Heteronomy as the challenge to nation:
a critique of collective and of individual rights[1]

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Introduction

Nation continues to be an embarrassment for the cosmopolitan commentator, whether legally inclined or not. As one manifestation of globalisation's other the nation refuses to accept its proper place in the progress of world history, as a transient reaction to empire. Like social democracy in Marxism, the epoch of nations was expected to dissolve itself, under the impulse of history, to make way for a higher level of political consciousness: if only the pragmatic regionalism represented by the European Community. Instead the spectre lingers, haunting Europe in particular but elsewhere in general, and threatening to be 'always with us' even after the poor have been successfully assimilated or dispersed.

The aim of this paper is to investigate one of the less overt ways in which nation maintains its presence. This relates to the issue of collective rights (Anaya 1996, Lerner 2003, Steiner & Alston 2000) exemplified by self-determination. It will be argued that self-determination partakes of the concept of nation in ways that may be covert but are nonetheless significant. Collective rights will be typified by the rights attributed to nations or to 'peoples'. Self-determination of peoples is enshrined in United Nations discourse and practice and is interrelated with the criteria for secession that have evolved in international law.

Contemporary conflicts in Chechnya, in Aceh, in Sri Lanka and in Israel-Palestine (among many others) are articulated in terms of the rights of certain kinds of collectives for autonomy. Advancing criticism of the basis for the claims to collective autonomy in situations such as these, is inevitably delicate. No less delicate are the issues of collective rights that concern indigenous peoples in the post-colony, such as Australia, Aotearoa-New Zealand, or Canada.

The article therefore begins by expanding on the assertions made above, and continues by indicating some relevant dimensions of the debate between autonomy and heteronomy from Kant to Derrida. Rather than a strictly chronological account, and certainly not a comprehensive one, the attempt is made to point up some of the ways that the debate has informed issues of rights, citizenship, individual identity and the self. Following this discussion, attention is focused on implications for our understanding of collective rights and of the nation. To anticipate, it is unlikely that an adequate articulation of otherness in relation to law and human rights, and in relation to the nation, will be achieved by a mere compilation of the diverse ways in which 'otherness' has come to be employed in contemporary social science and humanities discourse. One aim of the proposed paper is to make progress toward a somewhat more rigorous analysis of heteronomy in relation to legal status — while recognising that rigour itself has its others.

Identity and collective rights

It is commonplace for the notion of collective rights to be subjected to criticism from an individualist perspective. Liberal theory, including its recent neo-liberal manifestations, as well as legal positivism, rules out such impostors. It has also become commonplace for the notion of individual rights to be criticised from a communitarian or otherwise collectivist perspective. But the difficulty with collective rights is not that they are not individual rights (as held by positivist critics), any more than the difficulty with individual rights is that they are not collective rights (as held by communitarian critics). One aim of this

article is thus to contribute to the critical scrutiny of both collective and individual rights but without falling into the trap of presupposing either one in order to critique the other.

Instead both collective and individual rights may be identified as committed to *autonomy* and in contrast it is urged that we begin to think in terms of *heteronomy*. Collective rights, that is to say, are centred on a kind of autonomy (Dahbour 2003: 18) — an autonomy of an expanded self (family, neighbourhood, tribe, nation, gender). But an autonomy of the 'we' is at least as problematic as is the more familiar autonomy of the 'I'. Personal identity, whatever its chosen basis, brings together collective and individual domains, and the critiques of identity carried out in recent decades — by feminist, queer, and postcolonial theory for example — render it difficult to read identity as other than culturally specific and historically contingent (Sieg 2002: 257). Without suggesting that the 'choosing' is a voluntary and unconstrained act, identity must be thought of as a career or (and) as a performance rather than as an expression of some authentic personal characteristic. Therefore the assumptions about identity that underlie the notion of self-determination need to be problematised, for self-determination as a form of political legitimacy would seem to presuppose an authenticity of shared identity among its aspiring claimants. To put it in more concrete terms, it becomes problematic and complex, rather than merely arrogant and colonialist, that a 'hobbyist' white German who spends his weekends dressing up as a North American Native ('Indian') should challenge the tribal knowledge of a 'real' Blackfoot from North America, and accuse the latter of racism when told that 'no white man would tell him what his own history was' (Sieg 2002: 131).

As noted above, indigenous rights are a 'delicate' matter; this term is not intended to be euphemistic. It is a delicate matter indeed (either as impersonator-hobbyist or as academic) to respect collective cultural practices and knowledges, in a post-colonial context, while at the same time problematising the notion of biological authenticity. 'Political correctness' at times appears a less uncomfortable strategy, yet to exclude indigenous people from the scope of a general analysis (of the

production of identity) risks re-creating the situation by which 'civilised' and 'uncivilised' peoples were in earlier centuries separated out prior to any further conceptual scrutiny. Doubtless, the comfort levels of white academics are improved when non-white or otherwise non-privileged academics contribute to the debate, thus apparently providing legitimacy for its terms; yet such 'subaltern' contributions may always be re-read as subtle traces of the colonial or of the assimilative (Spivak 1999). One of the challenges of 'globalisation' is to be inclusive in relation to the scope of analysis while avoiding the tendency to flatten out political diversities. Sieg indicates the possibility of meeting the challenge:

> Global capitalism … thrives on the ever more rapid transformation of ethnic, cultural, sexual and other differences into sexy, exotic commodities available to a small class of consumers, while subjecting the population that produced this currency to its expanding regimes of austerity and deprivation (Sieg 2002: 259).

If the notion of the production of identity, and of its performance, is applied in a rigorous and perhaps courageous manner to the identities that might be thought to underlie 'self-determination' as well as to the 'safer' identity choices of the urban middle-class, then 'race emerges not as a property of particular bodies, but as the spectatorial activity of decoding (and thereby producing) difference' (Sieg 2002: 257). Sieg's interest in theatrical performance, and in dramatic traditions such as that of Brecht, informs her account at this point. Generally, the 'self' of 'self-determination' comes to be contested, even if this contestation proves troublesome. What perhaps emerges most clearly is that this 'self' is political rather than natural. The question thus emerges as to how self-determination, and other rights-claims pertaining to 'peoples', may be re-configured without merely reducing (and in many ways thereby emptying) those claims by individualising them. This challenge suggests that the dichotomy of autonomy–heteronomy should be scrutinised.

Autonomy and its discontents

A genealogy of the duality of autonomy and heteronomy would usefully begin with Kant's treatment of ethics, especially since Kant continues to play a role in contemporary debate on cosmopolitanism (Derrida 2001a: 21). Kant argued that in order to be consistent with individual freedom and responsibility, ethical judgment and action must of necessity be grounded in the subject's awareness of itself as legislator (Korner 1955: 150). That is to say, ethical conduct depends on an acceptance of one's own decision-making role as contrasted with a denial of that role. This is a corollary of the categorical imperative, which demands that any action I take must be such that I would will that action to be taken universally. For Kant there is no valid escape route from personal responsibility — I must 'own' my actions and judgments. To do otherwise would be to attribute responsibility (or cause) to some external agency or system, such as the environment, my educational experiences, the legal system, my biological needs or my mere moral preferences. These false theories of responsibility are for Kant examples of heteronomy. In the terminology of the much later existentialists, heteronomy might be thought of as Kant's version of 'bad faith' or perhaps of Nietzschean 'resentment'.

Kantian autonomy is far from mere 'individualism' as now understood, and indeed the rational egotist is Kant's intellectual opponent. Kant's problematic is how to answer the rational egotist's question 'why should I be moral?' (Rorty 1999: 80) and the directive concerning not treating other rational beings as mere means, but always as ends, underlines this point (notwithstanding practical difficulties, Rorty 1999: 74). Like the proposals of the existentialists however — and irrespective of the greater degree of rigour in Kant's formulation — the Kantian sense of heteronomy might be said to undervalue the role of other persons. As Rorty comments, Kant 'wanted to make knowledge of a core self do what can be done only by the continual refreshment and re-creation of the self, through interaction with selves as unlike itself as possible' (79).

If Kant may loosely be said to have privileged autonomy over heteronomy, certainly there are numerous derivative traditions for which this privileging is straightforwardly (if not precisely) the case. Accounts of individual development within psychology in the 20th century such as those of Piaget and Kohlberg expressly privileged a quasi-Kantian autonomous subject as representing the mature form of individual rationality (Morss 1996: 64). Both Piaget and Kohlberg postulated stage-like universal sequences of thinking, including moral thinking (and of course extending much more widely than moral thinking in the case of Piaget's theory). Both were influential on the thinking of Jürgen Habermas. For both Piaget and Kohlberg, early (immature, childish) stages of moral development are characterised by a reliance on the views of others, with a child's dependence on the will of parents representing the paradigm case. Kohlberg also stressed, in a manner more closely Kantian than Piaget's, that reliance on the moral decisions and expectations of one's community is immature.

Kohlberg notoriously consigned to the immature levels an empathic, collective approach to ethics that his colleague Carol Gilligan was later to argue typifies a distinct but not inferior form of ethics (1982). Thus for those social practices influenced by or represented by orthodox developmental psychology, heteronomy was seen as a primitive form of thinking and of acting, needing to be displaced in the growing individual by autonomy in order that maturity might be attained. As pointed out by Gilligan and other feminist critics, this version of the privileging of autonomy would seem to be a general and a generally unsatisfactory feature of contemporary western cultures (at least). For example, liberal theory emphasises the need for children to acquire autonomy through an educative process (Yuracko 2000: 487). Autonomy in the sense of independence might be seen as a value at odds with the attitude of nurturance or of ecological connectedness arguably more desirable in the contemporary citizen.

It should be stressed that this contemporary debate has left its Kantian origins (which are of course only one part of its intellectual sources) far behind. The autonomy of which Gilligan offers a critique is not a full-blooded Kantian autonomy, and the positive alternatives

advocated by Gilligan do not depend for their legitimacy on any Kantian framework of alternatives to autonomy. The feminist alternatives take their bearings by questioning the role of principle and rationality as the basis for ethics, which takes them (quite deliberately) well beyond Kant's radar screen. Nevertheless it may be remarked that the questioning of autonomy might have given rise to at least the consideration that heteronomy (in some sense) might offer some conceptual possibilities.

Two further, relevant versions of autonomy may be briefly mentioned: those of Castoriadis and of Habermas. Within political theory, post-Marxist Cornelius Castoriadis has discussed autonomy as both an individual and as a collective feature of human experience (1987, 1997). Castoriadis identifies (collective) autonomy with rational debate in the societal setting and has defined progress towards (societal) autonomy as liberation (Breckman 2004: 152, 167). Castoriadis claims to be using the notion of autonomy very differently from Kant, and of course Kant would not have treated any kind of social democracy as somehow solving the problem of heteronomy. Yet Castoriadis accepts Kant's broad picture of autonomy being desirable, and heteronomy undesirable, and for some of the same reasons. Thus for Castoriadis, democracy is 'that form of social life that renounces extra-social support from gods or transcendent ideas and accepts its own responsibility and historical risk' (Breckman 2004: 153). Democracy is therefore 'tragic' and 'the project of autonomy' is unending.

For the quasi-Kantian Castoriadis, autonomy still relates to *will*, either individual or collective. Here Castoriadis parts company with Habermas with whom otherwise he shares some viewpoints. Habermas' greater sensitivity to (non-Marxist) social theory relegates will in favour of the social norm, however generated. For Habermas a Kantian version of autonomy corresponds to a tradition in which a moral dimension of political life is prioritised. In this tradition (also shared by Rousseau), the private autonomy of citizens is set above their political autonomy. In an alternative tradition, according to Habermas' analysis, citizens' private autonomy is subordinated to their political (collective) autonomy, hence stressing self-realisation and what Habermas

terms the ethical dimension. Habermas takes the application of the notion of autonomy well beyond Kant and yet like others before him, shares in Kant's trepidation concerning the heteronomous. Habermas' focus on collaboration in speech communities (if only as an ideal) seems to militate against any serious consideration of 'the other'. Yet as Breckman comments,

> There seems to be a crisis in the very value of autonomy itself, exposed but not caused by the collapse of the metanarratives of emancipation that have animated two centuries of democratic struggle (2004: 166–7).

Heteronomy and othernesses

Autonomy is not synonymous with individualism or with a centredness on the self, and neither is heteronomy synonymous with a symmetrical centredness on the 'other'. But 'other' connects up with heteronomy in various ways and the term offers a signal that autonomy is being problematised if only by implication. Thus the notion of 'otherness' has been employed in the contemporary context of human rights and the law, by Jenni Millbank (2002) and by Don McMaster (2001: 3). McMaster's use of the term 'significant other' adds (pre-Lacanian) object-relations psychoanalysis to the theoretical mix. The observations of Arrigo on 'therapeutic jurisprudence' are also apposite here. Therapeutic jurisprudence, for Arrigo, treats the population as a homogenous whole — producing stabilising, unifying, totalising categories of sense-making 'that dismiss uncertainty, heterogeneity, diversity, and otherness': further, 'its normativity promotes a logic of identity ... [and] denies individual and group difference' (2004: 25).

The trope of 'other' in social science and in the humanities derives from a variety of sources. Major contributors in the 20th century, relevant to the present discussion, include in particular Lacan and Levinas. The founding contribution in modern centuries is undoubtedly that of Hegel whose discussions of negativity continue to inform (and to confront) contemporary writers such as Derrida and the post-Lacanian cultural theorist Slavoj Zizek (Parker 2004). From Hegel, the phenomenological tradition in philosophy maintained a preoccupation

with otherness. 'Other' also plays a role in postmodernist writings; thus for Lyotard, the 'postmodern affliction' (of contemporary society) is constituted by a 'foreclosure of the Other', a false reduction of the abject or sacred to transparent meanings; the 'effort of translation [of the strangeness of the other] must be endlessly renewed' (Lyotard 1999: 187).

Possible approaches to an articulation of heteronomy may thus be sought in the writings of Lacan, of Levinas and of Derrida (among others). Some extended attempts have been made within legal writings on human rights, especially by Costas Douzinas (2000a, 2000b, 2002, Douzinas et al 1994) to appropriate the contributions of Lacan and Levinas. Thus for Douzinas,

> rights ... [give] formal shape to people's desire for recognition by the Other: both the other person and the big Other, the law, language, the power structures and institutions, in a word, the symbolic order of the polity (2000b: 312).

Douzinas' version of other-speak relies heavily (in terms of vocabulary at least) on Jacques Lacan's psychoanalytic formulation of 'Other', a formulation which has been of considerable influence within the humanities and social sciences. Lacan's idiosyncratic version of psychoanalysis was portrayed by himself provocatively as a return to Freud after decades of distortion of Freud's claims in France and elsewhere. Lacan's intellectual influences included surrealism, structuralist linguistics and topology.

Lacan outlined a developmental process by which the speaking subject comes to accept its subordinate place within impersonal systems of meaning (Morss 1996: 105). He rejected the view that an autonomous self confronts such external systems, either during or even at the end of the process. Lacan argued that to the contrary, the self is constituted by those very systems. Lacan thus postulated a series of developmental phases in the child's experience of the self and of others. According to Lacan (in his more prescriptive moments), the child moves onwards from an earlier 'imaginary' basis to a later 'symbolic' basis for its experience.

In the 'mirror stage' of early childhood, before fully entering language as a participant, the 'imaginary' self is built on self-deception. In the imaginary, one's sense of self has at best the fragile kind of coherence of an image seen in a mirror or constructed from the reactions of significant caregivers. The coherence is fragile in that to place trust in such transient and perceptual effects, whether physical or intersubjective, is to be immensely vulnerable. Even so, the indirect, reflected image seems superior in its wholeness to the clumsy and uncoordinated bundle of affects and movements of one's own body of which one has some direct experience — as superior as master to slave, Prospero to Caliban.

The imaginary self is thus in some sense the prototype of an ideal self, possessing a coherence and an appearance of autonomy to which one may aspire but which one can never attain. But the Lacanian imaginary is unstable, an impossible, infantile dream. Entering the next, 'symbolic' realm involves submission to a non-negotiable, external system or frame of reference. This process is therefore characterised by subordination or an admission of defeat, a capitulation as in Freud's Oedipus complex (of which it is Lacan's version).

It is in the symbolic phase that Lacan discerns the major nexus of the self and the Law. The alien realm to which the subject submits is language, thought of as an external structure, and at the same time is Law. Through this process of submission — a secondary submission given the self-abasement associated with the mirror stage — the subject is constituted. That is to say, the subject does not exist prior to its series of submissions. For Lacan the user of language — the self that can enunciate, can refer to itself as 'I' — is a subject that submits. The Lacanian subject is a plaintiff, speaking (and being heard) only by means of presenting itself to some external system — High Court of Australia or Judge Judy, it is hard to tell. In either event, outside of the court it is no more than a loose collection of transient fragments of a self, inarticulate trailer trash. Lacan's was undoubtedly a serious if at times a flamboyant attempt to map out a non-autonomous form of subjectivity. However the encounter of Lacan and (for example) feminist theory suggests that the psychoanalytic baggage brought by the former

overwhelms the radical projects of the latter. Lacan redefines the ego, and presents a version that is fragmented, mediated and elusive, yet Lacan's accounts of the other remain conceptually defined by the position of that ego. It was Levinas who, rejecting psychoanalysis (Morss 2003: 893), was able to bring the other to centre stage.

Emmanuel Levinas, a theologian as well as a philosopher, constructed a philosophy on the basis of obligations toward the other (1987a, 1987b, 1998: 103). His aim was to articulate the radical difference from oneself that he believed to be manifested by the other. For Levinas the presence of the other is the sole basis for ethical action and for knowledge of the world. For example he argued that the concept of time could not arise in a solitary subject, but only in a subject faced with an other.

> There can be no pre-given universality that would allow for phenomenological symmetry in which the I understands the Other through a set of common properties (Cornell 1992: 87–8).

Levinas thus focused on the ways in which another person must be at one and the same time recognised as different to oneself and yet as deserving of one's care. The combination is challenging, for the acceptance of responsibility for another person is more usually seen as depending on a recognition of that other person as being similar to oneself — as it were to see the underlying humanity in a person of a very different culture to oneself. For Levinas, ethical responsibility does not depend on kinship with the other but arises from the otherness of the other person. Its basis is the very absence of communality. Likewise, reciprocity plays no part in Levinas' scheme whereas in more orthodox accounts, reciprocity is a significant basis for ethical action. Even if reciprocity does not involve a contractual relationship, in which case one's actions are performed in order to obtain something in return, it at least involves expectations. But expectations are for Levinas the denial of duty in that any expectation compromises one's openness to the other. Instead philosophy should be 'concerned with the absolutely other; it would be heteronomy itself' (Levinas 1987c: 47). Clearly then Levinas' ethics is a most demanding system.

Under most philosophical systems, people's comprehension of other people is said to occur in cognitive terms. In contrast, as Cornell puts it:

> For Levinas, the Other precedes the ethical subject. She cannot be grasped … in a relationship to the ethical subject or in a conceptualization of her as like the subject who examines her, because such knowledge would ultimately only be derivative of the subject's own self-conception. … For Levinas, to try to know the Other is itself unethical (1992: 87–8).

Levinas treated autonomy, and the associated senses of personal freedom, as secondary matters. Ethics precedes autonomy as well as ontology. Levinas distinguished this asymmetrical relationship between self and other from alternative descriptions of ethical interaction. There is a profound heterogeneity as between self and other. For Levinas the other is not 'alongside' or 'with' oneself, but 'in front of' oneself. It is the face of the other that most forcibly requires our accountability (Levinas 1998: 116). I fear for the other; I am commanded 'to answer for the life of the other person' (1987d: 109). For Levinas, justice is integrally related to these formulations. Thus, '[f]or me to catch sight of the possibility of justice ... someone must call me to account' (1987a: 40). Similarly, '[d]oes not justice consist in putting the obligations with regard to the other before obligations to oneself, in putting the other before the same?' (1987c: 53)

Before moving to consider the contribution of Derrida, which is much influenced by Levinas, some comments should be made on the recent writings of Costas Douzinas. Douzinas has attempted to synthesise a Lacanian and a Levinasian approach in the context of human rights. While unsuccessful (Morss 2003: 898), Douzinas' project illustrates the complexities of what might be thought of as a heteronomy-based account of rights. Douzinas' recognition of the significance of Levinas in legal thinking is to be welcomed and may contribute to a shift of emphasis from autonomy to heteronomy in the study of justice. In his own work however (among other factors) Douzinas' commitment to an impoverished version of Lacanian psychoanalysis undermines his project.

Douzinas argues that humans' activities and inter-relationships are determined by their desires, and that human rights arise as a manifestation or consequence of those same deep characteristics. Specifically, human rights aspirations are said to arise from a universal need for recognition of oneself as unique and whole. In Douzinas' account however, such recognition is impossible:

> The subject of rights tries incessantly to find the missing object that will … turn her into a whole being … [T]he promise of self-realisation becomes the impossible demand to be recognised by others as non-lacking (2000b: 321).

Fundamentally, Douzinas overlooks the incompatibility of Lacan's negative, lack-based formulation and the positive, demand-based approach of Levinas. The claims of the other on me are positive claims, not intra-psychic cries for reassurance. With his colleagues however, Douzinas has on occasion expressed well the heteronomous attitude, indicating that a time may come when we recognise an obligation 'for the other, for the stranger, the outsider, the alien or underprivileged who needs the law' (Douzinas et al 1994: 22).

Derrida's recent writings include very similar sentiments. Thus Derrida refers to the situation in which we would welcome '*anyone*, any other one, without checking at the border who he or she is …' (Derrida 1997: 8, emphasis in original). Jacques Derrida is of course a highly significant figure in the contemporary intellectual landscape. Rorty has commented that '[j]ust as German philosophers in the period between Kant and Hegel saw themselves as saving "reason" from Hume, many English-speaking philosophers now see themselves saving reason from Derrida' (1999: 80). While difficult to categorise, if only because of his continual re-definition of the available categories, Derrida might usefully be thought of as a profound critic of both Kantian and post-Kantian philosophy. Unlike those postmodern writers who have sought to dismantle the 'Enlightenment Project' inaugurated by Kant, and to stride ahead into new territories, Derrida has wrestled with that project as if our very ways of thinking and writing are bound up with it. He has taken seriously both the aims and the techniques of

Kant's project, and as a result has succeeded more than any other contemporary philosopher in dethroning the Kantian autonomous self without merely re-inventing Kant's repudiated forms of heteronomy. Derrida's reference to Levinas should be seen in that context, as perhaps should his treatment of psychoanalysis (Freudian rather than Lacanian) and indeed of Hegel. As has been said, 'Derrida is addressing the alterity of the other (that which puts me in question)' (Joseph 2004: 258).

Classical Derridean positions such as the (strategic) privileging of writing over speech might be seen in this way, for the more orthodox alternative (to which Derrida's claim is a response, not a final answer) privileges speech as breath of the self, a direct and immediate embodiment of the will. Derrida's riposte is to invert the device and toss it back, with the mediated and ostensibly secondary feature, writing, at least momentarily on top. Writing is heteronomy in action because text always exceeds the will and moreover leaves no space for will to retreat to — there is no 'outside-of-text'. If Kant's account of heteronomy is recast as 'resentment' as noted above — the servile shifting of blame to anybody or anything that will bear it — then Derrida's 'writing' perhaps occupies the conceptual realm between autonomy and resentment. He is concerned with the ethical but in ways that seek to avoid both voluntarism and the bad faith that often accompanies scholarly disputation.

Given this orientation, Derrida's interest in law and justice can be seen as one (major) component of his exploration of heteronomy. At least since the late 1980s (Norris 2004: 292) Derrida's express concerns have focused on interpersonal, ethical and political questions rather than semiotic or narrowly 'philosophical' questions. During this period Derrida has written on 'friendship, law, justice, testimony, the gift, hospitality, cosmopolitanism, forgiveness, and … the death penalty' (Critchley & Kearney 2001: ix, Derrida 1996, 2000), extensively influenced by Levinas throughout. Derrida himself comments on the ubiquity of the themes of justice, ethics and politics in his writings (1992: 7). Heteronomy has received direct attention (Derrida 2001b: 255).

The debt to Levinas is made clear in 'Force of Law':

> I would be tempted, up to a certain point, to compare the concept of justice … to Levinas's, [in part] because of the heteronomic relation to others, to the faces of otherness that govern me, whose infinity I cannot thematize and whose hostage I remain (Derrida 1992: 22).

As Derrida comments elsewhere, the Levinasian ethical subject is both 'host' (in the position of bestowing obligatory hospitality on the visiting other) and 'hostage' (Derrida 2000: 109) (that is to say, at the mercy of the other). 'Force of Law' itself posits 'justice as the possibility of deconstruction' (Derrida 1992: 15, also see Norrie 2004: 217) in such a way that justice itself is impervious to deconstruction. Deconstruction is now articulated in a Levinasian manner. Thus deconstruction can be schematised as combining an address to 'the singularity of the other' (Derrida 1992: 20) with a responsibility toward an inseparable network of concepts (including freedom, person, community and responsibility itself). For Derrida,

> [t]o address oneself to the other in the language of the other is, it seems, the condition of all possible justice … [but] justice as right seems to imply an element of universality … When I address myself to someone in English it is always an ordeal for me. For my addressee, for you as well, I imagine (Derrida 1992: 20).

The moment of the seeking of justice is thus a moment of anxiety but 'who will claim to be just by economizing on anxiety?' Justice is an 'unsatisfied appeal' and the formulation may seem reminiscent of the pessimistic, Lacanian approach of Costas Douzinas. But Derrida's is at least a 'possibility of justice' rather than a Douzinasian impossibility of justice.

Derrida is undoubtedly concerned with the denunciation of 'not only theoretical limits but also concrete injustices' (1992: 20) and consistent with that, his comments on current practices of asylum include the pithy observation that '[a]sylum will be granted only to those who cannot expect the slightest economic benefit upon immigration' (2001a: 12). He further comments:

> I also imagine the experience of cities of refuge as giving rise to a place [*lieu*] for reflection - for reflection on the questions of asylum and hospitality – and for a new order of law and a democracy to come to be put to the test [*experimentation*]. Being on the threshold of these cities, […] a certain idea of cosmopolitanism, *an other*, has not yet arrived, *perhaps*.
>
> -   If it has (*indeed*) arrived …
> - … then, one has perhaps not yet recognised it
> (2001a: 23, layout as in original).

Less elliptically, Derrida has suggested a reining-in of the more utopian (or eschatological) dimensions of the Levinas position on unconditional hospitality. The unconditional must somehow be yoked with the conditional:

> It is a question of knowing how to transform and improve the law, and of knowing if this improvement is possible within an historical space which takes place *between* the Law of an unconditional hospitality, offered *a priori* to every other, to all newcomers, *whoever they may be*, and the conditional laws of a right to hospitality, without which *The* unconditional Law of hospitality would be in danger of remaining a pious and irresponsible desire, without form and without potency, and of even being perverted at any moment (2001a: 22–3, emphasis and capitalisation as in original, corrected at one point).

Monolingualism of the Other is a sustained meditation on the notion of a 'mother language' which everyone supposedly inhabits. Derrida discusses the concrete ways in which a group or population, such as the Jews of Algeria during World War II, may be granted rights and withheld rights at the whim of others ('we were hostages of the French' (Derrida 1996: 17)). Collective identity clearly exists for Derrida in the context of such collective oppression. Yet he retains a scepticism about what is usually thought of as the most basic source of collective identity. Derrida finds support from Levinas on problematising the status of the mother tongue (91). He describes 'the disasters toward which incantatory invocations of the mother tongue will have pushed humans headlong', concluding that '[m]y culture was right away a political culture' (34). This is consistent with his claim

that '[a]ll culture is originally colonial' (39), and with the notion of origin as prosthesis as in the book's subtitle. The fact that culture is what we are born into merely raises the question why it is (roughly speaking) place of birth (and not for example place of death), that determines our collective identity if we have one (13). *Monolingualism of the Other* is intensely autobiographical, but uses that intensity to unsettle the reader's expectations concerning what will accompany the disclosures.

It can of course be treated as a merely personal characteristic that Derrida is identifying when he describes a reluctance to affiliate. But for no-one more than Derrida is the personal the political and a 'we' as a collective entity, capable of political or cultural acts, is highly problematised by his writings. In some ways at least the 'we' is the consequence of an act of violence. Heteronomy for Derrida appears to result in the radical questioning of the collectivised self as well as of the individualised self corresponding to Kantian autonomy. Derrida admonishes (but not without a self-deprecatory twist): 'Listen, believe me, do not believe so quickly that you are a people' (Derrida 1996: 34).

Challenging nation through heteronomy

It is widely recognised that nationalistic forms of self-determination are troublesome in their consequences, but attempts to 'save' self-determination from its nationalistic trappings do not appear to have been successful (Dahbour 2003: 216). The exercise only works by reading 'self-determination' as democratic participation in a general sense, with reference to legitimation in terms of ecology and 'lifeworlds'(Dahbour 2003: 217). This Habermasian solution to the problem of self-determination may be thought of as implicitly recognising the obsolescence of collective, Nation-style identity, but may not greatly assist us in the conceptual analysis of alternatives to that worldview.

More generally, the shift of terminology from rights of individual people (persons) to rights of 'peoples' may obscure but does not solve the problem of universalism in rights discourse. If anything it re-invents

nationhood albeit in a sanitised manner. The 'me/us' is a flexible and interlinked domain of autonomic reference, giving rise to related problems. Thus the replacement of 'people' by 'peoples' as rights-bearers — as exemplified in the rhetoric of the 'new' Europe in the draft European Constitution of 2003 — has been described as the mere re-emergence of an 'exclusivist idea of the "people"' (Breckman 2004: 161). Relatedly, it has been observed that the 'idea of citizenship bleeds into the notion of nationhood' (Tragardh & Delli Carpini 2004: 74). The 'right to develop' is a right that collapses the people and the individual, subordinating both to some overarching pattern of change (Morss 1996). In stark reality of course, the rights of any collective, to the extent such rights exist at all, exist in relation to the obligations of particular sovereign states (eg in relation to the one international instrument that expresses a 'right to development', the African Charter on Human and Peoples' Rights at Article 22: see Rosas 2001: 123).

It has been suggested that human rights instruments are aimed at the goal of 'universal solidarity' as against the danger of global fragmentation into a combination of 'profit-centred individualism' in some places and 'ethnically and culturally defined entities' in other places — entities 'which might contain a degree of solidarity within the group while excluding others' (Eide & Rosas 2001: 6). 'Ethnically and culturally defined entities' are those very collectives that would bear collective rights, and collective rights may thus be said to constitute a contemporary manifestation of Nation. Heteronomy's challenge of the collectives (culture, people) — perhaps in the interest of some kind of solidarity — is a challenge to Nation.

In general the role played by cultural groups (such as 'peoples') in contemporary human rights discourse may seem to suggest that autonomy no longer dominates international thinking. It may seem as if western-style individualism has given way to (or at least made room for) a broader collective worldview. But the state-centred realities of international law must be recognised in this as in other contexts (Robertson 2002: 159). International law has been narrow in its reading of self-determination (Shaw 2003: 230). In official human rights

parlance, a 'people' refers by default to the inhabitants of a state (or quasi-state or proto-state) such that 'self-determination' relates to state sovereignty above anything else. The wave of post-colonial self-determinations comprised a special category of what might otherwise have been secessions. Self-determination attempts not recognised as properly post-colonial, for example where the disputed territory is contiguous with a world power (Tibet, Chechnya), have been thereby classified as non-meritorious attempts at secession. A very small window was defined by Canada's Supreme Court in reflecting on the aspirations of the Québécois, in that a state's prolonged denial of the legitimate rights of a cultural minority might provide grounds for secession. Given the ability of states to deny even the existence of minorities within their borders — as by Turkey with relation to the Kurds, and by France in relation to everyone — the window seems unlikely to be made use of in the foreseeable future (Robertson 2002: 156, Stavenhagen 2001).

Post-colonial self-determination was a process thought of internationally as a historical tidying-up operation rather like the original 1951 Refugee Convention. The model was in reality that of the (nascent) nation, and as Geoffrey Robertson points out, the process of 'nation-building' as self-determination within the new states (for example in Africa) was allowed to cover up the misdemeanours of many a disreputable regime (2002: 162). Similarly, '[s]elf-determination rhetoric has been invoked … in association with extremist political posturing and ethnic chauvinism' (Anaya 1996: 75). As Anaya points out, available definitions of 'peoples' with respect to self-determination misunderstand the 'multiple, overlapping spheres of community, authority and interdependency that actually exist in the human experience' (1996: 78).

What is submitted here is that the corruption of self-determination is immanent, not merely contingent. To the extent they deny complexity and plurality — that is, to the extent they represent autonomy — self-determination and other collective rights reinstate ethnicised discourse. Within Australia at least, there remains a long way to go in

displacing the simple-mindedness of ethnicised discourse even among the elite. John Carroll for example has assured us that, in 'The Blessed Country' (the country of the Anzacs, the [cricketer] Don, and the marsupial) '[g]roups with a history of bloody violence — Greeks and Turks, Serbs and Croats to name two — have learnt, as "New Australians," that there is a better way to live together' (2001: 109). We further read that '[a] people, to feel free to let their character virtues speak unimpeded, must be at ease in themselves … Peoples, like individuals, take flight into ideology, dogmatism, moralism and ranting when they feel under inner threat' (2001: 109).

Heteronomy demands a more nuanced approach, for example in relation to 'culture'. Thus Sarah Williams has commented, 'I prefer to talk about post-culturalism … the problem is with the very notion of culture itself as an organizing principle. It appears to create a form of categorization that leaves us only able to go back and forth between home and abroad' (Minh-Ha et al 1999: 185). Trinh Minh-Ha adds:

> It has been very important for marginalized people to claim the right to self-representation; … what we need now is to carry out work that offers at least two movements at the same time: one claiming the right to self-representation, and the other dealing with the politics of representation, thereby refusing the boundaries or the limits that are being imposed on our activities (Minh-Ha et al 1999: 193).

'At least two movements at the same time' is strongly suggestive of heteronomy. It may also be suggestive of performance ('self-representation'), thus connecting up with the work of Katrin Sieg as noted above. Minh-Ha's account (elsewhere) of 'hybridity' in identity is also of considerable relevance here, even if the celebration of hybridity itself needs to be scrutinised (Ifekwunigwe 1999: 9). In significant senses the rights that are claimed under the banner of collective rights are rights to perform and to represent hybridity and difference. Such aspirations provide no purchase for the law of Nation, but rather for 'the law of the other, … the other of the law, heteronomy' (Derrida 2001b: 255).

Note

1   I retrospectively acknowledge the support of the University of Otago's Postcultural Seminar during the 1990s.

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