative democracy," and he rejects the argument, "that people need only acknowledge an allegiance to a common set of institutions to make aims such as these realizable" (162). Supposedly, he is not in favor interpreting the nation as "narrowly political, taking the form of 'constitutional patriotism,' in the phrase used by Habermas and others" (162-3). Constitutional patriotism is compatible with loyalty to state or super-state federations like the EU, and Miller is "skeptical about 'constitutional patriotism' as a substitute for nationality of the more familiar sort" (163). It is not enough to have "a statement of principles and a delineation of the institutions that will enact them" (163), for the identity suggested is too thin, lacking in specificity, and offers no account of the meaning for the boundaries of the association.

> The principles themselves are likely to be general in form, more or less the common currency of liberal democracies. Subscribing to them marks you out as a liberal rather than a fascist or an anarchist, but it does not provide the kind of political identity that nationality provides. In particular, it does not explain why the boundaries of the political community should fall here rather than there; nor does it give you any sense of the historical identity of the community, the links that bind present-day politics to decisions made and actions performed in the past (163).[70]

Reading such assertions, one would think that Miller had shown *what nations are* and why their boundaries are not arbitrary.

But in fact Miller advocates a mythical nation, one which merely enshrouds liberal democratic principles in the ever-shifting clouds of imagination. Despite referring us to the "historical identity of the community," he criticizes and invalidates *all* of the possible contents of British historical identity through a brief historical analysis (166-70). One may say his analysis

[70] Miller is especially concerned to demonstrate that "the present generation of compatriots can be held responsible (in some sense) for what their predecessors did; at the very least they may be remedially responsible for harms caused by earlier generations, through colonial expansion, warfare, slavery, etc." (Miller 2007, 113). Which shows that for him nationality is simply a more convenient way of assigning obligations to the same people to rectify the same global wrongs than cosmopolitanism permits.

gives British identity "a severe bruising," for he ends up uncertain "whether there is anything distinctly valuable left in a British identity at all" (170). He in fact feels entirely disgusted with British historical identity and entirely comfortable with thinner forms of nationhood. To take just the central example,

> Whereas once it was possible to regard Britain's constitutional arrangements as more or less uniquely valuable, in a European context particularly this is no longer possible. Many other countries have established stable forms of liberal democracy, and by comparison with the *formal constitutional arrangements of these states – with bills of rights, constitutional courts, and so forth* – British institutions have come to seem outmoded and unenlightened … Whereas Americans may look upon their constitution with steady reverence, and Germans, seeking for a new identity that puts the Nazi period firmly in the past, *readily embrace the idea of 'constitutional patriotism,'* no one can regard the British constitution as anything other than a ramshackle contrivance badly in need of *radical* renewal (170-1).

Miller would like to put British historical legacies – the ramshackle constitution built up over time without any one decisive founding moment – firmly in the past as well, and he would like to replace the historical Britain with a post-war consensus on (radical) liberal principles, enshrined in new institutions, and nothing more.

Miller is, therefore, deceiving us, and offering a mythical gloss on constitutional patriotism. Bernard Yack explains the futility of this strategy very well, noting that the voluntary nation is merely one "myth" while the ethnic nation is another; each captures something about what a nation is or can be. The "civic" version of the nation, according to which national community is a form of rational attachment to freely chosen principles, is no less a misrepresentation than the ethnic or older German idea of the nation, according to which nationhood is an objective characteristic of speech or descent no matter what identity one subjectively affirms (Yack 2012, 29). We have "two *myths*" on hand here, Yack claims, one emphasizing choice and one emphasizing the lack of choice (30). Maybe it would be more appropriate to say that *political associations* are sometimes more like nations and sometimes

less. The best we can do, perhaps, is to admit that countries or regimes are *different* from one another in their foundations, some emphasizing one condition of membership and some another, while many or even most will involve some mixture (32-33). Possibly no really existing nation, not even the most liberal, in fact excludes all forms of unchosen belonging – a proposition Miller often, but inconsistently, defends (Miller 1995, 41, 93, 123, 141).

And, indeed, a certain mixture may be for the best in most cases.[71] If one pursues the ideal of a purely voluntary nation, one arrives either at a minimal state tending toward anarchy, or an extremely involuntary and coercive nation of principle. One must volunteer for *something*, so a nation based exclusively on consent would exist as an oppressively ideological state, in which mutual loyalty would stretch no further than conformity to doctrine (Yack 2012, 39). After all, "The Soviet Union was such a state; rather unusually, it openly conceded that the peoples it governed were of different nationalities" (Miller 1995, 19). It did so, in part, because it was "a nation gripped by a monolithic ideology," being "a regime whose legitimacy depended upon acceptance of an official ideology" (39). But that is to say, the Soviet Union was a nation only insofar as it rested on belief, for it recognized no other principle of solidarity. Yack is correct to warn us here that seeing nations *simply* as "constituted by belief" both distorts the manner in which our more decent nations perpetuate their rule and points toward a less tolerant society than we currently possess. If liberals insist that we are a nation, but also that we are a nation of *believers*, then liberals will similarly claim to govern innumerable nationalities or ethnicities in the light of a common authoritative opinion.

[71] But why, I would like to ask, is it impossible to theorize that political communities could and should differ radically in the kind of membership they presuppose or impose? There are probably advantages and disadvantages to various forms of association. Where people have much in common, they have certain wonderful occasions for communion. Where they have less, it is some compensation if they have variety and freedom. I confess that I cannot yet support this intuition in terms of a philosophical or ethical position (on, say, monism versus pluralism versus relativism).

This possibility is a real danger for Miller's account of nationality, for, by defining the nation as constituted by belief, Miller's account of the nation lines up with cosmopolitan arguments against the nation. As Martha Nussbaum argues at length, cosmopolitan education is right *for us*, for Americans or liberals, for it begins from, extends, and renders consistent the education in liberalism that American students already receive today. The universalism of Kant's morality she believes "we" should take seriously (Nussbaum and Cohen 1996, 13). *We Americans* already teach the "equal basic human rights" of all, and the problem is only that the way in which we do so is not "sufficient" to its end (6). Americans should adopt a conscious commitment to cosmopolitanism because this ideal best expresses the best American values: "the values on which Americans may most justly pride themselves are, in a deep sense, Stoic values" (13). If we "mean what we say," we need to mean it when we say, "that respect should be accorded to humanity as such," and not that our speeches refer only to "Americans as such" (15). In sum, the tendency to take "pride in a specifically American identity" is what cosmopolitan education seeks to correct (3), in part because this tendency is contrary to the ideals included in American identity. Along with most prominent exponents of cosmopolitanism, Nussbaum argues that *we liberals* are bound to join her, that liberalism implies cosmopolitanism. For Nussbaum, *our* nation is constituted by the adamant denial that we or anyone else is the unchosen member of a nation. But being a nationalist in *that* sense runs the danger of turning alleged common membership in a nation into a dogmatic form of ideological control.

To see how well Miller's agenda overlaps with Nussbaum's, consider Miller's educational proposals for the new national curriculum. He offers a full endorsement of the National Curriculum History Working Group's recommendations (Miller 1995, 181n). They propose to give "central place to the development of freedom and democracy in Britain and…to

instil in pupils the attitudes of mind that support such achievements" (181n). These attitudes are, "respect for people of other cultures and from other backgrounds; an informed curiosity about the wider world; an understanding of how rights and liberties develop and how they may be threatened; some comprehension of what individual can do within society and under the rule of law" (181n, my emphasis). While no one would propose a British national education that ignored the development of freedom and democracy, the type of focus recommended here is very partial to a certain view. Most importantly, it is strange that the focus on freedom and democracy is interpreted as a focus on cultivating the attitudes of multicultural respect and curiosity about the wider world. Are these attitudes the unique public culture of the nation of Britain or rather the attitudes of the contemporary cosmopolitan?

Martha Nussbaum, for instance, equally considers the devotion to freedom and democracy to be central reasons why Americans should replace national education with cosmopolitan education, so we should consider the similarity between Miller's recommended education and Martha Nussbaum's:

> In educational terms, this means that students in the United States, for example, may continue to regard themselves as defined partly by their particular loves - their families, their religious, ethnic, or racial communities, or even their country. But they must also, and centrally, learn to recognize humanity wherever they encounter it, undeterred by traits that are strange to them, and be eager to understand humanity in all its strange guises. They must learn enough about the different to recognize common aims, aspirations, and values, and enough about these common ends to see how variously they are instantiated in the many cultures and their histories (Nussbaum and Cohen 1996, 9).

The central focus of both educations appears to be the same, whether regarded as a cosmopolitan or a national interpretation of freedom and democracy and the attitudes that support them. Given this overlap, we cannot be sure whether the requirement to teach students "how rights and liberties develop and how they may be threatened" implies teaching students that nations and nationality identities are crucial forums or crucial obstacles; in other words, it remains

ambiguous whether the education in question, though nationally produced, inculcates identification with or hostility to one's nation. The Working Group's three main recommendations for the British national education focuses on two things: British history as the development of attitudes of multicultural respect and worldwide curiosity, on the one hand, and as the study of social pluralism, on the other; and "optional units" on world cultures (Miller 1995, 181n). All in all, their recommendations might be reduced to the single aim of reinterpreting Britain as a cosmopolitan community.

Conclusion

Miller does not believe in nations, but he does believe in enforcing conformity to liberal ideals. There is, therefore, an instrumental and strategic aspect to Miller's arguments for nationality. It is strategy, pursued ironically, for achieving financial and cultural egalitarianism by the path that appears most promising. From the beginning, Miller seeks to explain and defend national identities as such, not nations as such. His argument will not "persuade people to affirm a national identity if they do not already have one" (15), for he does not intend to argue that nations are objectively real in such a way that a person would distort reality by denying or ignoring his or her national identity. He assumes that people vary in the degree to which they feel they have a national identity (13-14). And he assumes that it is useless to try to persuade cosmopolitans "that national identities are important elements in people's understanding of who they are," for such an argument, "will simply induce incredulity" in such people (14). What he suggests, instead, is that even these cosmopolitans may find that their own national identities exist in the form of "subterranean loyalties" (15). Indeed, "many people consciously repress such identities…for what seem to be good reasons" (15). They might be "repelled" by nationalist displays and believe that nationalist sentiments are "vulgar emotions" (15). "For people whose

politics are left-of-centre, there is also the sense that to give in to nationalist sentiments is to betray one's political ideals" (15). All his argument seeks to do is "to establish how far it is legitimate to express and act upon pre-existing national identities" (15). Writing *to* the cosmopolitans whose views he otherwise shares, he invites them to reconsider their options. "The nationalist celebrates his attachment to an historic community; the progressive liberal concedes it with reluctance and shame. We want to know which of them has the better reason on his or her side" (15). The argument is not, then, that nations exist and oblige us to action. The argument in this section is that we *feel* attached to nations, or many of us do, and if those who least feel this attachment can be shown an upside to these feelings, they may be willing to own up to having them as well.

Similarly, in his conclusion, Miller backs away from serious confrontation with cosmopolitan beliefs. He offers a "teasing description" of "multicultural cosmopolitanism," and critiques it lightly; however, he is ultimately "reluctant to push this argument too far" because he is unsure whether "people really need the kind of encompassing culture that nation-states have traditionally provided" or whether they can be just as happy with "the smorgasbord of cultural experiences that the cosmopolitan offers to replace it" (186). In an earlier context, Miller portrays the latter view as "pathological" for society (165), but he clearly does not mean that cosmopolitanism is inherently misguided. As far as he is concerned, it is no less reasonable in itself to feel indifferent to nations than to feel strongly for one. Instead, his concern is whether people will have "equal access to the cultural opportunities on offer" (186). If a cosmopolitan federation could guarantee as much or more equality of access to culture and "the financial status" necessary "to take advantage of…opportunities," then Miller would change his position to cosmopolitanism (186).

The argument Miller ultimately makes to cosmopolitans is unrelated to the validity of national identities. In place of such an argument, he objects to the results of their views. "The benefits of the global culture will be confined very largely to the elite," he argues, while the non-elite will be stuck with what their money can buy (187). Most succinctly:

> The welfare state – and indeed, programmes to protect minority rights – have always been *national* projects, justified on the basis that members of a community must protect one another and guarantee one another equal respect. If national identities begin to dissolve, ordinary people will have less reason to be active citizens, and political elites will have a freer hand in dismantling those institutions that currently counteract the global market to some degree (187).

As this statement shows, Miller is not concerned, in the first instance, with the protection of *national identity* but rather with the protection of *national states* that have the power to counteract market forces on behalf of the poor. The erosion of national identity is not, in itself, such a problem, but the present reality is. In the current situation, the arguments that contribute to the erosion of national identity point in the direction of a *libertarian* cosmopolitanism, rather than a liberal and redistributive one. The global market potentially dissolves the redistributive state by liberating and luring the rich away from the national tax base and otherwise eroding its powers. And the problem is that the same arguments that make the nation seem irrelevant might also tend to suggest that the state should do less. Unfortunately, "the very processes that are said to be dissolving national identities," in the cosmopolitan argument, are the processes of a global market that might tend to inflate and exacerbate inequalities for the residents of Western states (186-7).

The cosmopolitan arguments, that national identity is "in decline," consists of a familiar "catalogue of reasons" about the increasing connectedness of the world (155).[72] To rebut these

[72] The catalogues can be summarized quickly. We all consume the same things, and know that we consume the same things, identify and relate with "sub-national or supra-national" associations and, in Europe at least, have transferred, somewhat voluntarily, our collective powers to "supra-national organs of government" (155-7).

trends, Miller again appeals only to consequences. He is open in principle to the theory of overlapping identities often proposed by cosmopolitans; he does not think it implausible in principle to suggest, "national identities will co-exist at different levels – people will think of themselves as French or German at one level, European at another" (159). His rebuttal centers instead around evidence that, so far, national identities and value differences remain fairly robust in the general population (159-162). Based on this evidence, "It seems that at present established national identities are more likely to be challenged from below – by Basques, Flemings, Scots, and other like them elsewhere in the world – than eroded from above by people coming to identify themselves with large heterogeneous entities like Europe" (162). By responding in this fashion, Miller reveals that his refusal to promote a politics of overlapping identities is based in a pessimism concerning what is possible for the masses rather than based than in a contrary fundamental outlook or aspiration. Miller is concerned that, as a practical strategy for achieving the just society, the cosmopolitan argument will do more harm than good. Europe and regionalism are better positioned, he thinks, to suck away and shelter escapees from the welfare state than they are to build up new redistributive agencies and powers. In this context, Miller is arguing, to emphasize the decline of national identity is to contribute, accidentally, to the impotence of welfare regimes and to the potency of libertarian critiques of the same. These are instrumental arguments, derived implicitly from a cosmopolitan, or universal point of view.

A utilitarian or other liberal theorist who explicitly affirms at least a quasi-universalist point of view for deliberating about the value of states or nations is free to argue in this way. But Miller does not want to leave his defense of nationality this dependent upon instrumental

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Furthermore, we do not see our national forms of government as uniquely precious, for they are all converging on common forms; we no longer fear a war between them; and we have a "kind of relativism" about them that promotes complacent expectations of tranquility and inhibits us "from seeing ourselves as the custodians of a unique political treasure" (176-7).

considerations. He would like to claim that his nationalism is sincere. Officially, he makes this move because he believes doing so is too disingenuous. Ethical universalists, he explains, can support sentiments of nationality for the sake of "the effective functioning of political communities," but it results in a "somewhat uncomfortable" position (82). However, since it is clear that Miller does *not* believe in nations, this cannot be his sufficient reason. He is, I suspect, in this uncomfortable position too: "the position of having to recommend, on instrumental grounds, the fostering of attitudes and beliefs which he regards as intrinsically groundless" (82n). Since the national myth he seeks to impose is self-consciously a myth, and one that overlaps almost entirely with cosmopolitan goals, we may fairly read Miller's argument to the cosmopolitans as expressing his position best: nations are not real, but believing in them – *while denying they exist in any determinable way,* is the best possible strategy for advancing our current agenda. This strategy is not fully liberal in the original meaning of the term, and in fact involves the revolutionary destruction of existing nations and the imposition of ideological limits to speech but, in the world of competing mythologies, perhaps one must pick a side.

CHAPTER 5: NATIONAL LIBERALISM

We have seen all of the ways in which liberalism destroys nationality, properly speaking, and we have seen as well that Miller celebrates this fact. He is therefore arguing that we should believe in a myth that we know is false in order to further liberal goals. But he must do more than *offer* such a myth: he must impose it authoritatively. In order for the myth to accomplish anything, it must be given teeth. But Miller tries very hard to obscure that he is imposing a myth on us. The non-imposition of the liberal myth *is* his liberal myth.[73] But if that were really the case there would nothing for liberal nationalism to do, and Miller is not defending liberalism as it stands. "The nationalist celebrates his attachment to an historic community; the progressive liberal concedes it with reluctance and shame," and Miller wants to argue the nationalist has "the better reason on his or her side" (Miller 1995, 15). We must learn to celebrate, so the liberal must learn to celebrate. How could the liberal celebrate, though, if the nation is not thoroughly liberal? The nation must be re-made as liberal, must become what the liberal can celebrate, so a new national myth *must* be imposed. Out with the old and in with the new – liberal nationalism has a radical political agenda and falsely portrays this agenda as lacking authoritative restrictions that liberals proper reject. In this chapter, I will show as clearly as possible that Miller's nationalism is in fact illiberal.

To do so, I first note that Miller cannot rely on the myth of spontaneous order to describe his national reformation program. In some sense or other, this program would be imposed, politically. I therefore argue that Miller is obliged to be much more similar to a conservative nationalist than he claims to be. He would like to establish national authority without piety, but this is not possible. He too must advocate *establishment* of national institutions, and he is

[73] We could also say; the non-existence of the nation is his myth about the nation. As we saw in the previous chapter, he would like to infiltrate the nationalist position, so that no enemy to liberalism could rightly remain.

mistaken to think that a purely consensual process can establish or maintain them. He must privilege some voices over others, declare between winners and losers in the national conversation, protect the winner's views from perpetual criticism, and coercively inculcate identities and attitudes. In short, his national liberalism includes authority, establishment, piety, indoctrination, and exclusion. He fails to see how conservative he is in these respects because he does not have any respect for conservatives or any place for them in his nation. What he further fails to see is that, by his definition, almost everyone is conservative. He thinks he excludes the few, but he in fact excludes the many.

Non-spontaneous Order

Miller's nationalism (or "nationality") seeks to replace alternatives, to gain authority over the public sphere. He has rivals for this authority, and we know well who the most pertinent rivals are. Both of his rivals are parts of the conservative spectrum. Obviously, he opposes those conservatives who take a free-market approach to liberalism; i.e. those who are simply and strictly liberal in the classical sense of the term. Miller is not arguing that the new nation will arise through purely free, uncoordinated, spontaneous activity. Explicitly, Miller insists, "Nationality can no longer remain a diffuse, taken-for-granted cultural matrix, something one acquires simply by living in a place, breathing the air, being exposed to particular ways of doing things" (178). Nationality cannot "remain a diffuse, taken-for-granted cultural matrix" (178).[74] For Miller, *something must be done.*

Miller attempts to avoid giving this impression. But, as we saw in Chapter 3, to the extent that he *really* avoids such conclusions, he fails to establish national loyalty. He indeed *tries* to argue that national loyalty can be all about consent and choice, each properly understood. But

[74] As a free-market conservative would presumably argue.

whenever he is pressed to show that national obligations really exist, he takes this back. When Miller is being a nationalist, he argues, against liberals of all stripes, "to regard membership as something one has chosen is to give way to an untenable form of social atomism which first abstracts the individual from his or her social relationships and then supposes that those relationships can be explained as the voluntary choices of the individual thus abstracted" (59-60). Therefore, in normal circumstances at least, one cannot consider "acknowledgement of one's nationality a matter of voluntary choice" (60). If one could, the obligations Miller has in mind would disappear. "However one tries to spell it out, the 'voluntary creation' approach to special obligations is not going to endow nationality with ethical significance (nor, indeed, will it even strongly justify the existence of states)" (62). Miller is simply inconsistent on this crucial point, and there is no way to make his position coherent. To the extent, then, that he is serious about his nationalism, he must support the involuntary restriction of individuals.

And his proposals are quite clear. Miller assumes that national loyalty is necessary, and that national identity therefore requires strengthening through positive political action. Given these assumptions, Miller asks, "What, then, is to be done" (177)? And he answers, "there needs to be an explicit public debate about the character of national identity" (179), after which, Britain should reach a new "constitutional settlement" that replaces all of its former compromises and institutional ambiguities (180). Britain should then use "civic education as a means of transmitting the redefined and constitutionally embodied national identity to the incoming generation" (180). For this purpose, Britain should follow "the French example" of "compulsory education in public schools and military service" (143), and "the French tradition of republican and secular education" (170). So, the national identity will be instituted *politically* and *compulsorily*. How, then, will Miller avoid using coercion?

Authority

Miller's claim is that we can collectively impose a national myth *politically*, but without coercing anyone. In this task, his most important rivals are *conservative nationalists*, for these interlocutors would impose as well, as they admit plainly. In Miller's own view, "The conservative nationalist moves from a valid premiss – that a well functioning state rests upon a pre-political sense of common nationality," to an unnecessary conclusion (129). He does not agree, "that this sense of common nationality can be preserved only by protecting the present sense of national identity and the authority of the institutions that now express it" (129). Miller thus understands his dispute with conservative interlocutors to focus on the question of whether "national identity integrally involves allegiance to authority" (124). In Miller's view, national loyalty is merely a matter of "horizontal ties to fellow-members," and only conservatives require "vertical ties to established institutions" (124). The conservative interprets national loyalty thus: the nation being like a family, its unity and power reflect the "unequal relation of authority between parent and child," which makes national identity a form of "*piety"* (124). Quoting from Scruton, Miller illustrates that the conservative view considers piety a limit to individual autonomy: "Impiety is the refusal to recognize as legitimate a demand that does not arise from consent or choice" (Scruton 1980, 32-3, Miller 1995, 124). Just as children are obliged to recognize the authority of parents whom they did not choose and whose restrictions thwart their desires without justifications that they can understand, so the citizens are obliged to recognize the authority of a nation they did not choose and whose restrictions sometimes go beyond what can be explained as the outcome of any situation of choosing.

It should be almost obvious that Miller invokes piety since he, too, wants to say that nations make legitimate demands that do not arise from consent or choice. Miller's suggestion to

the contrary only even *appears* plausible because he links the conservative argument to the specific institutions, limits, and membership conditions that conservatives endorse. In fact his only dissent seems to be that the *present sense* of Britain's identity and the institutions *that now* express this identity do not appeal to him. If we abstract from these particulars, the conservative nationalist argument he reproduces is as follows: if national identity is good, and if it rests on reverence for pre-political symbols and myths, then the state should legally establish and protect some national institutions, limit speech rights to shield national myths from overly zealous criticism and take a cautious and discriminating approach to whoever demonstrates too little allegiance to the established nation. Miller of course has different myths, institutions, debates, and "aliens" in mind – that goes without saying. We merely have to see *what* Miller imposes and on *whom.*

We can get a little more specific about the perils Miller must avoid because Miller notes the corollaries of the conservative view well. First, "Since the state draws its own authority in part from the authority of the nation, it needs to give formal recognition to the institutions through which the latter is expressed" (125). Such institutions require "*establishment"* in the sense of legal recognition as superior to others of their form. In addition, since the nation consists of a mythology, this set of myths deserves protection form "rational criticism," irrespective of "liberal commitments such as those to freedom of thought and expression" (125). Finally, the trustworthy and pious citizens are those who accept and affirm these institutions and myths, sharing as much as possible in the public culture that supports them and therewith the state. Miller explains, "if you regard a common national identity as essential to political stability," (as Miller does), "and also think that national identity involves an allegiance to customary institutions and practices," (as Miller claims he does not), "you cannot help but regard an influx

of people not imbued with a suitable reverence for these institutions and practices as destabilizing" (126).[75] Establishment, limits to free speech, exclusion – Miller claims that his new nationalism will not require any of these illiberal contrivances. He would affirm the "if" without the "then." Is that really possible?

Establishment

Miller thinks he can deny that he requires piety or vertical ties because he assumes that a properly conducted, free, democratic debate over the national identity is not a matter of coercion. He enters the debate claiming that no side will assume authority over the other; there will be no privileged point of view.

> Ideally, the process of change should consist in a collective conversation in which many voices can join. No voice has a privileged status: those who seek to defend traditional interpretations enter the conversation on an equal footing with those who want to propose changes. The conversation will usually be about specific issues: which language or languages should be given official status; what version of national history should be taught in schools; what changes, if any, should be made to the constitutional arrangements; and so forth. But behind these lie the wider questions: what kind of people are we? What do we believe? How do we want to conduct ourselves in future? In this perspective established institutions have no sanctity; they serve as a point of reference, but have authority only in the sense in which a cookery book has authority for an aspiring chef, namely that it lays out the existing principles of cuisine and provides a base from which experimentation and innovation are possible (127).

Let us first consider this supposition in a very general way. Imagine we are to conduct this debate over national identity on these terms. Can we allow everyone to propose changes on an equal footing? As I argued in Chapter 3, the very suggestion is moot once we recall that it presupposes that we know *who* is part of this "everyone." Unless we already know the answer, in some way, we cannot even raise the question "what kind of people are we?" But let us get a little more specific; we will presuppose that the community of deliberation is sufficiently well-

[75] So, for the conservative, immigration is a dangerous force for political stability. And Miller rightly recognizes that this part of conservative view is mischaracterized as "racism" and in fact rests on this "deeper ground" (126).

defined. At one point, Miller imagines, "a street association deciding how to commemorate some national event such as a military victory or a coronation," and he urges, "these discussions must proceed on the basis that no one should be penalized or excluded for expressing views that challenge the traditional understanding of national symbols and historic events" (128). So, membership is at least defined by the fact that we have an existing street association. But now we must deliberate over how we feel about our national holiday without further presuppositions – how might that work out?

To do Miller justice, we must notice that he expects and requires democratic discussions to conform to "the ideal of *deliberative* democracy. This is the ideal of a political community in which decisions are reached through an open and uncoerced discussion of the issue at stake where the aim of all participants is to arrive at an agreed judgment" (96, emphasis in original). In other words, no coercion or leverage or privilege may be used to influence the conversation, and the result ought to be consensus, so no one will lose. To realize this ideal, everyone must keep their arguments consistent, and everyone must "be willing to moderate their claims in the hope that they can find common ground" (97). Under what conditions is this ideal coherent and plausible?

The conditions become clear if we ask, what happens if the ideal is not met? Suppose people are not willing to moderate their claims – what happens then? Will not at least *this* claim be privileged and entitled to use coercion: the claim to enforce the ideal? That will not be necessary if we are all already deliberative democrats, of course. But we are not; in fact, we need to be a nation *in order to* become deliberative democrats. Miller explains, "states require citizens to trust one another if they are to function effectively," i.e. to achieve the deliberative ideal (96), and "only a common nationality can provide the sense of solidarity that makes this possible"

(98). So, we must *first* acquire a common nationality, and then we will be able to be deliberative democrats. But the point of our current debate is to *establish* a common nationality, from scratch as it were. The participants are debating how to celebrate a "national event," such as a military victory or a coronation, so they are engaging in the same kind of "explicit public debate" about their national identity that will result in the new constitution. They are not *yet* endowed with a common nationality, for they do not yet agree on the meaning of the national event.

Now, if we must include all challenges and all opinions, then we must include and respect those who say that the military victory was really a tragedy, that the nation does not deserve to be commemorated, that the event deserves to be abolished or transformed into a protest; we must consider that the coronation is an absurdity, that the monarchy is illegitimate, that its holidays deserve mockery or abstinence. Miller affirmed all of these possible perspectives when he referred to Sartre and citizens with dual loyalties, as we saw in Chapter 3. So, Miller is quite correct, in a way, about the priority of the nation to the deliberative ideal: these types of disputes, about *who we are,* must be off of the table before we can possibly engage in a civil, let alone deliberative, discussion.[76]

Piety

Is the debate Miller in fact proposes in better shape? No indeed, for the opinions I mention are the very ones that Miller intends to bring to the new national debate in Britain. Should there be a coronation? In his view, "monarchy" has nothing to do with British national identity (167). Britain needs a new constitution, after all, because Britain's "constitutional arrangements," once both rare and inspiring, are now "outmoded and unenlightened" in

[76] In other words, while you can permit dissenters to protest a military parade or a coronation, you cannot hold the parade or coronation hostage to their demands. Once the nation's right to exist and express itself is up for grabs, there is no ground for compromise. National debate *presupposes* national community.

comparison with more modern forms (170-1). As far as Miller is concerned, "*no one* can regard the British constitution as anything other than a ramshackle contrivance badly in need of radical renewal" (171, my emphasis). In Miller's view, hardly anything – nay nothing – *valuable* remains of British identity today, so "many Britons may wonder whether there is anything distinctively valuable left in a British identity at all" (170). In Miller's account, which is of course a mythical history about British identity, these are presented as *facts* that demonstrate the need for the new public debate and constitution.[77] Presumably, to get the debate started, there must be consensus on this much, at least. But no such consensus exists, as I will confirm shortly. Miller's call for debate is therefore itself an unjustified imperative. It is an agenda-setting move, a privileged voice, from which there can be no dissent if the ball is to get rolling.

Let us also consider what happens after the debate is over. Now, according to Miller's deliberative ideal, the debate will not in fact be over until consensus is reached, but such consensus is a fairy tale. Some party will win, leaving others dissatisfied. And even if they are not, there is always the possibility that some new voice will arise. Not forgetting that Miller believes the debated identity may and should further evolve in the future (endless debates?), the question is whether it may evolve in just any direction, and the answer must surely be no. For, let us assume that he wins the debate, and Britain obtains a new constitutional order, an identity

[77] In presenting his evidence, Miller admits, "I owe a great debt here to Linda Colley's recent attempt to trace the origins of present-day British identity in the eighteenth and early nineteenth centuries" (Miller 1995, 166, Colley 1992). Indeed, Miller relies on Colley's history almost exclusively. This history, limited to the modern era, abstracts entirely from evidence of English and British identity that Miller invokes elsewhere. In Chapter 1 alone he considers, "Fortescue's *Absolute and Limited Monarchy* (c.1460) …the debates arising from the Union of the Scottish and English Crowns in 1603…Defoe's poem of 1701 cited above (28); English political thought in the seventeenth century (34-5), the historical bearing of "the Norman Conquest" (38). Given Miller's commitment to preferring national identities when "the process involves inputs from all sections of the community" (38), we might demand that his description of British national identity should include a survey of competing historical views. So, is Colley's view the consensus view among British historians? It is certainly *possible* to consult historians who take longer views as well, such as Trevelyan (Trevelyan 1956). Regardless, we have an illustration here of how Miller will use the soon-to-be-created Ministry of National History/Mythology.

enshrined in law and taught in school. What is the status of this new order? It is now the tradition. If towards it one must show no piety, if "those who seek to defend traditional interpretations enter the conversation on an equal footing with those who want to propose changes," if "established institutions have no sanctity" and "experimentation and innovation are possible," then the new order is at least as fragile as the old. One might wonder, then, whether a conservative revolution could follow, re-establishing the king. This in fact happened in France, for instance, and worse things happened in Germany when *its* liberal order collapsed. Consider Strauss again:

> Someone might say that the Constitution could be constitutionally changed so that the regime would cease to be a liberal democracy and become either Fascist or Communist and that every citizen would then be expected to be loyal to Fascism or Communism; but no one loyal to liberal democracy who knows what he is doing would teach this doctrine precisely because it is apt to undermine loyalty to liberal democracy … A given society may be characterized by extreme permissiveness, but this very permissiveness is in need of being established and defended, and it necessarily has limits: a permissive society which permits to its members also every sort of non-permissiveness will soon cease to be permissive; it will vanish from the face of the earth (Strauss 1964, 48).

We must assume that Miller does know what he is doing. But if we do, then we must also assume that he is not quite serious about the permanent flux he admires. This invocation of flux will do to get the project off of the ground, to sweep aside existing loyalties and begin the revolution. But Miller must have some idea of where the revolution is going and where it will end. "Therefore the guiding question… is the question of the best regime" (Strauss 1964, 49), not nationality. Once in place, Miller will defend this regime, and if he defends it in terms of nationality, he will be subject (but more explicitly) to the same critique he makes of conservative nationalists. In response, he too will have to practice coercion and set limits to public debate.[78]

[78] Miller really cannot have it both ways. If his position is that tradition is false and deserves no reverence, then he is a liberal, not a nationalist of any variety. But if his position is that tradition is sacred for us, for whatever reason, then he cannot go on to say that it is merely a cookery book from which we may depart. If one invites tradition to the table, saying we must be who we are, one cannot then add, or who we would like to be, starting from scratch.

Miller does not in fact even propose a free debate; he supplies an imperative. The debate will *only* consider, "the ways in which an historically transmitted identity (such as plainly exists in the British case) *must adapt* to new circumstances, especially to increasing cultural pluralism" (179, my emphasis). Miller and his party will therefore enter the debate over public holidays and the new national identity with radical opinions and an un-tempered insistence that people with contrary views of British identity "*must* adapt." The results are not optional or open-ended. "What *must* happen in general is that existing national identities must be stripped of elements that are repugnant to the self-understanding of one or more component groups…" (142, my emphasis). The requirement to adapt to "increasing cultural pluralism" is absolute. One can be a deliberative democrat *later*, perhaps, once everyone is on the same page. The first step is to deny that we have any given national identity; then, and only then, we must create one. The debate will take place between the like-minded and imposed on the rest.

Some people will value a cosmopolitan community – if it can be called a community. But others will not. Miller's proposal has opponents, and he is unwilling to entertain their views, so Miller cannot escape the charge that he limits debate. In the national debate Miller calls for, he intends to raise questions about the status of the same institutions the conservatives wish to establish and protect, such as the monarchy and the Church of England. He therefore agrees that these institutions have something important to do with the national identity, and if he is serious that the debate is an open one, he is open to the possibility that the result of the debate will be exactly what the conservatives call for. If there is really a chance for debate here, then it is

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Tradition cannot compete with change as one of two equally interesting options, for tradition's only word to say is, "respect me because I am." The case is the same as if one invited God to participate in a debate on the condition that His words would carry equal weight with his detractors. Piety is a yes or no, not a maybe. If the commandment is merely a recipe possibly to improve on, then it is not a commandment; if the nation is merely our present situation as an opportunity for reflection and change, it carries no obligations. So one does not treat the conservative *fairly* by offering equal terms, one in fact dismisses him. And Miller's revolution will be dismissed in turn.

possible that the new written constitution and educational curriculum will be determined by the conservative points of view. So, if Miller were serious, a possible outcome of his debate would be a strengthened monarchy and more deeply established church. My suggestion is clearly counterfactual, however. The terms of the debate are, "assuming that these institutions are nothing to us save a model on which to improve, what is to be done?" And the necessary result of the debate is, "they must all be scrapped, and a new, multi-cultural, cosmopolitan identity must be imposed." There is no stage at which one is free to insist that existing institutions are venerable, crucial ingredients of our identity, which must be preserved whether they appear useful or not. So, it is clear enough that Miller proposes a debate the outcome of which he predicts to win. But after he wins, one will not be free to challenge these new institutions – they will become venerable, crucial ingredients of our identity, which must be preserved whether they appear useful or not. And this means that Miller's call for free debate is a sham; like the conservative, but less openly, Miller call for limits to free speech.

Indoctrination

Miller generally portrays the national compulsory education he proposes as a challenge to multiculturalists, not conservatives. Against radical multiculturalists, he asserts, "the principle of nationality implies that schools should be seen, inter alia, as places where a common national identity is reproduced and children prepared for democratic citizenship" (142). Because immigrants are obliged to obtain this identity, "schools can act as a counterweight to the cultural environment of the family" (142). This means that schools should be "public in character" and teachers of "something like a national curriculum, a core body of material that all children should be expected to assimilate," with some allowance for regional variation (142-3). Some multiculturalists will, no doubt, find these requirements oppressive, but we would be misled if

we saw the interventions as planned for the sake of supporting the "cultural environment of the family" that may be traditional to Britons today. On the contrary, Miller is concerned to make national identity "sensitive to the realities of cultural pluralism" (180). On the contrary, "Cultural minorities should not be seen merely as recipients of an identity, but must be expected to play their part in redefining it for the future" (180). It is imperative that cultural minorities have "the opportunity to participate in the continuous redefinition of national identity" (180). So, the education of Britons must consist largely in this continuous process of redefinition.

How, then, *must* British identity adapt? The compulsory education for all "must be presented in such a way that it leaves open the possibility of differing interpretations" (180). But not the possibility of interpreting the slide to these changes as a decline, of course. Rather, each ethnic group "will want to highlight their struggle to establish themselves in British society" (180-1), so British history will presumably be taught to them as a progressive series of struggles against prior aspects of British identity. The purpose of this education is to validate "the changes in British political culture" that provide inclusion of the previously marginalized (181), so we must expect that the education will in fact portray British historical identity merely as an obstacle to some and a privilege to others. Those who identify in some way with older forms of British identity will learn to feel a proper sense of shame for the past and take pride exclusively in their ability to contribute to a more inclusive future.

In Miller's view, Britons today are tolerant but suspicious of those whose religions involve obedience to others. They have inherited "a specifically *Protestant* form of tolerance, which looks rather differently on religions that have their basis in individual experience and conviction as against those that involve deference to hierarchical authority" (169-70 emphasis in original). At this point, they are mostly comfortable with Catholics, but less so with Muslims.

This is not because they *should* be skeptical of Muslims, however. Rather, they become skeptical "because the images of Islam that are projected through the media involve Ayatollahs apparently controlling large masses of adoring believers – the very thing that is most likely to raise the hackles of a Protestant culture" (170).[79] In response, British identity *must* find a way to include Muslims on a more equal footing, and for this purpose, Britain should look to "the French tradition of republican and secular education" (170), or "the French example" of "compulsory education in public schools and military service" (143). The French educational tradition must replace the British educational tradition to better incorporate Muslims and strengthen civic participation.[80]

To illustrate French nationalist educational methods, Miller quotes and comments upon R. Brubaker's study of French and German citizenship education (Brubaker 1992).

> We might now think that this attempt was over-strenuous, but the basic logic is sound: *if you want to extend full rights of citizenship to everyone who resides on French soil regardless of cultural background, and at the same time to have generous immigration laws*, then you must take steps to ensure that the incoming groups are properly incorporated into French nationality (Miller 1995, 143).
>
> An integral part of the process was the substitution of French for the various regional dialects and languages that were still in common use in larger areas of rural France. In schools, *unwilling pupils were forced* to speak French…This may offend present-day multiculturalist sensibilities, but it is important to understand that France could not have been economically and politically integrated if the many local patois had not been superseded (143n, my emphasis).

[79] Rightly or wrongly? The remark is ambiguous. If only the images are incorrect, then Miller means that the Protestant tradition is healthy, and it is simply that we are unaware how very Protestant Muslims really are. In that case, should not the response to Muslim immigration include giving more explicit endorsement of Protestant identity, reminding the newcomers of what is expected? But if the Protestant attitude is wrong, then the media is not the problem; instead, one must teach Britons to be more open to becoming devotees of their priests. This complaint is ironic given the fact that Miller thinks nationality is a fictitious belief "transmitted … through … books, newspapers, pamphlets, and more recently the electronic media" (32). Would he perhaps be interested in censoring the national media in order to promote only positive images of everyone? Is he suggesting that Britons should be less skeptical of authoritative religions?

[80] The French tradition, of course, responds to an entirely different cultural situation, in which the *existing* republic is assumed to be Catholic as opposed to Protestant (recall the massacres) (Renan 1896). Miller's consistent plea for Britain to become France is one of the clearest signs that he does not distinguish between national identities.

We are meant to read this passage as a warning to multiculturalists: 'Listen,' it seems to say, 'You cannot have generous immigration without some efforts at conformity. But it is also fair to read this passage from the opposite point of view. French education is necessary, Miller is claiming, *if* you want to be simultaneously pro-immigration and to ensure that cultural minorities obtain full and equal status merely by virtue of residence, rather than birth or cultural conformity. The educational program demanded will affect the *current* citizens as much as the newcomers, so it is designed to integrate the newcomers in part by challenging "the cultural environment of the family" that British students might learn at home. If "unwilling" to learn the new curriculum of multiculturalism, they will be "forced" to speak its language all the same.[81]

To make the issue more concrete, I would like to offer one example of the way in which liberal nationalism limits free speech, in the same manner that liberal cosmopolitanism and/or multiculturalism would do. But the clearest example for this illustration that I find in Miller's book is the manner in which he would have us discuss the Holocaust. This subject brings up very strong emotions, so I hope to avoid any misunderstanding. Without question the Holocaust was a great evil; the question, however, is how we are to understand the responsibilities this historical event places on present-day Germans and ourselves. And, first of all, the question is how German identity is or must be shaped by this event, according to Miller's liberal nationalism. As we will recall from Chapter 3, truth is not his standard for liberal mythology. As it turns out, on closer inspection, open debate is not his standard either. What matters is how well myths support Miller's ideals.

> Leaving aside questions about the sense in which we can call any historical narrative true or false, the historical accuracy of *national stories* seems to *matter* less in its own right than *for the effect it has on the nation's present self-understanding*. For instance, we think that Germans should not deceive themselves about what went on during the

[81] The reader will recall that I compared this education to Nussbaum's cosmopolitan education in Chapter 3 (Nussbaum and Cohen 1996).

> Holocaust; but this, I think, is less because we think it intrinsically valuable for present-day Germans to have true beliefs about what their fathers did than *because we think they are less likely to succumb to racism* once again if they understand how the Holocaust came about. (This example also shows us the limits of Renan's remark about the importance of forgetting) (40).

For Miller, then, it is irrelevant here whether present-day Germans believe true things about themselves and irrelevant whether what they believe they spontaneously adopt. In principle, all that matters is the normative effect of the beliefs they hold today. In light of this standard, Miller asks, is it best that today's Germans hold a national identity that affirms their responsibility for the Holocaust? And Miller answers yes, because they do well to believe whatever might make them "less likely to succumb to racism once again" (40). As phrased, it sounds a very sensible goal. But in this phrase, Miller actually confounds the normative with the mythical. Normatively, he means to say, they ought to believe what makes them least likely to succumb to racism. But the idea that they must avoid doing so "*once again*" is part of the myth they must believe, for it is not the case that today's Germans are part of a historical nation – we know that much by now.[82] That myth "can be sustained today only by projecting backwards and supposing that other people still have the characteristics that made them enemies in the past. (Germans are still closet fascists, the French are always out to knife the British in the back, and other such improbable ideas)" (177). If it is Miller's sincere opinion that Germans are *not* still closet fascists, that "what their fathers did" is always a mythical phrase, and that it is mythical to believe that the Germans have a national tendency to succumb to racism in an extreme way (which, I suspect, is indeed

[82] To confirm, notice the specific way in which Miller's footnote modifies the irrelevance of the truth to our judgment by reference to Holocaust survivors. We do not think it intrinsically valuable for Germans to have true beliefs, "Except in so far as we think it an insult to the survivors of the Holocaust to have the truth about it distorted or suppressed. *This may matter less when those survivors have themselves died"* (40n). If we had any doubt remaining that Miller does not believe in nations that extend over time, this remark should dispel it. For the Jews of the future apparently have no interest in, and could not be insulted by, the disappearance of this truth. Miller's interest is limited to the living.

mythical), then there is some other reason why their own belief to the contrary has value. "They" cannot succumb to racism "*again"* because "they" have never yet done so.

If the "they" in this passage does not exist, what does? Miller's description of the German situation invokes a strikingly subjective point of view. Throughout, he writes of what "we think… I think…we think…we think" (40). Clearly, Miller is providing a description not only of what Germans believe but also, perhaps even more, what *we* believe or what *he* thinks we believe or should believe. We can therefore characterize his prose here as a kind of national story about ourselves, his readers. We believe or should believe, Miller thinks, that the Germans should remember the Holocaust as the work of their fathers far less for the sake of the truth than for what? The answer must be, for the sake of combatting racism. We (British, or perhaps also Americans and others) are a people committed to the eradication of racism, or we should be. That commitment of ours should stand higher than our commitment to truth.

To illustrate, notice that there are really *two* historical questions lurking in the example. The first concerns, "what went on during the Holocaust." The second concerns, "how the Holocaust came about." A commitment to truth might lead us to insist that vast numbers of people were killed during this event, and we might argue that the truth also includes the fact that these killings were murders, tortures, and indignities. But the causes of the Holocaust are very much the subject of competing historical interpretations. Was the Holocaust caused by racism? According to John Rawls, "Not to be overlooked is the fact that Hitler's demonic conception of the world was, in some perverse sense, religious…one which includes not merely racial elements" (Rawls 1999, 20). And doubtless there are even more complexities to the question of why Germany went along with Hitler at that time. At any rate, by insisting that *racism* was the singularly important cause, we are supporting one of a few alternative national or mythical

stories. By urging us to do so, Miller is urging us to privilege an account of what happened that places the maximum odium on this concept of racism. Again, we and the Germans are to *define ourselves* by the view that racism is the cause of the greatest evils, or we are to make the eradication of racism one of our highest aspirations.

But whatever their value, none of these commandments stem from or permit "open processes of debate and discussion to which everyone is potentially a contributor;" rather, in a very real sense, the anti-racist identity is "authoritatively imposed by repression and indoctrination" (39). Miller cannot force students to learn this new identity and then pretend he allows them to reconsider. Must we state the obvious? Denial of the Holocaust is a *crime* in sixteen countries, including Germany of course, and Miller shows no inclination to alter the law on this point. Through the use of this law and other state institutions like museums and memorials, both truths and myths are preserved. My point is not, of course, to call these institutions into question or to encourage Holocaust denial – far be it from *me* to do that! My point is, first of all, that democracies, too, must limit debate both coercively and otherwise. And second, there is a difference between acknowledging a terrible truth and turning it into a new, compulsory and mythical, ideology. Miller's nationalist mythology goes beyond liberalism and has teeth in it for dissenters, so he resembles conservative nationalists far more than he would like to admit.

Exclusion

Before we show *that* Miller excludes, let us notice *who* he excludes. And, in particular, how *many* he excludes. By focusing on Scruton and others far to the right, Miller gives the impression that he excludes only a fringe – hardly anyone at all. I, for one, care very little whether we exclude Holocaust deniers – especially since they are miserably ignorant of the truth,

which is unhealthy for the human soul. But Miller's potentially excluded class of persons is a much broader category. It includes not only Scruton, and probably Thatcherites, but also the vast majority of Britain's educated class. In fact, it may be supposed, it includes the vast majority of British citizens – at the very least all those who do not already share Miller's ideology, and probably even many that do.

The excluded are, in fact, whoever currently feels a sense of national (British) identity. When Miller calls for his national debate, his full remarks are, "there needs to be an explicit public debate about the character of national identity, and especially about the ways in which an historically transmitted identity (*such as plainly exists in the British case*) must adapt to new circumstances, especially to increasing cultural pluralism" (179, my emphasis). It bears emphasizing, "an historically transmitted identity… *plainly exists in the British case*" (179). What could the debate be about, if not about whether this identity, which *plainly exists*, must change? And what is this extant British identity? We may be surprised to learn, at this point, that it is not so hard after all "to pin down precisely what this entails" (25). British identity "could be linked to long-established institutions such as the monarchy, the Church of England, and the House of Parliament" (179). In other words, there are some particular, long-established institutions, that *could* be our point of reference when explaining the otherwise elusive national identity. So Miller's whole description of national identity, his fruitless search for what it is that "the people who share it …have… in common" (25), ignored some potent options. Beyond a "common public culture" (25), which turns out to be fictitious and mythical, there are real institutions with a history. Miller alleges that these institutions no longer provide his countrymen with an identity, but he is inconsistent on this point, and rightly so.

Miller, of course, does not value these "outmoded and unenlightened" institutions, but some people may. Let us consider how many. Miller allows, "the political class at least…take pride in the constitution despite its elusive quality" (179). In fact, the *unwritten* constitution of England, so delightfully mysterious, has been its glory, to the political class at least – and that class is not such a small number. But Miller has little compassion for "Those who view politics as a practical activity best left in the hands of an elite who have been educated in the relevant political tradition" (31); he cannot share their pride.[83] And he no doubt believes that *most* of Britain cannot share the pride of the elite. But if we think on the matter just a little, we may become suspicious that the majority probably *do*.

From where, after all, do the British get their sense of identity? According to Miller's own account of how British nationality came into being, they get it from not wishing to be *French.*[84] "Military success against the French, the winning of imperial possessions at their expense, and the collapse of the French Revolution into dictatorship were taken as confirmation of a British identity that embodied the root principles of liberalism: Protestantism, limited government, free commerce overseas" (106). Despite reminding his compatriots that they do not wish to be French, however, Miller consistently urges them to become more like France, America, and other "newer nations" (178, 171). Against the educated elite, and allegedly in favor

[83] If space allowed, it would be worthwhile to explain *why* Miller takes no pride in Britain's institutions and their history. In what I take to be the most crucial part of his story, he fails to take pride in these institutions because they have been rejected by the former colonies, most of which descended into military or one-party rule. Since he refuses to condemn their rejection of British imperialism all the same, he concludes, "The ending of empire – not so much the formal hand-over of power as what happened thereafter – called into question … the intrinsic value of British institutions themselves" (171-2). He recurs to this theme when he explains, "In a post-imperial age, we tend to acquiesce in a certain kind of relativism" (177). Ironically, "this is partly in deference to the doctrine of self-determination" (177). Miller's solution to Britain's lack of pride is also the reason for Britain's lack of pride.
[84] This is Miller's claim. I make no judgment as to whether national identities arise or could arise simply from opposition to some other national identity.

of the people, Miller raises the standard of the "activist idea" the famous "active" conception of the nation, the one born "during the French Revolution" (29).[85]

Miller dislikes British institutions because they have a messy history and are, well, British. There is lacking a certain clear hierarchy of principles; indeed, for Miller, "the operative principles have become simply mysterious" (179). He demands clear answers to questions such as, "What is the legitimate political role of the Church of England?" and "What does the heir to the throne have to do to disqualify himself from the succession?" (179-80). But there are no unambiguous answers to these questions; one can only study the long history of partial answers and compromises that have been made. And there are new questions, like how to "respond to the demand of some Islamic students that they should be allowed to wear special items of dress such as headscarves in schools" (179). Miller insists, "Questions such as these should not be brushed under the carpet or resolved through some administrative compromise, but should become the occasion for a public debate" (179). Following his deliberative democratic ideal, Miller wants clear answers, not compromises, and certainly no brushing things under the carpet.

As a relatively uneducated outsider, I have thought that British identity was characterized by compromise, caution, and bottom-up sorting of one problem at a time. Brushing things under the rug – is that not the British way? It is rumored that the Glorious Revolution of 1688 was glorious precisely because it refused to settle such issues more precisely than was absolutely required by the circumstances – a prime example, one might think, of the peculiar genius of the British people. Since Miller himself wishes to incorporate the 1689 Bill of rights "and so forth"

[85] Miller likes the explicitly revolutionary nations, which base themselves expressly on universal principles. We understand better now what he meant when he said that national identity should be expressed through "a set of understandings about how a group of people is to conduct its life together. This will include political principles such as a belief in democracy or the rule of law, but it reaches more widely than this" (26). In defining national identity in this way, Miller was preparing us to understand the need for a national debate in which existing institutions get replaced by "political principles … explicitly set down to serve as a point of reference for the future" (179). The nation of institutions is to be replaced by the nation of principles, the ideological nation.

into his new scheme (180), he might consider whether such acts did not gain in value precisely by being partial and cautious additions to an already venerable structure. At least this much is obvious: since even an American such as I can have heard such rumors of Britain's reputed identity, it is highly likely that Miller is quite mistaken to say "no one" among his compatriots takes pride in it. And these opponents do not even share the crucial premise of the debate, which is that there *should* be a debate because British national institutions are worthless as they are.

If even foreigners have heard of such things, probably many non-elite members of Britain have as well.[86] So, it would be very unwise to imagine that *only* the interests of some small and distasteful, conservative elite are at stake in the proposed revolution. Indeed, one of Miller's main points in *On Nationality* is that *most people* already feel a sense of national identity. If having a national identity is at all similar to being of Scruton's type, the point is that we are, *almost all of us,* of this type.

> What I am claiming, then, is that even those who profess their indifference to nationality under ordinary circumstances are very likely to find that, at those exceptional moments when the fate of the whole nation is determined collectively, their sense of identity is such that they see their own well-being as closely bound up with that of the community. Simply to give an accurate account of people's experiences requires us to give due weight to these mainly subterranean loyalties (14-15).

Later, Miller argues at length, "Despite attempts by Euro-ideologists to create a European national identity…very few Europeans actually acknowledge this in preference to their traditional national identities…their emotional loyalty (feelings of national pride, etc.) continues to be directed toward their country of origin" (160). All of these people are like Scruton in believing that some pieties should not be questioned and are not subject to rational revision, and

[86] I probably must count myself as one of the educated in this respect, but I assume that my education is off-set by the fact that I am a foreigner.

much of Miller's book is devoted to supporting their resistance.[87] Yet Miller's new political identity will be imposed in order to eliminate elements of the old identity that Miller dislikes, the very identity that these people possess. There are real people who take real pride in a British identity that is linked to real objects with a real history – the only serious objection Miller makes is that he prefers things of more recent invention.

The proposed changes are drastic, and they will affect many persons who currently feel a fairly strong sense of *existing* British identity. At the very least, Miller has admitted, there exists a political class of educated persons who value the existing institutions. What is to become of this political class? These persons cannot enter the debate because the "elusive" and "mysterious" aspect of what they love cannot be explained to everyone. Thus, they "are bound to view with distaste the activist idea of a people collectively determining its own destiny" (31). That may be so, but the question is, what does "collectively determining" mean? If being educated or otherwise part of an elite means having views that are impermissible in public, then such persons are not *part* of the collective in question. Beyond being barred from debate, are these persons even included in the "nation?"

Not necessarily, for Miller observes that this conservative nationalist argument makes sense: "if you regard a common national identity as essential to political stability, and also think that national identity involves an allegiance to customary institutions and practices, *you cannot help but regard* an influx of *people not imbued with a suitable reverence* for these institutions and practices *as destabilizing*" (126, my emphasis). But his conservative interlocutor is *not*

[87] What does Miller really have against elites? He detests, "lowest-common-denominator mass culture exemplified by Disney, McDonalds, and Australian soap operas" (187). He is keen to protect, "the architecture of public buildings; the pattern of a landscape; the content of education; the character of television and film," because, "We may all value a landscape in which small fields are divided by hedgerows rich in animal and bird life…As owners of television stations we may sincerely want to make high-class drama and probing documentaries…" (87). One of Miller's arguments for nationality, in other words, is the preservation of high-class culture, the remnants of the pre-modern modern order, that these high things may be shared with the common man.

imbued with suitable reverence for Miller's ideal nation. They therefore fall prey to the argument. Since conservatives are not imbued with reverence for the new order, they will be viewed with suspicion, as destabilizing the flux of change. If the compulsory education does not eliminate their views, what is to be done with them?

Perhaps history can guide us here. Miller proposes a revolutionary nation, like modern France, and he is enthusiastic to remind us, "As the Abbe Sieyes wrote, in his *great revolutionary tract*, 'The nation is prior to everything. It is the source of everything. Its will is always legal; indeed it is the law itself'" (29, my emphasis). As should be apparent by now, this concept of the nation is hollow and empty because it is merely the image of an egalitarian *state*, a blank slate against which to criticize existing communities and persons. Sieyes borrowed these ideas, somewhat carelessly, from Rousseau's theory of the state, as Bronislaw Baczko has shown.

> Sieyes may have worked on ground that Rousseau had already broken, but he did not repeat Rousseau's arguments. He made free use of Rousseau's works, drawing from them what he considered to be definitive acquisitions: the concept of the social contract, the idea of sovereign general will, indivisible and inalienable, and more. At times Sieyes seems to neglect problems that Rousseau considered essential, such as how society could be produced by a simple joining of individual wills, the stumbling block of all theories of social contract (Baczko 1988, S104).

Although apparently unimpressed with the conceptual difficulties involved in Sieyes's conceptions, Miller is not unaware of Sieyes's immoderation, noting, "Sieyes, in direct opposition to the royalist position cited below, *identifies* the nation with the Third Estate; 'it is impossible to find what place to assign to the caste of nobles among all the elements of a nation'" (Miller 1995, 29). Baczko can help us be more precise about what Sieyes here implies.

> The tone and the style are polemical, to be sure. But verbal violence aside, Sieyes formulated a tenet that was to weigh heavily on the course of the Revolution. The affirmation of national sovereignty – of the unitary general will – would be accomplished only by *the exclusion* from the political area of all those considered enemies of the nation.

> He went so far as to demand the exclusion of the privileged from the nation so that it could fully assume its sovereignty. The legitimacy of all alleged rights of the nobility was null. "Why should [the Third Estate] not *send back to the forests of Franconia all those families* who maintain the mad claim of issuing from the race of the conquerors and having succeeded to their rights?" The privileged had become "*real enemies* to the common interest"; they "exclude themselves quite voluntarily from the exercise of public rights"; their place in the social order was that "of a malignant humor that saps it and torments it" (Baczko 1988, S108, my emphasis).

Now, today's elite probably would not maintain such a "mad claim" as was held by the old aristocracy, and surely Miller would not bring back the guillotine. But it is still fair to notice that his model, Sieyes, a revolutionary nationalist, suggested a course of violence and ideological cleansing, a course that really was followed, with horrendous results – the very ones the British used to be so proud to have avoided. We have no need to turn to German romanticism in order to find "the idea that there are no ethical limits to what nations may do in pursuit of their aims, that in particular they are justified in using force to promote national interests at the expense of other peoples" (8). We can find it right here in the activist element that Miller somehow thinks an innocuous or rather grand part of our modern legacy.[88] These affinities explain why the doctrine in question is, as Miller notes, "anathema to a certain kind of conservative" (31). Indeed, the revolutionary nation is anathema to that kind of conservative (the libertarian who does *not* believe in nations), to the other kind of conservative (the nationalist who *does* believe in the existing order), and to anyone who just likes things as they are in some way or feels attached to

[88] We might also notice, "the activist idea of a people collectively determining its own destiny" stands in contrast to "a community that, because it stretches back and forward across the generations, is not one that the present generation can renounce" (31, 24). For the revolutionary Sieyes, "the great age of a law proves only that it is old .... They cite history, but our history is not our code" (Baczko 1988, S101). Sieyes's view, though much more radical, is well-aligned with liberal views on this point. For comparison, consider the conclusion to Daniel Defoe's poem, which Miller cited earlier:

> Then let us boast of ancestors no more, Or deeds of heroes done in days of yore,
> In latent records of the ages past, Behind the rear of time, in long oblivion placed …
> For fame of families is all a cheat, 'Tis personal virtue only makes us great
> (Defoe 1701, 218).

the idiosyncrasies of the traditional and familiar, and to anyone who fears what revolution can do, thanks to these terrible memories.

Conclusion

Miller allows Scruton to explain the conservative nationalist's view and comments upon it to suggest the contrast with his own:

> As Scruton says of 'communitarian' liberals, 'none of them is prepared to accept the real price of community: which is sanctity, intolerance, exclusion, and a sense that life's meaning depends upon obedience, and also on vigilance against the enemy'. This remark seems to me to illuminate well the kind of community that conservative nationalists take the nation to be, and the political implications that follow (125-6).

Clearly, Miller does not want to accept this "price" and feels that he would not want to be a member of such a community – to this extent he and Scruton agree about what communitarian liberals believe. But I am arguing, the point is even sharper because Miller's kind of community is not truly so distinct. In the post-constitutional future, Miller and his heirs would have the right and feel the duty to point to the newly enshrined identity as a source of unconditional obligation. They would declare its validity off-limits to debate and attacks upon it to be attacks on the legitimate pre-political nation. In short, Miller's kind of community *does* require "sanctity, intolerance, exclusion, and a sense that life's meaning depends upon obedience, and also on vigilance against the enemy." The only question is *what* is sanctified, and therefore intolerance and exclusion of *whom*, obedience to *where*, and vigilance against *which* enemy. Scruton's point is not merely that communitarians fail to pay the price in question, but also or rather that they fail to notice the price they *do* ask us to pay. The conservative, as Scruton says, accepts that the price of community is exclusion.[89] The liberal, or at least the liberal nationalist or communitarian, wrongly believes that he can avoid excluding anyone, and he in fact excludes the conservative –

[89] Miller's critique, that this same conservative is similarly stuck in the flux of time, is potentially fair, as I discussed with the aid of Strauss in Chapter 3. I find it a merit, however, that the conservative at least owns up to the problem.

that is, nearly everyone. He seems to see only fairness just when he is being most unfair. At the very moment when Miller insists on the inclusion of many voices, he excludes many voices, the very ones whose premises he shares.

One of the central questions that I have been pursuing in these final chapters is whether liberalism is compatible with nationalism; Miller's work is an opportunity to explore that question because he argues that it is. I have argued that Miller's case that liberalism is compatible with nationalism in fact tends to reveal the ways in which liberalism is *not* compatible with nationalism. It only appears at all compatible because Miller moves back and forth between a number of equivocations, sometimes claiming that nations obligate us and sometimes that they do not, as suits his turn. His myriad points of view cannot fit together side-by-side because, if the nation *does* really constrain us, it ceases to be liberal; and if it *does not* really constrain us, it ceases to be a nation. This point is not novel, but I have taken it to be worthwhile to support it with further evidence.

We can consider the problem in Miller's position in one of two ways. If we focus on the ways in which his conception of the nation is hollowed out by his liberalism, as I did in the previous chapter, then we would say that he does not really depart from liberalism so much as give a nations a liberal gloss. The problem in that case is that nationality ceases to be a meaningful or coherent concept; as a result, nationalism fails to offer any resources for liberalism. Liberalism is willing to embrace a national identity only to the extent that it is not really there, so nationality becomes the fiction of no one in particular about nothing in particular. It is not as though we can become *obligated* to such a fiction, once we know it is a fiction. And so on.

On the other hand, if we focus on the claims he makes in the name of the nation, as I have done in the present chapter, then Miller really does depart from liberalism, asserting a right to intervene in the choices of individuals on the basis of his insights. From this perspective, we would say that Miller is indeed a nationalist but that he does not recognize the severity of the claims he is making. Under the influence of his own myth, apparently, he fails to see how closely he resembles the aspects of conservative nationalism that he otherwise abhors. Sanctity, intolerance, and exclusion are indeed his bywords, and his pretension to avoid these pitfalls only deepens them. Liberal nationalism is necessarily in contradiction with itself: it does a bad job of being a nationalism and a bad job of being a liberalism. To do better, one either needs to argue for a liberalism that can subsist with less reliance on solidarity and community, or one must consider the case for a more serious nationalism.

CONCLUSION

I promised that the dissertation would do something to explain our current situation, and I hope that it has, but it is not altogether easy to summarize what this would be. I have criticized an entire spectrum of liberal thinking – perhaps I am the one who is confused? Perhaps, but I think that the confusion arises naturally. My explanation of our situation is that we *are* confused about whether we live in countries or not and, while I am not sure that I can relieve of us of this confusion, it may be that knowing we are confused is a beginning. In this conclusion, I will try to describe our confusion one more time, and then I will offer some directions for further study.

A large part of what is at stake in debates among liberal theorists over the status of the nation is the status and justification of the welfare state. The welfare state, unlike earlier conceptions of the liberal state, taxes some citizens for the sake of others. It imposes an obligation of sacrifice that goes beyond the famous liberal doctrine of self-interest properly understood. To explain what we are about, Rawls's theory famously advocates a national commitment to policies that prioritize the advantage of the *nationally* least well-off. But his ground for doing so is that we are not national communities or even associations. The critique of this dilemma was made first and most clearly by Sandel (Sandel 1982). Although Sandel's critique is quite complex and sophisticated, we need to focus only on the connection between the presupposition of national community and Rawls's "difference principle" of social justice.

Rawls establishes the difference principle, the principle that requires inequalities to be justified by their advancement of the interests of the least well-off, on the critique of our claims to *desert* (Rawls 1971, 64-5). We are not morally responsible, he says, for our own moral character. We just happen to be born with talents and, if lucky, brought up in ways that cultivate those talents as well attitudes and habits of self-cultivation. We therefore cannot claim the

rewards of our endowments. As Sandel summarizes the point, "the assets I have are only accidentally mine" (Sandel 1982, 69, 178). In principle, then, the net social product is the possession of mankind, not the individual.[90] But, Nozick argues, this means that Rawls's alleged liberalism falls apart: individuals *are* used as means to the ends of others. "Some will complain, echoing Rawls against utilitarianism, that this 'does not take seriously the distinction between persons'; and they will wonder whether any reconstruction of Kant that treats people's abilities and talents as resources for others can be adequate" (Nozick 1974, 228). As Sandel argues, "Here Nozick goes to the heart of Rawls's theory of the subject" (Sandel 1982). By distinguishing the self from all of its attributes, Rawls hopes to justify redistributing the advantages of individual attributes without having violated the autonomy of each individual. "But this has the consequence of leaving us with a subject *so* shorn of empirically-identifiable characteristics (so 'purified', in Nozick's word), as to resemble after all the Kantian transcendent or disembodied subject Rawls set out to avoid" (79). Sandel concludes that Nozick's critique of Rawls "therefore succeeds" (ibid).

If Nozick succeeds, the welfare state is unjustified, which is of course a major problem for contemporary liberalism. Sandel therefore asks whether communitarians can rescue Rawls through "an alternative defense, this one unanticipated by Nozick … by questioning the sense in which those who share in 'my' assets are properly described as 'others'" (79). In other words, social liberalism could be rescued by seeing redistribution as appropriate within a bonded community. After all, who is it that has a *better* claim than my own to these arbitrarily

[90] In this way, Rawls's theory of justice mirrors Marxism in its conception of property. But Rawls's theory of justice is liberal and capitalistic in its endorsement of permissible inequalities (55), and (tempered) allegiance to private property and production as the most efficient means for social production (242). His theory is not presented as a theory of international workers' rights but rather as a theory of fair background institutions for a liberal state, which subtly redistributes the social product in order to sure fair equality of opportunity and no more (243). It is, again, a theory of justice for a closed and independent society.

distributed gifts (95-6)? Since Rawls answers that these assets belong to 'society,' meaning national society, he implies an "intersubjective conception of the self" (79). But Rawls assumes a deontological and mutually disinterested conception of the self, which should resist coercive redistribution of its assets for the sake of others.

> This in any case is the assumption that must give way if Nozick's objection to common assets is to be overcome. If the difference principle is to avoid using some as means to others' ends, it can only be possible under circumstances where the subject of possession is a 'we' rather than an I, which circumstances imply in turn the existence of a community in the constitutive sense (80).
>
> Moreover, for the community as a whole to deserve the natural assets in its province and the benefits that flow from them, it is necessary to assume that society has some pre-institutional status that individuals lack, for only in this way could the community be said to possess its assets in the strong, constitutive sense of possession necessary to a desert base. But such a view would run counter to Rawls' individualistic assumptions, and in particular to his view that society is not 'an organic whole with a life of its own distinct from and superior to that of all its members in their relations with one another' (R 264)" (101).

Rawls is caught, in other words, between his critique of utilitarianism, for allowing some to be used for the greater social good of separate others, and his embrace of welfare redistribution on a national basis.

One is therefore left with this choice: explain how national intersubjectivity justifies society's possession of our individual assets, or take one of two cosmopolitan positions. Either advocate cosmopolitan redistribution, or agree with Nozick and others that redistributive policies are unjust. For those whose strongest commitment is the rescue of the difference principle, i.e., the defense of social justice at the national level, the temptation is therefore very strong to seek a communitarian or, specifically, nationalist account of the encumbered self, constituted in part by attachments to a particular nation. As Miller puts it, "the nationalist will want to insist that our membership of a national community is not open to choice" – at least, not open to choice in the same way that other forms of identity are open to choice for the autonomous self (Miller 1995,

194). For Miller, the solution is to fix the assumptions. The problem with Rawls's account of justice is that Rawls "does not devote any attention to the national character of the political community he is describing," but he describes it as "a society whose membership is taken to be fixed and given" (ibid). The most characteristic feature of Rawls's theory is the *hypothetical* nature of the social contract he describes, and this feature depends on the assumption that society is *closed.* The conclusions of voluntary contract theories are denied because parties to Rawls's contract assume they have no exit; they are to deliberate under the assumption that they are stuck with their choice. As Miller comments:

> The task of the parties in the original position, he says, 'is to agree on principles for the basic structure of the society in which *it is assumed they will lead their life*…The attachments formed to persons and places, to associations and communities, as well as cultural ties, are normally too strong to be given up, and this fact is not to be deplored.' These assumptions are hard to justify unless we suppose that the parties in question share a common nationality (93, my emphasis)

By making good this claim, by defending national community, Miller would justify the presuppositions of national redistributive policy as found in Rawls's classic theory.

But the price of doing so is the restriction of individual liberties and the defense of a certain restriction in the scope of moral duties, both of which are difficult to explain within the horizon of liberalism. So, alternatively, the cosmopolitan, who prioritizes the maintenance of individual liberty, will seek to solve this gap in Rawls's theory in an opposite manner, by distributing our individual assets to the collective world (Beitz 1979). There are a number of reasonable objections to this alleged solution. First, as Yack makes clear, contemporary cosmopolitans cannot justify the priority of the moral claims of the human community in terms of ancient, Stoic, "teleological conceptions of nature" (Yack 2012, 264). They therefore are in the same boat with other communitarians, engaging, "a disposition to imagine different things

that we share with others – natural, chosen, or contingent – as sources of mutual connection" (265). Their better argument is the argument from the principles of universal justice (ibid).

But this argument probably appeals to moral intuitions that have no determinable bearing on the extent of political obligation. Cosmopolitans appeal to Kant's universal moralism illicitly. "Unlike the Stoics, Kant clearly distinguishes between the obligations that we all share as members of his universal moral community and the obligations against which we measure the political and legal institutions of civil society" (269). In addition, if based on Rawls's own work, the argument becomes a bait-and-switch. "So, for instance, someone might argue in defense of Rawls's difference principle ('Social and economic inequalities are to be arranged to the greatest advantage of the worst off members of society') by assuming that the individuals to whom it will apply are bound together in a scheme of social co-operation, and then, having established the principle as a principle of justice, claim that it was arbitrary to allow it to operate only within national borders" (Miller 1995, 185n). But, cosmopolitans will reply, basing the obligations of egalitarian justice on national community would encourage exclusive forms of national identity that diverge from liberal principles of equal citizenship regarding the irrelevance of unchosen individual characteristics (Nussbaum and Cohen 1996).

In this way, the dispute over how to solve the problem of justice for contemporary liberalism meets up with the problem of what to do about pluralism within liberal society. For, if liberals are committed to viewing the state as a neutral arena for every identity and plan of life that is not unjust, then it becomes obvious at once that national identity is an obstacle to this promise. "National identities will appear to impose an artificial homogeneity on a culturally plural society, and moreover they will be seen as serving to legitimate the norms of some cultural groups at the expense of others – the long-established at the expense of the newly arrived, the

dominant ethnic groups at the expense of the minorities, the sexually 'normal' at the expense of the sexually 'deviant'" (Miller 1995, 132). Equal citizenship is never *fully* equal when it takes place within a framework skewed by a biased national identity, but these limits to neutrality cannot be overcome without the ruin of liberal institutions through the admixture of either cosmopolitanism or multiculturalism or both. Merely to preserve liberalism, then, and such principles of neutrality as it offers, the state must be permitted in some manner to maintain the national identity and ignore some claims against its bias. But on what grounds?

My suggestion is that none of these moves are tenable. We cannot build a world-state, nor tear down all borders and cease to discriminate between citizens and aliens, nor indoctrinate everyone in the myth that we are all one nation of liberal individuals with a common, utterly empty, "identity." Liberalism is falling apart before our eyes and, though a return to the precious moments of stability would seem preferable to either of the alternatives at hand, that stability was already illusionary. Although I have done too little to prove it here, my guess is that liberalism is not enough, however it is described. One way or another, however, we must show that existing things, traditions, communities of persons, and even prejudices are not entirely without their worth. My hunch is that liberalism requires a dose of conservatism. Not the nationalism that sees national community as more than it is, and not the liberalism that sees nations as less than they are. Nations are not all the same thing. Some are more imaginary, mere frameworks or federations, or dispensations. Some are more real. We need a nuanced account of what a nation can be and what kind of loyalty it deserves, not a new universal account of free-wheeling community. To supplement that, we need a nuanced account of what morality can be and how it applies, not a new universal account of justice and how it incorporates political borders after the fact. Where should we turn?

There are three main options. First, we could try to recover a more nuanced interpretation of liberalism. This avenue is not entirely unpromising, especially if we take a wide view of who among the traditional Enlightenment philosophers counts as a card-carrying liberal (Callanan 2014). But even Locke is less radical than his most radical statements imply. It is not altogether easy to see how Locke would explain the utility of patriotism, especially the sacrifice of one's life for the sake of its preservation. But perhaps Locke's ideas could be read in another way. True, it is irrational to defend the state for its own sake, but the state is not everything. The state is merely the guarantor of higher ends. If *those* ends support patriotism, then the state may as well. In addition, the theory of consent, however fanciful it appears, has the virtue of conferring presumptive legitimacy on decent political regimes. That old-fashioned kind of liberalism really had a certain conservative dimension – why else was it so violently opposed by debunkers like Bentham and Marx? Nevertheless, my guess is that Locke's ideas are not meant to be read in this way. To read Locke as conservative or concerned with anything other than the cultivation of skeptical and rational minds is usually to read him wrongly (Koganzon 2016).

Second, we might turn to the modern conservative tradition and its contemporary exponents. They have had much to teach us in our analysis, so their works might deserve further scrutiny. But we should be troubled by Miller's observation, which we also found in Strauss, that modern conservatism is a rear-guard action, unsure of what, precisely, it wants to defend. Perhaps, then, we should follow Strauss's own line of thought. The question of how a philosopher should relate to a community does not arise in modernity alone, and the answer that the philosopher should be a citizen of the world is not the only answer that ancient philosophers gave. In Socrates, we have the world's most famous "citizen-philosopher," though one who was a gadfly to his own city; in Aristotle, we have the world's most famous defense of man's

political nature, though Aristotle fled Athens rather than suffer Socrates's fate (Strauss 1964). We are not likely to get easy answers from the Socratics, nor is it likely to be easy to discover what they really thought (Sebell 2016), or how it would apply in our own age. But I see no more promising option.

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