ETHNICITY AND REFUGEES

by

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"No enduring world order can be created which ignores the ubiquitous yearnings of nations in search of roots in an ethnic past, and no study of nations and nationalism that completely ignores that past can bear fruit." 

The New World Disorder

Once upon a time, not very long ago, in fact, a very, very short time ago, ideological conflict, particularly the conflict between western liberal democracy and authoritarian communism, between the primacy of the individual and the critical importance of class and the economic collectivity, was acted out within the domestic politics of many less developed states. The two sides in a domestic conflict were supplied with arms by the superpower leaders of the two rival ideological blocs. Neither of the domestic disputants necessarily identified themselves with either ideology. One might have been a military dictatorship with some depth of populist support, though the regimes supported by the Soviet Union and/or China were more likely to identify themselves as communist or socialist than the other side's likelihood of identifying itself as liberal. In fact, regimes supported by the United States were often an amalgam of traditional elites (feudal, military, financial) rather than liberal democratic constituencies.

In Vietnam, the result of this conflict in ideologies fought through surrogates was the largest resettlement program for refugees of the last quarter century. In Afghanistan, five million refugees waited in Pakistan and Iran for the war to end so they could return. Even in Ethiopia, many if not most refugees were seen to be products of ideological conflict because Mengitsu, the military dictator who usurped power in a coup, was an avowed Marxist, thereby obscuring the nationalist origins of the conflict in Eritrea and other areas.

Ideological conflict not only appeared to dominate as a root cause of the production of refugees, but the three solutions envisaged were primarily based on the premise that refugees were a product of ideological conflict. After the beginning of the Cold War, Greek refugees could return to Greece once the communist insurgency was defeated and the new western-oriented political system took hold. Similarly in Afghanistan, the refugees await repatriation after the fall of the Communist government in Kabul, assuming it does fall.
Repatriation, settlement and resettlement, in that order, were seen as the only three forms of permanent solution for refugees.

The Western democracies were the main political and economic supporters of this new refugee regime. It was the humanistic side of the cold war arms race and the balance of power system. Refugees would be financed to settle in adjacent states to await resettlement when the communist regime was defeated. Only where victory over the communists in a reasonable time did not seem to be possible, were refugees from Cuba and Vietnam massively resettled in Western countries, primarily the United States, the leader of the Western side in the Cold War. Otherwise settlement and repatriation were to be utilized as permanent solutions.

These post war solutions to refugee situations were very different than the pre-war ones when the cause of refugee flows was seen to reside primarily in ethnic conflict rather than in economic and political ideology. Then, three very different permanent solutions were utilized – redrawing borders, exchanging populations and international guarantees for minority rights. They stand in marked contrast to the solutions mandated to the UNHCR – repatriation, settlement and resettlement. For the latter are premised on the sanctity of the borders and integrity of sovereign states, a rationale possibly created to resist messianic universalist communist ideology.

In the last two years, we witnessed the demise of one ideological system that for forty or seventy years dominated a good part of the world. What is perhaps even more remarkable has been the resurgence in faith in liberalism and even capitalism from those throwing off the yoke of oppression. But we have also seen the reemergence of ethnic conflict as the prime cause of refugee flows. Certainly, in Eastern Europe borders are under question as regional communist empires collapse from the weight of their own economic mismanagement and suppression of freedom. And this is only the beginning. The implosion of India, of Indonesia, of the largest country in Africa, Nigeria, has yet to occur, though each has had or is experiencing degrees of rebellion against central state authority. The rebellion of the Sikhs or of the Ibos were not akin to the secessionist Southern states in the USA forced to reunite to forge the common American nation. For India, Indonesia and Nigeria are not nations forged by states, but each consists of nations which existed prior to the construction of the state. The question is whether, when these nationalist forces erupt in these and other states all over the world in a way that will make the present period appear relatively tranquil, will the world abandon the post-war refugee regime for a pre-war one? More seriously for refugees,
will Western, particularly U.S. support for any refugee regime wane with the demise of the Cold War?

Certainly, in Europe and in the three major resettlement countries, Australia, Canada and the United States, there has been growing resistance to the large number of spontaneous arrivals claiming refugee status. The numbers are not the only problem. The high cost of processing individual claimants through a quasi-judicial system weighs upon the overburdened economies of these states. The relatively small numbers that are actually deported after utilizing this whole cumbersome process is another factor. The fact is, the refugee claims system is more and more perceived as a back door for immigration for those fleeing economically depressed and strife-torn regions. Western states, particularly their mandarins, see themselves as losing control over their borders and their own rights to self-determination, including the right to determine who can and who cannot become members of their polity. With the demise of any ideological motive, will the humanistic motive be insufficient to preserve the legal system so painfully constructed since World War II for the protection of refugees, particularly when the cause of refugee flows increasingly shifts from the fear of persecution from a tyrannical state apparatus to messy conflicts between rival nationalities and potentially much larger mass movements of refugees?

Nationalism and Ideology

To get some handle on this shift or reversal in the prime cause of refugee flows from ideology, or military coups in the guise of ideology, to conflicts between nationalist groups, an outline sketch of ethnicity or nationalism as a source of conflict and refugee flows might be helpful. Unlike communism, which claimed to be a scientific and universal solution at odds with its alternative universal competitor, liberal capitalism based on the primacy of the individual, nationalism was depicted as a belief which "glorified the peculiar and the parochial, national differences and national individualities." Nationality was that part of an identity which expressed the "continuity between one's construal of past ancestry and future aspirations in relation to ethnicity." However, unlike ethnicity per se, nationality, for some, identified those future aspirations with, "a group seeking to find its expression in what it regards as the highest form of organized activity, the sovereign state." The aim of nationalists "is national self-determination, and the lasting fulfillment which comes to man when he lives as a member of a sovereign nation."
Some went further and argued that nationality in its essence demanded exclusivity and homogeneity, a vision attributed (erroneously, I believe) to the heritage of the Hebrews. Christianity inherited the universalistic strain of Messianism, according to this interpretation, by building on the spiritual and cultural heritage, while nationalism was erected on a primitive racial and materialistic conception to develop a nationalistic Messianism considered as "the will to live dominantly and triumphantly as a rehabilitated people in a national home."7

The people. The home. In fact, nationalism itself has not been the problem. The problem has always been determining who belongs and the territory which belongs to that people. Thus, Irish nationalists claim Ulster Protestants are part of the Irish people, and, for the IRA, the Protestant resident's of Belfast's failure to accept that fact means they deserve death as traitors. Further, it is all of Eire that belongs to the Irish people. The non-violent nationalists may condemn the murders, but do not revise their beliefs, doctrines or constitution that provide the rationale for the violence.8 Even when nationalism is redefined primarily as a matter of inner identification and a desire to belong to the same state (a Staatsnation), a people committed by an act of collective will to belong to a common administrative, legal and political regime united by sentiment and a formal legal regime, rather than being defined in terms of empirical attributes such as language, culture and/or religion which use myth and symbolism to reinforce memory and values (Kulturnation)9, there remains the question of where to draw territorial borders. Should the Catholics of Northern Ireland be allowed to secede and join the Irish Republic?

The demise of the universalist ideology of communism has resurrected the nationalist question in Eastern Europe as a primary issue. It, of course, was always a central issue which Marxists could not resolve. Rosa Luxemburg denied there was a right to national self-determination, opposed nationalism in principle as leading to fragmentation and opposed it in practice when she founded the Social Democratic Party of Poland denying a Polish right to political self-determination while granting a right to cultural autonomy and a degree of administrative self-government to a Polish nation that had heretofore been divided between the Tsarist Regime, the Austro-Hungarian Empire and Prussia.10 Lenin, in contrast, emphasized the right of self-determination, but also recognized the tendency to fragmentation so that the right to self-determination was given de jure recognition but, sooner or later, denied any realization in practice. Initially, the Soviet revolutionaries under the Leninist doctrine recognized the independence of Finland and the Baltic republics. But at
the first opportunity, the Baltic states were reabsorbed into the Russian Empire under Stalin, who had all along opposed Lenin's policy of recognizing a right to national self-determination. Earlier on, the Menshevik separatists of Georgia were quickly drawn into rejoining the Bolshevik Soviet Empire as "equal" national partners along with independent republics such as Azerbaijan and Armenia. The reality was that a fifth column was used to take over the independent revolutionary governments which then "voluntarily" joined or became subordinate to the power of the Soviet federation, failing only where and as long as Western military intervention (an expeditionary German force under von der Goltz in Finland, for example) or the defeat of the Red Army allowed independent nation-states to sustain themselves. Communists could not tolerate secession and the realization of national self-determination. Tito, who was more tolerant of nationalist self-determination than any other Communist ruler, also clamped down on the Croatian secessionists in 1972. With the demise of communism, nationalism has reasserted itself. In Yugoslavia, where the communists retain power in Serbia, they were unwilling to accept the secession of Croatia, particularly since Croatia contains large numbers of Serbs.

The issue of national self-determination permeates a number of conflicts around the world as well as in Eastern Europe. Eritrea, a former Italian colony, was forcefully made a federated state of Ethiopia by the United Nations after World War II, with the right of self-determination after ten years, a right not only denied, but even its limited autonomy was taken away. Kurds, promised an independent state after World War I, were in fact divided up among Turkey, Iraq, Iran and the Soviet Union. Today Saddam Hussein of Iraq again makes a pretense of recognizing Kurdish autonomy which he will again undoubtedly undermine when he regains the power to do so. China refuses the right of Tibet to self-determination as does any government that believes that power comes out of the barrel of a gun rather than from the consent of a free people.

What attitude does the victorious universalist belief, liberalism, have towards nationalism? A more pragmatic one. In the short term, stability was primary for the development of capitalism. In the name of international peace and order, after World War I, national self-determination, the division of each separate nationality into a sovereign state, was to be the guide in the subsequent peace agreement. The Czechs, the Slavs, the Rumanians, the Kurds, the Arabs still ruled by Turkey, were all promised their own states. The major principle running through Woodrow Wilson's Fourteen Points was the right of all peoples to live in liberty and safety. Frontiers were to be redrawn along 'clearly recognizable lines of nationality'. Why?
The answer goes back to John Stuart Mill's Whig theory of nationalism. Nationalism was not valued in itself, but was simply seen to be useful on the basis that the commonality of a people tended to give representative government a better chance of working. Government by and for the people was the primary principle, not nationalism. "A portion of mankind may be said to constitute a Nationality if they are united among themselves by common sympathies which do not exist between them and any others—which make them cooperate with each other more willingly than with other people, desire to be under the same government, and desire that it should be government by themselves or any portion of themselves exclusively." It was a vision of a Staatsnation united by inner identification and sentiment and fused together by a collective act of will to create a common legal regime.

That meant, however, where national self-determination might lead to disorder and conflict, or where liberty was not an immediate prospect, the self-determination of nations, which was General Smuts first principle as the foundation of the League of Nations, was sacrificed to the need for international order. The Mandate system ended up, not as a vehicle for the orderly development of self-government of a people, but as a mode of perpetuating imperial control through zones of influence, allowing national conflicts, as in the case of Palestine, to fester. The recognition of national self-determination was subordinated to the interests of the imperial powers almost as much in the West as in the new Communist empires of the East. In the words of the author of the famous statement, "Power corrupts; absolute power corrupts absolutely," Lord Acton, "making the nation the mould and measure of the State" had to be subordinated to what was in effect a superior military power. For nationalism was not only an illegitimate but a dangerous and irrational force. For Acton, a balance system among various nationalities kept in check by the monopoly on military power of the state was preferable to regimes built on purely nationalist lines. Thus, the nationalist rivalries within India and Sri Lanka (then Ceylon) were suppressed. Today the world is the inheritor of those suppressed conflicts and refugees have been the product of the angry and intolerant form in which they have reemerged.

**Nationalism - Scourge or Creative Force**

There were, however, some who defended nationalism, not as simply as useful tool of liberalism (John Stuart Mill) or of communism (Lenin), but who saw it as a good in its own right. Nationalism was not the mother of all wars, but was, "the mother of all creations on earth." For nationalism was identified with a life force, "innate,
organic and genetic," the basis of natural power and the inner genius of being." Why? Because nationalism used language, and "language has its origin in our animal nature." Language builds a culture continued through tradition and transmitted by education. "Education, which performs the function of transmitting social traditions, can be said to be genetic, by virtue of the manner in which the transmission takes place, and organic, by virtue of the manner in which that which is being transmitted is assimilated and applied." Therefore, "a nation is as natural a plant as a family, only with more branches. Nothing, therefore, in more manifestly contrary to the purpose of political government than the unnatural enlargement of states, the wild mixing of various races and nationalities under one sceptre." War for conquest is not the result of nationalism, but its antithesis. Further, it is because all humans use language that they are endowed with sympathy and fellow feeling, the basis of moulding humans together into nations willing to defend each other from conquest by others, but also the basis of caring for all of humanity.

However, for some, such as Fichte, this became a rationale for exalting the national will and dreaming of a homogeneous nation where the will would not be contaminated. Language expressed the national character. Original languages were superior to mongrel derivative languages and German needed to be purified to avoid the same fate. Further the individual was to identify totally with the nation and the state would regulate all aspect of the individual's life. Individual rights and individuals apart from the state were phantoms. This entailed purifying the nation, expelling minorities and uniting all those of the same language and nationality under the same political roof, hence, requiring the elimination of "internal" borders and further purges of minorities which were weakening the national volk.

Other thinkers, such as G.W.F. Hegel, moved in the opposite direction. Nationalism had to be subsumed under the rule of law and a state regime, not because nationalism per se was inherently dangerous, but because it was unrealized in its fullest expression of freedom if it remained merely at the level of tradition and custom, or even when developed into self-conscious cultural expressions and activities. A Kulturnation had to become a Staatsnation. The freedom of the individual had to be objectified in laws and principles which explicitly recognized and protected freedom as fundamental. And those laws and principles had to be made universal and international. This, in fact, has been the case with the Universal Principles of Rights and Freedoms and such agreements as have evolved for the protection of refugees. The political sentiment of patriotism is most manifest when it is attached to upholding the duty to protect human rights and
freedoms in all situations and which recognizes and defends the right of individuals and groups to be different. Nationalism which manifests itself in the Rule of Law is nationalism which leads to a state which is a defender rather than suppressor of differences, which protects individual and minority rights rather than oppressing individuals and rejecting minorities from living in or participation in the state.

Further, this nationalism was not "natural" and "genetic", was not something given and primordial which existed outside the trajectory of history, but is a product of history. Nations have disappeared. Nations have been reborn. Nations have combined. At those magical turning points that occur in history and through which we are once again living, those elements so constitutive of a Kulturnation rooted in ethnic consciousness, common language, memory and symbols, reassert themselves for a place in the sun and an opportunity to find a political and legal form which will protect the continuity of those people.

There was, however, another reason for nations to be constituted in a state. Nations had to have their own states so they could properly live under the rule of law and have the full benefit of freedoms guaranteed to all. Nationalism, in this sense, is not merely a convenient tool of Whig ideology to unite men so they could elect governments which would protect the right of every individual to pursue his or her own selfish interests. Freedom was not just the right to pursue self interest. Freedom was a matter of universal right and one that had to be guaranteed to all by the rule of law which, though administered through states, had to become universal.

But nationalism, the basis for building states, the rule of law and the protection of freedom in its fullest sense, and not in the narrow sense of merely the right to pursue one's own self interest, could also be used for xenophobic and destructive purposes, for the expression of subjective feeling at the expense of another nation. If this was not to be the case, then all nations had to have states which made the rule of law and the protection of rights and freedoms primary. The break up of imperial states, the desire for nations to realize the expression of their unique identities through a sovereign state, is not the road to ruin but the path to a new international order built on the rule of law and the protection of the freedom of individuals, the equality of groups and the full realization of each unique nation.

**Nationalism and Freedom**

An ethnic group is not a nation. For a nation requires a territory
in which it is dominant, a state which protects and develops the unique qualities of that nation but also protects the equal rights of all its citizens under the rule of law. However, if the state is also dedicated to protecting and enhancing the ethos of its staatsvolk, the dominant nationality, as Giuseppe Mazzini, the father of Italian nationalism, wrote in his essay, "The Duties of Man", the responsibility for preserving and enhancing the national character meant that all citizens had to be inculcated with a common national tradition. This poses problems - both for the right of individuals to deviate and challenge that thinking and the symbols of that national thought as well as to ethnic minorities that desire to preserve their own national traditions within the envelope of a legal state where they are citizens.

Is it an expression of freedom to burn the flag of the United States of America when challenging the militaristic side of the national tradition which allows America to engage so easily in foreign military exercises, whether intended for good or greed? Is it an expression of cultural and religious freedom for a Sikh to enrol in the Royal Canadian Mounted Police and insist on wearing a turban, challenging the traditional image of the uniform of that force? Is it an expression of freedom to insult the head of state whether that head of state is a monarch who inherited her thrown, an appointed ex-politician or an elected current one?

These are the simple issues. What happens when two nationalities have claims to the same territory - Palestine, the Armenian enclave of Nagorno-Karabakh inside Azerbaijan? What happens when several nationalities share the same territory and state and one of them is not dominant, as in Uganda. What is the national ethos. The fact is the national question appears easier to solve when a "new nation" is being founded under a secular constitutional faith, as in the United States, so that the national sensibilities of various minorities and indigenous nations can presumably be ignored in the energy and determination to forge a new nation. Individuals may get protection, but not ethnic minorities. But if an indigenous nation becomes dominant in a state, as the English did in the British Isles, what happened to the Celtic nations - the Scots, the Irish, the Welsh, the Cornwallians? What happened in France to the Bretons and Basques? What happened in Spain to the Basques and Catalans? What happened to the non-Magyar minorities as it attempted to forcibly assimilate the various minorities in what would become Hungary? Minority rights, particularly political, language and cultural rights, tend to be swamped by the ambitions and energies of the newly flourishing nation. And if a nation is divided among a number of separate states, compared to 'new nation' imperialism and
indigenous nationalist imperialism, the pan-nationalist roots of nationalism seems to be the one most intolerant of all of national minorities, frequently blaming those 'cosmopolitans' for sapping the strength of unity from the national ethos. But when there are a number of nations competing for primacy in a new state, as in many states in Africa, the national competition often becomes both a vehicle and an excuse for the primary authority of the state to shift from the rule of law to the rule of force, since the state has presumably been given the monopoly on the use of coercive force. Whether a state is used to forge and unite a nation, as in the nations of the new world or the ex-colonial states, or when a nation seeks to and preserve itself in a state as in indigenous and pan-nationalist movements, minorities and individual rights always seem to be at risk.

What then do we make of developments in the new Europe with its attempt to forge a superstate out of many nations? What we have is the raising of the right of free passage of goods, services and people from the nation-state to the super state, to the realm of European Community as a whole. Further, Europe not only has the duty of creating an economic community, but a common community of rights under the rule of law protected by the court in Strasburg. Once the nation had secured its national identity through sovereign control of the apparatus of a state, the instrument of a superstate through the voluntary will of its constituent nations could be used to broaden and entrench both the economic freedoms and human rights of individuals which is the responsibility of a state apparatus. For though the superstate and European integration in particular poses some risk to national identity, its primary function is to enable that national identity to be preserved lest internecine wars and/or superpower battles end up destroying Europe altogether.

I believe we are entering a new world order to succeed the post World War I regime and the post World War II regime. It is one that will recognize the fundamental legitimate rights of nations to have a sovereign state of their own and not sacrifice that right to preservation of a false and temporary stability. This means the sanctity of borders will no longer be sacrosanct. There will be a danger of greater instability. But if this new emergence of nationality is also accompanied by the insistence on the rule of law, the protection of the rights of individuals and the protection of the right of minorities it need not entail forced transfer of populations in a silly, fruitless and destructive effort to create homogeneous nations within a state. The post World War I regime will be resurrected, but with voluntarism replacing coercion as the basis for change and the rule of law on a superstate level, one willing even to use force when
the rights of a minority population are threatened or they are coerced into flight.

The new international order for the protection of refugees must blend some of the methods of protecting refugees and the rights of nations developed after the first world war with the development of superstate law and the legal protections for rights and refugees developed in the aftermath of the second world war. Otherwise, Europe and North America, when flooded with refugees from these conflicts largely rooted in ethnic disputes (though not always - Iran is a throwback to the era of the Huegenots when religious hegemony was the main and original source of refugee flows in the modern world), will more and more seek ways to deter refugees from entering but without putting in place the instruments to counter the forces that give rise to the flows in the first place.

Inserts - ETHNICITY AND REFUGEES

1. (p. 3) The borders of many of the countries of Eastern Europe were set after WW I. As one very small example among a myriad, the League of Nations was required to assess the results of a plebiscite in Eupen-Malmédy to decide whether that small area on the western border of Germany should go to Belgium of Germany. The large exchange of Greek and Turkish populations after World War I is perhaps the best known of these programs, but there were many other population transfers including the ideas to transfer the Arab populations of Palestine to facilitate setting up a Jewish homeland. Woodrow Wilson's fourteen points, only partially included in the treaty of Versailles, provided for the protection of minority rights. These solution stand...(cont. with existing text)

2. (p. 2), established after the first World War by the Treaty of Versailles to administer the former overseas colonies of the German and Ottoman Empires to implement Article 22 of the League of Nations Covenant providing for the provisional recognition of independent (my italics) nations, with the Mandatory authority only required to render administrative advice and assistance,

3. (p. 15), though the risk is much greater when attempts are made to forge a nation within the boundary of a former colonial state or when attempts are being made to unite states through the energies of a pan-nationalist movement.

4. (p. 16) There is also a danger, minor I believe, that Europe will be used to forge a new European nationality, a new nation forged by a
state along the lines of the United States but without the language and the culture, and in doing so become xenophobic in relation to Asian "hordes" or Muslims and create that unity based on a mythical Christian American identity.

This would mean that borders are redrawn, but it should be done through a legal process. It will mean that populations will move, but this should occur in a more orderly fashion. It will mean that Human Rights protections will extend to minorities and subject to international responsibility. But it will also mean that the existing regime of access to protection by other states must be maintained for refugees fleeing persecution. The 1951 Refugee Convention and its Protocol must continue to be expanded both to other states and through the development of state procedures for ensuring that those protections are have the appropriate administrative and quasi-judicial apparatus to ensure that refugee protection is not a matter of mere principle. Thus, while the existing regime for refugee protection is preserved and expanded, both quantitatively and qualitatively, steps must be taken to rearrange the political order so that the situations which give rise to refugees are eliminated.


2. Ethnicity is not to be equated with nationalism. Ethnicity is older. However, if one accepts the division between two different roots for ethnicity in the pre-modern era, lateral and extensive aristocratic ethnic constellations which include scribes and the wealthier merchants, and vertical, intensive urban and artisan or tribal based and more exclusive constellations (cf. Smith 1986), then the two forms of ethnicity can be roughly correlated with the two forms of nationalism, state-nationalism and cultural nationalism respectively.


9. This distinction was made by the German historian and nationalist, Friedrich Meinecke in Cosmopolitanism and the Nation State. Karl Deutsch in Nationalism and Social Communication: An Inquiry into the Foundations of Nationality made these two conceptions necessary and jointly sufficient conditions for defining a nation.


11. In 1913, Stalin wrote, Marxism and the National Question in which he depicted language, territoriality, economic unity and culture as four necessary and jointly sufficient conditions for being a nation. As the first Commissar of Nationalities in the Soviet Union of 1917 he was able to use this theoretical thesis to deny the reality of a nation because it lacked one of the necessary conditions and then to attempt to forge a united economic sphere which would ensure that he could continue to reject any ultimate status to a nation.


15. Ibid, p. 313.


17. cf. J.G. Fichte, Addresses to the German Nation. tr. R.F. Jones and G. H. Turnbull, 1922. Also see The Foundations of Natural Law, 1796.

18. Peter Alter's book, Nationalism (London: Edward Arnold, 1989) tends to stress the development of a superstate system while supporting nationalism as an indispensable stage in the development of the new world order. But it is only a stage, not an indispensable part of the ultimate order. This is perhaps why he was so mistaken in celebrating Slovene loyalty to the Yugoslav state and suggesting that, "in trying to facilitate the coexistence of several nations and nationalities in a federalist, multinational polity, the pioneering Yugoslav state has made decisive headway in solving an old problem." (p. 134)