

allegiance while supporting their individuality, their liberty, and their capacity for self-government. It is not enough to hold out a vision of selfless social harmony that is incapable of attracting the energetic support of people as we know them. But neither is it enough to preserve people's economic freedom if they lose, as a consequence, the strength to insist on liberty. Contemporary defenders of democratic virtue (like Bellah) need to think more about interests; both they and liberal skeptics need to think more about pride and virtue.

The strongest defense of liberalism and the free market must be complex. It would stress liberalism's unique ability to combine interests, freedom, pride, and virtue – a kind of virtue that is not especially noble, but that is attainable and conducive to peace and prosperity. That is how I have interpreted Tocqueville's claim: liberal virtue equals the proud exercise of the capacity for self-government in public and private life. By refusing to take this claim seriously, defenders of capitalism may surrender their most effective weapons against communitarian and republican critics of liberalism.

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LIBERALISM AND THE POLITICIZATION OF ETHNICITY

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Most liberal democracies exhibit cultural pluralism, that is, citizens of the same country belong to various cultural communities, and so speak different languages, read different literatures, practice different customs. Most contemporary liberal political philosophy, on the other hand, assumes that countries are "nation-states". Citizens of the same state are assumed to share a common nationality, speak the same language, develop the same culture. My concern in this paper is how liberals have adapted their principles to deal with cultural pluralism.

1. *Multination States and Polyethnic States*

There are many different forms of cultural pluralism, and many different ways of labelling them, so some preliminary distinctions are required. There are two main sources of cultural pluralism. One source is the co-existence within a given state of more than one culture, where "culture" means a historical community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and history. A "culture" in this sense is closely related to the idea of a "nation" or of a "people" – indeed, these terms are often defined in terms of each other. A country which contains more than one culture is, therefore, not a nation-state but a multinational state, and the smaller cultures form "national minorities", or "minority cultures". The incorporation of different cultures into a single state may be involuntary, as occurs when one cultural community is invaded and conquered by another, or when its homeland is simply overrun by colonizing settlers who maintain their old culture. But the formation of a multinational state may also arise voluntarily, when different cultures agree to form a federation for their mutual benefit.

The second source of cultural pluralism is immigration. A country will exhibit cultural pluralism if it accepts large numbers of individuals and families from other cultures as immigrants, and allows them to maintain some of their ethnic particularity. Under these circumstances, immigrants are expected to integrate into the public institutions of the existing culture(s), but they are not required or expected to shed all aspects of their distinctive heritage and assimilate entirely to existing cultural norms. Immigrants may associate with each other to pursue their ethnic preferences, but such groups are not nations, and do not constitute cultures. Their distinctiveness is manifested in their private lives, and does not affect their institutional integration: they still participate within the dominant culture and speak the dominant language. A country with extensive immigration of this sort will have a number of "ethnic groups" as loosely aggregated subcultures, and so exhibit "polyethnicity".

A single country may be both multinational (as a result of colonizing, conquest, or confederation) and polyethnic (as a result of immigration). Indeed, all of these patterns are present in Canada – the Indians were overrun by French settlers, the French were conquered by the English – although the current relationship between the two can be seen as a voluntary federation, and both the English and French have accepted immigrants who are allowed to partially maintain their ethnic particularity. So Canada is both multinational and polyethnic. Those labels are less popular than the term "multicultural". But that term can be confusing, precisely because it is ambiguous between multinational and polyethnic. Thus some French-Canadians have opposed the Canadian government's "multiculturalism" policy because they think it reduces their claims of nationhood to the level of mere ethnicity. Other people had the opposite fear (or hope) that the policy was intended to treat immigrant groups as nations, and hence support the development of institutionally complete cultures alongside the French and English. In fact, neither fear was justified, since "multiculturalism" is a policy of supporting polyethnicity within the national institutions of the English and French cultures. As Burnet says,

culture, including language, can only be maintained and developed when it is employed in all areas of life. So far as

this is so, it cannot have been the intention of the framers of the policy to promote multiculturalism: that there was to be a bilingual – English and French – framework makes this evident. Rather, the policy makers wished to endorse polyethnicity.¹

Since "multicultural" invites this sort of confusion, I will use the terms "multinational" and "polyethnic" to refer to the two main forms of cultural pluralism.

In culturally plural countries, an important area of conflict concerns the way ethnicity should be recognized by the state, e.g., which languages should be recognized in the parliaments, bureaucracies and courts; should each nation or ethnic group have publicly funded cultural institutions and education in their mother-tongue; should state benefits be distributed by national or ethnic organizations; should political offices be reserved for members of particular nations or ethnic groups, or distributed in accordance with a principle of national or ethnic proportionality; should nations have veto power over culture-affecting decisions on immigration, communication, education, etc.?

These are all questions about what we might call the "politicization of ethnicity". We can distinguish two broad categories of political claims, to correspond with the two categories of cultural pluralism. In multinational states, the component nations are inclined to demand some form of political autonomy or territorial jurisdiction so as to ensure the free development of their culture. At the extreme, nations may wish to secede, if they think their self-determination is impossible within the larger state.² In polyethnic states, ethnic groups demand the right to freely express their particularity (e.g., in private ethnic associations and presses), without it hampering their success in the economic and political institutions of the dominant culture, and are inclined to demand state

¹ J. Burnet, "Multiculturalism, Immigration, and Racism: A Comment on the Canadian Immigration and Population Study" (1975) 7 *Canadian Ethnic Studies* 35 at 36.

² For surveys of minority rights claims worldwide, see J. Sigler, *Minority Rights: A Comparative Analysis* (Wesport: Greenwood Press, 1983); V. Van Dyke, "The Individual, the State, and Ethnic Communities in Political Theory" (1977) 29 *World Politics* 343; F. Caporossi, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN Doc. E/CN.4/Sub.2/384 Rev. 1 (New York: United Nations, 1979).

support for these actions (e.g., cultural exchanges and festivals, ethnic studies in schools, bilingual education). At the extreme, ethnic groups may demand that political offices be reserved for their members according to their proportion of the population, and that state benefits be distributed through ethnic organizations.³

2. *The Current Liberal Orthodoxy*

These questions form much of the substance of the political life of pluralist countries, both in the day-to-day administration of state policy, and in the historical moments of constitutional commitments and crises. Yet they are almost entirely ignored in contemporary liberal political philosophy. Liberal philosophers rarely discuss the difference between nation-states and polyethnic or multination states, and apparently do not think of cultural plurality as raising important questions for liberal politics. Despite this theoretical vacuum, a certain view about the salience of ethnicity has come to be accepted as the orthodox liberal position. And while this view is rarely articulated explicitly, we can construct its basic outline.

Contemporary liberals, insofar as they discuss the issue, treat culture in the same way as religion, as something which people should be free to pursue in their private life, but which is not the concern of the state. Just as liberalism precludes the establishment of an official religion, so too there cannot be official cultures which have preferred status over other possible cultural allegiances. In a liberal society "the state sets before itself the model that [cultural] group membership is purely private, a shifting matter of personal choice and degree."⁴ The state does not oppose the freedom of people to express their particular cultural attachments, but nor does it nurture such expression – rather, to use Glazer's phrase, it responds with "benign neutrality". Ethnic groups "are protected against discrimination and prejudice, and they are given the liberty,⁵

³ A comprehensive quota system is ultimately incompatible with genuine polyethnicity, for it reproduces within every group the same educational and employment patterns, whereas "historically specific cultures necessarily produce historically specific patterns of interest and work" [M. Walzer, "Pluralism in Political Perspective" in M. Walzer, ed., *The Politics of Ethnicity* (Cambridge: Harvard University Press, 1982) at 23–24].

⁴ N. Glazer, "Individual Rights Against Group Rights", in A. Tay and E. Kamenka, eds. *Human Rights* (London: Edward Arnold, 1978) 87 at 88.

all individuals and groups are, to maintain whatever part of an ethnic heritage or a distinct identity they wish, as long as that does not transgress on the rights of others."⁶ But their efforts are purely private, and it is not the place of public agencies to attach legal identities or disabilities to cultural membership or ethnic identity. The state adheres to the "principle of the separation between state and society which makes religion and ethnic communities a voluntary and private matter. The separation between state and society in this sense is what liberal democracy is all about."⁷ Since ethnicity is a private matter, liberals tend to oppose "any legal or governmental recognition" of ethnic groups, and prohibit the use of "ethnic criteria" in the distribution of rights, resources, and duties.⁸

There is an immediate problem, however, with official languages. Surely the state is giving at least partial establishment to a culture when it decides which language is to be used in public schooling, or in the provision of state services. This is a significant embarrassment for the "benign neutrality" view, and it is remarkable how rarely language rights are discussed in contemporary liberal theory. But there have been attempts to reconcile official languages with benign neutrality. According to Knopff, language has two functions: it can function as the vehicle for the transmission of a particular culture, but it can also function as "a culturally neutral, or utilitarian means of communication which allows those of different cultures to participate in the same political community."⁹ By placing the

⁵ N. Glazer, *Ethnic Dilemmas: 1964–1982* (Cambridge: Harvard University Press, 1983) at 124.

⁶ H. Broz, "Multiculturalism in Canada: A Muddle" (1980) 6 *Canadian Public Policy* 41 at 44. Cf. Glazer, *supra*, note 5 at 124.

⁷ M. Gordon, "Toward a General Theory of Racial and Ethnic Group Relations", in N. Glazer and D. Moynihan, eds. *Ethnicity, Theory and Experience* (Cambridge: Harvard University Press, 1975) 84 at 105. See also J. Porter, "Ethnic Pluralism in Canada", in *ibid.* 267 at 295; P. van den Bergh, "Protection of Ethnic Minorities: A Critical Appraisal" in R. Wütsing, ed., *Protection of Ethnic Minorities: Comparative Perspectives and Assimilation* (Pergamon Press, 1981) 343 at 347; J. Aizenstat, "Liberalism and Assimilation: Lord Durham Revisited" in S. Brooks, ed. *Political Thought in Canada: Contemporary Perspectives* (Toronto, Irwin Publishers, 1984) 239 at 251–52.

⁸ R. Knopff, "Language and Culture in the Canadian Debate: The Battle of the White Papers" (1979) 6 *Canadian Review of Studies in Nationalism* 66 at 67; cf. D. Segal, "Nationalism, Comparatively Speaking" (1988) 1 *Journal of Historical Sociology* at 312.

emphasis on the utilitarian function, governments "can enact official languages without at the same time legislating official cultures . . . in enacting 'official languages', one does not necessarily imply that the cultures which these languages transmit and represent thereby become 'official cultures'." Culture "remains a purely private affair", for while English and French have official backing as the "utilitarian" languages, all languages compete on equal terms for "cultural" allegiance. It is the

task of the individual members of a culture to show the excellence of their product on the cultural marketplace, as it were. If they succeed, the language of that culture will become attractive to others. . . . If [a] culture, and hence, language, cannot show itself to be worthy of choice in the light of standards of the good, then it deserves to disappear.⁹

Although this distinction between the utilitarian and cultural functions of language is questionable, we now have the basic outline of the current liberal orthodoxy on ethnicity. Liberals have invoked the ideal of benign neutrality in attacking the entire range of proposals for the politicization of ethnicity in Canada, whether it be the national rights claims of French Canadians,¹¹ the national and aboriginal rights claims of the Inuit and Indian peoples,¹² or the demands of ethnic groups to

⁹ Knopff, *supra*, note 8 at 67.

¹⁰ *Ibid.* at 70.

¹¹ R. Knopff, "Liberal Democracy and the Challenge of Nationalism in Canadian Politics" (1982) 9 Canadian Review of Studies in Nationalism 23 at 29-39; J. Aizenstat, *The Political Thought of Lord Durham* (Kingston: McGill-Queen's University Press, 1988) c. 8; F. L. Morton, "Group Rights Versus Individual Rights in the Charter: The Special Case of Natives and the Quebecois" in N. Nevitte, A. Kornberg, eds. *Minorities and the Canadian State* (Oakville: Mosaic Press, 1985) 71 at 77-83.

¹² Morton, *supra*, note 11 at 73-77; B. Schwartz, *First Principles, Second Thoughts: Aboriginal Peoples, Constitutional Reform and Canadian Statecraft* (Montreal: The Institute for Research on Public Policy, 1981); I. Cf. M. Asch, *Home and Native Land: Aboriginal Rights and the Canadian Constitution* (Toronto: Methuen, 1984) at 75-88, 100-104; S. Weaver, "Federal Difficulties with Aboriginal Rights in Canada" in M. Boldt & J. Long, eds. *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights* (Toronto: University of Toronto Press, 1985) at 147-42; G. Dacks, *A Choice of Futures: Politics in the Canadian North* (Toronto: Methuen, 1981) at 63-79; J. Potting & R. Gabbies, *Out of Irrelevance: A Socio-political Introduction to Indian Affairs in Canada*

state benefits under the multiculturalism policy.¹³ This conflict between the requirements of liberalism and the demand for public recognition of cultural groups has led to a schizophrenia in the way Canadian politicians and courts deal with ethnicity. Our political culture and institutions recognize both liberal equality and minority rights, yet each has been weakened by the other.¹⁴

3. *Ethnicity and the Liberal Tradition*

But are liberals committed to this view of ethnicity? It is part of the current orthodoxy that liberals have always opposed politicizing ethnicity, and that demands for the political recognition of cultural groups are a recent and illiberal deviation from long-established liberal practice.¹⁵ This is not true. Minority rights were an important part of liberal theory and practice between the world wars. Hobhouse, for example, said that "the more liberal statesmanship" of his day had recognized the necessity of minority rights to ensure "cultural equality".¹⁶ There is more than one way to meet the legitimate demands of national minorities, but "[c]learly it is not achieved by equality of franchise. The smaller nationality does not merely want equal rights with others. It stands out for a certain life of its own".¹⁷ One manifestation of this liberal commitment was the minority protection scheme set up under the League of Nations for various European national minorities.

Some liberals gave a more qualified endorsement of minority rights, seeing them as consistent with, but not required by, liberalism. Hoernle, for example, thought that "assimilation",

(Toronto: Butterworth, 1980) at 327-31; R. Barsh & J. Henderson, "Aboriginal Rights, Treaty Rights and Human Rights: Indian Tribes and Constitutional Renewal" (1982) 17 Journal of Canadian Studies 53 at 69-70.

¹³ Brodz, *supra* note 6 at 44-45; L. Roberts & R. Clifton, "Exploring the Ideology of Multiculturalism" (1982) 8 Canadian Public Policy 88 at 90-93.

¹⁴ I discuss this tension in W. Kymlicka, *Liberalism, Community, and Culture* (Oxford: Oxford University Press, 1989) c. 7.

¹⁵ See, for example, Aizenstat, *supra*, note 11 at 91-92.

¹⁶ L. T. Hobhouse, *Social Development: Its Nature and Conditions* (London: George Allen and Unwin, 1966) at 297, 299.

¹⁷ L. T. Hobhouse, *Social Evolution and Political Theory* (New York: Columbia University Press, 1928) at 146-47.

thought, since a free state must be a nation-state, national minorities must be dealt with by coercive assimilation or the redrawing of boundaries, not by minority rights.²²

So the current liberal orthodoxy obscures the diversity of earlier liberal positions on minority rights. Notice also that none of these earlier positions endorses the current view that the state should treat ethnicity as a purely private matter. On the contrary, the first two views endorse the legal recognition of minority cultures, and the third rejects minority rights not because it rejects the idea of an official culture, but precisely because it believes there should only be one official culture.

This is just a quick sketch of the way many earlier liberals viewed ethnicity – a fuller account would probably reveal an even greater range of views. But we now have a rough sense of both the current orthodoxy and the range of earlier views it supplanted, and we can begin to look at the causes of this change. One possible explanation is that liberalism is only now working out the full implications of its “abstract individualism”. Earlier liberals tacitly drew on pre-liberal ideas of culture, but modern liberals have been more consistent in their individualism, basing their theories on a conception of the individual as a solitary atom who is independent of, and prior to, her cultural environment. On this view, liberals ignore the political significance of cultural membership and ethnic identity because their individualism ignores its significance entirely. This explanation of the liberal view of ethnicity has become almost as much of an orthodoxy in the literature as the position it criticises,²³ and it is echoed in communitarian claims

²² Glazer, *supra*, note 5 at 298. The need for cultural homogeneity remains a much-debated issue. For a current representative of Mill's school, see P. van de Berghe, *The Ethnic Phenomenon* (New York: Elsevier, 1981) c. 2. For the opposite view that cultural pluralism and minority rights help guarantee a free society, see Sigler, *supra*, note 2 at 188–92.

²³ E.G., J. Degenaar, “Nationalism, Liberalism, and Pluralism” in J. Butler, ed., *Democratic Liberalism in South Africa: Its History and Prospect* (Middletown: Wesleyan University Press, 1987) 236 at 242; F. Swenson, “Liberal Democracy and Group Rights: The Legacy of Individualism and its Impact on American Indian Tribes” (1979) 27 *Political Studies* 421 at 423; H. Adam, “The Failure of Political Liberalism” in H. Adam & H. Gilmore, eds., *Ethnic Power Mobilized: Can South Africa Change?* (New Haven: Yale University Press, 1979) 258 at 265–67; H. Dickie-Clark, “On the Liberal Definition of the South African Situation” in P. van den Berghe, ed., *The Liberal Dilemma in South Africa* (New York: St. Martin's Press, 1979) 48 at 51–52; P. Rich, “Liberalism and Ethnicity in South African Politics, 1921–1948” (1976) 35 *African Studies* 229 at 239–40.

“separation”, and “parallel development” were all consistent with the requirements of liberal equality, since “each offers a realization of the ideal of an ‘area of liberty’, or in other words, of a free society for free men”.¹⁸ But, like Hobhouse, he believed that developing the pluralist options was the greatest challenge facing English liberalism if its appeal was to move beyond the boundaries of its (culturally homogeneous) homeland.¹⁹

Some liberals did oppose minority rights, but not because of a commitment to the principle of “benign neutrality”. Their concern was stability, not justice. They believed, with Mill, that free institutions are “next to impossible” in a multinational state.

Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion necessary to the workings of representative institutions cannot exist. . . . [It] is in general a necessary condition of free institutions that the boundaries of governments should coincide in the main with those of nationalities.²⁰

For liberals like Mill, democracy is government “by the people”, but self-rule is only possible if “the people” are “a people”: a nation. The members of a democracy must share a sense of political allegiance, and common nationality was said to be a precondition of that allegiance. Thus T. H. Green argued that liberal democracy is only possible if people feel bound to the state by “ties derived from a common dwelling place with its associations, from common memories, traditions and customs, and from the common ways of feeling and thinking which a common language and still more a common literature embodies.”²¹ According to this stream of liberal

¹⁸ R. F. A. Hoernle, *South African Native Policy and the Liberal Spirit* (Capetown: Lovedale Press, 1939) at 181.

¹⁹ Hoernle, *supra*, note 18 at 123–25, 136–8; Hobhouse, *supra*, note 17 at 146.

²⁰ J. S. Mill, “Considerations on Representative Government” in H. Acton, ed., *Utilitarianism, Liberty, Representative Government* (London: J. M. Dent and Sons, 1972) 171 at 361, 363. But see Lord Acton's response to Mill's demand for homogeneity threatens liberty (“Nationality” in J. Figgis, R. Laurence, eds., *The History of Freedom and Other Essays* (London: Macmillan, 1922), 270 at 285–90).

²¹ T. H. Green, *Lectures on the Principles of Political Obligation* (London: Longmans, Green & Co., 1941) at 130–31. Cf. P. Rich, “T. H. Green, Lord Scarman and the Issue of Ethnic Minority Rights in English Liberal Thought” (1987) 10 *Ethnic and Racial Studies* 149 at 155.

that liberalism depends on a notion of the self which is unencumbered by social attachments, whose freedom is exercised precisely by abstracting itself from its cultural situation.²⁴

I believe the explanation lies elsewhere. The new liberal orthodoxy is the result, not of the inexorable working out of liberalism's individualistic premises, but of the convergence of a number of post-war political changes. Three features of the post-war world have conspired to suppress or distort questions of ethnicity, and have led liberals to adopt a misplaced antagonism towards the politicization of ethnicity. These three factors are (a) disillusionment with the minority rights scheme of the League of Nations, (b) the American racial desegregation movement, and (c) the "ethnic revival" amongst immigrant groups in the United States. While none of these events or movements are distinctively Canadian, each has contributed to the formation of a new liberal orthodoxy that has been adopted, perhaps unwittingly, by Canadian liberals. I will discuss each of these in turn, to see how they have helped create this new liberal orthodoxy.

4. *The Failure of the Minority Treaties*

The first important change in liberal views came with the failure of the League's minority protection scheme, and its role in the outbreak of World War Two. The scheme gave international recognition to the German-speaking minorities in Czechoslovakia and Poland, and the Nazis encouraged them to make demands and lodge complaints against their governments. When the Polish and Czech governments were unwilling or unable to meet the escalating demands of their German minorities, the Nazis used this as a pretext for aggression. This Nazi manipulation of the League scheme, and the cooperation of the German minorities in it, created "a strong reaction against the concept of international protection" of national minorities. The "hard fact was that statesmen, generally backed by public opinion which was deeply impressed by the perfidy of irredentist and disloyal minorities, were disposed to

²⁴ A. MacIntyre, *After Virtue* (London: Duckworth, 1981) c. 15; M. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982) at 150-65.

curtail, rather than to expand, the rights of minorities."²⁵ This curtailing of minority rights was done, not in the interest of justice, but by people "within whose frame of reference the interests of the national state ranked as supreme values. . . . [The majority nationality] has an interest in making the national state secure and its institutions stable, even at the cost of obliterating minority cultures and imposing an enforced homogeneity upon the population."²⁶

This "frame of reference" is similar to the earlier liberal view that freedom requires cultural homogeneity, although it differs in emphasis. Whereas Mill and Green were concerned with domestic stability, post-war statesmen were primarily concerned with international peace. But the effect was the same - questions about the fairness of minority rights were subordinated to the higher demands of stability. There was an explicit desire to leave the issue of minority rights off the United Nations agenda, and the U.N. has only recently agreed to reconsider the legitimacy of minority rights claims.²⁷ The fear that national minorities will be disloyal (or simply apathetic) continues to inhibit discussion of the justice of these claims, both internationally and in the domestic politics of many countries.²⁸

5. *Racial Desegregation in the United States*

The modern liberal rejection of minority rights began with worries about political stability, but it acquired the mantle of justice when it was linked to racial desegregation. In *Brown v Board of Education*, the American Supreme Court struck down the system of segregated educational facilities for black and

²⁵ J. Claude, *National Minorities: An International Problem* (Cambridge: Harvard University Press, 1955) at 57, 69.

²⁶ *supra*, note 25 at 80-81.

²⁷ L. Sohn, "The Rights of Minorities" in L. Henkin, ed., *The International Bill of Rights: The Covenant on Civil and Political Rights* (New York: Columbia University Press, 1981), p. 7; Thornberry, "Is There a Phoenix in the Ashes? International Law and Minority Rights" (1980) 15 *Texas International Law Journal* 421.

²⁸ D. Maybury-Lewis, "Living in Leviathan: Ethnic Groups and the State" in Maybury-Lewis, ed., *The Prospects for Plural Societies* (Washington: American Ethnological Society, 1984) at 222-27; J. Clayton, "Internationally Uprooted People and the Transnational Protection of Minority Cultures" (1978) 24 *New York Law School Review* 125 at 138.

white children in the South. This decision, and the civil rights movement generally, had an enormous influence on American views of racial equality. The new model of racial justice was "colour-blind laws", replacing "separate but equal treatment", which was now seen as the paradigm of racial injustice. But the influence of *Brown* was soon felt in areas other than race relations, for it seemed to lay down a principle which was equally applicable to issues of ethnicity. According to this principle, injustice is a matter of arbitrary exclusion from the dominant institutions of society, and equality is a matter of non-discrimination and equal opportunity to participate. Viewed in this light, legislation providing separate institutions for minority cultures seems no different than the segregation of blacks. The natural extension of *Brown*, therefore, was to remove the separate status of minority cultures, and encourage their equal participation in mainstream society. This reasoning underlies the Canadian government's 1969 proposal to remove the special constitutional status of Indians,²⁹ and *Brown* was cited by the Canadian Supreme Court when striking down a law enacted under that status.³⁰ *Brown*'s formula for racial justice was also invoked against the rights of American Indians, and the rights of national minorities in international law.³¹

But the actual judgment in *Brown* does not support this application of the colour-blind formula to the rights of national minorities. The Court was simply not addressing the issue of national rights, like the right of a culture to the autonomous institutions needed to be able to freely develop itself within a multinational state. Segregationists were not claiming that whites and blacks formed different cultures with different languages and literatures. On the contrary, the whole burden of their case

²⁹ "Statement of the Government of Canada on Indian Policy", in R. Bowles et al., eds., *The Indian: Assimilation, Integration or Separation* (Scarborough: Prentice-Hall, 1972) 201 at 204 ("separate but equal services do not provide truly equal treatment"), and at 202 ("the ultimate aim of removing the specific references to Indians from the constitution . . . is a goal to be kept constantly in view").

³⁰ *Regina v. Drybones* [1970] S.C.R. 282 at 300 ("The social situations in *Brown v. Board of Education* and in the instant case are, of course, very different, but the basic philosophic concept is the same.")

³¹ R. Barish and J. Henderson, *The Road: Indian Tribes and Political Liberty* (Berkeley: University of California Press, 1980) at 241-48; V. Van Dyke, *Human Rights, Ethnicity and Discrimination* (Vernon, Canada: Greenwood Press, 1985) at 194.

was that the education received by blacks in their segregated facilities was *identical* to that of whites. The question was whether racial groups could be given separate facilities so long as the facilities were identical. And the Court ruled that *under those circumstances* segregation was inherently unequal, since it would be seen as a "badge of inferiority", as a sign of racism.

Nothing in the judgment warrants the claim that national rights are incompatible with liberal equality. Indeed, the judgment, examined more closely, may argue *for* the recognition of national rights. Consider the situation of American Indians, whose separate institutions came under attack after *Brown*:

Where blacks have been forcibly *excluded* (segregated) from white society by law, Indians - aboriginal peoples with their own cultures, languages, religions and territories - have been forcibly *included* (integrated) into that society by law. That is what [is] meant by coercive assimilation - the practice of compelling, through submersion, an ethnic, cultural and linguistic minority to shed its uniqueness and identity and mingle with the rest of society.³²

Integrated education for the Indians, like segregated education for the blacks, is a "badge of inferiority" for it fails "to recognize the importance and validity of the Indian community".³³ In fact, the "integration of Indian children in white-dominated schools had the same negative educational and emotional effects which segregation was held to have in *Brown*", so the "underlying principle" which struck down the segregation of blacks (i.e. that racial classifications harmful to a minority are prohibited) should also strike down legislated integration of Indians.³⁴

The point is not that Indians don't need protection against racism. But whereas racism against blacks comes from the denial by whites that blacks are full members of the community, racism against Indians comes primarily from the denial by whites that Indians are distinct peoples with their own cultures and communities. Unfortunately, the centrality of the

³² M. Gross, "Indian Control for Quality Indian Education" (1973) 49 North Dakota Law Review 237 at 244.

³³ *Ibid.* at 242.

³⁴ *Ibid.* at 245, 248.

civil rights movement has prevented people from seeing the distinctive issues raised by the existence of national minorities.³⁵

6. *Polyethnicity and the American Ethnic Revival*

The belief that minority rights are unfair and divisive was confirmed, for many liberals, by their role in the ethnic revival which rocked the United States in the 1960's and 1970's. This revival began with the claim that it was legitimate (not "un-American") for ethnic groups to express their distinctive characteristics. At the time, the explicit aim of immigration policy was "anglo-conformity", i.e. converting immigrants to the cultural norms of the country's English heritage. Those groups which were considered incapable of making this adjustment faced immigration restrictions, and whoever was admitted was expected to give up their previous ethnic ties. These restrictions and expectations were progressively abandoned in the 1960's and 1970's, in both the U.S. and Canada, as governments accepted the existence of "unmeltable ethnics" among the immigrants.³⁶

³⁵ As Thomas Berger notes, "The American media penetrates Canadian life so completely, we have a tendency sometimes to think that our own issues of race relations must be defined in the same way as they are in the United States. Thus many of our legal scholars and political scientists think only in terms of replicating American experience. In 1969, the Government of Canada adopted a policy of integration and assimilation for Canada's Native population that was based on American policy, developed in the 1960's, towards blacks" ["Towards the Regime of Tolerance" in S. Brooks, ed., *Political Thought in Canada: Contemporary Perspectives* (Toronto: Irwin Publishers, 1984) 83 at 94].

³⁶ This shared commitment to anglo-conformity is obscured by the misleading contrast between the American "melting-pot" and the Canadian "ethnic mosaic." While "ethnic mosaic" carries the ideological connotation of respect for the integrity of ethnic cultures, in practice it simply meant that immigrants to Canada had a choice of two dominant cultures to assimilate to. But while Canada is bi-national, the "uneasy tolerance" which French and English were to show towards each other was not extended to foreigners who resisted assimilation or were believed to be "unassimilable" [J. Porter, *The Measure of Canadian Society* (Toronto: Gage, 1979) at 154]. Conversely, the "melting pot" referred primarily to the biological fusing of various ethnic groups through intermarriage, not the fusing of their cultural practices. As Theodore Roosevelt explained "the representatives of many old-world races are being fused together into a new type", but "the crucible in which all the new types are melted into one was shaped from 1776 to 1789, and our nationality was definitely fixed in all its essentials by the men of Washington's day" (Theodor Roosevelt quoted in M. Gordon, *Assimilation in American Life: The Role*

But the ethnic revival in the United States soon moved on to new demands. One result of the more open expression of ethnic identity was that ethnic groups became more conscious of their status as a group. It became common to measure the distribution of income or occupations in terms of ethnicity, and those groups which were faring less well demanded group-based ameliorative action, such as extensive quotas in education and employment. Other groups, less concerned with success in the dominant institutions of society, emphasized cultural self-determination, and the need for separate institutions in which to develop their own culture. In these and other ways, ethnicity became increasingly salient in American political culture and public policy.

American liberals have had an ambiguous relationship to this ethnic revival. Most liberals accepted the initial demand for the abandonment of the anglo-conformity model, even though earlier liberals strongly supported the old model which emphasized shared cultural allegiance as the basis of political allegiance.³⁷ But as ethnic demands escalated, liberal support diminished. I will look at two discussions of the ethnic revival to see how worries about the politicization of immigrant groups in America has influenced liberal views of ethnicity in general.

A. Nathan Glazer

Glazer believes that the politicization of ethnicity in America is a new and disturbing trend. Ethnicity has not been the traditional basis of American politics because the federal division of the United States "preceded the creation of much of our great ethnic diversity" (275):

[I]n the absence of ethnic and racial concentrations dominating one or more states, and of ethnic concentrations that could claim national rights on the basis of settlement on

of Race, Religion, and National Origin (New York: Oxford University Press, 1964) at 121-22].

³⁷ *Supra*, note 5 at 99. For an important exception to this earlier American liberal support for anglo-conformity, see R. Bourne, "Transnational America" in C. Resek, ed. *War and the Intellectuals: Essays by Randolph S. Bourne*, (1915-1919) (New York: Harper and Row, 1964). See also Horace Kallen's critique of the way his fellow American liberals supported "Americanization" policies [*Culture and Democracy in the United States* (New York: Boni and Liveright, 1924) at 145-47].

American territories before they became part of the United States, it became difficult for most groups to envisage claims to national rights – for example, the right to use their language in a state's government, or to establish institutions reflecting their distinctive ethnic culture, or to secede.³⁸

This American pattern of dispersed and intermingled ethnicity, which he calls "new world ethnic diversity", is fundamentally different from the multinational states of the old world. American groups "rarely put forward concrete ethnic demands of the type we might see in nations where ethnic groups formed more compact, self-conscious, culture-maintaining entities" (283).

The fact that ethnic groups in America don't make national claims is not evidence of racism, for ethnic groups have no ground for such claims. In the case of mother-tongue education, for example, most Americans

had come to this country not to maintain a foreign language and culture but with the intention . . . to become Americanized as fast as possible, and this meant English language and American culture. They sought the induction to a new language and culture that the public schools provided – as do many present-day immigrants, too – and while they often found, as time went on, that they regretted what they and their children had lost, this was *their* choice, rather than an imposed choice (149).

When immigrants chose to leave their culture and come to America, they voluntarily relinquished their national membership, and the national rights which go with it. This is in contrast to national minorities in the old world, where the denial of national rights, like mother-tongue education, is "an imposed choice".

The heart of Glazer's argument against the politicization of ethnicity in America is this distinction between old-world countries which are "a federation of peoples", and immigrant countries which are composed of "dispersed, mixed, assimilated [and] integrated" ethnic groups (227). And I think this is a significant distinction.³⁹ Surely immigrant groups

³⁸ *Supra*, note 5 at 276–77. References to this work are in parentheses in the text.

³⁹ Of course, there will be some cultural groups which do not fit neatly into either the "national minority" or the "voluntary immigrant" camp

cannot claim the same rights as national minorities. If I and others decide to emigrate to China, we have no right that the Chinese government provide us with public services in our mother-tongue. We could argue that a government policy that provided English-language services would benefit everyone, by enriching the whole cultural environment. But we have no *right* to such policies, for in choosing to leave Canada, we relinquish the rights that go with membership in our cultural community. Public subsidization of the ethnic activities of voluntary immigrant groups is best seen as a matter of policy, which no one has a right to, or a right against.⁴⁰

As the ethnic revival escalated, however, some immigrant groups in the United States adopted the language and attitudes of colonized nations or peoples (110–11). They labelled social pressures for assimilation as "oppression", and demanded their "right" to state recognition of ethnicity, and state support for separate ethnic institutions. But this adoption of nationalist rhetoric by immigrant groups is, Glazer argues, totally unwarranted. The new demands are unjustified, since immigration was not an imposed choice. They are also divisive, since each group will resent any special rights given to other groups (228–29), and impracticable, since American ethnic groups are too dispersed and assimilated to exercise collective autonomy. Moreover, any attempt to turn ethnic groups into the "compact, self-conscious, culture-maintaining entities" necessary for collective autonomy would require coercion since many immigrants desire integration (124). Implementing the

example, the Doukhobours immigrated to Canada, not voluntarily as individuals, but en masse, precisely in order to preserve their culture, since they were being persecuted in Russia. Other groups (e.g. the Hutterites and Ukrainians) came voluntarily, but on the explicit promise from Canadian immigration officials that they would be able to retain their culture and social structures. In neither case can they be said to have freely chosen to relinquish the rights that go with membership in their cultural community. The special tax arrangements for Hutterite colonies show that our legal system recognizes that some cultural groups do not fit neatly into the categories of national minority or voluntary immigrant group, and so require some intermediate status. See K. Z. Paltiel, "Group Rights in the Canadian Constitution and Aboriginal Claims to Self-Determination" in R. J. Jackson, ed., *Contemporary Canadian Politics: Readings and Notes* (Scarborough: Prentice-Hall, 1987) at 28.

⁴⁰ Evelyn Kallen, however, argues that ethnic groups in a polyethnic society have a right to public support ("Ethnicity and Collective Rights in Canada," in L. Driedger, ed., *Ethnic Canada* (Toronto: Copp Clark, 1987) at 325–31).

extensive demands of the ethnic revival would, therefore, be unjust, impracticable, divisive, and coercive.

This is Glazer's argument against the politicization of ethnicity in America, and it is a recognizably liberal argument, for it is focused on the role of choice in immigrant assimilation, and coercion in the assimilation of minority nations. But notice that this argument, whatever its validity, is not an argument against national rights.⁴¹ Glazer's point is that ethnic groups in America are not national minorities, not that national minorities don't have any rights. Yet, as with the *Brown* judgment, there has been a tendency for liberals to generalize the conclusions to all issues of ethnicity. Indeed, Glazer himself twists his arguments so as to make them apply to national minorities. He notes that even in the United States there are exceptions to the new world ethnicity pattern – American Indians, Mexican-Americans, blacks, Puerto Ricans etc. In respect to many of these groups, the United States is (or at least was) "a federation of peoples". When the Southwest joined the United States, Spanish-Americans were recognized as a distinct culture entitled to special rights, although these were taken away when anglophone settlers achieved majority status (277).⁴² and Indians and Puerto Ricans continue to be federated to the American state as distinct peoples with special political status.

Glazer recognizes that these groups "possess much more in the way of national characteristics" (283–84), and that they are demanding national rights on just the grounds that he emphasizes are inapplicable to immigrant groups:

Both blacks and the Spanish-speaking point to a distinctive political situation: the blacks were brought as slaves, and the Mexicans and Puerto Ricans were conquered. The American Indians were also conquered. The white ethnic groups,

⁴¹ It is also not an argument against existing "multiculturalism" policies, so long as these are not seen as matters of national rights or collective autonomy. Glazer, however, thinks that the risks of coercion and divisiveness are so great that even modest forms of support for polyethnicity are bad policy (*supra*, note 5 at 124).

⁴² This parallels the fate of the Métis, whose national rights were recognized when Manitoba entered Confederation, then taken away when English settlers became the majority in the province. See J. Weinstein, *Aboriginal Self-Determination off a Land Base* (Kingston: Institute for International Relations, 1986) at 46–47.

however, came as free immigrants. Thus the blacks, the Spanish-speaking groups, the American Indians, and perhaps some other groups can make stronger claims for public support of their distinctive cultures than can European groups (118).

So Glazer recognizes that his argument against the politicization of immigrant ethnicity actually argues for the recognition of some national rights.⁴³ He cannot avoid accepting that "there is a good deal of weight" in this point (119).

Yet Glazer opposes recognising the rights of America's national minorities. Instead, his hope is that "these groups, with proper public policies to stamp out discrimination and inferior status and to encourage acculturation and assimilation, will become not very different from the European and Asian ethnic groups, the ghost nations, bound by nostalgia and sentiment and only occasionally coalescing around distinct interests" (284). In the end, Glazer insists that "benign neutrality" is appropriate for national minorities as well, even though this contradicts Glazer's own argument for benign neutrality, i.e., the difference between the coerced assimilation of minority nations and the voluntary assimilation of immigrants.

Why does Glazer reject the implications of his own argument for national rights? In places he seems to say that the American commitment to benign neutrality is essentially arbitrary. The legitimacy of national rights is not, after all, a question of justice: "Whether or not a nation elects to handle multi-ethnic diversity by formally ignoring it or by formally recognizing it has no bearing on whether . . . we consider that nation responsive to human rights and to civil rights."⁴⁴ The reason Americans reject minority rights is not justice, but simply that there is

such a thing as a state ideology, a national consensus, that shapes and determines what attitude immigrant and minority groups will take toward the alternative possibilities of group

⁴³ American blacks do not fit either the new world ethnicity pattern or the national minority pattern. They did not choose to leave their original cultures, and they were not allowed to preserve those cultures, or create a national community, within the United States. As a result, their claims for group rights have centred more on compensatory justice than national rights.

⁴⁴ Glazer, *supra*, note 4 at 98.

maintenance and group rights on the one hand, or individual integration and individual rights on the other. . . . The United States, whatever the realities of discrimination and segregation, had as a national ideal a unitary and new ethnic identity, that of American.⁴⁵

So Glazer's claim is not that minority rights are excluded from the national consensus because they are unfair. Rather, they are unfair because they are excluded from the national consensus.

But this is no argument (at least not a liberal argument). What if the national consensus is built on ignorance or insensitivity to the interests of minority nations (as his own argument suggests)? In any event, Glazer's description of the national consensus is biased. He says the consensus must either accept or reject the politicization of ethnicity. But why can't the national consensus emphasize what Glazer himself emphasizes: the difference between immigrant groups and national minorities? The national ideal may recognize the legitimate rights of minority cultures while denying the illegitimate claims of immigrant groups. Indeed, this is close to the actual practice and national consensus in both the U.S. and Canada: our laws give Indians, Inuit, French-Canadians, and Puerto Ricans a special political status that other ethnic groups do not have. So Glazer has no argument of justice or convention to support his commitment to benign neutrality towards national minorities. Why then is he opposed to the rights of national minorities? After asserting that the "proper" policy is to assimilate the Indians, he goes on to note "a final complication":

If the public policy gets turned around to the point where, rather than trying to suppress or ignore the existence of the ethnic group as a distinctive element in American society and polity, it acknowledges a distinctive status for some groups and begins to attach rights in public law to membership in them, will that not react on the others, halfway toward assimilation, and will they not begin to reassert themselves so that they will not be placed at a disadvantage? (284)

Here is the crux of the matter for Glazer. Indians who desire recognition of their national rights may have both justice and convention on their side, but

Our problem is that we are not a federation of peoples (like Canada or the Soviet Union) but of states, and our ethnic groups are already too dispersed, mixed, assimilated, integrated to permit without confusion a policy that separates out some for special treatment. But if we try, then many other groups will join the queue, or try to, and the hope of a large fraternity of all Americans will have to be abandoned. . . . In a multiethnic society, such a policy can only encourage one group after another to raise claims to special treatment for its protection. . . . The demand for special treatment will lead to animus against other groups that already have it, by those who think they should have it and don't. (227-29)

In other words, recognizing the legitimate demands of Indians would make European and Asian ethnic groups demand illegitimate and divisive benefits, and there by jeopardize the "larger fraternity of all Americans".

It is worth pausing to consider how weak this argument is. Firstly, Glazer's argument is hypocritical. It rests on the importance of distinguishing national minorities and ethnic groups, but he then denies that this distinction can be drawn. Secondly, his argument is ethnocentric. He says there is a "national consensus" in favor of assimilation, but he clearly means by this a consensus amongst European and Asian ethnic groups, since he admits that other groups do want national rights. He says that this consensus has produced a "fraternity of all Americans", even though he admits that it has excluded blacks, Indians, Hispanics and Puerto Ricans. He says that national rights should be rejected in order to avoid mutual resentment. But what he really hopes to avoid is (unjustified) resentment amongst European and Asian ethnic groups, since he admits that national minorities are already (and legitimately) resentful at the denial of their national rights. Immigrant groups have illegitimately adopted the language of national rights, and in order to fight this divisive tendency, Glazer denies Indians the legitimate use of that language.

It is hard to avoid the conclusion that Indians are pawns being sacrificed to preserve Glazer's real concern, viz., the fraternity of immigrant groups in America. The beliefs of ethnic groups are taken by Glazer to be definitive of the "national" ideal, of what "all Americans" feel. As a result, the

⁴⁵ *Ibid.* at 100.

claims of Indians are evaluated, not in terms of their intrinsic merits, but in terms of their potential effect on the "fraternity" of immigrant groups. Glazer's commitment to colour-blind laws, which was presented as the defining feature of liberal justice,⁴⁶ is in fact defended through arbitrary and ethnocentric fiat, and through the explicit subordination of the interests of national minorities to the fraternity of ethnic groups. Glazer's rejection of national rights, therefore, is not the product of his liberal principles.

B. Michael Walzer

While Walzer and Glazer are on different ends of the American liberal spectrum – Walzer a social democrat, Glazer a conservative – they have remarkably similar views of ethnicity. Like Glazer, Walzer begins by insisting on the distinctive features of "new world ethnic diversity". Unlike the Old World,

pluralism in the New World originated in individual and familial migration. . . . The Old World call for self-determination had no resonance here; the immigrants (except for the black slaves) had come voluntarily and did not have to be forced to stay (indeed, many of them returned home each year), nor did different groups have any basis for or any reason for secession.⁴⁷

This process of assimilating voluntary immigrants was unlike Russification, which was aimed at

intact and rooted communities, at nations that, with the exception of the Jews, were established on lands they had occupied for many centuries – In the United States, by contrast, Americanization was aimed at peoples far more susceptible to cultural change, for they were not only uprooted; they had uprooted themselves. Whatever the pressures that had driven them to the New World, they had chosen to come, while others like themselves, in their own families, had chosen to remain (9)

⁴⁶ N. Glazer, *Affirmative Discrimination: Ethnic and Public Policy* (New York: Basic Books, 1975) at 220.

⁴⁷ *Supra*, note 3 at 6–7. Subsequent references to this work are in parentheses in the text. Cf. M. Walzer, "States and Minorities" in C. Fried, ed., *Minorities: Community and Identity* (Berlin: Springer-Verlag, 1983) 224.

Thus immigrants had no reason for rejecting English as the public language, and when they did resist Americanization "their resistance took a new form. It was not a demand that politics follow nationality, but rather that politics be separated from nationality – as it was already separated from religion. It was not a demand for national liberation, but for ethnic pluralism" (10–11).

Unfortunately, the ethnic revival has broken this pattern, as ethnic leaders adopt attitudes that are only appropriate for old world minorities. So Walzer's argument against the demands of the ethnic revival, like Glazer's, rests on the fact that immigrant groups are not minority nations. Yet Walzer, like Glazer, twists his argument to attack the rights of minority cultures. Consider his treatment of American Indians, who are an exception to this common approach, this "unity" (18), concerning the political role of ethnicity. The logic of Walzer's argument suggests that Indians should not be forced to accept an approach which is "not primarily the product of their experience" (6), but rather is "adapted to the needs of immigrant communities" (27). Indeed, the Indians' situation is the opposite of that which justifies the depoliticization of immigrant ethnicity.

Yet Walzer opposes the recognition of their national rights. His hope is that "this kind of equity, adapted to the needs of immigrant communities, can successfully be extended to the racial minorities now asserting their own group claims" (27). But he gives no argument for endorsing this "extension". Like Glazer, his response to minority cultures that are claiming national rights is not to consider the merits of the claim (which his own arguments endorse), but rather to arbitrarily apply the immigrant model instead. Rather than argue against the legitimacy of their claims, Walzer suggests that Indians don't really want national rights: "Racism is the great barrier to a fully developed pluralism and as long as it exists American Indians and blacks, and perhaps Mexican Americans as well, will be tempted by [national rights]" (27). These national rights claims would not be tempting if Indians had the "same opportunities for group organization and cultural expression" available to immigrant groups (27). But there is no evidence that Indians only desire national rights because they have been prevented from becoming just another ethnic group. On the contrary, Indians have often been pressured to become just

another ethnic group, but they have resisted that pressure and fought to protect their distinct status. Indians are indeed subject to racism, but the racism they are most concerned with is the racism denial that they are distinct peoples with their own cultures and communities.

Since Walzer has no argument against minorities which demand national rights rather than polyethnicity, he instead suggests that no one really wants national rights. It is hard to believe that he actually thinks this, for it is completely at odds with the history of Indian tribes in America or Canada.⁴⁸ In any event, the fact that Indians might choose to become an ethnic group like all the others does not show that they don't have the right to choose otherwise (nations can choose not to exercise their legitimate rights). Walzer's claim is not only insensitive to the real aspirations of American Indians, it is irrelevant to the question of the legitimacy of their national rights.

So nothing in Walzer's argument supports the claim that national rights are unfair. In the end, Walzer, like Glazer, resorts to the idea of a national consensus. He says that the question of national rights within a multinational state "must itself be worked out politically, and its precise character will depend upon understandings shared among the citizens about the value of cultural diversity, local autonomy, and so on. It is to these understandings that we must appeal when we make our arguments".⁴⁹ And in America, the larger political community sees national rights as "inconsistent with our historical traditions and shared understandings – inconsistent, too, with contemporary living patterns, deeply and bitterly divisive."⁵⁰ In other words, the dominant culture, adapted to the needs of immigrant ethnicity, is paramount, and Indians can't be allowed to interfere with its "shared understandings", or have rights that would be "divisive". But, like Glazer, Walzer provides no argument why a consensus adapted to immigrant ethnicity should define what is legitimate for national minor-

48. This recalls Thurgood Marshall's claim that Indians want colour-blind laws but "they just have not had the judgment or the wherewithal to bring lawsuits" (in L. Friedman, ed., *Argument: The Oral Argument Before the Supreme Court in Brown v. Board of Education* (New York: Chelsea House, 1969) at 50).

49. M. Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (Oxford: Blackwell, 1983) at 29.

50. *Ibid.* at 151.

ities, and he ignores the fact that the national consensus in the U.S. (and Canada) does accept the special status of national minorities.

Walzer's argument exhibits the same faults as Glazer's. Both switch between emphasizing and ignoring the distinction between ethnic groups and national minorities, depending on whether the distinction helps or hinders their cause.⁵¹ Both make ad hoc appeals to a "national consensus", which they equate with the aspirations of European and Asian immigrants, and which they describe in simplistic terms. Both assert the importance liberalism attaches to the separation of state and ethnicity, but the reasons they give for rejecting national rights have nothing to do with liberal principles, and indeed are in conflict with them.

51. American delegates to the U.N. manifest the same tendency to switch between emphasizing and ignoring the difference between immigrant groups and national minorities when opposing the international protection of minority rights. See Sohn, *supra*, note 27 at 272, 279; W. McKean, *Equality and Discrimination Under International Law* (Oxford: Oxford University Press, 1983) at 70–71, 142–43.