THE NORMATIVE LIMITS TO THE DISPERSAL OF TERRITORIAL SOVEREIGNTY*

> Imagine there's no countries,
> It isn't hard to do,
> Nothing to kill or die for,
> No religion too,
> Imagine all the people living life in peace . . .
>
> —*John Lennon*

The spate of recent articles, books, and book chapters bearing such titles as "The End of (or 'Beyond') Sovereignty" (or "The State," "The Nation-State," etc.) or having the topic as a dominant theme,[1] illustrates well an increasingly common view among academics. Especially among political philosophers taking up the theme, it is nearly universally held that sovereign statehood as we have known it for the past few centuries is—if not like slavery and burning-at-the-stake, then at least, like unelected government and child labour—something that ought to and soon will be confined to a dark dustbin of history. Enlightenment and progress reside in the transcendence of this retrograde institution that permits to fester, and from which sometimes directly emanate, a great many evils of our time: war, genocide, an array of human-rights violations, lack of co-operation on critical environmental challenges, global inequality, poverty, and much more. That national conflict and competition result when the massive powers of modernity are organised into distinct concentrations of institutionalised "sovereignty" on discrete territories, is as predictable as the combustion of known inflammatory substances under appropriate conditions.

The relation between sovereignty and territoriality is an intricate one. It is in fact possible to have some semblance of the first without the second. In tribal societies in which various strongmen owe allegiance to different warlords, or in states with confessional jurisdictions which subject different people to different laws according to their faith, governments

were to some extent non-territorial, and different residents of the same territory owed allegiance to, were taxed by and compelled to follow the laws of, different governments. We could imagine a modern hypothetical case, where "Saudi citizens" residing in the British Isles could have their hands amputated for stealing, while "British citizens" in the Arabian peninsula would be immune from such punishments, but subject to laws, say, prohibiting sexual harassment. This would contrast with, say, the judgment of a recent French court convicting an African woman residing in France to eight years imprisonment for the practice of female circumcision or "female genital mutilation," as the courts described it (thus applying the laws of France to all residing within its territory).

Much recent criticism of sovereignty would find the non-territorial brand outlined in the previous paragraph equally objectionable insofar as it, too, fails to comply with universal ethical norms. The preponderance of "beyond-sovereignty" advocacy is directed against the territorial sovereignty of our era, and it is these arguments that this paper will address. My conclusion is that while some diffusion (Pogge), unbundling (Elkins) or dismantling (O'Neill) of territorial sovereignty might be desirable, there are stringent limitations as to how much, which critics have hitherto systematically overlooked.

Territorial Sovereignty

To understand territorial sovereignty one must first consider the phenomenon of territoriality in general. Geographer Robert Sack defines it as "the attempt by an individual or group to affect, influence, or control people, phenomena, and relationships, by delimiting and asserting control over a geographic area" (Sack, 1986, p. 19). Territorial strategies can thus range from the posting of no-smoking signs in a room or building, to the disallowing of small children into a part of the house with breakable or dangerous objects, or a room to be kept clean for guests, the defence by criminal or youth gangs of their "turf," zoning laws within a city or country, the erection of borders between two countries, or the declaration of suprastate zones, whether of free trade, military alliance, or environmental treaty.

In general, the application of a rule or law to any spatial region with the aim of controlling the behaviour of people within it constitutes territoriality as defined above.

Four aspects of territoriality related to state sovereignty are exclusivity, contiguity, persistence,[2] and clustering. Exclusivity involves controlling access to the territory and things within it (Sack, 1986, p. 22), though it can also involve attempts to block access to the outside by restraining those within (as, say, various dictatorships do by restricting emigration or foreign travel of their subjects). With regard to states, it includes what is often called external sovereignty: that no other state's laws can apply or be enforced within its boundaries. It also arguably involves some restriction on immigration. Contiguity has in practice admitted of exceptions, from Alaska to the Spanish enclaves of llivia within France, and Ceuta and Melilla within Morocco, the Italian Campione d'Italia within Switzerland, and Russian Kaliningrad between Poland and Lithuania, but these have tended to be rather rule-proving in the centuries since Westphalia.

Another aspect of the territoriality of states is the persistence of sovereignty over a territory. Introduction of this temporal concept[3] is not intended to deny that borders are sometimes modified, nor even radically expanded and contracted, as, say, the borders of the British Empire. Nor, of course, does it preclude the possibility of states coming into and passing out of existence. But at the heart of normative debates about sovereignty are claims to enduring control over some home base—claims which figure prominently in both nationalist and some cosmopolitan-liberal justifications.[4] It seems a necessary feature of territorial sovereignty that it have reasonable temporal persistence. If borders could be altered at any time according to whim, which would follow if one applied the principle that society should be "as voluntary a scheme as possible" (Rawls, 1971) to the very boundaries of states, the distinction between territorial and non-territorial authority would collapse. Persistent territoriality thus expresses an intersection between space and time and is a useful concept to have in discussing territorial sovereignty.

Finally, it is important to mention an aspect of state sovereignty not inherently territorial, but which in the case of existing states presumes or builds upon the territorial aspects just enumerated. I have called this feature clustering; others authors (Elkins) speak of "bundling." Sovereign states are compounded out of administrative jurisdictions sharing exactly the same territory.[5] Thus, defence, health and welfare, criminal and civil law, unemployment insurance, national income policy, and so forth, are functions

or jurisdictions usually clustered together by a single sovereign state; because the state is territorial, the jurisdictions are identically bounded territorially.

Against the background of these distinctions several theoretical alternatives to sovereign territoriality can be envisioned. One already mentioned rejects the first three, while leaving the fourth in somewhat of a haze. Political authority would thus be organised such that 'citizens' were identified and governed exclusively by who they were, not where they lived. In a given territory, rather than one set of laws applying to everyone within it, different sets of laws would apply to the respective citizens governed by them. Since neither exclusivity, contiguity, nor persistence would obtain, the "state," such as it would be, would move wherever its citizens moved. The clustering feature is left in a haze because it would be far from obvious who would administer and enforce the laws in such a regime, who would pay for public construction in a given territory, and who would be eligible to use which public facilities (nor even what 'public' would now mean). Nor is the feasibility of such an arrangement self-evident. This need not detain us, however, as the sole purpose of mentioning this extreme non-territoriality is to raise the conceptual possibility.

Another possibility is to retain exclusivity, but to relax the other two territorial conditions, so that new states could be formed or dissolved at ease, whether as enclaves or otherwise. Alternatively, one could retain the persistence of a permanent base, but relax exclusivity by allowing relatively free immigration and enabling non-citizens to be governed to some extent by their own laws. Exclusivity, of course, admits of degrees, even with current practice (for instance as with foreign embassies or politically autonomous areas).

Yet another possibility, which I will discuss at some length, does not explicitly challenge the territoriality, as I have defined it, of individual government functions, but declusters the single sovereign state into different functions with different administrative boundaries.[6] Indirect implications of this arrangement for the exclusivity aspect will be examined later. Here we may simply note that challenges to the clustered sovereign state can be made without denying the desirability of administering discrete functions territorially (and for reasons independent of territoriality *per se*), but such that the territoriality of the state is not unaffected.

This explains why it is necessary to address questions about the meaning and justification of sovereignty when attempting to analyse rights to territory. These possibilities discussed above are not exhaustive of the alternatives to a sovereign territorial state, but are helpful reference points for the discussion below.

The Current Debate

I turn now to a brief general survey of recent critiques of sovereignty. As stated above, sources, motivations, and concerns have been diverse, though interrelated. First, the end of the Cold War, coupled with various trends that go under the catch phrase 'globalisation', have created a unique sense of possibility. As a result, sovereign states are increasingly regarded by some as obstacles to the development of international institutions suited to the global scope of such concerns as world peace, human-rights monitoring and enforcement, environmental protection, global development, and, for some, distributive justice.

Some arguing in this vein aspire to the formation of a single global state (e.g., among philosophers, Nielsen, 1988). Others, though sympathetic to institutional cosmopolitanism, reject the global state (Beitz, 1979; Pogge, 1992; O'Neill, 1994) because the proposed concentration of power would, if anything, reproduce the evils of a sovereign state on a grand scale. The present essay is not primarily concerned with the global state, although I shall have a few brief remarks about it toward the end. In similar spirit some have attacked the sovereign-state system as an obstacle to cosmopolitan justice (Luban, 1985 a, 1985 b), and as inimical to the desirable development of a robust international legal system with effective powers of enforcement, and broad jurisdiction in the areas of human-rights protection and prevention of war. Central to this debate is the question of rights and duties of intervention.

A rather different debate concerns whether the European Union (and possibly other trading blocks) has already effected the demise of sovereignty (as urged, for instance, by Neil MacCormick, 1993). Ostensibly conceptual, it has blended, especially in the U.K., with normative disputes over integration with the E.U. and whether such would constitute a loss of national sovereignty. A further controversy centres on identity. Some writers loosely labelled 'postmodernist', others advocating cultural cos-

mopolitanism (e.g., Waldron, Griffin), have claimed that identity is no longer primarily nation-centered, but constituted from diverse sources removed from their original historical and geographical contexts. This claim is often accompanied with scepticism regarding the normative significance of national borders, given the presumption of ever diminishing cultural differences across them.

A different view, which will be the focus of the remainder of this essay, does not share the presumption of prevailing cultural cosmopolitanism. It holds that sovereign states, as nodes of concentrated power, can be overwhelming *foci* of their members' allegiances, sentiments, loyalties, and identities. But it laments this fact, and calls for a dispersal or diffusion of sovereignty for reasons of peace and security, cosmopolitan justice, and ecological well-being (Pogge, 1992, 61–4; O'Neill, 1994, 72–3; Beitz, 1979; Elkins, 1995). In this group, varying proposals have been tabled about how to disperse sovereignty. All agree, however, that different governmental functions might have different optimal territorial shapes, while others need not be administered territorially at all (Pogge, 1992; O'Neill, 1994; Elkins, 1995). Moreover, if the "unbundling" of functions leads to a deconstruction of national identity, or a drastic reduction in its significance, all the better for peace and human rights the world over. Institutional realignment according to the requirements of ethical cosmopolitanism[7] can begin when the presumption is abandoned that sovereign states have exclusive rights over territories and everything within them.

Disassembling the sovereign state

In the spirit of the epigraph of this essay, advocates of dismantling the sovereign state align themselves with the angels, seeking to rid us of outmoded ways of thinking that impede progress in global justice, human rights, environmental protection, prevention or elimination of war, and narrowing the gap between rich and poor countries. It is necessary "to corrode the presumptiveness of unconscious assumptions—whether about territoriality, the state, or personal identities" (Elkins, 1995, p. 261). The most deeply embedded prevailing assumptions are that states should be massive concentrations of power exercising exclusive control over their own territories. "[W]ithin their own territories, national governments are free to do virtually anything they like. Such governments therefore have very powerful incentives and very broad opportunities to develop their

military might. This is bound to lead to the further proliferation of nuclear, biological, chemical, and conventional weapons of mass destruction. And in a world in which dozens of competing national governments control such weapons, the outbreak of devastating wars is only a matter of time." (Pogge, 1992, p. 62). War will be made less likely by the dispersal of sovereignty. This will be because there will be less at stake when power is diffuse (Pogge, 1992, p. 62) or because it will be more difficult to mobilise people with multiple and conflicting identities, loyalties, and memberships (Elkins, 1995, p. 262).

Another problem is oppression; "under the current global regime, national governments are effectively free to control 'their' populations in whatever way they see fit. Many make extensive use of this freedom by torturing and murdering their domestic opponents, censoring information, suppressing and subverting democratic procedures, prohibiting emigration, and so forth. This problem could be reduced through a vertical dispersal of sovereignty over various layers of political units that would check and balance one another as well as publicize one another's abuses." (Pogge, 1992). Again, "[e]xcess concentration of power within states is dangerous; so is excess independence of states from one another" (O'Neill, 1994, p. 72).

In short, the root of most evil is the concentrated power of the sovereign state. It is necessary, therefore, to sever the mighty nexus between government functions, nations, and territories." If state functions are to a significant degree decoupled from the nation, then perhaps one can imagine that the nation itself could be decoupled from territory" (Elkins 1995, p. 261). Some particular functions might be better administered territorially, but that is no reason to presume a division of the world into sovereign territorial states. "Would it not make more sense to start with functional rather than territorial divisions of the tasks of government? And if we did so, would not the optimal territorial arrangements probably differ for different types of governmental function?" (O'Neill, 1994, p. 72).

While this is but a sample of these authors' arguments, it is fairly representative and conveys the converging lines of reasoning between them. There are also divergences. O'Neill is most interested in disengaging different functions from one another and from a common territorial base. Pogge favours "nested" units vertically dispersed, which is to say, some functions performed by overarching global administration, within which are nested regional and state-level units, within which local units—some

as small as neighbourhoods—assume new functions. Effectively, this means pushing some functions presently held by states upwards, and others downwards to deconcentrate the state. Elkins, by contrast, is keen on non-territorial solutions as far as possible, is uninhibited by the prospect that government functions might increasingly resemble private services (or indeed be replaced by them), and not averse to engaging in futuristic speculation about the harnessing of new technologies to make government services more "customized." The methods differ, but the objective of the authors is the same: the dismantling of the territorial sovereign state.

Reasons to Retain the Concentration of Sovereignty

It is the broad objective that I wish now to question. There are reasons both for administering functions territorially and for clustering them in identically bounded jurisdictions which these philosophers have neglected at their peril. These reasons cast doubt on the desirability of the proposals outlined above, despite their differences.

Some goods, as these writers acknowledge,[8] are public goods. That is to say, they cannot be enjoyed by anyone without everyone being able to enjoy them. A fairly wide consensus holds that coercive taxation would be justified to finance production of these goods to the extent that would-be free-riders would choose to pay their share of the production if they could not free-ride (Rawls, 1971, p. 267).[9] Infrastructures for water and electricity supply, roads and railways, public transport, military defence (assuming there are still some threats in the world if we start from the here and now), are some of the more obvious candidates for the sort of public goods likely to be considered essential by nearly everyone in modern societies.

Public goods are commonly said to be indivisible, but this feature conceals another one, namely that they are inherently territorial. That is to say, indivisibility implies that they are goods from which all those residing in the territory in which they were enjoyed would benefit as well. It is common residence in the territory, not common citizenship, which for most such goods makes the enjoyment of their benefit collective. The territorial feature is mentioned only in passing, if at all, in classical discussions of public goods (Rawls, 1971; Buchanan, 1968), perhaps because it is so obvious as to be taken for granted. To restate the argument, then, the production of public goods requires coercively enforced taxation because

everyone would wish to be assured that as few as possible in the territory would free-ride. Coercive taxation within the territory, however, implies a sovereign over it, as Rawls observes:

> Each person's willingness to contribute is contingent upon the contribution of the others. Therefore to maintain public confidence in the scheme that is superior from everyone's point of view, or better anyway than the situation that would obtain in its absence, some device for administering fines and penalties must be established. It is here that the mere existence of an effective sovereign, or even the general belief in his efficacy, has a crucial role (Rawls, 1971, p. 270).

If we grant, then, that there are indispensable public goods that ought to be produced fairly, we have already presupposed an elaborate legal system, including courts, enforcement agencies, and public administration (including an Internal Revenue Service); if we are furthermore democrats, we also require an elected legislature ultimately responsible for decisions about which public goods to produce and how much. Importantly, however, it also follows that all of these will necessarily have identically bounded territorial jurisdictions. This complex of agencies and administrations would follow even from a single essential public good, as each of the institutions mentioned is responsible for the same territory where the public good will be enjoyed. Since there is a multiplicity of public goods, the question might arise whether each good should have its own parliamentary jurisdiction, and proper public and legal administration. But even to suggest this is enough to demonstrate its absurdity; the sheer inefficiency would be such as to make the very clustering of functions itself one of the most important public goods. But there are other aspects to consider.

Among the most essential public goods is an enforced criminal code. This is also an inherently public or collective good (Raz, 1986, pp. 198–99) such that no futurist technology could ever "customise" the supply of its benefits. In a democracy, a functioning criminal code requires not only an elaborate legal system, lawyers and judges, and law schools, but also a broad range of institutions and practices which support these, from media to universities. In short, it requires a community. But to be a well-functioning community, its elements have to work together according to shared norms and interlocking or co-ordinated functions. The taxation system supporting other public goods has to be integrated with the same

legal code and enforced by the same agencies as those enforcing the criminal code, and it in turn has to finance many of the institutions required for the legal system to function.

The financing alone of public goods needs to be centralised in a modern society. It is necessary to have a centralised investment fund which can be shifted to specific functions according to changing need. That is, one needs a state budget, not merely function budgets. That would require an overarching body that can move investments across functions, deciding in a given year, say, to increase the health budget while cutting back on, say, road construction. In a simplified world in which the only public services were health and public highways, if the health and road jurisdictions did not coincide, and were not brought under some central authority, someone who lived in the health jurisdiction at a time when it had been hit with unforeseen costs could expect no succour from the other public fund, whatever the consequences. A common budget is thus itself a public good. It in turn would require taxation to be centralised, and again, a centralised legal framework regulating taxation.

We can see now a regular pattern emerging in these considerations. Again and again, it appears that the integration of different "functions" with each other turns out to be an essential public good. And this brings us to a central shortcoming shared by all the dispersal theories of sovereignty: they can all be convicted of what one might call the function-atomist fallacy. O'Neill looks at each function individually and queries what is the optimal territorial arrangement for it. Pogge asks: "when one thinks about it more carefully, it turns out to be surprisingly difficult to come up with examples of indivisible governmental functions. Eminent domain, economic policy, foreign policy, judicial review; the control of raw materials, security forces, education, health care, and income support; the regulation and taxation of resource extraction and pollution, of work and consumption can all be handled at various levels. . . . So what are the governmental functions that supposedly are vertically indivisible? Second, is their indivisibility supposed to be derived from a conceptual insight, from empirical exigencies, or from moral desiderata? And which ones?"

As a matter of fact, most of the functions on Pogge's list already are vertically divided in federal states such as Canada, and even in the United States. There already is a division of governmental labour, as it were, between national, provincial (or "state" in the American sense), and

municipal levels, prompting some wonder as to what all the fuss is about. Presumably the current vertical divisions are not satisfactory to Pogge— he would also disperse powers to supra-state and very local levels—but likely the real target of complaint is that there is still an integrated hierarchy of key institutions and functions such as the judiciary and law enforcement, with the buck-stops-here level being the federal or national state (including an ultimate appellate court). But if one now rephrases the question to query why that need be the case, there turn out to be reasons for it, both empirical and moral, that would justify leaving the national level holding considerable concentrated power.

The empirical ones have to do with efficient functioning; it is an empirical fact about our world that it has risks, which good governments seek to ensure against, and that our resources (including time) are scarce, so that, all things being equal, we desire co-ordination and to avoid duplication. Chief among the moral reasons are equal treatment and democratic control. In a modern society, democratic participation varies, among other factors, according to the importance of the level of government: the more concentrated the power of the level, the greater the participation.[10] Typically, participation as measured by voter turn-out, media attention, and party membership, is highest for national-level elections. It seems a safe surmise that, all else equal, the more diffuse the sovereignty, the weaker the popular participation. Oscar Wilde once remarked that socialism wouldn't work because there was not enough time in a day for all the necessary meetings. Perhaps, if sovereignty were diffuse, all necessary meetings could somehow be held, but who would care to attend them? If elections were held, who would vote in them? Clustering political authority, it would seem, facilitates democracy as well as tyranny. In the bustle and complexity of modern life, few have time or inclination to follow the politics of the sewage administration, the road-construction authority, the agricultural board, and so forth. But when all these are ordered in a structure reaching an apex, interest, commitment, and allegiance tend to increase (if at the cost of each individual having far less direct control).

Pogge and Elkins implicitly acknowledge this in allowing that national identity will be far less important when sovereignty is diffuse. The problem is that the political community that sustained identity will be less important as well. If government functions become diffuse and dis-

connected, and if interest, participation, and allegiance similarly decline, these functions will increasingly resemble private services. This eventuality might leave market enthusiasts (Elkins 1995, pp. 79ff.) unperturbed. But consumer demand as a mechanism of ensuring accountability is a poor substitute for public deliberation about desirable policy, and that deliberation would be jeopardised by the weakening of an integrated community sharing a range of fundamental values.

Yet this could well result from the adoption of the various proposals for vertical diffusion and declustering. An example provided by Pogge may illustrate this. Pogge takes issue with Walzer, who wrote; "At some level of political organization something like the sovereign state must take shape and claim the authority to make its own admissions policy, to control and sometimes to restrain the flow of immigrants" (Walzer, 1981, p. 10). The alternative, as Sidgwick had said, was "not . . . to create a world without walls, but rather to create a thousand petty fortresses." (Walzer, 1981, p. 9). Therefore, "Only if the state makes a selection among would-be members and guarantees the loyalty, security, and welfare of the individuals it selects, can local communities take shape as 'indifferent' associations, determined only by personal preference and market capacity" (Walzer, 1981). Somewhat intrepidly,[11] Pogge defends the neighbourhood restriction policy against the state; immigration control is a function "much better served still" if pushed down from the state to the neighbourhood level.

Pogge and Walzer agree that territorial exclusivity is justified to protect cultures; presumably they might also agree that there is a trade-off here between the value of freedom (for outsiders), which must be restricted, and the value of preserving the culture. So what is at stake between them? If Pogge were accused of sanctioning intolerance and ghettoes, he could reply that Walzer's state is a ghetto writ large, practising intolerance on a grand scale. But two points, I believe, weigh heavily in favour of the ghetto writ large. First, there is an issue in need of clarification. Pogge does not explain whether the policy of giving neighbourhoods control over immigration should be accompanied by giving them the force to back up this jurisdiction. In other words, he does not say whether he advocates breaking up the monopoly of legitimate force on a given territory that states, as Weber famously defined them, enjoy. The tenor of the discussion on immigration does not appear to recommend a redistribution of force, wisely, it would seem, given the horrific consequences that might result from each neighbourhood having its own militia (as Sidgwick foresaw).

On the other hand, the general remarks cited earlier critical of the state monopoly of power would seem vitiated were they not accompanied by a call to break up this monopoly. But however one views the monopoly, it would surely be a worse situation if every clan, neighbourhood, gang, and block could take up arms against its neighbour. Rather than going beyond the state, we would be back in a Hobbesian state of nature; indeed, while critics of classical contractarians raised doubts about whether such a state ever existed, we would now be in the business of creating it.

But if, on a more charitable reading, Pogge means merely to derogate powers over immigration to neighbourhoods while the state maintains overall responsibility of enforcement, the question would then be whether the state would retain the duty and right to enforce hard-won principles of desegregation, freedom of movement and access. This brings us to the second point, namely that however much liberal national states are discriminatory in their immigration policy—and it remains a moot question how much discrimination is permissible on grounds of maintaining a national identity and favouring those with whom one has a special relationship—most such states are diverse enough that, to be liberal, they must safeguard against any internal discrimination. The difference in scale, then, between the ghettoes writ large and small, arguably translates into a difference in quality. Even the sort of selectiveness in immigration of the large ghetto and the small are bound to be different, as in the former case the policy ultimately must be defended to a large and already diverse public, against the background of non-discriminatory principles accepted by liberal courts. This does not guarantee a generous immigration policy, but it does ensure that a range of voices will be heard, that views will be debated in public, and that there will be some pressure to make external policy consistent with the internal, including the principle of non-discrimination on the basis of race. Chances thus would be much greater for some degree of internal tolerance, and possibly a more rational immigration policy. If neighbourhoods, on the other hand, have authority to exercise territorial exclusivity, they need consider no more than the narrow interests of their respective members. Intolerance would breed as barriers were erected; pedestrians and prospective home-buyers would have to steer clear of xenophobic vicinities.[12]

Freedom of mobility, and a legal practice of toleration, are again public goods threatened by function atomism. Separating the function of immigration from the sort of community that could sustain toleration

might yield various answers to the question of which level is optimal to control this jurisdiction. If we take a broader view, however, or if we regard optimality itself in terms of the wide range of values that it is desirable to promote, then we are again moved in the direction of integrating this jurisdiction into the cluster of jurisdictions maintaining the community as a whole, that is, the community of the sovereign state.

To summarise briefly, then, critics of sovereign clustering neglect features of it, some of which contribute to, and some of which even seem indispensable for, democratic community, the administration of justice, fair and efficient governance, and civic virtue. That there could be gains or losses from the realignment of this or that particular function is not in dispute. But that the declustering of sovereignty into myriad shapes or levels would be a clear benefit, let alone hold out the promise of remedy for the primary evils of the age, seems an unsubstantiated claim at best.

Despite the arguments above, it is likely that many advocates of disassembly will not be swayed. After all, they might argue, the benefits of declustering that they have claimed for it are also public goods. So who is to say that those I allege—efficiency, democratic participation, integration of governance and community—are even equal to, let alone more weighty than, those of global peace and respect for human rights, environmental protection, and global justice? Indeed, put that way, I might appear not to have achieved very much. At best, I might have shown that there is a trade-off between the two sets of goods, but if the goods that they cite are really there for the taking, the trade-off might seem well worth the making. On the other hand, one might begin to wonder why we can't have it all, by opting for the world state. Aversion to that plan, let us recall, arises among advocates of declustering from the worry that it would carry all the evils of concentrated territorial sovereignty, writ a hundredfold large by the magnification of concentration. Yet it is not obvious why this should be the case even on their own terms. Sovereign statehood is alleged to impede peace, co-operation on the environment, and global justice because of *competition* between a *plurality* of nodes of concentrated power, not because of concentration *per se*. On the contrary, precisely the consideration that allegedly blocks global justice—that each national state concerns itself only with its own citizens—would presumably make justice *within* each such state, or at least the wealthier ones, all the more achievable. But if that is so, then the global state would seem the

best option for achieving global justice. Or again, consider environmental co-operation. What impedes this on the global scale, for advocates of declustering, is not concentration of sovereign power *per se*, but competition between states. The global state, on the other hand, would eliminate this. Similar reasoning would seem to hold for the other ills and benefits considered by these writers. So it is puzzling to understand in their own terms their opposition to this option.

Perhaps, however, the worries are based more on *Realpolitik* considerations of the world as we find it, rather than how a world state might function under ideal conditions. Vast portions of the world's population live today in illiberal and undemocratic regimes. A single state, whether regular or king-sized, cannot mix material so incongruous with democracy. Speculating how to spread democracy exceeds the scope of this paper; the point, however, is that if *this* is the real motivation for rejecting world government in the meantime, it would cast even greater doubt on the proposals of declustering and benefits alleged therefrom to accrue. If it is assumed that China and the Middle East are to remain for the interim future under tyrannical regimes, how is dispersal of sovereignty supposed to spread respect for human rights to them? On the one hand, it is unlikely that they could be compelled to disperse *their* sovereignty—one might as well compel them just to become liberal democracies, after which, if "Doyle's law" is correct (that democracies do not wage war against each other) world peace and respect for human rights would simply follow, declustering or not. Or are the democracies supposed to disperse their own sovereignty while leaving the most vicious states intact? Hardly quite the remedy for a nicer cosmos, I should think.

I began with a quotation from a pop singer, who thought that if countries and religion disappeared, so too would conflict. One can see the rationale for this. The worst conflicts are over what people think important. Get rid of everything that's important, and motivation for conflict will disappear. The emphasis of declustering advocates is, to be fair, slightly different. They see the worst conflicts arising between nodes of power. Disperse the nodes of power, and the conflicts will disappear. But it is not just coincidence that both see Utopia in the ridding of countries. These are at once nodes of power, and *foci* of identity. As Elkins, Pogge, and O'Neill each recognise, these complement and reinforce each other. The more one's identity is invested in some institution, the more power one wishes

it to have; conversely the more influence an institution has over one's life, the more likely one will identify with it (under typical conditions). Yet if the price to pay for dissolving concentrations of power and *foci* of identity turns out to be apathy, inefficiency, and the anarchy of "a thousand petty fortresses," as I have argued, then it is difficult to envision how the benefits of world peace and co-operation that would supposedly justify this price would be attainable in the first place.

I will just briefly mention another aspect of the considerations presented here. If it is indeed the case, as I have tried to argue, that there are limitations to desirable dismantling of states, then certain implications will no doubt follow about territorial rights and national identity. If a territorial state remains the best way of attaining various public goods, then the primary value of territories will remain the instrumental value of enabling self-government. This value of territory is consistently ignored in philosophical debates about so-called territorial rights, where economic, geopolitical, symbolic and affective values are the only ones ever considered. If it is necessary to cluster identically bounded functions in order to meet fundamental requirements of efficiency and justice, and to ensure sufficient democratic participation (as has been argued herein), then the value of territory has to be reconceived. Groups having strong claims to the right of self-government will derivatively have strong claims to the territory on which that self-government is to be established, since that territory is a necessary means to their self-government.

I have discussed self-determination elsewhere,[13] and cannot pursue it here. It may be worth mentioning, though, that if the considerations against declustering have merit, then it will be undesirable, and perhaps not possible, to deconstruct identity in the way proposed by advocates of declustering, and that groups with historical-cultural identities will retain fundamental interests in the instrumental value of territories for self-determination. This is not to suggest that one needs national states simply to provide people with identities. That would be far too short a way with the arguments for declustering; cosmopolitan identities of various kinds are certainly possible. But if declustering turns out to be undesirable on wholly independent grounds, then arguably deconstructing identity at least beyond the degree to which citizens continue to have an allegiance to their fellow citizens and their common institutions will also be undesirable. That is, the arguments against declustering will add support to

what Miller calls a state-to-nation direction of argument (Miller, 1995; p. 82). If we will need states for the foreseeable future, we will also need some of the common identities that sustain them and make their production of public goods viable. How strong that identity need be, what mixtures of ethical and prudential reasoning, considerations of justice and patriotism, are sufficient, what scope for multicultural allegiances, and so forth, are all questions well beyond the present concern, which has sought to address merely whether we require states in the first place. The answer I have suggested may lack the appeal of sounding radical, progressive, poignant, or prophetic. In fact, if it has any merit at all, which of course I do not claim to be certain of, it may be only the quality of being right. But the analysis does point to the conclusion that something like a territorial sovereign state may be the normatively optimal way to organise political and social life, and that at least during the era where illiberal tyrannies continue to rule large parts of the globe, the current plurality of such states, albeit perhaps with stronger alliances between the democracies, may be the most desirable state of affairs.

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NOTES

1. Here is a brief sample. Most of their authors see sovereignty already in decline, and nearly all rejoice in that observation: Neil MacCormick, "Beyond the Sovereign State," *The Modern Law Review*, **56**, no. 1, Jan. 1993; David Elkins, *Beyond Sovereignty: Territory and Political Economy in the Twenty-First Century* (Toronto: University of Toronto Press, 1995); Marvin Soroos, *Beyond Sovereignty: The Challenge of Global Policy* (Columbia, SC: University of South Carolina Press, 1986); Thom Kuehls, *Beyond Sovereign Territory: The Space of Ecopolitics* (Minneapolis, MN: University of Minnesota Press, 1996); Maryann K. Cusimano, *Beyond Sovereignty: Issues for a Global Agenda* (Boston, MA: Bedford/St. Martins, 2000); Joseph A. Camilleri and Jim Falk, *The End of Sovereignty?: The Politics of a Shrinking and Fragmenting World* (Aldershot, U.K.: Edward Elgar, 1992); Harold Hagemann, *Beyond the Nation-State* (Amsterdam, North

Holland: Oxford, 1997); John Hoffman, *Beyond the State: An Introductory Critique* (Cambridge, MA: Polity Press, 1995); David Beetham, *The End of the Nation State?* (The University of Leeds *Review*, 1983); Jean-Marie Guéhenno, *The End of the Nation State?* (Minneapolis, MN: University of Minnesota Press, 1995); Kenichi Ohmae, *The End of the Nation State: The Rise of Regional Economies* (London: Harper/Collins, 1995); Boris Frankel, *Beyond the State? Dominant Theories and Socialist Strategies* (London: Macmillan, 1983); "The End of the Affair?", ch. 5 of Ross Poole, *Nation and Identity* (New York: Routledge, 1999). But see also Anthony D. Smith, "Beyond National Identity?" in *National Identity* (London: Penguin, 1991), who answers the question largely in the negative.

2. The first two are discussed by Elkins (p. 13), who also adds continuity: the non-embeddedness of enclaves within other nations. Continuity is usually implied by contiguity, since if one nation had an enclave within it (rendering it discontinuous), the other nation whose enclave it was would be non-contiguous. The exception is an enclave constituting an entire state.

3. I do not use 'continuity' in the temporal sense, so as not to be confused with the spatial sense (see n. 2, above).

4. For instance, Rawls can be said to invoke it in his justification of the enduring control by peoples of the territories in which they reside (Rawls 1993b). International law arguably builds persistence into its definition of statehood. The Montevideo Convention on Rights and Duties of States (1933) stipulates that a "state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) a government; and (d) a capacity to enter into relations with other states" (quoted in Dixon 1996, p. 100). The first two features combine with the third (giving rise to the fourth) to incorporate the relative permanence of governance over a given territory.

5. Some writers (e.g., Elkins, 1995) use the terms 'bundling' and 'unbundling', but as I have used 'clustering' elsewhere, I continue with it here and its antonym 'declustering'. I use the bulkier term 'identically-bounded', rather than 'congruent' employed by other writers because, strictly speaking, congruent territories need not have identical boundaries—they can be far apart—nor even be the same size. They are congruent if the shape of one could be cut out of the surface of a globe, expanded or contracted as required, then fit perfectly onto the shape of the second.

6. This is suggested, for example, by O'Neill (pp. 72–73) and in another way by Pogge (1992).

7. Ethical cosmopolitanism generally refers to the doctrine that all humans are of equal moral concern for each human moral agent. Doctrines otherwise as diverse as Kant's moral theory and Bentham's utilitarianism are examples of ethical cosmopolitanism. For Kant, each moral agent was obliged to test maxims of action according to their universalizability, while Bentham held *both* that a nation must neither "do more evil to foreign nations taken together . . . than . . . good to itself," *nor* "refuse to render positive services to a foreign nation, when the rendering of them would produce more good to the last mentioned nation, than it would produce evil to itself" (Bentham, 1843, p. 538). Ethical cosmopolitanism need not imply institutional cosmopolitanism (advocacy of global institutions) nor preclude special duties to co-nationals, compatriots, or family members.

8. This is explicitly discussed by Elkins, p. 79ff. Despite my disagreement with most of his conclusions, I am indebted to his discussion in Ch. 3, "Economics and Territory," (Elkins, 1995). See also O'Neill (1994, pp. 72–73), and Pogge (1992).

9. Even Nozick's objections to the principles of fairness (Nozick, 1974, pp. 90–95) do not hold against the formulation here. His example of a public PA system set up without some person's consent (Nozick, 1974, pp. 93–94) relies on the assumption that the person might *not* have preferred the system, along with its obligations, had the entire proposition been put to him.

10. Note that we cannot say; "the higher the level of government, the greater the participation." Participation in elections for the European Union, for instance, continues to be extremely low despite being for a higher level of government. This merely illustrates the point that the critical determinant of the degree of participation is the degree of concentration of power, not the level of government *per se*.

11. Given that the history of the American civil rights movement has been in no small part a struggle against restricted neighbourhoods.

12. That this might sound familiar to visitors to some American cities is no objection to the claim; rather, it underscores how much worse the situation would be if xenophobes and racists could erect barriers by right.

13. "Rights of Secession," *Society*, July–August 1998; "Secession, Law, and Rights," *Human Rights Review* 1:2, 2000; and in a forthcoming book.

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