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NATIONS WITHOUT STATES: POLITICAL COMMUNITIES IN THE GLOBAL AGE

Montserrat Guibernau*

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The nation has become one of the most contested concepts of our times. The multifarious definitions of the nation focus on cultural, political, psychological, territorial, ethnic, and sociological principles according to different scholars, politicians, and political activists willing to shed some light into such a disputed term. Their lack of agreement suggests a major difficulty in dealing with such a complex phenomenon. The crux of the matter probably resides close to the link which has been established between nation and State, and to the common practice of using the nation as a source of political legitimacy. To be or not to be recognized as a nation entails different rights for the community which claims to be one, since being a nation usually implies the attachment to a particular territory, a shared culture and history, and the vindication of the right to self-determination. To define a specific community as a nation involves the more or less explicit acceptance of the legitimacy of the State which claims to represent it, or, if the nation does not possess a State of its own, it then implicitly acknowledges the nation's right to self-government involving some degree of political autonomy which may or may not lead to a claim for independence.

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I. DEFINITIONS

The nation, however, cannot be viewed in isolation. I argue that a clear-cut distinction needs to be drawn between three main concepts: nation, State, and nationalism. In addition, the nation-state needs to be defined and further distinguished from these three concepts. By "State," taking Weber's definition, I refer to "a human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory,"¹ although not all States have successfully accomplished this, and some of them have not even aspired to accomplish it. By "nation," I refer to a human group conscious of forming a community, sharing a common culture and a clearly demarcated territory, having a common past and a common project for the future, and claiming the right to rule itself. This definition attributes five dimensions to the nation: psychological or consciousness of forming a group, cultural, territorial, political and historical. By "nationalism" I mean the sentiment of belonging to a community whose members identify with a set of symbols, beliefs and ways of life, and have the will to decide upon their common political destiny.² The nation-state is a modern institution, characterized by the formation of a kind of State that has the monopoly of what it claims to be the legitimate use of force within a demarcated territory and seeks to unite the people subject to its rule by means of cultural homogenization.

Nation, State, and nationalism form a triad characterized by a constant tension between its three components. This tension can be seen on two levels. First, changes in the definition of one of the constituents have the capacity to influence and, to some extent, even alter the definitions of the other two. Second, the eventual emergence of external factors may alter the very nature of the triad by shifting the balance of power between its members and even threatening to undermine one of them at the expense of another.

For instance, if belonging to a nation is defined in terms of common blood, the definitions of the State and citizenship, as an attribute conferred upon its members, will have to include blood as a *sine qua non* condition for membership. Consequently, any nationalist movement emerging in these specific circumstances will focus upon common blood as a requisite for exclusion and inclusion in the nation that they want to defend and promote. In other cases where common ancestry is replaced by territory or by the will to be a member of a particular nation as the primary condition for membership of a particular State, the defi-

1. MAX WEBER, FROM MAX WEBER: ESSAYS IN SOCIOLOGY 78 (Hans H. Gerth & C Wright Mills, trans. and eds., 1946).

2. MONTSERRAT GUIBERNAU, NATIONALISMS 47-48 (1996).

dition of the nation and the character of nationalism are altered accordingly. Of course, alterations in the definitions of nation, State and nationalism are not restricted to conditions for belonging or criteria for membership.

The state's self-definition as a unitary, a federal, or even a multinational political institution holds significant consequences for the peoples living within its boundaries. Once one of these self-definitions is adopted by a specific State, it has the capacity to influence the definition of the nation. This is particularly evident in the case of being confronted with a State that declares itself to be multinational, thus assuming the coexistence of more than one nation within its territory. Such a position entails an automatic distinction between nation and State which challenges the commonly accepted coincidence between the two. A multinational State explicitly acknowledges its internal diversity, and, in so doing, it influences the diverse definitions of nationalism that may emerge within its territory. First, in these cases, the nationalism instilled by the State will necessarily involve the acceptance of the diverse nations included within its borders. This type of nationalism tends to focus on shared constitutional rights and principles as elements able to hold together an otherwise diverse citizenry. Second, the nationalism emerging from some of the national minorities included within the State is strongly influenced by the state's recognition of their status as nations. The minorities' nationalism is bound to focus on demands for greater power and resources which will allow them to further the degree of self-government they enjoy, assuming that they are already entitled to some political autonomy.

In a similar way, alterations in the definition of nationalism have the power to impact the definitions of both the State and the nation. Therefore, a nationalist discourse based upon the rejection, dehumanization, and portrayal of those who do not belong to the nation as "enemies" and as a "threat" will feed xenophobia and ethnic hatred. This type of nationalism is likely to foster a narrow definition of the nation based upon the exclusion of the different and the belief in the superiority of one's own nation above all others. A State endorsing this sort of nationalism is likely to base its policy on the marginalization or sometimes even the elimination of "others" within its territory, and/or the pursuit of a consistent assimilation policy. This type of State often engages in conflicts with other States as a result of an aggressive economic and/or territorial expansionist policy.

In considering the second level of the relation between the components of the triad, we examine how external factors may alter its nature. Here we are confronted with radical transformations able to alter the

more or less stable equilibrium existing between the components of the triad by affecting their relationship at a structural level well above the particular situations considered when analyzing individual cases.

At present, the main challenge to the relationship between the components of the triad concerns the radical and rapid transformations altering the traditional nature of the State. The proliferation of supranational institutions, the increasing number of multinational corporations, and the emergence of substate nationalist movements contrive a novel political scenario in which the traditional role of the State is being undermined in a fundamental way. The signs of this have already become apparent; the radicalization of State nationalism, the proliferation of ethnic and national conflicts, and the State's resistance to give up substantial aspects of its sovereignty represent but a few examples which hint at the State's urgent need to recast its nature. At this moment in time, we are witnessing the rise of what I call "nations without States" as potential new political actors able to capture and promote sentiments of loyalty, solidarity and community among individuals who seem to have developed a growing need for identity. Sound political and economic arguments may also be invoked in trying to account for the relevance that nations without states may acquire in the foreseeable future.

II. NATIONS WITHOUT STATES

By "nations without States" I refer to nations which, in spite of having their territories included within the boundaries of one or more States, by and large do not identify with them.³ The members of a nation lacking a State of their own regard the State containing them as alien, and maintain a separate sense of national identity generally based upon a common culture, history, attachment to a particular territory and the explicit wish to rule themselves. Self-determination is sometimes understood as political autonomy, in other cases it stops short of independence and often involves the right to secede. Catalonia, Quebec, Scotland, the Basque Country, and Flanders represent but a few nations without States currently demanding further autonomy. It could be argued that some of these nations do have some kind of State of their own since a substantial number of powers have been devolved to their regional parliaments. But, because in my view, political autonomy or even federation fall short of independence since they tend to exclude foreign

3. See MONTSERRAT GUIBERNAU, *NATIONS WITHOUT STATES* (1999).

and economic policy, defense and constitutional matters, it continues to make sense to refer to them as nations without States.

A nation without State, as the term indicates, is based upon the existence of a nation, that is, a community endowed with a stable but dynamic core containing a set of factors which have generated the emergence of a specific national identity. The State, that is, the political institution with which the nation should ideally identify, is missing. This creates a picture in which we have the cultural unit but lack the corresponding political institution regarded as legitimate by the members of the nation. The relationship between nation and State seems to have shifted from a time in which the State and its role in nation-building was given pre-eminence. In contrast, contemporary nationalist movements in nations without States are actively involved in "State-building." We should note, however, that the State they seek to create differs from the classical model of State.⁴

The main qualities of the nation-state which somehow favored the assimilation of otherwise culturally diverse citizens were: its power to confer rights and duties upon its citizens; to provide for their basic needs, a function which since the Second World War materialized in the establishment of more or less generous welfare systems; and to maintain order in society while controlling the economy, defense, immigration and foreign policy, education and communication systems. The nation-state has traditionally based its legitimacy upon the idea that it represents the nation, in spite of the fact that often the State, once created, had to engage in nation-building processes aimed at the forced assimilation of its citizens. It now becomes apparent that, in many cases, these processes have largely failed; the re-emergence of nationalist movements in nations without States proves it. At present, the State seems to become increasingly unable to fulfill its citizens' needs and consequently the citizens turn away from it and search for alternative institutions.

Most so called nation-states are not constituted by a single nation which is coextensive with the State;⁵ internal diversity is the rule. The nation-state, after a long process of consolidation that has involved the construction of a symbolic image of the community endowed with a particular language and culture, and the creation of symbols and rituals destined to emphasize its unique character and the fixing of territorial borders, is being forced to respond to challenges from within.

4. See Montserrat Guibernau, *Globalization and the Nation-State*, in MONTSERRAT GUIBERNAU & JOHN HUTCHINSON, *UNDERSTANDING NATIONALISM* 242 *passim* (2001)

5. GUIBERNAU, *supra* note 2, at 47.

The nations or parts of nations included within a single State do not share similar levels of national awareness. What is more, while some will define themselves as nations, others will be happy to be referred to as provinces or regions. Nations are not unique and fixed, and throughout history it is possible to record the disintegration of some nations which have played a prominent role during a particular period and the creation of new ones.

The State has a strong tendency to absorb functions and a great reluctance to delegate control over any of the tasks it considers as an integral part of its sovereignty. The argument for state centralization is closely connected to the idea of state sovereignty understood as full control over all matters concerning the social, political and economic life of the citizens living within its boundaries. The increasing number of international organizations, multinational companies, supranational social movements and the technical sophistication of modern warfare are currently challenging this classic concept of state sovereignty. The State is exposed to pressure from above while at the same time it lays itself open to increasing internal strain to modify its traditional centralist nature and acknowledges the existence of territorially circumscribed cultural communities within itself which show a varying degree of national self-consciousness and put forward different socio-political demands. The origin of most of these communities can be traced back to an era previous to the founding moment of the nation-state when diversity was generally diluted under the centralist and homogenizing practices of a then incipient nation-state.

The nationalism of nations without States is closely connected to two interrelated factors: the intensification of globalization processes and the transformations affecting the nation-state. This type of nationalism emerges as a socio-political movement that defends the right of peoples to decide upon their own political destiny. Pressure for change and the nature of political demands are not homogeneous and depend upon each case, but what all these movements seem to share is the will to develop their specific culture and language, whenever it exists, and the desire to feel represented by the institutions deciding upon their future. The number of people involved in the movement can measure the strength of this type of nationalism; thus, a massive following is more difficult to ignore if the State wants to maintain its credibility as a democratic institution.

A key feature when considering nations without States is the degree of dissatisfaction felt by their members concerning their present situation. They tend to regard the State within which they are included as "alien," as an "obstruction" to the development of their nation, or as a

“burden” that takes a great deal of their resources and does not provide them with sufficient benefits. The articulation of such feelings provokes the emergence of nationalist movements with differing political aims ranging from devolution and autonomy to secession and independence. Such movements are based upon the denunciation of an unsatisfactory situation related to economic, social, political, or security matters stemming from the relationship between the State and its national minorities. The particular nature of the State, which differs in each case, determines the status of the national minority, while the strength of the minority’s nationalist movement heavily influences a possible re-shaping of its relationship with the state.

This paper considers cultural recognition, political autonomy, and federation as three possible political responses to the nationalism of nations without States. Independence may indeed be the outcome of nationalist pressure, but in what follows I shall focus upon these three alternatives which are capable of accommodating the national minorities’ demands without, in principle, leading to secession. Cultural recognition, political autonomy and federation presuppose the acceptance of democracy understood in a broad sense and the readiness of the State to recognize varying degrees of difference within itself. There are many intermediate solutions to the three main political scenarios I wish to study. In this sense, I will consider regionalization, devolution, and decentralization as variations either within cultural recognition or political autonomy depending upon each case. A further political response refers to a state of affairs in which the national minority’s existence is not recognized as such by the State or States containing it. This is what I call “denial and repression.” In these occasions, lack of recognition is often accompanied by the active implementation of policies destined to homogenize the population and to eradicate the cultural and political specific traits of the minority. There are many ways in which repression can be exerted ranging from social and political to overt military measures.

In what follows, I examine different political scenarios and feasible solutions to the nationalism of nations without States in Western countries. Although I will make occasional references to some post-colonial societies, I am aware that for these references to be fully accurate, a careful analysis of what colonialism means, and how the concepts of nation, State, and nationalism were exported to these areas and appropriated by the new local elites to fit into a radically distinct environment from that of the West where they had originated, should be included. But this is an area of study that is far beyond the scope of the present

paper. A further case not considered in this paper concerns whether First Nations could be regarded as a type of nations without States.⁶

III. CULTURAL RECOGNITION

The acknowledgment of certain cultural traits as specific characteristics of a territorially-based national minority which the state may refer to as "region," "province," or "département" stands as a soft option in the state's process of recognizing its internal diversity. Two main issues need to be considered before exploring this option.

First, cultural recognition presupposes the existence of a unitary State which excludes the possibility of considering its internal diversity as the outcome of more than one nation living under the umbrella of a single political institution. Almost invariably, the State promotes a common language and culture through a more or less efficient national education system. In this context, internal differences do not pose a threat to the state's integrity; rather, they are incorporated into the state's culture, and are considered as part of it.

Second, cultural recognition seems to work wherever national minorities have a weak sense of identity, or are unwilling to or prevented from articulating social and political movements in defense of their specificity. But, how are we to explain a weak national self-consciousness? In my view, three main causes can be identified: (1) a successful assimilation program implemented by the State that has resulted in a considerable degree of integration of the national minority involved; (2) a situation in which the national minority has been repressed over a substantial period of time, taking into account that repression can be exerted in a myriad of ways that do not necessarily involve the use of physical force; and (3) historical accident. This refers to unspecified circumstances which can be considered entirely as a matter of chance. For example, the death or lack of a successor to the crown and the need to find a new monarch outside the nation; a high influx of migrants taking over the economy and, later, politics; or the massive migration of young members of the nation forced to find work elsewhere.

Cultural recognition involves a unitary State which does not delegate its sovereign powers, except on very specific issues, as was the case in Scotland where it maintained its separate education system, religion (*kirk*), and civil law.

6. For an analysis of nations and nationalism in Native America, see GUIBERNAU, *supra* note 3, at 67-82.

Cultural recognition involves a minimal degree of decentralization, if any. The citizens of the State exert their sovereignty in general elections which affect the life of the entire population, the region is never considered as a separate entity enjoying the right to directly decide upon matters affecting it (*demos*). There are no regional elections; sovereignty is exercised at a single level and it is not devolved. The integrity of the State is well preserved since the possibility of internal challenges is ruled out by a firm unitary state structure.

The State may decide to appoint a special representative for the area in charge of the distribution of state subsidies and the administration of the region according to the state's legislation. This person is usually accountable to the parliament about issues concerning the region. The state's nominee is not elected by the region's inhabitants, as members of the regional government and the president himself would be if there were political autonomy. This has been the case in Scotland up to 1999 when the first members to the newly created Scottish Parliament were elected. In Scotland, a Secretary of State was appointed in the first post-union Government (1707). After 1745, however, no such appointment was made; while responsibility for Scotland during the majority of the ensuing period lay with the Home Secretary, most of the effective political power was exercised by the Lord Advocate. This system lasted until 1885 when the office of Secretary of Scotland was created, the status of which was enhanced in 1926 to that of Secretary of State.

In addition, cultural recognition usually involves the protection and promotion of the regional language, if there is one, and culture. It is relatively easy and uncompromising for the State to sponsor some folklore events which reflect the specific traditions of the area and present them as a constitutive part of the nation-state's broad culture. Such manifestations are aimed at pleasing those members of the region who consider themselves satisfied with this level of recognition.

The protection and encouragement of a regional language that is only spoken by a small minority or relegated to a private sphere, is more controversial. The degree of controversy is directly connected to the strength and resources allocated to this end, and to the social impact of an increasing use of the language in the public sphere. Wherever the regional language has been lost, difference is placed upon other distinctive features of the community such as law, religion, but undoubtedly, wherever language still exists, it becomes one of the most prominent features of identity.

The recognition of internal difference, be it in the form of cultural recognition, political autonomy or federation, is bound to contrive opposition from those who sustain a closed image of the State as a political

institution that aims at the annihilation of difference within itself. In many multinational States we encounter what I call a "colonization of the regions." By this I mean a process of active assimilation of regions to the mainstream culture and language. The presence of the state's representatives in the administration and the army contributes to the consolidation of such policies.

Furthermore, a subtle and to a certain degree unintended form of colonization of poor areas occurs when a substantial number of second residences belonging to people from outside the region who enjoy a higher standard of living and benefit from the region's lower prices in the housing market and services takes place. The impact of their presence depends very much on the number of new "part-time" residents. A few people are easier to assimilate into the uses, traditions, and even the language of a particular region. Similarly, the various attitudes of those entering certain communities through their second homes make a great difference. Thus, some people are respectful of regional cultures, while others are indifferent to them. There are also those who clearly despise regional cultures as inferior, primitive, or retrograde in an attempt to justify the region's backwardness. In these circumstances, the autochthonous people's reactions towards the "newcomers" range from open hostility, which sometimes can lead to violence, to admiration and a sense of inferiority.

IV. POLITICAL AUTONOMY

Political autonomy refers to a situation in which a unitary State decides to implement a certain degree of decentralization by devolving some of its powers to all or some of its constituent regions, provinces or nations—the terminology varies a great deal depending upon the individual's perspective. Some key concepts connected with the idea of political autonomy are: subsidiarity, decentralization, and devolution. They all refer to the transformation of a unitary State into a political institution able to delegate some functions while still retaining a strong core of attributes. These concepts can be understood as a means to deepen democracy by bringing decision-making processes closer to those who will be directly affected by them. The main argument for decentralization is the implicit belief that transferring certain functions to substate institutions with a territorial basis could increase efficiency and legitimacy. However, although some practical reasons could be invoked for defending the partial autonomy of certain areas within a single State, it should never be taken for granted that the State will automatically accept them.

The combination of democracy and Woodrow Wilson's 1918 principle of a people's right to self-determination has so far materialized in different political arrangements attempting to acknowledge both criteria while preserving the nation-state's integrity. Political autonomy should be regarded as a state's response to its national minorities' nationalism which goes beyond cultural recognition. It usually emerges as the result of pressure exerted by the national minorities involved and it is never a smooth process. Political autonomy requires the amendment of the state's constitution to specify the degree of decentralization and the specific powers that will be transferred to the regions. It also requires establishing clear guiding principles for the allocation of the resources that will make political autonomy possible. Sovereignty is not shared by the constituent parts of the State as it is expected in a federation. Instead of this, the State transfers some of its functions to newly created regional institutions with or without a previous historical past that must always be accountable to it. Matters relating to culture and welfare seem to be easier to transfer than those concerning taxation, security, and international relations. The latter, if ever ceded, are always partial and evolve under close supervision by state agents and institutions. There is not a fixed rule of how much power should be devolved when autonomy is conferred upon some regions, which explains why the concept and content of this political arrangement vary substantially when applied to different political environments.

For instance, Catalonia, in northern Spain, shares Scotland's history of having been independent until the early eighteenth century and then subsequently integrated within a larger State. A separate sense of identity based on a particular culture, which in the case of Catalonia includes a distinct language, and the desire for some type of political recognition have been at the heart of Catalan as well as in Scottish nationalist demands.

A. Catalonia

Fundamental to the history of Catalan nationalism is the fact that Catalonia became a nation without a State after a long period up to 1714, during which it had enjoyed its own political institutions and laws.⁷

Catalonia enjoyed a certain degree of autonomy under the administrative government of the *Mancomunitat* (1913–1923),⁸ which was suppressed in 1923 after the *coup d'état* of Miguel Primo de Rivera,⁹

7. ALBERT BALCELLS, *CATALAN NATIONALISM* 15 (Jacqueline Hall, trans., 1996).

8. *Id.* at 67–69.

9. *Id.* at 83.

and under the *Generalitat* (1931–1938),¹⁰ which was abolished by General Francisco Franco's decree of April 5, 1938.¹¹ After Franco's dictatorship, Catalonia recovered its autonomous government, *Generalitat* (1977),¹² and sanctioned a new Statute of Autonomy (1979).¹³

During the Francoist regime (1939–75), nationalism and democracy stood together as part and parcel of the Catalan and Basque demands for the transformation of Spain into a democratic State able to recognize diversity within itself and ready to alter its recalcitrant centralist nature.¹⁴ After Franco's death in 1975, the national question became a pressing matter and a compromise among all political forces engaged in the process of drawing up a new democratic constitution for Spain had to be achieved.¹⁵ The makers of the constitution opted for a model based upon symmetry, what has been called *café para todos*, or “coffee for everyone,”¹⁶ and instead of directly responding to the nationalist claims of Catalonia and the Basque Country as nations, they decided to implement a system that would allow the creation of seventeen autonomous communities, some historically and culturally distinct—Catalonia, the Basque Country and Galicia—others artificially created where no sense of a separate identity had ever existed—La Rioja and Madrid, among many others.¹⁷ Yet, while Catalonia, the Basque Country and Galicia could immediately initiate the process towards full autonomy, other regions had to fulfill a five year “restricted autonomy” period before initiating it.¹⁸ Once full autonomy is achieved, however, the constitution makes no distinction between the communities.¹⁹ The constitution assumes the indissoluble unity of Spain while recognizing and guaranteeing the right to autonomy of its nationalities and regions.²⁰

Each community has a regional legislative assembly consisting of a single chamber.²¹ Deputies are elected on the basis of proportional representation, and usually the leader of the majority party or coalition

10. MONTSERRAT GUIBERNAU, CATALAN NATIONALISM: FRANCOISM, TRANSITION AND DEMOCRACY 34–36 (2004).

11. Montserrat Guibernau, *Spain: Catalonia and the Basque Country*, in MICHAEL O'NEILL & DENNIS AUSTIN, DEMOCRACY AND CULTURAL DIVERSITY 56 (2000).

12. BALCELLS, *supra* note 7, at 172; *see also* PAUL PRESTON, JUAN CARLOS : EL REY DE UN PUEBLO 452–53 (2003).

13. GUIBERNAU, *supra* note 10, at 76.

14. José L. Cebrián, *La experiencia del período constituyente*, in ESPAÑA 1975–1980: CONFLICTOS Y LOGROS DE LA DEMOCRACIA 13, 13–24 (José L. Cagigao et al. eds., 1982).

15. GUIBERNAU, *supra* note 10, at 72.

16. Guibernau, *supra* note 11, at 61.

17. *Id.*

18. JORDI SOLÉ TURA, NACIONALIDADES Y NACIONALISMOS EN ESPAÑA: AUTONOMÍAS, FEDERALISMO, AUTODETERMINACIÓN 109 (1985).

19. CONSTITUCIÓN [CE] arts. 143, 151 (Spain).

20. *Id.* at art. 2.

21. *See generally id.* at arts. 143–58.

assumes the presidency of the community.²² The president heads a regional executive of ministers in charge of departments which mostly, but not always, follow the Spanish national pattern.²³ In many ways, the autonomous governments act as States.²⁴ In Catalonia and the Basque Country, for example, they provide services in education, health, culture, housing, local transport, and agriculture; and they have even gained control of their autonomous police force. The Spanish Government holds exclusive jurisdiction over defense, the administration of justice, international relations and general economic planning.²⁵ A Compensation Fund administered by the government allocates special resources to poorer regions and is intended to promote equilibrium and solidarity among them.²⁶

B. Scotland

Scotland enjoyed political independence until 1707, and the survival of many of its institutions, notably law, religion and education, after the union contributed to the preservation of its singular identity as a nation within the United Kingdom.²⁷

Scotland has endured a long and complicated process towards self-determination. In the 1979 Referendum, the Scots voted in favor of the Labour Government proposals to establish a Scottish Assembly.²⁸ The Act was repealed because a special majority provision required that at least forty percent of the registered electorate should vote in favor. Only 32.9 percent of the electorate voted positively in the referendum.

Since 1988, the Scottish Constitutional Convention comprising Labour, Liberal Democrats, Nationalists, churches, unions and other civic groups has been campaigning for change. In 1995, they published a plan for a Scottish Parliament.²⁹ In the light of the unhappy memories of earlier attempts at major constitutional reform, the convention opposed an establishing referendum considering it as a high risk strategy.³⁰ Once in power, the Labour government decided to hold a referendum (September 11, 1997) with a positive outcome; seventy-four percent of the Scots

22. *See generally id.*

23. *See generally id.*

24. *See id.* art. 148.

25. *Id.* at art. 149.

26. *Id.* at art. 158.

27. JOHN DUNCAN MACKIE, *A HISTORY OF SCOTLAND* 263 (Bruce Lenman & Geoffrey Parker, eds., 2d ed. 1978).

28. THE SCOTTISH OFFICE, *SCOTLAND'S PARLIAMENT* para. 1.4 (1997), available at <http://www.scotland.gov.uk/government/devolution/scpa-00.asp>.

29. THE SCOTTISH OFFICE, *supra* note 28, at para. 1.5.

30. Lindsay Paterson, *Scottish Democracy and Scottish Utopias: The First Year of the Scottish Parliament*, in *SCOTTISH AFFAIRS* 45 (Autumn 2000).

voted for a Scottish Parliament and sixty-three percent voted to give it tax-varying powers.³¹ This has transformed Scotland's status within Britain. The Scots now elect their own representatives in the Scottish Parliament; the first elections took place in May, 1999.³² The First Minister heads the Scottish Executive and is appointed by the Queen on the advice of the Presiding Officer after the Scottish Parliament has nominated a candidate, who will normally be the leader of the party able to command the majority support of the Scottish Parliament.³³ The affirmative referendum result cannot deliver constitutional entrenchment, but it might reinforce its moral and political legitimacy. Ultimately, Scotland's Parliament will have to secure its future in the U.K. Constitution by convincing the population of its relevance to their lives.

The British Prime Minister, Tony Blair, in his preface to *Scotland's White Paper* referred to Scotland as "a proud historic nation in the United Kingdom,"³⁴ thus acknowledging the multinational character of the British State. Throughout the paper, Scottish devolution was presented as part of the government's comprehensive program of constitutional reform destined to strengthen the United Kingdom.³⁵ Scotland remains an integral part of the United Kingdom, and the Queen continues to be Head of State of the United Kingdom. Westminster is and will remain sovereign. The Scottish Parliament has lawmaking powers over a wide range of matters which affect Scotland. Westminster retains powers and responsibilities for: the constitution of the United Kingdom; U.K. foreign policy including relations with Europe; U.K. defense and national security; the stability of the U.K.'s fiscal, economic and monetary system; employment legislation; social security; and most aspects of transport safety and regulation.³⁶

V. FEDERATION

The main difference between federation, as a form of government of a country in which power is divided between one central and several regional governments, and political autonomy lies in the much higher degree of decentralization that is constitutionally established and guaranteed whenever a federal structure is set up. In objective terms and

31. Michael O'Neill, *Great Britain: From Dicey to Devolution*, 53 *PARLIAMENTARY AFFAIRS* 69, 78 (2000).

32. Graham Leicester, *Scotland*, in *THE STATE AND THE NATIONS* 13, 15 (R Hazell ed. 2000).

33. See generally *THE SCOTTISH OFFICE*, *supra* note 28, at paras. 2.6, 4.2.

34. Tony Blair, *Preface to THE SCOTTISH OFFICE*, *supra* note 28, at v.

35. *THE SCOTTISH OFFICE*, *supra* note 28, at para. 4.5.

36. *Id.* at para. 3.3.

from the point of view of the degree of self-determination, a nation without State can enjoy without becoming independent, this is the most advantageous arrangement. However, there is not a sole interpretation of federalism, or, at least, there are remarkable differences between different federal structures. In Graham Smith's view, federalism is both a political ideology and an institutional arrangement.³⁷ As a political ideology, it assumes that the ideal organization of human affairs is best reflected in the celebration of diversity through unity. As an institutional arrangement, federations vary widely in their content depending upon historical, economic, social and political circumstances.

Because federalism represents an ideological commitment, the mere creation of federal structures does not necessarily lead to a federalism which assumes both respect for diversity and a strong commitment to accept the union of the federation. In some cases, political leaders' commitment to federalism produces a "federalizing" influence when it comes to the articulation of the State, without arriving at federation.

Federation embodies a particular articulation of political power within a clearly demarcated territory, which is informed by the desire to acknowledge, protect, and encourage diversity within, while at the same time maintaining the territorial integrity of the State. The constituent units of a federation, as Burgess writes, are not mere local authorities subordinate to a dominant central power; "[o]n the contrary, they themselves are states with states rights."³⁸ As Elazar puts it, "the very essence of federation as a particular form of union is self-rule plus shared rule."³⁹

At the center of the federalist idea lies the assumption of the worth and validity of diversity. For this reason federations have often proved highly useful political tools in protecting national minorities concentrated in particular territorial areas within the federal State. In the case of Switzerland, most cantons had been established according to the cultural and linguistic specificity of their inhabitants. A similar point could be made about Quebec, as the only French enclave in North America, and one of the most active nations without States in struggling to secure its linguistic and cultural development, in principle, within the Canadian federation.

Quite often there is a tension between some members of the federation's desire to expand the scope of self-determination and the state's urgency to increase federal control. This tension varies in each case and

37. Graham Smith, *Mapping the Federal Condition: Ideology, Political Practice and Social Justice*, in *FEDERALISM: THE MULTIETHNIC CHALLENGE* 4 (Graham Smith ed., 1995).

38. Michael Burgess, *Federalism and Federation Reappraisal*, in *COMPARATIVE FEDERALISM AND FEDERATION: COMPETING TRADITIONS AND FUTURE DIRECTIONS* 3, 5 (Michael Burgess & Alain G. Gagnon eds., 1993).

39. DAVID ELAZAR, *EXPLORING FEDERALISM* 12 (1987).

its intensity depends a great deal on the reasons which prompted the creation of the federation. Ideally, federations should be the outcome of an agreement between independent States which freely decide to start a federal project, which allows them to shoulder common interests jointly while dealing separately with their domestic affairs. Quite often, however, federations are born out of the pressure exerted by territorially circumscribed ethnic groups that are dissatisfied with the treatment they receive by the unitary state containing them, and have enough power to force its transformation. This would be the case in Belgium, where a strong Flemish nationalist movement has progressively pushed for the recognition of its specificity within a once unitary Belgian State, which has recently turned into a federation to accommodate Flanders' nationalist demands. In other cases, federations do not respond to pressure from below, but are created from above. The Soviet Union and India illustrate this point.

An exception to this is the regionalization of the German political system and the role of the *länder*. Gunlicks argues that German federalism today does not reflect a society divided by significant ethnic, social, cultural, or religious tension; rather, it is designed to reduce the power of the central government and guarantee a stable democracy.⁴⁰ This explains the greater emphasis which the German Basic Law places on the sharing of powers, responsibilities and resources, when compared, for example, with the Constitution of the United States which stipulates a separation of powers between the federation and the states.⁴¹ In Germany, federal and *länder* governments are forced to collaborate by a system of joint policymaking or "interlocking politics."⁴² Benz argues that the cultural or historical basis of the *länder* is rather weak due to the varied German history throughout which the territorial patchwork was in constant flux.⁴³ He emphasizes the role of the two World Wars in overturning the territorial boundaries of the State and its parts. He writes:

After the Second World War, the regional structures of the German state were re-established in a territorial setting which has been primarily defined by the artificially created occupation zones. The *länder* which formed the Federal Republic after 1949, as well as those which existed in the GDR until 1952 and

40. See generally Arthur B. Gunlicks, *Introduction: Federalism and Intergovernmental Relations in West Germany, a Fortieth Year Appraisal*, in *PUBLIUS 1 passim* (Fall 1989).

41. See *id.*

42. See *id.*

43. Arthur Benz, *German regions in the European Union*, in *REGIONS IN EUROPE* 111, 113 (Patrick Le Galès & Christian Lequesne, eds., 1998).

which were re-established in 1990, were for the most part pragmatic creations of the Allies and lacked traditions.⁴⁴

Benz argues that cultural regions exist but they are more fiction than reality from a political point of view since the *länder* do not coincide with them, except in very few cases.⁴⁵

The territorial grouping of its citizens is a major feature of a federation. In King's words: "what is distinctive about federations is not the fact that the people are viewed as sovereign, but that the expression of this sovereignty is tied to the existence and entrenchment of regional, territorial units."⁴⁶ Thus, federation is a useful device in the articulation of large political institutions formed out of the will of several independent founding units, as it was the case in Canada, which is regarded, at least by Quebecois nationalists, as the merging of two founding nations, one of French and the other of English culture and language. But, as I have already mentioned, federation is also instrumental in responding to the claims for self-determination of nations without States.

Yet, the role of federation in a multiethnic or in a multinational society where cultural groupings are non-territorial requires a different approach. The Austro-Marxists, Otto Bauer and Karl Renner, addressed this subject by trying to establish valid channels of representation for the numerous ethnic groups scattered around the Austro-Hungarian empire.⁴⁷ They suggested the creation of non-territorial based institutions through which ethnic groups could be represented and find institutional support.⁴⁸ Once more, this emphasizes the main aim of federation, that is, the preservation of diversity within unity as a feature present in Lenin's Soviet Union, Nehru's India, Trudeau's Canada or even, as Smith points out, in Delors' European Union.⁴⁹ Diversity and unity, not uniformity, are two constituents of federalism that are constantly being negotiated in a federation. Centralization and decentralization also express a core feature in defining federations that should be considered as an expression of democratic practice.

Federation does not eliminate conflict. To a certain extent, it could be argued that the acknowledgment of diversity is in itself a source of conflict, but as Burgess stresses, this "does not have to be conceived as a

44. *Id.*

45. *Id.*

46. Preston King, *Federation and Representation*, in *COMPARATIVE FEDERALISM AND FEDERATION* 94, 96 (Michael Burgess & Alain G. Gagnon eds., 1993).

47. Smith, *supra* note 37, at 6.

48. *Id.*

49. *See id.* at 7.

weakness.”⁵⁰ The success of federal systems is not to be measured in terms of the elimination of social conflicts but instead, in their capacity to regulate and manage such conflicts.⁵¹ Federations seek to resolve conflict through democratic means, by encouraging tolerance and respect for ethnic diversity. This is why federations cannot be the result of force or an imposition from above. Awareness of the extremely complicated process of creating a federal State which will defend diversity and promote a sentiment of union between its constituents becomes crucial to secure and maintain its legitimacy.

In Kriek’s view, the main dangers threatening federations are: (1) the possibility that a cultural or religious minority will exceed its opposition role and end up calling for secession; (2) the dominant position of certain groups within the federation holding enough power to push for centralization, a threat which could be avoided by the creation of strong regional or group parties; and (3) the dependence of one constituent on others for its resources, a factor capable of provoking either unitary trends or separatist movements. Consequently financial autonomy is usually regarded as a highly desirable characteristic of the units forming a federation.⁵²

To prevent disintegration, federations need to combine a strong but minimal federal government with a genuine policy of decentralization and respect for its members. A rational division of functions and powers is decisive to establish an effective coordination system able to avoid a redundant bureaucracy. Decisions need to be taken collectively and the relations between the federal State and its constituents clearly established in a constitution sanctioned by all. A State may adopt some federal elements, but it cannot be referred to as a federation unless the federal principle is stated in its constitution. Once federation is established, in principle, all its components hold symmetric rights and duties. But symmetry is a feature which is currently being questioned in several federations, such as Quebec.

A. Quebec

Quebec, one of the ten provinces of Canada, considers itself distinct from the other provinces. It enjoys a specific French culture and language, together with a separate historical tradition, and has developed a strong sense of identity closely linked to a flourishing nationalist

50. Michael Burgess, *The Political Uses of Federalism*, in *COMPARATIVE FEDERALISM AND FEDERATION* 15, 20 (Michael Burgess & Alain G. Gagnon eds., 1993).

51. *Id.* at 18.

52. D.J. KRIEK, *FEDERALISM: THE SOLUTION?* 30 (1992).

movement.⁵³ Quebec's demand to be recognized as a "distinct society" within Canada exemplifies a claim for asymmetry founded upon a bicultural and bilingual conception of Canada. The recognition of the right to self-determination of indigenous peoples within the Canadian territory adds further pressure to explore asymmetric forms of federation and alter the traditional conception of Canada.

In my view, federations should be regarded as a dynamic process which evolves as a result of internal as well as external transformations concerning its constituents. Substantial changes can be identified in the case of Canada, especially since the 1960s "Quiet Revolution" took place in Quebec, awakening a nationalist movement that denounced the second class treatment received by French Canadians within the federation.⁵⁴ Education, employment and language appeared as three major areas in which French Canadians faced discrimination.⁵⁵ The 1969 Official Languages Act granted equal status to French and English in federal institutions, ensured federal services in both languages nationwide, and established the Office of the Commissioner of Official Languages to monitor implementation.⁵⁶ The same year, the Royal Commission on Bilingualism and Biculturalism revealed that the cultural and linguistic privileges of the English minority in Quebec were combined with a considerably better economic situation.⁵⁷ The average English male in the labor force earned just under 50 percent more than the average Quebecois male.⁵⁸ Unilingual anglophone males in Quebec were portrayed as the most privileged group in all Canada.⁵⁹ The public exposure of the inferior status of the Quebecois sparked nationalist feelings and contributed to the reinvention of the nationalist movement.⁶⁰

The constant activity of a rising Quebecois nationalism propitiated some transformations in the treatment of French Canadians—progressively referred to as Quebecois—thus territorially circumscribing them. In 1971 Pierre Trudeau, then Prime Minister, declared Canada to be a multicultural state,⁶¹ a measure highly disputed by Quebecois

53. For a history of Quebec, its politics and policy, see GUY LACHAPPELLE ET AL., *THE QUEBEC DEMOCRACY: STRUCTURES, PROCESSES AND POLICIES* (1993).

54. For an historical perspective on the Canadian federation, see Lloyd Brown-John, *The Meech Lake Accord in Historical Perspective*, in *CANADIAN FEDERALISM: PAST, PRESENT AND FUTURE* 176 (Michael Burgess ed., 1990).

55. Alain G. Gagnon, *Canada: Unity and Diversity*, 53 *PARLIAMENTARY AFFAIRS* 12, 19 (2000).

56. JOHN F. CONWAY, *DEBTS TO PAY: ENGLISH CANADA AND QUEBEC FROM THE CONQUEST TO THE REFERENDUM* 70 (1992).

57. *Id.* at 73.

58. *Id.*

59. *Id.* at 74.

60. Gagnon, *supra* note 55, at 19–20.

61. *Id.* at 19.

circles which argued that multiculturalism was an instrument to water down their nationalist claims and the primarily bilingual and bicultural nature of the Canadian federation.⁶²

The inclusion of a constitutional amendment that affects Quebec, the Canadian Charter of Rights and Freedoms, was enacted in 1982 when Canada patriated its constitution without the consent of the people of Quebec through their representatives in the provincial assembly.⁶³ This constituted an injustice from the Quebecois perspective because it violated one of the fundamental rules of federation: what affects all must be agreed to by all or by their representatives. As Tully emphasizes, “[a]lthough the Supreme Court ruled that the convention would be breached, nine provinces and the federal government, all of whose consent was given, proceeded without the consent of the Quebec Assembly, and with its express dissent, even though Quebec was affected the most. This was unprecedented.”⁶⁴ Since then, several attempts have been made to solve this anomalous situation. In 1987 under the auspices of Prime Minister Brian Mulroney, the premiers of the ten provinces drafted the Meech Lake Accord which increased provincial power and contained a clause in which Quebec was defined as a “distinct society” within the Canadian federation.⁶⁵ Much concern and unease emerged about the meaning and significance of the term “distinct society” exclusively applied to Quebec. The accord attracted growing opposition and it finally collapsed in June, 1990.⁶⁶

In 1991, constitutional negotiations reopened, and in 1992 the premiers of the nine English speaking provinces drafted the Charlottetown Agreement.⁶⁷ It substantially increased provincial powers and weakened the federal government, while granting Quebec a “distinct society” status. Decentralization went further than it did in the Meech Lake Accord. In the Charlottetown Agreement, the so called “Canada clause” proclaimed the “equality of the provinces,” Canada’s “linguistic duality,” and proposed to entrench the inherent right of aboriginal self-government in the constitution.⁶⁸ The most irreparable damage to the Charlottetown Agreement resulted from the stand adopted by the Native Women’s Association of Canada.⁶⁹ Their major concerns were the exclu-

62. CONWAY, *supra* note 56, at 93.

63. Gagnon, *supra* note 55, at 21.

64. James Tully, *Let’s Talk: the Quebec Referendum and the Future of Canada*, Paper Presented at the Austin-Hempel Lecture at Dalhousie University 6 (March 23–24, 1995).

65. MICHAEL KEATING, *NATIONS AGAINST THE STATE: THE NEW POLITICS OF NATIONALISM IN QUEBEC, CATALONIA AND SCOTLAND* 84 (2001).

66. *Id.* at 85–86.

67. GUIBERNAU, *supra* note 3, at 59.

68. *Id.*

69. *Id.*

sion of women from the negotiating table, and the primacy given by the Agreement to native culture and traditions over gender equality rights. Charlottetown gained further opposition from Indian chiefs' caution about the possible erosion of treaty rights.⁷⁰ In Quebec, the "Canadian clause" insistence on the "equality of provinces" re-awakened an ever present resentment which would re-emerge whenever Quebec was treated as a province just like the others. In the October 26, 1992 Referendum on the Charlottetown Agreement, Quebec and the rest of Canada (commonly referred to as ROC) voted "no" for opposite reasons.⁷¹

The October 30, 1995 Referendum on Quebec's sovereignty was lost by only 52, 448 votes which allowed for a 1.12 percent majority for the "no."⁷² The substantial increase in the number of people backing sovereignty, however, confirmed the strength of the Quebecois nationalist movement and is currently forcing the Canadian federal government to find a solution to Quebec's claims.⁷³ In Gagnon's words, "attempts at reducing Quebecois to the status of one minority among others in Canada simply denies the fact that Quebec forms one of the main pillars upon which Canada was established in the Confederation agreement of 1867."⁷⁴

The relationship between Quebec and the Canadian federal State illustrates the dynamic character of federation. Change is intrinsic to federation as a political arrangement which is not only based upon respecting diversity but which also acknowledges its non-permanent nature.

VI. DENIAL AND REPRESSION

There is a fundamental qualitative shift between the meaning and implications of the three political scenarios we have just analyzed and the study of what I shall refer to as "denial and repression." Through cultural recognition, political autonomy and federalism, the State acknowledges varying degrees of internal difference. These options may

70. *Id.*

71. *Id.*

72. CHIEF ELECTORAL OFFICER OF QUEBEC, RAPPORT PRÉLIMINAIRE DES RÉSULTATS DU DÉPOUILLEMENT DES VOTES LE SOIR DU SCRUTIN: RÉFÉRENDUM DU 30 OCTOBRE 1995 3 (1995).

73. For a thorough analysis of the implications of a new Quebec-Canada partnership beyond the Plan B's hard line toward Quebec or on the contingency strategy of a Plan C in the event of Quebec's secession in the near future. See ROGER GIBBINS & GUY LAFOREST, BEYOND THE IMPASSE TOWARD RECONCILIATION (1998).

74. Alain G. Gagnon, *From Nation-State to Multinational State: Quebec and Canada facing the challenge of modernity*, keynote speech delivered before the British Association of Canadian Studies 16 (April 12, 1996).

not fully satisfy the aspirations of the nations without States concerned in each case; however, there is a tremendous difference between the struggle for further recognition and the fight to defend the right to exist.

Denial concerns the State's refusal to acknowledge the existence of any sort of cultural, historical or political national minorities within itself. In this situation, internal diversity is ignored, and assimilation is actively encouraged. The State imposes a unique language, culture, and institutions, which are presented as the only ones that both exist and can exist within the State's territory. Any remaining cultural or linguistic difference is portrayed as a regional characteristic, as a sign of the past, and given a folklore status. In this section I focus on the analysis of two particular cases: the homogenizing policies implemented by the French State in the period leading to its consolidation as a modern nation-state, and the active repression endured by Kurdish people.

A. France: Linguistic Homogenization and the Consolidation of the Nation-State

The defense of a unitary State with a strong tendency to homogenize its population was a common feature of most nation-states in their foundational moment. At that particular time, States struggled to eliminate internal difference and to turn themselves into political institutions that sought to create cultural and emotional links among its citizens. France is a case in point. Immediately after the French Revolution, decrees were translated into the major dialects and languages spoken in the territory of the French State. The First French Republic (1792), involved a change in attitude directed at establishing one people, one nation, and one language.⁷⁵ In 1793 *l'abbé* Grégoire presented his *rapport* about the need and means to universalize the use of French to the Convention's Committee of Public Instruction. According to him, only three million people, out of a total population of twenty-six million, could speak correctly the "national" language, that is French, while the percentage of those able to write in French was still lower.⁷⁶ In Citron's view, the Third French Republic (1870–1940) played a crucial role in the process of "*francisation*" of the French people.⁷⁷ Jules Ferry created a free, compulsory and laic school system that promoted French language, history, and values. At school, the use of *patois* was strictly forbidden and "severely punished."⁷⁸ Citron writes: "the leaders of the Third Republic, heirs of the revolutionaries, were like them, impermeable to the idea of

75. SUZANNE CITRON, *L'HISTOIRE DE FRANCE: AUTREMENT* 140–43 (1992).

76. *Id.* at 142.

77. *Id.* at 174.

78. *Id.*

a possible existence of cultures other than their own in France.”⁷⁹ At the same time, gallicization involved the imposition of a certain image of France as a “single and indivisible nation” through the teaching of a unified history that left aside the particular histories of the peoples included within the French Republic.⁸⁰

As Graff mentions, with the spirit of national linguistic development and increased intolerance of dialect, class differences in language and literacy were reinforced.⁸¹ Resistance did not prevent linguistic change. The power of the State to impose a language and expand it through a school system was the key to initiating the slow decay of minority languages and dialects. French represented the advance of civilization and progress, and its use in “urban and white-collar work, armed-forces training, and the growing volume of print materials stimulated the increase in French speaking, reading and writing in the countryside.”⁸² Similar policies were implemented in nineteenth-century Prussia, where Bismarck expanded the Prussian school system into the Polish regions of Poznan and Silesia and allowed only the German language as a medium of instruction.⁸³

The states’ rejection of linguistic diversity and the imposition of a single “national” language by making it necessary and compulsory to get by in ordinary life has several major consequences: (1) the folklorization of minority languages by restricting their use to festive or literary contexts in which they are portrayed as signs of cultural difference, but not as everyday markers of national identity;⁸⁴ (2) the perception of minority languages as having a lower status, which is directly connected to restrictions in their use; (3) the progressive lack of interest in the cultivation of minority languages, not only as part of a high culture but also in everyday use, because of which public and private utilization of the language tends to decrease; (4) the labeling of the minority language as a remnant of the past, as a sign of backwardness and even resistance to modernization; and (5) the portrayal of the desire to maintain a language other than the official one as an indication of betrayal of the State and to one’s own fellow countrymen and women.

Denial involves exclusion of the minority language and culture from the State’s school system, sentencing them to a slow and to a somehow

79. *Id.*

80. *Id.*

81. HARVEY J. GRAFF, *THE LEGACIES OF LITERACY* 277 (1987).

82. *Id.*

83. See JAMES BOWEN, *HISTORY OF WESTERN EDUCATION: THE MODERN WEST EUROPE AND THE NEW WORLD* 3 (1981).

84. Sahlins refers to this particular point in exploring the use of the Catalan language north of the Pyrenees, see PETER SAHLINS, *BOUNDARIES: THE MAKING OF FRANCE AND SPAIN IN THE PYRENEES* 289 (1989).

“natural” death. But for a language to become the vehicle of expression of the most intimate emotions and feelings of a people, it takes more than its expansion through the school system and its compulsory character. It requires a long and complex process at the end of which people should come to regard a particular language as their own and not as something that has been imposed on them.

The association of a particular language with a certain superior status is closely connected to the self-image of the nation-state it represents. The attachment of prestige and power to a specific language is crucial to attain popular acceptance.

Denial is not only practiced by nation-states in the process of being formed, as in post-Revolutionary France. There are contemporary States that actively implement homogenization policies of various kinds. For instance, Spain reversed its centralist homogenizing policy towards Catalan, Basque and Galician in 1978 when a new constitution acknowledged the need to recognize and guarantee the right to self-determination of the nationalities and regions included within the Spanish State.⁸⁵

B. The Kurds: The Repression of Difference

Often, the denial of difference is accompanied by measures directed at the elimination of internal diversity. Repression has many faces, and it ranges from mere socio-economic to political measures which may include the use of force. To forbid a language and a culture, and to dissolve, wherever they already exist, the political institutions of a national minority are common strategies employed by some States seeking to annihilate internal diversity. The punishment of those who trespass the state's laws regarding these matters is intended as a deterrent. Random intimidation and attacks on members of the national minority seek to destroy any kind of nationalist revival which could eventually turn into a real threat to the state's integrity. The use of force stresses the power of the State and the vulnerability of those subject to it. It also reveals the state's inability to put forward its cause for homogenization by means other than the use of force. Violence, which sometimes is publicly displayed while in other occasions it is used in a more surreptitious fashion, reflects the absence of rational arguments and dialogue.

The intensity, frequency, and means applied to implement repression are likely to provoke divergent outcomes that are closely related to the characteristics of the national minority in question. The degree of national consciousness and the solidarity among the minority's members is likely to increase during periods of repression when experiences

85. CONSTITUCIÓN [CE] art. 2 (Spain).

of collective intimidation need to be constantly integrated into the political discourse of resistance. A pervasive and prolonged repression usually undermines the national minority's capacity to resist and favors its assimilation. Individuals' political resistance might be debilitated to the point of extinction. On some occasions, individuals may even try to hide their origin by fitting into the state's imposed pattern of what it means to be a proper citizen: by speaking the state's language and being attached to the state's culture and values. In contrasting cases, the state's actions stimulate the emergence of active resistance movements, which often respond to the state's violence against their community with armed struggle.

The land the Kurds claim as their own stretches across five nation-states: Iraq, Turkey, Syria, Iran and Armenia. There are an estimated twenty-three million Kurds.⁸⁶ After the First World War and the consequent dismantling of the Ottoman empire, the Kurds were promised a State (Treaty of Sèvres, 1920);⁸⁷ however, the influence of Woodrow Wilson's principle of the self-determination of peoples was to be forgotten when the Treaty of Lausanne (1923) determining the new borders of Turkey was ratified.⁸⁸ The Kurds have always been regarded as a threat to the modern Turkish state founded by Kemal Atatürk. Guided by Atatürk's nationalism, Turkey attempted the forcible assimilation of Kurds. As Ignatieff writes, "they were denied the right to speak their own language, educate their children in it or even call themselves Kurds."⁸⁹ In Zubaida's words, "Turkey has maintained a stubborn denial of Kurdish identity and has severely suppressed cultural and linguistic expressions of Kurdishness."⁹⁰ In 1984 the Kurdish Worker's Party's leader, Abdullah Ocalan, declared war on the Turkish government and demanded independence. Guerrilla activity was resumed in southeastern Turkey. "A very dirty war began," O'Ballance writes, "and atrocities were committed by both sides."⁹¹

The Kurds were also regarded as a tribal and backward people by the modernizing nationalism of the Shah of Iran. Their condition as Sunni Muslims, while most Iranians were Shias, contributed to a marginalization which acquired an even darker side after the fundamentalist

86. EDGAR O'BALLANCE, *THE KURDISH STRUGGLE 1920-94* xxi (1996).

87. *Id.* at xxii.

88. *Id.*

89. MICHAEL IGNATIEFF, *BLOOD AND BELONGING* 136 (1993).

90. Sami Zubaida, *Introduction*, in *THE KURDS: A CONTEMPORARY OVERVIEW* (Philip Kreyenbroek & Stefan Sperl eds., 1992).

91. O'BALLANCE, *supra* note 86, at xi.

revolution of the Ayatollahs in 1979.⁹² Violence has often been employed against Kurdish villages inside the enclave.⁹³

The history of Kurdish repression in Iraq since the 1970s, when Saddam Hussein came to power, is a long, violent and complicated one in which internal Kurdish differences have been exploited by both the Iraqi and the Turkish governments. Anticipating Saddam Hussein's defeat in the Gulf War, a Kurdish popular uprising occurred in Iraq in 1991.⁹⁴ Hussein retaliated causing a mass exodus of Kurds who sought refuge in remote mountains, and in Turkey and Iran. The creation of the enclave of Kurdistan in 1991 responded to the first United Nations attempt to "protect a minority against the genocidal intentions of its nominal ruler."⁹⁵ The enclave of Kurdistan is not a State, it has no flag of its own and it is not even allowed to call itself Kurdistan. Technically, the enclave remains a part of Iraq and is protected by forces which set up an air exclusion zone north of the 36th parallel.

When U.S. and British troops invaded Iraq in Gulf War II, the Kurds of Iraq supported them with the aim of removing Saddam Hussein from power. The Kurds sought to create some type of autonomous region, or an independent Kurdish State, in the areas where they form a majority. At the time of writing, the Kurdish struggle continues and no permanent settlement has been arranged.

VII. CONCLUSION: MAJOR QUESTIONS AND DILEMMAS FOR NATIONS WITHOUT STATES

In the West, nations without States find themselves living within radically different political scenarios ranging from cultural recognition to political autonomy and federation. In some extreme cases they are subject to repression and prevented from developing their own specific cultures and languages. The degree of national consciousness among different members of nations without States is also subject to substantial variations which have a direct influence on the strength and intensity of different nationalist movements. Besides, there are remarkable variations among the attitudes of distinct states toward the national minorities they contain. Yet, the sanctioning of democracy as a guiding principle by a particular State should, in principle, favor some kind of recognition of its internal diversity, except, we should bear in mind that democracy can be interpreted in a disparate manner which may lead to the imple-

92. IGNATIEFF, *supra* note 89, at 136.

93. *Id.* at 137.

94. *Id.* at 138.

95. *Id.*

mentation of substantially different policies concerning intra-state cultural differences.

The existence of a committed “potential intelligentsia” is crucial in the activation and consolidation of the nationalist movement. Its members should be able to construct a discourse critical of the State and be ready to search, cultivate, and even invent common memories, values, myths and symbols whose aim would be to generate, where it is absent, or increase, where it already exists, the individuals’ degree of national consciousness. Turning a small elite into a mass movement including people from different backgrounds is the major challenge faced by nations without States and an indispensable condition if their nationalist movements are to succeed.

In my view, the future significance of nations without States and their chances to become new global political actors depend upon two main factors: their economic viability and their capacity to provide individuals with a strong sense of identity. Economic viability is indispensable since it is very hard for nations without States to demand further autonomy or independence when they are economically dependent on the States which include them. The threat of substantial cuts in state subsidies may act as a deterrent to those who otherwise would be happy for its nation to enjoy further autonomy. The passion awakened by nationalism can certainly be cooled by a state of affairs in which people feel deprived. The economic prosperity of Catalonia and its condition as a major contributor to the Spanish coffer from which it receives significantly less than it contributes, is one of the major arguments employed by Catalan nationalists calling for greater autonomy. In a highly competitive world, nations without States need to specialize and offer high quality products or services based upon high standards.

There are other cases in which nationalist movements have emerged in deprived areas. Corsican nationalism is a case in point. In these circumstances, nationalists tend to provide an explanation for the nation’s backwardness by blaming the State. The argument for further autonomy or independence rests on the need to break free from a State which is portrayed as a source of constraint for the nation’s development. In such areas, state subsidies are poor, non-existent, or considered as insufficient. Secession is often presented as the only feasible alternative for the nation’s survival.

I argue that nations without States are faced with three main dilemmas: (1) how to deal with internal diversity; (2) how to avoid violence as a strategy to achieve further autonomy and recognition; and (3) how to avoid the creation of an expensive bureaucratic machine adding a further layer of government to an already saturated political structure.

First, one of the major causes of intra-state conflict stems from the nation-state's tendency to neglect its internal diversity and impose a set of homogenizing policies aimed at favoring the emergence of a single united nation under the auspices of a centralized political institution, the State. Most nation-states have failed to acknowledge the resilience of national and ethnic identities co-existing within its boundaries other than the one they were aiming to impose. This line of action has prompted innumerable conflicts creating resentment and dissatisfaction among national and ethnic minorities elsewhere.

Nation-states enjoy varying degrees of power and act according to different structural principles. Yet while some of them have opted for the forced assimilation or even the annihilation of their national minorities, others have chosen to confer on them diverse degrees of recognition. At the same time, while some nations without States have remained silent, buried under the pressure exerted by the State, others have more or less disappeared, their languages and cultures being reduced to a minority status that seriously threatens their survival, and a few have generated potent nationalist movements defending their right to participate in the governance of their own communities.

At present, we observe the flourishing of nationalism in nations without States. However, due to the transnational circulation of people, culture and financial resources, these nations are confronted with a major challenge, this is their increasing internal diversity. At the dawn of a new millennium, nations without States should seek imaginative and democratically based alternatives to permit cultural coexistence and at the same time encourage a sufficient degree of civic coherence. In my view, they should aim to promote their own culture and language in the public domain while favoring diversity in the private sphere. This is an extremely delicate matter since most nations without States feel the legitimate need to engage in the active "nationalization" of the nation. Often, they have to reverse years of forced assimilation, resist the powerful influences of the state's media, and the unstoppable advancement of a global culture which speaks with an American accent. Yet, there is only one way out if further conflict and resentment are to be averted. Ethnic differences in nations without States have to be respected and this has to be the product of a mutual compromise; that is, in practical terms, those who respect others should be respected.

Ethnically distinct people living within a nation other than their own should be welcomed into the host society and allowed to maintain their own cultures and languages, but they should also be expected to engage in a collective project able to unite all the members of the nation. The political engagement of diverse people living within the same nation

should be based not upon a shared origin, but on shared values and principles involving the construction of an open society, endowed with democratic, efficient and accountable institutions. The commitment to civic values should operate as a source of cohesion and solidarity among otherwise diverse and free individuals who, as members of the nation, should be recognized as bearers of individual as well as collective rights.

To reach a state of affairs in which individuals share democratic principles and values concerning the type of society they want to live in and regard the institutions governing them as legitimate is not an easy task. Yet it seems to me the only alternative to the challenges posed by a world characterized by an increasing socio-political fragmentation stemming from cultural misunderstandings and confrontation between cultures struggling not to be swept away by the tide of globalization. These are some of the most difficult questions to be answered: How can we preserve and promote a decaying culture and language which has been neglected by lack of resources? How can we preserve a culture and enhance the use of a language wherever a particular nation has received a large number of migrants who, because of the marginalization to which the national culture was condemned at the time of their arrival, did not feel either the need or the wish to appropriate it and make it part of their own identity? How can we harmonize the nationalist claims of a nation without state such as Quebec with similar claims on behalf of the Native nations inhabiting its territory?

A second dilemma faced by nations without States concerns the strategies chosen by their nationalist movements in order to advance their goals. Such strategies are closely related to the political ideologies held by such movements. Hence, the acceptance of democracy as a guiding principle should discourage the use of violence and favor the emergence of social movements determined to advance their goals through dialogue and participation in democratic channels.

Specific socio-political and historical circumstances influence the decision of some groups to turn to violence as a means to attract international attention and hopefully promote their goals. It should be stressed that political terrorism has more often than not proved to be an unsuccessful device in the struggle for self-determination. Whenever identity is constructed upon the portrayal of the other as a potential enemy, violence against ethnic minorities living within the nation's territory is likely to emerge. Building up an identity upon the belief of one's group superiority above others is bound to generate feelings of hatred which can easily turn into xenophobia and racism. At present, there are many

circumstances in which nationalist arguments are mixed with racist and xenophobic elements.

In the recent past, non-democratic forms of nationalism have brought destruction and suffering to Bosnia, Croatia, Serbia, Chechnya, East Timor, Kosovo and Rwanda, among many other countries. In all these situations, nationalist arguments have been employed as detonators of civil and international wars, ethnic cleansing, oppression and the annihilation of peoples.

Nations without States, to flourish and prosper, need to build up their nationalist discourses upon solid democratic principles stressing the richness and value of diversity and encouraging respect for the different. Only then, can nations without States overcome what I consider one of the nation-state's main flaws, this is the failure to accommodate national and ethnic differences within its borders.

A third dilemma faced by emerging nations without States refers to the need to avoid the genesis of a heavy and expensive bureaucratic machine which would seriously undermine their efficiency and pose a burden to their economic viability. In the near future, nations without States are bound to exist along with changing classical nation-state structures and newly created supranational organizations. There is a risk of unnecessary duplication of bureaucracy which can only be averted if subsidiarity is taken seriously and a serious re-structuring of the distinct functions for which each political institution is made responsible takes place.

Subsidiarity refers to the political principle that establishes that decisions should be taken as close to the citizens as possible. Subsidiarity is based upon the decentralization of power and it primarily refers to the process by means of which the State devolves power to the regions and local governments. But it also applies to regional governments being able to put into practice their own decentralization.

Subsidiarity is favored by a communication technology which permits an almost immediate flow of information between traditional centers of power and regional decision-making institutions. It could be argued that subsidiarity is encouraged because, although decisions might be taken miles away from traditional centers of power, these can still exert a tight control upon them due to the highly sophisticated technology that permits the storage, selective use, and immediate access to information being generated in distant localities.

Subsidiarity consists of applying, interpreting, and developing these particular rules to specific scenarios. One of the main advantages of opting for a system based upon subsidiarity resides in the fact that the individuals who are going to take the decisions have a much closer ex-

perience of the problems to solve, know better the people's needs, aspirations and limitations, and almost invariably they belong to the communities within which they are operating. Yet, they are not regarded as alien by community-members.

A further advantage of subsidiarity is its proven capacity to enable people to take a more active part in the life of their community. Subsidiarity empowers individuals and stimulates their creative capacity, they feel as actors with specific tasks to accomplish and are endowed with the power to decide upon a limited number of issues.

In my view, to work, subsidiarity requires three main conditions: efficiency, trust and legitimacy.

Decentralization to be *efficient* has to avoid the duplication of bureaucracy that is often frequent whenever there is an attempt to apply the subsidiarity principle. People will feel that subsidiarity is positive if the institutions generated by it are efficient, that is, they identify the problems, seek and work to eradicate their causes, and promptly respond to the citizens' needs. Matters devolved should be dealt with by a single layer of officials and civil servants, otherwise subsidiarity is nothing more than a very expensive fiction.

Trust is essential for subsidiarity to work. Trust operates in two ways: downwards from the institutions which opt for decentralization to regional and local institutions; and upwards from the newly created or empowered institutions to state or supranational institutions which decide which functions are to be devolved. The agents involved in a subsidiarity structure need to trust each other about the common principles and values that inform their actions. Central institutions should regard subsidiarity as a furthering of democracy. Devolved institutions should employ their newly acquired power and resources to the advancement of their communities within the framework set up by decentralization, being aware that the strongest arguments for subsidiarity stem from its efficiency, cost-effectiveness and identification of the people with their regional institutions and rulers. Subsidiarity is impossible wherever political actors do not trust each other and do not share a core of principles, values and objectives which guarantee their cohesion. If this is the case, then subsidiarity leads to nothing else but fragmentation and hostility.

Once subsidiarity is adopted as a principle for political organization, it is crucial that the people regard the institutions and individuals who work in them as *legitimate*. The key condition of legitimacy is that people feel represented by the democratically elected rulers of the devolved government and institutions. Legitimacy has to prove effective and this brings us back to the requirement for efficiency mentioned above.

Transparency and accountability in decisionmaking processes and its subsequent implementation are vital to guarantee an efficient and cost effective application of the subsidiarity principle. The future of nations without states to a great extent depends upon the acceptance and successful implementation of subsidiarity. The fulfillment of the three main conditions I have just outlined points to some of the major challenges to be faced by nation states in their quest for recognition as political actors.