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The astute observer faces a difficult task in predicting trends in international affairs. While many actors on the international plane find ever increasing opportunities for cooperation and interpenetration, others become increasingly ineffectual, irrelevant or isolated. This issue of e-merge explores (dis):integration! - the paradoxical trends of increased integration and sometimes total disintegration taking place in international affairs.

In her article "**Ethnonationalism and the Failed State**," Abby Stoddard explores the capacity of the civil state to act as a unifying force in the face of globalization's pressures. She observes that the phenomenon of failed or failing states can set in motion forces that cause shifts in individuals' political identification - membership in an ethnic or religious nation replaces membership in a civil state. Ms. Stoddard challenges the reader to consider the flexibility of political identity, usually disguised by the immutable claims of ethnicity and history.

By comparing the federal systems of Canada and the Former Yugoslavia, Nadia Marsan explores how diverse national groups can be granted recognition and autonomy without threatening the federal project. In her paper "**Uniting Diversity**," she observes that the dialectic between unity and diversity can be successful provided the federal structure is balanced and reciprocal: an overly centralized federation or, conversely, a decentralized federal structure are both incapable of ensuring the survival of a federal state.

Renee Martyna finds that the inequities of globalization - based on race, class, and nationality - have been replicated in the global feminist movement. This leads Ms. Martyna to ask "**Whither Global Feminism?**" - an assessment of the continuing viability of feminism as a global movement. She concludes that in order to survive, the global movement must initiate a self-critical transformation. If it can celebrate and harness the power of difference it can continue as a force for justice.

While cultures increasingly appear to share commonalities, regional particularities also appear to be on the rise. Marc Munro considers this phenomenon by examining the architectural symbolism of the Kuala Lumpur's Petronas Twin Towers - the world's tallest buildings. Taking cues from Islamic art, the Petronas Towers are intended to proclaim the rebirth of traditional Malay culture. In "**The Architecture of the Global Medina**," Mr. Munro questions whether what was intended as a statement of regional renaissance is in fact the product of a world devoid of particularity.

Regional trade agreements are one of the most significant and contentious parts of the integration underway in international affairs. Critics of the NAFTA argue that its investor-state dispute settlement has severely restricted the power of member-states. Eugene Lang weighs such criticisms in the context of the recent claim by Ethyl Corporation against Canada under the NAFTA. In his paper, "**In Defense of the NAFTA Investor-State Dispute Settlement Procedure**," Mr. Lang considers the extent to which the investor-state dispute settlement unduly constrains national sovereignty.

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The members of the e-merge Editorial Committee take great pleasure in cordially welcoming you to this website. We are confident that you will find the articles and book reviews to be stimulating and insightful. E-merge seeks to publish graduate student papers that challenge the reader to think about international issues in a new light. We hope you will enjoy exploring (dis):integration!

We are pleased to announce the call for papers for e-merge, volume four. Feel free to visit the Call for Papers page for more information. We hope that you will consider this publishing opportunity in the upcoming months.

Ethnonationalism and the Failed State: Sources of Civil State Fragmentation in the International Political Economy

For all the influence of kinship, culture and history, the phenomenon of ethnonationalist mobilization and conflict stems most directly from elements of state failure. Institutional and economic deficiencies, including chronic poverty and underdevelopment, rampant corruption and the pressures of globalization, erode the ability of the civil state to maintain its unifying force in the hearts and minds of its citizens. Failed or failing states can set in motion a number of forces that ultimately bring about a shift in individuals' primary political identification from membership in an associative civil *state* to membership in a particular ethnic or religious *nation*. This article surveys the current literature on ethnic conflict and war economies, and makes a case for approaching the phenomenon of shifting group identities as a rational choice of individuals, rooted in local and international economic/political conditions. Recent civil conflicts such as the former Yugoslavia and Rwanda are discussed to exemplify the essentially flexible nature of political identity - disguised though it is by the seemingly immutable claims of ethnicity and history.

Abby Stoddard is currently working toward a doctoral degree in politics at New York University, where she also holds the professional position of Research Associate at the Center on International Cooperation, performing policy analysis on international humanitarian assistance and post-conflict recovery. After receiving an MA in international affairs from Columbia University (SIPA), Abby worked for ten years in international humanitarian organizations, most recently as Program Director for Doctors of the World-USA. She is co-author with Shepard Forman of "International Assistance Organizations" to be published in a forthcoming edited volume entitled *The State of Nonprofit America*.

INTRODUCTION

The initial optimism that greeted the end of the Cold War, with promises of a “new world order”ⁱ and even “the end of history,”ⁱⁱ quickly faded when the 1990s witnessed a new surge of violent civil conflicts and the splintering of nation-states along ethnonationalist lines. The term “ethnonationalism” refers to a politicized group affiliation based on inherent traits - ethnicity, race, clan, tribe, cultural heritage or religion - that define “a people” in the minds of its members. Most ethnonationalist conflicts are fought within or across national borders, are prolonged, intractable, and often become inseparable from the humanitarian crises they engender.

The response of many policymakers and pundits to such conflicts has ranged from the apathetic to the apocalyptic. Ethnonationalist upheavals should not surprise, went the common refrain, as they are based on primordial human emotions and centuries of history. Furthermore, because of their emotional, irrational basis, such conflicts are by nature unresponsive to reason or traditional diplomacy. The implicit policy prescription seemed to be for the international community to wash its hands of the new horrors now visited upon peoples of the developing world, and regrettably to accept a certain amount of violence and ethnic partition as inevitable.

Some saw these events as signifying the decline of the nation-state itself. In two notable articles, Samuel Huntington’s “The Clash of Civilizations” and Robert Kaplan’s “The Coming Anarchy,” it is argued that “the real borders are the most tangible and intractable ones: those of culture and tribe.”ⁱⁱⁱ But are we to accept that only these ethnic identities are truly “real”, and that they are so solid and permanent? This article will explore an emerging school of thought that takes issue with this claim. I aim to advance the argument that the nature of political identity, though at times disguised by seemingly immutable claims of blood ties, culture and history, is in fact flexible, and is politically, economically and rationally determined.

The growing scholarly literature on “ethnic conflict,” as the name suggests, focuses mainly on the *conflict* aspect. Most of its theorists are concerned with studying the forces that drive people to commit ethnically based violence. This article, in contrast, seeks explanations for the internal transformation, in which the individual’s primary identity and allegiance shifts from the civil state to the ethno-nation, for example, the process by which a Yugoslav redefines himself as Croat, first and foremost. This shift may or may not result in violent conflict, or may itself be provoked by initial incidents of violence. The dynamics of ethnic identity and allegiance will be examined from a political economy, or rational choice, perspective.

I will consider the following systemic and unit-level causal factors: post-Cold War politics, globalization, the economics of conflict, the phenomenon of failed states, and the competing conceptual identities of ethno-nationalism and civil statehood. I will then review and attempt to synthesize the most recent developments toward a rational choice approach. In brief, it is my contention that:

- state failure is a process of which the archetypal “failed state” is only the most extreme outcome. It occurs at many levels and to varying degrees, engendering political and economic responses by groups and individuals;
- the economic response is manifested in the creation of illegal or parallel economies, with new economic actors engaging in war-profiteering made possible by globalization;
- the political response, in the worst case, is the manipulation of fear by legitimate leaders or ethnic activists to obtain or maintain control over portions of public and territory;
- the majority of the public is ultimately swept along as they shift their political identity from citizen of the state to member of the ethnic or religious nation - a self-interested

switch of allegiance, now that state is no longer ensuring their security or their economic opportunity;

- this process reflects a process of rational decision-making that is nonetheless masked, even to the individual decision-makers, by the trappings of altruism and group solidarity.

Simply put, the failure (or failings) of states did not simply ignite or “set loose” preexisting animosities, but has played a direct role in creating them, by forcing individuals to shift their identifications out of rational self-interest.

In Search of the New World Order

Political scientists have dubbed the era at the dawn of the twenty-first century as “post-Cold War,” “postmodern,” or “post-Fordist.” The fact that these definitions are framed in the anterior denotes that the old ordering concept of the international system has disappeared, and has yet to be replaced with a new common paradigm. Arguably the two most important features of the current system are the now unrivaled power position of the United States on the one hand and globalization on the other. These two phenomena have contributed significantly to the weakness and/or failure of many states, and to the rise of ethnonationalist movements.

Unipolarity without Peace

Some have compared the end of the Cold War with the end of World Wars I and II, as being catalytic to a new surge of nation building. Yet the ethnically based conflict and violence occurring today runs counter to the very idea of the nation-state system. It is a reordering in reaction to a negative situation. No longer valuable as strategic game pieces in the Cold War, many underdeveloped countries saw their superpower patronage supports (American as well as

Soviet) dry up, revealing chronic institutional and economic weaknesses that in some cases proved fatal.

The end of bipolar competition has also reduced dramatically the motivation to use aid and trade as political instruments to obtain allies and keep them in power. One consequence has been that superpower or major power patrons have withdrawn the foreign financial and military support on which some governments had come to rely for their power and their capacity to govern. Dependent more on foreign resources than on domestic tax base, and more on skills in obtaining foreign resources than on those of winning allegiance at home, ...such regimes collapse rapidly when external resources disappear. Verbal support has replaced the funds, arms, and bases of legitimacy that had been used to neutralize or coopt other contenders for power, buy domestic support, and distribute the minimal welfare necessary to social equity and to the peaceful resolution of conflicts provoked by inequalities. One need only mention the former Yugoslavia, Afghanistan, Somalia, Liberia and Zaire/Congo.^{iv}

As Michael Ignatieff expressed it, “huge sections of the world’s population have been simply left to fend for themselves. Not surprisingly, their nation-states are collapsing.”^v

Despite predictions of a *Pax Americana*, with the fading of the Cold War ideological contest, conflicts proliferated rather than petered out. Yet the majority of the conflicts were intra-national as opposed to international. States splintered along ethnic lines and many descended into armed conflict. Czechoslovakia’s “civilized divorce” was the rare exception among the examples of brutal violence and ethnic cleansing that came to define the 1990s.

The Mixed Opportunities of Globalization

Along with the end of bipolarity, an equally important set of factors has been the pressures and opportunities of globalization. Technological innovations in communications and transportation, and in particular the movement of capital across borders, have circumvented or eroded traditional state sovereignty not only in the conduct of international finance and trade, but increasingly in their own domestic affairs.

While world trade has greatly increased overall, developing countries have seen their share of the value of this trade decrease in past decades, notwithstanding the rapid expansion of Asian exports. No single cause or set of causes underlie chronic underdevelopment, but a constellation of obstacles to development may include the absence of capital markets needed for the development of innovative ideas; coordination problems for the collective action (retraining, etc.) needed to move into new markets; declining/cyclical terms of trade for primary products, which makes it hard to finance this move; inequitable income and land distribution among developing country populations; and, quite possibly, the combined effects of international structural adjustment programs requiring fiscal austerity on the one hand, and the inflow of development assistance resources on the other, creating significant incentives for corruption.^{vi}

The effects of globalization on countries mired in the poverty trap are widely debated. On the one hand many proclaim it as a positive progressive force, creating jobs, business opportunities and bridges to modernity throughout the developing world.^{vii} Globalization is viewed as having a beneficial effect on standards of living and education, even democratization, as the power of local elites is subverted by global competition and norms of transparency.^{viii} Yet there are those, even among globalization's proponents, who concede its potential for political disruption. They argue that contrary to expectations, globalization has in many cases weakened civil state institutions rather than forcing them to be more efficient so as to compete in the global market as economic units. Some have claimed that globalization increases rather than decreases inequities within states, causing demand for conflict among those who do not share in its benefits:

Conversion to free markets has exacerbated the problem of economic inequality in underdeveloped countries, many of which have underdeveloped regions which correspond to specific ethnic groups or segments of society.... Indeed, some of the poster children for globalization proved that they were more,

not less, vulnerable to civil strife as a result. The riots, lootings, and rapes that occurred in Indonesia in May-June 1998 provided a stark example of civil conflict – albeit fortunately not civil war – sparked by an economy's inability to cope with the demands as well as the opportunities of globalization.^{ix}

Others say the problem is that growth of unregulated capital markets increases the instability of national economies, and that this instability can lead to conflict. Dani Rodrik, for one, has contended that openness to the global market can affect redistributive politics inside a country. Rodrik points out that the efficiency of the state in tax collection and redistribution is decreased when the country is opened up to trade, for it is harder to assess and collect taxes on incomes when capital is flowing easily across borders. Confidence in the state as a means to ensure that the entire population will share in the benefits of increased trade will decrease as income gaps widen.^x

Finally, there exists the threat of what could be called globalization's "dark side", meaning its potential to trigger or prolong civil conflict and help spread it across national boundaries. In a trend that will be examined in more detail in a subsequent section, recent research has uncovered links between the world market and regional "war economies," such as drugs, arms, oil and diamonds. These illegal opportunities create incentives among certain actors in conflicts to promote and perpetuate the violence and anarchy to protect their economic interests. Mark Duffield has observed that the increasing globalization of the international economy has lent itself to new forms of war, characterized by their prolonged duration and links to expanding international black and gray markets.^{xi} This view sees protracted instability and social breakdown as essentially an economic adaptation to globalization.

Michael Hechter posited that markets in general tend to destabilize social groups. Unlike the production of collective goods, the market is better able to produce goods with independent and divergent individuals acting in the absence of formal controls. This logic "suggests that the

growth of markets should have destabilizing consequences for many preexisting groups. Indeed the rise of the market is accompanied by the demise of a host of different kinds of groups – the traditional extended family, kinship groups, etc.”^{xii} Globalization pressures, it can be argued, have had this effect on the weak state. In some underdeveloped countries the nominal state has ceased to be a viable group to which to belong.

The vacuum left behind after the Cold War, coupled with the vagaries of globalization, has thus created serious external strains on the traditional nation-state apparatus, particularly in the developing world. Many developing states were already weakened or failing due to a variety of internal factors, to which we will now turn.

The Phenomenon of Failed and Failing States

Much scholarly attention has been paid recently to the so-called “failed states,” which surfaced after the end of the Cold War and resulted in a number of the conflicts that became emblematic of the 1990s. A failed state results when the leadership and institutions of the state are weakened and discredited to the point where the state can no longer fulfill its responsibilities or exercise sovereign power over the territory within its borders. The concept of the state is not confined to government and political systems, but encompasses the basic structures on which political, civil and economic life is conducted. The major responsibilities of states reside in the provision of public goods. In other words, a functioning state must be able to maintain law and order and protect rights within its borders, defend against threats from without, and provide (at a minimum) the infrastructure to allow for economic activity.

In an article on complex political emergencies (“CPEs”), Lionel Cliffe and Robin Luckham write that “the causes (of CPEs) are not only to be found in the issues around which

conflicts are politicized, such as ethnicity or regional identity, but also in the prior trend towards a failure of governance.”^{xiii} I argue that, in fact, it is often this prior failure of governance that is the causal factor in the politicization of ethnic identity issues.

Some of the earliest examinations of weak states are found in economic development literature. An overview of the debate that preceded the current failed state literature shows an evolution in thinking about the appropriate role and purpose of the state in development, and whether it serves as a motor or a drag.^{xiv} Most recently the debate has progressed with the works of William Reno, Mark Duffield, and Mats Berdal, among others, who have focused on “criminal” states as opposed to the merely highly corrupt ones. The distinction revolves around the purpose of the state’s action in the economy. A corrupt state, it could be reasoned, has been derailed from the long-term goal of benefiting the whole in favor of short-term benefits for a few individuals. A criminal state, on the other hand, can be seen as having a wholly separate purpose, and is operating in a different economic reality. A failing state is one that becomes “criminalized,” when the government ultimately exists mainly to extract surplus for the enrichment of a few, keeping the potential opposition divided and “offering different fiefdoms to different groups.”^{xv} In countries such as Somalia, Liberia and Sierra Leone, the end result has been the total collapse of central government into a chaotic and violent interplay of rural warlords.

In his book *Warlord Politics and African States*, William Reno explicates the process of degeneration of weak states into warlordism. This occurs through policies of “elite accommodation” in which leaders intentionally stymie development by outsourcing economic roles to outsiders and increase dependencies in order to simultaneously deny power to those who may be an internal threat, and to gain a source of external wealth that can be used to pay off

potential rivals. Because it has ceased to serve collective interests and lacks legitimacy among vast portions of its citizenry, the weak state is compelled to privatize security, hiring mercenaries, practicing political division, essentially “mirroring future warlord politics.” Politics are “commercialized” by leaders intervening in markets to accumulate wealth directly, and limiting access to potential rivals. These leaders intentionally keep state institutions and bureaucratic structures weak, as they are a potential source of power for various rival elites. The resulting “weak” or “quasi” state increasingly has less to do with collective interests and serves only to maintain the hold on power of the leadership and patronage system. Cold War patron states underwrote this process of elite accommodation at first, and later this role was assumed by the international financial institutions, which continued to prop up the regimes under the mistaken assumption that with Cold War patrons gone, the rulers would have no choice but to act in the interests of economic development.

Reno’s work points to a rational explanation of political behavior that heretofore defied rational explanations because of its debilitating effects on the institutions of a civil state. The weakening of states can be profitable for certain parties: “The failure of state institutions allows non-state organizations to take advantage of economic opportunity and create new political alliances.”^{xvi}

Not surprisingly, the examples of failed and failing states (and the bulk of ethnonationalist conflict) have occurred in the developing world. Shashi Tharoor has written that the root cause of state failure is the condition of longstanding underdevelopment, which breeds conflict: “The uneven distribution of infrastructure in a poor country, for instance, can lead to resources being distributed unequally, which in turn leads to increasing fissures in a society

between those from ‘neglected regions’ and those better served by roads, railways, power stations, telecommunications, bridges, and canals.”^{xvii}

There are levels and degrees of state failure, and they need not lead inexorably to violent conflict. As Zaire proved, a state can be failing for many years before it disintegrates completely, and, although a rarity, Czechoslovakia demonstrated that a peaceful separation on ethnic grounds is at least possible. While one finds the archetypes of state failure in Africa (Somalia, Liberia, Sierra Leone, and Zaire/Congo), they have their parallels in the former Yugoslavia and other postcommunist countries. Rwanda never fit the profile of a failed state in the conventional sense. In fact, its strong administrative and governance structures actually facilitated both the genocide and the quick consolidation of power by the invading RPF. Nonetheless, the Rwandan state had failed in important ways before the cataclysm of ethnic violence. Its president fronted a highly corrupt and inefficient system of patronage that had abdicated responsibility for security and governance of its people, while using fear and ethnic scapegoating to remain in power. This, as we shall see, created the conditions of the ethnonationalist movement that led to the massacres.

In all of these countries, the state had ceased to be a security provider or guarantor of economic opportunity. The state’s politics and patronage worked to divide rather than unify, certain economic and political actors seized the opportunity for personal enrichment and localized power, and the mass of the people followed the only viable course that was laid open to them: they sought out other non-state group affiliations to protect their interests.

The Economics of Ethnicity and Conflict

UN Secretary General Kofi Annan, reporting on complex humanitarian emergencies, cites a study by the United Nations University that found a positive relationship between war and inequality among domestic social groups. More than simple poverty, it is this inequality, which the weak state is unable or unwilling to manage, that breeds conflict. Although not all poor states with high levels of inequality experience civil war, in those that have, inequality corresponding to ethnicity proves an especially potent destabilizing force. As the Secretary-General stated:

Political demagogues have little difficulty finding targets of opportunity and mobilizing support for chauvinist causes.... But in other cases armed conflict has less to do with ethnic, national or other enmities than the struggle to control economic resources. The pursuit of diamonds, drugs, timber concessions and other valuable commodities drives a number of today's internal wars. In some countries the capacity of the State to extract resources from society and to allocate patronage to cronies is *the* prize to be fought over.^{xviii}

The literature concerning these so-called “war economies” (including works by Duffield, Reno, Keen and Berdal, among others) provides perhaps the most compelling argument yet that today's ethnic civil wars are not merely the acting out of ancient hatreds, but have a rational economic basis in the failed state context. The dynamic can be explained by entitlement theory, as expanded by Stewart and Fitzgerald's concept of “non-entitlements” or illegal gains.^{xix} The loss of direct entitlements of the market and public sector of the failing state are “more than compensated for by the opportunity that conflict creates for increased access to non-entitlements.”^{xx}

Even the act of violence itself can be seen to have a rational basis beyond the forces of human emotion.^{xxi} Mats Berdal and David Keen have identified and examined the various “functions” that are served by violence, even atrocities against civilians, in civil conflicts. These

functions, according to Berdal and Keen, are political, economic, defensive and psychological, and all are in service of self-interested goals.^{xxii} Thus basic self-interested behavior is disguised as blood feuding. As Reno has illustrated, what may appear as ethnic struggle in African states is instead often a case of “enterprising strongmen focus[ing] on controlling accumulation, which may now mean collecting aid, seizing natural resources, and manipulating calls for reform.”^{xxiii} This notion is echoed by authors Cliffe and Luckham who state that “in most [complex political emergencies] of the 1990s discontents arising from social and economic deprivation are more often articulated in ethnic nationality, regional or communal terms... In Somalia, for instance, ...whatever the definition of groups, the object of their contestation often came down to matters of land.”^{xxiv}

Goodhand and Hulme have termed these groups of actors “predatory social formations.” Today’s complex political emergencies, they write, are characterized by a virulent ethnonationalism, but this often serves as a cover for the war profiteers and political opportunists who foster and manipulate these sentiments. These motives are the same as the ones that serve to prolong the conflicts, as “[p]eace would disrupt the systems of production and exchange that provide such warlords and their followers with livelihoods.”^{xxv} There have even been cases of mutual cooperation between warring parties in sharing the spoils of their continued conflict.^{xxvi}

The connection between the looting economies in wartorn countries and global black or gray markets is well documented: opium in Afghanistan; cocaine in Columbia; diamonds in Angola, Liberia and Sierra Leone; oil, diamonds and other natural resources in the DRC. All of these conflicts are buttressed by the vast global trade in weapons, much of it emanating from Eastern Europe and the former USSR.

An emerging field of study known as “the regionalization of conflict” calls attention to the way that opportunities presented by these global markets create “an open invitation to spreading ethnic conflict not only within individual countries, but across borders and whole regions.”^{xxvii} Globalization thus helps generate the “supply side” of civil conflict and draws in local, regional and international actors.^{xxviii} This creates difficulties for those seeking to contain and resolve civil conflicts, because the individual state has ceased to be a viable unit of analysis.

Like war economies, ethnonationalist identities transcend national borders, which is what makes ethnonationalism such a useful mobilizing force as well as a convincing cover or rationale for profiteering activities. Glazer and Moynihan (1979) have pointed to the “salience of ethnicity” as an expression of and vehicle for pursuing economic interests. “Paradoxically, ethnicity is an effective means of mobilizing around common material interests precisely because of its non-material, that is symbolic, content, which masks or ‘mystifies’ those interests for the group members themselves.”^{xxix} Ethnic, religious, linguistic, or other groupings can serve this function equally well. Even criminal organizations have been known to adopt the ethos and rituals of family or tribe.

Competing Identities: Ethnonationalism and the Civil State

Having examined the links between state failure and non-state economic opportunities (i.e. black markets and war economies), this section will look to more political dimensions, to see how ethnonationalist sentiments are used to rally peoples behind a non-state identity, and to make their rational behavior in doing so appear irrational. To do so it is useful to review the theories of ethnonationalism and ethnic conflict.

First, regarding concepts of nation and state: the idea of the nation is not easily defined in the modern political context. Distinct from the concept of “state,” which implies a juridical order, a civil-political association, and recognized geographical boundaries, the term “nation” is more abstract and intangible, involving the consciousness of a “people” holding a shared perception of its history. Modern day nation-states contain both of these dimensions to varying degrees. Truly ethnically homogenous nation-states are virtually non-existent, while most countries contain a variety of diverse ethnic groups within their borders and depend upon their peaceful cohabitation.

Theories of ethnonationalist movements and identity construction

To cherish a sense of group identity, of belonging, is undoubtedly a fundamental human trait. Individuals seek group identification for reasons of security and to pursue collective interests. Of course, identity is necessarily relational, and would be meaningless without a broader context (there cannot be an “us” without a “them.”) This concept helps to explain the apparent contradiction between the concomitant trends of economic globalization on the one hand and ethno-political fragmentation on the other. As Turton has argued, “One cannot think locally unless one already has an idea of a global context in which localities can exist. (To make a claim to self determination) is also to assert global identity.”^{xxx}

Yet while ethnicity is a subjective, relational concept, it is at the same time very real in the sense of its power to motivate people and in its basis in historical events. It cannot be disputed that nationalism is capable of unifying a nation and consolidating domestic order, and alternatively of breaking states apart and instigating war. But is nationalism necessarily the predominant feature of personal identity and human relations?

Historically, the debate surrounding this question has polarized around the “primordial” viewpoint, which holds that the truest and most binding identity are those of “tribe,” and the constructivist position, which insists that ethnonationalist identity, like all others, is a purely social construction. The primordialist-constructivist debate on ethnic identity has been framed elsewhere as “ascriptive” vs. “situational”,^{xxxix} but the fundamental question boils down to whether such identities are essentially fixed or flexible. More recently, a third view has begun to emerge that effectively synthesizes the two opposing perspectives, maintaining that in fact, “ethnic identity is *both* rooted in history and subject to social engineering.”^{xxxix}

Primordialism originated in the anthropological writings of Shils and Geertz, who hypothesized that all modern humans are subject to the strong and prevailing emotional influence of ancient primordial bonds of their ethnicity.^{xxxix} This view holds that ethnicity is fundamentally different from other forms of social groupings by virtue of its “relative disengagement from interest, especially economic interest,”^{xxxix} and is used to explain why ethnonationalism may prevail, even when it appears to run counter to rational interest-maximizing behavior.

A simplified version of the primordialist approach became popular in press and policy circles in the 1990s, especially in regard to the civil conflicts that erupted in the immediate post-Cold War period. The metaphor often used was of ancient ethnic hatreds being “thawed out” or “set loose” after communism’s fall. In Africa, the postcolonial nation-states were widely dismissed as artificial boundaries cutting across the “true” groupings corresponding to tribal identities. To quote one author, “Collective identities in underdeveloped societies are particularly conflict prone because identities are derived from *fundamental, incontrovertible, and non-negotiable* values such as language, history, and religion.”^{xxxix}

That this attitude is so common when examining ethnic conflict is understandable given the intense brutality of modern civil conflict and the apparent irrationality of the warring parties who seem to deliberately choose bloodshed and anarchy over negotiated settlement. The IRA refusing to disarm in accordance with the negotiated power-sharing agreement is case in point of a seemingly irrational decision, when compliance with the agreement would afford it greater long-term benefits. The *New York Times* quoted author Brian Feeny: “‘There’s nothing about the IRA’s decision that is strategic. It’s atavistic and sentimental.’ Said another analyst, ‘Never underestimate the impact of folk memory on the psychology of republicanism.’”^{xxxvi} Unfortunately the primordialist argument leads to a theoretical and political dead-end. If one cannot fathom what is in the human heart, one cannot construct policy solutions or alternatives either.

Though the scientific consensus is that the concepts such as race have no real meaning beyond superficial physical characteristics, and that “most human groupings are highly subjective,”^{xxxvii} some theories for ethnonationalism persist which stress a “natural,” inborn and unavoidable sense of bonding with one’s own kind. So-called “genetic similarity theory”^{xxxviii} holds that it is an evolutionary imperative for like to bond with like in order to increase the chances of gene survival. For reasons of genetic likeness one chooses a mate, a community, and even a best friend, according to the theory. Whatever the scientific merit of such an argument, it cannot satisfactorily explain the experience of assimilated immigrants in America, or the numerous intermarriages in Yugoslavia and Rwanda before the conflicts.

The opposite side of the debate is the “circumstantialist” approach, associated most often with Barth (1969) and Glazer and Moynihan (1975). These authors argued that ethnic identity and groupings are partially determined by social conditions and economic interests, pointing out

that “many of the groups that had engaged in ‘primordial’ conflicts are themselves recent historical creations.”^{xxxix} Charles Kupchan goes further, defining nationalism and ethnic identity as purely a socio-political construct, and not a human trait: “Precisely because nationalism is not primordial or essentialist, it is malleable and its trajectory is susceptible to influence through policy instruments.”^{xl}

Taking a similar view, Shashi Tharoor refers to the spate of ethnonationalist movements as a form of “postmodern tribalism.”^{xli} Ethnonationalism is now more commonly manufactured, he says, usually by leaders trying to maintain their hold on power, “or to distract their citizens from other domestic failures, often when ethnic division is nowhere as profound as being claimed ... All nationalisms are essentially invented (or reinvented) in modern times, through a combination of imagining ethnic, linguistic, or historical communities that have no greater basis than communal indoctrination.”^{xlii} For the ends of economic advancement, power, and control over resources, ethnic separatism is promoted as the most effective means, and is supported by the language of human rights and the concept of self-determination.

Representing the third, or synthesis, approach is Balkan specialist Stephen Majstorovic. Majstorovic has identified in ethnonationalist movements a phenomenon he calls “primordialization,” by which he means a process of “creating, re-creating or enhancing an identity that is subjective and historically rooted.”^{xliii} This was especially true of the Serbs, for whom, “more than for the Muslims or the Croats, the parameters of construction and reconstruction become narrower with each historic alliteration of identity formation, or primordialization.”^{xliv}

An important empirical contribution to the study of ethnic conflict has been provided by Ted Robert Gurr at the University of Maryland, whose database classifies and tracks 233

“politicized” ethnic minorities around the world.^{xlv} Taking the mobilized ethnic minority group as his unit of analysis, Gurr has developed detailed profiles of ethnonationalist movements in every region, starting from 1945. As is to be expected with the benefit of side-by-side comparison, the differences between ethnonationalist movements appear more striking than their similarities. Indeed, some theorists have used these findings to call for the disaggregation of “ethnic conflict” as a study,^{xlvi} on the grounds that one cannot reasonably lump together such diverse and complex situations as Sri Lanka and Northern Ireland, Burundi and Quebec. However, one stands the risk of losing the forest for the trees, and the wealth of data may obscure some important general findings. For example, Gurr’s data show that, in the main, ethnonationalist conflict is on the rise in most regions of the world except in the western democracies and Japan (where it is decreasing), and that ethnonationalist movements are most intense in the world’s poorest and weakest states.^{xlvii} The primordialist school might counter that the minority groups in the western democracies and Japan make up much smaller percentages of those populations, but would be hard pressed to explain the recent rise of intra-state conflict across the board without consideration of economic circumstances and interests.

The argument of this article therefore takes a position akin to the third view: i.e., that there is a particular salience to the inherent qualities of ethnicity, religion or culture, and a potency to ethnonationalism as a mobilizing force, but that these “organic” or inherent values do not automatically trump those of the associative variety. Rather, it is the weakness of the structures of the associative state that ultimately forces a shift in identity and allegiance to the ethnonationalist stance. The momentum for this shift is first initiated by deliberate actions of economic and political opportunists with interests in ethnic separation. The manipulation of history and nationalist myths and the exploitation of fears by power-seekers lead more and more

people to switch their allegiance to the ethnonationalist group, creating a snowballing or “complementarities” effect on the mass public, until there is total polarization. As such, in this line of reasoning, ethnic identification is treated as endogenous, rather than a fixed independent variable. This is not to deny that factors such as historical experience, religious fervor, and strong feelings of unity exist, but only that they do not inexorably trump other identities and associations. Nor should it be construed as the utopian view that the associative state can transcend and overcome all divisions.

The economic motivations behind instigating and perpetuating ethnic division and conflict were explored in the preceding section. Global markets have provided incentive to corrupt state actors or non-state actors to pursue enrichment outside the formal state structure, often in war-profiteering, smuggling, and other criminal activities that thrive in anarchic conditions. Acknowledging that the spheres of politics and economics are fundamentally inseparable,^{xlviii} we turn now to the more power-based motivation for sowing ethnonationalist divisions.

Political opportunists and the function of history, fear and complementarities

Charismatic leadership, a shared version of history, and the manipulation of fear are important contributors to the formation of a national identity. These factors work in concert with economic motivations in driving ethnonationalist movements.

Nationalist sentiment can and has been manipulated by leaders not only to mobilize a domestic population against a foreign enemy, but also to legitimize dictatorships and deflect criticism away from the domestic regime. In this way, it can be argued, ethnonationalism and autocratic government are mutually reinforcing. In an atmosphere of authoritarianism, where the rights of individuals are subordinate to the group, political matters are not open to the public

scrutiny and debate that could potentially expose and defuse nationalist myths and paranoia. Ethnonationalist movements are typically preceded by revivals of historical narratives and symbols, and these “positive” unifiers are later merged with the incitement of hatred, which is at bottom the cultivation of fear. In every bloody ethnic conflict, the average individual believed that the actions of its group were justified to defend against an enemy bent on their destruction. In the months preceding the genocide in Rwanda the national radio warned repeatedly of an ensuing raid by exiled Tutsis bent on killing and enslaving Hutus. Serbs in Bosnia spoke with utmost conviction of their names being seen on “death lists” drawn up by Croats and Muslims.

The media plays a special role in fomenting civil conflicts and has been seen to wield great power in inciting ethnic fears and violence. Television propaganda images in the Balkans, and Hutu nationalist radio in the days leading up to and during the massacres in Rwanda, are often cited as major contributing factors to the violence. The appeal to ethnic images and folklore, and a call for the return to real or imagined glory days of old, especially when the modern state structure is failing, are powerful tools in the hands of those who would maintain their grip on power, even if it is over a smaller subset of their former sovereignty.

A report on the conflict between Muslims and Christians in Ambon, Indonesia, provides a textbook example of the engineering of fear and hatred to the point where violence becomes almost unavoidable:

In Indonesia, still reeling from the carnage in East Timor, chaos is a political tool, and most outbreaks of violence seem to have been either set off or fueled by provocateurs. Most people interviewed here in Ambon are convinced that someone -- political schemers, disaffected soldiers, religious extremists, corrupt business interests, perhaps all of these -- has provoked their war and is determined to keep it alive. Echoing sentiments of some Western policy makers in the wake of Yugoslavia, Rwanda and other ethnic conflagrations, the president's supporters cite helplessness in the face of such “complex and deep-rooted” problems in Ambon...

Ambon today is hostage to rumors and false reports. Unverified and exaggerated accounts are repeated in the national press, fueling passions around this nation of 210 million, where nearly 90 percent of the people are Muslim. In Ambon, both sides insist that they fight only in self-defense.

Even if the fighting were to stop today, the hatreds and brutality that have taken root over the last year may take generations to heal...(depression, frustration and) despair that seems to have driven so many people into religious warfare, beyond the reach of any real religion.^{xlix}

The particular extremism of expatriates has also been seen to play an important role in galvanizing people into ethnonationalist movements. This was evidenced, for example, in the role of expatriate intellectuals “in creating, practically out of whole cloth, an Oromo national self-consciousness where none had existed, and in financing a ‘liberation army’ to win a state in the Horn of Africa for a nation that had never existed before in the midst of most of its putative citizenry.”^l An additional factor contributing to the ethnicization of a group is external recognition and hence legitimization of the movement, such as the precipitous recognition of Croatia at the outset of the Yugoslav breakup. Finally, some theorists have emphasized the process of democratization, particularly premature elections, as instigating ethnic strife. In addition to the conditions of underdevelopment and the loss of Cold War patron states, democratization introduced to institutionally weak states can easily be seen as a contributor to state failure and civil strife.

The complementarities effect on individual self-identification

To understand the dynamics of ethnonationalist polarization, it is necessary to examine the notion of individual identity. In his book *One for All: The Logic of Group Conflict*, Russell Hardin echoes Erikson’s supposition that the essence of identity is not inborn characteristics, but rather the act of identification, i.e. a personal choice based on what “motivates” the individual.^{li} Depending on the circumstances, ethnicity need be no more motivating than civil statehood, or

for that matter, profession or social class. Most people identify with a number of different and sometimes overlapping social groupings, and will emphasize one or another identity depending on the time and circumstances. However, a major shifting of prominence from geographic group identity to a subset of that identity, say American to Texan, has major political implications because the second identity necessarily negates the first.

If one accepts the notion that an individual chooses his or her primary identity, then the concept of complementarities can help describe the process of people's redefinition of themselves by ethnonationalist identities. The complementarities principle holds that the return for any one individual depends on what everybody else (in that industry and complementary industries) is doing. The cost of adoption (of a new technology, for example) falls as the number of others adopting it rises. By the same token, it becomes more costly to stick with an old technology as the number of people using it falls: "This divergence between individual gain and social cost occurs whenever a system of production, or organizational form, exhibits externalities, so that the cost or benefit of adopting that system by an individual depends on how many others have adopted that system." A tipping point is reached where it is no longer in one's interest to maintain the civil state association when all around you are forming separate camps. This is possible even when individuals do not privately subscribe to the ethnonationalist line, as Timur Kuran contends in his work on "preference falsification."^{lii} People will tend to "go with the flow" of public opinion in their environment, either by displaying positions they do not privately hold, or by remaining silent. There is then a snowball or cascading effect that firmly entrenches the position. This phenomenon explains how public opinion can be shaped and groups mobilized by a few vocal activists.

In Europe, ethnonationalist identities and animosities were not thawed after communism, but were actually further hardened than during the Cold War period. In Africa, colonialism planted the seeds for ethnic strife by setting down rigid class and territorial boundaries that made ethnic groups less permeable, and framed them in political competition.^{liii} As the following case examples of Rwanda and Yugoslavia will illustrate, it was not primordial sentiments or ancient hatreds at the root of these conflicts, but rather state failure coupled with deliberate political manipulation. These particular cases were chosen precisely because they were so often held up as examples of intractable conflicts based on primordial loyalties and hatreds.

Rwanda

The dumbfounding horror of the Rwandan genocide, which claimed the lives of over half a million Tutsis and thousands of Hutu sympathizers, certainly seems to defy rational explanation. Once the scale of the carnage became known, world leaders shook their heads as the Western press wrote of ancient, inexorable tribal hatreds. Upon closer inspection, however, the ancient hatreds theory cannot explain why the organized political violence by one group against the other did not actually begin until 1959.

In fact, the assignation of Rwandans to the Hutu or Tutsi group has little to do with true ethnic ties, but was primarily an economic class or caste construct harking back to the Belgian colonial period.^{liv} Although the majority of modern Rwandans descended from two separate peoples who migrated to the area beginning some 2000 years ago, after centuries and centuries of coexistence and intermixing, “ethnographers and historians have lately come to agree that Hutus and Tutsis cannot properly be called distinct ethnic groups.”^{lv} Unlike many other African countries, Rwanda existed as a self-contained nation state prior to the colonial period, in which Hutu and Tutsi lived intermingled, sharing the same language, religion and culture. The political

leaders could be either Hutu or Tutsi, and members of one group could join the other through marriage and clientage.

Although most Hutu and Tutsi could not be identified by appearance, certain physical archetypes remained, with some of the Tutsi displaying longer, thinner “more European” features. It was this difference that was exploited by Belgian colonizers as a method of divide and rule. In the early 1930s Belgian colonizers using “racial scientists” armed with calipers and measuring tapes undertook a census and issued ethnic identity cards to every Rwandan. This measure prevented hereditary crossing over and established a political system in which the Tutsis, deemed superior by the colonial power due to their physical traits, became the predominant economic and political class. Although traditionally Tutsis were herdsman and Hutus were cultivators, leading to a degree of economic differentiation, the hierarchy of one group over the other was entirely externally imposed in the twentieth century. In his book on the genocide, Philip Gourevitch speculates that the Belgians saw this divisive order as necessary precisely because pre-colonial Rwandans, despite being of different ethnic heritage, were so strongly unified under a common Rwandan identity.^{lvi}

Following the census of 1933-34, the Belgians created a colonial order in which Tutsis dominated economic, social and political life, and as directed by the Belgian colonial power, repressed, taxed and physically beat the Hutu, who were used as forced labor and denied most educational and employment opportunities. This undeniably created an indelible, if relatively short-lived, historical legacy to overcome in subsequent inter-group relations. As Gourevitch writes:

Whatever Hutu and Tutsi identity may have stood for in the pre-colonial state no longer mattered; the Belgians had made ‘ethnicity’ the defining feature of Rwandan existence...(W)ith every schoolchild reared in the doctrine of racial superiority and inferiority, the idea of a collective national identity was steadily

laid to waste and on either side of the Hutu-Tutsi divide there developed mutually exclusionary discourses based on the competing claims of entitlement and injury.^{lvii}

The political order turned on its head when Hutus, supported and led by Belgian reformers, staged a coup and replaced Tutsi leaders with Hutus in 1960, just two years before Rwanda gained full independence from Belgium. The Tutsi dictatorship was replaced with a Hutu dictatorship, and distrust between the two groups escalated to the point of state-sponsored pogroms against Tutsis every few years. Each of these massacres resulted in a growing of the Tutsi-led army in exile, the Rwandan Patriotic Front (RPF).

The Rwandan state under the government of Habyarimana was corrupt to the point it could easily be classified as “predatory,” to use the terminology of economics author Peter Evan.^{lviii} The president and a small group of cronies centered in the northwestern provinces enriched themselves while the majority of Rwandans remained in extreme poverty. After the prices of Rwanda’s chief exports - coffee and tea - crashed in 1986, the economic situation got worse, while the corrupt oligarchy began to focus on skimming foreign aid donations.^{lix} Meanwhile, Habyarimana’s original promises of peace, unity and development for all Rwandans were shattered when scattered pogroms against Tutsis began occurring, spurred on by anti-Tutsi propaganda in the popular press and threats of an RPF invasion. The fear of an invading Tutsi army from without, coupled with a scapegoat Tutsi minority within, allowed the oligarchy to maintain control and distract the majority of the population from the disastrous economic situation. Yet the power holders within the oligarchy were increasingly competing with each other over a shrinking pot of resources.

The 1994 massacre, now recognized by the international community as a true case of genocide, occurred immediately after the death of Hutu President Habyarimana in a suspicious plane crash. The corrupt power structure, now without the nominal leadership of Habyarimana,

and alarmed over the Arusha Accords which called for power sharing with the RPF, essentially called on every Hutu to kill every Tutsi in Rwanda. By best estimates, between 500,000 and 800,000 Tutsis were slaughtered over a three-month period before the RPF took control of the country and installed a new government.^{lx} The Hutu army and militia groups were so focused on killing Tutsis that they did not put up a serious resistance to the invading army but kept moving in a swath across the country until they were driven across the border, along with about two million civilian refugees, by the much smaller RPF force. It was as if the oligarchic power structure of the Habyarimana government, in tatters after the years of corruption and infighting simply disintegrated. The brutally swift and decisive actions of the exiled RPF in moving in and taking control of the state apparatus was the primary reason Rwanda did not end in a situation of anarchic warlordism like other failed African states.

Yugoslavia

The ethnonationalist groups that tore apart Yugoslavia in the early 1990s had different cultures, histories, and resentments from those in Rwanda, yet, when looked at from the perspective of economic crisis and state failure, there are some fundamental similarities: specifically, the disintegration of the state and the manipulation of fear and the use of the media by power-holders.

Tribes of Slavic peoples first settled in the territory of former Yugoslavia in the sixth century, and lived independently until the Middle Ages, when Croats and Slovenes came under control of Austria-Hungary and Serbians were defeated by the Ottoman Empire. Serbia maintained its Orthodox religion and cultural identity throughout the years of Turkish rule. Croatia and the northern republics remained a part of the Austro-Hungarian Empire and Roman

Catholic faith. Under the Ottomans, many Serbian and Croatian inhabitants of Bosnia-Herzegovina converted from Orthodoxy or Catholicism to Islam. Later Bosnia was transferred to Hapsburg rule.

Many other European states, including Germany, are united of much more diverse groups than the South Slavs.^{lxi} What differentiate the people of Yugoslavia are their separate histories – in essence, the political and religious legacies of their previous foreign occupiers. Except for the ethnic Hungarians in Vojvodina and ethnic Albanians in Kosovo, the overwhelming majority of Yugoslavs were of the same Slavic ancestry and shared a common language

Like Rwanda, the former Yugoslavia has often been perceived as a seething cauldron of longstanding ethnic hatreds, which kept a lid on the violence only as long as Tito and the USSR were in existence. There are those who are now questioning this conventional wisdom. A few theorists have looked at ways the Yugoslav structure of government, as it evolved during the socialist period, actually helped to construct and entrench ethnic identities. Gojko Vulkovic has blamed the style of decentralized socialist self-management introduced under Tito for “creating the conditions for development by the republics of extreme ethnocentric policies.” Vulkovic maintains it was the structure of political and economic institutions that set the stage for the ethnic conflict to come. Economic life in socialist Yugoslavia was organized vertically – through guilds, while political power was organized horizontally – in communes and regions that corresponded in many areas to ethnic groupings. After the 1974 constitution granted increased autonomy to the regions, the regional political leaderships increasingly empowered themselves and attempted to expand their control over regional resources.

The constitution that was built on ethnic identity, far from stemming ethnic rivalry, would ultimately dissolve along these same lines:

This outcome led to ethnic violence and disintegration in a period when an already weakened Yugoslavia tried to transform its socialist self-management system into a multi-party democracy ... Yugoslav political institutions and administrative state appeared incapable of maintaining unity in the absence of a strong central authority. The ethno-national skeleton of political and administrative institutions reemerged at the surface of political competition. It was the system of socialist self-management ... that provided the ideological, institutional, and administrative environment that generated such ethnic polarization of the South Slavs.^{lxii}

James Fearon has reinforced this strand of thought. He maintains that Yugoslavia's "federal bargain," which was meant to provide both economic security and protection of minorities, essentially disintegrated in the late 1980s, leaving the republics as effectively the centers of government. The bargain collapsed due to the exit of the economically better off Slovenia and the renegeing of the longstanding taboo of fomenting of nationalist sentiments – thus removing two linchpins from Tito's structure. As the national layer of government ceased to provide the economic benefits or act as a unifying force, identities and loyalties shifted to the sub-units. Fearon makes the analogy of a shift to state identification among Americans should the federal government collapse: "state politicians would have strong incentives to whip up political support on the basis of state identities. Add ethnic 'ownership' of particular states and ethnically mixed state populations, and it starts to look like Yugoslavia in 1990."^{lxiii}

Some of the "social-construct" school of thought have argued that the ethnic hatred manifesting itself in the Bosnian war was nothing more than a cynical invention of politicians such as Milosevic and Tudjman, and those aspiring to power such as Karadzic and Mladic. It is true that national and religious identities were always fluid in Yugoslavia, that religious conversions were made for political expediency, and that people would identify with this or that relative, Serb, Croat, or Slovene depending on their times and circumstances. Yet to place full responsibility for the nationalist resurgence solely on the politicians seems naive. Their

nationalist propaganda had to have fallen on fertile ground for the hostility to erupt so quickly into such extreme violence. The truth was that the previous attempts at state-building had not laid the necessary groundwork for unity. Socialist countries did not have the civil society institutions now recognized as crucial to a feeling of civil-state identity, and when the economy is failing the people had little incentive to maintain this particular allegiance.

What was now occurring was a different kind of state-building. Smaller, ethnically homogenous nations were attempting to be formed out of the corpse of the failed federal entity. For some in power, most notably those in the former Communist Party of Serbia, this was the most promising route to sustaining power in the new era. In a 1989 speech that may have marked the turning point in the fate of post-Communist Yugoslavia, Slobodan Milosevic stood at the site in Kosovo where the Serbs were defeated by the Turks exactly six hundred years earlier and spoke directly to and about the Serbs, recounted their heroism and humiliation in history, and appealed for Serbian unity in the face of new threats. In that speech, some say, the ideal of the state of Yugoslavia was dealt a death blow and the nationalist dream of a Greater Serbia was reborn. Exploiting their historical fears and strong sense of victimization, Milosevic rallied the Serbs around him and sent a warning to his fellow Yugoslavs.

Aided considerably by his party's monopoly of the media, Milosevic was able to nurture Serbian nationalism while at the same time obscuring the fact that the national infrastructure had deteriorated irreparably due to decades of communist misrule and incompetence. Milosevic, in the words of George Schöpflin, "successfully convinced the Serbs that the reason for their economic plight is not that the Serbian economy is run badly, but because various aliens (the Kosovo Albanians, the Croats, the West through the embargo, etc.) are threatening the integrity of the Serbian nation, although in fact these factors have nothing to do with the economy."^{lxiv} It

is interesting to note that of the three groups at war in Bosnia, the Muslims, who are widely perceived as the primary victims of the conflict, had the least in terms of nationalist folklore and icons, and arguably felt less of a group identity as Muslims than their fellow Slavs did as Croats and Serbs. Unfortunately, the experience of the Bosnian war can be expected to even things up on this score. As Majstorovic writes, “It should be apparent that at this point the Muslim identity is still in the process of primordialization.”^{lxv}

Ethnonationalism has its own powerful momentum, and once the identity shift has been made it is extremely difficult to persuade people to think in terms of larger group interests. Leaders have incentives to keep nationalist sentiments and fears high, to be seen as the most loyal to the group. The International Crisis Group has found this to be true in its analysis of elections in post-war Bosnia-Herzegovina: “The current electoral system favours ethnically-based parties. Most voters, fearful and mistrustful of other ethnic groups, cast their votes primarily on the basis of which party is perceived as being the staunchest defender of the narrow interests of their own ethnic group.... Thus on many issues, politics turns into a zero-sum game, as ethnic leaders strike postures designed to show their nationalist credentials, to the detriment of responsible government.”^{lxvi}

For the purposes of this argument, the examples of the Rwanda and Yugoslavia conflicts are deficient only in that they ended, unlike several ongoing conflicts in Africa where the state remains in a state of failure and warlords and smugglers continue to reap the commercial benefits of anarchy and chaos.

Identity politics in a strong state

The term “identity politics,” often used to describe domestic political dynamics in the United States, is associated with issues of class, race, or gender consciousness and power sharing

and civil rights within a democratic state. Identity politics, it is safe to say, are generally practiced by the weakest members within a strong state, those who derive the fewest tangible benefits from the civil state apparatus. The closer a group is to the lowest rung on the socioeconomic ladder, the stronger their group affiliation in domestic politics. However, Gurr's data on ethnic minority groups show that in western democracies, minorities express their grievances "in protest, rarely in rebellion,"^{lxvii} implying continued confidence in the overarching state framework under which conflict can be managed. The fact that identity politics are practiced in the U.S. shows that strong group associations can exist without risking state fragmentation because a strong economy and civil state structures help maintain the viability of the associative state.

Some theorists emphasize democratic institutions in particular as vital to this cohesion. As Tharoor contends, "Democracies that offer minorities the opportunities to find their place in the sun and to determine their own political future within a national framework usually do not need to fear ethnic rebellion."^{lxviii} In a weak or failing state, however, identity politics overwhelm the associative concept of the civil state. Grievances are more often met with repression than accommodation, and rebellion is sometimes perceived as the only option when all legitimate outlets for expression are barred. Tharoor writes in praise of India, which he believes to embody the paradigm of "one land embracing many ... a land of belonging rather than blood."^{lxix} By virtue of its democratic system, India has survived by successfully managing conflict and maintaining the civil association of its many different groups. "The reason India has survived all the stresses and strains that have beset it for 50 years is that it maintained consensus on how to manage without consensus."^{lxx}

Tharoor's argument may place too much weight on the type of government (democratic) in maintaining unity as opposed to the strength of the state itself. It is arguable that continued underdevelopment and corruption threaten to unravel the India's civil state consensus. While there are numerous ethnonationalist sentiments (including racial, religious and linguistic) and inter-group tensions are increasing in India,^{lxxi} conditions have not reached the point where one's ethnic group supersedes the Indian state as the rational identity choice.

I have attempted to show that in many cases failing or deficient states lead to ethnic polarization and not the other way around, as others have argued:

If a state fails, it is weakened because political participation and opportunities become defined along narrow bands of ethnic sensibility and are coupled with the deliberate suppression of non-ethnic issues. The result is a perceived narrowing of policy options, leading to inter-ethnic confrontation, violence, and secession....Identity-based politics also detract from the public's ability to appreciate the value of market exchange; the value of depriving a rival group of benefits may be perceived as greater than the costs of foregoing gains from trade.^{lxxii}

I maintain, on the contrary, that the decision to adopt a sub-state identity as primary is not a matter of relative positioning, but rather the seizing of an alternative made urgent by the short-term decision horizon of those in difficult circumstances.

Elise Giuliano's article on the ethnonationalist movement of Tatarstan argues persuasively that ethnic preferences cannot be assumed to be in any way fixed or endogenous, for to do so would be to overpredict ethnic conflict.^{lxxiii} Rather, she asserts, political issues can be defined by leaders as either ethnically exclusive or as a general public good. In Tatarstan the ethnonationalist movement for independence was defeated by the Tatar government's more moderate alternative of "sovereignty," which granted the region more autonomy and control over its resources while maintaining an affiliation with the Russian Federation. This was done by framing the issue as being in the interests of all ethnic groups in the Tatarstan, Russians

included: “President Shamiev essentially created an aggrieved community, a nationalist movement without an ethnic identity but with loyalty to a particular territorial state.”^{lxxiv} Giuliano’s case study of Tatarstan thus lends support to the contention that the associative state model can survive ethnonationalist entrepreneurship simply by providing a viable political and economic umbrella, communicated by its leadership as serving the interests of all its members. (Similarly, in South Africa, where the ethnic divide could not be any more straightforward, whites are joining the ANC because it is not defined as a party of blacks.) It is particularly telling that, as Giuliano points out, “Tatarstan is one of Russia’s most economically advanced, urbanized and Russified republics.”^{lxxv} The economic situation of Tatarstan in the early 1990s stands in stark contrast to Chechnya, whose ethnonationalist movement had a very different outcome. The proportion of ethnic Tatars living in cities (63.4%) and participating in government and professional life was quite high by developing world standards, whereas according to a 1989 census, 70% of all Chechens lived in rural areas, surviving as farmers and herdsmen.^{lxxvi}

Keen and Berdal divide the functions of conflict into *political* “changing or retaining the rules of the game” and *non-political*, which includes economic (profiteering and warlordism), psychological (sense and satisfaction in turning the tables) and security motivations. Psychological seems more of a by-product, but the political, economic and security functions interrelate closely. Economic and political triggers by elites and new groups can cause the initial switch in identity followed opportunism then finally by a fear reaction where ordinary people realize it is economically sounder or physically safer to be inside a particular community than outside it, especially in a failed state context where there is no central provider of security. For these same reasons many Afghans initially welcomed the Taliban’s rise to power, as seemingly

the only group capable of imposing order over chaos. Likewise, ethnic ties did very little to stem the mass defections from the Taliban regime when the U.S.-led military campaign rendered it an unviable.

While globalization has contributed to the economic opportunism of war economies, the end of the Cold War power structure has been responsible for the “top-down” political motivators of ethnic fragmentation. As in former Yugoslavia, “much of the violence has been initiated not by revolutionaries seeking to transform the state, but by a range of elites seeking to deflect political threats, often by inciting violence along ethnic lines ... taking advantage of the fear, need and greed of ordinary people.”^{lxxvii} Rwandans will readily admit that in most cases Hutus and Tutsis cannot tell each other apart by sight. It was the Belgians’ census and ethnic identity cards that made the genocide logistically possible. What made it imaginable was the initial switching of conscious political identity from a civil political statehood to blood ties to one’s ethnic group. This switch may or may not lead to cataclysmic ethnic violence. It is a necessary but not sufficient condition for ethnic violence such as occurred in Rwanda and Yugoslavia, and should be seen as an important precursor to political change.

The following section will explain the dynamics of the ethnonationalist identity shift using a rational choice argument. This does not square with the received wisdom on the subject. In the words of one author: “Despite the penchant in postmodern analysis for stressing the decentered person who can change identities like clothing, ethnonational identity often predisposes people to *dispense with rational decisionmaking* and instead embrace a policy of radical ethnic altruism in which lives are sacrificed.”^{lxxviii} It is this assumption of irrationality that I am questioning.

A Rational Choice Approach

The field of international political economy traditionally has not contended with the issue of separatist ethnonationalism and civil wars. Neoclassical economists could only see such behaviors as irrational, by reason of the loss in aggregate production and consumption and the erosion of capital they incurred.^{lxxix} This view takes for granted that the unified nation-state is the basic unit-actor in the global economic system, and that its leadership and population identify with the nation-state as such. These assumptions were challenged in the 1990s with the work of theorists such as Duffield, Keen and de Waal, who maintained that the breakdown of states and emergence of conflicts represent ““a new type of political economy, not simply the disruption of the old one.””^{lxxx} A new economic ordering has replaced the political economy of the nation state, one in which individuals may more effectively seek their fortunes outside the crumbling state structures. War economies have provided one of the most direct routes.

The emerging game theoretic approaches to ethnic conflict have focused mainly on the decision to use violence, beginning from the assumption that war is costly to all parties.^{lxxxi} While still treating ethnic identity as an exogenous variable, these approaches have nonetheless helped to take the study of ethnonationalist conflict out of the realm of the psychological and historical, in order to seek logical explanation for ethnonationalist conflict, i.e. one more satisfactory than simply “the eruption of long simmering animosities.”

Authors Brubaker and Laitin have surveyed the various game theoretic approaches to ethnic conflict and grouped them into three main categories:^{lxxxii} One looks at the issue from the aspect of *credible commitments*,^{lxxxiii} examining the problem of how an “ethnicized” government could credibly commit to protecting minority groups. Other studies have taken the tack of *asymmetric information* problems (Fearon and Laitin 1996), where low levels of communication

between communities lead to triggers for violence; and a third, broad category is that of *intragroup dynamics* (Hechter, Hardin, Kuran, and Laitin), which looks not only at the decision to resort to violence, but also at how ethnonationalist groups are mobilized to begin with. That point is important for the purposes of this argument, for the term ethnic conflict must not be equated with ethnic violence or civil war, which is merely its worst-case scenario outcome. Conflict occurs naturally between individuals' and groups' ideas and interests, and the peaceful management of such conflict under consensus of a shared identity is the responsibility of state government. Of interest here is how conflict becomes ethnically framed, and when the conflict no longer occurs within a common assumption of an overlaying civil association. As Turton phrases the question, "what turns ethnic politics into nationalist politics?"^{lxxxiv}

In approaching problems of ethnonationalism from the perspective of intragroup dynamics, it is necessary to bring in other disciplines, such as anthropology and sociology. Writing from a sociology background, Michael Hechter has proposed a rational action theory approach to group solidarity. As originally posited by Emile Durkheim, different types of social groups vary in the degree of their "groupness" or solidarity, which determines the extent of the group's influence over individual behavior. Normativists hold that those groups with the highest levels of solidarity (for example, the family) have the greatest degree of internalized norms or "rules of the game." Structuralists, however, maintain that the greater the commonality of interests, the greater the solidarity of the group, and emphasize the influence of institutions on behavior. In his theory of group solidarity, Hechter explicitly rejects the normativist-structuralist divide in sociology, preferring a rational choice approach, which allows the theorist to incorporate "three separate elements: individuals, institutions, and collective, or social, outcomes."^{lxxxv}

Following the logic of Mancur Olson's "selective incentives" (1975), Hechter assumes that individuals join or form groups in order to obtain "excludable, jointly produced goods" i.e. collective goods that do not entail a free-rider problem: "Solidarity can be best understood as compliance in the absence of compensation or a quid pro quo. The theory of group solidarity treats these group obligations as a tax that is imposed on each member as a condition of access to the joint good."^{lxxxvi} Starting from the assumption that "groups exist to supply their members with some desired joint good,"^{lxxxvii} Hechter posits an instrumental explanation for ethnonationalist conflict and violence. The concept of aggregation is important to understand how rational choice can be used to explain group behavior. "The commonly held preference impels everyone who is subject to the same constraints to act similarly,"^{lxxxviii} Hechter explains, while idiosyncratic preferences cancel each other out. By this reasoning, the various emotional predilections toward violence are randomized among individuals in a population and neutralized, while the instrumental underpinnings of violence may conform to the commonly held preference (such as the collective good of physical security, made urgent by the fear element in a polarized situation). In the aggregate, therefore, it is the instrumental or rational bases for ethnonationalist violence that are decisive. Like Hechter, Russell Hardin also expands on Olson's group theory and employs a rational choice explanation for how ethnic groups coalesce and develop norms of exclusion.^{lxxxix}

Kuran and Laitin do not assume that ethnic groups are unified in their interests, but rather that ethnic "activists" or "entrepreneurs" use pressure, humiliation, and fear tactics to persuade other members of the group to shift from ethnically neutral to ethnicized positions, creating a "cascading effect."^{xc} The cascade leads to a polarized situation in which conflict is easily ignited (yet if one take a broad definition of interests, then Hechter's "commonly held

preference” can be that of physical security, and the fear fostered by the ethnic activists can certainly work to help strengthen group affiliation).

As mentioned earlier, this analysis is concerned not so much with what tips the scales toward actual violence, but with that which, in the earlier stages, works to dissolve the civil association and reorder the identity priorities of individuals. I propose this dynamic is set in motion by state failure: as the formal state erodes, non-state political and economic activity propagate like weeds in a decaying structure. Economic interests are pursued either by using the corrupt state apparatus as a means of extracting resources, or in illegal activities (and increased access to global markets has been a boon to both types of activity). Power interests are pursued by carving out smaller fiefdoms within the original territory of the state or across formal national boundaries. In many cases, the political and economic interests are as one and the actors are the same. Either way, they are served by ethnonationalist polarization, animosity and fear and in turn help to foster them. The existence of ethnonationalist provocateurs and Kuran’s theory of preference falsification can then help to explain the mobilization of ethnonationalist groups. I suggested in a previous section that the existence of complementarities may also add to the understanding of this dynamic. Once one segment has identified itself as distinct and possessed of group interest, a fear reaction causes similar bonding among the other group or groups. Societal norms can play the same role as multiple equilibria in economic models, in that adhering to a certain norm, say the associative state identity can be like remaining at a low level equilibrium - the more people depart from it, the more one is compelled to follow suit.

To restate the basic theoretical problem in using a rational choice explanation for ethnonationalism: How can the adoption of a new ethnonationalist identity be considered an interest maximizing behavior of individuals when (a) in the long-run the ethnonationalist

polarization promises violence and perhaps ruination, and (b) it is by definition a group behavior, and the group clearly contains members possessed of many different motivations (e.g., there are the primary instigators and others who stand to gain in economic and political power, there are individuals who firmly believe they are doing it for altruistic, solidarity reasons, and finally a number of others who are simply going along out of fear)?

Although an individual's interests may be better served by membership in the associative state, state failure has created a constraint that compels the individual to seek his or her interests in a different association. It is a well-known phenomenon in economics that the poorer a person is, the more urgent one's situation, the shorter one's time horizon (in game theoretic terms, the higher his "discount rate"). Better to cast one's lot with the group promising immediate security and/or economic opportunity than hold out for broader collective goals in an uncertain future. Indeed, state failure may create a situation where there is simply no viable alternative to ethnonationalist affiliation. In this regard, Hobsbawm has suggested that ethnic group identification is used by individuals as a "fall back position," when faced with the failure or instability of formerly reliable state structures and ideology.^{xci}

Regarding the second part of the problem, the work of theorists such as Hechter and Hardin have provided intriguing explanations for how the interests of individuals are aggregated in such a way that the bonding is rational and the conflict and violence are instrumental. Furthermore, groups containing diverse elements are commonly used as unitary actors in rational choice theory, as when modeling the behaviors of states' international relations. Brams and Kilgore point out that international policies of states are usually the result of compromise, allowing the state to be considered a single player. This can apply to any group containing common preferences, whether the unified position is the result of aggregation, compromise,

repression or intimidation. However, this question poses a particular problem for some because of the unique masking function of ethnonationalism. As stated earlier, many members of ethnonationalist movements may feel real emotions and altruism, and vehemently deny any ulterior motive beyond group solidarity. Nevertheless, their actions show a rational path toward self-interested goals given the constraints they face, *as they perceive them*.

This question of perception is important, for it may also be argued that rational choice approaches are simply inadequate to capture the full scope and complexity of ethnic identification, since people's perceived risks and choices are themselves socially constructed. Yet, this criticism may be applied to the use of rational choice theory in any area. The discipline has continued to develop despite these concerns because it promises at least a gateway toward understanding. Ultimately, rational choice theory does not require us to know what is in the head of each individual in order to achieve a rationalist understanding of the events, but only that the choices made reflect self-interested behavior given the particular constraints: "It is an evaluation of the consistency of choices and not the thought process ... Our purpose is not to explain cognition but rather to understand political acts."^{xcii}

Rational action theory is a path worthy of exploring further in the analysis of ethnonationalism and failed states, particularly in the search for policy. The rational action approach can lend a degree of predictability to these phenomena, such predictability being essential for preparedness and preventive action.

CONCLUSION

Chester A. Crocker, speaking on ethnic conflict in 1999, challenged the prevailing wisdom that ethnic conflicts were intractable because they were based on ancient hatreds and

primordial sentiments. On the contrary, he said, ethnic conflict “can be a response to stimuli of all kinds. It can be a response to the removal of alien rule. It can be simply the playing out of political entrepreneurship. It can be a response to the creation of new economic threats and opportunities. It can be the response to or the result of, premature elections ... Ethnic conflict can arise from the collapse of a state or an empire.”^{xciii}

What all of the above have in common is a realignment of populations within nation-states to a new order. Some theorists have argued that the decay of the “Weberian state” is over diagnosed. Rather, it is weak or quasi states that are failing now that the Cold War buttressing is gone. And indeed “state failure” may perhaps be too strong a term to use for the catalyst of the identity shift. Whether the civil state has actually collapsed, it has failed to maintain its hold on the identity consciousness of its citizenry. This paper has attempted to describe the mechanism for that, and how it is economically and rationally determined.

It bears repeating that although this argument has taken a political economy approach to the study of group identification and state fragmentation, this by no means discounts the human factors in fueling the behavior. As Hechter attests, “There is nothing in rational choice that denies that individuals can pursue altruistic or prosocial ends.”^{xciv} Undoubtedly even those actors who directly profit by the conflict feel some sense of genuine ethnic solidarity and deep enmity toward the opposing group. Rational choice theory, I have argued, at least offers a way forward.

For, despite continued media messages, there is a growing consensus among scholars that “ethnicity will not serve as a causal explanation of war.”^{xcv} Simply dismissing such behavior as irrational or pathological leaves no room for solution. Taking the alternative view of state breakups and protracted conflicts as expressions of rational, albeit sub-optimal behavior rooted

in current economic reality has important implications for policy precisely because it leaves this door open.

NOTES

ⁱ The Bush Administration briefly used this phrase in an attempt to define a post-“containment” foreign policy.

ⁱⁱ Francis Fukuyama’s 1989 editorial of this title prophesied an outbreak of world peace owing to a synthesis of socialist and capitalist ideals (Washington Post, 7/30/89)

ⁱⁱⁱ Robert D. Kaplan, “The Coming Anarchy,” *The Atlantic Monthly* (February 1994): 60.

^{iv} Susan L. Woodward, “Warlordism and ‘Tribal’ Warfare,” *Naval War College Review* (Spring 1999).

^v Michael Ignatieff quoted in David Carment, “Modelling Ethnic Conflict: Problems and Pitfalls,” *Politics and the Life Sciences* 16 (September 1997).

^{vi} Debraj Ray, *Development Economics* (Princeton: Princeton UP, 1998).

^{vii} Francis Fukuyama, “The Left Should Love Globalization,” *Wall Street Journal* (1 Dec. 1999).

^{viii} Fukuyama *Wall Street Journal*.

^{ix} Shashi Tharoor, “The Future of Civil Conflict,” *World Policy Journal* 16. 1 (Spring 1999).

^x Dani Rodrik, *Has Globalization Gone Too Far?* (Washington, D.C.: Institute for International Economics, 1997).

^{xi} Mark Duffield, “Aid Policy and Post-Modern Conflict: A Critical Review,” Occasional Paper 19, (School of Public Policy, University of Birmingham, 1998).

^{xii} Michael Hechter, *Principles of Group Solidarity* (Berkeley: University of California Press, 1987) 170.

^{xiii} Lionel Cliffe and Robin Luckham, “Complex Political Emergencies and the State: Failure and the Fate of the State,” *Third World Quarterly* 20. 1 (1999).32.

^{xiv} From the 1920s through the 1960s, neoclassical theorists emphasized the crucial role of the state in economic development, as a necessary intervener where markets were imperfect. The “rent-seeking” school of thought later emerged in a backlash against the state-led development theories. Anne Kruger argued that state or government failures could have worse economic effects than market failures (The term “state failure” here refers to a failure to act effectively, not the total collapse implied by today’s “failed state”). This is because the state does not act as a unitary and disinterested institution, but rather exists as a conglomeration of self-interested individuals. State actors will act like private sector actors and engage in rent-seeking (corrupt) behavior. In many developing countries, the abuse of power to issue licenses pervades the public sector and thwarts development. The solution, according to Kruger, is

minimal state intervention. The state should confine itself to investing in infrastructure development and human capital, protecting property rights, enforcing contracts and maintaining macroeconomic stability.

Theorists such as Peter Evans and Larry Westphal rebutted the rent-seeking argument, and called for a more nuanced assessment of states and state capacities. Kruger's description, they argued, does not fit all states, but only those so corrupt as to be considered "predatory," such as Congo (Zaire) (Evans 1994). The state can complement the market by using the feedback from firms to inform its long-range, big picture economic strategies. East Asia's success, for example, lay in the particular policies of export-led development that the state used to move into and excel in the technology sector (Westphal 1990). Pranab Bardhan (1997) makes the further distinction between types and levels of corruption. A state with centralized corruption and lump sum payment does not have the same oppressive effect on competition as free-for-all corruption.

^{xv} Chester A. Crocker, "How to Think About Ethnic Conflict," *Orbis* 43.4 (Fall 1999) 3.

^{xvi} William Reno, *Warlord Politics and African States* (Boulder, CO: Lynne Rienner Publishers, 1998) 27.

^{xvii} Tharoor.

^{xviii} Kofi Annan, *Facing the Humanitarian Challenge: Towards a Culture of Prevention* (New York: UNDP, 1999).

^{xix} Jonathan Goodhand and David Hulme, ">From Wars to Complex Political Emergencies: Understanding Conflict and Peace-building in the New World Disorder," *Third World Quarterly* 20. 1 (1999) 20.

^{xx} Goodhand and Hulme 20.

^{xxi} Stathis N. Kalyvas, "Wanton and Senseless? The Logic of Massacres in Algeria," *Rationality and Society* (Thousand Oaks, August 1999).

^{xxii} Mats Berdal and David Keen, "Violence and Economic Agendas in Civil Wars," *Millennium* 26.3 (1997).

^{xxiii} Reno 26.

^{xxiv} Cliffe and Luckham 44.

^{xxv} Goodhand and Hulme 17.

^{xxvi} Tharoor.

^{xxvii} Crocker 3.

^{xxviii} Barnett R. Rubin, *The Fragmentation of Afghanistan* (forthcoming 2002) (Yale UP).

^{xxix} David Turton, ed., *War and Ethnicity: Global Connections and Local Violence* (Rochester: University of Rochester Press, 1997) 11.

^{xxx} Turton 6-7.

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- ^{xxx} Cynthia H. Enloe, *Ethnic Soldiers: State Security in Divided Societies* (Athens: University of Georgia Press, 1980).
- ^{xxxii} Steven Majstorovic, "Ancient Hatreds or Elite Manipulation? Memory and Politics in the Former Yugoslavia," *World Affairs* 159 (Spring 1997) 4.
- ^{xxxiii} Jack David Eller, *From Culture to Ethnicity to Conflict* (University of Michigan Press, 1999) 78.
- ^{xxxiv} Eller 79.
- ^{xxxv} David Carment, "Modelling Ethnic Conflict: Problems and Pitfalls," *Politics and the Life Sciences* 16 (September 1997) 2. Italics added.
- ^{xxxvi} Warren Hoge, "I.R.A. and the Arms Principle," *The New York Times* 5 February 2000.
- ^{xxxvii} Scott I. Malcomson, "The Color of Bones," *The New York Times Magazine* 2 April 2000.
- ^{xxxviii} Philippe J. Rushton, "Genetic Similarity Theory and the roots of Ethnic Conflict," *The Journal of Social, Political and Economic Studies* 23. 4 (Winter 1998).
- ^{xxxix} Nathan Glazer and Daniel P. Moynihan, eds., *Ethnicity: Theory and Experience* (Harvard: Harvard UP, 1975) 19.
- ^{xl} Charles A. Kupchan, "Introduction: Nationalism Resurgent," in Charles A. Kupchan, ed., *Nationalism and Nationalities in the New Europe*, Council on Foreign Relations (Ithaca, Cornell UP, 1995) 3.
- ^{xli} Tharoor 1.
- ^{xlii} Tharoor 2.
- ^{xliii} Majstorovic 5.
- ^{xliv} Majstorovic 5.
- ^{xl} Ted Robert Gurr, *Minorities at Risk: A Global View of Ethnopolitical Conflicts* (Washington, D.C.: USIP, 1993).
- ^{xli} Brubaker and Laitin 1998.
- ^{xlvii} Unfortunately, Gurr's 1993 publication presents data only up to 1989, omitting the most recent decade which saw some of the century's worst ethnic conflicts.
- ^{xlviii} An important point made by Berdal and Keen (1997) is that neither a purely political nor economic analysis can be used here. Today's "complex political emergencies," as ethnically based conflicts within and across borders have come to be known, are defined by the interplay of both spheres.
- ^{xl} Seth Mydans, "Religious Warfare in Indonesian Isles Bodes Wide Chaos," *The New York Times* February 9, 2000.
- ¹ Tharoor 6.
- ^{li} Russell Hardin, *One for All: The Logic of Group Conflict* (Princeton: Princeton UP, 1995) xi.
- ^{lii} Timur Kuran, "Private Truths, Public Lies: The Social Consequences of Preference Falsification."

^{liii} Turton 6.

^{liv} See Alison Des Forges, *Leave None to Tell the Story: Genocide in Rwanda*, Human Rights Watch (1999); and Philip Gourevitch, *We Wish to Inform you that Tomorrow We will be Killed with our Families* (New York: Farrar, Strauss and Giroux, 1999).

^{lv} Gourevitch 48.

^{lvi} Gourevitch 54.

^{lvii} Gourevitch.57-58.

^{lviii} Peter B. Evans, "Predatory, Developmental, and Other Apparatuses: A Comparative Political Economy Perspective on the Third World State," *Comparative National Development*, ed. Douglas Kineard, (University of North Carolina, 1994).

^{lix} The extent to which foreign development aid contributed to Rwanda's tragedy has been debated. See for example, Peter Uvin, *Aiding Violence: The Development Enterprise in Rwanda* (Kumarian Press, 1998).

^{lx} *Joint Evaluation of Emergency Assistance to Rwanda*, "Study 1: Historical Perspective: Some Explanatory Factors," Tor Sellström and Lennart Wohlgemuth (March 1996): <http://www.reliefweb.int/library/nordic/book1/pb020.html>.

^{lxi} Aleksa Djilas, "Fear Thy Neighbor: The Breakup of Yugoslavia," ed. Charles A. Kupchan, *Nationalism and Nationalities in the New Europe*, Council on Foreign Relations (Ithaca: Cornell UP, 1995) 87.

^{lxii} Gojko Vuckovic, "Failure of Socialist Self-Management to Create a Viable Nation-State, and Disintegration of the Yugoslav Administrative State and State Institutions," *East European Quarterly* 32.3 (Fall 1998): 12.

^{lxiii} James D. Fearon, "The World/Yugoslavia: Was Tito's Way the Best to Keep Peace?" *Los Angeles Times* 5 September 1999.

^{lxiv} Schöpflin, George, "Nationalism and Ethnicity in Europe," in Charles A. Kupchan, ed., *Nationalism and Nationalities in the New Europe*, Council on Foreign Relations, Cornell University Press, Ithaca, 1995: 56-57.

^{lxv} Majstorovic 9.

^{lxvi} International Crisis Group, "Whither Bosnia?" 9 September 1998: <http://www.intl-crisis-group.org/projects/bosnia/reports/bh39rep.htm#intro>.

^{lxvii} Gurr 139.

^{lxviii} Tharoor 2.

^{lxix} Tharoor 9.

^{lxx} Tharoor 9.

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- ^{lxxi} David Zurick, "Lands of Conflict in South Asia," *Focus* 45. 3 (Winter 1999).
- ^{lxxii} Carment 2.
- ^{lxxiii} Elise Giuliano, "Who Determines the Self in the Politics of Self Determination?" *Comparative Politics* (April 2000).
- ^{lxxiv} Giuliano 311-312.
- ^{lxxv} Giuliano 304.
- ^{lxxvi} Edward Kline, "ASF Chechnya Brief," The Andrei Sakharov Foundation, www.wdn.com/asf/cgi.html.
- ^{lxxvii} Berdal and Keen.
- ^{lxxviii} Majstorovic 9. Italics added.
- ^{lxxix} Goodhand and Hulme.
- ^{lxxx} David Keen, "The Political Economy of War" (1997), cited in Goodhand and Hulme 19.
- ^{lxxxi} Fearon 1995.
- ^{lxxxii} Brubaker and Laitin.
- ^{lxxxiii} Fearon 1994.
- ^{lxxxiv} Turton 13.
- ^{lxxxv} Michael Hechter, *Principles of Group Solidarity* (University of California Press, Berkely, 1987) 30.
- ^{lxxxvi} Hechter 11.
- ^{lxxxvii} Hechter 31.
- ^{lxxxviii} Hechter 31.
- ^{lxxxix} Hardin.
- ^{xc} Brubaker and Laitin 10.
- ^{xci} Turton 13.
- ^{xcii} James D. Morrow, *Game Theory for Political Scientists* (Princeton UP, 1994) 17-20.
- ^{xciii} Crocker.
- ^{xciv} Hechter 11.
- ^{xcv} Turton 3.

Uniting Diversity: A Comparative Analysis of the Federal Systems of the Former Yugoslavia and Canada as Multi-ethnic States

This paper uncovers the way in which a federal constitution is structured to recognize diverse national groups within a state and the extent to which autonomy can be granted without inevitably leading to the destruction and failure of the federal project. In order to consider the best constitutional mechanisms for Canada, this paper will consider what made the former Yugoslavia such a short lived and unstable federal constitutional state. The *1974 Constitution* of the Socialist Federal Republic of Yugoslavia will demonstrate that certain constitutional structures which seemingly protect diversity, in fact create a schism between groups, which precludes the success of any federal project. Given the appropriate structural mechanisms, we will see that federalism is a viable option to unify diversity. Unity in diversity can be achieved so long as the federal system is fluid and adapting to changing demands and socio-cultural contexts. This analysis of the *Quebec Secession Reference*, the Canadian *Constitution Act, 1867* and the *1974 Constitution* of the former Socialist federal Republic of Yugoslavia will show that in order to succeed, a multinational federal constitutional system requires: (a) a common myth unifying all sub-units for a common purpose and a common interest which does not swallow the identity of national minorities; (b) an adequate characterization of sub-units which ensures that they are all equal in nation-status and not overly 'ethnic'; (c) an adequate division of legislative power to permit the sub-units to define themselves within a clear constitutional framework; and (d) a reciprocal relationship between an independent federal entity and the sub-units. The dialectic between unity and diversity can only be successful in a balanced, reciprocal framework: too much decentralization or an overly strong central federal government, preclude the survival of a constitutional federal state.

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Autonomy in self-definition is necessary to the formation of a strong individual or group identity.¹ Within the context of a state, the denial of autonomy can lead to national minority groups feeling that their interests, and hence their identity, are being suffocated. This denial of autonomy can give rise to conflicts where minority ethnic groups struggle to assert their identity within states that do not fully represent them. The granting of autonomy within an overarching government structure is key to alleviating the potential tensions between a majority and national

minorities: "a community willingly accepts a larger social framework as its natural surroundings when it can resolve its specific problems autonomously and participate equally in the solution of problems common to the entire society and when it can collaborate with other parts on equal terms without being abused or exploited by them."ⁱⁱ

Once we acknowledge that autonomy is fundamental to identity, we see that national identity is further reaffirmed when it is recognized *as distinct* by others. Such recognition creates a kind of politics of difference:

With the politics of equal dignity, what is established is meant to be universally the same, an identical basket of rights and immunities; with the politics of difference, what we are asked to recognize is the unique identity of this individual or group, its distinctness from everyone else. The idea is that it is precisely that distinctness that has been ignored, glossed over, assimilated to a dominant or majority identity.ⁱⁱⁱ

Such a 'politics of difference' includes an incorporation of differing, distinct voices recognized as such within a larger social group. This politic has as a goal "to maintain and cherish distinctness, not just now but forever."^{iv} Such a politics of difference can only really be implemented in a state which values difference as a collective and enriching 'good'. The question then becomes, how does such a "politics of difference" manifest itself concretely towards ensuring the survival of multiple and varying cultures within a state? It appears that constitutional federalism provides an adequate institutional framework for a 'politics of difference' that can alleviate these tensions between majority and minority groups within a state. Federalism is such an attractive option because it is founded on the idea of the unification of diversity: the gathering of different groups to pursue a greater united goal. Such a federal structure embodying autonomy, equality and collaboration is possibly the best structural tool to unite diversity. Indeed, a federal state structure allows for a collaboration between groups to achieve collective objectives while allowing each group's worth and identity to be constructed autonomously and recognized as legitimate by all other groups.

However, this is a very idealistic conception of federalism. In fact, the recognition of

difference inherent in any federal project can lead to a hardening of positions which, in turn, may create greater antagonism between groups. A central issue in addressing the adequacy of federalism is whether a balance can be struck between unified collaboration for a common goal and a recognition of distinct groups, each of which is secure in its identity and survival. Can there be, in other words, a successful unity of diversity or are such projects bound for failure? In order to answer this question, it is necessary to identify certain constitutional mechanisms that ensure minorities are recognized as distinct without, at the same time, jeopardizing the federal unification project.

The Supreme Court of Canada decision in the *Quebec Secession Reference*^v provides an excellent starting point from which to investigate the various constitutional principles that ensure a successful unification of diversity. One of the main issues in this case was whether, under the Canadian constitution, Quebec could unilaterally secede from Canada. In order to answer that question, the court had to identify and elaborate those principles that underlie and characterize the Canadian constitutional federal system. According to the Court, these principles include "federalism, democracy, constitutionalism and the rule of law, and respect for minority rights."^{vi} These principles, which function in symbiosis, represent the rationale and the ideals that motivated the introduction of a federal structure and continue to motivate it today. These "unwritten postulates...form the very foundation of the Constitution of Canada"^{vii} and, in fact, are an important element to any well functioning constitutional federal system striving to achieve the ideal balance between diversity and unity. A successful federalism that endeavors to protect national minorities and overcome secessionist movements is one which is in constant dialogue with its sub-units and therefore constantly adapting. In order to protect that success, however, there must be an adequate constitutional structure.

In this paper, I hope to uncover the way in which a federal constitution is structured to recognize national groups and to identify the extent to which autonomy can be granted without inevitably leading to the destruction and failure of the federal project. In doing so, I will investigate some factors that made the former Socialist Federal Republic of Yugoslavia's

constitutional federal project so short lived and unstable. The *1974 Constitution*^{viii} of the Socialist Federal Republic of Yugoslavia will demonstrate that certain constitutional structures which seemingly protect diversity can, in fact, create a schism between groups which precludes the success of any federal project.

A successful federal project is one which is constantly evolving and thus, a comparative analysis of the mechanisms for unifying diversity will always be relevant. Canadian federalism is not static but always fluctuates between increased and decreased centralization. As Ronald Watts makes clear, "we may be able to draw lessons or inspiration from practice in other federations, particularly in relation to identifying potential dangers to be averted, desirable objectives, and appropriate and inappropriate processes for achieving those objectives."^{ix} The former SFRY's experience with its *1974 Constitution* allows us to identify such processes or dangerous paths that lie before the Canadian federal project. In order to make this study comprehensive, I will focus on the reciprocal relationship between the Quebecois national minority and the federal majority in Canada, as well as that in the former Socialist Federal Republic of Yugoslavia between Croatia and the Yugoslavian government. Federalism can take many forms and its efficacy in the protection of national minorities will depend on the history of the society which it structures. As a result, no two federations can be perfectly compared; however, different federal experiences can, at the very least, inform each other. I am aware that such a focus by-passes crucial issues. However, these are beyond the scope of this paper.^x

This analysis of the *Quebec Secession Reference*, the *Canadian Constitution Act, 1867* and the *1974 Constitution* of the former Socialist federal Republic of Yugoslavia will show that in order to succeed, a multinational federal constitutional nation requires: (a) a common myth unifying all sub-units for a common purpose and a common interest which does not swallow the identity of national minorities; (b) an adequate characterization of sub-units which ensures that they are all equal in nation-status and not overly 'ethnic'; (c) an adequate division of legislative power to permit the sub-units to define themselves within a clear constitutional framework; and (d) a reciprocal relationship between an independent federal entity and the sub-units. The

dialectic between unity and diversity can be successful only in a balanced, reciprocal framework: both too much decentralization or an overly strong central federal government, threaten the survival of a constitutional federal state.

II -Federalism as a constitutional mechanism to attain unity in diversity

Federalism represents an attempt to "create institutional arrangements that will ensure the cultural and social development of national minorities."^{xi} The main mechanisms to ensure the protection of the distinctiveness of national minorities are those which grant a certain amount of autonomy. If a group is not granted a voice in its own definition or determination, it can quickly be threatened by assimilation into the majority. In order to maintain and preserve minority voices, we must provide them with some protection from majority rule. Federalism is the coming together of different groups to pursue common goals while maintaining the integrity of all members. As the Supreme Court held in the *Quebec Secession Reference*:

...the principle of federalism recognizes the diversity of the component parts of Confederation, and the autonomy of provincial governments to develop their societies within their respective spheres of jurisdiction. The federal structure of our country also facilitates democratic participation by distributing power to the government thought to be most suited to achieving the particular societal objective having regard to this diversity.^{xii}

Federalism, with its delineation of sub-units and with their unification in a central forum, can grant minority autonomy while also ensuring that common goals are being met by the central government. However, this division between sub-units and a central body is very delicate: "stability of each federal system depends on the balance of two opposing forces. One force works towards greater identity and uniformity, while the other maintains diversity and preserves a particular communal tradition and specific cultural values."^{xiii} Such a delicate balance is protected by the presence of a constitution which ensures "that vulnerable minority groups are endowed with the institutions and rights necessary to maintain and promote their identities against the assimilative pressures of the majority. And ... a constitution may provide for a division of political power that allocates political power amongst different levels of

government.”^{xiv} As we shall see, the initial motivation underlying the unification into a federal state can have a profound impact on the success of the federal project. The presence of a common myth animating the federal project amongst the various groups in a state is a fundamental component of successful federalism. Yet, it is not the case that any common myth will suffice. In fact, while pressing for unification and commonality, such a myth must leave enough room for diverse national identities to assert themselves. In order to uncover such a common myth, we can turn to an analysis of those ideals that motivated unity in diversity in Canada and the SFRY.

(i) Motivation underlying Canadian federalism

In asserting themselves as a unified state, the former colonies of Upper and Lower Canada recognized that unification was in their best interest if they intended to survive the threat of an established United States to the south. When establishing itself as a nation, Upper and Lower Canada had to consider adopting a constitutional federal framework as a means to unite in diversity; doing so ensured that the two divergent groups were preserved as distinct while being unified in a federal state pursuing common goals of protection and survival.^{xv}

Sovereignty was the primary motivating force in the unification of the colonies. In fact, the very issue of sovereignty which animated the Canadian federation rendered the project sympathetic to the recognition of cultural diversity.^{xvi} According to Professor Hogg, "the genesis of the federal system in Canada was a political compromise between proponents of unity (who would have preferred a legislative union) and proponents of diversity (who were unwilling to submerge the separate identities of their provinces)."^{xvii} According to the court in the *Quebec Secession Reference*, "federalism was a legal response to the underlying political and cultural realities that existed at Confederation and continue to exist today."^{xviii} These cultural and political realities consisted in the presence of different national cultures and the need to unify to assert a sovereign Canada. These realities were fundamental considerations in the establishment of the Canadian constitutional federation.

The ideal vision of Canadian federalism was expressed in *Re the Initiative and*

Referendum Act^{xix} where the court stated that the scheme of the *Constitution Act, 1867* was:

...not to weld the Provinces into one, nor to subordinate Provincial Governments to a central authority, but to establish a central government in which these Provinces should be represented, entrusted with exclusive authority only in affairs in which they had a common interest. Subject to this each Province was to retain its independence and autonomy and to be directly under the Crown as its head.^{xx}

This diversity between the French and the British colonies, was protected through the maintenance of a certain degree of autonomy within their spheres of jurisdiction. For interests which all colonies shared, however, they would unite and collaborate. The explicit objective of the Canadian federation was the "reconciliation of diversity with unity." Thus, we see that the common myth of Canadian federalism was the assertion of statehood or sovereignty following a colonial history. In addition, the protection of national cultural identity was included within this myth and it formed the very essence of the Canadian federal project. Therefore, despite differences and the recognition of diversity, such a common myth was strong enough to animate a common goal of unification by differing groups.

(ii) Motivation underlying the former SFRY federalism

In light of the subsequent break-up of the former Socialist Federal Republic of Yugoslavia, it is useful to consider the motivations underlying the *1974 Constitution* which may have contributed to the creation of a common myth to animate a federal project. An analysis of the rationales underlying the SFRY quickly shows that this federal project lacked an adequate common myth to animate the unification of Yugoslavia.

The former Socialist Federal Republic of Yugoslavia's history is characterized by division rather than unification. The sub-units of the SFRY had oscillated between independence, federal arrangement and domination by other states. Most importantly, however, was the fact that each sub-unit had undergone its own cultural and national development: for example, both Croatia and Serbia had experienced very different histories as nations.^{xxi} Yet, the *1974 Constitution* opens with the following:

the nations of Yugoslavia,... on the basis of their will freely expressed in ... conformity with their historic aspirations, aware that further consolidation of their brotherhood and unity is in the common interest, have, together with the nationalities with which they live, united in a federal republic of free and equal nations and nationalities and founded a socialist federal community of working people – the Socialist Republic of Yugoslavia.^{xxii}

The *1974 Constitution* emphasized the equality of nations and communist ideals, yet assumed that the diverse historical cultural groups within the federation would nevertheless be protected. In 1974 there were two unifying forces which masqueraded as a common myth: communism and the unification of Southern Slavic nations. However, these two myths were overly centered on unification and could not allow for any form of nationalism or recognition of diversity within the unified federation. Both, as we shall see, were insufficient to bind diverse groups into a collaborative project for unity.

First, the political factor of communism served to create the opposite of the federal ideal: communist ideology and structure necessarily lead to a centralized state with little autonomy granted to the sub-units.^{xxiii} In a multinational federal state, a communist ideal could not function as a common myth animating the federal project because it requires that all units relinquish their nationalism and diversity in order to support the socialist goal. In short, a federal project animated by communist ideology precludes the recognition of diversity. Communist ideology is very centralizing and the role of the Communist party “meant that the state, although theoretically independent of the party, in actual fact was subordinated to the Communist party as the leading political force in society. This meant that in all relevant areas of domestic and foreign policy, state power was exercised on the basis of the political decisions made by the central bodies of the Communist party.”^{xxiv} Given the overarching importance of the Communist Party, the constituent units were left only with “limited powers in relatively unimportant matters.”^{xxv} This communist motivating force in a sense encouraged the complete abolishment of diversity and sub-unit nationalism within the SFRY. As such, it could not function as an adequate collective unifying myth since the sub-units would feel that their identity would be subsumed. In order to alleviate or temper this overarching ideology, the *1974 Constitution*

represented an attempt to secure diversity within a communist state by decentralizing the federal project. The *1974 Constitution* was perceived as a response by the Communist party to pay heed to the various expressions of nationalist demands for recognition and autonomy through a decentralized federal system. Essentially, however, the federalism that was created in the SFRY through the *1974 Constitution* was inextricably bound up with the authoritarian one-party state and ideology of the Communist Party.^{xxvi}

Second, Serbia had a long-standing goal of unification into a South Slavic nation. According to Vesna Pesic, the foundation of the idea of Yugoslav ethnic unity was "a joint project among the various South Slav nations to ward off any territorial aspirations of neighboring countries and to protect their national identities through a 'unified' Yugoslavia."^{xxvii} The rationale underlying the SFRY union was largely one of protection from non-Slavic states and influences in central Europe following two World Wars.^{xxviii} For territorial areas like Croatia which had been subjected to external domination, a unified South Slav nation presented an option for survival. Croatia as a unit was not strong enough in the face of external threats and an alliance with the strong Serbian army provided its only protection. However, few Croats were willing to surrender their fragile nationhood by joining a sovereign Yugoslavia which would be dominated by Serbia. The price that Croatia had to pay for this protection was too steep. It seemed that its motivation for finally entering a Yugoslav federation after World War II was not collaboration, but rather self-survival in the face of a history of domination by foreign powers. By unifying with Serbia and Montenegro, which had become established nation states, Croatia was securing its survival from foreign domination. However, in so doing, it was relinquishing a significant degree of its autonomy.^{xxix} The *1974 Constitution* was presented as a tool to ensure the recognition of diversity within the unified Slavic State; again, this recognition was granted through decentralization.

The preceding cursory evaluation of the motivations underlying the federal project of the former SFRY shows that the enactment of the *1974 Constitution* was an attempt to create a balance between ethnic diversity and the communist ideal of social unity. In order to allow for

the recognition of diverse nations within the SFRY united by a Communist project and the ideal of the South Slavic state, the *1974 Constitution* granted too much autonomy to its constituent units.^{xxx} Such an approach could not reconcile unity with diversity because it tried to solve the problem of extreme centralization with an equally extreme decentralization.

(iii) Conclusion:

Federalism requires a unifying myth which supports the project of unity. However, to be truly successful, such a unifying myth must not suffocate the recognition of diverse national/cultural identities. That is, the common myth must unify the sub-units only to the extent of achieving a common goal and not at the expense of the affirmation or recognition of diversity. In Canada we see that diverse groups were related in their common endeavor to assert themselves as independent following a colonial history. Canadian federalism was a new creation in which none of the units had a historically cemented independent nation-statehood. Canadian federalism was created with a premise of striving together towards the common good while maintaining autonomy for its constituent parts. As a result, the positions of the provincial sub-units were not veritably hardened out of a lack of recognition for diversity.

The former Socialist Federal Republic of Yugoslavia, on the other hand, was motivated by a communist ideology and the ideal of unification of Southern Slavic states. In addition, the long-standing divergent history of the component parts presented a severe obstacle to the creation of a common myth that would recognize diversity. These motivations establish a shaky foundation to the SFRY's federal project. The question that arises is whether Canadian federalism is headed in this direction of increased decentralization as a remedy for a lack of recognition of diversity. The national Quebec minority in being organized within the province of Quebec is accumulating a history which may disrupt the common unifying myth. It is important to recognize that national history can accumulate, develop and harden even within a federal system. Having established the different 'mythological' foundations of Canadian and SFRY federalism, I will compare the way in which the federal states of Canada and SFRY are organized into sub-units which represent distinct ethnic groups according to the common myth

identified above.

III - The creation and characterization of the sub-units within the federation

Having examined the difference in motivation underlying the federal project in Canada in 1867 and in the SFRY in 1974, the most useful starting point in evaluating a federal system itself is to consider the way in which the sub-units within the federal state are constituted. There is a wide range of methods for dividing up a federal state into sub-units. For example, in the United States the sub-units are purely territorial and thus there is no real ethnic majority represented by any one unit. Alternatively, in Belgium, there is a linguistic third tier sub-unit which is independent from the territorial organization of the state. We can distinguish a federalism motivated by accommodation for ethnic pluralism (Belgium) from a federalism which is merely a decentralization of power (United States). Canada and the SFRY, as multinational federations, are two examples of federations composed of sub-units which represent a particular ethno-cultural identity. In such federations, "the boundaries of one or more sub-units are designed with the purpose of enabling a national minority to exercise self-government."^{xxxii} In the case of Canada, Quebec is the only real self-governing ethnic province as all others represent territorial interests. The former SFRY, on the other hand, is territorially divided entirely into ethno-cultural groups.

Although it would initially appear that the characterization of sub-units along ethnic lines would ensure unity in diversity, in fact, such divisions can exacerbate conflict within a state. As we shall see in our comparative analysis of the Canadian provinces and territories and the SFRY's provinces and republics, an overly ethnic characterization of sub-units can lead to the failure of the federal project. If the sub-units are too ethnically defined, a federation could quickly disintegrate into a collectivity of dissatisfied groups with hardened positions incapable of efficient unification. Mihail Markovic provides us with a useful warning when he points out that:

federalism...understood in the narrow sense of a political system applicable to multinational societies...tends to make national identity and national interest the

focus of all social considerations. The subtle and necessary balance between the individual and the ethnic, on the one hand, and the ethnic and the supranational, the universally human, on the other, tends to be dangerously disturbed: priority is inevitably given to ethnicity.^{xxxii}

(i) How are sub-units characterized in Canada?

In order to have a voice and be recognized in the Canadian federal state, a particular group must be represented by a provincial/territorial sub-unit. Sections 5-8 of the *Constitution Act, 1867* provide the basic framework for the division of the Dominion of Canada into Provinces. According to these sections, the territorial settlements of Upper and Lower Canada, Nova Scotia and New Brunswick are established as Provinces. The creation of the provinces was largely determined by the colonial settlement of people. In addition, s.146 of the *Constitution Act, 1867* establishes that the admission of other colonies into the union could be undertaken “on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fits to approve subject to the Provisions of this Act.” In Canada, the provinces are territorially organized and represent a strictly territorial interest with the exception of Quebec which is the territorial representative of the French Quebecois culture.

Again we see that federalism, in its division into sub-units, is an attempt to preserve and recognize cultural identity by attributing a certain degree of autonomy to the provinces. According to the Court in the *Quebec Secession Reference*:

the principle of federalism facilitates the pursuit of collective goals by cultural and linguistic minorities which form the majority within a particular province. This is the case in Quebec, where the majority of the population is French-speaking, and which possesses a distinct culture. This is not merely the result of chance. The social and demographic reality of Quebec explains the existence of the province of Quebec as a political unit and indeed, was one of the essential reasons for establishing a federal structure for the Canadian union in 1867 ... the federal structure adopted at Confederation enables French-speaking Canadians to form a numerical majority in the province of Quebec, and so exercise the considerable provincial powers conferred by the Constitution Act, 1867 in such a way as to promote their language and culture.^{xxxiii}

The organization of the Province of Quebec thus creates an institution in which a cultural group forms a majority and is granted autonomy in defining itself. Thus, the creation of cultural national provinces counterbalances the fact that such a cultural group is in fact a minority in the

federal union. Through representation by the province of Quebec, the French-speaking cultural group ensures that their interests will be recognized by the federal government.

Despite Quebec's historical pursuit of sovereignty, the Provinces and Territories of Canada were entering a compact of unity as a post-colonial endeavor. That is, neither had a truly cemented national history which could create the hardened antagonism which is so likely in attempts to unify diversity. In Canada, the federal union and the creation of provincial sub-units was a new project motivated by the accommodation for Quebec cultural difference and the division of such a large country into territorial units to meet local demands. This characterization of sub-units ensured the success of Canadian federalism.

(ii) How are sub-units characterized in the former SFRY?

The former Socialist Federal Republic of Yugoslavia was a federation composed of different and separate nations which were established prior to the federal project. In the *1974 Constitution*, the Socialist Federal Republic of Yugoslavia was composed of 8 units: 6 Republics (Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia, Slovenia) and 2 Autonomous Provinces (Kosovo, Vojvodina)^{xxxiv}. The Socialist Republics are defined in the *1974 Constitution* article 3 as:

states based on the sovereignty of the people and the power of and self-management by the working class and all working people, and are socialist, self-managing democratic communities of working people and citizens, and of nations and nationalities having equal rights.

The Socialist Autonomous Provinces on the other hand are defined in article 4 of the *1974 Constitution* as:

autonomous socialist self-managing democratic socio-political communities based on the power of and self-management by the working class and all working people, in which working people, nations and nationalities realize their sovereign rights, and when so specified by the Constitution of the Socialist Republic of Serbia in the common interests of the working people, nations, and nationalities of that Republic as a whole, they do so also within the Republic.

The phrasing of articles 3 and 4 makes it very difficult to identify the differences between the Republics and the Provinces. Essentially, a Republic appears to be a "state" while a Province is

a "community." In addition, Provinces fall under the Constitution of the Republic of Serbia.

The Yugoslavian federation of 1974 represented an institutionalization of 'ethno-nationality' whereby each constitutive republic consisted of a largely homogenous ethnic group.^{xxxv} Each Republic and Province represented a particular cultural group which formed the majority within that territory. This resulted in each unit (Republic or Province) being centered on the assertion of its cultural identity vis-à-vis the other sub-units. However, ethnic groups were not confined to the territorial units within the Republic and the Provinces which represented them, but were dispersed across all nations. This resulted in the suppression of interests of minorities within these Republics and Provinces. This is especially the case for minority groups within a Republic who are part of an ethnic group which is represented by a rival ethnic Republic.^{xxxvi}

In any analysis of the creation of sub-units in the former Socialist Federal Republic of Yugoslavia, we must keep in mind that the Republics and the Provinces carried historical baggage spanning centuries. The fact that each of the sub-units within the SFRY had undergone its own historical and cultural development created an obstacle to a successful multinational federalism. As a result, the former Socialist Federal Republic of Yugoslavia was more akin to a confederation of sovereign states rather than a federation of autonomous sub-units. The SFRY was bound to fail primarily because, despite the fact that all sub-units were at varying stages of nationhood, they were all granted equal status within the federal organs.^{xxxvii}

(iii) Conclusion:

In order to be workable, a federal state requires a clear constitution which entrenches the division of a federation into sub-units. The Supreme Court in the *Quebec Secession Reference* points out that in order to understand the two related principles of federalism and constitutionalism, we must unpack why "a constitution is entrenched beyond the reach of simple majority rule."^{xxxviii} Constitutions within federalism "ensure that vulnerable minority groups are endowed with the institutions and the rights necessary to maintain and promote their identities against the assimilative pressures of the majority."^{xxxix} An adequate organization of the state into

sub-units that represent the cultural interest of national minority groups within a federal state ensures the success of the federal project while maintaining the diversity of all its parts. However, it is crucial for the survival of any federal project that despite separate national histories, the sub-units be united toward a common goal. The experience of the SFRY demonstrates that an over emphasis on ethnic nationalism and a disregard for the distinct history of each group in the delineation of sub-units can only reinforce conflict. Most importantly, it appears to offer an easy answer to the problem of diversity within unity and ignores the suppression of minorities within the sub-units.^{x1} The key to Canada's success as a federal state may simply be that there is only one province which is culturally defined while all other provinces and territories represent territorial interests. What we must now turn to is a comparative analysis of the way in which these sub-units in Canada and in the former SFRY attain recognition and autonomy through the division of legislative powers.

IV - How are the legislative powers divided to ensure the preservation of autonomy?

Constitutions serve two fundamental purposes: first, they are a structural tool which allocates certain powers and functions to various groups and ensures that a functional legal system emerges.^{x1i} Second, constitutions serve to take certain issues or concerns outside of the political arena^{x1ii} and preserve them from the influence of majority rule. I will now look at the way in which the written constitutions of Canada and the former SFRY fulfill these two fundamental purposes through the allocation of powers between the sub-units and the federal government as a means of unifying diversity.^{x1iii} The division of legislative powers is an important element in a federal state based on the unity of diversity because it delineates the autonomy of the sub-units and dictates the jurisdiction in which the federal government can legislate:

The federal-provincial division of powers was a legal recognition of the diversity that existed among the initial members of Confederation and manifested a concern to accommodate that diversity within a single nation by granting significant powers to provincial governments ... [Confederation created] a unified and independent political state in which different peoples could resolve their disagreements and work together

toward common goals and common interests.^{xliv}

An adequate division of power relies on the existence of a clear constitutional structure. What we shall see is that for a federal project to succeed in uniting diversity, there must be a clear constitutional enumeration of powers between the federal and the provincial. The ambiguous assignment of legislative powers, the absence of any real autonomous central body, and the pervasively ethnic approach to all issues served to reinforce diversity at the expense of unity in the former SFRY.

(i) The division of powers in Canada

According to Professor Hogg, "in a federal state, governmental power is distributed between a central (or national or federal) authority and several regional (or provincial or state) authorities, in such a way that every individual in the state is subject to the laws of two authorities, the central authority and a regional authority."^{xlv} By dividing legislative power in such a way, the sub-units in the federation can be assured a certain degree of autonomy in the regulation of their local affairs. At the same time, the federal government takes responsibility for those issues that concern the country as a whole. Canada, covering such a large territorial area, derives benefits from the efficiency and accountability that result from a division of powers between the federal and provincial governments.^{xlvi} In the *Quebec Secession Reference*, the court found that "the principle of federalism recognizes the diversity of the component part of Confederation, and the autonomy of the provincial governments to develop their societies within their respective spheres of jurisdiction."^{xlvii} Such a clear division of legislative powers is the defining mechanism which will ensure the success of a federal state which hopes to unify diversity.

The *Constitution Act, 1867* assigns enumerated powers to the provinces and to the federal unit.^{xlviii} By doing so, the respective spheres of legislative jurisdiction of both the federal and the provincial are clearly laid out. In addition, both the provincial (through s.92(13) on property and civil rights) and the federal units (through Peace Order and Good Government and s.91(29))

have a certain basket of residual power. This gives both entities a precise realm of legislation as well as a residual sphere of jurisdiction.

In Canada, under the *Constitution Act, 1867*, most powers relating to social or cultural issues are allotted to the provincial sub-units; for example, powers relating to property and civil rights in the Province,^{xlix} matters of a local or private nature^l and education.^{li} In the *Quebec Secession Reference*, the court points out that within Canada's federal structure, certain resolutions were made “to protect French language culture, both directly (by making French an official language in Quebec and Canada as a whole) and indirectly (by allocating jurisdiction over education and ‘property and Civil Rights in the Province’ to the Provinces).”^{lii} This division of powers reaffirms the protection of minorities because it enables provinces to define themselves and make laws with respect to their cultural ideals and territorial interests. At the same time, the federal government is explicitly assigned the task of legislating in the common interest of the nation. Such a clear enumeration of power as we find in ss. 91 and 92 of the *Constitution Act, 1867* is a mechanism that reconciles unity with diversity in our multinational federal state.

(ii) The division of power in the former SFRY

The *1974 Constitution* of the Socialist Federal Republic of Yugoslavia is very ambiguous in its delineation of the legislative powers of the federal and republic/provincial governments. As we have seen above, in order to unify diversity, the Republics and the Provinces must be granted a reasonable amount of autonomy while the federal government must secure its role as an overarching regulator for the common interest.^{liii} Pursuant to article 281 of the *1974 Constitution*, the federation through its organs is assigned certain powers of national import.^{liv} The *1974 Constitution* makes no explicit delineation of powers to the provincial/republic entities. What is notable about this constitutional arrangement is that these federal organs were composed of representatives or delegations from the Republics and the Provinces.^{lv} Therefore, although the federal entity is granted a realm of legislative jurisdiction, this entity is illusory: in effect, it is entirely composed of the province/republic, which represent their own interests over and above

the federal, central interests. For example, while the Federal Chamber made decisions according to majority vote,^{lvi} the Chamber of the Republics and the Provinces could only make decisions by consensus.^{lvii} Such a mechanism granted a veto power to each Republic and each Province, thus rendering useless any considerations for proportional representation.^{lviii}

Through this focus on the Republican/Provincial consensus within the federal organs and the corresponding result that all federal policy was motivated by Republican or Provincial interest, the *1974 Constitution* created a confederation of sovereign states rather than a true federation. In addition, the fact that areas of federal legislative power were minimal, and the existence of a consensus requirement by the Chamber of the Republics and Provinces ensured the complete absence of an autonomous, independent federal legislative power.

The *1974 Constitution* of the SFRY created a "federalism with multi-level autonomies [in which] the centre does not impose an explicit, detailed order, but produces instead a general regulatory framework to be filled by the autonomous activity of subsystems."^{lix} However, where the regulatory framework is poorly delineated it is difficult to identify that federal entity which is meant to unify the autonomous sub-units. As a result, the requirement that all national units come to a consensus in the Chamber unnecessarily 'nationalized' all issues "leading to national confrontation on a regular basis."^{lx}

These constitutional mechanisms, which granted equal status to the Republics and the Provinces and required consensus in the Federal Chamber of federal decision-making bodies, ensured that a certain degree of paralysis would occur at the center. As Beverly Crawford points out, "any representative who felt that the interests of his republic or province would not be met by a particular federal policy could block its implementation. And ethnic identity was given increasing political weight as ethnic representative bodies became more powerful."^{lxi} Thus, we see that the SFRY's division of powers in the *1974 Constitution* was overly characterized by decentralization which lead to difficulty in making united policy and instead increased ethnic assertiveness. In effect, this conclusion stems from the fact that "there were no federal bodies with their own source of legitimacy that transcended that of the republics [as a result] Yugoslavia

under the [1974] *Constitution* could neither frame issues in terms of their impact on the federation as a whole, nor arrive at federal solutions that attempted to effect compromise outcomes."^{lxii}

(iii) Conclusion:

The *Quebec Secession Reference* makes clear that federalism, constitutionalism and the rule of law work together to ensure that the balance between unity and diversity is entrenched in a supra-legal framework.^{lxiii} Federalism requires an intricate constitutional structure which lays out the various units and powers which serve to reconcile unity with diversity. Such a structure can only be attained through constitutionalism. Since the balance between unity (centralisation) and diversity (decentralisation) is so delicate, it must be entrenched in a constitutional text. Most importantly, however, the provincial and federal powers must be clearly set out in the constitution. As compared to the *Constitution Act, 1867*, the SFRY *1974 Constitution*, in addition to granting no specific powers to the provinces and republics, is very ambiguous as to the extent of the federal powers it grants. The ethnicisation of issues was inevitable in the SFRY of the *1974 Constitution* because all representatives in the federal organs were representatives of a particular ethnic group. In striving to obtain recognition, each ethnic position became hardened. We can see a similar pattern emerging in Canada with respect to Quebec. On March 5th, 2001 the new Premier of Quebec, Bernard Landry was named. Many critics argue that rather than focusing on economic issues, sovereignty remains his sole and overwhelming concern. This ethnicisation of issues can only contribute to increased conflict at the expense of unity. The analysis of the SFRY division of legislative powers in the *1974 Constitution* should serve as evidence that in Canada, we must beware of taking on such tactics as increased decentralization and overly ethnic-centered debates.

V - Is there an independent federal entity acting as a voice for unity?

Once we have delineated the way in which the sub-units are created and the way in which the legislative powers are assigned, we must turn our attention to the peculiar relationship between the federal unit and the republic/provincial sub-units. In "The Theory of Competitive

Federalism,"^{lxiv} Albert Breton makes a distinction between 'co-operative' and 'competitive' federalism. Under a co-operative model, all sub-units are working together to achieve collective goals. A competitive model, on the other hand, is characterized by representatives attempting to ensure the best possible outcome for their constituency. In the latter model, the sub-units are not focused on some collective good but rather, on the best outcome for themselves. According to Breton, co-operation is "less efficient than competition, essentially because co-operation can easily degenerate into collusion, conspiracy and connivance and that this is not necessarily good!"^{lxv} Competition, he suggests, is "a natural by-product of a federal organization"^{lxvi} and in fact, encourages debate and dialogue. In a federal arrangement which unites diversity, the best approach is one which represents a median between co-operation and competition. The central question I hope to address in this section is whether the federal unit in Canada and the former SFRY is composed of the sub-units from which it obtains its powers through delegation or whether the federal is in fact "superior" to, or independent from, the sub-units. The former model represents decentralization and the latter, centralization. As we shall see, although it initially appears that a decentralized model would be more adequate to protect diversity in unity, in fact, too much decentralization can prevent the federal project from realizing itself. The federal must be an independent entity which is *more than the sum of its parts*. It is only when the federal and the sub-units are engaged in a positional dialogue that unity in diversity in a multinational federation can be successfully achieved.

(i) The Canadian federal entity

Although Canada began ostensibly as a constitutional federation whereby the whole was only made up of the sum of its parts, Canada has now evolved into a true federation. Professor Hogg points out that in the Canadian federal system the central and provincial entities are 'coordinate'. For example, the provincial legislative powers:

...are not granted by the Parliament of Canada, and they cannot be taken away, altered or controlled by the Parliament of Canada. And the [Provincial] Legislature, even acting in concert with all the other provincial Legislatures, is likewise incompetent to take away, alter or control the powers of the Parliament

of Canada...[However,] to speak of the central authority as a 'higher level' of government must not carry the implication that the regional authorities are legally subordinate to the center; on the contrary, they are coordinate or equal in status with the center.^{lxvii}

This peculiar coordinate and equal status of the central and provincial entities is largely a result of the fact that Canada is not a confederation. Within a confederation, the federal central government obtains its powers as a delegate of the sub-units. These sub-units then retain the right to take these powers back. In Canada, "the union of the provinces, ... established a central government which was in no sense the delegate of the provinces. It was independent of the provinces and coordinate with them."^{lxviii}

The Canadian federal government clearly has an independent identity as a national forum focused on ensuring unity in diversity. The federal government has the power to invalidate provincial laws (s.90), to appoint the Lieutenant Governor of each province (s.58), to appoint superior court judges (s.96), to assert federal jurisdiction through the peace order and good government preamble to s.91, and to declare certain local works within their jurisdiction as issues for the general advantage of Canada [ss.91(29) and 92(10)(c)].^{lxix} Although these seem like extreme federal powers, these do not disrupt the reciprocity between unity and diversity because those federal powers which may unduly encroach upon the provincial jurisdiction are seldom used and when they are, they are rigidly scrutinized and debated. The restrained use of these powers by the federal government relies on objections by the provincial/territorial sub-units compatible to the competitive model discussed above. So long as there is confidence in the federal government, dialogue between the federal and provincial entities and the collective ideal of unity in diversity, the federal powers do not dangerously centralize the federal government but serve to unite the diverse sub-units.

In order to establish a successful and workable relationship between the Provinces and the Federal unit, it is important that their roles be entrenched in a constitution. Such mechanisms that protect this relationship are those discussed above: the presence of a common unifying myth which recognizes diversity, the adequate characterization of the sub-units, and the division of

powers. The central question to be asked is whether there is a conception of a Canadian federal entity.^{lxx} In answering this question we may consider whether provinces fight and negotiate with each other or whether they do so with the federal entity. A quick look at federal jurisprudence and the Quebec secession issue show that discussions and debates take place mainly between the federal and the provincial. This function of the federal entity to regulate the whole and to serve as a forum ensures the success of federalism. If the Provinces are overly antagonistic towards one another then positions tend to get hardened and there is no overarching framework in which to have a debate with respect to unity; in fact, any rationale for unification would disappear in the disputes. An independent federal entity ensures the presence of a voice representing unity.

(ii) The former SFRY's federal entity

It is difficult to speak of an independent neutral federal entity in the *1974 Constitution* creating the SFRY. The federal government obtained its authority purely from its constituent units. In that respect, the former SFRY appears to be a true confederation as Hogg describes it.^{lxxi} An analysis of the composition of the federal organs, the division of powers between the federal and the sub-units and the lack of a common myth uniting all nations while recognizing their distinctness reveals that the SFRY established by the *1974 Constitution* lacked an overarching federal identity. Smiljko Sokol in the introduction to the *1974 Constitution*, writes that "relative to the 1963 Constitution, the *1974 Constitution* has to a considerable extent narrowed the powers of the Federation in favor of the socialist republics and autonomous provinces and has, in addition, extended and reinforced the various forms of participation by the republics and autonomous provinces in the exercise of federal functions."^{lxxii} As a result, it is very difficult to speak of an independent federal unit centered on common goals. Such a central unit is itself firmly divided and, as such, is not a veritable force in establishing or encouraging unity.

A major problem which reinforced this absence of an overarching, strong federal entity was that, "when Yugoslavia was formed in 1918, two of its constituent republics (Serbia and Montenegro) had existed as independent nation states for nearly a century."^{lxxiii} As a result, these

well established and confident nations were willing to establish their ethnic identity as the new Yugoslav identity which would unite the Southern Slavic nations. It was inevitable in such circumstances that the federal entity would represent the interests of the one dominant group. Croatia, meanwhile, was a nation striving to assert itself after a history of domination by the Austro-Hungarian Empire. As a result, with a rising nationalist movement, Croatia saw the federal project as a means to independence rather than as an end in itself. Vesna Pestic argues that the former SFRY was centered on a struggle between "Croatian separatism striving for an independent state and Serbian centralism striving to preserve the common Yugoslav state under its dominion...Both of these strident, ethnocentric, national ideologies preordained the failure of any attempt to constitute Yugoslavia as a modern unitary and liberal state."^{lxxiv} Since Serbia's objective in federation was the unification of all Serbs within one state under the guise of establishing a Southern Slavic state there was a certain antagonism between Croatia and the central government from the very start because Croatia felt that its cultural identity was not being recognized but rather, suffocated by the federal project.

From the inception of the *1974 Constitution* to 1980, the SFRY was under the communist dictatorship of Josip Broz Tito. Tito was the primary unifying force for the federal project and his death in 1980 marked the beginning of the fall of the communist federation. Tito was the force which reconciled unity with diversity within an overarching communist project.^{lxxv} According to Professor Paul Garde, "Tito, the (communist) partisan General during WWII...based his regime on tolerance for all of the nationalities ...That was the underlying idea which was in line with communist internationalism, that is, that ... all peoples have equal rights and all peoples have the same place within the Federation."^{lxxvi} Such a federalism could work only while Tito, a Croat, was the authoritarian ruler. In essence, Tito represented the overarching element which unified all nations into one common federation. However, according to Vesna Pestic, "the *1974 Constitution* established a symmetry that precluded linking Yugoslavia's identity with any particular republic. As such, Yugoslavia essentially had no citizens; rather, it was inhabited by citizens of its respective republics. In reality, though, the

country's political life belonged to Tito and the Yugoslav National Army.^{lxxvii}

As a further impediment to the establishment of a federal voice following the death of Tito, the SFRY was to be ruled by a collective presidency composed of one member from each of the Republics and each of the Autonomous Provinces.^{lxxviii} This eight-member presidency ensured that no independent federal entity could truly emerge.

The ambiguity of the *1974 Constitution* reinforced the problems flowing from a lack of a firm, strong embodiment of the federal project represented in a strong central entity. The fact that the SFRY was composed of so many different groups struggling for recognition necessitated a strong central unit to regulate their relations and represent unification in the face of diversity. As it was, the *1974 Constitution* failed to create such a central unit. As history reveals, Tito was the only entity that kept the SFRY united; once he was gone, so too was the voice that spoke for unity on behalf of the diverse groups.

(iii) Conclusion:

The extent to which diversity within unity will be successful relies heavily on the way in which the country is subdivided. By granting autonomy to sub-units within a federation, such sub-units are recognized as different. However, the federal unit must be more than the sum of its parts. This is true especially in cases where the federal project includes firmly established and divergent nations. In the former SFRY established under the *1974 Constitution*, the balance between the autonomy of the parts and the unity of the whole was tipped dangerously towards ensuring the autonomy of the Republics/Provinces.

In the *Quebec Secession Reference*, the Supreme Court of Canada identifies democracy as a fundamental constitutional principle.^{lxxix} It is interesting to consider the Court's comment that "the relationship between democracy and federalism means, for example, that in Canada there may be different and equally legitimate majorities in different provinces and territories and at the federal level."^{lxxx} In order for such majority rule to make any sense, there must be an independent federal forum in which the Provinces are represented. The case of the SFRY demonstrates that an ethnically organized and overly decentralized federal state can create

conflict because each sub-unit is frantically trying to assert itself vis-à-vis the others. In addition, a centralized federal government ensures that there is a neutral forum representing unity. If there is no such neutral forum, then the federal unit is composed of hardened confrontational members in which all fight to ensure diversity and none fight for the common project of unity.

VI - Conclusion: what are the constitutional requirements for unity in diversity?

The essential question I have tried to answer is whether multinational federalism can reconcile unity with diversity. The answer to this question depends on the particular circumstances under which the federal system was adopted and the constitutional mechanisms employed to ensure the protection of distinct cultural groups within the federal state. The sense of belonging to the common purpose of federalism is crucial to ensuring that all units maintain their allegiance to the federal objective. According to Charles Taylor, "the politics of nationalism has been powered for well over a century partly by the sense that people have had of being despised or respected by others around them. Multinational societies can break up because of a lack of perceived recognition of the equal worth of one group by another."^{lxxxix}

The question of secession in the *Quebec Secession Reference* concerned the constitutionality and domestic legality of secession. Secession is the archetypal symptom of a failed multinational federal project. The Supreme Court found that "the federalism principle, in conjunction with the democratic principle, dictates that the clear repudiation of the existing constitutional order and the clear expression of the desire to pursue secession by the population of a province would give rise to a reciprocal obligation on all parties to Confederation to negotiate constitutional changes to respond to that desire."^{lxxxix} Federalism is a compact, a gathering of diverse units in order to pursue common goals. As such, federalism is a reciprocal relationship and the principles enunciated above in the *Quebec Secession Reference* are to be applied in a reciprocal fashion. On the one hand, the central government has obligations to respect the autonomy of the sub-units. On the other hand, the sub-units who are granted such autonomy have certain obligations towards the central federal project and their fellow units.

Throughout our short Canadian history, there have been many attempts towards decentralization. The Meech Lake Constitutional Accord of 1987 and the even more decentralizing Charlottetown Accord in 1992 spring to mind as examples of such attempts. Simplistically, these Accords represented an attempt to enlarge provincial powers. However, these Accords were not passed: the former because the provinces objected to the qualification of Quebec as a 'distinct society' and the latter was rejected in a national referendum. The above analysis of the *1974 Constitution* of the former SFRY should have allowed us to recognize that decentralization can represent a movement towards the failure of a multinational federal project.

Federalism can provide an adequate mechanism to unite diversity so long as a balance is struck between unity and autonomy. As the experience of the former SFRY demonstrates, the granting of too much autonomy to the sub-units can be disastrous for a federal project. I am not presuming here to have identified all those elements which may have led to the break-up of the former SFRY. I have only attempted to investigate those constitutional mechanisms which may have contributed to the failure of the federal project. In addition, I have investigated only those mechanisms which I believe to be of particular relevance to the Canadian federation. I have argued that certain constitutional mechanisms must be put in place to ensure the balance between unity and diversity. In order to succeed, a federal constitutional state requires, first, a common myth unifying all sub-units for a common purpose and interest without swallowing the identity of the national minorities; second, an adequate characterization of sub-units which ensures that they are all equal in nation status and not overly 'ethnic'; third, an adequate division of legislative autonomy to permit the sub-units to define themselves within a clear constitutional framework; and finally, fourth, an independent federal entity which speaks for unity.

It is interesting to consider, in a concluding note, the comments of George-Etienne Cartier in the Parliamentary Debates on Confederation in 1865: "the idea of unity of races [is] utopian -- it [is] impossible. Dissimilarity, in fact, appear[s] to be the order of the physical world and of the moral world, as well as in the political world.... [W]e [are] of different races, not for the purpose of warring against each other, but in order to compete and emulate for the general

welfare."^{lxxxiii} Through this comparative study of federalism in Canada and the former SFRY, I have demonstrated the means by which this ideal can be attained and the possible dangers that lurk behind a multinational federal project.

Notes

ⁱ Charles Taylor, "The Politics of Recognition," *Philosophical Arguments* (Cambridge: First Harvard UP, 1997) 225.

ⁱⁱ Mihailo Markovic, "The Federal Experience in Yugoslavia," *Rethinking Federalism: Citizens, Markets, and Governments in a Changing World*, ed. Karen Knop (Vancouver: UBC Press, 1995) 75.

ⁱⁱⁱ Taylor 234.

^{iv} Taylor 235.

^v *Re Secession of Quebec*, 2 S.C.R. 217, 1998 [hereinafter *Quebec Secession Reference*].

^{vi} *Quebec Secession Reference* paragraph 49.

^{vii} *Reference Re Manitoba Language Rights*, 752, [1985] 1 S.C.R. 721.

^{viii} Introductory Part I, *Constitution of the Socialist Federal Republic of Yugoslavia*, Slu ebni list SFRJ 1974 No.18. [hereinafter the *1974 Constitution*].

^{ix} R.L. Watts, *Comparing Federal Systems*, 2nd ed. (Kingston: McGill-Queen's UP, 1999) 121.

^x In order to be comprehensive, this analysis must bypass an in-depth analysis of the distinct geopolitical context of both federations. Some interesting issues include asymmetry in federal states, the suppression of minorities within minorities and the constitutional protection extended to minority rights. This analysis is one focused on constitutional law in its structural capacity and thus sets aside the important rights protection model of constitutional law. Most importantly, however, is the absence of discussion on the relationship between the federal government and the aboriginal segment of the Canadian population. In essence, I hope that the principles outlined in this paper can identify the obstacles that must be overcome in order to ensure the autonomy and recognition of aboriginals within the federal project.

^{xi} J. Jenson & M. Papillon, “Citizenship and the Recognition of Cultural Diversity: The Canadian Experience,” *A Structured Dialogue on Diversity: The Values and Political Structures That Support It* (Ottawa: May 12, 2000).

^{xii} *Quebec Secession Reference* paragraph 58.

^{xiii} Markovic 79.

^{xiv} *Quebec Secession Reference* paragraph 74.

^{xv} Preamble, *The Constitution Act, 1867* (U.K.), 30 & 31 Vict., c.3, reprinted in R.S.C. 1985, App.II, No.5., states that “such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire.”

^{xvi} See generally Barry Strayer, “The Canadian Constitution and Diversity,” *Forging Unity out of Diversity: The Approaches of Eight Nations*, ed. R. Goldwin (Washington, D.C.: American Enterprise Institute for Public Policy Research 1985).

^{xvii} P.W. Hogg, *Constitutional Law of Canada*, 2000 student ed. (Toronto: Carswell, 2000) 115.

^{xviii} *Quebec Secession Reference* paragraph 43.

^{xix} [1919] A.C. 935 (P.C.).

^{xx} [1919] A.C. 942.

^{xxi} See generally Markovic.

^{xxii} Introductory Part I, *Constitution of the Socialist Federal Republic of Yugoslavia*.

^{xxiii} See Viktor Knapp, “Central and Eastern European Federations: Communist Theory and Practice,” *Rethinking Federalism: Citizens, Markets, and Governments in a Changing World*, ed. Karen Knop (Vancouver: UBC Press, 1995) 316.

^{xxiv} Knapp 323.

^{xxv} Knapp 323.

^{xxvi} Consider the emphasis placed on uniting the “working people” and the “brotherhood and unity of all

nations” in the Introductory Part of the *1974 Constitution*. There is little room within this project for the affirmation of national identity which may be distinct from this all-encompassing project.

^{xxvii} Vesna Pesic, “Serbian Nationalism and the Origins of the Yugoslav Crisis” (Washington: USIP, April 1996) 2. <<http://www.usip.org/oc/sr/pesic/pesic2.html>>

^{xxviii} Consider Article 237 of the *1974 Constitution*: “It shall be the inviolable and inalienable right and duty of the nations and nationalities of Yugoslavia, working people, and citizens to protect and defend the independence, sovereignty, territorial integrity, and the social system of the SFRY established by the SFRY Constitution.”

^{xxix} See generally Markovic 80-83.

^{xxx} This will become clearer following the analysis of the way in which the sub-units are composed and their respective powers vis-à-vis the federal state.

^{xxxi} Will Kymlicka, “Response to Jenson and Papillon Backgrounder.” <http://www.cprn.com/family/files/crdc-2_e.htm>

^{xxxii} Markovic 83.

^{xxxiii} *Quebec Secession Reference* paragraph 59.

^{xxxiv} See articles 1 and 2 of the *1974 Constitution*.

^{xxxv} See generally Pesic.

^{xxxvi} Consider, for example, the massacre of the Serbs who formed a minority within Croatia. The minority within Croatia would be especially mistreated as a form of retaliation towards Serbia. Croatia is not the only one guilty of such conduct and this is by no means an isolated incident.

^{xxxvii} See generally Markovic. Consider especially the fact that Serbia and Montenegro were secure independent nation states. Croatia, meanwhile, had a more precarious national identity and was reluctant to exchange its Croatian identity for a united Yugoslav identity. Slovenia, Macedonia and Bosnia had an even more fragile identity, having undergone a history of subjection from foreign domination.

^{xxxviii} *Quebec Secession Reference* paragraph 73.

^{xxxix} *Quebec Secession Reference* paragraph 74.

^{xl} See *Ford v. Quebec (Attorney General)*, 2 S.C.R. 712, 1988.

^{xli} *Quebec Secession Reference* paragraph 32.

^{xlii} For a discussion of the different purposes of constitutions in newly emerging democratic state see H.W.O. Okoth-Ogendo, "Constitutions Without Constitutionalism: Reflections on an African Political Paradox," *Constitutionalism and Democracy: Transitions in the Contemporary World*, ed. Douglas Greenberg (New York : Oxford University Press, 1993).

^{xliii} As the Supreme Court confirmed in paragraph 32 of the *Quebec Secession Reference*, "a constitution must contain a comprehensive set of rules and principles which are capable of providing an exhaustive legal framework for our system of government."

^{xliv} *Quebec Secession Reference* paragraph 43.

^{xlv} Strayer 104.

^{xlvi} See generally Hogg.

^{xlvii} *Quebec Secession Reference* paragraph 58.

^{xlviii} *Constitution Act, 1867* Sections 91 and 92.

^{xlix} *Constitution Act, 1867* Section 92 (13).

^l *Constitution Act, 1867* Section 92 (16).

^{li} *Constitution Act, 1867* Section 93.

^{lii} *Quebec Secession Reference* paragraph 38.

^{liii} See generally Markovic 85.

^{liv} In article 281, the federal organs must ensure and regulate: (1) the independence and territorial integrity of the SFRY, (2) the system of socialist self-management,...(4) the fundamentals of the law of obligations, (5) the fundamentals of the system of social planning, (6) national defence, (7) foreign policy,...(8) exports and imports,...(11) air navigation and other field of traffic, (12) conditions and principles

regarding sanctions for criminal and economic offences, (13) weights and measures. This is not an exhaustive list but only an example of those powers exercised by the federal organs pursuant to article 281 of the *1974 Constitution*.

^{lv} See article 291 of the *1974 Constitution*, which set out the composition of the Federal Chamber with 30 delegates from each Republic and 20 delegates from each Autonomous Province. Article 292 sets out the composition of the Chamber of the Republics and Provinces with 12 delegates from each Republic and 8 from each Province.

^{lvi} According to article 294 of the *1974 Constitution*: “the Federal Chamber shall decide by a majority vote at sessions attended by a majority of delegates, unless a special majority is required by the present Constitution.”

^{lvii} According to article 295 of the *1974 Constitution*: “A decision shall be considered as taken if its has received the vote from all delegations to the Chamber.” Yet, in order to prevent complete immobilism in the federal organs, the following was added: “on questions which it decides with the Federal Chamber, the Chamber of the Republics and Provinces shall decide by majority vote of all delegates present in the Chamber.”

^{lviii} See generally Pesic.

^{lix} Markovic 86.

^{lx} Markovic 2.

^{lxi} Beverly Crawford, “Explaining Cultural Conflict in the ex-Yugoslavia: institutional weakness, economic crisis, and identity politics,” *The Myth of Ethnic Conflict: Politics, Economics, and Cultural Violence*, eds. B. Crawford & R. Lipschutz (Berkeley: International and Area Studies Research Series, 1998).

^{lxii} Knapp 10.

^{lxiii} *Quebec Secession Reference* paragraphs 70-78.

^{lxiv} Albert Breton, “The Theory of Competitive Federalism,” *Federalism in Canada*, ed. G. Stevenson (Ottawa: Supply and Services Canada, 1989) 457.

^{lxv} Breton 457.

^{lxvi} Breton 457.

^{lxvii} Strayer 104.

^{lxviii} Strayer 106.

^{lxix} See Hogg 118.

^{lxx} Consider the current debate of ensuring that Ottawa is an officially bilingual city. As such, Ottawa becomes the seat of the “federal entity” because it is representative of the two founding colonies which are recognized in the *Constitution Act, 1867*.

^{lxxi} See Hogg 106.

^{lxxii} Smiljko Sokol, “Introduction to the Constitution of the Socialist Federal Republic of Yugoslavia,” *The Constitutions of the Communist World*, ed. W. Simons (The Hague: Martinus Nijhoff Publishers, 1984) 426.

^{lxxiii} Markovic 81.

^{lxxiv} Knapp 4-5.

^{lxxv} In fact, in article 333 of the *1974 Constitution*, Tito’s presidency was constitutionally protected: “in view of the historic role of Josip Broz Tito in the National Liberation War and the Socialist Revolution, in the creation and development of the Socialist Federal Republic of Yugoslavia, the development of Yugoslav socialist self-management society, the achievement of the brotherhood and unity of the nations and nationalities of Yugoslavia, the consolidation of the independence of the country and of its position in international relations and in the struggle for peace in the world, and in line with the expressed will of the working people and citizens, nations and nationalities of Yugoslavia — the SFRY Assembly may, on the proposal of the Assemblies of the Republics and Assemblies of the Autonomous Provinces, elect Josip Broz Tito President of the Republic for an unlimited term of office.”

^{lxxvi} Kevin Sim, “An Expert’s Overview: How Tito Handled the Outburst of Nationalism,” *The World’s Most Wanted Man* (Frontline: May 26, 1996). <http://www.pbs.org/wgbh/pages/frontline/shows/karadzic/bosnia/tito.html>. These comments are Paul Garde’s testimony to the judges of the War Crimes Tribunal

at the Hague on June 27-28, 1996.

^{lxxvii} Knapp 10.

^{lxxviii} See article 321 of the *1974 Constitution*: “The SFRY Presidency shall be composed of a member from each Republic and Autonomous Province.”

^{lxxix} *Quebec Secession Reference* paragraphs 61-69.

^{lxxx} *Quebec Secession Reference* paragraph 66.

^{lxxxi} Taylor 250.

^{lxxxii} *Quebec Secession Reference* paragraph 88.

^{lxxxiii} *Quebec Secession Reference* paragraph 43.

Whither Global Feminism?

The task of this paper is to gauge the viability of feminism in a global forum. It begins with the premise that the structural inequities of globalization, based largely on race, class, and nationality, have been reified in the feminist movement, and have threatened the disintegration of a global platform. After appraising the various waves of feminist thought and action, it concludes that in order to survive, the movement must initiate a critical self-transformation, celebrate and harness the power of difference, and concentrate on the intersection of all specificity: the rally for justice.

Acknowledgements

I dedicate this work to the feminists I met while studying in Egypt, who taught me that there is more than one way to skin a patriarchal cat.

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At every women's gathering the divisions of race, class, nationality and ethnicity erupt, tearing the unity that brings women together...We can pretend that differences do not exist, or we can explore them, and in the process reformulate feminism itself. The latter is more difficult and painful, but indispensable, if sisterhood is to become more than a slogan.

■ Asoka Bandarage, "Toward International Feminism" 1994

To many, the very fact that there is a popular inclination to refer to a 'global feminist movement'¹ is confirmation of its existence. It is certainly difficult to deny feminism's transnational political presence, for "few social movements have flourished in as many parts of the world as women's movements have."² Any implication of homogeneity in the movement is misleading, knowing as we do that women across the globe have focused their efforts very differently with regard to how they conceptualize their oppression and determine their targets in alleviating it. Is it accurate, or even necessary, then, to label all women's initiatives with the same moniker? Would the alternative threaten the strength of the feminist position on the global stage? These were some of the pressing concerns of women who convened in Beijing,³ more than 30 years after the first criticisms over the 'universal applicability' of feminism first emerged, and they remain of significant concern to date. Recognizing a potentially explosive pluralism amongst the movement's participants, the sometimes competing goals and tactics which characterize their initiatives worldwide, and a corresponding dissension in feminist ranks, those present at the international conference in Beijing discovered that feminism itself – like the masculine domination against which it is poised – is overdue for transformation. The fallout in academia has been an almost existential debate.

The purpose of this paper is to investigate the existence and character of the global feminist movement, specifically: *whether* it exists, *where* it might take place, *who* can take part, and finally, can it survive? Methodologically, this exploration involves a dissection of

‘globalization’⁴ to reveal its negative impact on women, especially poor women living in or emigrating from the Southern hemisphere. Correspondingly, both the rationale behind and the impediments to a ‘global’ feminist programme – understood here as the appropriate response to globalization – will be outlined. What we discover in the process is that globalization has sponsored a highly racialized and socially stratified ‘selection’ in global society, which reinforces and even exacerbates previously established patriarchal and socio-economic structures; precisely the kind of structural ghettoizing which feminism purports to rally against. Yet ironically, critics from the South charge that these very same schisms find reflection in the feminist movement itself. The real question then becomes: how can feminism accommodate specificity among women, while retaining the momentum and cohesion necessary to negotiate women’s rights on the global stage?

Despite a lack of cohesion in the feminist movement worldwide, there are many compelling reasons for women to organize globally – particularly given the changing nature of governance in the era of globalization, and the rise of transnational threats to security, not to mention the old axiom that there is greater strength in numbers. I will examine the various localities and targets of women’s advocacy, with a view to discovering where feminist mobilizers have been most effective, and where they should set their sights in the future. My research reveals that the ‘particular’ and the ‘universal’ coincide most often on global issues which do not immediately avow a feminist agenda, but where the voices, agendas and powerful contribution of women resonate; where ‘Justice’ itself is the reoccurring theme. I will argue that the potential for feminism to remain viable in a global forum is largely dependent on a self-transformation within the movement, which will reform its own power ranks and permit it to harness the strength of its

diversity, while confronting and convincing the practitioners of global governance that gender justice is a matter of pervasive relevance.

Globalization and the Gender Gap

[Globalization is] the emergence of a set of sequences and processes that are unhindered by territorial and jurisdictional barriers and that indeed enhance the spread of trans-border practices in economic, political, cultural and social domains. [It is] a discourse of political knowledge offering one view of how to make the post-modern world manageable.

■ Higgott and Reich, 1997

True to its name, globalization is a force to which everyone everywhere is subject. The territory it covers is both tangible and abstract, for it invades our minds as well as our shopping malls. As a system of knowledge, its view of the world is hardly value-free, but is “predicated on culturally and historically specific interpretations of human behaviour, seen through the lens of a particular race, ethnicity, class and gender of thinker.”⁵ Its management is therefore highly exclusionary to the majority of people it impacts, most particularly the 52% of the world’s population referred to as ‘women’.

Pamela Sparr writes that the list of female grievances against the forces of globalization are manifold: the feminization of poverty, the requirement to seek employment outside the home, discrimination in the workplace, lack of job security, deteriorating working conditions, extreme wage differentials, the escalation of unpaid work, retreating social safety nets, slowing and uneven levels of education, health degeneration, food shortages, rising domestic violence, increasing migration flows, and the rise in single parent households.⁶ This list, it must be said, is probably not exhaustive. Nor is it necessarily accurate for all women.

Bakker and Ghiara, feminist scholars in the field of international political economy, enlighten us of the fact that women have been able to negotiate the forces of globalization in beneficial ways – if they are privileged with the higher education or sophisticated service sector

skills to secure their position in the global economy. Of course, the opposite is true for low-skilled manufacturing workers. One's socio-economic status is thus a primary determinant of one's relationship to globalization, but it is by no means the only category to consider. The experience of women varies greatly along class-based lines, but so too does it depend on ethnicity; race being a component of class formation which dictates "concrete" economic positioning along racial lines.⁷ Prioritizing class, then, as the ultimate determinant of identity is a decidedly over-stylized approach.

Many women will attest to overlapping patterns of discrimination which are complicated by other aspects of their identity, like generational divides, for instance, which place elderly women in the most de-regulated and exploited positions in the workplace, while younger women are fast-tracked through hiring schemes. The youth, it must be said, are often forced to sacrifice their own educational opportunities to assume the household duties their working mothers can no longer manage properly, and which their macho or absentee fathers refuse to assume.⁸ And so we see that the livelihood of women is frequently compromised simply because they are women; an observation which still finds resonance across both socio-economic and transnational lines. Gender has thus become the focal (if somewhat tenuous) point around which many objectors to globalization have chosen to rally.

By now it is a well-established fact that while men are not impervious to the devastating effects of the global 'restructuring' program, the prioritization of the male-defined market has incurred relatively greater losses for women.⁹ The gender gap has been officially recorded by the United Nations in a report which essentially argues that women are being left to pick up the slack for global market failures,¹⁰ and that overlaying this gendered reality is a complex web of discrimination which emulates the class, race, age divisions which are curiously reminiscent of

international power structures of the past. It is understood, then, that globalization does not operate in a vacuum, but has instead emerged to reinforce and enhance the *a priori* inequitable distribution of power worldwide, of which patriarchy, class/race, generational and gender stratification are rudimentary relationships.

Specificity and the promotion of 'global feminism'

Over time, globalization has come to signify far more than just transnational market liberalization. When invoked, the term will also conjure images of the 'global village,' the revolution in communications, and the ultimate interdependence of all communities. It has, to some extent, had similar resonance in the feminist consciousness, frequently coupled with the conviction that the status of women is an issue best tackled at the level of international institutions, where the feminist angst toward the state can be (at least partially) bypassed, and the solidarity between women worldwide can be wielded to an advantage.

With the efforts to mainstream¹¹ gender in the United Nations development paradigm, recognition (if only through lip-service) that sustainable development rests on the equitable inclusion of women was formally established. In October 2001, other facets of the global governing structure have followed suit, by introducing resolutions like SC1325 to security policy at the United Nations, which emphasizes the need to mainstream women in peacebuilding. Although the mainstreaming project has met with considerable obstacles since (not the least of which include a serious lack of funds and the registered resistance of many men), feminists of various political persuasions across the globe continue to exert pressure at institutional and systemic levels of society to ensure greater equality between the sexes. There is doubt, however, over whether or not those who are at the forefront of this endeavour are truly representative, as

their agenda does not necessarily reflect the concerns of all women everywhere. 'Western', and more recently 'Northern,' feminists are particularly scrutinized for their 'imperialist' vision of women's emancipation, and their presumption of 'global' leadership.

Liberal feminists have been fielding charges of ethnocentrism since the early 1960s. By the mid- 70s, an avid commitment to rid themselves of their 'white-middle-class' moniker was apparent, but by then there was another accusation to deal with: the indictment that they were part of another 'neo-colonialist plot' to fashion the Third World in their image. In what Jessie Bernard calls "a curious twist of logic," women in the developing world alleged that international feminism was a form of intellectual, cultural and political oppression. And thus the existential debate was inducted to the feminist movement. Was there such a thing as a "global sisterhood?"

Inasmuch as the reaction was a symptom of the developing world's desire to overcome their colonial past, it was also a clear reflection of the incongruence between feminist logic as it was construed in the liberal democracies of North America and Europe, and the issues of primary concern to women the world over. The argument from the 'South' ironically echoed the charge laid by many feminists in the 'North' against neo-classical economics: that despite being 'couched in universal terms, the analytical categories and social change strategies produced by such feminists are derived from a unique historical and cultural experience.'¹² Based on liberal ethics of human rights, the individualism inherent to this version of the women's movement was a particular affront to the communitarian sensibilities of many Southern women, just as the 'possessive individualism' of the market-based world is today. Moreover, specificity of experience exposed realities such as race, class, age, urban or rural lifestyles, nationalism and culture as competing informers of social identity which threatened to create serious divides

between women and challenged the plausibility of a universally effective feminist movement. It continues to do so today.

Retorting that the implication of homogeneity on their own front might be equally irresponsible, Western/Northern feminists have often cited divergence between the various political strains, of which Liberal, Radical and Socialist feminists form the most significant camps – as proof that the movement is sufficiently diversified. Yet the choices still register objections from the South. The first in this trio – classic liberalist feminism – sought to eliminate the emphasis on difference by replacing it with ‘sameness’, or more accurately, through an equation of the emotional, intellectual and even physical capacity between men and women. To many feminists, the acceptance of masculine/individualist traits – what later analysts referred to as androcentrism – as the norm to which women should aspire made the liberal position particularly difficult to swallow. No easier to accept, however, was the espousal of a ‘total’ cultural revolution such as that proposed by some radical feminists¹³ though the emphasis on the mutual interdependence of the entire world’s social, political, and economic relationships was seen as a definite improvement. More attractive yet was the socialist position, for herein lay the dissection of the rigid distinctions such as ‘private’ and ‘public’ spheres which did not resonate in the Southern women’s mind.¹⁴ Still, the essentializing category of ‘gender’ remained bothersome; thus the genesis of post-modern feminism, traced to France but also substantially authored in the South, which stresses that the oppression of women assumes many different forms according to socio-economic, cultural and political situation.¹⁵ But this assertion too had its pitfalls, not the least of which was the threat of total neutralization. What, then, were those feminists who were dedicated to supporting their international sisters and promoting the ‘cause’ worldwide to do?

Where to start...

Amira Basu identifies a number of ‘mainstream’ feminist tendencies which have proven exclusionary to the Southern woman: first, in much of the feminist scholarship to date, women’s movements in the post-colonial world were all but ignored; second, women’s movements generally were strictly equated with modernization and development, and being viewed exclusively through that lens, were subject to an assumption of transnational uniformity that smacked of the culturally insensitive discourse inherent to neo-liberal economics. Variance in the degree and kind of oppression experienced by women was thereby silenced, as was acknowledgement that the rise of feminism has generally correlated with the increased industrialization and urbanization of society, which brings into existence, and greatly hinges upon, a middle class. In contrast to their privileged ‘sisters’, women of lower socio-economic strata have articulated very different priorities for their advocacy. Thus, the economic boundaries of the movement were reified,¹⁶ as was the more general observation that globalization itself had been fashioned on the back of historical inequalities. Recognizing this, many feminists began to see the logic in deciphering these disparities at their source – turning toward an investigation of women’s lives, experience and concern delivered in their own voice, and through their own eyes – rather than superimposing a discourse upon their sisters in struggle.

In this context, it is not surprising that post-modern feminism speaks more authentically to many women. But the danger inherent to its innovation of ‘many truths’ is whether or not it precluded the possibility of a global movement needed to confront global problems. Because women of different colour, religion, geographic location, age and culture each occupied a particular position in the global economy, the singular focus on gender as an analytical tool had

been deemed insufficient to gauge the impact of globalization on women as a whole.¹⁷ Nevertheless, it was clear that much of the effort to improve the lives of women hinged on collective action.¹⁸ How were feminists to reconcile these seemingly competing realities?

In an effort to rectify the inconsistencies of ‘the movement,’ researchers began to dedicate much of their time to the exploration of ‘differences.’ Likewise, the UN launched, as part of its 1975 world plan of action, a project of ‘equitable integration,’ which saw the creation of national machineries, bureaus, advisory committees, commissions and ministries in part to address the specificity problem. The upside of this endeavour was that it uncovered many silences, giving air time to voices which were previously unheard. The down side was that it often had the inadvertent effect of exacerbating Southern resentment of the North.¹⁹

Then, as now, women in the developing world were still feeling used and exoticized by researchers who posited them as the ‘other’ in their studies; observers who patronizingly charted their successes and failures, utterly oblivious to their own complicity in the oppressive cycle.²⁰ The UN has often been derided with similar complaints, accused of being just another “male-defined form of separatism.”²¹ It is plausible that despite the best of intentions, reconciling the diversity of the movement with the universalistic nature of the United Nations bureaucracy was an ambitious if not totally naïve project, but many feminists realized that they were not blameless in this misappropriation. A seminal self-criticism of international feminism was born at this juncture: the realization that power stratification still plagued the ranks of their own movement as well as the world at large. To ‘free’ women, then, was to begin by looking in the mirror and begin refashioning their own exclusionary perceptions. The self exploration which ensued revealed some interesting questions regarding the character of the ‘global’ sisterhood.

Shifting 'global' boundaries: the local, national and international movement

Women's movements comprise a range of struggles by women against gender inequality. These movements may be independently organized or affiliated with political parties, they may be of short or of long duration, they may rest on a narrow social base or on multi-class coalitions. They may be local or national. To limit the discussion by excluding any of these forms would be to restrict our understanding of a rich and multifaceted phenomenon.²²

Where are women most able to be directly involved in the struggle to improve their lives?

Participation has been and still is a central theme in the feminist agenda. Most often it is assumed that women are most effective when they participate at the local level, and this is why the 'local' has been given a privileged space in the development paradigm; indeed, many NGOs have made this space a priority. With respect to the move toward greater 'integration' specifically, engagement at the 'grassroots' level seemed more sensitive to the context of peoples lives, and more capable of fostering a democratic and inclusive forum in which to counter national and global oppression. With the advent of globalization, however, the rise in migrant flows across national boundaries has meant that local spaces are being re-organized. This begs the question so poignantly posed by Shirin Rai: "What is the locale for the migrant woman? Her home that she has left behind, or her present, which is not home?"²³

The use of the words 'North,' 'South' and 'Western' in this paper are somewhat misleading on this point, because they imply an almost surgical division between the have and have-nots across geographical space. The truth we know to be far less discernible, with pockets of each living beside and in amongst each other. When we think of the typical 'North American Girl,' many might reflexively call on a 'sitcom' image of a middle or upper class teenager, with considerable education, who is considering college. The millions of girls working in the fields,

factories and sweatshops in North America do not automatically spring to mind. Who can women such as these hold accountable for the injustices they suffer?

Globalization has been accompanied by the decay of national boundaries, and some have argued that the former will eventually make borders entirely moot. In this context, the call for a transnational feminism seems an imperative, though we are cautioned not to be hasty in dismissing the role of the state. As part of the metamorphosis that is globalization, the state has become the ‘node’ through which global society is currently restructuring itself.²⁴ As the mediator between the local and the global, it remains an important level of negotiation in the feminist struggle, as well as an arena where difference can be both managed and legitimated:

The nation-state as the focus of development struggles allows historical knowledge of traditions, cultures, and political contexts to be mobilized with greater facility than the amorphous ‘international economic institutions’ peopled by shadowy figures not visible to the local oppositional struggles, and [gives focus to] the frustrations of local struggles when they are not able to hold the international elites accountable for the disasters brought upon them.²⁵

The feminist position on the nation-state has been ambivalent, ranging from a total rejection of the state to expounding on the benefits of working with it.²⁶ Effectiveness is the issue at stake on both sides of the debate, because a critical distance from the institution which you are fighting to reform can be both integral and contrary to influencing it. But if we choose to discharge our national representation, what shall we engage as an alternative?

Overstating the role of ‘local’ and ‘state’ arenas is easily offset by the reality that in many countries, neither political space is one of freedom and security. Certainly, “the levels of culturally validated oppressions, exclusions, violation and surveillance that women experience ... are very high.”²⁷ This is where the importance of an international forum – global civil society and social movements generally – becomes paramount. As the testament of many women has

shown (and despite the incidence of exclusion which may plague it), international fellowship has afforded women with a relative degree of freedom of action and speech that is denied them in their domestic settings.²⁸ Indeed, it forms an important and often crucial complement to their 'local' cause. 'Global' feminism is easily understood as the confluence of all such efforts, whether in small villages, or in the UN General Assembly. Therein lies the most compelling reason for women to organize at a global level.

Highlighting the politics of cooperation and confrontation in the global feminist movement, as was the mandate at the first conference in Beijing, has been a painful but productive means of shoring up these shifting boundaries. It emphasized two integral loci of power for the movement. First, to build upon and influence decisions taken locally, nationally and regionally; and second, to draw upon the skills and resources emanating from people and institutions at many different levels of society,²⁹ so that the movement maintains both strength and relevance worldwide. The discussion at Beijing +5 revealed that implementing these strategies has met with mixed but promising success.

Experiments in prioritizing diversity... GAD and DAWN: two sides of the same coin?

In order to grasp the most appropriate strategies for bridging the cleavages in the feminist movement, it is important to backtrack somewhat and examine the tactics which have already been tried. As previously alluded to, feminists in both the North and the South were profoundly disillusioned by the 'special interest' status to which they felt they had been relegated in the 'Women and Development' paradigm of UN design. A formalized (and initially independent) articulation of these views was born through the creation of two new organizations: Development Alternatives for Women in a New Era (DAWN) in the South, and concurrently, Gender and

Development (GAD) in the North. Each called for a development model which was more holistic in its representation of women's interests, and both espoused more direct and concerted support for local women's organizations.³⁰ The most important contribution of either, however, was the linkages made between micro and macro levels of injustice: that a rural woman must walk miles to gather firewood because deforestation – sponsored by corporate multinationals for sale on the international market – has depleted her local resources was not lost in these new worldviews. In the words of Kate Young, the new approach “look[ed] at the totality of social organization, economic and political life in order to understand the shaping of particular aspects of society.”³¹ In so doing, the interdependence of society the world over was contrasted against the conspicuous absence of a corresponding sense of community and dedication to shared solutions. The ‘global’ was emerging in fact, but the ‘imagined community’ was lagging far behind.

For GAD in particular, the comprehensive approach was a marked change from its former incarnation which saw economic growth as the lone criterion for progress (the unfortunate habit of development policy to this point). Strategic and practical needs were considered in tandem to reflect both the immediate and long terms goals of the movement – the onus for which was laid on actors at all levels of society: local, national and international. Collective action was posited as the cornerstone of success, and intrinsic to this was the logic that partnership, rather than the typical expert-recipient aid relationship, was critical. True to this sentiment, and with significant departure from its forebear WID, GAD was developed with in consultation with women in the South. This invested it with an air of legitimacy where there might otherwise have been contempt.

Was the gap between North and South closing? Certainly, there was great progress evidenced in the innovation that there was a collective stake in the future of development. That

gender issues, addressed in isolation from the other salient issues in women's lives, could only inspire partial solutions was another advancement to add to the score.³² The next hurdle would be to judge just how well these insights would translate into other forums of women's advocacy.

Beijing: sisterhood is trying

Women's movements are associated with a number of struggles worldwide, not the least of which include the promotion of human rights, the democratization of authoritarian regimes, the quest for national liberation, ending violence against women, securing reproductive health and choice, and the campaign for political participation and representation. The logic and tactics behind these struggles do not always immediately coincide with one another, and some might even conflict, yet the importance of collective and transnational support for the fundamental objective in each is clear:

What initially motivates many women to organize is not necessarily a belief in the distinctive nature of their problems but rather a sense of shared oppression with other groups that have been denied their rights. [Indeed,] patriarchal domination is no more apt in and of itself to provide a catalyst to women's activism than class exploitation is likely in and of itself to stimulate class struggle.³³

The 'imagined community' is bound by a commonality of struggle and resistance against two powerful oppressors: patriarchy and domination. Three basic tracts are evident in the ensuing endeavour: first is that of setting the global agenda, second is that of supporting and encouraging women's activism worldwide, and third (though somewhat problematic) has been the effort toward mainstreaming gender in the politics and programs of development and later, security.

Moving toward the present day, we see that a comprehensive framework like the one innovators of GAD and DAWN had in mind was both visionary and warranted, but was it effective? Was it enough? The various themes covered at the Beijing Conference on Women

show that there is a lot of ground still left to cover. For starters, feminism has not yet realized its seminal goal of inclusion. One of the key concerns which remains relates to the racial fractures evident in the movement, chronicled in *Bringing Beijing Back: Local and Global Strategies*: “Racism still exists throughout society...[we] are immersed in a debate over race, affirmative action, and immigration quotas without widespread knowledge on the facts of these issues. This lack of knowledge has created an anti-immigration sentiment with racist underpinnings.”³⁴ Gendered immigration patterns expose the irony of a global economy which permits the free transfer of all goods and services except for that of one of its primary units of production – its labour force. Proper integration and mobility of the latter is severely compromised by the race, class and gender criteria which are entrenched in immigration policy worldwide. The ‘statelessness’ which results enhances the already marginalized status of many women. That this ‘institutionalized’ form of discrimination cannot be addressed apart from the other salient issues of globalization is only one reflection of the popular wisdom that ‘women’s’ issues cannot be effectively separated from many other political, social and economic movements agitating for change: “while some single issue movements against racism are necessary, they cannot achieve true social change working in isolation. This fragmentation reduces their effectiveness and splinters their message.”³⁵ And this, of course, necessitates cooperation across national, as well as cultural, political and philosophical lines – the second and most salient incentive to organize globally. The question now is whether or not feminists can work together to create a global platform which would adequately reflect the nature of the movement.

Comprehending the complex web of existence which now informs the ‘global’ woman is a constant challenge – but it is the qualitative remedy that feminism requires. There is a great deal of scholarly work on the specific and subjective experience of various women, but few

scholars have adopted a crosscultural perspective in their studies, and those that do are largely limited to the disciplines of anthropology and sociology, not international political economy. The paralytic impact of exaggerated ‘political correctness’ must be overcome with a concerted effort to reclaim and recognize where commonalities exist, and to discern where differences can be accommodated effectively. In this our comparative capability is in desperate need of enhancement – yet another concern which came to light in Beijing. The call to conduct research into alliance and coalition building, so that feminist practitioners can better understand which partnerships have worked and why, will certainly be integral. As will the continued and frequent opportunities for international dialogue, not to mention financial support. The practical, and somewhat more tedious, aspects of managing the movement – the networking and negotiation – have been less appealing to feminist scholars, but they may prove to be the cornerstone of a feminism that is truly to engage in the next wave of its own development: transformation. By moving slightly away from singularly critical agenda, and adding a dimension of construction to the debate, feminism the epistemology will more fully develop as an avenue for praxis.

Where to?

Is it possible to eliminate the elitist bias that has traditionally characterized the feminist movement? Not entirely. The bottom line is still money, and any new proposals are bound to be limited by financing: “Even where there is widespread and cohesive sympathy for feminist demands, the opposition is often better organized and funded.”³⁶ Once again, this is true inside as well as outside the movement. Moreover, economic and age-based marginalization of some women has cut their voices from the larger debate. The desperate need for more innovative

methods of dialoguing between various groups of women is highlighted in the Beijing conference notes:

Together the generations of women can be a dynamic force for social change. However, barriers created by different communication styles and attitudes sometimes hinder dialogue. For example, jargon and the level of discourse often make younger participants feel excluded from discussion and decision making. Also, older women are perceived to be more complacent while younger women are often perceived as risk takers. There is also the financial barrier. Older women may have more financial resources at their disposal... younger women may not be able to travel to attend conferences or gain access to the Internet, because they cannot afford it.³⁷

A tallying of the concerns expressed at the conference indicates that class, race, age and culture are still highly potent axes of exclusion within feminist ranks. The immediate and more practical remedy for this is clear: in order to address the larger issue of gender inequity effectively, women must begin to address the redistribution of resources within and without the movement itself, invoking the politics of structural change as well as the agenda of mainstreaming gender worldwide.³⁸ In short, feminists need to *be* the solution they envision in the world. To do otherwise is to risk death by hypocrisy.

Since these turbulent times in the development of the movement began, there have been a number of miscarried attempts to forge a sense of solidarity amongst divergent feminist positions,³⁹ and as we have learned from the experience in Beijing, we continue to wrestle with the problem today. Assuming, however, that our desire to work in partnership with women in the world over remains sincere, those who have been tasked by default (by virtue of their socio-economic, racial and even gender⁴⁰ status) with a leadership role are left to discover the best possible means of rectifying these apparent inconsistencies in their own minds, as well as in their vision of global governance. However, despite the positioning which behoves this action,

feminists at the forefront must divest themselves of the ‘watch-dog’ role, just as their most exaggerated dependents must divest themselves of their tendency to be ‘free-riders.’

The challenge will not only be to protect difference, but to rely on it for political and intellectual dynamism. Ben Agger tells us this is not, in fact, an impossible feat:

We *assume* that class, race and gender are conceptually and empirically separable ‘realities’ to which different theories are appropriate. But difference is not an irreducible ‘fact’. It must be theorized and not assumed. Class, race and gender are the *same* things—that is, their inferiorization is produced by the same theoretical logic.⁴¹

One can accept and even celebrate specificity without automatically invalidating the possibility of universalism. In an era of transformation, feminists are acutely aware that efforts toward ‘integration’ should not become synonymous with co-optation, absorption, incorporation, tokenism, or disappearance.⁴² Nevertheless, the art of associating freely and fairly together has yet to be mastered, for it is mistakenly believed to require an equality of conditions which seems entirely idealistic in today’s world.⁴³

A typical trajectory asserts that the commonalities between various groups of women have yet to be sufficiently examined for their unifying qualities.⁴⁴ Once probed, the similarities between feminisms, and the greater movement, might resonate more clearly. A new wave of scholarly research is welcomed here. A great irony, however, is that to date, a significant majority of the scholarship done on ‘integration’ has come out of North America, betraying a reluctance on the part of southern feminists to engage in a truly global movement, in which they feel their voices may be appropriated. But perhaps, as some have suggested, the quest for unification is to belabour a fruitless engagement.

Feminism might be well advised to move into a phase where it leaves its pre-occupation with the relationship between various ‘factions’ behind, in favour of concentrating more

efficiently on the achievements and challenges yet to be faced, whether collectively or separately.⁴⁵ Strategic alliances between various camps might be suitable in the short run, but total solidarity unnecessary over the long term. If the broader movement can centre itself on the question of justice, the details of each endeavour can be left to those who know their situation best, and those who wish to lend their support can do so without threatening their own integrity. Though some have argued that the concept of justice is itself a matter of idealized and relativized vision, it is a fair generalization to say that ending women's subordination everywhere is the overarching goal. That this subordination has multiple sources and varies across time and space should not detract from its singular demonization as the objective of the women's movement globally.

Coalition building on points of accord, and respectful retraction of support on others, should be tolerable, but it demands that feminists place less emphasis of preserving the integrity of their particular positions, in favour of honouring that of another.

There are, however, some ethical concerns to enumerate about 'strategic' versus 'romantic' sisterhood. It is admittedly naive to assume that all women have a perfect knowledge of the political and social oppression with which they are confronted, and are able to confront it in equal and effective measure.⁴⁶ An important part of the required transformation is the creation of a space for women in which they can direct the nuances of this debate themselves, or at very least, "break away from the highly circumscribed sphere of family, kin or village" in order to "understand the role of ideology in constructing their understanding of their experiences."⁴⁷ The complete retraction from involvement in the affairs of our sisters is extremist in that sense – but in the practical sense, how do feminists approach the international cause?

Lisa Pitre proposes that a true ‘partnership’ is best realized through stronger institutional support for indigenous women’s organizations in the South, which she feels will permit Southern women to have a more autonomous voice, and invite them into a development discourse previously dominated by Northern ‘experts’. It would also provide them with the means for personal and collective empowerment, while offering women from the North the opportunity to share and learn from their counterparts.⁴⁸ The success of individual movements is dependent on both the degree of political opportunity available to them locally, and the mobilization of resources – money, community, knowledge.⁴⁹ The interconnectedness of the world provides new avenues for such mobilization, with international political pressure becoming more intense. The leadership of particular states – Norway and Canada to name but two – is notable here.

Support for various initiatives, indigenously conceived, may be grudging at times, as they may sometimes offend ‘Northern’ sensibilities. The public espousal of anti-feminist views, which in notable cases has opened the vestiges of unusual power and prominence to some women in Pakistan, is a case in point.⁵⁰ Indeed, women are reshaping their definitions of feminism in very interesting ways. The *nuxing zhuyi* otherwise known as ‘women’s right-ism’ in Japan is a perfect example of how women have stamped their ownership on the feminist movement with a local rendition of its conceptualization.⁵¹ However compromising it may initially seem, respecting that different histories and situations require different tactics and strategies is essential to discovering shared goals amidst the complexities of the global initiative.

Whither feminism? The theoretical tract

As a feminist operating in the global forum, one is perpetually confronted with the question of relativism. Those of us who inherited the shameful legacies of colonialism and neo-

liberalism are loath to continue in the imperialistic⁵² tract. Instead, many have favoured a post-modern rejection of meta-narratives – a championing of diversity and the reality of difference. But as a woman (that is, as a target rather than simply an objective observer of the social inequities of the current global order) who wants to improve the situation, a relativist regression into nihilism is not a viable alternative. It simply is not a convincing avenue for change. This is the personal struggle which has underpinned this research paper: an exploration of the options for engagement in a global transformation which does not perpetuate an exclusionary past. The conclusion reached holds that feminism itself must be transformed.

“Feminists require a new epistemological understanding... [for] the advocates of difference and diversity must be answered, but so must the critics of differences without end.”⁵³ With the benefit of Weberian insight, one author outlines some of the issues which feminism needs to come to grips with if it is to remain viable in the post-modern world, many of which have featured in this paper. First, since we now understand that the concepts feminists employ are undoubtedly political and value-laden, to argue otherwise, or to stay static in this criticism, is futile. One of the strengths of the movement to this point has been its critical exploration of what is biased about the masculine social order. An enhancement of this has been recognition of its biased self – not as a failing, but as a matter of fact. Bias is true of all social science constructs; it is limiting only insofar as it tends toward absolutism. Its acknowledgment and the subsequent effort to redress its inadequacies is a mark of epistemological progressiveness. Second, is the realization that feminism is only a partial concept, for it does not, and cannot, reveal the totality of truth. This is not to say, however, that partiality does not serve as an appropriate response to the exclusionary masculine world: “By revealing hitherto invisible aspects of social reality, feminist concepts expose the partiality of masculine ‘general’ concepts.”⁵⁴ Finally, feminist

concepts should be and are justified by the overriding criterion that they help us understand reality *better*:

General feminist concepts often elide differences among women; they purport to offer truths about all women. But if we judge these concepts on the basis of whether counter-instances exist, they fail; they do not, in fact, offer truths about all women. But if we judge them according to whether they illuminate social reality, many of them pass muster... they have provided valuable insights into the broad parameters of women's situation; they have changed the landscape of social and political analysis and theory.⁵⁵

A feminist theory which promotes 'difference without differentiation' will do little to improve the lives of women. The post-colonial movement was correct to reject the privileging of middle-class Anglo-American feminism, for in doing so it has greatly enriched our understanding of the feminine plight. There is a danger, however, in overstating differences, as we know that some distinctions more pervasive or trivial than others. Feminists must negotiate these disparities according to the criterion of 'understanding; disaggregating the conditions of 'woman', but preempting the threat of total disintegration.

If this solution sounds abstract and evasive, it is only so in reflection of the fact that feminist methodology and epistemology is not a 'neat formula'.

Like it or not, we *do* live in a world in which many voices vie for ascendancy. Our question should not be how we can re-establish a meta-narrative more to our liking, but how we can make our voices heard among the cacophony of voices. Specifically, how can we construct arguments that feminist ideal types are valid because conceptualizing the world through these concepts would yield a better world?"⁵⁶

Let us avoid allowing our differences to compromise the power of a diverse social critique.

Conclusion

Much of the success of the movement toward an equitable integrationist revolution depended on the emerging character of the female world itself. On what strengths it developed. What resources it achieved. What weaknesses it overcame. Especially its

vulnerability vis-à-vis the male world. For the female world was not unified, or of single mind, or without its own separatisms.

■ Jessie Bernard

Bernard wrote this as a meditation on the condition of the women's movement back in 1987, but it rings true even today – with perhaps slightly more cynicism, given the fatigue and complacency that infects some younger generations of women, which threatens to stall progress on the feminist front. Is the global feminist movement defeated in the face of 'diversity' that is so much a part of our 'globalized' existence? Not if it rolls with the punches: "Social movements are not self-contained; rather, they grow from and give birth to other struggles, unite in coalition, and lock in conflict."⁵⁷ The success of the movement is above all a process, in which shifting alliances and loyalties can be subtle or severe but should not be framed by extreme cooperation or competition. Social movements are far too complex to be essentialized in that way.

A truly global feminism may yet be merely visionary – but we do know that feminists almost everywhere are fighting a hard fight, and in many cases, winning. Unfortunately, across the globe women and girls continue to face bleak realities about their lives, careers, educational opportunities, and the positions they hold in their families. The degree of oppression varies, and often women feel triply marginalized by their age, class and culture. Significant numbers of scholars conceive that the time has come for feminism to be completely diffused into larger ideological, cultural, national, socio-political, and all other progressive movements – not just in theory, but also in practice. Yet the mainstreaming effort is perpetually bogged by a common refrain: a divergence in vision, a lack of financial support, and the waxing and waning of sincere commitment on the part of staff who do not 'own' the project.⁵⁸ Even when there is consensus

on what constitutes ‘shared goals,’ various streams of the movement have difficulty working effectively in coalition.⁵⁹ Confronting disjunction has proven worthwhile, however, as we see in the case of women in Mexico who have taken issue with the purported ‘universality’ of human rights: “such struggles by women and indigenous people who use but simultaneously challenge the discourse on Universal human rights may contribute to the construction of a ‘new universalism’ of rights in which differences are not effaced but are respected.”⁶⁰

Although varying groups may differ on the relative importance of specific social issues, each sub-group is united by their fundamental goal to end oppression. Indeed, justice is the intersection of all specificity. Women from varied socio-economic backgrounds have cooperated quite effectively across borders on issues as diverse as fighting domestic violence, promoting women’s rights, establishing rape as a war crime, or in organizing trade unions like SEWA – projects where solidarity, political will, and the raising of consciousness have been most potent in its global incarnation. The relation of women to all forms of oppression, racism, sexism, ageism, and ecocide, we see, is very compelling evidence of the need to mainstream these debates in the global discussion.

Feminists must nevertheless be wary of the temptation to appeal to the lowest common denominator in favour of forging consensus. Where fundamental principles are needlessly compromised, ‘gender’ need not be the overarching priority – particularly when oppressors and the oppressed find themselves as part and parcel of a grossly essentializing category. Despite the fact that sharing in a gendered identity highlights an undeniable intersection of agendas, it is precisely the willingness of those who would stand enough apart to be able to criticize from within that will ensure the growth and survival of a global and representative movement; but let

not this high powered self-criticism become a reflexive modus operandi, but to do so not only to assist, but also to promote, disintegration.

Are race, class, age, nationalism and culture irreconcilable differences among women? Are there compelling reasons for women to organize both collectively and globally? The answers to these questions are not fully contained within these pages; their critical importance only resounds. Still, we emerge from the debate with a clearer perspective on the direction of the latest feminist wave. At this juncture in time – when globalization is being accredited for the greatest economic boom in history at the expense of women – the accompanying realities of interdependence, and the emergence of a new conceptual and political ‘space,’ make it particularly important that women organize both collectively and globally. Indeed, if women are to have a considerable impact on world order and its governance, we must present a unified front. This front, however, need not be irrespective of difference. With the goal of social, political and economic justice as the binding agenda driving the movement, a vision of global feminism should be one which engages women at all levels of society in all aspects of their lives, encouraging productive diversity rather than homogeneity, while proposing a pro-active redistribution of power, rather than reactive critique of its current allotment. The pressing task which lies before members of the movement is to devise the tactics and strategies to make this solution a reality. Some, both practical and theoretical, have been suggested in these pages, but the required innovation cannot simply be prescribed, it must be lived.

NOTES

¹ The term ‘movement’ is sometimes troublesome due to the discrepancies over the degree of ‘formal’ organization the word implies. For the purposes of this paper, a suitable definition is provided in the introduction of Deborah Steinstra’s article “Of Roots Leaves and Trees: Gender, Social Movements, and Global Governance,” *Gender Politics in Global Governance*, eds. Meyer and Prugl (Boulder: Rowman

and Littlefield, 1999). She defines social movements as “groups with a self-consciousness or awareness of being a group and with some level of organization, though not all members necessarily participate in those organizations.... arising in response to structural, technological or other changes in society ... in order to do politics differently.” However, it must be noted that the use of ‘feminism’ in the following sentence may unwittingly equate this philosophical and epistemological position with a movement, which it clearly is not. Notwithstanding the distinction, it is also clear that feminism and the women’s movement inform each other, and so it is not wholly irresponsible to conflate the two for the purposes of assessing the potential for a ‘global’ platform.

² Amrita Basu, *Women’s Movements in a Global Perspective* (Boulder: Westview, 1995) 1.

³ The United Nations Fourth World Conference on Women was held in Beijing in September 1995, and was followed by a similar conference five years later, aptly called Beijing +5.

⁴ Globalization generally refers to the policies and trends associated with market liberalization, but also refers loosely to the cultural, political and social tendency toward universalism that now grips the world.

⁵ Pamela Sparr, *Mortgaging Woman’s Lives* *Mortgaging women’s lives: feminist critiques of structural adjustment*, (London: Zed Books, 1994) 15.

⁶ Sparr p.7

⁷ See foreword Anthias, Floya and Yuval-Davis, Nira, *Racial Boundaries* (London: Routledge, 1992).

⁸ Nancy Whittier, *Feminist Generations* (Philadelphia: Temple UP, 1995) p. 98-99.

⁹ Isabella Bakker, *Rethinking Restructuring: Gender and Change in Canada* (Toronto: Toronto UP, 1996) 109.

¹⁰ United Nations. 1999 World Survey on the Role of Women and Development: Globalization, Gender and Work. Fifty-Fourth Session.

¹¹ Elizabeth Ridell Dixon’s definition of mainstreaming is “a process of integration involving the incorporation of an issue into a pre-existing framework or structure ... making it central to every aspect of the work of that structure.” (p.149) Riddell-Dixon, Elizabeth, 1999 ‘Mainstreaming Women’s Rights: Problems and Prospects within the Centre for Human Rights.’ *Global Governance* Vol 5, No. 2, pp. 149-172. This is the notion being referred to here, although it is understood that the mainstreaming project is far more complex than this simple definition will allow.

¹² Asoka Bandarage, *Women, Population and Global Crisis* (London & New Jersey: Zed Books, 1997). p. 7.

¹³ Basu p.7.

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- ¹⁴ Spike V. Peterson and Anne Sisson Runyan, *Global Gender Issues* (Boulder: Westview Press, 1993) 120.
- ¹⁵ Peterson and Runyan 116-22.
- ¹⁶ Basu, Amrita, *Women's Movements in a Global Perspective* (Boulder: Westview Press, 1995).
- ¹⁷ Blaclock and Macdonald p.166.
- ¹⁸ "From WID to GAD: Conceptual Shifts in the Women and Development Discourse."
www.unrisd.org/engindex/publ/list.
- ¹⁹ Jessie Bernard, *The Female World from a Global Perspective* (Indiana: Indiana UP, 1987).
- ²⁰ Ibid p.ix.
- ²¹ Ibid p 39.
- ²² Basu, Amrita, *Women's Movements in a global Perspective* (Boulder: Westview Press, 1995) p.3.
- ²³ Shirin Rai, *Engendered Development is a Global Age?* (Coventry: University of Warwick, Centre for the Study of Globalization and Regionalization, 1998) p.18.
- ²⁴ Jessie Bernard, *The Female World from a Global Perspective* (Indiana: Indiana UP, 1987). P.5.
- ²⁵ Rai 10.
- ²⁶ Irene Tinker, "Non-Governmental Organizations: An Alternative Power Base for Women?" *Gender Politics in Global Governance*, eds. Meyer and Prugl (Boulder: Rowman and Littlefield, 1999) p.89; Sonia Alvarez, "Advocating Feminism: The Latin American Feminist NGO Boom," *International Feminist Journal of Politics* 1.2 (1999).
- ²⁷ Rai p.18.
- ²⁸ Bernard p.27
- ²⁹ Rai p.24.
- ³⁰ Lisa Pitre, *Women's Organizations, International Linkages and Bridging the gap: Women in Development and a Global Feminist Vision* (Ottawa: MA Thesis, Carleton University, 1993) 28.
- ³¹ Young p.1.
- ³² Pitre p. 41.
- ³³ Basu p. 10.
- ³⁴ *Bringing Beijing Back: Local and Global Strategies* see <http://www.cafra.org/search.htm>
- ³⁵ Basu p.11.
- ³⁶ Basu p.17.
- ³⁷ *Bringing Beijing Back* 12.
- ³⁸ Rai p.25.

³⁹ See Jessie Bernard for extensive coverage of the various failed attempts.

⁴⁰ An element of this debate which, in the interest of brevity, has not been touched on is the stratification of women along the lines of sexual orientation, and the resentment of some women over the inclusion of lesbian and bisexual women under the rubric of ‘gender,’ which they argue is a dangerously fluid term.

⁴¹ Ben Agger, *Gender, Culture and Power: Toward a Feminist Postmodern Theory* (Westport: Praeger, 1993) 20.

⁴² Tinker, Irene, “Nongovernmental Organizations: An Alternative Power Base for Women?” in *Gender Politics in Global Governance* Mary K. Meyer and Elisabeth Prugl. (eds.) (Oxford: Rowman & Littlefield Publishers, Inc, 1999). pp. 88-106.

⁴³ Nancy Whittier, *Feminist Generations* (Philadelphia: Temple UP, 1995) p.113

⁴⁴ Bernard, Jessie. *The Female World from a Global Perspective*, (Indiana: University Press, 1987).

⁴⁵ Basu 4.

⁴⁶ “From WID to GAD” 2.

⁴⁷ Young (in Bernard) p.142.

⁴⁸ Pitre thesis. Pitre emphasizes the role of autonomous/indigenous NGOs in her argument for greater institutional support for Southern women. Notwithstanding the large body of literature which exposes the inadequacies of the NGO system – namely, that NGOs run by ‘femocrats’ and whose policy is dictated by gender ‘experts,’ are as riddled with unequal power structures as any other contemporary form of ‘governance’ – it is understood that participation in local NGOs is among the most feasible options available to many women in the South who seek a source of empowerment. It is beyond the scope of this paper to discuss how the NGO system itself might be reformed, but suffice it to say that the overhaul required would mimic that of what is demanded of feminism generally.

⁴⁹ Steinstra 271.

⁵⁰ See Basu 4.

⁵¹ Basu 7.

⁵² Imperialism here is understood to connote the West/North economic, political and cultural hegemony over the South.

⁵³ Hekman, Susan J. *Feminism, identity and difference* (Portland: Frank Cass., 1999) p.86 .

⁵⁴ Hekman, p. 87.

⁵⁵ Hekman, p. 88.

⁵⁶ Hekman, p. 89.

⁵⁷ Whittier p.157.

⁵⁸ “Approaches to Institutionalizing Gender,” *BRIDGE* (www.ids.ac.uk/bridge) p.6

⁵⁹ Steinstra 272.

⁶⁰ Cathy Blacklock and Laura Macdonald, “Human Rights and Citizenship in Mexico and Guatemala: From Strategic to a New Universalism,” *Social Politics* 5.2 (1998): 3.

The Architecture of the Global Medina

The Petronas Twin Towers in Kuala Lumpur are the tallest buildings in the world. Using its architectural symbolism as a metaphor for wider social issues, Marc Munro argues that the design of this structure presents a positive challenge to the notion of Islamic identity

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The architecture of Malaysia is going through a period of national self-assertion. Nowhere is this more apparent than in the cityscape of Kuala Lumpur. Once a minor colonial centre, it is now in the process of transforming itself into a major capitalist metropolis. Above the urban remnants of its colonial past, a new city of towering steel and glass is being erected. The centrepiece of this development is the corporate headquarters of Petronas, the national oil company. Completed in 1996, the 452-metre twin towers of this complex are now the tallest buildings in the world, surpassing Chicago's 442-metre Sears Tower, which had held the world height championship since 1973. Officially inaugurated on 17 August, 1999, the complex was finally opened to the public on 30 May 2000 and the world turned its attention to this oft-forgotten corner of the globe. Pictures of the monumental structure made their way through the news wires and the world television news networks covered the estimated 800 souls who flocked to the towers to take in the view.

In an ABC report, Malaysian Prime Minister Mahathir Mohamed is quoted defending the \$1 billion project, stating that these towers add to the pride of a small nation like Malaysia “because small people always like to appear tall.”¹ Height, however, is not the only interesting thing about this structure, and Mahathir knows it. Its design is a conscious attempt to merge the ultimate symbol of capitalist power with the religious symbolism of the Islamic aesthetic. The eight-point star of the Islamic arabesque forms the basic ground plan of the towers, which are

linked by a bridge at the forty-first floor, creating a vast open gateway to the city. Though grounded in a regional Islamic aesthetic, the design is syncretic in its inspiration and cosmopolitan in its outlook. This type of cultural synthesis is typical of new architectural thinking.² The once sacred universal ideals of high modernism are currently being abandoned in favour of more vernacular forms. Grand development projects are no longer intended to dominate and transform the cultural environment; rather, environment now shapes project design. The goal is not simply to resurrect past forms, but to incorporate the heritage of a place in order to position a structure within the continuum of a cultural past, present and future. The Petronas Towers are very much an attempt to realise this type of synthesis and it is presented on a monumental scale. Cesar Pelli, the architect, has described his work as an effort “to respond to the climate, to the dominant Islamic culture, and to the sense of form and patterning that I could perceive in traditional Malaysian building.”³

The structure, however, is unique. Although it was inspired by the intricate geometric patterns of Islamic art, it is not within that tradition. The building seems to transcend tradition. These towers are designed to capture the essential spirit of a culture, but they exist as a novelty within it. The design is presented as the architecture of authenticity, but it lacks the roots of cultural heritage. Its purpose is to dominate the architectural remains of the former colonial city, thereby proclaiming the rebirth of traditional Malay culture; except the design was envisioned by an Argentinean artist based in New York.

Thus, what is intended to be a powerful statement of a regional renaissance is in actuality more the product of a world within which the particularity of place no longer seems to exist. The fact that an outsider could create a national monument in an Islamic idiom graphically demonstrates how schizophrenic cultural symbolism has become. Yet, on closer inspection, the

contradictions may be more superficial than fundamental. The Algerian social thinker Mohammad Arkoun has recently argued that even in mosque design, “Whether or not the architects themselves have an Islamic background is not a priority issue; what matters more is the content and the function they give to spirituality.”⁴ Indeed, Pelli's cultural origins should have prohibited him from becoming the signature artist of Malaysia's national monument, but they did not. According to Abdul Rahim Naim, chief operating officer of the Kuala Lumpur City Centre, the design selection committee “wanted something extraordinary and that is what Mr Pelli gave us. His design has elements of Islamic architecture identifiable with our country. The other architects’ designs looked as if they could be built anywhere. Mr. Pelli's design could be no other place but Kuala Lumpur.”⁵ Authenticity is obviously a very nebulous notion. The contradictions apparent with the Petronas Towers complex, therefore, present an interesting philosophical challenge for the future of Islamic identity and Muslim social development.

The importance of architecture is not an abstract theoretical issue. Its cost is too great, its symbolism too profound. Ismail Serageldin, an Egyptian architect and vice-president of the World Bank, has argued for the motivating power of architectural construction. He believes that “the need to assert identity in the face of the forces of anomie and globalisation has never been greater. The challenge for architecture is to transcend the conventional and create the new. This is not a search for innovation for its own sake, but a search for a language that responds to new needs and aspirations and is sufficiently authentic to allow the users to identify with it today and cherish it tomorrow.”⁶

Yet reconciling a singular Malaysian national identity with the urban environment of the capital city is very much a work in progress. The city fabric is a complicated cultural nexus held together by the legacy of British colonial relationships. Originally, it was purely a commercial

centre, established by the Chinese-dominated tin industry. Subsequently, it came to be governed by the British colonial administration based in Singapore. Political prominence grew with the British effort to bind the various peninsular Malay sultanates into a federated union.⁷ The Malay cultural presence, therefore, had to accommodate a pre-existing urban environment built to suit the economic and political needs of a world empire. Although this had certain political benefits for the Rajas, the Malays themselves tended to adhere to their long established *Kampung* (village) life. Thus, upon independence, the Malays were left with a national metropolis constructed by others. This created an adverse situation, with which they have been trying to come to terms ever since.⁸

Confronted with a lacuna, Pelli was forced to invent his own vision of a national architectural style, since “no one knew what it meant for a building to be ‘Malaysian.’ We were flying blind.”⁹ Thus, he adopted the arabesque as his totem for all things Islamic. The eight-pointed star became the ground plan and Pelli piled one on top of the other, reaching for the sky. The result is a unique architectural achievement and he fully recognises that the artistic vision of this national monument is a personal construct. Pelli argues, however, that “because they will appear for the first time in Kuala Lumpur they will be forever identified with the place -- the same way the Eiffel Tower is identified with Paris, although its structure and form were not derived from Parisian or French architecture”.¹⁰

Only time will tell whether the Petronas Towers will, like the Eiffel Tower for the French, strike a resonant cord in the minds of the Malaysian, or whether they will be seen simply as a monumental curiosity. The sheer size and power of the structures, however, would indicate that some form of culture accommodation is inevitable.¹¹ This, perhaps, is precisely the point. The primary function of the building is not simply to house the national oil company;

functionality is a secondary consideration. This building represents a political statement about the future direction of the Malaysian nation. The project was the brainchild of Prime Minister Mahathir himself. He wanted a monument in the heart of the capital that would symbolise the country's modernisation and rising international profile. He was actively engaged in all stages of the design process and the final product is marked by his personal seal.¹² It shows the direction in which he wishes his country to move. The skyscraper is the marker of the international capitalist way, par excellence.

This urban aesthetic originated in the capitalist explosion that rocketed Chicago onto the world stage and the form is now the standardised home of financial activity. Louis Henry Sullivan, the architect credited with having created the skyscraper, described Chicago as having “an intoxicating rawness, a sense of big things to be done. For ‘big’ was the word.”¹³ Sullivan provided this city with an architecture that challenged the cultural primacy of the Old World. Skyscrapers have now replaced cathedral spires and grand mosque minarets. After Sullivan, no major urban centre could make a serious claim upon the world’s attention without first constructing these temples to capital. This is the claim Mahathir Mohamed is now making. Inspired by the didactic example of the Chicago aesthetic, Malaysia is now reconstructing Kuala Lumpur. It is a declaration to the world: Malaysia is a culture of greatness. It has raised itself out of international obscurity to Promethean heights. The position of the architect as an outsider makes this declaration all the more profound. It is simultaneously both the presentation of a proud Malaysia to the world and the recognition of its arrival.

International awareness of a distinctly Malaysian identity is an important issue for the Malay. Foreign domination had made them a minority upon their native soil.¹⁴ First the Europeans, then the Chinese and Indians, colonised their land and pushed aside the indigenous

Bumiputra way of life. The sons of the soil lost their birthright and they refused to accommodate or even engage these strangers. Consequently, modernity developed around them but did not include them.¹⁵ As the Chinese and Indians became citizens of empire, the Malay communities remained loyal to their sultans. Malaysian social critic Chandra Muzaffar believes that “this submission to the will of the monarch ... perpetuated as a supreme cultural value, had such an iron grip upon the Malay mind that it paralysed the ability to act in variance with the ruler’s will and want.”¹⁶

By 1969, however, the social disparity between the rural Malaysian villagers and the upwardly mobile urban immigrant communities had become an affront too great to endure. This frustration exploded with violence. In order to restore peace to the nation, the state gave up all pretence of balancing the competing needs of its diverse society. Malaysia is the land of the Malay. The New Economic Policy was designed to return to the *Bumiputra* the patrimony they believed had been stolen. The native sons would claim the new economy for themselves. A new Malaysian technocratic elite began to assert its dominance. Government bureaucracy became the new sultanate and the old rulers were placed under its control.¹⁷ The future required a vibrant national civil society and this necessitated an end to the provincialism of the *ancien regime*.¹⁸

The religious symbolism utilised by Pelli within the design of the Petronas Towers is recognition that Malaysia is not only an Asian tiger; it is a distinctly Malay tiger. It is through the idiom of Islam that the Malay find their most effective nationalist cultural expression. Chandra Muzaffar maintains that “more than language or any other facet of culture, Islam expresses *Bumiputra* or more accurately Malay identity in a manner that has no parallel.”¹⁹ The subtle distinction being made here is the important separation that needs to be maintained between the concept of cultural authenticity and the reality of its elusiveness. Malaysia itself is a construct of

colonialism. It did not exist before 1957. Many of the “sons of the soil” are actually from Sumatra. Most within the immigrant communities are not actually immigrants; their roots stretch back for generations. Consequently, neither origin nor language can sufficiently determine the boundaries separating the self from the other. Islam, however, is a province of identity that links the Malay to a great imperial culture that is distinct from both their former British colonial masters and their current ethnic Chinese social rivals.

The strategic connection between national development and Islamic identity can be seen in the figure of Anwar Ibrahim. Formerly an Islamic student activist, he was brought into the government by Prime Minister Mahathir in 1982 to serve as minister of finance. Thereafter, fiscal bodies began adopting religious adjectives([objectives?](#)). Ibrahim's subsequent downfall, however, is indicative of the real place of Islam in the halls of power. It is to serve. Shortly after Suharto had been ousted in Indonesia, Ibrahim made the mistake of thinking he was powerful enough to call for the “creative destruction” of the old political order in Malaysia.²⁰ He was not, and now sits in jail. Religion is an aspect of Malay identity and the state is the guardian of all things Malaysian. This relationship is beyond challenge.²¹ The arabesques of the Petronas Towers are decorative, not fundamental. The Mahathir regime is a technocratic sultanate. The proper channels of authority must be respected. Any questioning of the regime is an act of subversion. There will be no destruction, only construction.

The will to build is at the core of Mahathir's Vision 2020 development programme. The goal of this programme is to transform Malaysia into a fully developed modern society by the second decade of the millennium. In the 1991 inaugural speech for this programme, “Malaysia: The Way Forward,” Mahathir explained: “Malaysia should not develop only in the economic sense. It must be a nation that is fully developed along all the dimensions: economically,

politically, socially, spiritually, psychologically and culturally.” He then called on all Malaysians to foster a greater sense of “national pride and confidence.”²² Five years later, Kuala Lumpur built the tallest building in the world. This is a declaration of independence. It has nothing to do with economics. Skyscrapers have never made economic sense. The costs of soaring verticality far outweigh those of humbler structures, but the construction of tall buildings has nothing to do with company ledgers. When architecture reaches for the sky, it is to touch the heavens.

The Empire State Building was a bid for immortality in an era of desperation, a messianic act. Built during the darkest days of the Depression, it was presented as a graphic display of awe-inspiring technical virtuosity and unfaltering economic virility. Alfred Emmanuel Smith, its chief visionary, was originally the target of ridicule. Rather than a symbol of potency, the massive tower was dismissed as his last erection. The pure size and power of the construction, however, commanded respect and the building is now a monument of human achievement. The black and white stills by Lewis Wickes Hine of workers suspended in the sky, defying gravity's deadly pull, have become icons of the modern age. Out of poverty, the workers raised themselves to the status of heroes. The construction of the Petronas Towers is a similar bid for immortality.

Construction on a monumental scale is intrinsic to the Promethean urge within the human psyche. The quest for greatness requires concrete displays of prowess and power. This is the medium through which majesty is recognised. Skyscrapers are ziggurats and pyramids. Their construction is an act of devotion. It is the recognition of grandeur. Monumental architecture expresses the dominant social conception of the self and any transformation in social self-perception necessitates the construction of new forms that claim the didactic content of past monuments in the name of a more glorious future. Consequently, Mahathir was not content with

one Promethean tower. Two were required to achieve the recognition he desired. Alongside the Petronas centrepiece, nine other buildings are planned, each the equal of the Empire State Building. One of these monster buildings, the Plaza Rakyat complex, will itself be the largest single architectural work in Asia.²³ The grammar of scale remains constant. The will to power creates an insatiable desire to reach greater and greater heights.

Yet, it must be remembered that the archetypal ziggurat was also the progenitor of the Tower of Babel. Malaysia, in 1997, suffered a fall of biblical proportions. It had firmly believed that it was entering the Promised Land and the new fetish for all things big and grand reflected this optimism. After years of frustration, labouring under the weight of debt and suffering the indignity of structural adjustment, it seemed to be at the promised point of economic departure. Over the past several years, this emerging economic powerhouse has celebrated its long awaited coming of age in architecture. The will of Mahathir has been set upon building a triumphant city of awe and wonder. Only time will tell whether the current economic quagmire will infuse Malaysia with the same type of bloody minded determination that created the Manhattan skyline or whether the dormant cranes of unrealised dreams will act as a cruel reminder of reach falling short of grasp.

NOTES

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In Defense of the NAFTA Investor-State Dispute Settlement Procedure: Ethyl Corporation v. Government of Canada.

In 1998 the US firm Ethyl Corporation initiated proceedings against the Government of Canada pursuant to the NAFTA investor-state dispute settlement mechanism, alleging that a law passed by the Canadian Parliament had the effect of expropriating Ethyl's business in Canada. To settle Ethyl Corp.'s claim, the Government of Canada paid the firm US \$13 million in compensation and nullified the offending legislation. This decision was met with assertions in Canada and beyond that the case demonstrated how the NAFTA investor-state dispute settlement procedure, unique among international trade agreements, unduly constrains the national policy sovereignty of governments and elevates the "rights" of multinational enterprises to unreasonable levels. This paper analyzes the Ethyl Case, to date the most important and often cited NAFTA investor-state challenge. The central argument is that, contrary to the views of NAFTA critics, the application of the investor-state provisions of NAFTA in this case does not lend weight to the "sovereignty erosion" thesis. Rather, the case confirms the value of having investor-state dispute settlement procedures in international trade and investment agreements as a means to constrain the actions of governments that violate international economic agreements to which they are legally bound.

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INTRODUCTION

Chapter eleven of the *North American Free Trade Agreement (NAFTA)*, which was signed by the governments of Canada, Mexico and the United States in 1992 and came into force in 1994, contains a so-called investor-state dispute settlement mechanism. This procedure, unique among existing international trade agreements, makes provisions for firms in the NAFTA area to challenge foreign government measures, on the grounds that a state action has expropriated, or has the effect of expropriating, the business of a particular firm. A successful investor-state challenge can result in rulings from NAFTA arbitral panels that require governments to financially compensate firms for measures that are found to be in violation of NAFTA investment

obligations.

In 1998 the first investor-state challenge pursuant to the NAFTA was initiated by the American firm Ethyl Corporation, a chemical manufacturer, against the government of Canada. Ethyl Corporation alleged that the Canadian government's 1997 legislation, *The Manganese-Based Fuel Additives Act* (MBFAA), also known as bill C-29, then C-94, which banned the gasoline additive methylclopentadienyl manganese tricarbonyl (known as MMT), produced exclusively for the Canadian market by Ethyl Corporation, constituted an expropriation of Ethyl's Canadian business. Before the NAFTA challenge ran its course, the Canadian government settled their dispute with Ethyl Corporation by nullifying bill C-94 and paying US \$13 million in compensation to the firm.

Ottawa's decision to back down in the face of Ethyl's challenge has led to claims by NAFTA critics, political parties (e.g., the Canadian New Democratic Party), some governments (e.g., sub-national governments in the US and Canada and governments outside the NAFTA bloc), non-governmental organizations (e.g., the Council of Canadians) and anti-globalization forces generally, that investor-state dispute settlement provisions in international trade agreements unduly constrain the policy sovereignty of governments, unreasonably increase the rights of multinational enterprises relative to states and citizens and thereby inhibit the ability of governments to act freely in the public interest.¹

This paper will examine the Ethyl case, which to date has been the major point of reference for critics of the investor-state mechanism, and argue that it does not lend weight to the anti investor-state dispute settlement argument. In fact, it will be shown that this case demonstrates the value of investor-state dispute settlement procedures as tools to constrain the actions of governments that violate their international trade and investment obligations and that are not taken on the basis of sound public policy

principles and rationales, but rather come about as a result of domestic lobbying and political pressures exerted by powerful vested interests that may not be acting in the broader public interest.²

1.0 National Sovereignty and International Trade Agreements

“NAFTA is about a New World Order...it is about a loss of American sovereignty.”³

This quotation is illustrative of a long-standing and deeply rooted fear, present within many countries, of a perceived unacceptable diminution of national sovereignty associated with belonging to international trade agreements, principally of the regional variety, but also including the General Agreement on Tariffs and Trade/World Trade Organization (GATT/WTO). Nevertheless, over the past three decades, there has been a proliferation of regional trade blocs. Chief among these are the European Common Market, which led to the European Union, and the Canada-US Free Trade Agreement (CUFTA), which has been superseded by the NAFTA. The rise of regional trade blocs over the past few decades in North and South America, Europe and Asia has been accompanied by often intense political debates around the impact of such agreements on national sovereignty, or the capacity of governments to legislate and regulate in the public interest free from international constraints. Similar debates have also arisen in some countries over GATT agreements, notably the Uruguay Round agreement and the establishment of the World Trade Organization.

Since the controversy around the Ethyl case primarily concerns the broader issue of the constraints on national policy sovereignty stemming from a particular provision of the NAFTA, that which follows is an analysis of whether regional trade agreements impinge upon national sovereignty to the detriment of the nation-state, the public interest and citizens, as is often alleged. From this, we can better assess the extent to which these

general criticisms of Free Trade Agreements (FTAs) are legitimate and whether the existence of the investor-state dispute settlement procedure within the NAFTA, and the exercise of this mechanism by Ethyl Corporation, along with the Canadian government's capitulation to the Ethyl challenge, illustrates a significant loss of national policy authority associated with this provision. On the basis of this analysis we can draw conclusions as to the appropriateness or desirability, in principle, of including investor-state dispute settlement mechanisms in international trade and investment agreements, as seen from the standpoint of governments, citizens and the public interest.

1.1 The Loss of Sovereignty Debate

For the purposes of this discussion, sovereignty will be defined, somewhat narrowly, as national control over decisions affecting the national economy, to use Weintraub's terminology.⁴ By definition, international trade agreements require the ceding of some sovereignty, or lessen the authority of governments to make public policy free of external constraints, chiefly the ability to retain and establish new tariff and non-tariff barriers. Nevertheless, losses of policy authority in this respect have been accepted by many democratic and non-democratic governments alike, most of which have signed onto some form of international trade agreement over the past forty years. As Bruce Doern and Brian Tomlin point out, in the post-war era there has been a worldwide trend towards "declining sovereignty" of most countries due to international agreements and protocols.⁵ In the context of increasing globalization and associated international economic agreements, but also as a result of non-economic protocols and treaties, states have subjected themselves to various forms of conditionality that strip them of real power. Yet governments that enter into trade agreements obviously regard such reductions in policy sovereignty as worthwhile trade-offs in exchange for the economic and political benefits that derive from particular international economic agreements.

Nevertheless, various interests, especially non-governmental organizations (NGOs) and opposition political parties, often regard such trade-offs as unacceptable and contrary to the national and public interest (at least in the context of international economic agreements). In the United States, sovereignty-related opposition to international trade agreements is commonplace from both the left (e.g., certain elements of the Democratic Party, the labour movement and consumer advocates) and the right (e.g., the nationalist wing of the Republican Party and the Ross Perot-founded Reform Party). This has been demonstrated in recent national elections, where strong opposition to the NAFTA and WTO has been voiced from both sides of the spectrum.

Opposition to international trade agreements on the grounds of erosion of sovereignty, particularly from the left, also featured prominently in Canada during the debates around the CUFTA in the late 1980s, with some extreme critics of the agreement alleging that it would gut the ability of Canadian governments to conduct independent industrial, social, regional (within Canada), environmental and macroeconomic policies, ultimately forcing a harmonization of Canadian policies in all these areas to the American standard. A national election in 1988 was fought primarily over CUFTA and this tension, pitting the pro-CUFTA 'continentalists' against the anti-CUFTA 'nationalists'. Concerns over the impact on national sovereignty stemming from international economic agreements have also emerged within the European Union, especially within the United Kingdom.

But what are the major tangible concerns of those who fear that international trade agreements will lead to unacceptable and damaging losses of national policy autonomy? Are such fears legitimate? And are there instances where reductions in national policy authority favouring international rules and procedures are in the broader public interest, independent of the associated economic benefits that might accrue to a particular country

from such an agreement?

1.2 Ideological vs. Substantive Arguments

Obviously, some of the sovereignty-related opposition to free trade agreements is primarily ideological and may have little to do with the substance of particular agreements. Examples of rather vitriolic opposition to trade agreements on sovereignty grounds abound, a recent prominent example being some of the protests at the WTO Ministerial meetings in Seattle and the Summit of the Americas meeting in Quebec City. However, even respected consumer advocates, such as Ralph Nader, often lapse into diatribes against trade agreements on loss of sovereignty grounds that are both ideological in character and lack analytical substance.⁶ Nonetheless, there are also many examples of relatively non-ideological, analytically-based critiques of free trade agreements from this point of view, such as those of Richard Grinspun and Maxwell Cameron, who argue that the NAFTA is likely to weaken government activity at all levels and reduce the provision of public services.⁷ Parenthetically, criticisms of free trade agreements due to concerns over the erosion of national policy autonomy may well be more acute in federal states, like the US and Canada, where, in addition to national governments, sub-national authorities have considerable policy jurisdiction that might be diluted by international trade agreements.

Perhaps the most prevalent sovereignty-related argument against international trade agreements is the policy harmonization thesis, the claim being that the policies of the members of trade blocs will inexorably converge upon some common standard. In the context of customs unions or common markets, like the European Union, this argument has merit because one of the defining features of such arrangements is a common external tariff and commercial policy, both of which obviously necessitate policy harmonization on the part of the member states in a considerable array of areas.

Moreover, in the European Union, the principle of mutual recognition (as opposed to national treatment) prevails, meaning that national laws, regulations and administrative practices that have not been harmonized must be recognized as equivalent (hence, if a product meets the standards of one member, it can be sold in the markets of all members).⁸ The mutual recognition principle would seem to promote efforts toward policy harmonization to reduce differences in national rules throughout the union.⁹

Hence, the reduction of national sovereignty over economic and even some social policies in a customs union or common market context is quite pronounced, which in part explains why Canada and Mexico made plain from the outset of the NAFTA talks that they did not want to enter into such an arrangement.¹⁰ By contrast, in Europe, the gradual, or 'functionalist', move from sectoral free trade in coal and steel in the early 1950s to the establishment of the European Common Market in 1958, culminating in the European Union of today, is premised on the pooling of sovereignty, ultimately leading toward a common currency and perhaps even a federal European state structure. The EU requirement of significant delegation of national policy sovereignty to supranational authorities, such as the European Court of Justice and especially the European Central Bank, is precisely why the British are skittish about fully joining the broader European project.

However, the degree of national sovereignty delegation to supranational entities found in Europe is far removed from what is required of free trade agreements, especially the GATT, which was designed deliberately to avoid policy harmonization, with the recent Trade-Related Intellectual Property (TRIPs) agreement being the major exception to this rule.¹¹ Regional FTAs normally do not require much, if any, policy harmonization. There are no stated provisions in the NAFTA, for example, that require the member states to harmonize policies, except, like the GATT, in the area of intellectual

property protection. There is also no European mutual recognition arrangement in NAFTA, due to concerns that this would lead to policy harmonization. Instead, national treatment is the ruling NAFTA principle, which, according to Rugman, is a form of national sovereignty safeguard because it allows member states to set their own laws and policies without facing undue harmonization pressures.¹²

Nevertheless, the argument is often advanced that free trade agreements like NAFTA inevitably lead to de facto policy harmonization and therefore hamstring state power to a considerable degree. For example, it is frequently claimed that in order for firms in one country to remain competitive with firms in the dominant regional economy (in the context of a regional trade agreement), irresistible pressures for policy harmonization to the dominant country standard (presumed to be the most business-friendly standard) will arise in a whole host of areas. This is the familiar ‘race to the bottom’ argument espoused by many NGOs and some academics.¹³ There is, however, little evidence that this dynamic has in fact emerged in existing free trade areas.¹⁴ Keith Banting, for example, has demonstrated that notwithstanding alarmist claims by Canadian anti-free trade interests, there has been *no* discernible harmonization in Canadian social policy towards the American standard, and in fact the character of the welfare states of the two countries has probably diverged further since the advent of CUFTA in 1989.¹⁵ The policy harmonization argument against free trade areas, as distinct from customs unions or common markets, thus seems to be false or at least overstated.

Other important sovereignty-related concerns about trade agreements arise with respect to dispute settlement procedures. For example, under the NAFTA, while Mexico and Canada remain subject to US countervail and anti-dumping policies, they have also obtained a measure of control over these through the NAFTA that did not exist previously. Prior to the CUFTA-NAFTA, these duties were exclusively in the hands of

the US government and courts, but are now to be reviewed by NAFTA panels, composed of representatives from the disputing countries, to ensure they conform with existing US law and are not merely the result of protectionist pressures in the US.

Sovereignty-related issues were also raised in the US over NAFTA trilateral commissions, which were established to monitor the enforcement of the NAFTA “side-agreements” on labour and the environment, even though these agreements were demanded by the Americans to ensure ‘fair trade’ with, or prevent ‘social dumping’ from, Mexico. But it needs to be emphasized that these side agreements were not attempts to harmonize labour and environmental policies in the NAFTA region towards some international standard. Rather, they were to ensure that NAFTA members enforced their existing laws in these areas, due primarily to concerns on the part of the US that the enforcement of Mexican laws was inconsistent and open to political pressure and manipulation, not that the content of those laws was inadequate.¹⁶

More controversially, American free trade critics, especially on the right, argued prior to NAFTA implementation that it would undermine US authority over immigration policy, resulting in a flood of Mexican workers across the border. Such arguments were either politically or ideologically motivated, or betrayed a misunderstanding of the NAFTA, or confused an FTA with a common market where a single labour market prevails. The NAFTA partners have retained full control over immigration policy because NAFTA does not make provision for a single North American labour market, as we find in the EU.¹⁷ Indeed, part of the reason Washington wanted Mexico to enter into a free trade agreement with the US was to boost Mexican exports and inward Foreign Direct Investment (FDI) and thereby create more prosperous economic conditions in Mexico that might help staunch the illegal flow of Mexicans into the US in search of employment, which has been a major political issue for successive American

governments.

The lesson to be drawn from the foregoing discussion is not that free trade agreements have no impact on national sovereignty. All FTAs, to varying degrees, do require delegations of national policy authority in favour of international rules and often supranational enforcement procedures. However, the claims of many critics of regional trade agreements that such arrangements *by their nature* seriously hamstring the policy autonomy of governments in a range of areas often not even specified in the agreement, and that FTAs inevitably lead to harmonization across most policy domains, is exaggerated, not borne out by either experience or logic, and thus undermines intelligent debate of the real effects of these agreements.

The NAFTA, for example, reduces the discretionary power of member governments at the policy margin, principally in respect of the authority to establish and vary tariff and non-tariff barriers (which admittedly have an effect on fiscal policy, although the contribution of tariffs to overall government revenue was marginal in all of these countries prior to the NAFTA), and the power of governments to discriminate against foreign investment (although even here governments retained many sectoral exemptions to the agreement, such as cultural industries, telecommunications, banking etc.). But the NAFTA does not, as free trade critics often allege, impede the authority of governments in the areas of “high” domestic policy, such as social, fiscal, monetary or economic development policy (i.e. business or regional subsidies), principally because these policy domains are not dealt with in the NAFTA text. NAFTA is not akin to the European Union treaties, such as the Maastricht Treaty, which, *inter alia* deliberately hamstring domestic fiscal policy. Nevertheless, free trade critics play on perceived public fears of reduced government authority in these high policy areas; hence the claim,

which has not come to pass, that the Canada-US Free Trade Agreement would force private health care in Canada. They do this because there is little broad political mileage to be garnered from opposing an international trade agreement on the grounds that it will result in a loss of tariff or quota authority, reduce government revenues by a few hundred million dollars, or put limits on the ability of governments to protect uncompetitive domestic industries.

The basic questions that must be addressed are not whether FTAs inherently place major constraints on national sovereignty, as the critics of such agreements often argue. Instead, assessments of specific FTAs, and their particular elements, must be carried out to determine whether ceding policy authority in some areas is worth the economic and political benefits to the national economy and polity associated with the agreement.

When viewed from this perspective, the investor-state dispute settlement mechanism of the NAFTA should not be opposed *in principle* as an unacceptable constraint on national sovereignty, as many anti-NAFTA interests have argued in the wake of the Ethyl case (when the very existence of the provision became widely known), especially when, as discussed, NAFTA's general impact on national policy autonomy is minimal. Rather, this provision should be analyzed on its merits and against the record of its operation. There may well be advantages of having such a procedure, not just from the standpoint of firms, some of whom may obviously benefit from it, but also from the perspective of the public interest, a viewpoint that has been totally neglected in public discussions of the investor-state mechanism.

Consequently, we now turn to a brief description of and rationale for the NAFTA investor-state dispute settlement provision. This will be followed by an examination of the Ethyl case, the first substantive action brought forward under this procedure. This will help inform a subsequent analysis as to whether the mechanism is by its very nature

a major and unacceptable constraint on national policy autonomy, and, more to the point, whether the Ethyl case lends weight to such arguments, given that this dispute has been the flashpoint for anti investor-state critics and is the most often cited instance illustrating the alleged sovereignty-related pitfalls of this procedure.

2.0 The NAFTA Investor-State Dispute Settlement Mechanism

A key American objective during the CUFTA negotiations was for the agreement to cover investment. This was driven by the hostile US reaction to the economic nationalist policies of the Trudeau administration during the 1970s, which introduced measures to control the level of foreign investment in the Canadian economy, notably through the establishment in 1973 of the Foreign Investment Review Agency (FIRA).¹⁸ Because American investment had been such a politically charged issue in Canada, the Canadian government resisted investment-related provisions in the CUFTA. Hence, the agreement contains only modest investment measures.¹⁹

However, Canadian and US views on investment protection converged during the NAFTA negotiations because both countries harboured concerns regarding Mexican treatment of foreign investment, due to the economic nationalist bent that Mexican governments had exhibited in the past. This Canadian-American bias against Mexico existed even though, by the time of the NAFTA negotiations, the Mexican trade and investment policy regime was moving unilaterally toward North American norms, due largely to a more liberal economic philosophy taking hold within the Mexican government after the debt crisis of the early 1980s, which had demonstrated the failure of import substitution and economic nationalist policies that were hostile toward FDI.

Nevertheless, the three governments agreed to include investment obligations in chapter eleven of the NAFTA. These obligations are based on the principle of national

treatment, requiring each signatory to accord to investors and investments of other NAFTA parties “treatment no less favourable than it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments (Article 1102.1 of NAFTA).”²⁰

For our purposes, however, the key aspect of the NAFTA investment provisions is the existence of an investor-state dispute settlement procedure to ensure that the obligations are enforced. This is a vitally important provision of the NAFTA, but, until the Ethyl case, was largely overlooked by NGOs and even some trade experts.²¹ Yet, as Gestrin and Rugman point out, “No other multi-lateral or bilateral investment agreement goes as far as the NAFTA in terms of...the *enforcement of rules*.”²²

What is new and unique about this procedure is that it permits private citizens or firms to challenge government measures on the grounds that a state action constitutes expropriation of the investor’s investment or business. The normal dispute resolution procedure in trade agreements (including the NAFTA outside of the investment realm) only permits governments to challenge each other. But in the NAFTA, an investor can directly challenge a state on a measure that is alleged to contravene the investment provisions of the agreement.

Through the investor-state procedure, a complainant can initiate arbitration proceedings that are to follow either the United Nations arbitration rules or the World Bank-sponsored *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*. The investor and the state being challenged must engage in a 90-day consultation phase prior to initiating arbitration proceedings, to try to resolve their differences. If the dispute cannot be satisfactorily resolved during this period, the investor can request binding arbitration via one of the above-noted procedures.

Importantly, the challenged state must agree to arbitration if it is requested by the investor, and governments are required to implement the ruling from the arbitration panel if it finds an expropriation, or something “tantamount to expropriation,” has occurred. The NAFTA investor-state dispute settlement procedure is therefore not unlike that which exists in many bi-lateral investment treaties,²³ the proliferation of which has been considerable in the past two decades.²⁴

Investment dispute arbitration under the NAFTA is to be carried out by a three person panel, one of whom is nominated by the government being challenged, one by the investor, with the third panelist nominated jointly by the other two panelists. If the panel finds the government has violated the NAFTA investment provisions, it can order the state to pay compensation to the firm for lost profits and related losses during the existence of the measure, as well as for future lost profits resulting from the continued application of the policy. Arbitration panels cannot force a government to remove a measure that is found to contravene the NAFTA; they can only require the government to pay compensation to the firm for lost business resulting from it. Importantly, the investor-state mechanism is available only to firms that challenge governments other than their own (i.e. there must be an international element to the dispute). Investors can also challenge the actions of sub-national governments (e.g. state, provincial or local), but this is to be done via the national government of the country in question.²⁵ Aside from the broad national treatment requirement, the scope of the investor-state provisions allows firms, for example, to challenge governments on expropriations, actions “tantamount to expropriation,” performance requirements and international minimum standards (e.g. a government action that unfairly denies due process to courts, administrative hearings, permit applications, etc.).²⁶

This, then, briefly summarizes the NAFTA investor-state dispute settlement

procedure and describes how it is intended to operate. We now turn to an examination of the Ethyl case.

3.0 Ethyl Corporation vs. Government of Canada

3.1 Origins of the Dispute

Since 1977, the gasoline additive known as MMT, produced exclusively by Ethyl Corporation of Virginia, US, for the Canadian market, has been widely used as an octane enhancer in Canada. After leaded gasoline was banned in Canada and many other countries during the 1980s and 1990s due to its widely known and internationally accepted adverse effects on human health, MMT, a substitute for lead, became the octane enhancer of choice among gasoline refiners in Canada. By the 1990s MMT was present in virtually all Canadian gasoline and Canada constituted Ethyl's largest market for the chemical, as it is not widely used in the US or Europe.

Unlike lead, there are no existing scientific studies that conclude MMT has adverse environmental or health effects when used as a gasoline additive. Indeed, in 1978 and 1994 the Canadian Department of Health conducted reviews of the health implications of increased MMT use and concluded that MMT as a gasoline additive posed no adverse health consequences to Canadians.²⁷ The conclusions of these studies were subsequently confirmed by the Canadian Royal Commission on Lead in the Environment (Royal Society of Canada 1986), as well as by two independent studies commissioned by Health Canada in 1987 and 1988.²⁸ Consequently, for many years, the use of MMT in gasoline in Canada was not controversial from an environmental or health standpoint, and hence there were no serious lobbies mounted by environmental or health NGOs to ban the chemical. This situation changed radically in the mid 1990s as the Canadian subsidiaries of the US multinational automobile industry (Chrysler, Ford and

General Motors, known collectively as “the Big Three“) came into the MMT picture.

3.2 MMT and the Big Three

The automotive industry in Canada, composed chiefly of subsidiaries or branch plants of the Big Three American auto makers, has for decades been the dominant industrial sector in the Canadian economy, geographically concentrated in the province of Ontario near the US border. The Canadian automotive sector was considered so vital to both the Canadian economy and the US auto industry that in 1965 Canada and the United States signed the *Auto Pact*, a sectoral free trade agreement in finished vehicles and automotive parts. Today, due to the presence of the US multinational auto manufacturers, Canada is the sixth largest vehicle producer in the world, accounting for 5% of total world production.²⁹ The auto sector is the largest contributor to Canadian GDP and is Canada’s biggest employer, employing 500,000 workers.³⁰ Auto manufacturing dominates the economy of Ontario, Canada’s largest and richest province.

Given the economic might of the auto sector, it is not surprising that the Big Three have always had considerable political clout in Ottawa and with the Ontario Government, such influence being a major factor contributing to the establishment of the Auto Pact. As Maureen Appel Molot states: “The industry is of such significance to the economies of Canada, the U.S. and Mexico that it carries considerable political weight. When the industry feels its interests are being threatened it does not shy away from using its political clout in any of the three capitals.”³¹

In the mid-1990s, the Big Three began to exert their political influence in Ottawa to persuade the government to ban MMT. The auto makers claimed that MMT-laden gasoline caused their new generation on-board diagnostic systems (OBDs) to malfunction in some models.³² OBD systems monitor the emission controls of vehicles and alert drivers to malfunctions so they can seek necessary service.³³ According to the Big Three,

OBD system failures were occurring to a much greater extent in Canada, where MMT was universally used in gasoline, than in the US, where MMT use is comparatively rare. This situation was allegedly leading to costly consumer warranty claims in Canada for the auto manufacturers. The Big Three also claimed to have conducted studies suggesting that MMT gasoline usage result in greater tailpipe emissions, thereby adversely affecting the environment.³⁴

The normal degree of influence that the American auto manufacturers possessed in the Canadian political system had probably increased as a result of the 1993 federal election, and the Big Three capitalized upon this situation to secure an MMT ban. That year the Liberal Party, which had been out of office for nine years, won a majority government in the general election with two thirds of its parliamentary seats located in Ontario, where the auto sector is concentrated. Indeed, the Liberals took 98 of 99 seats in Ontario (in a 300 seat Parliament). Auto sector issues were thus of critical political importance to the Liberal government, leading, among other things, to the establishment of an ‘auto caucus’ to discuss and develop common positions on issues related to the sector, and composed of roughly two dozen Members of Parliament who had major elements of the auto sector located within their constituencies. This domestic political situation boded well for the multinational auto firms to obtain their objective of a government ban on MMT, even though they lacked a direct, convincing and evidence-based environmental or health policy rationale for such a prohibition.

In 1995, under mounting pressure from the Big Three³⁵ and the government’s own Members of Parliament, the federal Cabinet began to seriously consider the notion of banning MMT. The government, however, could not simply prohibit the substance due to claims by the auto sector that it caused some automobile systems to malfunction in certain models. Notwithstanding the arguments of the auto makers, if such a situation is

proven to occur, it does not require a public policy solution, but rather is a product development issue for the auto manufacturers to resolve. Thus, for an MMT prohibition to be justifiable and legitimate, the Canadian government would normally require an environmental or health-related policy rationale. Since, as discussed previously, there were no scientific studies indicating that MMT posed environmental or health risks, prohibiting the substance pursuant to the *Canadian Environmental Protection Act (CEPA)*, the normal avenue for banning toxic substances in Canada, was not open to the government. If Ottawa possessed scientific evidence as to the health or environmental risks of MMT, it could be banned under CEPA. But the CEPA legislation does not embody the precautionary principle, whereby a substance can be banned if there are merely suspicions, but no conclusive evidence, that it is harmful. CEPA prohibitions require a threshold of evidence and, consequently, the existing environmental legislative route was not available as a possible option for prohibiting MMT.

3.3 *The Manganese-Based Fuel Additives Act (MBFAA)*

Nevertheless, it would appear that a majority segment of the government caucus (i.e. most of the 98 Members of Parliament from Ontario, including over a third of the Cabinet) had been convinced by intense lobbying from the auto makers that the government must find a way to ban MMT. The Minister of the Environment at that time, who was in charge of this issue and who held an Ontario constituency whose major industry was steel production (a large share of its product being sold to the auto makers), appeared to be determined to find a way to eliminate MMT from Canadian gasoline. With the normal environmental route closed, and with no other federal legislative basis available for banning MMT, the Minister in 1995 introduced the *Manganese-Based Fuel Additives Act* (manganese being the core chemical element in MMT), which permitted the government to prohibit manganese-based chemicals (i.e. MMT). In contrast to CEPA,

the MBFAA allowed prohibitions of substances on the basis of the precautionary principle.

Upon introducing and debating the MBFAA in the federal Parliament the government made clear that this bill was intended specifically to prohibit MMT in Canada via the precautionary principle, and was targeted directly at Ethyl Corporation, due to claims by the auto manufacturers that MMT caused OBDs to fail. The Minister's speech to Parliament in support of the bill reads as follows: "Canada is forced to confront the problem of MMT. It's not because a new environmental threat has emerged, but because our fuels and monitoring devices used to counter environmental threats are getting more sophisticated."³⁶ The government also indicated that banning MMT was as much about the economics of the auto sector as about the environment or the health of Canadians. Again, to quote the Minister of the Environment, "there will be a perception that Canadian autos don't work well because the warning lights will always be blinking--not because of malfunction--but because of the gasoline additive."³⁷

The problem the government ultimately faced over this legislation, however, stemmed from the fact that the MBFAA approach to prohibiting MMT was through overt trade restrictions. Since MMT was manufactured exclusively in the US by Ethyl Corporation, the government concluded it could effectively ban the substance by prohibiting its international trade, and hence its importation into Canada. However, Ethyl Corporation also possessed a storage facility in Ontario where stockpiles of the chemical were inventoried for distribution throughout Canada. Hence, the MBFAA also prohibited the inter-provincial trade of MMT within Canada. Ostensibly, this was to prevent Ethyl Corporation from converting their existing Canadian storage and distribution facility into a manufacturing plant, from which MMT could be distributed throughout Canada, thereby providing Ethyl Corporation with a way in which to overcome the effect of the

international trade restriction.

It must have been obvious to the government that the MBFAA would likely violate the trade provisions of the NAFTA and perhaps even the GATT, given that the legislation amounted to a highly visible, overt and new non-tariff barrier. However, Ottawa also likely calculated that, given the considerable political influence of the Big Three in Washington, especially as compared to that of Ethyl Corporation,³⁸ it was probable that the US parent companies of the Canadian Big Three subsidiaries would persuade the US government to refrain from challenging the MBFAA under NAFTA or GATT. In the final analysis this proved to be the case, as Washington at no time during the dispute made any public suggestion that they would challenge the MBFAA as a trade restriction under the GATT or NAFTA. Indeed, there were no public statements made by the US government on the MBFAA, which is highly unusual given the recent propensity for the US Trade Representative to openly voice criticism of Canadian policies that distort trade, let alone blatant trade restrictions like the MBFAA. However, the new, and as yet untested, NAFTA investor-state dispute settlement mechanism afforded Ethyl Corporation itself an avenue to challenge the MBFAA, irrespective of the position of Washington, on the grounds that the law violated the investment provisions of the NAFTA and constituted an expropriation of Ethyl's Canadian business. Ethyl Corporation ultimately initiated this course of action in 1998.

3.4 Other Domestic Pressures for Banning MMT

Although pressure from the US auto manufacturers was the primary reason the Canadian government took the unusual and controversial step of prohibiting MMT through trade restrictions, there were also some other domestic interests that favoured banning MMT. Ottawa had recently unveiled a policy to encourage the development of the domestic ethanol industry through a subsidy to a new ethanol manufacturing facility

in southern Ontario. Ethanol is a potential substitute for MMT, and Ontario farmers were selling corn, the raw material for ethanol production, to this emerging industry. Hence, the Ontario agriculture sector was also broadly in support of an MMT ban because it could lead to an increase in the demand for ethanol and hence corn. Domestic environmental and health NGOs were also, not surprisingly, supportive of a MMT ban, and specifically of the MBFAA approach, because it enshrined the precautionary principle, which such groups typically favour as a basis for environmental regulation. Hence, by the mid 1990s a bizarre coalition led by the multinational auto manufacturers, but including farmers and environmental and health NGOs, were all now applying pressure on the government to prohibit MMT.

3.5 Domestic Opposition to the MBFAA

Aside from Ethyl Corporation's opposition to the MBFAA, the legislation also encountered considerable domestic resistance from the Canadian petroleum industry, the government of the province of Alberta, where the Canadian petroleum sector is concentrated, and the opposition Reform Party (which held most of the federal constituencies in Alberta). This opposition to the legislation was based on the fact that if MMT was banned, the Canadian petroleum sector would have to incur significant capital investment costs to change their refinery operations to accommodate a new octane enhancer that could substitute for MMT.³⁹

The MBFAA, consequently, did not pass smoothly through the Canadian Parliament after it was introduced in 1995. Eventually, after surviving more than two years of rancorous debate in Parliament, the MBFAA became law in 1997.

3.6 Ethyl Corporation's Challenges to the MBFAA

Not long after the MBFAA passed into law, Ethyl Corporation initiated proceedings against Ottawa under the investor-state procedure of the NAFTA, and sought

US \$250 million in compensation for lost profits, future profit loss, damage to the company's international reputation and legal costs. Simultaneously, Ethyl's Canadian division launched a constitutional challenge against Ottawa in the domestic courts, arguing that the government had exceeded its jurisdiction in passing the MBFAA. If nothing else, this latter move on the part of Ethyl demonstrated their desperation to have this law revoked, as it is hard to imagine Ethyl winning this challenge given the Canadian federal government's constitutional jurisdiction over trade and commerce.

Roughly concurrent with these challenges from Ethyl, the government of the province of Alberta initiated a challenge of the MBFAA under the Agreement on Internal Trade (AIT). This agreement was signed in 1994 between the government of Canada and the governments of Canada's ten provinces and two territories. It was designed to reduce the internal barriers to trade within Canada, which were and remain considerable. The agreement makes provision for a government-to-government dispute resolution tribunal, but the decisions of the panel are non-binding, as it was hoped moral suasion alone could induce compliance with tribunal rulings (more likely the AIT's non-binding nature reflects the reluctance of Ottawa and the provincial governments to seriously tackle internal trade barriers). The provinces of Quebec, Saskatchewan and Nova Scotia supported Alberta in this dispute.⁴⁰

In July of 1998, the AIT tribunal ruled against Ottawa, finding that the restrictions on the trade of MMT within Canada were inconsistent with the federal government's obligations under the AIT. Importantly, the panel also concluded that existing scientific evidence failed to demonstrate, notwithstanding the claims of the auto industry, that MMT impairs proper functioning of on-board diagnostic systems in vehicles.⁴¹

When the government made public the AIT report, it indicated in a press release that it would comply with the recommendation of the panel to remove the MBFAA.

However, the press release also stated that the government had reached a settlement with Ethyl Corporation and would pay the firm US \$13 million in compensation, which, the government claimed, represented Ethyl's "reasonable costs and lost profits in Canada" as a result of the legislation.⁴² In exchange, Ethyl Corporation agreed to drop both its NAFTA and constitutional challenges.

The government had obviously calculated that it would likely lose the NAFTA challenge and might be faced with a compensation award against it on the order of \$250 million, along with a major domestic political controversy relating to the investor-state procedure's alleged constraint on national policy sovereignty, not to mention the NAFTA more generally, which had not been a controversial agreement in Canada to that point. Hence, it appears that in order to minimize the government's financial losses and limit potential controversy stemming from losing the investor-state challenge, Ottawa negotiated a financial settlement with Ethyl Corporation in conjunction with an agreement to remove the MBFAA. However, for public consumption, the government claimed that it was removing the MBFAA due to the AIT panel ruling, which would presumably help minimize criticism of the NAFTA investor-state procedure.

There seems little doubt, however, that the real reason Ottawa settled with Ethyl and removed the MBFAA shortly thereafter⁴³ was due to the possibility of losing the investor-state challenge and the potential financial and political costs associated with this. As noted, the AIT panel ruling was not binding on Ottawa and did not call for compensation to be paid to Ethyl, so it is hard to believe that the AIT decision prompted the government not only to remove the legislation, but also to pay Ethyl \$13 million. Moreover, the AIT ruling dealt only with the movement of MMT within Canada, not its international trade, so the government could have complied with the letter of the ruling by simply amending the MBFAA to permit the internal trade of MMT while retaining the

prohibition on the importation of the substance. Hence, the AIT justification was little more than an attempt by the government to obfuscate the real reasons for settling the dispute, which related directly to Ethyl's NAFTA challenge and the potential financial costs and political fall-out in the event this case was lost by the government, which Ottawa seems to have considered to be a high probability.

Subsequent to the settlement and the removal of the MBFAA, a great deal of criticism emerged, both in Canada and the US, of the investor-state procedure, on the grounds that the Ethyl case demonstrated that this mechanism prevented the Canadian government from protecting the environment and health and unreasonably elevated the rights of multinational enterprises in the NAFTA region. This led to broader arguments that the investor-state dispute settlement *concept* represented a triumph of the multinational firm over the state, the public interest and citizens. Efforts, led by Canada and the US, to negotiate an investor-state dispute settlement procedure in the ill-fated Multilateral Agreement on Investment, the negotiations of which were nearing their end at the time of the Ethyl settlement, failed, partly as a result of the outcome of the Ethyl case (few either within or outside of Canada believed Ottawa's claim that it settled with Ethyl and removed the MBFAA due to the AIT decision). Publicly expressed hostility to the investor-state dispute settlement procedure on the part of the Canadian government itself, the co-designer and once a major champion of this innovation, has also recently emerged, with the current Canadian Minister for International Trade indicating before the Canadian House of Commons that he will never again pursue strict NAFTA-like investment rules that allow foreign companies to sue the Canadian government.⁴⁴ No doubt such views within the Canadian government are driven as much by frustration at the numerous investor-state challenges to Canada in the wake of the Ethyl case, as they are due primarily to the outcome of that unique dispute. But is this widespread hostility

to the investor-state procedure warranted on the basis of the Ethyl case?

4.0 Evaluation of the Investor-State Procedure: Lessons from the Ethyl Case

“The sovereign right of governments to give way to sectional pressures ... is not a principle worth defending.”⁴⁵

There is no doubt that the Ethyl dispute has given rise to legitimate issues on specific provisions of the NAFTA investor-state dispute settlement procedure. Chief among these concern whether the definition of investment contained in chapter eleven of the NAFTA is too broad or vague, given that it permits firms to challenge government actions that are “tantamount to expropriation,” without qualification. Conceivably, this could lead to a litany of expropriation claims against governments on grounds that were not intended by the NAFTA signatories. There have in fact been numerous, seemingly frivolous claims, against all three governments since the Ethyl settlement, that seem to suggest that some multinational corporations view Canada’s settlement with Ethyl as a significant precedent that affords financial opportunities to firms who are dissatisfied with particular government policies.⁴⁶ In an effort to head off future unwarranted investor-state claims, the Canadian government suggested publicly in the immediate aftermath of the Ethyl dispute that Canada would raise with the Mexicans and Americans the prospect of revisiting the definition of investment in chapter eleven during the mandatory NAFTA five year review, which occurred in early 1999. Nothing came of this initiative, likely due to concerns from Mexico and the US that if the investment provisions of NAFTA were put back on the table, irresistible political pressure would mount for other aspects of the NAFTA to be redressed, something none of the signatories desired.

Another legitimate issue relating to the functioning of the investor-state

mechanism that emerged out of the Ethyl dispute is the secrecy and lack of transparency in the arbitration process. On the basis of the alleged need to protect commercial confidentiality, investor-state proceedings are carried out in secret. Indeed, the Canadian Parliament and public were kept totally in the dark about the Ethyl challenge until the settlement was announced. Hence, in Canada, the arbitration process became a significant political issue after the Ethyl settlement became public, with even supporters of the investor-state mechanism, such as the business press, calling for reforms to make the process more transparent.⁴⁷ The Canadian government apparently shared these concerns and suggested that this subject would also be raised with the Mexicans and Americans during the NAFTA review process.⁴⁸ To date nothing has come of this initiative either.

Notwithstanding these legitimate criticisms of, and shortcomings with, certain aspects of the NAFTA investor-state dispute settlement mechanism, the major lesson to be learned from the Ethyl case is not that this procedure unduly constrained the policy sovereignty of the Canadian government. Rather, when this dispute is examined objectively, it illustrates the value of having some form of investor-state arbitration procedure in the context of a free trade agreement that includes investment obligations.

Fundamentally, the Ethyl case is a story about a conflict between two multinational industrial sectors operating within a free trade area. As we have seen, one of these sectors, the automobile industry, enjoys enormous economic and political power within the North American trade bloc generally, and Canada specifically. The other sector(s), the chemical manufacturing and petroleum refinery industry, have far less economic and political clout. Consequently, the auto industry was able to exercise its political influence to persuade the Canadian government to prohibit a chemical substance that the Big Three claimed adversely affected the proper functioning of their product. As

a result, Ethyl Corporation, the manufacturer of the chemical in question, effectively had a major component of its international business eliminated due to the successful lobbying of the auto sector. Such an outcome can hardly be construed as either fair or in the public interest.

It is not the intention of this paper to make a final judgment on whether MMT has adverse effects on the environment and human health. This debate rages on in Canada. Rather, it is simply to point out that the Canadian government possessed no conclusive evidence linking MMT to environmental or health degradation, and this was evident in both public statements made by the government (cited previously) and by the manner in which MMT was eventually banned (i.e. through trade restrictions rather than via existing environmental protection legislation). Consequently, the MMT ban must be construed as primarily, if not exclusively, an attempt by the Canadian government to satisfy the economic or business-related demands of the Big Three auto makers. Ethyl Corporation, of course, stood to pay a significant economic price for the government's political desire to curry favour with the auto sector.

Viewed from this perspective, the MBFAA was poor public policy because it was not based on a sound policy rationale but instead resulted from political pressure applied by one powerful sector of the Canadian economy. Furthermore, it circumvented the existing legislative framework for regulating the environment (i.e., CEPA) and violated in spirit, if not in fact, international and internal trade agreements to which the Canadian government was party (i.e. NAFTA, GATT and the AIT). The Ethyl challenge and the subsequent capitulation of the Canadian government also provoked the first real public controversy within Canada over the NAFTA generally and the investor-state procedure specifically. This was a serious ramification of the case because successive Canadian governments have held the position that NAFTA, and CUFTA that preceded it, are of

vital importance to the health of the Canadian economy, which is heavily trade dependent (40% of Canada's GDP is derived from trade), with over 80% of its trade with the US. There is considerable empirical evidence and academic analyses to support such views, which today are conventional wisdom in Canada. Public support for NAFTA generally was thus probably unnecessarily undermined by the government's decision to prohibit MMT via the MBFAA, thus potentially inducing an investor-state challenge, which the government was likely to lose. It is therefore difficult to objectively conclude that the MBFAA was in the public interest from the standpoint of either environmental protection or broader Canadian economic interests.

Thus one iconoclastic, yet reasonable, interpretation of the outcome of Ethyl's challenge of the MBFAA is that, rather than unduly constraining national policy sovereignty, it succeeded in reversing a poor public policy decision that was beyond the existing Canadian legislative framework for environmental regulation and in violation of important international and domestic economic agreements to which Ottawa was party. Parenthetically, the MBFAA also undermined intergovernmental relations within Canada (manifesting in the first AIT challenge), a perennially divisive and problematic feature of Canadian politics. The decision to pass the MBFAA therefore does not appear to have been taken with the Canadian public interest in mind.

The claim by many NAFTA critics that the Ethyl challenge demonstrated an unacceptable weakening of Canadian policy sovereignty resulting from the NAFTA generally and this procedure specifically, because it prevented the government from regulating the environment, is seriously overstated. The Ethyl challenge manifestly did not prevent the Canadian government from prohibiting MMT. First, as noted, there are no provisions in the NAFTA requiring governments to remove offending policies or legislation that are found to violate NAFTA investment obligations; rather, governments

are simply required to financially compensate firms for offending measures. Moreover, if Ottawa was serious about banning MMT on environmental or human health related grounds, notwithstanding the lack of scientific evidence to support such a ban under CEPA, it could nonetheless have done so in a manner that would likely have been consistent with its NAFTA investment obligations. This would have required amending CEPA so that the law enshrined the precautionary principle (which was present in the MBFAA) for all environmental regulation in Canada. That would have allowed Canada to ban MMT under existing environmental legislation, rather than through international trade restrictions, while remaining consistent in its policy stance that the precautionary principle is the accepted Canadian method for environmental regulation, a legitimate position for any government to take. Such an approach would probably have stood a much better chance of surviving an investor-state challenge from Ethyl Corporation (assuming one was initiated), because it respected the NAFTA principle of national treatment and was not a law that overtly discriminated against one foreign firm, as did the MBFAA. But clearly the Canadian government does not believe in the precautionary principle for environmental regulation, as the government made no attempt to reform the CEPA along these lines either prior to or following the Ethyl challenge. This of course lends further weight to the argument that the MBFAA was little more than an attempt to pacify the auto sector.

In the final analysis, the most important lesson to be derived from the MMT episode is that politically powerful, often multinational, businesses can persuade governments to legislate or regulate on the basis of the specific interests of these firms, which may well be at odds with the public interest. As the Ethyl case demonstrates, this can result in serious negative consequences for other businesses or sectors that do not wield commensurate weight in the domestic political system. When such a scenario

occurs in the context of a free trade area where the member states have undertaken investment obligations, the existence of an investor-state dispute settlement mechanism affords the politically weaker firm the opportunity to at least gain fair financial compensation if the government's measure is found to be in violation of the agreement's investment obligations. And, as seen with the Ethyl case, it may also induce governments to remove offending measures (even though NAFTA arbitral panels cannot require this). Thus, rather than unduly constraining national policy sovereignty, a well designed investor-state dispute settlement mechanism can help level the political playing field somewhat when public policy, resulting principally from the lobbying of sectional pressures, differentially affects international businesses.

CONCLUSION

We can conclude by pointing out two ironies that have emerged from the Ethyl case. This dispute, the first major investor-state challenge under the NAFTA, was directed not at Mexico, the country for which the procedure was conceived to restrain, but rather against Canada, one of the countries that designed the mechanism to constrain Mexican government excesses. Moreover, subsequent to the Ethyl case there have been far more investor-state challenges threatened and initiated against Canada and the US than against Mexico.⁴⁹ And, as a result, the procedure has generated greater political controversy in the two rich, seemingly liberal NAFTA countries than in the poorer, allegedly illiberal one. The second irony is that the automobile manufacturing industry, the North American industrial sector that was one of the most ardent NAFTA proponents,⁵⁰ was the first to feel how one of the agreement's lesser-known provisions could stymie their political and business objectives. Thus the Ethyl case has shown how the NAFTA investor-state procedure has turned the political tables against one of the

more economically powerful states that designed the mechanism, as well as against one of the powerful business sectors that regards the NAFTA as key to their economic and political interests.

The NAFTA critics and anti-globalization forces would have us believe that, fundamentally, this case illustrates how the investor-state procedure guts the policy sovereignty of governments. However, a more plausible and sober-minded interpretation of *the Ethyl case* leads to the conclusion that this mechanism constrains the powerful and gives a voice to the comparatively weak in the international political economy.

NOTES

¹ For a representative sample of such arguments, see Corporate Watch, *The Ethyl Corporation Has Filed a \$251 Million Dollar Lawsuit Against Canadian Government*, www.corpwatch.org, Harmonization Alert, *NAFTA Investor-State Provision, PCBs* (September 1998); Legislature of the Province of British Columbia, Special Committee on the Multi-Lateral Agreement on Investment. *First Report*. Third Session, Thirty Sixth Parliament, December 29, 1998.

² Admittedly, the ‘public interest’ is an elusive concept. For our purposes, however, it can be thought of as the inverse of the private interest of firms, i.e. the pursuit of profit maximization and shareholder value without regard to societal implications. Hence, in theory at least, democratic governments are elected to pursue the public interest, rather than succumbing to sectional pressures (which might be rent-seeking in nature, rather than welfare enhancing). Policy decisions are, then, in theory, based upon an aggregation of private interests (which the state is in a unique position to construct), with the broader interests of society in mind, as opposed to the narrow interests of one firm or sector of the economy. If a disaggregated and narrow private interest drives public policy through rent-seeking behaviour (as will be argued to have occurred in this case), that can produce perverse societal welfare effects, which are at odds with the public interest. This view of the public interest is not consistent with the “harmony of interests” doctrine espoused by Adam Smith and the classical political economists of 18th century Britain.

³ Pat Buchanan, *Washington Times* Sept. 22, 1993, qtd. in Sidney Weintraub, “NAFTA and US Economic Sovereignty,” *NAFTA and Sovereignty*, eds. Joyce Hoebing, Sidney Weintraub and M. Delal Baer (Washington: Centre for Strategic and International Studies, 1996) 135.

⁴ Weintraub 148.

⁵ G. Bruce Doern and Brian Tomlin, *Faith and Fear: The Free Trade Story* (Toronto: Stoddart

Publishing, 1991) 247.

⁶ See Ralph Nader, "Introduction: Free Trade and the Decline of Democracy," *The Case Against Free Trade* (San Francisco: Earth Island Press and Berkeley: North Atlantic Books, 1993) for an example of a largely ideological critique of the NAFTA and GATT.

⁷ Richard Grinspun and Maxwell A. Cameron, "The Political Economy of North American Integration: Diverse Perspectives, Converging Criticisms," *The Political Economy of North American Free Trade*, eds. Richard Grinspun and Maxwell A. Cameron (London: MacMillan Press, 1993) 10.

⁸ Robert Z. Lawrence, *Regionalism, Multilateralism and Deeper Integration* (Washington: Brookings Institution, 1996) 46.

⁹ Alan M. Rugman, "North American Economic Integration and Canadian Sovereignty," eds. Hoebing, Weintraub and Baer, 111.

¹⁰ Weintraub 144.

¹¹ Frieder Roessler, "Diverging Domestic Policies and Multilateral Trade Integration," *Fair Trade and Harmonization, Volume 2: Legal Analysis*, eds. Robert Hudec and Jagdish Bhagwati, (Cambridge, MA: MIT Press).

¹² Rugman 114. In addition, the NAFTA adopted the CUFTA principle that health, social services, education, cultural industries and transportation would be exempt from national treatment provisions.

¹³ Within the International Political Economy discipline, the British scholar, the late Susan Strange, is one prominent example of this school of thought.

¹⁴ Maureen A. Farrow and Robert C. York, "Economic, Social and Cultural Policy Independence in the Post Free-Trade Era: A View from Canada," *The Canada-US Free Trade Agreement: Implications, Opportunities and Challenges*, ed. Daniel E. Nolle (New York: New York UP, 1990) 124.

¹⁵ Keith G. Banting, "The Social Policy Divide: The Welfare State in Canada and the United States," *Degrees of Freedom: Canada and the United States in a Changing World*, eds. Keith G. Banting, George Hoeborg and Richard Simeon (Montreal-Kingston: McGill-Queen's Press, 1997).

¹⁶ Virginia A. Leary, "Worker's Rights and International Trade: The Social Clause (GATT, ILO, NAFTA, US Laws)," *Fair Trade and Harmonization, Volume 2: Legal Analysis*, eds. Robert Hudec and Jagdish Bhagwati (Cambridge, MA: MIT Press, 1996) 200.

¹⁷ For the most part, the pre-NAFTA barriers to labour mobility continue to exist in the region.

¹⁸ FIRA had a mandate to screen and approve or reject foreign acquisitions of Canadian businesses to determine whether they constituted a "net benefit" to the Canadian economy. The legality of FIRA was challenged by the US under the GATT in 1982, leading some analysts, such

as Graham, to argue that the FIRA dispute was an important impetus to the Uruguay Round Trade Related Investment Measures (TRIMS) agreement (see Edward M. Graham, *Global Corporations and National Governments* (Washington: Institute for International Economics, 1996) 71. The Mulroney government replaced FIRA in 1984 by a new agency called Investment Canada with a mandate to attract FDI to reflect the internationalist, or some would say, pro-American bias of this government.

¹⁹ G. Bruce Doern and Brian Tomlin, *Faith and Fear: The Free Trade Story* (Toronto: Stoddart, 1991).

²⁰ Qtd. from Michael Gestrin and Alan M. Rugman, "The NAFTA Investment Provisions: Prototype for Multilateral Investment Rules," *Market Access After the Uruguay Round: Investment, Competition and Technology Perspectives* (Paris: OECD, 1996).

²¹ See Michael Trebilcock and Robert Howse, *The Regulation of International Trade and Industry Canada, Analysis of International Trade Dispute Settlement Mechanisms and Implications for Canada's Agreement on Internal Trade* (Ottawa: Industry Canada, Occasional Paper No. 19, November 1997), both of which make no mention of the NAFTA investor-state procedure.

²² Gestrin and Rugman 63. Emphasis added. That said, as Graham points out, the European Court of Justice can hear issues arising between firms and governments in the event of a perceived conflict between EU rules and national laws and policies bearing upon the firm's operations. Graham 60.

²³ According to Julius, the BIT investor-state process has been rarely used due to its length and complexity. DeAnne Julius, "International Direct Investment: Strengthening the Policy Regime," *Managing the World Economy: Fifty Years After Bretton Woods*, ed. Peter B. Kenen (Washington: Institute for International Economics, 1994) 283. Ray Vernon was of the view that, in practice, BITs constrain governments only marginally because the political consequence of violating BITs is mild. Ray Vernon, *In the Hurricane's Eye* (Cambridge, MA: Harvard UP, 1998).

²⁴ Thomas L. Brewer, "International Investment Dispute Settlement Procedures: The Evolving Regime for Foreign Direct Investment," *Law and Policy in International Business* 26. 3 (Spring 1995): 653.

²⁵ Subsequent to the Ethyl case, investor-state proceedings have been initiated against provincial and state governments in the US, Canada and Mexico, and even against the ruling of a US court.

²⁶ Appleton and Associates, International Lawyers, "The NAFTA Investor-State Process" (www.appletonlaw.com).

²⁷ Health Canada, *Risk Assessment for the Combustion Products of MMT in Gasoline* (Ottawa: Health Canada, 1994).

²⁸ Health Canada 1.

²⁹ Canadian Vehicle Manufacturers Association, *The Automotive Industry in Canada* (Toronto: CVMA, 1999) 1.

³⁰ Maureen Appel Molot, "Introduction," in *Driving Continentally: National Policies and the North American Auto Industry*, ed. Maureen Appel Molot (Ottawa: Carleton UP, 1991) 4.

³¹ Appel Molot 2.

³² Government of Canada, Environment Canada, News Release, *Government to Act on Agreement on Internal Trade Panel Report on MMT* (Ottawa: July 20, 1998).

³³ Government of Canada, Environment Canada, *Third Reading Speech in Support of Bill C-29, the Manganese-Based Fuel Additives Act*, Delivered by the Minister of the Environment at the House of Commons, Ottawa, Canada, September 25, 1996.

³⁴ This information is derived from meetings the author attended in July 1998 with the President of the Canadian Vehicle Manufacturers Association (CVMA), the umbrella organization representing the Big Three in Canada, the Vice President, Chrysler Canada, and on the basis of the CVMA submission on MMT to the Government of Canada.

³⁵ The Big Three indicated that if the government did not act swiftly to ban MMT they would fail to honour warranty claims from Canadian consumers as a result of faulty OBDs, and would blame this situation on the government's refusal to ban MMT. General Motors also suggested that they would simply remove OBDs from vehicles manufactured for the Canadian market if MMT was not banned.

³⁶ *Third Reading Speech in Support of Bill C-29, the Manganese-Based Fuel Additives Act*, September 25, 1996, 2 .

³⁷ *Speech in Support of Bill C-29* 5.

³⁸ The Big Three are also the largest industrial employer in the US whereas Ethyl Corporation is a marginal player in the American economy and polity.

³⁹ The government estimated the costs for the petroleum sector to be about \$115 million in capital expenditures and \$50 million per year in added operating costs. See *Third Reading Speech in Support of Bill C-29, the Manganese-Based Fuel Additives Act*, September 25, 1996, 6.

⁴⁰ Government of Canada, Environment Canada, News Release, "Government to act on Agreement on Internal Trade Panel Report on MMT" (Ottawa: Environment Canada, July 20, 1998).

⁴¹ Government of Canada, "Government to act."

⁴² Government of Canada, "Government to act."

⁴³⁴³ In the summer of 1998 the government de-listed MMT from the MBFAA schedule, effectively neutering the bill, as MMT was the only substance on the schedule.

⁴⁴ Heather Scoffield, "Pettigrew rejects NAFTA dispute model," *Globe and Mail* 6 April 2000: B5.

⁴⁵ David Henderson, *The MAI Affair: A Story and its Lessons* (London: Royal Institute of International Affairs, 1999) 44.

⁴⁶ For example, the American firm United Parcel Service (UPS) initiated an investor-state challenge against the government of Canada because Canada Post (a Canadian government corporation) owns a courier service that competes with UPS. Incredibly, UPS claims that this is tantamount to expropriation of their business. See Reuters, "UPS Planning to sue Canada in Courier Row," 18 Feb. 2000.

⁴⁷ Financial Post Editorial, "Why the secrecy over investors' rights?" *Financial Post* 29 Aug. 1998.

⁴⁸ Legislative Assembly of the Province of British Columbia, Special Committee on the Multilateral Agreement on Investment, *First Report* (Victoria, British Columbia: December 29, 1998) 6.

⁴⁹ Indeed, all of the 12 NAFTA challenges formally launched under Chapter 11 have been against actions of US and Canadian governments. Peter Kennedy and Barrie McKenna, "Claims punitive tariffs on Canadian shipments violate free-trade agreement," *Globe and Mail* 6 Nov. 2001: B1, B7.

⁵⁰ Ronald W. Cox, "Explaining Business Support for Regional Trade Agreements," *International Political Economy: Perspectives on Global Power and Wealth*, eds. Jeffrey A. Frieden and David A. Lake (London: Routledge, 2000).

Simon Caney & Peter Jones, *Human Rights and Global Diversity* (Portland, Or.: Frank Cass Publishers, 2001).

Reviewed by Patti Tamara Lenard

The strength of Simon Caney and Peter Jones' edited collection entitled *Human Rights and Global Diversity* lies in its introduction. This opening piece nicely outlines the range of debate that emerges from efforts to reconcile diversity (e.g. ethical, cultural, religious diversities) and a coherent, widely accepted theory of human rights – merely one of the many issues posed by globalization. The authors note that the forces of globalization (a term which remains undefined throughout the collection) that “press the case for global norms” are often simultaneously perceived to be “forces that will erode the cultural diversities.” (6) Caney and Jones hope their collection will contribute to this debate. The weakness of the collection, however, is the lack of a structured, coherent debate among the essays in the collection. It appears that the contributors were not required by the editors to interact with their colleagues or to recognize the extent to which they might be responding to each other.

Chris Brown's opening paper, “Cosmopolitanism, World Citizenship and Global Civil Society,” challenges scholars who argue that a global civil society is emerging. According to Brown, the metaphor is misleading since the typical understanding of civil society – as a counterweight to a strong and stable state – does not apply at the global level where there is no central government (15). Global civil society is only conceivable among countries with a developed civil society at the national level – and these nations are few and far between (22). Brown believes that the enthusiasm for developing a global

civil society is drawing the international community away from the “pressing need to create a less violent interstate order in which the benefits of *Westphalian* citizenship are available to a larger number of people” (24). Brown, however, does not link an insecure interstate order with the emergence of a global civil society, however defined. In fact, it is plausible that the emergence of what is now commonly referred to as a “global civil society”, in which people around the world have at least a some degree of access to an international audience is a *bad* sign, indicating in fact that too many people are looking for an alternative outlet for their complaints against their respective states. Brown also seems to assume that scholars of global civil society imagine a replica of civil society at the global level. This assumption prevents Brown from engaging more directly the question of whether civil society is a wholly different entity than global civil society, where civil society plays different roles and includes different actors than does a global civil society.

Peter Jones, in “Human Rights and Diverse Cultures: Continuity or Discontinuity?” argues that a theory of human rights must work to accommodate diversity. He offers two alternative approaches: the continuous and the discontinuous. The continuous approach appears very similar to John Rawls’ overlapping consensus in which support for human rights is located within each person’s own ethical outlook. Jones dismisses this approach since “it is a search for something other than diversity, rather than a search for dealing with diversity” (37). Jones’ preference, the discontinuous strategy, locates a foundation of human rights that is independent of any ethical framework (34). On this view, human rights are autonomously founded and therefore can co-exist with all ethical frameworks. We thus hold two frameworks as valuable: our own

ethical framework and a human rights framework with equal moral worth at its core. Our ability to adopt an external perspective means that we can now value people independently of the values they hold (42). Notwithstanding the intense difficulty of freely stepping outside our own ethical framework, it is not clear that Jones realizes the extent to which his own work is derivative of liberal theorizing. That is, an emphasis on equal moral worth – *the* fundamental liberal value – is precisely at issue among diverse ethical frameworks, and taking it as a starting point sidesteps the genuine diversity that causes conflict when the possibility of a universal theory of human rights is considered.

In “Human Rights, Compatibility and Diverse Cultures”, Simon Caney deals with the question of compatibility between theories of human rights and non-western ethical frameworks. Caney intends to dispel the commonly voiced criticism that non-western cultures have insufficient respect for human rights (52). He offers a case-study of Theravada Buddhism as an example of a non-western tradition whose ethical tenets are compatible with an emphasis on human rights. Caney argues that non-western traditions, which remain undefined in his essay, are often unfairly accused of disregarding and failing to respect human rights. His defence of Buddhism, however, does not seem to further his argument. It is clear that fundamentalist Islam attracts a significant degree of, often unfairly founded, critique from human rights advocates (see, for example, J. Carens’ *Culture, Citizenship and Community*, 2000). Buddhism, however, is not attacked nearly as often for all the reasons that Caney outlines – namely, that Buddhism is widely perceived to be an open, tolerant tradition that respects all forms of life. Thus, Caney’s exposition does not serve as an effective argument against critics of the human rights positions of non-western traditions.

Tom Hadden suggests in his “The Pendulum Theory of Individual, Communal and Minority Rights” that a more balanced approach to human rights theorizing is needed in the discipline of international affairs (77). According to Hadden, there are three main accounts of the basis for human rights justification – the individualist (which emphasizes respect for individuals), the absolutist (which argues that human rights are absolute), and the equal status justification (where all human rights are of equal value, and therefore do not conflict). Hadden finds some truth in each of these accounts, although none captures the complexity of the debate on human rights. For instance, Hadden defines the pendulum effect in regards only to the use of the individualist justification: “from time to time the focus of attention has shifted from individual to group rights and back again rather like a pendulum” (81). Hadden then focuses on the shifts in emphasis around individual rights (ignoring the other approaches, once he has introduced them), from which he concludes, among other things, that the size of an ethnic group is key in establishing justification for group rights (86), that certain human rights apply to individuals and others to groups (86), and that “the most appropriate formulations on issues of democracies are unlikely to be found in human rights conventions and declarations” (88). The third of these conclusions bears no obvious relation to his argument (though he claims it is a conclusion of “special significance”), nor is it clear why he is concerned only with tracing the pendulum effect with respect to individualism but not equal status or absolutism. In “The Question of Self-Determination and its Implications for Normative International Theory”, Kimberly Hutchings addresses how the ideal of self-determination is approached in normative debates around individual versus collective rights (91). Hutchings briefly touches on a series of “idealistic” ethical

traditions – including Kantianism, contractarianism, cosmopolitanism – and then discusses more critical traditions, including strains of feminism, critical theory and post-modernism. The strength of this paper resides in its conclusion that attention needs to be paid to context rather than to an analysis of self-determination through ideal theory: “it is the tendency toward theoretical purity which helps to fuel traditional realist charges as to the irrelevance and dangerous implications of normative judgment as such in the realm of international politics” (116). The primary weakness of Hutchings’ essay is its somewhat odd organization. Each of the traditions is pursued largely in isolation; it is not always clear how the traditions stand in relation to each other (the exception, to be fair, is the discussion of consistencies between civic republicanism and liberal nationalism). The relative brevity of the individual discussions prevents Hutchings from appreciating the complexities of the debates within each tradition (surely, Yael Tamir is not the only liberal nationalist, for example). Perhaps a more critical look at these traditions might have been organized according to theme, to which each of the traditions might respond. In this way, the principle issues for debate might have been clearer.

Mark Bevir, in “Derrida and the Heidegger Controversy: Global Friendship Against Racism”, suggests that deconstructionism has been unfairly dismissed in the human rights debate. In fact, writes Bevir, one can learn from the genuine cosmopolitanism of deconstructionist thinkers – Derrida is the example here – since their writings emphasize respect and friendship for the Other, regardless of where she is situated. Derrida’s work is contrasted with Heidegger’s, whose metaphysics is universalizing and ignores the standpoint of the Other: thus, Derrida argues that Heidegger is in danger of advocating racism (127). Bevir states that in its emphasis on universalism, liberalism likewise tends

toward racism (134). Although the author suggests that he might be accused of relying on a simple interpretation of liberalism, he does not effectively dispel the source of this criticism. It is clear that contemporary liberal theory is filled with attempts to recognize and promote difference; it therefore seems odd that Bevir instead relies on a classical interpretation of liberalism to make his case. In the end, the liberalism he describes and then attempts to dismiss as racist is a straw-person version of liberalism. Moreover, throughout this article, it is not easy to detect the author's voice, and consequently it becomes difficult to decipher Bevir's argument from his articulation of Derrida's position.

The concluding chapter is Nicholas Wheeler's "Humanitarian Vigilantes or Legal Entrepreneurs: Enforcing Human Rights in International Society". Wheeler investigates how NATO's intervention in Kosovo should be interpreted; in other words, whether it was an anomalous event or whether it sets a precedent for future interventions in situations of (perceived) gross human rights violations. The response to NATO's actions, he notes, was "divided into those who see it as a dangerous breach of the law and those who cautiously welcome this normative development" (154). He concludes, however, that this one intervention has not transformed the United Nations Security Council into "a humanitarian coalition." Wheeler's conclusion rests on his conviction that states in general are unlikely to act from altruistic motivations, or in cases where their own security is not of primary concern (157, 160). Wheeler suggests, instead, that we erect a "society of states" which is able to review cases of humanitarian intervention, to evaluate whether they were indeed justified: "moral censure and economic sanctions might at least exercise a significant deterrent effect" (159). Wheeler does not, however,

explain how a society of states differs from the Security Council, for example, except that it would have fewer restrictions on its intervention. Moreover, he offers no explanation of why we need another level of government at the international level, except that China and Russia too frequently use their veto at the current level to prevent the Council from upholding “the *civilised* values of the international community” (157, emphasis added). This review concludes as it began: the strength of the collection is that it contributes (in particular, through its introduction) to a new debate that is in need of analysis – human rights and their interaction with global diversity is certainly of critical concern. Yet the essays do not, in any serious way, interact with or respond to each other, so that the reader completes the volume without a sense that a particular area of the complex debates around human rights has progressed.

Scott Sinclair, *GATS: How the World Trade Organization's New "Services" Negotiations Threaten Democracy* (Ottawa : Canadian Centre for Policy Alternatives, 2000).

Reviewed by Terrence A. Cowl

The spectacle of widespread protests at the Seattle World Trade Organization Ministerial Meeting in November-December 1999 brought significant public attention to the issues of globalization and trade liberalization. Although the Ministerial failed in its task to launch a new round of trade negotiations due to a lack of agreement among Members on substantive issues, the protesters (aided by media coverage) took much of the credit for the meeting's failure. Since Seattle, protesters have appeared at major meetings of other multilateral economic organizations such as the World Bank (Washington, D.C.), the Organization of American States (Windsor), and the International Monetary Fund (Prague). More recently, the April 2001 Summit of the Americas, hosted in Quebec City, was beset by activists protesting the ongoing negotiations of a hemispheric trade agreement, the Free Trade Area of the Americas (FTAA).

It would now appear that protesters and NGOs have a new target: the General Agreement on Trade in Services (GATS). Part of the Uruguay Round of negotiations which created the WTO, the GATS is an agreement which aims to reduce barriers to international trade in services and seeks to improve trade in services and investment conditions through a set of mutually agreed rules. Irrespective of the failed outcome of the Seattle Ministerial, the WTO launched new negotiations on the GATS in March 2000. The purpose of these new negotiations is to broaden the scope of current commitments and to develop new rules and obligations which affect trade in services. The GATS negotiations are now part of the broader "Doha Round" of multilateral trade negotiations launched by WTO Members at the Doha Ministerial in December 2001.

This new round of GATS negotiations is the subject of a recent book by Scott Sinclair, entitled *GATS: How the World Trade Organization's New "Services" Negotiations Threaten Democracy*, published in September 2000 by the Canadian Centre for Policy Alternatives. Similar to other works, such as Maude Barlow and Tony Clarke's *MAI and the Threat to Canadian Sovereignty*, Sinclair's book styles itself as an exposé of the GATS, detailing how the current agreement and the new negotiations are being advanced at the expense of democratic rights.

Although the GATS is a complex treaty, the theme of Sinclair's book is relatively simple. For Sinclair, the GATS goes far beyond mere trade liberalization and aims to “radically restructure the role of government worldwide”. In the opening passages, Sinclair sets the tone for the book by stating that the GATS, “is designed to facilitate international business by constraining democratic governance. The talks are taking place behind closed doors in close consultation with international corporate lobbyists.”

While services play an undeniably important role in Canada's economy and society, Sinclair views trade in services as transactions which usually favour the interests of multinational corporations at the expense of national, provincial or local governments trying to maintain their regulatory authority (e.g. public safety laws) in the interest of citizens. This view foreshadows Sinclair's theme developed over the remainder of the book: trade liberalization does not benefit ordinary citizens, rather, it satisfies the demands of powerful MNCs.

Sinclair suggests the GATS is an agreement that is “virtually unknown to the public.” This is a fair and accurate statement as most observers agree that the GATS is a complex, even opaque, agreement to understand – even to those with a vested interest. This “opaqueness” of the

agreement and the complex nature of the trade in services issue has led to a natural distrust of the GATS among many in the NGO world.

This distrust is evident in the conspiratorial tone that pervades the text of Sinclair's book. Unfortunately, the confrontational approach of Sinclair's text sometimes detracts from some of the author's valid points. For example, Sinclair states that the trade negotiators, "shrouded in secrecy", are working "in conjunction with MNC's" to develop a "radically new approach" to trade in services. They are aided in their efforts by WTO staff, who are "fervent" advocates of free trade – pushing an "immoderate, even extreme" agenda "relying upon secrecy".

Semantics aside, Sinclair provides a relatively straightforward and clear outline of the GATS and its complicated disciplines, albeit portrayed in a negative and speculative light. Throughout, he insists that the GATS disciplines will lead to the "commercialization of all services" despite the flexible nature of the agreement – Members are obliged to liberalize only those sectors they choose. GATS observer Pierre Sauvé notes that many of the obligations, such as national treatment or market access, are triggered only when a Member schedules a commitment to liberalize a specific sector of its economy. Therefore, the framework agreement itself is something of a "an empty shell" in the absence of negotiated commitments.[1]

Some of Sinclair's discomfort with the current GATS disciplines stems not only from the obligations themselves, but also from how they will be interpreted by the WTO's dispute settlement body. And here, his concerns have some degree of validity. Some critics (and not just NGOs) have questioned the scope of the WTO's Dispute Settlement Body/Appellate Body's decisions, stating that some of these decisions go beyond merely interpreting the WTO Agreement and, instead, make new commitments. A few problematic decisions aside, however, it is difficult to condemn the accomplishments of the GATS and the WTO for fear of an

overzealous interpretation of its text by the occasional panel. For the most part, these difficulties are overshadowed by the stability and validity which the WTO's dispute settlement regime has provided the world trading system.

Moving from the current GATS, the rest of Sinclair's book focuses on the new round of negotiations. For the most part, Sinclair provides an accurate review of the GATS negotiating agenda. However, from negotiating "modalities" (i.e. procedures), to technical work on classification, to the negotiation of commitments and new rules (e.g. subsidies, domestic regulations, etc.), Sinclair continually assumes a "worst case scenario" – that each process will be taken to its extreme and result in the total privatization of all services. Where mere proposals may suggest a problematic outcome, Sinclair portrays such proposals as certainties. For example, Sinclair assumes that the GATS negotiations will be completed by the end of 2002 merely because this date was suggested by the United States. However, that US proposal had little support from the WTO Membership at the time; the GATS is currently scheduled to be completed by 2005 as part of the broader Doha Round (a date which many WTO observers consider overly-optimistic).

Determining whether Sinclair's book is effective depends upon on what standard is utilized. As a piece of anti-globalization literature, Sinclair's *GATS: How the World Trade Organization's New "Services" Negotiations Threaten Democracy* can be viewed favourably. Sinclair understands the subject on which he has written and has prepared a relatively well-researched, well-written book (aside from the use of overly inflammatory language). He covers a very complicated subject in a relatively digestible manner (and with parsimony – the actual text of the book is less than 100 pages). It stands above similar tomes, such as Barlow and Clarke's

piece on the MAI. It could be effective in convincing the uninitiated reader that the GATS will do harm to our democratic rights.

However, if an observer of international affairs is looking for a well-balanced and thorough analysis to better understand this complicated, yet important agreement, then Sinclair's book cannot be recommended. While Sinclair presents the GATS clearly, he does so through a hypercritical prism, which distorts the meaning of each article. Sinclair finds danger and threats to democracy lurking in every passage of the GATS, leading an uninitiated reader to make false conclusions about the agreement and trade liberalization itself.

Sinclair does raise some interesting questions regarding the scope of reclassification, negotiating procedures, and the development of new rules. As with any negotiations, there are uncertainties as to what Canada and other countries will be able to accomplish, so it is important to keep negotiators vigilant. Equally, attention should be brought to bear on the improved transparency of the WTO and the development of Canada's negotiating position. However, it appears that the author is convinced that the government and its negotiators are ignorant to the larger societal concerns and cannot be trusted to effectively monitor these issues in the interests of Canadians.

A worthwhile critical assessment of the GATS, and the entire WTO system, would be better served if the author provided the reader a fuller picture by balancing this criticism with an understanding of the importance of trade, and of a rules-based trade regime, for a medium-sized state like Canada. Sauvé points out that prior to the Uruguay Round, "no such body of rules was available to civilize – hence, provide the peaceful means to resolve – policy conflicts among nations in a sector now accounting for more than one-fifth of world commerce."^[2] Absent these

rules, Canada is left to the whims of economic superpowers such as the United States and the European Union in a “power-based” system.

It is easier to “villainize” a multinational corporation or an organization such as the WTO than to admit that the liberalization of trade in services can bring benefits to all Canadians – admitting the latter may detract from the author’s central theme. Nowhere in Sinclair’s book is there any recognition of the positive impact of trade liberalization on the Canadian economy and its improvements to the quality of life of Canadians. Sinclair also omits to acknowledge that agreements like the GATS have raised the economic efficiency of Members’ service industries as countries evolve toward more knowledge-based economies and societies. The reader of Sinclair’s book will not be exposed to such widely accepted propositions of the international trade system unless they look elsewhere.

[1] Pierre Sauvé, “Assessing the General Agreement on Trade in Services – Half-Full or Half-Empty?”, *Journal of World Trade*, August 1995, p. 137.

[2] Sauvé, p. 141.