The Tragedy and Promise of Self-Determination
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ABSTRACT. The principle of self-determination, like Janus, has two faces: negative and positive. Often understood as enabling the fracture of states into national components, the principle is better seen as facilitating the creation of multinational frameworks that foster toleration and human rights.

INTRODUCTION

In a classic essay, A.C. Bradley argues that the essence of tragedy lies in conflict—not between good and evil, as one might expect, but between good and good.[1] The tragic hero is torn between two rightful but opposing demands:

> The family claims what the state refuses, love requires what honour forbids. The competing forces are both in themselves rightful, and so far the claim of each is equally justified; but the right of each is pushed into a wrong, because it ignores the right of the other, and demands that absolute sway which belongs to neither alone, but to the whole of which each is but a part.[2]

Faced with this conflict, the tragic hero identifies wholly with one claim or the other—Antigone single-mindedly fulfills her duty to her dead brother, Romeo pursues his love for Juliet at all costs—and so brings on catastrophe.

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1. A.C. BRADLEY, *Hegel's Theory of Tragedy, in* OXFORD LECTURES ON POETRY 69, 70-75 (2d ed. 1909).

2. *Id.* at 71-72. For a thoughtful application of Bradley's theory to Canadian federalism, see SAMUEL V. LASELVA, THE MORAL FOUNDATIONS OF CANADIAN FEDERALISM: PARADOXES, ACHIEVEMENTS, AND TRAGEDIES OF NATIONHOOD 5-9 (1996).

This, then, is the tragedy of national self-determination, which takes an undoubted good—solidarity with the national group—and elevates it to a position of supremacy, driving out another important good—fellowship with those beyond the cultural and ethnic divide. So doing, it adopts a constricted and impoverishing version of the self, a version that shuns the unfamiliar, the alien, the unsettling, in favor of the familiar, the habitual, the reassuring. But the self may also be understood in a more expansive way, one that transcends barriers of culture, religion, language, and ethnicity, and embraces multiple forms of identity and mutual engagement, recognizing wider forms of community that nurture toleration and human rights.[3] Here lies the "promise" of this Essay's title: self-determination *for* rather than self-determination *from*, positive rather than negative.

Negative self-determination contemplates a severing of broader communal bonds in favor of exclusive ethnic and cultural loyalties, thus advancing one good at the expense of another, as with the tragic hero. Positive self-determination, by contrast, seeks to reconcile and strengthen the multiple bonds that connect us one to the other—individual to individual, group to group, nation to nation, state to state. It furthers this goal by fashioning constitutional frameworks that embrace a variety of national and cultural groups, habituating each to tolerate and respect the other, while inculcating awareness that together they are stronger and more prosperous—indeed, more fully human—than when apart.

This is the argument pursued here. Our starting point is the classic theory of national self-determination, which promotes a negative version of the right and, on scrutiny, turns out to be incomplete, a fragment of a hidden whole. Our search for the missing pieces draws us to positive self-determination, as exemplified by a political process unfolding in East Africa today.

First, a few clarifications. In speaking of self-determination in its most general sense, I mean the power of a group to determine its own international status: whether to remain, become, or cease to be an independent state. This approach assumes that the right of self-determination refers primarily to the right of sovereign states to determine their status freely under international law, as when they maintain their independence, join a federation or merge with another state. Nevertheless, the right of self-determination arguably may also vest in certain substate groups that aspire to full international statehood. It is this branch of the topic that interests me here. I focus particularly on the right of *national* self-

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3.   *See* Jeremy Webber, *The Generosity of Toleration*, *in* RECOGNITION VERSUS SELF-DETERMINA-
      TION 269 (Avigail Eisenberg et al. eds., 2014).

determination, the right of a national group within a state to decide whether or not to secede from that state.[4]

Of course, theories of national self-determination come in many forms. Here, I deal only with the standard theory, which portrays the right as general in nature, one held by all national groups that meet certain basic criteria, rather than as a particular right arising exclusively in special circumstances, such as when a group suffers severe oppression at the hands of a central government.[5] Under the standard theory, the right of national self-determination is unilateral in nature, so it may be exercised without the consent of any other entity, whether an existing state or a substate group. As such, it contrasts with more moderate versions of the right, which are interdependent or mutual rather than unilateral, requiring the participation and consent of other entities whose vital interests are affected. Finally, the theory gives a national group the right to decide whether to gain full independence as a sovereign state in international law, rather than, say, simply the right to gain a measure of internal autonomy or to participate in the creation of institutions of self-government.[6]

The following discussion deals with the right of national determination as a matter of morality and justice, without attempting to determine how far international law recognizes such a right.[7] However, our analysis may also shed some light in this direction.

I. NEGATIVE NATIONAL SELF-DETERMINATION

The classic argument for a right of national self-determination proceeds in three stages.[8] It starts with the proposition that the self-identity and well-being

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4. For theories that justify self-determination on grounds broader than national identity, see, for example, CHRISTOPHER HEATH WELLMAN, A THEORY OF SECESSION: THE CASE FOR POLITICAL SELF-DETERMINATION (2005); and Daniel Philpott, *In Defense of Self-Determination*, 105 ETHICS 352 (1990).

5. For the particular version of the right, see ALLEN BUCHANAN, JUSTICE, LEGITIMACY, AND SELF-DETERMINATION: MORAL FOUNDATIONS FOR INTERNATIONAL LAW (2003).

6. *See, e.g.*, S. JAMES ANAYA, INDIGENOUS PEOPLES IN INTERNATIONAL LAW 75-96 (1996).

7. For an excellent discussion, see JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 97-148 (2d ed. 2007).

8. This account draws in particular on Avishai Margalit & Joseph Raz, *National Self-Determination*, 87 J. PHIL. 439 (1990). For fuller analysis of their arguments, see Brian Slattery, *The Paradoxes of National Self-Determination*, 32 OSGOODE HALL L.J. 703, 716-22 (1994). For other approaches to national self-determination, see, for example, MARGARET MOORE, THE ETHICS OF NATIONALISM (2001); David Miller, *On Nationality*, 2 NATIONS & NATIONALISM 409 (1996); Christopher W. Morris, *The Case for National Self-Determination*, in THE THEORY OF SELF-DETERMINATION 32 (Fernando R. Tesón ed., 2016); Kai Nielsen, *Liberal Nationalism and Secession*, in NATIONAL SELF-DETERMINATION AND SECESSION 103, 110 (Margaret Moore ed., 1998).

of many individuals is grounded in their membership in groups. While voluntary groups such as sports clubs or artistic associations may be enriching and worthwhile, normally they are not fundamental to a person's life. By contrast, membership in certain ethnic, cultural, or religious groups is often central to an individual's sense of self-identity and well-being. These groups are generally distinguished by the fact that they have rich, multifaceted cultures, which are transmitted down the generations and affect many important aspects of people's lives. A group that plays this central role is termed a "national" or "encompassing" group.[9]

The importance of national groups to the lives of their members means that there is a strong link between communal prosperity and individual well-being. Where the group's culture suffers from decay or repression, the options and opportunities available to its members may correspondingly shrink and their dignity and self-respect may be adversely affected. And to lack the ability to participate in a national culture is often to experience serious limitations on one's opportunities and abilities.[10]

This link between individual and communal well-being leads to the second proposition, which maintains that a national group has a strong interest in *self-government*, that is the ability to govern itself as an independent state with its own territories. Self-government permits the group to determine its fortune by its own actions, conducting its affairs in the way it considers most conducive to its prosperity. Group members are generally better positioned than outsiders to judge what is best for the community and to take the initiatives and make the sacrifices needed to ensure the vitality of the common culture.[11]

This reflection leads to the final proposition, which maintains that the potential *value* of self-government for a national group is substantial enough to give the group an exclusive *right* to decide whether the circumstances justifying self-government are present—whether in the particular context the group's territory should form an independent, self-governing state—in effect the *right of self-determination*.[12] This move from the realm of "value" to that of "right" is critical to the argument. Yet there is a significant difference between the two. The value that self-government possesses for a national group does not bind anyone else, no matter how important it may be to the group. By contrast, a right commands the respect of others, obliging them not to impede its exercise. In the

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9.   Margalit & Raz, *supra* note 8, at 442-48.

10. *Id*. at 448-50.

11. *Id*. at 440-41, 450.

12. *Id*. at 456-57.

present case, this duty affects first and foremost the state governing the territory, which is bound to defer to the decision of the national group.[13]

This, then, is the classic argument for a right of national self-determination. It has the virtue of emphasizing the vital role that communally generated attributes play in the lives of individuals. Without a rich legacy of languages, social norms, religious beliefs, artistic and intellectual resources, and styles of wit and play, we would be poor wanderers and babblers indeed. And in order to survive and flourish, national cultures may, at times, need structural support in the form of special legislative and constitutional regimes enacted by the state.

But it is unclear why the *value* of a culture necessarily endows the national group with the *right* to become an independent state, with its own territory and the power to govern all residents, nationals and non-nationals alike. Mere value does not give rise to a right, in particular when the interests of others are at stake. Just because the owners of a condominium townhouse need to expand their dwelling in order to accommodate aging parents does not mean they have the right to appropriate a slice of the communal gardens. The attribution of a right is warranted only where there are sufficient reasons why the other parties affected should respect it.[14] Those parties have interests, values, and rights of their own, which may well outweigh the interests of the claimant.

In effect, the assertion of a general right of national self-determination calls into play at least two sets of competing interests: those held by the national group, and those held by the enfolding state and its citizens, including all those living in the affected territory. To establish a right to self-determination, it is not enough to demonstrate that self-government is potentially valuable for the national group. One must also show that this value substantially outweighs the interests, values, and rights of the enfolding state and its citizens, and that this state of affairs holds true generally and not just in particular instances.

The question is not whether, *in specific circumstances*, the balance of advantage tilts in favor of a certain national group, for it may in some instances, as when the group has been persecuted by the state. The question is whether, *overall*, the balance between the interests of national groups and complex states is so decidedly in favor of national groups as to justify awarding a general right that may be exercised without the participation and consent of others affected. In effect, the classic argument for recognizing a general right of self-determination considers only one side of the matter. It is radically incomplete.

Some advocates of the right acknowledge the drawbacks of such a one-sided approach but argue there is no alternative to granting national groups what

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13. *Id.* at 460.

14. I discuss this point more fully in *Rights, Communities, and Tradition*, 41 U. Toronto L.J. 447, 453-57 (1991).

amounts to a right of self-adjudication. They point out that binding international machinery is not available to decide the merits of particular cases where national groups seek independence, and such groups are normally in the best position to determine how strong their need for independent statehood is.[15] However, this argument is not persuasive. Most international disputes are not amenable to resolution by effective adjudication. Yet this fact does not justify a rule that automatically awards a right of self-adjudication to one class of disputant as against another—smaller states as against larger states, for example, or the reverse. The absence of adequate international tribunals only leaves the matter to be resolved by negotiation or political pressure, which may or may not yield a satisfactory solution.

The whole argument rests on the proposition that, where there is a dispute between two types of parties, X and Y, and no binding mechanism for adjudicating the dispute exists, X should always be given the right of self-adjudication— *a right that is binding on Y*—because X is best able to judge the merits of its own case. But this analysis is faulty, because Y is just as well-qualified to assess the merits of *its* own case. The argument for awarding a right of self-adjudication is equally strong in both instances, or rather equally weak. Neither solution satisfies the basic requirement that, for a value to yield a binding right, sufficient reasons must be given to show why other affected parties should respect it.

In sum, there is no reason to systematically prefer the interests of national groups over those of enfolding states, unless it can be shown that such groups are essentially more valuable or worthy of concern and respect than multinational entities. But that case is hard to make out, and it is not one that most advocates of national self-determination even attempt. To the contrary, all things being equal, multinational states and federations provide the better hope for the future—in particular for the nurturing of inter-communal toleration and practical respect for human rights. A case-study drawn from contemporary East Africa may help illustrate the point.

II. POSITIVE SELF-DETERMINATION

In 1961, the country of Tanganyika achieved independence under the guidance of Julius Kambarage Nyerere. Formerly a United Nations trust territory ruled by Britain, Tanganyika came to statehood on the crest of the post-war wave of decolonization that swept away the old European empires. By most accounts, Tanganyika's independence was a classic case of self-determination. Yet the country was a far cry from a homogenous nation-state. It comprised some 120 ethno-cultural groups and at least as many languages, with a remarkable

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15.   Margalit & Raz, *supra* note 8, at 457-58.

diversity of cultures, religious beliefs, customary laws, and ways of life.[16] Tanganyika was hardly unique in this respect. Most post-colonial states in Africa and Asia encompass a variety of national groups, differing in ethnicity, culture, language, religion, and history.[17] Far from being examples of *national* self-determination, these countries represent instances of *multinational* self-determination.

Julius Nyerere perceived that his first and most important task was to build a strong sense of Tanganyikan identity, one that would predominate over local loyalties without necessarily erasing them. To fulfill this goal, he harnessed the force of the concept of *ujamaa*, a Swahili neologism connoting familyhood, social solidarity, and mutual obligation.[18] He also promoted Swahili as a national language, dismantled the old colonial chiefdoms, improved access to education and social services throughout the country, recruited politicians and civil servants from a broad variety of ethnic and religious backgrounds, inaugurated a one-party political system, and campaigned tirelessly for the suppression of tribalism and racialism.[19] More troublingly, perhaps, he used powers of preventive detention to silence people who, in his view, threatened national unity.[20]

Nyerere also believed that the task of building solidarity did not end at Tanganyika's borders.[21] Like his contemporary, President Kwame Nkrumah of Ghana, he held that Africa would remain economically and politically fragile, open to outside manipulation and domination, unless it moved toward greater political and economic integration in the form of a United States of Africa, or at least regional federations as stepping-stones to broader unity.[22] Thus, in 1963, Nyerere strongly supported the foundation of the Organization of African Unity (OAU), whose Charter affirmed that all African States should unite "so that the

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16. Indeed, some estimates put the number of ethnic groups as high as 150; for further discussion, see Carl Sebastian Laurentius Gahnström, Ethnicity, Religion and Politics in Tanzania: The 2010 General Elections and Mwanza Region 38 (May 2012) (unpublished Master's thesis, University of Helsinki), https://helda.helsinki.fi/handle/10138/34058 [https://perma.cc/2C6Q-VRGK].

17. David Welsh, *Domestic Politics and Ethnic Conflict*, 35 SURVIVAL 63, 64 (1993).

18. For the origins and meaning of the term, see PAUL BJERK, BUILDING A PEACEFUL NATION: JULIUS NYERERE AND THE ESTABLISHMENT OF SOVEREIGNTY IN TANZANIA, 1960-1964, at 97-108 (2015).

19. *See generally id.*; CRANFORD PRATT, THE CRITICAL PHASE IN TANZANIA 1945-1968: NYERERE AND THE EMERGENCE OF A SOCIALIST STRATEGY (1976).

20. For further discussion, see BJERK, *supra* note 18, at 83-96; and PRATT, *supra*, note 19, at 184-89.

21. Nyerere elaborated this view in considerable detail. *See, e.g.*, JULIUS K. NYERERE, FREEDOM AND UNITY: UHURU NA UMOJA: A SELECTION FROM WRITINGS AND SPEECHES 1952-65, at 85-98, 152-53, 170-71, 188-94, 212-17, 266-85, 291-97, 300-04, 334-50 (1966).

22. On the broader context of the movement for African unity, see ADOM GETACHEW, WORLDMAKING AFTER EMPIRE: THE RISE AND FALL OF SELF-DETERMINATION (2019).

welfare and well-being of their peoples can be assured," expressing the aspirations of African peoples "for brother-hood and solidarity, in a larger unity transcending ethnic and national differences."[23]

To Julius Nyerere, Tanganyikan independence represented not a final destination but a way station in a historic movement toward greater human solidarity. This movement would be furthered internally by the process of nation-building, the creation of a strong sense of common identity; and externally by constructing broader frameworks for cooperation and mutual obligation—what we have called positive self-determination. As Nyerere wrote in an influential essay on *ujamaa*:

> It was in the struggle to break the grip of colonialism that we learnt the need for unity. We came to recognize that the same socialist attitude of mind which, in the tribal days, gave to every individual the security that comes of belonging to a widely extended family, must be preserved within the still wider society of the nation. But we should not stop there. Our recognition of the family to which we all belong must be extended yet further—beyond the tribe, the community, the nation, or even the continent—to embrace the whole society of mankind.[24]

For Nyerere, socialism was grounded in a fundamental moral principle: the need to care for one another.[25] This principle animated much of his philosophy, which he characterized as African socialism, distinct from what he viewed as doctrinaire European socialism, with its emphasis on class warfare and the inevitable conflict between people.[26]

Nyerere also identified more pragmatic reasons for African unity. The people of the continent, he argued, needed to be in a position to determine their own destiny. Mere technical freedom, such as many African nations enjoyed, was not enough. Genuine political strength was necessary to ward off domination by outside powers. By the same token, it was vital for Africa to gain a modern economy, which was the only way to escape from poverty. Yet, he observed ruefully, at present "none of these things are true, or likely to become true."[27] Africa was

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23. Org. of African Unity [OAU] Charter preamble.

24. NYERERE, *supra* note 21, at 171.

25. *Id*. at 162. For further discussion of Nyerere's philosophy of *ujamaa*, see Bonny Ibhawoh & J.I. Dibua, *Deconstructing Ujamaa: The Legacy of Julius Nyerere in the Quest for Social and Economic Development in Africa*, 8 AFR. J. POL. SCI. 59 (2003); Ogenga Otunnu, *Mwalimu Julius Kambarage Nyerere's Philosophy, Contribution, and Legacies*, 13 AFR. IDENTITIES 18 (2015); Viktoria Stöger-Eising, Ujamaa *Revisited: Indigenous and European Influences in Nyerere's Social and Political Thought*, 70 AFRICA 118 (2000).

26. NYERERE, *supra* note 21, at 170.

27. *Id*. at 336.

composed of a collection of independent states, each one of which was subject to enormous external pressures, while remaining so weak in isolation that they competed with one another for the favors of the wealthy.[28]

African unity was therefore essential to prevent political exploitation by those outside Africa and to avoid internecine competition for external economic benefits. Africa had to be able to police itself effectively and defend itself against aggression. It needed to create a common currency and a common market, tearing down customs and tariff walls along a hundred frontiers. "These things require that in relation to the outside world the separate national states of Africa must cease to exist. They must be replaced by Africa."[29] But this did not necessarily mean a unitary state. Rather, it could be a federal state, with a division of powers between the center and the constituent parts.[30]

Regrettably, after the creation of the OAU, the movement toward African unity faltered.[31] Likewise, plans for an East African Federation did not progress beyond the unification of Tanganyika and Zanzibar in 1964, which gave birth to the state of Tanzania. Even the East African Community, a customs and services union that had existed in one form or another since early colonial days, collapsed in 1977 due to internal conflict.[32] Nevertheless, Nyerere's domestic policies gave rise to a modern state that possesses one of the strongest senses of national identity in Africa, while remaining one of the continent's most diverse countries. Surveys reveal that over seventy-eight percent of citizens identify themselves primarily as Tanzanian rather than as members of ethnic groups, and a similar percentage express significant levels of trust in their fellow citizens.[33]

The world today has similarities with the Tanganyika of 1961, divided as it is into some 195 states, with a profusion of cultures, languages, ethnic

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28. *Id.*

29. *Id.* at 338.

30. *Id.* at 343.

31. For an account of the OAU and its successor organization, the African Union, launched in 2002, see SAMUEL M. MAKINDA ET AL., THE AFRICAN UNION: ADDRESSING THE CHALLENGES OF PEACE, SECURITY, AND GOVERNANCE (2d ed. 2016).

32. RICHARD E. MSHOMBA, ECONOMIC INTEGRATION IN AFRICA: THE EAST AFRICAN COMMUNITY IN COMPARATIVE PERSPECTIVE 34-73 (2017).

33. Gahnström, *supra* note 16, at 42-45. In Gahnström's 2008 survey that tested the relative importance of national and ethnic identity, 69% of respondents said they felt exclusively Tanzanian, 9% felt more Tanzanian than ethnic, 13% felt both equally, 4% felt more ethnic, and only a total of 3% felt exclusively ethnic. *Id.* at 43. In the same survey, 76% of respondents said they trusted other Tanzanians somewhat or a lot. *Id. See also* Edward Miguel, *Tribe or Nation? Nation Building and Public Goods in Kenya Versus Tanzania*, 56 WORLD POL. 327 (2004) (suggesting, in an empirical study, that nation-building policies in Tanzania have led to better collective-action outcomes than in neighboring Kenya).

backgrounds, and religions.[34] A great majority of world states—by some estimates more than eighty percent—are either multinational or possess significant national minorities.[35] Under the negative theory of national self-determination, many of these substate groups would be entitled to opt unilaterally for secession, so that most world states would be vulnerable to fragmentation or dismemberment, and the fragments themselves would be open to the same threat.[36] It is hard to see how the cause of human welfare and human rights is well served by a theory that enables large-scale splintering along ethnic and religious lines, with a concomitant escalation of mistrust and conflict.

In a world of serious periodic disorder, stable boundaries and governmental structures often carry substantial benefits for citizens, as frameworks within which they may lead their lives in relative peace and security. Yet the negative theory of national self-determination assigns little value to the relative order and stability represented by existing state structures. The point is not just theoretical. Given what history and contemporary events tell us about the potential for intercommunal conflict, any principle that permits ethnic, cultural, and religious groups to attempt the restructuring of existing states by unilateral fiat often leads to extensive turmoil, as various national groups struggle with state governments and one another to achieve the most advantageous position.[37] More generally, in its concern to further the welfare of national groups, the negative theory of national self-determination does not allow for a finer-grained analysis that takes account of the multiple allegiances, commitments, and responsibilities that most individuals possess.

Far from encouraging the growth of expansive and multilayered communal bonds, the theory tends to promote a telescoping of communal horizons and a narrowing of shared allegiances, actually hardening the often blurry and malleable lines that distinguish people on an ethnic and cultural basis. In effect, the theory fails to give sufficient weight to the wide range of overlapping communities that ordinarily have claims on our loyalties: the family, the kin-group, the

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34. This figure is based on the current membership of the United Nations plus two observer states. *Growth in United Nations Membership, 1945—Present*, UNITED NATIONS, https://www.un.org/en/sections/member-states/growth-united-nations-membership-1945-present/index.html [https://perma.cc/QD35-Q9JQ]; *Non-Member States*, UNITED NATIONS, https://www.un.org/en/sections/member-states/non-member-states/index.html [https://perma.cc/J8YA-59LL].

35. Welsh, *supra* note 17, at 65.

36. *See generally* John McGarry, *'Orphans of Secession': National Pluralism in Secessionist Regions and Post-Secession States*, *in* NATIONAL SELF-DETERMINATION AND SECESSION 215 (Margaret Moore ed., 1998).

37. For further discussion, see *id.*; and Donald L. Horowitz, *Self-Determination: Politics, Philosophy, and Law*, *in* NATIONAL SELF-DETERMINATION AND SECESSION 181 (Margaret Moore ed., 1998).

neighborhood, the school, the church, mosque, or temple, the workplace, the sports club, the ethnic community, the town, the province, the state, and the universal community of humanity as a whole. In considering the multiplicity of these allegiances and the varying importance they may have for individual self-identity and well-being, it seems doubtful whether the claims of any single national group should be privileged to the extent suggested. In the end, the theory attaches limited value to multiple senses of allegiance and belonging, ignoring the fact that, for many people, it is the very multiplicity of these allegiances that makes up their identity.[38]

When Julius Nyerere stepped down as President of Tanzania in 1985, his hopes for a federal union with other East African countries remained unrealized. Yet the story does not end there. Within fifteen years, Kenya, Tanzania, and Uganda signed a treaty reviving the defunct East African Community.[39] Echoing Nyerere's ideals, the Treaty affirms that greater cooperation "will raise the standards of living of African peoples, maintain and enhance the economic stability, foster close and peaceful relations among African states and accelerate the successive stages in the realisation of the proposed African Economic Community and Political Union."[40] In 2005, a full-fledged customs union took force among the partner states, and five years later a protocol for establishing a common market became operational.[41]

The membership of the Community has also expanded. In 2007, Rwanda and Burundi joined the organization, and in 2016 South Sudan became the sixth member.[42] The combined population of the Community now totals 177 million people, comprising a land area of 2.5 million square kilometers and over two hundred ethnic groups, languages, and cultures.[43] Very recently, the Democratic

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38. For more on this point, see Brian Slattery, *Our Mongrel Selves: Pluralism, Identity and the Nation*, in COMMUNITY OF RIGHTS: RIGHTS OF COMMUNITY 85-120 (Ysolde Gendreau ed., 2003). On the multiplicity and fluidity of identities, see KWAME ANTHONY APPIAH, THE LIES THAT BIND: RETHINKING IDENTITY 69-104 (2018); and RORY STEWART, THE MARCHES: A BORDERLAND JOURNEY BETWEEN ENGLAND AND SCOTLAND (2016).

39. Treaty for the Establishment of the East African Community, Nov. 30, 1999, East African Community (2002).

40. *Id*. preamble.

41. For a detailed discussion, see MSHOMBA, *supra* note 32, at 74-121.

42. *Overview of EAC*, E. AFR. CMTY., https://www.eac.int/overview-of-eac [https://perma.cc/A592-8GJ5].

43. *Id.*; *see also East African Community Vision 2050: Regional Vision for Socio-Economic Transformation and Development*, E. AFR. CMTY. 17 (2015), http://repository.eac.int/bitstream/handle/11671/567/EAC%20Vision%202050%20FINAL%20DRAFT%20OCT-%202015.pdf [https://perma.cc/6C9G-BMEJ]. For varying appraisals of the Community, see ARTHUR BAINOMUGISHA & SABASTIANO RWENGABO, THE PROMISE AND EFFICACY OF THE EAST AFRICAN COMMUNITY (2016); Davor Jancic, *Regional Parliaments and African Economic Integration*, 30 EUR. J.

Republic of the Congo applied to join the Community, which would extend the union across a broad swath of Africa, from the east coast to the west.[44]

On the political level, plans for an East African Federation have also been moving ahead. In 2017, the heads of the partner states identified confederation as a transitional stage on the road to political federation, and the following year a committee of experts was charged with the job of drafting a regional constitution, with a target date of 2023. Significant obstacles remain, such that one commentator has been moved to invoke the Swahili proverb: *haraka, haraka, haina baraka*—hurry, hurry has no blessing.[45] In the long run, nevertheless, Julius Nyerere's hopes for greater African unity may yet be realized.[46]

CONCLUSION

What lessons may be drawn from these ongoing efforts in East Africa? There is much to be said on this score—taking us far beyond the present Essay. But one lesson stands out. The negative theory of national self-determination misconstrues the task that lies ahead of us, which is the construction of broader frameworks for human interaction—frameworks that strengthen mutual respect and sense of obligation, building greater community and solidarity. Such frameworks are the essential basis for the advancement of human well-being and human rights. In their absence, poverty, social conflict, and outright war will continue to be the scourge of humanity, undermining basic rights and destroying the conditions essential for individual and group flourishing.

Not only does the negative theory of national self-determination misunderstand what needs to be done, it has the effect of hindering efforts to achieve that goal. In tacitly encouraging and enabling political fragmentation, it undermines the basic normative structures needed to serve the broader cause of human welfare and rights—paradoxically the very goods it aims to promote. These goods are better secured through the creation of multinational frameworks that stimulate different ethnic and cultural groups to interact and work for common goals—in effect, through positive self-determination

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INT'L L. 199 (2019); L.O. Wauna Oluoch, *Legitimacy of the East African Community*, 53 J. AFR. L. 194 (2009); Julius Hemingway, The East African Union: Regional Integration in the East African Community (Jan. 10, 2018) (unpublished Master's thesis, Leiden University), https://openaccess.leidenuniv.nl [https://perma.cc/99WP-5UEZ].

44. Aggrey Mutambo, *DR Congo Applies for Admission to East Africa Community*, E. AFR. (June 14, 2019), https://www.theeastafrican.co.ke/news/ea/DR-Congo-seeks-to-join--East-African -Community/4552908-5157244-rldjtsz/index.html [https://perma.cc/H8BB-XCWH].

45. MSHOMBA, *supra* note 32, at 184.

46. *See id.* at 157-205 for a balanced appraisal.

The world is not a static place, divided forever into "us" and "them." As Julius Nyerere emphasized, there is a pressing need for humans to broaden their sympathies and moral horizons. Yet a culture of toleration does not spring into existence unaided. It requires a midwife—in the guise of legal norms. The future of humanity depends on constitutional structures that show the other is also us.

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