Justice in Ethnically Diverse Societies:  
A Critique of Political Alienation

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Abstract
The paper presents a normative principle of constitutional justice that  
acknowledges ethno-cultural and ethno-national diversity by addressing the  
injustice of political alienation. It is suggested that this principle could be the  
subject of a methodological overlapping consensus among several  
comprehensive normative-theoretical frameworks that are influential in current  
debates. The main implication of the principle for ethnically diverse societies is  
that it demands a deconstruction of hierarchical group relations among citizens  
along with the simultaneous achievement of an inclusive political culture. I apply  
this normative framework to the struggle for constitutional justice in the ethno-  
nationally divided context of Northern Ireland. The principle would seem to  
demand a bi-national egalitarian arrangement and it is argued that this would be  
most effectively achieved under joint British-Irish sovereignty. I conclude by  
considering how to minimize the risk that such institutional recognition of  
national identities could further alienate citizens who do not belong to either of  
the main national groups.

Within the liberal academic mainstream, normative political theory has in recent years  
been struggling to come to terms with the increasingly forceful demands of cultural  
justice for groups identified in terms of their ethnicity or nationality. It has become  
evident that if liberalism is to address in a constructive way political controversies  
associated with multiculturalism and national diversity, particularly those conflicts  
related to deep ethno-national differences, then it will have to reframe its commitment to  
individual freedom. Controversies arising from the politics of ethnic and national  
pluralism reveal the inadequacy of any normative framework that fails to acknowledge  
the inextricable connection between individual freedom and the recognition of particular  
group identities. Individual freedom is conditional on the cultural freedom of those  
groups to which a specific individual feels a strong affiliation or sense of belonging. A  
group is culturally free if its members can express and celebrate their distinctiveness  
without cost to their status as equal citizens. In most Western democracies at least, gay  
and lesbian citizens, for example, have achieved much in recent decades by securing  
cultural freedom through the public celebration of their difference. For most of the  
individuals involved this has been a liberating experience in terms of the recognition by  
others of their freedom and equality as citizens. This experience of freedom is to be  
contrasted with the experience of alienation that results when citizens are unjustly forced
to choose between the expression of their cultural distinctiveness and the achievement of equal status as members of the political community.

I want to explore here the sense in which this form of political alienation is a source of injustice, or more specifically constitutional injustice. In the first section I present a principle of constitutional justice that seeks to tackle political alienation by eliminating those structural inequalities in which it is rooted. I argue that this principle can be supported by what I refer to as a methodological overlapping consensus of several normative-theoretical frameworks. In this sense I think the principle is independent of much of the ongoing controversies in contemporary political theory. I then assess in greater detail some of the normative implications of this principle so as to outline the political conditions of ethno-cultural freedom in any pluralist context. In the third section I offer an account of the basic features of the ethno-national conflict in Northern Ireland and I argue that in this context impartial justice requires a bi-nationally egalitarian constitutional arrangement that would be best achieved under joint British-Irish sovereignty. Finally, I address the concern as to how to minimize the risk that such institutional recognition of national identities might have unduly restrictive effects on the individual autonomy of all citizens, or the danger that a bi-national constitution might further alienate those citizens who do not belong to either of the main national groups.

I Constitutional Justice and Political Alienation

Any impartial norm of equal citizenship that is to be applied to modern democratic states has to grapple with the fact that individual citizens form their identities in a variety of different ethno-cultural contexts. The norm I defend takes ethno-cultural diversity seriously by addressing the injustice of political alienation.

Just constitutional arrangements eliminate those structures of inequality that lead to the unjustifiable alienation of some groups of citizens from the institutions of the state.

To be alienated from the state’s institutions is to lack that sense of political agency that we associate with free and equal citizenship. If the state institutions are alien to us then we will experience them as forces of oppression, not as the guarantors of our rights or as channels of collective self-expression. A difference-sensitive account of impartial justice demands that the political constitution should guarantee to all citizens that they be treated with equal dignity within their own particular identity-forming contexts. While each citizen must be included as an equal member of the political community, this should not require members of minority cultures to abandon their distinctiveness, or to deny their particular identities. No citizen should be alienated from the institutions of state simply because of the fact that some particular social or cultural group affiliation forms an important aspect of that citizen’s identity.

Two points of clarification seem to be in order. First, a comment on the term ‘unjustifiable alienation’ is required. All political alienation is unjustifiable except when the alienated groups are those who are committed to the destruction of the bonds of democratic culture that make political accommodation possible in pluralist societies. If a citizen feels alienated from the institutions of the state because his individual identity is bound up with some political group intent on annihilating members of an ethnic minority,
or dismantling democratic institutions, then that is as it should be. Just accommodation among diverse groups may well require the alienation of such anti-democratic elements. What a theory of impartial constitutional justice requires is not a principle that is neutral towards all groups but rather one that is fair to all those groups of citizens who share the commitment to securing just grounds for peaceful co-existence. The principle I defend is impartial in the sense that it does not favour or promote the culture of any one group over any other, so long as the commitments of the groups themselves are not incompatible with the achievement of equal justice for all citizens regardless of group affiliations.

The second point of clarification relates to the objective reality of political alienation. I am emphasizing here the role of structural inequalities as sources of political alienation so as to show that alienation is not simply a matter of subjective feeling. Even privileged citizens may feel alienated from the political system because, for example, politics bores them, but this feeling is not in itself relevant here. Many citizens choose to opt out of the political process primarily because they need nothing from it since they are doing well enough in life already. There is no lack of opportunity to influence the political process in such cases, nor is there any relative lack of political privilege.

A feeling of alienation only becomes a subject of justice if it stems from an identifiable group inequality. Political alienation is unjust if it has a real structural basis that can be identified through social scientific research. Any structural inequality that sets up hierarchies among citizens is a basis for such alienation. If some citizens feel alienated from the institutions of the state because they are part of a minority religious group while the constitution grants formal privileges to the majority religious culture, then their alienation is not just a subjective feeling but it has a real basis. It sets up a hierarchy between members of the majority religious culture and other citizens and in that sense it is a structure of inequality that is almost certain to lead to a collective sense of alienation among members of the minority group.

This account of constitutional justice follows the tradition of critical theory as the attempt to present a normative articulation of the struggle for political emancipation. Marxist criticism of liberal democracy highlights the way in which state institutions are structured in such a way as to serve the interests of the ruling, bourgeois, property-owning class at the expense of the proletariat. The alienation of working class citizens from the institutions of state acts as a motivational source for the revolutionary struggle to emancipate all citizens from exploitative social and economic relations. Many of the most forceful feminist criticisms of liberal democracy have drawn on the alienation of women who find themselves subject to laws that have, for the most part, been made by men and for men. Gay and lesbian groups have highlighted the discriminating effects of laws that fail to recognize them as equal in their difference. A similar set of normative arguments can be made in relation to the struggle against political alienation based on various other social differences including those that are categorized in terms of race, religion, age, disability and so on. Here I will be exploring the injustice of political alienation primarily as it arises in ethno-nationally divided societies. I will be focusing on the case of Northern Ireland so as to cast some light on how a constitutional arrangement that could eliminate this form of injustice might be put in place in that particular context. But first we need to offer some grounds for this principle of constitutional justice.
The principle can be supported in a variety of different ways and I will not go into any great detail here on any one of them. Neither do I want to privilege one line of normative justification over others. The point is that this principle is not dependent on any one theoretical framework but rather it can be located at the intersection of a number of influential normative perspectives. First, the principle could be justified with reference to John Rawls’s original position (Rawls, 2001). Parties to the original position might agree to this principle as an alternative formulation of that aspect of Rawls’s first principle of justice that guarantees political liberties fair value for all (Rawls, 1996, 356-63). If the political liberties are to be of fair value to all citizens then it seems clear that there could be no structural inequalities leading to the political alienation of certain groups of citizens. Furthermore, it seems plausible from this Rawlsian point of view, that this principle could be the object of a reasonable overlapping consensus (Rawls, 1996, 131-172). It represents a principle of political morality that all those holding reasonable comprehensive doctrines might be expected to endorse. This Rawlsian mode of justification is obviously towards the abstract rationalist end of the scale, relying as it does on the logical coherence of its claims about reasonableness and on the capacity of citizens to abstract themselves sufficiently from their embedded lives so as to adopt the original position as a device of representation.

But this principle’s claim to validity does not depend on such an abstract Rawlsian defence. Alternatively, the principle could be justified from a more empirical point of view. A wide range of research programmes in comparative political science focus on the question as to which constitutional structures and arrangements offer the best prospects for just, peaceful or stable co-existence in pluralist societies (Lijphart, 1978; Horowitz, 1985; Lustick, 1993). Leading normative political theorists, most notably Will Kymlicka (2001, 3-4), have been quite explicit in arguing that theorists should start their analysis by looking around at what is happening in the world. Which political policies and strategies seem to work best in addressing fairly and effectively problems of ethno-cultural pluralism associated with structural inequalities? The implication is that good empirical analysis, particularly comparative analysis that puts general hypotheses to the test, is an important source for normative theoretical assessments of the merits of the various constitutional means of dealing with deep diversity in modern democratic societies. This kind of normative/comparative theory can be used as grounds for the justification of this principle of justice to the extent that it can be used to underline the central significance in successful constitutional engineering of the concerns about political alienation that lie behind this norm. We eliminate those structures of inequality that lead to group alienation if we design our institutions to be inclusive, representative, sensitive to group identities and so on. The idea is to reveal empirical grounds for believing that just and peaceful co-existence depends on law making procedures that make collective and inclusive self-government possible, and on political institutions that foster an overarching sense of citizen unity.

There are other alternatives to those lines of justification represented here by the approaches to normative theory taken by Rawls and Kymlicka. For example one of the key normative claims behind Jürgen Habermas’s discourse-theoretical approach to law and democracy concerns the notion of universal collective authorship of the law. The idea is that in order for citizens to view laws as legitimate they must be able to think of themselves not only as being subject to those laws but also as being themselves the laws’
collective authors (Habermas, 1996, 33). This sense of collective authorship would seem to depend on the elimination of any structures of inequality that lead to political alienation of some group of citizens. In this sense the discourse theory of democratic legitimacy presupposes the principle I am defending here. A fourth line of justification could be offered from a more contextualist approach to normative political theory. Theorists like Michael Walzer (1983) and Joseph Carens (2000) might agree that the demands of justice are dependent on social meanings that vary from one context to another. Yet the thrust of Walzer’s account of complex equality is to eliminate the institutionalization of those forms of social difference that lead to the domination of some social groups by others (1983, xiii). Walzer’s sense of domination is synonymous with the kind of structural inequalities that would lead to political alienation of some groups of citizens. Similarly Carens’ emphasis on evenhandedness is grounded in the same concern about inclusion that lies behind the impulse to eliminate structures of inequality because of their alienating effects (2000, 8-14).

As I suggested already, I am not privileging one line of justification here over any others. There are several other currently influential approaches to normative theory that might also have been referred to here. While I will not develop the argument I think liberal nationalist frameworks (Tamir, 1995; Miller, 1995), agonistic conceptions of radical democracy (Mouffe, 2000) and contemporary versions of civic republicanism (Pettit, 1999), to take three further examples, would endorse the elimination of structural injustices that lead to political alienation. The general point is that it would appear that the principle I am outlining could be derived from several of the most influential normative perspectives in contemporary political theory. As we have seen, these perspectives include those that tend towards an abstract, rationally deductive form of argumentation as well as those that adopt a more contextual, or even empirical, orientation. In explaining the broad basis of justification for the principle, we might look on it as the subject of a methodological overlapping consensus. In spite of the Rawlsian origin of the idea of an overlapping consensus I am using the notion for methodological purposes in a way that does not favour Rawls’s own approach to normative justification. The point is to show that of the many theoretical perspectives that contemporary normative political theorists might choose to work with, several of them could be included in this methodological overlapping consensus. Regardless of the tensions and differences among these various frameworks, they all have the potential to offer some justificatory grounds for the principle of constitutional justice I have outlined.

My hope here is to show that by detaching this principle from any one set of theoretical commitments, it can be shown to be independent of many of the most contentious debates in contemporary political theory. It is not methodologically sectarian in that sense. The concern here is to emphasize the need to tackle the injustice of political alienation while acknowledging fully the fact that political theorists, and indeed citizens generally, differ in reasonable ways with regard to our normative-theoretical methodological commitments. Some favour a relatively abstract approach to the construction a political account of justice. Others are more empirically oriented in seeking to assess which institutional frameworks work most effectively. Others still work at the interface of philosophy and empirical social theory in seeking to do justice to both the normative and factual dimensions of modern democratic law and politics. And some prefer to argue that justice is relative to social meaning in reflecting the normative
commitments of particular communities at specific times in different places. All of these normative orientations seem to converge in identifying political alienation as a serious source of injustice that has to be addressed in the project of constitutional design. In this sense there is an overlap on the matter of constitutional justice between all these various relatively comprehensive normative frameworks. Each of them demands that those structural inequalities that lead to the political alienation of particular groups of citizens must be eliminated.

II Normative Implications for Ethnically Diverse Societies

It follows, from this normative perspective, that there should be no forced assimilation of ethno-cultural minorities, nor should they be coerced into living, Apartheid-style, in separate, isolated enclaves. Both policies, assimilation and separation, grant systematic social and political advantages to members of the dominant culture by forcing members of other cultures to choose between maintaining their distinctive culture and attaining equal membership of the political community. To be forced into making such a choice is unjust. Cultural minorities must be accommodated on a basis of equal citizenship in that they should not have to pay a price for preserving their distinctive identities. In societies where there are significant ethnic or national minorities, this may require differential rights with regard to say education or cultural activities, while in other cases it may necessitate special representation rights, or even self-governing autonomy (Kymlicka, 1995). As we will see, in the complex case of Northern Ireland, it would seem to require a constitutional framework that can grant equal recognition to two historically antagonistic national communities.

In taking cultural diversity seriously, this account of constitutional justice rejects key features of two significant strands in modern political thought. The first of these strands is that form of liberal theory that derives its constitutional principles from a set of individual rights that purport to be neutral with regard to the ethical commitments of its citizens (Nozick, 1974; Steiner, 1994). The second is that form of communitarianism that gives priority to the collective over the individual by presenting constitutional principles as expressions of the shared values and traditions of particular national communities (Dahbour and Ishay, 1995). For communitarian nationalists, the constitution promotes a particular national form of life and expresses a unique national identity. Neither individualistic liberalism nor communitarian nationalism can do justice to the reality of cultural diversity since both have at least two contrasting theoretical deficiencies: their accounts of personal identity-formation; and their understandings of the ethical basis of constitutionalism. The alternative I advocate here overcomes both sets of deficiencies.

With regard to personal identity-formation, if we want to take the reality of cultural diversity seriously, then we can endorse neither the atomistic conception of the person that is associated with individualistic liberalism, nor the essentialism that is associated with communitarian nationalist thinking. On the one hand, individualistic liberalism abstracts people from the context of their ethical ties to particular social groups, including ethnic and national communities (Taylor, 1995). In this way it fails to appreciate the extent to which individual identities are situated within a network of group memberships, the structure of which can be a cause of entrenched political conflict. For this reason, the general principles generated by liberal theory often fail to connect with the sources that motivate those political actions that are driven by a struggle for positive
recognition of particular identities. The shortcomings of such a form of individualistic liberalism are particularly glaring in the context of a deeply divided society like Northern Ireland (McGarry and O’Leary, 1995b; O’Neill, 1996).

On the other hand, communitarian nationalism runs the risk of saddling individuals with a tightly drawn collective identity that limits personal autonomy. While individual identities are embedded within a network of group memberships, it is oppressive to think of cultural characteristics associated with gender, race or nationality as being essential to any individual’s identity (Appiah, 1994). This is oppressive because it lays down in a dogmatic fashion what individuals should take to be the defining features of their identities. Such essentialism fails to reckon with three interrelated factors that are potentially disruptive of collective identities. First, individual identities are formed not only in relation to the structure of group differences but also in personal and intimate relations. These relations may give us some distance from a particular group, thus strengthening our capacity to break away from our traditions of origin. Second, the fact that group memberships intersect one another means that there is always potential to destabilise collective identities by forming cross-cutting political alliances. Such alliances can heighten our sense of having multiple group affiliations and so they work against any tendency to view one collective identity, say our nationality, as being primary or essential to our self-understandings. Third, the boundaries between social groups are never entirely closed in that certain people will not be easily categorised. These ‘others’ disrupt the binary thinking, the mentality of ‘us and them’, associated with essentialism by indicating the historical contingency of collective identities. In Northern Ireland these ‘others’ include recent immigrants, those with family-affiliations to both traditions, or to neither, and those for whom a cross-cutting collective identity is of greatest significance including, for example, some feminists, or members of the gay and lesbian communities (Porter, 1998). While group memberships are unavoidable features of our identity-forming context, they do not constitute the essence of our identities.

We can avoid both liberal individualism and communitarian essentialism by developing a relational conception of social group differences. Social groups, including cultural and national communities, are differentiated by the way in which the members stand in relation to others, particularly with regard to structures of power and privilege (Young, 2000, 92-102). Group-based oppression is to be explained with reference to the way in which structures of power assert the superiority of a dominant group by acting as mechanisms of subjugation that serve to disempower other groups. Social structures that privilege one class, sex, race or cultural community, oppress groups whose needs, aspirations or ideals differ from those of the dominant culture. Constitutional structures that serve to alienate a minority national community from the institutions of state are oppressive in just this way. Impartial justice demands that we transform the structure of these group relations so as to bring this oppression to an end.

The concept of a social group is central to this account of justice because our memberships of such groups have important implications for our own individual identities. Group memberships position us socially independently of the exercise of our personal autonomy and so we have no choice but to deal with these individual social locations. If a particular group affiliation reflects an important aspect of my personal identity and if that group has been oppressed or underprivileged in some way in relation to others, then my own sense of self-esteem suffers (Honneth, 1995, 138). Of course, I
may simply accept my lot by viewing as fixed the structure of group relations that has
been the source of my oppression. Alternatively, I may, in solidarity with other members
of the group, assert our group identity. This will involve us in a struggle to achieve a
positive recognition of our shared identity as an important aspect of attaining justice for
members of the group. It is this dynamic that drives those struggles for recognition
associated with socialism, feminism and liberation movements confronting racism,
colonialism, homophobia, sectarianism, prejudice against the disabled, and the
oppression of cultural and national minorities. But while we may see the assertion of a
group identity as necessary to the task of resisting injustice, we should also seek to avoid
the restrictions on individual autonomy that are associated with cultural essentialism. The
only way we can do that is to create conditions, over the long-term at least, that can
broaden the scope for personal autonomy by facilitating the disruption of those collective
identities that are rigidly constructed.

What this suggests is that a just constitution has to respond to collective struggles
against group-based oppression and this may often require the positive recognition of
particular group identities, through the affirmation of special rights. But it must also
facilitate the disruption of collective identities that place undue restraints on the personal
autonomy of individual citizens. The most fruitful way to connect these concerns is to
distinguish between the internal cultural diversity within a society, as represented by a
wide variety of social groups, and a shared political culture that offers a basis for equal
citizenship to all individual members of a just political community. While each of us may
belong to a variety of different social groups, as citizens we all share equal membership
of one political community. The institutions of state should not deny our internal cultural
diversity since to do so would be to set in place political structures that privilege the
dominant culture in ways that alienate and oppress other social groups by arbitrarily
restricting their cultural freedom. This means that the political culture in which the
institutions of state are embedded must be adequately inclusive of all significant groups
(Habermas, 1998; Young, 2000).

This distinction between a shared and inclusive political culture and an internal
diversity of group-cultures allows us to give a normatively acceptable account of the
ethical basis of constitutionalism. It helps us to avoid the problems associated both with
the individualistic liberal claim that a constitution can be ethically neutral, and the
communitarian nationalist view that the constitution must be thought to be expressive of
the shared values of one national tradition. The individualistic liberal fails to notice that
since all constitutions are projects of a particular people, embedded historically in
distinctive cultural contexts, none can be ethically neutral. A constitution cannot but
affirm the achievements of a particular people in promoting a distinctive political culture.
The distinctive ethos of this culture is expressed in the symbols we associate with
institutions of the state, be they flags, anthems, emblems or whatever. This is not to say
that such a political culture must, as the communitarian nationalist believes, be that of
one national community. In a nationally diverse context, such as Northern Ireland, a just
constitutional project cannot be thought of in terms of the realisation of one nation-state.

Ironically individualistic liberalism and communitarian nationalism share an
insensitivity to the possibility of group memberships generating struggles for recognition
of particular identities that can challenge the legitimacy of the state (Tully, 1995). I have
stressed here two key features of a more convincing impartialist theory of constitutional
justice that addresses the injustice of political alienation through structural inequality. First, the theory must grasp the significance of group memberships in providing identity-forming contexts for individuals and in motivating struggles for justice. Secondly, it must affirm the ethical basis of constitutionalism while remaining open to the internal diversity of group-cultures by rejecting both ethical neutrality and national purity as inappropriate ideals. The theory will be sensitive to two dimensions of cultural diversity: the internal diversity of group-cultures within each state; and the diversity of historically unique political cultures in which particular constitutions are embedded. What this ideal of constitutional justice requires is that a shared political culture should not deny the internal diversity of group-cultures within society. This means that if flags, anthems and emblems are used to express the ethical basis of the constitution, then these should be unifying symbols of an inclusive political culture, not divisive symbols of group-based oppression.

This demand will require a variety of different measures depending on the cultural and historical context. In a relatively homogenous society, where almost all citizens belong to one national community, this unique political culture may be heavily marked by that national culture but it must make adequate provision for the expression of the cultural distinctiveness of its significant minorities. In a society characterised by mass immigration, the political culture should reflect the multicultural nature of that society by giving due recognition to the cultures of its aboriginal peoples and by respecting cultural differences among its immigrant communities. In a deeply divided society like Northern Ireland, the political culture will have to be inclusive of, and consonant with, two antagonistic national communities as well as being respectful of smaller minority cultures. This normative framework justifies those policies that are required, in specific contexts, to protect individual and group identities by ensuring that each citizen is treated with equal dignity. Citizens should not suffer systematic social and political disadvantages because of the group-affiliations that structure their personal identities. If we are not to be punished, and alienated from the institutions of state, because of the ways in which we differ from members of the dominant group-culture of our society, then we will need to have grounds to believe ourselves to be equal citizens. We need to feel included as members of a legal community who share a political culture that is expressed in the constitution, the institutions of government and agencies of the state.

From this perspective, we must seek to transform those structures of power that alienate some citizens in granting systematic privileges to one dominant group-culture over others. This kind of group-based oppression is very often the root cause of those political conflicts associated with struggles for recognition, including national conflicts such as that in Northern Ireland. Impartial justice requires that constitutional arrangements should reflect new relations that signify the deconstruction of the hierarchical structure of power that differentiates groups and underpins the antagonism between them. The most secure basis for peace and stability, and the most effective way to resolve conflict, is to establish a constitutional framework expressive of a political culture that is inclusive of all significant social groups. Justice is not ethically neutral: it does not accommodate those who deny internal diversity by obstructing the achievement of an inclusive political culture. Nor can justice reflect national purity in a case where cultural and national minorities demand recognition.
III The Demands of Constitutional Justice in Northern Ireland

Northern Ireland is an ethnically and culturally plural political jurisdiction marked by a deep conflict of nationality. The vast majority of its citizens are divided into two main national communities with opposing political aspirations, differing identities, and divergent loyalties. Ever since this jurisdiction was brought into existence in 1921 with the partition of Ireland, it has struggled to establish its legitimacy as part of the United Kingdom by failing to gain the allegiance of a large and growing minority of its citizens, namely those who aspire to some form of Irish national unity. At the same time, the unionist majority has maintained that it would face the prospect of political marginalization and cultural exclusion if its members were it to be forced, as a national minority, into a united Ireland. The dominant tendency within both national traditions has been to deny legitimacy to the aspiration of the other.

We can explain the protracted nature of the conflict in Northern Ireland by showing how both of the two broad constitutional options that are of greatest historical significance, the retention of Northern Ireland within the United Kingdom or its incorporation into a united Ireland, inevitably lead to unjust political alienation. This is because each of these options facilitates the domination of one national community by the other. What we should learn from the history of this conflict is that, within this context, any constitutional structure that fails to recognise the legitimacy of the differing aspirations, identities and loyalties of the two national communities will be oppressive of one of the national groups. Any such arrangement allows the dominant group to enjoy the powers and privileges associated with the fact that the institutions of the state protect their national aspiration and express their national identity. For the other group, the coercive powers of the state are viewed as alien forces that subjugate and oppress them.

To say that Northern Ireland is exclusively British, or exclusively Irish, is to seek to establish a hierarchical relationship between two groups of citizens. It is to distinguish those who identify with the institutions of the state and are thought of as full members of a self-regulating political community from those whose national identity leads them to feel alienated from the state and who are, in effect, second-class citizens. But, while the conflict is best understood as a struggle between competing national communities with incompatible aspirations to self-determination, we should not discount the role of the British and Irish states in helping to create the conditions of conflict (McGarry and O’Leary, 1995a, 360-363). Both have some responsibility for the on-going crisis in that neither has managed to convince members of the ‘other’ national tradition in Northern Ireland that they would, as citizens of that political community, be treated by the state with equal dignity in their own identity-forming contexts. In other words, state building failures on the part of both the British state, prior to and since 1921, and on the part of the Irish state since 1921, have been significant factors in the conflict (Lustick, 1985). Irish nationalists in Northern Ireland continue to feel alienated from the British state, as their fellow nationals in the South had prior to 1921, while unionists still see the Irish state as an alien force that threatens to envelop them. In this sense it may be illuminating to think of Northern Ireland as an ethnic frontier society, a conflict zone that is affected crucially by the actions of others beyond the frontier, in this case the British and Irish states representing fellow nationals of the key protagonists (Wright, 1987).

There are, therefore, important external sources of the conflict that will have to be addressed in any just settlement. This point is overlooked by those whose interpretations
focus exclusively on internal differences between the communities without grasping the underlying basis for conflict in the clash of mutually antagonistic nationalities and the way in which the actions of the British and Irish states impact on that relationship. We should not, however, overestimate the significance of these external sources. Whatever the negative contributions of past state-building failures, it is clear that the policies of both British and Irish Governments in recent years have been to secure a fair and balanced settlement that would be acceptable to both national communities within Northern Ireland (Arthur, 1999). If the policy is ultimately to be successful, it will have to involve the deconstruction of the hierarchical nature of the group relation between the two communities and that can only be achieved by bringing the politics of internal majoritarianism to a definitive end.

Many interpretations of the conflict have failed to identify the fundamental cause of the continuing antagonism to be the hierarchical nature of the internal group-relation between unionists and nationalists. Traditional nationalists have traced the roots of the conflict to the colonial imposition of British rule on the people of Ireland, while traditional unionists have blamed irredentism within the Republic of Ireland for destabilising Northern Ireland (Whyte, 1990, chs 6-7; McGarry and O’Leary, 1995a, Part I). These opposing interpretations have a tendency to render the other community politically invisible in that they assume that the presence of a large minority of citizens with a differing national aspiration is of no great significance with regard to the legitimacy of the state. There is no sense, from either perspective, that the rights of self-determination that each community demands for itself should be granted reciprocally to the other national community.

Nor is there any sensitivity in these partisan accounts to the importance that each community attaches to their need for national self-expression in a context where they feel that their own identities are under threat from forces intent on alienating them from the structures of political power. This is why we find scepticism regarding the ideal of ‘parity of esteem’ among those partisans on both sides who fail to recognise members of the other national community in their difference (Cadogan Group, 1996; Rolston, 1998). If this ideal, which is affirmed in the Agreement, is taken to mean that members of both communities should be treated with equal dignity in their differing identity-forming contexts, then it would appear to be an important aspect of a just settlement. Individuals should be free to express the cultural and national differences that structure their group affiliations. Scepticism regarding the ideal itself is a reflection of the partisan’s inability to acknowledge the fact that the conflict is rooted in a clash of national traditions and in the hierarchical relation between them. Of course ‘esteem’ can only be due to those traditions that are compatible with an inclusive political culture.

As should be clear by now, constitutional justice in Northern Ireland has two key requirements from the normative perspective outlined here. The first is the deconstruction of the hierarchical relation between unionists and nationalists as groups, and the second is the achievement of an inclusive political culture on which institutions that take us beyond this hierarchy could be built. The key is to ensure that members of both national communities feel that they can identify, as equals, with the institutions of the state. If no citizen is to feel alienated from the state then all will need to feel respected within their own identity-forming context. Whether Irish or British, all citizens needs to know themselves to be, in every significant way, free and equal members of the political
community. Given the history of this conflict and the size of the minority involved, this would seem to suggest that the institutions of state should be fully and equally bi-national. They should be both British and Irish and there should be no systematic political or social advantage for those who are members of the majority tradition. An inclusive political culture will be equally respectful of Britishness and Irishness in not privileging one over the other and in not producing one victorious national community and another vanquished one. Bi-national egalitarianism suggests that joint British-Irish sovereignty would be the most just constitutional arrangement in this context.

Joint sovereignty should be thought of as a durable, long-term arrangement, one that will remain in place regardless of which community forms the majority (O’Leary et al., 1993). The idea is that if we are to achieve justice and stability, we need a radical and permanent break from the politics of majoritarianism, something that leaves both groups vulnerable to the contingency of demographics. This may reassure those unionists who are inclined to view this kind of proposal as a stepping-stone to a united Ireland. Long-term joint sovereignty provides for greater stability in ensuring that the constitutional position will not change even if demographic trends produce, at some stage in the future, a nationalist majority. Under joint sovereignty British nationals in Northern Ireland would still express their national identity through the institutions of the state. The fact that Irish nationals would be on an equal footing as to the political institutional expression of national identity cannot be seen as a defeat for unionism.

Sharing sovereignty could only mean defeat if we were to take for granted a notion of sovereignty that is simply inappropriate and inoperable in a modern world that is being transformed by complex processes of globalization. One of the virtues of confederal arrangements like the one I am proposing is that it takes us beyond a paralyzing obsession with sovereignty thought of in terms of independence and freedom from interference towards a relational conception of sovereignty (Hoffman, 1998). The unyielding view of sovereignty as non-interference no longer reflects the constrained capacity for action that states and national governments must make do with in a world where international markets and supranational political institutions, including the European Union and the United Nations, play an ever-increasing role. Furthermore, it is clear that the outdated conception of sovereignty as non-interference undermines the possibility of achieving constitutional justice in Northern Ireland (Kearney, 1997, 24; Anderson, 1998, 127-132). In contrast, a bi-national constitution takes us beyond nationalism while acknowledging the current need for political self-expression of the two national communities. In this sense it is post-nationalist without being post-national (Geoghegan, 1994). Such an arrangement will underline the ethical uniqueness of the political constitutions of both the United Kingdom and the Republic of Ireland in reflecting more justly the historical struggles and achievements of the particular peoples and nations concerned. The proposed political structures would also reflect the internal ethical diversity of these constitutions. This diversity would be revealed in the asymmetrical relations of England, Scotland (with its own Parliament), Wales (with its own Assembly) and Northern Ireland (where sovereignty would be shared with the Republic of Ireland) to the United Kingdom and in the continuing constitutional differences between the two parts of Ireland.

Since the ethical uniqueness of a political community is expressed through flags, anthems, emblems and so on, a just Northern Ireland will be one in which symbols of
both national traditions enjoy equal status. The only just alternatives would be to achieve agreement on a set of symbols that are genuinely inclusive, or less plausibly, to avoid public use of national symbols altogether. Public buildings should fly both the Union flag and the Irish tricolour until such a time, if ever, that a new flag is accepted by both national traditions. Alternatively no flag should be flown. There are also implications for the celebration of national holidays in that St. Patrick’s Day should enjoy equal official status as a public holiday as does the July holiday celebrating the defeat of Catholic forces at the Battle of the Boyne in 1690. Wherever there are official national symbols, the honouring of the achievements of particular citizens, the support of representative sports teams, the promotion of the arts and so on, there should be a sensitivity to the bi-national reality of Northern Irish society. If and when the UK adopts the Euro the sole currency in use will be appropriately neutral between the two national traditions but until then, both sterling and the Euro should have equal status as legal tender.

Joint sovereignty, as the most egalitarian bi-national arrangement, recognizes fully the legitimacy of both national aspirations and it resolves the conflict between them by granting them substantively equal constitutional status. Members of both national communities can identify, as free and equal citizens, with the institutions of the state and neither need fear any political transformation leading to their subordination and oppression as a national minority. In this way we might expect such an arrangement to be more rationally acceptable to all concerned than one based on a rigid conception of sovereignty in which they would run a serious risk of ending up as members of an alienated national minority.

IV Bi-National Egalitarianism and the Protection of Individual Autonomy

The Belfast Agreement of 1998 is bi-national in insisting that members of both national communities must be treated as equals in their national differences, no matter which of the sovereign governments has jurisdiction in Northern Ireland. It states that governmental power must be exercised

with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos and aspiration of both communities.

(Agreement, Constitutional Issues, 1 (v))

This commitment to national impartiality opposes any hierarchical relationship between unionists and nationalists as social and political groups. In this sense it responds to the first demand of constitutional justice in Northern Ireland by making great strides in achieving the deconstruction of the most pernicious aspects of this hierarchical communal relationship.

Nationalists are assured of cultural equality and ‘parity of esteem’ within Northern Ireland and they have the bonus of being linked in a politically meaningful way to the Irish Republic through the North/South institutions. But the priority given to the consent of a majority internal to Northern Ireland on constitutional matters means that not all the systematic political privileges of the unionist majority have been removed. In this
sense, since the United Kingdom is sovereign, and Ireland is not, unionists remain constitutionally dominant to some degree. Even if that dominance should not count for much, it has a symbolic importance that may be a source for continuing antagonism, especially at times of communal tension. Enshrining the principle of consent in this manner means that the Agreement has compromised this demand of justice, and the prospects for stability, to the realities of social power. It legitimizes the will of the majority on fundamental constitutional matters when political majoritarianism has itself been the primary source of the conflict. It also leaves the door open, depending on demographic trends, to a potentially traumatic future consideration of the creation of a united Ireland. Joint sovereignty, by bringing the politics of majoritarianism to a definitive end, avoids these problems and so achieves the deconstruction of hierarchy in a more complete way.

The second requirement of justice is the achievement of a constitutional framework expressive of a political culture that is inclusive of all. The endorsement of the Agreement in the Northern referendum certainly helped to bring a new and inclusive Northern Irish political culture into being. There are no good reasons to question the idea that the Agreement satisfies fully the requirements of democratic legitimacy, underpinned as it is by the results of not just the referendum in the North but also that in the South. This historic accommodation was an important sign that a shared and sustained commitment to these novel institutions might just be possible in this new constitutional context. Justice, however, is a more stringent test of political arrangements than legitimacy, yet it promises a more fertile grounding for peace and stability. While the political culture expressed in the complex constitutional framework of the Agreement is inclusively bi-national, it is not strictly egalitarian due to the constitutional privileges that are retained by whichever community happens to be in the majority at any given time. Joint sovereignty, as the full realization of bi-national egalitarianism, would reassure all citizens that they had broken free of the politics of national antagonism in achieving a political culture that provides a stable basis for just political institutions.

One further advantage of joint sovereignty over the 1998 Agreement has to do with the ongoing conflicts of interpretation regarding the meaning of the Agreement. Pro-Agreement unionists see it as an opportunity to copper-fasten the Union while many Irish nationalists view it as a stepping-stone to a united Ireland. What is required is a more transparent arrangement that is not so subject to conflicting interpretations that feed antagonistic national aspirations. The ambiguities that are implicit in the Agreement may well have been historically necessary in order to provide some institutional space to allow the political actors involved to think their way beyond the conflict. But these ambiguities that lend themselves to conflicting interpretations may well continue to haunt the institutions set up under the Agreement, to a point where they will eventually make them unworkable. Joint sovereignty is a more transparently egalitarian arrangement that liberates all the people of Northern Ireland from zero-sum games of majorities and minorities. It is, according to this normative analysis, a more secure grounding for long-term peace, stability, prosperity and constitutional justice in Northern Ireland.

I suggest, therefore, that joint sovereignty provides the most appropriate model for the constitutional recognition of both British and Irish national identities in this context. In comparison with the institutional set-up of the Agreement, its rigorously egalitarian cast makes it more comprehensively bi-national. While national recognition of
this kind is a necessary requirement for the achievement of constitutional justice at this historical juncture in Northern Ireland, we need to consider how from the normative perspective outlined here the threat of cultural essentialism, or in this case national essentialism and the undue restrictions it places on individual autonomy, presents significant challenges for the peace process. There is a danger that bi-national constitutional arrangements will alienate further those who do not feel at ease in either of the main national groups. These include recent immigrants, those who seek to break away from their communities of origin, those of a mixed religious heritage and those for whom political struggles related to class, gender, race, ethnicity or sexual orientation are of far greater concern than national or religious differences. What further measures, beyond bi-national constitutional provisions, are likely to nurture a political culture that is fully inclusive of all? How are conditions to be created that will broaden the scope for personal autonomy by facilitating the disruption of collective identities that are rigidly constructed? It might be suggested that bi-national institutional arrangements, whether under the Agreement or joint sovereignty, make it extremely difficult to create and foster such conditions since they offer incentives for people to channel their political concerns through national matrices.

While these dangers are very real it seems more than possible to establish and maintain bi-national institutions while at the same time fostering conditions that are likely to disrupt over time rigidly constructed collective identities. Both objectives can be pursued simultaneously to good effect if the normative priorities of the peace process are clearly ordered. The first priority has rightly been to minimize political violence. It is one thing to suggest that the bi-national features of the Agreement, which would be further enhanced under joint sovereignty, are potentially oppressive due to the tendency they may have to freeze national identities and to prioritize the politics of national conflict over other struggles. It is quite another thing to argue that this is more oppressive than the twenty-five years of communal political violence that had preceded the cease-fires of 1994. Anyone who argues that a state of civil war, with the death, destruction and everyday fear it brought with it, is less oppressive than a set of bi-national institutions is normatively confused. Political development depends crucially on people being freed from the paralyzing effects on their thinking of the level of going violence that prevailed for those twenty-five years.

The second (and closely related) priority for the peace process must be to secure just and stable constitutional relations between the two main national communities, as this is the best means of ensuring that no group has cause to return to ‘war’. This has been the focus of my argument here. If we can establish and maintain inclusively democratic institutions that recognize national identities in a just manner, and I have argued that given the history of the conflict this requires bi-nationally egalitarian institutions in this context, then the people of Northern Ireland will have every chance of enjoying long-term political stability and peace. In a situation where communal antagonism has been so intense, and when the threat of violence continues to be so palpable, the project of creating conditions that disrupt rigid processes of identity formation has to take its place behind these priorities. Putting violence to an end and achieving a set of just and stable institutions are necessary if not sufficient conditions for the disruption of rigid processes of identity formation as a medium to long-term goal.
Where does this leave those who do not fit neatly into the unionist or nationalist communities, or those who do not identify with either national tradition? Without going into any detail, we should note briefly that there are several significant aspects of the Agreement that indicate how the threat of national essentialism might be overcome in the medium to long-term. I cannot address this further in the current context but all of these areas of concern would have to be factored into any detailed institutional proposals as to how joint sovereignty might operate if it were to satisfy the demands of the normative framework I have defended here.

Most significant in this regard is the centrality of human rights and equality of opportunity to the transformation of Northern Irish society that is envisaged in the Agreement. In the quotation I used above from the opening section of the text dealing with constitutional issues, it is clear that the parties commit themselves to the idea that governmental power is to be exercised with ‘rigorous impartiality on behalf of all the people in the diversity of their identities and traditions’. Furthermore it ‘shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights [and] of freedom from discrimination for all citizens’ (my emphases here and in the previous sentence). When it says ‘all’ it includes those citizens who do not feel entirely at home in either national community.

In the remainder of the text of Agreement there is more space given over to ‘Rights, Safeguards and Equality of Opportunity’ than to either the North-South institutions (‘Strand 2’) or institutional relations between Britain and Ireland (‘Strand 3’). There are many significant rights provisions including the affirmation of a wide range of individual human rights and the establishment of a Human Rights Commission for Northern Ireland. There is also a commitment to an exceptionally rigorous set of anti-discrimination provisions that offer effective legal challenges to practices driven not only by sectarianism or ethno-nationalism but also a range of other prejudices including sexism, racism, ageism and homophobia, and the establishment of an Equality Commission for Northern Ireland. Finally there is a commitment to economic development and the promotion of social inclusion, in particular with respect to the advancement of women in public life. So far from placing excessive legal restriction on the autonomy of the individual, these commitments and institutional innovations put Northern Ireland well ahead of most Western democracies in the implementation of individual rights and legal guarantees designed to ensure impartial and egalitarian treatment of all citizens in a pluralistic context characterized by social and cultural diversity (Harvey, 2001).

There are two other issues worthy of note here. First, it would be easy to overestimate the extent to which the legislative work of the Assembly is structured by the practice whereby members designate themselves as ‘unionist’, ‘nationalist’ or ‘other’. This designation only comes into play with regard to certain specified key decisions (Agreement, Strand One, 5d) and most of the work of the Assembly is conducted without reference to such designations. Members of two parties have already used the designation ‘other’ (the Alliance Party and the Women’s Coalition) and many liberals share the hope that should the peace process eventually deliver a stable future of prosperity and relative social harmony, then members who choose this designation will grow in strength, to the extent that they may be in a position to dismantle these particular cross-community guarantees altogether. The growth of this middle-ground of ‘others’ could, possibly, be
encouraged by future reform of the electoral system if that were to make cross-community voting among moderates from either side of the national divide more likely (Horowitz, 2002). Secondly, in the wake of the Agreement substantial financial support has been made available to foster and encourage integrated education across Northern Ireland. Clearly this is another development that is likely to act as a counterbalance to any institutional effects that lock children into their own national blocs.

Taken together, therefore, these provisions and developments destabilize any tendency towards national essentialism by helping to create conditions under which non-national political struggles can, over time, come to displace the current obsession with the constitutional question. This may, from a liberal perspective seem like a rather insubstantial set of protections as it might be suggested that national essentialism would be undermined much more effectively were national recognition much less central to the design of political institutions. Individual autonomy, not only of these ‘others’ but also of those brought up in national heartlands, would be better protected in a situation where possibilities of identity-transformation were enhanced, and one might assume this to be more likely in a case where national identities were not institutionalized. But this is not a safe assumption and when seeking to overcome the dangers of national essentialism, one has to be clear about what alternatives are on offer in any given context.

Certainly the prospects of justice, peace and stability are enhanced in general by processes of identity transformation that loosen the ties that bind individuals to exclusive projects of national self-determination in diverse contexts. But when we face a choice of establishing and maintaining a set of bi-national institutions or risk a return to an ongoing campaign of political violence, it is clear which of these options is most likely to facilitate such identity transformation over time. While bi-national institutions are not maximally effective in this regard, nothing freezes identities quite so forcefully as high levels of communal violence. It is naïve to believe that the people of Northern Ireland can move directly from decades of simmering civil war to the dissolution of the conflict in a postmodern liberal order that recognizes only the rights of individuals whose identities and group affiliations are constantly in flux. Northern Ireland cannot break with its past by ignoring the roots of its conflict and this means that the legitimacy of conflicting national aspirations must be recognized, at least for the foreseeable future. The cause of violence must be dealt with as a matter of priority. A bi-national set of institutions, whether under the Agreement or joint sovereignty, should not, however, be thought of a bi-nationalist arrangement, one that feeds two competing exclusive projects of national self-determination. In demanding that each national community modifies its own national aspiration so as to make room for the aspirations of others it places them in a post-nationalist context, one that takes national identities seriously while acknowledging that the ideal of national purity is incompatible with the achievement of the kind of inclusive political culture that constitutional justice requires.

REFERENCES


