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Rechtsgeschichte
Legal History

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The Multicultural State: Progress or Tragedy?

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Abstract

This essay is a short response to Daniel Bonilla Maldonado's contribution, »Beyond the State: Can State Law Survive in the Twenty-First Century?« to the recently published *Cambridge History of Latin American Law in Global Perspective*. While Bonilla sees progress in the movement from the centralized nation-state to the multicultural state, my essay argues for an appreciation of the values that motivated the creation of the unified state as a single constitutional order in the post-colonial period. This effort may have failed, but with that failure went a distinct and valuable idea of freedom.

Keywords: modernity, freedom, nation-state, multiculturalism

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The Multicultural State: Progress or Tragedy?*

Just about the time that Daniel Bonilla's narrative of recent constitutional development in Latin America begins – the mid to late 1980s – I began my career as a law professor. Alongside constitutional law, I found myself teaching international law. One of the contentious topics in that field was the right of self-determination. Who can make such a claim and what does it entail: autonomy or statehood? Is the right free-standing or remedial?

These legal questions were pushed forward both by political developments and by a new theoretical literature on multiculturalism. My view, then, was that international law could take no position on the central issue in these debates – the place of cultural minorities in the distribution of political power within the state. It could not do so because there was no correct answer embedded in political practice, and there was no common political morality with respect to this issue upon which to draw. Some states imagined themselves as »melting pots«, aiming for a single, national political culture, while other states thought of themselves as alliances among diverse communities that pre-existed the state. The former tended toward centralization of power. To the extent that they decentralized, the subunits were defined politically, not culturally. The fifty American states are not cultural or ethnic communities. Multicultural states, on the other hand, were skeptical of centralization. They tolerated centralized power as a device for coordination among distinct communities that were defined prior to and apart from their politics.

I thought of this as the difference between the United States and Canada, or the difference between what had been the French and the British approaches to empire. The pressing practical issue in the 1980s, however, concerned state formation after decolonization. The colonial legacy included political boundaries drawn without substantial regard for the geography of indigenous communities. Was the post-colonial state committed to a kind of erasure of political differences among indigenous communities or was its state building project to reflect its multi-national character?

Reading Daniel's essay, I realized that the ground has shifted over the last few decades. There has been a moral, if not a legal, victory for one side in this debate – the multicultural side. Daniel's story is about the progressive development of South American constitutionalism from a postcolonial regime of nationalist monoculturalism, to multiculturalism within a liberal frame, to plurinationalism or interculturalism. The endpoint rejects the idea of a single people united in a political culture, imposing a single order of law upon themselves. The state, instead, becomes a site for dialogue among autonomous, self-governing communities. While Daniel speaks of a continuing commitment to a singular or absolute sovereignty even in the plurinational state, it is hard to know what that means beyond a commitment to stable borders – especially given the second half of his chapter, which describes the increasingly porous nature of sovereignty.

Daniel sees the increasing, political embrace of cultural difference over the last four decades as progress toward a proper endpoint – a movement from illegitimacy to legitimacy. The monocultural state suppressed the diverse political and cultural claims of indigenous and African-American groups. The emerging plurinational state would give these diverse groups »their due« by recognizing them as autonomous sources of law. The state becomes a site of constant exchange and negotiation among these internal nations.

One wonders where, in this model, is the power to decide. Daniel's description is full of the language of discourse, interaction, and learning, but there is little on the moment of decision. A state,

however, is a power in the world by virtue of its decisions. The power does not exist in the abstract, but only in its use – including the carrying into effect of decisions. Inevitably decisions have unequal consequences. What actually holds the state together at the moment of decision? I'm not sure a plurinational state is actually a state; it may be the problem to be addressed through state formation. Think for example of Lebanon.

Thinking about the political from the perspective of the decision, I realized that where Daniel sees progress, I see tragedy. Daniel might be right in describing the new forms of state order as remedies for pathologies in the exercise of power by earlier state formations. We should not, however, read those pathologies through the lens of the remedy. When a car crashes, we might encourage the passengers to take a train. The failure of the car, however, was not that it was not a train. The failure of the unitary state was not that it was not a multicultural state. It was, rather, the failure of the modern political project.

Daniel is describing a turn to a post-modern, political project. I want to linger for a few minutes on the nature of the modern state-building project and what was lost with its failure. Daniel and I have quite different understandings of the nature of that project. I see the nation following the state; he sees the state following the nation. Both views are well represented in the tradition of state construction. The American and French experiences stand on one side; the German and Italian, on the other. I suspect that Daniel is attracted to the latter view, in part, because he approaches the problem from the perspective of the multicultural remedy. I am attracted to the former because it rests on a radical idea of freedom – an idea I believe to be at the heart of modernity.

What was the nature of the modern state-building project of which both the United States and Latin American states were products? These were settler states; they were also revolutionary states. They broke the bonds of political authority, in pursuit of an idea of self-creation. Political order might depend upon civil society, but it was not to be a mirror of society. Rather, the state-building project affirmed the autonomy of the political. The state was an artificial, not a natural, order. It was something to be designed by reason and enacted by the will. The political project, accordingly, expressed the Enlightenment belief that a free will was one that could form itself under the direction of reason. Hobbes and Kant are equal founders of this tradition.

To think that political order could be a project of reason required a turn away from God as well as from every other traditional source of order. That turning was an act of liberation. Every political claim had to be justified to the »opinion of mankind«, meaning it had to defend itself through an appeal to reason. This thought, famously embodied in the founding documents of the United States, was at least as important historically as the invention of the steam engine. Failed political projects could now be replaced. Indeed, there was a moral demand that they be replaced by something new. For these reasons, the modern political age was characterized by repeated efforts at constitutional construction.

The modern state is distinctly a product of theory. We don't have modern states until we have modern political theory. This too is remarkable: the practical equivalent of the discovery of Pluto on the basis of theory. The famous frontispiece of Hobbes' *Leviathan* symbolizes this ambition of state creation *ex nihilo*. Deploying reason, a community could bring itself into history as a force in the world. Compare this to state construction through royal marriages. The very meaning of history changes. It becomes the self-narrative of a collective, transgenerational agent that is the people.

This modern, political project was both new and grand. It promised liberation from multiple forms of subordination. Citizens would give the law to themselves. Belief in this state expressed the possibility of freedom and order: ordered liberty. This was a vision of politics commensurate with the belief in science and education that characterized modernity.

The key ideas of this modern political project remained stable for some 300 years: human rights expressing the dignity of a citizen capable of self-government, law as the construct of reason, and elections as the means for the selection of political representatives. Liberal theory tends to think this is enough, but it is not. Missing from it is a robust idea of representation of the popular sovereign. Only this could turn the universal project of reason into the project of a particular community. Absent this moment of representation, the project has no home. It is as moveable and as transient as a copy of *Leviathan*. This element of representation was the counterforce to a natural tendency of the other

elements (human rights, reason, and elections) to move toward larger and larger political configurations. To be modern was to want to live in a political community that understood itself as committed to realizing in and for itself the three elements of the liberal, democratic state.

There were, of course, a million problems with this political program, beginning with the belief that not all people were »capable« of being full citizens. They were not yet modern: that is, they were still uncivilized. At its origins, the modern state excluded women and minorities. As a project of colonization, it excluded majorities, as the colonizers claimed to be the civilized. The project also imagined citizens as rational agents, but of course real people respond – for good and bad reasons – to many unreasonable claims. Those claims can range from personal interests to group advantage. The political project was a grand idea, but it was crippled from the start by its reliance on real people. This problem had already been identified by Plato: the just state requires at its foundation the sort of person that only arrives with its success.

Every institution faces a conflict between its ideals and the actual practices that inform its behavior. For this reason, every institution is in constant need of reform. Beyond a certain point, reform seems impossible and we abandon the project as a bad idea. Was the modern state a bad idea? I don't think so. More importantly, I don't think there was a choice. It represented the political expression of the modern project. We cannot choose not to live in our historical moment. This does not mean we have to be neutral in our attitude toward this historical formation. I think the modern political project was a truly great idea. If we are bound to a political life, I would choose to be bound to a state that thought of politics as a project of self-creation under the guidance of reason. In ordinary discourse, we call that project »freedom«.

How did we move from a competition between political visions in the 1980s to the triumph of multiculturalism today? This shift is only one manifestation of the assault on modernity with which we are familiar in both its academic and popular forms. What I described as pathologies become essential attributes. The frame of reference shifts from reason to power: who has it and who does not? We dismiss reason as rationalization and consider individual motives; we examine the actual distribution of wealth and power among competing groups. We develop accounts of structural injustices, of individual biases, of social hierarchies that perpetuate themselves under the guise of reason. Whose reason, we ask? We identify groups that suffer from exclusion even as they perform necessary labor for the community. We find that the project of modernity never penetrated deeply into society, as families and communities protect their own against even the just claims of others. Politically, these multiple critiques translate into a deep resentment of elites. The anger at elites, then, informs an attack on the political institutions they occupy. This combination of critique and mobilization has caused political disruption everywhere.

Those of us who think both that much of the critique is correct and that the rejection of the modernist project is a tragedy are in a difficult position. I really do not know if the modernist project is salvageable. We, too, must live within the historical moment in which we find ourselves. The issue is not whether we can imagine more robust forms of human rights, reason, and electoral accountability. Europe has been experimenting in this direction. The difficulty is whether we can find an identity – a representation of the self – in that political formation. Whose project is it? One answer to that question was given by Brexit; another is given in the political developments that Daniel recounts.

Daniel describes a double movement – a sort of pincer movement – attacking the classical concept of the unified, modern state from within and from without. At stake in these attacks was the nature of the intergenerational collective subject whose project was the state. That concept of self-creation seems increasingly anachronistic. No state can live in our historical moment without massive, legal coordination with others. The power of decision moves toward transnational institutions, draining state sovereignty of importance.

There is nothing new in recognizing that as transnational governance grows, so do centrifugal forces within the state. Transfer of power away from the nation weakens the claim of the state in the face of more local claims on identity. Sometimes there is a counter-reaction, reclaiming state power as in Brexit. More often, we simply live with a weaker sense of politics as the site of identity and freedom. The wealthy become cosmopolitans; the less well-off turn inward to ethnic and cultural identity.

These moves seem tragic to me, both for what has been lost and for the dangers they raise. Transnational governance has not penetrated citizen identity; its claims of rationality ground bureaucracy, not freedom. Its success depends upon a depoliticized world. A depoliticized world opens a space for a multicultural state. Both developments imagine a politics in which decision is not necessary. Politics without decision can indeed be endless conversation. This is the condition under which new forms of politics can emerge that reclaim the power to decide. Today, those forms are likely to be populist and violent. This is a problem not just in Latin America, but everywhere.

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