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The Principle of Proximity

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The Principle of Proximity

Jeremy Waldron

1. Introduction

A much earlier version of this paper was presented some years ago as the annual Daniel Jacobson Lecture, at the Hebrew University of Jerusalem.[1] I thought hard before presenting it there. I knew what I wanted to say; I had been thinking about topic for many years. But I worried that half of it would be hopelessly abstract: I was going to be delving into the higher reaches of Kantian political philosophy. And I worried that the other half would be uncomfortably concrete, for what I proposed to do—in Jerusalem, of all places—was to cast doubt on the proposition that it is a good idea for people to form a political community exclusively with those they like, or those who are like them, or those who share with them some affinity or trust based on culture, language, religion, or ethnicity. I wanted to cast doubt on that proposition not by criticizing it directly, but by articulating an alternative approach to the formation of political communities, which I shall call *the principle of proximity*.

The principle of proximity holds that states should be formed among those who (in Immanuel Kant's phrase) live "unavoidably side by side."[2] A state should be formed among them not on account of any special affinity or trust, but rather on account of the potential conflict that their proximity to one another is likely to engender. People should join in political community with those they are most likely to fight.

In the end it went down better than I thought; and at question time, the questions were the routine sort that one gets at any political philosophy gathering – a challenge to this or that interpretation of Kant, the offer of some repair or improvement, criticisms of some aspects of the analysis. They were not at all hostile in the way that I feared. In fact I have found that the project—trying to get away from a nationalist or cultural image of political community—tends to be met

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[1] This was first presented as the Daniel Jacobson Lecture, at the Hebrew University of Jerusalem, May 4, 2005.

[2] Kant cite (*infra*, note 17).

with greater hostility in the United States, Britain, New Zealand or Canada, where people have an *intellectual* investment in ethnic or cultural communitarianism, than in the countries where the thesis might actually bite.

My topic is the basis on which we form separate political communities. There are six and a half billion people living in the world. They practice twenty or more major religions (and innumerable minor ones). They speak six thousand languages and participate in I don't know how many national cultures. I have seen a list of world ethnicities on the internet which suggests that there are 800 of them.[3] Now, the land area of the world comprises 150 million square kilometers, which, after you give 14 million to Antarctica, doesn't leave much for the 200 odd states in the world and the 800 ethnicities to fight over. We have all this land and all these people, all these cultures, languages, and ethnicities. How do we correlate the people, the land, and the ethnicities into separate political communities?

One answer is: well, "*we*" don't do it; history does. History has allocated people and territory into separate states on all sorts of bases and for all sorts of reasons: by ethnicity, conquest, consent, sale and purchase, by secession and civil war, and for all I know by accretion around bishoprics.

Unfortunately, history has done it ambiguously and contestably. And anyway, history never did this by itself. It allocated land and people to states with the assistance of principles and ideologies—whether these were particular principles like Zionism in Palestine or "manifest destiny" in the Americas, or general doctrines like the principle of national self-determination which is now enshrined in all the leading human rights conventions, in Article 1 of the International Covenant on Civil and Political Rights, for example.[4]

After all, choices have to be made. They had to be made in the reorganization of Europe after the First and Second World Wars. Choices had to be made in the 1960s and 70s in the decolonization of Africa, Asia, India, and the Pacific. They had to be made in the reorganization of Central and Eastern Europe and the territories of the former Soviet Union after the end of the Cold War. And as my audience in Jerusalem knew, they are still coming up for debate: what should happen, how should states be constituted, boundaries drawn, and the movements of people restricted in the territory that stretches from Lebanon and Syria in the north to Egypt in the south, from the Jordan River to the Mediterranean Sea? These are acutely practical questions. But it is the task of a

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[3] List of ethnic groups in Wikipedia.

[4] ICCPR Article 1 (1): "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

philosopher to concern himself not just with political answers, but with the principles and doctrines that lie behind them.

Moreover it is not just great issues of the break-up of empires that engage these philosophies. There is also a host of less lethal questions about arrangements to be made for linguistic, religious, ethnic, and indigenous minorities in settings where the redrawing of state boundaries is out of the question. (These are the questions that often exercise my academic audiences in North America, Europe or Australasia.) In those areas, should we encourage a second-best solution, such as devolution and regional autonomy, based on a watered-down version of nationalism? Or should we abandon nationalism altogether and think in terms of a genuinely multi-cultural state? How should we think about migration, differential fertility rates, the fracturing of identity, and the breakdown of cultural boundaries in an increasingly shrinking world? Should we try to limit these developments because they challenge our traditional philosophy of state formation? Or should we regard them as showing that the nationalist approach to the formation of political community is no longer satisfactory, if it ever was?

2. The Principle of National Self-Determination

I am interested in alternatives to national self-determination, i.e. alternatives to the principle which holds that those who are already constituted as peoples, with an ethnic, cultural, or linguistic identity of their own, have a right to constitute themselves as a political community with a state and legal system of their own.

I think of national self-determination as a particularly strong form of a more abstract approach to political community, which I call *the principle of affinity*. My reason for this abstraction is that I want to include as targets ideas about the connection between political and cultural community which have become important in recent political theory—in the work of Will Kymlicka, for example—but which seek at the same time to distance themselves from nationalism properly so-called.[5]

The principle of affinity holds that states are to be formed among people who are already well disposed to one another, on the basis of what they share in the way of ethnic, cultural, religious or linguistic connection. The idea is that the organization of a legal and political community builds on this affinity, nourishes it, preserves it, and works because of it. Political community reflects the affinity of

[5] See also Will Kymlicka's essay on self-determination in the Besson and Tasioulas volume.

the members with one another in their cultural, linguistic, ethnic or religious community.

Obviously there will be different theories of affinity depending on which commonalities are emphasized. John Stuart Mill expressed the abstract idea as part of his definition of *nationality*:

> A portion of mankind may be said to constitute a Nationality if they are united among themselves by common sympathies which do not exist between them and any others – which make them co-operate with each other more willingly than with other people, desire to be under the same government, and desire that it should be government by themselves or a portion of themselves exclusively.[6]

Mill defines nation or nationality in terms of the very idea of affinity, whereas others regard nationality as a particular version of affinity. No matter: it is the principle of affinity in all its versions—nationalism in Mill's sense—which I want to talk about and to which I want to elaborate an alternative in this paper.

Philosophically, nationalism is dominant; to many it may seem the only game in town. Still, I don't think we understand an ideology unless we understand the logical space that it occupies, which means understanding the alternative approaches to the same subject-matter that it excludes. We don't understand a principle until we understand its rivals, the other ideas that it tries to push aside.

I also think that adherence to the principle of affinity is both distorting and dangerous, particularly in its nationalist version. It misconceives the nature and function of law; it distorts one's thinking about cultural rights and multi-culturalism; it presents as inherently problematic what we ought to regard as the norm—namely, the movement and mingling of peoples and the dissolution and fracturing of the boundaries of ethnic identity; and it sets us on a dangerous path towards something like ethnic cleansing, at least in circumstances where nationalist aspirations do not correspond neatly to existing territorial and demographic realities. But it is not my intention to attack the nationalist model directly. There are already plenty of books and lectures that do that, attacking the idea as mythological or as pernicious or both, and lamenting the "poisoned landscape" which it has established in Europe and elsewhere.[7] I am interested in elaborating the alternative to nationalism. What post-nationalist political philosophy lacks is

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[6] Mill, *Considerations on Representative Government*, Ch. 16.

[7] Patrick J. Geary, *The Myth of Nations: The Medieval Origins of Europe* (Princeton U.P., 2003), p. 15; also Jeremy Brecher as excerpted in *The Nationalist Reader* attacking the "environmental problem" that nationalism represents

clear articulation of a non-affinity-based conception, a conception which can explain the particularity of distinct political communities while serving as a general competitor to nationalism and other affinity-based approaches.

3. Alternative Views—Resources in the Liberal Tradition

People sometimes say that the alternative to nationalism is just classical liberalism. Certainly there have been liberal theories which are anti-nationalist. But we have to say more than this, first because there may be liberal forms of nationalism,[8] and secondly, because as a matter of the history of ideas, classic liberalism never really theorized the distinction of the world into separate *territorial* political communities at all. Mostly, liberals just assume that there is a group of people who desire to form a political community, which is something that, as Locke says, "any number of men may do, because it injures not the freedom of the rest; they are left as they were in the liberty of the state of nature."[9] But they offer no good explanation of how this works or how it acquires a territorial dimension.[10]

However, there are a couple of clues in the liberal tradition, which may enable us to elaborate an alternative to the affinity model. The first is the very well-known suggestion of Thomas Hobbes that the point of setting up political community is precisely *not* to confirm and solidify affinity, but to prevent the outbreak of murderous conflict. The second is the less well-known position of Immanuel Kant in Part One of *The Metaphysics of Morals* (sometimes known as the *Rechtslechre*), where the argument is that people who are likely to quarrel over the just use of resources are required, morally, to enter into political community with one another so that their disputes can be resolved consistently within a single coherent framework of laws. I will take my lead mostly from Kant. But I want to say a little about both these doctrines.

a. Hobbes

Hobbes says next to nothing about what distinguishes one community from another. But he is highly skeptical about natural or cultural affinities; he thinks

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[8] Cf. Yael Tamir, *Liberal Nationalism*.

[9] Locke, *Second Treatise*, § 95.

[10] There is, I suppose, Locke's preposterous theory (*Second Treatise*, §120) that a territory is constituted for a political community by the accumulated real estate of the original signatories to the social contract: but this account is equivocal, question-begging and quite unsatisfactory.

they are quite unreliable as a basis for political union.[11] There is no natural affinity among human beings, apart perhaps from small family groups; as for cultural or religious affinities, these are always and endemically liable to split and fissure and fall into deadly sectarian conflict, on Hobbes's account. They are not a reliable basis for political community.

On the other hand, what he says about the motivation for political union is very important: Hobbes associates political community among humans with conflict. What interests him is "how and by what stages, in the passion for self-preservation, a number of natural persons from fear of each other have coalesced into one civil person to which we have given the name of commonwealth."[12] "From fear of each other," that's the point—diffidence, suspicion, conflict, and the possibility of a war of all against all (individually or in small scale factions) that is likely to result from that – that's the basis of political community. It is exactly the opposite of the affinity approach. People unite "[f]rom fear of each other." We join in community, not with our brothers and sisters but with those whom we would otherwise fight. It is in the rational self-interest of everyone to join with others in setting up a political framework that can allay this prospect of fighting.

b. Kant

My second set of clues can be found in the political philosophy of Immanuel Kant. Kant's argument about the origins of political community goes like this.

People who live in one another's vicinity—in Kant's phrase "unavoidably side by side"[13]—are likely to want to take possession of material resources (land, for example) as their individual property. But none of us can do that without coming into conflict with others who may want the very patch of land that we are appropriating, and who might have their own theory about how it is appropriately distributed. Our proximity to each other in the vicinity of natural resources will therefore generate conflict and we need to establish a basis on which such issues

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[11] "It is true that certain living creatures, as bees and ants, live sociably one with another (which are therefore by Aristotle numbered amongst political creatures), and ... some man may perhaps desire to know why mankind cannot do the same. To which I answer, First, that men are continually in competition for honour and dignity, which these creatures are not; ... Secondly, that amongst these creatures the common good differeth not from the private; ... Thirdly, that these creatures, having not, as man, the use of reason, do not see, nor think they see, any fault in the administration of their common business: whereas amongst men there are very many that think themselves wiser and abler to govern the public better than the rest, and these strive to reform and innovate, one this way, another that way; and thereby bring it into distraction and civil war. Fourthly, that these creatures ... want that art of words by which some men can represent to others that which is good in the likeness of evil; and evil, in the likeness of good, ... discontenting men and troubling their peace at their pleasure. ... Lastly, the agreement of these creatures is natural; that of men is by covenant only, which is artificial...."

[12] Hobbes, *De Cive*, CUP edition, p. 74: my emphasis.

[13] For the 'unavoidably side by side' formulation, see the Ladd translation at p. 71 (6: 307).

can be resolved in the name of us all. It is not good enough, Kant says, for each of us to think morally about these issues and act towards others as our own conscience or our own personal sense of justice dictates. The categorical imperative won't do it. The problem with a purely moral solution is people's sense of moral autonomy which leads me to act righteously on one set of principles and you to act righteously on another set of principles

> [H]owever well disposed ... men might be, ... men ... can never be secure against violence from one another, since each has [his] own right to do what seems right and good to [him] and not to be dependent upon another's opinion about this. So, unless [he] wants to renounce any concepts of Right, the first thing [he] has to resolve upon is ... [to] ... leave the state of nature, in which each follows [his] own judgment, unite [him]self with all others (with which it cannot avoid interacting), subject [him]self to a public lawful external coercion, and so enter into a condition in which what is to be recognized as belonging to [him] is determined by law.[14]

We need a *shared* juridical framework to sustain a system of property. Without this we face the moral catastrophe of force being deployed in one and the same setting on the basis of competing arrays of principles. That cannot possibly generate the reciprocity that the moral use of coercion requires. [15]

4. Two Models

So there we have two positions: (i) the principle of affinity, which is that a political community should be thought of as something constructed among those who share certain fundamental affections, a common way of life, and a heritage of custom, understanding and belief; (ii) and the Kantian or Hobbesian position that the point of the state is to resolve conflicts and establish justice, and that forming an organized political community is a duty we owe to anyone with whom we are likely to come into endemic conflict. On Hobbes's account, this is a matter of self-interest; on Kant's account, it is a moral imperative. On neither account can we pick and choose the people with whom we are required to come to terms in political community. We are always liable to find ourselves alongside others who disagree with us and whose approach to things that matter to us is quite different

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[14] Rechtslehre, § 44; get page citation. The pronouns in the ellipses are "it" and "its."

[15] For a detailed account of Kant's argument, see Jeremy Waldron, *The Dignity of Legislation*, Ch. 3, and JW, "Kant's Legal Positivism," *Harvard Law Review*, 109 (1996), 1535-1566.

from ours. That is why I call this *the principle of proximity*: states should be formed amongst people who occupy the same territory, whether they have any affinity with one another or not, because they are the ones who are most likely to be in conflict with one another. The assumptions of this second model, it should be clear, are diametrically opposite to the assumptions of the first. But it is my view that by taking conflict seriously and facing up to it as a first principle, the proximity approach represents a safer bet in a mixed up world than the nationalist or affinity-based approach that is quite uncomfortable with thinking about political community in terms of difference, disagreement or conflict.

5. The Need for a Model

In section 6, I shall set out more details of the way the principle of proximity can explain the formation of political communities. I will present a model of the formation of distinct and particular communities that does not rest on any assumption of affinity.

But first we may want to ask why exactly we need a "model" of the sort I am envisaging here to think about the basis of the formation of political communities. Why is this something that political philosophy needs to construct? Why is it something we need to think about at all? The question is particularly acute when our models are, as it were, *originalist* in character—that is, when they ask: what was the basis on which political communities were or might have been *originally formed*? This kind of model-building can easily seem irrelevant, particularly when the originalist model differs from the basis on which the division of the world into political communities and the allocation of peoples and persons to those communities are currently determined. Surely political philosophy should address itself to the present, not to some (probably hypothetical) past buried in the mists of distant time.

Consider as an analogy the fate of social contract theory. Such theories present an attractive story of the original formation of political communities: in the state of nature, people came together for certain purposes on the basis of Lockean consent and that's how civil society and the state got going. But the original story itself is certainly a myth, and its modern application is highly problematic.[16] Why can't we say simply: it doesn't matter whether the state was organized on the basis of a contract or not; it *now* ought to serve the interests of the people it purports to rule. Maybe we can give a *hypothetical* contractarian account of what such service

[16] Even the Lockeans find it hard to give a credible contractarian account of the way in which people's membership of political communities is currently determined. (Consider Locke's rather desperate expedient of "tacit" consent in §§119-22 of the *Second Treatise*.)

must involve (but that hypothetical account will be wholly divorced from any originalist story);[17] or maybe we can just address the question of the proper function of the state directly and in the present tense, as the utilitarians did, without any contractarian apparatus whatever.[18]

Why not say, analogously, that *it doesn't matter* whether political communities were originally founded on the basis of affinity or proximity? What advantage is there in pursuing what Robert Nozick called a "fact-defective" or "process-defective" explanation of the origins of political community?[19]

I gave a sort of answer to this in section 1, when I considered the challenge that it is history, not philosophy that forms us into political communities: we just *are* formed into political communities and we must make the best of it. I replied that it is not always the case that this is out of our control, and when it is under our control we need a basis for thinking intelligently about it. The affinity theory continues to be deployed as a way of addressing present-tense problems. We still find people saying that the important thing to bear in mind when we are dealing with residual disputes over nation-building, self-determination, and boundaries is the need to constitute new states or reconstitute old ones so that people of different national, cultural, religious, and linguistic allegiances are not no longer permitted to live in one another's vicinity. These present-tense claims need to be evaluated and the alternatives to them considered.

As for those political communities that are already well-established in the world, it might seem obvious to *me* that such states should not regard themselves as the embodiment or guardian of any particular nationality or ethnicity, any particular culture or way of life. After all, all modern states—certainly all modern developed states—are multi-national, multi-ethnic, multi-cultural whatever their official ideology. On any sensible direct normative approach, we will insist that the state presiding over a multinational or multicultural society must not behave as though it were the guardian of any particular culture (e.g. the majority one).[20] Now, if proponents of the affinity approach are to oppose this, they will have to present the multicultural or multinational character of modern states as a matter of regret or as a deplorable deviation from the original purpose of political community. WE must have something to say when they take this line: dismissing what they say as fanciful nostalgia will not be enough. We have to be able to offer an alternative

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[17] Refer to Rawls, *A Theory of Justice*.

[18] Cite to Bentham and Mill.

[19] Robert Nozick, *Anarchy, State and Utopia* (1974) pp. 7-8.

[20] It can do this by eschewing the guardianship of culture altogether or (as Will Kymlicka suggests in *Multicultural Citizenship* (Clarendon Press, 1995)) by paying equal attention to all the cultures under its umbrella.

(and an attractive) account of the "original purpose" of political community, an alternative that will make the emergence of modern multicultural and multinational states seem natural rather than an aberration.

6. Details of the Proximity Model: Conflict, Law, and State

Now let us zoom in a little closer on the model I am proposing. What does proximity mean? Why does it have the importance Kant thinks it has? And how, specifically is it related to the concepts of state and law? My general thesis is that proximity tends to generate endemic conflict and endemic conflict needs to be regulated by a state. But why? And what it is about the relation between conflict and proximity that is so important for understanding the specific tasks of the state?

The principle of proximity begins from the premise that humans are not spread out evenly across the face of the earth, but clustered together in a plurality of distinct localities. We have not settled with the same density over every habitable square mile; rather there have been concentrations of settlement in various regions, either randomly, or (as Kant's follower, Fichte suggests) in a way that is determined by natural frontiers[21] or specially favorable locations, where resources like fresh water or arable land are located.

So there are clusters of human proximity. Now, why does the presence of people in each other's close vicinity generate conflict?

One obvious point is that as embodied beings we are likely to face problems of abutment and physical obstruction as we run into each other in the various activities that we perform in this vicinity. A more important point is that the very resources that attract people unevenly to particular locations will also represent occasions for dispute. Each person or family wants a piece of *this* arable land, for example, or wants access to this river or aquifer, and they want their right over it to be recognized by all of the others. But the others in the vicinity do not necessarily have the same view of appropriation or distribution of resources as they do. And so there are likely to be disputes and disagreements, quarrels with those who are (physically) closest to us, quarrels centering particularly on the resources that led a bunch of us to cluster in this propitious environment in the first place. As well as issues of resources use and property, we will tend to have our most frequent

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[21] Fichte, talks of natural frontiers—"[s]ince the earth's surface is divided into areas by seas, rivers, and mountains, which also separate men, it was inevitable that several states would arise"—and of the relative isolation of peoples from one another (*Nationalism Reader*, p. 60). This passage is preceded by the following: "It would ... be ... possible for separate groups of beings who nothing of each other's existence to unite in states in different places. In one place in the world, the need for a state would be felt and the remedy taken and in another place the same need would be felt and the same remedy taken without the former knowing of the latter or the latter knowing of the former." Contrast with Fichte's "Address to the German Nation."

dealings, interactions and exchanges with those physically close to us. We may have occasional interactions with others elsewhere, but those close to us will be the most frequent repeat players; and as we know from economic and rational choice theory, in circumstances of repeat play and iterated interaction, bargaining and coordination and potential gains from co-operation take on a different aspect.

My model assumes that there will be conflicts arising from proximity in any or all of these ways, and that those who participate in these disputes have a responsibility to deal with them not on a violent basis nor on a purely individually conscientious basis, but to set up standing frameworks of law and state to deal with them.

So far so good. But not all disputes arise among those who are near to one another; I might have dealings with people all over the world and hence a potential for conflict with people not necessarily in my vicinity. Surely that too needs to be regulated by law. So it may be a mistake to try to correlate political communities or states with these local pockets of conflict. The jurist Hans Kelsen considered the possibility that "the interaction between individuals belonging to the same State is more intense than the interaction between individuals belonging to different States"[22] and rejected it.

> Whether it is economic, political, or cultural relations we have in mind ... it cannot seriously be questioned that people belonging to different States frequently have more intense contact than citizens of the same State. ... [S]ocial interaction is not limited to people living together within the same space. Thanks to present-day means of communication, the liveliest exchange of spiritual values is possible between people scattered over the whole earth. In normal times, state borders are no hindrance to close relationships between people. If, *per impossibile*, one could exactly measure the intensity of social interaction, one would probably find that mankind is divided into groups in no way coinciding with existing States.[23]

It is not clear what Kelsen means by "intensity," here. He may be using it in a psychological sense, to refer to the interactions that matter most to people. And if the premises of the affinity account is true, he may well be right about that:

> Think of the case where individuals of the same nationality, race, or religion are divided between two neighboring States whose populations lack

[22] Kelsen, *General Theory of Law and State*, p. 183.

[23] Idem.

homogeneity. Membership in the same language community, religion, class, or profession often creates far closer ties than common citizenship.

But it is not the closeness of the ties of their spiritual value that matters on the proximity account. While we should accept the point that interactions and the problems they give rise to may range far and wide, there is something about the frequency, the density, the variety, and the entanglement of the disputes that arise endemically among those who are unavoidably side-by-side that necessitates the building of a political community with a state as a solution. The repetitive frequency of the same kinds of conflict indicates a necessity for standing arrangements that can be applied in case after case. In such settings, it is not enough to have conflict resolution, in the sense of each dispute being resolved one-by-one. What is needed is a standing arrangement to deal with endemic conflict, and of course provide a basis on which the resolution of one conflict might help people arrange their dealings in future to avoid other conflicts. At the same time, the people in a given locality will engage together in many different kinds of dispute. I buy apples from a neighboring orchardist, but I also conflict with him over water-rights, and he objects to the chemicals I use in my garden and I send my children to work part-time as fruit pickers, and one of them wants to marry his daughter, etc. Though these conflicts arise *seriatim*, often they have to be dealt with simultaneously—or at least the solutions have to cohere with one another—for the resolution of one will bear on the prospects for the resolution of others.

These distinctions between disputes that arise far and wide and those that arise among the population of a certain locality indicate a difference between the need for law and the need for a state. Obviously people have all sorts of relations with one another including long distance relations of trade etc. Many such disputes can be settled by a framework of transnational law that does not necessarily require a state. Formal trade law and customary *lex mercatoria* are among the legal devices for pre-empting and resolving potential disputes that do not necessitate a tightly-knit community or an organized state. But it would be wrong to infer from this that state and political community are forms of organization devoted to something different else altogether, like the preservation of a people's culture or a way of life.[24] State and political community are necessary not for dealing with disputes as such, but for the sort of dense entangled thickets of disputes that arise among those who live in the same locality.

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[24] I have heard people say that even if *law* is oriented to conflict, nevertheless the state and political community can be dissociated from that and oriented more to cultural and ethnic ideals: the mission of the state is the defense and advancement of the aspirations of a people and the protection and sheltering of their distinctive way of life. I don't accept that.

A state in the modern world can be understood as a particular kind of legal organization. It is, in Kelsen's words, "a relatively centralized legal order."[25] A state embodies an interlocking array of norms, given coherence by a constitution, and associated with a degree of centralization that enables us to personify the legal order and envisage someone's or something's taking responsibility—political responsibility—for the overall character of the system of norms. So we associate the legal aspect of the state with a political community whose members act together to realize the centralized and comprehensive responsibility for multiple legal arrangements that the juridical character of the state enables us to envisage. (Transnational law is not centralized or personified in that way: responsibility for the law tends to be piecemeal rather than systemic.)

A complex legal and political organization of this kind seems to me particular appropriate for dealing with problems of the kind and on the scale that proximity involves. Where there is endemic and entangled conflict, solutions cannot just be piecemeal. Someone or some entity must take responsibility for the coherence of what emerges as an integrated body of law. The issues about the normative importance of consistency here are apparent in Kant's theory, in his insistence that when force is used to uphold judgments about justice and right it must be used systematically and consistently, in order to connect the moral conditions for its use with the abstract but very central Kantian idea of the harmonization of each person's external freedom (and of his liability to coercion) with that of everyone else. I have gone into that in detail elsewhere and there is no space to pursue it here.[26] But it is worth mentioning briefly two other recent arguments, which also take up this point of *responsibility for the big picture*. One is the suggestion by Ronald Dworkin about the importance of *integrity* in constituting a legal community, especially in circumstances where people don't necessarily agree with all the substantive principles of law, but recognize nevertheless that having like cases treated alike establishes an important basis for reciprocal obligation.[27] The other is John Rawls's insistence that it is the *basic structure* of a society's institutions that is the proper subject for justice.[28] Justice, according to Rawls, is holistic: it is not concerned only with the quality and outcome of particular interactions or even types of interaction in a particular area like crime or torts. It concerns itself with the overall impact on people's dignity and life-chances of the social system as a whole. For these reasons, it is important

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[25] Kelsen, *Pure Theory of Law*, 290; IPLT 99

[26] Waldron, "Kant's Legal Positivism"; see note 15 above and accompanying text.

[27] Dworkin, *Law's Empire*, Ch. 6.

[28] Rawls, *A Theory of Justice*, pp. __ (early section entitled "The Subject of Justice").

not just to have law, but to have the sort of open-ended, coherent, and centrally personified law that at its best the organization of a state represents and to have a political community that can take full responsibility for it.

That, in outline form is the model that the principle of proximity presupposes. To summarize: humans cluster together in particular areas; endemic and entangled disputes are likely to arise in these areas. For reasons of efficiency, reasons of integrity, and reasons of justice, it is important that these thickets of disputes be addressed by a political community taking responsibility for the administration of the centralized array of legal arrangements we call a state. In this way we can explain the emergence of particular states in particular areas without relying on any idea of affinity and without assuming that it is the function of a state to preserve and promote any particular culture or the interests of any ethnic group.

Of course most states didn't actually arise in this way. (But that is true of the nationalist account as well). These are model-theoretic conceptions that help us think through the teleology of political arrangements. As I said in section 5, the point of a model like this is to occupy some of the intellectual space that nationalist models currently occupy, so that we have a way of thinking about the state—whether it is a way of thinking nostalgically about the state or a way of addressing current normative and other practical concerns—which is an alternative to the dominant nationalist account.

Even if states originally had developed in this way, it may be difficult to apply the model in any simple-minded fashion now. The model envisages the world with little pockets of human settlement and population at some distance from one another (fig. 1, *on next page*), and it imagines that each of these pockets might require a distinct political community. But even if polities start like that, they do not remain

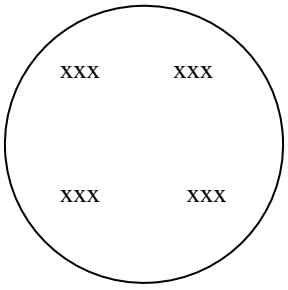
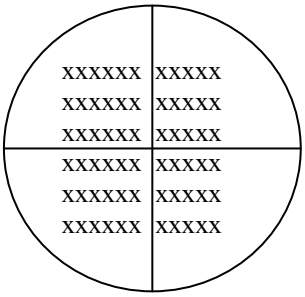


fig. 1 → fig. 2



isolated. As they expand in size and population, they will present a picture of more evenly spaced population in the world (fig. 2), necessitating boundaries that may

seem pretty arbitrary from the perspective of the original model. Considering fig. 2 by itself, it may seem that something like Kelsen's observation is vindicated.[29] There may seem no reason to suppose that a given person has more frequent interactions and conflicts with others in his quadrant than with those just on the other side of the boundary. But if we think about the path-dependency of the evolution from fig. 1 to fig. 2, we can imagine that greater familiarity with the legal and political arrangements set up originally in each corner of the circle to resolve the disputes arising in these localities may well mean that the comparatively higher frequency, density and entanglement of interactions will survive the approach of the population towards one another. All this, too, is model-theoretic and it must be read in the light of what I said in section 5 and in the previous paragraph. But it helps us think clearly about the relationship of the proximity model to the present reality of a crowded interactive world.

Of course there may come a time when the world is so globally interactive that there be little sense in continuing to think in terms that, even theoretically, presuppose an origin in something like fig. 1. We may just imagine the circle in fig. 2 without the boundaries. But the proximity account will have done its work if at that stage we do not automatically turn back to the identity politics of nation and affinity, but move forward on the basis that any new global state-like and polity-like institutions will of course be multi-national in their conception and their mission.

7. The Mission of Law[30]

It may seem an objection to the proximity account that it presents a very old-fashioned minimalist account of the state as nothing but a Hobbesian or a Knatian conflict-resolver. What about other more positive functions such as the provision of public goods? What about the state's moral functions, to do justice and to provide assistance to some of its members? Is it the price of giving up the affinity model that we have to retreat to sort of Nozickian offensive individualism and minimalism?[31] People talk of a "post-nationalist" world, but isn't there a danger of my account taking us back to *pre*-nationalist one?

I don't think so. I have developed the account in terms of conflict because that presents the starkest contrast with the affinity model. But a similar account

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[29] See above notes 22 and 23 above, and accompanying text.

[30] In different ways, I am grateful to Ruth Gavison and James Penner for helping me think through the arguments of this section.

[31] Cite to Nozick, *ASU*, Ch. 7.

can be developed also in terms of the framework for a flourishing economy,[32] the provision of public goods and the performance of important functions related to justice and morality.

We tend to think carelessly that the moral functions of the state must be easier to explain on an affinity model. But this is not the case. The most demanding moral requirements are those that insist on our taking care of strangers and doing justice to those with whom we are not already bound by ties of kinship.[33] Ethnic affinity on this account is as often an obstacle as an aid to our responding to moral demands.[34] As for public goods, I reckon that one of the things that makes a good "public" is that it is provided to people who are (otherwise) strangers to one another or (otherwise) uninvolved din each others' lives. They cooperate for the common good as members of a public rather than as members of a family or kinship group.

In any case, the provision of public goods or moral goods is not really an alternative to a conflict resolution account; rather it implicates a conflict-resolution account. As Hobbes saw, the provision of public goods is impossible if people are constantly at one another's throats.[35] Also, even if there is a disposition to provide public goods or respond collectively to the demands of morality and social justice, there is still the problem of resolving conflicts and establishing coordination

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[32] Cf. Loren Lomasky in "Toward a Liberal Theory of National Boundaries" in David Miller and Sohail H. Hashmi (eds.) *Boundaries and Justice: Diverse Ethical Perspectives* (Princeton,: Princeton University Press, 2001), 55 (arguing that state boundaries protect zones where law is set up to facilitate the sort of dense and orderly but free interaction that at its best allows markets and market economy to flourish).

[33] For the development of a proximity framework for thinking about our response to the needs of strangers, see Jeremy Waldron "Who is my Neighbor?—Proximity and Humanity," *The Monist*, 86 (2003), 333. In Christ's parable of the "Good Samaritan" (Luke 10: 27-37), the claim is that a man proves himself neighbor to another simply by helping him when he is confronted with his need. Even though the man who fell among thieves and the man who helped him are from quite different communities, they are thrown together on the road to Jericho and it is the sheer fact of their proximity that enables the plight of one to make a compelling moral demand on the other. I argue that the important moral work in the story of the Good Samaritan is not done by any abstract cosmopolitan universalism—which is very easy to lampoon (the classic lampoon being that of Charles Dickens in the character of Mrs Jellyby in *Bleak House* (Harmondsworth: Penguin, 1994), Ch. 4—but by the sheer particularity of the accidental conjunction in time and space of two concrete individuals. It is wrong to see the "moral" of the Good Samaritan parable as prescribing nothing but a diffuse and universal concern. Rather, the parable turns on the issue of *actual proximity*. The man has fallen among thieves in a particular place on a particular road; and then "a certain Samaritan, as he journeyed, *came where he was*." The idea is: never mind ethnicity, community, or traditional categories of neighbor-ness. The fact that you are *there* makes you his neighbor. Moreover, this is not just because of some principle of efficiency. It's because human need reaches out naturally and I believe reaches out in a way that is morally imperative on account of the immediacy of sight and mutual recognition.

[34] See also Jeremy Waldron, "Secularism and the Limits of Community," a response to George Rupp, *Globalization Challenged: Conviction, Conflict, Community* (New York: Columbia University Press, 2006), 52.

[35] Hobbes, *Leviathan*, Ch. 13.

among the various proposals and initiatives that might be involved.[36] Finally, the necessity also exists for a state-like entity to coordinate the dense thicket of disparate and overlapping public goods and moral initiatives that address together all the problems that arise in a given setting. Once again, some entity must take responsibility for the "big picture." In all these regards, an account in terms of public goods and moral responsibility will be analogous to the conflict-resolution account that I have given, as well as presupposing it.

So the proximity account is not necessarily committed to a minimalist conception of the state. True, it does reject the idea that the state should be the guardian and promoter of a particular culture or way of life.[37] But this is rejection of a *particular* function—which the proximity account views as unrealistic and pernicious. It is not part of any wholesale program to shrink the state, oppose big government, or reduce the functions of law to a narrow individualist compass.

8. Self-Determination

I believe that this distinction between principles of affinity and principles of proximity is a fundamental point of division in political philosophy, and it affects the way one thinks about much else, such as the function of the state, some aspects of the basis of individual rights against the state, some aspects of jurisprudence, the politics of cultural identity, and a host of issues like the nature of citizen and the approach we take to immigration policy.

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[36] There is a fine account of this in John Finnis, *Natural Law and Natural Rights* (1980), Ch. IX, pp. 231-59, on authority. Authority, Finnis argues, is needed in human communities not only on account of people's weakness or wickedness. It would also be needed, even among a people of great intelligence and dedication, so far as the demands of practical reasonableness and the common good are concerned. (ibid., p. 239). A person dedicated to the common good "will always be looking out for new and better ways of attaining the common good, of co-ordinating the action of members, of playing his own role. … Intelligence and dedication, skill and commitment thus multiply the problems of co-ordination, by giving the group more possible orientations, commitments, projects, "priorities," and procedures to choose from. And until a particular choice is made, nothing will in fact be done" (ibid., pp. 231-2). So we face what Finnis calls "co-ordination problems"—problems to which there are "two or more available, reasonable, and appropriate solutions, none of which, however, would amount to a solution unless adopted to the exclusion of the other solutions available, reasonable, and appropriate for that problem" (ibid., p. 232) The function of authority is to resolve such problems, to enable the intelligent and imaginative creatures we are to focus our cooperation, in relation to each set of competing alternatives, on just one of the schemes that offer us ways of promoting the common good. (I have adapted this footnote from Jeremy Waldron, '*Lex Satis Iusta*,' *Notre Dame Law Review*, 75 (2000), 1829, at p. 1834.)

[37] In a number of papers published over the last ten or fifteen years, I have expressed skepticism about the idea that we should think of law as designed to protect or nourish a particular culture or way of life. [Cites] That skepticism is most acute with regard to the so-called pervasive cultures of encompassing groups which Joseph Raz and Avishai Margalit make the center of their case for national self-determination in a well-known article published in the Journal Of Philosophy in 1990. Still, I promised I would not get into that side of things. It's the alternative view of law that I want to articulate in this paper.

It may seem reminiscent of the liberalism/ communitarianism divide that dominated political philosophy in the 1980s. But that is not a straightforward parallel.[38] The principle of affinity is not necessarily illiberal; I said that earlier. Nationalism can be liberal as Yael Tamir has pointed out and as the case of John Stuart Mill illustrates. And, as the example of Hobbes reminds us, the principle of proximity need not necessarily lead to a liberal state.[39]

Also the one view can fold into the other. Proximity is capable of generating brotherhood. Simply occupying the same land over time can give rise to social solidarity, perhaps even rising to the level of nationalist sentiment. Mazzini once remarked that "a country is not a mere territory; the particular territory is only its foundation. The Country is the idea which rises upon that foundation; it is the sentiment of love, the sense of fellowship which binds together all the sons of that territory."[40] Inasmuch as defenders of the affinity model stresses occupation of a common soil rather than kinship, race, descent and common blood, their conception can have a genealogical relation with the proximity ideal. There mere fact of political union in itself can generate strong bonds of solidarity[41]—the experience of a common history and proud allegiance to a constitution can do that, as the case of the United States of America indicates. Jürgen Habermas's ideal of constitutional patriotism and the solidarity that goes with it is not far-fetched.[42] But this is unlikely to happen if one part of the society (even the majority) regards the territory, the soil, and the constitution as theirs in a sense that excludes at some level others who live side-by-side with them in the same locality.

The proximity model also generates a powerful and attractive conception of self-determination that can compete with more familiar nationalist versions of that ideal.[43] Many politicians think of self-determination as a right of peoples—

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[38] Mill as counterexample: nationalist and liberal.

[39] For example, we might not expect a state organized on grounds other than religious affinity to have an established church. But the strongest Erastian arguments for religious establishment arose out of the recognition of the actuality of or potential for religious plurality in the society, not on its denial.

[40]Mazzini in *Nationalist Reader*, p. 96

[41] Kant sometimes plays with the idea of affinity. e.g., later in MM: "The human beings who make up a nation can, as natives of the country, be represented as analogous to descendants from common ancestor (congeniti) even if this is not in fact the case. But in an intellectual sense, they can be thought of as the offspring of a common mother (the republic), constituting, as it were, a single family (gens, natio) whose members (the citizens) are all equal by birth." (sect. 53)

[42] Cite to Habermas.

[43] I have pursued this contrast in Jeremy Waldron, ""Two Conceptions of Self-Determination," forthcoming in S. Besson and J. Tasoulias (eds.) *The Philosophy of International Law*. But see also Will Kymlicka's essay on self-determination in the same volume. Also Guyora Binder talks of a universalist as well as a nationalist aspect of self-

peoples constituted independently by nationality, language or ethnicity. For them, it is a right explicitly centered around an affinity model. But we may also thinkj of self-determination as a right accruing collectively to those who happen to inhabit a territory. All of them—*there, in that place*—have a right to determine their arrangements independent of anyone trying to rule over them from somewhere else. *They* are the ones who must solve the myriad problems and answer the various challenges (moral and otherwise) that living in the same vicinity gives rise to.

Why is it important that all this be sorted out by the very people among whom this thicket of potential disputes arises? Why wouldn't the imposition of a legal framework by an imperial power solve this problem? It would, but not in a respectful way, not in a way that respected the fact that the people themselves among whom these disputes may arise have a perspective on their solution. This is why the contractarian side of Kant's approach remains important. Kant does not share the Lockean version of liberalism which seems to hold that we have discretion to pick and choose whom we might enter into political relations with. When you cannot avoid living side-by-side with others Kant says, you ought to leave the state of nature and proceed along with those with whom you might be in conflict into a rightful condition, that is, a condition of [positive law].[44] This is a matter of natural duty, as Rawls puts it; indeed if someone won't participate in this, it is something that he might legitimately be forced to do.[45] Still, the prescriptive mode of this transition is best understood in contractarian terms:[46] this is something that *we are to do together*, something which no doubt is a moral imperative, but an imperative that is responded to by us. It is for the people concerned—the people of that vicinity, the people potentially in conflict—to do

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determination in "The Case for Self Determination," 29 *Stan. J. Int'l L.* 223. (I am grateful to Tamar Hostovsky for this reference.)

[44] Kant, pp. 121-2

[45] Refer to Rawls on natural duty and JW, "Special Ties and Natural Duties," *Philosophy and Public Affairs*, 22 (1993), 3-30. See Kant, *Metaphysics of Morals*, 122 (6: 307).

[46] For Kant, the social contract is a fiction, used to illuminate the main features of his political theory (Kant, "Theory and Practice," in *Kant's Political Writings*, p. 79). It is "a union as an end in itself which [people] all ought to share and which is thus an absolute and primary duty in all external relationships whatsoever among human beings (who cannot avoid mutually influencing one another)." (ibid., 73). The main political relevance of the 'compulsory contract' idea is to indicate that we are to think about our political obligation not in the light of a optional commitment, but in light of the reasons that would make such a commitment morally necessary and compelling. Here Kant's position is structurally similar to that of Hobbes, who insists (when it matters) that the extent of one's political obligation is determined not by the explicit terms of the contract one has signed, but by the reasons there were for signing the contract in the first place. cf. Thomas Hobbes, *Leviathan*, Ch. xxi at 151: '[T]he Obligation a man may sometimes have ... dependeth not on the Words of our Submission; but on the Intention; which is to be understood by the End thereof. When therefore our refusal to obey, frustrates the End for which the Soveraignty was ordained; then there is no Liberty to refuse: otherwise there is.'

this, i.e., to respond to the moral imperative to establish a civil constitution and a system of law. The task is a morally necessary one, but that does not mean that it does not matter who performs it. The task arises because each of the persons involved has a sense of justice—albeit one that may be at variance with another's. The challenge is to find a way that respects that fact, while solving the problem it gives rise to. The Kantian conception does this by maintaining that the problem of disagreement must be solved, while at the same time insisting that it must be solved by those among whom it arises.

9. Proximity and rootless cosmopolitanism?

Accounts of the kind I have given are sometimes attacked as unrealistic and shallow. They predicate themselves upon the possibility of a bond between humans that is unmediated by any ties of blood, kinship, ethnicity, language or religion—indeed, unmediated by anything except a sense of common problems. This aspiration often attracts the sort of denunciation that people reserve for abstract liberal cosmopolitan. We might consider in this regard the verdict of Theodore Herzl on those who seek to erase the differences among peoples as the basis of the state:

> It might ... be said that we ought not to create distinctions between people; we ought not to raise fresh barriers; we should rather make the old disappear. But men who think in this way are amiable visionaries and the idea of a native land will still flourish when the dust of their bones will have vanished tracelessly in the winds.[47]

This sounds like damning criticism. It certainly requires a response. But does the principle of proximity in fact express a hopelessly abstract cosmopolitan idea? Is it in the business of opposing to national affinity some bloodless Esperanto myth of universal brotherhood?[48]

It's tempting for me to dismiss this criticism out of hand. After all, the whole point of my lecture has been to talk about particularity of political communities—not to erase it, but to provide a separate normative and analytical model for understanding it. When I think about human solidarity, I don't think of anything abstract: I think of one human being responding to another whom he is in

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[47] Herzl in Nationalist Reader p. 129

[48] For a recent revival of the tired and vicious "Cosmopolitanism = Esperanto" slander, see Robert Pinsky, "Eros Against Esperanto." in Martha Nussbaum and Joshiua Cohen (eds.) *For Love of Country: Debating the Limits of Patriotism* (Boston: Beacon Press, 1996), 85. See also David Miller, *On Nationality*, p. 184.

a position to help—with their relationship unimpeded by either side first rifling through the other's ancestry, language or religion to find out how high they ought to be on a list of ethnic priorities.[49]

But actually I don't want to jettison the connection between proximity and cosmopolitanism. I certainly use the principle of proximity as the premise of a lot of my cosmopolitan writings.[50] If anything I am more perturbed by possible criticisms from the cosmopolitan side. After all, what I have outlined seems at odds with the idea that we share the whole earth with all others.[51] What I have said emphasizes distinct and particular political communities and, as such, it sits uncomfortably with the notion of a global political community. What I have said emphasizes the duties we owe to people in our vicinity. Yet Kantian cosmopolitanism is thought to emphasize the duties we owe to all human beings, not just to those who are near us. By substituting proximity for affinity, it might be thought that I am unduly limiting the scope of our duties of global justice. And this is quite the opposite criticism from the one intimated in the Herzl quotation.

What I want to say in response to this criticism is that there is a connection between the principle of proximity and at least a moderate cosmopolitan insistence that in our thinking about particular states and particular legal systems we should leave the door open to international connection and to a sense of responsibility that goes beyond borders.

I think a case can be made that nationalism leaves little room for that sort of global responsibility. It is, as Reinhold Niebuhr observed, the institutionalization of sectional selfishness.[52] It is not clear how to build up to a theory of global justice from nationalist foundations, where a territory its natural resources are conceived in some strong sense as the property of people whose common bonds with one another separate them from the rest of mankind.

On the proximity principle, by contrast, political and legal arrangements depend on the happenstance of location and that is frankly acknowledged. We say, "Well, whatever we owe to mankind in general, these disputes at least—these disputes around here—must be settled." But they can be settled on an essentially *inter partes* basis, leaving it an open question what the people around here owe in

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[49] See Waldron "Who is my Neighbor?" op. cit. – and the comments in footnote 36 above.

[50] This paper is a draft of one of the chapters of a new book that I am working on called *Cosmopolitan Right*.

[51] [KANT, op. cit., pp. 83-4, paragraph 13 [VI, 262]: "All men are originally (i.e., prior to any act of choice that establishes a right) in possession of land that is in conformity with right, that is, they have a right to be wherever nature or chance (apart from their will) has placed them. This kind of possession ... is possession in common because the spherical surface of the earth unites all places on its surface." See also ibid., 158-9, paragraph 62 [VI, 352-3] -- an extraordinarily interesting passage.]

[52] Niebuhr, *Moral Man and Immoral Society*

the way of resource-sharing and cooperation with others further afield. There is no inherent obstacle to that broader outlook in the case of the principle of proximity, whereas there does seem to be an inherent obstacle in the case of principles that take seriously the exclusive affinities of peoples and nations.

So my first response to the Herzl denunciation is more aggressive than defensive. Ultimately we have a responsibility to adopt or at least leave room for a global and humanitarian perspective; it is not just a matter of choosing to be an "amiable visionary." Morality requires us sometimes to transcend the perspective of particular peoples and particular ways of life. And the principle of proximity—while still taking seriously the existence of separate political communities—offers a better basis for doing that.

The second respect in which I plead defiantly guilty to adopting a cosmopolitan perspective in all of this is in regard to the doubts that I have – the doubts that I have expressed in print now for ten or fifteen years – about the separateness and integrity of cultures or the importance of the preservation of particular ways of life.[53] The word "cosmopolitanism" means many things, and that skepticism is one facet of it which I think is very important. There's no time to say anything much about that this evening, except that this is the main basis on which I would disagree with Raz/Margalit article.[54] I am skeptical about any thesis about the cultural mission of the state. I do not believe it is the task of the legal system to promote or maintain the integrity of a particular way of life. This is particularly because I am skeptical about the individuation and identity of particular cultures. I believe in cultural mélange, in the fracturing and mixing of cultures, not in cultural identity.[55] I believe that is the descriptive reality, and I believe also, as an evaluative proposition, that it's healthier for cultures to see themselves as amorphous and unbounded and essentially fractured and compromised than to try to suppress all that or limit it in the interests of a spurious myth of cultural purity or integrity.

Anyway, even if cultures and ways of life could be distinguished from one another in a way that would make the legal nourishment of their integrity an intelligible aim of state and law, that doesn't make it an appropriate aim to impute to the law. Certainly it is an intelligent aim for most societies. Most modern societies are multicultural. If talk of distinct ways of life makes sense, then they seek to govern people and peoples of many different ways of life,—people who interact with one another, undertake new initiatives with on another, and fall into

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[53] Cites.

[54] Cite.

[55] JW, "Multiculturalism and Mélange."

conflict with one another across ethnic and cultural boundaries. Trying to apply the logic of nationalism to a multicultural society, trying to govern multicultural societies with the logic of nationalism—is causing greater and greater strain. For my money, it would be better to acknowledge the inherent inappropriateness of the nationalist principle, and adopt an alternative principle of the kind that I have been elaborating.

So part of me just wants to turn the tables on the Herzl and ask, "Who is being unrealistic?" There is and has been such a mingling of peoples and cultures and ways of life all over the world, for thousands of years, that the principle of nationality looks increasingly inept as a basis for thinking about the division of the world into separate political communities. Almost all modern countries shelter a whole variety of peoples and cultures within their borders; the distinction is simply between those who countries who do and those who do not allow an outmoded affection for nationality stand in the way of their dealing responsibly with that fact.

10. The Issue of Trust

And yet I am not happy with the stridency of the response I have given. When all this is said, there is still one massive outstanding issue that seems to make it overwhelmingly and irresponsibly naive to think of the allocation of peoples and territories to states on the basis of mere proximity, to think about the formation of political communities as though the only issue were mechanisms to resolve resource disputes among various individuals. The one remaining issue is the issue of trust—trust among peoples, trust as between culturally or ethnically distinct groups. After all, as I said earlier, the principle of proximity does not make the ancient affinities and hatreds disappear. It has not been part of my argument that national affinities are unreal or harmless; only that the state should not be founded on them. But if the state is not founded on them, if the state joins together in political community those who belong to different nations, cultures and ethnicities, then what becomes of their antipathies in this new political context? The law may promise neutrality and even-handedness. But there are still majorities and minorities and there is no reason to suppose that an ethnic minority should feel safe when it is delivered into the power of a majority, which comprises their ancient enemies. I put it very strongly, but the issue is a terrible one. The state is very powerful; it seeks to monopolize deadly force and the question is whether it is reasonable to expect people to submit to the murderous possibilities of a an officially proximity-based state, in which they confront what is in fact an affinity-

based group to which they do not belong. And this is not an abstract speculative possibility.

So what is to be said about this issue of trust? Surely this is the key to the affinity-based approach. It is not, as Mill said it was, a willingness to cooperate with some people rather than others. Politics always requires us to put ours lives in the hands of others. It is a question of which hands we are trusting enough to deliver ourselves into. I have three things to say on this issue.

The first is to question whether affinity is in fact a secure basis of trust. By predicating society on pre-existing trust, arising from shared nationality and ethnicity, we take a huge gamble that there will be no fission, that nationality will not disintegrate into sectarianism powered by the most vicious recriminations that one or other side is not being as true as it could be to the original vision of affinity. If we rely on affinity, we are always vulnerable to endogenously-generated disagreement and fissure. We must always expect that consensus is fragile. The proximity principle, taking the potential for disagreement and conflict seriously, is perhaps the better basis for approaching real world. In other words, I am saying that there is a gamble on both sides.

My second response is to see affinity or equality as a source of distrust. The principle of affinity is principle for shrinking trust as well as a principle for building on it. I mean now distrust between communities. Distrust that stems from widespread acceptance that principle of affinity is already in play.

I have heard people complain that my Proximity Principle is predicated on an individualist model of society and social conflict. It seems to proceed on the basis that the primary problem that the institution of the state confronts is conflict among individuals over property. But individuals, acting alone, are the last of the state's problems. States have to deal, not just with people, but with peoples, and that's something that liberal individualists have a very hard time coming to terms with. So—the criticism goes—maybe the Affinity Principle is more realistic in this regard at least: it takes seriously the tendency of humans to coalesce into groups and to identify strongly with groups; it takes seriously the communal dimension of human life. In the end it is the proximity Principle that is the more realistic. It assumes that there *will* be conflict in any particular vicinity and disagreement as to how that conflict is to be resolved. The conflict and the disagreement may be between individuals or between groups, between families or communities or businesses. Recognizing the need for some separate basis for resolving these conflicts need not involve blindness to the facts of human community. What the principle of proximity insists upon is that communal affinity and cultural and ethnic solidarity are usually part of the problem and not the basis for a solution.

By contrast, the tendency of the affinity model in a modern mixed-up world is exclusionary. It is the gerrymandering of borders, the generation of inter-communal violence and ethnic cleansing to try to artificially duplicate the demographic conditions in which alone the national principle makes sense. That's the reality: the creation of the legacy of a special kind of suspicion, a special kind of inter-communal hostility—hostility and suspicion the promotion and legitimation of which, under the auspices of nationalism and ethnic and cultural identity politics, has made the ordinary tasks of politics and law immeasurably more difficult and dangerous.

My third response is more optimistic and affirming. I spoke earlier of the hope that the experience of living side by side and solving problems under the auspices of a legal constitution might itself generate a certain solidarity. Neither should be discounted. The first--the daily experience of working things out together under the impartial auspices of law—can cut off ethnic animosity from its roots in ignorance and unjustified suspicion. It is a way of experiencing the human-ness of the other, rather than devoting deliberate energies at a distance to each other's demonization. And the Habermasian idea of constitutional patriotism offers the prospect that we can focus our solidarity on ways of taking conflict seriously enough to try to solve them rather than on ways of avoiding them by distance, differentiation, and hostility.

11. Conclusion

All of this brings us back to the question of what a discussion like this can possibly hope to achieve in a world where people's aspirations and fears, their best hopes and their worst nightmares, are already laid out on a matrix of nationalism and ethnic and cultural self-determination, whether we philosophies like it or not.

I worried at the beginning that nationalism is the only game in town. In some moods it seems so. At other times the principle of nationalism seems preposterous and irrelevant, wildly incendiary and irresponsible.

For my money, the proximity approach is more realistic in the mixed-up circumstances of the modern world, and less dangerous than the opposite, affinity-based or nationalist view. (It is less dangerous, certainly, when one thinks what is likely to be done – what has in fact been done – to turn the affinity-assumptions of nationalism into a self-fulfilling prophecy, to replicate artificially the demographic geography in which alone it makes sense).

I spoke at the beginning if the importance of this as an academic exercise: I said that I do not think we understand nationalism unless we also understand its rivals, the principles whose space it purports to occupy, the principles it purports to supersede. Even if it is inevitable, even if is the only game in town, is the

principle of national self-determination a principle whose motivation and effects we should be proud or ashamed of? It is, I think, a mistake to approach discussions of this sort purely in terms of the bottom line, purely in terms of what we should change or abolish or close down if the argument is correct. I am not urging us in this lecture to give anything up. But I would urge some reconsideration of the spirit in which the principle of national self-determination -- to which I guess the world is undoubtedly committed - should be pursued. For it matters not only whether we follow this principle, but how we follow it. In what spirit should we follow this principle? A spirit of moral certainty? Or a spirit of hesitation and humility?

If, in view of the facts about trust, there is no choice but to proceed with the communal separation and disengagement and the foundation or refoundation of states along lines of ethnic or cultural affinity, still this is not something we should be proud of or trumpet as an ideal. It is certainly not something we should be attempting to cultivate where it doesn't exist—to persuade people to feel national affinity and antipathy where they do not, or to offer even a watered down version of the principle as a basis for thinking about ordinary politics. Above all, it's important to remember and bear in mind—sadly perhaps and in a spirit of loss and futility—the road that was not taken, what the alternative is or have been an older and different conception of political organization. That's what liberalism political philosophy has neglected. And that, more than anything else, is what I have been trying to patch together in this paper.