

Territorial Neutrality and Cultural Pluralism in American Federalism: Is the United States the Archenemy of Peripheral Nationalism?

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Abstract: *This study examines accommodations of 'national' minorities in the context of territorial neutrality and territorial democracy in American federalism and critiques Kymlicka's criticism of the United States as the foe of peripheral nationalism. Aside from the imagined nationalism of the white American South, peripheral nationalism has not been politically viable in the United States. Territorial democracy permitted territorially based cultural pluralism that facilitated immigrant assimilation while asymmetrical territorial governance arrangements accommodated 'national' minorities not necessarily desiring statehood. Secession, therefore, is not a credible threat in American federalism.*

KEYWORDS: federalism, indigenous, multiculturalism, peripheral nationalism, territorial

1 Introduction

The United States has been prominently criticized for suppressing peripheral nationalism, namely, territorially based national claims by non-Anglophone inhabitants, by refusing “to use federalism to accommodate the self-government rights of national minorities” (Kymlicka 1995: 28). This criticism, however, assumes that theories of territorially based national claims are universal, but they are not because they are not applicable to North America. There is no indigenous peripheral nationalism in North America because the land's original peoples did not conceptualize themselves in European “national” terms and because European settlers decimated many aboriginal communities. The peripheral nationalism in Quebec is not indigenous; it was transplanted from Europe by two historically antagonistic imperial powers that conquered and settled the lands now called Canada. As such, there is center-periphery bargaining over nationality-based territorial power (Siroky et al. 2016) in Canada but not in the United States.

Immigrants to the United States often retained cultural attachments but ordinarily shed national and language attachments (Walzer 1996) because they migrated as individuals, families, or groups from particular European localities where they had often shared a peripheral national identity, not a country-wide national identity, but were usually denoted by the latter once in the United States. Sicilians and immigrants from other parts of Italy, for example, were regarded by other Americans as simply Italians. Additionally, immigrants from any one country or periphery usually dispersed across U.S. territory after arrival and also had to share territorially based governing power with immigrants from other places.

Immigrants gained political power by virtue of their occupation of particular territories in the American federal system, but those territorial bases were political and pragmatic, not national or primordial, and remained neutral insofar as any immigrant could settle in any territory open to settlement. However, many kindred immigrants established local communities through which they initially expressed their values, such as Swiss immigrants who founded, among others, New Glarus, Wisconsin, and New Bern, North Carolina, but did not retain or construct peripheral nationalist identities in opposition to acquiring an American identity.

Consequently, secession, to the extent it has occurred in the United States, has not been driven by the same dynamics as national secessionist movements in Europe (Siroky et al. 2016) or elsewhere (e.g., Swenden 2016). In recent years, citizen groups in Alaska, California, Florida, Georgia, Hawaii, Montana, New Hampshire, South Carolina, Texas, and Vermont have agitated for secession, usually from their state (e.g., Naylor 2008), but none, with the partial exception of native Hawaiians, represent national minorities and none enjoy much voter support. A 2014 Reuters poll found 23.9 percent of Americans supporting the idea of their “state peacefully withdrawing from the United States of America and the federal government” (Gaines 2014), but these secession advocacies have too little voter support to be credible, none are rooted in peripheral nationalism, and all reflect disgruntlement with the U.S. government.

1.1 Ersatz Nationalisms in the South and Deseret

Before 1865, many white southerners, especially slave-owners, imagined themselves to be a nation. As a prominent southern novelist put it, the South was “a separate nation . . . with its own people, existing within a nation” (Lee 2015: 52). Eleven southern states seceded in 1860-61; however, southerners do not fit the definition of a peripheral nation because, with their northern compatriots, they shared white skin, the English language, Protestant Christianity, and descent from the British Isles. Southern secessionists staked their nationalist claim partly on a Cavalier heritage, but many southern descendants of indentured servants and northern British immigrants did not share that identity (Fischer 1989). White southern ‘nationalism’ was constructed atop black slavery, a construction that would be rejected today as a legitimate peripheral-nationalist claim. The South had, and still has, a distinctive subculture, but so did New England, the Mid-Atlantic states, and the Midwest (Gastil 1975; Elazar 1984; Fischer 1989). Furthermore, cultural and socioeconomic differences between the upper South and lower South have existed since 1789. The Civil War, moreover, was understood mainly as an act of ‘disunion,’ namely, dissolution of the union rather than secession. Fears of disunion emerged soon after the founding, and antebellum politics involved constant North-South bargaining to prevent one or more regions from inducing disunion (Varon 2008). Especially important was maintenance of parity of representation of the two regions in Congress even while southerners controlled the presidency for most of the years between the founding and the Civil War.

Elements of southern ‘nationalism’ survived the war but have been eroding. In July 2015, for example, South Carolina—the first state to secede and bombard a federal fort—removed the Confederate battle flag from its capitol and sent it to a museum. There is growing support to remove the Confederate flag and monuments from public spaces (McWhirter 2016). The erosion of southern ‘nationalism’ has been due in no small part to northern in-migration and foreign immigration. Since 1990, the South’s population has

increased by 42 percent; the Northeast grew by 11 percent. South Carolina's governor in 2016 was a daughter of immigrants from India.

The experience with southern 'nationalism' partly explains the absence of peripheral nationalism in the United States. Such nationalism is associated with illiberal, pre-modern, reactionary values. In liberal democracies today, peripheral nationalists are presumed to share liberal democratic values (see also, for example, Röth et al. 2016). Separatists desiring European Union membership, for example, would have to embrace the EU's norms. The weakening of white southern 'nationalism' also illustrates the difficulty of building permanent 'national' entities in a federation with substantial interjurisdictional migration (Warren 2011; Somin 2015).

A quasi-nationalist case was the Mormon effort to have their desired state of Deseret join the United States as a distinct Mormon state. The Republican Party, founded in 1854, vowed to smash "the twin relics of barbarism—Polygamy and Slavery" (Kincaid 2003: 76). After the Civil War, the Republican-controlled federal government mounted a 25-year political, legal, and semi-military campaign to exterminate polygamy in Mormon country (Gordon 2002). After Mormon leaders ended church endorsement of polygamy in 1890, the United States challenged no other tenet of Mormonism, and Utah entered the union in 1896 as a secular state much smaller than Deseret but with an overwhelming Mormon majority that shaped the state's political and cultural life for another century. Today, moreover, polygamous communities function openly along the Arizona-Utah border, though unsanctioned by the church. The Mormon case also does not fit the definition of peripheral nationalism because Desert's settlers were whites of Yankee stock, speakers of English, believers in Jesus Christ, and eager to join the union.

The Mormon case illustrates the territorial bases of American cultural pluralism. Many observers construe the United States as a country of non-territorial multiculturalism where groups sustain cultural identities via voluntary civil-society mechanisms (Kallen 1924; Walzer 1996). Kymlicka (1995) distinguishes 'multination states' such as Belgium and Canada from 'polyethnic states' such as the United States. However, the non-territorial characterization of the United States is not entirely accurate because local territorial democracy allowed immigrants to maintain facets of their nationality while assimilating into the federal polity.

1.2 Secession Experiences

The United States has experienced many secessions, which began during the colonial era. In New England, where the Puritans sought to establish holy commonwealths, dissidents often split from a community (or were expelled as heretics) and formed a new community embodying their values (Smith 1966). Roger Williams famously departed Massachusetts in 1636 with his followers and founded Rhode Island. The presence of a vast frontier facilitated splintering for more than two centuries.

The original 13 states seceded from Great Britain. The prologue to the Declaration of Independence of 1776 contains the first modern assertion of a new nation: "When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, ..." Before 1776, most colonials regarded themselves as Englishmen.

Vermont (1791), Kentucky (1792), and Maine (1820) seceded peacefully from extant states and with their formal consent. West Virginia seceded in 1863 after Virginia seceded

from the United States. Texas seceded violently from Mexico. This secession reflected the cultural and economic distinctiveness of Texas as well as conflict between centralists and federalists in Mexico. The Alamo's defenders were mostly non-Hispanic; the few Hispanic defenders were Texas-born. Over the course of U.S. history, portions of some counties, municipalities, towns, and school districts have seceded from their home jurisdiction. All of the above secessions reflected mixed political, economic, and cultural motivations.

2 Territorial Neutrality and Expressions of Cultural Pluralism

The election of a Muslim-majority city council in Hamtramck, Michigan, in November 2015—the first such council in the United States—illustrates the territorial accommodation available to immigrant groups. This city of more than 22,000 people had long been Polish and Catholic (Wood 1955). Poles made up about 90 percent of the population in the 1970s. More than 50 percent of the residents are now Muslims from Bangladesh, Yemen, and elsewhere. The Muslim call to prayers has been broadcast on the city's streets since 2004. The Polish chairman of Hamtramck's historical commission noted: "Before the Poles were here, the Germans were here, and before that the French were here ... Life is going on as usual" (quoted in Maher 2015: A7).

In 1984, after followers of Bhagwan Shree Rajneesh moved into Antelope, Oregon, they outvoted long-time residents in order to exercise municipal powers and change the city's name to Rajneesh. The Rajneeshee movement collapsed, however, enabling the old-time residents to recapture the city and restore the name Antelope (Korn 1985; Abbott 1990). Historically, nearly all local and state jurisdictions in the United States have experienced waves of migration that have displaced previous cultural patterns or layered on new ones.

2.1 *Territorial Neutrality*

These examples illustrate the principle of territorial neutrality in American federalism, namely, that state and local jurisdictions are open theatres where whatever people or peoples constitute the majority can stage democratic performances that reflect their political, socioeconomic, and cultural preferences. However, no majority can assert perpetual authority or exclude 'foreigners'; the reigning majority is always vulnerable to displacement by a new majority formed as a result of incoming and outgoing migrants.

Legally, "State lines are all that distinguish one state from another and the people of one state from another" (Brilmayer 1991: 219). A "state may be created for the good of its people, but it is defined by its territory, and 'its people' are defined by the territory in which they live" (Laycock 1992: 316-17).

2.2 *Rectangular Land Survey Underlying Territorial Neutrality*

Territorial neutrality was underwritten by the Public Lands Resolution of 1780, enacted by the Continental Congress, and by the land ordinances of 1784, 1785, and 1787 enacted by the Confederation Congress. The new U.S. Congress adopted those policies because the U.S. Constitution (Art. IV, Sec. 3) gives Congress plenary authority over U.S. territories. All four acts managed disposition of the Northwest Territories ceded to the union by the seven states that had claimed those territories. The 1780 resolution and 1784 ordinance provided for settlement of the territories and their formation into "republican states" eligible to "become members of the Federal Union" and to enjoy "the same rights of

sovereignty, freedom and independence as the other States” (quoted in Hill 1988: 43). The 1785 ordinance mandated a rectangular land-survey creating a continuous grid of 36-square-mile townships (93.24 square kilometers), each divided into 36 one-square-mile sections (640 acres or 259 hectares). Land was sold for one dollar per acre, with a 640-acre minimum. Section 16 of each 36-square-mile section was set aside to support education.

Congress declined to designate a section for religion. The religion receiving support would have been decided by a majority of the residents of the 36-square-mile section. Rejection of such land grants did not reflect fear of religious nationalism but of creating discord on the frontier among competing religious groups.

This system was based more on New England’s land-use practices than on those of the South. Thomas Jefferson hoped the system would encourage settlement by yeoman farmers and discourage slave-dependent plantations. The rectangular survey covers 69 percent of the land area of the 48 contiguous states and partially covers another 9 percent (Carstensen 1988). The survey was extended to Alaska.

Louisiana recognizes French and Spanish *arpents* as well as the rectangular system; Texas recognizes Spanish land grants and some elements of the rectangular system; and Hawaii uses mostly the Kingdom of Hawaii’s land division present at the time of U.S. annexation in 1898. Vestiges of French ‘long lots’ remain in a few Michigan and Wisconsin localities; a portion of southern Ohio is based on Virginia’s metes-and-bounds system; and some areas of New Mexico retain Spanish and Mexican metes-and-bounds delineations.

The straight lines that shape all or a portion of the boundaries of all U.S. states except Hawaii highlight this territorial neutrality. Colorado and Wyoming are almost square. Most straight-line boundaries end or are interrupted only by geographic features, such as a river.

The Northwest Ordinance of 1787 prohibited slavery and provided for federal-government appointment of a governor, secretary, and three judges for territories having less than 5,000 free, male residents. When a territory reached 5,000 free, male inhabitants, its residents could elect a legislature; reaching 60,000 such inhabitants, the residents could petition to enter the union as a co-equal state. The federal Enabling Act of 1802 established the procedure for admitting the first new territorial state, Ohio, in 1803 and subsequent states. Residents must elect a constitutional convention to decide whether to join the union and, if so, draft a state constitution, although most territories first held a statehood referendum. The constitution is submitted to the U.S. Congress. The Enabling Act’s only requirements were that the state constitution be “republican” and not violate the Northwest Ordinance.

Although movies portray the nineteenth-century territories as the ‘wild West,’ the rectangular system facilitated a rather “*mild West*” (Carstensen 1988: 39) by fostering more orderly and less litigious settlement than would have occurred under the metes-and-bounds system or personal and corporate land grants made by Congress. The system permitted local expressions of political, socioeconomic, and cultural preferences based on the immigrants who settled various sections, as well as a diversity of preference expressions across the sections, while also denying immigrant groups an ability “to claim national rights on the ground of settlement before the establishment of” U.S. authority (Glazer 1977: 73).

These lands, of course, were not empty. The grid survey was laid atop Indian lands to benefit immigrants with little regard for Indian land claims, but the prevailing European attitude was captured by Tocqueville: “Although the huge territories . . . were inhabited by

many native tribes, one can fairly say that at the time of discovery they were no more than a wilderness" ([1835] 1969: 30). This was not peculiar to the United States; the decimation of indigenous peoples and thefts of their lands occurred everywhere in the Western Hemisphere as well as in Australia and New Zealand. Differences afterwards arose from how the European settlers of those places governed those lands.

2.3 Territorial Democracy

Territorial neutrality underlies what Brownson called "territorial democracy" ([1865] 1972: 210). He borrowed the term from Benjamin Disraeli, who stated: "The democracy of America must not be confounded with the democracies of old Europe . . . It is a territorial democracy" constructed by "cultivators of the soil" (1865: 1572). Brownson characterized territorial democracy as a counterweight to what he termed "personal" democracy and "humanitarian" democracy—the former rooted in egoistic individualism, the latter expressed as Jacobin centralization. Territorial democracy, he averred, facilitates a transcendence of individualism without submergence in a general will. In the United States, Brownson noted, political powers and rights are vested in places, not estates, nations, or peoples, and all residents of a place are entitled to participate in its governance.

The concept was revived by Kirk (1974) who argued that while the federal union is a republic, states and localities are territorial democracies that sustain associational life against the pressures of mass society and protect liberty against government centralization (Russello 1994). Elazar emphasized the role of territorial democracy in fostering territorially based pluralism. People gain representation in government through "their ability to capture political control of territorial political units." When "one interest declines . . . and a new one arises, the new one can gain some voice in the system" (Elazar 1984: 47). Specific groups often settled in specific jurisdictions in order to establish specific communities. "This territorial distribution of power has served to mitigate the effects of great national diversity by allowing subnational territorial communities to interpret national demands in such a way as to reflect their own local values as well" (Elazar 1994: 67).

2.4 Non-Centralization and Territorial Democracy

Territorial democracy was empowered by very constrained federal power for the first 150 years of U.S. history. The system was highly non-centralized because there was no original central power (Elazar 1984). The union was established by 13 states, and procedures for admitting new states emphasized mutual state-federal consent. Once in the union, new states were equal to the extant states and governed themselves with little federal-government interference. The United States was a federation of "island communities" up through the nineteenth century (Wiebe 1975), although those communities were connected to national commerce. Even today, despite tremendous centralization since the 1960s (Kincaid 2012), the United States ranks third highest for regional authority among the seven federations scored on the regional authority index (Hooghe et al. 2008) and is the world's ninth most decentralized country (with Switzerland being the only federation more decentralized than the United States) according to the World Bank (Ivanyina and Shah 2012).

The principal source of state and local self-governing authority is the police power, which, in the United States, is the authority to legislate for the health, safety, morals, and general welfare of the people. The federal government was not given the police power.

This is a theoretically unlimited power that can be constrained only when a state or local use of the police power conflicts with the federal Constitution or law, with a state constitution as enacted by the state's citizens, or, in the case of local government uses of the police power, with a state law or municipal charter granted by the state. The police power encompasses, for example, alcoholic beverages, bicycles, building and fire codes, child welfare, consumer protection, corporation chartering, crime, discrimination, divorce, drugs, education, eminent domain, environment, gambling, health care, hospitals, land-use planning, language, marijuana, marriage, motor vehicles, natural resources, nuisances, occupational licensing, museums, parking, public health, public order, recreation, religion, restaurants, sanitation, transportation, voter qualifications, and zoning. Thus, states and localities enjoy a large range of domestic powers, some of which belong to the federation elsewhere, such as marriage law in Australia, Canada, and Germany. If many of these powers are assigned to the federation, cultural groups cannot use them to institutionalize their preferences in constituent jurisdictions.

The Constitution places insignificant limits on state tax powers. States enact income, sales, property, and many other taxes and fees. They have broad leeway to use taxes to regulate behavior. No federal constitutional limits are placed on state borrowing. Consequently, state and local citizens have broad police and fiscal powers to enact and finance their political, socioeconomic, and cultural preferences.

2.5 *Territorial Cultural Pluralism*

Territorial neutrality and territorial democracy in a non-centralized federation with a largely enabling and unobtrusive federal government allowed culturally distinct immigrant groups to establish thousands of territorial bases. Although histories of U.S. immigration usually emphasize the role of big cities in assimilating immigrants, never has more than a third of the U.S. population lived in cities of 100,000 or more people. Settlement sprawled across what are now 35,886 municipalities and 3,031 counties.

Many immigrants settled in small and medium-sized jurisdictions where they could build a supportive civil community and gain voice in local government so as to shape public policies compatible with their preferences. Local schools dominated by one ethnic group often offered non-English instruction. In 1923, the U.S. Supreme Court struck down laws in about 23 states that mandated English-only instruction (*Meyer* 1923). Election to local government has been the first step for immigrant groups to enter the U.S. political system and ascend to state and federal offices. Because all representation is territorial, immigrant groups can influence representation in city, county, state, and federal legislative bodies before their members achieve election to those bodies. Such territorial bases are staging grounds for individuals, especially immigrants' children, to assimilate into American society. U.S. refugee policy today emphasizes settlement in communities where family and compatriots are already present.

In big cities, immigrant groups created neighborhoods such as Chinatown, Little Italy, and Little Havana. In the nineteenth and early twentieth centuries, most municipal and county council members were elected from territorial wards that enabled immigrant majorities in most neighborhoods to elect their own members, just as ward elections today increase black and Hispanic representation compared to at-large elections. By the early twentieth century, immigrant groups, especially the Irish, had built powerful political machines (i.e., party organizations), mostly Democratic, that positioned them to exercise substantial power in state and national politics (Erie 1990).

Importantly, the larger size of states and immigrant diversity prevented any one cultural group from controlling a state and making national claims or secession demands. Diversity also tempered regional tensions and facilitated assimilation into a polyglot culture unified by English communication. Despite the absence of fiscal equalization, higher proportions of Americans than residents of Canada, Germany, and Spain believe their region is treated equitably in their federal system (Kincaid and Cole 2016).

The partial exception is Louisiana. In 1812, Louisiana became the only state to enter the union with a non-English-speaking majority and a civil-law rather than common-law tradition. However, the French majority sought quick incorporation in order to gain self-governing powers not enjoyed under imperial Spanish and Napoleonic rule. Worried about French Catholic dominance, Congress required Louisiana's constitution to provide that laws and official documents be published in the language "in which the Constitution of the United States is written," though not exclusively (Ward 1997: 1293). Up to the Civil War, Louisiana published documents in French and English; its legislature operated bilingually; and some officials (e.g., Governor Jacques Villeré, 1816-20) spoke only French. The 1845 constitution recognized French language rights, and an 1847 law allowed bilingual instruction in public schools. However, the 1868 constitution banned non-English legal publications, and in 1921, English was declared the official language. Only in the 1960s did Louisiana revive its French heritage. Louisiana's current (1974) constitution provides: "The right of the people to preserve, foster, and promote their respective historic linguistic and cultural origins is recognized" (Art. XII, Sec. 4). French is recognized again, but there are no official languages. However, such policies aim to foster tourism, not separatism (Murphy 2008).

Nearly all immigrants sought assimilation. Only a few small religious groups, such as the Amish, desired distinct, but not national, communities. Such communities have been accommodated mostly informally, though also legally insofar as state and federal laws permit religious freedom. For example, Amish children are exempt from state compulsory-education laws after grade eight (*Wisconsin* 1972). The limits of municipal or county religious rule remain unknown. After Rajneesh's followers incorporated a new municipality, Rajneeshpuram, in 1982, Oregon's attorney general contested the incorporation as violating the separation of church and state. Oregon's judiciary upheld the incorporation, but it became moot when the community collapsed after Rajneesh was convicted of immigration fraud and returned to India (Korn 1985; Abbott 1990).

This discussion is not meant to imply that immigrants experienced no social and governmental discrimination. Every non-British and non-Protestant immigrant group faced discrimination. Even Benjamin Franklin railed against Pennsylvania's Germans in 1751: "Why should the Palatine boors be suffered to swarm into our settlements, and, by herding together, establish their language and manners, to the exclusion of ours?" (quoted in O'Brien 1987: 285). Yet, the proposed U.S. Constitution was translated into German in 1787; there were still 488 German-language newspapers in 1900 (Kirschbaum 2015); and persons of German ancestry are now the largest population group. Discrimination came not only from British-stock Americans but also from preceding immigrants. By the 1820s, Germans joined many other Americans to discriminate against Irish immigrants, while Irish Catholic and Irish Protestant immigrants battled each other. In 2015, many Syrians in Allentown, Pennsylvania, objected to Syrian refugees being resettled near them because the Allentown Syrians are Christian while the refugees are Muslim (Associated Press 2015). Yet previous immigrant groups assimilated fairly well, as do most new ones. Approximately 50,000 Bosnian Muslim refugees from the war in the former Yugoslavia

live in St. Louis, Missouri. They faced initial discrimination and fear from many neighbors but, on average, they now earn 25 percent more than their U.S.-born neighbors (Anon 2015).¹

3 Statehood and Peripheral Nationalism

The absence of peripheral nationalism has led some observers to criticize the United States as being hostile to such nationalism. One influential critique contends:

In the United States ... a deliberate decision was made not to use federalism to accommodate the self-government rights of national minorities. It would have been quite possible in the nineteenth century to create states dominated by the Navaho, for example, or by Chicanos, Puerto Ricans, and native Hawaiians. At the time these groups were incorporated into the United States, they formed majorities in their homelands. However, a deliberate decision was made not to accept any territory as a state unless these national groups were outnumbered. In some cases, this was achieved by drawing boundaries so that Indian tribes or Hispanic groups were outnumbered (Florida). In other cases, it was achieved by delaying statehood until anglophone settlers swamped the older inhabitants (e.g. Hawaii; the south-west). In cases where the national minority was not likely to be outnumbered, a new type of non-federal political unit was created, such as the 'commonwealth' of Puerto Rico, or the 'Protectorate' of Guam (Kymlicka 1995: 28-29; 1997: 328; 1998a: 22; 1998b: 121-122; 2000a: 4; 2000b: 209; 2002: 29; 2004: 111).

This paragraph has been quoted widely (e.g., Brettschneider 2002: 38; McGarry and O'Leary 2004; Redding 2008: 975; and Anderson 2015: 106); however, the only endnote attached to the paragraph contains no sources or data substantiating its claims.²

3.1 Was There a Deliberate Decision?

There is no record of a deliberate government decision to deny statehood to 'national' minorities. This contention is especially puzzling because, during the American Revolution, the Continental Congress thrice appealed to Quebec to join the United Colonies and send delegates to the Congress. After independence, controversies over admitting new states focused before 1860 on whether a prospective state sanctioned slavery and after 1860 on whether a prospective state adhered to the Democratic Party or Republican Party and whether admitting western states would dilute eastern states' political power.

It is unlikely the U.S. founders could have conceptualized a multinational federation because none existed in the 1780s. The only other 'nations' occupying current and future U.S. territory were Indian peoples with whom the United States conducted treaty relations until 1871. Thus, the tribes were construed in terms of international relations, not domestic intergovernmental relations. Non-English settlers, such as the Germans in Pennsylvania and Dutch in New York, did not interpret themselves as distinct nations.

¹This article does not discuss black Americans because they do not occupy a specific territory or constitute a 'nation' or diaspora people for whom Africa is Zion, nor were they voluntary immigrants. Since the early nineteenth century, some activists have advocated black nationalism (Van Deburg 1997), but none have attracted politically viable black support. Since the era of slavery, most black Americans have rejected a desire to return to Africa (Sinha 2016), preferring instead to claim equal citizenship in the United States. Only about 17 percent prefer being called African American (Jones 2013).

²Correspondence with Kymlicka did not yield sources or data.

The founders' federalism, moreover, preceded the country's "great ethnic diversity" (Glazer 1977: 72). Further, no federation created in the Western Hemisphere (i.e., United States 1789, Mexico 1824, Venezuela 1830, Argentina 1853, Canada 1867, and Brazil 1899) or in Australia (1901) was multinational. Canada's Anglophones had to accommodate Francophones politically, but the modern idea of a multicultural or multinational federation was not fully conceptualized until the 1960s, particularly through the work of the Royal Commission on Bilingualism and Biculturalism (Tierney 2007). Even today, Canada is a *de facto* bicultural federation because Quebec has not approved the Constitution Act, 1982.

The issue of a nation within a nation arose in revolutionary France in regard to Jews. "One must refuse everything to the Jews as a nation and accord everything to Jews as individuals," declared Clermont-Tonnerre (1789). "It is repugnant to have ... a nation within the nation." The 1791 act emancipating Jews disestablished Jewish corporate life, and Jews were expected to lose their Jewishness (Kates 1990: 113).

This question did not disturb the United States. President George Washington—accompanied by prominent political leaders—visited Jews in Newport, Rhode Island, in 1790. He also wrote to the Hebrew Congregation of Newport saying: "May the children of the stock of Abraham who dwell in this land continue to merit and enjoy the good will of the other inhabitants—while every one shall sit in safety under his own vine and fig tree and there shall be none to make him afraid" (Mastromarino 1996: 286). Jefferson wrote that Virginia's 1786 Statute for Religious Freedom protected "the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and Infidel of every denomination" (Ford 1892: 62).

3.2 *Indigenous-Nation States?*

The idea that the United States could have established a Navajo state or other Indian-nation states cannot be assessed definitively because we lack records of a defined Navajo territory having a known Navajo population.

Other problems beset this contention. For one, every settler polity established in the Western Hemisphere encountered hundreds to thousands of indigenous communities, almost all lacking written languages and wheeled transport, many having overlapping territories, and some being nomadic. Aside from racism, such numbers thwarted multiple state formations, and the cultures of these 'nations' clashed with European notions of state organization. Indigenous peoples fought European occupation, but no country in the Western Hemisphere or Australia or New Zealand created indigenous-nation states or provinces.

Indigenous peoples rarely constituted defined territorial polities, and they had a rich variety of governance systems. The concept of indigenous peoples as 'nations,' with the U.S. Supreme Court terming the conquered tribes "domestic dependent nations" (*Cherokee Nation* 1831) is a construct imposed on indigenous peoples by Europeans seeking to locate indigenes within a Euro-centric worldview.

Kymlicka suggests that Canada's development "involved the federation of three distinct national groups (English, French, and Aboriginals)" (1995: 12). This view is puzzling because the French were conquered in 1763 by the British, who desired no French-nation province. The view is inaccurate because (1) the aboriginal 'nations' were conquered by the British and the French, (2) the term 'aboriginals' disguises the diversity of indigenous peoples, and (3) Canada's indigenous peoples still lack equal parity with Canada's settler

peoples and enjoy less self-determination than tribes in the United States (Borrows 2016). Nunavut, created in 1999, encompasses mostly Inuit peoples and is not a co-equal province. Unsettled, moreover, is whether Quebec's secession would require the Cree to exit with Quebec. Russell (2004) contends that no provincial majority has a right to yank indigenous peoples out of Canada against their will. In 1995, 96 percent of Cree and Inuit voters in northern Quebec opposed Quebec secession (Wherrett 1996).

Navajos have not requested statehood. Former Navajo President Albert Hale contended: "The Navajo Nation currently enjoys the status of semi-sovereign nation. In spite of all the limitations on our sovereign status, a semi-sovereign nation status is a step higher than a state sovereign status" (quoted in Norrell 1996: A3). Statehood would vitiate the ability of indigenous peoples to maintain their cultural nationhood because the U.S. Constitution would not allow them to base state citizenship on blood quanta, exclude non-tribal people from citizenship, and exclude non-tribal people from residence and conducting business in the state.

The tribe's status, while far from ideal, permits perpetuation of Navajo peoplehood. Further, the U.S. government deals with all 566 tribes on a government-to-government basis. The tribes also enjoy multiple legal statuses, and they can alter their status strategically by gaining 'treatment as state' status from the U.S. government, acting politically as state and county citizens, and benefitting from international recognition as indigenous peoples (Mohan 2015).

Practical obstacles to statehood are that the Navajo nation surrounds the Hopi nation, and Navajos occupy some lands claimed by the Hopi. Hopi-Navajo relations are antagonistic.

It is often thought that the proposed state of Sequoyah could have been an Indian-nation state. It was proposed in 1905 by the so-called Five Civilized Tribes in eastern Oklahoma who sought to protect their governmental power in the face of a federal law slated to destroy their political existence in March 1906. The tribes held a convention and wrote a constitution approved by 86 percent of the territory's voters. The U.S. Congress ignored the statehood petition (Morgan et al. 1991). Opposition was not driven by fear of an Indian state because the Sequoyah Constitution did not propose an Indian-nation state. Tribal law would have ceased, and the constitution did not acknowledge Indian-nation citizenship. Instead, President Theodore Roosevelt, a Republican, and many members of Congress objected to admitting two western states (i.e., eastern and western Oklahoma), a likely Democratic state (i.e., Sequoyah), and a state that might enfranchise women. However, in 1906, as Oklahoma was joining the union, Congress enacted legislation guaranteeing the tribes' existence forever. Arguably, Sequoyah's defeat "was a blessing for the tribes" (Leeds 2007: 10) because statehood would have foreclosed the resurgence of Oklahoma's 39 tribes. Instead, they have been able to exercise self-governing tribal powers with varying degrees of sovereignty to the exclusion of Oklahoma-state power within their long-standing territories.

Accommodations of increased Indian self-determination since the 1960s (Borrows 2016) has entailed asymmetric arrangements that, while not ideal, offer territorial opportunities to sustain Indian peoples. The legal basis for these arrangements is the U.S. Constitution's grant to the Congress of plenary authority to regulate relations with Indian tribes and dispose of U.S. territories. The post-1960s enhancement of tribal self-determination is not compatible with the Siroky et al. (2016) thesis, though, because tribes have never posed a credible exit threat, and the center has not been dependent on them. Instead, enhancement of tribal autonomy was driven by Republican President Richard M. Nixon and a

Democratic Congress in the context of the 1960s' rights revolution. This is not to say that indigenous peoples are treated justly. Throughout the Western Hemisphere, they were nearly exterminated by Europeans. Contemporary accommodations cannot compensate for yesterday's genocides (Brown 1970; Wilkins 2013).

3.3 *A Hispanic State?*

O'Brien contends that the United States "did not admit either New Mexico or Arizona to statehood until the Anglos had attained a majority" (1987: 330); yet, in an article with 535 footnotes, she provides no sources or data for this claim. The idea that the United States could have established a Mexican/Chicano/Hispanic/Latino-nation state after acquiring more than half of Mexico's territory under the 1848 Treaty of Guadalupe Hidalgo following a war with Mexico cannot be assessed definitively because there are no accurate records of the territory's Mexican population. Estimates claim 80,000 (Navarro 2015: 52) to 100,000 (Foley 2014: 31) Mexicans spread across what are now nine states from California to New Mexico. Complicating the assessment is that the U.S. Census counted most Mexicans as white between 1850 and 1920 (Gibson and Lennon 1999). It seems certain, though, that the Mexican population was not sufficient for statehood in any portion of the vast territory, nor did Mexicans advocate a distinct national state.³

The United States treated the territory the same as other territories. It applied the rectangular survey and opened the land for settlement. The principal deviations were treaty recognition of land claims of the 90 percent of Mexicans who remained in the territory and became U.S. citizens with full voting rights (before most African Americans, Asians, and Indians attained U.S. citizenship). Kymlicka believes the treaty guaranteed Mexican language rights, but they "were rescinded by the Anglophone settlers as soon as they formed a majority" (1995: 116). Article IX of the treaty guaranteed liberty and the free exercise of religion, which implied rights to communicate and worship in Spanish, but the treaty did not guarantee language rights or rights to Spanish-language government services. Massive Anglo in-migration did marginalize Spanish in parts of the territory and produce discrimination against Mexicans, but the federal government had no treaty obligation to preserve Spanish. Yet when New Mexico entered the union in 1912, its constitution provided for bilingual governance and other accommodations for its large Hispanic population.

3.4 *Puerto Rico and Guam Statehood?*

Puerto Rico and Guam were acquired by the United States in 1898 after a war with Spain triggered by U.S. intervention on behalf of Cuba's war for independence from Spain. The United States also acquired the Philippines. Cuba was given independence in 1902; the Philippines became independent in 1946.

The United States rejected Puerto Rico's 1914 request for independence. In 1917, U.S. citizenship was extended to all Puerto Ricans, despite their objections. Relations improved in 1947 when the United States allowed Puerto Rico to elect a governor. In 1950, Congress authorized Puerto Ricans to adopt a constitution, approved by 80 percent, which established the *Estado Libre Asociado de Puerto Rico*.

³Since 1848, various activists have promoted Hispanic nationalism (Navarro 2015), but none attracted politically viable Hispanic support.

Non-statehood has little to do with Spanish culture. Although one congressman said in 1993 that it would be difficult to admit Puerto Rico into “the Union with two official languages” (quoted in Aleinikoff 1994: 42), the main barrier is that Puerto Ricans have not clearly requested statehood. In 1967, only 39 percent voted for statehood, followed by 46 percent in 1993 and 47 percent in 1998. (The people of Hawaii, the last state admitted to the union, voted 93 percent for statehood.) Votes for independence never exceeded 6 percent in these plebiscites.

In 2012, Puerto Ricans voted on whether to continue the island’s ‘commonwealth’ status. Fifty-four percent voted ‘no.’ They then voted on statehood, independence, or a Sovereign Free Associated State. For the first time, statehood prevailed by 61 percent. However, the referendum has been faulted for being ambiguous, even misleading, and yielding a large number of blank and spoiled ballots. In the same election, voters ousted the pro-statehood governor and the legislature’s pro-statehood majority. An opinion poll showed majority support for the current status. In 2013, the legislature deemed the plebiscite “inconclusive” (Garrett 2013).

Two barriers to statehood are that the island is strongly Democratic and would, if admitted, be the twenty-ninth largest state in terms of population (much larger than Alaska, Hawaii, and 19 other states) and entitled to about four members of the U.S. House of Representatives plus two senators. All other new U.S. states had smaller populations posing much lower political threats to the relative positions of the extant states.

Guam’s lack of statehood is not due to cultural prejudice or opposition to the Chamorro language. One barrier is that Guam has a population of 159,358, which is much smaller than the smallest state, Wyoming (with 586,107 people). Guam residents are U.S. citizens, but they divide on whether Guam should become a state, unite with Hawaii or the Northern Mariana Islands, or become independent.

Similar factors apply to the non-state status of the U.S. Virgin Islands (population, 106,405), American Samoa (population, 54,343), and Commonwealth of the Northern Mariana Islands (population 52,334). American Samoa also is the only territory where residents are U.S. nationals but not U.S. citizens. The islands’ government has opposed U.S. citizenship because it would threaten Samoa’s cultural autonomy, especially its rule that communally owned land be sold only to persons who are at least 50 percent Samoan. When U.S. citizenship was extended to all residents of the Northern Mariana Islands in 1986, individuals were permitted to reject citizenship but remain U.S. nationals.

The federacy arrangements with all six territories, while not ideal, are asymmetrical accommodations of culturally different peoples who support affiliation with the United States but not necessarily statehood (Stevens 1977). These arrangements, coupled with the islands’ distance from the United States, help preserve their cultures and languages because they discourage interjurisdictional migration that would dilute these cultures. Consequently, they cannot be deemed necessarily inferior to statehood.

3.5 Did Anglophones Deliberately Swamp Hawaiians?

The contention that Hawaii statehood was postponed until Anglophone migrants swamped the indigenous Hawaiians is incorrect. Hawaii’s population was about 300,000 when James Cook arrived in 1778. The total population—Hawaiian and non-Hawaiian—was 56,897 in 1872. The native Hawaiian population had been decimated long before U.S. involvement and annexation in 1898.

The U.S. census has no ‘Anglophone’ classification, but at statehood in 1959, only 32 percent of the population was white. Only 17 percent of the population was native Hawaiian, but 32 percent was Japanese, 11 percent Filipino, 6 percent Chinese, and 3 percent other.

Despite being one-third Japanese, Hawaii was accorded statehood only 14 years after World War II when Americans had vilified the Japanese. Japanese Hawaiians most supported statehood. Most of the *haole* elite (i.e., Hawaiians of European ancestry) opposed statehood. Southern members of Congress most opposed Hawaii statehood from 1945 to 1959. Although some employed racist rhetoric, such as ‘the Japanese menace,’ white southerners opposed statehood mainly because they believed Hawaii’s congressional delegation would oppose the South’s race policies (Pratt and Smith 2000). Nevertheless, Hawaii is the only state having two official languages, English and Hawaiian, which were specified in a 1978 amendment to the state’s constitution. Hawaii’s constitution and federal law also protect homelands reserved for native Hawaiians (defined as persons with 50 percent or more Hawaiian blood). The U.S. Congress established the homelands in 1921 but has not recognized Hawaiians as possessing attributes of nationhood.

Hawaii’s long statehood gestation was not unusual. Alaska was purchased from Russia in 1867 and did not achieve statehood until 1959. Non-contiguity with the 48 states was an initial obstacle. Agitation for statehood began in Hawaii and Alaska before World War II, but the war delayed action. Both entered the union in 1959 in part because they were militarily strategic during the Cold War and because President Dwight D. Eisenhower, a Republican, and the Democratic majority in Congress believed the predominant party affiliations of the residents of the two states would counterbalance each other.

3.6 *Were Florida’s Boundaries Manipulated?*

There is no evidence that Florida’s boundaries were manipulated in order to marginalize Indians or Hispanics. Florida is mostly a peninsula with the second longest coastline (2,173 km) in the United States after Alaska. Border manipulation would have divided the peninsula into two or more states because there was little room to manipulate Florida’s northern land border that abuts Georgia and Alabama. Florida’s land boundary was drawn in 1799 based on a 1795 Spain-U.S. treaty when Spain controlled Florida. The boundary consists mostly of straight lines with only small deviations for natural geographic features (Denham 2015). Florida became a U.S. territory in 1822 and a U.S. state in 1845. The only boundary change was Spain’s formal cession of West Florida to the United States. West Florida, heavily settled by white Americans, had declared independence in 1810. It was then annexed by the United States. West Florida was divided among Alabama, Mississippi, and Louisiana while much bigger East Florida with a large Seminole population and many escaped slaves became Florida. The U.S. Supreme Court later upheld Florida’s land boundary against a Georgia challenge (*Florida* 1854). However, the United States fought three costly wars (1816-19, 1835-42, and 1855-58) with Florida’s Seminoles (Knetsch 2003).

3.7 *Abortions of Quixotic States*

A number of proposed states failed to materialize, though not due to fears of peripheral nationalism. For example, Franklin was proposed in 1785. More than half of the states

voted to admit it, but the vote fell short of the required two-thirds majority. Franklinites elected a governor and legislature and established courts. Under attack from Indians, Franklin requested help from Spain, but North Carolina soldiers marched into Franklin and arrested the governor. Franklin became a part of Tennessee in 1796. In 1794, a private militia seized Creek land in west Georgia to establish the republic of Trans-Oconee. President Washington persuaded Georgia's governor to send 1,200 militiamen to squash it. Muskogee, founded in 1795 in the area of Tallahassee, Florida, by William Augustus Bowles and Seminole Indians, was crushed by Spain's military. A state of Adelsverein was proposed in 1845 by 21 German nobles who wanted to move large numbers of Germans to the West. The proposed state included what is now New Braunfels, Texas, a region settled by Germans. William Walker and 48 mercenaries created Sonora in 1853 after capturing Baja California and part of Sonora. Mexico expelled them (Trinklein 2010).

Yucatan seceded from Mexico in 1846. In 1848, the white (*criollo*) government requested U.S. annexation. President James K. Polk was sympathetic because Yucatan had also beseeched Britain and Spain for annexation. Polk submitted an annexation request to Congress. Many Democrats and Manifest Destiny expansionists supported annexation; most Whigs opposed it. After the treaty of Guadalupe Hidalgo, the Yucatan's warring parties concluded a treaty, and the U.S. Senate dropped the matter (Leonard 2000).

In the late 1850s, John J. Flournoy proposed a "republic of the deaf," a state "where all of its citizens would be deaf and the chief means of communication would be sign language" (Gannon et al. 1981: 73). Congress was not receptive, but in 1857, it chartered what became Gallaudet University for deaf students.

4 Conclusion

The United States case highlights limitations to theories of multiculturalism and peripheral nationalism, especially as applied to places outside of Europe and transplantations of European nationalisms. There is a multiplicity of accommodations of cultural diversity, including asymmetrical arrangements, that need not be tied to a 'national' bed and to statist assumptions that only independent statehood or constituent statehood in a multinational federation constitute equity (cf. also Zdeb 2016). Territorial neutrality and democracy may be most suitable and equitable in immigrant polities and polities experiencing substantial immigration.

The critique of the United States does not withstand scrutiny in part because the United States is a predominantly immigrant nation, and virtually all immigrants desired assimilation. Assimilation was eased by territorial neutrality and democracy that allowed immigrants to establish territorial bases from which they could launch assimilation. The critique also imposes presentism (Fischer 1970) on the past because conceptions of a democratic multinational federation, democratic self-determination, and peaceful right of democratic secession are contemporary ideas that achieved widespread legitimation only during the post-World War II 'age of democracy' (Kincaid 2015; Siroky et al. 2016).

During the current 'age of democracy,' the United States also has sought to accommodate through asymmetrical arrangements 'national' minorities brought within its jurisdiction by nineteenth-century conquests but not desiring incorporation. Asymmetrical arrangements might be superior, especially for the large number of indigenous peoples.

Each is now small in number, each has a unique culture, and all possess cultures different from European cultures. In the United States, especially, asymmetrical tribal governance arrangements have the significant benefit of limiting undesirable foreign in-migration.

There is ample room for criticism of U.S. treatment of minorities and for the improvement of governance, but theories of multiculturalism and peripheral nationalism do not necessarily point toward the best solutions.

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