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Eastern Europe and the Natural Law Tradition

Sabrina P. Ramet

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and the Natural Law Tradition**

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About this series

The *Donald W. Treadgold Papers* publication series was created to honor a great teacher and great scholar. Donald W. Treadgold was professor of history and international studies at the University of Washington from 1949 to 1993. During that time, he wrote seven books, one of which — *Twentieth Century Russia* — went into eight editions. He was twice editor of *Slavic Review*, the organ of the American Association for the Advancement of Slavic Studies, and received the AAASS Award for Distinguished Contributions to Slavic Studies, as well as the AAASS Award for Distinguished Service. Professor Treadgold molded several generations of Russian historians and contributed enormously to the field of Russian history. He was, in other ways as well, an inspiration to all who knew him.

The *Treadgold Papers* series was created in 1993 on the occasion of Professor Treadgold's retirement, on the initiative of Professor Daniel Waugh. Professor Treadgold passed away in December 1994. The series is dedicated to the memory of a great man, publishing papers in those areas which were close to his heart.

Sabrina P. Ramet
Editor

About the author of this issue

Sabrina P. Ramet has been Professor of International Studies at the University of Washington and from 1996 to 2001 editor of *The Donald W. Treadgold Papers*. In August 2001 she moves to Norway to assume responsibilities as Professor of Political Science at the Norwegian University of Science and Technology (NTNU) in Trondheim. She is the author of seven books (among them, *Balkan Babel: The Disintegration of Yugoslavia from the Death of Tito to the War for Kosovo*, 3rd ed. (Westview Press, 1999)).

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1. Introduction

I have undertaken, in the pages which follow, to extend the argument first broached in my 1997 publication, *Whose Democracy?*, to the effect that moral relativism, nationalism, and capitalism all present challenges to the project of establishing, consolidating, and maintaining legitimate (and hence, stable) political systems, and to the effect that the standard for system legitimacy is Natural Law or, as I called it in my earlier work, Universal Reason.

Recently, there have been claims registered on behalf of certain notions about cultural diversity, to the effect that there are no universal standards, no universal rights, and above all, no such thing as Universal Reason, which is to say, no universally valid mores of human behavior. Moral relativists choosing to take up this particular banner may be overstating their case. "After all," Shashi Tharoor reminds us,

concepts of justice and law, the legitimacy of government, the dignity of the individual, protection from oppressive or arbitrary rule, and participation in the affairs of the community are found in every society on the face of the earth. Far from being difficult to identify, the number of philosophical common denominators between different cultures and political traditions makes universalism anything but a distortion of reality.¹

The words "found in every society" establish the universality of certain minimal truths; there is no need to insist on *universal assent* in order to establish the universality of a minimal moral law, any more than one would need to insist on *universal assent* to the laws of mathematics in order to establish that mathematics has a certain claim to universal and transcultural validity.

In order to insist on the nullibicity of universal standards of behavior, a would-be consistent relativist would have to maintain that murder, torture, the killing of infants, mass rape, pick-pocketing, lying, exploitation, slavery, cruelty, and other forms of hurtful behavior are not necessarily wrong or

even morally problematic. In order to connect this with *misconceived* notions of cultural diversity, he or she would have to claim further that at least one of these behaviors is or could be considered a “local tradition” in some country or other. That said, it should be clear enough why I consider such relativists to be either unconscious of the import of their own words or, alternatively, driven by contempt for non-Europeans, (the typical charge against classical liberal notions of universal rights and mores being “Eurocentric”, which, in practice, is not so much a *charge* as a *claim*).

Yet far from being mere “Eurocentric” conceits, as the cultural relativists suppose, honesty, generosity, hospitality, loyalty, and mutual aid have been found by anthropologists to be generally held to be important virtues in societies at all levels of development, on all continents.² No one (as far as I am aware) denies that there are variations in customs, traditions, and even mores from one society to another, from one group (however defined) to another. What Natural Law theorists insist on, however, is that not everything is arbitrary or relative or merely a feature of one or another religion or culture.

Natural Law has also encountered resistance among authoritarians of various stripes, because they are aware that it establishes the concept that there is an external standard by which the conduct of state authorities may be judged. As Heinrich Rommen put it in a 1945 publication, “...there must be a law from which all human laws derive their validity and moral obligation. There must be a right which is paramount to all rights of the state...”³

The Natural Law tradition constitutes the single most important area of overlap between Catholic social teachings and the classical liberal tradition of John Locke, Thomas Jefferson, James Madison, and Immanuel Kant.⁴ And in spite of recurrent announcements, from time to time, that Natural Law theory is “dead” or – worse for some – “old-fashioned”, Natural Law continues to animate scholars and, in the past hundred years, penetrated deeply into international law. The Geneva Convention and the Universal Declaration of Human Rights are but two of the better known incarnations in international law of the Natural Law tradition.

What is Natural Law? In a word, it is the argument that the moral law has universal validity, applying to all equally, and that the basic postulates of the moral law can be discerned by unaided reason. There are some variations on the theme, of

course. St. Thomas Aquinas⁵ argued that beyond the “basic postulates”, unaided reason might well run into difficulty; and hence, for Aquinas, the need for divine revelation. For Hooker and Locke, the most central postulates discernible by reason are the imperative to do no harm and the moral equality of all persons.⁶ For Hobbes, by contrast with Aquinas, Hooker, and Locke alike, the universal validity of the precepts of Natural Law derives solely from the command of God, who has equipped humankind with the faculty of reason in order to make compliance possible.⁷ For Kant, the door opened by reason is the categorical imperative, the rule of universalizability which, for Kant, is the fulcrum of the moral law.

“Post-modernists” are variously embarrassed, annoyed, repulsed, or bored by appeals to Natural Law. But, to my mind, Universal Reason (Natural Law) is the standard whereby to measure system legitimacy; and system legitimacy – understood triadically, as consisting of moral legitimacy, political legitimacy, and economic legitimacy – is the barometer of a system’s stability, providing at the same time the key to understanding both its internal and its external behavior.

Moral universalism is the term which is appropriately applied to adherents of the Natural Law tradition. It may be distinguished in the first place from *moral consequentialism*, which seeks to assess the morality of an action not according to abstract principles (as both Locke and Kant would have it), but according to the actual or presumed consequences of the action. *Moral conventionalism* has also been a historic rival and consists in the denial that there can exist any standards or rules of behavior other than those laid down in law. As Hobbes puts it in *De Cive*,

How many men have been killed by the erroneous doctrine that sovereign Kings are not masters but servants of society? ... [H]ow many Rebellions have been caused by the doctrine that it is up to private men to determine whether the commands of Kings are just or unjust, and that his commands may rightly be discussed before they are carried out, and in fact ought to be discussed? ... Since such opinions arise every day, anyone who dispels such clouds and shows by the soundest reasoning that there are no authentic doctrines of just and unjust, good and evil,

except the laws established in each commonwealth ... will certainly reveal not only the royal road to peace but also the dark and shadowy ways of sedition....⁸

Other moral understandings include *moral contractarianism* (which believes that morality consists in unwritten and largely implicit rules of behavior passed down from generation to generation, but, for the most part, not open to rational review or legislative correction), and *theocracy* (which argues that society should be modeled according to the precepts of divine law, as interpreted by the clergy of the self-declared "true religion"). Aside from these moral understandings, there is also the position of *nihilism*, which rejects *all* mores, codes, rules, commandments, and institutions as arrant nonsense. The only pure nihilist with whose work I am familiar is Max Stirner, author of *The Ego and His Own*, a book aptly described as an assemblage of meandering ravings.⁹

I have insisted on identifying myself with the Natural Law tradition rather than with "liberalism-in-general", even though I consider myself a classical liberal, for three reasons: first, because my ideas about economic legitimacy (viz., that neither socialism nor capitalism is legitimate) derive, in the first place, from the encyclicals of Popes Leo XIII, John XXIII, and John Paul II, encyclicals taking Natural Law as their point of departure; second, because among the three strands of liberalism which have emerged – universalist-idealism (embodying Natural Law), conventionalist-realism, and consequentialist-relativism.¹⁰ – I identify myself with the first, viz., universalist-idealism; and third, because the term "Natural Law" is far more precise than "liberalism" which, in any event, is all too frequently identified with the specific cultural dispositions, laws, customs, strengths, weaknesses, and proclivities of American society, even though not everything occurring in America should necessarily be interpreted as a pristine embodiment of classical liberal principles.¹¹

The twin themes of Natural Law and liberal idealism run as threads through the entire text. In chapter 2, I consider the challenges which capitalism has offered to the liberal project in East-Central Europe, noting, along the way, the insights of various scholars who anticipated the region's rough ride in the immediate "post-communist" era. It would be comforting to imagine that capitalism unbound – even, ideally, where out-and-out

mafias are concerned – would somehow work, as by an “invisible hand” (to steal a phrase from Adam Smith), to foster the common good. But if, by capitalism, we mean a system premised on minimal government regulation, geared to the maximization of profits, and oriented toward inculcating in “consumers” cravings for the commodities offered for purchase, then capitalism may, in fact, be problematic for the liberal project (to put it gently). Capitalism, as Joseph Schumpeter put it once,

...creates a critical frame of mind which, after having destroyed the moral authority of so many other institutions, in the end turns against its own; the bourgeois finds to his amazement that the rationalist attitude does not stop at the credentials of kings and popes but goes on to attack private property and the whole scheme of bourgeois values.¹²

In chapter 3, I take up the concept of sovereignty, examining its development by two classical liberals – Hobbes and Kant – setting their views against those of Jean-Jacques Rousseau, a non-liberal advocate of democracy and no defender of Natural Law, examining how the constitutions of the contemporary East-Central European states reflect perspectives expostulated in these theories about sovereignty. The chapter closes with a brief consideration of the common translation of popular sovereignty into claims on behalf of nationalism (an ideology profoundly at odds with the Natural Law tradition).

Chapter 4 picks up where chapter 3 leaves off, probing the alleged right of national self-determination and subjecting it to a moral critique. The idea of a right of national self-determination is, further, shown to be organically connected with the tradition of “realism” (which is to say, with the rejection of Natural Law, even though Natural Law is the only foundation upon which claims on behalf of natural rights may be coherently registered), and with certain misconceived efforts to introduce exaggerated and distorted notions about value-free science into the social sciences and humanities. From the analysis in chapters 3–4, it follows that neither ethnic homogeneity nor nationalist ideology has anything to do with the Natural Law tradition or, if one prefers, with liberal idealism. Quite to the contrary, whereas liberal idealism enumerates certain principles which are essential to the establishment and maintenance of a legitimate sys-

tem, nationalism pulls one in precisely the opposite direction, toward illegitimate politics. Whereas liberal idealism holds that the state should be seen as a rational construct, designed to foster the common good and obliged to respect the limits set by Natural Law, "nationalism and racialism regard the state as the fruit from the mysterious depth of an irrational, national soul...[The] State, consequently, is not the creation of reason for reason," and cannot be limited by the dictates of Universal Reason, but is merely, for nationalists, the sword and shield of the ruling Nation.¹³ The nationalist principle obtained one of its earliest defenses in the writings of the Abbé E. J. Sièyes, one of five members of the French Revolutionary "Directory". It was he who advised that "[the Nation's] will is always lawful, for she is herself the embodiment of the law."¹⁴

And, in closing, chapter 5 returns to the theme of legitimacy, noting that the high value placed upon it by liberal idealists distinguishes them from liberal realists, and provides an explanation of the more realistic analyses offered by idealists.

2. Liberalism and Capitalism – a Dangerous Liaison

Just over a decade ago, as Eastern Europe began a process of transformation of its political, economic, moral, and cultural systems, many in the East allowed themselves to feel jubilant (though not in Yugoslavia, where tensions were already running high and where fear was the dominant emotion). Berliners danced on the Wall which had divided their city for a generation and pocketed pieces of it as the bulldozers knocked down the most striking symbol of East-West division. In much of the region, most especially in the northern tier, there were widespread demands for privatization, property restitution, and an end to constraints on free enterprise. In Western governments, there was smug satisfaction. US President George Bush even announced the dawning of a “New World Order”, no doubt oblivious to the fact that just sixty years earlier, the Third Reich and its allies had been promoting what they called the “New Order”.

But not everyone was smug. Among scholars, caution was more common than delirium. Economist Laura D’Andrea Tyson, for example, in an insightful article published in 1991, pointed out that

Although continued change is a certainty, its ultimate destination is not. No one knows precisely where reforms will lead. The only certainties are that the road of change will be a rocky one and that economic performance will very likely get worse before it gets better.¹

Predicting “a sharp decline” in available government revenues, leading to cuts in “all categories of domestic spending – investment, consumption, and government spending,”² she forecast years of “austerity”, “popular discontent”, and “dislocation”.³ Rejecting triumphalism and determinism alike, she concluded soberly that

The challenges of transition are monumental and complicated ones. The process of addressing these challenges will be long and arduous. Not

all countries will succeed, and their final destination points will be different.⁴

About the same time, Ivo Banac predicted that "The dislocations endemic to systemic changes will keep Eastern Europe boiling for years,"⁵ while Katherine Verdery and Gail Kligman observed accurately that "the situation in Romania is more complex than may appear."⁶ Again, writing of the case of Albania, Elez Biberaj observed presciently that "the transition from centrally planned communism to market-driven capitalism will be a complicated process," and noted that "some observers have warned of the danger of a conservative communist backlash and authoritarian regression."⁷

Andras Kepes, in a contribution written for the same volume in which Tyson's piece appeared, expressed his fear that due to the weakness of the fledgling multiparty system in Hungary, "the demand of the masses for authoritarianism may gain ground," noting that the sharp increase in the crime rate represented an important challenge to the post-communist system.⁸ Meanwhile, in a chapter published in 1992, Kenneth Jowitt confidently predicted that "Klaus's economic reforms [in the Czech Republic] will fail"⁹ and, responding to these sundry complications across the region, suggested that an alternative path, of "liberal authoritarianism", might constitute a more practical strategy.¹⁰

Nor were they alone in their caution. Patricia Smith, commenting on the East German case in 1991, concluded that "the quick route to the market economy has [already] proven to be more costly, difficult, and painful than originally anticipated,"¹¹ while the ever-observant Anneli Gabanyi was quick to point out the difficulties in Romania's convoluted transition.¹² Or again, Eniko Bollobas, writing in November 1991, expressed concern that "...the problem of ultra-nationalism will get more and more complicated and more difficult to solve."¹³ Similarly, Gyorgy Tokay and Dorin Tudoran, writing in April 1992, stressed that "...the gap between talking about democratic values and behaving in such a manner is enormous."¹⁴

At least one author was deeply pessimistic about what lay ahead for the region, viz., Chris Brown, who in a manuscript finalized for press in November 1992, warned,

'Eastern Europe' ... is facing a desperate crisis: widespread political unrest, economic hardship, malnutrition, even mass starvation in some areas, are possibilities in the autumn of 1992, perhaps realities by the time these words are read.¹⁵

In my own writings at the time, I too was wary. As I wrote in 1991,

Institutions can be closed or created, laws can be rewritten. But attitudes and behaviors are sometimes harder to change.... Taken collectively, this [post-communist] attitudinal syndrome ... gives one reason for pause. [Some of] these attitudes are clearly not supportive of pluralism ... [This] suggest[s] that alongside the very real factors for (re)pluralization, there are also some factors that will pull in the opposite direction. Political change will not be easy.¹⁶

Elsewhere in the same book, I wrote,

When economic deterioration reaches the point that a vast and experienced political order vanishes in a matter of months, it is a safe bet that the economic preconditions for the stabilization of a new system do not exist. With even the best of intentions, it will be difficult for the elites in the new states to halt the slide into economic and social chaos.¹⁷

And again, in an article finalized in December 1991, I warned:

The stability of any democratic system cannot be taken for granted. History is littered with the debris of failed democratic systems, beginning with the subverted Roman Republic (or even the Athenian democracy). Stability has its own preconditions. So too does democracy. And if those preconditions are not satisfied, or at least reasonably approached, stable democracy is impossible.¹⁸

More than a year earlier I had noted that "as of October 1990 there were warnings that Hungary was in for a difficult transition," and that, in Bulgaria, people "confronted the results of a decline in production, and braced for food shortages, price hikes, and electricity shortfalls. In these conditions, the crime rate soared, stirring expressions of concern in the media."¹⁹

Yet, if many observers forecast a difficult transition, none, as far as I am aware, were so bold as to suggest that the aspirations of these societies would necessarily meet with complete and total defeat, much less that these societies were doomed to an eternity of economic instability, widespread crime and corruption, and regional turmoil. Robert Kaplan's mass-market "travelogue", *Balkan Ghosts*, came perhaps the closest to complete pessimism, though only about the Balkans, but even Kaplan would later deny that he had intended for his book to be interpreted as offering either analysis or prognosis.

Where Yugoslavia is concerned, Ivo Banac and Viktor Meier offered realistic and insightful analyses of the situation, long before war broke out. Already in November 1990, Banac warned that Serbian party boss Slobodan Milošević was taking the country down the road to civil war,²⁰ while Meier's regular reports for the *Frankfurter Allgemeine* provided a clear day-by-day, week-by-week chronicle of Yugoslavia's descent into interethnic violence.²¹

While Serbia, Croatia, and Bosnia went to war, other countries in the region looked for foreign investors to bail them out of the economic doldrums, in effect selling their stock to the highest bidder. In a particularly prescient prediction about the direction in which the region would be moving, Kazimierz Poznański, writing in late summer 1991, warned,

The region is likely, however, to move in a different direction – towards a dependent market. The original Communist system was designed, at least in part, to prevent dependence on the more advanced, capitalist countries. This was done partly out of contempt for capitalism but also out of a desire to maximize state power, not to mention a naïve hope that isolation would cure many economic problems without creating other, possibly more severe, ones. The decay of communism brought down this design, opening

the door to foreign economic influence, or dependence.²²

The advantage of such dependence was that it offered the prospect of keeping the economy functioning, while creating or maintaining a certain number of jobs. The drawback was twofold: first, that by selling their stock to foreign owners, the Central and East Europeans inevitably gave up some of the control they might otherwise – in an “ideal” world – have enjoyed over their own future and, in the process, fueled processes of capitalist transition which have dramatically accentuated class differences with a rapidity for which few were prepared; and second, that the alienation of capital stock signifies no less than the alienation of profits.

In any event, the honeymoon (such as it was) proved to be all too short. Local mafias grew rich, while foreign investors bought up much of the economy. Pyramid schemes wiped out the savings of ordinary citizens in Romania and Albania. Corruption and cronyism have plagued much of the region. Trading patterns established for nearly half a century were disrupted and altered. In all the countries of the region there were initial contractions in industrial production, producing deep recession and radically changing the class composition of these societies. In Hungary, industrial production contracted at a rate of nearly 20 per cent annually for three years; in Poland the same annual rate of contraction was maintained for two years. In the Czech Republic, national income declined by nearly 25 per cent annually for three years. Rates of contraction were significantly worse throughout the Balkans.²³ Gross domestic product declined over the years 1990-1993 by an average of 11.5 per cent annually in Bulgaria, 6.6 per cent in the Czech Republic, 5.0 per cent in Hungary, 4.2 per cent in Poland, 10.3 per cent in Romania, 8.0 per cent in Slovakia, and 4.9 per cent in Slovenia – with more catastrophic declines in the Balkan war zone.²⁴ As of 1995, only the Czech Republic and Romania recorded unemployment rates of less than 10 per cent. Elsewhere in the region, unemployment ranged from a “low” of 10.9 per cent in Hungary to a high of 37.7 per cent in Macedonia, with unemployment rates in Albania, Croatia, and the Federal Republic of Yugoslavia all recorded above 15 per cent.²⁵ Large sectors of the population have been driven into poverty: 64.5 per cent of Serbs, 65 per cent of Romanians, and 30 per cent of rural Albanians live below the poverty line, while 76 per cent of

Bulgarians polled (in January 1999) said that they lived in poverty.²⁶ Western products have flooded the region, resulting in serious trade deficits and rising indebtedness. Women themselves have been reduced to commodities. As Joanna Regulska has pointed out, half a million East European women are transported across the region by prostitution rings annually, in what is arguably the most blatant manifestation of the West's "colonization" of Eastern Europe.²⁷ With these considerations in mind, Kazimierz Poznański has argued that the post-communist transition in Eastern Europe has been, up to now, a failure.²⁸ And while it would be premature to write off Poland, the Czech Republic, Hungary, and Croatia, or even Slovakia, Romania, and Macedonia, much less Slovenia, the region's most successful transition-system at this writing, Serbia, Montenegro, Bosnia-Herzegovina, Albania, and Bulgaria remain in dire straits, with the continued lack of resolution of the legitimacy problem in Belgrade contributing to problems in much of the western Balkans.

It is important to emphasize the process of transfer of local stock to foreign control. By the end of the decade, 70 per cent of Hungary's industry and banking and essentially all printed media were foreign-owned; 35 per cent of Polish industry and 50 per cent of Polish banking, together with 30 per cent of Czech industry and 25 per cent of Czech banking were also foreign-owned, and the tendency has been toward ever greater portions of local industry and banking coming under foreign control.²⁹ By early 2000, moreover, some 75 per cent of printed media in Poland was foreign-owned, together with essentially all printed media in Bulgaria.³⁰ Kazimierz Poznański has estimated that the portion of Poland's capital stock which was sold to Westerners for about \$24 billion is worth about \$240-260 billion as of 2001. Macedonia's capital stock has also been sold at a discount, with Greek businessmen accounting for some 90 per cent of foreign investments in the country.³¹

There were some, such as Charles Gati,³² as well as the aforementioned Kepes, Bollobas, Tokay, Tudoran, and Brown, who feared, from the beginning, that the transition might be derailed and end in political and/or economic debacle. But there were all too few who understood in advance (or for that matter, who understand even now) that capitalism itself would assume a form inimical to the liberal project (though I would count Poznański among those who saw this danger clearly) or who reflected on the fact that Eastern Europe was engaging in

orchestrated repluralization at a time when, under the impact of the Reagan, Thatcher, Kohl, and other governments, the West – and in particular, the United States – was taking rapid strides from democracy to plutocracy, in essence reshaping the Western model of “pluralism”. Viewed in this light, the transition from one-party socialism to plutocratic capitalism held, not the promise of the realization of the liberal project, but only the certainty of a second betrayal (communism having constituted the “first” betrayal) – indeed, a betrayal all the more bitter because the plutocrats of the West continue to recite the old liberal truths, which they themselves no longer honor.

Elsewhere³³ I have defined classical liberalism as a value system based on the concept of Natural Law (or Universal Reason) and centered on the rule of law, notions of individual rights and duties, tolerance, respect for the harm principle, equality, and the neutrality of the state in matters of religion. Rule of law entails that all laws be published, that there be no secret legal codes or appendices, that the laws be applied equally to all citizens, and that officeholders be equally subject to the law. Tolerance is linked with respect for the harm principle on the principle of universalizability. As Richard Hooker (1554-1600), the “preliberal” Natural Law theorist,³⁴ noted in his *Of the Laws of Ecclesiastical Polity*,

[Of] what several rules and canons natural reason hath drawn for direction of life, no man is ignorant, as namely, That because we would take no harm, we must therefore do none; That since we would not be in any thing extremely dealt with, we must ourselves avoid all extremity in our dealings; That from all violence and wrong we are utterly to abstain.³⁵

Tolerance, further, is not the same thing as indulgence, much less as apathy. It is, on the contrary, the active embrace of heterogeneity. There is, therefore, no such thing as “tolerance of intolerance” in the liberal tradition properly understood. To be a liberal is, on the contrary, to be committed to tolerance of all that does not do harm; it entails a commitment, further, to combat tendencies to indulgence of hurtful verbal, physical, and institutional action.

Tolerance and respect for the harm principle are preconditions for any security in individual and social rights, as well as

for any understanding of the linkage between rights and duties (both being grounded in the moral law).

State neutrality in matters of religion would seem to be a simple matter, but inevitably there are grey areas. In the United States and Poland, for example, advocates of a complete or nearly complete ban on abortions believe that they are merely trying to bring the laws of the land into accord with a universal truth recognized by their religion. Opponents of such regulation, on the other hand, deny that there is any clear "universal truth" at stake and conclude that advocates of state regulation merely want to use the state apparatus to enforce and impose denominationally-derived strictures on the entire society.

Finally, there is equality which, as I have noted elsewhere, has been "...interpreted by those right of center as limited to mere legal or civic equality ('equal before the law'), extended by the center to include also equality of opportunity (with attendant demands for 'affirmative action' and/or quotas), and given its most ambitious interpretation by those on the left end of the political spectrum, for whom equality is meaningless unless it embraces also *economic* equality."³⁶

There are undoubtedly some who would agree with C. B. MacPherson that what John Locke achieved in his *Two Treatises of Government* "...was to base the property right on natural right and natural law, and then to remove all the natural law limits from the property right."³⁷ On the other hand, there is this striking passage in *The Second Treatise*:

For he that leaves as much as another can make use of, does as good as take nothing at all. No Body could think himself injur'd by the drinking of another Man, though he took a good Draught, who had a whole River of the same Water left to him to quench his thirst. And the Case of Land and Water, *where there is enough of both*, is perfectly the same.³⁸

My own view is that Locke's defense of the right of property acquisition was qualified by two considerations: equality and sufficiency. In a word, no person or corporation or conglomerate may hold so much property as to render it unlikely that others will still find enough property for the satisfaction of their basic needs. Moreover, implicit here is a notion of minimal property and minimal means necessary to live on a level which

could be construed as being in harmony with the dual principles of equality and sufficiency. There is, in short, a “left” interpretation of Locke, and of the liberal tradition more broadly.³⁹

More than two centuries after the death of Locke, that great British liberal thinker, L. T. Hobhouse, argued for the internal coherence of a liberal socialism (what we would call ‘social democracy’ today). In *Liberalism* (1911), Hobhouse went much further than Locke in urging, first, that “freedom is only one side of social life,” and must be counter-balanced by “mutual aid”, and, second, that vast inequalities of wealth are, on the face of things, problematic for the liberal project and can be justified *only* if the continuation of such inequalities can be shown to be “better for the good of all.”⁴⁰ For Hobhouse, all wealth is ultimately *social* wealth, i.e., wealth made possible by social organization and legitimated only to the extent that it serves to advance the common good; from this postulate, Hobhouse concludes that all persons have a right to own property and, more controversially, that remuneration should be commensurate with productive work. Not surprisingly, Hobhouse expresses contempt for investors who make a living exclusively from buying and selling stocks.⁴¹ Those familiar with Pope Leo XIII’s *Rerum novarum* will readily see some commonality between Hobhouse’s tract and the pontiff’s encyclical, issued twenty years earlier.

It follows that *classical liberalism* is not necessarily as friendly toward *laissez faire* capitalism as is sometimes thought, and that capitalism, where it does injury to the principles of equality and sufficiency, or to the harm principle, figures as an anti-liberal force. The term “liberal economics” is, in fact, an oxymoron, because the liberal project can only be protected – as James Madison and Thomas Jefferson understood – where the state is harnessed to protect the poor and the weak from the rich, and even, I would add, to set limits on the accumulation of wealth. Where the state is harnessed to protect the privileges of the rich, one has neither liberalism nor democracy. This is why I have suggested⁴² that only an economic system based on the dual principles of free enterprise and state regulation of income and property can be considered legitimate. I call this economic system *solidarism*, and contrast it with the rival *illegitimate* systems, capitalism and socialism.

I make no claim to originality in espousing this interpretation, for which I am indebted to that other vehicle of Natural

Law teachings: the papal encyclicals of the Roman Catholic Church, above all Pope Leo XIII's *Rerum novarum* (1891), Pope John XXIII's *Mater et magistra* (1961), and Pope John Paul II's *Sollicitudo rei socialis* (1988) and *Centesimus Annus* (1991).⁴³ In the last mentioned encyclical, Pope John Paul II urged that

...error consists in an understanding of human freedom which detaches it from obedience to the truth, and consequently from the duty to respect the rights of others. The essence of freedom then becomes self-love carried to the point of contempt for God and neighbor, a self-love which leads to an unbridled affirmation of self-interest and which refuses to be limited by any demand.⁴⁴

This translucent passage captures much of the reason for the deep disappointment which many East Europeans have felt in the transition (or transformation) process.

There are at least two reasons why many self-professed "liberals" have been willing to countenance the scourges of vast economic inequality in supposedly "liberal" societies. The first is that not all liberals accept the Natural Law tradition. Many, including the distinguished ethicist L. W. Sumner,⁴⁵ and the articulate philosopher Russell Hardin,⁴⁶ subscribe to that alternative current, *consequentialism*. And while I respect the sophistication of their work and have benefitted from it, I fear that consequentialism is a poor guide to social policy and, indeed, that it may offer a framework within which the alleged "costs" of "progress" may more easily be justified.

The second reason is that there has been a general assumption that what passes under the term "economic liberalism" must, of necessity, be compatible with "political liberalism", indeed with any strain of political liberalism.⁴⁷ For "economic liberals", the favored recipe is for a minimalist state, in which – especially in post-Reagan, post-Thatcher economics – the rich and the prosperous are expected to contribute ever smaller amounts in taxes, in hopes that their prosperity will "trickle down" to the indigent for whom, in the meantime, most social services have been eliminated or cut back, in order to keep the shrinking budget balanced. On this point, *Centesimus Annus* comments:

The State cannot limit itself to “favoring one portion of the citizens”, namely the rich and prosperous, nor can it “neglect the other”, which clearly represents the majority of society. Otherwise, there would be a violation of that law of justice [Natural Law] which ordains that every person should receive his due.⁴⁸

There are, no doubt, some who feel that the liberal state ought not to get involved in trying to foster social justice, who feel that it is enough that the state not interfere in the freedom of citizens to do as they please, who feel that it is not the state's role, for example, to fund rehabilitation programs or low-cost, high-quality public education, even if those services might expand the range of the effective freedom of less prosperous citizens. Such sentiments are often associated with a relativism rooted not in true tolerance, but in apathy. But apathy is completely foreign to the Natural Law tradition, while, as Polish sociologist Jerzy Szacki has urged, “liberalism is not identical with moral relativism and does not call upon its followers to accord equal value to all conceptions. There are not and cannot be any liberals who would be neutral in this sense.”⁴⁹ Or, to put it another way, there are some behaviors which ought not to be tolerated in a *liberal* society.

Keeping in mind the sundry points made in this chapter, it is clear that, with the exception of Slovenia, the post-communist societies of East-Central Europe have not been building liberal democracies at all, but rather they have been constructing hybrids, in which some liberal and democratic trappings, and even guarantees, adorn a fundamentally plutocratic-colonial structure. And, as against the moral universalism entailed in the Natural Law tradition, these societies have been embracing conventionalism (with its tendencies toward the absolutization of the laws) and consequentialism (including in its most virulent form, chauvinistic nationalism). And here I note Zdeněk Suda's warning in a recent publication that nationalism, in the East-Central European area, “...has been so powerful a foe that even today it might be premature to consider the victory of liberalism as final.”⁵⁰ The philosophical roots of the relationship between nationalism and liberal democracy will be explored in the next chapter.

3. Three Views of Sovereignty: The East European Connection

I have already alluded, in the preceding chapter, to the threat posed by nationalism to the liberal project, hinting that I consider nationalism to be incompatible with the Natural Law tradition or, as it is sometimes called, the tradition of Universal Reason. There are, to be sure, "liberal nationalists",¹ who argue that nationalism may provide a basis for group solidarity, thereby providing an impetus to the very principle of solidarism described briefly in chapter 2. But there are both theoretical and practical reasons to resist the temptation to marry liberalism with nationalism. On a theoretical level, nationalism involves a collective bond among persons sharing the same language or culture, a bond which, to the extent that it becomes primary, displaces the human solidarity prescribed by the Natural Law tradition and entailed in the liberal project. On a practical level, as Jamie Mayerfeld has pointed out, "because ... nationalism impairs people's ability to form an accurate moral evaluation of their own nation's conduct, it often leads them to excuse the unjustifiable use of violence."² Indeed, Mayerfeld goes further, arguing that "...any nationalism, liberal or otherwise, will exert pressure on people to undertake, in the name of the nation, acts of violent aggression or violent resistance that are unjust even according to non-controversial and minimally complete standards of morality."³ The decade of inter-ethnic violence in the western Balkans is a case in point.

At the heart of the controversy about the relationship of nationalism to liberal democracy is the sometimes slippery concept of *popular sovereignty*, which is germane as well to the choice as to the balance to be struck between the rule of law and majority rule. In the years since 1987, and most especially during the transformative years 1987-1990, the notion of popular sovereignty has repeatedly been asserted in East-Central Europe, always with the certainty that this notion bears an unproblematic, uncontestable, and ultimately simple relation to democracy, in the generally understood meaning of that latter term, i.e., rule by the people as exercised through the medium of representative government. Popular sovereignty has further been so closely associated with the doctrine of national self-determination as to lead many political actors and observ-

ers alike to consider them inseparable. These twin convictions have colored the political transformations in the region over the past decade, infusing nationalist suppositions with the aura of a legitimacy of which they do not, in fact, partake.

The democratic tradition, however, as I shall argue, admits of at least three rather different views of sovereignty: the conventionalist-realist view (traceable to Hobbes), the universalist-idealist view (advanced by Kant), and the nationalist symbiosis (which might be traced to Herder but which must, more properly, be associated with the political impulses and ideological currents spawned by the French *philosophes* and popularized by the French Revolution). One could, of course, easily add to this list by identifying the specific strain of liberal-idealism defended by Locke (and in calling him an “idealist”, I am thinking of his emphasis on Natural Law as the ultimate source of both duty and right) or the non-liberal realism of Hegel, who tied obligation to the interdependence of family, community, and state rather than to some overarching ideal which might take the form of a categorical imperative and who placed sovereignty unambiguously within the normative framework of the state, rather than ascribing it to popular will à la Rousseau. And no doubt, other variations might occur to one or another observer. However, the three views I have identified represent the most important, most influential, and hence also, most potent alternatives here; other views or interpretations are either variations of these three or less significant permutations lacking real influence in the East-Central European region.

Liberal realism: Hobbes' absolute sovereignty

Thomas Hobbes (1588-1679) bears a problematic relationship to the classic liberal tradition. On the one hand, one may note his subscription to notions of Natural Law,⁴ his belief that the central purpose of political authority is the maintenance of civil order (a belief he shares with others whose “liberal” credentials are unchallenged), and the fact that he viewed the individual as possessing at least one inalienable right – the right to life. Hobbes was, on the other hand, no champion of democracy. It was not that he scorned democracy as such; he was, rather, disinterested in distinctions between monarchy, aristocracy, and democracy, emphasizing instead the distinction between effective government and ineffective government.⁵ To

the extent that Hobbes was convinced of the natural superiority of monarchy over democracy,⁶ it was because he judged monarchy to be better equipped to maintain civil order.

As Leo Strauss has pointed out, Hobbes undertook to reconcile two rival theories of sovereignty: *patrimonialism*, which traced sovereignty to the rights of fathers (husbands) over other members of their families, and *contract theory*, which held that legitimate authority could only be premised on the voluntary submission of free citizens.⁷ Hobbes broke with tradition by exalting the state over the Church, demanding that religion serve the interests of the state. In his *Dialogue between a Philosopher and a Student*, as in his *Leviathan*, Hobbes demanded obedience and assent to the laws and decrees of government, saying nothing of any right of rebellion.⁸ On the contrary, the only "inalienable" right which Hobbes allows a person, even in defiance of sovereign authority, is the right to protect his own life.⁹

In taking this harsh view, Hobbes was responding to the political uncertainties and ideological ferment unleashed by the English Civil War. It was, indeed, the roundheads who, in the course of their war against the King, had laid the basis for establishing popular sovereignty as the ultimate authority in the land, i.e., even over the King. But the roundheads were not thinking of people as such, of ordinary citizens organizing themselves as they might, but of the parliament, or more specifically the "Long Parliament", as the embodiment of popular sovereignty.¹⁰ Inevitably, the Royalists countered that if the people were truly sovereign, then they could depose the parliament and endorse the authority of the King.

Hobbes' response is to equate *the sovereign* with "the people" and to judge that any aggregation of rebels can comprise only "the crowd", i.e., a group of *individuals*, and, Hobbes argues in *De Cive* (1642; second edition, 1647),

...a crowd cannot make a promise or an agreement, acquire or transfer a right, do, have, possess, and so on, except separately or as individuals, so that there are as many promises, agreements, rights, and actions, as there are men. For this reason, a crowd is not a natural person.¹¹

It follows that if no number of rebels can ever claim to constitute a "natural person", i.e., a body able to claim rights, there can never be a right of rebellion.

For Hobbes, then, the people are not sovereign; rather, the sovereign is the people. This appears to be an inverted theory of popular sovereignty. But in fact it is not that at all, for in Hobbes' view, sovereignty does not exist before the creation of government; it is, rather, a characteristic of government, not a power whereby government is created.¹² Nor could there be any appeal to a social contract, since, in Hobbes' view, the sovereign "...was above the contract, as he was above any particular interpretation of divine, natural, or civil law other than his own."¹³ The sovereign was, accordingly, the quintessential embodiment of freedom, in Hobbes' view.

Hobbes insisted that sovereignty had to be, perforce, *absolute* and *indivisible*, understanding by the former that the sovereign should reign supreme in the religious sphere, dictating which doctrines would be endorsed and which disallowed, and prescribing ecclesiastical rituals for the society. On Hobbes' view, then, the sovereign "...has the right both to decide which opinions and doctrines are inimical to peace and to forbid their being taught."¹⁴ Perhaps paradoxically, Hobbes insists nonetheless that sovereigns are bound by Natural Law,¹⁵ but resolves the moral dilemma of citizens placed under simultaneous obligation to obey both immoral commands of an "absolute sovereign" and the dictates of "right reason" by urging citizens confronting such a dilemma to choose (passive) civil disobedience and be prepared to endure martyrdom.¹⁶

As Rogow notes, Hobbes cannot, in any way, be associated with the prehistory of either fascism or Marxism-Leninism, let alone Naziism, since his objective was clearly the protection of life and limb.¹⁷ Moreover, where fascism and Naziism figure as manifestations of "mass politics", Hobbes' concept of the sovereign state reflects precisely his fear of the consequences of the mobilization of the masses. As for democracy, on the other hand, Hobbes was pointedly indifferent to its charms.

Populist democracy: Rousseau and the French Revolution

Jean-Jacques Rousseau died in 1778, eleven years before the outbreak of the French Revolution. But he was, in many ways, its spiritual godfather, and his ideas about the General Will and about the primacy of the collective over the individual

were fully embodied in the revolution. No liberal, Rousseau was an enthusiast for democracy, trusting implicitly to the wisdom of the people. "The first thing the legislator must know," said Robespierre, following Rousseau, "is that *le peuple* is good."¹⁸

Although there is a broad consensus that Rousseau was, in some sense, a democrat,¹⁹ it is a striking fact that Rousseau never advocated universal suffrage or even universal adult male suffrage.²⁰ Rousseau, who held that sovereignty was originally invested in the people, who could never renounce or alienate their fundamental sovereignty, drew a distinction between the constitution of the state, which should be democratic, and the government, which – in his view – need not be democratic.²¹ This is, perhaps, why Chapman concludes that Rousseau wanted "...to achieve liberal ideas by totalitarian means."²² But this is only half right because Rousseau, the advocate of unlimited, indivisible, and "indestructible" popular sovereignty,²³ provided arguments which could readily be adduced in support of what Talmon has called "totalitarian democracy".²⁴ In his demand that the individual accept the General Will as the embodiment of her/his own best interests, Rousseau anticipated Trotsky's later lament, "One cannot be right against the party."

With the unfolding of the French Revolution, the Directorate's operationalization of Rousseau's formulas for populist democracy became wedded to a popular, messianic nationalism in which error was excluded by definition. Rousseau, for his part, was prepared to admit that people might be deceived, but insisted all the same that "...the general will is always right and ever tends to the public advantage"²⁵ – a monumental claim, as monumental as the contemporary faith in the ability of the market to respond to the challenges of environmental destruction, the accelerating extinction of species, over-fishing, the spoliation of coral reefs, and over-population. Rousseau, thus, was quite content to demand "the complete alienation by each associate member to the community of *all his rights*."²⁶ Rousseau rescued the right of popular revolt from the absolutist state he justified, however, by the appeal to the doctrine of popular sovereignty, under which, in Rousseau's words, "...government can be legitimate only on condition that each successive generation of subjects is free either to accept or to reject it."²⁷

Hence, although neither Hobbes nor Rousseau was a nationalist as such, nationalism could find fertile soil only in the

latter's thought, not in the Hobb'sian legacy. Hobbes, the conventionalist, was no advocate of democracy; Rousseau, the democrat, was no champion of liberalism. This contrast should not surprise us. For, as Rudolf Rocker has pointed out,

There is an essential difference between liberalism and democracy, based on two different conceptions of the relationship between man and society.... [Early liberals] saw clearly that every form of government menaces man's freedom; hence, they always endeavored to guard the individual from the encroachments of governmental power and strove to confine this to the smallest possible field of activity.... The state constitution of liberalism was, therefore, predominantly of a *negative* nature...

In contradistinction to liberalism, the starting point of democracy was a collective concept – the people, the community. But although this abstract concept on which the democratic ideal is founded could only lead to results disastrous to the independence of human personality, it was surrounded by the aureole of a fictitious concept of freedom...²⁸

This is why the Lockean endeavor to marry liberalism and democracy often produces an unhappy, unstable marriage, in which organized groups, whether of the religious right or of corporate interests, for example, are forever trying to scupper liberal values and, in the spirit of Robespierre, to erect a “republic of virtue” on the field of a victorious campaign against perceived “vices”.²⁹ The success of the Lockean formula depends, as Locke knew but as many liberals today forget, on assuring that active citizens are educated, and specifically, educated in the spirit of liberalism. Where this is not the case, liberal democracy decays, transmogrifying into that cheap alloy, *illiberal* democracy, with its “bacchanalian revel” – to steal a phrase from Hegel – of persecutions, discrimination, and self-seeking.

One final point should be recorded before relinquishing our discussion of Rousseau. Jean-Jacques Rousseau is, for perfectly good reasons, routinely associated with notions of majority rule and, accordingly, democracy,³⁰ but, at the same time,

he was quite explicit about his belief that "...democracy is best suited to small states, aristocracy to those of medium size, and monarchy to the largest."³¹ Here it is important to return to Rousseau's distinction between the (necessarily democratic) constitution of the state and its (not necessarily democratic) government. Hence, for Rousseau, there was nothing self-contradictory about the notion of an authoritarian democracy.

Liberal idealism: Kant's defense of liberal monarchy

Immanuel Kant (1724-1804) bridled at the illiberal aspects of Rousseau's theory. Indeed, Kant argued that direct democracy

...is necessarily a *despotism*, because it establishes an executive power through which all the citizens may make decisions about (and indeed against) the single individual without his consent...; and this means that the general will is in contradiction with itself, and thus also with freedom.³²

The problem with democracy, Kant felt, was that one could not rely on it to be *liberal*, and it was the safeguarding of liberal values (individual freedom, equality, tolerance, the autonomy of the individual) which mattered to Kant. Indeed, Kant was convinced that a (hereditary) monarchy was better equipped (and hence more likely) to protect human rights than was a democracy, and hence, more compatible with the liberal tradition, properly understood. Kant consistently praised what he called "republican government", but by that expression he was referring not to the structure of government but to its values. Accordingly, in a lesser-known work, Kant advises,

It is ... the duty of monarchs, even if they rule *autocratically*, to govern in a *republican* (not a democratic) manner – that is, to treat the people in a manner consistent with the spirit of the laws of freedom (as a people with fully developed reason would direct itself)....³³

On the other hand, Kant declares his conviction, in his essay on "Perpetual Peace", that "...any form of government which is not *representative* is essentially an *anomaly*, [while] ... the other two political constitutions (i.e. autocracy and aristocracy) are always defective...."³⁴

Given his strong disagreements with Rousseau, it is somewhat surprising to discover some parallels between the two men on the subject of sovereignty. First, in a manner reminiscent of Rousseau, Kant distinguishes between the form of *sovereignty*, which might be autocratic, aristocratic, or democratic, and the form of *government*, which relates to the organization of power and which needs to entail the separation of legislative and executive power.³⁵ Second, in common with both Locke and Rousseau, Kant links the establishment of state sovereignty to the need to protect property rights.³⁶

In view of Kant's unmistakable commitment to liberal values, many authors, including the present writer,³⁷ have had problems with the following passage in *Metaphysics of Morals*:

The head of a state has only rights against his subjects and no duties (that he can be coerced to fulfill). Moreover, even if the organ of the head of a state, the *ruler*, proceeds contrary to law, for example, if he goes against the law of equality in assigning the burdens of state in matters of taxation, recruiting and so forth, subjects may indeed oppose this injustice by *complaints (gravamina)* but not by resistance.... A people cannot offer any resistance to the legislative head of a state that would be consistent with right, since a rightful condition is possible only by submission to its general legislative will. There is, therefore, no right to *sedition (seditio)*, still less to *rebellion (rebellio)*.³⁸

Where Rousseau demanded the individual's unconditional submission to the General Will, Kant demands the unconditional submission of both the individual and any group considering itself to reflect some sort of "general will" *to the government*. Indeed, for Kant, any notion of a "general will" is simply irrelevant.

But Kant does not follow Hobbes either. The Hobb'sian monarch is credited with "absolute sovereignty", but Kant re-

pudiates such absolutism, insisting that insofar as subjects have inalienable rights, the ruler is obliged to respect those rights. The key qualifying phrase in the passage quoted above from *Metaphysics of Morals* is "duties that he can be coerced to fulfill." It is not that the sovereign has no duties, only – for Kant – that no one has the right to coerce the sovereign to fulfill those duties (because the right to coerce would erect a higher authority over and above "the sovereign" – which, in Kant's view, and in a manner strangely reminiscent of Hobbes, would entangle one in self-contradiction). Kant does *not* require obedience to the unjust commands of a tyrant. On the contrary, Kant expressly permits and counsels disobedience to the sovereign in instances where obedience would require that the subject commit unjust or immoral acts. But resistance and rebellion are excluded.³⁹ And while Kant may agree with Hobbes in delegitimizing rebellion, they differ in the role assigned to the sovereign. Where Hobbes assigns the sovereign the primary role of protecting people from each other,⁴⁰ on the assumption that conflict is sown into human nature itself, Kant characterizes good government as "a maternal womb"⁴¹ and is "...interested in the devices nature uses to develop cooperative capacities, such as those needed to establish a law-governed civil order."⁴²

The case of Eastern Europe

As Kommers and Thompson note,⁴³ Kantian philosophy exerts tangible influence in contemporary constitutional development, above all in Europe, his rigorous rationality holding a particular attraction for constitution-framers. But in *Eastern Europe*, concepts of "national democracy", even of a neo-Rousseauian mold, have predominated. This has less to do with "primordial sentiments" of ancient vintage or with a recrudescence of collective irrationality, as some observers would have it, than with two other factors. First, the sense of disorientation induced by the tidal changes beginning in 1989 drove many in the region to seek the security of identification with the collective, and with the demise of the ideology of class loyalty, Nation emerged as the most available alternative for such identification. Second, for new states in the region (Slovenia, Croatia, Serbia/Montenegro, Macedonia, Estonia, Latvia, Lithuania,

Belarus, Ukraine, and Moldova), *nationalism* offered the prospect of ready "legitimation", even if of a dubious nature.

A comparison of the constitutions of ten of the post-communist states in the region (all except Albania and Bosnia-Herzegovina) bears out my claim that concepts of "national democracy" have predominated in the region. All of them except the incomplete Polish constitutional act of 17 October 1992 make reference to either popular sovereignty or *national* sovereignty. The Bulgarian constitution declares, for example, that "the entire power of the state shall derive from the people" (Article 2), while the Czech constitution of 1992 declares (Article 2) that "the people shall be the source of all power in the state."⁴⁴ The Macedonian constitution follows this mold, prescribing that "Sovereignty in the Republic of Macedonia derives from the citizens and belongs to the citizens" (Article 2). And again, in the constitution of the Republic of Hungary one finds the affirmation (in Article 2), "In the republic of Hungary, all power shall belong to the people exercising its sovereignty through its elected representatives as well as directly." Only the Czech constitution adds the explanation, "A constitutional law may determine the instances when the people are to exercise state power directly."

We have already seen that in the Hobb'sian concept, popular sovereignty has no meaning, indeed no existence, after the founding of the state. The constitutions of Hungary, Macedonia, and the Czech Republic are, accordingly, not Hobb'sian in spirit but are, in fact, closer to Rousseau. For Kant, moreover, *popular sovereignty* is a misnomer, as sovereignty, in Kant's view, is an aspect and dimension of government, which does not exist prior to the founding of government and which cannot be alienated from government or transferred. In Kant's view, sovereignty has nothing to do with the people, the nation, or any other collectivity of persons; rather, sovereignty is what makes government government.

That said, the foregoing constitutions are nonetheless somewhat closer than those of other states in the region to the liberal spirit, though the Bulgarian constitution's requirement that the state "assist in the maintenance of tolerance and respect among the believers from different denominations, and among believers and non-believers" (Article 37) is closer to Locke than to Hobbes. By contrast with the foregoing, however, the constitutions of Croatia, Serbia, Slovenia, Slovakia, and Romania seek legitimation in the presumption of *national* sovereignty, though

only the Croatian, Serbian, and Romanian constitutions establish "national states" as such. The constitution of the Republic of Serbia (adopted 28 September 1990), for instance, describes the republic as the "state of the Serb people,"⁴⁵ while that of the Republic of Croatia represents that republic as "the national state of the Croatian nation and a state of members of other nations and minorities who are citizens," naming the Serbs first among those "other nations" (Preamble). The Croatian constitution's further elaboration that "The sovereignty of the Republic of Croatia is inalienable, indivisible, and untransferable" (Article 2) had the intended effect of rendering local Serb separatism unconstitutional. The Croatian constitution based itself, at the very outset, on what it called "the Croatian nation's historical right to full sovereignty." As of March 2000, however, the newly elected Croatian government headed by Prime Minister Ivica Račan and President Stipe Mesić seems to be committed to radical revisions of the constitution, including, possibly, redefining Croatia as a *citizens' state* (in which all citizens are fully equal), rather than a *national state* (with vague suggestions that the dominant nation is to be favored).⁴⁶ The Romanian constitution of December 1991 is also in this "national" mold, affirming in Article 2, "National sovereignty resides with the Romanian people, who shall exercise it through its representative bodies and by referendum." Ultimately, the Romanian constitution, like the constitution of Macedonia, straddles the fence. We thus find Article 4 of Romania's constitution declaring that "Romania is the common and indivisible homeland of all its citizens," though the word "indivisible" was chosen to delegitimize any lingering Hungarian irredentist fantasies in connection with Transylvania. Macedonia's constitution, while emphasizing civil equality, also pays obeisance, in the preamble, to "...the historical fact that Macedonia is established as a national state of the Macedonian people," as part of a compromise formula devised in order to purchase the support of the right.⁴⁷

The constitutions of Slovenia and Slovakia pay obeisance, in passing, to the national principle, by way of justifying their acts of disassociation from their respective federations, but both declare themselves "democratic" states, rather than "national states", with the Slovenian document even adding, "Slovenia is a state of all its citizens" (Article 3).

I stated at the outset that the Lockean concept of popular sovereignty is irrelevant to contemporary Eastern Europe. This

might appear strange to some, however, in the light of the supposed twin goals of the revolutions in the region (limited government and economic privatization). And it may be further supposed that not only the Bulgarian but also the Czech, Hungarian, and Slovak constitutions may be not just closer to Locke in certain particulars, but fully within the Lockean tradition. After all, it was Locke who undertook the first endeavor to reconcile liberal values with limited government, and Locke also who offered an articulate liberal defense of rebellion against tyranny. But Locke's irrelevance may readily be demonstrated. To begin with, Locke placed his emphasis squarely on the protection of private property. Locke had the following to say about the purpose of government in his *First Treatise of Government*:

Property, whose Original is from the Right a Man has to use any of the Inferior Creatures, for the Subsistence and Comfort of his Life, is for the benefit and sole Advantage of the Proprietor, so that he may even destroy the thing, that he has Property in by his use of it, where need requires: but *Government being for the Preservation of every Mans Right and Property*, by preserving him from the Violence or Injury of others, is for the good of the Governed.⁴⁸

While all of these constitutions except that of the Czech Republic contain provisions guaranteeing the sanctity of private property, none of them represent the protection of private property as the central purpose of government, a construal which reduces popular sovereignty to a mere vehicle of property contract.

There is a further passage in Locke's *Two Treatises* worthy of attention, which occurs in the *Second Treatise*. Here he makes positive law contingent upon its being in accord with Natural Law, stating the case more strongly than Kant would later. "The Municipal Laws of Countries," he writes there, "...are only so far right, as they are founded on the Law of Nature, by which they are to be regulated and interpreted."⁴⁹ Crediting Richard Hooker, Locke adds that "The Laws which have been hitherto mentioned, i.e., the Laws of Nature, do bind Men,"⁵⁰ which is to say also office-holders. In so saying, Locke invites one to accept the notion of an external standard – Natural Law – by which the morality and justice of the state's legislative and policy acts

may be judged. That no such external standard, located in human reason, is accorded a place in the constitutions of the post-communist states of Eastern Europe goes without saying. These considerations incline me to consider Lockean theory largely unrepresented in the region in question. This is ironic given that the anti-communist dissidents of yesteryear held the socialist state to just such an external standard.

On the other hand, the Polish constitution of 1997 begins with the affirmation, "We, the Polish nation, all citizens of the Republic, equally those believing in God as the source of truth, goodness and beauty, and those not sharing that faith and drawing these universal truths from other sources, equal in their rights and duties toward Poland..."⁵¹ This clause, together with a right-to-life affirmation, suggest that the Polish constitution, unlike the constitutions of other republics in the region, contains passages referring to Natural Law (here under the term "universal truths"), but the inclusion of a reference to God makes clear that the constitution-framers were alluding to Natural Law not only, or even primarily, as secular reason, but also, and even primarily, as the Law of God. Ironically, the text, which emerged as a compromise between the Church and parties on the left in Poland, has left Solidarity activists, as well as some sectors of the Church, alienated. Radio Maria, for example, has condemned the new constitution as "a threat to the Christian tradition of the Polish people."⁵²

Nationalism and sovereignty

Many observers have commented on the proliferation of nationalist symbols, parties, actions, and violence in the region since the mid-1980s, predating, thus, the watershed year, 1989. The most common explanation, especially in the popular mass media, has been that the nationalist sentiments were there all along, but were merely held in check by the tough communist regimes. As those regimes weakened and then crumbled – so the stock explanation has it – nationalist sentiments rose to the surface. A more sophisticated assessment has been offered by Ishiyama and Breuning, who suggest that the psychological and social disorientation associated with the transition from authoritarian one-party rule to (albeit largely corrupt) forms of pluralism naturally opened the door to what they call "ethnopolitical extremism".⁵³ Susan Woodward believes that

nationalism can generally, if not always, be reduced to economic concerns. "Nationalism is just an excuse," she says dismissively, "a part of the political dynamic as conflicts develop between the central government and regional governments over who controls what resources and what money is being drained out of the region."⁵⁴ Jack Snyder of Columbia University gets us closer to the issue in noting that the absence of valued, legitimate institutions of power could lead to a spiraling of mutual recriminations between national groups within a given society.⁵⁵

To my mind, two further factors need to be taken into account. First, communism paradoxically not only reinforced and strengthened nationalism but even, in some instances, invented new nationalisms (the cases of Macedonia and Moldova come to mind, as also of certain Central Asian republics). The communist authorities of Eastern Europe were, of course, implacably hostile to everything that smacked of nationalism (except in the case of Romania) but – in contrast to the centralizing examples set by France, Spain, and Italy – adopted the practice of conceding territorial autonomy to ethnic minorities, whether one thinks of the USSR or Yugoslavia or Czechoslovakia or even, up to 1968, Romania. This practice could only serve to keep alive national identities and to provide would-be separatists with vital institutional resources. In this regard, Ceaușescu's abolition of the Magyar Autonomous Region in Romania in 1968 could be seen as a sensible prophylactic measure. But Ceaușescu made other concessions to nationalism, embracing Romanian nationalism and an adulatory approach to Romanian history as twin tools of pseudo-legitimation.⁵⁶

Second, as communism faded, the question "Who are we?" came to the fore, naturally and ineluctably. Communism's answer – "the working class" – was rejected, while answers referring to confessional identity were not even considered, for the most part. Instead, the answer was framed in terms of ethno-linguistic groups – nations – which, as often as not, crossed state frontiers. In Eastern Germany, for example, huge crowds poured onto the streets of Berlin, Dresden, and Leipzig, chanting "Wir sind das Volk" (We are the people); but soon this chant became modified as "Wir sind *ein* Volk" (We are *one* people) – an allusion to the division of Germany imposed by the Allies after World War Two.⁵⁷

In Yugoslavia, the challenge which nationalism posed to state sovereignty was made quintessentially clear. The preservation of a united Yugoslavia had been premised on the inculcation of

a limited sense of community, to which the label "Yugoslav socialist patriotism" had been affixed. But with the ascent of Milošević to power in Serbia and the rising tide of exclusivist and revanchist Serbian nationalism, non-Serbs felt threatened. More particularly, they felt threatened *as non-Serbs* and, one by one, began demanding either protection from Serbian authorities (via enhanced self-government) or disassociation from the federation. The first important statement to this effect, raising the banner of popular sovereignty, came in Slovenia, in the form of the officially sponsored "Fundamental Charter of Slovenia" in spring 1989. This Charter registered the following, *inter alia*:

We want to live in a democratic state grounded on the sovereignty of the Slovenian people, human rights, and the liberties of citizens. We will live only in such a Yugoslavia in which our sovereignty and our lasting and inalienable right to self-determination are secured, together with the equality of all nationalities and minorities, in which the differences among peoples are protected and guaranteed, and in which the common tasks in the federal state are regulated on the basis of consensus.⁵⁸

Indeed, Slovenia, Croatia, Bosnia-Herzegovina, and Macedonia all issued declarations of sovereignty before announcing their disassociation from the dying S.F.R.Y.

In Serbia after 1987, Milošević authorized mass demonstrations by Serbs while disallowing mass demonstrations by Albanians, even where the latter might have only the purpose of supporting the constitution. In this way, Milošević assumed a principle of popular sovereignty in which Serbs were equated with "the people", while Albanians were excluded from any part of "the people".

Taking stock of the region's record since 1989, it seems clear enough that Milošević (in Serbia), Mečiar (in Slovakia, until 1998), and Iliescu (in Romania, holding office until 1996) were quite prepared to appeal to the "general will" to justify depredations against the rights of Albanians in Kosovo, Hungarians in southern Slovakia, or students and intellectuals in Romania. They seemed to operate in implicit, if not explicit, agreement with Sièyes' dictum that the will of the Nation "is

always lawful” since the Nation “is herself the embodiment of the law” – or, to put it another way, *above* the law. In Rousseau’s vision, as in that of Milošević or Mečiar (or Mayor Funar of Cluj, for that matter), Natural Law does not come into the picture; there is no categorical imperative other than the imperative (or rather, justification) to carry out a “general will” which is stoked and shaped by leaders with nationalist agendas.

Conclusion – Hopes for a more tolerant paranoia?

From the foregoing, I hope it is evident that there are both Rousseauian and Hobb’sian elements in the political life of Eastern Europe – the former being prevalent in much of the Balkans and the spirit of the latter being reflected, at least to some extent, in Hungary, the Czech Republic, post-Mečiar Slovakia, and, in some ways, also Bulgaria. I have described Slovenia, Macedonia, and Croatia as hybrids, though the “citizens” character is more pronounced in the Slovene case (where the ideals of Kant arguably come the closest to realization), while the “national” character has been more pronounced in the case of Croatia, although (as already noted) the new government which took office in the winter of 1999/2000 promised to change the constitution in the direction of making it less “national”.

I have also suggested that the East European states have confronted a choice among three models of sovereignty – the protoliberal absolutism of Hobbes, the illiberal democratism of Rousseau, and the liberal monarchism of Kant – and have indicated why I believe that Locke’s historically potent model is not available for practical adoption in the region. Of these four models, only that of Rousseau could be said to provide a fertile bed for nationalism.

Recently, the literature has seen an intensifying debate between liberal nationalists and liberal anti-nationalists. This debate is directly relevant to the political challenges being confronted in Eastern Europe. In brief, liberal nationalists consider it important for states to build a sense of shared national identity even in culturally diverse settings, while liberal anti-nationalists variously fear that such a result can only be achieved via oppressive measures or warn that the presumptions and claims of nationalists are at variance and in contradiction with the presumptions and values of liberals. Among the protagonists of a liberal (or civic) nationalism are Liah Greenfeld,⁵⁹ Yael

Tamir,⁶⁰ and Vladimir Tismaneanu.⁶¹ Among the advocates of an anti-nationalist liberalism one may number Iris Young,⁶² Andrew Mann,⁶³ and Omar Dahbour,⁶⁴ as well as myself.⁶⁵ Mason offers practical considerations here, urging that "assimilation policies will have morally relevant costs, even if...these are not necessarily sufficient to justify speaking of oppression," and that, in any event, the advantages sought through the imposition of a common national identity might be obtainable "in other ways that do not impose the moral costs which arise from even moderate non-coercive assimilation policies."⁶⁶

For my part, I am impressed by the albeit-polemical definition of nationalism offered by Yugoslav novelist Danilo Kiš:

Nationalism is first and foremost paranoia, individual and collective paranoia. As collective paranoia it is the product of envy and fear and primarily the result of a loss of individual consciousness; it is nothing but a set of individual paranoias raised to the degree of paroxysm.... The nationalist is a frustrated individualist, nationalism the frustrated (collective) expression of his individualism, at once an ideology and [an] anti-ideology.⁶⁷

The paranoia of nationalism is everywhere in evidence in post-1987/89 Eastern Europe – in Dedijer's wide-eyed howling about a Vatican-Comintern conspiracy against Serbs, in Csurka's excited admonitions about a capitalist-Jewish-Masonic conspiracy against Hungarians, in Zhirinovskiy's periodic rantings about the need for Slavs to band together in self-defense, in recurrent articles in Milošević's press in the late 1980s and early 1990s about Germany being a "Fourth Reich", and so forth. But insofar as liberal-nationalists hope to tame the beast – rather than banishing it – they end up seeking either to generate a nationalism which does not exclude anyone and is not directed against anyone – a nationalism which is not nationalism at all, as far as I can tell – or to produce some sort of tolerant strain of paranoia.

Not all nationalism reaches a malignant stage; in many cases, nationalism, like some tumors, remains benign, or in remission. But nationalism, like a tumor, is ultimately not a healthy component in the host-organism. And nationalism is not a healthy component of the body politic. For this reason, the

spirit of Rousseau must be exorcised in Eastern Europe, by whatever means seem most effectual, before the Kantian liberal project can move forward.

4. The So-Called Right of National Self-Determination and Other Myths*

The preceding chapter continued the discussion of nationalism, setting it in the context of alternative understandings of popular sovereignty. The analysis of nationalism would not be complete without a discussion of the central claim registered by nationalists, viz., that there is a universal, natural right of self-declared nations to be independent and to align the borders of the state with the territory inhabited by co-nationals. In a classic statement of this claim, Robert Redslob, a professor of the history of international law at the University of Strassbourg, wrote that

...In a case of disparity between the nation and the State, a reorganization is legitimate, a reorganization which will be realized – by forceful or peaceful means – either by the foundation of a new State or by incorporation into an existing State with the same ethnic character.¹

“Nations enjoy the right of self-determination” – so we have been told for so long that this claim appears, at least at first sight, to have as great a claim to certifiable veracity as the law of gravity. Even though complications and even conflicting claims are readily conceded, the principle seems to be beyond challenge, almost to enjoy status as a transcendent principle of political life. To the extent that a primary alternative receptacle of rights is identified, in the dominant liberal paradigm of the twentieth century, that receptacle is the individual. And it is left to the state to resolve such differences and frictions as may arise between the rights enjoyed by individuals and the supposed rights of the nation.

While few, if any, theorists would care to challenge the existence of “group rights” – “group” being defined as any collectivity of persons associating on the basis of some common traits, interests, or goal(s)² – it is quite another matter to establish the precise moral content, political nature, and limits of “group rights”. Among other things, it will be seen that claims concerning “national rights” cannot be derived from those con-

cerning "group rights", since the former entail the notion that persons geographically or politically cut off from the "nation" are nonetheless "of the nation", participating fully in the rights of that nation and contributing, through their mere existence, to claims based on sheer number.

But although the doctrine of the right of national self-determination lacks any firm foundation, floating as it were in mid-air, rather like Salvador Dalí's renowned depiction of a castle on a flying rock, the doctrine is assisted in its flight by two "hot-air" balloons: the myth of political "realism" and the current warped proscription of values in the social sciences which some writers would urge upon us, under the banner of "liberty and value-free science for all." The doctrine's advocates even argue on its behalf that it should be identified with majority rule and, via that principle, with democracy itself, even if the question within which boundaries the given majority is to be sought is, at times, not susceptible of adequate resolution – which is why the U.N. Charter (Article 5), despite its embrace of the principle of "self-determination", carefully avoids specifying that this right is vested in *nations*.³ Moreover, if it is democratic to be nationalist, does that mean that we may describe the excesses of nationalism as "excesses of democracy", as "too much democracy"? An answer in either the affirmative or the negative should sound simplistic, and it is so because the very identification of the national principle with democracy is itself simplistic.

Modern mythology

The three myths constitute a triad of contemporary mythology. I propose, in this section, to summarize the principal ideas connected with these three myths, and, in the following section, to discuss the fatal flaws afflicting these myths. In the final section, I shall endeavor to develop an alternative theory of legitimacy and rights, based in large part on Kant's *Metaphysics of Morals*⁴ and on a recent book of my own.⁵

Myth 1: National self-determination. The central idea of nationalism has remained remarkably constant ever since Johann Gottfried von Herder (1744-1803). It may be summed up in the demand that the state serve as the legal-institutional embodiment and protector of the nation and its culture.⁶ This principle does not exclude the possibility that there might be

two equally legitimate Hungarian states, or two Romanian national states, or two German states, or even a multiplicity of states identified with a single nation or national idea. But it does pull the rug from under any would-be multinational or supranational state, such as Austria-Hungary or the Soviet Union or the Socialist Federated Republic of Yugoslavia.

If the nation-state is the ideal (perhaps indeed the “only” legitimate) political form, then the defense of the nation-state’s sovereignty and independence becomes the national community’s supreme moral duty, as argued by the British neo-Hegelian philosopher Bernard Bosanquet (1848-1923).⁷ Moreover, as Bosanquet further explains, “The body which is to be in sole or supreme command of force for the common good must possess a true general will, and for that reason must be a genuine community sharing a common sentiment and animated by a common tradition.”⁸ This, in turn, suggests a collective right to national homogeneity – a point to which I shall return later.

Further, advocacy of a right of national self-determination has been closely associated with the defense of a right of national secession – a recourse considered necessary to instrumentalize the achievement of near-homogeneous nation-states.

Myth 2: So-called political “realism”. The underlying premise of realism, whether in the classic Morgenthau tradition, in a Marxist guise, or attired in the garments of rational choice theory, is that interests should serve and do in fact serve as the guiding beacon of political action⁹ – in effect identifying the real with the rational, as Hegel put it. But whereas Hegel, had he spoken the language of “interests”, would have identified those interests with morality,¹⁰ in effect acknowledging the reality of ethical interests, would-be “realists” think not of ethical interests but of national interests, economic self-interest, and, in some contexts, the political interests of office-holders – in effect reducing interests to power in its sundry forms.¹¹ It was, for example, purely in the “realist” tradition that, in June 1998, top officials at the Pentagon expressed their skepticism about any use of military force to stop Milošević’s atrocities against the Albanian civilian population of Kosovë by urging that “Washington has no compelling national security interest in Kosovë,”¹² not even acknowledging that there might be compelling ethical interests (and duties) at stake.

Hobbes' writings sowed many of the seeds which have sprouted as contemporary "realism". Although Hobbes acknowledged the existence of Natural Law, he did not view the political order as serving any moral purpose, as most of his contemporaries did, but in terms of peace and security above all. Hence, in *De Cive* (1642), Hobbes urged that "*Just and unjust* did not exist until commands were given; hence their nature is relative to a command; and every action in its own nature is indifferent. What is *just* or *unjust* derives from the right of the ruler."¹³

"Realists" often stress conflict as a constant in human history, and are often seen as being pessimistic about human nature.¹⁴ Conflict is explained as taking place variously between states, classes, or nations. But however it may be construed, the conclusion is always the same: winning is preferable to losing. It is hard to imagine anyone arguing the reverse. But what if the nature of what is the essential value to be won or lost were grotesquely distorted? And what if, to take a second point, there might be an escape from conflict (or, at least, a means of reducing the frequency and ferocity of conflict)? Marx fantasized about such an escape, which he expected to result from the social, economic, ethnic, and religious (or rather, areligious) homogenization of the planet. Less fantastically, Immanuel Kant (1724- 1804) argued that conflict could be reduced by working to achieve the erection of an international legal order which would regulate relations between states and through the universalization of democratic forms (in effect anticipating Wilsonianism and some of the concepts underpinning the United Nations and the Council of Europe).¹⁵ Kant denied, in *The Metaphysics of Morals*, that perpetual peace was achievable, but insisted, all the same, that "...the political principles directed toward perpetual peace, of entering into such alliances of states, which serve for continual *approximation* to it, are not unachievable."¹⁶ In Kant's view, "war is the greatest of evils"¹⁷ – the most potent vehicle for the "radical evil" which lies, in Kant's view, at the heart of human nature.¹⁸

What, then, is the "realist myth"? At base, realists affirm that states may serve their own short-term and long-term interests by seeking to advance exclusive material interests (power and wealth) without regard to human rights or justice or Natural Law or the general good. Idealists dispute this and urge, on the contrary, the centrality of these values to interests. Idealists hold that disregard for these loftier values risks undermin-

ing also the very stability upon which self-declared “realists” ardently depend.

Myth 3: Value-free science as total freedom. Political “realism”, as noted above, already entails ethical neutrality, thereby revealing its organic connection with at least one understanding of value-free science. Morgenthau put it this way: “Realism maintains that universal moral principles cannot be applied to the actions of states in their abstract universal formulation, but that they must be filtered through the concrete circumstances of time and place.”¹⁹ Or, more precisely, they must – in the view of “realists” – be filtered through a consideration of the interests at stake for the relevant actors. Interests, not principles, shall rule in the community of nations. And, on this view, as Machiavelli once said, the greatest “crime” which a prince might commit is not to advance the material interests of his state. Insofar as certain scientists may recognize no ethical boundaries in choice of object (e.g., cloning, genetic splicing, euthanasia), in scope of experimentation (e.g., use of animals as subjects when chemical testing can achieve the same result), or in application (e.g., Nazi science),²⁰ they proclaim the self-centered “total freedom” of Machiavelli, not the limited “ethical freedom” of Kant.

The notion of “value-free science” opens the door, in effect, to the incorporation of the moral relativism of political “realism” into its epistemology and methodology. In its incunabulum, the notion of value-free science was healthy and essential, urging that one bring objectivity into one’s methodology and not permit oneself to be guided by preferences derived from religious, ethnic, racial, cultural, financial, or other sources in framing the analytical problem and developing a research strategy. Had social scientists been willing to leave it at that, remaining content with the modest cast given to the notion by most hard scientists, it would be difficult to quarrel with it. Fortunately, many social scientists have remained content with that. But there has always been a temptation for some to embrace a full-blooded Machiavellian methodology, come what may. Under the impact of the Serbian Insurrectionary War of 1991-1995, in particular, some social scientists have even sought to impose a stricture, forbidding other social scientists from assessing culpability in a war situation; rather, we were urged to consider it “scientific” to proceed from the a priori *assumption* that “all are guilty”, building supposedly “scientific” conclusions on the rigid

foundation of this relativistic doctrine. These overenthusiastic champions of an overextended distortion of “value-free science” would have us believe that concern with moral principles threatens to obstruct one’s understanding of real political events,²¹ and that, on the contrary, one must place not moral considerations, but real political interest, at the center of one’s political analysis, if it is to yield useful results at any level.

In his tragedy of 1606, *Macbeth*, Shakespeare casts doubt on the feasibility of setting morality aside and acting purely on the basis of self-interest. In a striking scene in the play, Shakespeare has a sleepwalking Lady Macbeth go through the motions of washing her hands, while mumbling (in her sleep):

Out, damned spot! out, I say! ... What need we
fear who knows it, when none can call our pow’r
to accompt? Yet who would have thought the
old man to have had so much blood in him? ...
What, will these hands ne’er be clean? ... Here’s
the smell of the blood still. All the perfumes of
Arabia will not sweeten this little hand. Oh, oh,
oh!²²

More contemporary apologists for “ethnic cleansing”, while not guilty of participation in the crimes themselves, seek, much like Lady Macbeth, to wash out the “damned spot” of heinous atrocities. Perhaps, a latter-day Macbeth would have us believe, ethnic cleansing is but normal and commonplace in nation-building, and perhaps morality can be premised only on *amnesia*.²³ Perhaps, the same apologist (who, in following in the footsteps of the change-denying ancient Greek philosopher Parmenides, has allowed himself to remain blissfully unaware of the absurdities entailed in his own extravagant misrepresentations or, perhaps, strange misunderstandings²⁴) would like to suppose, genocide can only be a collective act of a nation, so that as long as only individuals, and not the entire nation, are brought to trial for mass atrocities, one cannot truly speak of genocide at all, but only of the isolated crimes of certain individuals.²⁵ The advocacy of this kind of “value-free” science – indeed, a science reluctant to distinguish good from evil – is, as Carol Lilly has noted, wedded to “amoral realism,”²⁶ and, as this relativizing argument makes clear, vital to the defense of the rights of nations against criticism rooted in moral outrage; that such advocacy may also serve to obstruct the assignment

of primary guilt to one or another side in the Bosnian war should be clear enough.

The notion of value-free science is generally thought to be useful in guarding the investigator against prejudices, preformed conclusions, distorted investigation, and what is conventionally called "normative bias", and if understood in its original sense, can serve these functions well. The value-free scientist is supposed to set upon his or her tasks without having a preferred outcome and, more significantly, without allowing normative considerations to guide the selection of problems to be investigated, but there have, from time to time, been over-enthusiastic practitioners of "value-free science", such as Nazi scientists who took on the assignment to develop new technology so that more Jews and Gypsies could be gassed at once. For enthusiasts, all themes and all subjects are equally deserving of investigation and understanding, it would thence be argued, with distinctions allowed, at most, on the basis of *interest*.

The problems with nationalist "realism" and amoral science

I shall, in this and the following section, examine the flaws and fantasies of the three myths, but take them up in reverse order, starting, thus, with the concept of "value-free" science.

The values of "value-free" science. The notion that social science must be "value-free" to the point of declining to acknowledge guilt or even to "call a spade a spade" is based on a flawed historiography and on blatant self-contradiction. Historiographically, the very birth of the modern science of international politics lay in normative values. As E. H. Carr reminds us,

The teleological aspect of the science of international politics has been conspicuous from the outset. It took its rise from a great and disastrous war; and the overwhelming purpose which dominated and inspired the pioneers of the new science was to obviate a recurrence of this disease of the international body politic. The pas-

sionate desire to prevent war determined the whole initial course and direction of the study.²⁷

Moreover, the notion that science is truly "value-free", if taken literally and to the extreme that some would like, would reduce science to the arbitrary and erratic pursuit of knowledge for its own sake and without regard to utility. When medical researchers study cancer in humans, rather than the diseases which afflict the common house fly, it is because they value human life more than the lives of flies. Nor is it any use to refer this argument to *interest*, because the "realist" concept of interest presumes that interests are permanently in conflict – i.e., that there might be persons, for example, whose interests would be better served by obstructing progress toward the treatment of cancer and that a history of medical research might be interpreted as a struggle between these two interests.

In actual fact, *all* science is informed by values, whether the value of human health, or that of protecting the environment, or that of extending the horizons for direct travel, and values affect not only choice of object of study, but also the scope of the study, the methodology, and the applications sought. A Machiavellian political science purged of values would end up looking like a social-science counterpart to "Nazi science", embracing a relativistic worldview holding "...that 'right' means (can only be coherently understood as meaning) 'right for a given society'; that 'right for a given society' is to be understood in a functionalist sense; and that (therefore) it is wrong for people in one society to condemn, interfere with, etc., the values of another society,"²⁸ and, by extension, holding also that it is wrong for one scientist to criticize the values or purposes or another scientist unless, presumably, the latter is actually breaking the laws of the land. Nor is it clear how a social science purged of values might retain an interest in the vigor of tolerance in a given society, as Lilly has warned,²⁹ even though, as Raz points out, tolerance has a good claim to being the single most important value to deserve protection, according to classical liberal thinking.³⁰

Why "realism" is unrealistic. Machiavelli and Hobbes are variously credited with having been the *Urväter* of political "realism", but, where Machiavelli is concerned, this claim is only partially accurate. For unlike modern-day (or perhaps, "post-modern"-day) "realists", Machiavelli laid stress on the neces-

sity of appearing both moral and benevolent. In so urging, he recognized the existence of a universal moral law; he merely felt that "princes" sometimes needed to ignore it. Contemporary "realist" writings do not necessarily share these suppositions.

The realist-idealist debate can be reduced to three core disputes: concerning the place of morally-informed vision in policy-making, regarding the feasibility of emphasizing and promoting the common interests of all parties to a given conflict, and concerning the nature of interests themselves.

To take up the first two points together: contemporary "realists" have tended to urge policy-makers to advance the immediate material and short-term security interests of their own state or states, rather than the shared interests of an entire region (incidentally, urging policies based on a specific set of values and ethical dispositions, rather than on the kind of purged science they profess to practise). The behavior of Clemenceau and Lloyd-George at Versailles, like that of Carrington, Owen, Hurd, and Major during the Serbian Insurrectionary War of 1991-1995, was classically "realist", seeking to advance or protect the specific interests of Britain (or, in Clemenceau's case, France) and showed little real concern for the merits of the case on the ground. Whether there should have been plebiscites conducted after World War One in the South Tirol or in Transylvania or in what became southern Slovakia, or whether the unity or separation (in 1991-1995) according to one formula or another of the nations of Bosnia best accorded with the interests of the people constituting those nations were not questions into which these politicians cared to enter. The reason is that they allowed themselves to be guided by the hope of safeguarding British or French *interests*, in effecting subscribing to political "realism". Their approach tended to emphasize the *conflict* of interests locally (between Germans and Poles, Hungarians and Romanians, Serbs and Muslims, etc.) rather than to attempt to identify common interests, such as, in the Bosnian case the reduction of xenophobia on all sides and the removal of chauvinistic nationalists from positions of power on all sides.

But to expect "realists" to concern themselves with common interests is to expect "realists" to think like "idealists". Nor can "realists" be expected to concern themselves with achieving a "just" solution, much less with promoting "justice" in a peace settlement, in a region, or even in the world, justice being the quality inhering in legitimate government and not one or another territorial settlement. The abnegation of moral re-

sponsibility by "realists" is complete and all-encompassing. For such "realists", politics is a zero-sum game, in which there are winners and losers: the whole notion of justice, in which all persons and groups are to some extent "winners" is entirely foreign to "pure realism".

Moreover, "realists" have been limited by an oversimplified view of interests (the third point registered above). Rather than allowing, as John Spanier does, that a nation may have interests of an ethical or normative nature,³¹ in effect that the antipathy between values and interests postulated by "realists" may be misleading and even dangerous, many "realists" tend to emphasize the direct "material" interests of one nation versus another, be these interests of an economic, territorial, security, or resources nature. For the "realist", the only reason why one agent may rationally support another's claim is in the hope of direct reciprocation on a matter considered important by that agent. Gewirth counsels against such an analysis. In his view,

...the rational agent's recognition and support of other persons' positive rights does not have as its ground merely, or even primarily, a kind of "rational", strategic, self-centered calculation of how according these rights to others may probably help him to receive such help himself. The ground is primarily not one of reciprocity but rather of mutuality. It is not a contingent matter of quid pro quo but a necessary [a priori] matter of persons' common humanity as purposive agents. The agent recognizes that other persons are similar to her in being prospective purposive agents and having the needs of agency, and on this ground she rationally accepts that they have the same positive rights she necessarily claims for herself. Thus a kind of community, a common status of having needs that require for their fulfillment the positive help of others, lies in the background of the argument for positive rights, so that rights and community are in this way also brought together.³²

But if, as Spanier implies and as Kant explicitly urges, the interests of justice, toleration, and freedom cannot be divorced

from the "material" interests of states, then the endeavor to sacrifice the former *in order* to achieve the latter can only founder and end in disaster. Political "realism", in a word, is utterly unrealistic and can only be unrealistic. "Idealists", in spite of their name, are more truly realistic, in urging that peace, prosperity, and harmony among nations can only be fostered by seeking to promote the values upon which they are founded. Kant would have agreed with Machiavelli on the importance that any peace settlement appear to be just; but where Kant departs from Machiavelli is in his conviction that the reality of justice is also essential.

The Great Powers' leaders have, with a very few exceptions – Woodrow Wilson, Franklin Delano Roosevelt, and Jimmy Carter come to mind – operated on the basis of political "realism". Pure realists are even vulnerable to criticism on the basis of their own values. The results speak for themselves. The Treaty of Berlin, concocted in 1878, was supposed to serve the interests of Britain and France by reducing the territorial extent of Bulgaria (expected to remain a Russian protégé) and the interests of Austria-Hungary, by assigning to her control the Ottoman province of Bosnia-Herzegovina (albeit, shorn of Novi Pazar). In actual fact, this product of "realism" sowed deep animosities in Bulgaria, opened Macedonia to fierce competition between Serbia, Bulgaria, and Greece, politicized Bosnia's Muslims, alienated Bosnia's Serbs, and destabilized much of the region, setting the stage for the Balkan Wars of 1912-1913 and World War One. In order to defend the "realism" of "realism" as exemplified in the Treaty of Berlin, one would have to believe that both long-term Balkan instability and the outbreak of continent-wide warfare in 1914 served the interests of the Great Powers (recalling that World War One went a long way toward draining the financial resources of those self-same powers). This seems a dubious proposition.

"Realism" triumphed again at the London Conference in 1913, which recognized Albania within truncated borders and legitimated the Serbian conquest of a large chunk of the newly declared state, even though the local majority was Albanian and preferred union with Albania, thereby unnecessarily stoking resentment and discontent and sowing the seeds of future instability. Britain and France wanted to keep Albania small because of Albania's friendship with Austria-Hungary. Neither peace nor stability were of much concern to the British and French diplomats at the conference. But the problems created

by the self-serving assignment of Kosovë to Serbia have continued to this day, playing a not inconsiderable role in the destabilization of socialist Yugoslavia.

"Realism" and "idealism" clashed at the Paris Peace Talks of 1919-1920, embodied respectively in the figures of Clemenceau and Wilson. But with the exception of the establishment of the League of Nations, the provisions of the treaties were inspired more by the self-serving avarice associated with "realism" than with the "mutuality of needs" (Gewirth's phrase) associated with "idealism". Whether one speaks of the punitive reparations imposed on Germany by the Allies or the confiscation of Germany's overseas colonies by Britain, France, and Japan, or the highly selective use of plebiscites (holding them in Schleswig-Holstein, Silesia, and Burgenland, but not in Alsace-Lorraine, southern Slovakia, Vojvodina, Transylvania, Sudetenland, Kosovë, or western Prussia, what came to be known as the "Polish corridor", all the while singing the praises of national self-determination, as if it were the operative doctrine of the Great Powers), in each of these cases, interest-driven "realism" guided the treaties' framers. But while I would deny that there is any blanket right of national self-determination which would justify the break-up of legitimate states or the arbitrary action of irredentist groups, when an empire collapses, someone has to decide as to the borders of the new states which will emerge out of its political cadaver. The *only* legitimate basis for drawing new borders in the contemporary age is according to the wishes of local residents, recognizing not a right of "national" self-determination but a *conditional right of local self-determination, operative in conditions of system collapse*. No matter that the reparations destabilized Germany and helped to build up the popularity of the Nazi Party. No matter that most of these "realist" territorial arrangements proved to be untenable, provocative, and dangerous, thereby showing themselves to be self-contradictory at the most fundamental level. Had the sundry peace treaties drafted in Paris been prepared with an eye to justice and the "mutuality of needs", it is arguable, à la A. J. P. Taylor, that there would have been no Third Reich, no Holocaust, and no World War Two.³³ On this argument, to defend the foreign policy "realism" of Versailles in a consistent and comprehensive way, one would have to argue that the Third Reich, the Holocaust, and the savagery of World War Two were all in the best interests of Britain and France at least, if not of the other Great Powers as well.

Arguments derived from the “mutuality of needs” and from the importance of fairness and justice suggest that the repudiation of values results, over the long term, in injury to one’s own material interests. In consequence, only “idealism” serves the long-term interests (including material interests) of powers; political “realism” is a short-cut to disaster.

Why there are no national rights

I have alluded, in the foregoing section, to certain counter-productive territorial arrangements made in Berlin, London, and Paris in the years 1878-1920. It is not by accident that I nowhere referred to the right of national self-determination as a principle being violated. I alluded to instability, local discontent, resentment, and the inability to move forward with democratization as unfortunate results of certain bad treaties, but, to my mind, the denial of national self-determination entails no self-contradiction, if only because I do not believe that there is any such right. This is not to justify land grabs by greedy powers; it is, on the contrary, a plea for working within existing borders, where they are geostrategically and economically viable.

On this point, my own thinking is close to Kant’s, albeit by analogy. In discussing his belief that there is no right of rebellion, Kant insists quite consistently that people must obey whatever sovereign commands authority in their land. Thus, although no revolution or rebellion can ever legitimately claim the allegiance of the people against the established government,

...once a revolution has succeeded and a new constitution has been established, the lack of legitimacy with which it began and has been implemented cannot release the subjects from the obligation to comply with the new order of things as good citizens, and they cannot refuse honest obedience to the [new] authority that now has the power.³⁴

By the same virtue, I would argue that there is no nationally-derived natural right of secession, but should such a secession succeed, its success would generate neither a right for further secessions from the new state nor a right to resort to

arms to restore the original union. War and violence, as Kant notes, can never (or rather, almost never, in my own view) be legitimately launched; or to put it differently, there can never be a right to insurrection or to offensive war. (The sole qualification to this maxim is insurrection to overthrow or escape from tyranny – for reasons to be discussed later in the section dealing with a theory of rights.)

Now the claim to a universal right of national self-determination must be situated within the theory of rights more generally. Legal philosophy admits of only three kinds of rights: divine rights, natural rights, and positive rights.³⁵ That national self-determination could be a *divine* right may be dismissed at once on the grounds that no major religion includes national self-determination among its doctrines, that the wishes of a supposed Supreme Deity cannot be readily ascertained or documented, and that the very existence (not to mention, nature) of such a being is, at the very least, open to some dispute. Nor is it admissible that national self-determination can be a *positive* right, since the exercise of such a right must, of necessity include a right of secession and since positive rights are, by definition, rights created and sustained by legal connection with the right-bestowing state. (There is no international convention granting a blanket positive right of self-determination to all self-declared national groups; so this alternative can be dismissed.) In other words, to claim a universal *positive* right of national self-determination would be to claim that all³⁶ states permit the secession of their territorial parts, when inhabited by distinct national groups – which is patently false. As a result, if there is a right of national self-determination, it can only be a *natural* right, which is to say, a right grounded in Natural Law.

The first difficulty confronting nationalists is that nationalism is, of its essence, morally relativist, rather than morally universalist.³⁷ As such, nationalism stands in tension with, if not in a relationship of overt repudiation of, Natural Law. By denying Natural Law, the nationalist denies the only possible ground for the presumed right which s/he wishes to enjoy and ends without any claim to that right. Moral consequentialism, moral conventionalism, and moral contractarianism all entail a denial of the existence of natural rights;³⁸ and yet, these approaches (and consequentialism in particular) constitute precisely the moral foundations of nationalism.

The second difficulty is that even if our would-be nationalist offers to embrace moral universalism (which holds that all

people of all races and nations are of equal moral worth, enjoy the same natural rights, and ought to enjoy the same positive rights), how is s/he to deal with the circumstance that Natural Law theory derives all rights from duties, that rights are thought to be interlinked with corresponding duties? To put it another way, if a national group enjoys the right to secede, the state must have a duty to permit that group to secede. But, ironically, nationalists rarely, if ever, make the latter claim. Moreover, if the nation-state is the ideal, then the dominant national group within the given state must be entitled to define which language or languages will be official and what will be the content of officially permitted (or supported) culture (a claim registered by Franco in Spain, Ceaușescu in Romania, Karadžić in Bosnia, and others, and indeed a common claim by nationalists), and that must of necessity, entail a moral duty on the part of minority groups to relinquish their indigenous languages and cultures upon command. Yet this proposition lands the nationalist in a twilight realm of pure subjectivity not far from the pseudo-metaphysics of Max Stirner. Nationalists, it seems, affirm and deny the same maxim in the same breath.

But there is a third difficulty, viz., that the doctrine of national self-determination directly contradicts an essential corollary of moral universalism: "Any action is *right* if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law."³⁹ In other words, the exercise of such a right (of national self-determination) *always* violates the rights of others, regardless of their number. Even if the support for secession within subregion X of the Republic of Z were 100 per cent, that secession would violate the rights of those citizens remaining with rump-Z (except, as already mentioned, in the case of Z being ruled by a tyrant). Or, to put it another way, moral universalism does not legitimate the exercise of a right of national self-determination, and if a "right" may never be exercised, then it is not a right at all. This argument is not so different from that of James Madison in *The Federalist Papers* or from that of John Stuart Mill in *On Liberty*. In *Federalist Paper* No. 51, specifically, Madison is concerned to prevent majority rule from threatening the rights of a minority, however defined, while Mill *begins* his 1859 tract with a warning about "'the tyranny of the majority' [which] is now generally included among the evils against which society requires us to be on its guard."⁴⁰

But there is yet a fourth difficulty which the doctrine's advocates encounter. If there were a "right of national self-determination", it would, of necessity, take the form of "all Serbs have the right to live in one state," as Dobrica Ćosić and Slobodan Milošević have put it, because if the claim were construed rather as "some Serbs have the right to live in one state," then the state would be premised on an inequality of rights among co-ethnics, which is to say on a right which is sometimes enjoyed, sometimes not. But, to continue, such a right would have to entail a further claim that "Serbs have a right to live by themselves," i.e., without the presence of non-Serb minorities, since if this right were omitted, inevitably the "national right" of one or another group would be violated. In other words, the assertion of a "right of national self-determination" entails, of necessity, a legitimization of "ethnic cleansing" (genocide).

Why should this be so? Let us imagine that we had a nation known as the Fyromese and that they were intermixed with another, larger nation known as the Fopogese. Let us suppose further, that they coexisted in a country consisting of five provinces, with the following population distribution:

Province A: 2,100,000 Fopogese; 0 Fyromese
Province B: 3,200,000 Fopogese; 0 Fyromese
Province C: 2,450,000 Fopogese; 0 Fyromese
Province D: 1,800,000 Fopogese; 370,000 Fyromese
Province E: 1,950,000 Fopogese; 1,200,000 Fyromese

And let us further suppose that the Fyromese are so intermixed with the Fopogese in provinces D and E that it would be utterly impossible to draw any border without leaving some of each group within the territory controlled by the other. In other words, imagine a territory bearing, in this regard, some resemblance to Bosnia-Herzegovina in 1991. It is immediately apparent that unless our Fyromese wished to change their status from being a minority in one Fopogese-dominated state to being a minority in two Fopogese-dominated states, the only recourse they could have in the endeavor to exercise their supposed "right of national self-determination" (thereby asserting their supposed "right" to determine the official language(s) of state and define its culture) would be either to reduce the Fopogese to second-class status or to expel most or all of the Fopogese from those districts in which they intended to create their state. Thus, there can be no "right of national self-deter-

mination" without either at least a contingent right to practise ethnic and cultural discrimination or a "right of ethnic cleansing", i.e., a "right to perpetrate genocide," as defined under the *Geneva Conventions*.

But it should be recalled that doctrine advocates are seeking to reconcile their claims with Natural Law and that the central principle of Natural Law is the maxim, "I ought never to act except in such a way that I can also will that my maxim should become a universal law."⁴¹ Kant restates this rule in *The Metaphysics of Morals*, adding the crucial corollary, "Any maxim [or act] that does not so qualify is contrary to morals."⁴² Unless one can claim that the world would be a better place if people everywhere practised discrimination as they saw fit or, if they deemed it "appropriate", killed off those whose presence they found inconvenient, one cannot feel legitimated in claiming genocide as a natural right; moreover, anyone seriously making such a claim could only be judged completely insane. It appears that Natural Law can never legitimate the taking of life, as entailed in the claim to a right of "ethnic cleansing", thus demonstrating that the doctrine of a "right" of national self-determination stands in direct contradiction to Natural Law.

Now, two objections may be raised to the foregoing argument. The first is that the claim that all co-ethnics should live in one state needs to be qualified with reference to existing boundaries. That is, Serbia had a right to go it alone, just as Croatia did, but it did not have a right to take Croatia's Serbs (or even Bosnia's Serbs) with it. The second is that this right should be restricted to nations in a numerical majority locally. I shall take up these possible objections in order.

Where the first qualification is concerned, this transparent effort to salvage the "right" by tying it to the doctrine of *uti possidetis*⁴³ is doomed to fail, because these are contrary principles, not complementary ones. If the right of self-determination abides in the entire people living in a given state community (or in their government), then it is not a *national* right at all, but a *state* right.

The second qualification is a common one and reflects a widespread assumption about such "alleged" rights. But in actuality, such a qualification makes the "national right" hostage to the democratic principle – which was precisely the principle embodied in the Bosnian state referendum of February-March 1992 and the principle rejected by the Bosnian Serbs. Moreover, if proportionality is the rule, then we are faced with

the apparent "truth" that a minority of 49.999 per cent would enjoy no right of self-determination, while a majority of 50.001 per cent would not only enjoy that right, but would also enjoy a further right to dictate its cultural agenda to the minority of 49.999 per cent and suppress the latter's culture. Moreover, in a situation like Bosnia's (as of 1991), with three minorities, no single group would enjoy a separate right of self-determination if defended on the democratic principle – which again makes nonsense of the supposed "right". Thus, this qualification turns out, on closer examination, to be untenable.

Further possible objections. Before turning to the alternative theory of rights which I wish to offer, I should like to take up three further possible objections to the arguments I have made thus far.

First, it might be argued that in associating the doctrine of the right of national self-determination with political realism, even if I do not equate them, I am forgetting that Wilson, perhaps the doctrine's greatest champion in this century, was the quintessential idealist and that Herder himself was a romantic nationalist, not a classical "realist". Is this a case of conflating realism with idealism – and more, of outright misattribution? That the national doctrine and the realist school enjoyed separate births is clear enough, but they have become associated over time. Already in the nineteenth century, diplomats of the Great Powers did not hesitate to mouth the rhetoric of self-determination while seeking to advance their own material and security interests. More particularly, in the course of the nineteenth century, nationalism became the legitimating cover for the pursuit of the state's material interests, and the appearance of honoring the supposed "national rights" of smaller nations served, in turn, to present one's own state as gracious and noble, even while providing legitimation for the ideology of nationalism. In this century, moreover, despite their different births, both have become part of the common stock of mainstream political thinking.

Second, it might be argued that rights are ultimately subjective, that rights are what people think they are (the position of pure nominalists such as Thrasymachus in Book I of Plato's *Republic*). The corollary is that if people think that they enjoy such a right, then, by virtue of their belief alone, they come into possession of that right. Such solipsistic argumentation might be acceptable on conventionalist grounds, but quite apart from

the philosophical limitations and moral relativism of conventionalism,⁴⁴ a right can only be understood – as Mary Gregor notes, summarizing Kant – as “...a capacity to put another under obligation.”⁴⁵ In other words, the notion of rights presumes that there is a consensus about rights (as is implied already in the concept, *Universal Reason*). Elsewhere, in *The Doctrine of Right*, Kant defines his subject as “the sum of laws for which an external lawgiving is possible,”⁴⁶ thus linking right with obligation via their connection in (natural or positive) law.

A possible third objection would hold that the democratic principle provides that people may claim the right to associate with whichever state they choose, to secede from one state, to set up independent republics at will, even to seek to have the territory in which they live annexed to a neighboring state. But nationalists seeking to found their claims on democratic theory are obliged to demonstrate why nationality, rather than religion or some other shared trait, for example, should enjoy primacy in establishing the legitimacy of separatist movements, or, for that matter, why a shared trait authorizes a group to terminate its association with others not sharing this trait. Until doctrine advocates accomplish that task, why should skeptics give greater credence to a supposed right of *national* self-determination than to equivalent principles established on the basis of religion, social class, political orientation, or cultural compatibility? Moreover, doctrine advocates need to resolve the dilemma set by the fact that the consistent exercise of this supposed right would result in indefinite secessions, subsecessions, and subsubsecessions, and further, that the existence of ethnically mixed areas poses a problem soluble *only* by ignoring the human rights of persons living in those areas and by repudiating Natural Law altogether.

Toward a Theory of Rights

The preceding argument was to some extent presaged, as regards the question of national rights, in a debate published in *Political Theory* in 1992 between two thoughtful students of nationalities affairs, Chandran Kukathas and Will Kymlicka. In the course of two articles for that journal, Kukathas outlined a position close to my own. Kymlicka, in a reply to the first of these, presented an articulate case for the contrary view.⁴⁷ What is, I think, distinctive in the present essay is the endeavor to

harness Natural Law theory to the analysis of the question at hand.

St. Thomas Aquinas (ca. 1225-1274), although not the originator of the concept of Natural Law (which was common currency in Cicero's time already), gave this concept its first systematic and comprehensive expostulation. Linking this law with what the Stoics had called *immanent Reason* (and which I have elsewhere called *Universal Reason*⁴⁸), Aquinas explained,

Now among all others the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end: and this participation of the eternal law in the rational creatur[e] is called the natural law.⁴⁹

Kant's teaching on Natural Law added to that of Aquinas in two important respects. First, like Hobbes,⁵⁰ Kant dismissed the notion that God's will could serve as the ultimate foundation of morality, tracing the moral sense to universally-shared reason.⁵¹ Second, having rejected all heteronomous sources of morality, Kant declared that moral concepts can arise only *a priori*, and never *a posteriori*. That is to say, moral principles "...cannot be abstracted from any empirical, and therefore merely contingent, knowledge."⁵² In so saying, Kant attributed to reason a greater degree of certainty than Aquinas had conceded.

Earlier in this essay, I argued that advocates of the doctrine of national self-determination are unable to establish the status of the supposed national "right" because, in several important regards, it is incompatible with Natural Law, the source of all natural rights. However, it is important to stress that both individual and societal rights are protected under Natural Law, because they are firmly embedded in interlocking networks of duties. *Individual rights* include the right to preserve one's life, to own property, to develop one's faculties, to hold such religious and/or philosophical views as one judges appropriate, to speak one's mind (as long as no injury is intended thereby), and to associate with those from the association with whom one derives satisfaction. What I call *societal rights* include rights enjoyed not by individuals qua individuals, but communally.

These include a society's right to public security, to a functioning public education system, to low-cost medical care, to the commitment of the state to uphold a system of justice broadly compatible with Natural Law, etc.⁵³ Society's rights imply and entail corresponding duties on the part of the state, just as the rights of individuals entail corresponding duties (if only of respect for them) on the part of other individuals as well as of the state. As I have noted elsewhere, some of those rights which are claimed as "national rights" are in fact *individual* rights shared by a group of people. As individuals they are entitled to aggregate for the pursuit of goals and interests shared in common. Natural rights of this order would include

...the right to obtain education in one's own language, where there are enough students with that native language to warrant classes; the right to develop and pursue one's own culture, together with fellow members of that culture (including converts); [and] the right to establish cultural and educational institutions funded from private funds or from funds generated by the members of that community.⁵⁴

My argument, thus, is *not* that national groups do not have rights. On the contrary, they enjoy all those rights based on the aggregation of the individual rights of their members and all those societal rights in which they partake as sectors of a broader society. What I am denying is, rather, that there are specific "national rights", such as alleged rights to secession, to ethnic autonomy, to cultural hegemonism (suppressing the languages and cultures of local minorities), to mass murder and cultural annihilation dressed up as "cleansing", to confiscation of the houses and property of members of another nation and reassignment of them to members of one's own nation,⁵⁵ or to state funding for the cultural institutions, radio stations, newspapers, and ethnic events of specific nationality groups (unless such funding is specifically guaranteed under *positive* law in the given state). To the extent that one wished to establish a modified right of national self-determination at a lower level, one would have to derive it from clearly recognized individual rights. Thus, for example, individuals are generally recognized to enjoy a natural right to emigrate. From this, one may legitimately derive a collective (or national) right of emigration, as

per the flight of the Israelites from Egypt under Moses or the flight of the Serbs from Kosovë under Patriarch Arsenije III Crnojević. But just as an individual does not enjoy a right to declare her house "sovereign" or to declare it to be under the sovereignty of a foreign power,⁵⁶ so too, nations taking leave of a given state are not entitled to take their land with them (with one exception).

I have alluded at least twice already to an important exception to the general moral proscription of secession, constituted by the right (and duty) to oppose tyranny. This exception was first established, not by Kant, but by John Locke (1632-1704), and centers on the question of tyranny. If we define tyranny – as the medievals did⁵⁷ – as the comprehensive departure on the part of the sovereign from the canons of Natural Law, then, in conditions of tyranny, sovereignty is temporarily vested in the people, who are not only authorized, but indeed duty-bound, to overthrow the tyrannical government and to appoint another, in better harmony with the moral law. Locke was, of course, writing in justification of the exclusion of James II from the throne of England; hence, his defense of popular sovereignty was an essential element in his advocacy of what amounted to Whig revolution. But the same principle could be cited in justification of the declarations of independence by Slovenia and Croatia in 1991, since, if a society is unable to overthrow a tyrant, whatever the reason for that deficiency may be, individual parts of that society are entitled to remove themselves from that tyranny.

Now it might be thought that the right to escape from tyranny might lay the theoretic foundation for a right of *national* self-determination. But, in fact, such logic would be flawed – in the first place because the right to escape tyranny provides no grounds for aggregating right at the level of nation, and in the second place, because advocates of secessionism (as the example of Quebec makes clear) do not wish to be limited in the exercise of this option to clearly tyrannical situations. Moreover, if tyranny is a moral problem, it is a problem for the entire people of the given state – *even if other parts of the society are not themselves subjected to tyrannical repression* – and not just for one or another national group. When the Serbian government despoiled Kosovar Albanians of their individual human rights, this was a moral problem for *all* citizens of Serbia; when the Croatian government despoiled local Serbs of their individual human rights, this was a moral problem for *all* citizens

of Croatia. To deny this is to embrace the moral hedonism of consequentialism, in which rights and duties both evanesce, leaving only the license for self-gratification and self-interest. To put it another way, if the concept of rights is to be protected in a given society, then the rights of *all* permanent residents must be protected equally.

Conclusion

The doctrine of the right of national self-determination has been pernicious in its effects. And let no one doubt but that the proclamation of the so-called "right" by Wilson and Lenin, and its widespread validation, including for that matter by sundry scholars,⁵⁸ has encouraged people to take up arms on behalf of the nation. Ideas are not without their effects, and bad ideas are apt to have bad effects. While no set of ideas can solve problems absolutely, the widespread abandonment of the doctrine of the right of national self-determination might well have a salutary and pacifying effect in certain troubled areas, removing at the same time at least one source of violations of human rights.⁵⁹ The question of tyranny, which constitutes the one exception to the proscription of secession, cannot be put to use in the service of this doctrine, which remains incompatible with the moral universalism of Natural Law.

As already noted in chapters 1-2, the societies of East-Central Europe can hope for long-term stability only to the extent that they develop and maintain legitimate systems. And legitimacy (the subject of the concluding chapter) in turn entails the harmonization of the socio-political-economic system with universal standards of morality, standards which I subsume under the rubric of Natural Law.

5. Legitimacy or Order – Which is the Fulcrum?

Make no mistake: both liberal idealists and liberal realists value both legitimacy and order.¹ The difference is that where idealists believe that civic order is a consequence of system legitimacy and that legitimacy is, in turn, measured in terms of the system's harmony with certain values and norms, realists construe legitimacy as but the face of civil order, however achieved. Machiavelli, still a central reference point for the realist tradition, or what's left of it,² had no objection to legitimacy as such, but placed his emphasis on *the appearance* of legitimacy, or rather, on the appearance of personal virtue on the part of the ruler, which he, not being an idealist, equated with legitimacy.

It is worth remembering that Samuel P. Huntington, the dean among contemporary "realists", treated democracy and Leninism, in his 1968 work, *Political Order in Changing Societies*, as functionally equivalent, insofar as they both assured (so he wrote) civil order. It is this functional-mindedness of the "realists" which accounts for the fact that they treated the communist systems as functionally equivalent to Western democracies in terms of expected stability, imperviousness to collapse and/or revolution, and life expectancy. "Realists" at times expressed contempt for those ("idealists") who, such as Tismaneanu,³ were engaged in research into values and dissent, human rights movements, women's organizations, and other agents promoting concepts of civil society,⁴ because these "realists" were skeptical about the impact that norms and values could have in the world of politics. They dismissed or ignored predictions of the eventual collapse of communism registered from 1980 onward by such scholars as Ernst Kux, George Schöpflin, Anneli Ute Gabanyi, Ivan Volgyes, Dimitry Pospelovsky, and others⁵ as mere wishful thinking and insisted that communism would last "forever". They ignored the dramatic findings by "Marta Toch" (a pen name) concerning the growth of an independent civil society in Poland in the early 1980s, which she called a "quiet revolution" and documented in a 101-page report released at the end of 1986.⁶ And when proven wrong, completely wrong, rather than abandoning the "realist" paradigm for the threadbare piece of ideology that it is, they have preferred to imagine variously either that *everyone* is

a "realist" or that the predictive powers of *realism* and *idealism* are equivalent (a supposition advanced, however, on entirely nonempirical grounds). Moreover, whether because of lack of familiarity with the literature or because of an inability to remember the writings of those with whom they have disagreed or possibly for other reasons, some "realists" have now fallen into the trap of denying that anyone ever anticipated the events of 1989, in spite of a written record to the contrary! By contrast with the "realists", idealist writers such as Ken Anderson, István Lovas, Ferenc Feher, and Agnes argued that legitimation is not implied in the mere establishment of order and control, and that socialist Hungary, with which they were primarily concerned, lacked the normative basis on which legitimation could be achieved.⁷

Realism is, of course, an orientation which emphasizes power and power-holders. Realists tend to emphasize conflict of interest, and scholars under the influence of the realist paradigm tend to believe that change starts at the top and, therefore, that researchers do best to talk to power-holders. Realists tend to be conventionalists, i.e., to treat laws as the final arbiter, and to be impatient with appeals to human reason, conscience, normative standards such as Natural Law, or even normative covenants such as the Universal Declaration of Human Rights. Zvonko Lerotić, a professor of political science at the University of Zagreb and a sometime adviser to the late Croatian President Franjo Tudjman, offered a caricature of the "realist" position in December 1995, in urging (evidently seriously),

Peace is not better than war, nor war better than peace, justice is not better than injustice, nor injustice better than justice, neither is virtue better than crime or crime [better] than virtue, unless it leads to realizing the state and national dreams.⁸

Idealism offers a sharply contrasting image of the world. I find myself, indeed, in complete agreement with Chris Brown's assertion that

...ethical considerations have been major sources of change, in particular in Eastern Europe, where the moral bankruptcy of the old order was as apparent as its economic and political failures....

Policies guided only by considerations of *Realpolitik* will not succeed in establishing a legitimate order in Europe. New structures will neither merit nor receive public acceptance unless they are seen as ethically defensible.⁹

Idealists tend to emphasize values and norms, and scholars under the influence of the idealist paradigm tend to believe that the most important processes of change tend to start from below, and therefore, that researchers endeavoring to keep their hands on the “pulse” of society need to talk with people in many walks of life. Idealists tend to be universalists, i.e., to treat human Reason as the final arbiter, and to believe that it is appropriate to judge laws according to standards set by Natural Law, as well as by normative covenants such as the Universal Declaration of Human Rights. Further, where realists take *output* as the measure of a system’s legitimacy (and hence their stress on civil order, prosperity, and the development of strong institutions of state), idealists look rather to the normative structure in assessing a state’s (or system’s) legitimacy. It is in this spirit that Thomas Pogge has urged a rethinking of the notion of state sovereignty, proposing that it be deconstructed and dispersed vertically. Characterizing the traditional concept of state sovereignty as “no longer defensible”, Pogge has urged, instead, that citizens’ “...allegiance and loyalties should be widely dispersed over these units: neighborhood, town, county, province, state, region, and world at large.”¹⁰

My own version of idealism, grounded in the philosophical writings of John Locke, Immanuel Kant, and James Madison in the first place, and having resonance also with the thinking of contemporary writers Alan Gewirth¹¹ and John Rawls,¹² starts with the classical liberal notion of Universal Reason, taking that as the starting point for constructing a theory of system legitimacy. It is, thus, on the basis of an appeal to Universal Reason that I take the liberal project (as defined in chapter 1) as the basis for the moral legitimacy of a given system, and social justice (respecting also the dual principles of equality and sufficiency) as the core of any claim to economic legitimacy. As for political legitimacy, I link this to widespread agreement on certain fixed rules of political succession with the election of public officials being the principal rule to win such agreement in the contemporary era.¹³

Do idealists trivialize or disregard power considerations? Of course not. Rather, idealists believe that power does not operate in a normative vacuum, and that the mere endeavor to behave as if there were no universally understood normative standards has operated to bring about the collapse of more than a few authoritarian systems.

The chief lesson of 1989, therefore, is that the idealists were and are always right: power without legitimacy cannot last, order without the sanction of legitimate authority is, at most, transitory, ephemeral. Only system legitimacy can provide the foundation for stable political life. The more legitimate a system is (in its moral, political, and economic spheres), the better its chances of stability and endurance. The less legitimate a system (in any of the three specified spheres), the greater the chances that civil order will break down and that the institutions of state will prove unstable. There are all sorts of system equilibria. But only a fully legitimate system can remain at equilibrium for long periods of time; where it allows its institutions and laws to become corrupted (e.g., by allowing hitherto democratic institutions to evolve into the instruments of plutocratic rule), a system condemns itself to death.

Hence, to Huntington's dictum that the all-important distinction in politics is between those systems capable of maintaining order and those not so capable, I answer: Do not mistake the smoke for the fire. The fulcrum of politics is always the principle of triadic legitimacy which demarcates differences in system behavior, capacity, stability, and life expectancy.

Endnotes for Chapter 1 (pp. 9-14)

¹ Shashi Tharoor, "Are Human Rights Universal?," in *World Policy Journal*, Vol. 16, No. 4 (Winter 1999/2000), p. 3.

² See the exposition in Petr Kropotkin, *Mutual Aid: A Factor of Evolution* (Boston: Porter Sargent Publishers, 1902), especially introduction, chapters 3, 7-8.

³ Heinrich A. Rommen, *The State in Catholic Thought: A Treatise in Political Philosophy* (New York: B. Herder Book Co., 1945; reprinted by Greenwood Press, 1969), p. 155.

⁴ Here I am evidently following in the footsteps of Polish liberal Mirosław Dzielski who, in his *Duch nadchodzącego czasu* (Wrocław: Wektry, 1989), reportedly endeavored to identify a common ground between Catholicism and liberalism. See the summary of Dzielski's views in Jerzy Szacki, *Liberalism after Communism* (Budapest: Central European University Press, 1995), pp. 178-180. For further discussions of the relationship between Catholicism and liberalism, see Kenneth L. Grasso, Gerard V. Bradley, and Robert P. Hunt, (eds.), *Catholicism, Liberalism, and Communitarianism: The Catholic Intellectual Tradition and the Moral Foundations of Democracy* (Lanham, Md.: Rowman & Littlefield, 1995); John Langan, S.J., "Catholicism and Liberalism – 200 Years of Contest and Consensus," in R. Bruce Douglass, Gerald M. Mara, and Henry S. Richardson (eds.), *Liberalism and the Good* (New York and London: Routledge, 1990); and R. Bruce Douglass and David Hollenbach (eds.), *Catholicism and Liberalism: Contributions to American Public Philosophy* (Cambridge: Cambridge University Press, 1994).

⁵ St. Thomas Aquinas (1225?-1274), who did much to develop the theory of Natural Law, also had this to say about civic equality: "Political [as opposed to despotic] government is the leadership of free and equal people; and so the roles of leader and led (ruler and ruled) are swapped about for the sake of equality, and many people get to be constituted ruler either in one position or responsibility or in a number of such positions." – St. Thomas Aquinas, *In libros Politicorum Aristotelis*, as quoted in John Finnis, "Is Natural Law Theory Compatible with Limited Government?," in Robert P. George (ed.), *Natural Law, Lib-*

eralism, and Morality: Contemporary Essays (Oxford: Clarendon Press, 1996), p. 2.

⁶ Regarding Kant on equality, see Allen W. Wood, *Kant's Ethical Thought* (Cambridge: Cambridge University Press, 1999), pp. 132-139.

⁷ A. P. Martinich, *Hobbes: A Biography* (Cambridge: Cambridge University Press, 1999), pp. 147-148. Martinich admits that this is a minority view among specialists in Hobbes' philosophy.

⁸ Thomas Hobbes, Preface to *On the Citizen*, trans. from Latin and edited by Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998), pp. 9-10.

⁹ Max Stirner, *The Ego and His Own*, trans. from German by Steven T. Byington, ed. by James J. Martin (New York: Libertarian Book Club, 1963). See also R. W. K. Paterson, *The Nihilist Egoist: Max Stirner* (London: Oxford University Press, 1971).

¹⁰ There may be other strands as well, but these are the labels I have applied to the three strands identified in my chapter, "The Classical Liberal Tradition: Versions, Subversions, Aversions, Traversions, Reversions," forthcoming in a book edited by Mitja Žagar, Oto Luthar, and Keith McLeod.

¹¹ As Stephen Holmes points out rather indirectly in his chapter, "The Permanent Structure of Antiliberal Thought," in Nancy L. Rosenblum (ed.), *Liberalism and the Moral Life* (Cambridge, MA: Harvard University Press, 1989), p. 230.

¹² Quoted in Henry S. Richardson, "The Problem of Liberalism and the Good," in Rosenblum (ed.), *Liberalism and the Good*, p. 1.

¹³ Rommen, *The State in Catholic Thought*, p. 275.

¹⁴ Quoted in Rudolf Rocker, *Nationalism and Culture*, trans. from German by Ray E. Chase (Montreal: Black Rose Books, 1998), p. 174.

Endnotes for Chapter 2 (pp. 15-25)

¹ Laura D'Andrea Tyson, "The Three Challenges of Economic Transition in Eastern Europe," in George W. Breslauer (ed.), *Dilemmas of Transition in the Soviet Union and Eastern Europe* (Berkeley: Center for Slavic and East European Studies, 1991), p. 45.

² *Ibid.*, pp. 47, 48.

³ *Ibid.*, pp. 48, 49.

⁴ *Ibid.*, p. 63.

⁵ Ivo Banac, "Introduction", in Ivo Banac (ed.), *Eastern Europe in Revolution* (Ithaca, NY: Cornell University Press, 1992), p. 11.

⁶ Katherine Verdery and Gail Kligman, "Romania after Ceausescu: Post-Communist Communism?," in Banac (ed.), *Eastern Europe in Revolution*, p. 140.

⁷ Elez Biberaj, "Albania: The Last Domino," in Banac (ed.), *Eastern Europe in Revolution*, p. 205.

⁸ Andras Kepes, "The Current Political Background of the Economic Transition in Hungary," in Breslauer (ed.), *Dilemmas of Transition*, p. 125.

⁹ Ken Jowitt, "The Leninist Legacy," in Banac (ed.), *Eastern Europe in Revolution*, p. 223.

¹⁰ *Ibid.*, p. 222.

¹¹ Patricia J. Smith, "German Economic and Monetary Union: Transition to a Market Economy," in Sabrina Petra Ramet (ed.), *Adaptation and Transformation in Communist and Post-communist Systems* (Boulder, CO: Westview Press, 1992), p. 42.

¹² Anneli Ute Gabanyi, *Die unvollendete Revolution. Rumänien seit 1945* (Munich: Piper Verlag, 1990). See also, by the same author: *Systemwechsel in Rumänien. Von der Revolution zur Transformation* (Munich: R. Oldenbourg Verlag, 1998).

¹³ Eniko Bollobas, "Hungary: Post-Communist Trends and Prospects," (November 1991), in Constantine Menges (ed.), *Transitions from Communism in Russia and Eastern Europe: Analysis and Perspectives* (Lanham, MD: University Press of America, 1994), p. 106.

¹⁴ Gyorgy Tokay and Dorin Tudoran, "Romania: Is There a Transition to Democracy?" (April 1992), in Menges (ed.), *Transitions from Communism*, p. 136.

¹⁵ Chris Brown, "Introduction," in Chris Brown (ed.), *Political Restructuring in Europe: Ethical Perspectives* (London and New York: Routledge, 1994), p. 1.

¹⁶ Sabrina Petra Ramet, "Processes of Decay, Engines of Transformation: An Introduction," in Ramet (ed.), *Adaptation and Transformation*, pp. 7, 8. The book was finalized in 1991.

¹⁷ Sabrina Petra Ramet, "When Systems Collapse: Toward a Theory about the Relationship Between System Decay and Civil Strife," in Ramet (ed.), *Adaptation and Transformation*, p. 280.

¹⁸ Sabrina Petra Ramet, "The New Poland: Democratic and Authoritarian Tendencies," in *Global Affairs*, Vol. 7, No. 2 (Spring 1992), p. 135.

¹⁹ Sabrina Petra Ramet, *Social Currents in Eastern Europe: The Sources and Meaning of the Great Transformation* (Durham, NC: Duke University Press, 1991), pp. 334, 323.

²⁰ Ivo Banac, "Yugoslavia: The Road to Civil War," paper presented at the annual convention of the American Association for the Advancement of Slavic Studies, Washington D.C. (November 1990), p. 3, as cited in Reneo Lukić and Allen Lynch, *Europe from the Balkans to the Urals: The Disintegration of Yugoslavia and the Soviet Union* (Oxford and New York: Oxford University Press, 1996), p. 156.

²¹ Meier later drew upon his interviews and research to produce a highly successful volume concentrating, above all, on the years 1980-91. See Viktor Meier, *Yugoslavia: A History of Its Demise*, trans. from German by Sabrina P. Ramet (London and New York: Routledge, 1999). See also Viktor Meier, "Yugoslavia: Worsen-

ing Economic and Nationalist Crisis,” in William E. Griffith (ed.), *Central and Eastern Europe: The Opening Curtain?* (Boulder, CO: Westview Press, 1989), esp. pp. 263-264, 267, 275, 276-277.

²² Kazimierz Z. Poznański, “Property Rights Perspective on Evolution of Communist-Type Economies,” in Kazimierz Z. Poznański (ed.), *Constructing Capitalism: The Reemergence of Civil Society and Liberal Economy in the Post-Communist World* (Boulder, CO: Westview Press, 1992), p. 78.

²³ Kazimierz Z. Poznański, “Post-Communist Transition as Institutional Disintegration: Explaining the Regional Economic Recession,” in *Acta Oeconomica*, Vol. 50 (1999), No. 1-2, p. 6. See also Kazimierz Z. Poznański (ed.), *The Evolutionary Transition to Capitalism* (Boulder, CO: Westview Press, 1995).

²⁴ Sabrina Petra Ramet, *Social Currents in Eastern Europe: The Sources and Consequences of the Great Transformation*, 2nd ed. (Durham, NC: Duke University Press, 1995), p. 374.

²⁵ See table in Sabrina P. Ramet, *Whose Democracy? Nationalism, Religion, and the Doctrine of Collective Rights in Post-1989 Eastern Europe* (Lanham, MD: Rowman & Littlefield, 1997), p. 40.

²⁶ On Serbs, 1 Net web site (Belgrade), 10 January 2000, in *BBC Summary of World Broadcasts* (13 January 2000), on *Lexis-Nexis Academic Universe*; on Romanians, *Interfax news agency* (22 October 1999), in *BBC Monitoring Europe – Political* (22 October 1999), on *Lexis-Nexis Academic Universe*; on Albanians, *M2 Presswire* (5 May 1999), on *Lexis-Nexis Academic Universe*; on Bulgarians, *BTA (Sofia)*, 15 February 1999, in *BBC Monitoring Europe-Economic* (15 February 1999), on *Lexis-Nexis Academic Universe*.

²⁷ Joanna Regulska, “Integration or Colonization: Gendered EU and its Relationship with Accession Countries – the Case of Poland,” talk presented at the University of Washington, 14 February 2000. See also *Deutsche Presse-Agentur* (23 August 1999), on *Lexis-Nexis Academic Universe*; and *The Independent* (London), 15 October 1999, p. 8.

²⁸ Conversation with Kazimierz Poznański, Lynnwood, WA, 12 February 2000. Poznański deals with the failure of transition in extenso in his book, *Wielki przekret: Kleska polskich reform* (Warsaw, 2000).

²⁹ Kazimierz Z. Poznański, "The Morals of Transition: Decline of Public Interest and Runaway Reforms in Eastern Europe," in Sorin Antohi and Vladimir Tismaneanu (eds.), *Between Past and Future: The Revolutions of 1989 and Their Aftermath* (Budapest: Central European University Press, 2000), p. 235.

³⁰ Conversation with Kazimierz Z. Poznański, Seattle, WA, 18 February 2000. See also his "Comparative Transition Theory: Recession and Recovery in Post-Communist Economies," in *Emergo*, Vol. 5, No. 2 (Spring 1998).

³¹ Branka Nanevska, "The Sale of [the] Macedonian Economy," *AIM Press* (3 February 2000), p. 2. at www.aimpress.org.

³² Gati's comments at a conference held just outside Washington D.C., October 1989.

³³ Sabrina P. Ramet, "The Classical Liberal Tradition: Versions, Subversions, Aversions, Traversions, Reversions," forthcoming in a book edited by Mitja Žagar, Oto Luthar, and Keith McLeod.

³⁴ Munz calls Hooker "the last great representative of the medieval natural-law school," while Archer notes Hooker's debts to Aristotle and St. Thomas Aquinas, concluding that Hooker is better understood as a synthesis of what preceded him than as a precursor of what was to follow. See Peter Munz, *The Place of Hooker in the History of Thought* (London: Routledge & Kegan Paul, 1952), p. 206; and Stanley Archer, *Richard Hooker* (Boston: Twayne Publishers, 1983), p. 117.

³⁵ Richard Hooker, *Of the Law of Ecclesiastical Polity*, ed. by Arthur Stephen McGrade (Cambridge: Cambridge University Press, 1989), p. 80, italics removed.

³⁶ Sabrina P. Ramet, "The Failure of Transition in the Balkans – An Introduction," in *Modern Greek Studies Yearbook* (forthcoming), p. 4.

³⁷ C. B. MacPherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Oxford University Press, 1962), p. 199.

³⁸ John Locke, *Two Treatises of Government*, ed. by Peter Laslett (Cambridge: Cambridge University Press, 1960), II, p. 291, my emphasis.

³⁹ On this point, see also W. M. Spellman, *John Locke* (New York: St. Martin's Press, 1997), pp. 115-116.

⁴⁰ L. T. Hobhouse, *Liberalism* (London: Oxford University Press, 1911; reprinted, 1981), pp. 67, 70, my emphasis.

⁴¹ *Ibid.*, pp. 97, 101-102, 105, 107-108.

⁴² In my *Whose Democracy?*, introduction, chap. 3, conclusion.

⁴³ Or, for that matter, see Robert Grant, "Liberalism, Values, and Social Cohesion," in Zdeněk Suda and Jiří Musil (eds.), *The Meaning of Liberalism: East and West* (Budapest: Central European University Press, 2000), p. 74.

⁴⁴ John Paul II, *Encyclical Letter 'Centesimus Annus' of the Supreme Pontiff* (Boston: St. Paul Books, 1991), pp. 25-26.

⁴⁵ L. W. Sumner, *The Moral Foundation of Rights* (Oxford: Clarendon Press, 1987).

⁴⁶ Russell Hardin, *Morality within the Limits of Reason* (Chicago: University of Chicago Press, 1988).

⁴⁷ Jerzy Szacki notes the general unconsciousness about *political* liberalism in post-communist Poland. See his excellent and insightful *Liberalism after Communism* (Budapest: Central European University Press, 1995), pp. 202-203.

⁴⁸ John Paul II, *Centesimus Annus*, p. 16.

⁴⁹ Szacki, *Liberalism after Communism*, p. 199.

⁵⁰ Zdeněk Suda, "Liberalism in Central Europe after 1989," in *The Meaning of Liberalism*, p. 200.

Endnotes for Chapter 3 (pp. 26-43)

¹ See, for example, Yael Tamir, *Liberal Nationalism* (Princeton, NJ: Princeton University Press, 1993).

² Jamie Mayerfeld, "The Myth of Benign Group Identity: A Critique of Liberal Nationalism," in *Polity*, Vol. 30, No. 4 (Summer 1998), p. 557.

³ *Ibid.*, pp. 557-558.

⁴ See Norberto Bobbio, *Thomas Hobbes and the Natural Law Tradition*, trans. from Italian by Daniela Gobetti (Chicago: University of Chicago Press, 1993).

⁵ James R. Hurtgen, "Hobbes's Theory of Sovereignty in *Leviathan*," in *Reason Papers*, No. 5 (Winter 1979), pp. 64-65.

⁶ Leo Strauss, *The Political Philosophy of Hobbes: Its Basis and Its Genesis*, trans. from German by Elsa M. Sinclair (Chicago: University of Chicago Press, 1963), p. 66.

⁷ *Ibid.*, pp. 66-67.

⁸ Thomas Hobbes, *A Dialogue between a Philosopher and a Student of the Common Laws of England*, ed. by Joseph Cropsey (Chicago: University of Chicago Press, 1971), pp. 69, 71.

⁹ See Thomas Hobbes, *Leviathan*, ed. by Michael Oakeshott (Toronto: Collier Books, 1971).

¹⁰ Edmund Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W. W. Norton, 1988), pp. 58-60.

¹¹ Thomas Hobbes, *On the Citizen*, ed. and trans. by Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998), p. 76.

¹² Charles E. Merriam, Jr., *History of the Theory of Sovereignty since Rousseau* (New York: Garland Publ. Co., 1972; reprint of the 1900 edition), p. 25.

¹³ Arnold A. Rogow, *Thomas Hobbes: Radical in the Service of Reaction* (New York: W. W. Norton, 1986), p. 139. See also Hobbes, *On the Citizen*, p. 135.

¹⁴ Hobbes, *On the Citizen*, p. 80.

¹⁵ *Ibid.*, pp. 147, 152.

¹⁶ *Ibid.*, p. 245. Regarding Hobbes' views on absolute sovereignty, see also A.P. Martinich, *Hobbes: A Biography* (Cambridge: Cambridge University Press, 1999), pp. 151-153.

¹⁷ Rogow, *Thomas Hobbes*, p. 245.

¹⁸ Quoted in Carol Blum, *Rousseau and the Republic of Virtue: The Language of Politics in the French Revolution* (Ithaca, NY: Cornell University Press, 1986), p. 161.

¹⁹ The portrayal of Rousseau as a democrat, is, on the other hand, disputed by W. J. Stankiewicz. See Stankiewicz's introduction, "In Defense of Sovereignty: A Critique and an Interpretation," in W. J. Stankiewicz (ed.), *In Defense of Sovereignty* (New York: Oxford University Press, 1969), p. 27. See also Jacques Maritain, "The Concept of Sovereignty," in Stankiewicz (ed.), *In Defense of Sovereignty*, pp. 57-58.

²⁰ David Rosenfeld, "Rousseau's Unanimous Contract and the Doctrine of Popular Sovereignty", in *History of Political Thought*, Vol. 8, No. 1 (Spring 1987), pp. 83, 84.

²¹ *Ibid.*, pp. 87, 89.

²² J. W. Chapman, *Rousseau – Totalitarian or Liberal?* (1956), p. 139, as quoted in J. McManners, "The Social Contract and Rousseau's Revolt Against Society," in Maurice Cranston and Richard S. Peters (eds.), *Hobbes and Rousseau: A Collection of Critical Essays* (Garden City, NY: Anchor Books, 1972), p. 294.

²³ Ali A. Mazrui, "Alienable Sovereignty in Rousseau: A Further Look," in *Ethics*, Vol. 77, No. 2 (January 1967), p. 107.

²⁴ J. L. Talmon, *The Origins of Totalitarian Democracy* (London: Secker & Warburg, 1952).

²⁵ Jean-Jacques Rousseau, "The Social Contract," in *Social Contract*, comp. Sir Ernest Barker (Oxford and New York: Oxford University Press, 1960), p. 193.

²⁶ *Ibid.*, p. 180, Rousseau's emphasis.

²⁷ *Ibid.*, p. 175.

²⁸ Rudolf Rocker, *Nationalism and Culture*, trans. from German by Ray E. Chase (Montreal: Black Rose Books, 1998), pp. 161-162.

²⁹ See Blum, *Rousseau and the Republic of Virtue*, p. 242. For further discussion of the problematic relationship between liberalism and democracy, see John Kekes, *Against Liberalism* (Ithaca, NY: Cornell University Press, 1997), esp. chapters 1 and 8.

³⁰ For example, in Wojciech Sokolewicz, "The Relevance of Western Models for Constitution-Building in Poland," in Joachim Jens Hesse and Nevil Johnson (eds.), *Constitutional Policy and Change in Europe* (Oxford: Oxford University Press, 1995), pp. 252-253.

³¹ Rousseau, "Social Contract," p. 231.

³² Immanuel Kant, *Perpetual Peace*, as quoted in Matthew Levinger, "Kant and the Origins of Prussian Constitutionalism," in *History of Political Thought*, Vol. 19, Issue 2 (Summer 1998), p. 245.

³³ Immanuel Kant, "The Contest of the Faculties," as quoted in *Ibid.*, p. 244.

³⁴ Immanuel Kant, "Perpetual Peace," in *Political Writings*, ed. Hans Reiss (Cambridge: Cambridge University Press, 1970), p. 101, emphasis in original.

³⁵ On this point, see Sven Arntzen, "Kant's Denial of Absolute Sovereignty," in *Pacific Philosophical Quarterly*, Vol. 76, No. 1 (March 1975), pp. 1-3; and Levinger, "Kant and the Origins," p. 244.

- ³⁶ Allen W. Wood, *Kant's Ethical Thought* (Cambridge: Cambridge University Press, 1999), p. 248.
- ³⁷ See my *Whose Democracy? Nationalism, Religion, and the Doctrine of Collective Rights in Post-1989 Eastern Europe* (Lanham, MD: Rowman & Littlefield, 1997), introduction.
- ³⁸ Immanuel Kant, *The Metaphysics of Morals*, trans. from German by Mary Gregor (Cambridge: Cambridge University Press, 1991), pp. 130, 131.
- ³⁹ See Peter Nicholson, "Kant on the Duty Never to Resist the Sovereign," in *Ethics*, Vol. 86, No. 3 (April 1976), pp. 218-219; and Arntzen, "Kant's Denial", pp. 4-5. See also comments in Heiner Bielefeldt, "Autonomy and Republicanism: Immanuel Kant's Philosophy of Freedom," in *Political Theory*, Vol. 25, No. 4 (August 1997), pp. 535, 551.
- ⁴⁰ Hobbes, *On the Citizen*, pp. 78-79; and Hobbes, *Leviathan*, pp. 129, 132.
- ⁴¹ Immanuel Kant, "On the Common Saying: This May be True in Theory, but it does not Apply in Practice," in *Political Writings*, p. 74.
- ⁴² Wood, *Kant's Ethical Thought*, p. 229, emphasis in original.
- ⁴³ Donald V. Kommers and W. J. Thompson, "Fundamentals in the Liberal Constitutional Tradition," in Hesse and Johnson (eds.), *Constitutional Policy*, pp. 35-36.
- ⁴⁴ These and other extracts from constitutional charters are taken from *The rebirth of democracy: 12 constitutions of central and eastern Europe*, 2nd ed. (Strasbourg: Council of Europe, 1996).
- ⁴⁵ Quoted in Georg Brunner, *Nationality Problems and Minority Conflicts in Eastern Europe* (Gütersloh: Bertelsmann Foundation, 1996), p. 47.
- ⁴⁶ *Nacional* (Zagreb), No. 224 (2 March 2000), at www.nacional.hr/htm/224053.EN.htm.

⁴⁷ See Julie Mostov, "Democracy and the Politics of National Identity", in *Studies in East European Thought*, Vol. 46, No. 1/2 (June 1994), pp. 17-18.

⁴⁸ John Locke, *Two Treatises of Government*, ed. by Peter Laslett (New York: Mentor Books, 1963), I, p. 247, my emphasis.

⁴⁹ *Ibid.*, II, p. 316.

⁵⁰ *Ibid.*, II, p. 318.

⁵¹ Quoted in *The Washington Post* (26 May 1997), p. A24.

⁵² Quoted in *Tages-Anzeiger* (12 May 1997), p. 3.

⁵³ John I. Ishiyama and Marijke Breuning, *Ethnopolitics in the New Europe* (Boulder and London: Lynne Rienner, 1998), p. 7.

⁵⁴ Quoted in *New York Times* (21 February 1999), Section 4, p. 4.

⁵⁵ See *Ibid.*

⁵⁶ See Trond Gilberg, *Nationalism and Communism in Romania: The Rise and Fall of Ceaușescu's Personal Dictatorship* (Boulder, CO: Westview Press, 1990), pp. 175-176, 179.

⁵⁷ See Dirk Philipsen, *We Were the People: Voices from East Germany's Revolutionary Autumn of 1989* (Durham, NC: Duke University Press, 1993).

⁵⁸ Quoted in Viktor Meier, *Wie Jugoslawien verspielt wurde*, 2nd ed. (Munich: C. H. Beck'sche Buchdruckerei, 1996), p. 204.

⁵⁹ Liah Greenfeld, *Nationalism: Five Roads to Modernity* (Cambridge, MA: Harvard University Press, 1992).

⁶⁰ Tamir, *Liberal Nationalism* [note 1].

⁶¹ Vladimir Tismaneanu, "Nationalism, Populism, and Other Threats to Liberal Democracy in Post-Communist Europe," *The Donald W. Treadgold Papers in Russian, East European, and Central Asian Studies* No. 20 (Seattle: The Henry M. Jackson

School of International Studies of the University of Washington, January 1999).

⁶² Iris Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990).

⁶³ Andrew Mann, "Political Community, Liberal-Nationalism, and the Ethics of Assimilation," in *Ethics*, Vol. 109, No. 2 (January 1999), pp. 261-286.

⁶⁴ See Omar Dahbour, review article in *Constellations*, Vol. 3, No. 1 (April 1996), pp. 129-132.

⁶⁵ Ramet, *Whose Democracy* [note 37].

⁶⁶ Mason, "Political Community, Liberal-Nationalism," pp. 271-272.

⁶⁷ As quoted in Tismaneanu, "Nationalism, Populism," pp. 41-42.

Endnotes for Chapter 4 (pp. 44-67)

* A somewhat different version of this chapter was published in *Human Rights Review*, Vol. 2, No. 1 (January-March 2001). I am grateful to Thomas Cushman, editor of *Human Rights Review*, for kind permission to use this article here.

¹ Robert Redslob, *Le Principe des Nationalités* (1931), as quoted in Nathaniel Berman, "'But the Alternative is Despair': Nationalism and the Modernist Renewal of International Law," in *Harvard Law Review*, Vol. 106, No. 8 (June 1993), p. 1810.

² On group rights, see Russell Hardin, *Morality within the Limits of Reason* (Chicago: University of Chicago Press, 1988), pp. 96-97.

³ Reneo Lukić and Allen Lynch, *Europe from the Balkans to the Urals: The Disintegration of Yugoslavia and the Soviet Union* (Oxford: Oxford University Press, 1996), p. 33.

⁴ Immanuel Kant, *The Metaphysics of Morals*, trans. from German by Mary Gregor (Cambridge: Cambridge University Press, 1991).

⁵ Sabrina P. Ramet, *Whose Democracy? Nationalism, Religion, and the Doctrine of Collective Rights in Post-1989 Eastern Europe* (Lanham, MD: Rowman & Littlefield, 1997).

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⁷ *Ibid.*, p. 23.

⁸ Quoted in *Ibid.*

⁹ Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 5th ed. (New York: Alfred A. Knopf, 1973), pp. 6-9.

¹⁰ See G. W. F. Hegel, *Reason in History: A General Introduction to the Philosophy of History*, trans. from German by Robert S. Hartman (Indianapolis: Bobs-Merrill, 1953).

¹¹ Morgenthau, *Politics Among Nations*, p. 5; see also Niccolo Machiavelli, *The Prince and the Discourses*, trans. from Italian by Luigi Ricci; revised by E. R. P. Vincent (New York: The Modern Library, 1950).

¹² *The Washington Post* (6 June 1998), p. A18.

¹³ Thomas Hobbes, *On the Citizen*, ed. and trans. by Richard Tuck and Michael Silverthorne (Cambridge: Cambridge University Press, 1998), p. 132, emphases in original.

¹⁴ For example, by Charles W. Kegley, Jr. and Eugene R. Wittkopf, in their *World Politics: Trend and Transformation*, 2nd ed. (New York: St. Martin's Press, 1985), p. 17.

¹⁵ Karl Jaspers, *Kant*, trans. from German by Ralph Manheim (San Diego: Harcourt Brace & Co., 1962), pp. 116, 118; and Kurt Taylor Gaubatz, "Kant, Democracy, and History," in *Jour-*

nal of Democracy, Vol. 7, No. 4 (October 1996), pp. 138, 147-148.

¹⁶ Kant, *Metaphysics of Morals*, p. 156, Kant's emphasis. See also Hannah Arendt, *Lectures on Kant's Political Philosophy* (Chicago: University of Chicago Press, 1982), pp. 52-54; and Michael W. Doyle, "Liberalism and International Relations," in Ronald Beiner and William James Booth (eds.), *Kant & Political Philosophy: The Contemporary Legacy* (New Haven, CN: Yale University Press, 1993), pp. 186-193.

¹⁷ Jaspers, *Kant*, p. 114.

¹⁸ Jacob Rogozinski, "It Makes Us Wrong: Kant and Radical Evil," in Joan Copjec (ed.), *Radical Evil* (London: Verso, 1996), pp. 31-32.

¹⁹ Morgenthau, *Politics Among Nations*, p. 10.

²⁰ See Götz Aly, Peter Chroust, and Christian Pross, *Cleansing the Fatherland: Nazi Medicine and Racial Hygiene*, trans. from German by Belinda Cooper (Baltimore, MD: The Johns Hopkins University Press, 1994); and George J. Annas and Michael A. Grodin (eds.), *The Nazi Doctors and the Nuremberg Code: Human Rights in Human Experimentation* (New York and Oxford: Oxford University Press, 1992).

²¹ Robert M. Hayden, "Schindler's Fate: Genocide, Ethnic Cleansing, and Population Transfers," in *Slavic Review*, Vol. 55, No. 4 (Winter 1996), p. 731.

²² William Shakespeare, *Macbeth*, Act V, Scene 1, lines 31, 33-36, 39-40, 46-48 (New York: Washington Square Press, 1966), p. 78.

²³ Hayden's arguments in "Schindler's Fate," pp. 731-732, 734, 736, 747.

²⁴ Robert Hayden, at times in the spirit of Parmenides, has, for reasons best known to himself, decided to attack my work with a regularity which has surprised me. Yet, in these attacks, he has repeatedly attributed to me views I do not hold. Most recently, in a misrepresentation bordering on solipsism, Hayden

has claimed that I subscribe to the so-called "ancient hatreds" thesis, quoting in support of his misrepresentation, my suggestion that "Yugoslavia was always a Tower of Babel," and endeavoring to associate me, in the reader's mind, with Daniel Goldhagen (seen as an advocate of collective guilt) and Samuel P. Huntington (the archdeacon of so-called "realism" and theorist of "civilizational clashes"). Hayden apparently does not read my work with comprehension. To begin with, if Hayden truly believes that Yugoslavia existed in "ancient" times, then he is the only scholar with this strange but self-serving "interpretation". Of course, if, as Parmenides says, nothing changes in the world, then the essential facts must be changeless. Hayden apparently considers the existence of Yugoslavia to be precisely such a changeless fact.

Hayden has also chosen to associate me with Samuel P. Huntington, without acknowledging what should be obvious to anyone, viz., that my work is at complete odds with Huntington's. Indeed, if Hayden had bothered to read the 3rd edition of my *Balkan Babel* (1999), instead of remaining content to quote from my 1st edition (1992) out of context, then he might have noticed that there is a lengthy criticism of Huntington in the 3rd edition. Finally, as to Hayden's allegations about "collective guilt", I would not have taken the trouble to use the formula "Milošević and his minions" in my 1997 book, *Whose Democracy?*, if I had not been so concerned to avoid even the slightest implication of collective guilt on the part of "the Serbs"; nor would I have taken the trouble to list those individuals who were culpable for taking the SFRY down the road to war (*Balkan Babel*, 3rd edition, pp. 69-70), emphasizing the central role of Milošević, if I had wanted the reader to come to an entirely different conclusion.

But, taking stock of Hayden's other broadsides, one finds: that he subscribes to the Parmenidean view (as of January 1996) that it "...is even more difficult to insist that what is happening [in East-Central Europe since 1989] is a movement toward pluralism" (though without indicating why he allows himself to state this without qualification, thereby implicitly denying all forms of pluralism, including, presumably, organizational pluralism); that he can fail to distinguish between (my) idealism and (Huntingtonian) realism; and that he believes that modern problems of political illegitimacy and repression (the problems stressed in the 1st and 2nd editions of my *Balkan Babel* already, as well as in the 3rd) are somehow – in his view – equiva-

lent to or reducible to "ancient tribal hatreds". And given the last equation, one may wonder to what extent Hayden is able to distance *himself* from the reductionist thesis which finds in contemporary problems only the echoes of more ancient troubles.

For Hayden's misunderstandings and misrepresentations, see: Robert M. Hayden, *Blueprints for a House Divided: The Constitutional Logic of the Yugoslav Conflicts* (Ann Arbor: University of Michigan Press, 1999), p. 2; Robert Hayden, "Balkan Commentary," in *Anthropology News* (March 2000), pp. 67-68; R. Hayden, "review" article, in *Slavic Review*, Vol. 55, No. 2 (Summer 1996), p. 444; and letter to the editor from Robert Hayden, in *Slavic Review*, Vol. 56, No. 1 (Spring 1997), p. 185. For my own rebuttal of one of Hayden's misconstruals, see my column under "Society for the Anthropology of Europe" in *Anthropology News* (September 2000). For serious analyses of the relativist, utilitarian orientation of Hayden's thinking, see Thomas Cushman, "Critical Theory and the War in Croatia and Bosnia," *The Donald W. Treadgold Papers in Russian, East European, and Central Asian Studies*, No. 13 (Seattle: The Henry M. Jackson School of International Studies of the University of Washington, 1997); and Keith Doubt, *Sociology after Bosnia and Kosovo: Recovering Justice* (Lanham, Md.: Rowman & Littlefield, 2000), chap. 13 (pp. 137-146).

²⁵ Hayden, "Schindler's Fate," p. 743.

²⁶ Carol S. Lilly, "Amoral Realism or Immoral Obfuscation?," in *Slavic Review*, Vol. 55, No. 4 (Winter 1996), p. 749.

²⁷ Edward Hallett Carr, *The Twenty Years' Crisis, 1919-1939: An Introduction to the Study of International Relations* (New York and San Francisco: Harper & Row, 1964), p. 8.

²⁸ Bernard Williams, a foe of relativism, summarizing its principal propositions in his *Morality: An Introduction to Ethics* (New York: Harper & Row, 1972), p. 20, as quoted in Ruth Macklin, "Universality of the Nuremberg Code," in *The Nazi Doctors*, p. 241.

²⁹ Lilly, "Amoral Realism," p. 752.

³⁰ Joseph Raz, "Autonomy, Toleration, and the Harm Principle," in Susan Mendus (ed.), *Justifying Toleration: Conceptual and*

Historical Perspectives (Cambridge: Cambridge University Press, 1988), pp. 157, 165.

³¹ See John Spanier, *American Foreign Policy Since World War II*, 6th ed. (New York: Praeger Publishers, 1973).

³² Alan Gewirth, *The Community of Rights* (Chicago: University of Chicago Press, 1996), p. 41.

³³ A. J. P. Taylor, *From Sarajevo to Potsdam* (London: Thames & Hudson, 1965).

³⁴ Kant, *Metaphysics of Morals*, p. 133.

³⁵ Regarding natural rights and positive rights, see J. W. Harris, *Legal Philosophies*, 2nd ed. (London and Edinburgh: Butterworths, 1997).

³⁶ If even one state did not permit such secession, then the right could not be said to be a *universal* positive right.

³⁷ John Keane, *Reflections on Violence* (London: Verso, 1996).

³⁸ For a discussion of these moral theories, see L. W. Sumner, *The Moral Foundation of Rights* (Oxford: Clarendon Press, 1987).

³⁹ Kant, *Metaphysics of Morals*, p. 56, Kant's emphasis.

⁴⁰ John Stuart Mill, *On Liberty and other writings* (Cambridge: Cambridge University Press, 1989), p. 8.

⁴¹ Immanuel Kant, *The Moral Law: Groundwork of the Metaphysics of Morals*, trans. from German by H. J. Paton (London and New York: Routledge, 1995 [reprint of 1948 ed.]), p. 67, emphases omitted.

⁴² Kant, *Metaphysics of Morals*, p. 51.

⁴³ Rein Mullerson, "New Developments in the Former USSR and Yugoslavia," in *Virginia Journal of International Law*, Vol. 33, No. 2 (Winter 1993), esp. p.313.

- ⁴⁴ Conventionalism's limitations are summarized in Sumner, *Moral Foundation*.
- ⁴⁵ Mary Gregor, "Kant on 'Natural Rights,'" in Beiner and Booth (eds.), *Kant & Political Philosophy*, p. 52.
- ⁴⁶ Quoted in *Ibid.*, p. 66.
- ⁴⁷ Chandran Kukathas, "Are There Any Cultural Rights?," and Will Kymlicka, "The Rights of Minority Cultures: Reply to Kukathas" — both in *Political Theory*, Vol. 20, No. 1 (February 1992); and Chandran Kukathas, "Cultural Rights Again: A Rejoinder to Kymlicka," in *Political Theory*, Vol. 20, No. 4 (November 1992). See also Will Kymlicka (ed.), *The Rights of Minority Cultures* (Oxford: Oxford University Press, 1995).
- ⁴⁸ Ramet, *Whose Democracy?*, chap. 3 and conclusion.
- ⁴⁹ Quoted in Lloyd L. Weinreb, "The Moral Point of View," in Robert P. George (ed.), *Natural Law, Liberalism, and Morality* (Oxford: Clarendon Press, 1996), pp. 200-201.
- ⁵⁰ See Norberto Bobbio, *Thomas Hobbes and the Natural Law Tradition*, trans. from Italian by Daniela Gobetti (Chicago: University of Chicago Press, 1993).
- ⁵¹ Kant, *Moral Law: Groundwork*, p. 104. See also Kant, *Metaphysics of Morals*, p. 53; and Jaspers, *Kant*, p. 68.
- ⁵² Kant, *Moral Law: Groundwork*, p. 75.
- ⁵³ For further discussion of these ideas, see Ramet, *Whose Democracy?*, introduction, esp. pp. 6-13.
- ⁵⁴ *Ibid.*, p. 7.
- ⁵⁵ As Kant writes, "...to interfere with the use of a piece of land by the first occupant is to wrong him...Natural Right...lays down taking first possession as a rightful basis for acquisition on which every first possessor can rely." — Kant, *Metaphysics of Morals*, p. 73.

⁵⁶ This position was, however, seriously argued by Hans-Hermann Hoppe in his article, "The Western State as Paradigm," in *Society*, Vol. 35, No. 5 (July/August 1998). For my rebuttal of his argument, see Sabrina P. Ramet, "Profit Motives in Secession," in *Society*, Vol. 35, No. 5 (July/August 1998).

⁵⁷ Fritz Kern, *Kingship and Law in the Middle Ages* (Oxford: Basil Blackwell, 1939).

⁵⁸ Such as David Miller, *On Nationality* (Oxford: Clarendon Press, 1995), chap. 4; Avishai Margalit and Joseph Raz, "National Self-Determination," in Kymlicka (ed.), *Rights of Minority Cultures*, pp. 79-92; and Ernest Gellner, *Nations and Nationalisms* (Oxford: Basil Blackwell, 1983), p. 2. But for a sophisticated defense of a "soft" and, by his own admission, "vague" right of national self-determination, see Allen Buchanan, "The Morality of Secession," in Kymlicka (ed.), *Rights of Minority Cultures*, pp. 350-374.

⁵⁹ For an extended argument as to why both hegemonist and autonomist/separatist forms of nationalism are dangerous, see Ramet, *Whose Democracy?*, chapters 3, 5-6.

Endnotes for Chapter 5 (pp. 59-62)

¹ On this debate, see Sabrina P. Ramet, *Balkan Babel: The Disintegration of Yugoslavia from the Death of Tito to the War for Kosovo*, 3rd ed. (Boulder, CO: Westview Press, 1999), chap. 13 ("Milošević, Kosovo, and the Principle of Legitimacy"); and Sabrina P. Ramet, "The American Debate about Kosovo: Hawks, Doves, Kiwis, Falcons, and Nightingales," under review.

² See Jeffrey W. Legro and Andrew Moravcsik, "Is Anybody Still a Realist?," in *International Security*, Vol. 24, No. 2 (Fall 1999).

³ See Vladimir Tismaneanu's revealing preface to *Reinventing Politics: Eastern Europe from Stalin to Havel* (New York: Free Press, 1992).

⁴ See also Vladimir Tismaneanu (ed.), *In Search of Civil Society: Independent Peace Movements in the Soviet Bloc* (New York:

Routledge, 1990); and *From Below: Independent Peace and Environmental Movements in Eastern Europe and the USSR* (New York: A Helsinki Watch Report, October 1987).

⁵ See details and documentation in Sabrina P. Ramet, *Social Currents in Eastern Europe: The Sources and Consequences of the Great Transformation*, 2nd ed. (Durham, NC: Duke University Press, 1995), chap. 1.

⁶ "Marta Toch", *Reinventing Civil Society: Poland's Quiet Revolution, 1981-1986* (New York: Helsinki Watch, December 1986).

⁷ As summarized in Joni Lovenduski and Jean Woodall, *Politics and Society in Eastern Europe* (Bloomington, IN: Indiana University Press, 1987), p. 430.

⁸ Quoted in the HDZ newspaper, *Drzavnost*, as cited in *Feral Tribune* (22 December 1995), as trans. in Mark Thompson, *Forging War: The Media in Serbia, Croatia, Bosnia and Hercegovina*, 2nd ed. (Luton: University of Luton Press, 1999), p. 356.

⁹ Chris Brown, "Introduction," in Chris Brown (ed.), *Political restructuring in Europe: Ethical perspectives* (London and New York: Routledge, 1994), pp. 3-4.

¹⁰ Thomas W. Pogge, "Cosmopolitanism and sovereignty," in Brown (ed.), *Political restructuring in Europe*, p. 99.

¹¹ Alan Gewirth, *Reason and Morality* (Chicago: University of Chicago Press, 1978); and Alan Gewirth, *The Community of Rights* (Chicago: University of Chicago Press, 1996).

¹² See John Rawls, *A Theory of Justice* (Cambridge, MA: The Belknap Press of Harvard University, 1971); and John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999).

¹³ For a more detailed expostulation, see Sabrina P. Ramet, *Whose Democracy? Nationalism, Religion, and the Doctrine of Collective Rights in Post-1989 Eastern Europe* (Lanham, MD: Rowman & Littlefield, 1997), introduction, chap. 3, conclusion.

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