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Democratic Alternatives to Ethnic Conflict: Consociationalism and Neo-Separatism

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ARTICLES

DEMOCRATIC ALTERNATIVES TO ETHNIC CONFLICT: CONSOCIATIONALISM AND NEO-SEPARATISM

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I. INTRODUCTION

Before modern society formed, man lived in communities which were often, to a certain extent, isolated from one another. Each community had its own manner of customs, laws, and social norms. Societies began to interact, and, when they did, they needed to account for conflicts in legal systems. Where one society conquered another, the victorious society could generally impose its legal system. However, the dominant groups did not always succeed in imposing their identity.

In the modern world, identity has come to play a major role in political agendas. Where a state has attempted to impose a single identity based on a majority group, it has met resistance and even has seen the resurgence of previously ignored cultural groups.[1] Democracy has further allowed people to express their diverse views of the world. As a result, most states find themselves to be plural societies composed of divergent - and often contradictory - groups. If they profess to behave as open and free democracies, they need to find a way

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1. For example, the communist regime in Yugoslavia encouraged cultural pride and the retention of each group's distinct identity. *See* JAMES G. KELLAS, THE POLITICS OF NATIONALISM AND ETHNICITY 115 (1991).

to allow for the diversity of expression without undermining their own existence. Plural societies need to find a way to accommodate multiple identities within their state structure, or risk mass disorder and potential violence.

This article will examine the issue as it exists in a changing world - one in which the seemingly contradictory trends of globalization and decentralization are working together to create new paradigms. It will discuss two non-violent, indeed democratic, alternatives to potential ethnic conflict: consociationalism and neo-separatism.[2] In a consociational regime, each cultural group has an official role in the constitutional system which guarantees group rights while preserving the whole state unit: Belgium, Lebanon, and South Africa are experimenting with such possibilities. By contrast, the neo-separatists look to balance growing decentralization and globalization in order to eventually secede, in a *de facto* manner, without ever having to declare independence or create a defined rupture. The Catalans, in Spain, are the leaders of this tendency.

A. *Democratic Government and Fundamental Cleavages*

The theory of democratic government rests on a simple premise: a fair system of voting determines a majority which governs while respecting the rights of the minority.[3] Contemporary democratic regimes take many forms, but most have developed a system of parties which compete with each other in a political arena for votes and the right to govern. One concept remains fundamental to most theorists, however: the party in the minority can one day become the party in the majority simply by winning over enough of the electorate.[4]

Societal cleavages do not always rest on ideologies, however. Sometimes, party affiliation becomes intertwined with personal identity. Some elements of identity, often ethno-cultural in nature, have made an especially indelible mark. Although all sides may agree on the ideal of democratic government, they may find such a regime impractical. With party affiliation

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2. *See generally* AREND LIJPHART, DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION (1977).
3. *See id.* at 21.
4. *See id.* at 22.

tied to identity, the minority party cannot hope to persuade the electorate to favor it because it stands for a representation of identity not ideology. If identity becomes the real focal point for politics, it can become exclusive to the point that a dominant majority can oppress minority groups, hardly representing fair play and democracy as generally understood.[5] In the extreme, pluralism can make democracy untenable, by pitting one group as the mortal enemy of other groups.[6]

Society need not be homogenous for democracy to work. However, in a classic democratic regime, different segments of society share a civic identity to complement whatever other individual or group identity they also might have. It is this shared civic identity which creates regime stability. For standard democracy to work, even heterogeneous societies must share a homogeneous civic identity - one group must be willing to vote for a member of another group because they share political objectives despite belonging to separate identity groups. If separate groups feel genuinely constrained to vote only for candidates from within their own group, then functional democracy faces a threat.

For a country to function as a democracy, it does not require a homogenous population. The different segments of that population do not even have to interact much with one another. But they do have to respect each other, not interfere beyond agreed norms, and share a common civic identity or loyalty to the greater state. One group cannot overwhelm the other - if a society has two main groups they must be relatively evenly matched, and if it has more than two groups no one can become dominant. Finally, the general population of the groups must place confidence in their leaders to guide society, because such a democracy only functions day-to-day as a product of its elites.[7]

B. *Political boundaries and the modern state*

Modern democracy emerged from the Age of Enlightenment. So too, however, did other forces of identity. Frontiers which derived from historical accidents did not correspond with

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5. *See id.* at 22-23.

6. *See* ROBERT A. DAHL, DEMOCRACY AND ITS CRITICS 254-255 (1989).

7. *See* KELLAS, *supra* note 1, at 136-139.

settlement patterns, as the original modern nation-states of Europe did not derive their civic identities from their citizens. To a certain extent, the values of the Enlightenment tried to force citizens to take a "national" identity defined by the state. This created a certain amount of backlash from groups who, on the one hand, had their sense of ethnic identity rekindled and, on the other hand, felt threatened by the majority nationality in their state.[8] This re-awakened ethnic identity, coupled with an innovative use of the term "nation" to categorize ethnically-defined sub groups within Nation-States, marked the beginning of ethnic politics.[9]

Similarly, religion, once a matter of course, became a divisive force around the same time. Religious boundaries, like ethnic ones, did not necessarily correspond with coalescing state frontiers. Even where they did, radical secularizing anti-clericalism created an additional cleavage between the religious and the a-religious populations, to an extent far greater than previously felt. The situation increased in importance because the religious population felt that attacks on organized religion threatened their identities. This was not merely a case of a parallel secular civic society and personal religious society; the anti-clericals presented a very real threat to believers.

None of these forces had been relevant previously, even where they existed in embryo, because the people did not have voting power. As democratic ideals spread and more states adopted democratic regime structures, those which had fewer cleavages, those which did not have cleavages which ran nearly so deep, and those whose minority groups were relatively insignificant, stood a better chance of forming a stable civic identity on which to build a democratic government. Where distinct ethno-cultural identities flourished, rifts developed in societies and became the focus of politics and governance.[10]

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8. *See* Charles E. Ehrlich, *Ethnicity, Citizenship, and Identity in the Constitution of Multiethnic States: Lessons From Early Twentieth Century Spain and Austria, in* THE EUROPEAN LEGACY 1147-1148 (1997). *Cf.* DOV RONEN, THE QUEST FOR SELF-DETERMINATION (1979).

9. *See* RONEN, *supra* note 8.

10. *See* DONALD L. HOROWITZ, ETHNIC GROUPS IN CONFLICT 6-12 (1985).

II. CONSOCIATIONAL DEMOCRACY

Many states which had significant cultural cleavages nevertheless managed to form stable democracies. They did so through what has been termed by theorists[11] as the consociational model. To varying degrees, they institutionalized their cleavages and used them to build a democratic structure. Power-sharing mechanisms manifested themselves in several ways, either based on parties which represented the separate groups or upon the group identities directly.[12]

These issues spread outside the West as democratic ideals spread. Non-Western states often found their boundaries even more artificial than European states because most of the non-Western boundaries came as the result of European colonial powers carving up territories without regard for the identities of the people on the ground.[13] Whereas within Western Europe ethnic conflict has generally become internalized to a politics of consensus, in newer states politicians have exacerbated ethnic conflict by highlighting the ethnic basis for the identity of their political movements. Even when ethnic identity has played little role in a political movement, politicians have found it productive to appeal to that sentiment within their own tribe or religious group.[14] As democratic ideals spread to the developing world, a look back to Europe could provide instruction on how to restrain potential ethnic conflict.[15]

A. The Seminal Case: The Netherlands

The Dutch political scientist Arend Lijphart first coined the term consociational democracy in order to describe the political system he observed in the Netherlands in the 1960s.[16] However, the term quickly expanded to include several similar regimes in various countries with diverse cleavage

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11. *See, e.g.,* AREND LIJPHART, THE POLITICS OF ACCOMODATION: PLURALISM AND DEMOCRACY IN THE NETHERLANDS (1968).

12. *See id.*

13. *See* Jerome Wilson, *Ethnic Groups and the Right to Self-Determination*, 11 CONN. J. INT'L L. 433, 440-442 (1996).

14. *See* HOROWITZ, *supra* note 10, at 291-298.

15. *See* JUAN J. LINZ & ALFRED STEPAN, PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION 33-37 (1996).

16. Lijphart, *supra* note 11, at 15.

systems.[17]

Class and religion heavily divide Dutch society. The religious cleavage runs three ways: besides the split between Calvinists and Catholics, there is also a rift with a secular bloc which has a strong liberal anti-clerical background.[18] These rifts date back to the founding of the Dutch state and its independence from Spain. More than simple religious affiliations, the three main groups each feel a fundamental link with the identity of the country, and the links do not correspond.[19]

Further complicating these so-called vertical cleavages is the horizontal cleavage of class. In many societies, the common struggle of the non-aristocratic classes against the aristocracy caused the bulk of the population to bond together into contemporary democratic states. In the Netherlands, however, the bourgeoisie governed far earlier than in other countries - from independence in the seventeenth century - thus attracting a greater amount of enmity from the working classes than in other western democracies.[20]

These cleavages might suggest that democracy would be unworkable in the Netherlands. What Lijphart tried to explain, however, was precisely how democracy could function in the country. The Netherlands adopted as a solution the institutionalization of these cleavages into the political structure. Rather than divide society, the diverse strands became interwoven into a system which, as a whole, comprised a functioning democratic society. Each bloc may have its own representation in society, but also feel a part of Dutch society, and see Dutch society as the combination of all of their identities.[21]

Each sub-group in society has its own political party, its own interest groups, and its own social organizations. This has led to mutual accommodation, based on each group's acceptance of the others as partners instead of as competitors. At the pinnacle of the system is the Economic and Social Council, an appointed body made up of representatives of all major groups which has only nominal real power but great influence.

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17. *See id.*
18. *See id.*
19. *See id.* at 16-18.
20. *See id.* at 18-23.
21. *See id.* at 78-82.

The political power rests with elected officials but these too seek to avoid conflict.[22]

B. *Types of Consociational Democracy*

The Dutch system epitomizes the main variety of consociational democracy. As distinct from the adversarial politics found in many traditional western democracies such as the United States or Great Britain, Dutch governance seeks out broad coalitions even when coalitions are not necessary to form a majority. The Grand Coalition (a coalition government which includes two or more large political parties with opposing viewpoints) carries special importance in a system which emphasizes the sharing of power over the dominance of any one group.[23] Instead of government versus opposition, consociational democracies often require the opposition to be internal to the government; to better sort out differences without public scrutiny or conflict.[24]

Beyond the Grand Coalition, the philosophy of consociational democracy rests on as many as three pillars: 1) mutual veto; 2) proportionality; and 3) segmental autonomy.[25] With mutual veto, often called concurrent majority rule, every group reserves the right to veto legislation which is not in the interest of their particular group.[26] Therefore, if one group or even one sub-group finds a policy to be completely detrimental to its fundamental interests, it may veto that policy even if the other groups support the policy. This allows all groups a certain measure of security, knowing that their fundamental interests cannot fall under grave threat. This veto, however, can only appear sparingly, at the risk of making government unworkable. But the power to wield the veto forces even greater compromise by encouraging participation in the system and compromise with other groups on anything which might not be considered quite as essential. The drawback, however, is potential governmental stalemate.[27]

In dividing up governmental and administrative posts,

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22. *See id.* at 103-181.
23. *See* LIJPHART, *supra* note 2, at 25-31.
24. *See id.* at 25-31.
25. *See id.* at 33-38.
26. *See id.*
27. *See id.*

consociational democracies often rely on some degree of proportionality. Instead of the majority party making only friendly appointments, each group would receive a number of posts at each level of civil society proportional with its relative population within society.[28] In this way, everyone receives ample representation at all levels of government, and no accident can produce anything otherwise. Rather than democratic majority rule, this system produces proportional representative governance, and prevents groups from feeling victimized by any otherwise unfriendly majority. However, such an arrangement fossilizes proportions, which leads to tension if one group has a higher birthrate than another. The faster-growing group will quickly feel under-represented, and the slower-growing group will soon feel threatened with getting overrun.[29]

Finally, consociational democracies often resort to a certain amount of segmented autonomy. This can occur in two ways. First, where the different groups live in distinct geographic regions of the country, the group which may form a minority at the state level is permitted autonomy and a degree of devolved power at the regional level. Second, where the different groups live in geographically mixed communities or in a patchwork arrangement, cultural devolution may result. When the populations are mixed in this way, each group is allowed a certain amount of control over its own affairs, such as having separate school systems. In this way, the groups have fewer areas of direct conflict.[30] This concept has been described as personal federalism, in contrast to the more standard territorial federalism. The underlying principle allows allegiance to a common state despite irreconcilable cleavages.[31]

While this is an efficacious system to manage, tensions which might normally exist between center and periphery as the result of regional devolution, even without cultural differences, can quickly dissolve into ethnic conflict. Likewise, re-

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28. *See id.*
29. *See* LIJPHART, *supra* note 2, at 38-41.
30. *See id.* at 41-44.
31. *See* Antoine Nasri Messarra, *Principe de territorialité et principe de personnalité en fédéralisme comparé, in* INTERNATIONAL ASSOCIATION OF CONSTITUTIONAL LAW, FEDERALISM AND DECENTRALIZATION: CONSTITUTIONAL PROBLEMS OF TERRITORIAL DECENTRALIZATION IN FEDERAL AND CENTRALIZED STATES 447-457 (1987).

gions composed of majority populations might start to resent the special powers that minority-populated regions might gain. If the devolution is cultural and not regional, traditions and rights might receive better protection, but society as a whole will have to function with different laws applicable to different elements. This, too, can lead to discord and does little to promote a stable and common civic society.

Although the theory developed in the Netherlands, the practice has existed in several countries. Since every country has its own issues and concerns, they have found divergent manners of forging consociational democratic systems. Belgium, Lebanon, and South Africa represent three extremely separate sets of characteristics. These diverse examples show the range of possibilities for consociational democracy, as well as the range of potential success or failure. What links these three examples is that in all three countries the population feels some strong degree of loyalty to the state. A state civic identity does indeed exist, independent of the cultural identity, without which these states might not be at all viable.

C. *A Precarious Success: Belgium*

Belgium appeared as an accident of history, which resulted in a portion of the Netherlands and a portion of France uniting into a single state.[32] Despite its origin as part of the Low Countries, the French intelligentsia dominated through the capital city of Brussels. As a result, several non-ethnic cleavages appeared before the Walloon/Fleming one most associated with contemporary Belgium.[33] The first major cleavage appeared between the Catholics and the anti-clericals, under the influence of a similar division in post-revolutionary France.[34] As Belgium industrialized, cleavages of class followed. This, in turn, led to social movements which cut across the religious cleavage. The Belgian working class developed social democracy and social Catholicism depending on their religious fervor.[35]

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32. *See* HANS-DIETER KLINGEMANN ET AL., PARTIES, POLICIES, AND DEMOCRACY 222 (1994).

33. *See id.*

34. *See id.*

35. *See id.*

Although the Dutch-speaking Flemings outnumbered the French-speaking Walloons,[36] the predominance of Brussels as a French city tilted the balance towards the Walloons. However, a greater proportion of working class Catholics were Flemish, and so the social Catholic movement began to play the Flemish card and stress that linguistic and cultural heritage. Once this happened, the ethno-cultural cleavage took on importance in Belgian politics. Soon after the social Catholics unleashed Flemish nationalism, a party appeared predicated on that identity. This ultimately provoked a similar movement on the French-speaking side of the country.[37]

All of the major parties split in half. Today, Belgium has developed a system of party duplication in which every party has a Flemish and Walloon counterpart.[38] These party families may or may not join in coalition together. The complexity of the situation has led to consociationalism in phases.[39]

One reform which has been discussed for many years, but never fully developed, is a territorial division of powers. The natural split of the country into Wallonia and Flanders (the latter containing small German-speaking and Frisian-speaking corners) has been hampered by the status of Brussels, a French-speaking outpost which, in a complete decentralization, might tilt the power in favor of the minority French speakers, two regions to one.[40]

Belgian politics have ground to a virtual stalemate from all of the conflicting cleavages.[41] However, the country continues to thrive. A functional professional bureaucracy carries out the administrative business of the state, not the elected politicians. Belgium thus maintains both the status of a representative democracy and a functional bureaucratic state. Although most groups feel under siege, all agree to support the *status quo* which provides the stability for what might otherwise turn into a dysfunctional state.[42]

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36. *See id.*
37. *See id.* at 223.
38. *See* KLINGEMANN ET AL, *supra* note 33, at 223.
39. *See id.* at 223-224.
40. *See id.* at 224.
41. *See id.* at 224-225, 239.
42. *See id.*

D. *Consociational Disaster and Rebirth: Lebanon*

Achieving independence in 1943, Lebanon existed as an extremely diverse mix of populations which had no historic connection or record of self-governance as a group.[43] The population was split roughly evenly between Christians and Moslems and each of those two religions was further divided into sects: Maronite Christians made up 30% of the population, Sunni Moslems 20%, Shiite Moslems 18%, and Orthodox Christians 11%.[44] Other sects, and indeed other religious groups such as the Druze, filled out the population.[45]

A consociational system developed as an informal pact between the major groups. Together, they formed a variant of the Grand Coalition, in which the specific governmental jobs were partitioned between the groups. The president would always be a Maronite, the prime minister a Sunni, the chairman of the legislature a Shiite, and the deputy chairman and deputy prime minister an Orthodox Christian.[46] Although normal elections were held, they did not lead to contests between the sects because the leadership positions were agreed upon already. Furthermore, the parliamentary constituencies were multi-member and elected by proportional representation with a fixed ratio for each sect, a system referred to as "preset proportional representation."[47] This further undermined any potential conflict between the sects.[48]

Meanwhile, outside politics, each sect had its own schools and other social infrastructure. This arrangement accounted for the otherwise geographically mixed populations, allowing them autonomy without making any one group a minority in another group's territory.

Lebanon's attempt at consociational democracy did not work. The inflexible percentages which the diverse groups agreed on in 1943 did not reflect changing demographics.[49] The internal political structure of Lebanon also did not match the political turmoil of the Middle East, and the international

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43. *See* LIJPHART, *supra* note 2, at 147-148.
44. *See id.*
45. *See id.*
46. *See id.*
47. *Id.* at 148.
48. *See id.*
49. *See* LIJPHART, *supra* note 2, at 149-150.

situation pitted different groups against each other in ways which would have otherwise not necessarily penetrated internal Lebanese politics. The failure to cope with the volatile situation led to a breakdown of the entire system and the wealthy statelet decayed into civil war by 1975.[50]

The post-civil war scenario in Lebanon reflects a rebirth of consociationalism. The original system has been modified to reflect the current state of affairs, but has been retained to enough of an extent so as to establish legitimacy in the state. A new emphasis has been placed on removing some of the more minor cleavages, such as the sect divisions within each religion, in order to stabilize the situation. The reshuffling of percentages now generally reflects the Moslem/Christian split, rather than the four-way split existing before the civil war. This has reduced the influence of the Maronites, who had been the strongest hold-outs against reform because they had held the most power under the original agreement.[51]

Since the civil war, the various parties have agreed to recognize the "Arab" identity of Lebanon.[52] This move was made not only to appease the Moslems influenced by neighboring Moslem-Arab states, but also provided a national identity to which all groups could subscribe. Arab Christians and Arab Moslems, after all, were still both Arabs.[53]

The new regime retains the separate administration of Christian and Moslem populations, each according to its own custom.[54] The current scenario also preserves the old division of offices among the different sects, but has reshuffled the portfolios in order to give the Moslems more power. Thus, certain matters which the Maronite president previously handled have come under the authority of the Sunni prime minister.[55] Currently, seats in parliament are automatically divided in half between Christians and Moslems. However, most leaders now call for future direct elections which will not be governed by religious quotas and which will have districts drawn

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50. *See id.* at 148.
51. *See* RODOLFO STAVENHAGEN, ETHNIC CONFLICT AND THE NATION-STATE 256 (1996).
52. *See id.* at 256-257.
53. *See id.* at 256-257.
54. *See id.* at 257.
55. *See id.*

to include both religions.[56]

In this way, Lebanon hopes to break down the exclusive cleavages which produced a ruinous and brutal civil war, without necessarily removing those cleavages altogether. By respecting the distinct sects, the system strives to allow them to determine their own affairs while subscribing to a common Lebanon. The different groups can thereby maintain their distinctive identities and belief systems while sharing another common identity.

E. A New Attempt and Hope: South Africa

Another experiment with consociationalism is in progress in South Africa. Since the fall of the Apartheid regime, the constitutional framers have looked for ways to keep together an extremely diverse population in which, until recently, official policy had fostered animosities.

The old Apartheid regime had split different races into different classes of society.[57] Homelands were set up to give pseudo-independence to black tribes, and to keep them apart from the whites.[58] Asians and Coloreds also had their own distinct place in society, which included, in the waning days of Apartheid, their own parliaments.[59] The non-white groups did not have autonomy because they were subservient to the whites, but the society was kept separate enough so that non-whites were in many ways self-governing as long as they did not interfere with white society. This state of affairs provided the backdrop for the democratic constitutional process set up after the demise of the Apartheid regime. Since the country consisted of several racial groups, and even the racial groups subdivided along ethnic lines (the whites were split between the Afrikaners and those of British origin, which had created large differences in identity), consociationalism was the natural choice for a future democratic regime to take.[60]

One party, the African National Congress, dominated the transition, however, and it was not always open to accommoda-

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56. *See id.* at 257-259.
57. *See* KELLAS, *supra* note 1, at 126.
58. *See id.*
59. *See id.*
60. *See id.* at 127-129.

tion even if it paid lip-service to consociational principles in theory.[61] The new regime divided South Africa into regions, with quasi-historical boundaries, in order to pacify ethnic groups, even within what would become a fundamentally unitarist state. However, the new boundaries had little historic legitimacy, and also did not have economic viability. Loyalty has thus remained with the tribes instead of transferring to the new regional structures or to other groups within the state in the spirit of economic cooperation.

The constitutional framers attempted to break the state down into regions which could manage their own affairs, and to base those regions on ethnicity so that no group could complain that the new regime was throttling its identity. A certain amount of veto power would, in theory, produce concurrent majority rule. In practice, however, the Zulus have shown the most visible determination to assert their identity and block the central administration. As a result, the central administration has, in turn, centralized further in order to curb the Zulus. Consociational in theory, the South African Constitution has not yet followed this theory in practice.

The South African example shows how regional boundaries can be set up to appease certain ethnic groups, but also how, when the state itself is fundamentally unitarist in concept, conflicts will arise which will stir up unnecessary tension between tribes with distinct historical identities. Specific tribes may have territorial dominance over specific regions, but the regions themselves need to have economic and historical viability for individuals' loyalty to pass to both the region and the state. Failing this, the regions become the source, not the solution, for ethnic conflict.[62]

In South Africa, the central state created the regions and gave the regions wide latitude to act - but only within the structures of the central constitution.[63] Although the Constitution establishes regions and gives them powers to act locally,

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61. *See id.* at 142.

62. *See* David Welsh, *The Provincial Boundary Demarcation Process, in* BIRTH OF A CONSTITUTION 223-230 (Bertus de Villiers ed., Rustica Press 1994); Lawrence Schlemmer, *Regionalism in South Africa: Opportunities Missed, in* BIRTH OF A CONSTITUTION 242-255 (Bertus de Villiers ed., Rustica Press 1994).

63. *See* Bertus de Villiers, *The Constitutional Principles: Content and Significance, in* BIRTH OF A CONSTITUTION 45 (Bertus de Villiers ed., Rustica Press 1994).

much of the real power remains in the center, where the constitution is enforced and interpreted.[64] Furthermore, only the central government has the power of taxation, which limits the real power of the regional governments.[65] The concerns of the Zulus, arguably South Africa's most historic ethnic group, demonstrate fear for the future of their historic identity. The regions in the new South Africa are somewhat historic, even if not exactly drawn, and delineate ethnic groups. But in some ways, the unitarist tendencies of the main constitutional framers sought to include these regions in order to control and contain ethnic identity. There remains, however, a fundamental power-play between one important ethnic group which sees itself as more historically self-governing and the central state. The Zulus, in their demands for greater privileges, risk producing a backlash by other groups, which see concessions to the Zulus as special treatment and who will in turn demand their own concessions from the central government. The Zulus, or at least their leaders, understandably do not want to risk losing their privileged position at the bargaining table with a central state having unitarist tendencies.[66]

F. The Lessons of Consociationalism

As the world becomes more globalized, the world's citizens have shown a tendency towards reaffirming their own identities. How they determine the definition of their identities, however, remains a very personal matter, even when the definition comes from demagogues who stir up populations to gain personal power. But identity must remain a purely personal and almost indescribable matter. It is not a specific opinion, which might change, but an aspect of an individual's character which he shares with a group that he considers too fundamental to ever change. Ethnic and religious identity meet these requirements.

States have turned to variants of consociationalism to integrate their populations. Where a minority group lives in a geographically definable territory, and where it does not have

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64. S. AFR. CONST. Chs. 4, 6, 7, 9 (1993).

65. *See* Ronald L. Watts, *Is the New Constitution Federal or Unitary? in* BIRTH OF A CONSTITUTION 75-88 (Bertus de Villiers ed., Rustica Press 1994).

66. *See* Wilson, *supra* note 13, at 442-456.

sufficient loyalty to the greater state, independentist move-
ments have resulted. States have been able to satisfy some of
these tendencies by ceding certain degrees of autonomy. But in
those states where the population is mixed together, other
models - variants of consociationalism - require consideration.

Social scientists have generally considered
consociationalism an effective way to solve the problems of
conflicting identity within a sovereign territory. Yet in the
three examples presented above, which span the range of pos-
sibilities for consociational democracy, there remains no clear
success. Belgium became almost ungovernable by contempo-
rary democratic standards. The politics of consensus left no one
with any power other than civil service functionaries - hardly
democratically selected representatives, even if appointments
to the civil service reflected the requirements of
consociationalism. To gain political accountability and control,
Belgium has devolved power to its component regions, which
operate almost in a vacuum from one another.[67] Although this
would qualify as part of the consociational solution, it hardly
makes Belgium a fully functional single entity. The placement
of the capital of the European Union in the Belgian capital has
further eroded the distinctiveness of "Belgian" as an identity
for Flemings and Walloons.

Meanwhile, in Lebanon, long heralded as a bastion of
functional consociational democracy outside the West, political
instability has dominated the last quarter century - indeed
much of that time was spent fighting a civil war.[68]
Consociationalism worked to create the new state and kept it
operating for its first three decades of existence, but the sys-
tem was so finely balanced that changes in internal and exter-
nal relationships tipped the scale towards complete breakdown.
This system has been resurrected since the civil war, although
modified slightly to account for changes in that time. However,
the new variant has come under intense international pres-
sure. Furthermore, one of the tenants of the new variant is
that if it works it will phase itself out and ultimately turn
Lebanon into a plural non-consociational society.

The final example, South Africa, has not had time to fully

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67. *See* KLINGEMANN ET AL, *supra* note 32, at 222.
68. *See* LIJPHART, *supra* note 2, at 148.

develop its new system. However, tension already exists be-
tween the political center and the ethnic periphery. This has
played itself out as a conflict of identity more than anything
else. The governing African National Congress would like to
present itself as the common natural party for all citizens, but
it wants centralized administration and is dominated by a
specific black tribe. If the largest group within the largest
party shows no tendency towards accommodation and instead
seeks power, the other groups might feel sufficiently threat-
ened, seeking to undermine the newly-democratized state
through means which may not be wholly democratic.

In some respects, these countries might learn from non-
consociational, yet still plural, societies like the United States.
A strong civic identity allows diverse groups to keep a common
loyalty. Meanwhile, the government does not seek to impose
any majority identity on minority groups. On the other hand,
the United States has a clear white-European origin. For much
of its history, those who were not white Protestant males were
excluded from power structures within society.[69] Even today,
at the start of the twenty-first century, white Protestant males
dominate the elite sectors of society.

This scenario has provoked periodic calls for a more
consociational model in the United States. Whether a black
political movement might form its base - Stokely Carmichael,
the Black Panther leader, once called for such a party to orga-
nize because he felt that until blacks had their own party they
could never gain influence within the existing parties - or
whether simple redistricting to create "minority" districts
would suffice to improve the representation of non-white
groups,[70] these calls echo concerns in societies which have
used consociational models to solve issues of conflicting identi-
ty among citizens.

Fundamentally, then, for a plural state to achieve stabili-
ty, its component groups must maintain a fair degree of civic
loyalty to the amorphous concept of the state itself. Such a
state must not have an ethnic, cultural, or religious identity of
its own, but should allow its citizens to hold their own iden-

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69. *See* A. Leon Higginbotham, Jr., *Racism in American and South Africa
Courts: Similarities and Differences*, 65 N.Y.U. L. REV. 479, 487 n.15 (1990).

70. This process, known as "gerrymandering," was found unconstitutional in
Reno v. Shaw, 509 U.S. 630 (1993).

tities in a manner compatible with the state itself and with each other. If a consociational arrangement can provide this state identity, then it will achieve its desired stability. If the concept of identity proves too great and divisive, then forces may tend to rip the state asunder or to lead to the oppression of a weak minority group.

III. NEO-SEPARATISM

There are, however, ways to achieve independence without violence and without causing the state to rupture. The growth of international trade has created intercourse among states and the organizations and treaties necessary to manage that intercourse.[71] It also has produced a great deal of harmonization on a global scale. On the other side of the coin, however, exists the administrative structure with which the states themselves organize internally. In many countries, particularly the most free-trading democratic ones, this has meant a trend towards decentralization of power; devolution to the regions or local governments. The traditional states, therefore, face a double threat to their sovereignty: one from globalization and one from decentralization. As the states themselves lose legitimacy, regional groups can capitalize on the situation. Without having to agitate for independence, they can promote a new political tactic, neo-separatism, by which they will achieve *de facto* independence through democratic means.

A. *Neo-Separatism in Catalonia*

With its history of violent terrorism, the political situation of the Basque Country receives much international focus when social scientists consider Spain. Of vastly greater significance, however, are the politics of Catalonia. There, the governing nationalists have implanted a mode of operation which represents perhaps one of the greatest challenges to the notion of the nation-state in the twenty-first century. The Catalan nationalists have, in their two decades of government, produced a finely-tuned agenda which serves as the example for nationalist movements elsewhere. The governing Catalan nationalists fall within the mainstream of Spanish politics, and have even

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71. *See, e.g.*, General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700.

propped up minority governments of the Socialist Party (1993-1996) and the conservative Popular Party (1996-2000).[72] The Autonomous Government of Catalonia, acting outside the scope of the powers accorded to it by the Spanish Constitution, uses much the same language as outright independentists when it presses its nationalist demands. In their official capacity, Catalan politicians have conducted their own foreign policy, often in accordance with the principles of the United Nations and the European Union.[73] In doing so, they have more quietly put forward the question as to exactly what Catalonia's right to self-determination is and how the international community should acknowledge it.

The strategy of the Catalan government has great repercussions internationally because it represents an alternative to traditional independentist approaches. Technically, the Catalan nationalists who govern Catalonia do not seek Catalan independence from Spain. Instead, they seek to gain or enlarge direct Catalan representation in international organizations to which Spain itself is a party.[74] In doing so they do not have to go against Spanish laws or treaty obligations. At the same time, however, they seek to strengthen these supra-national organizations, such that the traditional member-states, like Spain, lose some of their own flexibility in terms of these treaty obligations. This activity delegitimizes the state. If regional governments like that of Catalonia have direct representation in these international organizations, then the states themselves lose relevance. Taken to an extreme, Catalonia would obtain *de facto* independence without ever having to declare that independence. This marks a shrewd deviation from traditional approaches. Their actions characterize a "neo-separatism," a tendency which they hope will spread abroad to delegitimize the traditional states to the point where the Catalan nationalists and their friends no longer need to separate to gain effective independence.

Catalonia sits in the northeastern corner of the Iberian Peninsula. Catalonia proper has nearly seven million inhabit-

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72. In March 2000, the Popular Party won the general elections outright and could form a majority government. Although the conservatives sought Catalan nationalist support, such support was no longer necessary to govern.

73. *See* KELLAS, *supra* note 1, at 154.

74. *See id.*

ants, although virtually a third of that population is made up
of immigrants from elsewhere in Spain who have moved to the
area around Barcelona for economic reasons.[75] Two other
Spanish regions, Valencia and the Balearic Islands, are also
culturally and linguistically Catalan, although the quasi-feder-
al structure of the medieval Catalan empire allowed them to
grow as historically separate regions with their own distinct
identities.[76] In total, nearly eleven million Europeans, mostly
from Spain, speak Catalan and identify with some aspect of
Catalan culture, making Catalans more numerous than several
independent European nationalities, including, for example,
the Danes.[77] In contrast with the notorious Basques, and even
with the non-violent groups such as the Scots in Britain, the
main Catalan nationalist politicians do not openly proclaim
that they want to renegotiate their relationship with the cen-
tral government. Catalan nationalist politicians have shown
greater pragmatism in gradually gaining concessions from
Madrid. If their strategy succeeds, they will never need to
openly declare independence. Indeed, they often deride
independentists, but independence will happen nonetheless.

Although these questions can appear as internal constitu-
tional issues, they have great impact on other countries as
well. As the model of the European Union takes hold, the in-
fluence of Jordi Pujol, Catalonia's nationalist president, on
other parts of the continent can serve to undermine the old
nation-states, which will take an increased interest in self-
preservation. The institutions of the European Union
themselves get crafted by the member-states, which is one
reason the Catalan government seeks direct representation
without which it must rely on Spain to represent its interests
in Europe, even if those interests conflict with the perceived
rights of Catalonia to self-determination. Other parts of the
world grapple with similar issues in the sphere of constitution-
al reform: should multi-ethnic states not decentralize, they run
the risk of contravening the United Nations by not acknowl-
edging the rights of their minorities to self-determination;
should they decentralize too much, however, they run the risk

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75. *See id.* at 16-18.
76. *See id.*
77. *See id.*

of having their now-autonomous minorities clamor for an independent role in world affairs.

B. Self-Determination in Current International Law

Despite nationalists' visible protests to the contrary, Catalonia's claim to self-determination is weak. The Charter of the United Nations enshrined the right of self-determination as a fundamental human right.[78] Subsequent United Nations declarations, however, have failed to clarify who could make claims for self-determination and what would result of those claims should the member state determine that the matter was purely internal. The *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations* spelled out that:

> by virtue of the principle of equal rights and self-determination of people enshrined in the Charter, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.[79]

However, only paragraphs later, the *Declaration* added that:

> Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.[80]

What this document does not address is a way to deter-

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78. U.N. CHARTER art. 55.

79. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, adopted by the U.N. General Assembly, October 24, 1970, U.N. GAOR, Supp. 121 (n.28), U.N. Doc. A/8028 (1971) [hereinafter Declaration on Friendly Relations].

80. *Id.*

mine how much self-determination satisfactorily fulfills the conditions set. The document fails to reconcile these two paragraphs. The period in which the U.N. drafted the *Declaration*, however, provides some context for resolution of this problem. At the time, the world was witnessing massive decolonization. Construed under these pretenses, the U.N.'s declarations on self-determination are less about independentist movements within countries than about anti-colonial movements in occupied countries. That does not stop independentist movements from making the same claim of rights. By delving into history, these movements often argue that the colonization merely took place centuries before and that, therefore, their cultures have suffered more prolonged suppression. This lengthier discrimination, according to this theory, gives these claimants even more right to self-determination.

Catalan nationalists use history to demonstrate centuries of domination at the hands of Castilian Spain and, therefore, to prove the long-standing validity of their claims for self-determination.[81] The record shows, however, that Catalonia was one of the founding partners in the Spanish state, even if this state was dominated since the beginning by Castile.[82] Furthermore, Catalans had an important role in influencing the current Spanish Constitution.[83] Although some Catalanists claim that Castile has treated Catalonia like a colony for most of Spain's existence, this view is contentious. Indeed, industrial Catalonia is the wealthiest region in Spain, although this has meant that it also contributes the most money in taxes. Yet, Catalonia often has been under-represented in Spanish politics. Whether this represents colonialism on the part of Castile depends on interpretation.[84] Furthermore, even if Castile's treatment of Catalonia did have colonialist tendencies in the past, whether Catalonia is truly a colony under the current constitutional structure also would require debate.

Scotland provides an enlightening comparison in this case. Scottish nationalists filed their own "Claim of Right to Self-

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81. For a general overview of Catalan history, see FELIPE FERNÁNDEZ-ARMESTO, BARCELONA: A THOUSAND YEARS OF THE CITY'S PAST (1991).

82. *See id.*

83. *See id.*

84. *Cf.* Charles E. Ehrlich, *The Lliga Regionalista and the Catalan Industrial Bourgeoisie*, 33 J. CONTEMP. HIST. 381, 399-417 (1998).

Determination" with the United Nations in the 1970s, using many of the same arguments Catalans would use in a 1997 claim.[85] In the Scottish case, at least, Scotland could claim that it had become an economic backwater under English rule. However, it could submit no firm evidence that it would have developed otherwise. Indeed, Scotland joined the Union in order to gain access to the English, henceforward British, Empire. The fact that Scotland's legal government entered into a Union with England and Wales under legitimate law undermines any future claim to colonization - according even to Scottish legal scholars who support independence - unless Scotland could show discriminatory and overtly oppressive government at the hands of the dominant English.[86] A 1972 International Commission of Jurors decision, based on what the Commission considered a widely held view among international lawyers, stated that "if a people or their representatives have once chosen to join.with others within a unitary or federal state, that choice is the final exercise of their right to self-determination; they cannot afterwards claim the right to secede under the principle of the right to self-determination."[87] A negotiated divorce, such as what took place in Czechoslovakia, would carry more merit than a claim for self-determination before the UN. Catalonia, which has generally prospered within Spain, has a similarly dubious legal claim in this view.

C. The Democratic Convergence of Catalonia: Interpreting the Spanish Constitution

Since the restoration of autonomy for Catalonia under the current constitution, one political party has dominated Catalan politics: the Democratic Convergence of Catalonia (CDC). The CDC was originally formed as a coalition of nationalist groups

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85. On September 1, 1997, a Catalan nationalist group styling itself the "Catalan National Council" formally submitted a petition to Kofi Annan, Secretary General of the United Nations, for Catalonia's right to self-determination independent of Spain (and France). Joan Lucas i Masjoan et al., The Catalan National Council Requests and Demands, Officially and Urgently, Letter to Kofi Annan, (Sept. 1997), *available at* http://www.cnc-cat.org/cnc-cat/sol_a.htm.

86. *See* Elspeth Attwool, *A Right to Secede? Scotland Reviewed, in* CONSTITUTIONALISM, DEMOCRACY, AND SOVEREIGNTY, 133-136 (Richard Bellamy ed., Avebury 1996).

87. *Id.* Attwool hinges the Scottish right to self-determination on an aspiration to a greater degree of autonomy allowed for by the (British) democratic polity.

of center-left and center-right (social democrats, Christian democrats, and liberals).[88] Composing every government with its perpetual coalition partner, the Democratic Union of Catalonia (UDC, a Christian Democratic party which dates to the 1930s), and together with the UDC forming at least an overwhelming relative majority in the Catalan parliament since autonomy, the CDC controls official policy within the Catalan government.[89] The CDC's president, Jordi Pujol i Soley, has served as President of Catalonia since 1980, and is the most widely known voice for Catalonia throughout the world.[90] As a result, the policies expressed by the CDC usually reappear as the policies of the Catalan government. The CDC's mission statement concludes with a "Determination to Exist," which states that:

> [I]t is today, in the framework of the future political union of Europe that we Catalans say we want to participate directly, with no intermediaries, as one more people among the peoples of Europe. And for all these reasons that, for Catalonia, we are asking the same right as the continent's other nations: the right to exist, the right to freely and democratically, by exercising our right to self-government, decide our future.[91]

Within the context of the Spanish state-structure, self-government does not necessarily mean independence, however. The Constitution of 1978 divided Spain into seventeen autonomous communities, based roughly on historic regions. The "Catalan Question" was one of the fundamental questions with which the framers of the Constitution had to deal.[92] The Constitution technically "recognized" the regions, rather than "constitute" them, thus acknowledging their historic right to autonomy.[93] However, the Constitution also spoke of the unity of the Spanish State, in the process denying any right to self-

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88. Convergéncia Democrática de Catalunya, *A determination to exist, at* http://www.convergencia.org/llengues/english/determation.html (last visited Oct. 15, 2000).

89. *See id.*

90. *See id.*

91. *Id.*

92. GREGORIO PECES-BARBA MARTÍNEZ, LA ELABORACIÓN DE LA CONSTITUCIÓN DE 1978 22-23 (Fernando Torres ed., 1988).

93. *Id.*

determination in the traditional sense of sovereignty.[94] The arrangement was meant to allow each region or "nationality" autonomy and local self-government within the Spanish state. As a trade-off, the principle of "self-determination" was applied to the Spanish state in its entirety. As a democratic country, Spain was providing self-determination to all of its peoples, especially in as far as it allowed regional self-government.[95] Within the Spanish Constitution of 1978, the State was paramount and controlled the distribution of power to the regions, however.[96] The representative of the Spanish Socialist Workers Party on the commission which wrote the Constitution, the legal scholar Gregorio Peces-Barba Martínez, assured the congressional committee which oversaw his commission that the right of self-determination specifically mentioned in the United Nations *Declaration* would not interfere with this constitutional construction which recognized "nationalities" within Spain. He claimed the right was only applicable to colonized peoples and not to peoples which had, over history, united with others into states.[97]

Although one of the CDC's leading intellectuals, Miquel Roca Junyent, had a seat on the committee which wrote the Constitution, the CDC in practice has rejected the construction. The current Secretary General of the CDC, Pere Esteve, has explained that "nevertheless, the notable ambiguity of some points and key phrases in the Constitution at the moment of definition, for example, of how much the self-government of Catalonia should encompass, leaves too much to the arbitrariness of (central) political power."[98] Esteve has objected to the division of Spain into seventeen autonomous communities, some based on historic nationalities and some not, which though they have differing levels of autonomy are essentially, in Esteve's opinion, symmetrical entities which

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94. *See* LUIS SÁNCHEZ AGESTA, SISTEMA POLÍTICO DE LA CONSTITUCIÓN ESPAOLA DE 1978 397-399 (1993).

95. *See* Herrero Rodríguez de Minon, Speech in Congress, (May 5, 1978), *reprinted in* CONSTITUCIÓN ESPANOLA: TRABAJOS PARLAMENTARIOS 639 (Fernando Sainz Moreno ed., 1980).

96. *See* PECES-BARBA, LA CONSTITUCIÓN ESPANOLA DE 1978 330 (1981) (citing his own statements of June 16, 1978).

97. *See id.*

98. *See generally* PERE ESTEVE, PER UN NOU HORITZÓ PER A CATALUNYA (1997).

dilute the uniqueness of the historic nationalities.[99] Objecting to both the "sane regionalism" of the Spanish right (in government since May 1996) and the "homogenizing formulas" of the Spanish socialists (in government from 1982 to 1996), Esteve has argued for a broad interpretation of self-government.[100]

The policy of the CDC, and therefore of the Catalan government, thus has been to seek to expand the powers of Catalonia.[101] In doing so, it has been careful to keep its official demands within the confines of the Spanish State. The CDC does not operate as an independentist party. It has instead collaborated with the central government in order to win greater concessions for Catalonia and to expand Catalan autonomy beyond the scope envisioned by the Constitution. At times this has been of dubious constitutionality, but that is hardly an international concern.[102]

One power most definitely not granted by the Constitution to the autonomous communities, however, was control over foreign policy. This has not stopped the government of Catalonia from pursuing an increasingly vociferous presence in the world community. The most visible campaign occurred in a massive advertising blitz during the Barcelona Olympics of 1992, when the Autonomous Government took out double full-page advertisements in major international publications. "In which country would you place this city," the first page asked, showing a blank map of Europe with a dot marked Barcelona. The next page showed the same map, with the borders of Catalonia drawn around Barcelona: "In Catalonia, a country in Spain."[103] Pujol himself makes frequent trips abroad under the guise of cultural exchanges, something permitted to him under the Constitution. Yet, on these trips he often meets with foreign governments to discuss trade, immigration, environmental policy, and other geo-political problems. Further, he brings with him members of his cabinet, who meet with corresponding members of foreign governments.

As countries in the old Soviet sphere gained independence

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99. *See id.*
100. *See id.*
101. *See id.*
102. Pere Esteve, *La maduressa del Catalanisme, at* http://convergencia.org/partit/catalanisme2.html (last visited Oct. 15, 2000).
103. JOHN HARGREAVES, FREEDOM FOR CATALONIA? CATALAN NATIONALISM, SPANISH IDENTITY, AND THE BARCELONA OLYMPIC GAMES 85-86 (2000)

in the late 1980s and early 1990s, Pujol welcomed their new leaders to Barcelona on official state visits. Pujol also had no problems accepting invitations to the newly-independent states. When Pujol visited Slovakia after its split from the Czech Republic, the Slovaks welcomed him by flying the Catalan flag and playing the Catalan anthem alongside their Slovak counterparts. Even at home that flag and anthem appear with prominence. At the Barcelona Olympics in 1992, for which Catalan nationalists applied to the International Olympic Committee to send their own team, the organizers found they had to fly the Catalan flag and play the Catalan anthem at the opening ceremonies in order to avoid the hissing that accompanied the Spanish equivalents at the rehearsals (and Spanish King Juan Carlos found himself introduced with a Catalanized name and fictitious title: "Joan Carles, Rei de Catalunya"). These traditional symbols, though theoretically harmless, carry much importance in the perception of Catalonia as an entity on the international stage.[104]

The stated policies of the CDC have as an object to "transfer onto the international and European scene the effects derived from the enlargement of [Catalan] political power and the recognition [of Catalonia] as a nation, by distinguishing the country through its international presence."[105] This includes: debating international policy within Catalan political organisms to the extent they would occupy within any sovereign state, encouraging cultural and economic exchanges with other states, promoting Barcelona as a geopolitical center, developing foreign relations, achieving representation for Catalonia on international institutional bodies, and obtaining full representation within the European Union.[106] As the governing party within Catalonia, the CDC under Pujol has begun to put these goals into practice.

Although Pujol is quick and loud to defend Catalan interests, his strategy is subtle. He talks of using Catalonia as the catalyst to develop Spain. What he fundamentally recognizes is that, in the world today, an independent Catalonia would nev-

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104. For a discussion of the political use of symbols at the Barcelona Olympics, and especially "Catalanization" of the Games, see JOHN HARGREAVES, *supra* note 104, at 58-95.

105. Esteve, *supra* note 98.

106. *See* Esteve, *supra* note 102.

er be truly independent. A prudent Catalonia would retain its links to Spain. A wealthy and developed Spain would remain an important neighbor.

Pujol has found the greatest success within the sphere of the European Union. The European Union has provided a way to justify nationalist demands without seeming extremist and indeed by often supporting the greater state. Importantly, the CDC does not call itself a "nationalist" party. Although it speaks of the "nation" within Catalonia, it seeks compromise and moderation on the Spanish political scene as a means of winning power from the center.[107] The CDC has proposed Catalanism as the force that could carry Spain into Europe; if Spain did not want to come along, Catalonia would go alone into the European mainstream. Spain, in this view, was a myth created by Castile; its peoples really belonged to Europe.[108] As Spain entered the European Community, Catalan nationalism grew in stature within Catalonia as a European movement.[109]

Pujol has also taken an active role in the Assembly of European Regions, of which he has served as President since 1992.[110] The "Europe of the Regions" movement has sought to redefine the European Union by recognizing the continent as an assemblage of peoples and historic regions which could form the basis of a new Euro-federation.[111] However, when the European Movement has talked of "regionalism" it has ignored the traditional variety concerned with ethnic, cultural, and linguistic matters - often of prime importance to the Europe of the Regions movement - in favor of "functional" regionalism, an economic and social cousin described in Article Two of the Rome Treaty[112] and promoted by regional policy, leveling differences, and homogenizing regions, rather than fostering di-

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107. *See* JORDI SOLÉ TURA, NACIONALIDADES Y NACIONALISMOS EN ESPAÑA: AUTONOMÍAS, FEDERALISMO, AUTO-DETERMINACIÓN 57 (1973).

108. LEANDRE COLOMER I CALSINA, CATALUNYA I EL FEDERALISME 193 (1991).

109. Felip Puig i Godes, *Tot compromís comporta risc*, CONVERGENCIA INFORMACIÓ EDICIÓ ELECTRÓNICA (Oct. 6, 1997) *at* http://convergencia.org/informacio/numanteriors.html.

110. *See* Fried Esterbauer, *Die Regionalistische Leitsätze, in* FÖDERALISMUS UND REGIONALISMUS IN EUROPÄISCHER PERSPEKTIVE 78 (Stefan Huber and Peter Perathaler, eds., 1988).

111. *See id.*

112. Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11, art. 2 [hereinafter Rome Treaty].

versity.[113] "Catalonia," Pujol has said speaking for many historic micro-nationalities, "does not aspire to be a North Dakota."[114] Some "regions" have more value than others.[115] Nevertheless, men like Pujol often have pressed European regionalism for its economic rather than its cultural role. Pujol's Catalonia has been as happy to collaborate with recent administrative creations like Rhone-Alpes and Baden-Württemberg as with traditional cultural regions with strong industrial bases like Lombardy.[116]

The CDC has succeeded in Catalonia to a great degree due to Pujol's multi-faceted character. In Barcelona he talks of nationalism. In Madrid, he seeks power at the level of the Spanish state, professing Catalonia's interest in Spain. In Europe, he aspires to lead the regional representation he hopes to win in Brussels, even while he complains that such representation for all regions downplays the importance of those regions that have their own "national" identity as opposed to those which were mere administrative creations.

Pujol's policies have indeed increased awareness of Catalonia abroad. However, they have not done much to clarify recognition of the right to self-determination. Spain in no way violates the conditions set in the U.N.'s *Declaration on Principles* regarding compliance with the principle of equal rights and self-determination.[117] Indeed, a majority of Catalans do not desire complete independence from Spain and find ample expression for their political views - even nationalist ones - within the democratic framework of Spain. Therefore, Spain could rely on the international community to support it in defending itself from a bid by Catalan nationalists to undermine the State. Should Spain so desire, it could put pressure on the international community to cease recognizing Pujol's foreign policy and to stop high-level meetings with the Catalan President.[118]

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113. *See generally* Jules Vandamme, *Regionalism in Europe, in* REGIONALISM AND SUPRA-NATIONALISM (D.M. Cameron ed., 1981).

114. FEDERALISMO Y ESTADO DE LAS AUTONOMÍAS 115 (Lluís Armet ed., 1988).

115. *See id.*

116. *See* CHRISTOPHER HARVIE, THE RISE OF REGIONAL EUROPE 53-64 (1994).

117. *See* Declaration on Friendly Relations, *supra* note 79.

118. The same sorts of questions make themselves apparent in international dealings with the Tibetan and Taiwanese governments. Starting with a United Nations Resolution in 1959 calling for "respect for the fundamental human rights of

Spain has not pursued this option, though this likely has to do with internal political instability and the need for recent minority governments (the last Socialist government and the current conservative one) to rely on the Catalan nationalists for the support that keeps them in power. However, complementary to the question of what exactly is Catalonia's right to "self-determination," is the question of what rights Spain has against Catalan governmental activities within the international community.

The U.N. *Declaration* may not explain itself clearly, but the context in which the General Assembly approved it and principles of customary international law leave little doubt that Catalonia has a very weak claim to self-determination. To assert a claim of self-determination based on the United Nations *Declaration*, Catalonia would have to show that it had been the victim of colonization, or barring that, of severe cur-

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the Tibetan people and for their distinctive cultural and religious life," several countries and international bodies have passed resolutions in support of the Dalai Lama's government-in-exile and condemning the Chinese occupation of Tibet. (A comprehensive summary of international resolutions on Tibet is available at http://www.tibet.com/Resolution/index.html). Different countries have welcomed the Dalai Lama on state visits, and several states have also begun to appoint coordinators for Tibetan affairs within the auspices of their departments of state. *See, e.g.,* Austl. Sen. Res. (Nov. 24, 1997) (supporting a similar U.S. measure), *available at* http://www.tibet.com/Resolution/aus24nov97.html. China has repeatedly objected to this quasi-recognition, and the clout of the Chinese government has been the main obstacle towards full recognition of Tibet. Likewise, albeit under distinct circumstances, the Chinese government has also blocked full international recognition of Taiwan due to its territorial claims. Taiwan, as a major international economic trading power, has become increasingly frustrated with this state of affairs, and has begun to pursue its own quest for recognition. While official Taiwanese policy under the long-governing Nationalists had always been for the recognition of only one "Chinese" government, trends suggested the emergence of a dual-recognition policy even among the Nationalists. *See* Formosan Association of Public Affairs, *The dual recognition of China and Taiwan,* DUAL RECOGNITION (June 3, 1997). Then, in March 2000, a pro-independence party dethroned the nationalists, raising this issue to yet another level. China continues to protest, however, whenever any country receives Taiwanese diplomats.

But the human rights issues in China present a more clear-cut case in breach of the UN Declaration of Principles in the case of Tibet. Quasi-recognition of Tibet and Taiwan gives the international community leverage when dealing with China on other issues. In the case of Spain, however, these issues do not present themselves. The Spanish government, therefore, would find itself in a much stronger position should it choose to demand that the international community cease contacts with the Catalan government beyond those approved by Spain under its constitution.

rent oppression.[119] The Catalans already have self-determination within the Spanish State. Spain is a democratic country in which Catalans have full and equal rights. Catalonia joined Castile as a partner in Spain over five centuries ago through legitimate means. Although since then Spain has increasingly imposed itself on the administration of Catalonia, and Catalan language and culture have been banned for periods, Catalonia today enjoys autonomy within Spain, under a Constitution that was written by seven respected legal scholars, two of whom were Catalans. Catalan nationalists regularly win elections within Catalonia to govern Catalonia and to represent Catalonia in Madrid.[120] Despite the dubious constitutionality of their actions, Catalan leaders regularly conduct foreign policy without protest from Madrid.[121] Although many Catalans may not be entirely happy with the level of autonomy granted to Catalonia under the current constitutional regime, they are able to, and do indeed, affect change through constitutional and democratic means. The United Nations Charter sanctifies existing states except under extreme scenarios; if Catalonia cannot meet these scenarios, Catalan nationalists must find another means to achieve their goal of self-determination independent of the Spanish State. The neo-separatist path they have chosen cleverly circumvents the issue, but still could have the same result.

D. *Globalization and Decentralization: Economic Determinants*

The issue of globalization is not a new one. When the modern nation-states formed in the West, they did so because of world-wide trading pressures. Sovereignty needed to reside in that structure which could best represent the interests of the elites, and so that sovereignty gradually passed from monarchs to some element of the states themselves. In most cases, this transfer meant finding the right balance of power within each state between the aristocracy and the growing burgher classes as well as, in some cases, military interests. The United States made the distinct innovation of transferring sover-

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119. *See* Declaration on Friendly Relations, *supra* note 79.
120. *See* KELLAS, *supra* note 1, at 89.
121. *See id.*

eignty to the people.[122] But whatever the system used, international relations meant relations between distinct states rather than between traditional rulers.

The new paradigm did not represent a complete shift, however, because it happened in response to global pressures and merely represented a new and improved way of dealing with those pressures. The further shifts which have occurred since the Second World War or since the early 1970s have merely represented the latest development in this trend. Even statists who see the state as the cornerstone of human existence have seen that same state as part of a state-system; which itself forms a natural supra-state organization reflected in international law.[123] Although sovereign states still retain the right not to participate in international accords, in practice they find they have to conform eventually, to some degree, with world legal norms because they are enmeshed in a web of interdependencies and have to take the rest of the world community into account to accomplish their own interests.[124] Further, in international law, states gradually begin to conform to the standards of the world community, even if those standards themselves gradually change over time. For those who argue for the primacy of the state, only a small step exists between internationalism and intra-state collaboration within a supra-state organization.[125]

As a result, states find they must recognize certain human rights in order to fully participate in the global system. If they fail to, the international pressure often comes with an economic impact. If states decentralize power, or if smaller adminis-

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122. *See, e.g.,* THE DECLARATION OF INDEPENDENCE (U.S. 1776); U.S. CONST.

123. *See* Alain Lipietz, *The National and the Regional: Their Autonomy Vis-a-Vis the Capitalist World Crisis, in* TRANSCENDING THE STATE-GLOBAL DIVIDE: A NEO-STRUCTURALIST AGENDA IN INTERNATIONAL RELATIONS 23-24 (Ronen P. Palan & Barry Gills eds., 1994).

124. *See* Mark W. Zacher, *The Decaying Pillars of the Westphalian Temple: Implications for International Order and Governance, in* GOVERNANCE WITHOUT GOVERNMENT: ORDER AND CHANGE IN WORLD POLITICS 60 (James N. Rosenau & Ernst-Otto Czempiel eds., Cambridge 1992); Anthony J.N. Judge & Kjell Skjelsbaek, *Transnational Associations and Their Functions, in* FUNCTIONALISM: THEORY AND PRACTICE IN INTERNATIONAL RELATIONS 203-204 (A.J.R. Groom & Paul Taylor eds., 1975).

125. *See* A.J.R. Groom, *Functionalism and World Society, in* FUNCTIONALISM: THEORY AND PRACTICE IN INTERNATIONAL RELATIONS 94-96 (A.J.R. Groom & Paul Taylor eds., 1975).

trative units gain independence, those new units themselves become locked into the global system to a greater rather than lesser extent. International politics and economics have blended. Economic decisions are often political ones. When heads of state meet, they most often discuss economic exchanges between their countries. Political conferences focus on trade issues. Even conventions on human rights or the environment wrap themselves in the economic bottom line. And the bottom line remains that free trade increases wealth. Nationalist demands by some states still hinder many agreements, but more and more barriers to trade break down daily. Even many of the most closed-minded opponents to free trade still argue their own economic theories to justify their politics.

Independence for sub-state political regions only makes economic sense as long as the seceding state recognizes its place in the global world. Independence for independence's sake may address a political desire for self-determination, but if the new state hopes to succeed, the decision cannot simply exist in the political sphere. Levels of technology, travel, and general interaction between peoples have been increasing exponentially. The number of interactions and common concerns and processes to deal with them has increased, leading to ever more common processes and international organizations to manage those processes.[126] Increasingly, states find they must become involved in international bodies in order to further global interests, because only in that way can they protect their own interests.[127]

In the contemporary world, economic well-being has become as important as security, if it has not already entirely surpassed security as the primary issue of international relations. The increase in trade has resulted in the demise of armed powers facing each other down over traditional sovereign issues and the rise of collaboration in trade for mutual wealth creation.[128] Where theories of international relations once concerned themselves with solely state actors, they now involve the examination of underlying and overlying processes, movements, and concerns - the structure of the global sys-

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126. *See* ANDREW M. SCOTT, THE DYNAMICS OF INTERDEPENDENCE 54-55 (1982).

127. *See id.* at 132-134.

128. Czempiel, *Governance and Democratization, in* GOVERNANCE WITHOUT GOVERNMENT 172 (James N. Rosenau & Ernst-Otto Czempiel eds., 1992).

tem.[129]

One important issue which has surfaced threatens the very structure of the traditional states from within: the question of which geographic boundaries might best deal with local needs and represent and administer the local population. The boundaries in question might subdivide the existing states, or might encompass parts of more than one state. They might correspond to the rising tide of nationalist movements, or they might follow a purely functionalist approach in which each problem needing a solution required the *ad hoc* formation of a different geographic community for every given scenario.[130]

Within many democratic countries, which are often also those most open to international free-trading schemes, the tendency in recent years has been to decentralize the administration even while passing control of global issues to international organizations. Within the global framework, traditional states have less meaning. It becomes possible, even for independentist nationalist movements, to argue that not only are they not destructive forces aiming to break up states, but that they are in reality constructive forces, better suited to participate in global affairs. Whichever way the boundaries question resolves under any given circumstances, a growing trend has emerged to consider people whom do not correspond to the traditional states. This process has earned the description "building down," crafting statelets at more local levels which might form within the constricts of international agreements.[131] Thus, the Scottish National Party can campaign for "Independence in Europe" and participate with numerous other regional movements within the European movement.[132] The Catalan nationalists, Europe's leaders in this philosophy, also argue that their country does not require Madrid, but should directly affiliate to international organizations even if

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129. Gills & Palan, *Introduction: the neostructuralist agenda in international relations, in* TRANSCENDING THE STATE-GLOBAL DIVIDE 1-8 (Ronen P. Palan & Barry Gills eds., 1994).

130. *See* Paul Taylor, *Regionalism: The Thought and the Deed, in* FRAMEWORKS FOR INTERNATIONAL COOPERATION 151.-152 (Groom & Taylor eds., 1990).

131. Alexis Heraclides, *From Autonomy to Secession: Building Down, in* FRAMEWORKS FOR INTERNATIONAL COOPERATION 194 (Groom & Taylor eds., 1990).

132. Charles E. Ehrlich, *Federalism, Regionalism, Nationalism: A Century of Catalan Political Thought and its Implications for Scotland in Europe, in 1* SPACE & POLITY 205, 220 (1997); D. McCrone, *Post-Nationalism and the Decline of the Nation-State*, RADICAL SCOT. Feb./Mar. 1991, at 8.

Catalonia remains part of Spain.[133] All of these movements argue that the size of the state is no indication of its viability in the modern world. Indeed, some attempts to create or maintain larger states are not viable because they cannot take into account the interests of diverse populations.[134] It is, therefore, no contradiction that the global structure has tended both towards interdependent globalization and local decentralization.

The federal system in the United States offers one model. The federal government has primacy in international treaties, but each state may maintain its own policies where they do not conflict with federal law.[135] Further down the structure, local governments in the U.S. find that they too can enact economic policy with contacts at various levels on the international trading system. When global economic forces affect local jurisdictions, the relevant level of local government kicks in, often bypassing the federal state completely. When the Republic was founded, international trade had less of a pervasive effect locally; regulation from the federal government was sufficient. In the modern world that is not the case. The division of competencies between the various levels of government means that state and local governments which carry out their own global economic policies are not overstepping their constitutional bounds.[136]

Within the new world economic order, populations seek a voice which manifests itself on the local level. The more decentralized the administration of a government, the more efficiently it can address local needs. As a result, many states have embarked on decentralization of administration in order to strengthen their global positions. This decentralization serves to fortify the parts, which in turn gives the entire state a competitive boost in the global arena. But the states do this at their own risk; they lose control over areas of their sovereignty, both to the decentralized regions and to the international organizations.[137] The traditional concept of sovereignty loses its

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133. *See* Ehrlich, *supra* note 132, at 220.

134. *See* Heraclides, *supra* note 131, at 185.

135. *See* U.S. CONST. art. VI.

136. *See* Brenda S. Beerman, *State Involvement in the Promotion of Export Trade: Is It Time to Rethink the Concept of Federalism as it Pertains to Foreign Relations?* 21 N.C. J. INT'L L. & COM. REG. 187, 188 (1996).

137. Rosenau, *Citizenship in a changing order, in* GOVERNANCE WITHOUT GOV-

role. If sovereignty is the measure for the state, then the state has ceased to be as important a player in world affairs. But if adapting to globalization for the benefit of the citizenry is the measure, then the states which function most efficiently within the new framework are actually maintaining their important role as the protectors of their own societies.

IV. CONCLUSION

As the world enters the twenty-first century, the traditional states are undergoing a massive identity crisis. The global world has put one set of pressures on them; both in terms of their place in the world and in terms of the behavior the world expects states to follow, even when dealing exclusively with their own citizens. On the other hand, component groups within their borders have continued to strive for self-determination and for their own cultural identities, often in tandem with the new globalizing tendencies. As a result, the potential for serious conflict between different groups exists as much as ever.

Some states have entered convulsions. Others have looked for ways to adapt to the changed global circumstances. Non-peaceful and non-democratic solutions risk the traditional state's position within the world. Not only is the trouble disruptive, and the international opprobrium quick to arrive, but the state still has not addressed the root problem: the existence of diverse ethno-cultural groups within its boundaries.

If the different groups live in more-or-less defined areas, then the devolution of administration can provide sufficient self-determination to meet democratic desires and international norms. When combined with global pressures, such devolution ultimately may lead to separation, but the region which may eventually separate from the traditional state still would not get to separate from the world and still would have the old state as a neighbor and necessary partner. Nationalist groups, the "neo-separatists," which recognize this, will find themselves best placed to take advantage of both local and global politics and economics. Governments of the traditional states will see less threat in such nationalists.

Where the distinct groups live in mixed or intertwined communities, however, a clear separation may not work. Devo-

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ERNMENT 280-285 (James N. Rosenau & Ernst-Otto Czempiel eds., 1992).

lution of power may work in such situations as well, to allow a more local say for regional concerns. But within each level of government some form of consociationalism might work instead to create a common civic society out of a number of distinct groups, a society in which no group feels threatened and still maintains a modicum of control over its own affairs. The drawback here is the question of whether a consociational democracy would be sustainable, and if it were, whether it would have to turn into an administrative bureaucracy in order to work effectively.

The fundamental issue, however, remains that in a rapidly changing world, in which the traditional states and civic identities find themselves under stress from several angles, those states find themselves revisiting the issues of what to do with their minority groups. Because of the increased prominence of human rights and its role in international law and diplomacy, the pressure exists to encourage the states to look for peaceful and democratic solutions. Furthermore, the states find that such peaceful and democratic solutions are not only less disruptive to the state's position in the global economy than more violent or oppressive methods, but that the peaceful and democratic methods might actually make the sovereign state more competitive and able to benefit from the international system.